The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 9 May 2013-31 August 2013.

**JUSTICE, INSTITUTIONS AND CONSUMER PROTECTION**

**(SUB-COMMITTEE E)**

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

In my letter of 11 December 2012 I explained that the majority of Member States (including the UK) had refused to accept the European Commission’s claims to exclusive external competence in this area. Given the resulting impasse in the negotiation of these proposals I said it was likely that the Commission would refer this matter to the Court of Justice of the European Union.

I can now confirm that the Commission lodged a request for an Opinion on 21 June. This has the reference Opinion 1/13. I also confirm that the UK intends to submit written observations.

I will write to you again when there have been further developments.

18 July 2013

ACTIONS FOR DAMAGES UNDER NATIONAL LAW FOR INFRINGEMENTS OF THE COMPETITION LAW PROVISIONS (11381/13)

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

Thank you for your helpful Explanatory Memorandum of 25 June 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July. We decided to retain this matter under scrutiny.

Like you, we do not consider that this proposal gives rise to any subsidiarity concerns. We also share your support, in principle, for this proposal.

We should be grateful if you would keep us informed of developments in the negotiation of this proposal in due course.

25 July 2013

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

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

Thank you for your letter of 8 May 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain this matter under scrutiny pending positive resolutions of both Houses of Parliament.

We note your explanation that the decision that will be put to the Council will be whether to appoint three additional Advocates General, and that the financial aspect of these appointments will be discussed during the annual budgetary framework next year.

We do not expect a reply to this letter.

22 May 2013

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

Following positive resolutions of both Houses of Parliament earlier this week, the Sub-Committee has decided to clear this proposal from scrutiny.
We do not expect a reply to this letter.

20 June 2013

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

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

Thank you for your Explanatory Memorandum of 17 April 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain the proposals under scrutiny.

We noted that you raised question marks over the subsidiarity of Articles 41 and 52 of the proposed Directive and Article 123c of the proposed Regulation. We do not, however, consider that these are sufficiently serious to merit the Committee recommending to the House that a subsidiarity reasoned opinion be issued. We should be grateful, however, for an update as negotiations progress on these matters.

We agree that the provisions enabling the Commission to adopt subordinate legislation need further consideration. We note that you consider that some powers may be outside the delegated legislation procedure found in Article 290 TFEU, and we should be grateful if you would indicate more specifically which they are. You highlight the power of the Commission to fix fees as a matter of particular concern, however, the existing Trade Mark Regulation already provides for the Commission to fix fees using the implementing legislation procedure of Article 291 TFEU. Indeed, some of the other powers given to the Commission appear to be matters of implementation and therefore are more suitable for the implementing legislation procedure rather than the delegated legislation procedure. We should be grateful if you could inform us of your preferred route for fixing fees and what, if any, subordinate legislation powers you consider should be adopted by the procedure prescribed by Article 291 TFEU.

We support your concern that the surplus of the European Trade Mark and Designs Agency should be passed to the EU budget when it has been accrued from fees to businesses for the service of registration or renewal of a trade mark. It would seem fairer and more supportive to business to adjust these fees downwards.

We note that you are consulting stakeholders and should be grateful if you would inform us in due course of the issues they raise with the proposals, particularly any matters on which clarification is required.

We should be grateful for a response to this letter when there is progress on negotiations or if you wish to expand on any of the matters referred to in this letter.

22 May 2013

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

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

Thank you for your letter dated 24 April 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May 2013.

Your letter makes clear the Government’s intention to maintain its view that the UK’s opt-in applies to this proposed Directive. This stance raises a number of difficulties which neither your letter nor Written Statement to Parliament address to the Committee’s satisfaction.

The Government maintain their view that the opt-in applies to this proposal despite the fact that you failed to convince the other 26 Member States that a Title V legal basis was necessary. Furthermore, the text agreed by the Council in April makes no reference in its recitals to the fact that as far as the UK is concerned; the opt-in applies, as would ordinarily be the case. This omission could in our view raise transparency issues regarding the agreed text. We are concerned that anyone who reads the text will inevitably deduce that this Directive applies to the UK as a piece of legislation adopted in the usual way without being subject to the UK’s opt-in. If the UK purports to opt in, it may, of course,
make no practical difference to the operation of the proposed legislation but given increasing sensitivities regarding legal basis and the operation of the UK’s opt-in the situation is uncomfortable.

The proposed Council Decision regarding the operation of Protocol 31 of the European Economic Area Agreement (Doc 6912/13) was recently scrutinised by Sub-Committee B, which assessed the effects on the Internal Market, Infrastructure and Employment. In that instance, your Explanatory Memorandum stated that the Government “decided not to assert the opt-in post adoption as any decision to opt-in would have been subject to approval by the Commission, which would not accept that the opt-in applies in the absence of a [Title V] legal base”. In this case, in contrast to your approach to the ADR Directive, the Government abandoned their position that the opt-in applies and accepted that the UK is bound by the Decision.

We accept that in relation to the ADR Directive there is no practical impact on the Directive’s operation if the UK participates in this matter, because either it has opted in (as you assert) or, as appears to be the position of the institutions and the other Member States, the UK’s opt-in is not engaged. Nevertheless, we are concerned that a piece of EU legislation which in its text gives no indication that the UK’s opt-in applies may stand as an unhelpful precedent in any future case which the Government may wish to litigate. We are also concerned at the apparent lack of consistency in the Government’s approach.

We look forward to considering your reply by 7 June.

22 May 2013

Letter from Jo Swinson MP to the Chairman

Thank you for your letter dated 22 May 2013 regarding the Government’s application of the Opt-in Protocol in which you note a number of perceived difficulties arising from the UK’s approach to this proposal. I will attempt to address these in turn below.

Firstly, you raise concerns about there being no reference to the UK’s decision to opt-in, in the recitals to the ADR Directive. I should like to clarify that while this would ordinarily be the case when there is agreement that the opt-in applies, the same does not apply in instances such as this. As the EU institutions do not share our view that the Opt-in Protocol applies in the absence of a Title V legal base being specifically cited, we cannot expect the legislation to include a reference to our decision to opt in. Nevertheless as the Government’s view is that the opt-in applies, we have sent an opt in letter to the Council. Further, to ensure a consistency of approach, it has long been Government policy to lay a Minute Statement asserting our right to opt-in, which we have done prior to the Council vote on this legislation. These steps formally record our decision to opt-in.

Your letter also notes that you consider the Government’s approach in this case to be in contrast with that taken in relation to the recent Council Decision regarding the operation of Protocol 31 of the European Economic Area (EEA) Agreement. I should point out, however, that the circumstances in that case differ from the ADR Directive in so far as the opt-in decision for Protocol 31 was being made post adoption. You will be aware that the Treaty provisions concerning post-adoption opt-ins differ from those made within the usual three month window following publication of a proposal, as they require the Commission to acknowledge the UK’s notification that it wishes to opt-in and confirm our participation. As the Commission disagreed with us that the Protocol applied in that case, the UK did not assert the opt-in on that occasion. The circumstances surrounding Protocol 31 therefore present a quite separate scenario to our decision in relation to the ADR Directive.

I can assure you that the Government will continue to give close attention to any provisions which could trigger the Opt-in Protocol and take steps to ensure the UK’s position is protected.

4 June 2013

Letter from the Chairman to Jo Swinson MP

Thank you for your letter dated 4 June 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 June 2013. We are grateful for your answers to our questions regarding the ramifications of the Government’s decision that the UK’s opt-in applies to this proposal.

We do not expect a reply to this letter.

20 June 2013
Thank you for your letter of 29 November 2012, addressed to my predecessor Lord Marland. As requested I am writing to update the Committee on the progress of the CRM dossier.

The Council Working Group has completed its initial line by line discussions of the draft Directive and has started to consider the Irish Presidency’s compromise proposals, published on 5 April (2012/0180(COD) (Annex A)) [not printed]. The rapporteur for the European Parliament’s Legal Affairs Committee (JURI), Mme Gallo, published a working document on the dossier on 4 March 2013. There will be an exchange of views on her draft report at the next JURI meeting on 29/30 May 2013. We understand that the dossier will be presented as an information point at the Competitiveness Council meeting on 30 May 2013, which Lord Green will attend. The Commission will maintain a reserve on the compromise text during discussions. Timetabling has yet to be confirmed but the European Parliament is pushing for swift negotiation and agreement before the end of its current term. The indicative date for 1st reading is 19 November 2013.

GENERAL PROVISIONS (ARTICLES 1 – 3)
SCOPE

The proposed definition in Article 3(a) of a ‘collecting society’ - based on the collective management of rights on behalf of members and a body that is owned or controlled by its members -has generated considerable debate. The definition, which reflects the classic structure of a collective management organisation, brings into scope most, but not all collecting societies.

There is growing support for modification to the definition so that it captures the realities of the way in which the market works. For example, some member states have indicated that many commercial organisations or agents carry out similar activities in collective rights management in competition with collecting societies. The Commission, the Presidency and the European Parliament are looking at solutions that would keep the level playing field intact. The UK welcomes this approach.

REPRESENTATION OF RIGHT HOLDERS, MEMBERSHIP AND ORGANISATION OF COLLECTIVE MANAGEMENT ORGANISATIONS (ARTICLES 4 – 9)

The Directive includes specific proposals for rules governing the relationship between collecting societies and rights holders. These include measures designed to ensure that rights holders can authorise the collective management organisation of their choice to manage rights and to withdraw such authorisation partially or completely (Article 5). This is essentially a codification of CJEU principles and jurisprudence.

The proposals that collecting societies should act in the best interests both of their right holders and their members, with fair and balanced representation of members in the monitoring of the collective management organisation’s activities and decision making -reflect the general principles required by the UK Government’s minimum standards for collecting societies. We anticipate the more detailed proposals to be without prejudice to, and not interfere with, existing legal forms.

MANAGEMENT OF RIGHTS REVENUE (ARTICLES 10 – 12)

The UK supports the principle of having a framework for the collection and use of rights revenue and investments pending distribution (Article 10), which takes into account the interests of rights holders.

The proposals around the distribution of the amounts due to right holders (Article 12) merit further consideration. Distribution is one of the most important issues for the protection of rights holders’ interests. The suggestion that funds should be distributed on at least an annual basis – or even more frequently if the rapporteur’s suggested six months is taken on board - could be an improvement for EU right holders in terms of recouping monies from collecting societies in the EU that distribute funds less frequently.

The current proposal is that, after three years, decisions about what happens to undistributed funds can be made by the general assembly (broadly speaking the membership) of the collecting society. This means that it might be possible for the funds to be retained by the collecting society, possibly for distribution to its members. This approach differs from the UK’s approach on undistributed funds in
other policy areas, where we have steered away from the retention of funds by the collecting society being the default option. Ideally there would be a range of options about how to handle undistributed funds, in accordance with national rules.

**RELATIONS WITH USERS (ARTICLE 15)**

The proposals for objective, clear and transparent licensing criteria broadly align with the Government’s minimum standards for collecting societies. This requirement, in the UK’s case, is without prejudice to the collecting society’s freedom to propose differential tariffs to commercial users. Should there be a dispute between commercial licensees and collecting societies about the rates, it is open to the licensee to refer the case to the Copyright Tribunal for adjudication.

The proposed amendment to extend the provision of information obligations to users is interesting. This would make more robust provision for collecting societies to receive the information that they need to comply with the Directive. The UK is exploring in discussion whether it would be possible to manage the flow of information between rights holders and collecting societies through contractual obligations alone.

**TITLE III – MULTI-TERRITORIAL LICENSING OF ONLINE RIGHTS IN MUSICAL WORKS BY COLLECTING SOCIETIES**

Title III of the Directive establishes the conditions that an authors’ collecting society must respect when providing multi-territorial licensing services for online rights in musical works. These include requirements for the efficient and transparent processing of data. There are also specific safeguards to ensure that the repertoires of all societies can be licensed across borders.

There is some concern on behalf of smaller collecting societies and/or smaller member states that the effect of Title III could be to create a smaller number of licensing hubs – which could incentivise the aggregation of rights and potentially swallow up the smaller repertoires. The rapporteur has highlighted the need to strike a balance between the different objectives of the Directive, in particular that the obligation in Article 29 to represent another collecting society for multi-territorial licensing should take into account the need to maintain cultural diversity.

Insofar as the proposals should result in improvements in databases, invoicing procedures and the like, they should generate efficiencies which could help reduce barriers to entry for business. Only those societies with systems and data that are capable of processing licences quickly and efficiently will be permitted to license these rights. These societies will be obliged to represent other collecting societies’ repertoires if requested (if already offering or granting licenses of the same type).

The proposed derogation for online music rights required for radio and television and broadcasting programmes (Article 33) is of interest insofar as the UK would welcome a provision that is technology neutral in its effect. Given that the line between broadcast and non-broadcast services has become increasingly blurred - as highlighted in the Commission’s recent Green Paper on the online distribution of audio visual works – there is some discussion about whether the proposed derogation fully captures the actual and future scope of broadcast activities.

**BETTER REGULATION PRIORITIES**

A priority objective for the UK is to seek to reduce overall EU regulatory burdens. The Commission’s proposal to exempt micro-entities from specific requirements in relation to supervision (Article 8.3) and transparency (Article 20.5) is in line with its commitment (which is not unqualified) to include exemptions for micros/lighter treatment for SMEs in existing and new proposals (EC Report November 2011). The European Parliament is united in its opinion that exemptions are not appropriate in this case as the provisions relate to the exercising of rights - a view reflected in proposed amendments to remove both exemptions.

*10 May 2013*

**Letter from the Chairman to the Viscount Younger of Leckie**

Thank you for your letter of 10 May which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain the matter under scrutiny.

The Committee was grateful for the update in advance of the Competitiveness Council of 30 May.

At this stage we confine ourselves to indicating some initial views on the matters you raise.
We agree that all organisations acting as Collecting Societies should, in principle, be covered by the proposal.

We are concerned that permitting national rules to apply to the handling of undistributed funds may result in the retention of bad practice in other Member States and therefore disadvantage UK rights holders who may be entitled to undistributed funds.

We agree that in principle the proposal should be technologically neutral.

We favour, in principle, alleviating the burden on SMEs.

We do not expect a reply to this letter, but look forward to a further update in due course.

22 May 2013

Letter from the Viscount Younger of Leckie to the Chairman

Further to your letter of 22 May 2013, I am writing as requested to update the Committee on the progress of the CRM dossier.

