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

Thank you for your letter of 11 November; please accept my apologies for the delay in replying to you. I understand that your Committee’s clerks are in touch with officials at the Cabinet Office, and at the UK Permanent Representation in Brussels, to resolve some outstanding working issues. Rather than wait further for those points to be clarified, I write now to reassure the Committee on the three main points you raise in your letter.

On your first point, I should reiterate that the Government interprets a ‘significant’ change to be a change that has ‘policy implications’, so I think that we are agreed here. For further clarity, we shall endeavour to remove phrases such as ‘significant’ or ‘substantial’ from the Scrutiny Guidance. Therefore, if any proposed change has ‘policy implications’, then these developments should be the subject of an update to the Committees, either at Ministerial or at official level. This would include changes which arise following a discussion at COREPER. However, as I believe the Committee recognises, the timing between the meetings of COREPER and the Council is often tight, and in many cases the Committee will have been updated in advance on the Government’s expectations for the forthcoming Council, and a further update after the Council would follow in these cases.

On your third point, in stating that the Government would only ‘consider’ requests for updates or supplementary explanatory memoranda, my intention was to provide a small amount of discretion for those rare occasions where either the Government has reasons for not being able to comply with the request, in which case the Government would need to justify fully why it could not comply; or where a more informal update or discussion with Committee clerks is desirable for reasons of time pressure. I agree entirely that departments should always provide additional information promptly when requested by a committee of Parliament.

14 January 2010

Letter from the Chairman to Chris Bryant MP

Thank you for your letter of 14 January about scrutiny of Codecision - which we must now call the Ordinary Legislative Procedure. My Committee has yet to discuss it.

— However a debate on our report has now been arranged for Thursday 28 January, in the House of Lords Chamber starting around 4.30pm. I would be grateful for an update on two of the outstanding issues in time for that debate. These are:

— Publishing the Scrutiny Guidance – According to your response to our report, dated 28 October, you are consulting the Cabinet Office, and we look forward to hearing the outcome. We continue to believe that, in the interests of open, transparent government, this should be done.

— Providing limité documents – According to your response of 28 October you are consulting the Council Legal Service, and again we look forward to hearing the outcome. However, given the evidence we took on this point (including from the Council Legal Service) and the established practice of other governments in giving limité documents to their parliaments, we
would be astonished if there were now to be difficulties. In any case this is a matter for the Government and not the Council Legal Service to decide.

In the absence of anything further on these matters, I will raise them in the debate, and will listen carefully to the Minister's reply.

20 January 2010

*Letter from the Chairman to Chris Bryant MP*

As you will be aware, the debate in the House of Lords on my Committee's report *Codecision and national parliamentary scrutiny* (Session 2008-09; HL Paper 125) was held on 28 January. Lord Brett replied for the Government and gave two commitments to be delivered by the end of February.

On the first, access to limité documents, he said that the Government was "confident that we can devise handling caveats to address the restrictions and accept the desirability of proactively providing the committee with appropriate limité documents at critical points in negotiations. [Thus,] subject to ministerial approval across government, we hope to be able to begin providing the committee with access to certain limité documents from the end of next month" (HL Deb. 1628). He went on to indicate that a letter on these documents was imminent (HL Deb. 1629).

On the second, making the Cabinet Office's scrutiny guidance publicly available, he said that "we have no problem making this document publicly available on the Cabinet Office website, and again we hope to be able to implement that within the next month" (HL Deb. 1629).

Given that we are now in March I would be glad of an update on the progress that has been made in realising these two commitments.

1 March 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 25 November.

I am mindful that you are awaiting a response on your proposed changes to the Scrutiny Reserve Resolution, further to your letter of 16 July. I can confirm that I am engaged in reviewing the implications for HMG of your suggestions. However, I do believe that there are two clear areas to address: 1) Those provisions that need to be reviewed as a direct consequence of the entry into force the Lisbon Treaty and; 2) The more general changes to the Scrutiny Reserve Resolution, not directly connected to the entry into force of the Lisbon Treaty, that you propose. The second area of suggested change will require considerable thought and wide consultation across Whitehall, which can be done in slower time. This would be done with the assurance that we are committed to continue Scrutiny at current levels until a new Resolution is agreed.

I start, therefore, with the points, raised in your letter, on the Government’s proposals for the new powers for Parliament in the Lisbon Treaty, following our helpful meeting on 20 November.

