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CIVIL JUSTICE: ACCESSION TO THE CAPE TOWN CONVENTION AND ITS PROTOCOL ON AIRCRAFT EQUIPMENT (12135/08)

Letter from Lord Davies of Abersoch, Minister for Trade and Investment, Department for Business, Enterprise and Regulatory Reform, to the Chairman

Thank you for Lord Grenfell’s letter of 27 October 2008 to Baroness Vadera, regarding the Explanatory Memorandum on the above subject. I am replying as this matter falls within my portfolio.

As you are aware, the UK played an active role in the negotiations of the Convention and Protocol and the Government remains committed to ratification. This matter has previously been discussed with stakeholders and further communication is planned in the near future.

I can confirm that the issue relating to delineation of Community competence has been resolved to the Government’s satisfaction. The proposals now being put forward by the Commission make it clear that the competence of Member States concerning the rules of the substantive law of insolvency are not affected.

Your Committee also asked whether the issue of who is to make declarations under Article XXX of the protocol has been resolved. I can confirm that the Government can accept the proposals that have been put forward under which the EC would not make any declarations under the Article, nor will Member States. Member States will thus remain free to amend their national law in this area to reflect the substance of the insolvency alternatives if they choose to. The UK can agree with this position and is taking part in the adoption and application of the Decision.

The revised proposals were considered by Coreper on 19 December 2008 where the UK retained its Parliamentary Scrutiny reservation. The next formal JHA Council is scheduled for 26-27 February, however we have received an indication from the Czech presidency that if we lift our reserve earlier, it is likely to be placed on the agenda of another Council in early February. I would therefore ask your Committee to consider lifting the scrutiny reserve as soon as possible.

29 January 2009

Letter from the Chairman to Lord Davies of Abersoch

Thank you for your letter dated 29 January. Sub-Committee E considered it on 11 February. We are grateful for the further information on the terms on which the EC will accede to the Convention and the aircraft Protocol.

We note that the Government exercised the UK’s right to opt into this proposal, though your letter does not quite say so. We should like to know when the notification of opting-in was given and briefly what considerations were taken into account. The Committee attaches considerable importance to scrutiny of the opt-in arrangements in relation to proposals under Title IV EC but was unable to consider the opt-in question in this case in the absence of information on the Government’s view in the Explanatory Memorandum dated 2 October 2008. This is unsatisfactory. We trust that under the new arrangements for enhanced scrutiny there will be no question of this recurring.

Pending answers to the questions above we retain the matter under scrutiny.

12 February 2009

Letter from Lord Davies of Abersoch to the Chairman

Thank you for your letter dated 12 February 2009. You have asked when the notification of the UK opting-in was given and what considerations were taken into account.

The proposal has a long history. It was originally submitted by the Commission to the Council on 20 December 2002. A note from the Presidency dated 20 June 2003 recorded that the UK would take part in the decision. The UK considered itself bound to take part in the decision as it involves the exercise of exclusive external competence by the Community arising from internal rules created by a Title IV instrument into which we had already opted in (Brussels I). Although this matter was sent to COREPER in October 2003 it was not adopted due to the “post-boxing dispute” between the UK and Spain. This dispute was resolved in December 2007 and an amended proposal was presented on 11 August 2008. This proposal again recited the fact that the UK had opted in to this Decision. It is accepted that given your Committee’s increased concern with opt in arrangements that the EM of 2 October 2008 should have made this position explicit.

As stated in my letter of 29 January 2009 the Government can agree with the proposal and is taking part in the adoption and application of the decision. The Government supports the Cape Town Convention and aircraft protocol and remains committed to ratification. Both Rolls Royce and BA have
indicated their support for these treaties and further discussions with other stakeholders are planned for the near future.

2 March 2009

Letter from the Chairman to Lord Davies of Abersoch

Thank you for your letter of 2 March. Sub-Committee E considered it on 4 March at exceptionally short notice, having regard to the timing of discussions in the Council. We now clear this matter from scrutiny.

The Committee accepts your acknowledgement that the position concerning the opt-in should have been made clear at an earlier stage. We note that the Government considered itself bound to participate in this proposal.

However as we understand the position under the Protocol, the Government was not obliged, but chose, to opt in. In other words, it was open to it not to take part although it would not have been open to it to enter into conflicting international engagements. Since this point could be important for the future we would be grateful either for your confirmation that this is how you too see it, or for an explanation why you disagree.

We wish to have had the opportunity to comment on any decision to opt in before it was made, although we do not object to the decision itself since opting in seems entirely justifiable.

5 March 2009

CIVIL JUSTICE: ACCESSION TO THE CAPE TOWN CONVENTION AND ITS PROTOCOL ON RAILWAY ROLLING STOCK (7115/09)

Letter from the Chairman to Lord Adonis, Minister of State, Department for Transport, to the Chairman

Thank you for your Explanatory Memorandum dated 23 March 2009 on this Proposal which was considered by Sub-Committee E at its meeting of 22 April 2009. The Committee has decided to keep the matter under scrutiny.

As was the case when the Committee looked into the Cape Town Convention and its application to the aircraft industry we think that the Convention and its accompanying Protocol on railway rolling stock within the EC could potentially be helpful to both the industry and those who fund it. However, we note with concern the lack of a Commission impact assessment for this proposal.

The Committee is unable to gauge from the Explanatory Memorandum the exact nature of the Government’s policy on this proposal and seeks a clearer statement of the Government’s intentions. The Government states that it has “reservations” about this proposal. What are these reservations? The Explanatory Memorandum alludes to two prior consultations on this matter within the UK that seemed to produce a less than favourable response. Is the Government able to provide the Committee with a more detailed assessment of why this proposal has the potential for conflict with, or restriction of, the current workings of the UK system?

In their Explanatory Memorandum the Commission argue that the Rail Protocol “is likely to be of great benefit to the European rail industry, banks and Governments by encouraging capital investment in the rail sector”. Does the Government agree with the Commission’s assessment?

The Committee notes the change in asserted legal base and has some concerns about whether Article 71(1) does cover this matter. When the Committee recently considered and cleared from scrutiny the EC’s accession to the Convention and accompanying Protocol on matters specific to aircraft equipment, the legal basis for that matter was Article 61c and 300(2) and was subject to the UK’s opt-in. However, the legal basis for the Community’s accession to the Convention and accompanying Protocol on railway rolling stock is Article 71(1) and not subject to the opt-in provisions. The Committee would welcome an explanation from the Government as to this divergence in legal base and the Government’s view about whether Article 71(1) is appropriate.

We note that in line with provisions in both the Convention and the Protocol, the draft Decision provides for EC accession to the extent of its competences. Is the Government satisfied that the draft declaration of competence properly delineates the relevant areas of competence?

In 2004-05 the Community created the European Railway Agency to “pave the way for the gradual establishment of an integrated European railway area both technically and legally”. Does the Government think this is a matter that falls within the Agency’s remit? If so, is the Government aware
of the Agency’s opinion of this proposal? Has the Government sought the opinion of or consulted with this recently established agency?

The Committee looks forward to receiving the Government’s replies to its questions.

23 April 2009

CIVIL JUSTICE: COMMON FRAME OF REFERENCE FOR CONTRACT LAW

Letter from Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

As promised by my ministerial predecessor, Bridget Prentice, I am pleased to enclose a copy of the report prepared for the Ministry of Justice by Professor Simon Whittaker on the draft common frame of reference, which was received recently.

We are considering Professor Whittaker's report and hope that it will help us develop our position on the CFR project.

10 December 2008

Letter from Lord Bach to the Chairman

The House of Commons European Scrutiny Committee met on 28 January 2009 and has raised a number of questions on the Common Frame of Reference. The content of this letter, responds to the points raised by that Committee.

The Committee asked whether the Government agreed with Professor Whittaker's assessment that the DCFR was more suitable as a basis for the codification of private law throughout the EU than as a toolbox for legislators and courts. The Government agrees that the DCFR resembles a code for private law but we have always made it clear that we do not endorse the development of a European code of contract law. The DCFR is exceedingly complex and inflexible and, as Professor Whittaker's analysis highlights, its coverage goes beyond the mere regulation of general and consumer contract, the latter of which has in essence been the basis of the CFR project. Although it contains some matters that could be significant between contracting parties, it also contains other matters that bear no direct relationship to contracts or contract law. Professor Whittaker's analysis endorses the Government's view that the DCFR is not suitable as a toolbox for EC legislators. The CFR, or political CFR, yet to be created by the Commission, will hopefully take a very different form and be more akin to the toolbox approach sought from it.

The Committee also asked whether the Government favoured narrowing the scope of the CFR to serve as the basis for recasting the Community acquis in specific areas of law such as EC Consumer law. In response to this question, the CFR (or political CFR) must first be distinguished from the DCFR. The UK, like the majority of other Member States, considers that any political CFR should be a non-binding toolbox. The European Commission is considering which parts of the DCFR will be useful in forming the political CFR. The Commission has, however, given assurance that it will be consulting widely on what should be included.

The Council has of course previously considered the purpose, content and scope of the CFR has reached some general conclusions in 2008. These relate to the:

— PURPOSE OF THE CFR: the Council has agreed that this should be a tool for better lawmaking targeted at Community lawmakers.

— CONTENT OF THE CFR: the CFR should consist of three linked elements: definitions, general principles and model rules, forming an inter-related whole to be derived from a variety of sources not just the academic CFR (DCFR) The content of the CFR should fully respect national legal traditions.

— SCOPE OF THE CFR: the CFR should include general contract law, including consumer contract law, with the possibility of including further special contracts later.

— THE LEGAL EFFECT OF THE CFR: the CFR should be a set of non-binding guidelines to be used by lawmakers at Community level on a voluntary basis as a common source of inspiration or reference in the lawmaking process. The Council and the European Parliament should be involved in the process of creating the CFR.
Given the proposed scope of the political CFR set by the Council, it is reasonable to assume that those parts of the DCFR that are predominantly about contract law, will be the first on the Commission's list of useful subjects. However, the DCFR is a complex and tightly knit document. It will be difficult to extract those parts wanted and find a coherent text that will provide appropriate guidelines to legislators. There will be a considerable amount of work to do to turn a putative private law code, that is the DCFR, into a toolbox or set of non-binding guidelines for legislators.

The Committee also asked for my (the Government's) views on the legal basis for a harmonising instrument of limited scope, in particular whether Article 95 of the EC Treaty would be the most appropriate legal base and that following the Tobacco Advertising case that any legislation on this basis would have to contribute to eliminating obstacles to free movement, or to removing appreciable distortions of competitions.

The Government's expectation is that the political CFR will not be a measure that will require legality in terms of a formal Treaty basis, although it remains the Government's intention to keep this under review. We anticipate that the CFR may take the form of an inter-Institutional agreement but precisely what form this will be is not yet clear. This type of 'soft law' agreement, however, normally involves the consensus of the Council, Commission and the European Parliament and has been devised as an informal means of improving law making within the Community.

28 February 2009

Letter from the Chairman to Lord Bach

Thank you for your letter of 28 February. Sub-Committee E considered this at its meeting on 11 March. The points with which your letter deals were, of course, all discussed when you gave evidence to the Sub-Committee last December in the course of its Inquiry into the CFR, and we note that the Government’s position on these points is unchanged.

12 March 2009

CIVIL JUSTICE: JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS

(11108/08)

Letter from Lord Bach, Parliamentary Under Secretary of State, Minister for Justice, to the Chairman

Lord Grenfell wrote to me on 24 November with notification that your Committee had cleared this proposal from scrutiny. I apologise for the delay in replying. I can confirm that agreement on the text was reached at the JHA Council on 28 November. The European Parliament also approved the proposal on 16 December. This has allowed a first reading deal to be concluded between the Council and Parliament. I enclose a copy of the agreed text. This is still subject to revision by the jurist-linguists.

I explained in my letter of 31 October that the Network's relationship with the professional associations of lawyers had still to be finalised. You will see that in the agreed text the proposed Article 5(2a) has been deleted and a new Article 5a has been inserted which requires the contact points to have "appropriate contacts" with the professional associations. While these associations will not have formal membership of the Network the Government can support this provision as it retains the main reason for allowing membership - i.e. to ensure the professional associations can share with the Network their views and experiences on the working of current instruments.

The other main substantive changes to the text are to Articles 8, 12a and 19. In Article 8 the fifteen days for contact points to respond to requests remains but where extra time is needed this should not, as a rule, exceed thirty days.

Paragraph 1 of Article 12a has been redrafted to extend the relationship of the Network with the European Judicial Training Network to the promotion of training sessions for the benefit of local judicial authorities. In agreeing this new wording we were, of course, aware of the need to ensure that there was no adverse effect on our judicial training systems. This text was agreed by the Judicial Studies Board and makes clear that such sessions must be "where appropriate and without prejudice to national practices".

The Commission's next evaluation report on the Network must now, under Article 19, include information on the Network's activities to progress with the design, development and implementation of European e-justice, particularly from the point of view of facilitating citizens' access to justice.

In his letter Lord Grenfell said that the Committee was pleased that the emphasis of the Presidency's revised text was on the supply of general legal information, rather than on its application or advice on
its application to specific cases, but queried whether this was consistent with the wording of Article 3(2)(b) and whether that provision should be more appropriately recast and repositioned in Article 5.

While it is true that the contact points are only required to provide general information to the professional associations of lawyers and, through the Network's website, to the public, as I explained in my letter of 31 October, the contact points have for some time provided more specific information on national law to the contact points or national authorities in another Member State. Therefore the Government believes that Article 3(2)(b) is appropriate as a description of one of the general tasks of the Network. This is then clarified as the responsibility of the contact points in Article 5. As I also mentioned in my letter of 31 October, when such requests are received the contact points do not provide legal advice on how legislation should be applied to a specific case.

Lord Grenfell also referred to the date of the opt in. Although the Explanatory Memorandum was issued within the required 10 working days of deposit of this proposal I appreciate you were unable to consider it until after the Summer Recess, during which the decision on whether to opt in had to be made. I am aware that there has been separate correspondence with your Committee on liaison with Parliament during the three month opt in period. As a result of that correspondence the Government has undertaken not to give formal notification of the UK's opt in decision within eight weeks of a proposal being issued. Explanatory Memoranda will highlight the period within which opt in decisions need to be made.

8 February 2009

**Letter from the Chairman to Lord Bach**

Thank you for your letter on 8 February which was considered by Sub-Committee E in its meeting of 25 February.

The Committee is again grateful for your helpful exposition of the latest developments included in the Decision and for providing a copy of the agreed text.

The Committee wishes to endorse the requirement in Article 19 that the Commission’s evaluation report specifically addresses the development of the European e-justice programme. The Committee also welcomes both the inclusion of a new Article 5(a) defining the Network’s relationships with professional bodies and the clarification of the relationship between the European Judicial Training Network and the Judicial Studies Board addressed in Article 12a.

The Committee notes your comments in relation to the liaison with Parliament when the three month opt-in period is at issue.

26 February 2009

**CIVIL JUSTICE: LAW APPLICABLE TO MAINTENANCE OBLIGATIONS (6996/09)**

**Letter from the Chairman to Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice**

Thank you for your Explanatory Memorandum. It was considered by Sub-Committee E at its meeting on 1 April and we decided to clear it from scrutiny.

2 April 2009

**CIVIL JUSTICE: MAINTENANCE OBLIGATIONS (5199/06)**

**Letter from the Chairman to Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice**

Thank you for your letter of 13 November which was considered by Sub-Committee E at its meeting of 17 December.

