



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

This edition includes correspondence from 9 May 2012 – 31 October 2012

JUSTICE, INSTITUTIONS AND CONSUMER PROTECTION

(SUB-COMMITTEE E)

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ACCESSION OF VARIOUS STATES TO THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (5218/12, 5306/12, 5312/12, COM (2011) 904, 908, 909, 911, 915, 916, 917)

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

Thank you for your letter of 13 April 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 May. We decided to continue to hold the

matter under scrutiny pending an update of the preparedness of the States seeking to join the Convention (other than Singapore and Andorra), and updates on the challenge to exclusive EU competence and on your efforts to include wording in the proposals to reflect the UK opt-in.

We remain disappointed that the Explanatory Memorandum did not specifically address the factors affecting the opt-in. It is important that key information on the opt-in is provided at the earliest opportunity if there is to be, in practice, effective parliamentary scrutiny of the opt-in decision which the Government advocate. In this case, it is notable that the decision to opt in was driven by the desire to promote the UK's arguments on the extent of EU exclusive competence. Whilst the Explanatory Memorandum does mention this issue, it provides no hint that this might be a factor relevant to the UK opt-in.

We are grateful for your clarification of the legal issues concerning the legal basis of these proposals. We also note that co-ordination of Member States positions remains necessary if accession of new states to the Hague Convention is only partly a matter of exclusive EU competence.

24 May 2012

AN EU AGENDA FOR THE RIGHTS OF THE CHILD (7226/11)

[FORMERLY SCRUTINISED BY SUB-COMMITTEE G]

Letter from the Chairman to Sarah Teather MP, Minister of State for Children and Families, Department of Education

Further to your letter of 21 November 2011 on the above Communication, to which my predecessor responded on 1 December, my predecessor sent a letter to the European Commission setting out a number of the issues that had arisen in the course of scrutinising the Communication.

The Sub-Committee on Justice, Institutions and Consumer Protection considered the Commission's response at its meeting of 27 June 2012 and decided that it should be drawn to your attention. I therefore attach a copy of the letter and would welcome any views that you may have.

28 June 2012

Letter from Sarah Teather MP to the Chairman

Thank you for your letter of 28 June, about the EU agenda for the Rights of the Child, and for sharing the letter from the Commission to the Committee with me.

I welcome the Commission's clarification on the points raised in the Committee's letter of 1 December last year. In particular, the role of the Inter-service Group on the Rights of the Child (ISG), which is facilitated and chaired by the European Commission's Directorate-General for Justice. This brings together focal points on children's issues as well as helps develop EU agendas, I look forward to the work of the ISG becoming recognised in future EU agendas.

I am aware of the value in Member States having the opportunity to exchange information and good practices on children's issues. I am pleased with the Commission's commitment to support Member States in this through the European Forum on the Rights of the Child and Europe de l' Enfance, which meet regularly. The Commission is providing enhanced support for them and the UK will, of course, be represented at these meetings.

I am particularly encouraged that the EU is prioritising children's rights and is using external actions, including trade policy. I believe this to be an effective method to promote the rights of the child within non-EU countries. These actions are very much in line with this Government's policy role in promoting and protecting children's rights around the world. This is shown by our willingness to help identify and share best practice with other countries. We also demonstrate it through our international aid and development programme, and through using our influence to counter abuses of children's rights elsewhere.

Thank you for writing on this important matter.

1 August 2012

BRUSSELS I REGULATION: CONCLUSION OF NEGOTIATIONS (18101/10)

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

I am writing, with the conclusion of the negotiations on the Brussels I Regulation imminent, to seek scrutiny clearance from your Committee prior to my attendance at the Justice and Home Affairs (JHA) Council on 7-8 June. The aim of the Danish Presidency is that this Council will reach political agreement on the main text of the Regulation, including the key recitals on arbitration. The majority of the remaining recitals and the prescribed forms will be concluded under the Cypriot Presidency. The current expectation is that the European Parliament will accept the conclusions of the Council. In overall terms the outcome of this review has been positive from the UK's perspective. I attach the latest version of the text.

The UK elected to exercise its right to opt in to the Brussels I Regulation at the outset. However, there were three main issues that the Government wished to address in the course of negotiations: extension of jurisdiction to third State defendants, arbitration and streamlined mutual recognition (including notification). I can report that the UK has achieved good results on all these issues which are explained further below.

EXTENSION OF JURISDICTION TO THIRD STATE DEFENDANTS

The current position reached on this issue reflects the general opinion expressed at the JHA Informal Council meeting in January this year. At that meeting most Member States (including the UK) opposed the Commission's proposal to extend the rules of EU jurisdiction to cover defendants living outside the EU. The preference was to retain the status quo. This would mean that, in general terms the rules of jurisdiction would not be extended to defendants resident in non-EU states and such cases would continue to be dealt with under national law. This result, if formally adopted, would represent a good outcome for the UK. Two minor exceptions to this outcome are now proposed by the Presidency. These are discussed below but are assessed to be acceptable.

This result would reflect the rationale underlying the Government's negotiating position. This had taken account of concerns expressed by UK interests groups who were concerned that the full harmonisation of the rules of jurisdiction could diminish access to UK courts and could damage their attraction for international commercial litigants, many of whom have little or no substantive connection with the EU, but choose to resolve their disputes in the UK. That choice depends on the liberal nature of the UK's jurisdictional rules, together with the discretion of judges to stay proceedings where they consider that the proceedings should be pursued outside the EU. These long established rules have worked well to date and have resulted in the high volume of international litigation that comes to the UK from around the world. The UK has been consistently keen to ensure that nothing should be done that would imperil this, thereby resulting in business moving outside the EU.

The two minor exceptions concern contracts involving consumers and employees (Articles 16(1) and 19(2)). In cases involving these weaker parties it is proposed that the protective rules of jurisdiction should be extended to these cases where the other party (the retailer or the employer) is resident outside the EU. The result would be that the consumer or employee would be entitled to sue in the courts of the Member State where they are resident. Although we have not supported these extensions to jurisdiction previously, we assess that they will not have significant implications for the UK. The volume of litigation is unlikely to be substantial and the businesses in question will be in any event located outside the EU. We advise that they represent an acceptable compromise for the Commission and those Member States (principally France and Spain) which had originally supported a general harmonisation of jurisdiction in relation to defendants domiciled outside the EU.

ARBITRATION

A significant number of Member States now support reinforcing the exclusion of arbitration from the scope of the Regulation. This is the UK's preferred solution. Such an outcome would, if agreed by the Council, represent a good result for the UK. It would in particular clarify in a recital that proceedings relating to the validity/invalidity of an arbitration agreement would fall outside the scope of the Regulation's rules on the recognition and enforcement of judgments (see footnote 1 to Article 84(2) and paragraphs 2 of the proposed recital). This was the particular concern raised by the European Court of Justice's (ECJ) decision in the *West Tankers* case. There would also be a useful general provision stating that the Regulation would not affect the operation of the 1958 New York

Arbitration Convention (see Article 84(2)). This solution would also have significant advantage that, unlike the Commission's approach, it would not in any way extend external EU competence in this area.

The Commission had attempted in its original proposal to resolve the problems of abusive litigation resulting from the ECJ's judgment in *West Tankers*. This decision created the potential for parties to either frustrate or undermine arbitration agreements by initiating court proceedings in another Member State. However, the Commission's well intentioned solution presented two difficulties for the UK. First, UK arbitration experts were not persuaded that the Commission's proposal dealt fully and adequately with all the technical complexity of the issues at stake and, secondly, although the EU indisputably has power under the Treaty to legislate in this way, the Commission's proposals would have created a measure of additional external EU competence. This would have given the Commission an enhanced role in international negotiations in this area of business, a role which is currently circumscribed by the limited extent of such competence in the face of the general competence of the Member States in this area.

STREAMLINED MUTUAL RECOGNITION

Political agreement was reached by the JHA Council in December 2011 on the abolition of *exequatur*, the process that requires one country's courts to validate the judgments of another before they can be enforced (see Chapter III). The Government was supportive of this as it was felt to be in the interests of judgment creditors, offering the prospect of reducing the time, complexity and costs that would otherwise be imposed upon them. At the same time, it was also agreed by the JHA that all the current protections to safeguard legitimate interests of judgment debtors should be preserved in full and should be resolved in the courts of the Member State where enforcement was being sought. This represents a significant improvement on the Commission's proposal which would, to some extent, have reduced those protections. This reduction would also have been exacerbated by requiring the protection relating to inadequate service of the originating process on the defendant to be resolved only in the Member State of origin.

A further welcome consequence of these improvements is that, contrary to the Commission's proposal, there will only be one procedure for recognition and enforcement. This avoids the complexity of the Commission's proposal which would have provided for two such procedures, depending on the particular type of case.

Notification

A proposal was made during the negotiations to request a mandatory provision to translate (in all cases) the notification of a foreign court decision. This had the support of some Member States whilst others, including the UK, took the view that such an approach was excessive and would detract from any benefit resulting from abolishing the *exequatur* procedure. The Government also took the view that such a provision was not cost effective.

A compromise position has been proposed (see Article 42-2) which could be acceptable to the Government subject to some minor points of clarification, in particular ensuring the appropriate application of a minimum time frame.

OTHER ISSUES

There remains a short list of other outstanding issues:

Choice of Court Agreements

The UK and the overwhelming majority of Member States strongly supported the Commission's proposals on choice of court agreements as an appropriate means of resolving the difficulties arising out of the ECJ's judgment in *Gasser* (a case involving tactical litigation where the parties to a contract had concluded a choice of court agreement). The Commission proposed two reforms. First, where the parties had designated a particular court to resolve their dispute, priority should be given to the chosen court to decide on its jurisdiction. This would be regardless of whether it was the first or second seised in the dispute. Under this proposal any other court would be required to stay proceedings until the chosen court had either confirmed its jurisdiction or, in cases where the choice of court agreement was invalid, declined jurisdiction (see Article 32(2)). The Commission's second proposal was for a harmonised conflict of law rule on the substantive validity of choice of court agreements (see Article 23(1)).

The current text of the Regulation satisfactorily resolves the problems resulting from *Gasser*. It ensures that where parties have elected to choose the court to resolve any dispute between them, (i.e. where they have entered into a choice of court agreement) this agreement will be respected. This means that if one of the parties attempts to instigate proceedings in another Member State court this court has the duty to decline to hear the case because of the existence of the choice of court agreement. Overall, a good result has been achieved by the UK on this matter.

International lis pendens and related issues

The Member States, including the UK, support the proposed international *lis pendens* rules (Articles 34 and 34-0). These confer, on the courts of the Member State, the discretion to stay their proceedings where the courts of a third State is already dealing with the same or a related matter. These flexible rules should be particularly helpful in the context of commercial litigation where it is more appropriate for the third State court to determine the case. It should help reduce the occurrence of competing proceedings.

Trusts

The UK is continuing to seek a recital to alleviate the inflexibility contained in the current wording of Article 5(6) of the Regulation. This provision, because it is limited to proceedings brought against settlors, trustees and beneficiaries, fails adequately to cover certain disputes relating to the internal workings of a trust, particularly where the disputes relate to the activities of “protectors” or “enforcers” who have been created by a trust instrument in order to safeguard the operation of the trust. Because the terms of the Commission’s “recast” of the Regulation preclude the amendment of any of the Regulation’s provisions which were not being amended by the Commission’s original proposal, it has not proved possible to amend Article 5(6). The UK will, nevertheless, try under the Cypriot Presidency to address the substance of the problem by means of a recital.

22 May 2012

Letter from the Chairman to the Rt. Hon Kenneth Clarke MP

Thank you for your letter of 22 May. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 13 June. Unfortunately your letter was not received in sufficient time for it to be considered before the Justice and Home Affairs Council. We decided to retain the matter under scrutiny pending further negotiations and an update on the recitals to the text.

We welcome the underlying approach of

- abolishing *exequatur* whilst retaining the current level of protection for defendants,
- restricting the opportunities to torpedo litigation by artificially exploiting the rules on jurisdiction in respect of litigation relating to arbitration and choice of court agreements,
- excluding third country domiciles from the scope of the proposal, and
- incorporating a flexible *lis pendens* rule in respect of proceedings initiated for the first time in third countries.

We can accept the compromises you mention in your letter as necessary to achieve these objectives.

We should be grateful for an update on further negotiation on this text, including the recitals in due course.

14 June 2012

Letter from the Rt. Hon Kenneth Clarke MP to the Chairman

Thank you for your letter of 14 June advising that the Committee have retained the Brussels I Regulation under scrutiny pending further negotiations and an update on the recitals.

I write now to update you on the outcome of the Council meeting. There was a clear majority of Member States in support of the general approach proposed by the Danish Presidency. Consensus was therefore reached. As the text was still subject to Parliamentary scrutiny in the UK, I abstained from giving formal UK agreement albeit that in practice the text of the Regulation represents a good outcome for the UK on all its key issues. Agreement of the remaining recitals and some technical fine

tuning of the entire Regulation are now being undertaken. This is likely to conclude early in the Cypriot Presidency. It is anticipated that the Regulation will be formally adopted some time in the autumn.

I will of course be sending the final text of the Regulation to the Committee for scrutiny clearance prior to its formal adoption. This will be made available to the Committee as soon as it is published.

17 July 2012

CAPITALS OF CULTURE (12558/12)

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

Thank you for your Explanatory Memorandum of 12 September 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 October. The Committee decided to retain the proposal under scrutiny.

We should be grateful if you would provide an update, in due course, on your progress in negotiating an amendment to involve Member States in the designation of the European Capitals of Culture.

25 October 2012

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

Letter from Norman Lamb MP, Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills, to the Chairman

I am writing to request clearance from scrutiny for both legislative proposals (the Directive on Alternative Dispute Resolution and the Regulation on Online Dispute Regulation) to enable the UK to agree to a General Approach on 30 May. I will of course continue to keep you updated on progress in the negotiations and will write to inform you of developments in the European Parliament.

I am attaching the latest Council text for both legislative proposals. This is being provided under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a *limité* marking. It cannot be published, nor can it be reported in any way which would bring detail contained in the document into the public domain.

[TEXT REDACTED]

I would welcome your response on whether you agree to release both proposals from scrutiny in good time to enable the UK to agree the proposals on 30 May. I am of course happy to answer any further questions you may have.

16 May 2012

Letter from the Chairman to Norman Lamb MP

Thank you for your letters dated 25 April 2012 and 16 May 2012 respectively. They were both considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 May 2012.

You have asked the Committee to clear these proposals ahead of the agreement of a General Approach at the Council to be held on 30 May. Unfortunately, given that the latest *limité* text of these proposals did not arrive in Parliament until the morning of 17 May (the day on which documents are sent to Committee members) the Committee feels that they have not had sufficient time to consider in full their content in order to ascertain whether they are happy to clear the documents from scrutiny. Therefore we retain these proposals under scrutiny.

As for the proposals themselves, we are grateful to you for the clear answers to our questions regarding costs and the legal base, and the Committee read with interest the results of your consultation with stakeholders. As you say it appears that UK stakeholders welcome these proposals in general but they have raised concerns with their detail. The Committee is encouraged by the fact that judging by the content of both of your letters it seems that the Government have taken many of the stakeholders' views on board and approached the negotiations accordingly. Your letter lists a

number of concessions that you have successfully secured to meet stakeholder concerns. It appears to the Committee that from the UK's perspective the negotiations of these proposals have progressed well.

The Committee would welcome an update from you on the key developments to the texts of these proposals in due course.

24 May 2012

Letter from Norman Lamb MP to the Chairman

Thank you for your letter of 24 May 2012 explaining why the Committee did not feel able to clear these proposals from scrutiny ahead of the Council meeting on 30 May.