There have been several developments since I last wrote to you: the dossier was presented as an information point at the Competitiveness Council in May; the Council Working Group completed its discussions of the Irish Presidency compromise text in June; in July the Presidency obtained an exploratory mandate from COREPER; and members of the European Parliament's Legal Affairs Committee (JURI) Committee gave the rapporteur, Marielle Gallo, a unanimous mandate to begin negotiations with the Council in the autumn.

This update covers the current Presidency compromise proposal and amendments adopted by JURI. There are clear synergies between the two, but they remain subject to debate in informal trilogue discussions between the Council, Commission and Parliament before publication of a final text. Nonetheless, there remains a strong political will to adopt the Directive before the end of the current Parliament in 2014.

SCOPE OF DIRECTIVE

There is general consensus that the term “collecting society” should be replaced by “collective management organisation” throughout the text. This is purely about terminology and has no substantive effect on scope.

There is considerable support for a new provision whereby independent management entities would fall within the scope of the Directive. The aim of this proposal is to address concerns (shared by the UK) over the potential lack of a level playing field were the Directive to apply only to member based, not for profit collective management organisations.

There is also a new provision that allows for (but does not oblige) Member States to apply the same or similar provisions to CMOs established outside the Union but operating within a Member State. Provided this remains a permissive provision, this is unlikely to be an issue.

DISTRIBUTION OF MONIES TO RIGHTSHOLDERS

We note the Committee’s concerns about undistributed funds. There has been some movement on this issue. The amendments adopted by the Legal Affairs Committee and the Presidency compromise proposal move towards the UK’s position that monies that cannot be distributed should not automatically revert to the CMO. The Legal Affairs Committee supported the rapporteur’s proposal that undistributed monies should be managed separately and in an independent way in order to fund cultural, social or educational services. While it would not be optimal to have only a single option, the proposal, if adopted, would mean that undistributed funds would not automatically be retained by the CMO. Moreover, such funds would have to be independently managed. There would be additional controls such as a diligent search for the rights holder and the ability of the missing rights holder to subsequently reclaim their money.

RELATIONS WITH USERS

Both the JURI Committee amendment and the Presidency compromise text include proposals which place obligations on users to comply with CMO deadlines and information requirements. The UK has
continued to lobby for further discussion around this proposal to ensure that the right balance is found between a reasonable request made by a CMO and the ability of the user to meet that request.

MULTI-TERRITORIAL LICENSING

In both the compromise amendment adopted by the JURI Committee and the revised Article 29 of the Presidency compromise proposal, a CMO which has agreed to manage the repertoire of another CMO for the purposes of multi-territorial must do so on the same terms as its own repertoire. This should help to alleviate concerns previously expressed by some smaller CMOs and/or smaller Member States about the potential for Title III to have a detrimental effect on smaller repertoires.

BETTER REGULATION PRIORITIES

The UK has raised the apparent dichotomy between the Commission’s proposal to exempt micro-entities from specific requirements in relation to supervision (Article 8.3) and transparency (Article 20.5) and its commitment (which is not unqualified) to include exemptions for micro/lighter treatment for SMEs in existing and new proposals (EC Report November 2011). The JURI Committee remains united in its opinion (as demonstrated by the recently adopted amendments) that exemptions would not be appropriate in this case as the provisions apply to the exercising of rights. No existing UK CMOs would be affected by the absence of the micro-exemption.

22 July 2013

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

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

These documents were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting on 17 July 2013.

We understand that MMF figures for these proposals have now been confirmed and an agreement has been reached on the final text. We would like to confirm that these two documents were cleared from scrutiny in May 2012.

18 July 2013

DRAFT DIRECTIVE ON RIGHT OF ACCESS TO A LAWYER (11497/11)

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

Thank you for your letter dated 25 April 2013. I note that the Justice, Institutions and Consumer Protection Sub-Committee has decided to retain the proposal under scrutiny. You asked for an update as to the progress of the negotiations with the European Parliament and whether in light of them, I would recommend that the UK opts in to the measure once it is adopted. As the negotiations are still ongoing, I am not yet in a position to say what the opt in recommendation will be. However, once the text is adopted I will ensure that the Scrutiny Committees are afforded sufficient time to scrutinise the Government’s decision.

You asked for a response to your letter by 9 May. I am grateful to your clerk for an extension so that now I can include an update on the latest developments on the negotiations. I enclose [not printed] a copy of the most recent version of the draft Directive, which the Institutions are currently considering as a basis for a First Reading Deal. Negotiations are still on-going, so this draft may be amended. The Presidency hopes to reach a First Reading Deal in early June.

The Sub-Committee remains concerned that the precise boundary of the proposal’s scope in relation to minor offences and deprivation of liberty continues to be difficult to draw. The Sub-Committee has previously sought to clarify this issue by drawing on the example of drink driving offences and the law of the breathalyser. In light of recent modifications to the text you have asked for further clarification with regard to this particular issue.
Although the term “minor offences” is not defined in the Directive, what are now recitals (9) and (10) provide examples of the sorts of offences envisaged. We would not, therefore, consider that drink driving offences are “minor” offences and we do not therefore consider that article 2(4) would have any application in respect of such offences. However, were there to be any doubt about this, article 2(4), as recently amended, is clear that for “minor” offences where deprivation of liberty can be imposed as a sanction or where the person is deprived of liberty in relation to that offence (i.e. he is taken into custody) then the Directive will apply. Given drink driving offences in the UK can attract a custodial sentence then section 2(4) would not carve these offences out of the scope of the Directive.

In respect of administering a breathalyser test, the latest version of the text sets out that the right to access a lawyer should apply before “questioning” by the police or other lawyer enforcement authorities. This latest version is still narrower than the Commission’s proposal which referred to “any questioning” and the recitals still clarify that “questioning” excludes preliminary questioning designed to establish whether or not a criminal offence has been committed in the first place. Questions asked by the police at the roadside are still listed as an example of questioning which would be outside of the scope of the Directive. In that respect, we would consider that preliminary questions asked at the roadside for the purposes of administering the breathalyser will, in most circumstances not, engage the Directive.

I turn now to other amendments which have been proposed and I have highlighted the most significant ones below.

SCOPE

A provision has been added to clarify that the Directive also applies to people who are initially interviewed as witnesses but who in the course of questioning by the police or other law enforcement authorities become suspects or accused persons. Recital 15 clarifies that when a person’s status changes the police should either make the person aware of the fact and allow him fully to exercise his rights under the Directive. Alternatively the police may decide to stop the questioning.

As you are aware, and as adverted to above in the discussion about drink driving offences, the provisions regarding minor offences have been further amended. The Directive now provides that “minor offences” where deprivation of liberty “cannot be imposed as a sanction” can be excluded from the scope of the Directive until the matter comes before a criminal court. But the text also now specifies that the Directive shall always apply in respect of minor offences when the suspect or accused person is deprived of liberty. In addition, recital 6a has been added to clarify that proceedings in relation to minor offending which take place within a prison and proceedings in relation to offences committed in a military context which are dealt with by a Commanding Officer should not be considered to be criminal proceedings for the purposes of this Directive.

THE RIGHT OF ACCESS TO A LAWYER

The General Approach text would have given suspects or accused persons the right to communicate with a lawyer. This provision has been extended to include a right to meet with a lawyer in private. Recital 16c clarifies that the right to meet a lawyer should not prevent Member States from restricting the right to access by telephone. However, this is only in respect of certain minor offences where the suspect or accused person will not be questioned by the police or law enforcement authorities. Although the Directive indicates that it is without prejudice to Member States’ legal aid systems, this provision would nevertheless appear to be compatible with the provision of legally aided advice by telephone in England and Wales. Further, as you are aware, legal aid will be dealt with by a subsequent Commission proposal.

A number of amendments have been made to the provision regarding when it should be possible to derogate from the right to access a lawyer. As I highlighted in my letter to you of 20 December 2012, the Commission’s proposal and the EP’s amendments sought to restrict Member States’ ability to derogate from a suspect’s right to have access to a lawyer to situations where there is an “urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person.” We have been concerned to ensure that the text is reflective of the European Court of Human Right’s case-law which, in the leading case of Salduz, held that access to a lawyer may be restricted in the light of “compelling reasons”, but did not seek to define exactly what they do or do not include. The General Approach text achieved that aim.

The latest version of the text seeks to reach a compromise by specifying the circumstances in which the right to access a lawyer can be temporarily derogated from. In addition to the circumstance specified by the EP it would allow the police or other law enforcement authorities to question a
suspect or accused person without a lawyer being present if it would be necessary for the investigating authorities to take “immediate action to prevent a substantial jeopardy to criminal proceedings.” It would also be possible to postpone access to a lawyer following a person’s deprivation of liberty if the geographical remoteness of a suspect or accused person would make it impossible to ensure the right of access to a lawyer without undue delay (although in these circumstances no questioning could take place). These provisions should be read in conjunction with recitals 23 and 23(a) – (c). The text would still allow derogations to be authorised by a senior police officer, rather than a judicial authority (which had been proposed by the Commission and supported by the EP). However, we remain concerned that the derogations are now unduly narrow and would not reflect the derogations available in the Police and Criminal Evidence Act 1984 and its Codes or in Schedule 8 to the Terrorism Act 2000. For example, it would not appear possible to derogate in order to prevent damage to, or allow recovery of, property.

CONFIDENTIALITY OF COMMUNICATION BETWEEN A LAWYER AND HIS CLIENT

The General Approach text would have permitted Member States to derogate from this principle in some very limited exceptional circumstances. This is compatible with the case-law of the ECtHR. However, the EP and some Member States agree with the Commission that confidentiality of communication between a lawyer and a suspect or accused person should be absolute. The current text seeks to reach a compromise by changing the obligation on Member States from “guaranteeing” confidentiality to “respecting” it, but the possibility to derogate has been removed from the text of article 4 itself. The text at recital 24 has been amended to clarify the situations in which Member States are or are not required to respect confidentiality and also clarifies that this obligation does not extend to situations where there is a belief that the communication is being used to further a criminal purpose. Recital 25 provides further clarification about the scope of the Directive in respect of Member States’ national and internal security responsibilities.

The need to respect the principle of confidentiality of communications between a suspect or accused person and his or her lawyer is entrenched in domestic law and it is only possible to derogate from it in very exceptional and limited circumstances. The Government is concerned that the possibility to derogate has been removed from the compromise text. We want to ensure that domestic law enforcement authorities can continue to investigate and prosecute serious crime effectively, and to avert serious threats in the exceptional and compelling circumstances currently permitted in UK law.

The right to have a third person informed of the deprivation of liberty and the right to communicate with third persons and consular authorities

The current text specifies that if a suspect or accused person is under the age of 18, then they have the right to have the holder of parental responsibility, or another appropriate adult, informed if they are deprived of their liberty. In England and Wales, current law and practice only affords this right to detainees under the age of 17. However, following the recent High Court ruling in R on the application of HC (a child, by his litigation friend CC) v 1. The Secretary of State for the Home Department, 2. The Commissioner of Police of the Metropolis) [2013] EWHC 982 (Admin), on the treatment of 17 year olds in police custody, the Government is considering the next steps that should be taken to implement the necessary changes. This will include amending the Police and Criminal Evidence Act 1984 Code of Practice C which provides guidance on the detention, treatment and questioning of people by police officers.

Article 5(4) has been added to ensure that a third party is always informed if a child is deprived of his liberty, even if it is thought to be necessary not to inform the holder of parental responsibility. In England and Wales, where an individual under the age of 17 is in police custody a person responsible for the child’s welfare or an appropriate adult will always be informed. As set out above, the Government is still considering its policy in relation to 17 year olds in police custody.

The circumstances in which Member States can temporarily postpone informing a third party that a suspect or accused person has been deprived of his liberty have been narrowed in a similar way to the derogations to the right to access a lawyer.

A new provision has been added, Article 5a, which gives suspects or accused persons who are deprived of their liberty the right to communicate with a third person of their choice. We have been keen to ensure that this provision is sufficiently flexible to ensure that Member States are able to protect against interference with criminal proceedings and harm to others, especially victims. The current text is intended to give Member States flexibility to limit or defer the exercise of this right.

A provision has been added to Article 6 which would give suspects or accused persons who are deprived of their liberty the right to converse and correspond with their consular authorities and the
right to have legal representation arranged by them. Article 36 of the Vienna Convention gives consular authorities a corresponding right, subject to the suspects or accused persons' wishes. This new provision is also subject to the person's wishes as well as being subject to the agreement of the consular authorities.

**EUROPEAN ARREST WARRANT PROCEEDINGS**

The EP supports the provisions in the Commission's proposal which would give a person arrested pursuant to a European Arrest Warrant (EAW) the right of access to a lawyer in the issuing Member State. These provisions had been deleted in the Council's General Approach. The latest version of the text contains some limited provisions in this regard. The competent authority in the executing Member State would be obliged to inform the requested person that he has a right to appoint a lawyer in the issuing Member State. If the requested person wants to exercise that right, he can request that the executing Member State inform the competent authorities in the issuing Member States. The issuing Member State would then be obliged to provide information to facilitate him in appointing a lawyer. Recital 35(d) clarifies that that information could include providing a list of lawyers. Under the terms of the Directive the suspect or accused person only has the right for a lawyer in the issuing Member State to undertake a limited role, which is restricted to assisting the lawyer in the executing Member State by providing him with information and advice. A number of Member States were keen to ensure that this new obligation does not risk creating delays in the execution of EAWs. Therefore Article 9(6) clarifies that the right of a requested person to appoint a lawyer in the issuing Member is without prejudice to the time limits set out in the EAW Framework Decision.

**REMEDIES**

Additional text has been added to Article 11 which would oblige Member States to ensure that in the assessment of evidence obtained in breach of a suspect or accused persons' right to a lawyer that the rights of the defence and the fairness of the proceedings are respected. This provision is without prejudice to national rules and systems on the admissibility of evidence.

**VULNERABLE PERSONS**

A new general provision has been added at Article 11a which would require Member States to ensure the particular needs of vulnerable suspects and accused persons are taken into account. The EP had requested a number of more specific amendments regarding vulnerable persons; however, the Commission intends to bring forward a separate measure in this area in late 2013.