We welcome the further improvements that were secured in negotiations to alleviate the practical effects of the effective retention of exequatur in the draft Regulation. We are also grateful for your very comprehensive explanations of the data handling provisions in response to the points previously raised by the Committee.

We welcome the progress made in limiting the bodies from whom information can be obtained by a Member State and endorse your intention to take up the option to designate specific public authorities
in the UK in order to limit the obligation to provide information to the most appropriate ones only. We do however note that any other legal entity which is not a public authority would be obliged to provide information “if it is so authorised by the law of the requested Member State.” We would be grateful to know whether you consider specific legislation is required to provide this authorisation and if so whether the Government contemplates putting that in place.

Furthermore we continue to regret the complexity and lack of clarity in the drafting of these provisions. This is illustrated by consideration of the inter-relationship between Articles 41b(1a), 44(1a) and 46(2).

— Article 44(1a) sets out the range of information that can be obtained by a requested Central Authority and which, in accordance with the fifth paragraph of Article 44.1, must be transmitted to the requesting Central Authority. The information in question includes, for certain purposes, identification of the debtor’s employer and/or bank accounts. However information that can be transmitted from one Central Authority to another under Article 41b(1a) for the same purposes does not include the debtor’s employer and/or bank account.

— Article 46(2) provides that, of the information that can be collected by a requested Central Authority under Article 44(1a), merely the existence of an address, income or assets in the requested Member State may be disclosed to a claimant subject to the application of the procedural rules before a court. This seems to assume that the full range of information set out in Article 44(1a) will be transmitted to the Central Authority of the requesting Member State. Also that it would be possible for a court in the requesting Member State to require the Central Authority of the requested Member State to communicate all the information obtained under Article 44(1a) to the Central Authority in the requesting Member State and so to the claimant. This appears to conflict with the more stringent limit to what one Central Authority can disclose to another set out in Article 41b(1a).

We hope that the opportunity provided by the process of revision by the jurist-linguists will be used in order to continue to seek greater simplicity and clarity in the drafting.

18 December 2008

Letter from Lord Bach to the Chairman

Thank you for your letter of 18 December 2008. Before I answer your questions, you will wish to note that this Regulation was formally adopted on 18 December 2008 (the jurist-linguists’ meeting having taken place on 4 December 2008) and was published in the Official Journal on 10 January as Council Regulation (EC) No. 4/2009. I enclose a copy for your information.

You asked first about whether the Government contemplates putting in place specific legislation to provide authorisation for any legal entity which is not a public authority to provide information. The provision for this authorisation was inserted at the request of certain Member States who considered that it was necessary to enable them to make the data sharing provisions work, given the manner in which, and persons by whom such data is held in their country. As you have noted, such bodies are only required to provide data “if so authorised by the law of the requested Member State”. The Regulation itself provides no directly applicable obligation on such authorities to provide the data and I can confirm that the Government has no intention of legislating to authorise or require sharing of data by such bodies.

You also said that you regretted the complexity and the lack of clarity in the drafting of the data sharing provisions. I have sympathy with this view. The negotiation of this Regulation was very technical and the complexity of the information sharing provisions was increased by the need to ensure a proper match between the requirements of data protection law and the desire to increase access to private information of debtors in order to ensure enforcement of duly adjudicated maintenance entitlements, whilst also taking into account the differences in national systems of 27 Member States. However, I am confident that the system of Central Authorities, once established, will foster expertise in the working of these provisions throughout Member States. I hope also that I can deal with your concerns by explaining in more detail how these provisions will work.

I have set out in a table in an annex to this letter what information can be requested and at what stage of the proceedings. To allow you to read across to the text of the adopted Regulation, references to the Article numbers of the Regulation follow in brackets, those of the text sent to you in November.

It should be remembered that the restrictions that apply do so only as far as the information has to be obtained pursuant to Article 44 (now Article 61), in other words from a nominated public authority (in terms of the UK’s intentions). Some of this information can be obtained from public registers in most
Member States. The table applies only where the application is made through a Central Authority rather than directly, and relates only to information which the requested Central Authority can obtain. It does not reflect what the Applicant can be told.

When considering these provisions, it is essential to bear in mind that requests can be made at a number of stages in respect of applications listed in Article 42b (Article 56):

PRIOR TO APPLYING TO ESTABLISH A MAINTENANCE DECISION IN THE FIRST PLACE

Such requests are made under Article 41b (Article 53) and are most likely to be when the creditor is seeking an adjudication of maintenance owed to them, but could also be when a debtor is seeking modification of an earlier order or even a decision that they owe no maintenance. At this stage, the chief concern in cross-border cases is locating the respondent to the application in order to effect service. In maintenance cases, it is often the case that the debtor in particular is seeking to evade maintenance obligations by concealing their whereabouts. Therefore, the Regulation allows data to be exchanged between Central Authorities to facilitate location.

The same request can also be made at the time an application is made or during the proceedings: the combined effect of Articles 41 and 44 (Articles 51 and 61).

AFTER OBTAINING A DECISION ON MAINTENANCE

At this stage the creditor may need to take enforcement action. Their interest is likely to be in ensuring that it is worth spending time and money on such action and therefore the Regulation enables the Central Authority of the requesting state to obtain from the Central Authority of the requested state limited pre-enforcement information under Article 41b (Article 53), indicating whether or not there are enforceable resources belonging to the debtor on the territory of the Member State. At this stage, only the existence, not the extent, is indicated since this is a pre-action request.

WHEN AN APPLICATION IS ACTUALLY MADE FOR ENFORCEMENT

At this time full information can be requested to assist the enforcement body in accordance with Article 44 (Article 61).

It also needs to be remembered, as explained in my letter of 13 November 2008, that more data is made available to dispose of an enforcement action than an action to establish the initial obligation because of the need to balance the rights of the debtor to privacy, as against the creditor's rights to maintenance. It was felt that once the creditor's claim has been adjudicated in their favour the balance swings in favour of allowing more private data to be provided which will ensure their rights are fulfilled through enforcement.

Article 41b (Article 53) is the provision which deals with the extent to which the full regime under Article 44 (Article 61) is available before any application is made. Only limited data is available, for a proposed application to establish the maintenance obligation, only the address; for a proposed application to enforce an adjudicated obligation, the address and whether or not income or assets exist (but not their extent). It is only where the creditor has an adjudicated decision and actually brings their application to enforce that all the data under Article 44 (Article 61) may be requested and, even then, information on the debtor's assets is only available where information on other resources will not satisfy the claim, for whatever reason.

It is therefore incorrect to say, in the first bullet point of your letter, that transmission between Central Authorities under Article 44 (Article 61) and under Article 41b (Article 53) is for the "same purposes". There is a spectrum of information available according to the stage and purpose of the application. The aim is to provide a balanced and proportionate approach to the competing interests of the parties, a balance which swings in the creditor's favour once they have proved their entitlement. At the preapplication stage of an enforcement claim (only), the requesting Central Authority is only entitled to be told whether the debtor has income or assets in the requested Member State. Whilst Article 41b (Article 53) permits the requested Central Authority to seek information on the employer's identity and the debtor's bank accounts, it is clear that those details cannot be transmitted to a requesting Central Authority. There is no inconsistency here; the requested Central Authority may need to know that the debtor is in employment, and that they have bank accounts, in order to inform the requesting Central Authority that he has income or assets regardless of their extent. To do that, it may need to find out who the employer is (to establish that there is an employer), or that bank accounts exist. Only a certain amount of pre-action fishing is allowed given that the creditor has not at this stage committed to an application and there is no need for an enforcement authority to know the actual details of the employer or accounts until the enforcement action has begun and the practicalities of extracting the money are being considered.
Turning to your second bullet point, it is important to bear in mind that the Regulation distinguishes between (a) what requesting and requested Central Authorities can tell each other, and (b) what the applicant can be told. Article 41b (Article 53) governs what can be communicated between Central Authorities prior to an application actually being made. Article 44(1) (Article 61(1)) governs three matters:

1. the power of a requested Central Authority to obtain data from public bodies;
2. the obligation on bodies which hold the data to provide it to the requested Central Authority; and
3. what those Central Authorities communicate between themselves once an application is actually made by the Applicant.

Article 46 (Article 62) governs the use of the data so obtained and disclosed, in particular what the applicant may be told, whether by the Central Authorities or by the body making the adjudication. Generally, that is limited to the existence of an address, income and assets in the requested state. However, it was important for some Member States that this rule be subject to national procedural rules, some of which might require that, in the course of court proceedings, the applicant be told, for example, the respondent's address. Therefore, disclosure to the applicant is governed in part by Article 46 (Article 62), but subject to any contrary rule of national procedural law. I anticipate that in practice, Central Authorities in the UK will quickly become familiar with the practice regarding disclosure of such information in other Member States through discussions with their counterparts and be able to advise Applicants accordingly.

There is no assumption in Article 46 (Article 62) that the full range of information must have been transferred to the requesting Central Authority. As explained above, what may be requested and what may be given is dependent on the stage of the proceedings and whether the application is for establishment, or enforcement, of an existing decision. This is not governed by Article 46 (Article 61). There is no right for the requesting Central Authority to demand all the information in Article 44(1a) (Article 61(2)) at any stage in the proceedings, it may request information only in accordance with the provisions of the Regulation explained above. Further, as explained above, the applicant will get only the information indicated in Article 46 (Article 62). It is only possible for the Applicant to be given the information which the requesting Central Authority possesses, even if the rules of court in a particular Member State require disclosure of more than the mere existence of the information. Therefore, it is only at the enforcement stage that the Applicant is likely to get the full range of information transmitted and then, depending on the rules of court, where the enforcement application is actually being heard.

This brings me on to an important practical point. In reality, at the enforcement stage, it is far more likely to be the enforcement authorities of the Member State in which the debtor is living which will deal with the adjudication of the application for enforcement. It is the public authorities of that Member State which are most likely to hold the relevant information. Therefore, when a creditor in, say, Germany, applies under Article 42b(1) (Article 56(1)) for enforcement of her maintenance decision given in Germany against her ex-husband living and earning in the UK, the request for the Article 44 (Article 61) information may come from the German Central Authority to a UK Central Authority, but the information will be given to the UK court which is enforcing the claim. This is the effect of Article 44(1) (Article 61(1)) paragraph 5 ("the requested Central Authority shall, as necessary, transmit the information obtained to the requesting Central Authority", my emphasis) and Article 46(1) (Article 62(1)). Even if the information were to be transferred back to the requesting Central Authority, it would simply transfer that information to the UK court under Article 46(1) (Article 62(1)).

There is no conflict between Article 46 (Article 62) and Article 41b (Article 53). Article 41b (Article 53) governs the availability of data prior to an application being made and therefore prior to the involvement of any court. There is therefore no conflict between the stringent restrictions on availability of data between Central Authorities under Article 41b (Article 53) (which will be fully subject to Article 46 (Article 62) regarding disclosure to the Applicant, without question of procedural rules of court because the court will not at that stage be involved) and what the Applicant can be told under Article 46 (Article 62).

21 January 2009
## What can be requested and at what stage of the proceedings

<table>
<thead>
<tr>
<th>Information</th>
<th>Address of respondent</th>
<th>Debtor's income</th>
<th>Identity of Debtor's employer</th>
<th>Identification of Debtor's bank accounts</th>
<th>Details of Debtor's assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to application under A.42b (A.56)</td>
<td>Yes – see A.41b (2) (A.53(2)) second para</td>
<td>Existence of income in requested Member State only, when creditor able to demonstrate an order in her favour - A.41b(2) (A.53(2))</td>
<td>Requested Central Authority can seek but may only indicate to requesting Central Authority whether Debtor is in receipt of income in that Member State –combined effect of A.41b(2) (A.53(2)) 1st and 2nd paras</td>
<td>Requested Central Authority can seek, but may only indicate to requesting Central Authority whether Debtor is in receipt of income in that Member State effect of A41b(2) (A.53(2)) 1st and 2nd paras</td>
<td>As for income, Mutatis mutandis</td>
</tr>
<tr>
<td>Application under A.42b (A.56) for establishment of maintenance decision</td>
<td>Yes – see A.44(1a) (A.61(2)) para 2</td>
<td>No – see A.44(1a) (A.61(2)) para 2</td>
<td>No – see A.44(1a) (A.61(2)) para 2</td>
<td>No A.44(1a) (A.61(2)) 2 see para</td>
<td>No – see A.44(1a) (A.61(2)) para 2</td>
</tr>
<tr>
<td>Application under A.42b (A.56) for enforcement of decision once obtained</td>
<td>Yes – see A.44(1a) (A.61(2)) para 3</td>
<td>Yes - A.44(1a) (A.61(2)) para 3</td>
<td>Yes - A.44(1a) (A.61(2)) para 3</td>
<td>Yes - A.44(1a) (A.61(2)) para 3</td>
<td>Yes, but only if information relating to income, employer and bank accounts isn't sufficient to recover the claim A. 44(1a) (A.61(2)) para 3.</td>
</tr>
</tbody>
</table>

### Letter from the Chairman to Lord Bach

Thank you for your letter of 21 January. It was considered by Sub-Committee E at its meeting of 11 February.

The Committee is grateful for your indication that the Government does not intend to legislate to require non-public legal entities in the UK to provide information to the Central Authority here. We are also grateful for your further detailed and helpful explanations as to how the Regulation is intended to work. We appreciate that this Regulation deals with complex matters, but having considered the points you make it nevertheless remains our view that the important provisions on the handling of information relating to individuals contained in this legislation could have been drafted more clearly.

12 February 2009
Letter from the Chairman to Lord Bach, Parliamentary Under Secretary of State, Minister for Justice

Thank you for your Explanatory Memoranda on these proposals dated 22 January. They were considered together by Sub-Committee E at its meeting of 11 February. We decided to retain them under scrutiny.

The Committee welcomes the principle of providing flexibility to enable Member States to enter into bilateral agreements with third countries in areas subject to exclusive Community external competence and in principle supports the mechanism set out in these proposals. We do not, therefore, object to the United Kingdom opting in to the negotiation of these proposals pending scrutiny.

We support extending the flexibility given to Member States by these proposals, in particular to include recognition and enforcement of judgments in respect of contractual and non-contractual liability.

The Committee notes that each proposal covers “sectoral matters” in their respective areas without it being clear how far this phrase is intended to limit their scope. We should be grateful for your view on this.

We support your objective of clarifying the basis on which the Commission should take its decision to permit Member States to negotiate and agree bilateral agreements. We agree with you that the test that such agreement should have “limited impact on the uniform and consistent application of the Community rules in place and on the proposed functioning of the system established by those rules” would give too much discretion to the Commission.

We also agree that there should be greater clarity that the UK can opt in to each proposal and, in the proposal concerning family law matters, that the UK is not subject to exclusive external Community competence in respect of the applicable law in the area of maintenance.

We welcome the inclusion of the review provision and the sunset clause, and encourage their use generally.

We look forward to further information on the progress of these proposals.

12 February 2009

Letter from Lord Bach to the Chairman

Thank you for your letter of 12 February about these proposals. I have noted your Committee’s support in principle for them and I am grateful to you for your indication that your Committee would not object to the United Kingdom opting in to the negotiations on them in accordance with our Protocol on Title IV measures. I understand that my officials have sent your secretariat the revised versions of the proposals. I now enclose the latest versions which we received at the end of last week. I consider that they contain no amendments of sufficient significance that are not covered below, to justify drawing to the attention of your Committee. I turn now to the points raised in your letter.

