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 4 June 2014- 4 December 2014

JUSTICE, INSTITUTIONS AND CONSUMER PROTECTION
(SUB-COMMITTEE E)

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2014 JUSTICE SCOREBOARD (7910/14)

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

Thank you for your Explanatory Memorandum dated 2 April 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 2 July 2014.

We question the argument that the Commission does not have the competence to prepare this annual Justice Scoreboard: as it says, effective judicial systems are fundamental to the success of economic policies for which it shares competence with Member States.

We do think, however, that the value of the simplistic comparisons in the tables in the Scoreboard can be questioned for the reasons you give. We also think the Scoreboard unnecessarily repeats work that is successfully undertaken by the Council of Europe, so we support the Conclusions of the JHA Council which have questioned the value of this annual initiative of the Commission.

We are now content to clear the Communication from scrutiny, and do not expect a reply to this letter.

4 July 2014

ACCESS TO PUBLISHED WORKS FOR PERSONS WHO ARE BLIND, VISUALLY IMPAIRED, OR OTHERWISE PRINT DISABLED (14617/14)

Letter from Baroness Neville-Rolfe, Minister for Intellectual Property, Parliamentary Under-Secretary-of-State, Business, Innovation and Skills to the Chairman, to the Chairman

I am writing to you concerning the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled.

The European Commission has recently published a proposal for a Council decision on the conclusion, on behalf of the European Union, of the Marrakesh Treaty. Details of the Treaty, which was concluded in June 2013, are included in the Explanatory Memorandum.
Lord Younger wrote to you on 15 April 2014 to update you on matters concerning the Council Decision on the signature, on behalf of the EU, of the Treaty. In your Report of 4 June 2014 you cleared the proposal from scrutiny and raised a number of points on the matter of EU competence and the Government’s intentions on this issue.

In addition to seeking your approval of the Government position on the Commission proposal, I would also like to provide a response to those points you raised in your previous letter.

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A number of potential international intellectual property treaties are currently under consideration at WIPO, such as agreements on industrial design law and practice, and on the protection of broadcasts. The possibility of a further treaty on copyright exceptions and limitations, closer in substance to the Marrakesh Treaty, is also being discussed, but any substantive progress is some way off. I should emphasise that WIPO Member States are still some way from reaching consensus and we are not expecting any imminent significant progress in negotiations. Discussions are proceeding with the EU and its Member States acting together.

—

There are a number of possible outcomes to current negotiations. These could include agreement of the proposal in its existing form, or following amendment to clarify the position on competence. Agreement would be by qualified majority vote. Should agreement on the legal basis of the decision not be reached, several options would be available to Member States and the Commission, including challenging the decision before the CJEU, or seeking an opinion from the CJEU. At this stage, before discussions on the proposal have begun, it is difficult to forecast the likelihood of such action, though it is clearly possible given the strongly held views on both sides. The Government will consider the position, including the views of other Member States, when determining the way forward on this issue.

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A total of 15 EU Member states have now signed the Treaty, many of which did so after agreement of the proposal for signature of the Treaty on behalf of the EU. As you know, nine Member States (including the UK) filed minute statements with the decision stating that they consider competence to be mixed and that Member States could sign and ratify the Treaty. The Commission has not challenged these signatures and has given no indication that it will do so. However, it is likely to take a more robust approach toward ratification of the Treaty. The Commission has yet to reveal its position in this regard and the Government will seek to ensure that this issue is resolved during negotiations on the current proposal.

I share your disappointment that the earlier decision gives no indication of the exercise of competence. The Government does not consider that the EU has exclusive competence in all matters covered by the Treaty and considers that the legal bases cited in the proposal are not appropriate. The Government will seek to clarify the position on competence in the proposal, working closely with other Member States.

The Government is a strong supporter of the Treaty and is committed to the principle of access to copyright works for visually impaired people. The Treaty strikes the right balance between allowing access to copyright works by those who need it and ensuring that copyright continues to protect right holders. On 1 June 2014 the Government introduced legislation to broaden the existing visual impairment exceptions to provide improved access to copyright works for people with all types of disability.

I will arrange for the text to be laid before Parliament as a Command Paper with an Explanatory Memorandum in the usual way.

I would be grateful if the Committee could consider the Commission proposal at its earliest convenience.

6 November 2014
Letter from the Chairman to David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum of 24 April on the Citizen’s Dialogues, one of which was held in London this year.

We think the initiative an important one, and whilst the Commission could be criticised for painting too rosy a picture of the Dialogues’ outcomes, action in the face of declining trust in the EU is better than no action.

We were surprised by your response in the Explanatory Memorandum to the Commission’s emphasis on the benefits of EU citizenship in the Communication. EU citizenship is a legal concept from which significant individual benefits flow; it is perhaps to be expected that in trying to highlight the benefits of the EU to the citizens of its Member States the Commission will concentrate on the consequences of EU rather than national citizenship. Your response also appears to overlook the fact that the UK accepted the status of EU citizenship and its entitlements by ratifying recent EU Treaties.

Be that as it may, we perceive the real difference of opinion between the Government and the Commission to be on how to resolve what both accept to be the worrying decline in trust in the EU.

For the Commission, Citizens’ Dialogues are just the beginning of measures to be taken at EU level to rekindle trust in the EU institutions. Promoting greater solidarity and the shared values on which the EU is based will inform these measures, according to the Communication. For the Government, the remedy is less Europe and a greater role for Member States and their parliaments.

As you know, in our recent report on The Role of National Parliaments in the EU we also concluded that national parliaments should be given greater influence over EU policy-making. We hope to receive the Government’s response to that report shortly.

We are content to clear the document and do not expect a reply to this letter.

19 June 2014

COMMON EUROPEAN SALES LAW (15429/11, 15432/11)

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

I am writing to update you on the progress of the draft Regulation for a Common European Sales Law (CESL) for the European Union since my letter of 14 March 2013 and to appraise you of the Government’s position following the vote of the European Parliament on 26 February.

The European Parliament’s JURI (Legal Affairs) Committee voted in September 2013 in support of the CESL proposal with amendments for an optional Regulation limiting it to distance selling, notably online sales, but still including business-to-business (B2B) and business-to-consumer (B2C) contracts. In July 2013, the IMCO (Single Market) Committee had voted narrowly in support of an amended version of the proposal (for a minimum harmonisation directive which limited its scope to B2C transactions) but these changes were not adopted by JURI. In the event, at the plenary the European Parliament voted heavily (416 votes for, 159 against with 65 abstentions) in favour of CESL with several amendments the most important of which restrict it to distance selling along the lines of the JURI changes.

We consider that the amendments made by the European Parliament do not adequately address the problems identified by our Call for Evidence process and hence CESL remains unacceptable to us. We know that a number of other Member States and stakeholders such as BEUC (the European Consumer Organisation) and Ecommerce Europe share our views. Restricting CESL to online and distance selling contracts would not solve some of the fundamental issues raised by ourselves and other Member States. These include subsidiarity, the legal nature and added value of such an optional instrument, the protection of consumers and the question of the legal base. The restriction to distance selling could itself result in uncertainty and confusion for consumers as to their rights.

Although Commissioner Reding has called on the Council rapidly to consider the outcome of the European Parliament vote, CESL was not the subject of substantive discussion at the JHA Council on
6 June. Nor has the position of the European Parliament been discussed in the Council Working Group, which is still discussing the articles of the Annex to the Commission’s proposal in their original version, and has so far covered fewer than half of those.

As you would expect, we are in contact with like-minded Member States about how best to influence the thinking of a new Commissioner on this dossier.

16 July 2014

Letter from the Chairman to Chris Grayling MP

Thank you for your letter of 16 July, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 30 July 2014.

We note that the prospect of this proposal being adopted in the near future remains slim.

We also note your comments on restricting the Regulation to online and distance selling contracts.

We look forward to being kept informed of further developments.

In the meantime the proposal remains under scrutiny.

We do not expect a reply to this letter.

30 July 2014

COMMUNITY TRADE MARK (8065/13, 8066/13)

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

I am writing to update you on negotiations and ask you for a scrutiny waiver on the above documents, the subject of an Explanatory Memorandum of 17 April 2013 and previous updates of 18 December and 26 April, which remain under the scrutiny of your Committee.

In light of fast moving negotiations, and potential for agreement on a Council position, I wanted to update you on this file so that you have the opportunity to consider the situation in full. Whilst negotiations have been progressing and we are reaching the end of this process in Council, there remain some outstanding issues. However, it is our understanding that the Italian Presidency intends to send the file to COREPER in the coming weeks to ask Council to adopt a position.

I will outline our progress against our main objectives agreed with the Cabinet European Affairs Committee and notified to your Committee in my letter of 18 December:

— **Minimise the use of delegated powers, especially in relation to non-technical matters;** the original proposal from the European Commission contained 64 Delegated Acts which would have seen a significant shift of responsibility and oversight away from Member States. This deployment of Delegated Acts met with universal resistance amongst our counterparts in the Council and the Commission’s attempts at justification were not persuasive. As a result these proposed powers have been completely stripped out, and replaced with Implementing Acts where they are an appropriate substitute, and with detailed rules written into the legislation when not.

— **Pursue a balanced cooperation framework with minimum mandatory adoption;** whilst he UK is a strong advocate of convergence and cooperation across the EU trade mark system, being active in a number of projects led and funded by OHIM, the original Commission proposal made this work mandatory. We do not think this is an appropriate or proportionate provision, a common view within Council. Therefore the latest draft proposal ensures that all cooperation between national offices and the OHIM, including the subsequent adoption of any new tools or practices, will be on a voluntary basis. Further the control of the direction of the projects now firmly rests with the President of the Office and the Administrative Board of Member States.
Keep the OHIM as managerially independent as we can; the Commission’s attempt to assert more managerial control over the OHIM has run aground on stiff opposition from Member States. These aspects have been removed and OHIM’s unique status has been preserved. Issues which could have led to significant Commission control of the Office, such as control of the shortlist for President, have been removed from the text. However, the accountability and transparency requirements in relation to the President and the other organs of the Office, which we support, have been given a legal basis.

The remaining objectives involve issues that are yet to be resolved, although we believe that they are at the stage where a political compromise acceptable to the UK could be reached:

— Look for a solution for the OHIM surplus that, as far as possible, reflects that the funds are derived from trade mark and design registration fees; this is proving to be a difficult issue. The overwhelming majority of Member States want a solution in line with the 2010 Council Conclusions that will see a percentage of surplus OHIM revenues passed to national offices, reflecting the additional costs the Community Trade Mark inflicts domestically. This would preserve their ability to keep funding their own IP related activities and is a particularly important issue for smaller offices. The Commission maintains a view that no legal basis exists for the transfer, despite signing the 2010 Council Conclusions. It insists that the only way to prevent the continued accumulation of a surplus is to transfer any surplus revenue to the overall EU budget with a consequent reduction in Member State contributions, resulting in no net increase to EU spending. This is not favoured by Member States or trade mark users. I outlined our position on this issue in my letter of 26 April.

— Limit the impact on legitimate trade stemming from measures to tackle counterfeit goods. This is the issue that has seen a strong divergence of opinion in Council. In our view the original Commission proposal was too broad and did not adequately strike the balance between protecting brand owners and preserving the right of free and legitimate trade. Many Member States have voiced the same concerns, although others support the Commission’s original proposal. We have been working very hard in an attempt to find a solution which gives appropriate weight to each of these very important aspects and negotiation is ongoing. We are hopeful that we will arrive at a solution acceptable to the UK, and continue to focus our negotiation efforts on this.

Underpinning these broad objectives were many detailed technical aspects to improve the overall functioning of the European Trade Mark system. We have been active in this area and whilst we have not been able to secure every preferred UK position, we have made a significant contribution and are content with the overall technical package.

Your last letter indicted that you supported the Government’s objectives, except on the issues of fees and the solution for the OHIM surplus. I hope my letter of 26 April will allay your concerns about our objective on that issue. My officials remain committed to working towards agreement on the outstanding issues, in line with our objectives, at upcoming meetings.

10 July 2014

Letter from the Chairman to Viscount Younger of Leckie

Thank you for your letters of 26 April and 10 July, which were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 16 July 2014.

We were grateful for your justification for the level of the registration fee of an ETM and for your helpful account of the good progress the Government have made in the negotiations. As you think an outcome which is acceptable to the UK is likely, we agree to your request to waive scrutiny for the purposes of agreement in the Council in the next few weeks.

In so doing, however, we note that a solution has yet to be found to the question of the EUTMDA’s surplus. We underline again our concern, shared by you and by stakeholders, that the EUTMDA should not be permitted to accrue an unwarranted surplus that is transferred to the EU Budget.
We ask you to provide the Committee with a public version of the text once it has been agreed in the Council, together with an explanation of the main differences between this text and the Commission’s original proposal. Your letter should also include an update on the Government’s endeavours to negotiate a lowering of the renewal, appeal and revocation fees for an ETM, which would benefit national SMEs.

We look forward to hearing from you in due course.

17 July 2014

Letter from Baroness Neville-Rolfe, Minister for Intellectual Property, Parliamentary Under-Secretary-of-State, Business, Innovation and Skills to the Chairman

I am writing, following your letter of 17 July, to update you on negotiations concerning the above documents, the subject of an Explanatory Memorandum of 17 April 2013 and previous updates of 18 December, 26 April and 10 July, which remain under the scrutiny of your Committee.

In my predecessor’s most recent letter, he spoke of the likelihood that the Italian Presidency would seek a Council position on the draft proposals, in response to which your Committee granted a scrutiny waiver, for which I am grateful. In line with our expectations and against the general mood of the working party, the Italian’s presented the latest compromise proposals to COREPER on 23 July, asking it to agree a position.

We did not support this decision, as the text contained two red lines for the UK that we believed required further negotiation. Whilst we successfully renegotiated one of our red lines in the run up to the meeting, the other remained in the text. As a result we were unable to support the Presidency, but under the qualified majority voting mechanism which applies to these legislative proposals, this was not enough to prevent a mandate being granted. Further, we are now aware that the Presidency will not seek further endorsement at a full Ministerial Council. Therefore, we expect the Presidency to seek the commencement of trialogue negotiations with the European Parliament within the coming months, once the European Parliamentary committees have appointed rapporteurs and are ready to start work.

Unfortunately I am not currently able to provide you with public texts of the positions agreed by the Council, as they have not as yet been produced by the Presidency. Copies of the two proposals will be sent to you as soon as we are in receipt of them. However, I will outline the detail of the most recent negotiations and explain the main differences between the final text and the original proposal from the Commission.

I will first outline the position around the red line that led us to vote against the mandate. Our objection centred on our continuing concern about the possibility of a transfer of any future surpluses accrued by the Office for Harmonisation in the Internal Market (OHIM).

The EU Commission’s original proposal, that such surpluses should be routinely transferred to the budget of the Union, was universally rejected by Member States during the early negotiations at the start of 2014. This was despite Commission assurances that any transfer would not result in a net increase of the Union’s budget, but that Member State contributions would be reduced by the amount transferred.

Given this overwhelming resistance, it was disappointing to see the principle of a transfer of any surplus to the EU budget resurrected in the compromise text prepared by the Italian Presidency at the beginning of July. At the following working group meeting the idea seemed to have gained a little currency, with some Member States seemingly attracted to the notion of a potential reduction in their national contribution to the EU budget. We continued to state our opposition to such a course in the strongest terms and the continuing general objection, led by the UK, forced the offer of a further compromise.

This compromise will require surpluses to be generated over five consecutive years before they could be transferred and then only on a proposal from the OHIM, supported by a two thirds majority of the OHIM’s Budget Committee¹, which consists of representatives of all 28 Member States. We could not accept this new proposal and remained committed to our principled stance concerning such a transfer. However, despite our efforts, these safeguards appear to have been deemed sufficient by all

¹ Article 139(3c) CTMR
other Member States, including those whose previous opposition had been as vociferous as ours, given that they were content to support the compromise at COREPER.

The second red line we were able to negotiate out of the text. This related to the principle of a reimbursement of a percentage of OHIM income to account for expense incurred within Member States as a direct result of Community Trade Mark (CTM) registrations. Whilst we were able to support the principle, the text presented stipulated that revenue was to be transferred to Member States who must then spend it on the matters identified as giving rise to the additional expense. This attempt to bind national government spending decisions was unacceptable: we are clear that any money transferred to the UK Exchequer is to be spent in a manner to which the Government sees fit. Although many Member States appeared comfortable with this approach, we were successful in proposing and securing agreement to alternative wording, which allows revenue to be transferred directly to those institutions within each Member State which perform any of the listed functions. In the main this will be national trade mark offices, but the approach retains sufficient flexibility for those Member States whose operations are more diffuse.

The final issue of substantive discussion leading up to COREPER was the proposal for goods in transit. Ostensibly designed to prevent counterfeit goods from entering the EU, we had opposed the original Commission proposal on the basis that it was too broad and would also impact on legitimate trade: a view shared by many, although not all, of our stakeholders. The proposal provided no possible defence, failed to recognise the territoriality of trade mark rights and in our view was very likely to be incompatible with international law. We worked hard to demonstrate the case for our objection and successfully built a sizeable bloc in opposition to the original proposal. As a result, an acceptable compromise was offered which provides legitimate traders with a mechanism to prove that the goods being shipped can be marketed in the destination country, allaying our main concerns.

The rest of the compromise text was agreed without the need for further changes or concessions. The broad changes secured to the text as outlined in the letter of 10 July remain but I will outline them again, along with other changes of significance:

— The numerous Delegated Acts have been completely removed, with Article 163a of the Commission’s proposal, which contained the main delegating power deleted, and the various delegations replaced by substantive rules and Implementing Acts. The Commission will be required to consult a Committee on Implementation Rules made up of representatives of the Member States in the exercise of the Implementing Acts, an important check on its ability to unilaterally set the framework of rules.

— The changes to governance at OHIM have been limited to transparency and reporting issues rather than providing excessive Commission control. The key changes are removing the requirement for the President of the OHIM to be drawn from a shortlist drawn up by the Commission, thus reinstating the Administrative Board over the Commission as the final arbiter of a potential President’s suitability to be put forward to the Council for approval; maintaining only one Commission member on the Administrative Board rather than the two proposed; and removing the possibility of the creation of a smaller Executive Board which would be at risk of greater Commission influence.

— Cooperation on trade mark practice and tools between national IP offices and the OHIM is no longer mandatory. In addition it is now the President of the OHIM that will propose projects, which can now concern issues of interest to Member States as well as the Union, to be defined and coordinated by the Administrative Board.

— The removal from the Trade Mark Directive of the requirement that the absolute grounds for refusal of the registration of a trade mark must be considered in all languages of the EU, not just the official languages of the Member State concerned. Not only would this have created translation

2 Article 139(3a) CTMR
3 Article 10(5) TMD and 9(5) CTMR
4 Articles 24a, 35a, 45a, 49a, 57a, 65a, 74a, 74k, 93a, 114a, 144a and 161a CTMR
5 Articles 125, 127a, 127b, 129 CTMR
6 Article 123c CTMR
7 Article 4(2) TMD

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costs, it would have placed a wholly unnecessary restriction on the availability of trade marks. For example, a brand of soap in the UK could have the trade mark ziepes, the Latvian word for soap, which could not be registered in Latvia as it is descriptive of the goods, an absolute ground for refusal. If this provision had remained the UK IPO would have to refuse the registration for the UK market because it was descriptive in Latvian. There was a similar provision in the Community Trade Mark Regulation 8, which was also removed, applying to languages outside of the EU. So the Malay for soap, sabun, could not be registered as a trade mark for a soap product even though the word would be unknown to the vast majority of the EU market.

The Commission’s proposal to limit double identity cases, where an identical trade mark is used for identical goods, to those instances where only where origin function of a trade mark is affected has been removed 9.

The filing date, which can be crucial to a trade mark, is no longer dependant on the payment of a fee 10. We did not support the Commission’s previous draft as it did not comply with the Singapore Treaty. The new draft allows the payment of the fee within a month from the filing of the application.

The proposed changes in both the Directive and the Regulation to the provisions regulating the classification of goods and services in relation to trade marks that would have would have permitted owners to declare a retrospective extension of their trade mark coverage have been deleted 11. This proposal was included by the Commission in an attempt to limit the impact of the OHIM’s change in classification practice following the IP Translator case 12. However the widely held view is that this could have led to innocent third parties being caught by this extension of coverage, so it has been removed.

The proposal to prevent national IP offices from carrying out relative grounds searches and examination, for existing marks which could be deemed similar to that being applied for, has been removed 13. The current proposal maintains relative grounds as optional for examination and makes clear that national IP offices are free to provide searches and notifications. Although UK no longer refuses trade mark registration on relative grounds, leaving it for those potentially affected to mount any challenge, we still carry out notification searches to assist this process.

The obligation for the OHIM to carry out a relative grounds search during the registration process, for marks similar to the mark being applied for and thus a potential source of opposition to the registration, has been reinstated 14. We view this as a useful service for SMEs.

The proposal in the Directive to requiring all national offices to introduce a one class one fee system of registration has been made optional 15. Whilst supported this anti-cluttering proposal in the Directive, it is of much less significance in relation to national filings and we are content with the optional system. The principle of one class for one fee in the CTMR was a key objective for the UK as it will discourage applicants from obtaining an over wide specification, and this has been maintained.

The option for the OHIM to provide mediation services has been extended to allow it to create a mediation centre 16. This proposal started life in the European Parliament’s position and sets out the appropriate rules for mediation at the OHIM. The Government is supportive of alternative

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8 Article 7(2) CTMR
9 Article 10(2)(b) TMD and 9(2)(b) CTMR
10 Article 27 CTMR
11 Article 28(8) CTMR
12 C-307/10
13 Article 41 TMD
14 Article 38 CTMR
15 Article 44 TMD
16 Art 137a CTMR
dispute resolution mechanisms, which can significantly reduce the costs to parties who find themselves in opposition.

The level of fees at the OHIM has also been considered as part of the negotiation. Once the decision had been taken that it was not appropriate of the Commission to be able to set fees under a Delegated Act, it was agreed that fee levels should be included in an annex to the CTMR. My predecessor set out in detail our policy position on fee levels in his letter of April 2014 and I can now update you on the progress made in negotiating the changes we considered desirable. Other Member States made perfectly clear their position that up front registration fees for a CTM should not be reduced, notwithstanding the move to one class one fee system. When it came to renewal fees there was some difference of opinion. We supported the view that renewal fees should be the same as registration fees, which has prevailed in the new fee structure.

We were also keen to see reductions in the fees relating to appeals and applications for revocation. Although others supported this view there was a divergence of opinion on the level of reduction. This stemmed from the perfectly legitimate concern that too steep a reduction could encourage groundless or even vexatious applications, which would be detrimental to the functioning of the overall system. The agreed proposal sees the fee for opposition reduced from 350 euro (£278.36) to 320 euro (£254.50), for revocation from 700 euro (£556.71) to 630 euro (£501.04) and for appeal from 800 euro (£636.24) to 720 euro (£572.62). We consider that these reductions strike a sensible balance between reducing the cost to business and maintaining the integrity of the system.

As I mentioned at the beginning of this letter, attention will now turn to negotiation with the European Parliament, thus it is appropriate to give some consideration to the prospects for these discussions. Our analysis is that in the main the European Parliament’s mandate is compatible with the text adopted by the Council and we anticipate that that there will be many areas where broad agreement can be achieved relatively quickly.

However, there are some issues of divergence which may require more in depth consideration. For example, on goods in transit the European Parliament voted to reverse the Rapporteur’s amendment, the principle of which we supported, reverting to the Commission’s original text. While it opposes any financial transfer from OHIM to the Union budget, in line with our position, it remains to be convinced about any transfer to national offices, except by way of grants. The Rapporteur’s report highlighted that some of the Delegated Acts were unnecessary, but was content with the majority of them; therefore the European Parliament is likely to question the total shift from Delegated Acts to Implementing Acts. Further, whilst on OHIM governance issues the Council and Parliament are largely aligned, the Parliament does envisage creating a role for itself within the Administrative Board structure, which we oppose along with others in Council. Ahead of trialogue discussions we will be engaging with key MEPs to seek to preserve the progress we have made and seek further improvements on our key objectives.

10 September 2014

Letter from the Chairman to Baroness Neville-Rolfe

Thank you for your letter of 10 September, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 29 October 2014.

On the substance, it seems to us that UK interests have largely been reflected in the final text negotiated in the Council, with the exception of the surpluses to the EUTMDA’s budget. Even in that case, the requirement of five consecutive years of surpluses, plus the requirement of a two-thirds majority in the agency’s budget committee, may serve to limit the amount of money which is diverted to the EU budget. Accordingly, we would be grateful for a further update only towards the conclusion of the first reading negotiations, after which we will consider releasing the proposals from scrutiny.

On process, the Committee previously agreed to waive the scrutiny reserve in order for the Council to give its agreement to the first-reading mandate. We are not clear why the Council was not invited to do so following agreement in COREPER. It appears from your letter that you may have been surprised by this too. We would be grateful for an explanation of the circumstances in which COREPER can agree a first-reading mandate, and how often it does so in place of the Council. The answer to this is relevant to how we scrutinise Council negotiations. On this issue, we look forward to hearing from you within the usual 10 working days.

30 October 2014
Letter from Baroness Neville-Rolfe to the Chairman

Thank you for your letter of 30 October.

You asked for information on the circumstances in which COREPER can agree a first-reading mandate, and how often it does so in place of the Council.

As part of the Council machinery, COREPER may consider mandates for informal trilogues. These informal discussions happen routinely, decided on a case-by-case basis, and are useful for the Commission, Council, and/or European Parliament to understand each others’ positions.

In these discussions the UK Permanent Representative or Deputy Permanent Representative operate within the mandate set by Ministers through the European Affairs Cabinet Committee clearance process, and in cases where items are held under scrutiny a parliamentary scrutiny reserve is always held in place.

Further, this process does not change the need for adoption by Ministers at a Council – where of course the scrutiny reserve resolution takes effect.

In this particular case, taking into account summer recess, we asked for a waiver in case the Regulation was to be presented to the Council in September for a possible general approach.

I hope the Committee will find this explanation helpful and I will of course keep you updated on progress before the text is returned to the Council for further consideration and agreement.

14 November 2014

CO-OPERATION TO STRENGTHEN CROSS-BORDER CONSUMER PROTECTION

Letter from the Chairman to Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum of 28 July, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 October 2014.

We have some sympathy with your doubts about the need for further EU legislation, which we summarise as follows:

— The CPC Regulation already contains sufficient rules — they just need to be applied by Member States and enforced by the Commission;

— Further and more effective cooperation can, and should, take place, but additional legislation is not required to do so;

— Harmonisation of enforcement standards in this sector will prevent the Government from prioritising enforcement action according to national needs and, in our view, would amount to a significant transfer of power to the EU; and

— Creating a new EU-level enforcement mechanism will create additional layers of bureaucracy in an already complex mechanism.

We would therefore like to be kept closely informed of developments. We therefore ask you to write to us again after the publication of the Commission’s impact assessment, when its final views on further legislation become known.

In the meantime, the report remains under scrutiny.

23 October 2014
Letter from Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

I am writing to update you on the negotiations of these two proposals. You will be aware that the UK has not opted in to either. I remain of the view that we will not wish to opt in after their adoption.

Progress over the last year has been slow. For example there was only one working group meeting during the Greek Presidency. There is a general assessment that the technical work on both proposals has been concluded but agreement is not yet possible due to outstanding political concerns from a small number of Member States, in particular regarding the status of certain relationships. As these proposals will be decided under the special legislative procedure for family measures, agreement must be obtained by unanimity.

Despite these problems the Italian Presidency would like to find a compromise before the end of the year. Whether that will be possible remains to be seen. Without agreement it may be that the only way forward on either or both proposals will be by way of enhanced cooperation. I shall keep you informed of developments.

In the meantime I set out below the main changes that have been made to the texts since I last wrote to you.

SCOPE
For both proposals there are new exclusions for social security and also the entitlement to transfer or adjustment between spouses or partners in the case of divorce, dissolution, legal separation or annulment, of rights to retirement or disability pension accrued during marriage or partnership which have not generated pension income during the marriage or partnership. I would also like to refer back to a point in my previous letter to clarify that gifts or companies set up between spouses and partners have been deleted from the exclusion list.

I also said in my previous letter that a new provision had been included that allowed the concept of ‘domicile’ to replace that of ‘nationality’ in those Member States where that is the usual connecting factor in family law matters. That has now been changed. Instead in both proposals there is a provision that refers to States which comprise several territorial units, each of which has its own laws. Any reference to the law of that State shall for the purposes of determining the law applicable to provisions referring to the nationality of spouses or partners be construed as referring to the law of the territorial area with which the spouses have the closest connection. This follows the precedent established in the Succession Regulation.

JURISDICTION
It has been agreed that where a court of a Member State has jurisdiction in succession matters for spouses or registered partners the courts of the same Member State will have jurisdiction to rule on matrimonial property or the property consequences of registered partners arising from the succession case. However, where assets are located in a non-EU country, a party may request the court not to rule on such assets where it may be expected that its decision in respect of those assets will not be recognised or declared enforceable in that country. This follows a similar provision in the Succession Regulation.

I am pleased to report that a choice of court provision similar to that in the matrimonial property regimes proposal has been included for registered partners. That means that registered partners will be able to choose the courts of the Member State whose law will be applied.

A new provision in both proposals now allows a court to close proceedings where the parties have agreed to settle the case amicably out of court.