I will update the Committee on the outcome of the upcoming negotiations. If a First Reading Deal is reached, the Government will reconsider its initial opt in decision based on the text of the adopted Directive. As I have set out above, I will ensure that the Committees have sufficient time to scrutinise the decision.

30 May 2013

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

Thank you for your letter dated 30 May 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 26 June 2013.

We have decided to retain the proposal under scrutiny.

It appears from your latest letter that the pattern set for these negotiations, where the contents of the proposal have ebbed and flowed, has continued and we are very grateful to you for your detailed analysis and explanation of the latest text.

In our letter to you dated 8 December 2011 we raised six concerns regarding the proposal as originally brought forward by the Commission:

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- The requirement that evidence obtained in breach of the Directive is automatically inadmissible;
- The lack of flexibility in the draft allowing Member State authorities to deny access to a lawyer in exceptional circumstances such as terrorist offences;
— That the individual’s right of access to a lawyer should not apply to non-custodial situations and should only become necessary at the point in time when the suspect’s liberty is curtailed;

— The complete guarantee given to the confidentiality of client/lawyer consultation without the possibility of interference on rare occasions;

— The requirement that prior to waiving the right to a lawyer the suspect must have received legal advice on the consequences of the decision; and

— The potential ramifications of requiring face-to-face access to a lawyer, in particular for the length of time individuals spend in custody.

Whilst your letter is clear that this latest text is still the subject of ongoing negotiation with the European Parliament, we take this opportunity to say that these six points remain our key concerns with this proposal. In light of our concerns we note your description of the permissible derogations in the latest text as “narrow” and your comments regarding the approach to lawyer/client confidentiality.

We look forward to hearing from you in due course on the progress of the ongoing negotiations and, once the Directive is agreed, to considering in detail both the text and the Government’s (re)consideration of the opt-in question.

26 June 2013

ENHANCING THE DEMOCRATIC AND EFFICIENT CONDUCT OF THE ELECTIONS TO THE EUROPEAN PARLIAMENT (7648/13, 7650/13)

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

Your Explanatory Memorandum on this Recommendation and the accompanying Communication were considered by the Justice, Institutions and Consumer Protection Sub-Committee on 22 May. We thank you for your account of the Commission’s recommendations and your view of them.

We endorse the motivation underlying the Commission’s ideas. Measures which would address the issues of low voter turnout in European elections and direct voters to the role of the European Parliament should go some way to resolving the democratic deficit which has been identified in EU affairs.

We think the idea that the links between national and European parties should be made plain by those parties to assist voters is welcome, though we agree with you that no change in the law should be made imposing any obligation in this respect. We also endorse the recommendation to parties that they declare support for a particular candidate whom they would like to see proposed for the Presidency of the Commission. While the European Parliament has no power of nomination, it must elect a candidate and that recommendation would make more transparent one of the roles of the European Parliament and could engage voters.

The idea of a common election day seems unlikely to do much for voter turnout and would run counter to national political cultures in more states than just the UK. We consider that recommendation to be disproportionate to the Commission’s aims and based on the false premises that voters in one state might be influenced by the voters in another state.

Recommendations 5) to 8) concern practicalities. We note your assessment that recommendation 5) is not practicable, but that you acknowledge that the others address real issues. The place to deal with those issues may be in the legislation on the right to vote and stand as candidates or materials, such as guidance notes, associated with that legislation.

We clear both documents from scrutiny and do not expect a reply to this letter.

22 May 2013
Letter from Damian Green MP, Minister for Policing and Criminal Justice, Home Office, to the Chairman

You were recently copied into a letter from the Secretary of State for Justice dated 15th April to the European Scrutiny Committee on the EU’s Accession to the ECHR. I write to inform you that the Commission has now referred the provisionally agreed Accession Agreement to the European Court of Justice for an opinion on the Agreement’s compatibility with the EU Treaties.

We received the English translation of the Commission’s request for an opinion on 1st August. I enclose a copy together with a copy of the negotiation report containing the text of the draft Accession Agreement and Explanatory Report.

Member States are able to intervene in the process to offer their comments on the points raised, or to put before the Court additional points on the Accession Agreement’s compatibility with the EU Treaties. We intend to intervene and would welcome any comments you might wish to make. The deadline for submitting observations to the Court is 15th October.

16 August 2013

EU CITIZENS: YOUR RIGHTS, YOUR FUTURE (9590/13), ON PROGRESS TOWARD EFFECTIVE EU CITIZENSHIP 2011-2013 (9592/13)

Letter from the Chairman to Mark Hoban MP, Minister for Employment, Department for Work and Pensions

Thank you for your Explanatory Memorandum dated 1 June 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 July 2013.

We have decided to retain the Commission report EU Citizens: your rights, your future under scrutiny and we have decided to clear from scrutiny the accompanying report On Progress toward effective EU Citizenship 2011-1013.

We note that the Commission’s EU Citizens: your rights, your future report covers a wide ranging list of policy areas and includes 12 recommendations for action, nearly all of which are aspirations expressed in general terms. This lack of detail, particularly with regard to how the Commission’s goals will actually be achieved, means inevitably that the Committee’s ability to scrutinise each of the Commission’s 12 recommendations is limited for the time being. For example, the Commission proposes the creation of a mutually recognised EU disability card (recommendation six) which seems to the Committee to be a sensible suggestion. However, as you say in your Explanatory Memorandum, the utility of such a proposal can only be assessed once the actual detail is known and its value can be measured against its cost, feasibility and impact.

We recognise that weighed against this problem is the fact that the vast majority of the Commission’s recommendations will require legislation to bring them into force which in turn, will form the basis of individual scrutiny by the EU Committee. Subject to our comments below regarding recommendations one, 12 and seven, we look forward to considering on an individual basis any legislation brought forward by the Commission to give effect to the recommendations in its report. We do however take this early opportunity to say that we can see that many of the Commission’s recommendations for action as they appear in the report could clearly raise subsidiarity concerns.

In relation to recommendation one and the EU’s rules governing access to unemployment benefits, we recognise that at a time of high youth unemployment the Commission’s proposals have, at least at first sight, attractions. In the case of the unemployed who travel to another Member State to look for work, are the Government satisfied that the EU’s current legislation on the coordination of and the communication between states’ social security systems is sufficiently robust to protect the taxpayer’s interests?

Recommendation 12, addresses EU citizen’s participation in the democratic life of the EU. We note that the Commission recommends proposing “constructive ways to enable EU citizens living in another EU country to fully participate in the democratic life of the EU by maintaining their right to vote in national elections in their country of origin”. In reply, you state that whilst you have no plans to change the current UK 15 year time limit on overseas voting rights you are “content” to consider such proposals as they arise. Unfortunately, in our view, your Explanatory Memorandum lacks detail
on this specific recommendation and we ask you for a more detailed explanation of the full ramifications of such a policy change. We also ask whether the Commission’s aim would be better pursued by introducing a right for all lawfully resident EU citizens to vote in the national elections in their host state (where most will be paying tax) rather than in their state of origin.

Finally, recommendation seven regards the proposed legislation addressing vulnerable suspects in criminal proceedings. This legislation has been eagerly awaited by this Committee. It formed part of the Roadmap on Criminal Procedural Rights agreed by the Member States and welcomed by this Committee in 2009 and later formed part of the Committee’s inquiry and subsequent report on the EU’s criminal procedure which was published last year. The publication of this legislation has been anticipated for some time and we note that the Commission now promises it by “the end of 2013”. Does the Government expect the Commission to meet this latest target date?

We look forward to considering your reply by 26 July.

11 July 2013

Letter from Mark Hoban MP to the Chairman

Thank you for your letter of 11 July, clearing the Commission Report “On progress towards effective EU citizenship 2011-13” and asking for further information on some aspects of the “EU Citizenship Report 2013”. As you recognise in your letter further proposals by the Commission will be necessary to implement many of the aspirations in the report. The Government will consider each proposal brought forward to implement the Citizenship Report, and they will be subject to scrutiny in their own right.

Concerning your specific query on recommendation 1 in the EU Citizenship Report 2013, you ask whether the Government is satisfied that the EU’s current regulation on the coordination of and communication between states’ social security systems is sufficiently robust to protect taxpayers’ interests. The Prime Minister, earlier this year, reiterated our commitment to free movement, but made clear that we have concerns about the impact of inactive migrants on welfare systems and public services. We believe that the UK’s rules on access to benefits are fair and in line with EU legislation – they fully support the freedom of workers to look for work within the EU, while making sure there are reasonable restrictions on access to benefits for those who have never worked in the UK and who have no intention of doing so.

As you will be aware, the European Commission is challenging the UK Habitual Residence Test; whereas we consider it can be justified in order to control the burden on the welfare system, by legitimately requiring a minimum degree of connection with and integration into UK society. More broadly, a number of other states share our concerns about the impact of migration on benefits and public services, and we are working with them to identify areas where amending EU Regulations can achieve a fairer balance between rights and responsibilities.

With regards to recommendation 12, you will be aware that British citizens overseas can register to vote in Parliamentary elections in the UK if they were previously registered in the UK within a 15 year time frame. Parliament decided to impose a time limit because it was considered that generally, over time an individual’s connection with the UK is likely to diminish.

The UK Government remains open to discussion about whether the 15 year time limit remains appropriate, but is not minded at present to change the law. As well as the fact that removing the time limit is not current Government policy, there would be practical difficulties as a result of our constituency based system that would need to be carefully considered if it were to be decided that removing the time-limit was appropriate. If any change is proposed Parliament will of course need to re consider the issue.

Regarding the voting rights of EU citizens’ resident in the UK, we believe that it is appropriate that they should be entitled to vote in European and local Government elections as provided for under EU law. However, whilst we are supportive of proposals to raise awareness amongst EU citizens of their existing electoral rights, extending the franchise for UK Parliamentary elections to include EU citizens would be a significant departure from existing arrangements. Citizenship of the country of residence is the normal prerequisite for the right to vote at Parliamentary elections in most democracies, including other EU states.

The UK electoral franchise is not linked with any liability to pay tax and it does not necessarily follow that, because someone pays taxes or has the right to live here, he or she has the right to vote. Many other foreign nationals with no right of enfranchisement also pay taxes in the UK, and some people
who are exempt from paying certain taxes – for example those reaching the age of 18 and living with their parents, who do not pay council tax – nevertheless have the right to vote.

On your query regarding recommendation 7, as you noted the Commission has stated that it intends to propose a package of legal instruments to strengthen citizens’ procedural rights when they are suspected or accused in criminal proceedings, taking into account the specific situation of children and vulnerable citizens, by the end of 2013. The Government has no further information on the likely timing of this proposal, which is a matter for the Commission.

17 July 2013

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

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

Thank you for your letter of 16 April, which the Justice, Institutions and Consumer Protection Sub-Committee considered at its first meeting of the new Session on 22 May.

We are pleased to note that the Government’s approach to these proposals is close to that of the Committee. We agree that the rules on parties and their funding must maintain a balance between the requirements for independence and those of financial propriety where taxpayers’ monies are concerned, and that the process for registration should not be unduly burdensome. We confirm our initial support for these proposals. We are pleased also that the Opinion of the Court of Auditors is actively being considered in discussion of the proposals.

We now clear the Opinion from scrutiny while keeping the two proposals for legislation under scrutiny pending further progress in the negotiations. We should be grateful for an update on progress in due course but, subject to that, do not expect a reply to this letter.

22 May 2013

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

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

Thank you for your letter of 14 March, in reference to my letter of 24 February and Explanatory Memorandum (EM) on the European Court of Auditors’ (ECA) Opinion (8/2012) on the draft Directive in question. I apologise for the late response to your letter. I also received a letter from the House of Commons European Scrutiny Committee in March, similarly relating to the Draft Directive on the fight against fraud to the Union’s financial interests by means of criminal law (“the PIF Directive”) and wanted to ensure that both Committees were fully informed of the latest position.

In your letter you request an update on how negotiations are progressing on the PIF Directive. The Presidency has said that they would like to agree a General Approach on the Directive at the Justice and Home Affairs (JHA) Council on 6 June. Negotiations are still ongoing at official level and I am not yet in a position to send you a copy of the final text which will form the General Approach, though I will do so when it is issued. I hope the information provided will allow your Committee to clear the draft Directive from scrutiny, so that the Government is able to support the General Approach, in the event that we are satisfied that it is in our interests to do so, as set out below.

With regard to the legal base of the draft Directive, the Government believes that Article 325 of the Treaty on the Functioning of the EU (TFEU) is not the correct legal base for this draft Directive, which is concerned with criminal offences and sanctions, and that the contents instead require an Article 83 legal base. A number of other Member States share this concern and the Council has been working on the basis of Article 83(2) although a final decision on this will only be taken at General Approach stage. We very strongly support the Presidency’s decision to work on the basis of Article 83(2) and it is a priority to ensure that we secure Council agreement and this is confirmed in the General Approach. I should perhaps reiterate that this has been a major negotiating priority and we are pleased the change of legal base has gained support from the Presidency and other Member
States. The Government is keen for an Article 83(2) legal base to be endorsed at the Council on 6 June and would ask again that any scrutiny reserves are lifted so this can be achieved.

I should like to reiterate that it has long been Government policy to seek the addition of a Title V legal base to proposals that contain JHA obligations. The advantage of doing so, as the Committee will be aware, is that it puts the application of the opt-in beyond any doubt as all parties, including the European Institutions, recognise that the opt-in applies in such circumstances.

With respect to the inclusion of mandatory minimum sentences in the proposal, we consider that such a provision may violate the principle of proportionality in sentencing and undermine judicial discretion. Such provisions are rare in the UK; we currently provide for minimum terms of imprisonment only in relation to exceptionally serious offending. For example, in England and Wales we currently provide for minimum terms of imprisonment only for a small number offences related to third offences of class A drug trafficking and domestic burglary, and to firearms and other dangerous weapons. These are offences which have raised particular public concerns and all have a provision to allow the court not to impose the mandatory minimum sentence if such a sentence would be unjust in all the circumstances of an individual case.

Such broad obligations to impose minimum terms of imprisonment for the range of offences in the Directive would remove the ability of judges to determine an appropriate criminal sanction having regard to all the circumstances of a particular case, for these offences. This is a fundamental feature of sentencing practice across the UK. In Council negotiations on the Directive, a majority of other Member States have indicated that they share our concerns about the inclusion of minimum terms of imprisonment in this Directive and we are pleased to report that they have been deleted from the current version of the Presidency’s text.