Your Committee supports, as does the Government, an extension of the scope of the proposal dealing with choice of law issues to cover the recognition and enforcement of judgments in civil and commercial matters. At the last meeting of the Working Group in Brussels our delegation urged such an extension in order to ensure that the proposal would be of practical utility for the United Kingdom. This reflected the many agreements of this kind which we have with Commonwealth countries. Unfortunately the Commission was strongly opposed to an extension of this kind. The basis of the reasoning behind this position was not entirely clear. It appears not to be based on technical legal objections but on broader political considerations relating to the importance of the Brussels I Regulation.

Equally unfortunate was the lack of any general support for the UK’s position on this issue among the other Member States. Accordingly, although we will continue to advocate such an extension of scope, in particular in the European Parliament, it must now be unlikely that it will be included within the finally agreed instruments.

Your Committee queried the implications of the reference in both proposals to “sectoral matters”. This reference has now been removed entirely from the family law proposal. In the choice of law proposal the reference is now to “particular matters”. This term is broader in meaning than “sectoral” and should cover a bilateral agreement with a third country, dealing with any subject matter, which contains one or more choice of law provisions. However it would probably not be broad enough to cover an agreement which dealt only with choice of law issues, but such an agreement would anyway be likely to have such
a significant impact on the Rome I or the Rome II Regulations that it would be rejected by the Commission.

Clearly one of the most significant provisions in the proposals relates to the degree of impact which the bilateral agreement in question can legitimately have on the acquis communautaire and still be concluded within the terms of the proposed Regulation. In the revised texts the test is that “the envisaged agreement appears not to render Community law ineffective and appears not to undermine the proper functioning of the system established by its rules”. In my view this new wording is an improvement on the original and should be sufficient to create a reasonable degree of manoeuvre for the Member States in their negotiations with third countries.

The Government is of the view that our Protocol on Title IV measures is applicable in relation to these proposals and is seeking to have this reflected in some way in a recital. We are also seeking a suitable adjustment in respect the lack of Community competence in relation to the UK as regards applicable law in the context of maintenance. I am optimistic that appropriate modifications will be made in relation to both these points.

I have noted your Committee’s support for the review provision, which the government also supports, and the sunset clause, which we do not in this particular instance. The latter is currently fixed for an early date which would largely deprive the proposals of any practical value. Such an early termination, with no clear undertaking that they would be reintroduced would be unfortunate in view of the purpose of the proposals which is to create some, albeit limited, flexibility for the Member States in the face of the encroaching limitations imposed by exclusive external Community competence. This position is shared by the great majority of the Member States.

It seems probable that the Czech Presidency will seek political agreement on these proposals from the JHA Council on 6/7 April. In the light of this tight timescale I would be grateful if your Committee would clear them from scrutiny in time for that meeting. In view of the improbability that the recognition and enforcement of judgments in civil and commercial matters will be brought within scope these proposals are unlikely to be of much practical utility for the UK. On the other hand the detailed terms of the procedure envisaged under these proposals have certainly been improved in various ways and should provide a reasonably satisfactory precedent in the event that a decision is taken in later years to extend scope in a way which could be useful for us.

18 March 2009

Letter from the Chairman to Lord Bach

Thank you for your letter of 18 March enclosing the latest Presidency texts. They were considered together by Sub-Committee E at its meeting of 1 April. We decided to retain this matter under scrutiny. The Committee welcomes the progress that has been made in negotiations particularly in clarifying and extending the scope of the proposals and importing greater objectivity into the test to be used by the Commission to assess whether to approve a bilateral agreement. It remains content for the UK to opt in to these negotiations. The Committee understands that it may not be possible to extend the scope of the proposal on the applicable law in contractual and non-contractual obligations but remains supportive of any further progress that can be made in this area, and it also understands why in this particular case you are not pursuing the sunset clause. It continues to support your policy of making clear in the recitals that the UK opt in applies to both these measures.

The Committee notes that the revised Presidency texts replace the standard comitology procedures for scrutiny of the decisions of the Commission by a procedure not found in the Comitology Decision (Decision 1999/468, as amended). However Article 1 of this Decision requires any specific procedural requirement imposed upon the Commission to be one of those set out in the Decision itself. It therefore considers that this provision must be reviewed.

The Committee would be grateful for information on the progress on the exercise of the UK opt in and progress on further negotiation of the texts.

2 April 2009

Letter from Lord Bach to the Chairman

Thank you for your letter of 2 April. I enclose the latest versions of the texts of these proposals which were agreed by Coreper on 7 April 2009. These will now form the basis for negotiations with the European Parliament, with a view to securing a first reading agreement between the Council and the European Parliament. There is a good prospect that that there will be such an agreement and that, as
envisaged by the Czech Presidency, both proposals will be adopted at the June meeting of the JHA Council.

You will note that it has not proved possible to secure an extension of the scope of the civil law instrument to cover the recognition and enforcement of judgments in civil and commercial matters (Article 1(2)). This reflects the strong opposition of the European Commission to any such extension at the present time. However, at our request the issue has been included within the review clause (Article 10(1)). This means that when the Regulation is reviewed by the Commission this issue must be considered in its report to the European Parliament and the Council.

I appreciate that this is not an entirely satisfactory outcome, but at least the issue will remain on the agenda for the future. It is to be hoped that, provided the Regulation is found to have operated in a generally satisfactory way in the meantime, the Commission will not maintain its opposition to such an extension. We certainly intend to return to the issue in the review process. You will also note from Recital 17 of the civil law agreement and Recital 16 of the family law agreement that it has now been made explicit that the UK opt in applies to both these measures. The Government indeed notified the President of the Council of the United Kingdom’s opt in on 8 April.

You raised the issue as to whether the comitology arrangements, in what is now Articles 5a and 7a, conforms to the terms of Council Decision 1999/468. The UK delegation raised exactly the same concern in the Working Group. During negotiations, the general consensus was that the substance of these provisions did not properly constitute a comitology procedure, but rather referred to an existing mechanism which is open to any Member State for the initiation of a political debate in the Council. On this basis there was no inconsistency with Council Decision 1999/468. This view was accepted by the majority of the Member States, who preferred such a political mechanism to the comitology provisions put forward by the Commission. The Government remains to be convinced that the result represents an optimal solution in terms of either policy or law, but it has not proved possible to make further headway on this issue.

Finally, you will note the compromise solution to the problem of the sunset clause contained in what is now Articles 10 and 10a. The result is that there will now be no automatic termination of the Regulations. This will only happen if in its review of their operation the Commission confirms that it is appropriate for such termination to take effect. This solution represents a better outcome than the mandatory sunset clause originally proposed by the Commission.

In view of the need for scrutiny clearance before the JHA Council in early June, I would be grateful if you could give such clearance by the middle of May.

21 April 2009

CIVIL JUSTICE: SUCCESSION AND WILLS

Letter from the Chairman to Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice

The letters from Bridget Prentice MP of 10 July and from yourself of 20 November were considered by Sub-Committee E at its meeting of 10 December.

The Committee is grateful for the continuing update on the progress of this matter, including both the Commission’s draft preliminary proposal and the UK comments on it. We regard this as a most important proposal in a complex area. We are conscious that there are an increasing number of people who are likely to be affected by issues of transnational succession as a consequence of increasing mobility with Europe and the increasing number of unions between nationals of Member States. We therefore consider that there are real practical benefits to be achieved in this area.

But to achieve those benefits it is essential that any legislation is coherent and provides predictable results. It must also fully recognise the differences between the civil law and common law traditions.

We can see value in a unitary scheme whereby the same law of succession applies to both moveable and immoveable property, and we are sympathetic to the basic principle that the jurisdiction and choice of law should be governed by the habitual residence of the deceased. We can also see value in a European Certificate of Inheritance, provided that it works across different legal systems, and provided that that competing Certificates and fraud are avoided.

However we endorse the concerns expressed by the Government in its written response at the Commission’s informal draft Regulation. In particular we strongly support the Government’s concerns that any legislation should not cross the “red lines” we identified in our Report on the Commission’s Green Paper on Succession and Wills (2nd Report of session 2007-08); it should not stray into areas of administration of estates, the validity and operation of testamentary trusts, matrimonial property law
and interests terminating on death such as joint tenancies; nor should it call into question the validity of otherwise valid inter vivos dispositions.

Additionally we would emphasise that the proposed provisions in Article 2.2 on subsidiary competence provide neither coherence nor certainty. We can envisage that a Member State can become competent in respect of the estate of a deceased who was habitually resident in a third country, provided there are significant assets in that Member State; but as it stands there are too many potentially competing claims to competence, some of which, as you have already identified, provide too remote a connection with the estate.

We agree that some more certain and appropriate means of resolving competing claims to subsidiary competence than Article 2.7 (Lis pedens) is desirable. But using Article 2.2 as a vehicle for this would be unsatisfactory. The principle underlying this Article (which as it stands concerns the transfer of proceedings in unrelated circumstances) is that a competent authority can transfer proceedings when it considers that the authority of another Member State “is better placed to assess the case.” This is too uncertain.

In the light of these considerations we would not be able to endorse an opt-in to any proposal which has not resolved our concerns.

We understand that the Commission is likely to issue its formal proposal in March. We look forward to receiving this and your Explanatory Memorandum in good time as this is a matter on which we anticipate that we might want to conduct an inquiry.

18 December 2008

COMPANY LAW: CIVIL LIABILITY AND FINANCIAL SECURITIES OF SHIP OWNERS (5907/06, 14486/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Thank you for your letter of 24 November replying to my letter of 28 October concerning the proposed directive on the insurance of shipowners for maritime claims. In your letter you queried how this legislation meets the principle of subsidiarity given the possibility of achieving the same benefit through more consistent ratification of the international law measures in this field.

The proposed directive does not require all the EU Member States to become a State party to the 1996 Protocol to the Limitation of Liability for Maritime Claims (LLMC). Instead, it approaches the issue of the need to enhance the coverage of shipowner insurance by:

— requiring all third country and EU Member States ships to have insurance in place when they enter a port under the jurisdiction of a Member State; and
— ensure that the required insurance cover should be at least equal to the maximum limits laid down in the 1996 Protocol to the LLMC.

These two provisions do not form part of the 1996 Protocol to the LLMC. To introduce them at the international level, without the proposed EU legislation, would have been a very difficult and time consuming process with no guarantee of ultimate success as individual Member States might have exercised their right not to participate. The principal benefit of the proposed legislation is that the new insurance requirements will be applied universally across the EU at the same time without exception. This could not be achieved by the Member States acting unilaterally. The Government considers, therefore, that the proposed directive meets the principle of subsidiarity.

I am grateful to the Committee for appreciating the reasons for the scrutiny override on this dossier. As I indicated to you in my letter of 28 October, the UK negotiated very hard in the last few days in the run up to the Council to ensure that the original Commission proposal was watered down significantly to ensure that it did not conflict with our international obligations or create unnecessary administrative burdens. The negotiations were fast moving and complex but even though progress was slowly being made with the text of the proposal, there still remained points of substance to resolve at the Council itself.

In the final discussions with other Member States just prior to the Council evidence appeared for the first time that opposition to the proposal was weakening. This change of attitude was due to continuing efforts to broker deals on new text and develop solutions to the issues raised by Member States. The question of whether these efforts would be successful was only answered during the subsequent discussion on the proposal at Council. In view of the complex negotiations, and the continuing doubts
of Member States on the proposal, it was unfortunately not possible to confirm the Government's position on the dossier to the scrutiny committees prior to the Council.

In the event, the UK was able to secure some further refinements to the text at Council and our key concerns were resolved. The changes to the text also enabled a significant majority of the Member States to support the revised proposal.

21 January 2009

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter of 21 January which was considered by Sub-Committee E at its meeting of 11 February.

The Committee is grateful for your explanation of the events leading to the scrutiny override. Whilst we appreciate that negotiations were fast moving and not settled until very shortly before the Council meeting of 9 October, nevertheless your letter of 1 October points to enough detail being known to have enabled scrutiny to take place.

We are also grateful for your explanation as to why you consider this proposal meets the subsidiarity test. We can understand and, in the light of your explanation, can accept that a fixed minimum level of compulsory insurance for ships entering an EU port is a tangible benefit to EU maritime safety, although it would have been possible to have provided greater assistance to the Committee by identifying this earlier, for example in your letter of 10 July in which you indicated that the use of the existing international law agreements could achieve the intended benefit of the proposal.

12 February 2009

COMPANY LAW: SHIP SOURCE POLLUTION (7616/08)

Letter from Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Thank you for your letter of 24 November 2008 in which you cleared this matter from scrutiny. The European Parliament’s Transport Committee has since published its final report and recommendations for further amendments to the text. This report was published in February and has been subject to negotiation in JHA Counsellor and Trialogue (Presidency, Commission, EP Rapporteur) sessions. Although the majority of the proposed amendments are broadly acceptable to the UK, I would like to explain our position on the most challenging provision ahead of a critical period of negotiations.

The European Parliament are determined that repeated, deliberate or seriously negligent discharges by ships must be regarded as criminal offences, regardless of whether they have a polluting effect. The concept of criminalising repeated minor discharges was not however, recognised in the original Directive or Framework Decision. Their justification is that criminalising such behaviour is the only way to halt a common practice which has, they say, transformed the former principle of “the polluter pays” to “pay to pollute”. They wish to have this recognised both in recital and article form and regard this as a key concern.

Where discharges have no polluting effect, they are by definition in the text itself regarded as ‘minor cases’ and should only be subject to administrative sanctions. Subject to agreed exceptions, the Directive already treats any discharges which have a polluting effect and which were committed with intent, recklessly or by serious negligence as criminal offences. At the point where repeated minor discharges do in fact have a polluting effect, the criminal offence would be committed. We prefer the current drafting because it enables Member States to retain prosecutorial discretion in less serious cases. The Government believes the final Directive should not exceed the scope of the original dossiers nor should it introduce a new provision at this late stage. This view is shared by the Presidency, Commission and the majority of Member States.

NEXT STEPS

The Presidency did not succeed in securing a compromise on this provision in meetings with the European Parliament’s Rapporteur last week, despite the resolute position of Member States. The matter is likely to be discussed at a JHA Counsellor meeting on 27 April, and again in a Trialogue session on the 28 April. COREPER will then meet on 28 April to consider approving a text for first reading agreement. Depending upon the progress of negotiations at the COREPER meeting, I will write to update the Committee on the emerging text.

24 April 2009
Letter from Lord Bach to the Chairman

Following my recent letter of 24 April, I am writing to update you on progress in negotiations on the difficult repeat minor discharges proposal which I brought to the Committee’s attention. I would also like to share the Government’s positive view on the final compromise text which goes forward to the Committee of Permanent Representatives (Coreper) on 29 April for approval with a view to the European Parliament delivering its opinion on 5-6 May. It is expected that agreement will be reached at First Reading and that the Council will then approve the Directive in the form amended by the Parliament. Your Committee cleared this matter from scrutiny in November 2008.

In an important development at the JHA Counsellor’s meeting on the 27 April, the European Parliament put forward a compromise proposal on the repeat minor discharges issue, following concerns expressed by the Presidency and Member States (and particularly strongly by the UK). This new proposal clarified and reduced the scope of the provision, making it broadly acceptable to the UK, subject to some grammatical restructuring.