Can I first thank you for considering my letter of 17 May so promptly. It was unfortunate that the Presidency did not issue a revised version of the texts earlier and that significant discussions on the text were still happening quite near the date of the Council meeting. In particular I felt it was necessary to await the discussions at the meeting of the Committee of Permanent Representatives (COREPER) on 16 May before updating you on what Member States would be asked to agree to at Council. The outcome of that meeting was a critical factor in deciding whether or not the UK should agree the revised texts.

However, I was disappointed that because the Committee did not receive the latest texts until 17 May, the Committee felt it did not have sufficient time to clear the documents from scrutiny.

Given the important amendments that had been secured to both proposals, the fact that we remained hopeful of securing an additional, important exclusion for higher and further education and the need to strengthen our negotiating position for the remainder of the negotiations, I am afraid I decided to override scrutiny on this occasion.

I am attaching the General Approach text for both legislative proposals that was agreed at the Competitiveness Council on 30 May. This is being provided under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a *limité* marking. It cannot be published, nor can it be reported in any way which would bring detail contained in the document into the public domain.

As I have explained in my previous letters, progress on these proposals has been made in a number of areas. I attach an overview of the key changes to the original proposals that have been made in the General Approach text.

By being able to vote in favour of the General Approach at the Council meeting, I was able to secure an important exemption for providers of further and higher education that offer courses which are wholly or partially government funded. Without this exemption the proposals would apply to some further and higher education in the UK because of the particular funding arrangements we have in place whereas in other Member States these services would be outside scope.

Relevant Committees of the European Parliament will be voting on their own amendments to the proposals next month. I will write in due course to inform you of these developments.

13 June 2012

Letter from the Chairman to Norman Lamb MP

Thank you for your letter dated 13 June 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 June.

We note your explanation for the decision to override the scrutiny reserve at the Council meeting held on 30 May. Unfortunately it is the Committee's view that the scrutiny of these important proposals has not progressed smoothly, culminating in your unrealistic expectation that the Committee could consider, digest and clear from scrutiny *limité* texts of these proposals received on the day that papers are circulated. Whilst we accept that recess periods have exacerbated these difficulties it is the Committee's view that it has not been afforded sufficient time or explanation from the Government of these proposals in order to enable it to fully assess both the content and the ramifications of the proposed Directive and Regulation.

For example, the Government's Explanatory Memorandum was submitted to this Committee subject to stakeholder views; this limited the extent to which you were able to comment on the proposals which in turn limited the extent to which the Committee could explore your views in

correspondence. In April, the Committee received under cover of a letter the conclusions of your consultation with stakeholders; these too were submitted to the Committee without accompanying commentary from the Government. Whilst this letter listed a number of concessions that you had successfully secured to the texts, these were not supported by textual analysis either.

Your latest letter continues this disappointing pattern: the inclusion of a lengthy *limité* text submitted without accompanying explanation and only supported with a list summarising the changes to the latest text. Given this context and the fact that you have overridden the scrutiny reserve the Committee wishes to receive a Supplementary Explanatory Memorandum from you clearly explaining the latest texts which were agreed at the Council meeting on 30 May and the Government's views thereon. This will offer the Committee the additional advantage from our point of view of reinstating the scrutiny reserve ahead of the negotiating stage with the European Parliament. In addition, under the circumstances we would appreciate an opportunity to discuss these matters with you in person both in relation to the detail of the proposals and the conduct of their scrutiny. To that end Committee officials will shortly be contacting your officials to arrange a mutually convenient date for you to appear before the Committee.

This leaves one remaining issue. We note that you provided the latest texts "under the Government's authority and arrangements ... for the sharing of EU documents carrying a *limité* marking. It cannot be published, nor can it be reported in any way which would bring detail contained in the document into the public domain". We would welcome an explanation from you as to why the Committee has been provided with General Approach texts on a *limité* basis as this is not the norm and indeed it could be argued that this goes against the very purpose underlying the agreement of a general approach which is supposed to signify a public stance by the Council. Any argument to support the application of a *limité* restriction to these documents and the Committee's consideration of them is undermined by the fact that the texts are freely available on the Council's website.

28 June 2012

Letter from Norman Lamb MP to the Chairman

Thank you for your letter of 28 June regarding my decision to override scrutiny in order to agree the General Approach on the EU Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) proposals at Competitiveness Council on 30 May.

I am sorry that the Committee feels that they did not have adequate time or explanation to full assess the proposals. I will provide a Supplementary Memorandum during the summer recess and would welcome the opportunity to discuss these matters in person after recess. My officials have been in contact with your clerks to agree a suitable date.

Ahead of my appearance in front of the Committee, I would like to take this opportunity to address the issue of the classification of the Council General Approach documents. When we received the General Approach texts from the Council Secretariat, the ODR Regulation still carried a *limite* marking. I was advised that the documents should therefore be provided under the Government's authority and arrangements ... for the sharing of EU documents containing a *limite* marking. We have raised this issue with the Council Secretariat. On 9 July they confirmed that they had mistakenly failed to remove the *limite* marking from the ODR text and that both documents are publicly available and the *limite* restriction no longer applies, although the marking has not been removed.

Prior to recess I would also like to take this opportunity to update you on the progress of negotiations since my letter of 13 June. On 10 July the Internal Market and Consumer Affairs Committee (IMCO) of the European Parliament voted on its amendments to the proposal. Trialogue negotiations will commence in September. We have not yet had the opportunity to fully assess the IMCO Committee amendments but I will provide a full update when I appear before the Committee after recess.

12 July 2012

Letter from the Chairman to Norman Lamb MP

Thank you for your letter dated 12 July 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 25 July. We are grateful to you for undertaking to submit during the parliamentary recess a Supplementary Explanatory Memorandum addressing the latest text of these proposals and for your explanation of the mistaken application of the *limité* restriction to the text agreed at the May Council.

We too look forward to your imminent appearance before the Committee.

26 July 2012

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

As a newly appointed Minister responsible for Consumer Affairs I am signing two Supplementary Explanatory Memorandums on these legislative proposals: one on the proposed Directive on consumer alternative dispute resolution (ADR) and one on the proposed Regulation on consumer online dispute resolution (ODR).

I hope that these will provide the Committee with all that they need to understand the potential impacts of the recent amendments to these proposals that have been put forward by both Council and the Internal Market and Consumer Protection (IMCO) Committee of the European Parliament. I'd be very happy to provide any further information if this would be helpful.

I am looking forward to attending the Committee on 24 October to discuss these legislative proposals further and I hope at that time to be able to give you an update on the negotiations that are just starting in Brussels between the European Commission, Council and the European Parliament. I would like to share the regret of my predecessor that the Committee feels that they did not have adequate time or explanation to fully assess the proposals and I hope that these Supplementary Explanatory Memorandums will help to explain in more detail what these proposals would and would not do and how this would be affected by the proposed amendments.

I am also writing to highlight the fact that the Supplementary Explanatory Memorandum for the Directive on consumer ADR notes that two amendments proposed by the IMCO Committee of the European Parliament may contain obligations in the field of Justice and Home Affairs (JHA) and as such may require an Article 81 legal base.

One of the amendments would require Member States to enable courts to invite parties to use ADR and provide them with certain information about ADR. The other would require Member States to amend limitation and prescription periods so these do not expire during ADR procedures. In policy terms, setting aside the legal issues, these amendments seem reasonable but they would take considerable legal effort to implement and their actual practical impact would be limited given that, at least in the UK, the sorts of dispute in question are unlikely to reach court.

The UK is arguing strongly during the Trilogue negotiations with the European Parliament that this Single Market legislation should not include any JHA obligations and a number of other Member States (for different reasons) are also opposing the inclusion of these amendments. However, it is possible that the Trilogue negotiations will nonetheless lead to the European Parliament (following its expected plenary vote on 19 November) formally submitting to Council a version of the legislation that contains one or other amendment. If so, then I have been advised that the UK may want to consider its Title V Opt-in Protocol to have been triggered.

Although, under the Protocol we should have a 3-month period in which to consider the opt-in, I have also been advised that under the circumstances described above, the UK may want to opt-in to the legislation (if it is decided that this is the right course of action) before it is put to the Competitiveness Council on 10 December. This is because I expect Member States to come under pressure to adopt this Single Market measure by the end of 2012 to coincide with the 20th anniversary of the Single Market. And, as you are aware, the process for the UK to seek to opt-in to legislation after it is adopted is far more complex.

I am writing to you in advance of the Title V Opt-in Protocol being formally triggered because I want to ensure you have the normal 8 week period to give a view on this potential opt-in issue despite the unprecedented circumstances so that, should as we expect, the UK come under pressure to waive its full 3-month period, that is done without prejudice to the Government's scrutiny commitments to the Houses.

I will, of course, keep you updated as negotiations progress on all of the key issues for the UK and, in particular, these amendments that may impose JHA obligations on Member States. I look forward to working in close cooperation with you on this and other important EU consumer dossiers.

15 September 2012

COPYRIGHT AND THE MULTI-TERRITORIAL LICENSING OF RIGHTS IN MUSICAL
WORKS FOR ONLINE USES IN THE INTERNAL MARKET (12669/12)

**Letter from the Chairman to Lord Marland of Odstock, Parliamentary Under Secretary
of State, Department for Business, Innovation and Skills**

Your predecessor's Explanatory Memorandum of 31 July 2012 and Supplementary Explanatory Memorandum of 31 August 2012 were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 October 2012. We decided to retain this matter under scrutiny.

We note that your Explanatory Memorandum did not indicate the Government's view on subsidiarity and we should be grateful for this.

We should also be grateful for information as to the provisions of the proposals relating to the governance and transparency of Collecting Societies which go further than proposed domestic legislation (in addition to Article 12, which you give as an example in paragraph 35 of your Explanatory Memorandum); and also the provisions which the Government regard as unsatisfactory and will therefore be seeking to change in the course of negotiations.

We note that the Commission has specifically rejected extended collective licensing as an option for dealing with the problem of licensing music for downloading whereas this is the approach of the Enterprise and Regulatory Reform Bill. Do you agree with the Commission's approach at the EU level and, specifically, do you agree with the Commission's reasons for rejecting the option of extended collective licensing as set out in its Impact Assessment?

Can you please let us know who has been consulted on this proposal and the results of that consultation.

We should be grateful for a response by Tuesday 30 October.

15 October 2012

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

[FORMERLY SCRUTINISED BY SUB-COMMITTEE G]

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

Following my attendance at the Education, Youth, Culture, and Sport Council on 10 May, I thought it would be helpful to update you on recent developments on the Creative Europe proposal.

In response to my letter of 23 April, the Committee agreed to support the proposed partial general approach on Creative Europe. However, I was subsequently obliged to oppose the Presidency compromise text, because it left selection decisions – i.e. decisions about which projects should receive EU funding under the programme – outside the formal comitology arrangements.

Further advice on this issue indicated that the collective agreement of the European Affairs Committee would be required before the UK could agree to it. Within the timescales involved it was unfortunately not possible to reach agreement prior to the Council, and so it became necessary to oppose the partial general approach, albeit while confirming that we supported all other aspects of the text.

As the Creative Europe proposal is subject to Qualified Majority Voting, the partial general approach was nevertheless agreed by the Council.

The proposal will now be considered by the European Parliament, and I will keep you informed of progress in due course

14 May 2012

Letter from Ed Vaizey MP to the Chairman

As promised in previous correspondences I am sending you a copy of the report [not printed] on the consultation on Creative Europe which we held earlier this year. The report will also be available on

the Department's website, together with the individual responses, from 11 June at: <http://www.culture.gov.uk/consultations/6566.aspx>. I also said I would send you copies of "MEDIA Desk UK – Report on 2012 Survey of Funding Recipients" and the "EU Culture Programme 2007 – 13 Analysis of UK applications and survey of successful candidates" which I enclose [not printed].

29 May 2012

CRIMINAL JUSTICE: THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

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

This is to inform you that the EU Directive on the Right to Information in Criminal Proceedings was published in the Official Journal on 1 June 2012. Member States are required to bring into force measures to comply with the Directive by 2 June 2014.

18 June 2012

CYPRIOUS PRESIDENCY PRIORITIES: JUSTICE

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

Cyprus took over the rotating European Union Presidency on 1 July 2012. I am writing to provide an overview of the Cypriot Presidency's priorities in the areas of justice on which the Ministry of Justice leads. I hope that this will help in the planning of the scrutiny of dossiers that are likely to be considered by the Justice and Home Affairs (JHA) Council during this period.

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

23 – 24 July (Informal Council) in Nicosia, Cyprus

19 - 20 September in Brussels

25 – 26 October in Luxembourg

7 – 8 December in Brussels

In the area of criminal justice, the Cypriot Presidency will take forward negotiations with the European Parliament on the draft Directive on **the right to access to a lawyer in criminal proceedings and on the right to communicate upon arrest**. This is the third measure of the **"Roadmap" to strengthen the procedural rights of suspected or accused persons in criminal proceedings**, which is part of the Stockholm Programme. The UK did not opt in to this directive because the Commission's proposal as originally drafted would have had an adverse impact on our ability to investigate and prosecute crime. We are actively negotiating in order to improve the Directive with a view to considering whether to opt in post adoption, in the event our concerns are met. We will consult Parliament on any decision to opt in post adoption.

The Cypriots will also look to adopt the **Directive on victims' rights** and also continue negotiations on **the Regulation on mutual recognition of protection orders in civil matters**. The Government has opted in to both proposals.

The Cypriots will also continue negotiations on the **Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)** and the **Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data**. The UK did not invoke the opt-out under the Schengen Protocol on the Directive. The Presidency will also continue the work on the proposed **EU-US Data protection Agreement**.

Negotiations on the **accession of the EU to the European Convention on Human Rights (ECHR)** will also continue under the Cypriot Presidency. We shall keep you informed of developments in this area.

In the area of judicial cooperation in civil matters, the Presidency will focus on the **draft Regulation on a European Account Preservation Order**. The UK did not opt in to this proposal because of concerns about the lack of safeguards for defendants but we hope to amend the text during negotiations to enable a post-adoption opt in. This draft Regulation will be discussed at the Informal JHA Council on 23-24 June.

The Cypriots will seek to finalise the work for the adoption of **the proposal to revise the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)**. The UK has opted in to this proposal.

The Cypriots will also take forward negotiations on the proposed **Regulations on Matrimonial Property Regimes and the Property Consequences of Registered Partnerships**. The UK has not opted in to these proposals and given the differences between the UK legal systems and those of other Member States in this area we are unlikely to opt in post adoption.

The proposals for **the Justice and Rights and Citizenship funding programmes** are part of the package of the Multiannual Financial Framework. The MFF will be a top priority for the Cypriot Presidency, who are aiming for a final agreement before the end of 2012. The proposals for these two programmes will be considered by the European Parliament in September, the Cypriots will then take forward trilogue negotiations.

The Presidency will also take forward negotiations on the **Common European Sales Law**, however it is unlikely to be one of their priorities during their tenure. The MoJ will publish its report on the responses to its Call for Evidence in the autumn.

17 July 2012

DRAFT AGREEMENT ON A UNIFIED PATENT COURT AND DRAFT STATUTE (9224/11, 9226/11, 11533/11)

Letter from Baroness Wilcox, Parliamentary Secretary for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

I am writing to inform you of an item relating to the Draft Agreement on a Unified Patent Court and draft statute which is on the agenda for the 30 May Competitiveness Council. We have not received any additional information regarding this point but the Danish Presidency is seeking to make progress on political agreement on this aspect of the Patent package.