APPLICABLE LAW
It is proposed that registered partners should be able to agree to designate or to change the law applicable to the property consequences of their partnership provided that they have a connection to the State concerned and that the law of that State attaches property consequences to the institution
of a registered partnership. In the absence of an agreement the applicable law will be that of the State under whose law the partnership was created.

Under the matrimonial property proposal it remains a suggestion that a court should have the discretion to apply a law with a closer connection with the couple than the laws indicated in the normal hierarchy but that has not yet been agreed.

THIRD PARTIES

The text of both proposals continues to state that the applicable law may not be invoked by a spouse or partner against a third party unless that third party knew or should have known of that law. This has now been clarified to say that where the law cannot be invoked by a spouse or partner against a third party because the third party did not know of the law, the effects of the matrimonial property regime or the property consequences of the registered partnership will be governed by the law of the State whose law is applicable to the transaction between a spouse or partner and the third party or, in cases involving immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.

18 July 2014

Letter from the Chairman to Chris Grayling MP

Thank you for your letter dated 18 July 2014, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 October 2014.

We were grateful to receive your helpful update on the timetable for the negotiations, and on the significant changes to the draft texts since you last wrote in December 2012.

Although conscious the Government has said it will not opt into these proposals once they are adopted, we have nonetheless decided to keep them under scrutiny. We would be grateful if you could write again at the end of the current Presidency with a further update; of particular interest to us is whether the Council will proceed via enhanced cooperation.

Once final texts have been adopted by the Council, we would be grateful for your further view on the likelihood of the UK opting in to them, and for an explanation of the consequences of the adopted proposals for matrimonial property law and practice in the UK.

We look forward to hearing from you in due course.

23 October 2014

DETENTION AND SUPERVISION OF EU CITIZENS (6943/14)

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

Thank you for your letter of 8 May regarding the Government’s Explanatory Memorandum on the implementation report from the European Commission.

In your letter you ask if the Government has discussed the matter of coherence with the Commission in regard to the Probation Framework Decision, Prisoner Transfer Framework Decision (“PTFD”) and the European Supervision Order Framework Decision (“ESO”). As you are aware, Protocol 36 to the Treaties sets out the following test in reference to the UK’s notification that it wishes to rejoin certain measures it has opted out of:

When acting under the relevant Protocols, the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the acquis of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.

As you would expect, the issue of coherence has been discussed in relation to all of the measures that the UK is seeking to rejoin including the PTFD and the ESO and also with reference to the Probation Framework Decision. The Government continues to believe that it has set out a package of measures that meets the above test, which emphasises the importance of practical operability, while ensuring coherence is respected. This has been made clear in discussions with the Commission.
With regard to your Committee’s concerns about the UK’s implementation of the ESO, we are progressing with the implementation of this measure and are currently preparing draft legislation. We will update you further on this matter in due course.

Your letter also asks about the PTFD. We have discussed the implementation of the PTFD with several of the ten Member States that have yet to implement the measure and have encouraged them to do so. Many have legislation currently going through their domestic Parliaments and we are therefore confident that they will implement soon. We, of course, cannot be sure how many begun implementation; and for the Member States who have implemented or begun implementation, we of course, cannot know whether this is directly attributable to UK influence. I remain confident that, as the measure comes under ECJ jurisdiction from 1 December 2014, we can expect the outstanding Member States to have fully implemented by that date, with the exception of Poland which has derogation from the compulsory transfer elements to December 2016. From 1 December 2014, Member States who have not implemented any of the measures subject to the 2014 Decision will face the risk of infraction proceedings and a potentially significant fine from the Commission.

I hope that this provides clarity on the Government’s position and I look forward to engaging with you further on this important matter.

3 July 2014

Letter from the Chairman to Chris Grayling MP

Thank you for letter dated 3 July 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 July 2014.

We have decided to retain the Commission’s report under scrutiny pending notification from you of the successful completion of the legislation implementing the European Supervision Order in the UK.

We are grateful to you for the answers to our questions and note your response regarding the coherence of these three Framework Decisions. This issue was overtaken by the publication on 3 July of Command Paper 8897 titled ‘Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union’. The content of the Command Paper was debated in the House on the 17 July during which the Government’s failure to heed the Committee’s recommendations in relation to the Probation FD was discussed.

We look forward to considering your response in due course.

24 July 2014

DIPLOMATIC AND CONSULAR PROTECTION OF EU CITIZENS IN THIRD COUNTRIES (18821/11)

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

Thank you for your letter of 13 May, in which you asked for clarification on how UK red lines on the proposed Council Directive on consular protection for citizens of the Union abroad have been met, in particular with relation to your concerns over Articles 8 to 11 in the original draft. I apologise for the slight delay in replying – the consular working group “COCON” met on 22 May and I wanted my reply to reflect the latest state of play with the negotiations on the Directive.

We have met all UK red lines by ensuring the removal of certain provisions from the Directive and that other provisions mirror language from existing council decisions.

The first draft of the proposed Directive was overly prescriptive and looked to set out minimum standards of assistance and eligibility to receive consular assistance. It also looked to expand the role of the EEAS/EU Delegations beyond the scope of Article 23 TFEU, mainly by allowing them to chair local consular meetings and give them more responsibility than their role currently restricts them to. These were all red lines for the UK.

The Directive has been significantly reduced in size over the course of the negotiations, with the original Articles 8-11 (which attempted to set out standards of consular assistance in a range of scenarios including deaths, arrests and detentions and victims of crime) being removed in their
entirety. The current draft reflects the reality that Member States provide assistance to unrepresented EU nationals in line with the assistance they would offer to their own nationals.

The role of the Union delegations is now covered under Article 9. We are continuing to press for a text that is consistent with Article 5 (10) of the Council Decision establishing the organisation and functioning of the EEAS (2010/427/EU) and with the language agreed at the General Affairs Council meeting in December, in particular to highlight that any activities undertaken by the EU delegation are at the request of Member States.

Local consular meetings are now chaired by a Member State, supported by the EU delegation, and the role of the EU delegation is further defined as being one of ‘close cooperation’ and in support of Member States’ consular activities. These changes have occurred as a result of a robust negotiation strategy and lobbying of like-minded Member States to support.

In our Explanatory Memorandum of 20 January 2012 we also outlined concerns that the Directive contained definitions (including of eligibility, represented and family members) that sought to alter or shape Member State national policy or practice. We have ensured that the Directive no longer tries to influence Member State national policy or practice, as these are a Member State competence.

Whilst we still consider the Directive unnecessary, we accept that the Council is increasingly likely to accept a version of the text. You will recall that this dossier is decided by QMV. Negotiations are still ongoing, but we are confident that we can maintain the protection of our red lines and that consular policy is only made by Member States.

I will continue to keep the Committee updated on the discussions.

6 June 2014

Letter from the Chairman to David Lidington MP

Thank you for your letter of 6 June 2014, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 July.

Thank you also for your helpful explanation of how the Government's negotiating objectives have been met. We have stressed in the past how important we think it is for Member State competence for consular affairs not to be infringed by the role ascribed to EU delegations. It seems from your letter that you have succeeded in protecting this competence, bar a change of language in Article 9, and that you are confident that this will not be reversed before the conclusion of the negotiations.

Given that negotiations might conclude during the Summer Recess, the Committee has decided to clear the proposal from scrutiny. We would, however, be grateful for an update on the final outcome, particularly in relation to Article 9, once the proposal has been adopted.

We look forward to hearing from you before the House returns in October.

24 July 2014

DRAFT EUROJUST REGULATION NEGOTIATIONS (12648/14, 12566/13, 11813/14)

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

I am writing to update you on developments regarding negotiations on the proposal for a Eurojust Regulation. Under the Greek Presidency, the first reading of all Articles was completed. The Italian Presidency has stated that they view this as a priority negotiation, and at the last working group in July produced a revised text covering Articles 1-17 (attached [not printed] to this letter). These Articles cover issues around competence, tasks and powers of Eurojust working as a College, powers of national members and governance including attendance of the European Public Prosecutor’s Office (EPPO) at Eurojust College meetings.

The Committee is aware that the Government had chosen not to opt in to the draft Eurojust Regulation at the start because the proposal creates substantial concerns; most notably by extending the mandatory powers of Eurojust National Members and because of the proposed interaction between Eurojust and the proposed European Public Prosecutor’s Office.
Turning to the text in question, Articles 2-6 relate to the tasks, competence and other functions of Eurojust. These are largely uncontroversial. However, Article 3 contains references to EPPO which will clearly need further consideration as negotiations progress. In addition, the Government is pleased that the revised draft reinstates the current provisions that Eurojust when acting as a College can only issue non-binding opinions in the event of a conflict of jurisdiction between Member States (Article 4).

Articles 7-9 relate to Eurojust National Members. As mentioned above, the issue of the powers of National Members under Article 8 are among the most contentious provisions in the proposal. As the committee will be aware, the proposal as initially drafted extended the powers of Eurojust National Members in ways that would conflict with criminal justice arrangements across the UK and change the nature of Eurojust. This would cut across the separation of powers between police and prosecutors in the common law systems in England & Wales and Northern Ireland. The Government believes that the revised document is encouraging on this point: there is now a general acceptance among Member States that the new Regulation should contain a derogation along the same lines as the existing Article 9(e) (as indicated under footnote 7), which ensures that Member States are not obliged to give powers to their National Member (therefore enabling them not to do so where this would conflict with their national criminal justice arrangements). They key now will be to ensure that the precise drafting of the derogation fully safeguards our criminal justice arrangements and we will take this forward at the working group.

Articles 10-17 relate to the College, the Executive Board, and the Administrative Director. The key issue here relates to the governance arrangements for Eurojust.

Our preference in relation to reform of Eurojust’s governance has been for administrative and management tasks to be transferred to an external Management Board, as is the case for other EU Agencies including Europol. In contrast, the Commission proposed an Executive Board with a strong Commission presence. Unfortunately, while a number of Member States opposed the Commission proposal, there was very limited support for the Management Board. At the June JHA Council, Member States approved a ‘middle way’ approach consisting of an Executive Board with more limited Commission involvement. While, given the outcome of the June Council, it is clear that there will be an Executive Board, we continue to be concerned that this approach may not effectively reduce the administrative burden on National Members and that it may erode the primacy of the College in decision making. We are accordingly working within the Executive Board proposal to improve it as far as possible. In respect of the question of the primacy of the College, we are pleased that an addition has been made to Article 14 to make clear that the Executive Board shall be accountable to the College.

There are several other issues raised by the changes in Articles 10-17.

Firstly, the revised text under Articles 12 and 14 allows for the EPPO to receive all agendas of College and Executive Board meetings and participate in such meetings (without a right to vote). We will continue to seek changes ensuring that Eurojust has the ultimate say on when the EPPO can attend College and Executive Board meetings. In addition we are concerned at the suggestion in Article 11 that Member States may be compensated where they appoint a substitute National Member where their National Members are appointed as President or Vice-President and will work to ensure that this does not result in an increase in the overall budget of Eurojust; and Article 13 has been amended in respect of the voting arrangements where a National Member becomes a President / Vice-President – our key concern here is to ensure that it remains ‘one Member State, one vote’, as the current text provides.

28 August 2014

Letter from Karen Bradley MP to the Chairman

I am writing to provide you with a further update on developments regarding negotiations on the proposal for a Eurojust Regulation. You will recall that I sent an update of the Italian Presidency’s revised text covering Articles 1-17. The Presidency has now issued another document 12648/14 revising the Commission’s proposal Chapter III, Chapter V - with the exception of the Articles dealing with the European Judicial Network (EJN) (Article 39) and European Public Prosecutor’s Office (EPPO) (Article 41) - and Chapter VI. These Articles relate to: the Eurojust National Co-ordination System (ENCS); exchange of information between Member States and Eurojust; relations with other Union bodies including Europol; relations with authorities of third countries including requests for judicial co-operation to and from third countries; financial and staff matters; and transitional arrangements.
Your Committee will be aware that the Government had chosen not to opt in to the draft Eurojust Regulation at the start because the proposal creates substantial concerns - most notably by extending the mandatory powers of Eurojust National Members and because of the proposed interaction between Eurojust and the proposed EPPO.

The main issue for the Government within this revised text concerns EPPO access to Eurojust data, including UK data. We believe data should only be exchanged with the EPPO with the consent of the originating Member State. I am encouraged that the revised document is going in that direction, but think there are further changes to be made to satisfy us in this regard and will continue to press hard to seek further safeguards for the UK in this area.

We are also seeking changes to ensure that Council permission is required before Eurojust can post a liaison Magistrate to a third country as in the current Eurojust Council Decision.

The Italian Presidency is seeking to produce a revised text in full for discussion before the end of its Presidency and I will update the Committee on any developments accordingly.

26 September 2014

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**Letter from the Chairman to Karen Bradley MP**

Thank you for your letters dated 28 August and 26 September 2014. They were both considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 October.

We have decided to retain the proposed Regulation under scrutiny.

We are grateful that you have provided us with a detailed update on the state of the negotiations in the Council. We note your comments on the draft which deal with the technical and practical detail of Eurojust’s operation. Our report into the European Public Prosecutor’s Office which in part looks at its ramifications for the UK’s relationship with Eurojust will be published on 3 November.

With regard to your letter dated 26 September, please explain to the Committee the reasoning behind your desire to ensure that Council permission is needed before Eurojust can post a liaison Magistrate to a third Country.

We look forward to considering your response by 7 November.

23 October 2014

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**Letter from Karen Bradley MP to the Chairman**

Thank you for your letter of 23 October.

You asked the Government to explain its reasoning behind the desire to ensure that Council permission is needed before Eurojust can post a liaison magistrate to a third country.

The Council of the European Union Conclusions on the Eurojust Annual Report 2013 of 12 June 2014 note that Eurojust has not yet made use of the possibilities provided for under Article 26a (2) of the Eurojust Decision to second a liaison magistrate to a third country, and invite Eurojust to inform the Council about the intended outcomes of seconding liaison magistrates for its operational work and whether there are concrete plans to that effect. Eurojust is yet to respond in this regard. Particularly given the lack of clarity about what seconding liaison magistrates will achieve, we believe the need to seek Council approval would provide a check to allow the Government to assure itself that use of a liaison magistrate represents good value for Eurojust. I also note that Council approval is also required under the current Eurojust Council Decision for the seconding of liaison magistrates.

5 November 2014

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**Letter from the Chairman to Karen Bradley MP**

Thank you for your letter dated 5 November 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 26 November 2014.

We decided to retain the proposal under scrutiny.

We are grateful for the answer to our question but regret that your response introduces an element of uncertainty. Our question to you was prompted by the statement in your letter of 26 September, which said that the Government was: “seeking changes to ensure that Council permission is required
before Eurojust can post a liaison Magistrate to a third country”. In contrast, the section of the current Eurojust legislation cited by your letter deals with “the secondment of … liaison magistrates to Eurojust” (Article 26a (2)). We therefore ask that you clarify the precise detail of the powers under discussion; is the Government’s concern related to powers covering the secondment of liaison Magistrates to Eurojust, from Eurojust or both? We hope that the legislation that emerges from these negotiations is clearer on this issue than at present.

We look forward to considering your response by 12 December.

28 November 2014

Letter from Karen Bradley MP to the Chairman

As the Committee is aware from my previous correspondence, negotiations on the draft Eurojust Regulation continue. The Presidency will present a partial general approach on Chapters I-III and V-IX (omitting the Chapter on Data Protection) of the proposal with all references to the European Public Prosecutor’s Office (EPPO) removed at the 4-5 December JHA Council meeting. The attached [not printed] document is being provided to the Committee under the Government’s authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limited marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain. The UK has not opted in to the proposal. We therefore have no vote on the text, and I am providing the text as a courtesy rather than for scrutiny clearance reasons.

One of the major concerns for the Government relates to the powers of Eurojust National Members covered in Article 8 of the proposed text. Here our concerns have been addressed – the revised text contains derogation along the same lines as the existing Article 9(e) of the current Eurojust Council Decision, which ensures that Member States are not obliged to give additional powers to their National Member.

Eurojust’s relationship with the EPPO is not covered in the revised text. This reflects the relative lack of progress being made in the EPPO negotiation.

My letter of 28 August set out our concerns in relation to Eurojust’s governance arrangements. The proposed Executive Board, while not going as far as the External Management Board that we had advocated, should allow National Members to focus more on operational issues. However, in the absence of clarity on interaction with the EPPO, I do not think it would be appropriate to take a definitive review on Eurojust’s governance arrangements at this stage.

The data protection chapter together with the corresponding definitions have also been removed from the text and will be dealt with under the incoming Latvian Presidency. This is due to a consensus that discussion on this issue should be paused while the Data Protection Directive is being negotiated.

The remainder of the text is largely uncontroversial and broadly replicates the current Eurojust Council Decision.

28 November 2014

DRAFT RULES OF PROCEDURE OF THE GENERAL COURT (7795/14)

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

Thank you for your Explanatory Memorandum dated 25 April 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 18 June 2014.

We have decided to retain the matter under scrutiny.

As you are no doubt aware, this Committee has taken a very keen interest in recent years in the workload of the Court of Justice of the European Union. Since 2011 we have published two reports which have identified significant workload difficulties for the General Court and both reports called on the Member States to agree measures to increase the General Court’s judiciary. (The Workload of the Court of Justice of the European Union, 14th Report of Session 2010-11, HL Paper 128; and, Workload of the Court of Justice of the European Union: Follow-up Report, 16th Report of Session 2012-13, HL Paper 163.)
Your Explanatory Memorandum welcomes efforts that bring efficiencies to the General Court, but you add that such efforts must be balanced against the requirement that litigants are able to present their cases fully. In your opinion, do you think the proposed amendments to the Rules of Procedure will increase the efficiency of the General Court, so that an increase in its judiciary would no longer be necessary?

As for the content of the proposed Rules of Procedure, we agree with your assessment that the document is extensive and technical. We note that once Government lawyers have concluded their evaluation of the document you will present a number of drafting amendments. We look forward to considering them. Your Explanatory Memorandum also drew our attention to a number of specific Articles. We particularly note your concerns regarding Articles 103 to 105 governing the Court’s handling of sensitive information and look forward to your update. However, we are not clear why you specifically drew Article 29 (consolidating the rules governing the hearing of straightforward cases by a single judge) and Article 45 (streamlining the language rules governing Intellectual Property Rights) to our notice. We would be grateful if you could elucidate your concerns.

We look forward to hearing from you in due course, once Government lawyers have concluded their consideration of this document.

19 June 2014

Letter from David Lidington MP to the Chairman

I am writing to update the Committees on the Draft Rules of Procedure of the EU General Court, further to my Explanatory Memorandum of 25 April 2014 and to the issues raised by the Committees in their replies of 14 May and 19 June. I apologise for not updating the Committees sooner. Negotiations in Brussels have moved slowly, with the Council Working Group reviewing the text article by article and completing this process in mid-October. The Court then took until 6 November to propose its first revision of the Draft Rules including substantive changes to Article 105 (copy attached [not printed]). Having received this I am now better placed to respond to all the issues you raised but with hindsight an interim reply should have been sent to you earlier. The Council can adopt the Rules by Qualified Majority Vote so we do not have a veto but my officials continue to argue for substantive changes to Article 105 and have made clear that we retain a Parliamentary scrutiny reserve on the whole package.

GENERAL OVERVIEW

The Government shares the Lords Committee’s concern regarding the backlog of cases in the Court. Whilst we hope that the revised draft Rules will go some way to helping the General Court address that backlog, we believe that Member States’ evaluation of these changes should be used to inform further decisions on any increases to the Court’s judiciary.

The Lords Committee requested clarification of why Article 29 and Article 45 were explicitly referred to in my Explanatory Memorandum. The Government does not have any particular concerns with the revised language; on the contrary we think it is an improvement. However I thought it right to mention them as these changes, together with new language in Articles 103 and 105, constitute the main revisions to the Rules as a whole.

The Commons Committee asked about consultation with stakeholders and whether any of the Rules significantly inhibit the presentation of cases. On the first point, we have engaged extensively with the Council of Bars and Law Societies of Europe and their comments of 16 July 2014 can be found on their website: www.ccbe.eu.

On whether the Rules will significantly inhibit the presentation of cases, analysis by Government lawyers has not identified any concerns except in relation to the new Article 105 on which I set out our position below.

ARTICLE 105 (CLOSED MATERIAL PROCEDURE)

Both committees asked for an update on Articles 103 and 105 governing the Court’s handling of confidential information – including an analysis of how the balance is struck, in cases pertaining to the security of the Union or its Member States, between the requirement of efficiency and the need to ensure that parties are able to present their cases fully, and how this procedure compares to the UK Closed Material Procedure (CMP).
The Committees will recall that Article 105 was a response to the Kadi II judgment, on which I will write separately in response to the Commons Committee's letter of 27 November. It raises questions not only about the balance between efficiency and the ability of parties to present their cases fully, but also between the right of parties to respond to charges against them and the protection of confidential information.

The UK’s Closed Material Procedure, as defined in the Justice and Security Act 2013, allows a party to proceedings to introduce confidential evidence which is not shown to the other party because of the impact this would have on national security. The evidence is, however, shown to a Special Advocate who represents the interests of the other party, and it can then be taken into account by the Court in reaching its decision. The party introducing the confidential evidence can withdraw it at any stage in proceedings – but with the understanding that this is likely to weaken the party’s case.

Article 105 of the draft Rules of Procedure envisages a broadly similar arrangement, but without the use of a Special Advocate. However the Court’s original draft raised a number of concerns and, in the Government’s view, gave inadequate weight to the importance of protecting sensitive information. The UK has argued consistently that absence of the necessary safeguards will constrain our ability to use this mechanism to defend important EU sanctions listings. We have secured improvements in the text including language:
— making it clear that a Member State can never be compelled to share confidential information
— extending the right of Member States to withdraw confidential information
— imposing an obligation on the General Court to avoid disclosing confidential information

However, despite the strong arguments we have presented based on our domestic practice, the Court is unlikely to agree a right of withdrawal at any stage in the process and all other Member States seem ready to accept this. We continue to press our case, highlighting to EU partners the practical reasons why this is important. The Court is now reflecting and will present in the coming days a further revision of Article 105 for discussion in Council.

We are pressing EU partners to allow time for full consideration of the substantive issues and for completion of our Parliamentary scrutiny procedures. My officials and I look forward to hearing from you and stand ready to provide further information.

3 December 2014

ESTABLISHMENT OF A CONTROLLER OF PROCEDURAL GUARANTEES (10943/14)

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

Thank you for the Explanatory Memorandum dated 7 July 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 July 2014.

We have decided to retain the proposal under scrutiny. We have considered its compatibility with the principle of subsidiarity and concluded that a Reasoned Opinion is not necessary in this instance. On the grounds set out below, the Committee considers this proposal unnecessary, but we recognise that it could not be pursued at Member State level.

Last year we considered the Commission’s Communication (Doc 12554/13) which foresaw the creation of the Controller of Procedural Guarantees (the Controller). We were sceptical of the need for the proposed changes in the governance of OLAF suggested by the Commission and agreed with the Government that the creation of a Controller was an unnecessary addition to OLAF’s bureaucracy and unlikely to improve its performance. We were also not persuaded by the Commission’s suggestion that the Controller ought to authorise investigative measures against members of the EU’s institutions. Our letter to you dated 11 September 2013 stated:

OLAF's functions are confined to administrative investigations. Requiring them to seek an opinion or an authorisation seems unnecessary …Responsibility should rest with the Director General.
This legislation brought forward by the Commission which gives effect to the Communication’s aims includes nothing new that would challenge our views. We remain of the opinion that the Controller is unnecessary.

We note that your Explanatory Memorandum says that previous attempts by the Commission to introduce a similar role were blocked by the Council on cost grounds. Do you expect opposition to this proposal from other Member States?

Finally, given this proposal’s close interaction with the proposed Regulation introducing the EPPO which remains the subject of ongoing negotiation, we take this opportunity to express our agreement with your assertion that this proposal has been brought forward at an inappropriate time.

We look forward to considering your response to this letter when the House returns in October.

24 July 2014

Letter from David Gauke MP to the Chairman

Thank you for your letter of 24 July regarding the Commission’s proposal to further amend Council Regulation 883/2013 (OLAF Regulation).

You asked whether the Government expected other Member States to oppose this proposal for further reform to the OLAF Regulation. The Commission’s proposal was discussed on 22 July at an official level working group on combating fraud (GAF) where an overwhelming majority of Member States, including the UK, declared the proposal to be premature and potentially unnecessary, and reminded the Commission of Member States’ response to their previous proposal.

While this does not rule out further discussion, there is clear opposition among a significant majority of Member States at this time.

The Government is encouraged by this Committee’s endorsement of our views on the Commission’s proposal to introduce a Controller of Procedural Guarantees and will continue to work with other Member States in Council to prevent the Commission from pursuing this unhelpful proposal.

23 September 2014

Letter from the Chairman to David Gauke MP

Thank you for your letter dated 23 September 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 October 2014.

We are grateful for your response to our question concerning opposition to this proposal in the Council and note that “an overwhelming majority of Member States” view this proposed Regulation as “premature and potentially unnecessary”.

We have decided to retain the proposal under scrutiny pending updates from you, in due course, on its discussion in the Council.

23 October 2014

EU CHARTER OF FUNDAMENTAL RIGHTS: COMMISSION REPORTS (9042/14)

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

Thank you for your Explanatory Memorandum dated 7 May 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 2 July 2014.

We have decided to clear the Commission’s report from scrutiny.

We too welcome this report. It is, as you say, a “measured and factual analysis of EU action in this area” which is useful in informing our Parliamentary scrutiny of this field of EU cooperation. We welcome the section of the Commission’s report which highlights the Court of Justice’s recent case law setting out when the Charter will apply to the Member States. We are also grateful for the Minister’s update on the state of play regarding the EU’s accession to the European Convention on Human Rights. Can you tell the Committee when you expect the Court of Justice to deliver its opinion on the matter?
We look forward to considering your response by 25 July.

4 July 2014

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

Thank you for your letter of 4 July 2014 in which you refer to the timings of the European Court of Justice’s opinion in the Article 218(11) litigation. The Court of Justice has not stated when it will deliver its opinion. My best estimate would be that the judgment will be handed down towards the end of the year.

I will keep you informed of any developments regarding this matter.

16 July 2014

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

Thank you for your letter dated 16 July 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 30 July 2014. We have decided to clear the Commission’s report from scrutiny. We note that you expect the Court of Justice to deliver its opinion on the EU’s accession to the ECHR before the end of the year.

We do not expect a reply to this letter.

30 July 2014

**EU CITIZENSHIP REPORT 2013- EU CITIZENS: YOUR RIGHTS, YOUR FUTURE (9590/13)**

**Letter from Esther McVey MP, Minister of State for Employment, Department for Work and Pensions, to the Chairman**

Thank you for your letter of 11 September 2013 sent in response to my predecessor’s letter of 17 July 2013 following the Explanatory Memorandum (EM) forwarded on the above report on 01 June 2013. I apologise for the Department not answering your letter promptly. I have only just been made aware of this correspondence and have made it clear to officials that this delay is unacceptable.

You asked for more information on the exchange of information and the policing of the rules on access to unemployment benefit. Within JobCentre Plus (JCP) the UK has the Job Seekers and Benefit Enhancement Section (JBES), which is a liaison office between the UK and other member states whose citizens import or export their own unemployment benefit (UB).

EU citizens can import their own countries UB into the UK for a maximum of 6 months. They are paid by their own country and the UK does not know the countries rate of benefit or entitlement conditions, entitlement to benefit is determined by their own country. JBES confirm with JCP that the claimants have signed to confirm their entitlement, the UK then notify the relevant Foreign Authority who releases payment; we also notify them of any change of circumstances including finding work.

UK citizens can export their UK Job Seekers Allowance (contribution based) for a maximum of 3 month, as the UK did not sign up to the three month extension. The UK asks for monthly signing evidence, only when this is received do we release our payments.

There are currently 2112 non-EU citizens registered in the UK as a person seeking work under Article 64 of Regulation 883/2004, and there are currently 187 UK citizens registered with the UK authorities under Article 55 of Regulation 987/2009 as being entitled to benefits under Regulation 883/2004.

We understand that no EU Member State has a general policy granting other Member States’ nationals residing on its territory the right to vote in national elections.

The only exceptions to this are:
The UK, which allows Irish nationals and nationals from Cyprus and Malta (as citizens of Commonwealth countries) to vote in national elections in the UK.

Ireland, which allows UK citizens to vote in national elections in Ireland.

Irish citizens resident in the UK have full voting rights and since 1985 British citizens resident in the Republic have enjoyed reciprocal rights to vote in elections to the Irish Parliament.

The special arrangements for Commonwealth citizens reflect our close historical ties. The Representation of the People Act 1918 provided that only British subjects could register as electors (others, defined in the Act as "aliens", were excluded from voting). The term "British subject" then included any person who owed allegiance to the Crown, regardless of the Crown territory in which he or she was born. In general terms this included citizens who became 'Commonwealth citizens' under the British Nationality Act 1981. The then Government gave an undertaking to preserve certain existing rights of 'Commonwealth citizens' resident in the UK, including the right to vote. Status as a Commonwealth citizen does not necessarily give an automatic right to vote. To be registered to vote, Commonwealth citizens who need it must have subsisting immigration clearance to enter or remain in the UK, as well as meeting the other eligibility criteria.