EUROPEAN PARLIAMENT OPINION – GOVERNMENT RESPONSE

The Government finds the European Parliament’s Opinion broadly acceptable and is pleased that an effective replacement for the annulled Framework Decision should finally be agreed. Minor drafting and restructuring amendments aside, the Government’s response to the main thrust of the Opinion is as follows:

— Criminalising minor repeat discharges which cumulatively lead to a deterioration in water quality

In my last letter, I outlined our concerns about the recent European Parliament proposal which would have criminalised non-polluting minor discharges, taking the Directive beyond the bounds of the original Framework Decision. The European Parliament’s compromise proposal put forward at the JHA Counsellor’s meeting on the 27 April now clarifies that these acts must have a cumulative polluting effect. The Government is content with this revised provision, despite being of the opinion that such acts would already have been caught by the instrument as it stood. This new provision merely restates the possibility.

— Distinction between administrative sanctions penalising minor discharges and criminal sanctions penalising serious discharges

This is an important restatement of the original Framework Decision which enables Member States to use non-criminal measures to address low-level, non-polluting acts. This is the Government’s preferred position as it allows for prosecutorial discretion and the most appropriate use of criminal justice resources.

— Distinction between natural and legal persons, with subsidiarity applying fully to the latter

This is in line with Government’s position and is a distinction which the UK continually seeks to draw in negotiations in the 1st Pillar.

— Transposition period of 12 months

Although the majority of the original Framework Decision provisions have already been implemented, the Government would prefer a transposition period of at least 12 months, given that the usual transposition time allowed for a Directive is 24 months. There had been proposals to reduce this to only six months, but these were resisted by the Presidency along with other Member States and the UK.

Throughout negotiations on this instrument, the Government’s aims were to ensure that the text:

— is compatible with international law (MARPOL)
— follows a cogent drafting structure similar to that employed in the adopted Environmental Crime Directive
— ensures that the obligations in relation to criminal law do not exclude the possibility of using administrative penalties as alternatives where appropriate in less serious cases
— ensures that all categories of persons associated with the maritime industry are included with the scope of the proposed offences
I can confirm that in our view the final Directive achieves these aims and we are pleased to support it as an important means of protecting the maritime environment from intentional, reckless or seriously negligent discharges of polluting substances.

29 April 2009

CRIMINAL JUSTICE: COUNCIL OF EUROPE CONVENTION NO.198 ON PROCEEDS FROM CRIME AND FINANCING OF TERRORISM (12467/05)

Letter from the Chairman Alan Campbell MP, Parliamentary Under Secretary of State, Home Office

Thank you for the Explanatory Memorandum on the revised proposal for a Council Decision concerning the signing on behalf of the European Community of the Council Convention on money laundering no 198, which was considered by Sub-Committee E in its meeting of 28 January.

The Committee notes your comments that the requested Commission declaration of competence has not been made and will not be forthcoming in the near future and expresses its disappointment in that regard. The need to define competence seems particularly important since the Community is referred to in a number of Articles besides Articles 1 and 12-14 to which the Explanatory Memorandum refers (for example Articles 17, 24, 35 and 42).

The Committee welcomes the new recital 4(a) addressing the Government’s concerns in relation to the delimitation of competence. However we consider that the limits to the Community’s competence should be expressly recognised in the substantive Article authorising signature.

This proposal is retained under scrutiny pending a response to these points.

29 January 2009

Letter from Lord West of Spithead, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of 29 January to Alan Campbell.

The Government shares your disappointment that the Commission has not made a declaration regarding competence. However, this proposal only authorises the Community's signature of the Convention: it does not alter or affect the competences of the Community under the Treaties, nor does it alter the competences of the Member States.

We have, throughout the negotiations sought greater clarity on the precise delineation of these competences, and at our insistence the new recital 4(a) has been inserted into the text. The substantive article of the decision must be read in conjunction with the preambular paragraphs. It is therefore now clear that aspects of the Convention are within Member State competence, and that that is particularly so in respect of Article 47. It is also therefore clear that we will be able to enter a reservation in respect of that Article when we sign and ratify the Convention in respect of the UK; and the Government does not feel it is necessary to clarify these matters further.

I hope that your concerns have now been addressed and you are able to clear this proposal from scrutiny.

Further, there are now no other Member States with reserves on this proposal, other than a Finnish parliamentary scrutiny reserve which we understand will be lifted in the coming days. The Presidency is therefore preparing the text for adoption at the forthcoming JHA Council on 26 February.

19 February 2009

Letter from the Chairman to Lord West of Spithead

Thank you for your letter of 19 February. Sub-Committee E considered it on 25 February at exceptionally short notice, having regard to the timing of discussions in the Council to which you referred.

The Committee noted your response on the issue of express provision on Community competence in the Decision. While disappointed that you do not consider it necessary to pursue this issue further, the Committee was content to clear this proposal from scrutiny.

26 February 2009
Letter from Lord West of Spithead to the Chairman

Thank you for your letter clearing from scrutiny the revised proposal for a Council Decision concerning the signing on behalf of the European Community of the Council of Europe Convention No. 198 on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism.

We would like to express our sincere thanks to the Committee for their very swift consideration of this matter.

The matter was able to be adopted at the JHA Council on 26 February.

19 March 2009

CRIMINAL JUSTICE: CRIMINAL PROCEDURAL RIGHTS (7349/07, 8200/07, 8545/07)

Letter from the Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

The purpose of this letter is two-fold: first, to apologise for my Department's failure to reply to the Committee's report of January 2007; second, to provide a brief update on this area of work.

The Committee's report "Breaking the deadlock: what future for EU procedural rights?" looked at the Framework Decision on criminal procedural rights that was then under consideration in Brussels. The protocol on such reports is clear, namely that departments should always provide a formal reply. Therefore, notwithstanding that a great deal of water has passed under the bridge since then - including the creation of the Ministry of Justice - I offer my unreserved apologies for the oversight.

The Framework Decision in question fell, as the Committee is aware, because the UK, with others, could not support it. (It did little more than duplicate - inexact and therefore potentially confusingly - provisions of the ECHR.) The UK position led to unhappiness in some quarters at the time but I am satisfied that our position was the right one in relation to that text in its final iteration. In any event it is now finished business. No further work is planned on that Framework Decision.

However, the Commission have indicated that they are minded to introduce a new proposal on criminal procedural rights in the second half of this year under the Swedish Presidency. We understand it is likely to be narrower in scope than its predecessor and look forward to seeing the detail of the proposal. Any such proposal will, of course, be deposited in due course.

5 February 2009

Letter from the Chairman to the Rt Hon Jack Straw MP

Thank you for your letter of 5 February which was considered by Sub-Committee E in its meeting of 25 February.

The Committee thanks you for your apology. In the circumstances, we are content not to have a response to our report of January 2007.

In addition the Committee formally clears from scrutiny the accompanying documents numbered: 7349/07, 8200/07 and 8545/07. If, as you expect, a fresh proposal is made, we will expect to receive a fresh explanatory memorandum on which to base scrutiny.

If it were possible to make real progress in this area we would encourage it.

26 February 2009

CRIMINAL JUSTICE: CROSS-BORDER ENFORCEMENT IN THE FIELD OF ROAD SAFETY (7984/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

We thank you for your letter of 20 November which was considered by Sub-Committee E at its meeting on 10 December.

We are grateful for your clear explanation of the current position in Council and of the Government’s reservations on the issue of competence and legal base as well as on the viability of the approach presently being taken. We prefer to see a copy of the proposal actually under discussion whenever
possible, and we would invite you to make this available, redacted as necessary, when this can be done consistently with the requirements of confidentiality.

The Committee notes that thus far discussion of the Directive has focussed on the questions of competence and legal base and that much of the detail has yet to be decided. We await the opportunity to consider the detail of this proposed measure.

As to the interaction between the Framework Decision on Mutual Recognition of Financial Penalties (FD) and the draft Directive, the Committee looks forward to receiving the results of the Ministry of Justice’s review of this issue.

The Committee takes this opportunity to echo what it understands to be your view, namely that legislation in the area covered by the draft Directive is unlikely to be appropriate under the first pillar. Also it seems unlikely to be an effective means of achieving, or making any significant progress towards, the Commission’s casualty reduction target, and points to the UK’s own excellent road safety record.

Finally, we note your comments about a scrutiny override, but, in view of the present inchoate and unsatisfactory nature of the proposal, it seems to us that any amended alternative would in effect amount to a substantially new measure. In these circumstances, a general agreement involving a scrutiny override would in our view have been inappropriate. The Committee looks forward to receiving and considering a new draft accompanied by a new Explanatory Memorandum when an amended proposal is presented in the Council.

We retain this proposal under scrutiny.

12 December 2008

CRIMINAL JUSTICE: EUROPEAN SUPERVISION ORDER (ESO) IN PRE-TRIAL PROCEDURES (15821/07, 16302/08)

Letter from the Rt Hon Baroness Scotland of Asthal, Attorney General, to the Chairman

Thank you for your predecessor Lord Grenfell’s letter of 24 November regarding the Committee's consideration of this proposal on 19 November. I am happy to note that this dossier has been cleared from scrutiny.

Firstly, I am pleased to be able to tell you that on 28 November the JHA Council reached political agreement on the Framework Decision. I attach a copy of the latest text.

As the Committee has noted, there have been substantial changes to the tone and, more importantly, to the substance of the text. The issues surrounding enforcement and public protection now have a much higher profile in the instrument than they had previously. The Government welcomed these amendments and was grateful to the Presidency for its willingness to listen to the UK’s arguments.

I understand, however, that the Committee still has some concerns on certain issues.

I note your disappointment that it was not possible to canvass other Member States on the value of consultation on this dossier with the Council of Europe. I am, however, satisfied that we have achieved a text which is fully compliant with the Articles of the European Convention on Human Rights, which protects the rights shared by all Member States.

You raised an issue of enforcement of breach of an ESO in the particular circumstances where an executing State is aware of an imminent abscond risk. Our greatest concern in the original text of the Framework Decision was that it did not allow for any immediate action to be taken by the executing State without reference to the issuing State first. This was not acceptable as it did not take into account the importance of immediate action in order to protect the public. The wording of the final text – see Article 3 in the attached Annex – means that the executing State may take immediate action on a breach in order to protect victims, the general public or internal security. If the circumstances of a case suggest an imminent abscond risk in breach of an ESO an executing State could take immediate action if there are grounds to believe it necessary to protect victims, the public or to internal security. Otherwise, where there is no such risk to victims, the public or to internal security, it will be for the issuing State to decide what action to take on any reported risk of absconding, and it will be in the interests of that State to respond speedily to such a report.

I am satisfied that the instrument provides a framework which encompasses all offences, will protect the rights of the defendant, protect the public and ensure the smooth running of justice.
Finally, I would like to express my gratitude for the Committee's helpful advice and suggestions during the formulation of this dossier.

8 December 2008

Letter from the Chairman to the Rt Hon Baroness Scotland of Asthal

Thank you for your letter of 8 December which was considered by Sub-Committee E at its meeting on 14 January.

The Committee is grateful for your further comments.

We note your understanding that the wording of the ESO only allows the executing state to take immediate action without reference to the issuing state where considered necessary "in order to protect victims, the general public or internal security". The answer therefore to our specific question whether such action could be taken by the executing state in relation to a defendant on bail observed to be boarding an airplane bound for South America appears to be: only in some circumstances. We feel that this is unfortunate in the context of a measure intended to facilitate and encourage the grant of pre-trial bail in a defendant's home state, and fear that it could discredit, or discourage use of, the ESO.

19 January 2009

Letter from the Rt Hon Baroness Scotland to the Chairman

Thank you for your letter of 19 January in response to my earlier letter of 8 December.

I note the Committee's continuing concern on the issue of enforcement of an ESO with regard to the risk of absconding. Your analysis of the position is correct, in that in any situation where there is an imminently abscend risk of the person subject to an ESO, and where there is an absence of any circumstances in which the safety of the public (including, of course, risks to potential victims) or the internal security of the State are at risk, the Executing State must await the decision of the Issuing State before taking any action.

It is, of course, the case that no-one can be certain just how a court in any Member State will use a procedure put in place by a Framework Decision until it is tested in practice. I am, however, optimistic that this enforcement issue will not unduly affect the credibility of the ESO process or discourage the courts in making use of it. The number of cases likely to fall within the circumstances you described would undoubtedly be small, as it would be unusual for the authorities to be aware of a person being about to abscond before they actually did so unless the person was of particular concern to the authorities or seen as a particularly serious risk.

I am also inclined to believe that, despite this issue, the ESO will be considered an asset by the courts. Whenever a defendant is released on bail the court runs the risk of that person absconding and the Order will be an instrument which will allow for much greater control of defendants who might otherwise be released without it. The Government is satisfied that the final text provides the necessary procedures for the return of an absconder in the more usual circumstances of a person who has absconded after they have failed to appear at court.

8 March 2009

CRIMINAL JUSTICE: PREVENTION AND SETTLEMENT OF CONFLICTS OF JURISDICTION IN CRIMINAL PROCEEDINGS (5208/09)

Letter from the Chairman to Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice

Thank you for your Explanatory Memorandum which was considered by Sub-Committee E at its meeting of 11 March 2009. The Committee is grateful for your detailed explanation of this proposal.
We appreciate that this proposal is a priority of the Czech Presidency and has the support of three other states, including Sweden which holds the succeeding Presidency. We are, nonetheless, bound to say that we do not at present feel able to share even your modest enthusiasm for its contents. In principle, of course, it is a good idea to have sensible mechanisms in place to enable investigating and prosecuting authorities of different states to liaise with each other and, so far as possible, to decide between themselves in which state further investigations and proceedings should take place.

However, no impact assessment appears to have been undertaken into the existence, nature or extent of any real problems in this field at present. Further, there is, as you point out in paragraphs 24 and 27 of the EM, already a body, Eurojust, which has express competences in the field, since its powers include seeking to achieve agreement about the appropriate jurisdiction for investigations or prosecutions either at the instance of any of its national members (art. 6) or when acting as a college (art. 7). The present proposal creates a parallel new set of notifying and responding authorities (art. 2), and seeks to regulate the resulting overlap of competence with Eurojust in a manner which appears to be cumbersome and to relegate Eurojust to a secondary role. Again, this is an aspect that an impact assessment could have been expected to address. Further, are you aware whether Eurojust was consulted and has had any input into the present proposal?

In short, the proposal appears to the Committee to represent a good example of the problem identified in its recent report on the Initiation of Legislation in the EU, in which it concluded (paragraph 164) that “Member States making legislative proposals should practise what they preach and provide impact assessments and the other explanatory material which is required to accompany proposals from the Commission”.

We also share the Government’s concern that the suggested mandatory procedures could prove bureaucratic, over-prescriptive or inflexible and time-consuming, all in a context where at the end of the day it is not intended that any state “should be obliged to give up or take over jurisdiction unless it wishes” (recital (7)). There is also plenty of scope, as you note, for doubt about what some of its terms mean, for example, a “significant link” to another state (art. 1.2(a)) or a “substantial part” of the relevant conduct taking place in another state (art. 6.1).

The Committee is a little surprised to see in recital 4 a reference to “the characteristics of each of the possible jurisdictions” as a factor of potential relevance to the choice of jurisdiction. Do you understand what is here in mind? Is it not an article of faith of the European Union that all jurisdictions are equal and share mutual trust in each other?