As you are aware, negotiations on the Unitary Patent and language Regulations, the location of the Patent Court, and the intergovernmental agreement (establishing a Unified Patent Court) have reached an advanced stage but have stalled over the location of the central division. There are also a number of wider operational aspects related to the Patent Court which will also need to be considered further to ensure users are provided with a better alternative to the current system.

As I indicated in my letter of 28 March to Lord Roper, the Danish Presidency has been seeking consensus on the whole Patent package including the Court agreement. The UK Government will continue to be an active and constructive participant in these discussions in order to secure the best overall outcome for wider UK interests.

I hope this information is helpful and I will continue to keep the Committees updated on any further developments.

18 May 2012

Letter from Baroness Wilcox to the Chairman

I wrote on 18 May to inform you that the draft agreement was on the agenda for the Competitiveness Council on 30 May, and that the Danish Presidency was seeking political agreement at this meeting. I also mentioned that, at the time of writing, we had not received additional information on this item.

I can now report that no new proposals or amendments regarding the draft agreement were put forward in advance of the Competitiveness Council and, whilst there was a brief discussion on the location of the central court, there was no change in Member State positions, nor was there any discussion on substantive policy issues.

I expect this issue to be discussed again at the European Council in June. I will continue to keep your Committee updated on any further developments.

I hope this is helpful.

31 May 2012

Letter from Baroness Wilcox to the Chairman

I wrote on 31 May to inform you that no substantive discussions on the Patent Court took place at the May Competitiveness Council and no agreement was reached. I also reported that negotiations would resume at the June European Council.

I can now report that we have successfully secured key changes in the design of the patent system that stakeholders had requested, namely that Articles 6-8 should be removed from the Patent Regulation. This change will safeguard against delays and uncertainty in settling patent disputes with which our stakeholders were concerned.

We have also been able to secure a vital part of the Court covering the pharmaceutical and life sciences industries for London. This will further reassure stakeholders about the high quality of the Court.

Coreper will be asked tomorrow to agree the change to the Patent Regulation as an amendment to the compromise proposal which is currently scheduled for a first reading vote in the European Parliament on 4 July.

Many stakeholders have reacted positively to this outcome, which allows us to take forward more detailed work to prepare the Agreement for signature and finalise the Rules of Procedure in the coming months.

I am grateful to the Committee for their interest in this file and hope this information is helpful.

2 July 2012

Letter from the Chairman to Baroness Wilcox

Thank you for your letter dated 2 July 2012. It was considered by the Justice and Institutions Sub-Committee at its meeting of 11 July 2012. We also take this opportunity to thank you for the two letters dated 18 and 31 May which kept the Committee informed about the ongoing negotiations.

We note that the European Council has decided to remove the provisions governing infringement from the Patent Regulation ahead of a vote in the European Parliament on 4 July. You have told us during the course of our lengthy correspondence and when you gave evidence to us that the inclusion of these articles in the Patent Regulation was not supported by UK stakeholders. Can you tell the Committee what forms the basis of the stakeholders' fears?

The Committee is also concerned that the suggestion by the European Council to the Council of Ministers that they remove the offending provisions from the Patent Regulation to which a General Approach was agreed in June 2011 may well have negative consequences for the ongoing progress of this dossier. Our concerns arise in relation to the ongoing negotiation with the European Parliament, and the views of the Court of Justice; in relation to the latter in light of its opinion on the incompatibility with the Treaties of the failed 2009/10 incarnation of the agreement, in part due to the lack of adequate preliminary ruling provisions.

- What in your view will be the effect of removing Articles 6–8 from the Patent Regulation?
- Does the removal of Articles 6–8 render the Patent with Unitary Effect worthless?
- What will be the impact of removal on the respective jurisdictions of the Unified Patent Court and the Court of Justice?
- Will the European Council's intervention jeopardise the ongoing discussion of this important dossier?

12 July 2012

Letter from Baroness Wilcox to the Chairman

Thank you for your letter of 12 July about the June European Council and the political agreement to remove articles 6 to 8 from the Patent Regulation.

You have asked a number of questions about the removal of these articles and the basis for stakeholders' concerns. The arguments against their inclusion have been made very forcefully by the patent judiciary and by industry users who will be holders of a unitary patent.

The primary concern expressed by stakeholders is that by including these articles in an EU regulation, the European Court of Justice (ECJ) would take on the extra role of interpretation of the meaning of infringement provisions. This additional process of judicial consideration, in what are essentially private party commercial disputes, risks adding delays and uncertainty to the process. Henry Carr QC has suggested that referring questions of interpretation to the ECJ could delay the process by up to two years.

There is also concern from stakeholders about the lack of experience at the ECJ in patent law. The uncertainty this creates around potential preliminary rulings would affect business investment decisions, innovation and growth. Indeed it might even make the unitary patent a less attractive choice to patent applicants.

Users tell us that there is no point in having a system which is worse than what is currently available and that key success criteria will be timeliness and consistency of judgments.

I also note the concerns of your committee that removing these provisions from the Patent Regulation might have negative consequences for the ongoing progress of this dossier. I set out below my response to the specific points in your letter:

THE EFFECT OF REMOVING ARTICLES 6—8 FROM THE PATENT REGULATION

Removing articles 6 to 8 from the regulation would avoid the European Court of Justice having to take on an extra role of interpretation of the meaning of the infringement provisions for the Unitary Patent in what are essentially private party commercial disputes.

Under the current proposals the Unified Patent Court would assume the specific role of making decisions on infringement of European bundle patents without needing to refer questions of interpretation to the ECJ. It is therefore sensible and conducive to harmonisation and expediency for it to assume the same role for the Unitary Patent.

THE IMPACT ON THE PATENT'S UNITARY EFFECT

In our opinion articles 6 to 8 are not necessary, article 3 of the draft regulation is sufficient to provide Unitary Protection. Article 3 of the draft regulation states:

“1. A European patent granted with the same set of claims in respect of all the participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection.

2. A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all the participating Member States.

.....It may only be limited, transferred or revoked or lapse in respect of all the participating Member States.”

This view is also set out in published legal literature, in particular in the opinions of Professor Krasser of the Munich Institute of Technology and the Max Planck Institute for Intellectual Property and Competition law (18 October 2011), and Professor Sir Robin Jacob (retired Lord Justice) (2 November 2011).

Professor Krasser's opinion has been endorsed by EPLAW, an association of European patent lawyers and judges in a statement issued on 29 October 2011.

THE IMPACT OF REMOVAL ON THE RESPECTIVE JURISDICTIONS OF THE UNIFIED PATENT COURT AND THE COURT OF JUSTICE

The European Court of Justice will continue to interpret EU law and ensure its equal application across all EU member states. In the case of the patent regulation the nature of infringement, which will be specific to a particular case between private parties, will not be defined within the regulation.

Patent rights are clearly articulated elsewhere in law, including in the unified patent court agreement, the European Patent Convention, and in national law. There is a high level of legal clarity over the rights that accrue to patent holders.

THE IMPACT ON ONGOING DISCUSSION OF THIS IMPORTANT DOSSIER

The European Council Conclusions recommending deletion of articles 6 to 8 were published days before a planned first reading vote on the regulation by the European Parliament. It is, therefore, understandable that the European Parliament has taken the decision to allow more time for MEPs consider the latest developments.

We will work with other European counterparts to provide the European Parliament with information and advice to help it to finalise its consideration of this important dossier. Whilst the added delay is unfortunate, it is clearly in the UK's best interest to secure an agreement which addresses the concerns of our stakeholders.

I am grateful to the Committee for their interest in this file and hope this information is helpful.

25 August 2012

Letter from Lord Marland of Odstock, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills to the Chairman

My predecessor, Baroness Wilcox, wrote to your Committee in July with an update on the Unitary Patent negotiations and the political agreement reached at the June European Council. I understand that your committee has cleared the regulations from scrutiny but I would like to take this opportunity to provide you with an update on recent developments and to highlight some of the decision points which are coming up.

The draft Patent Regulation will require updating in order to implement the suggestions from the June agreement. However the European Parliament's JURI committee has wanted to seek reassurance that such a deletion is compatible with EU law. Our view is that it is compatible. The Presidency is working to find text that would be acceptable to the Council and Parliament.

The next opportunity for Member States to indicate views on any amendments to the draft Patent Regulation would be at a future COREPER. If the changes to be proposed by the Presidency fulfil the terms of the June agreement, the UK will indicate its support for them for the purposes of the ongoing negotiations.

If the Council of Ministers and the European Parliament can reach agreement on the proposals, the regulations could be adopted at first reading. The first opportunity for an EP plenary meeting to agree this on behalf of the Parliament is the 22 October but given other pressures on the agenda this vote could be put back to November.

The final text of the Languages Regulation may include some minor revisions but these are not expected to be substantive. I will write to you again once we have details of the final text.

I am grateful to the committee for their interest in these files and I hope you will find this information helpful.

10 October 2012

Letter from the Chairman to Lord Marland

Your predecessor's letter dated 25 August 2012 was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 October 2012.

We have decided to retain the proposal under scrutiny. We are grateful to Baroness Wilcox for addressing our questions on the impact of the European Council's decision to remove Articles 6-8 from the Patent Regulation. We ask that you keep the Committee informed in due course of the situation as it develops.

15 October 2012

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

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

Thank you for your letter dated 3 May 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 May 2012.

We have decided to retain the proposal under scrutiny. We note that your letter asked the Committee to clear this proposal from scrutiny ahead of its agreement at the Justice and Home Affairs Council to be held on 8 June. Having decided not to opt in to this proposal the UK does not have a vote at the Council meeting in June; it is therefore the Committee's view that there is no danger of an override but, as we retain it under scrutiny the scrutiny reserve will continue to operate. This approach has the advantage for the Committee of keeping the proposal under scrutiny ahead of any review of the Government's decision not to opt in to this proposal once it has been adopted; which has been the Government's stated intention.

As for the substance of your letter, the Committee is very grateful for your detailed explanation of the latest text of this proposal. Whilst we note that key aspects of the latest text remain subject to negotiation many of the Committee's key concerns with the proposal as originally drafted have been addressed to the Committee's satisfaction. In particular, (i) the removal of the provisions governing the admissibility of evidence, (ii) the narrowing of the Directive's scope in order to exclude any preliminary questioning of the suspect, (iii) the removal of the provisions addressing witnesses who during the course of questioning become suspects, (iv) the change from a right to consult a lawyer on a face-to-face basis to a right to communicate, and (v) the greater leeway afforded Member States who wish temporarily to derogate from the Directive's principles when faced with "compelling reasons" to do so. We recognise that given the ongoing negotiation of this matter these changes too will be subject to agreement by the Council and with the European Parliament.

There are, however, two issues of substance which the Committee wishes to address. The first is the extent to which states must provide access to a lawyer for those who cannot afford one, which we note remains subject to negotiation in the Council. This Committee shares your concern with the current text which draws a distinction on access rights between those on the one hand who can afford a lawyer and the state is required to facilitate access, and those on the other who, unable to afford a lawyer, only receive access rights on the deprivation of liberty. This is an unwelcome development. Like you our preference would have been a requirement that for those who cannot afford a lawyer one would be provided regardless of the deprivation of liberty.

The second issue concerns the exclusion of minor offences from the proposal's scope. As you are aware the Committee has had some concerns regarding this aspect of the proposal but we too welcome the proposed solution of only excluding those minor offences from the Directive's scope where "only a fine can be imposed as the main sanction and deprivation of liberty cannot". We agree with you that this "flexibility takes into account [the] different approaches of Member States to similar ways of dealing with minor offences". We do however have one question regarding the boundary between the inclusion/exclusion of minor offences: are you able to explain to the Committee the circumstances in which the law involving the breathalyser will be caught by the proposed Directive?

We look forward to hearing from you in due course after the Justice and Home Affairs Council in June.

24 May 2012

Letter from the Rt. Hon Kenneth Clarke MP to the Chairman

Thank you for your letter of 24 May and for confirming that the Committee would not consider the agreement of a General Approach at the Justice and Home Affairs Council on 8 June to be a scrutiny override, because having decided not to opt in, the UK did not have a vote. I note the Committee's interest in scrutinising any review of the Government's decision not to opt in to this proposal once it has been adopted.

A copy of the text that was agreed by Ministers is enclosed. Since I wrote to you on 3 May only a small number of changes have been made to the text and I remain content that it represents a better balance between the rights of defendants and the wider interests of justice than the Commission's original proposal.

There has been a change to the provision of the Directive (article 3.4) relating to the content of the right of access to a lawyer for those deprived of their liberty. The draft that I sent to you on 3 May stated in the operative text that where a person is deprived of his liberty, the state should provide a lawyer. However, following opposition from a number of Member States, the operative text of the Directive has been changed. It now sets out that where a person is deprived of his liberty Member States shall “make the necessary arrangements to ensure that a suspected or accused person is in a position to effectively exercise his right of access to a lawyer.” This is accompanied by a recital (number 17) setting out how Member States should achieve this, “including by arranging for the assistance of a lawyer when the person concerned does not have one.”

Although our preference would have been for a text which required in the operative text for a lawyer to be provided, we are content with the text as it currently stands because it is clear that the state needs to take concrete steps to ensure that the person has a lawyer, rather than merely allowing a person access to his own lawyer. I made clear in my intervention that a positive obligation on Member States to ensure that a person can exercise his rights is key. At Council, Member States called for the Commission to publish a Directive on Legal Aid, and a Declaration to that effect was agreed. The Commission has committed to publish such a Directive in 2013. I noted that the concerns which had prevented us from opting in at the outset of negotiations in terms of potential impact on investigation and prosecution have been substantively dealt with, and if this remains the case, subsequent to discussions with the European Parliament, we will consider opting in post adoption. We will of course consult Parliament on any such decision.

In your letter, you asked me to explain the circumstances in which the law involving the breathalyser will be caught by the proposed Directive, with particular reference to the boundary between inclusion and exclusion of minor offences. In Member States such as the UK, where most offences involving drink driving are subject to a custodial penalty, article 2(4) would not have the effect of excluding those offences from the scope of the Directive. As you may recall, we were concerned that the Commission’s proposal set out that access to a lawyer should be granted before the start of “any questioning,” which could have encompassed routine questions asked by the police to someone suspected of a drink driving offence, before administering a breathalyser test. Any requirement to wait for a lawyer to arrive before asking those questions could delay administering the test which could prejudice the acquisition of evidence. This concern was shared by a large number of Member States. Article 3(2)(a) and recitals 13 and 16 now set out that the right to access a lawyer should apply before “official interview” by the police or other law enforcement authorities. The recitals make clear that “official interview” excludes questioning designed to establish whether or not a criminal offence has been committed in the first place. Questions asked by the police at the road-side are listed as an illustrative example of such questioning and would be outside of the Directive’s scope. In the event the police go on to officially interview the suspect, there would be a requirement to ensure access to a lawyer.

The provision relating to minor offences at Article 2(4) has been amended to exclude offences from the Directive, for which deprivation of a liberty may technically be a possible sanction for the offence, but which would only be imposed exceptionally. For example, mandatory sentencing guidelines may rule-out the imposition of a custodial sentence in respect of a particular offence save in truly exceptional circumstances. In such cases, the Directive will apply only once the case is heard by a criminal court. This amendment has been incorporated in order to reflect the differing approaches of Member States to access a lawyer in relation to cases of minor offending.

Finally, I note that two declarations were put forward by Member States. Italy, Spain and the Commission issued a joint declaration setting out their concerns relating to certain aspects of the Directive, including the scope of derogations, setting out that derogations from confidentiality in particular should be subject to “law and judicial control”. They also set out that the exclusions for minor offences should be limited to those “duly and objectively justified”. They recommend that negotiations should start with the European Parliament with those concerns in mind. Portugal made a declaration setting out that the Directive should be more ambitious, that minor offences should be within its scope, and should be subject to more restrictive derogations. It reserves the right to discuss these issues in the context of Trilogue.