Moving on to the extent of legislative changes required by this draft Directive; during the negotiations we have sought to ensure that the draft Directive is compatible with existing UK law. However, we note that during Council negotiations to date, Article 4(1) has moved towards becoming a more specific offence relating to the abuse of the tender process in EU procurement exercises. Negotiations on this provision are ongoing. We are negotiating with a view to ensuring that this provision is compatible with existing offences applicable in the UK. In addition, Article 11 of the draft Directive would require Member States to “establish jurisdiction” over offences committed by their nationals anywhere in the world. We do not currently take nationality extraterritorial jurisdiction over the range of offences set out in the draft Directive, with the exception of those relating to bribery. The provisions relating to jurisdiction have not been amended during Council negotiations.

In addition to those set out above, significant changes which have been made to the text by the Presidency during Council negotiations include the exclusion of VAT from its scope; the clarification of provisions on freezing and confiscation; and an update on limitation periods for the offences in the draft Directive, as detailed below.

The Commission’s proposal included VAT revenue within the scope of the draft Directive. The Government’s view is that the administration of VAT is a matter for Member States within the framework of the EU VAT system, and that the application of VAT rules (including any civil and criminal sanctions) should remain solely under the control of the Member State. A majority of other Member States share this view, and, in the current text of the Presidency’s paper, Article 2 of the draft Directive is clear that VAT revenue is excluded from the scope of the Directive.

Article 10 of the draft Directive has also recently been amended to make clear that the provision applies only to those Member States which are participating in the separately proposed ‘Directive on the Freezing and Confiscation of Proceeds of Crime in the EU’, which is currently subject to negotiations and to which the UK has chosen not to opt in at the outset. This is a change which has been made recently. We strongly support this clarification and wish to ensure that it forms part of the General Approach.

The provisions in Article 12 of the draft Directive, on limitation periods for the proposed offences, have also been amended during Council negotiations. The text has moved towards linking these to ‘serious’ offences; and towards reflecting this in Article 7 on penalties (which combines Articles 7 and 8 of the Commission’s proposal), whereby a distinction is drawn between offences which are deemed ‘serious’ and those which are not. The text does not stipulate what is meant by ‘serious’; this is left to Member States to determine. The provisions in Articles 7 and 12 are compatible with existing UK practice.

The Government views the Commission’s claim to there being a reduction in fraud with great reservation. National practices of reporting irregularities and suspected fraud vary, particularly with regards to timeliness and completeness, and so the amount quoted by the Commission could likely be
mere estimates. Most importantly, although there is a definition of ‘suspected fraud’ against the EU Budget in the Regulations, Member States do not use the term consistently as to what constitutes ‘suspected fraud’ and ‘other irregularities’ due to the different interpretation of criminal risks. As a result, some communications received by the Commission do not distinguish between the two. This will affect the Commission’s statistical assessment in providing a true picture of the level of fraud. The Commission is reviewing the practical modalities for the communication of irregularities in order to improve the notification system and to clarify, in particular, the concept of ‘fraud’ and ‘irregularity’. It plans to enter discussion on this with Member States in the Advisory Committee for the Coordination of Fraud Prevention. The Government will fully engage in these discussions when they take place.

With regards to the information being given to Member States to allow them to make decisions, the Government would prefer the Report to provide a more detailed country-by-country analysis per budget sector so that action at both EU and national level can be better targeted at problematic areas. The Government considers that complex rules and regulations, which govern budget sectors, need to be further simplified. This would help to increase the amount of funds absorbed by Member States, and would result in fewer errors and fraud and hence, improved financial management.

Turning now to the European Court of Auditors’ (ECA) Opinion found in EM 17670/12; the ECA expressed the view that the definition of the “Union’s financial interests” should be expanded to cover all the assets and liabilities managed on behalf of the EU, and all its financial operations, including borrowing and lending activity. The Government notes the ECA’s desire for a broader definition of financial interests but would need to see a stronger justification for the redefinition; at present the Government is not convinced of the necessity to include the listed bodies and activities in the definition. We acknowledge that the ECA’s Opinion expresses the view of the ECA, but does not constitute an official set of recommendations.

Secondly, the ECA recommended redefining “corruption” in the draft Directive to clarify that the corruption of officials who are paid by the EU institutions is automatically contrary to the EU’s financial interests. Currently draft article 4(3) requires the relevant behaviour to damage or be likely to damage the EU’s financial interests. This article remains subject to discussion in Council working groups, and the Government will continue to consider the ECA’s proposed clarification as part of negotiations. The Government will continue to negotiate with a view to ensuring that the definition in the draft Directive is compatible with existing UK legislation, in this case the Bribery Act 2010.

However, in the absence of any proposed precise revisions to the draft Directive during negotiations in consequence of the ECA’s proposals, the Government is not able to accurately predict the extent to which any such revisions would be covered by domestic criminal legislation.

Additionally, we believe there to be a risk that the Union’s financial interests could be deemed to cover own resources, particularly as regards Traditional Own Resources. However, our principal concern in this regard is that the Directive should not cover VAT fraud, due to this matter being a clear Member State competence. We are pleased that the Council text is now clear that VAT is excluded from the scope of the Directive.

24 May 2013

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

Thank you for your letter of 24 May. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 12 June. We are grateful for your detailed account of the progress of negotiations and the state of play.

We think your request for clearance from scrutiny before the Council meeting on 6 June was, in the circumstances, unrealistic. It was not practicable for the Committee to consider your letter at its meeting on 5 June, the letter having reached us on 30 May, during the recess. In any event, you indicated that further negotiations were expected and in the absence of a text for consideration, it is unlikely that the Committee would have been in a position to give clearance on the basis of the letter.

We have now seen that a general approach was agreed at the JHA Council meeting last week. Did the UK support that agreement?

We broadly welcome the changes to the original proposal which have been suggested and now, it appears, accepted by the Council. We welcome, in particular, the removal of the provision on mandatory minimum sentences. We hope you will continue to press for the removal of the provision on extra-territorial jurisdiction.
We note that the change in the legal base to Article 83(2) was agreed. Will the Government opt in to the proposal as amended by the Council?

We should like to see the text which was agreed by the Council and your assessment of the discussion in the Council meeting. In the meantime we retain the proposed Directive under scrutiny, but clear the Court of Auditors’ Opinion from scrutiny. We look forward to a reply by 28 June.

13 June 2013

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

Thank you for your letter of 13 June, in reference to my letter of 24 May updating your Committee on the progress of negotiations on the draft Directive.

This update is to inform you that the Justice Secretary attended the Justice and Home Affairs Council on 6 June, at which a General Approach was agreed on the draft Directive. The Justice Secretary supported this General Approach since there are a number of elements included in this text which have been objectives for the UK in these negotiations; notably the approach is firmly based on an Article 83(2) legal base, deletes the requirement for minimum terms of imprisonment, and removes VAT from the scope of the draft Directive. The General Approach was supported by the overwhelming majority of Member States. However, the Commission position continues to propose broader criminal offences and an Article 325 legal base.

The text of the General Approach was adopted without a formal vote, although certain delegations, as well as the Commission, signalled that they did not support. The Justice Secretary considered that, in the circumstances, he would not object to the Presidency concluding the General Approach so as to help secure these key positive amendments to the text, in particular the change of legal base which he supported. The dynamics of the negotiation were such that, if Council had opposed the text, it was likely to be delayed into the Lithuanian Presidency and the conditions for securing a positive outcome for the UK from the Council negotiation would not have improved. The Government regrets that this Proposal was not given adequate time to pass through national Parliamentary scrutiny prior to agreement at Council. Please find attached a copy of the General Approach text, as requested.

The General Approach includes the following elements, all of which are acceptable to the UK:

— A change in the legal base from Article 325 to Article 83(2);
— The deletion of an article introducing mandatory minimum prison sentences;
— The deletion of VAT from the scope of the Directive;
— The inclusion of language which clarifies that the UK will be exempt from the provisions on freezing and confiscation in the Directive;
— The amendment of provisions on limitation periods to take into consideration serious offences;

The requirement for Member States to “establish jurisdiction” over offences committed by their nationals anywhere in the world remains in the text.

The Presidency, the Commission and European Parliament have now proceeded to trilogue on the basis of the General Approach. The UK will continue to push for the removal of the provision on extra-territorial jurisdiction.

At the June Council, the Council Legal Service also noted their view that agreement of this General Approach triggered the three-month period during which the UK and Ireland must exercise an opt-in decision. The Justice Secretary made a minute statement which noted that the UK reserved its position as to whether the General Approach agreed did in fact trigger the opt-in decision process. With regards to the change in legal base to Article 83(2), the Government is still considering its position in relation to the opt-in and is not in a position to update you further on this point at present.

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

Thank you for your response dated 8 July to our Report the Fight against Fraud on the EU’s budget (12th Report of Sessions 2012-13, HL Paper 158). We note that it was due on 17 June. The Justice, Institution and Consumer Protection Sub-Committee considered it at its meeting of 24 July 2013 and we look forward to discussing this matter in the forthcoming debate in the House.

25 July 2013

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

Thank you for your letter of 25 July 2013, on an unnumbered Explanatory Memorandum (EM) on the European Anti-Fraud Office’s thirteenth report.

You asked for an explanation for the sudden increase in incoming information concerning irregularities from Member States’ authorities in 2012. I note that this is a significant increase compared to 2011, which had a relatively low amount of reported irregularities by Member States’ authorities compared with previous years. I agree that this increase deserves further explanation.

The OLAF report states that an increase in the number of reported irregularities could at least in part be a result of increased visibility of OLAF as an independent investigative office, or a demonstration of improved reporting and control systems, leading not to higher irregularities but higher detection of irregularities. OLAF gives a number of reasons for this increase in its report, which are summarised in paragraph 5 of the EM.

On the issue of discrepancies between the number of referrals to OLAF made by different Member States, the Government agrees more clarity is needed. As such, the Government has raised the need for OLAF and the Commission to conduct investigations to understand what problems there might be in this area or to provide assurance that the reporting and control systems in place in Member States are sufficient and effective. If there are problems with using the reporting system, such as experienced by the UK in the past, the Commission should strive to speedily resolve the issue with the relevant authorities or take enforcement actions including suspending payments if necessary.

With regard to the number of cases closed in 2012 with a recommendation for action (100 out of 465 closed), the Government shares your interest in this statistic.

The Government notes that the OLAF report refers to its recent reorganisation as a key reason for a high number of cases being closed without recommendation. It is important for OLAF to ensure all instances of fraud are tackled. Clearly OLAF’s work relies on information provided by third parties, including individual Member States. The Government would therefore like to see all parties, both public and private, playing a constructive role in supporting OLAF in this work. There must be a renewed focus on the quality and timeliness of information provided to OLAF to ensure sufficient investigation and ultimately, where necessary, recommendations for further action.

The Government believes OLAF is broadly effective within its current budget, as evidenced by the findings in the 2012 report that its performance is gradually improving. Its success however relies on effective cooperation with partners in Member States, third countries, international organisations and other EU Institutions. According to OLAF’s 2012 report, since its creation in 1999, more than 3,500 cases have been opened, with 335 individuals receiving prison sentences totalling 900 years, and with over €1.1 billion of EU money recovered. In the Government’s opinion, these indicate a positive level of success, although all parties concerned should continue to strive for better results and should of course in no way be complacent. In this respect, the Government is encouraged by the fact that OLAF’s 2012 report notes an increase in Member States’ engagement, as I am sure you do too.

2 August 2013
HAGUE SERVICE CONVENTION (10748/13)

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

Thank you for your Explanatory Memorandum of 25 June 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 July. We decided to clear this matter.

In doing so we note the potential dispute as to whether or not the EU has exclusive competence over the subject matter of the Convention.

In relation to the UK opt-in, we support the argument that the UK opt in is engaged in this proposal despite the fact that the UK has already opted into Regulation 1393/2007. We also consider that the effect of the UK not opting in to this proposal would be minimal. We would, therefore, not object to the UK opting in to this proposal. We note that this could give a better platform for a competence challenge, as was the case in respect of the currently stalled proposal on the accession of certain third countries to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

We should be grateful to be kept informed of developments in due course.

11 July 2013

HERCULE III PROGRAMME (18940/11)

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

Thank you for your letter of 17 April, which the Justice, Institutions and Consumer Protection Sub-Committee considered at its first meeting of the new Session on 22 May.

We note the current state of play on this proposal within the wider MFF context.

22 May 2013

HISTORICAL ARCHIVES OF THE INSTITUTIONS (13183/12)

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

Following my letter of 9 November 2012, I am writing to update you on the agreed draft text of the Regulation, to highlight the main features of the final version of the text and to seek clearance of this dossier from scrutiny.

13181/12 was considered by the European Union Committee’s 5th Progress of Scrutiny report, Session 2012-13, dated 16 October 2012. Following your letter of 15 October 2012, I wrote to the Committee regarding digital archiving in the European institutions and the voluntary deposit of historical records from the Court of Justice of the European Union and the European Central Bank.

Please find attached at Annex A [not printed] the proposed final text of the Regulation. The changes in the final text compared to the original proposal are relatively insubstantial, with the main aims of the Regulation remaining. The final text means that access to the historical archives of the European institutions, in both paper and digital format, will be available in the future from a single location at the EUI. This will help ensure transparency and accountability for the European institutions.

DIGITAL ARCHIVES

The text addresses the treatment of digital archives by stipulating that the European institutions shall make their archives available by electronic means, including digitised and born-digital archives, and facilitate their consultation on the internet (see article 9(1) and the Annex) [not printed]. The institutions will remain responsible for the permanent preservation of their digital archives and the EUI shall have permanent access to these documents to allow it to make them accessible from a single location and promote their consultation.
COSTS

The UK sought clarification on the cost-sharing arrangements during the negotiations. The Commission clarified that the running costs are unaffected and will still come from the general budget. The costs will be shared between the participating institutions on the basis of their proportional size. These costs will cover expenses for management of the archives but not for the provision of the building and repositories, which are to be financed by the Italian government. The Commission reiterated that Member States will not accrue any additional costs. The final text clarifies the rules and the basis for sharing the costs of managing the historical archives at the EUI between EU institutions (see article 8(8)).