The Committee notes that the proposal in recital 19 affirms the compatibility of the proposal with fundamental rights (while providing in art. 1.5 that it confers no new rights capable of being invoked before national authorities) and that The Law Society, in a position paper they have provided both to the Committee and the Government, has expressed concerns about the impact of the proposal on suspects/defendants and has suggested that suspects/defendants need to be given various procedural protections. The Committee believes that The Law Society’s concerns and suggestions probably mistake the nature of the proposal. Again, this might have been clearer if there had been an impact assessment. However, as the Committee understands it, the proposal is merely intended to formalise the sort of cooperation that may anyway occur, whether through Eurojust or bilateral understandings or entirely informally, between investigating and prosecuting authorities. Neither it nor any agreement about the appropriate jurisdiction which might be reached under it is intended to bind a suspect or defendant or affect their legal position. A suspect or defendant retains any domestic law rights he or she would otherwise have to object to whatever criminal forum materialises from such cooperation. Thus, for example, it is open to a suspect or defendant at common law to rely on any circumstances making it an abuse to proceed against him or her in England, rather than elsewhere.

That said, the Committee considers that it would be appropriate to consider adding (perhaps to art. 1.5) an express provision that the Framework Decision does not affect the legal position of any suspect or defendant or, in particular, remove or affect any rights which any such person would otherwise have to object to investigations or proceedings taking place in any particular jurisdiction.

13 March 2009

Letter from Lord Bach to the Chairman

Thank you for your letter of 13 March.

I enclose a copy of the latest draft of the text and also a further Explanatory Memorandum.

You will see that the text has changed significantly. In particular, it now focuses on direct contact between authorities in Member States when there are reasonable grounds to believe that parallel proceedings are being conducted in another Member State and, so far as possible, to help them reach consensus regarding where proceedings should take place (see Article 5). We welcome this focus and believe that this will ensure that the proposal will not lead to additional bureaucracy. The focus on
direct contact puts in place a flexible and efficient framework for discussions (see Recital 5(d) and Article 4(1)).

You are right that no impact assessment has been carried out. As you know, Member States’ initiatives do not require to be accompanied by impact assessments, though the UK has repeatedly pressed for this to begin to happen and we will continue to do so in relation to future instruments. We do not believe that the absence of an impact assessment in this instance is grounds for blocking the proposal. It should be noted that since the instrument now focuses on encouraging direct contact, there would be difficulties in quantifying the impact with any degree of accuracy.

The accompanying Explanatory Memorandum provides further information about the proposal’s relationship with Eurojust. In particular, the text is now entirely consistent with Eurojust’s role and responsibilities as set out in the recently negotiated Framework Decision. I can confirm that Eurojust has been consulted regarding the proposal and a representative has been sent to each of the Working Group discussions. Eurojust is very positive about the proposal and believes that it will lead to more cases being referred to Eurojust.

You are, of course, right that a suspect or defendant retains any domestic law rights he or she would otherwise have, to object to whatever criminal forum materialises from such co-operation. We agree that it would be helpful to make this explicit in the text. We have just secured a further amendment to this effect, in the form of a new recital:

“This Framework Decision does not reduce the existing rights of defendants arising under national law to argue that they should be prosecuted in their own or another jurisdiction, nor does it confer new rights.”

You are absolutely right that recital 4 could have undermined the principle that all jurisdictions are equal and share mutual trust in each other. Recital 4 has therefore been deleted.

As a result of the intensive and useful discussions which have been had about the proposal, the Czechs have decided to seek agreement to a General Approach at the April Justice and Home Affairs Council. Our concerns having been fully addressed, I would like to be able to agree to this and therefore ask that you release the text from scrutiny. I am happy to discuss this proposal, or to answer any further questions, if that would be helpful.

18 March 2009

Letter from the Chairman to Lord Bach

The Committee thanks you for your letter dated 18 March 2009 and supplementary Explanatory Memorandum which was considered by Sub-Committee E at its meeting on 1 April.

The text now deposited has, as you note, changed significantly. The Committee repeats its support for arrangements designed to assist different prosecuting or investigating authorities to reach agreement if possible on the jurisdiction where proceedings should be pursued, in order to avoid any risk of double jeopardy, although it thinks it open to question whether it was really appropriate or necessary to cast essentially administrative arrangements, with little if any binding effect and without any effective sanctions, in legal form at all.

The Committee notes the Minister’s comments in relation to Member State sponsored initiatives and the lack of accompanying impact assessment, and is glad to note that the Government has been pressing for such impact assessments, and will continue to do so in the future. The Committee reiterates its view that the present proposal would have benefited from such an assessment, and considers that the changed nature of the present proposal also suggests as much.

The clearer focus on avoiding double jeopardy situations, the removal of an obligatory system of contact based on “a significant link” and the flexibility afforded multi-jurisdictional Member States in the designation of competent authorities are all welcome features of the changed proposal. The removal of Recital 4 is understandable, in so far as it might have been read as suggesting that national authorities should undertake on a routine basis the task of evaluating "the characteristics" of each other's jurisdiction.

The Committee welcomes the new recital to the effect that "This Framework Decision is limited to establishing provisions on direct contact and direct consultations between the competent authorities of the Member States and therefore leaves the question whether or not individuals shall have the right to argue that they should be prosecuted in their own or in another jurisdiction a matter of national law of the Member States". This is, in the Committee's view, appropriate in order to clarify the nature and effect of the Framework Decision.

The Committee is pleased that Eurojust was consulted for this proposal and notes Eurojust's opinion that the mechanism may well encourage Member States to refer cases to them. We see that there is a
role for Eurojust under the mechanism to facilitate consensus about jurisdiction. In the Government's view, is there not a difficulty in trying to cast in legal terms matters calling for little more than practical and constructive collaboration between all concerned? Do UK authorities in practice ever refer jurisdictional issues to Eurojust? Does the Government anticipate that more such matters will be so referred under this proposal?

The Committee understands that the Presidency will seek agreement of this proposal in the Council on 6/7 April and on that basis the Committee clears this proposal from scrutiny.

The Committee would be grateful to be kept informed of the text as it emerges from the Council.

2 April 2009

Letter from Lord Bach to the Chairman

Thank you for your letter of 2 April. In particular, I am grateful to you for taking into account the Presidency’s plans to take the instrument to the 6 April Justice and Home Affairs Council and for clearing it on that basis.

I am pleased to tell you that a general approach was agreed at the JHA Council and I enclose a copy of the text (8338/09). This version is planned to be finalised by jurist-linguists on 7 May and will be formally adopted as soon as parliamentary reservations are lifted. Council is also awaiting an opinion from the European Parliament.

I absolutely agree that careful thought is needed before using legislation in relation to co-operation between Member States, however, we were persuaded that this particular Framework Decision would be a useful tool and would, for example, encourage practitioners to call more often on Eurojust, whether to facilitate dialogue or to help authorities reach a consensus on where to prosecute.

This conclusion was reached both as a result of the strong representations made by other Member States and consideration of the relevant statistics from Member States. Since 2004, the UK desk in Eurojust has registered a total of 16 cases identified as a conflict of jurisdiction involving the UK. Of these, 5 were cases that had been identified by other desks and 11 were identified by the UK. Whilst these cases are not a large proportion of the work of Eurojust, we believe that they are indicative of an appreciation of the role which Eurojust could helpfully play. I anticipate that it is likely that the number of referrals in the future will increase.

30 April 2009

CRIMINAL JUSTICE: SANCTIONS AGAINST EMPLOYERS OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS (9871/07, 10770/08)

Letter from Phil Woolas MP, Minister of State for Borders and Immigration, Home Office, to the Chairman

Firstly I would like to take this opportunity to welcome you in your new capacity as Chair of the European Union Committee. I look forward to working with you.

I am writing in response to your predecessor's letter about the proposed EU Directive providing for sanctions against employers of illegally staying third country nationals. Many issues in this Directive remain under negotiation, and officials continue to participate in discussions to influence these where possible. Once a final text has been agreed by the Council and the European Parliament I will deposit that text for parliamentary scrutiny.

I note Lord Grenfell's comments about back payments. The introduction of provisions to facilitate the recovery of outstanding remuneration by illegally employed workers might deter some employers from employing illegal workers in order to exploit their position. It is my view, however, that the provision of such a right could encourage some illegal workers to work in the knowledge that even if they are identified and removed from the UK they will still be paid in full. This risks undermining the clear message the Government is sending out to those would seek to work in the UK illegally.

The Government's position remains that UK domestic law, which provides that an employer can be issued with a civil penalty of up to £10,000 per illegal worker, or can face an unlimited fine or imprisonment if convicted of knowingly employing an illegal worker, already includes a strong deterrent to employers who consider employing illegal workers.

9 December 2008
Letter from the Chairman to Phil Woolas MP

Thank you for your letter of 9 December which was considered by Sub-Committee E at its meeting on 14 January. We note your response to our point on back payments but maintain our previous view and fear that the approach you take would add a yet further exploitative element to the situation of illegal workers in cases such as have received publicity recently.

We look forward to receiving a report on progress on this dossier and the latest text of the proposed Directive when negotiations are further advanced. But we stress that we will need to have these before the text has been agreed in the Council – not after the event, as your letter suggests – in order to complete our scrutiny.

15 January 2009

Letter from the Chairman to Phil Woolas MP

Thank you for submitting the further Explanatory Memorandum (EM) dated 16 February and the text of the proposal agreed by the Council. Sub-Committee E considered these documents at its meeting on 4 March.

The Committee noted your restatement of the elements of the proposal which continue to cause the Government concern. These have been the subject of previous correspondence based on earlier texts. It would have been helpful to have a more detailed note listing the changes. Having said that, we share most of your concerns though, as you are aware, not about the thrust of Article 7 (back pay). We also remain concerned at the obscurity of Article 9 (sub-contracting) despite the beneficial introduction of an exception of due diligence. How does the exception fit with the precondition for liability under Article 9(2) that the main and intermediate sub-contractors should have known that the employing contractor employed illegally staying workers? If they knew, how could they show they had undertaken due diligence?

We were disappointed that we received the latest text after agreement in the Council notwithstanding the stress placed, in my letter of 15 January, on the Committee having the opportunity to complete scrutiny before the matter came to the Council for agreement. We would appreciate an explanation, although the Government has not opted in.

In the meantime we are prepared to clear this matter from scrutiny but on the basis that, if the Government were to contemplate opting in to this measure, we will, of course, expect to receive a further Explanatory Memorandum well in advance to enable us to resume scrutiny then.

5 March 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 5 March notifying me that you have cleared the EU Directive providing for criminal sanctions against employers of illegally staying third country nationals from scrutiny. I have noted your request that a further explanatory memorandum must be provided if the Government revises its opt-in position, and would like to take this opportunity to address some of the comments in your letter.

I am sorry that you were disappointed not to receive the update you were expecting on the further progress of the negotiations on the EU Directive, occurring between the text and explanatory memorandum laid before Parliament in July last year and the superseding text and explanatory memorandum laid before Parliament in February this year. I would like to set out the reasons why no update was provided. Firstly, there were no significant amendments to the text of the Directive beyond those already outlined in the explanatory memorandum provided to the Committee last July and therefore change to the UK’s opt-in position prior to adoption had looked unlikely. Secondly, your previous letter of 15 January requesting an update prior to agreement of the text by European Council coincided with the production of a near final text which was then rapidly adopted by the Council. I trust you will accept my assurance that my department remains fully committed to meeting its obligations towards keeping the Committee informed of changes to the text of Directives affecting the United Kingdom.

ARTICLE 7 (BACK-PAYMENTS)

I note your comments about the thrust of Article 7. However, it remains our position that we do not want to encourage or condone illegal working by providing employment protections for those working illegally. This includes the introduction of provisions to facilitate the recovering of outstanding remuneration. Legal migration continues to make an important contribution to the UK economy and our emphasis continues to be to ensure that legal migrant workers who are here to work have the same
employment rights as their UK equivalents, and to minimise the scope for illegal working through a combination of enhanced awareness raising amongst workers and employers and proper enforcement via the relevant agencies.

**ARTICLE 9 (SUB-CONTRACTING)**

I agree with your observation that Article 9(3) of the Directive is contradictory to Article 9(2) and that the Directive is technically flawed in this respect. The UK continues to believe that the nature of contractual liability should be defined in national law and we are opposed to extending criminal or civil liability for the simple offence of employing illegal workers up the contractual supply chain beyond the direct employment relationship. We believe the approach enshrined in the Directive is unenforceable and would create unreasonable and unworkable burdens on business. It would be undesirable to create legal obligations on multiple parties in a supply chain to check the right to work status of the same workers; that responsibility should rest with their employer.

Under UK law, an employer attempting to establish a ‘due diligence style’ statutory excuse against a civil penalty liability for employing an illegal migrant worker must undertake specified document checks in respect of prospective employees before the employment commences. In undertaking the checks, the employer must take all reasonable steps to check the validity of the document. These checks must be repeated in respect of third country nationals with a time-limited immigration status no less frequently than every twelve months if the excuse is to be retained.

The documents that need to be checked for the excuse are set out in the Immigration (Restrictions on Employment) Order 2007 and consist of documents that demonstrate that the holder is not subject to immigration control or is subject to immigration control but has an unlimited or limited entitlement to enter or remain in the UK and an entitlement to undertake the employment in question. In particular the employer must satisfy himself that any document photograph is that of the prospective employee or employee, that any document date of birth is consistent with the appearance of the prospective employee or employee and take all other reasonable steps to check that the prospective employee or employee is the rightful owner of the document.

I will provide an update for the Committee should there be any further significant developments on any issues relating to this Directive or if the Government should reconsider its opt-in position, in which case I would provide a further Explanatory Memorandum.

21 April 2009

**Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 21 April which was considered by Sub-Committee E at its meeting on 29 April.

We are grateful for your explanation of the circumstances leading to the revised text and your Explanatory Memorandum of 16 February being provided after agreement in the Council, and for your assurance that your department remains fully committed to meeting its obligations to keep the Committee informed of changes to the text of Directives affecting the United Kingdom. We consider that those obligations include, whenever possible, furnishing full information in sufficient time to provide an opportunity for effective scrutiny. In this case we understand the text had become sufficiently final by 23 December 2008 for the European Parliament to be invited to agree it. Is that your understanding too?

On the substance of the proposal the Committee notes the Government’s continuing opposition to any requirement that employers should be liable to pay any arrears of remuneration to third-country workers illegally staying in the EU. It also notes the Government’s objection in principle to sanctions for employing such workers being extended to main and intermediate contractors.

30 April 2009

**INSTITUTIONS: CONDITIONS OF EMPLOYMENT OF OTHER SERVANTS OF THE EUROPEAN COMMUNITIES (15779/1/08)**

**Letter from the Chairman to the Rt Hon Caroline Flint MP, Minister for Europe, Foreign and Commonwealth Office**

Your Explanatory Memorandum on this proposal was considered by Sub-Committee E at its meeting on 10 December. The Committee agrees that the measure will provide a degree of greater accountability in the arrangements for employing MEPs’ staff and welcomes the Government’s support
for it. We should be grateful if you would confirm that the terms and conditions of such staff will ensure their ability to advise and assist MEPs independently. Accordingly, we now clear this document from scrutiny.

11 December 2008

Letter from the Rt Hon Caroline Flint MP to the Chairman

Thank you for your letter of 11 December regarding the above proposal. I am grateful for the Committee's clearance of scrutiny. As you will no doubt be aware the proposal was adopted by the Council on 18 December.

Your letter asked for confirmation that the terms and conditions of MEP assistants under the new measures will ensure their ability to advise and assist MEPs independently.

I can confirm that I am satisfied this will be the case. Although the contracts of, and salary payments to, the assistants will be handled by the Parliament's administration, MEPs will be entirely free in their choice of assistants, the tasks to be assigned to them and the duration of the labour contracts.