We understand that the LIBE Committee of the European Parliament plan to vote on their draft amendments to the proposal in early July, following which trilogue negotiations will begin. I will provide you with an update in due course.

21 June 2012

Letter from the Chairman to the Rt. Hon Kenneth Clarke MP

Thank you for your letter dated 21 June 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 11 July 2012.

We have decided to retain the proposal under scrutiny.

We are grateful to you for the latest update on this proposal's negotiation and for your explanation of the Directive's scope in relation to the law concerning the breathalyser.

We are however disappointed to read of the further narrowing of the state's obligation to provide a lawyer to those who cannot afford one. As we said to you in our letter of 24 May we see the dilution of this responsibility as an unwelcome development and in this latest draft the trend has continued. The original aim of this proposal was to ensure that defendants and suspects would be assured of their rights to access a lawyer as protected by the European Convention on Human Rights as clarified by the decision in *Salduz v Turkey*. In the *Salduz* judgment the ECtHR said that "... the right of everyone charged with a criminal offence to be effectively defended by a lawyer ... is one of the fundamental features of a fair trial". The judgment continues "... in order for the right to a fair trial to remain sufficiently 'practical and effective' ... as a rule, access to a lawyer should be provided from the first interrogation of a suspect by the police, unless it is demonstrated in the light of particular circumstances of each case that there are compelling reasons to restrict this right". The Court concluded that "[t]he rights of defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for conviction". Despite the fact that all EU Member States are subject to the ECHR the Commission's extensive impact assessment which accompanied this proposal identified significant disparities between the Member States on access to a lawyer.

In light of these factors the Committee is concerned that in further restricting the obligations on the Member States to provide a lawyer to those who cannot afford one the participating states have potentially lost sight of the original purpose underlying this proposal.

We look forward to considering in due course the revised text, and to receiving an update on the progress of the negotiations with the European Parliament.

12 July 2012

DRAFT RULES OF PROCEDURE OF THE COURT OF JUSTICE (8786/11, 8787/11, 11147/11, 8020/12)

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

Thank you for your Explanatory Memorandum dated 20 April 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 13 June 2012.

We have decided to retain the proposal under scrutiny.

We note your view that subject to the agreement of the wider package of reforms that this second draft "when considered as a whole [is] an improvement on the existing text" and adequately addresses your concerns. During the course of our previous correspondence on the first draft of the Court's proposed Rules of Procedure we had discussed the proposed power of the Court to limit the translation of overly excessive pleadings to those deemed by the Court as essential; we see that the Court has compromised on this issue. Given the conclusions set out in our Report *The Workload of the Court of Justice of the European Union* (14th Report of Session 2010-2011, HL paper 128) we hope that this will not adversely affect the Court's ability to manage its ever increasing workload.

We look forward to hearing from you in due course as the discussion of this matter develops.

14 June 2012

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

I am writing regarding the package of efficiency reforms to the Court of Justice of the European Union (CJEU) proposed by the Court in March 2011. Negotiations on these documents were ongoing for some time without substantial progress, and I apologise to the Committee for the resultant delay in providing you with an update. Following the developments detailed below, the vote on this package in

Council has now been scheduled for 24 July. I would therefore be grateful if you could give this your early attention.

Negotiations were stalled for so long due to the lack of agreement among Member States on the most significant and controversial reform: the increase to the number of Judges in the General Court. In May 2012 the Danish Presidency decided to remove that reform from the draft regulation amending the CJEU Statute. Although it has been removed from the current package, the reform to the number of Judges clearly merits further discussion. The Council is therefore now in the process of establishing a Friends of the Presidency Group to examine an increase to the number of Judges, as well as wider potential reforms to the CJEU. The UK will of course participate fully in this group, which will report back to Coreper by December 2012. This is an excellent opportunity for us to seek more substantial and varied reforms taking into account those set out in the House of Lords report on the CJEU, and I would appreciate any views you may like to offer in that context.

The remaining package of reforms is now as follows:

- A. Doc. 8787/11: a regulation amending the Statute of the CJEU and Annex I of that Statute, including the following elements:
 - i. **To establish the office of the Vice-President of the Court of Justice** as set out in the original EM;
 - ii. **To remove the requirement to read the report of the Judge-Rapporteur at the hearing** as set out in the original EM;
 - iii. **To modify the composition of the Grand Chamber:** the detail here has been slightly changed from that in the original EM. The Grand Chamber will be composed of at least three Presidents of Chambers of five Judges, as well as the President of the Court, the Vice-President, and other judges. The quorum of the full court is also increased to 17.
 - iv. **To provide for the possibility of attaching temporary Judges to the EU Civil Services Tribunal (CST):** as set out in the original EM. This will be implemented by means of the separate regulation detailed at C.
 - v. One further element has been added to the regulation, as recommended by the Commission in its opinion of Sept 2011: **to establish the office of Vice-President of the General Court.**
- B. Doc. 8020/12 and 11147/11: various changes to the Court's rules of procedure: these changes are detailed in my EM of 20 April 2012.
- C. Doc. 8786/11: a regulation relating to temporary Judges of the EU Civil Service Tribunal (CST), which is unchanged in substance following my EM of 28 April 2011.

Please note that two elements have been removed altogether from the original proposal for reform to the CJEU Statute, as follows:

- i. **To increase the number of Judges of the General Court by 12, from 27 to 39:** removed for the reasons detailed above.
- ii. **To abolish the 10-day grace period given to litigators for lodging proceedings:** removed due to Member States' unanimous agreement that it would be impractical.

When I wrote to you on the rules of procedure measure within this package, on 20 April this year, we did not yet have a date for the final agreement in Council, due to the continued lack of agreement on the number of General Court Judges. Following the Danish Presidency's decision in May on that issue, detailed above, this dossier has progressed extremely quickly in both the European Parliament and the Council. This fast progress is due to the CJEU's request that the reforms be finalised as quickly as possible, so that they can be established prior to the partial renewal of Judges on 6 October 2012.

On that basis, the European Parliament will now vote on 5 July, and the Council Secretariat informed UK officials on 28 June that the Council vote will take place on 24 July. I fully appreciate that this provides your Committee with a very short timeframe in which to complete scrutiny processes. I can assure you that the Government made every effort to extend this timeframe, and indeed was successful in preventing the vote from taking place earlier still.

On balance, the Government welcomes what I consider to be a modest but useful package of reforms, which will make a small step towards improving the functionality of the Court without incurring any significant costs. This can only be good for British businesses operating in the EU, which at the present time can find their activity impeded by delays in the enforcement of Single Market legislation. All three measures meet the Government's objectives, and our intention would therefore be to support them in Council. As mentioned above, I would therefore be very grateful if you are now able to give this your early attention, in advance of the Council vote on 24 July.

Alongside your Committee's scrutiny of these regulations, I'm sure you are aware that the regulation amending the CJEU Statute is subject to section 10 of the EU Act 2011. On that basis, the Government will only be able to vote in favour of that regulation on 24 July following positive resolutions from both Houses. Debates have been scheduled on 12 July in the House of Commons and on 23 July in the House of Lords. To inform the debates, I will deposit the draft regulation amending the CJEU Statute in the Library of the House following the vote in the European Parliament on 5 July. These debates will not formally cover the rules of procedure or the CST temporary Judges, except in the context of their relationship with the CJEU Statute reforms. As your Committee has been monitoring the passage of this legislation and holds the expertise on European matters, it would be extremely valuable if you are able to provide opinions on the reforms in time for those debates. I do of course appreciate that this would make the timetable substantially tighter, and I regret that I was not able to give Scrutiny Committees and Parliament more notice of the timing of decisions on this reform package. I can assure you that the Government has made its concerns on this point clear both to the Council and the Cypriot Presidency.

3 July 2012

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

Thank you for your letter dated 3 July 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 18 July 2012.

We have decided to clear these three proposals from scrutiny including both drafts of the Rules of Procedure numbered 11147/11 and 8020/12 and both drafts of the Statute numbered 12719/11 and 8787/11.

Given the clear conclusions in our Report into the Workload of the Court of Justice of the European Union (14th Report of Session 2010-2011, HL Paper 128) published in April 2011 it will come as no surprise to you that in our view the most significant information from your letter is that the Member States have failed to agree any increase in the General Court's judiciary; this represents a very disappointing development. You say that the Member States intend to deal with these matters in a Friends of the Presidency group; the Committee remains to be convinced that this forum will prove a more effective mechanism than the Council of Ministers as a means of addressing the Court's urgent workload problems. Indeed, passing this problem from the Council to a Friends of the Presidency group could be viewed as an abdication of the Member States' clear responsibilities to deal with the Court's problems.

The Committee's concern with the Member States inaction is highlighted by the latest statistics included in the Court's 2011 Annual Report. Dealing with the General Court first; in 2009 the General Court completed 555 cases with 1191 cases pending. The worrying nature of the General Court's problems was in the Committee's view best summarised by the Confederation of British Industry's evidence to our inquiry which pointed out that in 2009 a competition case took on average 33.1 months to complete. These statistics included in the Court's 2009 Annual Report, plus the evidence we took during our inquiry, informed the clear conclusion that the General Court's judiciary needed to be increased, and urgently. The Report said:

"Whilst we recognise the cost implications, if the Member States are serious about addressing the GC's workload problems this reform represents the best and most flexible long term solution. It must surely be possible for the Council to agree to appoint the necessary number ... which the Court could recommend at this stage."

Turning to the Court's most recent Annual Report, this shows that in 2011 the General Court completed 714 cases (an increase on 2009 of 159) but that 1308 cases were pending (an increase of 117). Despite the fact that the General Court dealt with 159 more cases than in 2009 the backlog continued to grow to 117 cases. To draw again on the headline statistic concerning competition cases which so concerned the Confederation of British Industry; in 2011 a competition case took on average 50.5 months to complete, that is more than 4 years. It is plain from the statistics that without urgent structural reform i.e. an increase in its judiciary, the General Court will continue to struggle to

manage its existing workload and, whilst its future workload continues to expand, time is not going to solve this problem—the longer the Member States take to address it the worse the problem grows.

The Committee repeats its disappointment with the Member States' continued inability to agree to appoint more judges to the General Court. The Committee's disappointment is exacerbated by the fact that the statistics clearly show that, despite an increase in the number of cases dealt with by the General Court, its workload problems have continued to grow inexorably.

Turning to the statistics relevant to the Court of Justice, in 2009 the Court completed 588 cases with 741 pending, and by comparison in 2011 it completed 638 cases with 849 pending. The Annual Report shows that by far the bulk of the Court of Justice's cases are preliminary rulings, and whilst the average time taken to complete these cases has fallen from 2009 levels (17.1 months) to 16.4 months in 2011, the Court of Justice has seen the number of preliminary reference requests increase from 302 in 2009 to 423 in 2011. In his evidence to the inquiry, former Advocate General Professor Jacobs warned in the context of preliminary rulings that "[F]rom the point of view of the Court of Justice, the difference between 300 cases and 400 cases is pretty substantial".

As for the expansion of the Court of Justice's jurisdiction into the Area of Freedom, Security and Justice matters, post the adoption of the Treaty of Lisbon, in 2011 the Court of Justice received 44 requests for preliminary rulings in this field, the second highest number after taxation (66). In 2009, albeit in the year the Lisbon Treaty was adopted, the Court received just 17 requests. As in the case of the General Court, the latest statistics support the conclusions in the Committee's Report in which we said that "the window of opportunity has closed within which the Court of Justice was able to avoid longer delays because the increase in its membership preceded an expected increase in its workload". We remain of the view that the twin pressures of the expansion of the Court's jurisdiction into the Area of Freedom, Security and Justice plus the increase in the EU's membership to 27 states will inevitably have an impact on the Court of Justice's ability to manage its workload. We continue to believe that the Court will experience its own crisis of workload soon. Despite the fact that the Government refuted this conclusion in its formal response to the Report, the ongoing upward trend in cases before the Court of Justice highlighted by the statistics supports the Committee's view.

In relation to both the General Court and the Court of Justice, we believe that the Member States ignore this problem at their peril; as we said in our Report in 2011, there is a price to be paid for litigants, individuals and the Member States in allowing the EU's judicial institution to suffer sclerosis in the delivery of justice. This cost will be felt not just financially but in bringing both the Court of Justice of the European Union and the wider EU into disrepute whilst at the same time undermining their legitimacy.

In clearing these documents from scrutiny we hope that the Government's agreement of them will at least enable the Court to alleviate in a small way the problems they face. But, in relation to the General Court in particular, we remain of the view that any action short of increasing the judiciary will be tinkering at the edges of the problem and that the best long term solution to their difficulties remains more judges. Once again we call on the Member States to address this issue urgently.

We look forward to making these points in the debate of the Statute on Monday 23 July.

19 July 2012

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

Thank you for your letter of 19 July 2012, informing me of the Committee's decision to clear from scrutiny the proposals relating to the reforms to the CJEU. You raised a number of points within your letter, and expressed the intention of discussing these with my colleague Lord Howell in the House of Lords section 10 debate on 23 July.

In that context, I will not reiterate here the points which Lord Howell has already made. However, I would like to take this opportunity to assure you I appreciate and share your concerns about the backlog at the General Court, and the increasing workload both at the General Court and the Court of Justice. The Government is considering all options for further reform carefully, taking into account the conclusions in your Report on the Workload of the Court of Justice of the European Union, in order to promote effective solutions in our discussions with the Court and the Commission, and with other Member States. I will keep you advised of this work as it progresses.

20 August 2012

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

Thank you for your letter dated 20 August 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 October 2012.

Our correspondence on this proposal and the debate on 23 July have made the Committee's disappointment with the Member States' continuing inability to address the Court of Justice of the EU's ongoing workload problems abundantly clear. However, having cleared these proposals from scrutiny we should like to make it clear that we wish to be kept informed of these negotiations; in particular, we will expect a thorough explanation of the Friends of the Presidency's Report and your views of their proposals for reform. Incidentally, is it still anticipated that the Friends of the Presidency Group will report by Christmas?

We look forward to considering your answer to our question by Tuesday 30 October.

15 October 2012

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

Thank you for your letter of 15 October, in response to my letter of 20 August, on the subject of reforms to the Court of Justice of the European Union.

I understand and share the Committee's concerns about the Court's ongoing workload problems, and can assure you that the Government is making every effort to find solutions to those problems, working within the Friends of the Presidency Group. I will provide a detailed progress report both to your own Committee and to the Commons European Scrutiny Committee in November.

In response to your question, I can confirm that the Group still intends to report by Christmas. I will of course share that report with you once it is available, and will set out the Government's perspective on it at that time.

31 October 2012

EQUAL OPPORTUNITIES: RIGHTS OF PERSONS WITH DISABILITIES (12892/08)

[FORMERLY SCRUTINISED BY SUB-COMMITTEE G]

Letter from the Chairman to Maria Miller MP, Parliamentary Under Secretary of State, Department of Work and Pensions

Thank you for your letter of 8 May which was considered on 13 June by the Justice, institutions and Consumer Protection Sub-Committee which has assumed responsibility for this dossier from the former Social Policies Sub-Committee following the reorganisation of our sub-committees at the beginning of this Session.

We are grateful for the further information you have provided and now clear the documents from scrutiny. No reply to this letter is expected.