I am pleased that we have reached agreement on the majority of the points in my 16 November letter. I note your suggestion that a motion inviting the House to submit a reasoned opinion could be moved by any appropriate member of the EU Committee or its Sub-Committees on the Committee’s behalf, not just by the Chairman of the Select Committee (paragraph 1B). We would be content with this approach, although ultimately it will be a matter for the Procedure Committee and the House to decide.

Further, I can confirm that HMG accepts the recommendation in the Committee’s report of 2005 on the timing of Government analysis of the subsidiarity principle (paragraph 1D). The Government will endeavour to meet its 10 working day deadline for the preparation of Explanatory Memoranda, including an assessment of subsidiarity compliance. I consider this an important element in helping the Committees and both Houses exercise their new subsidiarity powers.

In relation to your points on the summer recess and ‘stopping the clock’ of the Council of Ministers (paragraph 1F), the Council does not meet in August, except in exceptional circumstances.

The European Parliament also does not meet from the end of July to the end of August. So the chances of the two legislative bodies making rapid progress on dossiers tabled in June or July is low. However, we will propose to other Council Members that the Council would not, under normal circumstances, place a qualifying proposal on its agenda for eight weeks, plus the four weeks of August where they fall within that eight week period, after the adoption of the proposal by the Commission.
I am happy to reconfirm the HMG position that the Government should not support a proposal in the Council which has been the subject of a subsidiarity yellow card in either House without first further communicating to Parliament the reasons for doing so (paragraph 1G).

I note your suggestion for the Committee scrutinising any proposed use of a passerelle (paragraph 2). I welcome the idea of the Committee helping to inform the House before a decision on whether or not to agree a proposal to use a listed passerelle. Save in exceptional circumstances, I anticipate that there would be sufficient 'lead-in' time for the Committee to have the opportunity to make its views known before the House is asked to make a decision on a proposal to use a listed passerelle. I therefore do not think it would be necessary to codify this process further in the way you propose.

With regard to your suggestions on the Government’s undertakings on scrutiny of JHA opt-ins (paragraph 3), I am happy to accept the commitment to place the Explanatory Memorandum before Parliament no later than 10 working days after publication of the proposal. I can also confirm that the Government’s undertakings will be reflected in a Code of Practice, as proposed by Baroness Ashton on 9 June 2008.

However, I cannot agree to your proposal that the 8 weeks during which the Government will await the Committee’s views should be extended if the Committee has made a report to the House and that report has not yet been debated.

Your letter suggests that there is no penalty for taking the opt-in decision at the last minute, allowing for an extension of the 8-week period into the final month of the 3-month period. In practice, there could be a penalty if the UK urgently wishes to opt in but is barred from doing so pending a debate in the House, as we would be unable to engage fully in Council negotiations (e.g. participating in a qualified majority or a blocking minority), which could work significantly against the national interest. For this reason, we cannot give the undertaking you are seeking.

At the same time, we cannot guarantee that we would always be able to facilitate a debate within the 8-week period, as the practicability of doing so would hinge on how early in the 8-week period the Committee produced its report, and whether the 8-week period was curtailed by a Parliamentary recess. You suggest that there would be “no point in a debate if an opt-in decision had already been taken”. I can reassure you that in the vast majority of cases, opt-in decisions are not taken at the eight-week point. Instead, the first eight weeks are used to conduct consultations across Government, the devolved administrations, and with external stakeholders, as well as the EU Committees of each House, in order to inform the advice that is put to Ministers.

There is then further consultation at Cabinet committee level over several weeks before a collective Government decision is reached. The views of the House as expressed in a debate or a motion could therefore still influence Ministers’ collective decision, even where the debate takes place after the eight-week period.

Ultimately, however, opt-in decisions must remain a matter for Ministers, and I cannot agree to an arrangement which would see us barred from opting in to a JHA proposal until the House had expressed its view in a debate. This would give an inappropriate power of filibuster whereby refusal to hold a debate would prevent a decision. This is neither within the letter nor within the spirit of Baroness Ashton of Upholland’s undertakings.

On reference to the ECJ, Article 8 allows considerable discretion as to how it is implemented in each Member State and you are right that HMG's position was, and remains, that Article 8 does not oblige the Government to initiate proceedings in all circumstances. However you are also right that we have sought to take account of Parliament's views by agreeing to take forward any case at the request of either House.