On the occasions when it has considered this issue, Parliament has taken the view that the existing rights of groups which have entitlement to vote should not be disturbed, and that, other than the long standing special arrangements set out above, foreign nationals (including EU citizens) should be required to obtain British citizenship before being able to vote in national elections. This is standard practice across the EU.

25 August 2014

Letter from the Chairman to Esther McVey MP

Thank you for your letter dated 25 August 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 October 2014.

We have decided to retain the proposal under scrutiny.

As you acknowledge, your response forms the Government's reply to a letter that this Committee wrote to your predecessor in September 2013. We agree that this delay is entirely unacceptable and our officials will be contacting your office in order to arrange your appearance before us to explain the delay.

We recognise that your response offers us a detailed and comprehensive answer to the two outstanding issues that we have been pursuing with the Government (namely, the adequacy of the EU's social security legislation for policing the mobile unemployed; and the Government's objections to proposed Commission changes to EU citizens' voting rights). Were it not for the fact that it has taken your Department a year to furnish us with a response we would have brought our scrutiny of this matter to a close.

We look forward to meeting with you in due course.

23 October 2014

Letter from Esther McVey MP to the Chairman

Thank you for your letter of 23 October. I completely understand and share your frustration at the delay in the Department's response. I apologise unreservedly. Whilst I was not in my current ministerial post in September 2013, I take responsibility for my Department's failure to deal with your request for information promptly. But I should also like to offer an explanation, albeit not a justification.

My officials have looked closely at the issue and I regret to report that an initial delay, due to staff absences during recess, was subsequently compounded when both the lead scrutiny and policy coordinators for the DWP elements of this report, which also covers Home Office interests, left DWP on the same day in late September 2013.

I also regret that, on this occasion, established systems did not pick-up this oversight. For example, our internal scrutiny-tracking database showed the report as not cleared, with correspondence outstanding, and yet action on this report was repeatedly missed when other issues were identified.
and acted upon. It also appears that officials missed the uncleared item when reviewing your Committee’s helpful Progress of Scrutiny document.

It is also regretful that, given that this report is DWP’s first substantive business with Lords Sub-Committee E on Justice, we have failed to handle this correspondence. I do hope that this incident will be considered in the context of our good working relationship with the European Union Select Committee on other matters.

Moving forward, my officials are reviewing our existing systems to try to ensure that this kind of error does not occur again. As part of that, we hope to work closely with the Committee clerks and Cabinet Office scrutiny coordinators, including through a joint training session/presentation.

I hope that you will accept my apology. I would be happy to appear before you, but there is little further that I could add to this letter.

4 November 2014

Letter from the Chairman to Esther McVey MP

Thank you for your letter dated 4 November 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 November 2014.

We have decided to clear the Commission’s report from scrutiny.

Your Department’s failure to reply to our letter of 11 September 2013 until 25 August 2014 is one of the worst examples of a Departmental delay that we have come across. We are grateful to you for your detailed explanation and for your unreserved apology but, we note that it rests on recourse to the failures of established Departmental scrutiny tracking systems and the impact of staff departures; this does not explain, however, the Department’s failure to be alerted to its oversight by the Clerk’s letter of 25 February (copy attached [not printed]). We do agree though that there is little to be gained from your appearing before us in person.

You will be aware, in the context of our consideration of a proposed Regulation on insolvency proceedings, that this Sub-Committee recently called your Government colleague Jo Swinson MP to appear before us in order to explain similar failures by the Business Innovation and Skills Department (BIS). On that occasion the Department’s behaviour resulted in a scrutiny override. Following her appearance, she wrote to the Minister for Europe setting out the steps she and her Departmental officials had taken to avoid similar failures in future (copy attached [not printed]). To that end, you will note that BIS has undertaken to:

— Hold six-monthly training sessions on Parliamentary scrutiny;
— Put in place measures to ensure all staff working on EU issues understand the importance of Parliamentary scrutiny; and
— Introduce new systems to record the progress of scrutiny.

Beyond these, we draw your particular attention to Jo Swinson’s emphasis on the importance of close liaison between Departmental Officials and those in the House of Lords’ Committee Office.

We do not expect a reply to this letter.

11 November 2014

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office and Shailesh Vara MP, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Thank you for your letter dated 7 May. We are writing to update your Committee on the negotiations for the new strategic guidelines, and to request that you clear from scrutiny 7838/14 “The EU Justice Agenda 2020 – strengthening trust, mobility and growth within the Union” and 7844/14 & 7844/14 ADD 1 COM(2014)/154 “An open and secure Europe: making it happen”.
As you are aware, the strategic guidelines for future development in the JHA area are due to be agreed at the European Council meeting on 26 June. As part of this ongoing process the Home Secretary and the Justice Secretary attended the JHA Council on 5 June, at which the strategic guidelines were discussed, but no JHA Council contribution to the process was proposed or agreed. All Ministers agreed on the need to focus on implementation and consolidation of existing legislation, action to tackle trafficking in human beings and people smuggling, action on Counter-Terrorism and Counter-Radicalisation, and the need for increased cooperation between Member States and with third countries.

The Home Secretary intervened to express disappointment that the JHA Council was not in a position to offer a strong contribution to the European Council when all previous discussion in Council has indicated the Council’s desire to do so. She also stressed the importance of including action to tackle fraud and abuse of free movement, strengthen the EU’s external border to stop illegal migration, tackle trafficking in human beings and the crime of modern slavery, and action to improve the exchange of criminal records and the return of prisoners to their countries of origin, and a mechanism for Member States to review the guidelines once issued.

We are disappointed that the Presidency did not invite Ministers to agree a JHA Council contribution to the programme at the June JHA Council meeting. Instead the Presidency, after reflecting on the views of Ministers, submitted a letter to the President of the European Council. This letter was sent on 10 June. We attach [not printed] this for your information – it is classified as “limité” text, and is therefore shared with the Committee in confidence: it is not for publication.

The letter from the Greek Presidency does recognise the consensus among Member States for a shift in focus towards implementation and enforcement of existing rules, enhanced operational cooperation, partnerships with third countries and internal security priorities such as combating organised crime and trafficking and smuggling in human beings. However, the letter does not fully reflect the views of Member States on issues of solidarity and burden sharing (where a number of Member States have called for greater emphasis on the need for Member States facing migratory pressures to improve their national systems), and on free movement (19 Member States have previously raised the need to tackle abuse and fraud).

We are now working closely with other Member States and the EU institutions ahead of the June European Council to ensure UK priorities are reflected in the new strategic guidelines. We will update the Committee on the outcome of the June European Council on this matter as soon as possible.

Documents 7838/14 and 7844/14 & 7844/14 ADD 1 COM(2014)/154 relate to the Commission’s contribution to the new strategic guidelines, which took the form of two Communications (one from DG Home, and one from DG Justice). We submitted a joint Explanatory Memorandum on 31 March 2014. Your Committee has retained these documents under scrutiny.

The Government has engaged fully with your Committee throughout this process. We provided written evidence to the Committee’s inquiry into the post-Stockholm Programme, and James Brokenshire and Shailesh Vara gave oral evidence on 5 February 2014. The Government submitted its formal response to the Committee’s report on this matter on 5 June 2014.

Due to the usual arrangements of appointing Select Committees at the beginning of each Parliamentary session, we understand that the House may not be in a position to debate your Committee’s report and the Government’s response before the strategic guidelines are agreed at the June European Council. This is unfortunate but unavoidable. We are keen to avoid a scrutiny override and acknowledge that both our Departments and your Committee agree on the broad approach in the post-Stockholm Programme. On that basis we write to request scrutiny clearance of the above texts ahead of the Council. Of course the individual measures in the Programme will continue to be subject to scrutiny.

We would like to thank your Committee again for its ongoing and thoughtful work on this programme.

17 June 2014

Letter from the Chairman to Karen Bradley MP and Shailesh Vara MP

Thank you for your letters of 30 May and 17 June.
It is troubling that Member State governments in the JHA Council were not able to agree a formal contribution to the guidelines which will govern JHA policy over the next five years. Instead, a Presidency letter has been sent to the European Council. This is not a statement of the Council nor a public record. This is a disappointing result in view of the importance of the subject matter.

It is not clear from your letter of 17 June exactly what it was that prohibited a contribution being proposed — from the outside it seems a surprising development. We would be grateful for a more detailed explanation.

To date the only formal contribution to the strategic guidelines is from the Commission in the form of these two Communications. Consequently, it is possible that the strategic guidelines will be largely based on the Communications. We would therefore be grateful to know exactly what contribution the UK made to the contents of the strategic guidelines in the absence of a formal Council contribution, and how agreement on the draft guidelines was reached.

We do not think the Communications have to be cleared to avoid an override. The Prime Minister is not agreeing to their adoption in the European Council. He is agreeing to the adoption of strategic guidelines, which are likely to have a limité status, and a draft of which has consequently not been deposited. Agreeing to the adoption of the strategic guidelines will not therefore trigger an override of the scrutiny reserve on the Communications.

We have decided to retain the Communication under scrutiny until the Government decides whether to opt into the Regulation on the Justice Programme of the EU Budget. As your letter of 30 May confirms, UK legal practitioners will not be eligible for funding for training under the Justice Programme, the amount of which is €378 million. At the time, the Committee was surprised by the Government’s decision not to opt into the Justice Programme, particularly because under its predecessor UK-based organisations had been the third highest recipients of funding. The Lord Chief Justice also wrote at the time, expressing concern at the Government’s decision and asking it to reconsider. We echo that concern, and ask the Government to exercise its right to opt into the Justice Programme at this stage.

We look forward to hearing from you within ten days of receipt of this letter.

26 June 2014

Letter from Karen Bradley MP and Shailesh Vara MP to the Chairman

Thank you for your letters of 26 June on the Strategic Guidelines for the EU’s next Justice and Home Affairs programme. Given that they both addressed the same issue we have decided to combine the replies.

The Strategic Guidelines were agreed by the Prime Minister at the European Council of 27 June and are attached [not printed].

As mentioned in our letter to your Committee of 17 June, the Government was disappointed that the Greek Presidency did not invite Ministers to agree a formal JHA Council contribution to the programme. The Greek Presidency decided instead to send a letter to the President of the European Council summarising what it considered should be covered in the strategic guidelines following the discussion at the June JHA Council (our previous letter of 17 June provided a copy of this letter.) The Home Secretary intervened at the June JHA Council meeting to express disappointment that the Council would not agree and provide a formal contribution. The Government did not consider that the Presidency letter properly reflected the discussions that had been held in Council or dealt sufficiently with our priorities. Consequently, we engaged in further lobbying through other channels. This lobbying built on the Government’s initial letter to the Lithuanian Presidency when discussions on the new Strategic Guidelines began last year, as well as numerous conversations and exchanges at Ministerial and official level over the past few months.

Our efforts resulted in considerable success and the Government is content with the final Strategic Guidelines, which we consider to reflect our priorities. We welcome the overall tenor of the new Guidelines, which are genuinely strategic with a clear steer towards practical cooperation. This also seems to accord with the Committee’s own recommendations on this matter, as set out in your report of 14 April. The Guidelines also place a focus on proper implementation of existing measures rather than new legislation and are clear that the priority is to transpose, implement and consolidate existing legal instruments (all paragraph 3).
As you are aware from our evidence to your inquiry, the Government had five key priority areas on which we wanted to see action in the new guidelines:

— Preventing the abuse of free movement rights;
— Strengthening the EU’s external border;
— Action against human trafficking;
— More effective return of prisoners to their country of origin; and
— Improved exchange of criminal records.

We secured a specific and strong reference to preventing the abuse of free movement. Paragraph 12 of the Guidelines reads, “As one of the fundamental freedoms of the European Union, the right of EU citizens to move freely and reside and work in other Member States needs to be protected, including from possible misuse or fraudulent claims”. Misuse encompasses not only illegal immigration but also the exploitation of free movement rights, including for the purposes of organised criminality. In the UK we have seen fraudulent claims by EU nationals to public services, for example, social welfare, as well as fraudulent claims by non-EU nationals to entry and residence rights. We strongly welcome the inclusion of this broad language in the guidelines and we hope that this will lead the Commission and Member States to be more proactive, rather than reactive, in this area.

We welcome the substantial reference to strengthening the external border and working more effectively to reduce illegal migration with the Guidelines aiming to support efforts to tackle “irregular migration flows”. We also agree fully with the Guidelines where they say, at paragraph 8, that a “sustainable solution can only be found by intensifying cooperation with countries of origin and transit, including through assistance to strengthen their migration and border management capacity”.

Whilst we are usually excluded from measures that build on Schengen border arrangements we have a strong interest in ensuring that those arrangements remain robust.

We were also successful in ensuring two strong and explicit references to the need for action against human trafficking. Paragraph 8 identifies a focus on “addressing smuggling and trafficking in human beings more forcefully, with a focus on priority countries and routes”, and paragraph 10 recognises the importance of “preventing and combating serious and organised crime, including human trafficking and smuggling”. We are pleased to have secured two robust references to this area and consider it to properly reflect the priority the Government attaches to the fight against modern slavery.

In regards to effective return of prisoners to their country of origin, our key aim has always been to ensure full implementation of the Prisoner Transfer Framework Decision (PTFD). Consequently, we are pleased with the focus on ensuring full implementation of all existing legislation.

The Government also sought a reference to the need to improve cross-border information exchanges, particularly in relation to criminal records. Paragraph 10 of the Guidelines explicitly calls on the EU to help facilitate and coordinate work in this sphere and we welcome this.

The Government would also bring the Committee’s attention to the following points in the Guidelines, which we consider to be welcome:

— Improving the link between the EU’s internal and external policies. Paragraph 2 contains a clear reference to this. The Government was also pleased to see recognition that such an approach “has to be reflected in the cooperation between the EU’s institutions and bodies”. We believe there is far more that can be done in this regard.

— Role of the EU Counter Terrorism Coordinator. Paragraph 10 reaffirms the importance of this role in helping to maximise synergies between the internal and external elements of the EU’s counter terrorism policy.

— EU Passenger Name Record (PNR). Paragraph 10 of the Guidelines recognises the importance of this instrument to public safety and security. The Government welcomes this support as it believes that it is essential that the EU swiftly adopts an EU legal framework that provides for the exchange of intra-EEA PNR to tackle the issues of foreign fighters, trafficking and organised crime. We hope this will act as a springboard for renewed energy on this dossier, particularly from the European Parliament.
Simplifying access to justice. Paragraph 11 of the Strategic Guidelines includes welcome references to the need to promote effective use of technological innovations in the Justice area, including greater use of e-justice.

Council-led review mechanism. Paragraph 13 calls on the EU institutions and the Member States to ensure the appropriate follow-up to the guidelines and makes clear that the European Council will hold a mid-term review in 2017 which reflects the Governments aims.

The Government note that the reference to the European Public Prosecutor’s Office (EPPO) only refers to “advancing negotiations”, rather than a commitment to prioritising and concluding negotiations. As the Committee is aware the Government does not consider that the case has been made for the creation of the EPPO. We are aware that your Committee shares similar concerns.

The Government was also successful in opposing a reference to either the mutual recognition of asylum decisions or codification of legislation in the Guidelines. We consider this to be a particularly good result given references to both appeared in earlier drafts.

We hope your Committee will welcome the new Strategic Guidelines as they largely reflect what was recommended in your report of 14 April. We believe the Guidelines will provide a good basis for activity in the area of justice and home affairs for the next five years.

We note the Committee’s decision to clear the Commission’s Communication "An open and secure Europe: making it happen" and to retain the Commissions Communication: The Justice Agenda 2020 – Strengthening Trust, Mobility, and Growth within the Union under scrutiny until the Government decides whether to opt into the Regulation on the Justice Programme. As you know, under Protocol 21 the UK may, at any stage after a measure has been adopted, indicate its wish to participate. The Government will consider the value of a post-adoption opt-in and will write to you in due course.

9 July 2014

Letter from the Chairman to Karen Bradley MP and Shailesh Vara MP

Thank you for your letter of 9 July, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 30 July.

We were grateful for your commentary on the adopted Strategic Guidelines, and note that, as you say, they largely reflect the Government’s priorities and the recommendations of the European Union Committee’s Report Strategic Guidelines for the EU’s next Justice and Home Affairs programme; steady as she goes.

This Sub-Committee is concerned with EU justice policy, and so we have paid particular attention to the future activity listed in paragraph 11 of the Strategic Guidelines. We would be grateful if you could explain what further activity can be expected under each of the bullet points in that paragraph. This would help us in gauging with more certainty the future direction of EU justice policy and also the areas which might benefit from more in-depth scrutiny.

The Strategic Guidelines state that “the strategic use of EU funds will be key” (paragraph 3) and that further action is required to “enhance training for practitioners” (paragraph 11). In this regard we note that you say that the Government will consider the value of a post-adoption opt-in to the Regulation establishing the Justice Programme 2014-2020. It is clear from the Strategic Guidelines that funding for legal practitioners will be an important strand of future EU justice policy, yet, as you have confirmed, UK practitioners will not be eligible for it under the main funding programme of €378 million. So that we can better understand the Government’s concerns, we ask you to outline the reasons for and against opting into the Justice Programme, and to say when the Government is likely to consider a post-adoption opt-in.

We look forward to hearing from you before the House returns in October.

In the meantime, the Communication remains under scrutiny.

30 July 2014

Letter from Karen Bradley MP and Shailesh Vara MP to the Chairman

Thank you for your letter of 30 July and your Committee’s continued interest in the Strategic Guidelines for the EU’s next Justice and Home Affairs programme.
You ask the Government to set out what further activity can be expected under each of the bullet points in paragraph 11 of the strategic guidelines. Our starting point is of course that set out in the guidelines that work should focus on implementing current legislation rather than introducing new measures. As such we would expect further activity, in general, to build on what is already in place. The points in paragraph 11, together with the Government’s observations, are set out below.

**PROMOTE THE CONSISTENCY AND CLARITY OF EU LEGISLATION FOR CITIZENS AND BUSINESSES**

The Commission has not put forward specific plans in this area. From the negotiations on the EU’s next Justice and Home Affairs programme, we expect that over the next few years the Commission will look to evaluate the existing acquis, and where appropriate, review, revise and replace earlier instruments. This is something the Government would welcome.

**SIMPLIFY ACCESS TO JUSTICE; PROMOTE EFFECTIVE REMEDIES AND USE OF TECHNOLOGICAL INNOVATIONS INCLUDING THE USE OF E-JUSTICE**

Work is under way on amendments to the European Small Claims procedure, which the UK has opted into, and the European Account Preservation order, in which the UK is not participating, has recently been adopted. No other measures falling into this category have yet been announced. As regards e-justice, work will continue on the basis of the recently agreed Strategy and Action Plan, about both of which the Committee has been informed.

**CONTINUE EFFORTS TO STRENGTHEN THE RIGHTS OF ACCUSED AND SUSPECTED PERSONS IN CRIMINAL PROCEEDINGS**

Work on the completion of the "Roadmap" on criminal procedural rights can be expected to continue. The Roadmap describes a Council Resolution of 2009 which set out certain aspects of criminal procedural law which the Commission was invited to consider. Three measures flowing from the Roadmap have now been adopted (the UK is currently bound by two of those - Interpretation and Translation and Letter of Rights, and not bound by one - Access to a Lawyer). A further two are subject of current negotiation – Child Defendants and Legal Aid. A related proposal from the Commission on "the presumption of innocence", which was not explicitly in the "roadmap", has also been brought forward by the Commission and is currently under negotiation. The UK did not opt in to any of these latest proposals.

We expect negotiations on these measures to be concluded in the coming year. The Commission is also likely to consider further and possibly make a proposal on the one remaining issue identified on the Roadmap, which concerns pre-trial detention. There is currently no indication of when any such proposal might appear.

**EXAMINE THE REINFORCEMENT OF THE RIGHTS OF PERSONS, NOTABLY CHILDREN, IN PROCEEDINGS TO FACILITATE ENFORCEMENT OF JUDGEMENTS IN FAMILY LAW AND IN CIVIL AND COMMERCIAL MATTERS WITH CROSS-BORDER IMPLICATIONS**

The Commission is currently consulting on the Brussels IIa Regulation, which deals, amongst other matters, with the question of which courts are entitled to make decisions on cross-border parental responsibility disputes and how those decisions are enforced in another country. It also facilitates the return of children abducted from one country to another by family members. We foresee that this will lead to a revision of the Regulation next year.

Additionally, we can expect the Commission to prioritise work to spread best practice by collecting and disseminating information from Member States, including extensive work already in 2014 on the voice of the child in criminal, civil, administrative and family proceedings. The 2015 programme of work for the Experts’ Group on the Rights of the Child will be decided when the new Commission is in place.

**REINFORCE THE PROTECTION OF VICTIMS**

Measure D in the Budapest Roadmap for strengthening the rights and protection of victims describes a possible Commission review on the Directive on compensation for victims of crime. In particular, this review will examine whether existing procedures for the victim to request compensation should
be revised and simplified, and present any appropriate legislative or non-legislative proposals in the area of compensation of victims of crime. The timescale for this review has yet to be announced.

Additionally, EU Regulation 606/2013 on the mutual recognition of protection measures (civil and family) is due to come into force in January 2015.

ENHANCE MUTUAL RECOGNITION OF DECISIONS AND JUDGMENTS IN CIVIL AND CRIMINAL MATTERS

The Brussels I (Recast) Regulation is due to come into force in January 2015, and, other than the examination of Brussels IIa referred to above, no other measures in this area have yet been announced. No new measures in the field of criminal justice have yet been announced. However, the Italian Presidency has organised an expert level seminar for September to consider the impact of mutual recognition measures to date and specifically its application in the field of the confiscation of the proceeds of crime. It remains to be seen whether this would inform plans for the new Commission when it takes up office.

ENHANCE TRAINING FOR PRACTITIONERS;

Training for judges, prosecutors and other legal practitioners has featured in every JHA work programme since the Hague programme was adopted in 2004. Such training is acknowledged to be a matter for Member States, and the EU’s contribution has typically been to support training in EU law and in relation to mutual understanding of other Member States’ legal systems financially.
Mobilise the expertise of relevant EU agencies such as Eurojust and the Fundamental Rights Agency (FRA)

We expect this will primarily focus on making better use of the existing work of the relevant agencies in pursuing the other bullet points.

The Fundamental Rights Agency is working with Ireland, Finland and the Netherlands to develop indicators on the Rule of Law. The Fundamental Rights Agency’s role is to provide advice and assistance on fundamental rights, while some of the FRA’s thematic areas are related to the rule of law, the concept of rule of law encompasses a wide range of different issues falling outside the FRA’s remit. It is important that the Agency’s work on this project falls within the remit set out in its establishing Regulation.

As you know, negotiations on the European Commission’s proposal for a Regulation to reform Eurojust are ongoing.

The Justice Programme

The Committee’s letter also asks the Government to outline the reasons for and against opting in to the Justice Programme, and to say when the Government is likely to consider a post-adoption opt in.

As you know, the Government decided in 2012 not to opt in to this measure due to questions over the value of the activities the programme intended to fund, but carefully to consider opting in post-adoption. As with all post-adoption opt in decisions, a variety of factors must be considered. The Government will want to consider the impact on UK influence in EU legal and justice matters of opting in or staying out, and the benefits such programmes bring to the UK as a whole and to individual organisations and programmes. A key factor will be whether this programme, based on the evidence of its predecessors, offers value for money for UK taxpayers.

We expect to be able to update the Committee on the Government’s decision shortly.

3 September 2014

**Letter from Karen Bradley MP and Shailesh Vara MP to the Chairman**

I am writing to inform you of the Government’s decision not to opt in post-adoption to the Regulation of the European Parliament and of the Council establishing a Justice Programme for the period 2014-2020 at this time.

You wrote to me on 13 May and on 30 July 2014 on the subject of the EU Justice Agenda 2020 and asked questions in relation to the Government’s decision not to opt into the programme, and the impact on training for legal practitioners.

The Government decided in 2012 that the UK should not opt in to this measure due to questions over the value of the activities the programme intended to fund, and this decision was taken on the basis that careful consideration be given to opting in to this proposal post-adoption.

The overriding factor in the Government’s decision not to opt in to this programme post-adoption remains value for money for the taxpayer. Opting in to this measure would incur a cost of approximately €55m or £45m over seven years. The lack of a formal monitoring system for activities funded by predecessor programmes has made cost-benefit analysis difficult, but Commission data would suggest that under the previous programmes while UK-based organisations were frequently awarded projects, they were often for small sums of money meaning the UK consistently contributed more than it received in funding.

Maintaining this position will mean that UK-based organisations will continue to be ineligible for funding from the programme, although they would be eligible to take part in an activity in another Member State funded by the programme where they fund themselves.

The consideration of value for money has been weighed up against any loss of UK influence in our non-participation in the programme and I have considered carefully to those arguments. As mentioned above, a central difficulty in reaching a decision has been the lack of evidence of the value of predecessor programmes. Therefore, my officials will work with interested parties to monitor the impact of the UK’s non-involvement in the programme over the next year, and I will conduct a rigorous review of the decision next summer.
In the meantime, to address some of the particular concerns raised by the judiciary about the potential for loss of influence within EU judicial networks, my department will allocate funding for EU judicial training in England and Wales to a degree that will allow them to maintain the levels of training seen in previous years. I have suggested to the Scottish Cabinet Secretary for Justice and Northern Irish Justice Minister that they may wish to consider similar measures to ensure that members of the judiciary in Scotland and Northern Ireland are able to maintain current levels of training.

27 October 2014

**Letter from the Chairman to Karen Bradley MP and Shailesh Vara MP**

Thank you for your letter of 27 October, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 3 December.

We were grateful for your explanation of the Government’s decision not to opt into the Justice Programme 2014-20 at this stage, and for the efforts your officials have made to analyse its value to the UK.

We welcome your decision to make replacement funding available for EU legal training in England and Wales.

We would be grateful to be informed in detail of the results of the study being conducted over the next year into the effects of the UK’s continued non-participation in the programme, and of the Government’s further assessment of whether to opt in to the programme within three months of the Council being seized of it, so we will be interested to see if the Government’s view changes as a consequence of the study.

In the meantime, we clear the Communication from scrutiny.

3 December 2014

**EUROPEAN ACCOUNT PRESERVATION ORDER (13260/11)**

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

I am writing to update you on the progress of this proposal. Since I wrote to you on 3 December, at the time of the agreement of the Council’s General Approach, the Greek Presidency has held trilogue negotiations with the European Parliament with the aim of reaching a first reading deal. Those negotiations were successful and the enclosed text was adopted at last month’s General Affairs Council.

In general terms the adopted text follows the text agreed at the December Council, which I outlined to you in my previous letter. The trilogue discussions led to one substantive change. As I explained in December, the provision on providing information about bank accounts (Article 17 in the Commission proposal but now Article 14) was restricted to those cases where the creditor had obtained an enforceable judgment. Following the trilogue, a creditor will be able to make use of this provision where he has a judgment which is not yet enforceable, where the amount to be preserved is substantial and where he submits sufficient evidence to satisfy the court that there is an urgent need for the account information to be provided.

Now the text has been adopted, the Government will consider whether it is in the UK’s interests to opt in to the Regulation. That decision will be based mainly on whether the new text has redressed enough the balance between the rights of creditors and the safeguards for debtors. I will write to you again in due course once the Government has made its assessment and will give your Committee the opportunity to give an opinion if the Government is minded to opt in.

11 June 2014

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

Thank you for your letter dated 11 June 2014. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 16 July 2014. We decided to retain the matter under scrutiny.
We are grateful for the update on the progress of negotiations and note that the proposed Regulation was adopted at the June Council. Your letter addresses all our outstanding questions save for the issue of the circumstances under which a creditor would seek recourse to the provision governing the acquisition of a debtor’s bank account information (Article 14). Our letter to you of 18 December 2013 asked for further information on the circumstances in which an individual would use such a provision and whilst you have explained the system currently operating in England and Wales, and its compatibility with the Regulation, you have not furnished us with the requested examples. We would be grateful if you could address this oversight.

Aside from that issue, we note your comments that the discretion afforded the courts when deciding whether to issue an EAPO is “not as good as it should be”, in particular in relation to the potentially oppressive use of these orders, and the length of time that an order should be in force.

Finally, given that the proposal has been adopted and remains subject to a post-adoption assessment by the Government on the opt-in, we ask to be kept informed of any decision to participate in this proposal in good time.

We look forward to considering your response when the House returns in October.

17 July 2014

Letter from Chris Grayling MP to the Chairman

Thank you for your letter of 17 July. You asked for examples of the circumstances in which it is envisaged the Article 14 mechanism for providing information on bank accounts might be used.

Unlike our domestic freezing orders which are made against an individual, the European Account Preservation Order (EAPO) must be made against a specific bank account or accounts. Therefore it is necessary for the bank account details of the debtor to be known before an EAPO can take effect. That does not mean that the creditor should have the account number, but he should know at least the bank or banks where the account or accounts are held. The relevant bank must then identify the actual account before the EAPO can be applied.

The Commission’s proposal allowed creditors to request bank account details in all cases within the scope of the Regulation, that is even before the substantive proceedings underlying the creditor’s claim had been concluded. They suggested such information could be obtained either from a national registry of bank accounts, where one exists, or by requiring banks to provide details, even if the creditor was not aware that a particular bank held an account. During the negotiations we were able to secure the inclusion of our system of orders to obtain information directly from the debtor, as explained in my letter of 11 June.