14 June 2012

EU STAFF REGULATIONS (18638/11, 13327/12, 13176/12, 13270/12)

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

I am writing to provide you with an update on negotiations in Council on the above document, the subject of my Explanatory Memorandum (EM) of 16 January 2012. You currently retain this document under scrutiny pending receipt of an Impact Assessment from the Commission. Despite repeated requests from the UK and other Member States, the Commission has so far declined to provide such an Impact Assessment. It is clear, however, that the current proposal would not make a substantive contribution to the 25% financial savings this Government would like to see in the administrative Heading 5 of the Multi-Annual Financial Framework (MFF). In that context, we continue to call for a much more ambitious proposal – in particular, we are lobbying the Commission to model savings of €5bn, €10bn and €15bn on the Staff Regulations over the next MFF.

The detailed negotiation within Council is progressing on the same basis. The Danish Presidency has now produced an informal 'outcome of proceedings' document, outlining the current Council position on the key elements within the proposal, provided in annex for your information. In general, the current Council position is in line with the UK's position as set out in my EM: the Council opposes substantial sections of the proposal, calling for wider reforms and higher financial savings. Further detail on the two provisions within the current proposal which are of most interest to the Government, the Salary Adjustment Method and the provision on 'geographical balance', is provided below.

Your predecessor Lord Roper wrote to me on 2 February this year, regarding the Government position on the Salary Adjustment Method. As I said in my response to Lord Roper of 27 March, the Government does not consider that the current or proposed versions of the Salary Adjustment Method are either acceptable or justified. In his response of 26 April, Lord Roper noted that the Committee also took this view. I am therefore glad to be able to inform you that the Council has agreed a clear alternative proposal on the Salary Adjustment Method, which is in line with the UK's red lines and meets our main objectives, including achieving financial savings, ensuring maximum political influence, and delinking EU staff pay changes from civil service pay changes in Member States. However, the Commission is strongly opposed to the Council's alternative proposal, which it considers would give the Council too much control over staff salaries. This proposal has the Government's support, and we will be pushing for it in conversations with the Commission and the European Parliament, although we expect significant opposition from both. The Commission has already voiced its objections on several occasions.

The provision to promote 'geographical balance' in the EU Institutions' staff bodies would allow the Institutions to set up additional recruitment measures for nationals of Member States with low and decreasing representation in the EU Institutions. Less than 5% of Commission staff are UK nationals, despite the fact that the UK accounts for more than 12% of the EU population, so the Government has been actively supporting this provision. However, other Member States oppose it on the grounds that it would be detrimental to the principle of recruitment based on merit. Council has not, so far, been able to reach agreement on this issue.

We are also still a long way from final agreement on this proposal overall. The Commission, European Parliament and Trade Unions' positions remain as I set out in my EM: far removed from that of the Council, and opposed to substantial reform. The UK will continue to emphasise the need for more ambitious savings, and to negotiate on the basis of our established priorities.

4 July 2012

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

Thank you for your letter of 4 July 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 11 July. We decided to retain this matter under scrutiny pending further negotiation and the eventual production of an Impact Assessment by the Commission.

We welcome progress on the Salary Adjustment Method and would be grateful for further details as to how the alternative proposal would work. You rightly recall in your letter that we advocate its total abolition.

We also support some steps to remedy the geographical imbalance in the nationality of EU officials without jeopardising the overall quality of the EU workforce. However, it appears to us that the UK deficit can be addressed not only by provisions in the Staff Regulations but also by taking steps here to develop suitable candidates, particularly with the necessary language skills. We should be grateful if you could provide an outline of what steps are presently taken to this end and whether they match the efforts of other Member States.

We should be grateful for a reply by the end of the summer recess.

12 July 2012

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

Thank you for your letter of 12 July, in response to my letter of 4 July in which I provided an update on the progress of this negotiation. In your letter you requested details of how the alternative proposal on the Salary Adjustment Method would work, as well as an outline of the steps presently taken to remedy the UK deficit within the EU workforce. I apologise for the delay in responding.

The alternative Salary Adjustment Method would still involve an initial proposal from the Commission, potentially based on a mathematical formula similar to that currently laid out within Annex XI of the Staff Regulations, which takes salary changes in eight Member States, including the UK, as a starting point. However, that proposal would be capped at 2%. This would immediately ensure a substantial difference from the salary adjustments in some previous years, such as the 3.7% increase in 2009.

More importantly, the Commission's proposal would not then simply be subject to an immediate vote in Council. Instead, the Council and the European Parliament would take forward a negotiation under the Ordinary Legislation Procedure. They would use the Commission's proposal as the baseline for that negotiation, and would go on to consider whether basic salaries should be adjusted at that time, and if so by how much. Particular account would be taken of the evolution of staff expenditure, the needs of recruitment and the cost relating to the evolution of the number of staff and the size of the aggregate wage bill. To accommodate the additional time required for this negotiation, we anticipate that salary adjustments would take place biennially rather than annually.

Under this system, the Council would have genuine political oversight of and input into any salary adjustments for EU officials. Such salary adjustments would take EU officials' own circumstances into account, rather than being based solely on adjustments taking place in Member States, where the circumstances of officials are often very different. Because the Council would be entitled to disagree with the Commission's initial proposal, we would anticipate that the CJEU would no longer be required to rule on disputes between the Council and Commission, as currently happens when the Council votes against a Commission's proposal.

Moving on to your question about geographical imbalance, I agree that we must take action to develop as many suitable candidates as possible to boost the UK's representation in the EU Institutions' personnel. One means by which we are already taking action is the revised European Fast Stream, which preselects candidates with language ability and offers EU-focused work in the UK civil service, a five-month placement in the EU institutions, language tuition and specialised training for the EU recruitment exercises to maximise the chances of success. We are also offering tailored training to British candidates for the EU's assessment centre this autumn, with a focus on language skills.

More generally, we are currently examining how we can further encourage broader interest in EU careers among qualified candidates; this could include existing civil servants, specialists such as lawyers and accountants, and British expatriates with experience of living and working in French or German-speaking countries. We have been targeting these groups over the past two years and all these initiatives match or, in many cases, exceed what is done by other Member States. Although we still have fewer applications than our relative share of the EU's population might lead us to expect, I hope that the upward trend in applications, an increase of 30% in just two years, will continue as a result of our efforts.

4 October 2012

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

In my Explanatory Memorandum of 14 September on the above proposal, I stated that the Government would seek clarification from the Commission on any staffing and financial implications of this proposal.

Although your Committee has already cleared this EM from scrutiny, I thought that you would still be interested in the further information we have now received. I can confirm that the proposal will not result in the appointment of any additional staff; the recruitment of Croatian nationals will be to existing posts only. On that basis, there will be no additional staffing costs. The only financial implications of the proposal are the administrative costs of holding an additional concours to recruit Croatian nationals. Those costs are covered within the costs associated with the Croatian accession treaty, the UK's ratification of which will be subject to Parliamentary approval under the EU Act 2011.

The Commission has also confirmed that the baseline for the financial savings to be achieved under the proposed changes to the EU Staff Regulations does not include costs associated with Croatia, and that there is no relationship between the two proposals.

On the basis of these two points, I am content for the Government to support this proposal.

4 October 2012

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

At its meeting of 17 October 2012 the Justice, Institutions and Consumer Protection Sub-Committee considered these matters. It decided to retain document 18638/11 (the proposal for amendment of the Staff Regulations) under scrutiny pending further developments in negotiations and to clear document 13327/12 (the Report from the Commission on the Exception Clause). The other items have already been cleared.

The Committee noted the adverse report of the Court of Auditors on the effectiveness of Staff Development in the European Commission. It considers that this report underlines the need for the new Staff Regulations to achieve radical reform to bring the terms and conditions of EU officials more into line with those of national Civil Servants. In particular the Committee was astonished to read that the Commission operated an appraisal and promotion system which the Court of Auditors considered did not address under-performance and did not reward staff who made an effort to develop themselves.

The Committee was disappointed that the Commission still persists in pressing for the automatic increase in pay and pensions using the "Method" found in the current Staff Regulations, rather than invoking the exception clause. A repeat of last year's litigation on this subject appears inevitable. When is the outcome of the current proceedings likely to be known?

We were grateful for your letter of 4 October outlining the progress in the Council in reforming the "Method". The current and prospective litigation underlines just how unsatisfactory this is. Whilst the Committee would still prefer complete abolition, it would be able to accept the proposal for reform outlined in your letter, in the context of a wider package delivering radical reform. It would not, however, like to see this compromise further watered down in negotiations with the European Parliament.

The Committee was heartened by the Government's action to increase the number of British nationals applying for EU posts as outlined in your letter.

The Committee was also grateful for your letter of 4 October providing reassurance that Croatian accession would not lead to an increase in EU posts, nor disrupt efforts to achieve radical reform of the Staff Regulations.

We should be grateful for an update on the negotiations on the Staff Regulations in due course.

18 October 2012

EURO COUNTERFEITING PROTECTION (PERICLES 2020 PROGRAMME) (18938/11, 18939/11)

Letter from the Chairman to James Brokenshire MP, Minister for Crime Prevention, Home Office

Thank you for your letter of 18 April which was considered by the Justice, Institutions and Consumer Protection Sub-Committee, at its first meeting of the new Session of Parliament, on 23 May. We are grateful for your reply to our two questions on this proposal and now clear the documents from scrutiny.

24 May 2012

EUROPE FOR CITIZENS PROGRAMME (2014-2020) (18719/11)

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

Thank you for your letter of 24 April which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting of the new Session of Parliament, on 23 May. We are grateful for your reply to our question on the effect of the 2011 Act and now clear the document from scrutiny.

24 May 2012

EUROPEAN CINEMA IN THE DIGITAL ERA (14119/10)

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

I am writing to update you on my assessment of the financial impact and impact on UK businesses of EU support mechanisms for the digitisation of cinemas (Communication 14119/10 on Opportunities and Challenges for European Cinema in the Digital Era), as requested in Lord Roper's letter of 5 November 2010. I apologise for the delay.

The Commission's planned Digitisation of Cinemas programme issued its first Call for Proposals on 5 July 2011 with a deadline of 15 September 2011. Eligible cinemas were able to apply for up to €20,000 per screen to fund the side costs associated with the purchase of a digital projector. To be eligible, cinemas had to screen at least 50% European films, of which 30% had to be non-national. Cinemas were not eligible if they had, or would have, a projector from a third party under a commercial contract, the Virtual Print Fee (VPF) model.

57 cinemas from across Europe benefited from a total of €2,500,000. From around 50 cinemas that screen a majority of European films, there was only one, unsuccessful applicant from the UK. The low level of demand reflects that over 230 UK screens had already been converted to digital projection with UK public funding from the then UK Film Council's £12million Digital Screen Network (DSN) programme. In addition, UK cinemas have been more successful than those in other EU countries at working with the VPF model.

The Digitisation of Cinemas programme issued its second Call for Proposals on 26 May 2012 with a 31 July 2012 deadline. According to MEDIA Desk UK, obvious contenders for this year's Call are UK cinemas that are members of Europa Cinema network, because they will easily comply with the programming requirements. Many of them are already equipped with one digital screen through the DSN scheme but that equipment may now be in need of updating, and/or cinemas may be ready to equip a second or third screen. MEDIA Desk UK has promoted the Call for Proposals amongst those cinemas and had considerable interest.

18 July 2012

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 18 July. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee which now has responsibility for EU Culture policy. We are grateful for your account of the operation of the Digitisation of Cinemas programme.

The Commission's Communication has been cleared from scrutiny. No reply to this letter is expected.

15 October 2012

EUROPEAN COMMISSION: NUMBER OF COMMISSIONERS

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

Article 17(5) TEU provides for a reduction in the size of the Commission corresponding to two thirds of the number of Member States from 1 November 2014. However, this Article also allows the European Council to alter the number of Commissioners, subject to unanimous agreement.

In this regard you will recall that Heads of State or Government agreed at the European Council in December 2008 that a decision would be taken "to the effect that the Commission shall continue to include one national of each Member State" once the Lisbon Treaty entered into force. As outlined in the attached explanatory memorandum, the Council Secretariat has now circulated a draft decision to give effect to this agreement. The Government's approach is that, having made a commitment to the Republic of Ireland, it is important that the UK acts in good faith and honours that commitment. Moreover, we think it is right to ensure that a commitment made by the European Council as a whole to the Republic of Ireland is upheld.

Under the provisions of the EU Act 2011 this Government ensured that an Act of Parliament is required before the Prime Minister can agree to the decision at a future European Council. Parliament

will have control over this approval and will have the opportunity to debate and scrutinise the decision fully when this approval is sought through primary legislation. Your Committee will also be able to consider the decision and report on it in detail to inform Parliament in advance of the debate.

Clearly it would be sensible for all EU Member States to have completed their national procedures for approving this Decision in time for the appointment of the new Commission in 2014. Since in our case we need primary legislation, the intention is to use the legislative vehicle of the Bill to ratify Croatian accession, planned for introduction later this year, to enact this measure too. That in turn requires that the draft Decision is agreed at the General Affairs Council on 16 October and inevitably this cuts across the time that we normally build into our planning to allow for Parliamentary scrutiny.

I hope that your Committee will be able to consider the document at your first meeting back from the summer Recess. If this will not be possible then given the timing of this decision, and because agreement to the decision will in any event be subject to Parliamentary approval through primary legislation, I would be grateful if you could consider waiving scrutiny on the draft decision in order to meet the 16 October General Affairs Council deadline.

If you consider the decision to be of sufficient importance to require a meeting during Recess, I would be happy to make plans for me or officials to attend the Committee.

27 September 2012

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

Thank you for your Explanatory Memorandum and letter, both dated 27 September 2012. These were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 October. The Committee decided to clear the document.

We do not require any reply to this letter.

15 October 2012

EUROPEAN CONSUMER AGENDA (10420/12)

Letter from the Chairman to Norman Lamb MP, Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills

Your Explanatory Memorandum on this Communication was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 27 June. We thank you for your detailed analysis.

Like you, we welcome the Commission's Communication. It provides a useful overview of the Commission's plans in the field of consumer protection for the next few years. The four strategic objectives proposed by the Commission seem to us to form a good basis for policy-making, and the set of initiatives outlined in the Communication can be broadly welcomed. The Committee has under scrutiny two of the main initiatives, on the Common European Sales Law and Alternative Dispute Resolution and we look forward to examining the further planned proposals in due course. We note that no discussion of the Communication is expected in the Council.

We retain the Communication under scrutiny and intend to consider it further, taking into account the views of consumer groups, with a view to responding more fully. No reply to this letter is expected.

28 June 2012

Letter from Jo Swinson MP, Parliamentary Under Secretary for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, to the Chairman

I am writing to seek your agreement to a waiver from scrutiny to enable the Government to agree to the adoption of a Council Resolution on the Consumer Agenda 2012-2020 at the next Competitive Council on 11 October.

Firstly I would like to apologise for writing at such short notice but our expectation was that this resolution would be adopted at the December Competitiveness Council meeting.

The Cypriot Presidency circulated the draft Council Resolution on the Commission Communication on a Consumer Agenda – "Boosting confidence and growth" on 29 August. In this document they

welcome the Commission communication and recognise that strong consumer policy which builds consumer confidence is vital for the development of the single market and will act as a catalyst for economic growth.

Extensive discussions on the drafting of the text have taken place between the representatives of Member States. The UK, along with nine other Member States including Luxembourg, Sweden and the Netherlands, have successfully negotiated amendments which strengthen the text, bringing it more into line with the wider political context of the European growth agenda, through the inclusion of references on the completion of the single market for consumers. The UK Government would like to support the adoption of this now more ambitious Council resolution text.

Council resolutions are adopted by unanimity and I am therefore requesting a waiver from scrutiny to enable the adoption of the Council resolution on the Consumer Agenda at the Competitive Council on 11 October.

