CONTENTS

CONTENTS ............................................................................................................................................. 1
ACCESS TO EU DOCUMENTS (1049/01, 9200/08) ..................................................................................... 2
AREA OF FREEDOM, SECURITY AND HOME AFFAIRS (11060/09) .......................................................... 3
CITIZENS’ INITIATIVE (16195/09) ............................................................................................................. 4
CIVIL JUSTICE: JURISDICTION AND RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (9149/09 9150/09) ......................................................... 4
CIVIL JUSTICE: RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE (12265/09) .................................................................................................................. 5
COMPANY LAW: COMMUNITY PATENT (13706/09) .................................................................................. 6
COPYRIGHT: COMMUNITY PATENTS COURT AND DRAFT STATURE (7928/09) ........................................... 8
COPYRIGHT: KNOWLEDGE ECONOMY (12089/08) ...................................................................................... 12
COPYRIGHT: TERM OF PROTECTION (12217/08) ....................................................................................... 12
COURT OF AUDITORS REPORT: DELEGATING IMPLEMENTING TASKS TO EXECUTIVE AGENCIES (16632/09) ......................................................................................................................................................... 13
CRIMINAL JUSTICE: CHILD SEXUAL ABUSE, SEXUAL EXPLOITATION AND PORNOGRAPHY (8150/09) .................................................................................................................................................. 13
CRIMINAL JUSTICE: INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS (11917/09, 16801/09) ................................................................................................................................................................. 14
CRIMINAL JUSTICE: MODEL PROVISIONS GUIDING CRIMINAL LAW DELIBERATIONS (16542/1/09) ................................................................................................................................................................. 20
CRIMINAL JUSTICE: MUTUAL LEGAL ASSISTANCE BETWEEN THE EU AND ICELAND AND NORWAY (17703/09) ................................................................................................................................. 22
CRIMINAL JUSTICE: MUTUAL LEGAL ASSISTANCE BETWEEN THE EU AND JAPAN (17708/09) ................................................................................................................................. 26
CRIMINAL JUSTICE: OBTAINING EVIDENCE FROM ONE MEMBER STATE TO ANOTHER (17691/09) ................................................................................................................................................................. 27
CRIMINAL JUSTICE: PENALTIES FOR DRUG TRAFFICKING (5200/10) .................................................... 27
CRIMINAL JUSTICE: RIGHTS OF AND SUPPORT TO VICTIMS OF CRIME ............................................. 28
CRIMINAL JUSTICE: THIRD COUNTRY NATIONALS CONVICTED IN THE EUROPEAN UNION (11453/06) ................................................................................................................................................................. 29
CRIMINAL JUSTICE: TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS (11119/09)... 30
DISSOLUTION: MINISTRY OF JUSTICE DOSSIERS ................................................................................... 31
EUROPEAN PROTECTION ORDER (17513/09) .......................................................................................... 32
INFORMATION: PROTECTING CLASSIFIED INFORMATION (13885/1/09) ................................................ 33
INSTITUTIONS: RULES OF PROCEDURE OF THE COURT OF AUDITORS (17047/09) ...................... 34
INTERNAL SECURITY: INFORMATION MANAGEMENT STRATEGY (11060/09, 16637/09) ............ 34
JUDICIAL APPOINTMENTS PANEL ........................................................................................................ 34
JUSTICE AND HOME AFFAIRS: SPANISH PRESIDENCY PRIORITIES FOR JHA ISSUES .......... 35
JUSTICE AND HOME AFFAIRS COUNCIL 2010 ......................................................................................... 39
Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

We write to inform you of a change of formal responsibility within Government for this policy dossier. Though both the Foreign & Commonwealth Office and Ministry of Justice have been working closely together as negotiations have progressed at Council Working Group level in Brussels, we feel that those areas of key concern for the UK raised in the Commission’s proposal are areas where the Ministry of Justice has equivalent policy responsibility in the UK, particularly given the Ministry of Justice’s responsibility for the UK Freedom of Information Act. We have therefore decided that the Ministry of Justice should assume the formal responsibility for leading on the dossier with immediate effect. The Foreign & Commonwealth Office will continue to take a keen interest on this dossier, and Foreign Office officials will continue to work closely with counterparts in the Ministry of Justice, particularly on those aspects which might impact on the functioning of the European Institutions.

We should also take this opportunity to update you on the progress of negotiations so far. It has become apparent that there is a clear split within the Council on the approach to the re-cast of this dossier. The European Parliament has indicated that it is not prepared to give formally a first reading opinion based on the current Commission proposal. Negotiations have therefore stalled for the time being, awaiting either a new proposal from the Commission or an opinion from the European Parliament.

The Government continues to believe that the existing Regulation works reasonably well, and that the re-cast should serve to make the text of the Regulation clearer in regards to its purpose and workings as originally intended in 2001.

29 January 2010

Letter from the Chairman to Chris Bryant MP and the Rt Hon Michael Wills MP, Minister of State, Ministry of Justice

Thank you for your letter of 29 January. This was considered by Sub-Committee E at its meeting of 24 February. We are grateful for the update on the change of responsibility for this matter and on the state of negotiations on it. We look forward to receiving a response to the points raised in my letter of 30 October last year.

26 February 2010

Letter from the Rt Hon Michael Wills MP to the Chairman

Thank you for your letter of 26 February. I am writing in response to the issues raised in your letter to Chris Bryant MP, Minister for Europe, dated 30 October 2009. I am sorry for the delay in responding. Unfortunately, it appears that the FCO did not receive your letter.

By way of an update, the negotiations have not progressed since Chris Bryant and I jointly wrote to you on 29 January. The Government continues to await either a new proposal from the Commission or an opinion from the European Parliament.

In your letter, you state that the Government’s response to the proposal for a new Regulation does not expressly address whether negotiating positions should be disclosed if there is an overriding public interest in disclosure. As the Committee has already noted, there is a risk that should every detail
potentially be open to public scrutiny there may be a ‘chilling effect’, moving negotiations away from
the Council negotiating table. This shift would clearly be contrary to both the public interest and the
purpose of the Regulation. Accordingly, whilst we agree that negotiating positions should potentially
be available under the Regulation, they should only be released where there is an overriding public
interest in doing so.

I was pleased to note your comments regarding court documents. I would like to clarify that we agree
that the Court of Justice and Court of the First Instance (now the General Court) should regulate the
disclosure of documents submitted to them, including third party pleadings.

We welcome the Committee’s observations in relation to legal advice. We are anxious to ensure the
same level of protection for legal advice under the Regulation as it receives under the Freedom of
Information Act 2000. As you rightly observe, legal advice is not subject to an absolute exemption
domestically and we do not consider absolute protection to be necessary at European level either.
However, as is the case with the negotiating positions of Member States, there is a need to ensure that
the public interest in maintaining legal professional privilege is properly recognised. The High Court
has confirmed that the equivalent Freedom of Information Act 2000 exemption starts heavily weighted
in favour of protecting the confidentiality of legal advice. However, it is clear from the Joined Cases C-
39/05 P and C-52/05 P Kingdom of Sweden and Maurizio Turco v Council of the European Union, that
this may not be the starting point for the European Courts and we will continue to look creatively for
ways for the higher threshold to be acknowledged but without going so far as calling for an absolute
exemption.

You also asked for clarification of the Government’s position on proposed Article 5(2). In the
Government’s view, there should be a split approach to Member State documents. Where a Member
State document would be exempt from disclosure domestically, the Regulation should be similarly
exempt. This is consistent with the principle of subsidiarity and would avoid any conflict between
national and EU law.

Where a document would not be exempt domestically, a Member State could still object to disclosure
based on the exceptions in Article 4. In such a case, a challenge could be brought to the European
courts in the same way as is currently possible.

You noted the Government’s position on the protection of personal data taking priority over access to
documents. However, as is the case domestically, this precedence would not mean that personal data
would automatically be exempt. Disclosure would be permissible where processing of that nature is
compatible with the Directive. This means that the question of whether names, titles and functions of
public office holders acting in their professional capacity should be disclosed would fall to be
determined on a case by case basis. The Government, of course, awaits with interest the decision of the
ECJ in Case C-28/08 P Commission of the European Communities v The Bavarian Lager Co. Ltd.

I hope that the above explanations address the points you raised in your letter. Should you wish to
discuss any of the matters further, please do let me know.

24 March 2010

AREA OF FREEDOM, SECURITY AND HOME AFFAIRS (11060/09)

Letter from the Chairman to Meg Hillier MP

Thank you for your letter, received here on 7 January. The justice and general criminal law elements
were considered by Sub-Committee E at its meeting of 27 January.

We are grateful for the analysis of the final text which you have provided and of your explanations of
the specific points raised by us in earlier correspondence. We agree that the outcome of the
negotiations on Stockholm Programme is satisfactory and look forward to scrutinising the Action Plan
later this year.

28 January 2010
Letter from the Chairman to Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum dated 7 December which was considered by Sub-Committee E at its meeting of 13 January. We decided to retain this matter under scrutiny pending completion of the cross-Whitehall consultation.

The Committee is considering making a response to the Green Paper. In order to do so it will be looking at this matter on 27 January. In order to facilitate this we should be grateful for your preliminary views of the questions asked, particularly questions 1 and 2, by 20 January. In any event, we should like to see your proposed response to the Commission.

14 January 2010

Letter from the Chairman to Chris Bryant MP

Sub-Committee E considered the Green Paper on a European Citizens’ Initiative at its meeting of 27 January. In the absence of any response from the Government to our letter of 14 January, which we understand the post prevented you from responding to in time, the Committee responded direct to the Commission. A copy of the response, which expresses the general principles the Committee believes should be taken into consideration when deciding upon the matters of procedure and practical implementation set out in the Green Paper, is enclosed.

We remain interested to see a copy of the Government’s response.

3 February 2010

Letter from Chris Bryant MP to the Chairman

As requested in your Committee’s report of 9 December, I hereby enclose for your Committee’s information a copy of the Government’s response to the Commission Green Paper on the European Citizen’s Initiative (not printed).

The response to the Green paper is of course only a preliminary position, and the government now await the Commission’s full proposal, which is expected in late April.

The Committee may also wish to be aware that the Commission is planning to hold a public hearing on the issue on 22 February.

16 February 2010

Letter from the Chairman to Chris Bryant MP

Thank you for your letter dated 16 February and the copy of the Government response to the Commission Green Paper. Sub-Committee E examined it at their meeting of 3 March. We decided to clear the document from scrutiny and look forward to examining the Commission’s proposal in due course.

If any of your officials attended the Commission hearing on 22 February, we would be interested to learn of the discussions and your impressions.

5 March 2010

CIVIL JUSTICE: JURISDICTION AND RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (9149/09 9150/09)

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

Thank you for your letter dated 15 November which was considered by Sub-Committee E at its meeting of 9 December.

Once again the Committee is grateful for the further information you have provided and we too welcome the conclusion that the principle of party autonomy is important and that choice-of-court agreements be given adequate protection. As the Committee said in its recent Report in relation to choice-of-court agreements and their vulnerability to the “torpedo”: 

We welcome the statement in the Green Paper that the Regulation should ensure that agreements on jurisdiction are given full effect. This is consistent with the principle of party autonomy which we consider is an important consideration in legislative intervention...the present position under the Regulation, which permits the operation of the “torpedo” is highly unsatisfactory and a cause of injustice” paragraph 67, (emphasis added).

10 December 2009

CIVIL JUSTICE: RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE (12265/09)

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

Thank you for your letter of 13 November. It was considered by Sub-Committee E at its meeting of 9 December. We decided to clear this matter from scrutiny.

The Committee was grateful for your detailed explanation of the impact the Convention would have on UK law. This, together with the positive responses from those consulted, point to the Convention having a beneficial effect overall.

We note your explanation for the lower level of data protection than that provided by Regulation 4/2009 and are grateful for your assurance that these matters will be looked at closely when the Convention is implemented in national law.

We agree with your assessment that the prospects of challenging the Commission’s claim that the Union has exclusive competence to accede to the Convention are poor. However, you indicate that whatever the final decision on competence the UK wishes to be a party to the Convention. We do not understand how the UK could accede to the Convention as a party if the Union has exclusive competence. However, if you were to succeed in asserting that Member States do have competence to accede (shared with the Union) which they exercise by becoming separate parties to the Convention, then the Decision to accede would need more amendment than the removal of the reference to exclusive competence in recital 3. Annex 1, for example, states that the Community exercises competence over all the matters governed by the Convention.

We are grateful for your indication that the UK has opted in to this measure. In our view the opt-in is available even if the Union has exclusive competence derived from Regulation 4/2009 to which the UK has already opted in. We regret that the opt-in was exercised on the back of an Explanatory Memorandum which did not address the substantive question whether the UK should opt in, and before we had received a reply to our specific request for this information.

10 December 2009

Letter from Lord Bach to the Chairman

Thank you for your letter of 10 December in which you confirm that your Committee had decided to clear this proposal from scrutiny.

In your letter you queried how the UK could accede to the Convention as a party if the Union has exclusive competence and suggested that if there was shared competence there would be a need to do more to the text than remove the reference to exclusive competence. I should clarify that when in my letter of 13 November I said that the UK wished to be a party to the Convention I should more correctly have said that the UK intended to participate in the Convention. I appreciate that if there is exclusive competence in this area, then only the EU can accede as a party. If there is shared competence exercised by the EU the UK will participate as a Member State and not as a separate contracting party.

With regard to the need to amend the text if there is shared competence, Article 59(3) of the Convention gives the EU the power to make the declaration in Annex I to the Commission’s proposal. Article 59(3) says:

“At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare in accordance with A.63 that it exercises competence over all the matters governed by this convention and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by this Convention by virtue of the signature, acceptance, approval or accession of the Organisation”.

10 December 2009
For this to apply it is not necessary for the EU to have exclusive competence over all or any of the matters in question, merely “competence”. As a result it is possible for the EU to conclude the convention notwithstanding that it does not have exclusive competence in respect of all matters covered by the Convention, and can bind the Member States. Member States do not need to become parties to the Convention separately in order to be bound and participate. It is for this reason that the Government believes that the removal of the reference to “exclusive” competence in recital 3 is adequate.

As I mentioned in the Explanatory Memorandum on this proposal, the Government has consistently supported the objective of this Convention and those that responded to our recent consultation were very supportive of it being ratified. As the quickest and easiest way for Member States to ratify will be through the EU, for practical reasons the Government believes it is sensible to agree with the Commission’s suggestion.

Turning to the issue of the UK’s opt in, the timing of this proposal meant that the eight week period during which your Committee could give views on the UK’s decision to opt in fell within the Parliamentary recess. As you know, the Explanatory Memorandum alerted your Committee to the possibility of an opt in. It was not possible to indicate in the Explanatory Memorandum whether the Government was minded to opt in as we were awaiting the results of our consultation. However, as I mention above, I did make it clear that the Government supported the objective of the Convention, that it was broadly satisfied with the outcome of the negotiations and that, subject to the results of our consultation, believed it would be within our national interest to participate.

For your information you will be interested to know that the Presidency has suggested that the Commission’s proposal should be split into two separate Decisions, one on signature, and one on conclusion. This will enable signature to occur relatively early, as a political signal to other potential contracting states of the EU’s willingness to enter into this agreement, enabling the work on the Decision on conclusion to continue in parallel. The suggested draft does not assert exclusive competence but does retain the Article 59(3) declaration. I shall, of course, inform your Committee of the outcome of this suggestion and the negotiations.

6 January 2010

Letter from the Chairman to Lord Bach

Thank you for your letter of 6 January. It was considered by Sub-Committee E at its meeting of 27 January.

The Committee was grateful for your clarification that it is not intended that the UK should become a party to the Convention, and the reasons for this.

We note that a final view on the question of opting in was not available until consultation had been undertaken but do not consider that this need prevent, in future, the factors affecting a decision to opt in be raised explicitly at an early stage in order to assist our timely scrutiny of that decision, as you have helpfully done in other cases.

28 January 2010

COMPANY LAW: COMMUNITY PATENT (13706/09)

Letter from the Rt Hon David Lammy MP, Minister of State, Department for Business, Innovation and Skills, to the Chairman

I am writing to give you advance warning of the possibility that the Government may need to override parliamentary scrutiny on a proposal for a Council Regulation on the Community patent.

Discussions on the Community patent have been ongoing in Council since 2000, with many revised Regulation texts being presented by successive Presidencies. In September this year the Swedish Presidency presented revised text 13706/09, which differs in substance from the previous Regulation text to clear scrutiny (8539/03) only in that controversial provisions have been removed. In October, it became apparent that the current text (13706/09) may form a substantial basis for possible agreement on a Regulation at the Competitiveness Council on 3-4 December.

At this point we deposited the text and submitted the required Explanatory Memorandum on 11 November (this being replaced by a revised EM on 19 November). This document was cleared from scrutiny by the House of Commons’ Committee on 19 November. However, as parliament was dissolved, it could not be included in the House of Lords’ Select Committee sift until 24 November, at
which point it was referred to Sub-Committee E for examination. At the following Sub-Committee meeting on 2 December the document was not cleared and further information was requested.

The UK has previously pledged its support for the Regulation, and it would be extremely regrettable if we were unable to provide political agreement to the general approach which is expected to be voted on at the Competitiveness Council on 4 December. We shall of course respond urgently to your request for further information such that your Committee may clear the document as soon as possible. In the meantime I hope that you will accept my explanation.

2 December 2009

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your Explanatory Memorandum which was considered by Sub-Committee E at its meeting of 2 December 2009.

We have decided to retain this proposal under scrutiny.

The Committee recognises that the bulk of this proposed Regulation’s provisions mirror the text of the proposal considered and cleared from scrutiny in 2003 with the contentious issues on translation and judicial arrangements removed, but this factor alone offers no guarantee that the Committee would be content to clear this ‘new’ matter from scrutiny in 2009. However, we would have been happy to clear this proposal from scrutiny if it were not for the fact that the Committee are not able to understand paragraph 38 of your Explanatory Memorandum headed: “Competence”. Can the Government explain to the Committee what they mean when they say: “[I]t may be perceived that there is a risk that agreement on the Regulation at this stage could be used to support arguments to the effect that agreement is to confer exclusive competence on the Community”.