MANAGEMENT STRUCTURE BETWEEN EUROPEAN INSTITUTIONS AND THE EUI

The Regulation indicates that the management structure between the depositing European institutions and the EUI shall be arranged in a framework partnership agreement (see article 9(3)). This will include provisions on the deposit, preservation, access and public consultation of the historical archives. The European Commission will arrange and deliver the partnership agreement with the EUI on behalf of the depositing institutions.

ROLE OF THE DATA PROTECTION SUPERVISOR

The text highlights the applicable data protection rules and, in particular, reaffirms the supervisory role of the European Data Protection Supervisor over European institutions (see articles 8(9) and 8(10)).

EUROPEAN PARLIAMENT

Under the consent procedure, the European Parliament’s Committee on Culture and Education recommended that the European Parliament approve the proposed Regulation on 23 April 2013. The Committee considered that the proposed Regulation provides a more solid legal framework for the cooperation between the European Union and EUI. The Rapporteur pointed to the good inter-institutional cooperation in the historical archives field. The Rapporteur also regarded the development of the aspects of the proposed Regulation dealing with financing, data protection and digitisation as positive. Consent was granted by Parliament in line with this recommendation on 21 May.

ARTICLE 352 TREATY BASIS

As the proposed Regulation has been brought forward under article 352, the European Union Act 2011 requires Parliament to approve it in primary legislation in order for the UK to agree to the measure in Europe. The measure forms part of the EU Approvals Bill in the 2013-14 Parliamentary session.

3 June 2013

Letter from the Chairman to Helen Grant MP

Thank you for your letter of 3 June 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 12 June. The Committee were grateful for your explanation of the proposal as it has evolved and decided to clear the matter.

13 June 2013

INSOLVENCY PROCEEDINGS (17881/12, 17883/12)

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

Further to my letter of 15 April confirming that the UK has opted in to the proposed Regulation, I am writing to provide an update on the progress of negotiations.

The working group, attended by officials from the Insolvency Service, has now completed a first read through of the proposed Regulation. The proposals have been generally well received by all Member
States, though many are still conducting their own consultation exercises, with many delegations putting forward amendments to refine the draft text. I am pleased to say that none of the amendments put forward in negotiations represent any threat to the UK’s position. It is worth noting that the Commission has emphasised that the process of nominating procedures for inclusion in the Annex would be at the discretion of Member States, giving the example that the UK would not wish to nominate Schemes of Arrangement as a reason for this discretion.

The Presidency has requested written comments from delegations on all articles and the UK delegation has submitted suggested amendments to articles where the Commission had not proposed any change. Officials are preparing a further submission to the group to summarise all comments and interventions in writing. We anticipate that a revised text of the Regulation will be available in June.

The Irish Presidency of the EU will end in June, with Lithuania’s term beginning on 1 July. I understand that the Presidency will be seeking an orientation debate on suggested guidelines for future work on the key themes of the draft Regulation, being the broadening of the scope; the continued use of the COMI concept; establishing interconnected insolvency registers; and developing provisions to improve co-operation in dealing with the insolvencies of groups of companies.

Officials from the UK Permanent Representation in Brussels have met with attachés from the Lithuanian Presidency, who have confirmed that they see the discussions on the proposals to be very positive and that this dossier will be a priority to progress during their term. They envisage monthly meetings of the Working Group throughout the term of their presidency.

Given that the UK has now opted in to the proposals and the positive progress of the draft Regulation, I trust that your committee is content to clear the document from scrutiny so that the Government may participate fully in the negotiations with the support of Parliament.

27 May 2013

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 27 May 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 February. As this proposal is still in the early stages of its legislative procedure we decided to retain this matter under scrutiny.

We would be grateful for the following additional information when it becomes available:

— 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.

13 June 2013

JUSTICE PRIORITIES FOR THE LITHUANIAN PRESIDENCY OVER THE NEXT SIX MONTHS

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

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

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

18 – 19 July (Informal Council) in Vilnius, Lithuania
7 - 8 October in Luxembourg
6 - 7 December in Brussels
This is Lithuania’s first EU Presidency, where they will prioritise measures which aim to promote economic activity and growth. With this in mind, the Presidency will work to achieve progress on the Data Protection proposals, the European Account Preservation Order (EAPO), the Directive on Counterfeiting the Euro and other currencies, the EU Accession to the European Convention on Human Rights (ECHR) the Multiannual Financial Framework (MFF), and the Common European Sales Law (CESL).

Achieving progress on the proposed Regulation for the general EU data protection framework and the proposed Directive for personal data processing in the field of police and judicial cooperation will be a key priority for the Lithuanians. The Presidency will likely focus the negotiations on the proposed Regulation but will work to keep the proposals as a package. Both the proposed Regulation and the proposed Directive remain under Parliamentary scrutiny and I will keep you updated on the progress of the negotiations.

It is likely that the Presidency try to conclude negotiations on the European Account Preservation Order as they see it as a useful tool in strengthening the single market. The UK did not opt in to this proposal because of concerns about the lack of safeguards for defendants. Negotiations are continuing and we continue to work with others to improve the text to enable consideration of a post-adoption opt in. We will, naturally, consult Parliament on any decision to opt-in post adoption.

The Government on 20th April decided not to opt in to the proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law. The Government agrees that a proportionate criminal justice response to counterfeiting requires robust national laws and effective international cooperation at the operational level. The Government’s view is, however, that the Directive would have very little if any positive impact on UK enforcement or international operational cooperation and intelligence sharing, whilst presenting unwelcome legislative consequences for the UK.

The Lithuanian presidency have not highlighted that they will prioritise the proposal for EU accession to the European Convention on Human Rights (ECHR) at present. We shall keep you informed of developments in this area. We expect the Presidency to take forward discussions on any proposals the Commission decides to bring forward following the independent external evaluation of the Fundamental Rights Agency.

The Presidency will also seek to reach an agreement on the MFF 2014-2020 package. It is unlikely that final agreement on individual programmes will be reached until the MFF is adopted. Under the MFF 2014-2020 package, the Ministry of Justice has the lead on two funding programmes, the Justice Programme and the Rights, Citizenship and Equality programme. As you may recall, the Government chose not to opt-in initially to the Justice programme.

Since the agreement of the Partial General Approach in June 2012, discussions have been continuing between the Presidency, the Commission and the European Parliament (trilogue). The programmes are due to start in 2014. However, agreement to finalise these funding programmes must await the resolution of the current budget negotiations. Once the Justice programme has been finalised, the Government will need to take a decision about whether to opt-in post adoption and will, of course, give you the opportunity to express your views on the issue.

The Government continues to oppose the proposal for a Common European Sales Law as set out in the Government Response to the UK’s Call for Evidence, published in November 2012. The dossier is progressing extremely slowly in Council and we continue to work with like-minded Member States in our position.

During the Lithuanian Presidency we expect the Commission to adopt two proposals as part of the Criminal Procedural Rights Roadmap; a draft Directive on safeguards in criminal procedures for suspected or accused persons who are vulnerable, including children; and an initiative regarding legal aid in criminal proceedings. The UK’s opt in will apply to legislative proposals in this area.

27 June 2013
Letter from the Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

Further to your letter of 19 December 2012, I am writing to provide you with an update on how the European Aviation Safety Agency (EASA), European Chemicals Agency (ECHA), European Food Safety Agency (EFSA) and the European Medicines Agency (EMA) prevent conflict of interest.

In the absence of any specific central rules on dealing with conflict of interest, each agency has developed its own rules and procedures. Over the years this has led to a situation where different agencies have set up different rules and procedures with no uniform approach.

PREVENTION OF CONFLICT OF INTEREST WITHIN EASA, ECHA, EFSA, AND EMA

One important point to note is that although the special report “Management of conflict of interest in selected EU agencies” (No.15.2012) was released in October 2012, policies and procedures implemented after the report’s evaluation team completed its audit work (October 2011) were not evaluated. Some of the agencies had already begun to take action to prevent conflict of interest before the publication of the report. What follows below is a brief overview of the situation as it stands now.

The EASA Management Board has agreed a detailed policy on conflict of interest in which all Members are required to submit annual declarations of interest. The agency has also updated the code of conduct for its staff to ensure a high degree of independence and impartiality of EASA decisions. This includes a requirement for staff holding a sensitive position to complete an annual declaration of interests. The agency will create an Ethical Committee which will define the assessment criteria on interests, provide support in reviewing the declarations of interest and develop rules on how to deal with other matters related to the code of conduct. Rules relating to gifts have been improved and all staff members will undergo mandatory training on the prevention and mitigation of conflict of interest.

The ECHA has implemented many of the recommendations in the special report by striking a balance between having staff members with expertise and experience and, at the same time, strictly avoiding potential conflict of interest. Everyone working in or for the ECHA makes an annual declaration of interest (which is updated on a regular basis). Anyone with a declared interest in an issue will then not participate in decision or opinion making on that matter. The ECHA also has a conflict of interest advisory committee to support the Director in ensuring independence of decision making.

The EFSA has adopted a new Code of Conduct upholding core principles and values such as integrity, objectivity and serving in the public interest while providing guidance on standards. The EFSA requires all of its experts to comply in a three-step process as a prerequisite for their membership of a Panel or a Working Group. This involves an annual declaration of interests; a specific declaration of interests concerning particular subjects being worked on by the Panel or Working Group; and an oral declaration of interests at the beginning of each meeting. In cases where there is a conflict of interest appropriate measures such as the exclusion of the expert from the scientific group in question or from specific agenda items at meetings, to her or his exclusion from some or all of the EFSA’s activities are taken. Staff members leaving the EFSA are required to advise the Authority on future employment for a two-year period following their departure, including any subsequent change in their circumstances, so that the Authority can consider whether that may lead to a conflict of interest.

The EFSA’s Regulation allows for four members of the Board who are from organisations “representing consumers and other interests in the food chain”. However, the Government is concerned that the presence of industry figures on EFSA’s Management Board may continue to lead to a conflict of interest.

In February 2012, the Management Board of the EMA introduced updated rules on how it would handle potential conflict of interest of staff members. The EMA has a policy on the handling of conflict of interest for its scientific experts, including committee members. This was last updated and endorsed by the EMA’s Management Board in March 2012 along with a revised policy on the handling of conflict of interest for Management Board members.

The EMA takes a proactive approach to identifying potential conflict of interest and searching for alternative experts where necessary. To help achieve this, all experts who are involved in the agency’s activities and Management Board members must complete a declaration of interests form every year.
Each expert is assigned a risk level. After assigning a risk level, the EMA uses the information provided to determine if an expert’s involvement should be restricted or excluded in the EMA’s specific activities, such as the evaluation of a particular medicine. The EMA’s Management Board has also endorsed a breach-of-trust procedure setting out how the EMA would deal with incorrect or incomplete declarations of interests.

**OTHER AGENCIES**

It is important to note that the four selected agencies are not the only agencies to have reviewed their conflict of interest policies in light of the special report.

The European Environmental Agency recently adopted a new policy aimed at ensuring all staff comply with the obligations laid down by the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Community.

The European Union Agency for Fundamental Rights (FRA) has considered a draft document looking at rules governing conflict of interest for its Management Board members, which is in line with the recommendations from the special report, and expects to adopt it later this year.

The Board at the European Agency for Safety and Health at Work (EU-OSHA) is currently looking at proposals that ensure that the agency is transparent, this includes making the interests of decision makers visible and taking actions such as publishing key documents, including collecting and publishing the declarations of interest of members of the governing board on the agency website as requested by the European Parliament. These actions would complement other policies already in place. The new policy will also develop criteria for assessing interests, process for detecting and checking conflict of interest and possible consequences for breaching the policy.

The European Global Navigation Satellite System Agency (GSA) is also introducing a general policy on conflicts of interest. This seeks to avoid situations where the conflict of interest of an individual working or engaged within the agency could influence the performance of their duties. The policy will define and identify situations which have a potential to put the agency’s integrity at risk and will create procedures for effectively avoiding conflict of interest issues. The Government wants to ensure a transparent and effective system that identifies and manages any conflicts of interest that arise.

**THE COMMON APPROACH AND ROADMAP**

The Common Approach acknowledges the importance of conflict of interest by noting that the Commission should examine, together with agencies, whether there is scope for a harmonised approach to managing conflict of interest. In response to the special report, the Commission indicated that it would consider the potential need to develop an EU regulatory framework in the context of the implementation of the Common Approach. This was a welcome development. However, instead of a fully-fledged EU regulatory framework, the Commission are now talking to agencies to map existing rules and standards, and develop guidelines and best practices as laid down in the Roadmap. The Commission has also said that many of the main points from the special report will be taken into account. This work should be complete by the end of 2013.

Following the release of the special report the Directors of EU agencies within the EU Agencies Network, which is a forum for exchanging best practice and experience across all EU agencies, looked at the issue of prevention of conflict of interest. The ECHA was mandated by the EU Agencies Network to produce a paper on the prevention of conflict of interest which looked at risk assessment, governance and a checklist of the basic elements needed for the prevention of conflict of interest. The Network is currently considering this issue and looking at ways in which best practice could be shared.

**THE GOVERNMENT’S POSITION**

The Government welcomes the Commission’s approach in treating the issue of conflict of interest as a priority for 2013. Our preference would however have been for an EU regulatory framework, which would have had uniform application across all EU agencies. We will support and follow the Commission’s work in this area closely and will push for an EU regulatory framework if the new guidelines and best practice, currently being developed, are not sufficiently strong.

As the Committee is aware, we are conducting a wide-ranging review of the performance of the EU decentralised agencies, in light of the Common Approach and Roadmap, which were referred to in my Explanatory Memorandum of 31 January 2013. I apologise that I have not yet been able to give the Committee the update it requested; this is a complex exercise and my officials are still co-ordinating
the material it has gathered from across Whitehall. As soon as I am in a position to update the Committee further, I will of course do so.

11 July 2013

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

Thank you for your letter dated 11 July 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July.

The work that some agencies are carrying out to prevent conflict of interest appear sound. However, like you, we are concerned at the presence of industry representatives on the European Food Safety Agency’s Management Board.

As you know, the Committee favours a comprehensive EU regulatory framework dedicated to conflict of interest as it would best ensure comparable minimum requirements on independence and transparency applicable to all EU agencies and all key players that influence strategy, operations and decision-making. However, we will follow with interest the work that the Commission is carrying out in developing new guidelines and best practice in this area. We should be grateful if you could update the Sub-Committee when the Commission publishes the guidelines and provide us with your assessment of them.

We also look forward to receiving the results of your review of the performance of the EU decentralised agencies.