1 October 2012

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 1 October. We appreciate that this matter has moved faster than originally anticipated, and in the circumstances we agree a waiver to enable the UK to support the draft Council Conclusions.

In doing so we should make it clear that this is not a commitment to agree each and every proposal for future action, bearing in mind that the Government's earlier Explanatory Memorandum raised some concerns in respect of some of the specific initiatives which the Commission has put forward to achieve the high level objectives of the Agenda. All current and future legislative proposals will be subject to further detailed scrutiny.

We also still intend to continue our dialogue on this document and the Common Sales Law in the light of the views of consumer groups, as mentioned in our letter of 28 June.

In the meantime, we do not expect a reply to this letter.

15 October 2012

EUROPEAN CONVENTION OF HUMAN RIGHTS

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

Following the oral evidence I offered you last September, I am writing to inform you of how the negotiations for the accession of the EU to the European Convention on Human Rights (the Convention) are progressing.

Following initial consideration of the draft Accession Agreement prepared by the group of experts (CDDH-UE) at CDDH – the Council of Europe's steering committee on human rights – in Strasbourg in the summer of 2011, there have been discussions in Brussels since September 2011 to establish the EU negotiating position on the draft text, principally at the Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) working group.

Following the June Justice and Home Affairs (JHA) Council in Brussels, the negotiations on the Accession Agreement text have now re-started in Strasbourg. In addition, negotiations have begun in Brussels on the Internal Rules governing EU actions in Strasbourg as a result of accession.

In Strasbourg, the forum for future negotiations has been agreed (a new "47+1" group – all High Contracting Parties to the Convention, plus the EU negotiator). Further meetings of this group are expected in September and November this year, at which proposed amendments from the EU negotiator and other High Contracting Parties will be discussed. In Brussels, there have so far been two FREMP discussions on the Internal Rules, with further meetings planned for later in the year.

We continue to negotiate to meet the commitment under the Lisbon Treaty to secure EU accession to the ECHR, while ensuring that this accession is achieved in the right way, avoiding fundamentally altering the nature of the Convention system or affecting the competences of the EU, and preserving the position of the Member States in respect of the Convention.

The EU's Negotiating Directives are confidential, but the final Accession Agreement will be subject to Parliamentary scrutiny. The EU Act requires a positive resolution in both Houses before a UK minister can agree the Council Decision concluding the accession agreement. The UK's separate approval as a member of the Council of Europe will be subject to the Parliamentary procedure under the Constitutional Reform and Governance Act. The scrutiny requirements for the Internal Rules will be known once their content establishes the legal basis for their adoption.

25 July 2012

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

Your predecessor's letter of 25 July was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting following the summer recess, on 10 October. We note the report on the progress of discussions on the accession issue.

We understand that the further negotiations are not expected to conclude before the end of this year. We should be grateful for a further update at the end of the year or earlier if progress is made faster than expected but, subject to that, we do not expect a reply to this letter.

15 October 2012

EUROPEAN COURT OF JUSTICE: JUDGES AND ADVOCATES GENERAL

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

I am writing to update you on progress made with regards to the partial renewal of the European Court of Justice's judiciary this October. You will be aware that the terms of the incumbent Judges and Advocates General of a number of Member States, including the United Kingdom are due to expire on 6 October. Member States have been involved in the process of nominating new candidates, or proposing the renewal of terms, for their respective appointments, over the past year.

I am pleased to inform you that the United Kingdom's candidate, Mr Christopher Vajda QC, has today received approval from all Member States for his appointment as the next UK Judge to the European Court of Justice. Mr Vajda was selected as the UK's nominee following an open competition within the United Kingdom which culminated in interviews before a seven member selection panel of lay, judicial and legal experts. That panel proposed Mr Vajda's candidacy to Ministers who informed the Brussels authorities of the UK's nominee. His candidacy has been further scrutinised by the panel established under Article 255 of the Treaty on the Functioning of the European Union, and agreed by common accord of all the Member States.

Mr Vajda has significant legal experience both within the European and the domestic context, having practised as a Barrister, Queen's Counsel since 1997, for many years in various fora. Mr Vajda also has previous judicial experience having acted as a Recorder within the Crown Court for the past eight years. We are confident that with his valuable and extensive experience he will be a great asset to the Court.

A number of other Member States have also had their nominations approved by Member States. The United Kingdom has endorsed the nominations listed below, all of which have been scrutinised by the panel established under Article 255 of the Treaty on the Functioning of the European Union;

Eleven renewals of sitting judges at the European Court of Justice):

- Alexander Arabadjiev (Bulgaria)
- Jiří Malenovský (Czech Republic)
- Thomas Von Danwitz (Germany)
- Jean-Claude Bonichot (France)
- George Arestis (Cyprus)
- Egils Levits (Latvia)
- Egidijus Jarašiūnas (Lithuania)

- Alexandra Prechal (Netherlands)
- Maria Berger (Austria)
- Gustav Fernlund (Sweden)
- Antonio Tizzano (Italy)

One nomination for a new judge (aside from the UK nominee):

- José Luís Da Cruz Vilaça (Portugal)

Two nominations for the renewal of Advocates General:

- Paolo Mengozzi (Italy)
- Yves Bot (France)

Two nominations for new Advocates General:

- Melchior Wathelet (Belgium)
- Nils Wahl (Sweden)

21 June 2012

EUROPEAN PARLIAMENT ELECTIONS (12793/12)

Letter from the Chairman to Mark Harper MP, Minister for Political and Constitutional Reform, Cabinet Office

Your Explanatory Memorandum on this proposal was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting following the summer recess, on 10 October. We thank you for your full explanation and again for having previously alerted us to the revival of discussion on the former proposal to amend Directive 93/109.

We welcome the proposal to relieve potential candidates in European Parliament elections of an administrative burden while safeguarding the electoral process. The proposal potentially benefits EU citizens and may encourage more non-national residents to stand in elections. We now clear the proposal from scrutiny. No reply to this letter is expected.

15 October 2012

FIGHT AGAINST FRAUD (12683/12)

Letter from Mark Hoban MP, Financial Secretary, HM Treasury, to the Chairman

Following my Explanatory Memorandum of 15 July, entitled 'Draft Directive on the Fight against Fraud to the Union's Financial Interests by means of Criminal Law', I am writing to clarify and provide additional information on a number of issues.

I said in my Explanatory Memorandum that the Government was examining its position on the applicability of the Justice and Home Affairs (JHA) Opt-in Protocol. Having considered this issue further, I am clear that the proposal includes JHA obligations and that therefore the opt-in applies. As you are aware, it is the Government's position that the opt-in is triggered by the presence of JHA obligations rather than the citing of a particular legal base.

As set out in the Explanatory Memorandum the measure has been proposed under Article 325 of the Treaty on the Functioning of the European Union (TFEU). The Government continues to consider whether that is correct or whether another legal base – such as one under Title V – may be more appropriate. However as my observations above make clear, in our view these considerations are not determinative of whether the opt-in applies.

The Government has not finalised its position on whether to opt-in to this proposal, consistent with the scrutiny process and pending future discussions on legal issues. The policy considerations relevant to this decision are outlined in my Explanatory Memorandum. These are also the main issues, aside from the legal base, that the Government will address during initial negotiations on the proposal this autumn.

14 August 2012

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

Your predecessor's Explanatory Memorandum on this proposal was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 25 July and at its first meeting following the summer recess on 10 October. The Committee is grateful for the explanation of the proposal and the issues which may give rise to concern.

As you may know, we have begun an Inquiry into fraud against the EU's finances. This proposal will be considered in the course of the Inquiry.

It is clearly important to give adequate protection to the financial interests of the EU, including by means of the criminal law. We agree with the Commission that the extent of fraud is not matched by action under the criminal law in the Member States and that the establishment of common rules on offences and penalties would assist in the fight against fraud. We consider that the proposal maintains an appropriate balance between the need for a common approach to an EU-level problem and respect for differences in the Member States' systems of criminal law, and should establish a more effective legal framework. We therefore welcome this initiative.

The Explanatory Memorandum noted some areas of possible concern with this proposal.

The proposal is the first which would require Member States to establish minimum sentences. While the motivation for this element of the proposal - to ensure that all courts take offences against EU finances with a certain degree of seriousness - is laudable, the imposition of minimum sentences would clearly limit judicial discretion, could be considered a breach of the principle of proportionality and would, we believe, be an unusual provision in UK law. We question the necessity of this element of the proposal and hope that it can be removed from the draft Directive in the course of negotiations.

The proposal contains a provision on the freezing and confiscation of the proceeds of crime by reference to the current proposal on that subject which, if adopted, would replace current EU legislation. Since, as the Explanatory Memorandum pointed out, the UK has not opted in to that proposal, we should be interested to know how you propose to deal with the interaction between the two proposals.

On jurisdiction, we should like to be informed of the Government's conclusion concerning the implications of having to extend jurisdiction extra-territorially in relation to UK nationals.

Finally, we note that the Government are considering the legal basis for the draft Directive and we ask you to let us know the outcome of the consideration of this point.

We should be grateful for a reply to this letter by Tuesday 30 October, and keep the proposal under scrutiny.

15 October 2012

FUNDAMENTAL RIGHTS AGENCY: ESTABLISHING A MULTIANNUAL FRAMEWORK FOR 2013-2017 (18645/11, 10449/12)

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

Thank you for your letter of 27 January concerning the European Commission's proposal for a new multi-annual framework for the Fundamental Rights Agency (FRA). I would like to update you on the Government's position on this proposal. As the negotiations may progress quickly, given the concern to reach agreement in time for a new multi-annual framework to be in place for the start of 2013, when the current framework expires, I also write to seek Parliamentary clearance to allow the proposal to proceed to the European Parliament, whose consent is required before the proposal can be concluded. Failing this I seek a scrutiny waiver to agree to a proposal which meets the Government negotiating objectives as set out below. As this measure is subject to the European Union Act 2011, a separate parliamentary process will be required under the terms of that Act, once the text is finalised.

The Government is committed to respecting individuals' human rights, and supports the European Union in doing the same. The purpose of the FRA is to provide information and data to the EU institutions and Member States concerning the development and implementation of EU legislation. While it is a useful tool in identifying the impact of EU legislation, the Government would not wish to enlarge the scope of the FRA's work into new areas before there is real evidence of demand for its outputs and that they are being used by the EU institutions and by Member States in their policy-making.

The Government has sought views from external stakeholders and from the Commission and the FRA on how its outputs are being used to develop policy. While this has elicited some examples of the Commission, other Member States and NGOs making use of the FRA's data, these have been few in number and have not had a deep and significant impact. The Government notes that the FRA is currently undergoing an independent external evaluation, as required by Council Regulation 168/2007 which established the FRA, and considers that any decision to extend the scope of application of the FRA's work should not prejudice the outcome of this review due in 2013.

The Government therefore opposes an extension to the FRA's remit to cover former third pillar areas, and therefore opposes the current proposal for a multi-annual framework which includes themes of police co-operation and judicial co-operation in criminal matters. We will be seeking amendment to the proposal to remove these aspects.

As you note in your letter, the previous proposal concerning the FRA's multi-annual framework raised two technical points. Firstly, the use of a treaty base for the multi-annual framework: the Government agrees that a new proposal cannot be based on an invalid secondary legal base. Other Members States agree and the Commission no longer proposes this approach. Consequently, the new multi-annual framework (2013-2017) is being brought forward under Article 352 TFEU.

The live issue is whether the FRA's remit already extends to cover all areas of Union law, given the introduction of the Lisbon Treaty. The FRA's establishing Regulation specifically indicates that it should undertake its work in the area of 'community law'. The issue of whether it should be given a remit which also extended to the then third pillar— justice and home affairs - was discussed when the Agency was being established, but in the end a narrower remit was set. The Government therefore considers that the Council made a clear political decision to limit the remit of the FRA to community law. While the Lisbon Treaty has resulted in the suppression of the former pillar structure and indicates that references to the European Community should now be read as the European Union, this terminology does not mean that there is an automatic change to the scope of individual instruments. The Government does not therefore consider that the FRA's remit has been impliedly extended by the entry into force of the Lisbon Treaty. The issue has been discussed at the Council working group on fundamental rights (FREMP) and opinion is divided on this point.

The second issue you raise relates to the potential implications of the European Union Act 2011. The Government has considered the proposal in light of section 8 of that Act and the exemptions set out in section 8(6). It is the Government's view that none of the exemptions would apply to the Commission's proposal as drafted. We are considering whether the position would be otherwise if our preferred option of confining the scope were adopted. In the event that the proposal was amended such that an exemption did apply, according to the terms of the European Union Act, a Minister would be required to lay a statement before Parliament.

I welcome the opportunity to update your Committee on developments on this proposal.

10 May 2012

Letter from the Chairman to the Rt. Hon Kenneth Clarke MP

Thank you for your letter dated 10 May 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 May 2012.

We have decided to waive the scrutiny reserve ahead of the proposal's discussion in the Council and look forward to receiving updates on the proposal's negotiation.

On the merits of the proposal, the Committee is not persuaded by your arguments and we remain of the view that police cooperation and judicial cooperation in criminal matters "are areas of EU activity likely to engage fundamental rights" and as such these areas of EU competence ought to be within the Fundamental Rights Agency's remit. The Agency's role as described by its founding Regulation is to provide the EU's institutions and agencies with "assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence" (emphasis added). The two respective spheres of competence at

issue are clearly areas of EU activity where fundamental rights are routinely in play and, in the Committee's view, despite your technical arguments to the contrary, there is a clear role for the Agency to fulfil.

Regarding the various legislative and constitutional issues raised by this proposal, you refer to "the live issue" of whether the Agency's remit has been impliedly extended by the adoption of the Lisbon Treaty; whilst we agree with your argument that its remit has not been impliedly extended, in our view it remains the case that the introduction of the Treaty of Lisbon has changed the framework within which the EU and its agencies operate which in turn supports the policy argument for now extending the Agency's remit into the suggested areas which could be achieved by including express amendment of its founding Regulation of 2007.

We note that as currently drafted under the EU Act 2011 an Act of Parliament would be required before a Minister could agree to this proposal in the Council, and in addition that you are considering whether an Act of Parliament would be required if the Government are successful in narrowing the scope of this Decision.

We look forward to hearing from you in due course.

24 May 2012

Letter from the Rt. Hon Kenneth Clarke MP to the Chairman

Thank you for your letter of 24 May granting a scrutiny waiver in advance of the JHA Council meeting in June. At this meeting, political agreement was reached on a proposal which continues to limit the themes set out in the multiannual framework to those which fall in the area of community law, ie the former first pillar. The proposal will be sent to the European Parliament whose consent is required. The proposal will subsequently need to be agreed by the European Council.

As I stated in my letter to you of 10 May, the Government has been considering whether a proposal on a narrower remit would require approval by means of an Act of Parliament, in accordance with the requirements of section 8 of the European Union Act 2011 ("the Act"), or whether one of the exemptions set out in that section apply. Now that the proposal agreed does not cover the former third pillar areas of police cooperation and judicial cooperation in criminal matters, I have given this issue further consideration and concluded that the exemption set out in section 8(6)(a) applies in this case.

This provision states that a decision is for an exempt purpose if it "make(s) provision equivalent to that made by a measure previously adopted under Article 352 of TFEU".

The proposal, agreed at Council, does not include any elements which are outside the FRA's current remit. Although there are some adjustments in the terminology between this and the current MAF (2007-2013), the changes are not substantive and will not alter the work that the FRA has been doing. The proposed multiannual framework (MAF) lists Roma Integration as a separate theme, rather than including it within the themes of racism, xenophobia and related intolerance, and discrimination; judicial cooperation in non-criminal matters is set out expressly rather than falling implicitly as part of the others themes. It also omits the current theme of participation of the citizens of the Union in its democratic functioning.