The Committee has a long history of considering European Community attempts to create a Community patent system. In addition to the numerous legislative proposals submitted for routine scrutiny, this Committee’s first Report into this subject matter was published over twenty years ago and this was followed by a second Report in 1998. Over the course of this period the Committee has repeatedly expressed its desire for an effective Community patent system which is acceptable not only to the Member States individual interests but also from industry’s point of view.

Given this long history, the Committee is unable to understand the reason for the sudden call for urgency in relation to this Regulation. Indeed, one could argue that the desire for urgency is undermined by the fact that even if this measure is agreed at the Competitiveness Council on Friday 4 December, this measure cannot stand alone. In fact, its existence is entirely dependent on the further measures addressing the difficult issues on translation and judicial arrangements being agreed in the future. Are the Government in a position to explain to the Committee the reason for this urgency? Is this simply another example of a Council Presidency pushing the Member States to agree a dossier in order to claim success in signing off on a historically difficult area of Community legislation?

The Committee would like to take this opportunity to repeat the conclusion expressed in its 1998 Report:

“[T]he Community patent, a single patent which is valid throughout the Community, would have advantages over the present system of European and national patents. The success of the system depends firstly, as we said in our 1986 Report, on keeping costs down. A practical solution has to be found to the question of the number and extent of translations. There must also be judicial arrangements which will command the confidence of industry”.

With this in mind, the proposal for a European and Community Patents Court and Draft Statute was sifted for consideration by this Committee on Monday 23 November and will be considered by us shortly. As to the further proposals addressing renewal fees and the language/translation requirements the Committee looks forward to considering these when they are brought forward and particularly the practicality and cost of the overall package.

4 December 2009

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your letter dated 2 December 2009 which was considered by Sub-Committee E at its meeting of 16 December 2009. Because this letter was received after the meeting of Sub-Committee E on 2 December it effectively crossed with mine of 4 December. We had retained this matter under scrutiny pending a response to our request for further information.

Whilst the Committee is grateful for your early warning of the possibility of an override - which the Committee understands was exercised at the Council meeting on 4 December – the Committee is
nevertheless disappointed that an override was considered necessary. This proposed Regulation is entirely dependent on the agreement of future legislation addressing the traditionally contentious issues of translation/language requirements and judicial supervision of the Community patent. We look forward to receiving these proposals shortly.

17 December 2009

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your letter dated 16 December 2009 which was considered by Sub-Committee E at its meeting of 10 February 2010.

As the Committee said in its letter of 4 December 2009, we have a long history of considering the European Union’s attempts to create a pan-European patent system and the Committee welcomes the Government’s commitment to a European and Community Patents system which, as we said in the conclusion to our Report in 1998, must command the confidence of industry, a sentiment that you echo in your letter. In addition, we are not surprised to see the Government’s statement that the ongoing discussion of the language requirements and the creation of the Court “will be difficult”.

However, in relation to the Parliamentary scrutiny of this proposal, we are disappointed that an override was necessary but the Committee is grateful to the Minister for his explanations of the need for urgency under the Swedish Presidency and of paragraph 38 of the Government’s Explanatory Memorandum.

10 February 2010

COPYRIGHT: COMMUNITY PATENTS COURT AND DRAFT STATURE (7928/09)

Letter from the Chairman to the Rt Hon David Lammy MP, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum dated 19 November which was considered by Sub-Committee E at its meeting of 3 February 2010.

The Committee is grateful for the helpful Explanatory Memorandum which gives us an opportunity to consider this draft Agreement although we note that it is “currently frozen” pending an opinion from the European Court of Justice as to its compatibility with the Treaties. Consequently, much of the legal and constitutional detail i.e. appropriate legal base, competence, legislative procedures and voting arrangements remains subject to confirmation.

The benchmark for this Committee’s scrutiny of legislative proposals addressing the creation of a European Patent system remains the conclusion we expressed in our Report in 1997-98:

“The Committee believes the Community patent, a single patent which is valid throughout the Community, would have advantages over the present system of European and national patents. The success of the system depends…as we said in our 1986 Report, on keeping costs down…There must also be judicial arrangements which will command the confidence of industry”.

Given the gaps in this agreement it is not possible at this stage to assess this proposal’s ability to create judicial arrangements that will command the confidence of industry. However, the Committee is able to get a flavour of the judicial system this proposal seeks to introduce.

The Committee notes that the system is founded upon a pan-European Patent court with jurisdiction for both the EU and the European Patent Convention States. This Committee can at least see the potential merit in a single patent court for both international jurisdictions that could ensure the uniform application and interpretation of European and Community Patent law. However, are the Government content that the role afforded the European Court of Justice by this agreement is compatible with its role under the Treaty?

We also see the potential value of national and regional divisions of the Court of First Instance as this could maximise the accessibility and minimise the cost implications of litigating within the pan-European Patent system.

Although the Presidency text is as you say frozen pending the decision of the European Court of Justice the agreement was on the agenda for discussion at the Competitiveness Council held in mid December. Paragraph 54 of your Explanatory Memorandum highlighted the UK’s main priorities as “the possibility of split jurisdiction and how existing patent holders would be affected by the system”. We should be grateful for an update on the discussion of the UK’s priorities at the Council.
In addition to these two priorities, your Explanatory Memorandum at paragraphs 48 – 53 raised six other issues of concern: the Role of the European Court of Justice, Affordability, Regionalisation and Homogeneity of Jurisdiction, Languages, Technically-Qualified Judges, and the Court’s Location. Is the Minister able to tell the Committee whether there have been any developments in relation to these concerns?

As the Minister is aware the attempts by the European Union to create a pan-European Patent Court have been a subject that this Committee has followed closely for a number of years and we look forward to considering a complete agreement as and when it emerges from negotiation.

We retain this matter under scrutiny pending answers to our questions and receipt of the European Court of Justice’s opinion.

3 February 2010

Letter from the Rt Hon David Lammy MP to the Chairman

Thank you for your letter dated 3 February in which you ask a number of questions relating to this issue. I am pleased to offer the following answers to these questions.

ROLE AFFORDED TO THE EUROPEAN COURT OF JUSTICE

The question of whether the role afforded to the European Court of Justice by the draft International Agreement is compatible with the TFEU was considered in depth by the UK Government last year. Although these considerations were based on the old EC Treaty (pre-Lisbon), we believe that they are still applicable following the Lisbon Treaty. The concern here is whether the application of EU law by the European patent court (a non-EU institution) would undermine the autonomy of the EU legal order. The relevant test for this is found in Opinion 1/00 (paragraphs 12 and 13):

i. the essential character of the powers of the [EU] and its institutions must remain unaltered;

   a. the procedures for ensuring uniform interpretation of the Agreement must not have the effect of binding the [EU] and its institutions to a particular interpretation of the rules of [EU] law.

In this case, the view of the UK Government is that the essential character of the powers of the Court of Justice would be preserved under the proposed litigation system, since neither the Court’s exclusive jurisdiction nor the binding effect of its rulings would be called into question. The conferral of jurisdiction on the European patent court in cases relating to the validity and/or the application of EU patents would, therefore, be compatible with the TFEU.

Further, Article 48 of the draft Agreement gives the European patent court power to refer questions to the Court of Justice for a preliminary ruling. The availability of this procedure would not be dependent on the political will of a third country; the Court of Appeal of the court would be under a duty of referral corresponding to that of national courts of final resort; and it is explicitly provided by Article 48(2) that rulings by the Court are to be binding. The UK Government again considers this to be compatible with the TFEU as Opinion 1/92 (paragraph 32) held that “an international agreement concluded by the Community may confer new powers on the Court, provided that in so doing it does not change the nature of the function of the Court as conceived in the Treaty”.

UK PRIORITIES – OPT-OUT & SPLIT JURISDICTION

Opt-out

UK stakeholders have been understandably concerned about the possibility of existing patents and patent applications falling under the exclusive jurisdiction of the European patent court when it enters into force. They will have made business decisions to file patent applications, as well as validate and renew granted patents, with the expectation that any litigation would be before national courts. Therefore one of the UK’s main priorities has been to ensure that the expectations of holders of existing patents and patent applications are met with regard to litigation. In paragraph 26 of Council Conclusions (17229/09), agreed in December, we secured a provision that allows holders of European patents or patent applications granted or applied for prior to the entry into force of the Agreement to opt out of the court’s exclusive jurisdiction for the life of the patent. In paragraphs 24 and 25 we also secured a transitional period of up to five years from entry into force of the Agreement during which time validity and infringement actions relating to European patents may still be brought before the national courts of a Contracting State of the European Patent Convention. This is an important issue for UK stakeholders, and securing these provisions in Council Conclusions is a significant success.

Split Jurisdiction
Another of the UK’s main priorities relates to the splitting of cases between different court divisions. Paragraph 20 of the Council Conclusions allow for validity and infringement actions on a patent case to be dealt with separately if the local or regional division concerned deems this to be appropriate. UK stakeholders generally oppose hearing these actions separately as it is inefficient and can lead to inconsistencies.

In practice, we expect that most divisions, including the UK’s, will favour hearing related actions together. Further, paragraph 27 of the Council Conclusions provides a revision clause for a review of the jurisdiction in respect of related validity and infringement actions after either six years from entry into force of the court, or after a sufficient number of infringement cases, approximately 2000, have been decided. Termination or modification of the provision should then be decided by a committee comprising the court’s member states following assessment of the court’s performance. As few states favour splitting cases, and we expect hearing cases together will be shown to be more efficient, we expect there is a high probability of the provision being modified so that all divisions can only separate related actions with the agreement of both parties.

OTHER ISSUES

Role of the ECJ

The extent to which the ECJ should be involved in the court structure is still as yet unresolved. The ECJ has been asked whether the current proposed Agreement, which supports a minimal ECJ role, is compatible with the EU Treaty. The UK also supports a minimal role for the ECJ, limited to ensuring the primacy of EU law. No further progress on this issue is envisaged until the ECJ opines, this being expected no earlier than summer 2010.

Affordability

Principles on the financing of the court were included in paragraphs 29-34 of the Council Conclusions agreed in December. They provide for the court to be financed by its own revenues consisting of court fees, and at least during the transitional period (of up to five years) by contributions from the EU and non-EU Contracting States as necessary. As fee levels have not been discussed, it is currently unclear what, if any, subsidy would be required from the UK. The UK supports targeted court fees as appropriate, compared with a blanket low fee policy resulting in continual subsidies beyond the transitional period. The European Commission are currently undertaking a study into the cost of setting up and operating the court, following which we may have a better idea of the costs involved.

Regionalisation and Homogeneity of Jurisdiction

Paragraphs 15 and 16 of the Council Conclusions provide that a Contracting State having less than fifty patent cases per year must join a regional division having a critical mass of at least fifty cases, or must have a panel comprising only one national judge and two non-national judges. Conversely a Contracting State having at least fifty patent cases per year must may form their own local division and have a panel comprising two national judges and only one non-national judge. This means that only a small number of countries will be entitled to a local division having a majority of national judges, and these will be those countries whose judges are most experienced in patent litigation. The UK supports this as it should prevent diverse national, and potentially inefficient, practices continuing in each Contracting State.

Languages

Paragraphs 21-23 of the Council Conclusions relate to the issue of languages, and specify that the language of proceedings should generally be the language(s) of the Contracting State(s) hosting the division in question, or an official EPO language (English, French or German) if so designated by the Contracting State. The language of proceedings before the central division of the court should be the language of the patent, and before the Court of Appeal should be that at the court of First Instance. The Conclusions also specify that translation and interpretation facilities should be available to ensure fairness and predictability where appropriate, particularly for private parties and SMEs.

Technically-Qualified Judges

Paragraph 17 of the Council Conclusions relates to the use of technically qualified judges in the court of first instance. A technically qualified judge, in addition to the three legally qualified judges, should sit on the panel of a local or regional division in all cases of a counterclaim for revocation, and in cases of an action for infringement when requested by at least one of the parties. Further, all panels of the central division should comprise two legally qualified judges and one technically qualified judge.

Court’s Location

The location of the court is yet to be discussed in detail. It is expected that the location of the courts in local and regional divisions will be selected by the country or countries involved so as to allow access
for all which fall under its jurisdiction. The location(s) of the central division and Court of Appeal are again expected to be selected to allow access for all which fall under its jurisdiction. However, this is not expected to be discussed in detail until a late stage of negotiations.

I shall of course keep you updated on any significant future developments in relation to this dossier, in particular the ECJ’s opinion 1/09.

25 February 2010

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your letter dated 25 February which was considered by Sub-Committee E at its meeting of 24 March.

We have decided to retain the matter under scrutiny. We are grateful for the answers you have provided but note that much of the detail remains subject to the European Court of Justice’s opinion and ongoing negotiation of the Agreement.

In relation to the Agreement’s system of splitting jurisdiction on validity and infringement hearings between the Central and Local Divisions of the Court of First Instance, the Committee noted that in your original Explanatory Memorandum you pointed to cost concerns amongst UK stakeholders and that finding a solution to this formed one of the UK’s main priorities for the December Council. It seems to the Committee that the proposed solution in paragraph 20 of the Council’s Conclusions simply repeats the same division of jurisdiction as envisaged by the original Article 15(1) and 15a(5) of the Agreement. Is this correct and were the Government able to secure a concession designed to alleviate UK stakeholders’ concerns?

25 March 2010

Letter from the Rt Hon David Lammy MP to the Chairman

Thank you for your letter dated 25 March 2010 in response to mine of 25 February, requesting further clarification on the issue of the split jurisdiction of the European and Community Patents Court.

It is correct that finding an acceptable solution to the issue of splitting related validity and infringement actions was one of the UK’s main priorities for the December Council. The solution agreed in paragraph 20 of the Conclusions is consistent with that outlined in Article 15a(2) of the Draft Agreement. This allows the splitting of related validity and infringement actions should the local or regional division think this to be appropriate.

As stated in my letter to you dated 25 February 2010, in practice we expect that most divisions, including the UK’s, will favour hearing related actions together. Further, paragraph 27 of the Council Conclusions provides a revision clause for a review of the jurisdiction in respect of related validity and infringement actions after six years from entry into force of the court, or after a sufficient number of infringement cases, approximately 2000, have been decided. Termination or modification of the provision should then be decided by a committee comprising the court’s member states following assessment of the court’s performance. As few states favour splitting cases, and as we expect hearing related actions together will be shown to be more efficient, we expect that there is a high probability of the provision being modified so that all divisions can only separate related actions with the agreement of both parties.

Key UK stakeholders (including representatives of industry, the judiciary and legal professionals) appreciated that this was a reasonable compromise in order to achieve such a significant step towards a reform of the European patent system that will provide real benefits for business. They also generally share our view that the revision clause will, in the long term, enable the most efficient approach to be adopted for the whole court.

Regarding the ECJ’s Opinion 1/09, we have been advised that a hearing will take place on 18-19 May 2010, where all those who submitted written observations will be given the opportunity to make a further oral submission. The UK intends to participate in the hearing, following which the ECJ is expected to opine later in the year.

6 April 2010
COPYRIGHT: KNOWLEDGE ECONOMY (12089/08)

Letter from the Rt Hon David Lammy MP, Minister of State, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 23 April 2009 which expressed an interest in seeing, in due course, the material relating to the next stage in the consultation about the Gowers recommendations on copyright exceptions. I am now pleased to attach, for information, a copy of the consultation document which was published on 11 December.

16 December 2009

Letter from the Chairman to the Rt David Lammy MP

Thank you for your letter of 16 December which was considered by Sub-Committee E at its meeting of 20 January.

We are grateful for the further information provided in the consultation document, particularly in relation to the amendments to copyright law to benefit libraries, archives, research and distance learning. We also note that the present Digital Economy Bill includes provision to permit the requested use of orphaned works. We should be grateful for a further update when you have analysed the results of this consultation.

22 January 2010

COPYRIGHT: TERM OF PROTECTION (12217/08)

Letter from the Rt Hon David Lammy MP, Minister of State, Department for Business, Innovation and Skills, to the Chairman

Further to my letter of 6 November, I enclose the Impact Assessment relating to the above proposal (not printed).

The IA shows that the cost of Option 3 is less than Option 2. As I foreshadowed in my letter of 6 November, the UK has argued within Europe for an extension of term that better reflects the lifetime of a performer and one that delivers real and lasting benefits to performers; Option 3 delivers this.

As you may be aware, the proposal to extend copyright term was not discussed in Europe under the Swedish presidency however, I believe that the Spanish presidency is likely to progress the proposal as they take up their position in January 2010. I would therefore be grateful if you could consider the attached Impact Assessment at your earliest convenience.

I will inform you of further developments should they arise.

27 January 2010

Letter from the Chairman to the Rt Hon David Lammy MP

Thank you for your letter of 27 January. It was considered by Sub-Committee E at its meeting on 3 March. We decided to clear the proposal.

In the light of the previous correspondence, we consider it appropriate in principle to increase the term of protection for sound recordings to 70 years, provided that this is part of a package which strikes the right balance of improving the position of performers without imposing disproportionate costs on the public at large.

We are grateful for the Government’s impact assessment which has assisted us in considering the overall balance of the package. From this we conclude that the European Parliament’s first reading amendments would have a relatively low overall financial impact, in terms both of the costs it imposes and the benefits to be gained by performers and producers. We also conclude that the European Parliament text would benefit performers proportionately more than producers, as compared with the Commission’s original proposal. We consider that the amendments of the European Parliament do strike an appropriate balance and therefore support agreement on this text.

5 March 2010
Letter from the Chairman to Ian Pearson MP, Economic Secretary, HM Treasury

Your Explanatory Memorandum on this Report from the Court of Auditors was considered by Sub-Committee E on 20 January. The Report provides a useful insight into the way in which executive agencies were established by the Commission and shows the value of the audit function. We note that although the objectives for setting up agencies appear generally to have been achieved, the process by which they were set up was unsatisfactory. We hope that the Commission, whose response to the Report largely accepts the criticisms of the Court of Auditors, will act on the recommendations.

25 January 2010

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

I am writing to update you on the negotiations on the proposed Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, which you have retained under scrutiny.

I apologise for the delay in writing to you but, as you may be aware, there have been a number of developments in respect of this Framework Decision and the impact of the ratification of the Lisbon Treaty. I wanted to try to clarify these so that I could inform the Committee of the most up to date position.