In the meantime, the Committee retains the Common Approach and Roadmap under scrutiny and looks forward to your reply in due course.

25 July 2013

**PENSIONS (17322/12, 17360/12, 18638/11)**

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

Thank you for your letters of 27 March 2013 and 7 May 2013, which were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to clear these matters.

We are grateful for your further explanation as to why the Method could be renewed retrospectively for the period 1 July 2012 to 30 June 2013, although we note that adoption of the proposal to continue the Method would now involve using a legal basis (Annex XI of the Staff Regulations) which has now expired.

We remain unconvinced by your explanations for these proposals being matters of exclusive EU competence. We therefore do not accept this reasoning as grounds for restricting the role of national parliaments in raising subsidiarity concerns in respect of future similar proposals. However, we do not propose to take this matter further given, as we have indicated in previous correspondence, that we do not consider that these particular proposals give rise to substantive subsidiarity concerns.

In clearing the underlying proposal for reform of the Staff Regulations we continue to encourage the Government to achieve radical reform. As you know, we would have preferred to see the abolition of the Method, but the current Council proposal is an acceptable minimum.

We agree the increase in the retirement age, but would like to see a commensurate increase in the minimum age for early retirement and we urge the Government to continue pressing for the simplification and reduction of allowances.

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

Thank you for your Explanatory Memorandum of 15 May 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 June.

The Commission’s consultation raises issues that are clearly very important. In the Green Paper the Commission states that the consultation may lead to reform of the Audiovisual Media Services Directive and/or new legislation and other policy responses in the longer term. We understand that the Government and Ofcom will prepare a full response to the Green Paper and we look forward to receiving a copy of the response in due course.

In the meantime, however, we are very disappointed with the content of your explanatory memorandum. We would have expected it to include a summary of background information on the UK regulatory framework in this area; an explanation of the Government’s policy and your preliminary views on the questions raised in the Green Paper; and details on the possible effects on existing legislation or potential proposals that may be brought forward. In addition, we are interested to know the views expressed by other Member States on the Green Paper. Without this information it is very difficult for us to carry out our scrutiny functions effectively.

You say in your EM that the Green Paper was due for discussion at the Contact Committee on 30 May. We would be interested to know the outcome of that discussion.

We note that you are not consulting on the contents of the Green Paper at this stage and therefore question how the views of consumers and stakeholders would feed into your and Ofcom's formal reply to the Green Paper.

We retain this document under scrutiny and look forward to your reply by 4 July.

20 June 2013

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter with regards to the Green Paper and the explanatory memorandum provided by my Department.

I am sorry that you found the explanatory memorandum to be lacking substance. I can assure you that I and my department take our responsibility to your sub-committee and the issues raised in the European Commission’s Green paper very seriously indeed. In the letter you raised four key areas where the information provided failed to meet your needs and expectations: background to the UK regulatory framework, the Government’s preliminary views on the paper, the possible impact of the paper on existing legislation and the views of other member states. Below I have provided as much information on these issues as I am able, at this point in time. Where, for whatever reason, I have not been able to provide more detail I have set out why this is the case.

BACKGROUND INFORMATION ON THE UK REGULATORY FRAMEWORK

I have provided a detailed background note setting out the UK Regulatory framework in relation to the issues raised in the European Green Paper at Annex A. The key piece of European legislation in this area is the Audiovisual Media Services (AVMS) Directive which the UK has implemented. The implementation of this Directive involved many regulations that amended existing UK legislation, key amongst which are the Communications Act 2003 and the Broadcasting Acts 1990 or 1996.

PRELIMINARY VIEWS

You may be aware that we are soon to publish a paper that will set out our approach to digital connectivity, content and consumers. This covers many of the topics that the Green Paper covers, and will inform our response to the Green Paper. Because this piece of work is not yet public we were unable to provide you with more information in the explanatory memorandum at the time it was requested and the same is true today. My officials will be happy to send this through to you at the time of its publication.
I am, however, able to give you a preliminary view as to how we intend to respond to the European Green Paper. The paper itself is not setting out detailed proposals; instead it provides a discussion of a range of issues related to the challenges of media convergence. Given the wide ranging nature of the paper we plan to respond thematically, setting out in the clearest possible terms those matters on which we would welcome further consideration at the European level and those where we would resist any move away from domestic legislation. Stakeholders are planning to respond independently to the paper and we are working closely with the key organisations such as Ofcom and the BBC to ensure a coherent UK response.

POSSIBLE EFFECTS ON EXISTING LEGISLATION

Whilst it is likely that the Commission will look to amend or replace the AVMS Directive, we do not envisage that this will happen at any great pace. The upcoming European elections mean that any action will have to be taken in the new Parliament and the question of how, when or whether a revision of the AVMS takes place will depend on this outcome.

The Green Paper, and responses to it, will feed into this process, however at this stage, the paper is not a proposal; it is simply a paper to seek views. These views will form the body of evidence from which any approach to new legislation will be decided. As such there is a significant process to be worked through before an amended or new Directive is considered directly. That is why we are intending to respond to the Commission along the lines described above. in a way that, as explained above, sets our priorities and key concerns for any change to legislation at a European level.

VIEWS OF OTHER MEMBER STATES

A DCMS official represented the UK at the Contact Committee in Brussels, 30th May 2013 when the Green Paper was discussed as an agenda item. However, little was shared by member states in terms of how they were intending to respond to the Green Paper. Most said that they were considering the paper, accepted that convergence was happening and would respond in full by the deadline.

The caution shown by other nations was likely a result of the wide ranging scope of the paper and the lack of clear direction. Without clear proposals to support or propose, most members chose to remain silent. Whilst a few members, for example the French, made clear their appetite for further regulation there was no sense of broad support for this position. The discussion was extremely limited and did not assist in providing the UK with significantly more information.

CONSULTATION

Your letter also asked about the process that my Department will be undertaking to ensure the views of consumers and stakeholders are able to feed into our formal reply. The Department has, over the past two years, taken views from a wide range of stakeholders and consumers relating to issues across the telecoms and media sector with seminars and discussion papers looking at issues relating to connectivity, content and consumers. This work has informed the development of policy in this area. We will be setting out our approach to this sector at a national level shortly, and we will draw on this work in responding to the Commission’s Green Paper.

My Department will continue to give this work serious attention and I hope that this additional information will allow the Committee to fully scrutinise this paper. Officials in the Department are available should you require any further information.

9 July 2013

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 9 July 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 17 July.

You say in your letter that you expect to publish soon “a paper” which will set out the Government’s approach to digital connectivity, content and consumers. Could you please let us know the nature of this paper and the likely publication date. You also state how you plan to respond to the Green Paper but say little on the likely content of your response. We look forward to receiving a copy of your response in due course.

We note that the annex [not printed] does not provide any information on the regulatory framework for on-demand services and how that differs from the regulatory framework for linear services. Perhaps you could provide us some background information on this area.
You may wish to know that Ofcom are giving a briefing to the Sub-Committee on Wednesday 24 July on the Green Paper. After which the Sub-Committee will consider whether to conduct further oral evidence sessions.

We retain this document under scrutiny and look forward to your reply.

18 July 2013

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

Thank you for your Explanatory Memorandum of 3 June which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 12 June. We decided to retain this matter under scrutiny.

When the Committee previously responded to the Commission’s Green Paper on this subject it saw merit in mutual co-operation and standard multilingual forms, but was concerned that a practical need should be demonstrated for all formalities to be abolished; and that there might be documents with such a high risk of fraud that proof of authenticity would continue to be required.

We note however that the Commission, in its Impact Statement, has produced an estimate of the financial benefits to individuals and businesses of the proposal and provided practical examples of how it would provide benefits.

We should therefore be grateful if you could provide, by 28 June, the following information:

— Do you agree with the figures brought forward by the Commission?
— Which, if any, documents subject to this proposal do you consider present too great a risk of fraud (after taking account of the administrative co-operation provisions in the proposal) for formalities to be abolished, or for standard multilingual forms to be available?

In the light of the information presently available we decided that a subsidiarity reasoned opinion should not be issued in respect of this proposal.

We also look forward to receiving your further assessment of the implications and costs of implementation of this proposal together with an update on the progress of negotiations, including the legal basis for this proposal.

13 June 2013

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

Thank you for your letter of 13 June in response to my Explanatory Memorandum of 3 June on the above proposal. You decided to retain this matter under scrutiny and asked for further information.

The Committee noted that the Commission in its Impact Statement has produced an estimate of the financial benefits to individuals and businesses of the proposal and provided practical examples of how it would provide benefits, and asked whether we agree with the figures brought forward by the Commission.

The Impact Statement acknowledges that “an exact quantification of the public documents needed by EU citizens and businesses moving and doing business within the EU and affected by the identified administrative formalities is not feasible” as there are so many variables affecting why citizens may require legalisation of documents. However it estimates that a minimum of 1.4m documents per year are currently legalised for use in another EU country, as well as a similar number of certified translations and copies, and bases its estimates for cost savings on that.

We assess that projections appear reasonable. However, it is worth noting that EU citizens would still incur costs and delays in legalising any documents which are not covered by the proposal (court documents, official letters, educational certificates etc) for use within the EU, and on any documents for use outside the EU. There would therefore be some reduction in cost and inconvenience, but the proposal would not remove these altogether.

13 June 2013
The examples provided to demonstrate how the proposal would provide benefits are compelling. However, we would also note that some of the difficulties encountered by the individuals and companies in the case studies quoted are the result of a lack of understanding of the documentary requirements of the national authority concerned, albeit compounded by the delay and cost implied by the requirement for legalisation.

We will continue to press for further information from the Commission, including on the likely costs to Member States if they are required, for example, to introduce new central authorities to deal with queries about authenticity of documents, or to set up new IT systems to offer common format civil status documents in parallel to national documents.

The Committee also requested further information on which if any documents subject to this proposal we consider to present too great a risk of fraud for formalities to be abolished, or for standard multilingual forms to be available, after taking account of the administrative co-operation provisions in the proposal. The Government has not carried out an assessment of which particular documents subject to this proposal might be more or less susceptible to fraud. However as the proposal proceeds, we would want to ensure that any new structures or processes do not make fraud with regard to the documents in question easier or more likely.

I hope that this additional information is useful in the Committee’s consideration of clearing this document from scrutiny.

28 June 2013

PROPOSAL TO REFORM EUROJUST AND A PROPOSAL TO ESTABLISH A EUROPEAN PUBLIC PROSECUTOR’S OFFICE (UNNUMBERED)

Letter from the Chairman to James Brokenshire MP, Security Minister, Home Office

I wanted to inform you that we are expecting the European Commission to publish their draft proposals to reform Eurojust and create a European Public Prosecutor’s Office (EPPO) imminently, potentially on Wednesday 17 July.

Both proposals will trigger an opt-in decision, although the Government has already confirmed that it will not participate in the EPPO in the Coalition Agreement. We anticipate debates in both Houses on the Eurojust opt-in decision.

That said, I am conscious that the House of Lords will rise for recess at the end of the month. The three month deadline by which the opt-in decision will need to be made will be determined by the date the last language version of the Eurojust proposal is published. This means that much of the three month window for deciding UK participation is likely to fall during the summer recess. I have asked my officials to keep yours informed as soon as we know more to support the scrutiny process.

Once the proposals are published, they will, of course, be deposited for scrutiny in the usual way.

16 July 2013

PROTECTION OF THE EURO AND OTHER CURRENCIES AGAINST COUNTERFEITING BY CRIMINAL LAW (6152/13, 10518/13)

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

Thank you for your letters of 8 April and 8 May 2013. These were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain the proposal under scrutiny.

We remain disappointed with the information you have provided in respect of the UK opt-in. We can understand that the Government may not have been in a position to make a decision on whether or not to exercise the UK opt-in at the time of the Explanatory Memorandum. Nevertheless, the Government’s commitments to support Parliamentary scrutiny of JHA measures extend to providing information on the factors affecting the opt-in decision, where the Government is in a position to do so. We do not consider that you have met this commitment. In addition to the assessment of the policy implications of the proposal, which is standard in all Explanatory Memoranda, we would have expected a preliminary assessment of the prospects of negotiating away the concerns identified; some
assessment of the implications of non-participation (for example whether it would be practical to continue operating under the existing Framework Decision); and some indication as to whether UK investigation and prosecution authorities would be hampered by non-participation.

Our main concern with this proposal is the provision of minimum sentences without any judicial discretion to account for exceptional circumstances. However, the Commission’s Impact Assessment reveals that a significant number of other Member States do not have minimum sentences for counterfeiting and are therefore potential allies in addressing this issue.

We therefore encourage the Government to remain engaged with the proposal with a view to achieving a negotiated outcome to which the UK could opt-in when the measure is adopted.

We should be grateful for an update in due course on the progress of negotiations.

22 May 2013

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

Thank you for your Explanatory Memorandum of 10 July 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July. We decided to clear the Opinion from scrutiny.

In doing so, we generally support your approach to the matters raised by the European Central Bank. In particular, we remain opposed to minimum sentences. However, we see no objection to clarifying in the proposal how the value of non-euro counterfeit notes and coins is to be converted to euros for the purposes of applying the penalty thresholds, and that samples of counterfeit notes and coins held back from analysis because they are needed for prosecution should be sent for analysis (if that has not already taken place) once the prosecution has ended.

We do not expect a reply to this letter.

29 July 2013

**RAILWAY ROLLING STOCK (11140/13)**

**Letter from the Rt. Hon. Simon Burns MP, Minister of State, Department for Transport, to the Chairman**

Please find enclosed an Explanatory Memorandum [not printed] on the above proposal.

As you will see, the proposal has a Title V legal base and therefore, we consider, engages the UK’s opt-in (although we note that the Commission do not take this view). I apologise to the Committee that the legal base and its implications were not spotted earlier so that the EM could be submitted within the timescale laid out in the Ashton undertaking. This is of particular concern because the proposal has emerged so close to Parliamentary recess, and the time available to your Committee for consideration of its opinion on the opt-in was therefore already likely to be limited.

The EM notes that we have contacted the Council Secretariat to seek confirmation of the date of publication of the last language version of the proposal. That confirmation has not yet been received, but the worst case scenario is that the date of the last language version was 12 June 2013. If that is the case I am afraid that the deadline for Parliament’s opinion on the opt-in would be 6 August. I will of course confirm the deadline as soon as we receive confirmation from the Council Secretariat.