At the conclusion of the negotiations, however, the opportunity to make use of the Article 14 mechanism was reduced significantly. This has also reduced the utility of the Regulation as a whole. If a creditor does not know which bank holds an account he will not be able to obtain an EAPO until after a court has given judgment in the substantive proceedings confirming that money is owed to him. Where the creditor has obtained judgment in his or her favour but it is as yet not enforceable, the creditor must additionally satisfy the court that the amount to be preserved is substantial and that there is an urgent need for the account information to be provided before an application under Article 14 can be made.

For a creditor who does not know where a debtor has his bank accounts the Article 14 mechanism as agreed will be of only limited use. If the creditor had reason to believe at the start of the substantive proceedings that an EAPO was justified it is likely that by the time of the judgment the assets will have been dissipated. Therefore this provision will be of most use to a creditor where the risk of dissipation of assets arises after the judgment has been obtained. However even then the bank account information can only be obtained if the other tests under Article 14 (as described above) have been met.

7 October 2014

Letter from the Chairman to Chris Grayling MP

Thank you for your letter dated 7 October 2014. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 29 October 2014.
We decided to retain the matter under scrutiny pending the outcome of the Government's post-adoption assessment of the opt-in question. We are very grateful to you for your detailed explanation of the negotiation and agreement of the mechanism under which a creditor might obtain information about a debtor’s bank account (Article 14). We also note your conclusion that this aspect of the proposal has “reduced the utility of the Regulation as a whole”.

We do not expect an answer to this letter.

30 October 2014

EU ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (10817/10)

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

Thank you for your letter of 1 May, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 July.

We would be grateful if you could provide us with a summary of the arguments made by the UK at the oral hearing in May. We understand the Court’s Opinion is expected towards the end of the year. In addition, could you tell us whether the EU’s proposed accession has led to concern among States party to the ECHR that EU Member States may caucus to protect the interests of the EU, particularly in relation to the execution of judgments; and, if so, how those concerns will be addressed?

We look forward to hearing from you before the House returns in October.

In the meantime the proposal remains under scrutiny.

24 July 2014

Letter from Chris Grayling MP to the Chairman

Thank you for your letter of 24 July. First, with respect to your request for a summary of the arguments made by the UK at the European Court of Justice oral hearing on 5-6 May 2014, I can add the following overview of Counsel’s submissions.

The UK sought to encourage the Court to test robustly the Accession Agreement and its implications whilst steering clear of making any findings that could prejudge the content of the internal EU rules.

The UK reiterated the fact that accession would not extend the competences of the EU or the jurisdiction of the Union Courts. On the Internal Rules, the UK submitted that, in the absence of any published proposal from the Commission on the Internal Rules, it was inappropriate of the Commission to speculate on their possible content or for the Court to attempt to specify their content. Similarly, it was submitted that while the Accession Agreement sets up a framework to enable both the EU and Member States to become a co-respondent to ECtHR proceedings, how this would happen in practice would be determined in the Internal Rules. On prior involvement – a process to enable the ECJ to rule on the compatibility of EU law with the Charter before a case goes to the ECtHR – the UK submitted that it was on balance compatible with the Treaties but asked the Court to fully assess the range of arguments on this issue before reaching its conclusion.

On a separate point, you have queried whether the EU’s proposed accession has led to concerns among States party to the ECHR that EU member states may vote en bloc to protect the interests of the EU, particularly in relation to the execution of judgments. The extent of the EU’s involvement in the Committee of Ministers and its subordinate bodies has certainly been discussed by the Member States. It was subsequently addressed to the satisfaction of the 47+1 negotiating group in the final report of the Steering Committee for Human Rights published in June 2013 (see the Explanatory Note at para 82 to 92), Article 7 of the draft Accession Agreement and draft Rule 18 at Appendix III of the report. The draft rule and Article 7 of the Accession Agreement are intended to ensure that the combined votes of the EU and its Members States will not prejudice the effective exercise by the Committee of Ministers of its supervisory functions.

While not incorporated into the Accession Agreement proper, this rule is part of the ‘package’ of instruments which will be recommended to the Committee of Ministers in the event that the accession of the EU to the Convention is put to decision.
I shall of course keep you informed of any developments regarding these matters.

7 November 2014

EUROPEAN SMALL CLAIMS PROCEDURE (16749/13)

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

I wrote to you on 22 February informing you that the Government had opted in to this proposal. Since then the negotiations have progressed well and I am pleased to report that all of the UK’s objectives regarding the text have been addressed successfully in the Council. The Italian Presidency hopes that a General Approach can be agreed at the December JHA Council.

While there are likely to be further negotiations during November, to enable your committee to have enough time to consider the issues before the Council, I thought it would be helpful to provide you with the enclosed [not printed] copy of the latest Presidency text dated 29 October and to explain the main changes that have been made since the Commission’s proposal. As the latest text is classified as Limite I would ask that it not be made public.

SCOPE OF THE PROCEDURE (ARTICLE 2)

There has proved to be very little support within the Council for an extension of scope to €10,000. The Presidency has suggested two options - €4,000 or €5,000. On the basis of an agreement reached with the Devolved Administrations the Government has supported an increase up to €6,000. Of the two options the Government prefers €5,000 but can accept €4,000 if that proves to be the agreed compromise as it will still be a significant increase over the current level.

There has been a technical amendment to paragraph 3 to bring the wording of the exclusions into line with those in the revised Brussels I Regulation.

CROSS-BORDER RESTRICTION (PREVIOUSLY ARTICLE 2, NOW ARTICLE 3)

The majority view of the Council, including the UK, was to retain the current definition in Article 3. Therefore this has been reinstated by the Presidency.

COMMENCEMENT OF THE PROCEDURE (ARTICLE 4)

In paragraph 4 courts will be obliged to inform the claimant of a dismissal and will have to say whether an appeal against that dismissal exists. Under paragraph 5 courts will have to ensure they provide access to the standard claim form; there is no longer a requirement to have stocks of paper versions of the forms. Member States must also ensure the form is accessible through national websites. The Government supports these changes.

CONDUCT OF THE PROCEDURE (ARTICLE 5)

The Commission’s suggestion that parties should be able to have an oral hearing for cases over the value of €2,000 has been rejected. The Government welcomes this change as it believed that a party could have abused that right by calling for a hearing to delay proceedings or to put pressure on or cause problems to the other party. The previous reference to a hearing being held where parties sought a court settlement was also deleted as it was thought unnecessary.

ORAL HEARING (ARTICLE 8)

The text now clarifies that distance communication technology should be used for oral hearings where it is available unless the court believes its use would not be appropriate for the fair conduct of the proceedings. The automatic entitlement for parties to appear in person has been deleted, instead allowing more discretion for courts in such decisions. Provision is also made to enable a party who has been invited to be physically present at a hearing to request instead the use of distance communication technology on the grounds of proportionate cost. In addition, where a party requests to be physically present he needs to be aware that in the event of his claim being successful the costs
incurred might not be recoverable if they are considered unnecessarily incurred or disproportionate to the claim. The Government believes such changes are sensible and supports them.

ASSISTANCE FOR THE PARTIES (ARTICLE 11)

This Article now clarifies that courts will not be required to provide legal advice to parties. The Government welcomes the fact that only practical assistance in completing the forms and general information about use of the procedure or the courts where it is available will now need to be provided.

SERVICE OF DOCUMENTS (ARTICLE 13)

The main changes have clarified that postal service and electronic service are equally valid but electronic service can be used only where the laws of both the sending and receiving Member States allow it, where the means are available, and where the parties have agreed to such service, unless the law of the Member State of receipt requires electronic service to be used. Similar conditions should apply to all other written communications. The Government supports these changes.

COURT FEES AND METHODS OF PAYMENT (ARTICLE 15A)

Both the proposed 10% cap on court fees and the minimum fee of €35 have been removed. Instead recital 13 states that Member States should ensure that the fees they charge are not disproportionate and should not be higher than those charged for similar domestic procedures. Regarding the methods of payment, there is now more flexibility on what Member States can do. The Government welcomes these changes and is pleased that credit or debit card payments by telephone will be acceptable.

REVIEW (ARTICLE 18)

A minor technical amendment, requested by the UK, clarifies that the benefit of the interruption of prescription or limitation periods will be available only where such an interruption applies.

LANGUAGE AND TRANSLATION ISSUES (PREVIOUSLY ARTICLE 21, NOW ARTICLES 20, 21 AND 21A)

The text now clarifies that parties may request the version of the certificate for enforcement in the language version of the court of enforcement and that only section 4.3 of that form need be translated. A court will not be required to accept the forms in any language other than an official language of its Member State. The Government supports these provisions.

INFORMATION TO BE PROVIDED BY MEMBER STATES (ARTICLE 25)

Member States will now be required to provide information on their laws and procedures regarding electronic service and will have an extra six months to provide the requested information.

AMENDMENT OF THE STANDARD FORMS (ARTICLES 26 AND 27)

The implementing acts procedure with examination has been included instead of the delegated acts procedure. The Government welcomes this change.

EUROPEAN ORDER FOR PAYMENT

The Commission’s proposal concentrated on the effects of the lodging of a statement of opposition (Article 17 of the Order for Payment). This provision has had some technical amendments, including clarification that where the claimant has not made a choice, or if he chooses the European Small Claims Procedure for a dispute not within its scope, the case will be transferred to an appropriate domestic procedure unless the claimant has indicated no transfer should occur.

During the negotiations it was decided that there would need to be consequential changes to Articles 7(4) and 25 of the European Order for Payment to take account of the additional choices the creditor will have if he wants his case to transfer. Article 25 has been amended to ensure that where the court fees for a small claims procedure are less than those originally charged for a European Order for Payment, a court will not have to reimburse the difference. The Government supports these changes.
As for the European Small Claims Regulation, the Government welcomes the fact that amendment of the standard forms for the European Order for Payment will be by use of the implementing acts procedure with examination.

In the remaining negotiations I anticipate that any changes will be just technical. If any significant changes are made I will write to you again. In the meantime I would welcome your committee’s agreement that the UK can support the General Approach at December’s Council.

6 November 2014

Letter from the Chairman to Chris Grayling MP

Thank you for your letter of 6 November, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 26 November.

We are grateful for the full account you have provided of developments in the negotiations since February. We have compared them with your initial concerns with the proposal, as set out in an Explanatory Memorandum of 4 December 2013, and we agree with you that each one appears to have been answered.

The Small Claims Regulation has proved to be a useful instrument for simplifying, and limiting the costs of cross-border litigation in small claims. We think this revision will help improve its effectiveness. This is especially so for SMEs, only 20% of whose claims are reported by the Commission to be below €2,000, now that the threshold will be increased to €4,000 or €5,000.

We are therefore content to clear the proposal from scrutiny so that the UK can support a General Approach in the JHA Council in December.

We would, however, like to be informed of the final agreement on the threshold level within ten days after the JHA Council meets.

We would also like to be informed of any significant changes to the proposal as a consequence of the first reading negotiations. If those changes are sufficiently substantial to affect national policy considerations, we ask that a further EM be deposited together with the revised text.

28 November 2014

FRAUD ON THE EU’S FINANCES: OLAF’S SINGLE POINT OF CONTACT (UNNUMBERED)

Letter from Nicky Morgan MP, Economic Secretary to the Treasury, HM Treasury, to the Chairman

Thank you for your letter of 8 May on the Government’s nomination of an Anti-Fraud Coordination Service (AFCOS) for the UK.

I note the Committee’s disappointment that the Government’s decision to designate the City of London Police as the UK’s AFCOS was not, as requested, communicated to the Committee directly. It is unfortunate that the Committee was not notified prior to Commissioner Leppard’s submission but I would like to assure the Committee that, as soon as the decision was disseminated across Government, this information was communicated to the Committee through my letter of 14 May.

Your letter also asked for confirmation that the Devolved Administrations had been consulted as part of the decision-making process for designating an AFCOS. As the City of London Police was already successfully acting as the de-facto AFCOS in the UK, the Home Office did not consult the Devolved Administrations before formally designating this role. However, the Home Office continues to engage with justice and policing partners in Wales, Scotland and Northern Ireland as this formal relationship between the City of London Police and OLAF beds in.

May I take this opportunity to say that I share the Committee’s view that the designation of an AFCOS is an important development in the UK’s fight against EU fraud. I look forward to even greater cooperation and coordination between OLAF and our national authorities on this important issue.

18 June 2014
Letter from the Chairman to Nicky Morgan MP

Thank you for your letter dated 18 June 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 25 June 2014.

We are grateful for the Minister’s response. We agree that it was unfortunate that we learnt of the Government’s introduction of a key recommendation of our 2013 report only via Commissioner Leppard’s submission to our inquiry into the European Public Prosecutor’s Office. However, we note your assurance that we learnt of this development “as soon as the decision was disseminated across Government”.

It is regrettable that, in line with our report’s recommendation, the Home Office was unable to consult with the devolved administrations before designating the City of London Police as the UK’s AFCOS. However, we hope that the Government’s ongoing engagement with the Welsh, Scottish and Northern Irish administrations on the operation of this policy will help to ensure that the UK’s relationship with OLAF functions effectively.

We do not expect a reply to this letter.

26 June 2014

GOVERNMENT POSITION ON THE JHA OPT-IN (UNNUMBERED)

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

Thank you for your letter of 3 June 2014, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 July.

We will be launching an inquiry before the end of this month into the Government’s policy on applying the JHA opt-in, as summarised in your letter. We will of, course, send a copy of the terms of reference to your officials as soon as they are published, and look forward to the Government’s response. In light of the forthcoming inquiry, we do not propose to comment on the points made in your letter at this stage.

We look forward to the further letter you promised now that the Court of Justice has delivered its judgment in case C-377/12, in which the legal base in Title V for the readmission provisions was held not to be justified.

We look forward to hearing from you when the House returns in October.

24 July 2014

HAGUE CONVENTION OF 30 JUNE 2005 ON CHOICE OF COURT AGREEMENTS (5445/14)

Letter from the Chairman to Shailesh Vara MP, Parliamentary Under Secretary of State, Ministry of Justice

Thank you for your letter dated 14 May 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 July.

We decided to retain the matter under scrutiny.

We are grateful for the Minister’s update on the progress of these negotiations and we take this opportunity to endorse your efforts to clarify: (i) the application of the UK’s opt-in in the text of the proposal and, (ii) the operation of the Commission’s proposed exception for insurance contracts.

We look forward to considering further updates from you on the progress of these negotiations in due course.

24 July 2014
Letter from Shailesh Vara MP to the Chairman

I am writing further to update the Committee on developments on the Council Decision designed to give effect across the European Union to the Hague Convention on Choice of Court Agreements.

First, I attach [not printed] our Impact Checklist. You will see that we foresee that the measure will be of overall benefit to the UK, even if some of the benefits are difficult to quantify.

Negotiations on the text of the Council Decision have continued. You will recall that the Government’s principal concern was the proposal by the Commission to exclude insurance contracts from the scope of the decision.

We have been able to secure some concessions, including a significant narrowing of the exclusion. I enclose [not printed] the latest working text: it is a limite document and I must therefore ask you to treat it in confidence.

In particular, the latest text makes clear that the Convention would cover contracts for reinsurance – a key concern of our stakeholders, who were keen for us to secure this confirmation. Beyond that, in effect, the exclusion covers insurance contracts which are not considered to relate to “large risks” as defined in the Annex – and the definitions are set out more clearly in the latest text. The Convention itself already excludes contracts in which one of the parties is acting as a consumer.

The Commission, supported by a number of Member States, argue that the exclusion is necessary in order to be consistent with the terms of Section 3 of the Brussels I (recast) Regulation (1215/2012).

A new annex has been added to the text, the effect of which is to make explicit that the European Union might reassess the need for such an exclusion at some stage in the future.

The Government would have preferred that there should be no such exclusion. However we are clear that adoption of the Convention overall will be in the UK’s interests. This is a view that is strongly supported by leaders in the insurance industry and by members of the Lord Chancellor’s Advisory Committee on Private International Law.

I take the view that we are unlikely to secure further concessions on this point and that we should compromise by accepting the new text.

On the application of the opt-in, whilst we continue to press the point, there is at present no support for an amendment to recital 8. In similar cases we have sought to protect our position by placing a minute statement on the record at Council, to the effect that we consider that the UK’s participation is secured by the fact that we have opted in. We would propose to do the same here if it does not prove possible to amend the text.

The text will now go to Coreper and to the Council, as an ‘A’ point, to invite the European Parliament to agree to the revised version. I hope, therefore, that the Committee will now be in a position to clear the text from scrutiny so that the Government can ultimately agree to its adoption.

18 September 2014

Letter from the Chairman to Shailesh Vara MP

Thank you for your letter dated 18 September 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 15 October.

We note your comments regarding the progress that the Government has made in the negotiation of this proposal in the Council and that a text has emerged which, whilst not addressing fully the UK’s concerns, you conclude that its adoption will be in the UK’s interests “overall”.

You conclude your letter by stating that the text was on the Council’s agenda last week and that it will now go to the European Parliament who will be invited to agree the revised version. In our view, the Council’s agreement last week constitutes an override of the scrutiny reserve resolution. According to paragraph 3(b) of the resolution: “Agreement in relation to a document means agreement whether or not a formal vote is taken, and includes in particular … political agreement”. This applies to any political agreement in the Council including the agreement of the text last week; for the purpose of the scrutiny reserve the Council has agreed a stance from which it cannot resile. This is underlined by your statement in the letter that: “I take the view that we are unlikely to secure further concessions … and that we should compromise by accepting the new text”.

We understand that this override was caused by a genuine misunderstanding of the terms of the scrutiny reserve and also the summer recess. However, given the circumstances, in particular the
concessions that the Government secured during the negotiations, we understand why you were keen to agree the text in the Council last week, and do not wish to pursue the override further.

We do not expect a reply to this letter.

16 October 2014

IMPLEMENTATION OF THE EU FRAMEWORK FOR NATIONAL ROMA INTEGRATION STRATEGIES (8806/14)

Letter from the Chairman to Stephen Williams MP, Minister for Communities, Department for Communities and Local Government

Thank you for your Explanatory Memorandum dated 29 April 2014 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 2 July 2014.

You say that the Commission highlights a number of examples of good practice in the UK in education, employment, health, housing, anti-discrimination policy and funding, although they also say that the UK should consider taking various measures, including more monitoring of progress. We would be grateful to know the extent to which such monitoring would include an assessment of the effect on social cohesion being undermined by the positive action towards Roma required by the Framework.

We note that further measures recommended by the Commission include that housing initiatives for Roma should be “scaled up and implemented”; that hostile attitudes towards those groups should be carefully addressed; and that further use of EU funds could be made by the UK. We would be grateful to know what use, on an annual basis, the Government have made of the EU funds available to implement this Framework since 2011.

We look forward to seeing to what extent the UK has complied with these recommendations, and what other steps it has taken to implement the Strategy, by the time the Commission reports next year.

We would be grateful for a response to our questions within ten days of receipt of this letter.

We do not, however, see a need to keep the report under scrutiny, and so clear it.

10 July 2014

Letter from Stephen Williams MP to the Chairman

Thank you for your letter of 10 July, clearing the Explanatory Memorandum from scrutiny, but requesting some further information on the UK response to the EU Framework for National Roma Integration Strategies. The Northern Ireland Executive has asked for more time to comment on this response, due to the recent Bank Holidays there. I am sending this response to you now to keep within your deadline, but subject to any further comments Northern Ireland Ministers may wish to add.

With regard to the Committee’s question on the possibility of social cohesion being undermined by positive action towards Roma, the Public Sector Equality Duty requires public bodies to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. These equality considerations in policy making and service delivery (ie. planning, development, implementation and evaluation) would therefore be approached as an integral part of everyday business.

With regard to European funding for the implementation of the EU Framework, the UK is advancing Roma integration through mainstream policies so it is not possible to set out how much European funding has been used for the benefit of Roma. Some local projects in receipt of EU funding may more specifically relate to the inclusion of Roma but I am afraid we do not hold any central records on these.

22 July 2014
Thank you for your letter of 22 July, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 29 October 2014.

This is an area of national policy which we wish to scrutinise closely, so we were grateful for the information you provided on the application of the Public Sector Equality Duty to integration of Roma and social cohesion in the UK.

Your response on the UK’s use of EU funds for Roma integration was less helpful, however. The Commission’s Communication explains that the main funds for Roma integration are the European Social Fund (ESF), the European Regional Development Fund (ERDF) and the European Agricultural Fund for Rural Development (EAFRD). We are not clear what you mean when you say “the UK is advancing Roma integration through mainstream policies so it is not possible to set out how much European funding has been used for the benefit of Roma”. We ask you to explain:

— Whether you mean the Government does not use any EU funds for Roma integration;
— How national funds are used for Roma integration (policies, sources of funding and amounts); and
— The extent to which you are aware of national organisations that support Roma being directly financed from EU grants.

We note that Roma integration is a priority of the Council of Europe and of its Human Rights Commissioner, and also of the EU’s Fundamental Rights Agency. Is the Government satisfied that there is adequate coordination between the Commission, the Council of Europe and the Fundamental Rights Agency to avoid an overlap of functions? If so, we would be grateful for an explanation of how that coordination takes place.

30 October 2014

Thank you for your letter of 30 October asking for further information about EU funding and about cooperation between the European Commission and the Council of Europe.

You asked about Government use of EU funds that could be used for Roma integration. For the European Social Fund Programme 2007 to 2013, Roma are not a specific target group and data on Roma as a specific category is not collected. Individuals from the Roma community are eligible for support if they meet other relevant criteria. For the 2014 to 2020 programme there is no separate funding stream for Roma. The employment part of the programme will focus on people at a disadvantage in the labour market. Priorities will be determined locally by Local Enterprise Partnerships. It is possible that there will be specific projects targeted at Roma, or that projects will target a wider group of which Roma would be a part.

You also asked about how national funds are used for Roma integration. Government funding does not generally target particular ethnic groups; our policies do support disadvantaged people, including, for example, through my own Department’s investment of £6 million to support 24,000 isolated adults to learn English. We have also secured £60 million to help councils in England with the cost of providing traveller sites.

As I said in my earlier letter we have no central record of which national organisations supporting Roma may be in receipt of EU grants.

You also ask about cooperation between the European Commission and the Council of Europe. Roma integration is a priority for both organisations. We share the committee’s concern about the risks of duplication but we believe that the Commission and the Council of Europe are also aware of these risks and we know of a number of ways in which they cooperate on Roma issues. For example, they have jointly run the Roma mediators programme (Romed) which has carried out the training of Roma mediators in a number of Member States. The European Commission attends the six-monthly meetings of the Council of Europe’s Ad Hoc Committee of Experts on Roma (CAHROM), and at the instigation of the UK and a number of other Member States the Council of Europe Secretariat attended a recent meeting of the EU’s Network of National Roma Contact Points in order to discuss
how the two organisations should complement each other’s work on Roma integration rather than
duplicated it.

12 November 2014

INSOLVENCY PROCEEDINGS (17883/12)

Letter from Jenny Willott MP, Minister for Employment Relations and Customer Affairs,
Department for Business, Innovation and Skills, to the Chairman

Your committee has been considering this proposal for an amendment to the EC Cross-Border
Insolvency Regulation and has retained the issue under scrutiny to await updates on developments. I
write to inform you of the latest developments regarding the proposals and to inform you that it is
likely the Presidency will propose a General Approach at the next Council meeting on 6 June. I
believe that we should support this. I enclose [not printed] a copy of the latest presidency text in
confidence as it is marked Limite; I hope this will help understand the context of this update.

I apologise that it has been some time since the Committee has received an update. However,
negotiations had been progressing very slowly with little prospect of agreement within the Council
working group until very recently.

During negotiations under the current presidency, the positions taken by some Member States would
prove detrimental to UK interests if they were adopted; in particular there have been efforts to
introduce rules which could adversely impact on the UK’s success as the leading centre for business
rescue in the EU. Not only is this a significant source of income to UK professional firms, but as the
jurisdiction which delivers better returns to creditors than most other EU states (according to the
World Bank) preventing overseas companies from legitimately accessing the UK rescue market would
be detrimental to UK creditors of such companies, particularly financial institutions.

In order to avoid such proposals gaining traction within the Council, the UK has worked with like-
minded Member States on proposals which protect the UK interests. Were the UK to abstain in the
upcoming Council, there would be a risk to our position. Such an outcome would be highly
detrimental to the UK’s interests.

I regret it was not possible to write before now with any certainty and understand that the
Committee will not be able to consider my letter and clear the document before the Council meets.
For the reasons outlined above, if it transpires a General Approach is sought on 6 June, I believe it
would be in the interests of the UK to support it. I apologise in advance if this does occur.

UPDATE ON NEGOTIATIONS

UK officials have attended every working group of the Council. The working group has completed
four read throughs of the draft text. As negotiations continued, officials have maintained contact with
key stakeholders and sought their opinion on significant issues and to gain a practical view of the
evolving proposals.

The European Parliament held its first reading of the proposals on 4 February 2014. The Parliament
made 62 amendments to the Commission proposal. There are several important areas where the
positions of the European Parliament’s first reading and that of the Council working group are not
aligned, these include:

— A ‘suspect period’ where a debtor or company has relocated prior to the
opening of insolvency proceedings
— Group coordination proceedings
— No Member State discretion on which procedures are covered by the
Regulation

I will update the Committee on trilogue negotiations.

OUTCOME OF THE 2013 CONSULTATION WITH UK STAKEHOLDERS ON THE PROPOSAL

We received responses from fifteen organisations, including R3, who represent 93% of UK insolvency
practitioners, The Insolvency Lawyers Association, City of London Law Society and leading academics.
The respondents unanimously supported opting in to the draft Regulation. Respondents cited reputational risks to the UK of not opting in, increased costs and diminishing returns for UK businesses who are creditors of insolvency proceedings in other Member states and detriment to the insolvency industry in the UK generally. The financial costs and benefits overall remain difficult to quantify. The full responses were published on 15 April 2013, following the statement to the House that the Government had decided to opt-in to the draft Regulation.

Once again I am sorry that it has been some time since the Committee was updated on developments and that we did not anticipate this at an earlier stage. But I do take the view that it is important we support the current text. I will write again after the Council. In the meantime I would be pleased to speak to you if you have any questions.

4 June 2014

Letter from Jenny Willott MP to the Chairman

Further to my letter of 4 June, I can now confirm that the Presidency sought a General Approach on this proposal at the Council meeting on 6 June and that the UK voted in support of the General Approach.

I am sorry that it was necessary to override the Committee’s scrutiny of the proposals, though as I outlined in my previous letter, I do believe that it was in the best interests of the UK to support the compromise text.

The General Approach was adopted by the Council and will now proceed to triilogue under the Italian Presidency, for whom I understand this proposal will be a key priority. There will be working groups over the course of the summer both to consider recitals and to refine elements of the drafting (particularly concerning group coordination), which was a key concern raised by all Member States at Council.

Finally, my letter enclosed [not printed] a copy of the latest compromise text (reference 10284-add01.en14) which was marked limite. The limite restriction has now been removed and so this document may be considered public.

Once again, I do apologise that it was necessary to override scrutiny on this occasion. I do understand the important work that your Committee undertakes and appreciate the time that you have devoted to the matter to date; and of course am very happy to discuss this further with you.

23 June 2014

Letter from the Chairman to Jenny Willott MP

We refer to your predecessor’s letters of 4 June and 23 June, which were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 16 July.

We are very concerned by your Department’s handling of Parliamentary scrutiny on this important legislative proposal. We note also that this is not an isolated incident, the scrutiny reserve on the draft Directive on trade secrets (17392/13) having been recently overridden. We therefore invite you to give evidence to the Sub-Committee to explain your Department’s conduct. We also ask that you respond to the following points in writing within the timeframe below.

In our last letter to you, dated 13 June last year, we asked for the following information:

— “Sight of the anticipated revised text with the substantive changes from the original proposal highlighted and explained. If necessary this text can be handled in accordance with the agreement between the Government and the Committee on the handling of “Limité” documents, in order to preserve any confidentiality attaching to it.

— “The Government’s view on the outstanding issues which are going to be the subject of the forthcoming orientation debate in the Council.

— “The outcome of consultation with stakeholders on the proposal.”

We would be grateful if you could explain why we did not receive a reply to this letter until 4 June this year; and why, when your predecessor did write, she did not provide the information requested in the first bullet point, which is critical to effective scrutiny of the progress of negotiations.
To make matters worse, the letter of 4 June, emailed to the Committee on 5 June, explains that the House’s scrutiny reserve will be overridden on 6 June. The letter has all the appearance of an afterthought – there is nothing to suggest that any thought at all was given to scrutiny clearance until a few days before the General Approach, by which time it was too late. We find the statement that it was not possible to write with any certainty sooner, which is to say over a period of 12 months, particularly surprising. We ask you to explain what it was about these negotiations that prevented the Department from writing earlier.

You should be aware that it is wholly unsatisfactory for a Government Department to send a revised, adopted text to a Parliamentary scrutiny committee without explaining in sufficient detail the main changes between the revised and the original texts. We ask that you observe Cabinet Office guidelines and deposit an Explanatory Memorandum outlining these changes and explaining why they are acceptable to the UK.

We would be grateful for a reply to this letter and the deposit of the Explanatory Memorandum within two weeks of the date of this letter.

17 July 2014

Letter from Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 17 July. I fully appreciate your concern that the scrutiny reserve of your Committee was overridden on this proposal. It was a decision taken only after careful consideration of the situation which developed late in the negotiations at the end of May. This Department fully supports the important role your committee has in European Union matters.