This is made clear in the text, where Article 5a defines assistants as follows:

"For the purposes of these Conditions of employment, "accredited parliamentary assistants" means persons chosen by One or more Members and engaged by way of direct contract by the European Parliament to provide direct assistance, in the premises of the European Parliament at one of its three places of work, to the Member or Members in the exercise of their functions as Members of the European Parliament, under their direction and authority and in a relationship of mutual trust deriving from the freedom of choice referred to in Article 21 of the Statute for Members of the European Parliament." (my emphasis).

13 January 2009

Letter from the Chairman to the Rt Hon Caroline Flint MP

Thank you for your letter of 13 January 2009. Sub-Committee E considered the letter at its meeting on 4 March and is grateful for your confirmation as to the continuing independence of MEPs’ staff.

5 March 2009

INSTITUTIONS: EUROPEAN STATISTICS (14094/08)

Letter from the Chairman to Kevin Brennan MP, Minister for the Third Sector, Cabinet Office

We thank you for your letter of 10 November including the opinion of the European Data Protection Supervisor both of which were considered by Sub-Committee E at its meeting on 10 December.

The Committee endorses the conclusions expressed in the opinion of the European Data Protection Supervisor and welcomes both his strong support for the proposal and the changes in the draft reflecting the European Data Protection Supervisor’s five recommendations. The Committee also notes your comments in relation to the abandoned Commission expert group.

It particularly welcomes the amendment to clarify and expand the concept of anonymisation. This matter has now been cleared from scrutiny.

11 December 2008

INTELLECTUAL PROPERTY: COPYRIGHT IN THE KNOWLEDGE ECONOMY (12089/08)

Letter from the Rt Hon David Lammy MP, Minister of State for Higher Education and Intellectual Property, Department for Innovation, Universities and Skills, to the Chairman

Thank you for your letter of 6 November 2008 asking for Government’s views on the issues raised by the Green Paper, including any draft formal response to the Commission. I have also received a similar request from the Commons European Scrutiny Committee, and I am copying this letter to them.

The UK Intellectual Property Office has recently engaged with stakeholders to understand more fully the implications of the Green Paper. These views have been used to help inform our response to the consultation. A draft response is enclosed and I would be grateful if you could let me have your views
as soon as possible so that they can be included in our formal response to the Commission. We are required to respond with in the next few days.

3 December 2008

ANNEX A

UK GOVERNMENT RESPONSE TO EUROPEAN COMMISSION'S GREEN PAPER - COPYRIGHT IN THE KNOWLEDGE ECONOMY
DRAFT DATED 19 NOVEMBER 2008

Introduction

The UK Government welcomes the European Commission's Green Paper on Copyright in the Knowledge Economy. The role of the copyright framework in the digital age has become a subject of increasing public debate.

The copyright system is of fundamental importance to the future health and prosperity of our creative industries and our economy. It is the framework through which creative endeavour is rewarded, incentivising people to create and innovate. It is also the backdrop against which decisions on investment and jobs are made in these important sectors.

Background context

The creative industries grew by an average of 6% per annum between 1997 and 2005 compared to 3% for the rest of the UK economy. In summer 2006 creative employment totalled 1.9 million jobs, an average growth rate of 2% per annum. This rose to 4% in 2005-2006. These figures highlight the importance of creativity and a strong copyright framework to support creators. However, the landscape within which we work is changing all the time and we must respond to new issues as they arise.

The number of households with domestic internet access rose to over 15 million in the UK in 2007 (61% of all households). Higher broadband speeds make the delivery of content quicker and easier. Sites like MySpace and You Tube continue to grow year on year while 2008 saw the launch of the BBC iPlayer and mainstream electronic book readers. Consumer expectations on accessing and using content are changing. In many instances these contrast with industry views.

Digitisation and the internet aid the creation and dissemination of content and open up new markets. However they also bring challenges. Copying has been made much easier. Research studies estimate that around 25% of UK internet users engaged in online music 'piracy' in 2007. New business models are key but can our industries successfully 'compete with free'?

Continuing work being led by UK Government on P2P file sharing by means of an MOU with industry is important but further action may be needed. Looking forward we need to make sure that value can continue to be appropriately extracted from content by our creative interests.

We believe that there is scope to build on the Gowers Review and consider a wider range of issues in relation to copyright. It is vital that we maintain a system that supports creativity, investment and jobs and which inspires the confidence of businesses and users.

A number of the issues raised in the paper were also the subject of recommendations in the UK Gowers Review of IP which reported in 2006 and we continue to take forward these recommendations. The UK Government's recently launched Digital Britain initiative recognises the importance of IP and makes clear our intention to consider where further changes may be needed in the UK.

In making its response to the specific questions raised in the Green Paper the UK Government has taken into account views expressed informally to it by a number of industry stakeholders.

GENERAL ISSUES

1. Should there be encouragement or guidelines for contractual arrangements between right holders and users for the implementation of copyright exceptions?

2. Should there be encouragement, guidelines or model licenses for contractual arrangements between right holders and users on other aspects not covered by copyright exceptions?

The issue behind these two questions is the extent to which, whether in areas in which exceptions apply or those where they do not, the legal framework alone is adequate to prescribe the nature of the relationships which should exist. It is unclear whether any such encouragement or guidelines would be advisory in nature, or have some normative force. These two questions do not indicate who, within such a framework, should have responsibility for issuing and keeping up to date such material. There are choices as to whether such material originates from the state or from the industry itself.
Whatever is done, the legal framework itself needs to set out the key principles which should govern the relations hips between rightsholders and users. There may be scope for guidelines to indicate, for example, how the relevant legal principles are or have been interpreted in practice, or to identify pitfalls which the parties concerned would commonly want to avoid. There may also be a use for guidelines in situations where technological developments are moving ahead of the capacity of the legislation to address them.

In some areas where licensing is needed it would be useful to follow a successful model, such as the UK’s JISC (Joint Information Systems Committee) and NesLi2 Model licences. There is no single general answer to these questions: whether guidelines or encouragement are required or desirable will depend on exactly what is contemplated, by whom, and for whom.

3. Is an approach based on a list of non-mandatory exceptions adequate in the light of evolving Internet technologies and the prevalent economic and social expectations?

4. Should certain categories of exceptions be made mandatory to ensure more legal certainty and better protection of beneficiaries of exceptions?

5. If so, which ones?

Some of those consulted in the preparation of this response argue that there is a fundamental inconsistency in a copyright framework which harmonises rights across the EU, but relies on a series of optional exceptions to those rights at the national level. They believe that the practical difficulties of optional implementation outweigh the benefits of the flexibility the framework needs to offer, where increasingly information, and/or people who use information, cross boundaries or have to work at a pan-national level.

The fact that contractual arrangements have evolved for the supply of material across the whole of the EU, should not be taken as an indication that contract law has been able to solve these problems. Researchers for example may be involved in cooperative projects which cross national borders, and find that acts which fall within an exception in one country may require permission from the rights holder in another.

Some have likened this current situation to a 'patchwork' of laws which is difficult to navigate through at a practical level. The benefits of "The Knowledge Exchange" pan-European initiative are also under threat in the current climate. They believe a mandatory list of exceptions, consistent across the EU, would serve to assist transnational cooperation and development. However, it has been estimated that around 90% of contracts undermine copyright limitations and exceptions.

Others believe that the current list of non-mandatory provisions - to which the Berne a-step test must be applied – provide a useful degree of flexibility to Member States. This enables Member States to take account of the various differences in language, culture and developments, that prevail in their respective societies, and to ensure that their copyright framework meets their particular needs. Those who advocate this flexible approach to exceptions point out that it is unlikely that consistency will be achieved even with mandatory exceptions, given the broad interpretation that can be placed on the various concepts embodied within the language of the exceptions.

In the circumstances, the UK government believes it would be important before taking any further action on this issue to resolve the question of whether national level exceptions could, as a matter of law and practice, be legally harmonised in a way that would make sense for both rights holders and users, and if such harmonisation were possible, what limiting impact it might have on cultural diversity across the EU. Work to amend the exceptions would of course be limited by the provisions of Berne, and (more restrictively) the INFOSOC directive.

EXCEPTIONS FOR LIBRARIES AND ARCHIVES

6. Should the exception for libraries and archives remain unchanged because publishers themselves will develop online access to their catalogues?

7. In order to increase access to works, should publicly accessible libraries, educational establishments, museums and archives enter into licensing schemes with the publishers? Are there examples of successful licensing schemes for online access to library collection?

These questions deal with access to collections via two distinct means - curators of national collections of works, and the publishing industry. The publishing industry wants to be able to preserve its business models and to earn the revenues from the distribution of copyright works which are necessary to preserve the publishing industry. There are already examples of successful licensing schemes which enable commercial publishers to make the necessary returns and which enable libraries to provide access, at a price.

There is, so far as the UK government is aware, no particular access problem in terms of libraries who wish to subscribe in order to use such material. The issue behind the question seems to be whether
libraries, educational establishments, museums and archives should be encouraged or even mandated to enter into such arrangements.

These questions are asking whether such libraries should be given access, or give their members access, on terms which are more favourable than those which the institution would otherwise have been able to negotiate on the open market. This would put the institutions in a position to compete with the publishers for the distribution of the publishers' works, leading to lost sales for the publishers. To the extent that this would reduce economic returns to the publishers, it has the capacity to damage existing business models and hence to imperil the availability of future works.

The UK's Legal Deposit Libraries Act (2003 Act) allows for the UK's published output (and thereby its intellectual record and future published heritage) to be collected by the six prescribed legal deposit libraries. The legal deposit libraries hold full and complete record of the published material for future generations. There needs to be a distinction made here between libraries who provide access to digital material within their physical buildings (which is no different to the print system which has been in operation for 100 years) and those who do so online (which may conflict with commercial exploitation).

There is no evidence that publishers are developing and sustaining online access to their catalogues and it has not been proven under the current regime that there is an increased risk of loss of sales to publishers. Furthermore, it would not be feasible to rely on publishers to supply and maintain full and complete records for libraries. However, as already noted, there is no obstacle to individual libraries supplementing their collections by entering into commercial arrangements with publishers if they wish to do so. It should be for the institutions concerned, who know most about what their users want and need, to decide what material they wish to access, and to come to an agreement with the publishers concerned.

Remote access to digital files that are legally deposited material will create the probability of material being subsequently copied and shared locally. This does not comply with the Legal Deposit Libraries Bill. Although it seems reasonable to allow remote access to and digital copying of online collections held at legal deposit libraries for educational and research purposes, usage must comply with the Berne Convention and the 3-step test. We are currently considering the copyright exceptions in relation to education and research as we take work forward on the Gowers recommendations. No final decisions have yet been made in this area.

In other cases, such as unpublished, or out-of-print (but still in copyright) works, which are no longer commercially available, and for which no commercial exploitation seems likely, there may be a case for exploring whether and how libraries and archives could best develop online access to their collections, taking into account the requirements of the Berne 3-step test.

Although the questions focus on the publishing industry, we need to consider all rights holders and also the public interest. It is important to strike a balance between public and private use to uphold the benefits of lifelong learning. Higher Education represents a large sector in industry which is vital to the UK economy, and the future of creativity and innovation. Improved access to online works is vital, but the legitimate rights of IP holders must be protected. Any proposed changes in law must not impede on the Government's objectives for Higher Education.

Some of the issues relating to deposit libraries, delivery and impact raise questions which need to be debated domestically in the UK. A proper examination of the various roles libraries and archives play, and consideration of the rights holders and public interest issues in relation to those roles is needed before we can offer a balanced view. These issues will be properly considered as part of UK Government's ongoing work to maintain and develop the copyright framework.

8. Should the scope of the exception for publicly accessible libraries, educational establishments, museums and archives be clarified with respect to:
   a. Format shifting;
   b. The number of copies that can be made under the exception;
   c. The scanning of entire collections held by libraries;

9. Should the law be clarified with respect to whether the scanning of works held in libraries for the purpose of making their content searchable on the Internet goes beyond the scope of current exceptions to copyright?

In relation to the scope of the exceptions for libraries, etc, many of the stakeholders consulted felt that there was no need for clarification of the detail of how the exceptions work. As the Green Paper mentions, the UK Government is in the process of consulting on a recommendation by the Gowers Review of Intellectual Property¹ to broaden the UK's current exception in relation to the preservation

¹ http://www.hm-treasury.gov.uk/gowers_review.htm
of works. Other changes are also being considered, for example as part of our work. On the Gowers Review, to ensure that our exceptions regime remains relevant to the digital age.

Additional clarity may be useful in some areas. However it is not clear whether current uncertainties relate to the Directive or to the national laws adopted in pursuance of the Directive. In considering where clarification may be needed we must be careful not to be overly prescriptive. We must also be clear about whether clarification at the European level is necessary or whether what is needed is action at the national level to address specific instances of uncertainty. In fact it may be that there is no need for clarification at all - at either the national or EU levels – and that what is needed is a more constructive dialogue between rights holders and libraries etc.

In relation to the copying and dissemination by libraries of collections of digital works, the Google Book Search project and the recent settlement agreed by the parties in the US but still awaiting approval from the Courts at the time of writing), provides an interesting illustration of how these problems may be addressed in the future. It may be that business practices in this area evolve in a way that will provide an answer, through practical demonstration, to the question of whether any further clarification of the existing law is actually needed.

10. Is a further Community statutory instrument required to deal with the problem of orphan works, which goes beyond the Commission Recommendation 2006/158/EC of 24 August 2006?

11. If so, should this be done by amending the 2001 Directive on Copyright in the information society or through a stand-alone instrument?

12. How should the cross-border aspects of the orphan works issue be tackled to ensure EU-wide recognition of the solutions adopted in different Member States?

The issue of orphan works is being actively considered with stakeholders in the UK with a view to finding a legally satisfactory solution appropriate to the UK's circumstances. We recognise that different types of works require different approaches. In many cases, collecting societies deal with specific types of work and are keen to have a positive role to play in any solutions which are developed.

There are nevertheless some gaps in the coverage of particular types of works, for example old but in-copyright photographs, which do not sit comfortably within the licensing schemes envisaged by those keen to see greater exploitation of orphan works. Moreover the UK Government has concerns about the legal implications of licensing-type arrangements, and is currently exploring the legal position regarding the role which collecting societies, or other intermediaries, might play in the management of orphan works. Depending on the outcome, it may be that, for the sake of clarity and certainty, some kind of legal solution at EU level is ultimately required.

THE EXCEPTION FOR THE BENEFIT OF PEOPLE WITH A DISABILITY

13. Should people with a disability enter in to licensing schemes with the publishers in order to increase their access to works? If so, what types of licensing would be most suitable? Are there already licensing schemes in place to increase access to works for the disabled people?

Although generally, many stakeholders felt that licensing would not be appropriate in cases where individuals are seeking access to copies of works that they own, there is a form of such licensing in the UK. It has been set up between the Royal National Institute of Blind People (RNIB), which acts as a trusted intermediary, and UK publishers.

14. Should there be mandatory provisions that works are made available to people with a disability in a particular format?

We do not believe that stipulating particular formats in law will be helpful. Keeping legislation up to date with changes in technology is likely to be extremely difficult, and locking particular technologies into a legal framework could hamper efforts to deliver improvements.

15. Should there be a clarification that the current exception benefiting people with a disability applies to disabilities other than visual and hearing disabilities?