After I last wrote to you about this Framework Decision, the Presidency decided to concentrate on the separate but related Framework Decision on Preventing and Combating Trafficking in Human Beings and Protecting Victims. As part of this process, the Presidency took the approach of seeking to agree the provisions on victims in that Framework Decision, and then use these as a basis for revising the relevant Articles in the Sexual Exploitation Framework Decision which also covered the treatment of victims.

Due to the focus on the Human Trafficking Framework Decision, discussions in the working group on the Sexual Exploitation Framework Decision were slower and also more limited than expected – concentrating mainly on those Articles which were related to the criminal law and offences. Whilst there was some discussion on the definitions used in the Framework Decision and the detail of the offences, a number of Member States also sought the reintroduction of the exemptions contained in the 2004 Framework Decision and the 2007 Council of Europe Convention On Combating the Sexual Exploitation of Children where sexual activity involved individuals above the age of consent. This was a concern to the UK as I also highlighted in my Explanatory Memorandum in April. Discussions also took place on the levels of sentencing and the blocking of websites containing images of child sexual abuse.

However, when it became clear that that political agreement on this Framework Decision was unlikely to be reached before the JHA Council at the end of November and the Lisbon Treaty coming into effect on 1 December, the Presidency decided to put the negotiations on hold and a State of Play report was produced for the Council. The proposal itself has now ceased to exist as a draft Framework Decision.

We now understand that the Commission plan to retable this proposal under the new legal base of the Lisbon Treaty. However, whilst we are still unclear about when exactly this will happen, although it will be following the appointment of the new Commissioners, at the recent JHA Council meeting the Justice Secretary asked the Commission to consider the concerns raised by Member States before they retable the document.

5 January 2010

Letter from the Chairman to Lord Bach

Thank you for your letter dated 5 January 2010 which was considered by Sub-Committee E at its meeting of 27 January 2010.

The Committee is grateful for the further information you have provided and notes that with the coming into effect of the Lisbon Treaty on 1 December this Framework Decision will cease to exist.
The Committee looks forward to considering any new proposal as and when it emerges from the Commission.

As this proposal for a Framework Decision is not now proceeding, we formally clear it from scrutiny.

28 January 2010

CRIMINAL JUSTICE: INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS (11917/09, 16801/09)

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

Thank you for your letter of 24 November which was considered by Sub-Committee E at its meeting on 9 December. It was not practicable for the Committee to consider the letter before the date you mentioned as the deadline for comments on the Presidency’s idea for a legislative initiative made by Member States.

We are grateful for the further information about this matter and note that the draft Framework Decision is now defunct. While the Committee cleared that draft from scrutiny and gave its support to the substance of the proposal, we do not think it appropriate to pre-empt scrutiny of any future proposal in this field. We consider that the question whether the UK should sponsor an initiative for legislation is not a matter on which the Committee would wish to comment.

We do, however, have some comments and a question. We agree that, as you point out, if the UK co-sponsored an initiative for legislation, that would not of itself amount to a binding decision to opt in to the proposal but would give rise to a strong indication as to its intention to do so. We would go further: it seems to us that sponsoring would give rise to a political commitment to opt in which, in any but the most exceptional circumstances, it would be very difficult for the Government to resile from.

We point out that, notwithstanding any indication or commitment arising from sponsoring a proposal, no formal notification of the decision to opt in should be made within the period of at least 8 weeks agreed by the Government to allow scrutiny, as set out in the undertakings given by Baroness Ashton as Leader of the House during the passage of the EU (Amendment) Bill. The Committee has recommended that this part of the undertakings be the subject of a resolution of the House.

Finally, we wonder whether the UK has the power to sponsor proposals in the area of criminal justice. Under the Protocol on the position of the UK and Ireland in respect of the area of freedom, security and justice, the opt-in arrangements are based on the exclusion of the UK from the application of the provisions of the TFEU concerning the area of freedom, security and justice – see Article 2. Under Article 6 of the Protocol, provisions of Title V of Part Three of the TFEU become applicable to the UK, only in relation to a measure in relation to which the UK has opted in. The Protocol makes no provision for the UK to opt in to a provision of the TFEU itself, only to measures to be made, or adopted, under the Treaty.

Article 76 TFEU which provides for Member State sponsorship of proposals is contained in Title V. On the face of the Protocol, that article is not binding on the UK. How, therefore, may the UK take advantage of Article 76, or other Member States rely on UK co-sponsorship to make up the minimum number of states required by Article 76?

10 December 2009

Letter from Lord Bach to the Chairman

Thank you very much for your letter of 10 December. As you know, the Government’s view was that there was considerable merit in the proposal for a Framework Decision on interpretation and translation in criminal proceedings, and I was disappointed that it was not possible to adopt it prior to the coming into force of the Lisbon Treaty. However, I am glad to tell you that the same text has now been brought forward by a number of Member States as a Directive. This text has been deposited in Parliament, as has an Explanatory Memorandum.

I note your view that the UK cannot co-sponsor legislation. You will appreciate that this is a matter of great significance, and with consequences that go wider than this department. I am consulting with my colleagues in other departments and I will write to you setting out the Government’s position on this issue as soon as possible.

29 December 2009
Letter from the Chairman to Lord Bach

Your Explanatory Memorandum on this proposal was considered by Sub-Committee E on 20 January. The substance of this proposal is, as you note, essentially the same as that of the previous draft Framework Decision which the Committee supported. Taking account of the consideration given to the previous proposal, we support the present proposal and clear this document from scrutiny. We find that the proposal is consistent with the principle of subsidiarity.

We note that your initial view is in favour of the UK’s opting in to this proposal. We support that view.

We repeat a point we made in relation to the previous proposal. The provision in article 3(7) of the draft Directive for waiver of the right to translation, while providing helpful flexibility, should be accompanied by a safeguard against the possibility that a defendant might come under pressure to waive his rights against his interest. Such a safeguard might be a requirement that a court only allow the exercise of a waiver where the defendant’s decision is taken following bona fide legal advice.

We thank you also for your letter of 29 December and look forward to considering the Government’s view on the issue of sponsoring EU legislation in the justice field when you have completed your consultation.

We should be grateful to be kept informed of the progress of this proposal in both the Council and the European Parliament, in particular when any changes with policy implications are made.

22 January 2010

Letter from Lord Bach to the Chairman

Thank you very much for your letter of 22 January.

We entirely agree that it is important that defendants are not put under pressure to waive their rights to translation against their interests. However, we do not think that it is essential to amend the text in order to guard against this. An individual or his legal counsel should still be able to ask for the translation of an essential document notwithstanding a previous waiver, whether the original waiver had been given due to coercion (which would render the waiver of doubtful validity), not being fully informed or at a later stage if it becomes apparent to legal counsel (or indeed the court as the guardian of fairness of proceedings) that a defendant does not understand. There should also remain the possibility of review.

The article sits within the context of the right to translation, a right of review and a right to interpretation in court with the additional safeguards that come with judicial oversight. In addition recital 16 is helpful in guiding Member States when it comes to implementation as to the nature of the right in Article 3(7).

There have not yet been any negotiations at working group level on the draft Directive. As the proposal reflects the general approach reached on the Framework Decision, it will form the basis for negotiations with the European Parliament. The European Parliament has not yet started deliberations, but we understand that the Presidency hopes to reach agreement at First Reading. I will keep you updated about progress.

Officials are currently discussing sponsorship of EU legislation in the justice field and I will write to you shortly with more information.

3 February 2010

Letter from Lord Bach to the Chairman

In your letters of 10 December, and in a further letter of 22 January, both concerning the proposal on interpretation and translation, you asked for the Government’s view as to whether it has the power to co-sponsor a draft directive on interpretation and translation. You expressed doubts that this was possible, raising two issues. The first related to the eight-week period given to the Committee to express a view on the opt-in decision. The second concerned the operation of the Protocol relating to opting-in to measures in the field of freedom, security and justice.

These are important question with implications for any Member State initiatives brought forward under Article 76 TFEU, and I wanted to take time to consider my response.

I deal first with the question of the Government’s undertaking that the Scrutiny Committees will have eight weeks to express a view as to whether the UK should opt-in to any particular proposal. You are right to say that if the Government were to co-sponsor a proposal, it would be difficult to resile from what would appear a commitment to participate. You are also right to note that this is not binding. The Government attaches some weight to ensuring that even in these circumstances the correct procedures
are followed. These include the three month period during which the opt-in decision falls to be made. We see no reason to make an exception to the undertakings under which the Committees would have an opportunity to express a view within 8 weeks of publication, which the Government would then take into account.

As to your second point, we are of the view that the opinion set out in your letter is, with respect, a misreading of Protocol 21 on the Position of the United Kingdom and Ireland in respect of the area of freedom, security and justice. You argue that Article 2 of the Protocol disapplies the articles in Title V of the Treaty itself unless the UK opts-in to a particular measure and that, therefore the UK has no right to co-sponsor a measure under Article 76 TFEU.

In our view, Protocol 21 need to be read in the context of its primary purpose, as set out in Article 1 of the Protocol, relating to measures made under the Treaty.

Article 1 sets out that, subject to the power to opt-in, the UK and Ireland do not take part in the “adoption … of a proposed measure.” It goes on to define what is meant by unanimity and a qualified majority in circumstances in which either the UK and/or Ireland are not taking part. It is clear that by “adoption” it means the decision by the Council formally to adopt a measure, not the negotiations that precede it.

Article 2 of the protocol makes clear that it only applies “in consequence of Article 1”. It follows that Article 2 only applies in relation to circumstances when the UK is not participating in the adoption of a measure (i.e. it has not opted in during the three-month period allowed for in Article 3), and its effect is to disapply the provisions of Title V insofar as they result from such non-participation. Article 2 cannot reasonably be read as disapplying provisions in Title V, such as Article 76 TFEU, more generally.

What is more, Article 2 only disapplies provisions which are “binding upon or applicable” in the UK: Article 76 TFEU is not binding upon or applicable in the UK – it merely sets out matters of EU procedure governing how the EU adopts certain acts.

Were we to read Article 2 more widely, in the way you appear to suggest, it would have much broader consequences – such as disapplying:

— Article 68 TFEU, (so the UK would be unable to participate in the elaboration of strategic guidelines for freedom, security and justice),
— Article 69 TFEU (so that the UK Parliament was precluded from participating in ensuring that proposals comply with subsidiarity and proportionality as the time limit would likely expire before the UK exercised its opt-in),
— Article 71 TFEU (so that the UK would not participate in the Committee on Internal Security, which has already been established by that provision with the UK participating),
— Article 72 TFEU (so that the UK did not benefit from the protection of national powers afforded by that provision).
— Article 73 TFEU (so that the UK could not participate in non-legislative cooperation) and
— Article 88 TFEU (so that the UK did not benefit from the safeguards afforded to Member States directly by Article 88(3) TFEU, which limits the scope of Europol’s operations).

It is inconceivable that the Protocol could have been intended to have this effect.

For these reasons the Government considers that it has the power to co-sponsor a Member State initiative for a directive on interpretation in criminal matters, or in relation to any other matter falling within Article 76.

For these reasons the Government considers that it has the power to co-sponsor a Member State initiative for a directive on interpretation in criminal matters, or in relation to any other matter falling within Article 76.

23 February 2010

Letter from the Chairman to Lord Bach

Thank you for your letter of 3 February which was considered by Sub-Committee E on 24 February. We are grateful for your update on how this proposal is expected to progress.
Letter from Lord Bach to the Chairman

I am writing to inform you that Sir Kim Darroch, the Permanent Representative to the European Union, has given the Council of the European Union and the European Commission official confirmation that we will be opting in to the Directive on the rights to interpretation and to translation in criminal proceedings.

I want to thank you for your work to date scrutinising this measure and I will be sure to keep you informed of any developments.

10 March 2010

Letter from the Chairman to Lord Bach

Thank you for your letter of 23 February 2010. Sub-Committee E considered this on 17 March.

On the question of the interaction between the Treaty’s provision for Member States to sponsor initiatives and the UK’s opt-in arrangements, we note that the Government’s view and ours are broadly similar but we remain of the view that staying out of a sponsored measure would be very difficult politically. We regard as important the Government’s acknowledgement of the importance of following normal arrangements for scrutiny. We note that this will leave open the possibility that the Committee might urge the Government not to opt in to a particular proposal even though the UK had co-sponsored it.

We are grateful to you for your detailed analysis of the important legal point concerning Article 76 TFEU and the UK’s power to co-sponsor legislation, raised in our letter of 10 December. While the Protocol might helpfully have been less expansive in the language used to ensure that the UK feels no effects from measures adopted without its participation, the purpose of the Protocol is reasonably clear and we agree with your conclusion. We are content, therefore, to regard this correspondence as completed.

18 March 2010

Letter from Lord Bach to the Chairman

As you may be aware, there have been several recent developments on the proposed Directive on interpretation and translation. The Rapporteur, Baroness Ludford, has recently published a draft report with proposed amendments to the Member State initiative for a Directive. The Commission has, however, now published an alternative draft Directive on interpretation and translation. I am therefore writing to update you on the current situation, as well as the Government’s initial position on the Rapporteur’s proposed amendments.

The Government supports the Member State initiative for a Directive, and, as I explained in my last letter, we have now opted in to this proposal. The Rapporteur’s draft report was published on 5 March, and there was a first exchange of views on this report in the LIBE Committee on 17 March. Member States have also started to meet in Council at working group level to discuss their initial reactions to the draft amendments. As the substance of the proposal reached political agreement in Council as a Framework Decision last October, I hope that it will be possible to make rapid progress, working with the European Parliament, to adopt it without delay.

The Commission have, however, produced an alternative proposal on interpretation and translation which has been deposited with your Committee. I will also provide an Explanatory Memorandum on the Commission’s proposal shortly. As far as I am aware, a situation where there are simultaneously two proposals on the same subject matter has not arisen before. I believe that the Commission proposal is likely to require a separate decision on opt in for the UK, but I will consider this issue further in the Explanatory Memorandum.

The Government is considering the Commission’s proposal. I am concerned, however, that proceeding on the basis of this alternative proposal is likely to slow down progress on adopting legislation on interpretation and translation and on the other procedural rights measures in the Roadmap. The Government was pleased that the measure was reintroduced as a Member State initiative in December, and we hoped that this would help to prevent any loss of momentum. We anticipate that the changes which the Commission has made to the text in its new proposal will be considered in any case on the basis of the European Parliament’s amendments to the Member State proposal. The Government is therefore not persuaded that a new proposal is needed in order to examine these issues. We understand that the European Parliament and the Presidency are keen to agree a First Reading Deal on the basis of
the Member State initiative during the Spanish Presidency, perhaps as early as the first week of May. I will, of course, continue to update your Committee as matters progress.

I will now turn to the Government’s general position on the areas for amendment proposed by the Rapporteur.

RELATIONSHIP WITH THE ECHR AND THE CHARTER OF FUNDAMENTAL RIGHTS

The report proposes including a new provision in Article 1 stating that the provisions of this Directive which correspond to rights guaranteed by the European Convention on Human Rights (ECHR) or by the Charter shall be interpreted and implemented consistently with those rights, as developed in the relevant case law. The Government supports clarity on the relationship between this Directive and the rights under the ECHR; in our Explanatory Memorandum of 30 December, we explained that we supported the inclusion of Recital 18 which helps to clarify this point. We therefore welcome the intention behind the European Parliament’s amendment regarding the ECHR. We are also considering the wording of the added references to the Charter in this and other draft amendments.

DETENTION

The draft amendments propose to extend the scope of the proposal to detention, and refer to the “rules of detention” and “official contacts” between the detaining authorities and the suspect. The Government’s initial view is that detention is a distinct issue and the amendments proposed fall outside the scope of the fair trial right and the rights after arrest under Article 5 ECHR. We see the aim of this measure as being to ensure trust and confidence that a suspect has had or will get a fair trial for the purposes of mutual recognition of judicial judgments and decisions. Measure F of the Roadmap will provide an opportunity to consider pre-trial detention.

COMMUNICATION BETWEEN LAWYER AND CLIENT

The draft amendments propose stating that interpretation of communication between the suspect and his lawyer shall be provided throughout the proceedings. As we explained in December’s Explanatory Memorandum, we welcome clarifying the wording on this point.

TRANSLATION

1) Essential documents

The Rapporteur has proposed deleting references about it being up to the authorities of the Member State to decide which are the essential documents to be translated. The Government believes, however, that such decisions are best made at Member State level, given this will require fact-specific assessment in each case to determine what translation is needed to safeguard a suspect’s rights.

In the draft amendments, the list of essential documents includes essential documentary evidence and written legal advice. The Government is not currently convinced that it is necessary to specify essential documentary evidence, given that there is a general obligation in the draft Directive to translate all essential documents, and in the draft amendments to translate “all written material necessary to ensure that he [the suspect] is able to understand the case against him and exercise his rights…”. Regarding legal advice, we believe that the degree to which full translations are required to safeguard a suspect’s rights will depend upon the circumstances in each case.

The draft amendments also propose that the suspect must be given an indexed and fully referenced summary of the prosecution evidence in translation. Our initial view is that this draft amendment would create a right to information itself, rather than interpretation and translation as provided for by this Directive. It might also give defendants who do not speak the language greater rights than those who do, rather than ensuring that they are placed in the same position.

2) Oral translation or summary

The draft amendments propose restricting to a much greater extent the circumstances in which an oral translation or summary of documents can be given instead of a written translation. The Government agrees that oral translation should not be used if it prejudices the fairness of the proceedings. However, we will be exploring whether there is any alternative solution that could be used here to meet this objective.

3) Waiver

The Rapporteur also suggests that a waiver of the right to translation should only be valid if the suspect has received legal advice, the waiver is unequivocal, it is given in writing in the presence of his lawyer and it does not run counter to any important public interest. The Government is content that Article
3(7) of the draft Directive is adequate. As I explained in my letter to you of 3 February, an individual or his legal counsel should still be able to ask for translation of an essential document if for some reason there was doubt about the safety of the waiver. The article sits within the context of the right to translation, a right of review and a right to interpretation in court with the additional safeguards that come with judicial oversight. The Government’s initial view of the draft amendment is that it may be unnecessarily restrictive. However, the Government understands the Rapporteur’s intention to provide additional safeguards, and we could consider alternative language on this point.