I must echo the apologies of my predecessor for the lack of a reply to your letter of 13 June last year and the failure to keep you fully informed and updated on progress on this proposal. This was an oversight and is unacceptable: it should not have happened, and I do apologise. I have asked the officials involved to ensure that, going forwards, the Committee is informed more frequently as the negotiations progress.

As the compromise text has now been adopted by the Council, I enclose an explanatory memorandum, which addresses the main changes between the compromise text and the original Commission proposal and explains why the Government supports the changes and I hope that this will assist the Committee’s consideration. The text which was sent to you with my predecessor’s letter of 4 June had not then been adopted, and so was submitted without an EM, which would have been more helpful.

The need for the scrutiny override was the result of a rapid change of pace in the negotiations on the proposal. Progress in negotiations had been somewhat sedate, with many Member States still having fundamental concerns about some aspects of the proposal. Officials both in the UK and at UK Permanent Representation did not believe that a general approach would be achievable at Council, a position that I understand other Member States agreed with. While UK officials were engaging in bilateral meetings with other Member States to agree compromise positions, it was only at Coreper in late May that a general approach became possible. There followed a series of three JHA Counsellor’s meetings that lasted into the early hours of the morning, the final one of which finished on the morning of 3 June when it was finally confirmed that the Presidency would seek a General Approach at the June Council meeting.

As mentioned above, UK officials had sought to reach agreement with like-minded Member States in bilateral meetings to protect the UK’s position, on a number of key points:

— To ensure that Companies Act ‘Schemes of Arrangement’ and Debt Relief Orders would not be within the scope of the amended Regulation;
— Resisting calls for a ‘suspect period’ on COMI relocations that would impact on genuine COMI relocations, potentially restricting growth;
— That any group co-ordination proceedings would not add costs and delays to insolvencies of members of a group, by making participation voluntary.

Those agreements required mutual support on elements of the compromise and the advice received from the UK Permanent Representation was that if the UK abstained or did not support the General Approach those agreements would be lost, to the detriment of UK interests.
I firmly believe that while the override of scrutiny was unfortunate, it was in the UK’s interest to support the General Approach and as a result the UK has secured its key priorities.

I would of course be happy to give evidence to your Committee on these issues.

25 July 2014

Letter from Jo Swinson MP to the Chairman

As agreed in my letter of 28 July, I am writing to provide an update on the draft Regulation. As I said in my previous letter, the General Approach required further discussions on the recitals and annexes in line with the agreement made in June. Stakeholders support the general approach text as being in the best interests of the UK’s insolvency regime. That support is less enthusiastic than for the original Commission proposals, but generally it is recognised that in negotiations between 28 Member States there is a need for compromise. The principal area they have expressed concern on is on group co-ordination proceedings. Stakeholders do not feel that these would add value, and could increase costs, whereas the initial Commission proposal for enhanced co-operation and communication was suitably flexible to add value without necessarily increasing costs. Stakeholders do not believe that these proceedings are necessary, but welcome the fact that participation will be voluntary and no member of a group or its insolvency office holder will be compelled to take part where there is little or no benefit to that entity.

There have been two further working group meetings which have addressed the recitals and the annexes to the draft Regulation. New and amended recitals are largely consequential amendments following the amendments to the articles, and were already provided for in the footnotes of the text adopted in the general approach in June. Of particular importance to the UK, a recital is included which clarifies that neither Debt Relief Orders nor Schemes of Arrangement would be within the revised scope of the Regulation.

The UK has requested the inclusion of ‘interim receiver’ in annex C [not printed], the list of office holders for each country. While the function of interim receiver has been available since 1986, to date only the Official Receiver (who is already listed in annex C) may undertake the role. The Deregulation Bill currently progressing through Parliament will allow the role to be undertaken by an authorised insolvency practitioner, and so the Government believes that this should be expressly included in the same manner as ‘provisional liquidator’. The Commission agrees that it should be added and there has been no objection from other Member States. There are only a handful of interim receiver appointments each year, but it is important that such appointments have EU-wide recognition.

A total of 13 Member States have nominated new insolvency procedures to be added to annex A [not printed] in light of the revised scope. The UK has not nominated any new procedures. The Commission has undertaken a review of the processes available to Member States and is satisfied that the nominated procedures all meet the scope of the revised Regulation and can be added.

I understand that the trialogue negotiations will start in October, following technical level meetings between the Presidency and European Parliament. To facilitate these negotiations, the Presidency will present the draft recitals and annexes to the Justice and Home Affairs Council on 9th October to finalise technical details of the general approach agreed in June.

It seems likely that the final Regulation will be a recast which would replace the existing Regulation 1346/2000 with a consolidated Regulation, which will incorporate the unaltered provisions of the original and the amended provisions. This appears to be a sensible approach.

The use of the recast technique will require the agreement of the Council, Commission and the European Parliament. The Presidency proposes to conclude negotiations with the European Parliament before this is addressed, and to prepare a recast text towards the end of negotiations for consideration by the December Justice and Home Affairs Council.

The Italian Presidency has now set out its priorities on this proposal. They aim to conduct and complete trialogue discussions in order to adopt the Regulation at the December Justice and Home Affairs Council. This is an ambitious target, and of course will depend on the progress of negotiations with the European Parliament. It is important that the UK continues to play a leading role in the negotiations.
I do hope that I will be able to satisfy your Committee’s queries so that the final text can be released from scrutiny before the Council is asked to vote on its adoption.

1 October 2014

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 25 July, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting after the Summer Recess, on 15 October.

We do not propose to respond to your letter in detail, having considered it in the course of the evidence session with you on 15 October.

We limit ourselves to the following comments, which we ask you to bear in mind for the future. The override on 6 June was not, in our view, necessary. Were the same circumstances to arise again, what should happen is as follows:

— Your officials should alert the Committee’s staff the moment political agreement seems likely (well before the COREPER meeting), by telephone or email;
— In so doing they should seek informal guidance from the Committee’s staff on how to handle scrutiny to avoid a potential override; and
— A formal letter from the Minister to the Committee should be sent explaining the significant developments in negotiations, the Government’s view on them, and, where necessary, asking for the scrutiny reserve to be lifted (or, exceptionally, waived).

We note that in your Explanatory Memorandum of 28 July, you say “in the month leading to Coreper and the JHA Council on 5 and 6 June there was a concerted effort to resolve the outstanding issues through several JHA Counsellor’s [sic] meetings.” At the beginning of that month of concerted effort your officials should have been thinking about scrutiny clearance, rather than two days before the actual agreement in Council.

We look forward to a reply to this letter within ten days.

17 October 2014

Letter from the Chairman to Jo Swinson MP

Thank you for your Explanatory Memorandum of 28 July and your letter of 1 October, which were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting after the Summer Recess, on 15 October.

As you will know, the deposit of a new EM re-engages a new scrutiny reserve.

Albeit after prompting, your Explanatory Memorandum and letter helpfully explain the main changes to the Commission proposal reflected in the General Approach text, and why they are acceptable to the UK and to national stakeholders. The Committee was grateful to receive them.

We ask that you provide us with a final update towards the end of the first reading negotiations, which the Committee will consider with a view to clearing the proposal from scrutiny before further political agreement in the Council. That update should include the views of both the Government and stakeholders on any further significant changes to the proposal.

In the meantime, the proposal remains under scrutiny.

17 October 2014

Letter from Jo Swinson MP to the Chairman

Thank you for your letters of 17th October, and for the opportunity to appear before your committee on 15th October.

I agree with your suggestion on the best way forward when faced with a challenging timetable at the end of lengthy negotiations. On this file, given the tight timescales we can expect between the end of triilogue negotiations and the December Justice and Home Affairs Council, I can confirm that my officials will contact the Committee’s staff at the earliest opportunity in advance of Coreper. I have
also written to David Lidington, Minister for Europe, regarding the points raised in the Committee hearing on 15th October to ensure that the scrutiny procedures are rigorously adhered to by departments. A copy of my letter is enclosed [not printed].

In your letter you refer to the progress in negotiations that led to the override and what was said in my explanatory memorandum about the timing of developments. We did of course discuss this at the committee hearing on 15th October, but it might be helpful if I set out the chain of events.

From the progress of negotiations up to May, with several Member States still having critical points of difference, we did not expect that a general approach would be achievable at the June Council; an opinion which I believe was shared by other Member States. The last Council working group was on the 13th and 14th May following which there were still many differences between Member States.

On the 15th May the Presidency held a series of bilateral meetings with several Member States, including the UK, to attempt to reach a common position and we expected an orientation debate to then follow in June. At Coreper on 20th May there were still issues and it seemed unlikely any real progress could be achieved at the June Council.

It was at the Coreper meeting on 20th May that an issue concerning the amendment of the annexes was raised by the Council Legal Services and the Government had to settle its position before it could decide whether a general approach, if tabled at the June Council, would be in the UK’s interest. The legal issue regarding the annexes was important to ensure that Member States have a say on which procedures are included in the annexes. At the same time, in case a general approach was tabled for June Council, my officials discussed how to deal with the outstanding scrutiny reserve of your Committee, given that you would not have an opportunity to meet again until after the Council.

On 22nd May my officials contacted the Committee staff and were advised to explain the reasons for the potential override in a formal letter. This was done on 4th June, once the Government had settled its negotiating position and decided that it would be in the UK’s interest to vote in favour and in particular that the issue raised at Coreper on the 20th May on amendment of the annexes had been satisfactorily resolved. I hope you will appreciate that until that decision was made, it was possible that the Government would not be able to support a general approach and the question of a scrutiny override would not have arisen. Openly referring to such uncertainty at the time could have damaged our negotiating position.

Between Coreper meetings on the 20th May and 4th June, there were a series of JHA Counsellors’ meetings to resolve outstanding issues between a number of Member States. Even during these meetings there was ongoing discussion as to whether there would be a General Approach or an Orientation Debate: it was not confirmed until 4th June that a General Approach would indeed be sought at the Council meeting on 6th June.

Notwithstanding the failure to fully respond to your letter of June 2013, for which I cannot apologise enough, I hope that this sets out more clearly the difficult timeframe faced at the end of May.

Finally, your letter concerning the Explanatory Memorandum and further correspondence, requested a final update on progress in first reading negotiations. I can confirm that the first trialogue meeting was held on the 15th October, and I enclose [not printed] an update from the Italian Presidency (appendix 1 [not printed]) on this. This document is being provided to the Committee under the Government’s authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limité marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain. My officials will be in contact with the clerks to deal with any questions arising on this document.

I understand that a letter will shortly be published from number of UK and EU organisations expressing support for the general approach text agreed at the June Council. I will provide a copy of this and a final update on negotiations in advance of Coreper prior to the December Council. I hope that the Committee will then be able to clear this document in time for voting in December.

30 October 2014

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 30 October, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 November.

You say that your officials contacted the Committee staff on 22 May, and received the advice that the responsible Minister should send a letter explaining the reasons for an override. This was not done
until 4 June, two days before the Council meeting. You are fully aware that this delay led to your being invited to give evidence to us, and that in the future, despite negotiations not being finalised, a letter should be sent far sooner than two days before the relevant Council meeting. It must be possible for the Government to provide an explanation to Parliament in such circumstances, which would not damage its negotiating position. With this remark, we are content to draw a line under this aspect of our correspondence.

We congratulate you on the well-considered reforms you have put in place to improve Parliamentary scrutiny in your Department, and are gratified to see the extent to which you have heeded our concerns.

We welcome the fact that you have also written to the Minister for Europe “to ensure that the scrutiny procedures are rigorously adhered to by departments”. We would like to know whether further action across Whitehall arises from your letter; simply recirculating the Cabinet Office guidance will not, in our view, have a significant impact on improving scrutiny across Whitehall.

We look forward to a reply to this letter when the Minister for Europe has responded to your letter.

11 November 2014

Letter from Jo Swinson MP to the Chairman

Further to my letter of 30th October 2014, the Italian Presidency has now completed its trialogue negotiations with the European Parliament. The agreement reached will be considered by the Council on 4th–15th December 2014.

I enclose [not printed] a note from the Italian Presidency which summarises the outcome of the trialogue negotiations; and a copy of the draft recast Regulation. Both documents are limited and are provided to the Committee under the arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limited marking.

You will note that the draft recast text makes only limited changes to the text of the General Approach which was the subject of an Explanatory Memorandum provided to the Committee on 28 July 2014. These changes do not alter the support I expressed for the General Approach text in my accompanying letter of 28 July. Whilst a number of compromises have inevitably been made since the Commission first published its proposals in December 2012, I believe that the UK’s key priorities are secured in this final draft text.

As the draft recast of the Regulation is based on the General Approach text, the Explanatory Memorandum accompanying this letter is broadly similar to the Explanatory Memorandum of 28th July.

The expected timetable is for a political agreement to be sought at the Council meeting on 4th December following COREPER consideration on 25th November. If both the Council and the European Parliament agree the recast text, it is expected to be adopted in early 2015.

As the UK is the leading centre for business rescue in the EU, it has been important for us to have been at the forefront of the negotiations. I am satisfied that the recast text is a good result for the UK. Once in force it will benefit UK businesses and consumers affected by cross-border insolvencies in the EU as well as our own highly regarded insolvency profession which has helped rescue many of the largest EU companies, saving jobs and preserving value for benefit of stakeholders both in the UK and across the EU.

I do not expect any further substantive changes to be made to the enclosed [not printed] draft. I will provide a further update as soon as the final text is published, however this is not likely to be available until a few days before the December meeting. As the December Council meeting is the final stage at which the Council will consider the substantive provisions, I hope the Committee will be able to release the document from scrutiny in time to enable the Government to vote in favour of the revised Regulation.

18 November 2014

Letter from Jo Swinson MP to the Chairman

Further to my letter of 18th November 2014, the Italian Presidency has now issued a non-limited version of the insolvency text in advance of COREPER on 26th November.
The text has been amended to account for a small number of drafting errors identified following the circulation of the limité text and I can confirm there are no substantive changes. As a consequence I do not propose to submit a further Explanatory Memorandum to the one enclosed with my previous letter. I would be grateful if the Committee could consider this final draft text at its next meeting instead of the limité text.

As I mentioned in my previous letter, we are nearing the end of the negotiations and this compromise text represents a good outcome for UK interests. I hope the Committee is able to release it from scrutiny in order for the Government to vote in favour at the December Council.

24 November 2014

**Letter from the Chairman to Jo Swinson MP**

Thank you for your Explanatory Memorandum of 18 November and your letters of 18 and 24 November, which were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 3 December.

We are pleased to note that there has been a marked improvement in providing the Committee with the information requested in the response time requested since you gave evidence to us.

We think the Government support for this proposal is both well-reasoned and justified, and we are now content to clear it from scrutiny.

We do not expect a reply to this letter.

3 December 2014

**ITALIAN PRESIDENCY PRIORITIES FOR HOME OFFICE JUSTICE AND HOME AFFAIRS (JHA) ISSUES OVER THE NEXT SIX MONTHS (UNNUMBERED)**

**Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman**

Italy will hold the rotating Presidency of the EU Council of Ministers from 1 July to 31 December. I am writing to give you an overview of likely activity during the Italian Presidency on Home Office dossiers. I hope this will assist your Committee in planning for the JHA Councils in this period, and for any opt-in decisions.

We know that JHA Councils will take place on:

— 8 and 9 July (informal),
— 9 and 10 October, and
— 4 and 5 December

But of course these dates may be subject to change

This is the twelfth time Italy has held the Presidency of the Council of the European Union. The Italians have announced that their Presidency’s three priorities will be growth, Mediterranean issues and migration. The latter two priorities, in particular, contain much Home Office business and we can expect a strong focus on irregular migration across the Mediterranean. We also expect the Italians to pay particular attention to: security and terrorism (including foreign fighters); drug trafficking; human trafficking; organised crime infiltration into legal economy; asset seizure; and cyber security.

On migration, the Italians will place particular emphasis on the EU’s response, under the “Task Force Mediterranean” programme, to the deaths of migrants at sea. They are likely to press for an enhanced EU response, including work with third countries and additional support for those Member States which see themselves as Europe’s ‘frontline’, as well as the effective adoption of measures to fight illegal migration more generally. The Italians are particularly keen to promote partnership with third countries as a way to tackle illegal immigration flows. During their Presidency they will try and start up a new dialogue with Eastern African countries/Horn of Africa.

The new European Commission will be appointed during the Italian Presidency, and is due to take office on 1 November. This means that the existing Commission will be largely in “caretaker” mode for much of the Presidency, though we still expect some legislative proposals from it, not least in
respect of the European Police College (CEPOL). We will work closely with the new Justice and Home Affairs Commissioners, as well as the new High Representative for Foreign Affairs and Security Policy, to build a good working relationship and ensure that they are aware of UK priorities.

The UK’s 2014 opt-out decision will continue to be a priority under the next Presidency. We are confident that Italy will engage positively and help to conclude this matter formally.

With the exception of the expected new Regulation on CEPOL, the Presidency’s legislative work is likely to focus on taking forward existing negotiations rather than starting work on new measures. The Presidency will also need to begin implementation of the new “strategic guidelines for legislative and operational planning” in the JHA area that we expect the June European Council to agree.

The Italian Presidency will also begin discussions on a new Internal Security Strategy, to replace the existing one which expires this year. They may hold a discussion on this at the July Informal Council. At the same time, the Commission will begin consultations in advance of a Communication that we expect from them in early 2015. We understand the Commission believe that the existing five priorities (organised crime; counter terrorism; cybercrime; border management; crisis management / civil contingency planning) are still the right ones but want to take account of emerging threats such as energy fraud and environment crime.

On migration, asylum and border control, we expect the Italian Presidency to take forward a range of dossiers, including:

— The recast of the visa code, in particular relating to practices of issuing maritime visas and border control;

— Integrated management of the external borders (both through the implementation of EUROSUR and Maritime Operations Regulation, and through progressing the ‘Smart Borders’ package);

— A pilot project on enhanced joint returns;

— Progress on the legal migration Directives; and

— Revisiting the role of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), the senior official level working party with oversight of EU migration and asylum policy.

The mass displacement of people by the Syria crisis, increasingly linked to flows from the Southern Mediterranean, will also remain a focus of activity. In this regard, we will want to see the swift implementation of the EU Regional Development and Protection Programme for those displaced by the Syria crisis and will continue to play an active role on the programme’s steering committee.

With regard to legal migration, negotiations continue on a Directive on the entry of third country nationals for the purpose of research and study. As your Committee is aware, the UK has not opted in to the proposal. We will continue to provide updates on the progress of this measure.

During the Italian Presidency we will continue to press the EU to take effective action to tackle the abuse of free movement rights, working with other Member States which have similar concerns on this issue. We expect there will be a continuing focus on this issue as part of the implementation of the “roadmap” on migratory pressures (‘EU Action on Migratory Pressures – A Strategic Response’). We are also seeking a commitment to further work on this issue in the post-Stockholm JHA work Programme; as stated above, the Italian Presidency is expected to have discussions about implementation of that Programme.

We expect the counter terrorism (CT) focus to continue to be on the issue of foreign fighters returning from Syria, particularly in light of the recent attack in Brussels. The Italians have indicated that they are willing to look more closely at the situation in the Western Balkans in this respect. We expect the Italians, like the Greeks, to continue with the theme of combating anarchist terrorism.

Following Ministerial endorsement of the EU Strategy for Combating Radicalisation and Recruitment to Terrorism, which was revised under the Greek Presidency, the Italians have indicated that they may wish to produce accompanying guidelines for Member States to use on a voluntary basis.

The Italian Presidency will continue work under the EU Policy Cycle programme of cooperation against organised crime. A new set of EU Organised Crime Priorities 2014-17 was agreed by the JHA Council in June 2013, and the Presidency will be responsible for continuing to monitor progress against these priorities through the Standing Committee for Internal Security (COSI). The priorities
will be delivered through a series of Operational Action Plans focusing on improving operational collaboration between Member States under the different crime areas.

The Italians have stated that they also intend to focus on the fight against organised crime; in particular anti-corruption and anti-mafia issues. They also wish to galvanise EU action to prevent criminal infiltration of the legitimate economy. We expect them to present Council Conclusions on this issue, and to continue the momentum on the wider Anti-Corruption agenda following agreement of Council Conclusions on the EU Anti-Corruption report at the June 2014 JHA Council.

More widely we expect a push to tackle cybercrime, with attention focused on bank fraud and public/private sector collaboration, and on improved action to target online child sexual exploitation. The Italian Presidency’s drug policy priorities will include placing further focus on the flows and use of illicit narcotics, reducing the use of new psychoactive substances, the misuse of controlled prescribed drugs within the EU, and steering EU preparations for the 2016 UN General Assembly Special Sessions on Drugs. We also expect emphasis to be placed on human trafficking, with action to draw up a handbook of good practices to identify trafficking victims. Following the publication of the EU Commission’s Communication on firearms and the internal security of the EU, the Italians will be working towards the development of a standardised system of collecting information on the use of firearms for criminal purposes.

We understand that the Passenger Name Records Directive (PNR) is not one of the Italian Presidency’s priorities. However, the value of PNR in tackling serious crime, including terrorism, is recognised nationally. Italy is one of fourteen Member States in receipt of EU funding to develop a national Passenger Information Unit (PIU). The Directive remains with the European Parliament’s Civil Liberties and Freedom (LIBE) Committee for further consideration. The Government remains committed to the use of PNR as a way of tackling serious crime and terrorism, in particular foreign fighters, although not at the expense of data protection and civil liberties. We will continue to identify opportunities for pursuing a unified European approach to collecting passenger information. I will write to you on this particular matter in more detail once the new LIBE Committee has been formed.

The Commission completed its review of the European Programme for Critical Infrastructure Protection (EPCIP) and the Directive on the identification and designation of European Critical Infrastructure (ECI) last year. It has not proposed a change in policy or any new legislative instruments but instead a more practical approach to implementation of the Programme. The Government supports the retention of the current policy and legal framework and the adoption of a more practical, cross-sectoral approach which should deliver more tangible improvements to the security of critical infrastructure in the EU. The new approach is being piloted through projects involving four critical infrastructures with a European footprint. These projects will continue throughout the Italian Presidency.

The Directive on the freezing and confiscation of the proceeds of crime was adopted in April 2014. As you know, we have not opted in to this Directive. Now that the text has been adopted, we will carefully consider opting in. The decision will be subject to Parliamentary scrutiny in the normal way. We were expecting a Commission proposal to harmonise money laundering definitions, offences and sanctions under the Lithuanian Presidency. However, the proposal has not been forthcoming. The Commission conducted a practitioner-level scoping study last year but we are not aware of any further developments on this proposal.

We expect that progress will continue to be made on the negotiation of the draft Europol Regulation, with trilogue involving the European Parliament beginning following the agreement of a Council General Approach in early June. It is possible that a final text could be agreed under the Italian Presidency, but we assess that it is more likely that negotiations will continue into 2015.

We expect them to prioritise progress on the European Public Prosecutor’s Office (EPPO) and expect ongoing debate within the Council regarding the structure and powers of an EPPO, as well as the drafting of the second half of an alternative proposal. We will continue to challenge any proposals in line with the wide-ranging concerns we share with both Houses and actively seek to protect our interests as a non-participating Member State in the proposal.

On the Commission’s parallel proposal to reform Eurojust, the Italian Presidency will continue work started under the Greek Presidency. A first reading of all the Articles is completed and the Greek Presidency has produced a revised governance document that will form the basis for further negotiations. We will continue to lobby against any mandatory expansion in the powers of National Members and to protect our position as a non-participating Member State in the EPPO in relation to any inter-linkages between the two texts. There has not been substantive discussion on this latter
point and we would not expect it to be addressed until the position on the EPPO file becomes clearer. We would expect negotiations on this file to continue well into 2015.

We look forward to working with the Italian Presidency to ensure that the UK successfully connects in to SISII. Following the UK Government’s 2014 opt-out announcement, the UK has reiterated its intentions to rejoin SISII and to keep to our current “go live” in the last quarter 2014. The UK passed its Schengen data protection evaluation in October 2013; and the subsequent report was adopted in March 2014. This now allows the UK to begin the necessary SISII pre-verification (synchronisation of data), subject to the final adoption of the UK’s date for “go-live”. We have also recently undertaken the UK’s Police Cooperation Schengen Evaluation 2-5 June and we look forward to working with the Italian Presidency to finalise our report and recommendations.

We expect the Commission to publish a new Regulation governing CEPOL in July or September. This will trigger the JHA opt-in. The decision to bring the measure forward follows the rejection of the Commission’s earlier proposal (in the draft Europol Regulation) to merge CEPOL and Europol. We expect the draft Regulation to propose the changes the Commission believes are necessary to enable CEPOL to introduce the Law Enforcement Training Scheme (LETS) as set out in the Commission’s Communication of 27 April 2013 (doc 8230/13).

The Home Affairs EU funding Regulations establishing the Internal Security Fund and the Asylum, Migration and Integration Fund (ISF and AMIF) have now been adopted. The Commission is in the process of agreeing 7-year national programmes for all Member States. This includes the UK’s National Programme under the AMIF. We are considering whether to apply to opt in to the Internal Security Fund (Police). We will of course seek Parliament’s views in the customary way.

JHA OPT-IN

Apart from the draft CEPOL Regulation referred to earlier, we do not expect the Commission to bring forward any measures during the Italian Presidency on which the Home Office leads and which would trigger our JHA opt-in. Our 6 month update letter, due in July, and next annual report on the opt-in, due in January, will provide further updates.

16 June 2014

JUSTICE FUNDING PROGRAMME 2014-2020: POST-ADOPTION OPT-IN DECISION
(17278/11)

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

I am writing to inform you of the Government’s decision not to opt in post-adoption to the Regulation of the European Parliament and of the Council establishing a Justice Programme for the period 2014-2020 at this time.

You wrote to me on 13 May and on 30 July 2014 on the subject of the EU Justice Agenda 2020 and asked questions in relation to the Government’s decision not to opt into the programme, and the impact on training for legal practitioners.

The Government decided in 2012 that the UK should not opt in to this measure due to questions over the value of the activities the programme intended to fund, and this decision was taken on the basis that careful consideration be given to opting in to this proposal post-adoption.

The overriding factor in the Government’s decision not to opt in to this programme post-adoption remains value for money for the taxpayer. Opting in to this measure would incur a cost of approximately €55m or £45m over seven years. The lack of a formal monitoring system for activities funded by predecessor programmes has made cost-benefit analysis difficult, but Commission data would suggest that under the previous programmes while UK-based organisations were frequently awarded projects, they were often for small sums of money meaning the UK consistently contributed more than it received in funding.

Maintaining this position will mean that UK-based organisations will continue to be ineligible for funding from the programme, although they would be eligible to take part in an activity in another Member State funded by the programme where they fund themselves.
The consideration of value for money has been weighed up against any loss of UK influence in our non-participation in the programme and I have considered carefully to those arguments. As mentioned above, a central difficulty in reaching a decision has been the lack of evidence of the value of predecessor programmes. Therefore, my officials will work with interested parties to monitor the impact of the UK’s non-involvement in the programme over the next year, and I will conduct a rigorous review of the decision next summer.

In the meantime, to address some of the particular concerns raised by the judiciary about the potential for loss of influence within EU judicial networks, my department will allocate funding for EU judicial training in England and Wales to a degree that will allow them to maintain the levels of training seen in previous years. I have suggested to the Scottish Cabinet Secretary for Justice and Northern Irish Justice Minister that they may wish to consider similar measures to ensure that members of the judiciary in Scotland and Northern Ireland are able to maintain current levels of training.

27 October 2014

JUSTICE PRIORITIES FOR THE ITALIAN PRESIDENCY OVER THE NEXT SIX MONTHS (UNNUMBERED)

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

Italy will take over the rotating Presidency of the Council of the European Union on 1 July 2014. I am writing to provide an overview of the incoming 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 Italy Presidency is planning to host the following JHA Councils:
— 8 – 9 July (Informal in Milan);
— 9 -10 October (Luxembourg);
— 4 -5 December (Brussels).

This is Italy’s first EU Presidency for 11 years, and it has said that, overall, it will prioritise measures which aim to promote economic growth, migration and Mediterranean.

In the field of justice, achieving progress on the proposed Regulation for the general EU data protection framework will be a key priority for the Italian Presidency. They have formally set out their intention to secure a general approach in the Council by the end of their presidency term, as precursor to ‘trilogue’ negotiations taking place with the European Parliament in the first part of 2015. Key issues that will be revisited at the outset of their Presidency include the form of instrument (a Directive or a Regulation) and the question of public sector flexibility. Both the proposed Regulation and the proposed Directive for processing in the context of criminal investigations and prosecutions remain under Parliamentary scrutiny and still require considerable work. I will keep you updated on the progress of the negotiations.

The Italian Presidency has expressed its intention to continue work on the revision of the Insolvency Regulation with the aim of reaching final agreement. The Council adopted a general approach at the last Council meeting, which nearly all Member States thought was a balanced political compromise. However, there remained concerns over the late rush to agreement and Group Coordination elements (relating to insolvency proceedings for groups of companies), which the Italians have said they will take forward in negotiations with the European Parliament and when considering the wording of the recitals.

As regards Criminal Procedural Rights, the Italians would like to undertake a swift examination of the Commission proposals related to the “Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings”. Specifically, they will be taking forward the negotiations on the proposed Directives on legal aid and the presumption of innocence, with a view to an early adoption. The UK did not opt in to these draft Directives because the Government believed there are already sufficient protective measures in place in UK law and that the case for EU action was not made.