As you note the conduct of litigation before the ECJ is carried out by the UK Agents to the Court, based in the Treasury Solicitor's Department, who act under the authority and oversight of the Attorney General. The UK Agents have a general responsibility to ensure that litigation is conducted as effectively and efficiently as possible and that the wider reputation and interests of the United Kingdom are upheld. While final decisions on instructions and arguments in all ECJ litigation therefore rest with them, they would work closely with the House's representatives and seek to reach agreement on all points. In the unlikely event of a disagreement that cannot be resolved, we also propose that the House representatives should be able to refer these directly to the Attorney General who has ultimate responsibility for all litigation conducted on behalf of the United Kingdom. However as you indicate we would only anticipate such disagreement where there was real policy or reputational risk to the United Kingdom.

I agree that these points can best be addressed by our lawyers meeting to draft an informal memorandum setting out the agreed arrangements. In relation to the cost of taking a case to the ECJ (paragraph 4C), I can confirm that the House would only be liable for the costs of the UK action and that awards for costs against losing parties are not implemented in practice. I understand that the
figures which you quote are based on an assessment provided to your legal adviser by our EU Litigation team.

3 December 2009

Letter from Chris Bryant MP to the Chairman

As you are aware, one of the priorities of the Spanish Presidency will be the effective implementation of the Lisbon Treaty, following entry into force of the Treaty on 1 December. To this end, I am writing to the Committee with the attached recent note from the Spanish Presidency (not printed), setting out their programme of work in respect of Lisbon Treaty implementation.

My colleagues and I will of course continue to provide updates to you and your Committee on the specific issues outlined as progress is made on these in the coming weeks.

20 January 2010

LISBON TREATY: PREPARING FOR RATIFICATION

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

The Lisbon Treaty provides for the allocation of extra MEPs to 12 Member States, including the UK which gains 1 extra MEP. It also reduces the number of MEPs from Germany by 3. This year’s European Parliament elections were held under the provisions of the Nice Treaty. To allow the extra MEPs provided for under the Lisbon Treaty to be elected into the current 2009 – 2014 European Parliament without 3 current MEPs who have just been elected having to stand down, transitional arrangements would need to be adopted to enable the number of MEPs to temporarily exceed the limit of 750 plus the President which is laid down in Article 14(2) of the Treaty.

The December 2008 European Council Conclusions therefore set out that: “In the event that the Treaty of Lisbon enters into force after the European elections of June 2009, transitional measures will be adopted as soon as possible, in accordance with the necessary legal procedures, in order to increase, until the end of the 2009-2014 legislative period, in conformity with the numbers provided for in the framework of the IGC which approved the Treaty of Lisbon, the number of MEPs of the twelve Member States for which the number of MEPs was set to increase. Therefore, the total number of MEPs will rise from 736 to 754 until the end of the 2009-2014 legislative period. The objective is that this modification should enter into force, if possible, during the year 2010.”

The June 2009 European Council Conclusions confirmed that the European Council: “recalls its Declaration of December 2008 on transitional measures concerning the composition of the European Parliament. Once the condition set in its Declaration of December 2008 is met, the necessary steps to implement these measures will be taken by the Presidency.”

Although this is would be a transitional measure, as it would require a temporary change to the total number of MEPs laid out in the Treaty, it would require a Protocol and therefore the opening of a limited Intergovernmental Conference (IGC). In order to take this process forward, the Spanish government has submitted a proposal to the President of the Council to launch a consultation with the European Commission and European Parliament before taking a decision to convene an IGC. One option is to hold the IGC without a Convention beforehand given the limited scope of the provisions under discussion. This will be discussed in the coming days.

The Presidency will shortly be notifying you of this proposal by the Spanish Government. The Spanish plan to make arrangements to hold the limited IGC during their Presidency.

Our aim in negotiations would be to ensure the draft Protocol reflects the agreements at the December 2008 and June 2009 European Councils. I will, of course, keep Parliament fully informed of developments and would welcome any views you may have.

In addition, any amendment to the EU Treaties can only be ratified by this country if it is approved by Act of Parliament. This is set out in section 5 of the European Union (Amendment) Act 2008. Parliament would therefore need to pass primary legislation before any Protocol could be ratified by the UK. Only once this is done, could the changes enter into force.

14 December 2009