APPEAL/REVIEW IN RELATION TO A DECISION THAT INTERPRETATION OR TRANSLATION IS NOT NEEDED

The draft amendments propose referring to a “right of appeal to a judicial authority” rather than a right to a “review” in Articles 2 and 3. The Government agrees that there should be an effective means within the overall process of challenging a decision not to provide interpretation or translation. We believe, however, that “review” achieves this aim, and allows for a review in court as part of an appeal but also, at the investigation stage, for a decision by a police officer to be reconsidered by a more senior officer.

PHYSICAL AND MENTAL IMPAIRMENTS

The draft amendments refer to “physical and mental impairments” which “affect their [suspects’] ability to communicate effectively”. However, the current wording of the amendments potentially covers a wide range of conditions (e.g. autism, dementia, Down’s Syndrome and speech impediments). Many of these require other forms of assistance, for example from a friend, carer or intermediary, rather than foreign language or sign language interpretation as mandated by this Directive. The Government’s current view is that it would be more appropriate to consider the needs of those with mental or physical impairments under Measure E of the Roadmap which will deal with special safeguards for vulnerable defendants.

TRAINING, QUALITY AND ACCREDITATION

The draft report proposes including new provisions on training of those involved in criminal justice, and the training, qualification, accreditation and registration of interpreters and translators. The draft report also suggests that interpretation and translation should be of a “high quality” rather than of an “adequate quality”. The Government welcomes in principle the idea of including training for those involved in criminal justice in this Directive, although we are still considering the current amendment, particularly given that the judiciary and defence lawyers are independent of Government in the UK. We also agree that it is important to have the right quality of interpretation and translation. However, our initial view about this draft amendment is that the definition of “adequate quality” is sufficient to ensure that the proceedings are fair. We also believe that the Rapporteur’s proposed new provision on training, qualification, accreditation and registration of interpreters and translators may extend obligations too far, and the practical implications of this provision need further consideration.

USE OF TECHNOLOGY

The Rapporteur also proposes a new provision stating that technology such as video links, telephone or internet access can be used to provide interpretation only “as a last resort when the personal attendance of an interpreter is impossible…”. The draft amendments also suggest it should not be used for proceedings in court. The Government believes it is disproportionate to restrict the use of technology to this extent. The aim is to ensure the defendant receives a fair trial; use of technology is acceptable providing the trial is fair. In some remote areas, for example, it may be in the defendant’s interests to use technology to avoid delay or find an interpreter of the right quality. Courts can be expected to decide whether use of technology in a particular case is or is not against the interests of justice and the fair trial rights of the suspect.

Another amendment creates an obligation to record suspect interviews, oral translations and summaries or waivers under Article 3(7). The Government is generally in favour of recording suspect interviews and we support exchanging best practice on this. However, this Directive deals with interpretation and translation, rather than other rights. We also believe that the obligations in this amendment may be disproportionate, for example to provide both “an audio and a video recording”. There may also be some circumstances where for good reason written records are equally sufficient.

OTHER PROCEDURAL RIGHTS WORK

Some of the amendments appear to relate more to other measures on procedural rights than to interpretation and translation. One example is the requirement to provide an indexed and referenced
summary of the prosecution evidence discussed above. Another is the requirement to inform the suspect of his rights under this Directive, which it might be appropriate to consider under Measure B of the Roadmap, information on rights and charges. An amendment to Recital 11 anticipates future work on procedural rights, but does not correspond to the Roadmap. The Government doubts whether it is appropriate to pre-empt consideration of future procedural rights measures by the Council and the Parliament in this Directive on interpretation and translation.

22 March 2010

Letter from Lord Bach to the Chairman

As you are aware the Commission has published its own proposal for a Directive on interpretation and translation, the text of which was deposited with your Committee. I am now providing an Explanatory Memorandum on the Commission’s proposal for your consideration.

As I explained in my last letter of 22 March 2010, the Government supports the Member State initiative for a Directive, and, will continue working with other Member States and the European Parliament to have the draft Directive adopted without delay. The Government is considering the Commission’s proposal. The Commission’s proposal will require a separate decision on opt in for the UK.

I will, of course, continue to update your Committee as matters progress.

25 March 2010

Letter from Lord Bach to the Chairman

Thank you for your letter of 8 April regarding the Commission’s proposal on Interpretation and Translation. As you can appreciate, due to the purdah period I am not in a position to be able to comment on matters of policy. I will however ensure that you receive a substantive response when Parliament is reconvened.

Both the Council and the European Parliament are keen to make rapid progress and adopt the Member State draft Directive as quickly as possible. I thought it would be helpful to update you on the status of negotiations and likely timing for adoption of the Directive. The LIBE Committee had an orientation vote on 8 April to give the Rapporteur a mandate to negotiate with the Council. The Presidency will have a first round of negotiations with the Commission and the LIBE Committee on 19 - 20 April, to start the process of finding a compromise between the positions of the institutions.

Depending on progress with these negotiations, the current intention is to agree a first reading “deal” between the institutions before the LIBE Committee votes on its amendments on 10 May, with a view to possible adoption at first reading at the plenary session on 14 June. The JHA Council would endorse the agreement on 4 June after formal adoption of the Council position at the Committee of Permanent Representatives before 10 May.

I will, of course, continue to update your Committee as negotiations progress between now and June.

19 April 2010

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

I am writing to inform the Committee of the Council Conclusions guiding the Council’s criminal law deliberations which were agreed and adopted at the Justice and Home Affairs Council on 1 December 2009. Although Council Conclusions are not subject to Parliamentary scrutiny and have no legally binding effect, we nevertheless thought you would like to be made aware of them.

The Council Conclusions establish guidelines on assessing the need for criminal provisions in EU legislation and provides model criminal and non-criminal provisions to be used in future proposals.

An initiative of the Swedish Presidency and Germany, both delegations stated during the course of negotiations that the guidelines and model criminal provisions are aimed at providing assistance to non-criminal law experts, who are likely to be required to consider criminal provisions more frequently under the Lisbon Treaty arrangements.
The Government sees value in the Council Conclusions on model provisions guiding the Council’s criminal law deliberations and considers the measure will facilitate coherent and consistent use of criminal provisions in future EU proposals.

In particular, we take the view that it will be useful in the context of future negotiations to be clear that the Council considers the use of criminal sanctions as a last resort and attaches particular importance to the principles of subsidiarity and proportionality when assessing the need for such sanctions. During negotiations we secured the inclusion of a recommendation that the impact of criminal provisions at EU level on different legal systems should be considered.

One issue that arose during negotiations was the question of negligence. As originally drafted, the guidelines would have foreseen negligence being considered as a matter of course when criminal sanctions were contemplated. We did not think that appropriate, having in mind the seriousness of the conduct with which some EU legislation deals. The final draft is much improved in this respect, and provides for consideration of negligence within criminal provisions on a case-by-case basis. The Government could accept this.

These conclusions are only intended to guide work in the Council. However they seem likely to meet a mixed reception from the other institutions of the Union. In particular, at the JHA Council, the Commission made a statement to the effect that the guidelines and model provisions were premature and restricted the interpretation of Article 83 of the Treaty on the Functioning of the EU. The Government does not agree. We take the view that the coming into force of the new Treaty does not conflict with the agreement of the Council Conclusions. They are merely guidelines and are not capable of restricting interpretation of Treaty provisions. The Commission also asserted that these are unilateral guidelines of the Council and are without prejudice to the Commission’s right of initiative. The Government fails to see how such guidelines could interfere with the right of initiative.

Nonetheless, to address these concerns, the Conclusions include a statement encouraging discussion of the Conclusions with the other institutions of the Union after the entry into force of the Lisbon Treaty.

6 December 2009

Letter from the Chairman to Lord Bach

Thank you for your letter dated 6 December 2009 which was considered by Sub-Committee E at its meeting of 27 January 2010.

The Committee is grateful to the Minister for making us aware of these Council Conclusions which are not, as you say, subject to Parliamentary scrutiny. The Committee welcomes the attempt to create measures designed to “facilitate [the] coherent and consistent use of criminal provisions in future EU proposals”.

In relation to the substance of the Conclusions, the impact that EU criminal legislation has on the UK’s legal system and its nationals has long been an issue of interest to the Committee so we, too, welcome the inclusion of the recommendation to this effect highlighted by your letter.

Finally, the Committee notes at page four of the document that “the Council should seek together with the European Parliament and the Commission...to further develop and refine these conclusions”. Does the Minister intend to keep the Committee informed of the progress of this discussion or will the Committee only see these refined conclusions once they are agreed?

28 January 2010

Letter from Lord Bach to the Chairman

Thank you for your letter dated 28 January 2010. You seek information as to whether the Committee will be informed of the progress of any discussions between the institutions of the EU aimed at refining and developing the Council Conclusions or whether the Committee will be presented with the final text (if any).

It is not yet clear how these discussions will be conducted, if at all. I am sorry I am not therefore currently able to state definitively when I will inform your Committee of any discussions. However, I will seek to ensure that the Committees are informed and updated in accordance with the current approach of Government to Parliamentary Scrutiny.

9 February 2010
Letter from the Chairman to Lord Bach

Thank you for your letter dated 9 February which was considered by Sub-Committee E at its meeting of 3 March.

We are grateful for the answer provided. The Committee would like to take this opportunity to reiterate its desire to see these refined conclusions once they are agreed.

5 March 2010

CRIMINAL JUSTICE: MUTUAL LEGAL ASSISTANCE BETWEEN THE EU AND ICELAND AND NORWAY (17703/09)

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

Your Explanatory Memorandum (EM) on this proposal was considered by Sub-Committee E at its meeting on 27 January. On the basis of present information, we consider that the provisions for mutual assistance should assist in the fight against crime. We should, however, be grateful for a detailed analysis of which provisions of the EU Convention and its Protocol would be applied by the Agreement and your assessment of the value of those provisions and any safeguards provided to protect the citizen.

The EM does not give your view of this proposal, though no doubt you support its objective. We should be grateful to know your position. Do you know why this Agreement which was signed some six years ago has taken so long to reach the stage of ratification?

You indicate that the proposal is subject to the opt-in arrangements. Are we right to assume you are going to opt in?

Pending the further information we have requested, we retain the proposal under scrutiny. In view of the eight week time limit for our scrutiny of the opt-in issue, which we understand expires on 12 February, an urgent response is requested.

28 January 2010

Letter from Lord West of Spithead to the Chairman

Thank you for you your letter dated 28 January requesting further information on the above subject.

The underlying objective in concluding this Agreement is clearly to enhance mutual legal assistance in criminal matters (MLA) between the EU Member States and Iceland and Norway. As you know MLA is an important tool in the fight against international crime and I strongly believe we can all fully support the aim of this Agreement.

One of the questions asked in your letter is whether the UK will opt in to this Decision; it is my view that the UK should opt in to this Decision. However, this is simply my provisional view and the Government will obviously take full account of any views expressed by the Committee.

The reason that this Agreement has not been concluded before now is because a number of Member States have not to date informed the Commission that they made the necessary changes to their domestic law to comply with the provisions contained in the Agreement. The UK has, however, done so.

You also ask in your letter for a detailed analysis of the provisions contained in the 29 May 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the EU (2000 MLAC) and its Protocol which will be applied by the Agreement. Home Office EM 17703/09 sets outs the benefits which a number of the most important provisions of the 2000 MLAC and its Protocol would bring for the UK; however in light of your request for further information I have set out below exactly which provisions will apply, the benefit each of these provision should bring and, where appropriate, what the legislative regime in the UK is which allows us to comply with the provision in question. I hope you will forgive me for any overlap between the ground covered here and the ground covered in EM 17703/09.

2000 MLAC

Article 4

Article 4 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) provides that where a state receives a request for MLA it
should execute that request in accordance with the formalities and procedures specified by the state requesting assistance, and (insofar as is possible) within any time limits they set out. It is important to note, however, that Article 4(1) makes it clear that compliance with the formalities and procedures requested by the other State is only required insofar as they are not contrary to the fundamental principles of law in the requested State. Consequently, anybody affected by the execution of an MLA request would have the full protection of the rights afforded to them by UK law.

**Article 8**

Article 8 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) allows a party to the EU Norway and Iceland Agreement to return articles obtained by criminal means to their rightful owners. Clearly this will be of benefit to UK citizens who have seen their property taken control or possession of by criminals and wish to have it returned. Article 8(1) provides for the rights of *bona fide* third parties to be recognised. This is clearly in the interests of justice.

The Proceeds of Crime Act (External Requests and Orders) Order 2005 (ERO Order) provides for *bona fide* third party rights to be respected at both restraint and confiscation proceedings. These would be necessary before any articles could be disposed of by the requesting State. Article 9 and Article 23 respectively of the ERO Order allow affected parties in England and Wales, which are understood to include *bona fide* third parties, to make representation to the court in relation to property rights. The relevant Articles in relation to Scotland and Northern Ireland are Articles 59 and 70 and Articles 96 and 109 respectively. Any rights established by the court would need to be respected.

**Article 9**

Article 9 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) allows a party to the EU Norway and Iceland Agreement to ask that a person imprisoned in their territory be given permission to be temporarily transferred in custody to the territory of another party so as to allow them to assist with an investigation. This would be of benefit where, for example, the UK wishes a prisoner in the UK to be transferred to Iceland or Norway to assist with a UK investigation. One such scenario is where only the prisoner can correctly identify and lead investigators to where a key piece of evidence is located.

Under the provisions of section 47 of the Crime (International Co-operation) Act 2003 (‘CICA’) (the domestic law provision which will allow the UK to transfer prisoners to Norway and Iceland for these purposes) any temporary transfer could only take place with the consent of the prisoner in question. Prior to agreeing to such a transfer the UK would also, as a result of section 6 of the Human Rights Act 1998, need to be satisfied that the conditions subject to which the prisoner would be held in Iceland or Norway are compatible with the ECHR.

**Article 10**

Article 10 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) will allow a witness in the UK to give evidence in proceedings in Norway or Iceland by video link (and vice versa). While this provision might conceivably engage the Article 6 right to a fair trial if it could be used in a manner which would infringe the privilege against self incrimination, Article 10(5)(c) makes it clear that a person may refuse to testify where such a right exists either under the law of the Member State in which the person is located or under the law of the Member State in which the criminal proceedings are taking place. The UK has also entered a reservation to this article which makes it clear that a defendant would not be able to give evidence in foreign proceedings by video link.

It is important to note that Article 10(5)(a) of the 2000 MLAC makes it clear that where evidence is being given by video conference a judicial authority in the Member State in which the person is located must be present and shall be responsible for ensuring the hearing is carried out in conformity with the fundamental principles of the law of that Member State. It is also clear from Article 10(5)(c) that the hearing in question will take place under the supervision of a judicial authority in the country in which the criminal proceedings are taking place and, from Article 10(5)(d), that the person giving evidence should be assisted by an interpreter if needed.

These safeguards are reflected in section 30 of, and Part 1 of Schedule 2 to, CICA. This ensures that witnesses in the UK giving evidence by video link are afforded the same rights and legal protections as witnesses giving evidence in criminal proceedings in this country would be.

Video link evidence has many advantages. Most importantly it can increase the likelihood of a witness residing abroad being willing to provide evidence due to decreased practical difficulties such as travel arrangements and costs. In the past, such concerns may have led to the same witness not giving evidence. In light of that I believe that such a measure is greatly beneficial.

**Article 11**
Article 11 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) would allow witnesses in the UK to give evidence in proceedings in Norway or Iceland by telephone. While this provision could potentially engage Article 6 of the ECHR it is clear from Article 11(3) that a Member State need only agree to evidence being given in this way where this is compatible with the fundamental principles of their legal system. Article 11(2) also makes it clear that a witness can only be heard in this way with their consent.

These safeguards are reflected in UK law by section 31 of, and Part 2 of Schedule 2 to, CICA. This ensures that witnesses in the UK giving evidence by video link are afforded the same rights and legal protections as a witness giving evidence in this country would be. No provision is made in UK law for the UK to make such request and such evidence would not normally be admissible in UK courts.

Whilst the UK does not make use of telephone evidence other States do and it is clearly beneficial to these States that witnesses in the UK can give evidence in a manner accepted by their courts.

Article 13

Article 13 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) provides a framework through which parties to the EU Norway and Iceland Agreement may form a Joint Investigation Team (JIT). A JIT is where law enforcement officers from different jurisdictions operate as part of one team in order to investigate specific criminality. Given that many forms of international crime may span several countries and involve several important acts in different jurisdictions it is important that such teams can be formed. This allows officers from several different countries to act together in one single unit; this is a much more efficient way of conducting cross-border investigations.

The particular arrangements of every JIT must be organised prior to its formation. The actions of any JIT officer in the UK will be subject to the laws governing UK investigations.

Article 14

Article 14 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) allows a party to the EU Norway and Iceland Agreement to request that the other party assist with covert investigations. In certain cases the most effective manner of obtaining evidence on a criminal enterprise may be to act in a covert manner and this provides a framework for such request to be made.

Where such requests are made to the UK they are dealt with in accordance with the comprehensive safeguards contained in sections 26 – 48 of the Regulation of Investigatory Powers Act 2000 (RIPA); the relevant Scottish legislation is found in sections 5 – 20 of the Regulation of Investigatory Powers (Scotland) Act 2000. This ensures that only persons of a certain rank or standing can authorise such measures and that the measures will be proportionate to the criminality covered by the request.

Articles 15 and 16

Articles 15 and 16 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) provide that officers acting during the operations referred to in Articles 12 and 13 will be criminally and civilly liable to the same extent as officers from the requested country. It is clearly important and desirable that foreign law enforcement officers exercising any powers in the UK behave to the same standards and are offered the same protections as domestic officers.