Finally, on both the revision of the European Small Claims Regulation, and the proposed Regulation simplifying acceptance of certain public documents in the EU, the Italians are keen to see progress and
would like to obtain a general approach. The Italians have also said they will endeavour to advance work on the negotiations on the proposed Regulations on Matrimonial Property Regimes and on the Property Consequences of Registered Partnerships.

26 June 2014

MATRIMONIAL MATTERS AND THE MATTERS OF PARENTAL RESPONSIBILITY

(9111/14)

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

Thank you for your Explanatory Memorandum dated 12 May 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 2 July 2014.

As you say, Brussels IIa is the foundation of EU family law. As such, it has a significant impact on individuals involved in cross-border litigation and the Committee will wish to scrutinise any proposal to amend it closely.

Some of the suggested reforms in the Commission’s report will be far reaching if enacted, such as the creation of common minimum procedural standards. We welcome the Government’s cautious approach to assessing whether such reforms are justified and what their domestic impact will be.

We note from the Commission’s report that of the approximately 122 million marriages in the EU, around 16 million (13%) have a cross border dimension. We would be grateful to know, if the statistics are available, the number and percentage of marriages registered in the UK that have a similar cross-border element, in other words which are between spouses from two different EU Member States.

We would be grateful to be provided in due course with a summary of the responses to the Government’s own consultations on Regulation IIa, and then with the Government’s final response to the Commission proposals in this report.

In the meantime, the Commission’s report remains under scrutiny.

4 July 2014

MULTIANNUAL EUROPEAN E-JUSTICE ACTION PLAN 2014-2018 (UNNUMBERED)

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

I wrote to you on 19 December with an update on the work of European e-justice and details of the European e-justice strategy for 2014-2018 which had been agreed. In that letter I mentioned that there were plans to develop a new work programme during the Greek Presidency. That programme was agreed at the recent Justice and Home Affairs Council as the multiannual European e-justice action plan 2014-2018, a copy of which I enclose [not printed] for your information. While the action plan was being discussed the documents were classified as Limite and therefore were not depositable.

The strategy defines the general principles and objectives of European e-justice and sets the guidelines for the action plan. The action plan lists the projects that are planned, those who have responsibility for their implementation and an indicative timetable.

The objective of the projects listed is to achieve the broadest participation while acknowledging that Member State participation is on a voluntary basis. They will be financed through the Commission and by Member States and the European e-justice portal is confirmed as the key vehicle for e-justice delivery.

The plan is divided into four main sections. The first covers access to information and includes general information about the administration of justice, legislation, case law and access to relevant websites. Future projects include information on the following issues: to help citizens resolve legal problems; on minors; about prisons; the sharing of practical experience in criminal matters; sales following judicial proceedings; the dissemination of announcements on judicial proceedings; and the consumer law database. This section also includes the interconnection of registers on insolvency, business, land,
interpreters and translators, judicial experts, wills, powers of attorney and judicial officers such as bailiffs. Projects such as legal glossaries, European case law and European legislation identifiers are also included.

The second main section is on access to court and extrajudicial procedures and includes projects such as a database to help find a court in another Member State; making it easier to complete the standard forms for EU procedures online; electronic service of legal documents across borders; online dispute resolution mechanisms; a tool to help find a mediator; and the exchange of European Investigation Orders across borders.

The third area looks at communication between judicial authorities including videoconferencing; mechanisms for legalisation of documents to be used in another country (apostilles); tools to help with cross-border family maintenance cases; and cooperation with both the criminal and civil European Judicial Networks.

The final section is on horizontal issues and includes action to promote the portal and to ensure it is more user-friendly and meets the needs of users, this will include consultation with judges and lawyers; automated translation mechanisms; secure transportation of data; electronic signature and identification mechanisms; online payment systems and standards for documentation. Many of these issues will make use of the e-CODEX project (e-justice Communication via Online Data Exchange).

Two categories determine the order of priority for these projects. The first, A, includes projects arising from an obligation created by legislation or those carried over from the previous action plan. In the B category are those which meet the objectives of the strategy and are considered to be of particular importance. More work will be undertaken to prioritise the order of the B projects.

The action plan also highlights the need to screen new EU justice legislation to ensure that e-justice solutions are considered and that there is consistent use of modern information and communication technology. There is also a commitment to consider whether, subject to the institutional rules established at EU level, there is any scope to cooperate with non-EU countries.

For the future, at least once each Presidency, the e-justice working party will monitor progress on the action plan. In addition, it is planned that during the first half of 2016 the Council will assess the state of play and will suggest any further action considered necessary to improve the functioning of e-justice.

5 July 2014

Letter from the Chairman to Chris Grayling MP

Thank you for your letter dated 5 July 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 15 October 2014. The delay is explained by the fact that it was not clear until late July whether or not your letter referred to a new or existing item of scrutiny.

The Committee has taken a keen interest in the e-justice portal and we are very grateful to you for your periodic updates on this area of EU justice cooperation. We note the content of the four main areas for action agreed by the Council and look forward to being kept informed of any future developments, in particular, the outcome of the Council’s review in early 2016.

We do not expect a response to this letter.

16 October 2014

PROMOTING THE FREE MOVEMENT OF CITIZENS AND BUSINESSES BY SIMPLIFYING THE ACCEPTANCE OF CERTAIN PUBLIC DOCUMENTS IN THE EUROPEAN UNION (9037/13)

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

Thank you for your letter dated 23 April 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 18 June 2014.

We have decided to retain the matter under scrutiny.
We are grateful to the Minister for the update on the progress that this matter is making through the legislative process, in particular given the lack of clarity that remains over the scope of the documents covered by this proposal and the detail of the document verification system that it will introduce. We note your negotiation aims and your comment that an agreed text remains “some months away”.

We are also grateful for your analysis of the costs and benefits of introducing this proposal in the UK and look forward to revisiting this issue once a clearer picture of the proposal’s scope emerges from the negotiations.

We look forward to hearing further negotiation updates from you in due course.

19 June 2014

Letter from David Lidington MP to the Chairman

I submitted the above document to the House of Lords European Union Committee on 3 June 2013. The Committee decided at a meeting on 10 July 2013 to retain the issue under scrutiny and asked to be kept updated.

I wrote to update the Committees on 23 April 2014, at which time little progress had been made in negotiations. I write to provide a further update on the negotiations following substantial changes to the working draft which were published on 30 October.

CHANGE OF SCOPE AND RELATED COSTS

The original proposal covered public documents in twelve categories relating to personal and business documents. The European Parliament voted through amendments on 4 February which considerably enlarged the list of documents and which would have been unacceptable to us. A fifth redraft from the Presidency on 30 October reduced that list to cover only categories related to individuals (birth, marriage/registered partnership, death, name, residence and nationality) and this is being discussed in the Civil Law Working Group. An assessment of the potential burdens on UK authorities is difficult given that the scope of the proposal is likely to change during trilogue negotiations and that we will be required to answer an unknown number of requests from other Member States to verify the authenticity of our documents where there are doubts as to their authenticity. On the basis of the documents listed in the latest draft, we calculate that the potential benefits to citizens from the abolition of legalisation would be around £900,000 per annum, with further potential savings on translation costs if multi-lingual forms are introduced. There would be annual costs of between £37,000 and £125,000, depending on the quantity, to verify documents in cases of reasonable doubt as well as one-off costs of around £250,000 for HMG to set up systems to issue multilingual common format documents. We will revise these estimates when details of the documents to be covered are confirmed. We will also resist any amendments which would entail additional costs to Member States.

We have actively participated in discussions. Our aims are to:

— Minimise the financial and administrative impact of implementation for national governments;
— Ensure that Member States can insist on originals of documents in certain circumstances such as passport, identity and visa areas; and
— To guard against the possibility of ‘mission creep’ whereby EU common format documents could ultimately replace national documents.

RIGHT TO DEMAND ORIGINAL DOCUMENTS

We have secured wording retaining the right to demand original documents as a precaution against fraud. We have also found agreement on procedures to minimise the number of requests received from other Member States to verify the authenticity of doubtful documents.

ALTERNATIVES TO AUTONOMOUS MULTILINGUAL FORMS

The UK has also encouraged Member States to consider alternatives to the proposed EU multilingual forms. There are several options now under discussion and we will write separately on this issue when we and other Member States have assessed the options in more detail.
As the scope of the Regulation continues to evolve, the Government is maintaining careful consideration of the appropriateness of the legal base and the proportionality of the proposed measures.

I also recall that the documents within the scope of this proposed Regulation would be optional for citizens to request and obligatory for Governments to provide if requested to do so.

17 November 2014

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

Thank you for your letter dated 17 November 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 26 November 2014.

We decided to retain this matter under scrutiny.

We are grateful to you for your update on these negotiations and note that the Presidency has brought forward a fifth iteration of this proposal. Much of the correspondence between this Committee, the Northern Ireland Assembly Committee and the Government has sought to clarify the potential costs and benefits of this legislation to UK citizens, but your latest letter is clear that these negotiations remain fluid as does the proposal’s scope.

In light of these factors we note your latest estimate of the costs and benefits of introducing this proposal in the UK, but anticipate that they will be subject to change as the negotiations ebb and flow.

We hope that once a clearer picture of the proposal’s scope emerges we will all be in a better position to assess the potential costs and benefits of this legislation for UK citizens.

We look forward to considering your updates on this proposal’s progress through the Council in due course.

28 November 2014

**PROTECTING THE UNION’S FINANCIAL INTERESTS (12683/12)**

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

Thank you for your letter dated 21 July 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 30 July 2014.

We decided to retain the proposal under scrutiny.

We note that your letter confirms that the European Parliament’s proposed amendments to the Directive have left two of the Committee’s concerns with this proposal untouched: (i) the inclusion of a Title V legal basis activating the UK’s opt in and, (ii) the removal of mandatory minimum prison sentences.

Your letter does not mention the other matter on which we have corresponded with you throughout our scrutiny of this proposal, namely the provision on extra-territoriality. Our letter to you, dated 5 December 2013, noted that in contrast to this Committee’s view, the inclusion of this provision in the General Approach text remained an obstacle to the Government’s opting in to this proposal post-adoption. Can you confirm that the European Parliament did not suggest any amendments to this aspect of the proposal?

The one remaining issue raised by your letter is the European Parliament’s proposed amendment to include VAT within the Directive’s scope. The Government have been clear that they do not regard VAT as being the responsibility of the EU. In contrast, the proposal was initially brought forward by the Commission, with the Court of Justice’s jurisprudence on this issue in mind, and it therefore included VAT within its scope. In light of the Court of Justice’s clear view on this matter it is, perhaps, unsurprising that the European Parliament have called for the scope of the Directive to reflect the Court’s case law.

Nevertheless, this proposal now enters the trilogue stage of the legislative process and therefore remains subject to ongoing negotiation. We note the Parliament’s suggested amendment to include VAT within the proposal’s scope and ask how the Government intends to deal with this issue.
We look forward to hearing from you when the House returns in October.

30 July 2014

Letter from David Gauke MP to the Chairman

Thank you for your letter of 30 July regarding the PIF Directive.

Your letter sought confirmation of the European Parliament’s (EP) position on extra-territoriality. The EP’s amendments to the Commission’s draft Directive seek to expand its scope in relation to extra-territoriality to cover officials that are not EU nationals and not based within the EU. However, a large number of Member States have opposed this proposed text and we expect this position to be reflected during trilogue discussions.

Your letter also asked how the Government intends to deal with the EP’s proposed amendment to include VAT within the scope of the PIF Directive. As the Committee is aware, we believe that VAT should remain a national competence. The Government has been consistently clear that VAT should not fall within the Directive’s scope. This has been one of the UK’s negotiating priorities and we were encouraged by Council’s support for the General Approach text which eliminated VAT from the Directive’s scope. As we enter trilogue discussions, the UK will continue to push for the removal of VAT from the Directive’s scope and seek to secure a text that is acceptable to the UK.

7 October 2014

Letter from the Chairman to David Gauke MP

Thank you for your letter dated 7 October 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 29 October 2014.

We decided to retain the proposal under scrutiny.

We are grateful to you for answering our questions about the provision on extra-territoriality and the potential widening of the proposal’s scope to include VAT. In relation to the latter, you will be aware that on Thursday last week the Commission published its latest study into the VAT gap for the year 2012. The Commission estimates that in 2012 the gap constituted €177 billion or 16% of the total expected VAT revenue of the 26 Member States covered by the study. In comparison, the total EU budget for the same year was €147.2 billion; which means that the Commission’s estimate exceeds the entire EU budget for 2012 by €29.8 billion.

Algirdas Šemeta, the Commissioner responsible, argued that the VAT gap is illustrative of the effectiveness (or not) of the EU’s VAT enforcement and compliance measures. He concluded that the Member States “cannot afford revenue losses of this scale”. We agree.

Whilst we understand that the VAT gap is not necessarily indicative of criminal fraud, the Commission’s findings make sobering reading. When we conducted our own inquiry into EU budget fraud the Commission estimated that the VAT gap for the year 2011 was €100 billion; the Commission’s latest findings illustrate that in a single year there has been a very significant increase. You will recall that our report understood your opposition to any measure or action which would extend the EU’s competence into tax enforcement in the UK. But we also argued that this legitimate concern should not allow fraud which diminishes the amount due to the EU to be ignored or not pursued with vigour. The Commission’s findings suggest that the Commissioner is right to imply that the EU’s current VAT enforcement and compliance mechanisms are not working.

In light of the Commission’s findings we would ask you to state again, in detail, your grounds for opposing the extension of this Directive’s scope to cover VAT fraud.

We look forward to considering your reply by 14 November 2014.

30 October 2014

Letter from David Gauke MP to the Chairman

Thank you for your letter of 30 October 2014 on the above named Directive (“the PIF Directive”). Your letter highlights the Committee’s concerns in relation to VAT fraud and seeks further clarification of the Government’s objections to the inclusion of VAT within the scope of the PIF Directive.
The Government is of the view that as VAT is a national rather than an EU community tax, it should remain a matter for Member States and therefore a national competence. As such, we consider the inclusion of VAT within the scope of the PIF Directive to represent an extension of EU competence.

While it is clear that VAT fraud has an indirect impact on Member States’ contributions to the EU budget, the consequences of VAT fraud are overwhelmingly felt by Member States. In the UK, over 97% of VAT revenue is retained by the Exchequer making this first and foremost a fraud against UK tax revenues. As such, it is right that the responsibility to address VAT fraud falls to Member States.

I would like to reassure the Committee that this Government has noted the points raised in the Committee’s report (which was also the subject of a debate last December) and continues to take VAT fraud very seriously. In addition to taking steps to tackle VAT fraud within the UK, HMRC continues to work closely with other Member States and international agencies to combat fraud, including cross-border VAT fraud.

17 November 2014

PROTECTION OF UNDISCLOSED KNOW-HOW AND BUSINESS INFORMATION (TRADE SECRETS) AGAINST THEIR UNLAWFUL ACQUISITION, USE AND DISCLOSURE (17392/13)

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

Thank you for your letters dated 30 April and 3 June 2014. Both were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 18 June 2014.

We are grateful to you for your clear explanation of the reasons underlying your decision to override the scrutiny reserve at the Council on 26 May. We note, from your description of these negotiations, that the UK was able to secure a very satisfactory outcome with regard to its key concerns with the text, namely the limitation period and the inclusion of measures protecting confidentiality.

We recognise and understand that recess and prorogation limited our opportunity to consider your letter of 30 April. Nevertheless, we are disappointed by the way in which Parliamentary scrutiny of this proposal has been rushed. Regardless of recess dates, no one would argue that we have been given sufficient time and information to conduct our scrutiny of this matter. Even if the Committee had been able to consider your letter of 30 April requesting clearance in the week of 14 May, we had only been afforded a single occasion in January to consider our view of this proposal.

Furthermore, our consideration of this matter was based on a Government Explanatory Memorandum that gave no hint that the negotiation of this matter in the Council would proceed at such a pace. Indeed, your Explanatory Memorandum specifically warned that the European Parliamentary elections would, in fact, slow this proposal’s progress through the legislative system. Unfortunately, this once again appears to be an example of an EU Council Presidency eager to push through agreement of important legislation with scant regard paid to national parliamentary scrutiny timetables.

We look forward to considering your response in due course.

19 June 2014

Letter from the Viscount Younger of Leckie to the Chairman

Thank you for your letter of 19 June 2014 on this proposal.

I fully appreciate that you are disappointed to feel that the pace of discussions in the Council Working Group has restricted your opportunity to give appropriate scrutiny to the Commission’s proposal for a Directive on Trade Secrets. I would like to assure you that I understand how frustrating this must be.

The speed of negotiations is, of course, largely dictated by the Presidency. In the case of this proposal, the pace has been very quick. However, when the Government submitted the Explanatory Memorandum to Parliament, there was no suggestion that the goal was agreement to a general approach at the May Competitiveness Council. The EM was drafted on the basis of the best
information available at the time, and the European Parliament has not yet begun its work on the proposal.

I am firmly of the view that it would not have been in the UK’s interest to vote against the proposal, or to abstain, at the Competitiveness Council. We had, as you acknowledge, secured positive outcomes on our key concerns.

I hope that you find this letter helpful.

23 June 2014

Letter from the Chairman to Viscount Younger of Leckie

Thank you for your letter dated 23 June 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 16 July 2014.

We note your further explanation of the reasons underlying your decision to override the scrutiny reserve in May and the clarification of the proposition in the Explanatory Memorandum that the negotiation of this matter would progress slowly due to the European Parliamentary elections in May.

We take this opportunity to remind you that given the override in May, we would expect the Government to submit a new Explanatory Memorandum on the text of the proposal once the European Parliament has agreed its first reading opinion on the General Approach text agreed in May.

In the meantime, we do not expect a reply to this letter.

17 July 2014


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

I refer to your predecessor’s letter of 2 June, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 16 July.

We take note of the compromise agreement, which represents a significant reduction on the Commission’s original proposal for 2011, and of the Government’s reasons for voting against the compromise.

We do not expect a reply to this letter.

17 July 2014

RESOURCES FOR DECENTRALISED AGENCIES (12421/13)

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

I am writing to update you on the developments in the field of EU decentralised agencies, including our assessment of the guidelines published by the European Commission on the management and prevention of conflicts of interest in these agencies. I apologise for not having written on this subject earlier; extensive consultation across Whitehall was necessary as different departments lead on each agency.

CONFLICTS OF INTEREST

You asked for an update on the Commission’s guidelines on conflict of interest. These have now been published. They have been developed as a set of principles and a tool to help individual agencies develop their own policies for board members and experts. Their staff are governed by the Staff Regulations. The guidelines were part of the follow-up to the Common Approach for EU decentralised agencies announced in 2012. The Common Approach is not legally binding, but sets out
the parameters for EU decentralised agencies. The agencies were consulted and contributed to the development of the conflicts of interest guidelines. The guidelines do not provide a uniform approach, but suggest areas agencies should consider in formulating their own policy, such as how to remedy any failure to declare an interest or a breach of trust because of non-declaration or compliance with an agency’s policy.

As these are guidelines and not a regulatory framework, agencies are not compelled to adopt a policy but are encouraged to consider doing so, particularly in the selection of members of the management boards and of any specialised experts. Agencies should ensure there is transparency and clarity by publishing their policies on their websites.

The guidelines identified that 14 of the 32 agencies that fall under the Common Approach had existing policies covering their management boards, and a number also have policies governing the selection of the members of expert committees. These agencies should review their policies in due course, with reference to the guidelines.

The majority of the remainder have used the guidelines to develop their policies, and have either subsequently implemented policies (such as the European Asylum Support Office (EASO)), are awaiting board adoption of their policies (such as the Galileo Space Agency (GSA)), or are in the process of adopting policies. This last category includes the European Insurance and Occupational Pensions Authority (EIOPA), European Banking Authority (EBA), and European Securities and Markets Authority (ESMA). These three agencies are all working together to develop a consistent policy as they are all European supervisory authorities for the financial sector.

A few remaining agencies are in the process of undertaking a risk assessment and are discussing the issue at board level.

It remains to be seen how the publication of these guidelines will help to prevent conflicts of interest within agencies. As you know, the Government preferred a regulatory framework. We will keep a close eye on how the guidelines are used and how effective they are in practice. While it is reassuring to see the work the Commission is doing to encourage each agency to carry out regular risk assessments and sharing of best practice between agencies, the Government will remain sceptical of the approach until we can see a clear change in practice.

The Commission has said that they will remain in close contact with agencies to monitor this. Officials will also continue to monitor Commission activity on this, and encourage agencies without conflicts of interest policies to reconsider their approach. Officials will also work with the UK board members of the various agencies to encourage their agency to consider developing or reviewing conflicts of interest policies, as expected under the roadmap follow-up.

INCREASE IN AGENCY SPENDING

The Government shares the Committee’s concern about the justification the Commission has provided for their forecast increase in the overall decentralised agencies’ budget. The Government has pushed the Commission to reduce expenditure on agencies through the relevant working groups in Brussels. We will continue to do this at every opportunity, including through the annual EU Budget negotiations at which expenditure payments for decentralised agencies are agreed.

An Inter-institutional Working Group (IWG) on resources for decentralised agencies has been established to monitor and assist the delivery of the 5% staff reduction, agreed as part of the Inter-institutional Agreement of 2 December 2013 on budgetary discipline, on cooperation in budgetary matters and on sound financial management. The UK has intervened in a number of other Council Committees and Working Groups to influence the IWG’s remit in order to ensure that it works to uphold the agreed staff cuts.

The IWG is made up of representatives of the Council (through the rotating Presidency), the Commission and the European Parliament. Its remit is to discuss: the establishment plans of agencies on a case by case basis; administrative structures and financing models; reassessment of needs, including mergers or closures of agencies, and reassignment to the Commission; and treatment of fully or partially fee-financed agencies.

The group met in April and will meet again this autumn. It will continue its work up to the end of 2017, and will meet for a final time in 2018 when the 5% staff reduction target should have been achieved.
I welcome the establishment of the IWG as a way to ensure that agencies implement the 5% reduction in staffing. It is also a good opportunity to look at cross-cutting issues which could improve cost-efficiency. We will support and encourage the Commission to regularly assess the efficiency of agencies.

OTHER DEVELOPMENTS

I would also like to provide you with an update on other developments relating to EU decentralised agencies.

Further to its commitment to a 5% staff reduction (and the additional 1% redeployment pool), the Commission has separately conducted an exercise on whether a reserve fund was needed for partially fee-financed agencies. It carried out an analysis by looking at two of the partially self-financed agencies: the European Medicines Agency (EMA) and the European Chemicals Agency (ECHA).

Both agencies have a surplus from their fee-incurred activities and their revenues from recent years. The Commission was satisfied that these agencies were able to generate a sufficient surplus to cover any future shortfalls, and that a reserve fund was not necessary.

I support the Commission in not setting aside a reserve fund for the partially self-financed agencies, which would be wholly unjustified when the EU budget is already under constraint. Indeed, the Commission’s priority must be on implementing the 5% staff reduction and reducing agency spending wherever possible.

You also asked for an update on the Government’s review of the performance of decentralised agencies. Whilst we have completed an initial compilation of information from other Whitehall departments on EU decentralised agencies, cross-Whitehall discussions are on-going and it is clear that we need further detail to ensure that the review is effective. Given the opportunity which the subsequent creation of the IWG presents, the Government intends to collect further information and broaden our analysis. This is particularly timely given the institutional refresh this summer, the strategic priorities that the European Council set out for the EU as a whole, and the conclusion of the Government’s own Balance of Competences review.

8 October 2014

Letter from the Chairman to David Lidington MP

Thank you for your letter dated 8 October 2014. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 November 2014.

We decided to retain the matter under scrutiny. We are grateful to you for your update and we welcome many of the points raised in your letter, in particular your continued monitoring of the application of the guidelines issued as part of the follow-up to the Common Approach for EU Decentralised Agencies. In the light of the institutional refresh which has happened so far in 2014, what discussions have you had with the new Commission about completing the progress in implementing the guidelines for the managing of conflicts of interest in decentralised agencies?

We note you continue to raise the issue of the increase to agency funding; your support of the inter-institutional working group; and the staff reductions made so far. Have the other Member States raised the issue of the increase in funding during these negotiations? What has been the Commission’s reaction to you pushing for a reduction in expenditure on agencies?

I attach [not printed] a list of decentralised agencies available on the European Commission’s website (http://europa.eu/epso/success/recru/contacts/agencies_list_cast_en.pdf). Is this list up-to-date? When was each agency established? What is the predicted lifetime of each agency and when is each agency due to come to an end?

In the light of the Commission’s analysis of two partially self-financed agencies, are you content that reserve funds are not needed for any such agency or is more analysis required?

Finally, with regard to the Government’s own review of the performance of decentralised agencies, we are surprised at the length of time this review is taking. What further detail do you require to “ensure the review is effective”; and when do you anticipate publishing such a review?

We look forward to a reply within the usual 10 working days.

11 November 2014
Letter from David Lidington MP to the Chairman

Thank you for your letter of 11 November requesting additional information further to my update to you on developments in respect of EU decentralised agencies.

You requested information on the discussions I have had with the new Commission on the implementation of the guidelines for managing conflicts of interest in EU decentralised agencies. I note that the new Commission has been in office since 1 November. I expect it to provide an update on the implementation of the Common Approach for EU decentralised agencies by the end of this year, which should include the guidelines. I will update Parliament once this information has been received.

You enquired about the Commission’s reaction to our push for a reduction in expenditure and other Member States’ support for this position. A core of budget disciplinarian Member States (the Netherlands, Sweden, Denmark, Germany and France) share our concerns over the increase in decentralised agency budgets. However, to date, the Commission has resisted a reduction in expenditure. The Commission’s 2015 Draft Budget proposed a 4.4% year-on-year increase in expenditure for decentralised agencies. As you are aware, negotiations on the 2015 Budget are ongoing. The Government priority remains to push for an agreement that is consistent with the Multiannual Financial Framework deal which the Prime Minister secured and which delivers the best value for money for taxpayers.

You also enquired about reserve funds for self-financed decentralised agencies. The creation of a reserve fund would add an additional expenditure pressure on the EU administrative budget, which we are trying to reduce. Given the historic trend of the partially self-financed decentralised agencies producing a budget surplus, our analysis is that this reserve fund would sit untouched most years. The Government therefore believes that any budget deficit of the self-financed decentralised agencies - which on the occasions they have occurred in the past have been small - should be met by underspend or reprioritisation from the overall EU budget rather than from a reserve fund. On this basis, we are content with the Commission’s analysis that a reserve fund is not needed. Instead, the focus should remain on reducing expenditure on decentralised agencies.

Officials have examined the list of agencies you provided with your letter. This list contains both decentralised and executive agencies and other types of agencies. I have attached [not printed] to this letter an updated list of current EU decentralised agencies (Annex A) which includes the location and the date of establishment for each agency. EU decentralised agencies are created for an indefinite period although some have a review/evaluation clause in their respective regulations.

Finally, you asked about the Government’s review on the performance of decentralised agencies and plans for publication. As the explanatory memorandum (ref: 5022/13) of 13 January 2013 stated, this is an internal exercise to help inform the Government’s policy position on the decentralised agencies. I will, of course, update Parliament on our policy position when it is being used in relation to any relevant negotiation or when taking a position in Councils.

28 November 2014

Letter from Shailesh Vara MP, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

I am writing in response to your letter to James Brokenshire as Security Minister of 6 February with regard to the “Proposed Regulation Reforming Europol” and the impact of the use of the JHA opt out in general. I am sorry for the delay in doing so.

In your letter, you posed a number of questions in relation to the Access to a Lawyer Directive, namely how the review of a post adoption opt-in is progressing; whether the UK successfully negotiated a text that satisfactorily addressed the Government’s key concerns, whether other Member States accommodated the UK’s position and whether the UK will be opting in.

As indicated by Lord Taylor in the House of Lords on 8 May, the Government has not yet concluded a post-adoption review of this proposal. The UK was able to secure many of its negotiating objectives in the Council negotiations and the text underwent significant amendments during trilogue negotiations with the European Parliament. However, it is now for the Government to consider whether it has now been amended sufficiently to meet all of our points of concern.
There is no external deadline in which to complete our review or to reach a decision on future participation. I will, however, write to you again once our review is complete, to update the Committee on our conclusions and decision and of course if there is any question of a post-adoption opt-in we will seek the Committee’s views in accordance with the approach described in the Code of Practice.

28 July 2014

SIX MONTHLY UPDATE TO THE JOINT HOME OFFICE – MINISTRY OF JUSTICE
ANNUAL REPORT TO PARLIAMENT ON THE APPLICATION OF THE JHA OPT-IN
(UNNUMBERED)

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

I am writing on behalf of the Minister for Courts and Legal Aid, Shailesh Vara MP, and myself.

The Government has committed to provide the Parliamentary Scrutiny Committees with a regular six monthly update to the list of opt-in decisions which were annexed to the joint Home Office and Ministry of Justice annual report to Parliament on the JHA Opt-in. The Fourth Annual Report, which was published in January 2014, included decisions taken between 1 December 2012 and 30 November 2013. The updated annex, which I enclose [not printed], lists decisions taken in the period 1 December 2013 and 31 May 2014.