16. If so, which other disabilities should be included as relevant for on line dissemination of knowledge?

Current EU legislation does not limit the type of disability to which the exception applies, and it may therefore apply to those with disabilities beyond those relating to sight and hearing. For example, in relation to visual impairment, UK law already goes further than this and includes those who have a physical disability which means they are unable to hold or manipulate a book. We are also considering whether we wish to make further changes to UK laws to ensure that these issues are adequately addressed.
17. Should national laws clarify that beneficiaries of the exception for people with a disability should not be required to pay remuneration for using a work in order to convert it into an accessible format?

The issue of remuneration is complex, and the answer depends on the circumstances in which an exception is being applied. Where, for example, an individual in possession of a legally acquired copy, is using their own resources to transform a work into an accessible copy for their own use, and copies in an accessible form are not commercially available, there is a good argument to say that here should be no additional charge to the individual concerned.

In circumstances where trusted third party intermediaries may provide a comprehensive service to users, the question of remuneration is not so straightforward. Less than 5% of book titles are produced in an accessible format. This puts a burden on charities who are responsible for obtaining and distributing content. Discussions between UK publishers and the RNIB about access to digital versions of published works have already illustrated that there may be significant conversion costs.

How those costs will be borne has yet to be determined although it is worth noting that provision in UK law relating to the making of multiple copies by non-profit making bodies envisages that sums charged must not exceed the cost of making and supplying the copy.

18. Should Directive 96/9/EC on the legal protection of databases have a specific exception in favour of people with a disability that would apply to both original and sui generis databases?

There seems to be a gap here in the provisions for those with disabilities which prevents them from having the ability to make accessible copies for databases, in the same way as they can for other types of work. Subject to appropriate evaluation of the impact of making such an amendment, it would seem appropriate to ensure that the same conditions apply to an exception including databases as apply to the current exception dealing with other works.

DISSEMINATION OF WORKS FOR TEACHING AND RESEARCH PURPOSES

19. Should the scientific and research community enter into licensing schemes with publishers in order to increase access to works for teaching or research purposes? Are there examples of successful licensing schemes enabling online use of works for teaching or research purposes?

Concerns have been expressed to us by rights holders that there is a danger of blurring the distinctions between exceptions in the areas of research, teaching and education to such an extent that almost anyone, at any time, can claim to fall within one or other of the exceptions. They have concerns that any moves to ‘clarify’ exceptions in this field may have the effect of widening them to the extent that it jeopardises the core markets for those in educational publishing field, and threatens the licensing activities – including online licensing – that currently form part of their businesses. We note the comments in the Green Paper that amendments to clarify the scope of the exception do not imply that it would be extended.

Licensing schemes are part of the landscape in terms of access to educational and scientific material. ‘ScienceDirect’ operated by Reed Elsevier, for example, gives online access to many scientific journals, including its back-catalogue. In a slightly different context, the Educational Recording Agency provides a licensing scheme (‘ERA plus’) which permits recordings of broadcasts to be accessed by students and teachers online whether they are on the premises of their educational establishment or at home or working elsewhere within the UK.

We believe such licences complement access provided by means of the educational exceptions, and provide a mechanism through which both rights holders and educational establishments can meet their objectives. Of course in such circumstances it is important that there is an appropriate mechanism for determining the terms of such licensing schemes where agreement cannot be reached.

There are also limitations on the coverage of licensing schemes, and it must be remembered that there will always be works that are not covered in a collective scheme, the use of which may expose an educational establishment to the risk of being in breach of copyright if it wishes to make full use of digital technology. As such, care needs to be taken that the exact scope of any such schemes, and the way in which they interact with any copyright exceptions is clearly understood.

20. Should the teaching and research exception be clarified so as to accommodate modern forms of distance learning?

21. Should there be a clarification that the teaching and research exception covers not only material used in classrooms or educational facilities, but also use of works at home for study?

In considering how exceptions in this area should be framed in the future, we must strike a balance between the interests of rights holders and the wider public interest in terms of accessibility, in particular in light of the new opportunities afforded by technological change. The scope for
technological advancement to bring benefits to education is important and it is correct that we consider
the issue of exceptions in this area carefully.

In addition it is important to remember that teaching and research is also carried out at institutions such
as museums and galleries, e.g. the Natural History Museum employs many scientists who publish over
500 research papers a year.

As to the specific clarifications mentioned above, these are issues which have been the Subject of
recommendations in the UK by the Gowers Review of Intellectual Property. The responses received to
the first part of our current consultation on the various recommendations that were made in that Review
generally recognise the importance of remote access to educational material. In delivering such
exceptions it is important to consider the potential impact on rights holders interests and in the UK
discussions are ongoing on these issues. The Government will be publishing its views in the form of a
second stage consultation in due course.

22. Should there be mandatory minimum rules as to the length of the excerpts from works which can
be reproduced or made available for teaching and research purposes?

The applicability of an exception in this area relates to whether the work is needed as opposed to the
length of the excerpt that is being taken. In the past some UK collecting societies have provided
guidance to copyright users to help them understand how much of a work can typically be used.

However, it would seem that in general, many stakeholders do not believe mandatory rules about the
lengths of excerpts are appropriate. Such a move would cut across established principles relating to the
taking of a 'substantial part' of a work, which provides flexibility about the length of any excerpts,
taking into account its importance – quantitatively and qualitatively - relative to the work itself.
We would agree that such rules would not be appropriate.

23. Should there be a mandatory minimum requirement that the exception covers both teaching and
research?

Please see our comments in relation to questions 3 & 4.

USER-CREATED CONTENT

24. Should there be more precise rules regarding what acts end users can or cannot do when making
use of materials protected by copyright?

25. Should an exception for user-created content be introduced into the Directive?

Technological development and the internet have fuelled a growth in the creation and dissemination of
user-generated content. Some of this content is exploited commercially by the creator but much of it is
considered to be non-commercial. Where such content draws upon existing creative works this raises
important questions about the correct application of copyright law.

Many stakeholders take the view that the copyright framework already provides a comprehensive list of
'rules' as to what can and cannot be done with works which are protected by copyright. The suggestion
for an exception for user-created content seems to create a distinction between those who use and those
who create works, which in many cases is not justified. Another significant concern is the extent to
which such an exception might allow others to use works in a way that the existing rightsholders do not
approve of and the impact that exceptions in this area might have on remuneration.

An alternative to exceptions is to deliver improved licensing to aid the development and dissemination
of creative content. Such developments aim to make it easier for 'users' to create and post material on
the web, which has been adapted from other sources.

We are aware that rights holders and creators are already developing ways of permitting the use of their
works online and future innovation in this area may provide solutions. In addition to the 'Creative
Commons' licence we have seen the 2007 agreement between the MCPS-PRS Alliance and YouTube
which enables YouTube users to include certain musical works in their video clips under a licence
given to YouTube. Rights clearance for individual works can be a complex business although we note
that some rights holders are seeking to address this through simplified web based systems (like EMI’s
system for clearance for sampling).

In considering any possible exceptions in this area it is important to consider carefully the potential
impact on existing rights holders, in terms of both commercial and non commercial UGC.

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your letter of 3 December enclosing the proposed Government’s response to the
Commission’s Green Paper. Sub-Committee E considered this at its meeting of 10 December. Whilst
we appreciate that you have delayed submitting the Government response to the Commission in order
that it can take account of the views expressed on scrutiny, we regret that the proposed response did not reach the Committee in time to enable the Commission’s timetable to be met. However, we appreciate the thoroughness and care with which the proposed response has been prepared and we trust that the Commission will be ready to take it fully into account once submitted.

We decided to clear the document from scrutiny.

As I previously indicated the Committee welcomes the process of consultation.

We note the Government does not propose to express a view in its response on whether further harmonisation of the exception to copyright is possible or sensible as a matter of law or practice. We also note that there are a number of other questions upon which the Government expresses no firm view, either because it is carrying out consultation itself or because it has yet to decide where the balance lay between the public interest and the interest of rights holders. As we believe that this consultation will prove to be a precursor to a legislative proposal by the Commission it is clearly desirable that the UK policy in these areas be formulated in good time to maximise influence upon the proposal. We would be grateful if you could inform us when you do intend to react to the recommendations of the Gowers Report.

The Committee is sympathetic to the overall aim of adjusting copyright law in order to maximise the benefit of technological advances for libraries and archives, for teaching and research and for the benefit of disabled people. Whilst the detail of each legislative proposal emerging from this process will need to be examined further in the light of its text and its impact assessment, we support, in principle, the clarification of the exceptions to copyright addressed by the Green Paper. We consider that copyright holders are unlikely to be significantly worse off if there were express exceptions permitting format shifting for non-commercial and archival purposes, facilitating online access to orphaned works, and making available online unpublished and out of print (but still in copyright) works. In this context we also note that the Gowers Report recommended change to permit format shifting for non-commercial and archival purposes, and further legislation to deal with the problem that orphan works present to increasing online access to copyright works.

The Committee is a little puzzled by the first sentence of the last paragraph on the fourth page of the proposed response (“There is no evidence that publishers are developing and sustaining online access to their catalogues ….”). We would have thought that a number of publishers are already doing this, on sites where access can be purchased for a fee, and we read the proposed response itself as acknowledging this elsewhere.

11 December 2008

Letter from the Rt Hon David Lammy MP to the Chairman

I wanted to update you on the progress we are making in our work on copyright strategy and to thank you for your letter of 11 December 2008 in which you confirmed clearance of the government’s response to the European Commission’s Green Paper on copyright in the knowledge economy. That response was submitted to the Commission in December and we await further information from the Commission on how they will take this work forward.

The Commission posed a number of interesting and challenging questions in its Green Paper, to which we have given careful consideration. They go to the heart of the balance between those who create copyright works and those who seek to make use of them. We expect that this work will re-emerge when the new Commission is in place later in the year.

As you are probably aware, we had separately identified that we needed to develop a long term vision for the future of copyright. For this reason, we launched our own work on copyright strategy, which will help us to shape the debate within Europe, including the development of the Green Paper.

Since we launched our strategy work at the end of 2008 we have been engaging broadly with copyright interests. As well as speaking with our more traditional stakeholders we have taken care to reach out to those who we often struggle to hear. We have held a number of stakeholder workshops and have also been engaging directly with creators, the public and SMEs through a series of grassroots forums across the country. Our work will continue into the summer, as we take all of the insights and evidence we have already collected and identify the key issues which warrant further discussion and debate with stakeholders.

As to the timing of our response to the Gowers recommendations on copyright exceptions, the consultation raised a number of difficult issues. I am happy to say that we are resolving these and I expect to be able to announce a second stage of the consultation, complete with legislative language, later in the year.
I would like to again thank the Committee for its consideration of the government response to the EU’s Green Paper, and your helpful comments. For your information I enclose a copy of the Government response which was sent to the Commission.

26 March 2009

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your letter of 26 March which was considered by Sub-Committee E at its meeting on 22 April. We are grateful for your update. We should be interested to see the material on which your next consultation will seek views, in due course.

23 April 2009

INTELLECTUAL PROPERTY: COPYRIGHT: PROTECTION OF COPYRIGHT AND CERTAIN RELATED RIGHTS (12217/08)

Letter from the Rt Hon David Lammy MP, Minister of State for Higher Education and Intellectual Property, Department for Innovation, Universities and Skills, to the Chairman

Thank you for your letter of 24 November requesting further information on the proposal to extend the term of copyright protection for sound recordings and performers rights from 50 to 95 years. I apologise for the delay in response due to the ongoing discussions in Europe and some changes made within the proposal from the original text.

I would also like to thank the Committee for its consideration of the Government response and to clarify the additional points you have raised in your letter and similar points which have also been raised by the House of Commons Scrutiny Committee.

In your letter you request additional information on the views of stakeholders. Following the publication of the Proposal by the Commission in July 2008, the Intellectual Property Office issued an informal consultation requesting comments on the proposal from interests and stakeholders. As a result the Intellectual Property Office received 80 comments; approximately 80% of these were opposed to any extension in term. Three record companies responded in opposition, in addition to organisations representing libraries, archives and museums. We are aware that Phonographic Performance Limited (PPL) at that time encouraged their performer members to write in support of the proposal. 12 did so, one of these stated that he did not support an extension and another said that he saw no reason to assist the recording companies who did not give artists a fair deal. British Music Rights, British Phonographic Industry and PPL all pressed the Government to support an extension. In December, PPL launched a campaign to lobby the Government through MPs.

This lobby continues. Since this time, there has been significant lobbying by large sectors of the music industry to have the term of protection for copyright for sound recordings extended and many more members of PPL have written to Ministers on the issue.

They suggest that it is unfair to provide a shorter term of protection for performers than for lyricists and composers (who are entitled to copyright protection during their lives and for 70 years after death). However, some other sectors of the industry do not support these calls. In particular, sectors of the industry that specialise in the re-release of older works, particularly of classical music which is out of copyright, oppose term extension.

You ask whether we believe there to be a proper balance with present rights between performers and producers on the one hand and consumers and the general public on the other and whether the proposed measures are appropriate and effective to achieve that balance.

The Government believes that there are moral arguments, as well as economic arguments in relation to performers’ rights, and can see that there is some justification in providing protection for performers that lasts, at least in the majority of cases, for their lifetime. However, the original proposal from the European Commission was to extend the term of copyright in both the sound recordings and performers rights from 50 to 95 years. This proposed 45 year extension went beyond what we considered necessary to achieve our goals. If we accept the argument that performers should receive royalties throughout their lifetime, a term of 70 years ought to be sufficient. The current Presidency draft of the proposed Directive has a term of 70 years.

I would like to be clear that any extension must be part of a package which delivers maximum benefits to performers. The proposal currently on the table is still someway short of this goal.

The following improvements would ensure that the package delivers the right level of benefit to performers:
— Measures to assist performers being made permanent features of the Directive, and not purely transitional as in the current proposal. If this is not the case, the Directive will not benefit any performers of the future as the clauses aimed at improving the financial situation of performers will apply only to those whose performances were recorded or released prior to the adoption of the proposed Directive.

— It is possible that an artist who features on a recording released the day after the Directive comes into force may not benefit from any of the additional sources of revenue the Directive is supposed to create.

— A ‘clean slate’ provision to ensure that, after the original 50 year term, record labels are no longer permitted to enforce contracts that provide for royalty payments to go to the label to repay initial costs in producing the recording instead of to the performer.

— According to the Commission’s impact assessment only 1 in 8 recordings actually recovers its costs. Without this clause, 7 out of 8 featured artists will see no benefits at all from a term extension as all their royalties will be paid to their record labels to repay the costs of making the recording.

— Such a clause has already been proposed in the European Parliament, it has also been included in the most recent Presidency compromise proposal, but not yet on a permanent basis.

— More workable mechanism to ensure that all musicians, both session and featured, benefit from any extension. The clause requiring record companies to set aside a percentage of revenue in the extended term for session artists is complex and we have been consulting with industry and performers on how it can best be improved.

— A workable form of the use-it-or-lose-it clause. Only a small number of recordings are available to the public towards the end of the current 50 year term. As record labels own the copyright in the sound recording no third party is able to release the recording, even if the performers wish them to do so. If term is extended further even more recordings may be locked away. This includes many recordings that are not of commercial value but are of cultural or historic interest. A mechanism must be found to ensure that recordings which are not being made available by right holders can be released commercially. Copyright users need to be able to easily identify which recordings are still protected and which are free to use under a use-it-or-lose-it clause. The latest Presidency compromise proposal has a form of use it or lose it provision which would be permanent. The UK will be pressing to ensure that the arrangements in the Directive are workable.