Articles 17-22

Articles 17-22 of the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 1 of the EU Norway and Iceland Agreement) provide a framework to govern any interception of telecommunications which involves an EU Member State and either Norway or Iceland. Article 18 of the 2000 MLAC provides a framework pursuant to which one party to the EU Norway and Iceland Agreement may request the assistance of another in intercepting telecommunications. Where the UK receives a request for assistance with interception pursuant to an international MLA agreement such requests fall to be dealt with in accordance with the terms of RIPA. Where the request for assistance concerns interception of a person located in the UK a warrant under RIPA would be needed and all the procedural safeguards in that Act would apply. Those safeguards were specifically designed so as to ensure compliance with the ECHR so the Secretary of State for the Home Department is satisfied that the UK would only provide assistance with the interception of a person located in the UK where this would respect Article 8 rights. Similarly, in cases where the UK wished to make a request to another country for assistance with interception, a warrant must be issued by the Secretary of State in accordance with the terms of RIPA. The Secretary of State for the Home Department is satisfied that, in view of the fact that the ECHR compliant RIPA regime must be followed, the UK would only request assistance with interception in circumstances where this would comply with Article 8 of the ECHR.
Article 20 of the 2000 MLAC provides a regime designed to ensure that where one party to the 2000 MLAC carries out interception in the territory of another, notification of the fact of interception must be given to that other party. By virtue of Article 20(4)(a), once such notification has been provided the State in whose territory the interception is being carried out must, within 96 hours, either confirm that interception can proceed or give reasons as to why it must be stopped. Prior to this authorisation for interception being provided, the intercepting State may not use the material intercepted (Article 20(4)(b)) and where authorisation for interception is refused the refusing State can insist that the intercepted material not be used or be used only subject to certain conditions being observed. Importantly, when such a request is made to the UK, authorisation would only be provided where the terms of section 5 of RIPA have been met. As the RIPA regime has been specifically designed to ensure compliance with the ECHR, interception would only be authorised in circumstances compatible with Article 8.

Interception is an important tool in the fight against organised and serious international crime and it is right that, where such a request complies with the safeguards provided for by UK law, the UK offers such help and support to other States.

**Article 25**

Article 25 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) allows the contracting parties to the Agreement to make reservations in relation to the articles of the Convention which apply as between the parties.

**Article 26**

Article 26 of the 2000 MLAC (which Article 1 of the EU Norway and Iceland Agreement applies as between the EU and Norway and Iceland) specifies that the terms of the Convention will not apply to Gibraltar until the 1959 Council of Europe Convention has also been so extended. As the 1959 Convention has not yet been extended in this way the effect of the application of this provision is that the EU Norway and Iceland Agreement will not apply to Gibraltar.

**PROTOCOL TO THE 2000 MLAC**

**Articles 1-3**

Articles 1-3 of the Protocol to the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 2 of EU Norway and Iceland Agreement) provide a framework pursuant to which one party to the Protocol can request banking information from another. This includes account monitoring orders and customer information orders.

Given the very serious nature of making and acceding to such request there are strong safeguards found in sections 32 – 45 CICA. This ensures that every incoming request for customer information is subject to consideration of dual criminality and that the Secretary of State (or Lord Advocate in Scotland) has direct oversight of such requests, both in incoming and outgoing cases. This will ensure that such measures are only employed in proportionate cases and that citizens’ rights are safeguarded.

However, it important that at a time when monies and the proceeds of crime can be transferred from one bank to another bank, often in another jurisdiction, at the click of a button that such tools are available to investigators. Without such tools investigators would find it considerably more difficult to locate or trace the proceeds of crime and criminals may be more likely to reap the benefits of the crimes. I believe this is something to which we are all opposed.

**Article 4**

Article 4 of the Protocol to the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 2 of EU Norway and Iceland Agreement) establishes the principle that banks should not disclose the existence of any requests for banking information. This is to stop criminals being ‘tipped off’ that an investigation into them is underway and I believe the benefits of this are clear to all. This principle is reflected domestically in section 42 of CICA.

**Articles 5 and 6**

Article 5 of the Protocol to the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 2 of EU Norway and Iceland Agreement) provides that executing authorities should inform requesting authorities of any additional relevant information they may discover during execution of an MLA request, while Article 6 (which will also apply as between the EU and Norway and Iceland as a consequence of article 2 of the EU Norway and Iceland Agreement) makes provision for a follow up request for assistance to be made without the need for the requesting state to set out once again the information provided in their initial MLA request. Clearly, investigators benefit from being able to obtain as full a range of evidence as possible and in being able to do so with the minimum of unnecessary formalities- these Articles are aimed at ensuring that a framework
facilitating the efficient provision of such evidence is in place between the EU and Norway and Iceland.

Article 7

Article 7 of the Protocol to the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 2 of EU Norway and Iceland Agreement) provides that a request cannot be refused on the grounds of banking secrecy. As I outline above in relation to Article 1 – 3 of the Protocol to the 2000 MLAC the UK has explicitly legislated to provide MLA in such cases and the banks would be under a legal obligation to comply with any court order.

Articles 9 & 11

Article 9 of the Protocol to the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 2 of EU Norway and Iceland Agreement) provides that requests made between Member States will not be considered to be made in connection with political offences or for political purposes. This reflects the level of mutual trust between the EU and Norway and Iceland. Parties to the EU Norway and Iceland Agreement can by virtue of Article 9(2) of the 2000 MLAC, however, make reservations as to the circumstances in which this principle will be applied. Article 11 of the Protocol to the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 2 of EU Norway and Iceland Agreement) specifies that these are the only reservations which may be made in relation to the provisions of the Protocol to the 2000 MLAC.

Article 12

Article 12 of the Protocol to the 2000 MLAC (which will be applied as between the EU and Norway and Iceland by virtue of Article 2 of EU Norway and Iceland Agreement) specifies that the Protocol to the 2000 MLAC will only apply to Gibraltar when the 2000 MLAC takes effect. In view of the fact that the 2000 MLAC will not (for the reasons set out in relation to Article 26 of the 2000 MLAC) apply to Gibraltar this means that the provisions of the Protocol to the 2000 MLAC which apply in relation to MLA dealings between the EU and Norway and Iceland by virtue of the EU Norway and Iceland Agreement will not apply to Gibraltar.

I hope that this helps to more fully explain the effect of the Agreement and the legislative safeguards in place in the UK. It also, I hope, serves to outline why the UK thinks such measures are helpful in the MLA context and why these measures will assist in the fight against international crime.

8 February 2010

Letter from the Chairman to Lord West of Spithead

Thank you for your letter of 8 February which was considered by Sub-Committee E at its meeting on 3 March. We decided to clear this proposal from scrutiny.

We are grateful for the detailed account you provided of the substantive content of the Agreement with Iceland and Norway. We welcome the proposal to conclude this Agreement and endorse your provisional view that the UK should opt in to the proposal. On the question of compliance with subsidiarity, noting that the existing arrangements among the Member States are embodied in an EU Convention, we consider that the objective of providing for mutual assistance with Iceland and Norway is better achieved through action at EU level. We note the reason why the Agreement has waited some six years to reach this stage and hope that the Agreement will be concluded as planned by the end of June 2010.

5 March 2010

CRIMINAL JUSTICE: MUTUAL LEGAL ASSISTANCE BETWEEN THE EU AND JAPAN (17708/09)

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

Your Explanatory Memorandum (EM) on this proposal was considered by Sub-Committee E at its meeting on 27 January. Your EM indicates that you support the proposal that the EU should conclude the Agreement with Japan. We continue to endorse your support for this Agreement. The provisions for mutual assistance should assist in the fight against crime, and are balanced by appropriate safeguards. We agree also that the proposed decision is consistent with the principle of subsidiarity and consider that the UK should opt in to this proposal.

We now clear this proposal from scrutiny.
CRIMINAL JUSTICE: OBTAINING EVIDENCE FROM ONE MEMBER STATE TO ANOTHER (17691/09)

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

Thank you for your Explanatory Memorandum dated 2 December 2009 which was considered by Sub-Committee E at its meeting of 20 January 2010.

We have decided to retain the Green Paper under scrutiny pending consideration of the Government’s response to the Commission’s consultation.

The Commission’s Green Paper discusses a subject matter, the reform of the rules of evidence which, as the Government is no doubt aware, potentially raises significant ramifications for national procedural autonomy and the individual Member States’ criminal justice systems.

Unfortunately, your Explanatory Memorandum offers the Committee very little detail upon which we could base our scrutiny of this matter. The Committee notes your single expression “of some caution” in relation to the Commission’s mooted plans to enact common standards for the collection of evidence but feels that this forms a rather understated response to a Commission proposal that carries with it the potential for significant ramifications for national criminal justice systems.

Whatever the outcome of the Commission’s consultation, the Committee looks forward to considering the Government’s formal response to the Green Paper.

22 January 2010

Letter from the Chairman to Lord West of Spithead

Thank you for your letter dated 26 January 2010 enclosing your response to the Commission’s Green Paper. It was considered by Sub-Committee E at its meeting on 24 March 2010.

We have decided to clear this document from scrutiny.

We are grateful for the detailed account of the Government’s views on the issues raised in the Commission’s Green Paper. We agree with your approach. In particular, we agree that a single instrument to replace, but building on, the current measures should improve cross-border cooperation and we endorse the Government’s view that EU rules should not be introduced on whether evidence is admitted, for the reasons you outline. We join you in emphasising that any legislative proposal in this area must safeguard the protection of defendants’ rights.

The Commission will, we assume, present draft legislation in due course. We should be grateful if you would let us know when the Commission expects to publish a proposal?

22 January 2010

CRIMINAL JUSTICE: PENALTIES FOR DRUG TRAFFICKING (5200/10)

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

Your Explanatory Memorandum on this report was considered by Sub-Committee E on 3 March. The report paints a disappointing picture of the state of implementation of the Framework Decision and we hope that the Commission will follow up its conclusions and press for full information from the Member States. When the Council has considered the report as required under Article 9 of the Framework Decision we should be interested to hear the Council’s conclusions.

The UK would, of course, be in a better position to encourage the Commission if it had supplied information on its own implementation of the Framework Decision in a timely way. Would you explain why information on the UK’s implementation was not supplied in time for it to be taken into account in the Commission’s report, and whether Gibraltar has implemented the Framework Decision.

5 March 2010
Letter from Alan Campbell MP to the Chairman

Thank you for your letter of 5 March.

I note the conclusions of the Select Committee’s considerations of the Commission’s report of the implementation of the Framework Decision and the Government’s Explanatory Memorandum on this report.

The Framework Decision marked a first step towards a common EU criminal law approach to drug trafficking. The Government was pleased to note that the maximum penalties for drug trafficking in members states are now all at least the same, if not higher than the Framework Decisions stipulates. However, it is acknowledged that there were a number of findings that need to be addressed by the Commission to help ensure greater compliance by some of the member states. We are advised that the Council has yet to schedule a date for its consideration. The UK Representative for Justice and Home Affairs is actively pursuing this.

In response to your additional queries, the UK’s omission in submitting information to the Commission, for the reason that it did not come to the attention of the appropriate policy officials in the Home Office, is regrettable. As the Explanatory Memorandum demonstrates, the UK has implemented a number of legislative changes to comply with the Framework Decision, including raising the maximum penalty for trafficking of Class C drug to 14 years. In respect of Gibraltar, information on implementation is currently awaited. This will form part of our wider submission of information on implementation to the Commission and my office will advise the Clerk to the Committee in due course.

18 March 2010

CRIMINAL JUSTICE: RIGHTS OF AND SUPPORT TO VICTIMS OF CRIME

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

I attach, for your information, Council Conclusions on a strategy to ensure fulfilment of the rights of, and improve support to, persons who fall victim to crime in the EU. They were adopted at the Justice and Home Affairs Council on 23 October. My officials sent them to the clerk to your Committee in early November for information, but I would like to submit them to you more formally now.

The Conclusions are a political statement. They agree that fulfilling victims’ rights and improving support to victims should be given higher priority in the European Union. They also state that there is a need to agree a common strategy which will guide future work on victims, while taking into account the different legal systems of Member States and the roles of the victim in those systems. The Conclusions then describe principles, factors and actions to guide future measures in relation to victims. The Conclusions are therefore intended to be a basis for future EU proposals, and the Stockholm Programme now refers to the need for an integrated and co-ordinated approach to victims in line with these Conclusions. The Government strongly supports the aims and content of the Conclusions. We agree that it is important to ensure that victims’ rights are respected and fulfilled. We are very much in favour of improving support to victims and of ensuring that they are at the heart of the criminal justice system in every Member State, whether a party to proceedings or not.

8 December 2009

Letter from the Chairman to Lord Bach

Thank you for your letter dated 8 December 2009 which was considered by Sub-Committee E at its meeting of 20 January 2010. The Committee is grateful to the Minister for providing the Committee with these Council Conclusions. We welcome the principles listed at page three of the Conclusions which the Council agreed should guide the formation of this strategy.

At page four, the Conclusions list a number of action points that “should be undertaken in future work to fulfil the aims of the strategy”. What “future work” do the Government anticipate undertaking in relation to achieving the aims of the Conclusions and do the Government believe that legislative action is immediately necessary? In relation to any future legislative proposals, it is the Committee’s view that any action by the European Union must respect the individual legal systems and traditions of the Member States.

22 January 2010
Letter from Lord Bach to the Chairman

Thank you for your letter of 22 January, in which you raised a number of questions about the recent Council Conclusions on victims.

As I explained in my letter of 8 December, the Government is firmly committed to improving the support and protection provided to victims. We therefore welcomed the Conclusions, and strongly support their content and aims. We also believe that action on victims at EU level could help to protect UK citizens who are the victim of a crime in another Member State.

In terms of future work the Government will be undertaking, the Conclusions are a political statement, and set the direction for possible future action at EU level rather than requiring Member States to act. Nevertheless, the principles set out in the Conclusions mirror the Government’s long-standing aims to promote the rights of victims and improve the support available to them. There are well-established strategies in England and Wales, Scotland and Northern Ireland to improve the support, information and advice available to victims of crime. The Conclusions thus reinforce our domestic commitments to promote the rights of victims.

As the Conclusions are non-binding, no domestic legislation is immediately necessary in order to implement them. However, the European Commission have recently announced their intention to introduce a new draft legal instrument on victims for discussion and negotiation in early 2011. The Commission is currently researching and preparing this. Depending on the final form of any future instrument on victims, changes to domestic legislation might be necessary in order to transpose provisions into UK law. As with any action at EU level, we will want to make sure that it is based on evidence of where real problems lie, and that it addresses those problems effectively.

Finally, I agree with the Committee’s views on ensuring future action by the EU must respect the legal traditions of individual Member States. When negotiating the Conclusions, we were keen to ensure that they recognised the distinctive nature of the UK’s different legal systems. In particular, the final Conclusions take into account the fact that in the UK and other common law jurisdictions, victims are not party to proceedings. Ensuring respect and recognition for these traditions will be our starting point for negotiations on any future instruments.

3 February 2010

Letter from the Chairman to Lord Bach

Thank you for your letter dated 3 February which was considered by Sub-Committee E at its meeting of 3 March.

We are grateful for the answers to our questions. The Committee looks forward to considering the expected legislative proposal designed to support and protect victims of crime throughout the European Union.

5 March 2010

CRIMINAL JUSTICE: THIRD COUNTRY NATIONALS CONVICTED IN THE EUROPEAN UNION (11453/06)

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office and Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Further to Phil Woolas’s letter of 1 June I am writing to update the Committee to developments on the Commission’s work on the feasibility of an index of third country nationals convicted in the European Union.

The UNISYS study mentioned in Phil Woolas’s letter is now well underway, with visits having been made to 24 Member States, including the United Kingdom. The Commission hosted a meeting of national experts on 16 November in Brussels and another meeting is scheduled for January 2010.

The Committee will be aware that we have previously supported a fingerprint based solution. This remains the case. From the UNISYS visit and the meeting we think there is a growing consensus that only fingerprints provide the certainty that a person being prosecuted is the same as one who has previously been convicted. This does not mean that any index will necessarily be fingerprint based, but many Member States acknowledge that there is a qualitative difference between identifying own nationals, for whom good systems exist based around national identity registers, and identifying non-nationals whose identity is not tied to a national identity register.
On the other hand we are aware that, for most EU countries, fingerprints are collected by the police and criminal records maintained by the Ministry of Justice. This is of course in contrast to the position in the UK. Also unlike in the UK, fingerprints are not available for all convictions in much of the rest of the EU.

It is still being considered whether an index would be centralised, in which each Member State uploads fingerprints to a central database, or whether the system would be decentralised with provisions allowing each Member State to access the criminal convictions held in another Member State. Several Member States are unlikely to accept a system that requires manual intervention to confirm any possible hit.

There is no formal legislative proposal from the Commission. We do not expect anything to be issued in the next six months but the draft five-year JHA work programme, the Stockholm Programme, includes an invitation for the Commission to propose a register of third-country nationals who have been convicted by the courts of the Member States. There remains a possibility that the UNISYS study will not recommend any kind of index.

I will keep the Scrutiny Committees informed of any further substantive developments in this area, including on the outcome of the feasibility study and any legislative proposal in due course.

10 December 2009

Letter from the Chairman to Meg Hiller MP

Thank you for your letter dated 10 December 2009 which was considered by Sub-Committee E at its meeting of 13 January 2010.

The Committee is grateful for the further information you have provided. However, in our previous letter to Phil Woolas we asked the Minister whether he was able to inform the Committee as to the cost of the UNISYS feasibility study – this question remains unanswered. Are you able to answer the Committee’s outstanding question?

15 January 2010

Letter from Meg Hillier MP to the Chairman

Thank you for your letter of 15 January.

The cost of the UNISYS study is just under €500,000 (c£435,000). This is paid for by the Commission.

26 January 2010

Letter from the Chairman to Meg Hillier MP

Thank you for your letter dated 26 January which was considered by Sub-Committee E at its meeting of 3 February.

The Committee is grateful for the further information as to the cost of the feasibility study that you have provided.

3 February 2010

CRIMINAL JUSTICE: TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

(11119/09)

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

Thank you for your letter dated 22 November which was considered by Sub-Committee E at its meeting of 2 December 2009.

The Committee is grateful for the further information you have provided and notes that with the coming into effect of the Lisbon Treaty on 1 December and the concomitant collapse of the Third Pillar, this Framework Decision will cease to exist.

The Committee would like to take this opportunity to reiterate its desire that if this proposal is ever revived it will be accompanied by a full impact assessment identifying a problem in this field and that any future Explanatory Memorandum will address the issues highlighted in the letter of 5 November 2009.
As this proposal for a Framework Decision is not now proceeding, we formally clear it from scrutiny.

4 December 2009

DISSOLUTION: MINISTRY OF JUSTICE DOSSIERS

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

I wrote to you on 29 December 2009 about the Spanish Presidency’s priorities in the areas of justice which the Ministry of Justice leads on. I thought that it might be useful to write to you again in the run-up to the election period to update you on the current and forthcoming dossiers that are likely to progress over the next few months.