During this six-month period, 22 decisions were made under the JHA Opt-in Protocol, and 2 were made under the Schengen Opt-out Protocol. The UK opted in on 13 occasions and did not opt in on 11 occasions, including opting out under the Schengen Protocol on 2 occasions. For the Home Office, this included the decision under the JHA Opt-in Protocol to opt in to the proposal to move the European Police College (CEPOL) from Bramshill in the UK to Budapest, and the decision to assert the Schengen opt-out on proposals to tackle new psychoactive substances. On the Ministry of Justice side, the Government decided not to opt in to the procedural safeguards package covering measures on children suspected or accused in criminal proceedings, strengthening certain aspects of the presumption of innocence, and providing legal aid for suspects or accused persons deprived of liberty and legal aid in European Arrest Warrant proceedings. The Government also opted in to Council Decisions to sign Association Agreements with Georgia and Moldova, but did not opt in to the readmission provisions of Decisions to conclude Partnership and Co-operation Agreements with Vietnam, Singapore and the Philippines.

Since 31 May, the Government has taken a further 3 opt-in decisions. We have opted in to a Council Decision establishing the European Union position on the accession of Afghanistan to the World Trade Organisation, Council Decisions to sign an Association Agreement with the Ukraine, and a Decision establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work.

We expect that there will be relatively few new proposals over the coming months, ahead of the new Commission taking office. In the coming months, the Home Office and Ministry of Justice are expecting further opt-in decisions on the following proposals:

— Proposal amending the Dublin Regulation 604/2013 regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State;

— Proposal to reform the European Police College (CEPOL) and create a European Training System;

— Proposal to simplify travel formalities for EU citizens and third country family members; and

— Proposal for a mandate to negotiate an EU Readmission Agreement with Tunisia.

In addition, it is likely that further opt-in decisions will be required on the following proposals on which other Government Departments will lead:
Proposal to sign and conclude Protocols to the Euro-Mediterranean Agreement allowing the Republic of Tunisia and the Republic of Lebanon to participate in Union programmes;

Proposal to sign a Stabilisation and Association Agreement with Kosovo;

Proposal for a Council Decision establishing the European Union Position on the Accession of the Seychelles to the World Trade Organisation; and

Proposal for a Council Decision authorizing Austria and Poland to accede to the 2001 UN/ECE Budapest Convention for the Carriage of Goods by Inland Waterways (CMNI).

I trust that the Committee will find this update useful and look forward to working with you on JHA matters in the coming months. I will arrange for a copy of this letter to be placed in the House library.

18 July 2014
amended so that it now allows some discretion to be applied and this should be done where necessary.

However, a number of the most problematical issues we previously identified remain in the general approach text. These include the age definition of a child (it remains defined as all under 18 years of age which we considered would have significant operational impacts on the police, there remain cross-references to Directive 2013/48/EU (on the right of access to a lawyer) so our concern that this may import that Directive (which the UK is not currently bound by) remain and the provision on detention which it limits to “last resort” whereas UK laws are nuanced and allow detention where it is necessary (for the protection of others for example). As such, the Government does not support the general approach text.

I hope it will be helpful to give a summary of some of the key aspects of the general approach text for your Committee’s consideration. Please find these below.

— Article 2 (Scope) – this is now improved with a scope that does not continue once a child comes of age.
— Article 3 (definition) – this remains a problematic provision for the Government because a child is defined as all persons below 18 years of age.
— Article 6 (right of access to a lawyer) – the UK still considers this a problem because there remains an explicit reference to Directive 2013/48/EU in the body of the text. As this Directive does not currently bind the UK, we consider its inclusion unacceptable.
— Articles 7 and 8 (individual assessment and medical examination) – these Articles are somewhat improved by being less burdensome and more flexible.
— Article 9 (questioning) – this provision is improved with more ability to derogate from the obligation to record all interviews audio-visually. It remains problematic, however, in that it still may require audio-visual equipment in all Police stations.
— Article 10 (detention) – a significant problem remains in this provision because it still states that detention of a child can only be a matter of last resort. This language remains uncertain and its practical interpretation unknown.
— Article 14 (privacy) – there is now more flexibility in this provision. In particular, there is no longer a prohibition on holding the trial in public and the provision simply requires the protection of the child’s privacy.
— Article 18 (legal aid) – this now defers to national law in relation to legal aid provision and so shows improved flexibility.
— Article 20 (data collection) – there have been no major changes to this Article, which still represents an unnecessary bureaucratic burden.

The General Approach text will now be subject to trilogue discussions involving the European Parliament and the Commission. When and it what shape it will emerge from that process is unknown at this stage. I will provide another update when there is progress to report. Meanwhile, at this stage if the text progresses as it is our position remains unchanged; we will seek to secure changes we need to make it acceptable but will not seek to opt in until and unless those are secured.

21 July 2014

Letter from Chris Grayling MP to the Chairman

I am writing to you for information and in particular to provide copies of the completed Impact Assessment Checklists covering the above proposals for Directives recently produced by the European Commission. I hope that these are self-explanatory and helpful. You have seen the one related to the legal aid proposal already but I include it again here for completeness.

These issues were debated in the House of Commons on 18 March, where the Government’s decision not to opt in to any of these proposals was made clear, This decision has since been
confirmed in a Written Ministerial Statement where the reasons for that decision were set out and which are set out again for ease of reference below.

The proposal on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings would require some significant changes to UK laws and practice if it were accepted in its current form. For example, on the limited circumstances in which adverse inferences can be drawn from a defendant’s silence or refusal to cooperate. The presumption of innocence is a long-standing principle of the common law and UK laws that place exceptions upon this principle have been found to be compliant with the European Convention on Human Rights, and as such, the Government considers the proposal to be unnecessary and unwelcome and has concluded that the UK should not opt in to the proposal.

On the Directive on procedural safeguards for children suspected or accused in criminal proceedings. The Government clearly supports the principle that children that become engaged with the law enforcement agencies and the criminal justice systems are vulnerable and need special protection. There is already a raft of protective measures in UK laws and practice to help and support these children. For example, the Police and Criminal Evidence Act 1984 (“PACE”) and associated PACE codes set out the rules for the treatment of children accused or suspected of a criminal offence. However, the proposed Directive would establish different rules and require some significant changes to UK arrangements to no obvious benefit. The Government is not convinced those rules would represent an improvement in the support and protection of young people in the UK from those that already exist here and has therefore decided that the UK will not be opting in to this Directive.

Finally, on the Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant (EAW) proceedings, the Government considers the proposal to be unnecessary and unwelcome. It considers that the UK’s current system for the provision of criminal legal aid is one of which we can be proud. Access to criminal legal aid in the UK is already of a high standard. The right to criminal legal aid is already guaranteed by Article 6 of the European Convention on Human Rights, and of course UK laws and practice are compliant with that. The Government considers that the rules on legal aid are most appropriately determined by Member States themselves rather than at the EU level. The Government has therefore concluded that the UK will not opt in to this proposal.

I am writing to you separately to provide an update on the negotiations on the proposal related to child suspects, the only one of these proposals which has so far been progressed at all.

29 July 2014

Letter from the Chairman to Chris Grayling MP

Thank you for your letters dated 21 and 29 July 2014. They were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 15 October.

We have decided to retain all three proposed Directives and the Commission’s Recommendation on procedural safeguards under scrutiny.

THE LETTER DATED 21 JULY ON THE DIRECTIVE ON PROCEDURAL SAFEGUARDS FOR CHILDREN

The last time this Committee considered the proposed Directive we acknowledged in our letter, dated 27 February, that the opt-in decision facing the Government was finely balanced between the Government’s concerns with the proposed Directive (particularly the costs of implementing the proposal; the definition of a child as anyone below 18 years of age; and the aspects of the proposal dealing with depriving children of liberty) and the Government’s ability to negotiate a satisfactory outcome. In this regard, your letter confirms a number of significant developments:

— That you decided not to opt in to the proposal’s negotiation from the outset,
— That the participating Member States have agreed a General Approach, and
— That without changes to the General Approach agreed in June you will not be opting in to this Directive.

Your letter also listed a number of key aspects of the General Approach text. We take this opportunity to note these developments and your ongoing concerns with the text. You confirm that the ongoing discussion of the draft Directive now enters the trilogue stage and we ask that you keep us updated on the progress of these discussions.
THE LETTER DATED 29 JULY ON THE DIRECTIVES ON THE PRESUMPTION OF INNOCENCE, PROCEDURAL SAFEGUARDS FOR CHILDREN AND ACCESS TO PROVISIONAL LEGAL AID

We are grateful that you have finally confirmed the Government’s decisions not to opt in to these proposals. Your conclusion not to, broadly reflects our views.

However, we are disappointed that it has taken you four months to inform the Committee of your intentions. We note that you told the House of Commons at the debate on 18 March that the Government had decided not to opt in to any of the three proposed Directives. A decision that you have not confirmed to us until late July. The conduct of the Parliamentary scrutiny of these three proposals has not reached the standards that we would expect. Previously, we had to draw the poor standard of the Explanatory Memoranda on these proposals to your attention. Are you able to explain the delay in informing us of the outcome of your assessment of the opt-in?

We look forward to considering your response before 3 November.

17 October 2014

Letter from Chris Grayling MP to the Chairman

I am writing in response to your letter of 17 October in response to mine of 29 July regarding the above proposals and the Government’s decisions not to opt in to any of them at this stage. I have noted the other comments in your letter and in respect of the update on the progress of the child suspect proposal to General Approach, which I had earlier provided.

I note that you broadly agree with the Government decisions and that the proposals remain under scrutiny. You also asked for an explanation of the delay between the announcement of the Government decisions and the formal communication of those to your Committee.

As you are aware, these issues were debated in the House of Commons on 18 March, where the Government’s decision not to opt in to any of these proposals at this stage was made clear and put on record. This decision was then confirmed formally in writing to the Committee and by Written Ministerial Statement (WMS) on 30 July, where the reasons for that decision were again set out. The reason there was a gap between the original announcement in the Commons and the formal communications to your Committee was because we held the formal communications around the decisions back until the Impact and Equality Assessments had been completed and approved. This process took longer than expected and we recognise that this is not ideal. However, we had hoped providing them at the same time would be helpful to the Committee. I regret that on this occasion, the gap in notifying the Committee of the Government’s decision was longer than we might have hoped and we will make sure that the decisions are communicated to your Committee in a timely fashion in the future.

17 November 2014

Letter from the Chairman to Chris Grayling MP

Thank you for your letter dated 17 November 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 3 December.

We have decided to retain all three proposed Directives and the Commission’s Recommendation on procedural safeguards under scrutiny. We are grateful for your response, share your regret in the prolonged gap in the process and note the undertaking that, in future, the Ministry of Justice will endeavour to communicate opt-in decisions “in a timely fashion”.

We look forward to re-examining the merits of these proposals when the Government reconsiders the opt-in post adoption and considering updates on these negotiations in due course.

4 December 2014
Letter from the Chairman to Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your letter dated 29 May 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 2 July 2014.

We have decided to retain the Commission’s Communication under scrutiny.

It is clear from your reply that the Government and the Committee share doubts about many aspects of the Commission’s Communication. We are grateful that you have addressed our questions and we note your clear explanation of the Government’s two key responses to the Commission’s proposed Framework to strengthen the rule of law: (i) that dialogue between Member States remains your preferred method of resolution, and (ii) that you will continue to ensure that the Framework does not challenge the operation of existing Treaty mechanisms designed to police this matter such as Article 7 TEU. However, in light of President Barroso’s comments in September 2012, we are not persuaded that existing mechanisms are sufficient to fill the gap between the soft-power of inter Member State dialogue and the “nuclear-option” of Article 7 (TEU); how would you propose to address this gap?

In relation to your statement that you will continue to ensure that the Framework does not challenge the operation of existing Treaty mechanisms, whilst we acknowledge the policy aims that underpin your call for “flexibility”, are you concerned that the introduction of an informal process, via the Commission’s Communication into this area of EU affairs, potentially risks an unnecessary element of uncertainty which could, by its mere existence, undermine existing Treaty based mechanisms such as Article 7 (TEU)? If so, how do you propose to address the situation?

Finally, the Committee has taken a keen interest in the work of the EU’s Fundamental Rights Agency which produces many reports that touch upon aspects of the rule of law in the Member States. Does the Government believe that the agency’s reports have had material effect in this field?

We look forward to considering your response by 18 July 2014.

10 July 2014

Letter from Shailesh Vara MP, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Thank you for your letter of 10 July, in which you raise three specific questions about the Commission’s communication on rule of law, in response to my letter of 29 May.

First, you explain that the Committee is not persuaded that existing measures are sufficient to fill the gap between what you describe as the “soft power” of inter member state dialogue and the “nuclear option” of Article 7 of the Treaty on European Union (TEU). I sought to respond to this in my letter of 29 May by pointing to mechanisms that exist outside the EU, namely in the Council of Europe and the UN, where genuine expertise in monitoring threats to the rule of law exist. Furthermore it is the Government’s view that these issues are primarily for Member States to address. The debate is expected to continue at EU level under the Italian Presidency and, while plans for further discussions are not yet entirely clear, we expect that Member States will wish to assess potential options for strengthening their ability to hold constructive discussion with one another when a threat to the rule of law emerges.

Secondly, you ask whether the Government is concerned that the introduction of an informal process of the sort described might introduce an element of uncertainty into the Article 7 process. The Government is concerned that the Council’s role might be displaced, were the Commission’s proposed mechanism to be implemented. In particular, under Article 7(1) TEU, second paragraph, it should be for the Council, not the Commission to consider whether to issue any Recommendations prior to an Article 7 decision in respect of a Member State. Were a Recommendation to be issued it is clearly essential that its validity should not be open to question – as might be the case if one were made by the Commission in the absence of a clear basis under the Treaty for doing so. The Government will make clear that any such recommendations should be made by the Council.

Lastly you ask about the effect of Fundamental Rights Agency (FRA) reports that have touched upon the area of rule of law. The Committee will be aware that, in developing policy and legislation, the Government draws on a wide variety of evidential sources. Thus far there is little evidence to suggest
that the data produced by FRA is having a significant impact on policy outcomes in the UK. While some of the FRA’s thematic areas are related to the rule of law, the concept of rule of law encompasses a wide range of different issues falling outside the FRA’s remit which is limited to fundamental rights.

16 July 2014

Letter from the Chairman to Shailesh Vara MP

Thank you for your letter dated 16 July 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 30 July 2014.

We have decided to retain the Commission’s Communication under scrutiny.

You have addressed each of the three matters of substance that we put to you, but your responses have raised further questions that we wish to pursue. First, in response to the Committee’s statement that it is "not persuaded that existing measures are sufficient to fill the gap between … the ‘soft-power’ of inter Member State dialogue and the ‘nuclear option’ of Article 7" you refer us back to your previous letter in which you argued that existing mechanisms operating outside the EU will suffice. However, our question specifically referred to President Barroso’s argument that there is a gap in the EU’s mechanisms designed to deal with Member States’ adherence to the principles of the rule of law.

The Commission cited two examples in support of this Communication where poor adherence to the principles of the rule of law could pose a threat to the operation of EU legislation, namely the Brussels I Regulation dealing with the enforcement and recognition of judgments in civil matters and the operation of the European Arrest Warrant. Can you persuade the Committee that existing EU mechanisms - inter-state dialogue or suspension of a Member States Council rights - can successfully resolve challenges to the rule of law in this context where Member State cooperation is based on mutual trust and respect for each other’s legal systems?

With regard to our second question, we note your response that the Government is concerned that the Commission’s Communication “might introduce an element of uncertainty” into existing EU mechanisms dealing with the rule of law. What does the Government intend to do to avoid this development?

Finally, in reply to the Committee’s third question addressing the Fundamental Rights Agency’s (FRA) impact, you have restricted your response solely to the agency’s impact on policy and legislation in the UK. In October 2013, the Committee held an evidence session with Mr Morten Kjaerum, Director of the FRA, who explained the agency’s remit and offered us very interesting examples of its work. We are, of course, aware that the FRA’s work focusses on fundamental rights but, in our view, there is an obvious and clear overlap between the work of the FRA, for example, in relation to the treatment of Roma in some Member States, and the application of the rule of law. It was in this sense that we asked whether you were aware of the agency’s impact throughout the EU which might be of relevance to our consideration of this Commission Communication.

We look forward to considering your response when the House returns in October.

30 July 2014

Letter from Shailesh Vara MP to the Chairman

Thank you for your letter of 30 July, in response to mine of 16 July, in which you raise three further questions about the Commission’s proposed EU rule of law framework.

Firstly, you invite us to look again at President Barroso’s argument that there is a gap in the EU’s mechanisms designed to deal with Member States’ adherence to the rule of law, and you remind us of the references in the Commission’s Communication identifying Brussels I Regulation and the European Arrest Warrant as examples of where poor adherence to the rule of law could pose a threat to the operation of EU legislation. I agree that the two instruments mentioned do indeed depend on, and underline the importance of, proper adherence to the rule of law and mutual trust and respect among Member States. However I am not convinced of the Communication’s argument that it follows from this that a new Commission-led EU framework is justified.

It is important that we are clear on the extent of the ‘gap’ in EU measures to which President Barroso, and the Committee, refers. The Committee’s letter refers to the existing EU mechanisms of
Article 7(1) is designed to be a preventative mechanism which enables one third of Member States, the European Parliament and the Commission to make a reasoned proposal for a determination by the Council that there is a "clear risk of a serious breach" by a Member State of the values set out in Article 2. The Member State in question must be given an opportunity to be heard, and the Council may offer recommendations to remedy the situation.

Article 7(2) provides for a second type of determination, this time by the European Council on a reasoned proposal of one third of the Member States or the Commission, that a "serious and persistent breach" of one of the values exists.

Only having made a determination under Article 7(2) does Article 7(3) permit the Council, acting by qualified majority, to suspend certain of the rights of the Member State in question, including voting rights.

A determination under Article 7(1) TEU would undoubtedly be a major diplomatic event. However, this preventative procedure allows for an incremental approach to threats to the rule of law prior to suspending a Member State’s rights.

It is also important to note that the Commission retains substantial powers under Articles 258 and 259 TFEU to launch infringement proceedings where a Member State is deemed to have contravened EU law. This power has been used effectively to avert previous threats to the rule of law in Member States that were cited by Commissioner Reding in support of a new mechanism. Indeed, President Barosso acknowledged that such Commission action had "played a decisive role in seeing these worrying developments brought into check." It seems quite clear that the Commission could play a similar role in relation to the two instruments you specifically mention – the Brussels I Regulation and the European Arrest Warrant. The European Court of Justice already has jurisdiction over Brussels I, and infringement action would be available if a Member State failed to adhere to the requirements of that Regulation. The Court of Justice will gain similar jurisdiction over the European Arrest Warrant on 1 December this year.

The Government does, however, acknowledge that there may be situations where a Member States’ actions are judged to be of potential threat to the rule of law, but do not contravene any specific EU legislation, and are not deemed to breach the threshold for launching the preventative procedure under Article 7(1) TEU. Nevertheless it is my view that a further EU framework is neither necessary nor helpful.

As previous successful resolutions to rule of law situations have shown, a flexibility to respond in the most appropriate way is essential. Given the variety of tools available, both through EU institutions and outside of them, it is important that we are not constrained to follow a Commission-led mechanism which may not be appropriate in all circumstances and does not currently provide for adequate Member State oversight. Furthermore, rule of law issues are by their nature highly sensitive for Member States, and can be at the boundaries of EU acquis. As I have argued in previous letters, it is for this reason that the rule of law must principally be a matter for Member States. It is important that the EU institutions act within the competence conferred upon them. I am therefore conscious of the need to ensure respect for the Treaties as negotiations in Brussels develop.

For the above reasons I believe that current EU tools, supplemented by the work of international bodies such as the Council of Europe and the UN, are appropriate to deal with threats to the rule of law in the EU. Where there may arise potential threats which fall outside of EU mechanisms, this is by design and the Treaty boundaries should be respected. We do not, therefore, see the need for a Commission-led mechanism beyond that already set out in Article 7.

Your second question asks what the Government intends to do to avoid the Commission’s Communication introducing an element of uncertainty into the mechanisms in Article 7. It is not open to the Council or Member States to alter the text of the Communication. However, should the Council produce any conclusions on the Communication we would seek to ensure that they address those elements of the Communication that introduce potential uncertainty. For example, we would seek to make clear in any conclusions that it is for the Council alone to make recommendations as set out in Article 7(1) TEU.
Thirdly, you raise the question of the impact of the Fundamental Rights Agency (FRA), inviting me to expand on the answers I gave in my letter of 16 July. The Government has not made its own assessment of the impact that the FRA’s work has had on the rule of law across the EU. However, you may wish to note last year’s external evaluation of the FRA, which for example noted that the FRA’s work has been used by Members States in formulating national strategies for Roma. The external evaluation is available here: [http://fra.europa.eu/sites/default/files/fra-external_evaluation-final-report.pdf](http://fra.europa.eu/sites/default/files/fra-external_evaluation-final-report.pdf). You may also find useful some of the evidence received by the Government as part of its review of the balance of competences between the EU and the UK in the field of fundamental rights, published on 22 July. Some of the evidence discussed the impact of the work of the FRA, in particular with reference to Gypsy, Traveller and Roma communities in Member States. Full copies of the evidence received can be found here: [https://www.gov.uk/government/consultations/balance-of-competences-fundamental-rights-review](https://www.gov.uk/government/consultations/balance-of-competences-fundamental-rights-review).

Finally, I want to reassure the Committee that the Council’s discussion of the Communication is at an early stage, and the Government will continue to engage actively on this issue.

7 October 2014

Letter from the Chairman to Shailesh Vara MP

Thank you for your letter dated 7 October 2014. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 29 October 2014.

We are grateful for your detailed analysis and assessment of the range of mechanisms currently in place to police the Member States’ adherence to the EU’s founding principles. We note your clear view that the Communication is “neither necessary nor helpful”, and your answers to our questions regarding the potential introduction of uncertainty into this important area of EU cooperation and the impact of the FRA’s work.

We have decided to retain the Commission’s Communication under scrutiny and look forward to receiving periodic updates, in due course, of the Council’s discussion of this Communication.

30 October 2014

THE FIGHT AGAINST FRAUD TO THE UNION’S FINANCIAL INTERESTS BY MEANS OF CRIMINAL LAW - THE PIF DIRECTIVE (12772/13)

Letter from the Chairman to Nicky Morgan MP, Economic Secretary to the Treasury, HM Treasury

Thank you for your letter dated 14 May 2014 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 25 June 2014.

We have decided to clear the Commission’s report from scrutiny. We are pleased that, in line with our recommendation in our 2012 report into fraud on the EU’s budget, the Government have nominated the City of London Police to be the UK’s AFCOS.

We do not expect a reply to this letter.

30 June 2014

Letter from Nicky Morgan MP to the Chairman

It has been some time since I last updated the Committee on EU discussions of the Draft Directive on the fight against fraud to the Union’s financial interests by means of criminal law (the PIF Directive). I would now like to notify you of the developments that have occurred during this time and set out the calendar for discussions going forward.

On 16 April, the European Parliament (EP) reached a first reading position on the Council’s General Approach. As you may recall, the Council’s General Approach proposed important changes to the Commission’s original proposal, including a change in legal base, the removal of VAT from the Directive’s scope and the removal of minimum terms of imprisonment.

The EP’s first reading position crucially supports the Council’s proposed change of legal base to bring the PIF Directive under Title V of the TFEU. Further, the EP’s proposed text removes the provisions...
allowing for minimum terms of imprisonment but reinserts VAT within the Directive’s scope. A summary of the EP’s position can be found at the following link:


Although a clear timetable has yet to be presented, we expect trilogue discussions to commence in September under the Italian Presidency. We will continue to actively engage in discussions on this dossier to achieve a compromise text that meets UK objectives.

Finally, as set out in previous letters, the Government continues to seek to resolve the Committee’s concerns regarding the JHA content within this proposal and the related opt-in issues, and hopes to be in a position to provide the Committee with further clarity in due course.

21 July 2014

THE JUSTICE AND HOME AFFAIRS (JHA) COUNCIL 9 AND 10 OCTOBER 2014
(UNNUMBERED)

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

We are writing to inform you of the agenda for the meeting of the Justice and Home Affairs (JHA) Council, which will take place in Luxembourg on 9 and 10 October. The Minister for the Courts and Legal Aid, Shailesh Vara MP, and I (Home Secretary) will attend on behalf of the UK.

The Interior session will begin with updates from the Commission, FRONTEX and the European Asylum Support Office (EASO) on the “Follow-up to the Task Force Mediterranean”. This is the programme of actions agreed last December to address the migration situation in the Mediterranean. The Presidency continues to drive forward a more prioritised approach to these actions. The Government broadly supports the Presidency’s priorities and recently reiterated its commitment to the Task Force in a French-led joint letter to Commissioner Malmström. The Government welcomes the proposed withdrawal of the Italian national operation Mare Nostrum, which has increased flows to the EU and been exploited by people smugglers. We also welcome the intention to develop an enhanced Frontex operation in the Mediterranean, focused on management of the EU’s borders rather than the search and rescue of migrants.

There will be an update on the revised Greek Action Plan (GAP) on Asylum and Migration Management. This item relates to migration pressures at the EU’s Eastern border, which have been overshadowed by the Mediterranean in recent months. Substantial improvements have been made to the Greek asylum process since 2010, with the assistance of EASO. However, more capacity building is needed to assist Greece with their reception centres and to clear the backlog of asylum cases. EASO emergency support will continue until the end of the year and plans will be put in place for more tailor-made support thereafter.

The Council will then discuss the implementation of the EU’s priorities in combating serious and organised international crime. This item is about the 12 cooperation projects launched last year, under the EU Policy Cycle, against particular types of cross-border crime, such as drug trafficking, organised immigration crime and cybercrime. Member States, the Commission and Europol are likely to welcome the success of the projects so far. The UK takes part in all of these projects. We lead the workstreams on Child Sexual Exploitation, Human Trafficking and Heroin, and we are “co-leads” on Firearms, Cocaine and Excise Fraud. The Government will stress the importance of operational cooperation against serious and organised crime, and will call for more action against organised gangs that are exploiting free movement. We will also raise the issue of the threat posed by violent offenders who take advantage of free movement arrangements and ease of travel within the EU to exploit the lack of data sharing and police intelligence on criminal records.

The Council will return to the issue of foreign fighters travelling to Syria and Iraq. Member States will be invited to discuss the Council Conclusions from the European Council on 30 August 2014 as part of an orientation debate. We expect the basis of the discussion to be a Presidency paper which will ask Member States to discuss two key issues. The first is how to make progress on the Passenger Name Records (PNR) Directive, currently stalled in the European Parliament, following the European Council’s call for it to be adopted by the end of the year. The second is whether the Schengen Border Code, in which the UK does not take part, should be amended to allow more thorough
routine checks on EU nationals at the external border, in order to detect returning combatants more effectively. The Government will highlight the need for a quick conclusion of negotiations on the draft PNR Directive, leading to the agreement of a Directive which covers intra-EEA data. The UK is keen for the issue of foreign fighters to be discussed and continues to support action at the EU level.

Over lunch there will be a discussion entitled “Taking action to better manage migratory flows”. This will have a particular focus on the Central Mediterranean route, a priority for the Italian Presidency. The Government broadly supports the Presidency’s approach, particularly the focus on enhancing action in third countries to reduce illegal migration. We will underline the need for existing tools to be fully utilised to mitigate current migratory pressures, and to warn against new measures, such as relocation of asylum seekers within the EU, which could prove counterproductive, increasing pressures on Member States.

The Justice session will begin with an update on the state of play on the negotiations on the European Public Prosecutor’s Office (EPPO). Member States will be invited to discuss the “Single legal area” concept contained in the Commission’s original proposal as part of an orientation debate. The UK has made clear that we are not participating in the EPPO but we do play an active role in the negotiations to shape and protect our position as a non-participating Member State.

The Italian Presidency will then seek a partial general approach on Chapter IV (obligations on data controllers) of the proposed General Data Protection Regulation. This Chapter deals with, inter alia, general obligations on controllers, data security, data protection impact assessments and codes of conduct and certification. Successive presidencies have sought to strengthen the text in respect of the risk-based approach as a way of alleviating administrative burdens on business, and Small and Medium Enterprises in particular. The Government understands the need for a timely adoption of the proposal, but it is imperative that the new framework is right for both business and citizens, otherwise it risks damaging growth and failing to deliver better outcomes for individuals. We will be negotiating on this basis at Council.

The Italian Presidency intends to bring forward some issues arising from the proposed Directive on the Presumption of Innocence for discussion at Council, to provide a steer for further detailed work at expert level. The issue relates to the burden of proof and how to tackle differences of approach across the EU. In particular in some Member States judges as well as prosecutors have a role in seeking inculpatory or exculpatory evidence. The Presidency seeks guidance on how to reflect that in the proposal. It will also seek guidance on the approach to handling of presumptions of fact and making of inferences of unknown facts from those that are known. It is the Presidency’s stated intention to bring a proposed General Approach on this dossier to the December Council. The UK has not opted in to this dossier.

The Presidency will also be seeking a general approach by December on the draft regulation to simplify the circulation of certain documents within the EU by abolishing the need to legalise them; and to introduce multilingual common-format forms. The Government generally supports this initiative as it reduces red tape for citizens and businesses. However, the Government is seeking to limit the range of documents in scope and therefore the cost of implementing the Regulation, and to amend the format of the multilingual forms so that they do not have the same independent evidential value as the original national documents.