With regard to the issue of co-written works, this was added into the draft proposal at the last minute and is a very technical issue in copyright law. The UK, along with the other Member States affected by this proposal, has requested further information on what is meant by ‘co-written’ in this context and that the Commission produces an impact assessment on this measure. However, no information has been provided to date. The only study that is available on this issue, the Hugenholtz report, http://www.ivir.nl/publications/other/IViR_Recast_Final_Report_2006.pdf concluded that the measure was disproportionate, as it would not respect the integrity of Member States’ legal systems. Further, it is doubtful that this measure will produce harmonisation as national law will determine what constitutes a co-written work and Member States have varying definitions. The proposal will also result in some works which are currently out of copyright in the United Kingdom coming back into copyright. Consequently, the government is supporting proposals by other Member States to have this provision deleted.

You have also raised the rationale behind the current periods of protection. This is an historic position with the periods being harmonised over the years. The rights of record producers and performers are largely governed at an international level by the Rome Convention as supplemented by the WIPO Performances and Phonograms Treaty, while the rights of composers and lyricists are set out in the Berne Convention, as supplemented by the WIPO Copyright Treaty. EU Directive 2006/116/EC on the term of protection of copyright and certain related rights is consistent with these international obligations. In general terms composers’ and lyricists’ rights derive from the Berne Convention and they receive copyright protection for their life and a period of 70 years after their death. Performers’ rights and rights in sound recordings derive from the Rome Convention. Most rights governed by Rome are first owned by companies that commercialise copyright and they are given a shorter period of protection of 50 years. Performers have this shorter term but it is considered that their work is more
closely allied to that of composers and lyricists and so should attract the longer term of protection. The proposed directive goes some way to correct this perceived imbalance.

26 March 2009

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your letter of 26 March. It was considered by Sub-Committee E at its meeting on 22 April. We decided to retain the proposal under scrutiny.

The Committee was grateful for the information you provided on why there are different terms of copyright protection for performers’ rights in sound recordings, and also for the breakdown of the responses to your recent consultation on this proposal.

We support the aim of balancing the rights of performers and producers against the rights of consumers and the public in general, and can envisage this being achieved by a limited extension to 70 years of the term of the rights of the performers and producers accompanied by measures which sufficiently maximise the benefit to the performers of this extension.

We should be grateful for further information as negotiations develop, particularly on the package of benefits to the performers. We would be assisted by sight of the relevant text, if this is possible. We should also be grateful for the Government’s Impact Assessment in the light of these developments.

We also consider that the Commission’s proposal to harmonise the term of protection for co-written works has not been justified by the benefits it would bring and support your negotiating aim of removing this from the proposal.

23 April 2009

JHA COUNCIL REPORT, APRIL 2009

Letter from Vernon Coaker MP, Minister of State, Home Office, to the Chairman

I am writing to you about the JHA Council on 6 April and apologise for the delay in providing this information to you.

The Council was held in Luxembourg. My honourable friend the Minister of State for Borders and Immigration Phil Woolas, my noble friend, the Parliamentary under Secretary of State for Justice Lord Bach, Fergus Ewing, Scottish Minister for Community Safety and I represented the UK.

The Council reached a general approach on legislation concerning the prevention and settlement of conflicts of jurisdiction. This is a measure aimed at avoiding situations where a defendant is facing criminal proceedings in two or more Member States for the same facts. The UK supported the general approach, subject to a Parliamentary scrutiny reservation.

The Commission presented its proposal on combating sexual exploitation of children and child pornography and appealed to the Council to adopt it by the end of the year. They noted that increased freedom to travel and technological developments increased the threat to children and that the current legislative framework was insufficient. A number of Member States, including the UK, intervened to support the aims of the proposal.

On human trafficking, the Commission introduced its proposal, which was based on, but more ambitious than the Council of Europe Convention. It included a wider definition of trafficking than in the current instrument to cover trafficking for removal of organs and more stringent sanctions for this offence.

The Presidency welcomed the proposal and confirmed that it would take forward negotiations as a priority.

The Presidency presented the conclusions of the conference in Prague about the protection of vulnerable victims. The conclusions were welcomed by the Commission and adopted without discussion.

Under any other business, Justice Ministers discussed their responses to the economic downturn. This was a UK initiative. Lord Bach informed the Council that, in the UK, the Ministry of Justice was at the front line of providing practical legal help and support to individuals, families and businesses affected by the economic downturn. Among other things it was facilitating the resolution of debt related disputes both at court and beforehand. The UK had strategies in place to address increasing levels of debt, funding specialist social welfare law advice and introducing a range of pre-action protocols to
ensure that every effort was made by the parties to resolve disputes prior to court. The Presidency promised to return to this topic at the JHA Council in June.

The Commission provided information on the funds available for European e-justice work. It confirmed that e-justice was a priority for both the civil and criminal justice funding programmes and that when these programmes were reviewed it would consider whether any additional funding should be made available. The Presidency reminded all Member States of the conference on cross border succession and wills in Prague on 20 to 21 April.

There was also an update from Member States in relation to ratification of the EU-US Extradition and Mutual Legal Assistance (MLA) Agreements. The Presidency hoped the instruments of ratification could be exchanged at the EU-US summit in June.

During the Interior Ministers lunch, the Council discussed the appointment of the new Europol Director, after which the Council unanimously appointed the UK candidate, Rob Wainwright, the new director of Europol.

During the Mixed Committee with Norway, Switzerland, Iceland and Lichtenstein, Ministers were given an update regarding the implementation of the second generation of the Schengen Information System (SIS II) in light of the Council Conclusions adopted at the February Council which identified the need to resolve problems in the central system. The Presidency confirmed that a report would be presented to enable Ministers to make an informed decision on the way ahead at the June Council. The Council adopted Conclusions on the development of the SIRENE Bureaux. These are not relevant to the UK since they concern arrangements for the operation of the current Schengen Information System, to which the UK is not a party.

The Presidency congratulated Switzerland on the successful completion of its air borders evaluation allowing it to lift checks on persons at its air borders on 29 March 2009.

The Presidency presented to the Mixed Committee the current state of play on the implementation of the Regulation establishing the Visa Information System (VIS). The UK does not participate in that Regulation.

Lastly under any other business in the Mixed Committee the Presidency noted that following a visit by the Commission and Presidency to the US, the US had asked EU Member States officially for the first time for assistance in the closure of Guantanamo. The Mixed Committee in future would deal with this issue, because of the possible impact on the Schengen area. The Presidency was now ready to prepare a co-ordinated approach by EU Member States. The issue would be taken forward by Coreper, and would be reconsidered at the June Council to see if more specific conclusions could be reached.

Returning to the main Council agenda, the Presidency sought political agreement on the Directive for a single application procedure for third-country nationals. However, Member States remained divided on whether to include all legally resident third country nationals in the scope of rights of this proposal or just those admitted under the Single Application Procedure for which the Directive provided. The UK does not participate in this proposal.

The Council also discussed whether to start a Europol-Russia cooperation agreement. There were differing opinions on how to proceed and the Presidency did not reach a formal conclusion. They proposed instead that the issue should be placed on the agenda of the forthcoming Russia -EU Troika meeting in Kaliningrad. In the meantime they would try further to reconcile Member States' positions.

Under AOB, Greece informed the Council that the Third Global Forum for Migration and Development will take place on 4-5 November in Athens.

The next JHA Council will take place on the 4-5 June in Luxembourg.

28 April 2009

JUSTICE: E-JUSTICE STRATEGY

Letter from Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Lord Grenfell wrote to me on 24 November confirming your Committee's support for the creation of an e-Justice portal but expressing concerns about the budgetary implications of the Commission's aspirations, including the fact that provision of video conferencing and translation aids will incur significant cost at national level. A question was raised also about whether there was a risk that expenditure in the e-Justice area might put pressure on other parts of the JHA budget.
I agree that one of the key factors in the success of e-Justice projects must be that they are funded appropriately and it is true that the use of technology can require significant investment. The exact costs of the e-Justice projects are still to be determined, as they will depend on the scope agreed by the Council. Most of the e-Justice work, including development of the portal and translation, will be funded by the Commission. Any additional projects will be supported through applications for EU project funding or by Member States if they choose. It is important to note that Member States will not be compelled to join any e-Justice projects. Like all other Member States, the UK will have to decide on the added value that will be provided in joining a particular project. This decision will have to include an analysis of the costs of participation and the likely savings that might be achieved by joining a project.

In the examples given in Lord Grenfell’s letter we need to be mindful of the costs currently incurred in ensuring parties or witnesses can attend hearings far from their local area, including in other Member States. In addition it can be difficult to find interpreters in some languages in the United Kingdom so it would be useful to be able to allow interpretation via videoconference. Videoconference facilities are already widely available in our courts. The costs of translating documents can be very high and therefore there may be significant long-term savings in using translation aids. As I said we will analyse the potential savings against the costs and effectiveness of each project.

The Commission have described how e-Justice must develop by using finance from the Community budget under existing programmes, namely those for Civil Justice and Criminal Justice. Obtaining finance for e-Justice may be hindered given these two separate programmes, but the Commission have suggested that a single cross justice programme could be developed for the next funding cycle. A recently agreed e-Justice action Plan suggests that a considerable increase in budgetary resources from present will be required for the future implementations. E-Justice has been listed as a general priority of the current Civil Justice and Criminal Justice annual work programmes.

The e-Justice portal will be developed using funding under the existing programmes. Applications could be made to the same funds for additional e-Justice projects though there are differences between the project qualification criteria between the Civil Justice and Criminal Justice programmes. In criminal matters it is possible to some extent to finance national projects that aim to increase the use of IT. E-Justice is always included in general funding so there may be some impingement given the overall financial constraints of the work programmes. The allocation of funds in any given year will depend to a significant extent on the availability of suitable project proposals in the form of applications for grants. Further, the priorities defined in the annual work programmes are purely indicative and certainly do not prevent the financing of actions in other areas if high quality proposals are received.

9 December 2008

Letter from the Chairman to Lord Bach

Thank you for your letter of 9 December which was considered by Sub-committee E at its meeting of 14 January.

The Committee has decided to clear the Commission’s communication from scrutiny.

We consider it necessary to keep the scope and budgetary implications under review and that any future proposals in relation to these will be referred to us in time to consider them.

The Committee looks forward to considering the development of the EU’s e-justice programme and awaits with keen interest – post their formulation in the Council – the precise detail of these programmes, their budgetary implications and assessing the potential benefits e-Justice might bring to European Citizens.

15 January 2009

JUSTICE FUTURE GROUP (11549/08)

Letter from the Chairman to Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice

Bridget Prentice MP wrote to Lord Grenfell on 22 July enclosing a copy of the final report of the Future Group on Justice. It has been considered by Sub-Committee E.

We are most interested in the development of the successor to the Hague Programme and look forward to considering the formal papers that will be issued by the European Institutions as the process of policy formulation develops. This is a topic on which we may wish to take evidence at an appropriate time.
In the meantime we should be grateful if you could provide an update on the outcome of the Informal JHA Council which discussed this report, and on the intentions of the Czech and Swedish Presidencies as to the contents of a new Justice programme. We should also be interested in the thoughts of Government at this stage.

16 December 2008

Letter from Lord Bach to the Chairman

I am writing in response to your letter dated 16 December 2008 about the development of the successor to the Hague Programme, in which you asked, among other things, for an update on the outcome of the Informal JHA Council which discussed this report.

This report was discussed briefly over lunch at the Informal JHA Council in July 2008. Nothing of note emerged and the UK did not intervene.

This report will form only one part of the evidence on which the Commission will base the development of a proposal on the future of EU Justice and Home Affairs, which is expected at the end of May 2009. In addition, the Commission undertook a public consultation which finished at the beginning of December; the results of which will be published shortly. The UK sent a paper to Vice President Barrot and members of the JHA Council outlining its initial thoughts on the future of EU JHA in October 2008 and submitted it separately to the Commission as part of the consultation. This paper is attached for your information. However, the Government expects to develop its position further over the coming months.

We understand that the Commission intends to take a two-pronged approach, including an evaluation of the Hague Programme as well as a proposal for the next work programme.

The informal JHA Council in Prague last week included a discussion on mutual recognition in criminal matters, a topic which is likely to figure significantly in discussions leading to the new work programme. During this discussion, there was strong support for mutual recognition and widespread agreement that there was a need for better implementation and for more and better evaluation. The Commission is expected to publish a Communication on mutual recognition in May.

The Informal JHA Council in Stockholm in July is likely to focus almost exclusively on what is already being unofficially called the "Stockholm Programme". However, neither the Czechs nor the Swedes have made any public announcements as to their intentions in relation to the new work programme.

22 January 2009

Letter from the Chairman to Lord Bach

Thank you for your letter of 22 January. The aspects of the programme concerning Justice were considered by Sub-Committee E at its meeting of 25 February.

The Committee supports the principle that the Stockholm Programme should consolidate existing progress in this area. It believes the EU should concentrate its efforts on ensuring that existing legislation is fully implemented by the Member States and works in practice. It also believes that real benefits can be provided by practical, non-legislative measures both to increase mutual understanding and cooperation between judicial systems and also to provide citizens with readily available information.

We agree that some further legislation is needed, particularly to enhance the protection of the data of individuals, to abolish exequatur and to provide minimum standards of protection for those subject to criminal process such as the recording of police interviews; but it needs to add value, to be well targeted and to respect the traditions of Member States.

26 February 2009

ROME I: EXTENSION OF REGULATION TO THE UNITED KINGDOM

Letter from Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

I am writing to advise you that, on 22 December 2008 the European Commission adopted a decision to extend the application of the Rome I Regulation to the United Kingdom. As a result, the Regulation will come into force in the United Kingdom on 17 December 2009, the same time as other participating Member States.
I have also authorised the publication of the response paper to the public consultation held last year on whether the United Kingdom should participate in the Regulation which had been awaiting the Commission's response to the United Kingdom's notification that it wished to participate in the Regulation. I will be announcing the adoption of the European Commission's decision to extend the application of the Rome I Regulation to the United Kingdom in a Written Ministerial Statement to be placed in both Houses. I will also be placing copies of the response paper in the libraries of both Houses, the Vote Office and the Printed Paper Office.

In the meantime, I would like to express my gratitude to you and the Committee for the support and assistance provided throughout the lifetime of the Rome I dossier.

18 January 2009

US-EU AGREEMENTS ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE

Letter from Lord West of Spithead, Parliamentary Under Secretary of State, Home Office, to the Chairman

The final phase in the process to give effect to the EU-US agreements on extradition and mutual legal assistance (MLA) is taking place. This phase requires the exchange of the instruments of ratification of the UK-US judicial co-operation instruments related to the Agreements concluded between the EU and the United States. When that exchange has taken place between the UK and US, and between the US and each of the other member states of the EU, the EU-US agreements can be concluded at an EU-US summit likely to take place in June. After that point the Instruments between the UK and the US will enter into force.

I have submitted an Explanatory Memorandum on the US-UK Instruments.

With my apologies may I draw your attention to a minor error in the Explanatory Memorandum I submitted to your Committee in March concerning the Council Decision on the conclusion on behalf of the EU of the EU-US Agreements. Paragraph 2 of that EM stated that the bi-lateral extradition treaty between the UK and the US did not require any amendment as a consequence of the EU-US agreement. In fact some minor amendments were necessary, such that the integrated extradition text annexed to the Instrument is slightly different from the bi-lateral treaty currently in operation. However, the changes are only to give effect to the provisions contained in the EU-US Agreement on Extradition which has itself been scrutinised by your committee (Home Office EM 8295/1/03). In operational terms the differences will give rise to little or no change to existing practice. I apologise for this error.

30 April 2009