A European Commission proposal for a directive on the right to interpretation and translation in criminal proceedings, was released on 9 March. This is in addition to the existing Member State initiative on the same subject. It is highly unusual for there to be two parallel proposals on the same subject. The Government is considering both proposals.

We have already opted into the Member State Initiative on Interpretation and Translation and we are currently considering the European Parliament’s amendments. I have written separately to you on the detail of these amendments and the Government’s position but we support the Member State initiative and look forward to working with the European Parliament on it.

Negotiations about the Directive on a European Protection Order are ongoing and the Presidency is hoping for agreement by the summer. This timetable may prove ambitious as the working groups are still considering such fundamental questions as legal base and the nature of the instrument. This initiative is still held under scrutiny by both Committees and I will ensure that you are kept updated as negotiations progress.

We expect that a draft proposal for a Directive on combating sexual abuse and exploitation of children and child pornography will be adopted by the end of March. This will replace the draft Framework Decision, which was under discussion before the entry into force of the Lisbon Treaty.

In the Stockholm Programme, the Commission were invited to propose a Recommendation for the negotiation of a data protection and, where necessary, data sharing agreements for law enforcement purposes with the United States of America, building on the work carried out by the EU-US High Level Contact Group on data protection. The Commission has held meetings with experts from the data protection and law enforcement communities as well as those from the private sector who might be affected by such an agreement. We expect the Commission to present a confidential draft negotiating mandate by the end of April/ early May, which will not be subject to Parliamentary scrutiny.

In the area of civil judicial co-operation, the Presidency are likely to seek agreement on a Council Decision on the conclusion by the EU of the Hague convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This proposal has already cleared scrutiny in both Houses.

We also expect the Commission to publish two proposals on choice of law in divorce (Rome III). The UK did not opt in to the original proposal on this subject, which later failed to gain unanimous support in the Council. The Commission is expected to agree to a request from 10 Member States to take forward this work under the enhanced cooperation procedure provided under the Treaty. There is therefore likely to be a proposed Council Decision to authorise the use of enhanced cooperation as well as a proposed Regulation on the specifics of choice of law in divorce.

Negotiations on succession and wills are ongoing. You will recall that the UK did not opt in to this proposal. The Spanish Presidency is pressing hard for progress on this dossier. However, the complexity of the issues being discussed limits how fast the negotiations can progress. As you will recall, the UK’s greatest concern with this proposal was on the issue of “clawback”. Discussions will continue at official level but we would not expect any key decisions to arise during the dissolution period.

It is also expected that the Commission will present the draft Stockholm Programme (the next five year EU JHA programme) Action Plan before the end of the Spanish Presidency. This Action Plan is intended to translate the aims and priorities of the Stockholm Programme into concrete actions with a clear timetable for adoption and implementation. It is expected that it will be considered by the Council.

25 March 2010
Letter from the Chairman to Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice

Thank you for your Explanatory Memorandum dated 15 January 2010 which was considered by Sub-Committee E at its meeting of 24 February.

We have decided to retain this matter under scrutiny pending further negotiation of the initiative.

THE OPT-IN

The Committee acknowledges that many aspects of this proposal require clarification, however, whilst we agree with the objective behind this measure i.e. that victims of domestic violence and other crimes who have obtained protective orders in a Member State ought to be able to move freely across the EU with the confidence that they remain protected, we feel unable as the draft stands to express a view on the opt-in.

We would, however, be grateful for clarification of how the period of eight weeks was calculated. The Explanatory Memorandum indicates that this period expires on 8 March.

THE PROPOSAL

The Committee is grateful for the thorough and detailed Explanatory Memorandum which accompanied this proposal. The Committee is concerned that the boundaries of the scope of this proposal set out in Article 2 lack clarity, for example in relation to family law. Would the types of orders issued by the family law courts in this country that govern when a father can and cannot have access to his children fall within the scope of Article 2? In relation to the UK’s obligations under this proposal on receipt of a European Protection Order, would the Government be bound by this proposal to recognise a protective order issued by the family law courts of another Member State which would impose a restrictive obligation on a UK based individual that would not be routinely available within the UK’s jurisdiction?

We agree with the Government’s conclusion that as it currently stands the draft lacks clarity and changes to the text will be necessary, in particular to address the detail of the relationship between the issuing and executing states. In that regard, the Committee agrees with the Government that the main problems that need addressing are: the precise mechanics of the mutual recognition system, the division of jurisdiction between the two states and the fact that the person causing the danger will be informed “where appropriate”.

It strikes this Committee as surprising that a legislative proposal based on mutual recognition does not include sufficient detail to ascertain the precise mechanism as to how the European Protection Order will be given effect in the executing state. We agree with your view that this must be addressed so that it is clear whether the executing state accepts the foreign order as it stands, recognises it via an EU-wide generic order or issues its own domestic order based on the foreign order. Once this is addressed then the provisions of the proposal which set out the detail of the division of jurisdiction between the executing and issuing states can themselves be addressed, in particular the question as to who will exercise on-going jurisdiction. As the draft stands the Committee is unable to see how the mechanism in Article 10 would work. With this in mind, are the Government confident that, in the course of the on-going negotiation of this proposal, you will be able to achieve a workable system under Article 10?

In relation to the technical legal detail, the Committee would like to express its support for the Government’s attempts to clarify the legal base for this proposal. As the Member States sponsoring this initiative acknowledge in their Explanatory Memorandum, the Member States which replied to their questionnaire deal with protective orders through a variety of criminal, civil or administrative action and in the UK the majority of the cases are dealt with by the civil courts and the criminal sanction flows from a breach of a civil order. However, as currently drafted the legal base for this proposal is Article 82(1)(d) which is built upon judicial cooperation in criminal matters. Your Explanatory Memorandum says that the Government wish to consider this further “before updating the Committees in greater detail”. It is the Committee’s view that the legal basis for this measure requires clarification and we look forward to receiving the Government’s up-date.

In addition we support the Government’s attempts to clarify the designation of competent authority under Article 4 and the obligation on the national authority which grants the initial national protective measure to inform the protected person of the availability of the EPO in Article 5(3).

26 February 2010
Letter from Lord Bach to the Chairman

Thank you for letter of 26 February which we received on 1 March and for the consideration you have given the above Directive.

You ask how the eight week period for you to express your views was calculated given that the Explanatory Memorandum said the period expired on the 8 March. The eight weeks was calculated from the date of publication of the Draft Directive, which in the case of the European Protection Order was the 5 January. This means the date that should have been set out in the Explanatory Memorandum was the 2 March; an error meant an incorrect date was cited. I apologise and note that, despite this, your reply was within the eight week deadline for which I am very grateful. We intend to propose clear rules to be employed for the calculation of this period to ensure that there is an agreed understanding of when the 8 week period commences. We will be touch about this shortly in the context of the Code of Practice.

In relation to the proposal you are concerned that the boundaries of the scope lack clarity. We are working in the negotiations to gain alterations to the text that would help clarify scope. Scope is also tied to the issue of legal base which you question. As I have said to the Commons Scrutiny Committee, the issue of legal base is complex but we feel we can accept the legal base in Article 82 (“criminal matters”) is appropriate in the context of this instrument as the purpose of protection orders, whether issued in UK criminal or civil proceedings, is ultimately to protect the victim from crime. I do not, however, believe the dialogue on legal base has concluded within the working groups and I will update both this Committee and the Commons on developments as I know that you have a strong interest in the issue.

I am pleased that your views appear to accord with ours in terms of where revision and change to the text is required. You ask whether we are confident that in the course of negotiations we will be able to achieve a workable system under Article 10 (given the lack of detail in the text as to the precise mechanism)? The negotiations that have been held so far have been looking at and testing the mechanics of how the EPO may work and the sort of model that should be adopted. The direction of discussions has tended towards a model where the original protection order in the issuing state underlies the EPO. The executing state then accepts the existence and validity of the protection measure adopted in the issuing state and acknowledges the factual situation described in the EPO. The executing state will acknowledge that protection should be provided and try and find a suitable domestic equivalent. We are confident that the UK is not isolated in trying to make the mechanism workable and the views we have expressed have been echoed by others during negotiations which bodes well for finding resolution.

We will continue to update the Committee as the text progresses and I am grateful for the considered scrutiny of the measure to date.

14 March 2010

INFORMATION: PROTECTING CLASSIFIED INFORMATION (13885/1/09)

Letter from the Chairman to the Rt Hon Angela Smith MP, Minister of State, Cabinet Office

Your Explanatory Memorandum on this draft Decision, setting out new rules for the protection of classified information held by the Council of Ministers, was considered by Sub-Committee E on 13 January. We now clear this document from scrutiny.

Paragraph 18 of the Explanatory Memorandum mentions that the ratification of the Intergovernmental Agreement will be subject to a separate parliamentary process. What will this involve?

14 January 2010

Letter from the Chairman to the Rt Hon Angela Smith MP

Thank you for your letter of 8 February which was considered by Sub-Committee E on 3 March. We are grateful for the further information about the intergovernmental Agreement.

5 March 2010

Letter from the Rt Hon Angela Smith MP to the Chairman

Thank you for your letter of 14 January, noting that the Committee had cleared this document from scrutiny. You asked what the further Parliamentary scrutiny of the Intergovernmental Security Agreement, referred to in paragraph 18 of the Explanatory Memorandum, would involve.
The Council Decision is one component of the new general framework for the protection of classified information within the European Union. The framework comprises the Council Security Regulations as set out in the formal Decision by the Council (document 13885/1/09) and an Intergovernmental Security Agreement to legally bind the 27 Member States to these new regulations.

Before the Intergovernmental Security Agreement can take effect, the FCO will publish the Agreement as a Command Paper in the Treaty Series and lay it before Parliament for 21 days under the Ponsonby Rule. In accordance with standard procedure the Government will lay an Explanatory Memorandum alongside the Command Paper.

8 February 2010

INSTITUTIONS: RULES OF PROCEDURE OF THE COURT OF AUDITORS (17047/09)

Letter from the Chairman to Ian Pearson MP, Economic Secretary, HM Treasury
Thank you for your Explanatory Memorandum dated 12 January 2010 which was considered by Subcommittee E at its meeting of 27 January. We have decided to clear this document from scrutiny. However, we note with disappointment the length of time between deposit of the document and the Explanatory Memorandum and would like to take this opportunity to stress the importance of the Committee being given adequate time for scrutiny.

28 January 2010

INTERNAL SECURITY: INFORMATION MANAGEMENT STRATEGY (11060/09, 16637/09)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office
Thank you for your letter of 24 November enclosing an updated version of the Stockholm Programme. The elements concerning civil law and general criminal law were considered by Sub-Committee E at its meeting of 9 December. This is a matter which has now been cleared following my letter of 5 November and the Report published on 9 November entitled “The Stockholm Programme: home affairs”.

It would have been helpful if you could have highlighted the significant changes and informed us of your views on them. But in the absence of this information it appears to us that the changes in the area of civil law and general criminal law are mostly beneficial. However we do not consider it appropriate to include in this Programme a call for regulation of the financial markets, as appears in page 32. We note too the reference to a European Public Prosecutor at page 23. We will want to consider very carefully whether to opt in to any proposal which may be brought forward for a European Public Prosecutor.

We shall be interested to hear of the outcome of the European Council meeting.

10 December 2009

JUDICIAL APPOINTMENTS PANEL

Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman
Further to the depositing of an un-numbered explanatory memorandum draft proposal to establish the operating rules of a Judicial Appointments Panel, I am writing to you to share with you the President of the Court’s recommendations for the composition of the Panel for your information. I am particularly pleased that Lord Mance has been nominated as a member of the Panel, and I have no doubt that he will serve the Panel with distinction.

As the un-numbered explanatory memorandum sets out, the final proposal for the operating rules of the panel has not yet been published formally. However, we understand from the Spanish Presidency that they wish to table the proposal for adoption at the Justice and Home Affairs Council on 26 February. While my officials are engaging with the Presidency to request more time for consideration of this
issue by national Parliaments before being tabled for adoption, in order to facilitate your consideration of these proposals I wanted to share these with you before they were published formally.

I will of course provide you and your Committee with the formal proposal when it becomes available, which we expect to be later this week.

9 February 2010

Letter from Chris Bryant MP to the Chairman

I am writing to update you and your Committee on the President of the Court of Justice of the European Union’s proposals for establishing the operating rules of an appointments panel to the Court of Justice and General Court as part of the implementation of the Lisbon Treaty.

I previously submitted an un-numbered explanatory memorandum on the operating rules of the panel on 4 February and now attach in confidence the President’s proposals which will be decided at the Justice and Home Affairs Council on 26 February.

There is very little change between the two documents, namely: in paragraph one reference to Article 255 has been removed; in paragraph seven there is a change in the word order in the sentence on hearings; in paragraph eight there is an addition in that the panel’s opinions will be forwarded to the Member States as well as being presented to Member States in Council and in paragraph nine, the citation supporting the financial provisions for panellists is listed as a footnote.

I will, of course keep you updated on any further developments in this dossier.

19 February 2010

Letter from the Chairman to Chris Bryant MP

Thank you for your letters of 9 February and 19 February. These and your Explanatory Memorandum on the proposal from the President of the European Court of Justice (ECJ) were considered by Sub-Committee E on 24 February. We thank you for alerting us to this proposal in advance of the formal text to establish the operating rules of the Judicial Appointments Panel. We decided to clear the proposal from scrutiny.

We note that the draft Decision to establish the operating rules of the Judicial Appointments Panel has not yet been presented to the Council but is likely to be tabled for adoption by the Council on 26 February. We strongly endorse your efforts to persuade the Presidency that their timetable does not allow sufficient time for scrutiny by national parliaments. The proposal itself may be uncontroversial and not strictly covered by the Protocol on the role of national parliaments, but it hardly accords with the spirit of the Lisbon Treaty virtually to exclude national parliaments from any scrutiny of the proposal and the associated draft Decision. In the circumstances, however, we are content for you to agree the adoption of a Decision based on the present proposal.

We also considered the Recommendation of the President of the ECJ for the first members of the Panel. We make no comment on the nominations, clear the Recommendation and are content for you also to agree the adoption of a Decision based on the recommendation. We would, however, be grateful for your view on the extent to which the panel Members fall within the Protocol on the Privileges and Immunities of the European Union.

26 February 2010

JUSTICE AND HOME AFFAIRS: SPANISH PRESIDENCY PRIORITIES FOR JHA ISSUES

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

I am writing to give you an overview of the Spanish Presidency’s priorities for JHA issues over the next six months in terms of those dossiers covered by the Home Office. I hope that this will assist in the planning of your scrutiny of dossiers heading to the JHA Council in this period. For information, the current timetable for consideration of dossiers at JHA Councils under the Spanish Presidency is:

20-22 January (Informal Council, Toledo)
25-26 February (Brussels)
22-23 April (Luxembourg)
3-4 June (Luxembourg).

The Spanish will take over the rotating EU Presidency on 1 January 2010, against a changed JHA political context. On 1 December the Lisbon Treaty came into force bringing substantial changes to the police and criminal law arrangements. The ordinary legislative procedure will be Qualified Majority Voting (QMV) in the Council and co-decision with the European Parliament for former third pillar measures. There will be an extension of the UK’s JHA opt-in to measures previously under this pillar. We will also now be working with two JHA Commissioners on JHA business - one covering Justice, Fundamental Rights and Citizenship and one covering Home Affairs. They will be responsible for driving forward delivery of the new JHA work programme, the Stockholm Programme, which was adopted at the European Council on 11 December.

As a result of the Lisbon Treaty coming into force, all JHA measures with a legal base in the Treaty on the European Union, i.e. police and judicial co-operation, which were not adopted by 30 November have now lapsed and will have to be replaced with new proposals. We would not expect that process to begin before the new Commission is in place unless there is a clear need in any specific case. The Commission will be presenting a detailed plan of action which is to be adopted by June 2010.

There are also eight EU Agreements with third countries, agreed under the TEU, for which Council Decisions to conclude are expected to be presented just before the end of this year. As with all legislative proposals presented pursuant to Title V of the Treaty on the Functioning of the European Union, the UK opt-in will need to be exercised in relation to such measures. These are:

- 2009 “SWIFT” Agreement with US on the processing and transfer of Financial managing Data from the EU to the US for purposes of the Terrorist Finance Tracking Program
- 2009 Agreement with Japan on mutual legal assistance in criminal matters
- 2006 Agreement with the Republic of Iceland and Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.
- 2007 Agreement with the US on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the US Department of Homeland Security
- 2008 Agreement with Australia on the processing and transfer of EU-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service.
- 2008 Protocol with the Swiss Confederation and Liechtenstein on the Accession of Liechtenstein to the Agreement between the EU, the European Community and the Swiss Confederation on the Swiss Confederations Association with the implementation, application and development of the Schengen acquis.

On the home affairs agenda, the top priority for the Spanish will be to seek agreement on an EU Internal Security Strategy (ISS) by March 2010. This is intended to explain to EU (and wider world) citizens the challenges that the EU faces on security and set out the principles for tackling them. The UK has been arguing for a text that is focused and accessible. The UK sees the development of an EU Organised Crime Strategy to establish priorities for EU work and bring together relevant action as a related priority. The draft text of the ISS will be presented at the informal JHA Council in January.

Spain is also seeking to strengthen the EU-US relationship on security-related issues including a proposal for a joint political (not operational) statement on the fight against terrorism to iron-out current differences in approach. The Spanish would like it to be agreed at the EU-US Troika Ministerial meeting in April and presented at the JHA Council the same month. This is part of a wider initiative to deepen transatlantic cooperation building on the recently adopted EU-US statement in
October 2009 on “Enhancing transatlantic cooperation in the area of justice, freedom and security” which sets out a broad vision for co-operation. The UK supports this Declaration which widely reflects our own transatlantic JHA priorities and aids our own bilateral objectives.

In addition to their Internal Security Strategy, the Spanish are proposing a number of new initiatives. The Spanish want to develop police cooperation between EU Member States by agreeing Council Recommendations “setting out a simple way to establish joint police teams” for large events such as international sports fixtures or demonstrations. These recommendations would be based on Article 17 of the Prum Council Decision. It is the UK’s view that Article 17 already adequately allows for such teams to be created though this opportunity has not been exploited widely. The UK’s view is that little benefit will be derived and establishing a harmonised and possibly over bureaucratic approach will simply discourage cooperation. Spain are also looking to negotiate Council Conclusions on a programme, originally suggested by the French during their Presidency, which would import the concept of the Erasmus student exchange scheme to the area of police training for middle to high-ranking police officers. The UK position is that a review should be undertaken to provide clarity on the terms of reference, costs and benefits of the proposal.

