Dear Secretary of State

Ahead of your appearance before the Committee on 1 May, I am writing to draw your attention to a number of Government responses to Committee reports and correspondence that have, in our view, fallen short of expectations. We would be grateful to receive your response before that appearance, to inform any questions that we may ask you in person.

To begin with, we should stress that there have been some welcome cases of good practice across Government. The Home Affairs Sub-Committee has seen a marked improvement in engagement from the Department of Health and Social Care, the Department for Digital, Culture, Media and Sport, and the Home Office. The Department of Health and Social Care’s evidence to the recent ‘Brexit: reciprocal healthcare’ inquiry was particularly helpful. Likewise, the External Affairs Sub-Committee’s engagement with the Foreign and Commonwealth Office and the Ministry of Defence—on timeliness, the detail and analysis provided in Explanatory Memoranda, and the level of engagement with follow up questions—has led to a recent improvement in these departments’ approach to EU scrutiny.

But notwithstanding these instances of good practice, we are concerned that there has been a general decline in the quality of government departmental engagement with the Committee. We give examples below.

On 4 March 2017 our report on Brexit and the EU Budget was published. The Government initially claimed it could not submit a response during purdah, and the only response that we have received was an acknowledgement of the report’s existence, contained in correspondence from the Chief Secretary to the Treasury regarding the Commission’s working paper, Essential Principles on Financial Settlement. This letter, dated 13 October 2017, contained no substantive response to the report.

The Government’s response to our 6 March 2017 report on Brexit: UK-EU movement of people reached us only in January 2018. It grouped together the Committee’s recommendations, failing to address them directly. Much of the response simply repeated the Government’s position on freedom of movement as laid out in its future partnership papers, rather than engaging with the different focus of the report. In January 2018, the Committee wrote to the Home Office on 24 January to seek further information, but we have yet to receive a reply.
On 20 March 2017 our report on civil justice cooperation, *Brexit: justice for families, individuals and businesses*, was published. The Government’s response, dated 1 December, was seven months late, and failed to engage with many of the Committee’s conclusions and recommendations about future cooperation on civil justice. Perhaps the most striking feature of the response was that the Government appeared to be preparing for disengagement and failure, commenting that “in the event that we do not agree an arrangement for future civil judicial cooperation with the EU, it will be important to have reached a common view on the general principles that would govern how ongoing cooperation in this area could be wound down”.

Our report on *Brexit: trade in non-financial services* was published on 22 March 2017. During the debate on this report in December 2017, the Minister of State, Lord Callanan, assured the House that a response to the report was “in full preparation” and that he expected to be able to publish this “early in the new year”. No response has yet been forthcoming.

In December 2017 we published our report on *Brexit: deal or no deal*. This report was 58 pages long and included 38 separate conclusions and recommendations. Yet the Government response to the report, rather than responding to each conclusion in turn and in full, cited our conclusions selectively, sometimes merging or paraphrasing them so as to modify their meaning, before providing a minimal response.

You will also be aware that in March 2018 we wrote to you to complain about the standard of your reply to our letter of September 2017 on *Brexit: Overseas Territories*. In spite of the fact that we allowed two months for you to reply to our September letter, in line with the time allowed for formal responses to substantive Committee reports, rather than the normal 10 working days for responding to correspondence, your reply was not received until February 2018. Even then, the reply failed to address the issues set out in our letter, and we had to write back to seek a fuller response.

There has also been a noticeable decline in the standard of the Government’s support for our scrutiny of EU legislative proposals and other documents. A number of EMs have been received late. These problems reach across Government: to give a few examples, the Department for Digital, Culture, Media and Sport provided EMs 11723/17 and 11724/17 (both regarding the Convention on manipulation of sports competitions) over three months late, while the Cabinet Office overlooked EM 8162/16 (regarding public access to EU institutions’ documents) for over a year.

There have also been issues with a failure to answer the Committee’s questions on items of scrutiny. I am writing to you separately about your reply of 27 March to our letter of 22 February on the unnumbered Technical Note—international agreements during the transitional period.

There have also been issues with the treatment of the scrutiny reserve. Ministers have decided not to opt-in to Justice and Home Affairs measures without consulting the Committee: for instance, DCMS with regard to EM 11724/17 (as above), and the Home Office with regard to
EM 10940/17 (regarding the European Criminal Records Information System and Third Country Nationals).

Ministers have also breached the spirit (if not the letter) of the scrutiny reserve resolution on several occasions. The Home Office has supported General Approach text in Council without consulting the Committee in relation to EM 10940/17 (as above) With regard to EMs 12882/16 and 15336/17 (the proposed Inter-institutional Agreement on the Mandatory Transparency Register), DExEU failed to update the Committee on progress for a year, and participated through COREPER in the agreement of the Council’s position without informing the Committee.

In relation to EM 15816/16, the Home Office also informed the Committee about major developments mere days ahead of the Council vote. We believe that in expressing support in the Council for the Presidency’s draft text the Minister acted in breach of the scrutiny reserve. A later appearance by the Security Minister before our Justice Subcommittee, to explain his conduct and the poor handling of scrutiny, was cancelled at short notice; the Committee has decided to invite the Home Secretary to explain her Department’s behaviour.

The problems rehearsed in this letter illustrate what appears to be a general decline across a number of Government departments in the standard of engagement with the scrutiny process and with scrutiny committees. Your own Department is not immune from this decline. We therefore ask, given DExEU’s overall responsibility for supporting the scrutiny work of the Committee, what steps will you take to encourage an improvement of performance across Government, and to ensure that examples of best practice are learned from and applied more widely?

We look forward to receiving your response to this letter ahead of your appearance before the Committee on 1 May 2018. In light of your response we will consider what issues, if any, need to be raised in oral evidence.

I am copying this letter to Rt Hon David Lidington MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office.

Lord Boswell of Aynho
Chairman of the European Union Committee