Although the Act refers to previous measures adopted under Article 352 TFEU, my view is that this properly may be interpreted to include reference to measures adopted under Article 308 TEC before the Lisbon Treaty had effect. As you are aware, Article 352 is the same in text and effect and is simply a renumbering of the Treaty provisions. The previous MAF was adopted under secondary legislation in pursuance of an Article 308 measure.

I therefore wish to inform you of my intention to lay a statement in Parliament, in accordance with section 8(5) of the Act before the summer recess on 11 July 2012.

9 July 2012

Letter from the Chairman to the Rt. Hon Kenneth Clarke MP

Thank you for your letter dated 9 July 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 25 July 2012. We decided to retain the proposed Decision under scrutiny.

As you are aware the Committee has repeatedly expressed its support for the policy of extending the Fundamental Rights Agency's remit into the former Third Pillar areas of police cooperation and

judicial cooperation in criminal matters, in particular, as these are areas of EU cooperation likely to engage questions of human rights. You will not be surprised to hear that the Committee is disappointed with the outcome of these negotiations.

Whilst we note the content of your latest letter to the Committee and your statement laid before Parliament on 11 July that the Council Decision as amended “relates to an exempt purpose within the meaning of section 8(6)(a)” of the EU Act 2011, we do have some doubts regarding your analysis of the application of the EU Act to this Decision. We would seek your reassurance, in particular, as this is the first time and we do not expect it to be the last that the use of section 8 of the EU Act 2011 involving the extension of measures adopted pre-Lisbon under the old legal base of Article 308 EC will arise before this Sub-Committee.

First, you say that Article 352 TFEU “is the same in text and effect” as Article 308 EC. Whilst we accept that there are similarities, for example, both 352 TFEU and 308 EC require unanimity, legislative proposals based on the old Article 308 EC had to be justified as necessary for “the operation of the common market” and its use was further limited by the old three pillar stricture; legislative proposals adopted under Article 308 EC could only be within the scope of the EC Treaty. We think the significance of these differences is illustrated by the legislative Decision which forms the basis of this scrutiny correspondence. If this proposed Decision had been agreed by the Member States unamended it could have been adopted under Article 352 TFEU but, importantly, it could not, in our view, have been adopted under Article 308 EC because, unamended, it dealt with police and judicial cooperation i.e. matters dealt with in the old Third Pillar. If our interpretation is correct this simple example undermines the argument that the two articles are the “same in text and effect” and this, in turn, may well have ramifications for the Government’s and Parliament’s consideration of any future proposals extended via Article 352 TFEU but adopted pre-Lisbon under 308 EC. In addition we would add that the relevant section of the EU Act makes no mention of measures adopted under the pre-Lisbon Article 308 EC legal base and only refers to proposals adopted under Article 352 TFEU.

Second, section 8(6)(a) of the EU Act 2011 refers to the extension of proposals adopted pursuant to Article 352 TFEU, yet it remains the case that the original Decision adopted in 2008 which this proposal will now extend was adopted, albeit wrongly, under a secondary legal base (Article 5(1) of the Regulation establishing the Agency (Regulation 168/2007)) and not Article 352 TFEU’s predecessor Article 308 EC. Even if the Committee was convinced that the two Treaty articles in issue ought to be treated as the “same in text and effect”, your argument in support of the statement that section 8(6)(a) of the EU Act 2011 applies to this Decision, in our view, fails on legal base grounds alone. We cannot understand how section 8 of the EU Act can be read in such a way in order to apply the specific exemption to a measure which you describe as “adopted under secondary legislation in pursuance of an Article 308 measure” - section 8 of the EU Act does not recognise any such exemption.

If the Committee’s analysis of these very important issues is correct we would welcome your explanation of the likely ramifications of the Government’s failure to seek an Act of Parliament approving this Decision if it transpires that the Government failed to abide by the requirements of its EU Act 2011.

Aside from the question of the construction of the EU Act 2011, there is one general issue on which we would value your response; that is the increasing extension of the work of the EU into the field of Human Rights and consequent intrusion into an area traditionally the core responsibility of the Council of Europe. In your view, what if any, are the limits which should be set to the EU’s work in the field of Human Rights? Should the limits be designed to avoid any duplication with the work of the Council of Europe? Finally, are you satisfied with the degree of co-operation between the Fundamental Rights Agency in Vienna and the Strasbourg based Court and Commissioner?

We look forward to considering your reply within the usual 10 day deadline.

26 July 2012

Letter from the Rt. Hon Kenneth Clarke MP to the Chairman

Thank you for your letter of 26 July concerning the Statement I laid under Section 8 of the European Union Act 2011, relating to the proposal for a multiannual framework for the Fundamental Rights Agency (FRA).

I am grateful for the thought your committee and the Commons committee are giving to this important issues, particularly as this is the first time that Section 8 of the European Union Act 2011 is being applied. While the Government continues to be of the view that 308 measures can be properly

considered under Section 8, I think it appropriate that the Government take this opportunity to consider the interpretation of this section more generally, not simply the application of the exemption set out in Section 8(6)(a).

Once this consideration is complete I will write again with the Government's view.

You also ask for my views on the scope of the EU's work on human rights and the issue of duplication and complementarity with the work of the Council of Europe. Article 6 TEU is clear that human rights constitute general principles of the Union law and therefore apply to all EU legislation. The FRA's coverage is more limited and as I indicated my previous correspondence that any future proposal to extend its work to other areas would need to be considered, including consideration of whether its work is having an influence on the process by which EU legislation is made.

There are also differences in the focus and tasks of the FRA and other bodies, including the Council of Europe. The FRA's purpose is to provide information and evidence on the human rights situation across the Member States to assist in developing EU legislation. Unlike the Council of Europe it does not look at the fundamental rights situation in individual states. However, the issue of duplication is one which the FRA, the other EU institutions, the Council of Europe and Member States are alive to. The systems in place which aim to avoid duplication between the FRA and the Council of Europe – such as the inclusion of a representative of the Council of Europe on the management board of the FRA, and the memorandum of understanding between the two bodies – seem to be functioning well and there are examples of the Council of Europe building on and extending the research projects which the FRA have designed to non-EU member states.

There is also the external dimension to the EU's work on human rights. The Committee recently corresponded with my Rt Hon Friend the Minister for Europe on the new EU external human rights strategy, and specifically whether the appointment of an EU Special Representative ('EUSR') for human rights would duplicate the work of the Council of Europe's Commissioner for human rights.

The work of the EUSR will focus on human rights in states outside of the EU, while the work of the Council of Europe concerns the situation within the member states. Both the EUSR and the Commissioner will work on promoting awareness of and respect for human rights in the non-EU member States of the Council of Europe. To avoid any risk of duplication, Article 11(3) of the EUSR mandate requires the EUSR to "liaise and seek complementarity and synergies with other international and regional actors". This means that the EUSR should maintain a close dialogue with the Commissioner to avoid duplication. While their exact relationship will be for the EUSR and the Commissioner to determine themselves, we would envisage that they may seek to enhance each other's effectiveness, including by reinforcing each other's messages where appropriate.

In my view, that current approach of liaison and collaboration between the bodies working in this field, including through management structures, mandates and memoranda of understanding is a more workable approach than setting specific policy limitations.

3 September 2012

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

Your predecessor's letter dated 3 September 2012 was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 October 2012.

We decided to retain the proposed Decision under scrutiny.

In relation to the application of the EU Act 2011 to this Decision we note that it is the Government's intention to consider "the interpretation of this section more generally" and the Committee eagerly awaits the outcome of the deliberations. Subject to the outcome of the review it seems to the Committee that in appropriate cases section 8 can be applied to measures adopted pre-Lisbon under Article 308 EC but, in this specific instance, for the reasons set out in our letter of 26 July this is not such a case. This is perhaps best exemplified by the fact that had this Decision been agreed unamended post-Lisbon it could have been adopted under Article 352 TFEU but not pre-Lisbon under Article 308 EC because it dealt with the (old) Third Pillar matters. This is indicative of the fact that there are cases where reliance on the exemption in section 8 of the EU Act will be inappropriate.

As for the Fundamental Rights Agency's role in the wider European context and the Committee's concerns regarding the duplication of the Council of Europe's role, the Committee is grateful for the summary of their respective roles and notes the Government's view that "the current approach of liaison and collaboration" is working well. Your predecessor also addressed the additional issue of the

overlapping roles of the European Union's Special Representative for Human Rights and the Council of Europe's Commissioner in the 20 non-EU Council of Europe States, for which we are grateful.

We look forward in due course to considering the outcome of the Government's deliberations on the application of section 8 of the EU Act 2011.

15 October 2012

HISTORICAL ARCHIVES OF THE INSTITUTIONS (13183/12)

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

Thank you for your Explanatory Memorandum of 17 September 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 October. The Committee decided that the proposal raised no subsidiarity concerns and retained it under scrutiny.

We should be grateful if you would provide an update, in due course, on your progress in clarifying how the institutions will achieve digital archiving. We would also like to know, within the same timeframe, why the Court of Justice and the Court of Auditors are not included in this proposal and what alternative provisions there are for these institutions.

15 October 2012

HUMAN TRAFFICKING (11780/12)

Letter from the Chairman to Damien Green MP, Minister for Immigration, Home Office

Your Explanatory Memorandum (EM) on this Communication was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 25 July. We are grateful for your detailed analysis of the strategy and the actions proposed by the Commission, and your account of relevant UK action in this important area.

Like you, we welcome the strategy and the Commission's plans for the five years of its duration. The proposals, mainly for action by the Commission but including recommendations to the Member States, represent a consistent course which should add value to the efforts of the Member States.

Although some trafficking is internal to states, there is plainly a significant cross-border element. The Commission's proposals relate to the cross-border aspects of trafficking and general support for the Member States in combating trafficking in all its forms, while the strategy acknowledges that the principal responsibility for tackling trafficking rests with the Member States. We agree that it is appropriate for action as proposed to be taken at EU level for the purposes of the strategy.

Your EM notes that the Presidency has proposed that the Council should adopt formal Conclusions on the strategy in October. We should be grateful for a copy of the draft conclusions which are under discussion. (If this is not a public document, we acknowledge that you may have to apply restrictions on its use.)

While most of the proposed action would be financed from the Commission's budget, some support for Member States' work is proposed including from the Justice Programme to which the UK did not opt in. Are the Government considering opting in following adoption of the Programme?

We retain the Communication under scrutiny and look forward to a reply to this letter by the end of September at the latest.

26 July 2012

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

Thank you for your letter of 26 July 2012 and your consideration of the UK's Explanatory Memorandum on this Communication. I am grateful for your support in welcoming the Strategy and the Commission's plans for its duration.

The Communication makes reference to future 'justice funding programmes', which would encompass the Justice Programme and the Rights and Citizenship Programme. The latter does apply to the UK.

You have asked whether the Government will be opting into the Justice Programme post-adoption. At this time I am unable to give a final Government view since negotiations on the Programme are continuing. The Government will, however, review UK participation following adoption of the text to establish whether our initial concerns have been addressed. As recorded by the Secretary of State for Justice in the Written Ministerial Statement of 22 March, the Government will want to be convinced that the focus of the activities to be funded offer value for money and are worthwhile. As is usual in such cases, the Government will seek the views of the Scrutiny Committees in considering its position.

As requested, I enclose the draft Council Conclusions which are currently under discussion [not printed]. Please note that these are to be treated as restricted documents and not to be circulated more widely.

24 September 2012

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 24 September which was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 17 October. We are grateful for the copy of the draft Conclusions and note the restrictions on publication. We trust that the Conclusions, when agreed, will add impetus to the implementation of the Strategy set out in the Commission's Communication.

We note that you will review UK participation in the Justice Programme from which funds will be available for projects under the Strategy which you and we support.

We now clear the Communication from scrutiny.

18 October 2012

INDEX OF THIRD COUNTRY NATIONALS CONVICTED IN THE EU (11453/06)

Letter from James Brokenshire MP, Parliamentary Under Secretary for Crime and Security, Home Office, to the Chairman

I am writing further to my letter of 27 September 2010 and to Meg Hillier's letters of 10 December 2009 and 26 January 2010.

The timetable suggested in my letter – that a draft directive would be published in 2011 - has not been met. We believe that this is because the Commission has not yet conducted the required, detailed, internal impact assessment. We understand that work on this commenced in February this year and that an interim report was submitted at the end of May 2012. The final report is expected in late September/ early October. It will then be considered within the Commission itself, through inter-service consultation. We therefore do not expect any proposal to issue until February 2013 at the earliest.

21 August 2012

INTELLECTUAL PROPERTY

Letter from Baroness Wilcox, Parliamentary Secretary for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

I am writing to congratulate you on your appointment as Chairman of the Select Committee on the European Union. I am very aware of the essential role the Committee plays in the Parliamentary process and I am grateful for its careful deliberations on a wide and varied range of intellectual property matters.

Intellectual property is an important facet of the European Union's growth agenda with several dossiers being discussed or on the horizon; I thought therefore that it would be useful to give you an overview of intellectual property related issues that are currently before the Committee and also those issues about which I expect to be writing to you in the future:

- Very recently, I wrote to the Committee to provide an update on progress of the EU proposal for a Directive on the use of orphan works, which are

works for which the copyright owner cannot be identified or whose whereabouts are unknown. We expect a vote on the final text will come in the next few months.

- I will be writing very shortly to the Committee on developments concerning the proposed World Intellectual Property Organisation (WIPO) Audiovisual Performers Treaty ahead of a diplomatic conference being held in June in Beijing, to agree that Treaty
- A planned EU Framework Directive designed to create a more efficient European cross-border licensing system for online music is due to be published before the summer. It was announced by the Commission in 2010 as one of its initiatives under the Digital Agenda and we will submit an explanatory memorandum as soon as it is deposited.
- I gave evidence to the Committee on the Unified Patent Court Agreement and Unitary Patent Regulations in February and I wrote with further information on some of the details of the Court Agreement in March.
- In September we expect the Commission to propose changes to the existing rules for trademarks. This will not be a radical reform. It will focus on making the system, which comprises national rights and an EU wide trade mark, work better for businesses. It is expected to harmonise law and practice, help drive progress on quality and consistency and support modernisation of trade mark offices.

As you can see, it is a busy time for intellectual property in the European Union. I look forward to the continuing success of the relationship between my department and the Committee under your Chairmanship.

18 May 2012

INTELLECTUAL PROPERTY: CUSTOMS ENFORCEMENT (10880/11)

Letter from the Chairman to Chloe Smith MP, Economic Secretary, HM Treasury

Thank you for your letter of 12 April 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 May. The proposal was retained under scrutiny.

We note that the focus of negotiations has been on the administrative cost of the proposal. We are of the view that the administrative cost should be proportionate to the benefit accruing and hope to be able to form a judgment on whether this is the case with the benefit of the Government's Impact Assessment, which was requested in Lord Roper's letter of 14 July last year.

I should be grateful if you would forward the Impact Assessment when it is available and provide a further update on the progress of negotiations in due course.

24 May 2012

Letter from Chloe Smith MP to the Chairman

Thank you for your letter of 24 May 2012 in response to my letter updating you on the progress of negotiations of the Intellectual Property Rights Regulation.

The House of Lords European Union Select Committee noted that negotiations in Brussels had centred on the administrative cost of the proposal. The Committee requested sight of the Government's Impact Assessment in order to make an informed assessment as to whether any costs associated with the Regulation were outweighed by the benefit accruing from the proposal. The Committee made clear that the lifting of scrutiny would only be considered on receipt of this information. The Committee also requested an update as to the progress of the Regulation.