The Spanish will give high priority to any new proposal for a Passenger Name Records Directive issued by the Commission during their Presidency, though the Commission have not yet confirmed when such a proposal will be issued.

On organised crime and drug trafficking in West Africa, Latin America and the Caribbean, the Spanish Presidency will compile a matrix of existing initiatives and structures at EU, national and regional level. This will provide a clear overview of the existing work in this area and make recommendations to ensure more effective coordination of effort.

The Spanish are also seeking to raise awareness of gender-based violence through promoting best practice in the areas of risk analysis, prevention and protection. They will hold two seminars and present Conclusions to the JHA Council. This is a priority for the UK and we are fully supportive of this commitment.

Spain also intends to highlight work on victims’ rights. They will bring forward a Member State initiative, the European Protection Order, which will be aimed at ensuring that victims, but primarily those of domestic violence benefit from protection wherever they are in Europe. The Government would support this in principle. A MoJ lead but the Home Office have a keen interest in this issue.

A Belgian led Member State initiative, the European Investigation Order, is also likely to be tabled under the Spanish Presidency. The Spanish are likely to co-sponsor this initiative. The instrument will be based on mutual recognition and aim to provide a coherent and comprehensive system for mutual legal assistance in criminal matters (MLA) amongst member States. The UK believes the current MLA system to be fragmented and lacking coherence and is supportive, in principle, of this development. We do, however, have concerns over whether such an instrument will take sufficient account of the common law system.

Spain has called on the Commission to bring forward a proposal for a Directive on combating trafficking in human beings as a matter of urgency, to replace its proposal for a new Framework Decision which was not adopted prior to entry into force of the Lisbon Treaty. It would like to make progress on negotiations during its Presidency.

Spain will inherit a number of dossiers from the Swedish Presidency which will include the development of an Action Plan to implement the Stockholm Programme adopted under the Swedish Presidency in December. We expect this Plan to be adopted by the June Council.

On migration, Spain will undertake the first annual assessment of the European Pact on Immigration and Asylum which gained political agreement under the French Presidency. The Pact sets out the fundamental principles, priorities and aims of a common migration policy. Informed by reports from all Member States and other sources the Commission supported by Spain will compile an evaluation report on the Pact, which will be adopted following a discussion at the JHA Council in June 2010. This will enable the European Council to monitor how far the EU and Member States have implemented their commitments for the Pact.

Spain would like to make progress on managing the increasing number of Unaccompanied Minors arriving in Member States and are likely to focus on preventing minors travelling to the EU, protecting them while they are here and ensuring effective and safe methods of return. They have also expressed a wish to move forward on European legal migration initiatives, now that the Lisbon Treaty has moved this area of work from unanimity to QMV and co-decision.

The Spanish will also progress work on a range of Commission proposals on the Common European Asylum System (CEAS). These include recasts for the Dublin Regulation, to tackle asylum shopping by determining Member State responsibility for deciding an application for asylum – often the first Member State in which the asylum seeker entered the EU; the Eurodac Regulation, governing the
To strengthen Frontex the Commission, in light of its own evaluations and that by the Management Board carried out under Article 33 of the Frontex Regulation, has proposed to bring forward further legislation amending the Regulation by February 2010. Spain proposes this legislation should allow Frontex to acquire its own equipment where it is not made available through the Centralised Register of Available Equipment (CRATE). The UK is excluded from full participation in the Frontex Regulation on Schengen grounds however we participate in Frontex operations and other activities on a case by case basis in the role of advisers/observers. To maintain our current level of involvement in joint operations the UK is keen to ensure that any changes to extend the remit of Frontex enable UK staff to receive the same protection from civil and criminal liabilities as do “guest officers” from the Schengen States during Frontex operations.

The development of SIS II will reach a critical point early in the Spanish Presidency, as the first milestone test is scheduled to take place before the end of January. This will give Ministers greater clarity on the Commission-led project and enable a decision on the future development of the system. Negotiations on the proposed IT Agency which would manage SIS, VIS and the Eurodac systems will also continue under the Spanish Presidency, on the basis of a renewed post-Lisbon proposal from the Commission. The UK supports the need for an Agency.

The UK welcomes the Spanish Presidency’s focus on counter-terrorism, which will centre on the prevention of radicalisation and explosives. Spain seeks to develop a standardised tool for the collection of data on violent radicalisation, and will propose Council Conclusions on two initiatives to encourage implementation and improve control in the area of explosives. The Commission will also propose a negotiating mandate for a longer-term Terrorist Finance Tracking Programme (SWIFT) Agreement. The EU-US Agreement which was recently signed should last a maximum of nine months, and the Commission has committed to present its mandate early in the New Year.

18 December 2009

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

I am writing to give you an overview of the Spanish Presidency’s priorities in the areas of justice which the Ministry of Justice leads on. I hope that this will help in the planning of scrutiny of dossiers that are likely to head to the Justice and Home Affairs (JHA) Council during this period. The Spanish Presidency is planning to host the following JHA Councils:

20 – 22 January (Informal Council) in Toledo, Spain
25 – 26 February in Brussels
22 – 23 April in Luxembourg
3 – 4 June in Luxembourg

The Spanish Government will take over the rotating European Union Presidency on 1 January 2010. As a result of the Lisbon Treaty coming into force on 1 December 2009, all JHA measures with a legal base in the Treaty on the European Union (police and judicial co-operation) which were not adopted by 30 November, have now lapsed and will have to be replaced with new proposals under a legal base in the Treaty on the Functioning of the European Union.

We know that the Spanish Presidency is keen to re-start negotiations on two proposed Framework Decisions that were not concluded prior to the entry into force of the Lisbon Treaty: a proposed Framework Decision on interpretation and translation in criminal proceedings; and a proposed Framework Decision on combating sexual abuse, sexual exploitation of children and child pornography. The ordinary legislative procedure for these re-tabled proposals will be by Qualified Majority Voting in the Council and co-decision with the European Parliament. The UK’s opt-in will apply to these measures.
The Framework Decision on the right to interpretation and to translation in criminal proceedings has already been brought forward as a Member State Initiative in the form of a Directive. The Spanish Presidency will want to make as much progress as possible on the negotiations about this proposal. This is the first proposed measure of the recently agreed roadmap to strengthen the procedural rights of suspected or accused persons in criminal proceedings. During the second half of their Presidency, we understand that the Spanish would like to begin negotiations on the second measure that is suggested in the roadmap regarding information on rights and about charges for detained persons.

The Commission has indicated that following the appointment of the new Commissioners, it will table a proposal for a Directive on combating sexual abuse, sexual exploitation of children and child pornography.

One of the Spanish Presidency’s top priorities will be to improve protection for victims. They hope to start negotiations on a Member State Initiative to create a European Protection Order (EPO). This proposal would aim to ensure that victims, who are the beneficiaries of protection orders against an offender, would be able to benefit from those protection orders, wherever they are in the EU. As more citizens move between Member States, the Government believes that the EPO could really help to ensure that victims in Europe are able to move from State to State with confidence that they will be protected. However, we will be keen to ensure that the proposal is workable and right for the victim.

We understand that the Commission is still keen to make progress in the area of Intellectual Property Rights, perhaps during the second half of the Spanish Presidency.

The main proposal under negotiation in the area of civil judicial co-operation is on Succession and Wills. While in principle the Government believes that efforts to simplify and clarify the rules which apply to international successions could produce huge benefits for UK citizens, your Committee will be aware that it has concluded that these potential benefits are outweighed by significant concerns about the Commission’s proposal. The Government has therefore decided that the best course of action is not to opt in. However we intend to participate in the negotiations with the hope of resolving the issues of concern to allow the UK to participate after adoption. This is just the start of negotiations but the Spanish Presidency will want to make as much progress as possible.

The Presidency hope that the technical problems with the e-justice portal will be resolved allowing it to be launched during their term.

The Spanish Presidency has also indicated it wishes to give priority to the Accession of the European Union to the ECHR. The negotiations this will require both within the Union itself, and between the Union and the Council of Europe, are likely to be complex and we do not at this stage think it likely documents which require Scrutiny will be produced during the Spanish Presidency. We will, however, notify the two Committees if this position changes.

It is expected that the Commission will publish an Action Plan to implement the Stockholm Programme on the next five-year work plan in Justice and Home Affairs. The Spanish Presidency would then seek to adopt it at the June Council.

29 December 2009

Letter from the Chairman to Lord Bach

Thank you for your letter of 29 December which was considered by Sub-Committee E at its meeting of 20 January. We are grateful for this useful overview of the legislative agenda for the next six months in the areas of justice in which your department leads.

22 January 2010

JUSTICE AND HOME AFFAIRS COUNCIL 2010

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

I am writing to update you on the forthcoming Justice and Home Affairs (JHA) Council to be held in Luxembourg on 22-23 April 2010. On behalf of the United Kingdom, I will attend for the Home Office together with Lord Bach for the Ministry of Justice and Kenny MacAskill, the Scottish Secretary for Justice.

The Council, beginning in Mixed Committee with the Schengen States, will receive an update on the current state of play on the implementation of the Second Generation Schengen Information System
Member States will be informed of the official Commission conclusions on the outcome of the Milestone 1 test re-run and be asked to determine next steps forward.

There will then be a presentation by the Austrian delegation on lessons learnt following their experience as co-hosts of the European Football Championships in 2008 (Euro 2008).

Following Mixed Committee, the Presidency will seek agreement from the Council on the European Pact to combat international drug trafficking. The Pact aims to enhance operational cooperation within the EU in three thematic areas; the cocaine route; the heroin route; and countering the proceeds of drug trafficking. The UK supports this initiative which is in line with our priorities.

The Council will then discuss the new negotiating mandate for the EU-US Terrorist Finance Tracking Programme (SWIFT) agreement following the European Parliament vote to reject the previous interim agreement on 11 February. The Council will be asked to agree the draft mandate, which the Commission believes meets US needs and addresses the previous concerns of the European Parliament, and authorise the start of negotiations with the US.

The Presidency will then update the Council on the EU-US JHA Ministerial Troika which took place in Madrid on 8-9 April.

Over lunch Interior Ministers including Mixed Committee members will discuss the proposal to establish an EU IT Agency to manage Eurodac, the Visa Information System and the Schengen Information System.

On the second day, the European Protection Order will be discussed. This draft Directive is designed to assist victims who have obtained a protection order in one member state and who subsequently move to another member state. The Council will be invited to take a decision on the issues of scope and legal base of this measure.

The Commission will then present the Stockholm Programme Action Plan to the Council. The Action Plan sets out how the Stockholm Programme, the programme of work on JHA for the next five years, will be implemented in practice, including the Commission’s timetable for future measures.

There will then be a discussion about the EU’s accession to the European Convention on Human Rights (ECHR).

Next, the Presidency will adopt Council Conclusions on what actions in the field of justice can be taken to assist the economic recovery.

Finally, there will be a state of play report on e-justice.

Over lunch, Ministers will be asked for their views on the process for developing a future European Public Prosecutor, as provided for in the Lisbon Treaty. The Government has consistently opposed the creation of such a body.

19 April 2010

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

I am writing to update you on the Justice and Home Affairs (JHA) Council which was held in Brussels on 23 April. Lord Bach from the Ministry of Justice and Kenny MacAskill the Scottish Secretary for Justice were unable to attend due the problems caused by the volcanic ash cloud. Due to this issue the Council was also reduced to one day and took place in Brussels instead of Luxembourg.

The Council, beginning in Mixed Committee with the Schengen States, was asked to agree Council Conclusions on the Second Generation Schengen Information System (SISII). The Commission explained that the timetable had been followed and the first milestone test had been passed. I supported the Council Conclusions as drafted and said that we should be applauding a successful outcome to the milestone tests. The Commission then confirmed it would present a global schedule in June which would then be agreed at the October Council. The Presidency explained that whilst the Council Conclusions were accepted since the Council was not quorate they would be forwarded to the May 10th General Affairs Council for formal adoption as an “A” point.

Next there was a presentation by the Austrian delegation on lessons learnt following their experience as co-hosts of the European Football Championships in 2008 (Euro 2008). They explained how they had benefited greatly from a European network, and the pan-European training programme had also been important. They were currently providing advice and help to Poland and Ukraine for the Euro 2012 Championships. They felt that the Committee on Internal Security (COSI) would be the appropriate body to discuss this type of operation. The UK strongly supported Austria’s approach.
Following Mixed Committee, the Commission presented the draft Stockholm Programme Action Plan – a Communication which sets out their plans and timetable for taking forward the Stockholm Programme (the next five year EU work programme for justice and home affairs). The Council considered interior issues in the morning and justice in the afternoon. Member States welcomed an Action Plan in principle. Discussion centred on the need to ensure that the Action Plan faithfully reflected the content of the Stockholm Programme. The UK supported the implementation of the Stockholm Programme as agreed by Heads of Government last December, and was pleased to see a timetable for the actions in the Programme.

The Presidency then introduced a draft negotiating mandate for the EU-US Terrorist Finance Tracking Programme agreement, underlining the need to reach an agreement as soon as possible; an outcome also desired by the US. The Presidency also proposed a joint Council and Commission declaration stating the need to establish an acceptable legal basis for the transfer of data to the US. I echoed the need to reach a quick agreement to fill the security gap, noting that not reaching an agreement could have a direct impact on the security of Member States. I believed that the negotiating mandate struck the right balance between protecting security and protecting citizens’ data, and as such supported it, as well as the text of the accompanying declaration. The Presidency concluded that there was political agreement but since the Council was not quorate, the draft negotiating mandate would be forwarded to the May 10th General Affairs Council for formal adoption as an “A” point.

The Presidency then updated the Council on the EU-US JHA Ministerial Troika which took place in Madrid on 8-9 April, which focused predominantly on the post-Toledo Informal Council follow-up which covered aviation security, information sharing, research and international cooperation.

The Commission updated the Council on the Canada-Czech Republic visa issue, stating that it would not be introducing reciprocal measures against Canada for visa imposition on the Czech Republic. On 15 March Canadian, Czech and Commission officials reached agreement on measures that, when fulfilled, would allow Czech Republic nationals visa free access to Canada. The Presidency confirmed this issue has been put on the agenda of the EU/Canada summit on the 5 May.

Over lunch Justice Ministers, Commissioner Reding and I discussed the possible future creation of a European Public Prosecutors Office (EPP). Both the Presidency and Commission argued strongly for setting up the EPP quickly, with an initial mandate covering fraud against the Community budget. I made clear that the UK opposed the creation of an EPP.

The Justice session began with a discussion of the scope of the European Protection Order. The Council looked at how a compromise could be reached to address some of the concerns about scope. Most delegations supported the Presidency’s efforts to reach a compromise. The UK stated that we could be flexible and accept a narrow interpretation of scope if that was the consensus. The Presidency expressed its intention to continue working on the text for the next Council in June.

Justice Ministers had an orientation debate about the EU’s Accession to the European Convention on Human Rights. The Presidency is seeking to make progress on a mandate for negotiation with the Council of Europe. A number of Member States, including the UK, noted that the issues involved were important and complex and would need further detailed discussion.

The Presidency then adopted Council Conclusions on actions in the field of justice that can be taken to assist the economic recovery. The Presidency reported that the e-justice portal could be launched in July.

Under AOB problems with visas in third countries caused by the eruption of the Icelandic volcano were discussed. The Commission was disappointed that certain non-EU countries had not responded during the recent crisis. The Commission saw the need for more developed cooperation around Consular affairs for those Member States who are not ordinarily represented; the ideal forum for this could be via the common consular cooperation group.

29 April 2010

LATE PAYMENT IN COMMERCIAL TRANSACTIONS (8969/09)

Letter from the Chairman to Lord Davies of Abersoch, Minister for Trade, Investment and Small Business, Department for Business Innovation and Skills

Thank you for your letter of 30 November which was considered by Sub-Committee E at its meeting of 13 January. We decided to retain the proposal under scrutiny.

As you know the Committee has been concerned that small businesses are particularly vulnerable to late payments. We appreciate that they will benefit from progress in creating a general culture of prompt payment, based on legislation and non-legislative tools. However we would still be interested
in knowing whether there are any other options that might be added to the proposal specifically to assist small businesses.

We accept that it may not always be possible to determine whether there is a genuine dispute without recourse to the courts, but this disadvantage must be balanced against that arising from uncertainty as to how the proposal would operate in the event of a debt being genuinely disputed. To assist us in this, we should be grateful for an explanation of how the present Directive operates if the debt is disputed and whether any difficulty is experienced at present.

We welcome the simplification of the proposal by the greater alignment between business to business transactions and business to public authority transactions. We also welcome the fixing and capping of the payment which late paying businesses would be liable to pay in addition to interest.

We note that the additional payment that would have been imposed on late paying public authorities is still under discussion, including a proposal for a 2% payment capped at €50,000. We should be grateful to know whether you would support this particular proposal.

We are grateful that you will be pursuing the drafting points that were raised in my letter of 5 November and look forward to further information on the points raised in this letter and on the progress of negotiations.

15 January 2010

**Letter from Lord Davies of Abersoch to the Chairman**

Thank you for your letter of 15 January 2009, in which you raise three further questions about the Directive:

— whether there are any further options which are specifically designed to assist small business that might be added to the proposal;
— how the current and proposed Directive operates in the event of a debt being genuinely disputed; and
— whether we would support setting the compensation element payable by public sector bodies at 2%, with a maximum payment capped at €50,000.

We do not believe that it would be helpful to introduce additional measures specifically to assist small business. Our consultation suggests that the main requirement for smaller businesses is that legislation is simple to access/understand and apply. Evidence also shows that late payment persists across all businesses regardless of size or sector.

Our analysis of Experian invoicing data suggests that we are likely to secure the biggest improvements in payment by supporting business with short and simple advice on managing the business basics, including managing customer relationships and invoicing. In the past year we have seen over 110,000 downloads of our managing cash flow guides (http://www.creditmanagement.org.uk/bisguides.htm), which are supported by all the leading business and financial organisations.