I would like to assure your Committee that I am committed to the effective scrutiny of proposals that engage the UK’s opt-in. To help avoid similar timing problems with future proposals I have asked officials in the International Co-operation team in my department to check the legal base of every proposal as soon as it is published, regardless of whether or not it seems likely to involve a Title V legal base.

10 July 2013

**Letter from the Chairman to the Rt. Hon. Simon Burns MP**

Thank you for your Explanatory Memorandum and letter of 10 July. These were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July.
We are grateful for the steps you are putting in place to ensure timely submission of Explanatory Memoranda in future.

We agree with you that the proposal raises no subsidiarity issues.

We commend the transparency concerning the respective roles of the EU and the Member States through a declaration of competence.

We agree that the UK opt-in applies. As this is a mixed agreement in which the UK will participate in its own right in addition to the EU, it is not a matter of practical significance whether the opt-in is exercised. However, whether or not the UK opts in, it is important that the recitals of the Decision and the declaration of competence properly reflect the position.

We are therefore retaining this matter under scrutiny pending resolution of the opt-in issue and would be grateful if you would update us in due course.

25 July 2013

RETURN OF CULTURAL OBJECTS UNLAWFULLY REMOVED FROM THE TERRITORY OF A MEMBER STATE (10469/13, 10471/13)

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

Thank you for your detailed Explanatory Memorandum (EM) on the draft Directive and the Commission’s Report. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 10 July. We decided to clear the Report from Scrutiny but retain the draft Directive under scrutiny.

We are a little surprised at your generally lukewarm initial position on the proposal. It seems to us that the changes would make the kinds of helpful improvement suggested by national authorities at the time of the last Commission Report and endorsed by the working group which reported to the Commission. As such, we should have thought the proposal was uncontroversial.

While endorsing the need for an effective means of cooperation between Member States and welcoming the proposed use of the Internal Market Information System for this purpose, you comment on possible adverse effects of the other suggested changes. But is the risk of frivolous applications if the deadlines were extended a real one? What level of increase in requests for returns does the Government envisage and what would be the cost to the authorities of having to handle the increase? Will the Government’s concerns lead you actively to oppose the proposal?

We agree with you that no subsidiarity issues arise on the proposal for an amending Directive. However, we were concerned that, had we wished to consider a Reasoned Opinion on subsidiarity grounds, our time for doing so was curtailed by the late deposit of the documents and the EM. What caused the delays?

We look forward to hearing from you by 25 July. If it were possible for you to reply in time for our last meeting before the summer recess, on 24 July, that would be very helpful.

11 July 2013

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter of 11 July in response to my Explanatory Memorandum of 26 June on the European Commission’s proposal and report.

We consider that Directive 93/7/EEC offers useful safeguards for the protection of national treasures and therefore contributes to the fight against illicit trade. While the UK has not made use of the Directive to date and in general return proceedings under the Directive are rarely applied, we consider that the proposed changes would make it easier to make requests under the Directive in future if required. A key principle in our consideration of the proposed changes is the importance of striking the right balance between protecting cultural objects and allowing rightful owners the freedom to enjoy their property.

The reference to potential “frivolous use” of the Directive if the deadlines for return proceedings were extended was mentioned in the Explanatory Memorandum as an example of the sort of concerns that have been raised previously by the UK. Whilst we recognise that the majority of the
members of the working group which reported to the European Commission were in favour of extending deadlines, our current view is that the existing deadlines should offer sufficient time for appropriate and responsible use of the provisions. The Directive was set up in order to protect national treasures and our view is that it should be possible to bring return proceedings within one year of becoming aware of the location of such important objects.

The Commission envisages an increase in the use of the Directive if the changes are made, but they have not made any assessment of the level of increases. The Government agrees that the widening of scope would likely lead to an increase in the use of the Directive, but as the current provisions are rarely applied, it is difficult to quantify the likely level of increase in use and any associated handling costs. While the impact is difficult to quantify, we consider that it is likely to be small. The initial view is that any concerns we have identified would be unlikely to lead to the UK Government opposing the proposal in general.

I am sorry you felt that the Committee’s time to consider a Reasoned Opinion on subsidiarity grounds would have been curtailed should it have wished to do so. The Explanatory Memorandum was submitted within the deadline set by the Cabinet Office after the documents were received from the European Council Secretariat and deposited, but there appears to have been an unusual delay between the Commission proposal being adopted and it being communicated by the Council which was outside my control. We tried to inform you in a speedy manner and apologise if there were apparent delays in the process.

24 July 2013

REVIEW OF THE BALANCE OF COMPETENCES

Letter from the Rt. Hon. Maria Miller MP, Secretary of State for Culture, Media and Sport and Minister for Women and Equalities, Department for Culture, Media and Sport, to the Chairman

I am writing to you regarding the Review of the Balance of Competences launched by the Foreign Secretary in July 2012. As part of the commitment in the Government’s Coalition Agreement to examine the balance of competences between the United Kingdom and the European Union, the Department for Culture, Media, and Sport (DCMS) is leading a review of the sectors of Tourism, Culture, and Sport.

We are launching a Call for Evidence on 16 May 2013 and interested parties are invited to provide evidence by the end of July. Please find attached [not printed] the Call for Evidence document which sets out the scope of the report and includes a series of questions on which we ask contributors to focus.

Our report will be published by the end of 2013 and will be a comprehensive, thorough and detailed analysis of EU competence in the sectors of Tourism, Culture, and Sport. It will aid our understanding of the nature of our EU membership; and it will provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU.

We are also inviting stakeholders to consider the effects of non sector-specific EU legislation on their sectors: such as e.g. competition law on the Sports sector, and Employment law on the Tourism Sector. In such cases we will feed in to the lead Whitehall Department responsible for these cross-cutting issues. Other sectors within the DCMS portfolio, notably the creative industries and media, will feed in to the BIS-led review on the Internal Market in Services which is due to take place later in the autumn of 2013.

We would be particularly interested to receive the views of the Committee, or individual Members. Please also feel free to bring it to the attention of your contacts in the sector.

15 May 2013

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

I am writing to you regarding the Review of the Balance of Competences launched by the Foreign Secretary in July 2012. As part of the commitment in the Government’s Coalition Agreement to
examine the balance of competences between the United Kingdom and the European Union, the Ministry of Justice is leading a review on civil judicial cooperation (which includes family justice).

The Department launched a Call for Evidence today. Interested parties are invited to submit evidence with regard to the scope and nature of the EU’s power to act on matters of Civil Judicial Cooperation, as they affect the UK’s national interest. Please find attached the Call for Evidence document which sets out the scope of the report and includes a series of broad questions on which we ask contributors to focus. The deadline for submissions will be 5 August 2013.

The Civil Judicial Cooperation report will be completed by December 2013 and is an audit of how EU law and its operation and enforcement affect the UK. It is intended to develop a comprehensive and detailed analysis of how civil judicial cooperation impacts on the operation of the internal market, and consider the impact of any future enlargement of the EU. It will aid our understanding of the nature of our EU membership; and it will provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU.

16 May 2013

SIX MONTHLY UPDATE TO THE JOINT MINISTRY OF JUSTICE-HOME OFFICE ANNUAL REPORT TO PARLIAMENT ON THE JHA OPT-IN

Letter from Lord McNally, Minister of State, Ministry of Justice, to the Chairman

I am writing on behalf of James Brokenshire 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 third annual report, which was published on 25 April this year, included decisions taken between 1 December 2011 and 30 November 2012. The updated annex [not printed], which I enclose, lists decisions taken in the period between 1 December 2012 and 31 May 2013.

During this six-month period, nine decisions were made under the JHA Opt-in Protocol and none was made under the Schengen Opt-out Protocol. The UK opted in on six occasions and did not opt in on three occasions. For the Ministry of Justice, this included the decision under the JHA Opt-in Protocol to opt in to the Council Decision amending annexes II and III of Council Decision 9 June 2011 which approved, on behalf of the European Union, the 2007 Hague Maintenance Convention. The Government has also decided to not opt in to the Directive on the protection of the euro and other currencies against counterfeiting by criminal law. On the Home Office side, the Government opted in to the proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC, Decision No 575/2007/EC and Council Decision 2007/435/EC with a view to increasing the co-financing rate of the European Refugee Fund, the European Return Fund and the European Fund. The Government decided not to opt into Council Decisions concerning the conclusion of readmission agreements with Cape Verde and Armenia.

Since 31 May the Government has taken a further three opt-in decisions. We have opted in to a Council Decision concluding, on behalf of the EU, a UN Firearms Protocol. We have not opted in to the new Europol Regulation and a Directive on the admission of third country nationals for the purposes of scientific research, studies, pupil exchange, unremunerated training or voluntary service. These decisions will be reflected on the next end of year report. In addition, the Government is currently considering an opt-in decision on the EU-Ukraine Association Agreement.

In the coming months the Ministry of Justice and Home Office are expecting further opt-in decisions on the following proposals:

— Proposal to reform Eurojust (HO)
— Proposal on a European Public Prosecutor (HO)
— Proposal for criminal law measures on fighting money laundering (HO)
— Proposal on special safeguards in criminal procedures for suspected or accused persons who are vulnerable (MoJ)
— Initiative regarding legal aid in criminal proceedings (MoJ)
— Information exchange, risk-assessment and control of new psychoactive substances
— EU-Canada Passenger Name Records (signature and conclusion) (HO)
— Extension of IT Agency to Associated States (signature and conclusion) (HO)
— Extension of European Asylum Support Office to Associated States (signature and conclusion of international agreement) (HO)
— Proposal for a legislative instrument on e-justice (MoJ)
— Proposal to amend the current EC Regulation No 593/2008 on the law applicable to contractual obligations (Rome I) (MoJ)
— Proposal to amend the current EC Regulation No 864/2007 on the law applicable to non-contractual obligations (Rome II) (MoJ)

The proposals on Eurojust, money laundering and psychoactive substances measures will repeal measures from the 2014 JHA opt-out decision list should we choose to opt in, although our assumption is that none will be adopted before December 2014, when the opt-out decision takes effect. The existing measures will therefore remain within the scope of the 2014 decision.

In addition, it is likely that further opt-in decisions will be required on the following proposals on which other Government departments will lead:

— Minimal rules on sanctions and their enforcement in commercial road transport (DfT)
— Protocol to World Health Organisation Framework Convention on Tobacco Control (HMRC)
— Possible recast of Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (HMRC)
— Legal and technical framework for a European Terrorist Finance Tracking System (HMT)
— EU-Canada Free Trade Agreement (BIS)
— EU-Singapore Free Trade Agreement (BIS)
— Kazakhstan accession to WTO (BIS)

It is also possible that other wide ranging EU international agreements will require an opt-in decision.

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

17 July 2013

STAFF REGULATIONS OF OFFICIALS AND THE CONDITIONS OF EMPLOYMENT OF OTHER SERVANTS OF THE EUROPEAN UNION (18638/11)

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

I am writing to provide you with a further update on negotiations on the above document, the subject of an Explanatory Memorandum of 16 January 2012 and cleared by your Committee in a letter to the Financial Secretary to the Treasury dated 22 May 2013.

I am now in a position to update your Committee, following the conclusion of the trilogue between the European Parliament, Council (represented by the Irish Presidency) and the Commission on 18 June and a hastily scheduled Committee of Permanent Representatives (COREPER) vote on 28 June. The haste was the result of the European Parliament’s insistence that there was a connection between the Staff Regulations and the Multiannual Financial Framework (MFF). The compromise that came out of the trilogue, which I set out below, does contain some useful reforms, but was unacceptable to the UK overall, and we voted against it at COREPER. Whilst we did not take this action alone, we were not able to secure enough support from other Member States to halt endorsement of the proposals at COREPER. The package will now be sent to a Council for agreement, likely in October.
Let me be frank, these proposals do not go nearly as far as we would have liked, and whilst they will produce some savings over the seven years of the next MFF, they will not reform the EU Institutions to a level acceptable to the UK. The Government will continue to champion this cause at every possible opportunity, including in the EU’s annual budget process. We will not, however, be able to achieve either the savings or the reforms through the annual budget process that we could have achieved through the reform of the Staff Regulations. I deeply regret this state of affairs.

The Commission has provided an initial estimate of the savings it expects to see from the reforms in this compromise proposal, which includes a two year salary freeze, as agreed at the February European Council. I would suggest that the Committee notes that these are just unofficial estimates at this stage. Savings of €2.8bn are envisaged to result from these proposals, although this does not include any hypothetical savings from changes to the Salary Adjustment Method or Exception Clause.

I will now take the key areas of the EU staff regulations in turn, and set out the deal provisionally endorsed at COREPER. As I set out in my previous letter, the Commission has maintained that its original proposal of December 2011 should be adopted, following the February European Council Conclusions which did not cut EU administrative spending (Heading 5). The deal compromise deal was not the same as the Commission proposal, and did include some important reforms. Nonetheless, it was still not enough for the UK to be in a position to support it when a vote was called in COREPER.

STAFF REGULATIONS PROPOSAL ENDORSED BY COREPER – DETAILS OF THE PACKAGE

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SALARY ADJUSTMENT METHOD

One of our primary aims was to break the connection between EU salary awards and changes in Member State civil services. This would have helped to achieve pay moderation and provided significant savings over the long-term. I am afraid to say that the compromise agreement achieves neither of these goals. The salary adjustment method remains directly connected to pay progression in a number of Member States’ civil services (through a sample taken from the civil services of Belgium, Germany, Spain, France, Italy, Luxembourg, Netherlands, Austria, Poland, Sweden and United Kingdom – the ‘specific indicator’), and reflects the previous system that has generated an increase of over 20% since 2004. The new method does create a limited capping of pay awards by creating a corridor (i.e. a margin) of -2% to 2%, within which the ‘specific indicator’ can fluctuate. This is, however, a very limited moderation. The ‘specific indicator’ is then multiplied by a ‘joint inflation index’ (this combines the HICP (a European Central Bank indicator of inflation, the Harmonised Indicator of Consumer Prices) in the case of Belgium and CPI (Consumer Price Index) in the case of Luxembourg) to create an update for the pay and pensions of EU officials. The proposal therefore only caps half of the pay update, and, moreover, any moderation that was achieved would only be deferred until the following year (although it would still be subject to the 2%/-2% corridor). If you would like further information on this rather complex formula, I or my officials would be happy to write or provide a briefing.