Over lunch there will be a discussion on confiscation. The Government strongly supports using both civil and criminal procedures to deprive criminals of assets obtained through crime. The European Commission published a draft Directive on Confiscation in 2012 as the existing legislation at EU level has not been implemented consistently. The UK decided not to opt in to the draft Directive at the outset because it poses a risk to the UK’s civil recovery regime.

8 October 2014
Letter from Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice and Theresa May MP, Secretary of State, Home Office, to the Chairman

We are writing to update you on the progress of negotiations with the European Commission and Council on the pre-Lisbon justice and home affairs measures that the United Kingdom proposes to rejoin in the national interest.

We are pleased to be able to report that good progress has been made in these negotiations and that we have reached an ‘in principle’ deal with the Commission on the non-Schengen measures. A list of measures is attached at Annex A [not printed]. Despite this good progress, negotiations have not yet been concluded on the overall package. This matter was discussed at the General Affairs Council on 24 June and some Member States expressed technical reservations. Discussion will continue with the aim of allowing those states in question to lift their reservations, but as they are nearing their conclusion we wanted to write to inform your Committee.

We have been clear throughout this process that the measures we seek to rejoin will be subject to negotiation with the Commission and other Member States. But – backed by the clear views expressed in Parliament, not least by the reports of your committee and others – we have been able to resist many of the changes demanded by the Commission and other Member States. The changes to the list that was set out in Command Paper 8671 in July 2013 are therefore as follows:

— Two measures – that relating to CEPOL, the European Police College, and that relating to Freezing Orders – have been ‘Lisbonised’ by the new CEPOL measure and the European Investigation Order respectively. As a result, these measures are no longer subject to the opt-out and fall off the UK’s list.

— The UK will no longer seek to rejoin the Special Intervention Units measure. The Commission considers this measure to be linked to the Prüm decisions which the UK will not seek to rejoin.

— The UK will no longer seek to rejoin the European Genocide Network and will instead rejoin the European Judicial Network. This follows submission of further evidence from the Lord Advocate, Frank Mulholland, the Crown Prosecution Service and other Member States on the operational benefits of the measure and practical examples of its use in tackling crime.

— The UK will now seek to rejoin three Europol implementing measures which the Government accepts are necessary to continue participation in the main Europol measure.

— The UK will not rejoin the Schengen Handbook as other Member States consider this measure to have been superseded by other measures.

— The UK will now seek to rejoin the SIS II networks measure which is considered by other Member States to be integral to the operation of SIS II.

The Government has also published Command Paper 8897 today. This includes full impact assessments on all of the measures that the Government proposes to rejoin.

We intend to hold a debate before summer recess so that Parliament can consider these measures before our negotiations in Europe are concluded. We are currently discussing this matter with the Business Managers and will update you when a suitable date has been agreed.

We look forward to engaging further with you on this important matter.

3 July 2014

Letter from Chris Grayling MP and Theresa May MP to the Chairman

Thank you for your letter of 3 July 2014 updating us on the progress of negotiations with the European Commission and the Council on the measures which the United Kingdom proposes to opt back into. This was considered by the Home Affairs, Health and Education Sub-Committee of the
Select Committee on the European Union at a meeting on 9 July 2014. They considered at the same time the above Commission Communication and its explanatory memorandum of 26 June 2014.

The Committee has now also seen the Command Paper to which you refer entitled “Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union,” issued by the Government on 3 July (Cm 8897), and including the full impact assessments. Since you are not the signatories of the impact assessments, you may not be aware that the Command Paper has no Table of Contents, that the impact assessments are unindexed, and that they do not follow the order of the lists on pages 6 to 8 (which is the order you have adopted in the annex to your letter). To receive such a poor quality paper is disappointing, and is singularly unhelpful to members of the Select Committee and its Sub-Committees, and indeed to all members of the House.

Your letter lists the five measures no longer in the original 35 which appeared last year in Cm 8671, and the five measures which were not in Cm 8671 but are now in Cm 8897. These lists are not the same as those in the Commission Staff Working Document, and the comparison in the Explanatory Memorandum is therefore different. Since the forthcoming debates in both Houses will be focusing on the measures which the United Kingdom will be opting back into, it is important to know that the Government’s list is the same as the Commission’s. We would be glad to have your immediate reply on this point.

You say in your letter that you have reached an “in principle” deal with the Commission on the non-Schengen measures, but that some Member States continue to have “technical reservations”. It is important for us to know, as far in advance of the debate as possible, whether any of these “technical reservations” are likely to result in changes to the list, or in changes to the classification of measures as Schengen or non-Schengen.

You do not refer in your letter to the Data Protection Framework Decision (2008/977/JHA) which has been re-classified by the Commission as a Schengen measure. It seems from the Explanatory Memorandum, and Cm 8897, that the Government agrees with this. We would be grateful for your confirmation that you do not anticipate that the need for Council approval will cause any difficulties for the United Kingdom opting back in.

We clear the Commission Staff Working Document from scrutiny. If there are any further changes between now and 1 December 2014 in the agreed lists of measures, we would be grateful to be informed of them as soon as they take place.

9 July 2014

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office and Shailesh Vara MP, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Thank you for your letter of 9 July regarding the UK’s 2014 block opt-out decision. The Home Secretary and Justice Secretary have asked us to reply on their behalf.

We note that your Committee has cleared Commission Staff Working Document 9883/14 from scrutiny. However, we felt that it may be helpful to address a number of points in your letter to assist with future Parliamentary scrutiny of this complex matter.

The Lisbon Treaty sets out that all former Third Pillar measures will cease to apply to the UK on 1 December except where the United Kingdom decides to rejoin, or where an amendment to a measure has removed it from the scope of the opt-out and submitted the amended measure to the full powers of the Commission and Court of Justice of the European Union (CJEU) earlier. A full updated list of measures that the Government considers to be subject to the opt-out is included at Annex A [not printed] to this letter. This updated list will also be made available on the Government’s website. This list includes information on the measures that have been amended or replaced by post-Lisbon measures and indicates whether the Government has opted into these under the UK’s post-Lisbon opt-in arrangements. This list may be subject to further changes ahead of 1 December 2014 and, as request, if further changes do occur, we will ensure that Parliament is fully informed of these.

To assist with your scrutiny of this matter, details of those measures that have been added or removed from the Government’s list of measures subject to the opt-out, last published in September 2013, can be found below.
MEASURES THAT HAVE BEEN ADDED TO THE GOVERNMENT’S LIST OF MEASURES SUBJECT TO THE OPT-OUT PUBLISHED IN SEPTEMBER 2013

— Council Act of 10 March 1995, adopted on the basis of Article K.3 of the Treaty on the EU, drawing up the convention on simplified extradition procedures between the Member States of the European Union (number 1 on the Commission list, added at number 138 to the Government’s list)

— Council Act of 27 September 1996 drawing up the Convention relating to extradition between the Member States of the European Union (number 4 on the Commission list, added at number 139 to the Government’s list)

— Council Decision 2006/697/EC of 27 June 2006 on the signing of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (Number 65 on the Commission’s list, added at number 140 to the Government’s list)

Further to discussions in the Friends of the Presidency Working Group, the Government agrees that the above measures are part of the relevant third pillar acquis. The 1995 and 1996 Extradition Conventions apply between Member States and Norway and Iceland as a result of Council Decision 2003/169/JHA (included at number 48 on the Commission’s preliminary list and on the Government’s list at number 134). Both will be replaced by the 2006 Agreement between the EU, Iceland and Norway on the surrender procedure between the EU, Iceland and Norway once that agreement comes into force. This is expected before 1 December 2014. Council Decision 2006/697/EC relates to the signature of this 2006 Agreement. The Government has opted-in to the subsequent proposal for the conclusion of that agreement which remains binding on the UK.

— Council Decision 2009/820/CFSP of 23 October 2009 on the conclusion, on behalf of the European Union, of the Agreement on extradition between the European Union and the United States of America and the Agreement on mutual legal assistance between the European Union and the United States of America (Number 93 on the Commission’s list, added at number 101 to the Government’s list)

The Government’s list of September 2013 included the international agreement to which this conclusion Decision relates to. Further to discussions in the Friends of the Presidency Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States and it has been added to the Government’s list.

— Council Act of 29 November 1996 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities’ financial interests (number 11 on the Commission list, added at number 137 to the Government’s list)

This measure is a Protocol to the PIF Convention (number 8 on the Government’s list). The PIF Convention will be replaced by the Directive on the fight against fraud to the Union’s financial interests by means of criminal law (PIF) COM(2012)363, once adopted. Further to discussions in the Friends of the Presidency Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States and it has been added to the Government’s list.

— Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (number 134 on the Commission list, added at number 141 to the Government’s list)

The UK is prevented from participating in the VIS by virtue of the ECJ ruling in Case C-482/08 UK v Council. Further to discussions in the Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States and it has been added to the Government’s list.
Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex (97) decl. 13 rev 2) (added at number 142 to the Government’s list)

Further to discussions in the Friends of the Presidency Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States. However, the Government notes that this has been superseded by point 5.5 (adding a flag) of the SIRENE Manual in which the UK participates (Commission Decision 2008/334/JHA) and by point 6 of Annex VII of the Schengen Border Code (Regulation (EC) No 652/2006) which the UK does not participate in.

MEASURES REMOVED FROM THE GOVERNMENT’S LIST OF MEASURES SUBJECT TO THE OPT-OUT PUBLISHED IN SEPTEMBER 2013

Accession Agreements: Italy, Spain, Portugal, Greece, Austria, Denmark, Finland, Sweden.

The pre-Amsterdam accession agreements currently referred to in Article 1(b) of Decision 2000/365/EC were based on Article 140 of the Schengen Convention (which stated that any Member State may become a party to the Convention). Article 140 is no longer operative and was not given a third pillar legal base in Council Decision 1999/435/EC. Further to discussions in the Friends of the Presidency Working Group, the Government considers the better view is that these provisions are outside the scope of the opt-out. In any event, the Government considers that the UK’s participation in the Schengen acquis must be taken together with other Member States and the Associated EFTA States.

The Government further notes that the Articles and declarations of the relevant accession protocols included in Council Decision 2000/365/EC refer to various provisions which have been superseded. In relation to the Articles which refer to the Nordic Passport Union, the Government notes that these were given a Schengen Protocol legal base in Council Decision 1999/436/EC, and so are also outside the scope of the UK’s opt-out. In addition, these clauses continue to apply to the relevant Nordic countries and the UK’s position cannot affect that given that it is not part of the Nordic Passport Union.

You ask whether the Commission’s classification of the Data Protection Framework Decision as a Schengen measure will cause difficulties for the UK’s participation in the measure. The Government recognises and accepts the Commission’s classification of the measure, although we believe there are respectable arguments that this could also be classified as non-Schengen. Nevertheless, we do not anticipate any difficulties as a result of this classification and this matter is not in dispute.

Your letter refers to Command Paper 8897 Decision pursuant to Article 10(5) of Protocol 36 to the Treaty on the Functioning of the European Union. This Command Paper includes full and detailed Impact Assessments on each of the 35 measures that the UK is proposing to rejoin to aid consideration of the matter by the House, meeting the Government’s commitment to do so. As such we regret that your Committee is unhappy with the quality of the paper.

We hope that the General Debate on 17 July addressed your questions with regards to negotiations. Discussions continue with the aim of lifting the technical reservations that remain. We do not anticipate further changes to the list, or changes to the classifications of the measures, as a result of these discussions and we remain confident that deal can be concluded ahead of 1 December.

We look forward to engaging further with you on this important matter.

5 August 2014

Letter from the Chairman to Karen Bradley MP and Shailesh Vara MP

Thank you for your letter of 5 August 2014, written on behalf of the Home Secretary and the Lord Chancellor and Secretary of State for Justice, in reply to my letter of 9 July 2014 on the United Kingdom block opt-out and the measures which the United Kingdom proposes to opt back into. Your letter was considered by the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union at a meeting on 10 September 2014.

We are grateful for the list of measures which have been added to or removed from the earlier list of measures subject to the Government’s block opt-out, and in each case the reasons for the change. We are also glad for your confirmation that the re-classification of the Data Protection Framework Decision as a Schengen measure will not cause any difficulties.
We are grateful too for Annex A [not printed], the full updated list of measures subject to the block opt-out. It is useful to have information about post-Lisbon developments. It would have been more useful still if it had included, for each measure the Government might have opted back into, a statement whether or not the Government intended to do so. An asterisk would have sufficed. Since this list is to be made available on the Government’s website, you may like to consider making this change.

You say you regret that the Committee “is unhappy with the quality of the paper”. Cm 8897 does, as you say, contain impact assessments on each of the 35 measures the UK is proposing to rejoin. We have no doubt that these are “full and detailed”, but they are very difficult to access. To give an example: if you are interested in Item 59 of Annex A, Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, and wonder whether the Government intends to opt back in, you will not find this in Annex A. You will find it in the list on page 7 of the Command paper, in no discernible order, between a 2002 measure on Joint Investigation Teams and the 1997 Naples II Convention on Customs cooperation. But if you should then wish to read the impact assessment, since there is no Index or Table of Contents, you have to look through the Command paper until you find it on page 183, between two measures on data protection.

In my letter of 9 July we pointed out that the letter from the Secretaries of State of 3 July listed the five measures no longer in the original 35 which appeared last year in Cm 8671, and the five measures which were not in Cm 8671 but are now in Cm 8897. We explained that neither of these lists is the same as those in the Commission Staff Working Document (9883/14), and we sought your confirmation that the Government’s list is the same as the Commission’s.

In your letter you state:

Discussions continue with the aim of lifting the technical reservations that remain. We do not anticipate further changes to the list, or changes to the classifications of the measures, as a result of these discussions and we remain confident that [a] deal can be concluded ahead of 1 December.

I should be grateful for your confirmation that the list to which you “do not anticipate further changes” is in fact the list in Cm 8897, and is the list agreed by the Commission; or if not, what the differences are.

I look forward to hearing from you of any significant developments in the negotiations leading up to 1 December.

10 September 2014

Letter from Karen Bradley MP and Shailesh Vara MP to the Chairman

Thank you for your letter of 10 September regarding the UK’s 2014 block opt-out decision.

We are pleased that your Committee found the updated list of measures subject to the opt-out useful and agree that using an asterisk to signify the measures the UK is seeking to rejoin in the national interest would be a helpful addition. We have asked our officials to make this change to the list and we expect that this will be available on the Government’s website shortly. The overall list may continue to change up until 1 December but we will ensure that it is updated regularly so that the Government’s position is clear to your Committee and to Parliament. However, we would like to reiterate our explanation in the original Explanatory Memorandum that the Commission Staff Working Document (9883/14) has indicative value only and, in the event of a dispute, only the Court of Justice of the European Union (ECJ) will be able to determine whether a measure is part of the relevant former third pillar acquis.

We also note your Committee’s view on the quality of Command Paper 8897 and the Impact Assessments it contains. We will use this feedback in future publications and would like to apologise for any difficulties that this may have caused your Committee.

We would like to confirm that the 29 non-Schengen measures contained on pages 6 and 7 of Command Paper 8897 were agreed during negotiations with the European Commission earlier this year. Negotiations with the Commission have now concluded and we do not expect further changes to occur to this list. As the Home Secretary stated to Parliament on 10 July, we have also made good progress on the six Schengen measures, contained on pages 7 and 8 of Command Paper 8897, and the outline of a deal is clear. This matter was discussed at the General Affairs Council on 24 June but a small number of Member States expressed technical reservations. Two Member States have now
lifted those technical reservations and we are now very close to reaching overall political agreement. We will of course update Parliament, as we have throughout this process, when agreement has been reached.

We look forward to engaging further with you on this important matter.

30 October 2014

Letter from the Chairman to Karen Bradley MP (13683/14, 13680/14)

Thank you for your two Explanatory Memoranda of 3 November 2014 which were considered by the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union at a meeting on 26 November 2014.

These two draft Decisions are of course of critical importance to the Government’s application to opt back in to the 35 measures listed in the Annex to the first Decision. Our Clerk was informed by your officials last night that the Decisions are to be adopted tomorrow, 27 November, and published in the OJ the following day. You will of course be aware, not least from the amendment I tabled to the Government motion on 17 November, of the views not just of this Committee but of all the members who spoke in that debate about the Government’s handling of Parliamentary involvement in the whole saga of the block opt-out and subsequent opt-in. Nevertheless, we support the adoption of these two Decisions, and have decided to clear them from scrutiny.

There remain the two Decisions which will actually authorise the Government’s opt in to the 35 measures: a Council Decision in relation to the 6 Schengen measures, and a Commission Decision in relation to the remaining 29 non-Schengen measures. Until yesterday we had not heard from Ministers even about their existence, but were left to deduce this from the Treaties. Yesterday afternoon the Home Secretary gave me a hard copy of the draft Council Decision. It was not however accompanied by an EM. Although the Sub-Committee have seen it for information, they have not seen it for scrutiny, let alone for clearance from scrutiny.

The draft Council Decision is dated 19 November 2014. Paragraph 1.5 of the Cabinet Office Guidance on Scrutiny requires documents to be deposited in Parliament within 48 hours of circulation by the Council. We are therefore astonished that the draft Decision has not been deposited, and request that it be deposited immediately. Ministerial agreement to the draft Decision at tomorrow’s Transport Council will then be treated as a scrutiny override.

We have not seen any text of the draft Commission Decision. We accept that, since Member States are not involved in its adoption, it is not for formal deposit or scrutiny. We nevertheless feel that it would have been appropriate to let the Committee see it in draft, especially in view of the repeated assurances we have received from Ministers about the importance they attach to the Parliamentary scrutiny process.

As in the case of any other scrutiny override, Ministers will have to explain to the House why the Committee was never even given the opportunity to scrutinise the draft Council Decision, let alone clear it from scrutiny. The Cabinet Office guidance provides: “Subject to any wishes expressed by the Committee, statements may be either written or oral but are usually written.” On this occasion, we would like an oral statement to the House as soon as possible after these Decisions are adopted on 1 December.

26 November 2014

Letter from Karen Bradley MP to the Chairman

Thank you for your letter of 26 November and your ongoing work on this important matter.

I am very pleased to be able to inform you that the processes required to confirm the UK’s participation the 35 police and criminal measures were concluded on 1 December without any issues.

I was extremely grateful that your Committee cleared the Transitional and Financial Consequences Decisions from scrutiny given these two Decisions were critical finalising the UK’s participation in the 35 measures. Both Decisions were approved by other Member States and adopted at the Transport Telecommunications and Energy (TTE) Council on 27 November. The UK voted in favour of the Financial Consequences Decision, but did not have a vote on the Transitional Decision.

As you point out, a Council and a Commission Decision were also required to give effect to the UK’s application to rejoin the package of measures approved by Parliament, and agreed with all other
Member States. The Government has been transparent about the processes required to formally rejoin measures and set out details of these in Command Paper 8671: Decision pursuant to Article 10 of Protocol 36 to the Treaty on the Functioning of the European Union.

The Government voted, via the written procedure, to approve the adoption of the Schengen Council Decision in order to ensure that it entered into force on 1 December without an operational gap occurring. This followed extensive Parliamentary consideration of this matter in both Houses of Parliament. Whilst I apologise for the fact that this involved a breach of the Scrutiny Reserve Resolution, this technical Decision did no more than approve the UK’s participation in the Schengen measures that had already been endorsed by Parliament. Given unanimity was required for the measure to pass, the Government had to vote to approve this Decision to ensure that the package of measures could come into operation as soon as possible, to avoid a legal vacuum which could have arisen, to allow negotiations to conclude, and in order to conclude an advantageous package deal with other Member States.

I accept that this document was not deposited with Parliament within the normal timescales, and for that oversight I apologise on behalf of the Government. This document has now been deposited and the Government has provided an Explanatory Memoranda to accompany the Decision.

The Government did not receive a copy, either finalised or in draft form, of the Commission Decision approving the UK’s application to rejoin the 29 non-Schengen measures before it was adopted on 1 December and as a result we were unable to provide a copy to Parliament. As expected this Decision contained no more than a short provision approving the UK’s application to rejoin the 29 non-Schengen measures already agreed by both Houses of Parliament and full details of all of these measures are included in Command Paper 8897: Decision pursuant to Article 10(5) of Protocol 36 to the Treaty on the Functioning of the European Union. As you acknowledge in your letter, there is no requirement for this document to undergo formal scrutiny, or for it to be deposited in Parliament. Nevertheless, the Government will provide it alongside an Explanatory Memoranda for your Committee’s consideration.

Finally, the Government will arrange for a Written Statement to be made to the House on this matter. Whilst I note your request for an Oral Statement the Government believes that this is not justified given the extensive hours already debated to scrutiny of the 2014 Decision in both Houses.

4 December 2014

UPDATE ON NEGOTIATIONS FOLLOWING THE JUSTICE AND HOME AFFAIRS COUNCIL MEETING OF THE 9-10 OCTOBER (UNNUMBERED)

Letter from Simon Hughes MP, Minister of State, Ministry of Justice, to the Chairman

I am writing to provide you with an update on the proposed EU General Data Protection Regulation (GDPR) following the recent JHA Council on the 9-10 October in Brussels. At this meeting the current Italian Presidency of the Council secured a “partial general approach” (PGA) on Chapter IV of the GDPR dealing with provisions relating to obligations on data controllers. As with the previous PGA on Chapter V (international transfers), agreed under the Greek Presidency in June this year, a number of caveats were included as part of this agreement. The inclusion of these caveats was to reassure Member States that any partial agreement would be subject to further consideration to ensure overall coherence with the Regulation because of the cross-cutting nature of many of the issues involved. In particular, these caveats set out that:

— i. Such partial general approach is to be reached on the understanding that nothing is agreed until everything is agreed and does not exclude future changes to be made to the text of Chapter V to ensure the overall coherence of the Regulation.

— ii. Such partial general approach is without prejudice to horizontal questions, such as the legal nature of the instrument or provisions on delegated acts.

— iii. Such partial general approach does not mandate the Presidency to engage in informal trilogues with the European Parliament on the text."

As you will recall, when the Greek Presidency secured a PGA on Chapter V of the GDPR, the Government objected in principle to the use of PGA. The reasoning for this objection was that PGA
has no legal status in the EU treaties and, given the many caveats within it which would allow issues to be revisited, it is potentially misleading to present it as representing an agreement.

Furthermore, even if the caveats are viewed favourably as enabling the UK to revisit remaining concerns at a later date, the Government continues to believe that there are risks attached to agreeing to a series of partial general approaches on this basis. These include the risk that for all that they are not legally binding a PGA carries the perception of agreement at political level with the result that Member States may rely on that to preserve the Presidency’s text. Therefore it is likely that the adoption of a PGA means that it will be difficult in practical terms to revisit points of substance at a later date, regardless of the conditions set out by the Presidency. The UK therefore objected to the adoption of a PGA on Chapter IV.

Nonetheless, despite this objection to the use of PGAs, the Government is broadly supportive of the substance of the text of Chapter IV. Chapter IV is a key element of the overall package on the proposed GDPR in that it sets out the data protection obligations on data controllers when processing personal data. You will recall that the UK had previously raised significant concerns about the potential cost burdens on business of the original European Commission proposals, and in particular that the focus of the requirements was on prescription and process rather than delivering good data protection outcomes. To this end, the Ministry of Justice carried out an impact assessment which indicated (on the basis of the available information at the time) that the commission proposals would result in a significant net cost to the UK economy. In parallel, we also consulted with a broad range of stakeholders who reflected similar concerns about the possible cost burdens on business and the emphasis on a one-size fit all model that makes no distinction between the degree of risk of the particular processing operation. In earlier negotiations in Brussels on this topic, the majority of Member States called for the introduction of a more proportionate, risk-based approach to obligations on controllers.

In the first part of 2013, in response to the demands of the Council, the then Irish Presidency introduced a number of changes to the text of Chapter IV which sought to calibrate obligations on data controllers with the risk of harm to data subjects of the processing activity. For example, the obligation to notify a data protection authority of a data breach would only be required where it was likely to severely affect the rights and freedoms of data subjects where previously it was a blanket obligation for all breaches. In addition, they removed some of the mandatory requirements from the text, such as the requirement to designate a data protection officer.

On the basis of these changes, the Irish Presidency initially had hoped to secure a PGA at the June 2013 Justice and Home Affairs Council. However, despite the significant progress that had been made in delivering a more proportionate text, many delegations, including the UK, resisted this approach as it was considered that the risk-based approach should be further strengthened to strike the right balance between privacy rights and creating the right conditions for innovation and economic growth.

The current Italian Presidency has taken the Irish proposals further as part of recent discussions in Council. In particular, they have included risk triggers for certain obligations within the text so that data controllers only have to comply with an obligation where the processing activity is likely to present a high degree of risk. This approach has been applied to obligations, such as breach notifications, maintaining documentation records and impact assessments. In addition, the Presidency has sought to exempt small and medium-sized enterprises from certain obligations, unless the processing operation is likely to present a high degree of risk.

Nonetheless, there were a couple of areas which I should draw to your attention where we think the text could still be improved. The first of these is in the definition in recital 60b of “high risk” as “a particular risk” which takes no account of the seriousness of the risk of the processing. The UK will continue to argue that “particular risk” could be interpreted as capturing both high and low risk and that we therefore consider “serious” or “substantial” risk as a better descriptor. We had also hoped to ensure that the requirement to produce a Data Protection Impact Assessment (DPIA) should be limited only to cases where there is an identified or inherent high risk to the rights of data subjects. The Presidency approach, which was adopted in the July PGA, differs: it assumes that some types of processing should automatically and always be subject to DPIAs, irrespective of the actual risk posed in particular circumstances. While there are certain cases where we recognise that an impact assessment should be mandatory because the nature of the processing is inherently highly sensitive (e.g. large scale CCTV monitoring), there are other areas suggested by the Presidency, such as profiling including for credit reference purposes, which do not automatically involve high risk.

Notwithstanding the above, we do believe that overall there have been significant improvements, not least the introduction of a more risk-based approach and removal of some of the mandatory
obligations which we considered would impose disproportionate costs on business. We anticipate that these changes will result in a reduction in the cost of implementing a number of the proposals. The net impacts of the text’s changes are currently unclear. We are in the process of updating our impact analysis of the costs and benefits of the proposed legislation to take account of these changes. Once we have a revised assessment, I will be happy to write again to the Committee to provide this update.

The Italian Presidency has indicated that, for December JHA Council, it intends to secure a further PGA on Chapter IX which deals with provisions in relation to freedom of expression and statistical, scientific and medical research. We have consulted widely with key stakeholders and practitioners on these provisions who have indicated that they are broadly supportive of the current position in the text. The working text, in the main part, is a continuation of the existing rules in this area and will not impose further barriers to processing for these purposes. Further discussions are planned in the coming weeks on the regulatory one-stop shop mechanism, but it is not clear at this stage, since there is still much to agree at working group level, that it will be possible for the Italian Presidency to put this measure forward for agreement in December.

The Government’s overarching position continues to be that we need to strike the right balance between the protection of personal data and creating the right conditions for innovation and economic growth. In this regard, we do not want to see legislation that imposes disproportionate burdens on business or is unworkable in practice. We will continue to work with other Member States to make sure that the text best reflects these concerns and that any obligations are both proportionate and achievable. I will write to the Committee again following the Justice and Home Affairs Council meeting on the 4-5 December to inform you of the outcome of that meeting and any early planning for the Latvian Presidency in the first part of 2015.

19 November 2014

UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (9943/14)

Letter from Mark Harper MP, Minister of State for Disabled People, Department for Work and Pensions

As the SWD makes statements about what is within (and without) EU competence in terms of participation in the CRPD the House of Commons Scrutiny Committee Secretariat asked for the EM to set out the Government’s view on whether the EU exercise of competence has been in keeping with the proper division of competences between the EU and MS.

The Government believes that the Commission’s analysis of competence as set out in this report is, at the high level referenced, in keeping with the proper division of competences between the EU and MS.

As set out in the EM, there are, however, areas where the report lacks clarity and the Commission needs to provide more detailed explanations of why it is claiming the competency levels that it does.

I will write to the Commission to raise these issues and remind them of the importance of clearly presenting competence levels. I will keep you informed of their response and if any further action is required.

3 September 2014

WORLD INTELLECTUAL PROPERTY ORGANISATION TREATY TO FACILITATE ACCESS TO PUBLISHED WORKS FOR PERSONS WHO ARE BLIND, VISUALLY IMPAIRED, OR OTHERWISE PRINT DISABLED (5076/14)

Letter from the Chairman to Baroness Neville-Rolfe, Minister for Intellectual Property, Parliamentary Under-Secretary-of-State, Business, Innovation and Skills

Thank you for the letter of 3 June 2014, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 30 July.

When we last wrote, we asked you to explain:
— Why the proposal was expedited through the Council despite fundamental disagreement about whether the Treaty was a mixed agreement;

— Why, given that nine Member States in all disagreed with the Commission’s assessment that the EU had exclusive competence over the Treaty, only the UK voted against the Decision;

— Whether the exclusive EU competence which arises from the common commercial policy legal base of the Decision prevents the Treaty from being a mixed agreement as a matter of EU law, with the consequence that it cannot be ratified by Member States in their own right; and

— What the likelihood is of the disagreement being resolved or instead litigated before the ECJ.

Your letter answers the first two of our questions, for which we are grateful.

It appears the Government has yet to come to a final view on the second two questions. It is, obviously, essential for the legal status of the Treaty in the UK to be determined. We would therefore be grateful if you could write to us in due course with answers to these questions.

We look forward to considering your response in due course.

In the meantime, the document remains under scrutiny.

30 July 2014