Under both the current and proposed measures, disputed payments are a matter for the courts. Such cases are by their very nature complex but our consultation did not identify support for further action in this area.

Whilst the proposal for a 2% compensation rate for public sector payments is an improvement on the 5% compensation rate, it maintains the distinction between public and private sector payments which we consider to be arbitrary and confusing. We continue to favour a fixed compensation amount (regardless of contract value) as we believe this is easy to understand and apply. The fixed amount should reimburse the supplier for the cost of payment recovery. The proposed legislation already penalises the late payer by imposing a punitive interest rate, which is significantly higher than the base rate, on the overdue amount.

1 February 2010

**Letter from the Chairman to Lord Davies of Abersoch**

Thank you for your letter of 1 February which was considered by Sub-Committee E at its meeting of 3 March. We decided to retain the proposal under scrutiny.

We were grateful for the further information which you provided. We support your approach of promoting simplicity in the legislation, including by treating late paying public authorities and commercial undertakings similarly, and agree that non-legislative measures are an important tool in achieving a culture of timely payment.
Please can you keep us informed of progress on negotiation of the text, particularly in the light of the position of the European Parliament when it is established. At that point we should be grateful for your comments on how the revised text improves the clarity of the drafting in respect of the points raised in my letters of 8 June and 5 November 2009.

5 March 2010

Letter from Lord Davies of Abersoch to the Chairman

Thank you for your letter of 5 March 2010 about progress in developing a revised EU directive on combating late payment in commercial transactions.

I welcome your support for the UK’s negotiating position and have asked my officials to keep your Committee updated on progress.

18 March 2010

LISBON TREATY: IMPLEMENTATION OF ARTICLE 290 ON THE FUNCTIONING OF THE EUROPEAN UNION (5017/09)

Letter from the Chairman to Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum of 19 January. This was considered by Sub-Committee E at its meeting of 10 February. We decided to clear this matter.

Whilst we welcome the substance of the Communication and agreeing with the Council Declaration stressing the importance of the Commission’s commitment to consult experts from the national authorities of Member States we should be grateful for further information as to how, in practice, the European Parliament and the Council will operate Article 290.

We note that although the Commission published its Communication on 9 December 2009 and it was considered by COREPER on 14 December 2009 it was not deposited with Parliament until 5 January 2010. Is there a reason for this delay?

We are considering further the implications for scrutiny of Article 290.

10 February 2010

LISBON TREATY: PARLIAMENTARY IMPLEMENTATION

Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

Thank you for your letter of 27 November, regarding the preparations undertaken ahead of entry into force of the Lisbon Treaty on 1 December.

You raised two specific questions in respect of Article 3(3) of the Rules of Procedure of the Council. Firstly, the rationale for having different voting rules to decide to shorten the eight-week period is to improve the effectiveness of the Council in adopting legislative acts where an urgent need arises and where the underlying voting rule is less stringent than unanimity, such as a qualified majority. However, if an issue is particularly sensitive and the underlying voting requirement is unanimity, unanimity will still be required to derogate from the eight-week period. As I made clear in my letter of 20 November, the UK initially opposed this move from unanimity. However, the Council Legal Service felt that the unanimity requirement for all dossiers was inappropriate and there was a lack of support among other Member States for maintaining unanimity in all cases.

On your second point, I do not consider it necessary to include a specific requirement for a statement of the reasons for a derogation from the eight-week period in Article 3(3) of the Rules of Procedure, as there is an explicit reference in Article 3(3) to Article 4 of the Protocol on the role of national Parliaments which makes clear that the reasons for the derogation should be stated in either the draft act or the position of the Council.

In respect of the programme of work to implement the Lisbon Treaty more generally, the Swedish Presidency has prepared a further progress report on the implementation of the Lisbon Treaty, was tabled and noted at the December European Council. I attach this report for your information, which summarises the progress made since the October European Council.
18 December 2009

Letter from the Chairman to Chris Bryant MP

Thank you for your letter of 18 December and for providing a copy of the Presidency’s progress report. Your comments on the revised Rules of Procedure of the Council were considered by Sub-Committee E on 13 January. We are grateful for your explanation of the background to the two points raised in my letter of 27 November.

14 January 2010

STOCKHOLM PROGRAMME

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office to the Chairman

On Wednesday 17 March I appeared before the Lords European Union Select Committee to give evidence on the Stockholm Programme. I undertook to write to the Committee with further information on a number of points raised during the session.

EU LAW ENFORCEMENT TRAINING INITIATIVES

The Committee asked about EU law enforcement training projects within the UK. The European Police College (CEPOL) was established in 1999 and created a European-wide police-training network for Member States to support and develop a European approach to training in key areas. The CEPOL Secretariat is hosted by the UK through the National Policing Improvement Agency (NPIA).

The courses take place EU-wide and the 2009 programme in the UK delivered 5 courses through CEPOL (3 on European Police Co-operation, 1 on counter terrorism and 1 on Police language training). These courses have received very positive feedback from participants who have highlighted that the courses have both increased their understanding of other Member States’ ways of working and also helped shape the way they approach international missions. The UK will host 6 courses in 2010 covering areas such as firearms trafficking, covert operations and witness protection. CEPOL will also be undertaking a new programme funded by the EU to deliver additional exchange programmes for all law enforcement officers.

In addition the NPIA Europe desk continues to provide annually 6 to 8 training events for senior Netherlands Police Officers, in Serious Crime Analysis and Firearms Critical Incident Command which has attracted positive feedback from all participants.

OPERATIONAL LAW ENFORCEMENT COOPERATION

Lord Mawson asked about law enforcement cooperation at an operational level. We await the proposed letter from Lord Mawson outlining his specific concerns, but in the interim I would like to set out some of the many instances of practical cooperation that have proven invaluable to date.

Whilst we would never seek for foreign police officers to obtain operational powers within the UK (and there is no capacity for them to do so now nor any plans for this to happen in the future), we do strive to maximise international police co-operation with great success. Most examples of police cooperation between EU Member States go unnoticed and receive little publicity. However, the most recent and public example of practical police cooperation across EU Member States is the successful resolution of the kidnapping of Sahil Saeed in Pakistan. This involved a closely-coordinated surveillance operation involving law enforcement authorities in the UK, France, Spain and Pakistan. This led to the release of Sahil, arrests being made and the recovery of the ransom money. The investigation is ongoing.

The Cross Channel Intelligence Community (CCIC) – a self-funded partnership of law-enforcement agencies (including SOCA and UKBA) from the UK, France, Belgium and the Netherlands – is another excellent example of good value police cooperation. Set up by Kent Police, it provides a forum in which partners can exchange information and good practice to enable them to detect and prevent crime in their areas of responsibility on both sides of the Channel/North Sea. Six sub-groups cover illegal immigration and organised crime, people-trafficking, counter-terrorism and crisis management, intelligence and ports policing.

The CCIC is rapidly moving on from its traditional information-sharing role to operational co-ordination to combat “transfrontier” crime. For example, the human trafficking sub-group has a specific operational mandate actively to support Project TALON, a UK Human Trafficking Centre...
operation to clamp down on the kidnapping of males from the traveller community who are shipped from ports in the UK into Europe for exploitative labour.

I would like to focus on a specific CCIC project which yielded particularly positive results. This has involved the EU-funded secondment, since April 2009, of an inspector from Kent Police to the Bureau de Liaison Permanent of the police judiciaire in Lille, France. This unit is an intelligence-sharing and co-ordination cell, focussing on organised crime, principally illegal drugs trafficking. The secondment had a positive impact on an operation in May 2009, when an organised crime group dealing in drug supply and money laundering, under surveillance by Kent Police, planned a drugs exchange in the Calais area. As a result of intelligence being passed to the French police through the secondee and to the Joint Intelligence Unit at Folkestone, French police identified and followed the group, eventually making arrests in a car park in Calais. Approximately 25 kilos of amphetamine was seized. Four British Nationals were subsequently convicted by a French court and sentenced to lengthy terms of imprisonment. Further intelligence supplied by the French police resulted in more arrests in Kent and more drugs seized.

There are numerous other examples of police cooperation at an EU level which produce positive outcomes. These include a Joint Intelligence Unit at Folkestone, joined in September 2009 by a French officer from OCRIEST of Police Aux Frontieres, which focuses on counter-terrorism, radical extremism, and ports crime; an active programme of week-long visits, in both directions, between Kent Police and Rotterdam Police to identify best practice; and a joint bid for EU funding by Kent Police and German and Danish police forces to combat organised motorcycle gangs. Kent Police would be prepared to brief the Committee directly on what they are doing by way of practical co-operation with European police forces and I would be happy to write with further information on any of these projects.

EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM

I agreed to write with further detail on how the new European Criminal Records Information System (ECRIS) will function.

The Committee asked about the nature of the information that would be exchanged through ECRIS. This is set out in Article 11 of Framework Decision 2009/315/JHA and comprises three categories of information: obligatory, optional and additional. The Framework Decision states:

a. Information that shall always be transmitted, unless, in individual cases, such information is not known to the central authority (obligatory information):
   i. information on the convicted person (full name, date of birth, place of birth (town and State), gender, nationality and – if applicable – previous name(s));
   ii. information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);
   iii. information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions); and
   iv. information on the contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence);

b. information that shall be transmitted if entered in the criminal record (optional information):
   i. the convicted person’s parents’ names;
   ii. the reference number of the conviction;
   iii. the place of the offence; and
   iv. disqualifications arising from the conviction;

c. information that shall be transmitted, if available to the central authority (additional information):
   i. the convicted person’s identity number, or the type and number of the person’s identification document;
   ii. fingerprints, which have been taken from that person; and
   iii. if applicable, pseudonym and/or alias name(s). In addition, the central authority may transmit any other information concerning convictions entered in the criminal record.

The Committee also asked for further information on how ECRIS will interconnect with existing national records. ECRIS is a system that will allow criminal records information to be transmitted
using a secure electronic system (sTESTA). This is often currently transmitted by post, fax or e-mail. ECRIS will also ensure that the information transmitted is accompanied by codes for:

- The parameters of the offence (i.e. was it an attempt, or was the crime completed), the level of participation (e.g. was the offender the perpetrator or a conspirator) and whether the person is exempt from criminal responsibility (e.g. diminished responsibility).

- The type of offence (i.e. was it, for example, murder, theft, assault, drugs, sexual offences and within those broad categories of crime type was the person convicted).

- The sentence (e.g. imprisonment, probation, fines)

ECRIS will not provide any Member State with direct access to another’s criminal records, nor will a shadow database need to be set up.

The benefits of ECRIS are that by sending information electronically we can send it more quickly, more securely and using the ECRIS codes we will have a greater level of understanding of what the offence was, and how it can be compared with existing offence type in England and Wales, Scotland and Northern Ireland.

The Committee also asked whether other Member States would have access to our full CRB and if we would have access to theirs. Member States would not have direct access to information held on the criminal record for UK nationals. However the Framework Decision does require the UK, on request from another Member State, to provide all convictions held on the criminal record when a UK national is involved in criminal proceedings in another Member State’s jurisdiction. The UK would receive the same information from other Member States in the same circumstances.

I agreed to provide the Committee with a list of countries that the UK is currently working with to provide guidance for employers on how to understand criminal conviction certificates. In many countries individuals, and in some cases third parties, can request criminal records certificates for employment checking purposes. We are therefore looking at where we can strengthen the guidance for employers to encourage them to ask to see such certificates, particularly in relation to those seeking work with children and vulnerable adults. We aim to put in one place all the information that we have on this process in relation to each country to help employers and prospective employees obtain certificates and understand what is disclosed on them.

We have identified a number of countries with which we wish to prioritise the exchange of information. One of the factors in identifying those countries was the number of their nationals who have applied for CRB checks because they are employed working with children and vulnerable adults. We will ultimately look to provide guidance to employers for a wider range of countries. The priority countries are:

Afghanistan, Albania, Australia, Austria, Bangladesh, Bulgaria, Canada, China, Estonia, France, Germany, Ghana, India, Ireland, Jamaica, Lithuania, Netherlands, New Zealand, Nigeria, Pakistan, Philippines, Poland, Portugal, Romania, Spain, Thailand, Turkey, United Arab Emirates, United States of America, Vietnam.

I also agreed to send information on how we will overcome the difficulty of varying definitions of crimes in different Member States. The UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) has gained considerable experience on offence matching. They will analyse the relevant penal codes of the sending Member State, and the foreign offence will be matched to the closest UK offence. In order to ensure consistency, once the foreign offence has been mapped to a UK offence, this is the mapping that will be used when such offences are received going forward.

To aid decision making the UKCA-ECR has an internal PNC forum, where offences are analysed. If no decision can be reached, other agencies with expertise are consulted, such as the Crown Prosecution Service, SOCA Liaison Officers and Central Authorities in the foreign Member State.

**REHABILITATION OF OFFENDERS**

The Committee asked about the rehabilitation of offenders and I committed to sending further information on reform of the Rehabilitation of Offenders Act 1974 (“ROA”). Following a Home Office led review, the Government acknowledged the need to reform the ROA and accepted many of the recommendations made in the report, ‘Breaking the Circle’, in 2003. However, since that time other issues have taken priority for the use of scarce Parliamentary time, including legislation which has changed the landscape surrounding the ROA; for example, the Safeguarding Vulnerable Groups Act 2006 and wholesale reform of the adult and youth sentencing frameworks. Therefore, the Justice Secretary considers that any reform of the ROA now needs to be looked at afresh, in the current
context, before moving to introduce any reforming legislation. We also recognise Sunita Mason’s recent Independent Review of Retention and Disclosure Policy on the PNC which recommended reform of the ROA.

Rehabilitation is very much at the heart of our approach. We have worked hard to ensure that prison is a more decent, humane and constructive place than even 10 years ago, and a place where rehabilitation programmes can thrive. Prison drug treatment has increased tenfold since 1996-97, and there has been extra spending on offender learning too. We do not underestimate the need to build on our work to tackle reoffending, but reoffending has fallen in recent years, for both adults and young people. In 2008, adult reoffences fell 6.2% from 2005 and juvenile reoffences fell by 8.9%.

I hope that you have found this information helpful and informative. I would be happy to write with any further information you require.

25 March 2010

SUCCESSION AND WILLS (14722/09)

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

Thank you for your letter of 17 November concerning the UK opt-in to this proposal which has been of great assistance in considering this aspect of the Commission’s proposal. We are looking forward to your evidence on 16 December.

In the meantime we have been considering whether the proposal complies with the principle of subsidiarity for the purposes of a pilot exercise initiated by the Conference of European Affairs Committees (COSAC) in anticipation of the coming into force of the Lisbon Treaty.

We concluded that the proposal does comply with the principle. I attach for your information a copy of the response I have sent to COSAC.

14 December 2009

Letter from the Chairman to Lord Bach

Thank you for giving evidence to Sub-Committee E. The Committee has considered whether the UK should opt in to the Commission’s proposal in the light of your Explanatory Memorandum, your useful letter of 17 November, the consultation exercise carried out by your department and the evidence we have received in the course of our ongoing inquiry. The evidence we have heard points to there being concrete benefit to be gained from European legislation simplifying the handling of cross-border successions. However, we have formed the view that the UK should not opt in to the proposal for the reasons set out below.

Our preliminary view is that it would be unacceptable to run the risk of the claw back provisions found in the law of other Member States jeopardising lifetime gifts which would otherwise be valid under UK law. We also consider that there are other valid concerns which make the proposal undesirable as it stands; including the lack of definition in the proposal for the concept of habitual residence, giving jurisdiction to the Member State of habitual residence of the deceased even if he or she had chosen a different applicable law, and the broad nature of the special succession regimes which derogate from the basic principle of a single applicable law applying to a succession.

Our present belief is that the prospects of negotiating changes to the proposal are not sufficiently certain to counterbalance these concerns. Indeed it is questionable whether they would, in any event, be significantly improved by opting in, given that there is a significant incentive for other Member States to include the UK in the framework of any adopted Regulation because a significant number of cross-border successions involve a UK dimension.

We noted with interest the suggestion made by Mr Justice Hayton in his response to the consultation that the UK could remain out of the Regulation but seek to benefit from it to the extent desirable by suitably adjusting its domestic legislation.

We should be grateful to be informed of the outcome of your consultation.

17 December 2009
**SURRENDER PROCEDURE BETWEEN MEMBER STATES AND ICELAND AND NORWAY (17706/09)**

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

Your Explanatory Memorandum (EM) on this proposal was considered by Sub-Committee E at its meeting on 10 February. We note that, although the entry into force of the Agreement would not require changes in our legislation, the Agreement should make the operation of extradition arrangements with Iceland and Norway more efficient and strengthen judicial cooperation among the participating states. The provisions should assist in the fight against crime, and contain safeguards protecting fundamental rights. We agree that the proposed decision is consistent with the principle of subsidiarity.

We welcome the proposal that the EU conclude this Agreement, after more than three years since signature, and consider that the UK should opt in to this proposal.

We now clear this proposal from scrutiny. But we consider it unsatisfactory that the EM was submitted a month after the publication of the proposal which left very little time for the Committee to consider the opt-in issue within the eight-week period for scrutiny of that issue. Under the undertakings on the opt-in given to the House by Baroness Ashton during the passage of what became the European Union (Amendment) Act 2008, departments are to ensure that EMs are deposited strictly within the standard 10 working days allowed under the scrutiny arrangements. Even allowing for the Christmas holiday period, the Department should have done better.

10 February 2010

**TRANSPARENCY INITIATIVE: REGISTER OF INTEREST REPRESENTATIVES (15298/09)**

**Letter from the Chairman to Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office**

Your Explanatory Memorandum on this Communication was considered by Sub-Committee E at its meeting on 16 December. We decided to clear the Communication from scrutiny.

The Communication provides a helpful review of the first year of operation of the registration scheme. The Committee’s principal concern, when the scheme was established, was whether a voluntary approach would prove adequate. We note that the Government agree with the Commission that that approach is appropriate. For our part, we continue to regard the Commission’s initiative as helpful but, taking account of the facts that there remain organisations that have yet to register and that certain categories of organisation are clearly under-represented in the register, we think it is too early to conclude that the scheme is a success.

We should be interested to learn of the outcome of the discussions between the Commission and the European Parliament in due course.

17 December 2009