EXCEPTION CLAUSE

The current Exception Clause – as the Committee is only too well aware – is ineffectual. In spite of the financial crisis, and the difficult economic situation across the EU, the Commission has not seen fit to “activate” the Exception Clause and suspend the annual salary adjustment process. The Exception Clause endorsed at COREPER would only defer the ‘specific indicator’ of the Salary Adjustment Method to the following year if EU GDP growth was negative, and cancel the ‘specific indicator’ if GDP growth came in below -3%.

Whilst an Exception Clause which contains a clear activation trigger is to be welcomed, given the Commission’s past refusal to apply the Clause, the proposal is too weak to be effective, and, in our view, will not contribute towards pay restraint.
SPECIAL LEVY
The Special Levy – the additional tax paid by EU officials – is reintroduced at 6% for all staff, and at 7% for the most senior officials and Commissioners. Whilst this small tax increase is welcome, the Council’s proposal to limit deductions and include all remuneration (e.g. allowances) in order to maximise receipts was not accepted. Moreover, whilst the Government welcomes the progressivity of the new 7% rate, as it is currently constructed it would only impact on the pay received by around 200 staff and bring in very little revenue.

PENSIONS
The 28 June compromise increases the retirement age for new staff from 63 to 66, and for existing staff to 65 (with generous transitional measures). The accrual rate would also be decreased for new staff, and early retirement without penalty would be abolished. Whilst these limited changes are useful, they do not, in our view, go far enough in aggressively tackling pension costs, which are on course to make up over 20% of Heading 5 spending before the end of the next MFF in 2020.

CAREER STRUCTURE
On career advancement, the Council had been looking to slow progression (both merit-based and automatic) for all but the most talented staff whilst simultaneously limiting the most senior posts to those EU staff with significant responsibility and management of staff. The 28 June compromise does limit the number of those who can be placed at the highest grades, but does not slow down the career path enough. This is important, not just because of the need of promote meritocracy, but also because career progression has a clear impact on salary and pension costs.

ALLOWANCES
This is one of the areas of the Staff Regulations most clearly in need of significant reform, and I am disappointed to tell you that reform in this area has been marginal, at best. We had argued strongly for a rationalisation of the present complex allowances system and a significant reduction in the overall monetary value of the package. The limited reforms focus on travel allowance, but these will not bring significant savings.

GEOGRAPHIC BALANCE
Some helpful language has been endorsed, stating that the EU Institutions ought to take “appropriate measures following the observation of a significant imbalance between nationalities among officials”. The Commission will produce a report in January 2017 outlining its work to date to ameliorate geographic imbalances. This is, however, only a small step, and will not result in any significant changes to EU recruitment practices that would benefit the UK.

NEXT STEPS
The Commission will likely need to propose further amendments to the Staff Regulations before the next MFF in 2020. In the meantime, this Government will continue to fight against unnecessary administrative spending at every opportunity; most frequently through the annual budget negotiations. There is, however, a limit to how much this can be expected to achieve given that annual budgets cannot alter the provisions of the Staff Regulations and that those regulations determine spending on pay, pensions and allowances which together comprise 70% of EU administrative spending. Nevertheless, the annual budgets will be an essential tool for ensuring that reforms such as the 5% headcount reduction are being met, and for making certain that the Institutions are not falling behind their own targets for reform.

I hope this letter provides a useful update for your Committee. If it would prove useful to the Committee, my officials would be happy to provide an oral briefing on some of the more technical aspects of this dossier.

24 July 2013
Letter from Nick Hurd MP, Minister for Civil Society, Cabinet Office to the Chairman

Following your letter to me of 29 May 2012 I am now in a position to update you and the Committee on progress in negotiations on the European Commission’s proposed Statute for a European Foundation (“FE”), and to provide some feedback on the views of stakeholders and Member States.

STAKEHOLDER VIEWS

We have not been lobbied by the voluntary sector in the UK in support of this measure, which has led us to question the proportionality of the proposal. Where the voluntary sector has expressed a view it has been supportive in principal, but without considering the detailed implications of the proposal – in particular our concerns that the proposal could give rise to a two-tier system of charities: one based on our national definitions and rules, and another based on the European FE definition and rules. We do not think that the voluntary sector has given detailed thought to the significant problems that could arise from such a two-tier system.

The proposal has been strongly supported by the European Foundation Centre (EFC), and Donors and Foundations in Europe (DAFNE), two Brussels-based representative bodies for the foundation sector across Europe. But we have not seen significant support for the measure from UK-based representative bodies. The Society of Trusts and Estates Practitioners (STEP), a UK-based professional association for family inheritance and succession planning, including cross-border philanthropic giving, gave a presentation to the European Parliament’s Legal Affairs Committee in November 2012, which was supportive of the FE proposal in principle but highlighted some key concerns (that we share). STEP’s concerns included the lack of consensus on what constitutes a public benefit purpose, and that “a pan-European definition would have to reflect the ‘lowest common denominator’ amongst the purposes recognised across the EU if the European Foundation is to be properly utilised”. STEP also shared our concern about the inclusion of taxation in the proposal: “We do not consider that including ‘common denominator’ tax provisions in the Statute itself – that is, tax reliefs which are common to all member states – would be an appropriate approach considering the great variety of approaches across borders”.

PROGRESS OF NEGOTIATIONS AND MEMBER STATES’ VIEWS

You will remember that our main reservations related to the inclusion of any tax elements in the proposal, and that where action on taxation is appropriate at the EU level, this should be done under a tax legal base using unanimity voting, with decisions on EU level taxation measures being made by Finance Ministers at ECOFIN. This is a view shared by many other Member States.

The diversity of what can be recognised as a public benefit foundation under national laws also gives rise to significant concern from many Member States. The concern is that the FE could result in a two-tier system under which organisations could qualify under the FE definition that would not qualify under national laws (or vice versa). A lowest common denominator approach, whereby an FE would qualify only if it would be accepted under all Member States’ national laws would be workable, but unduly restrictive and therefore of questionable benefit. But without such an approach Member States’ national laws would inevitably be undermined in some way.

Perhaps unsurprisingly, given the difficult issues being discussed and the diversity of approaches under national laws, Working Party negotiations on this measure have made little progress. It is very hard to see unanimous agreement being reached on the proposal in anything like its current form.

Many Member States have also questioned the proportionality of creating a new pan-European structure for foundations, particularly when there appears to be little evidence of real demand from existing foundations.

The Irish Presidency has proposed a compromise text in an attempt to move the negotiations forward. I attach [not printed] for the Committee to consider in confidence, a copy of the compromise text. The text is marked “Limite” and therefore is not publicly available and should be handled accordingly in confidence. The main change is considered to be the insertion of a new article, Article 51a, which would enable Member States to impose more stringent non-discriminatory conditions under national laws than would otherwise be allowed by the Regulation, but only in a very limited number of specific situations. The very narrow limitation on the situations in which there would be discretion for Member States to impose more rigorous non-discriminatory conditions
represents a very minor concession, and more importantly this change does nothing to address the fundamental concerns we (and others) have over the inclusion of tax at all.

Furthermore, the compromise text adds several new provisions to the Regulation that we find problematic. We understand that some of these changes may have been introduced following the recent reports on the proposal of the Legal Affairs (JURI) and Culture and Education (CULT) committees of the European Parliament. For example, the compromise text includes a requirement for FEs to spend 70% of each year’s income within four years of its receipt (amendments to article 7). We believe that such a measure would be unduly bureaucratic for foundations, particularly in terms of monitoring and reporting, and would be almost impossible for regulators to police.

We will continue to engage constructively in negotiations, but hold little hope for much progress on the measure in its current form. I will write again to keep the Committee informed as negotiations continue.

12 June 2013

Letter from the Chairman to Nick Hurd MP

Thank you for your letter of 12 June. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 26 June.

We are grateful for your account of the state of play in the negotiations on this proposal and note the serious difficulties in reaching agreement on the fundamental issue of defining “public benefit”. We share your concerns about the inclusion of tax provisions in this proposal.

We note that you do not expect the proposal to make progress in its current form. We will keep it under scrutiny and look forward to a further update if and when any significant progress is made. Subject to that, we do not expect a reply to this letter.

26 June 2013

UPDATE ON THE EUROPEAN INVESTIGATION ORDER (9145/10, 18919/11)

Letter from Mark Harper MP, Minister of State for Immigration, Home Office, to the Chairman

In my letter of 22 January I undertook to update you on developments on the European Investigation Order (EIO).

Starting on 26 March, four trilogues took place under the Irish Presidency, the most recent on 11 June. These discussions were generally favourable to the UK position. Although a full, consolidated text has not yet been published, the following Articles have been agreed in principle (the draft revised text of these Articles is attached) [not printed]:

— Article 4 (Types of procedure for which the EIO can be issued)
— Article 5 (Content and form of the EIO)
— Article 6 (Transmission of the EIO)
— Article 7 (EIO related to an earlier EIO)
— Article 8 (Recognition and execution)
— Article 11 (Deadlines for recognition or execution)
— Article 14 (Grounds for postponement of recognition or execution)
— Article 16 (Criminal liability regarding officials)
— Article 17 (Civil liability regarding officials)

Most of these are non-contentious clauses and we were content with the agreed General Approach text. Discussions have also taken place on Articles 2, 5a, 9 and 10, to which my letter of 22 January also referred:

— Article 2 (Definitions of Executing/Issuing authorities) -There were concerns about the approach the European Parliament was taking in terms of defining an ‘executing authority’. However, the definition now looks likely to cover
the UK’s system of using a “central authority” to receive, accede to, and ensure the execution of EIOs.

— Article 5a (Conditions for Issuing and Transmitting an EIO) - It also appears likely that there will be a mechanism that will allow an executing authority to return an EIO that it considers disproportionate, so that the issuing authority can consider withdrawing the request.

— Article 9 & Article 10 (Recourse to different types of investigative measure / Grounds for non-recognition or non-execution) – The European Parliament is in favour of a ground for refusal on human/fundamental rights grounds and a clause that ensures that Member States are not obliged to carry out search and seizure where this is not possible in a comparable domestic case. We are supportive of a human/fundamental rights refusal ground and are considering proposals regarding search and seizure. However, negotiations on these clauses remain challenging.

Overall, progress was made under the Irish Presidency. Difficult discussions on grounds for refusal remain, but I am optimistic that negotiations will be concluded during the Lithuanian Presidency. I will keep you updated on developments during these negotiations.

5 July 2013

Letter from the Chairman to Mark Harper MP

Thank you for your recent letter which we received on 5 July. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 17 July. We are grateful for this further progress report and your comments on the main issues which have been under discussion. The amendments under discussion, in particular, those on proportionality and dual criminality seem to be those which the Committee, like you, would support.

We keep the matter under scrutiny and look forward to a further update as the negotiations develop. We remind you that we wish to consider the text of the draft Directive as agreed in the trilogue.

18 July 2013

WIPO COPYRIGHT TREATY FOR VISUALLY IMPAIRED PEOPLE

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

I am writing to you to let you know that the UK has been actively involved in international negotiations at the World Intellectual Property Organization (WIPO) on improving access to copyright works for visually impaired people. Significant progress has been made on the text in recent months, resulting in a draft Treaty. A Diplomatic Conference will be held on 17-28 April in Marrakesh, where further negotiations will take place with the aim of agreeing the Treaty text.

BACKGROUND

UK copyright law allows accessible copies of copyright works (for example, Braille versions of books) to be made for visually impaired people without infringing copyright in the original work. However, many countries’ copyright laws do not allow this. Even where national copyright laws do allow the making of accessible copies, international copyright laws do not permit them to be exchanged across borders. This means that a Braille copy of a book produced in the UK by the RNIB cannot be sent to their sister organisation in Australia – instead, they must pay to make their own copy.

The World Blind Union estimates that in the UK less than 5% of books are available in an accessible format, with less than 1% available in the developing world. The UK has long been a strong advocate for the need for international action to address this “book famine”.

WIPO has been hosting international discussions with the aim of agreeing a copyright Treaty that would require Member States to have an exception for the making of accessible copies for visually impaired people and to permit the transfer of accessible copies across national borders.

The UK wants to achieve a Treaty that will improve access to copyright works for visually impaired people whilst maintaining the important incentives that copyright provides for rights owners.
The Treaty concerns matters of national and EU competence, so it is being negotiated as a mixed agreement. The UK has ensured that the EU Commission’s negotiating mandate in relation to this Treaty includes our key objectives in the negotiations, and only allows the Commission to negotiate on matters of exclusive EU competence.

NEXT STEPS

There are still several outstanding issues that will be taken to the Diplomatic Conference. It is clear that a significant amount of focussed work will be needed, and that all parties will need to be flexible, if we are to successfully conclude the Treaty.

As mentioned above, the Treaty will be negotiated as mixed agreement. If a text is agreed it will be open to the UK, other Member States and the EU to sign the Treaty. At the Diplomatic Conference, the UK will be negotiating in line with the Government’s agreed position on this issue. I will write again following the Diplomatic Conference to inform you of the latest developments and any new text. Should the UK decide to sign the Treaty I will of course arrange for the text to be laid before Parliament as a Command Paper with an Explanatory Memorandum in the usual way.

We have carried out an initial assessment of UK laws and are of the view that, if the UK signs the Treaty, minor amendment of UK copyright exceptions for visually impaired people in the area of cross-border exchange of accessible copies of works could be required. Further analysis will be required following the Diplomatic Conference.

If, following the Diplomatic Conference, the EU seeks permission from the Council to sign the Treaty on matters of EU competence; I will provide you with the necessary explanatory memorandum which will be submitted for Parliamentary scrutiny.

I attach the current draft text [not printed] of the Treaty for your information.

13 June 2013

Letter from the Chairman to the Viscount Younger of Leckie

Thank you for your letter of 13 June which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 3 July.

The Committee was grateful for the information on the progress of negotiations. We understand agreement was in fact reached on the text of a Treaty on 26 June. We look forward to scrutinising any proposal brought forward by the Commission for the EU to sign it.

As you will recall from correspondence relating to the Beijing Treaty, the Committee is concerned that the respective competences of the EU and the Member States should be transparent, especially for the other states participating in it. Ideally, this should be done by provision for a declaration of competence in the Treaty itself.

We should therefore be grateful if you would let us know what steps have been taken to include provision for the respective competences of the EU and its Member States to be made transparent.

4 July 2013