I include below an update on the progress of negotiations and a summary of the attached Impact Assessment which I hope will meet your needs.

UPDATE ON NEGOTIATIONS SINCE LAST UPDATE

Since I last wrote to you, the Customs Union Council Working Group (CUG) and the European Parliament Internal Market and Consumer Protection Committee (IMCO) have completed the First Reading of the proposed regulation.

Her Majesty's Revenue and Customs (HMRC) played an active role in the CUG negotiations and have been successful in removing the majority of articles which were not in the UK's interests. As it stands the main elements and impacts of the latest draft texts are as follows:

- **Right To Be Heard (RTBH)** provisions have been dropped from the Presidency Draft and only remain in the European Parliament draft in a significantly modified form that will only be applicable in 2% of detentions. This equates to approximately 600 postal and 35 non-postal consignments per annum. We will continue to resist the inclusion of this provision in the final text and expect to be successful as opposition is widespread amongst Member States.
- **The small consignment procedure** has an opt-in provision giving rights holders the option of transferring enforcement activity to customs authorities, thereby transferring the enforcement costs but in return for losing the intelligence they currently receive.
- **Parallel trade and overruns** are now out of scope and have not been included in either draft text. The exclusion of these goods from the Regulation will allow customs authorities to continue to focus finite resources on infringing goods of most value and goods that have the most potential to cause harm to UK consumers.
- **Increase in communication from customs authorities** as part of the detention process, customs authorities will now be required to provide the same level of detailed information to both the rights holder and the recipient. This is a departure from the current procedure which sees only the rights holder provided with this material. Indicative estimates contained in the Impact Assessment judge this to cost £100,000 per annum. To reduce this cost HMRC will seek to use the upcoming EU-provided IT system (COPIIS) to streamline processes and will look to negotiate with rights holders to come to an agreement on the appropriate allocation of these costs.
- **Goods in transit** are explicitly included in the European Parliament draft. However there will be negligible impact as the possibility for customs action at the border is governed by whether the goods are potentially infringing substantive Intellectual Property law (i.e. if there is evidence the goods are to be diverted onto the EU market) and this situation is very rarely encountered.

As the draft Presidency and European Parliament texts have finished First Reading, HMRC is in a position to provide an Impact Assessment and Supplementary Explanatory Memorandum for your consideration. Because of the progress made in agreeing the text HMRC is confident that this Assessment is durable and will withstand any likely amendments as the proposal goes through Second Reading and Trialogues.

HMRC confirms that the European Presidency and European Parliament texts are almost identical, with the only substantive differences being a highly modified Right To Be Heard procedure and a different definition of a small consignment. On this basis HMRC expect that a final text will be agreed at Second Reading stage.

The conclusion of this Assessment is that the monetised costs/benefits will be negligible, with the only substantive increased monetised cost a result of the requirement for increased communication from custom authorities to recipients as part of the detention process.

NEXT STEPS

HMRC believe that the concerns identified by the Committee in the original European Presidency text have now been addressed. This is a result of the steps taken to remove or amend elements that could have had an impact on finite customs authority resources.

The proposal will now go to a Second Reading where the European Presidency text will be the lead document. Given the relative closeness of both the European Presidency and European Parliament positions we reasonably expect an acceptable compromise document to emerge following further discussions, which may start on 05 September.

HMRC's negotiating position remains as before: we will support the extension of the scope of Intellectual Property rights covered; making mandatory a currently optional simplified procedure; the exclusion of overruns from scope; increased level of communication from customs authorities; and changing the time periods from 'date of receipt' to 'date of dispatch'.

HMRC will continue to negotiate over the modified Right To Be Heard procedure in the European Parliament draft and press for its removal. However, if the narrower form of RTBH were to be present in the final text we do not anticipate any significant implementation difficulties. HMRC expects to be successful in securing its removal as opposition to its inclusion is widespread. HMRC will also continue to negotiate over the appropriate definition of a small consignment. The UK has been successful in getting agreeable definitions in both the Presidency and European Parliament texts, but will support the lower limit in the European Parliament draft as this has fewer implementation challenges.

The UK will continue to vigorously oppose any draft that does not provide for an optional procedure. HMRC expect that will be achieved.

Overall, the UK has been successful in negotiations to remove the most contentious elements of the draft Regulation and has reached acceptable compromises on those that remain. The completed Impact Assessment demonstrates a negligible impact upon consumers, businesses, HMRC and Border Force, which HMRC is content to support.

If the Committee considers the Impact Assessment and sees fit to clear the document from scrutiny this will ensure the UK can vote to support the regulation and bring it into force for the benefit of the UK.

30 August 2012

INTELLECTUAL PROPERTY: PROPOSED WIPO AUDIOVISUAL PERFORMANCES TREATY

Letter from Baroness Wilcox, Parliamentary Secretary for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

Further to my letters dated 6 September 2011 and 2 November 2011, I am writing to update you on the recent progress concerning the proposed World Intellectual Property Organisation (WIPO) Audiovisual Performances Treaty.

As you are aware, we have been actively involved in negotiations at WIPO concerning a treaty on the protection of audiovisual performances. In the year 2000, WIPO held a diplomatic conference to discuss proposals for an international treaty on audiovisual performances. The UK supported the EU Council's decision to grant a mandate to the European Commission to conduct negotiations in consultation with a special committee designated by the Council.

The conference held in 2000 reached provisional agreement on all the treaty's articles except that relating to the issue of transfer of rights from the audiovisual performer to the producer (Article 12). The conference was then suspended. At the June 2011 meeting of the WIPO Standing Committee on Copyright and Related Rights (SCCR), provisional agreement was reached on the remaining Article. On this basis, the WIPO General Assembly, at its 20th Ordinary Session held last September, agreed to convene the diplomatic conference once again.

Therefore the text of the Treaty is the same as that in 2000, barring one Article which has been agreed in a different forum. As such, the European Commission will rely on the mandate agreed for the 2000 conference. Some minor amendments have been to this which reflect a more up-to-date position and do not impact on the substance which remains essentially the same. Enclosed is a copy of a document showing the amendments [not printed]. This is marked as 'Limite' and as such should be treated as confidential. Also enclosed is a copy of the original mandate.

The mandate was originally agreed under EC Treaty provisions. However a mandate adopted prior to the coming into force of the Lisbon Treaty remains valid and as such negotiations will continue on the basis of the mandate as amended.

NEXT STEPS

We fully support a treaty to provide international protection for performers' rights. The treaty will give performing artists the same level of international protection for their audiovisual performances as is currently given to their sound performances under the provisions of the WIPO Performances and Phonograms Treaty (WPPT).

The text of treaty has been agreed in principle. However there will be some discussion at the Conference around three additional agreed statements and one additional clause in the preamble to the Treaty. Subject to any amendments and agreement on the agreed statements, we will want to see a treaty that:

- balances the interests of performers and producers
- retains the current levels of flexibility and
- provides a clear legal basis in terms of the protection provided

We have carried out an initial assessment of UK law and are of the view that some change will be required in the area of moral rights. Under UK law performers do not currently enjoy moral rights in respect of audiovisual fixations of their performances.

The current draft text of the Treaty is attached [not printed]. As soon as we have a final agreed text I will of course share it with you and let you have a more detailed assessment of what it means for UK law.

28 May 2012

Letter from the Chairman to Baroness Wilcox

Thank you for your letter of 28 May. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 13 June.

We were grateful for sight of the draft text and your explanation.

We note that discussions are now focussing on the detail of the preamble and agreed statements. In this context we remind you of our continuing concern that the respective roles of the EU and the Member States ought to be transparent and hope that you will take the opportunity of these final discussions to ensure that the Treaty can accommodate a declaration of competence by the EU.

14 June 2012

JHA OPT-IN: UPDATE

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

I am writing on behalf of the Home Secretary and myself. The Government has committed to provide the Parliamentary Scrutiny Committees with a regular six-monthly update to the list of opt-in decisions which were annexed to the joint Home Office-Ministry of Justice annual report to Parliament on the JHA Opt-in. The second annual report, which was published on 23 January this year, included decisions taken between 1 December 2010 and 30 November 2011. The updated annex, which I enclose [not printed], lists decisions taken in the period between 1 December 2011 and 31 May 2012.

During this six-month period, twenty decisions were made under the JHA Opt-in Protocol and one was made under the Schengen Opt-out Protocol. For the Ministry of Justice, this included the decision under the Schengen Protocol to not opt out of the Directive on Data Protection. Eight separate decisions concerning the acceptance of various third countries to the 1980 Hague Convention on child abduction were also made within this period. The Government has also decided to not opt in to the Regulation on the Justice Funding Programme 2014-2020. On the Home Office side, the Government decided to opt in to the proposal for an EU-US Passenger Name Records agreement, and to the Regulations establishing the Asylum and Migration Fund. The Government did not opt in to the proposal establishing an Internal Security Fund.

I trust that the Committee will find the report useful and look forward to working with you on justice and home affairs matters in the coming months.

A copy of this letter has been placed in the House Library.

16 July 2012

JUSTICE PROGRAMME 2014 –2020 AND RIGHTS AND CITIZENSHIP PROGRAMME
(17273/11, 17278/11)

**Letter from the Rt. Hon Kenneth Clarke MP, Lord Chancellor and Secretary of State for
Justice, Ministry of Justice, to the Chairman**

I am writing to update your committee on the negotiations so far, to set out the Government's approach and to seek clearance on this proposal to agree to a partial general approach at JHA Council in June. In the event that your Committee is unable to provide scrutiny clearance I ask that you consider providing a scrutiny waiver on this proposal.

In "A Budget for Europe 2020" the Commission identified the need for a simpler and more transparent budget to overcome the problems that arise from the complexity of programme structures and the existence of multiple programmes. The entire package reduces the existing 11 funds under the Justice and Home Affairs area for the period for 2007 - 2013 to four funding programmes under this heading for 2014-2020: the Asylum and Migration Fund, Internal Security Fund, Justice and Rights and Citizenship funding programmes for 2014 – 2020.

There have so far been three meetings of the ad hoc Friends of Presidency working group set up to negotiate this dossier. I attach a copy [not printed] of the Presidency's latest version of the proposal following discussion at these meetings. Good progress has been made in securing the changes the Government requires and all our main negotiating objectives have been met.

The Danish Presidency is keen to reach agreement to a partial general approach on this dossier, as well as the other Justice and Home Affairs programmes at the June JHA Council. This will involve reaching agreement on the proposals with the exclusion of budgetary matters and any horizontal issues. This covers Article 7, paragraph 1 on budget and Article 11 on the Protection of the financial interests of the Union. It has removed reference to the indicative budget figures. In order for the UK to participate fully in this meeting and to influence the proposals, I am therefore seeking clearance for a partial general approach in advance of the meeting. I am not at this time seeking clearance on the budget for the proposals and will be making clear at JHA Council that by agreeing to the policy aspects of the proposals the UK is not committing to any budgetary proposal or level. The Government will be arguing for a significant reduction from the budget of the current programmes when the issue of budgets is discussed. Ministers at the Home Office will be writing in similar terms concerning the Home Affairs programmes.

The Government initially had a number of concerns over the objectives in the proposal. While the Government considers the areas currently set out in the proposal are all ones where the funding programme has a role in helping to embed and implement European legislation and policy in cited areas and should therefore be included, we have concerns that, as currently drafted, the scope of the programme, could be interpreted as extending across all the rights in the Charter. The Government therefore sought wording to make it clear that funding is limited to those areas set out as specific objectives in Article 4. The latest Presidency draft of the proposal includes text to this effect.

Additionally, the Government considers that the areas of gender equality, and preventing and combating violence against women should be areas where funding is available through this programme as the successor to elements of the Programme for Employment and Social Solidarity and the *Daphne III* programme which is concerned with preventing and combating violence against women. Requests to include these elements in the programme received support from several other Member States and have been included in the latest Presidency draft of the proposal.

The Government was concerned that the proposal currently includes a reference to consular protection as one of the citizenship rights in the recitals. The Government does not agree that there is a right to consular protection; the European Union's competence with regards consular protection is limited to the non-discriminatory provision of consular assistance to European citizens when they are in a third country. The Government does not consider that this is an appropriate area for this funding programme. The latest draft of the proposal has omitted this reference.

Even with these proposed amendments to the coverage of the programme, the Government did not consider that the objectives in the initial proposal are sufficiently specific or measurable. Clear objectives are particularly important to ensure the selection of targeted projects and provide the

framework for effective evaluation of value for money aspects of the programme. The Government is therefore seeking changes to the way in which the objectives are set out. Other Member States have also expressed concern that the objectives set out in the proposal are loosely drafted and that this has led to difficulties in identifying appropriate success indicators. The latest draft of the proposal seeks to make the objectives more tangible and measurable ways.

The Government is committed to the development of a strong EU consumer policy as an important element in contributing to the development of the single market. The Commission, in negotiations, has stated that the scope of the programme with regard to consumer policy is limited to those areas for which the European Union's DG Justice has responsibility – namely consumer and market legislation. However, the Government will be seeking for this distinction to be made clear through further drafting changes to explicitly reference the need to avoid distinction with the Consumer programme.

The Government has also sought the inclusion of references to the need to avoid duplication of other European Union work, such as that undertaken by relevant agencies and text has been included in Article 10 of the latest draft of the proposal.

The Government has also considered the proposed implementation procedures for the programme. Given the need to ensure that funding is focused on priority areas and provided to projects which meet the programme's objectives of helping to embed and implement European Union legislation and policy, the Government, along with a number of other Member States, considers that Member States should have a greater role in the implementation of the programme. The Government has therefore argued that the examination procedure should be used. This will mean that the Commission adopts the opinion of the Committee (which is made up of Member States) in determining the annual work programmes. The latest draft of the proposal calls for the use of the examination process.

10 May 2012

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

Thank you for the letter dated 26 April addressed to the Lord Chancellor and Secretary of State for Justice. The Committee have expressed interest in knowing the views of interested parties on the decision not to opt in to this proposed regulation and also to know who received funds under this programme last year and how much. I would also like to take this opportunity to update the committee on how this dossier is progressing in Council.

At the end of last year my Department carried out an informal engagement survey, addressed to NGOs, academics, the judiciary and policy leads, to which we received a 20% response. In addition to consulting on the objectives of the programme and activities to be funded, recipients were asked if they thought it was in the national interest for the Government to opt in to negotiations on the proposed regulation and the reasons for their response; what the benefits of UK participation were and what would be the consequences of non participation. Unsurprisingly, since the respondents were those who had shown an interest in, or have received funding from the current programmes, no opposition was voiced to the Government opting in to the programme.

To date three letters have been received in response to the Government's decision not to opt in to the proposed Justice programme. The Lord Chief Justice wrote expressing concern about the decision and requested that the Government reconsider. Correspondence has also been received from two MPs concerned about the effect the decision would have on UK citizens who are victims of crime overseas. The Government's decision not to participate in the proposed programme will not deny British citizens access to support should they find themselves victims on crime in the EU and, as your Committee know, negotiations are currently underway on a proposed Directive on the rights, support and protection of victims of crime..

The proposed Justice programme is a successor to the current Civil Justice, Criminal Justice and Drug Prevention and Information programmes. Results of the 2011 call for proposals from these programmes are not yet available; however the attached annex provides information on UK organisations which received funding from these three programmes in 2010, where the UK was a project lead. Overall the net receipts to UK interests have in the past been less than our contribution to the programmes – for the period 2007-2010, total UK receipts, where UK organisations were project leads, was €10m whereas the indicative UK contribution was €12.6m. In general the majority of the recipients of funding from these programmes are private organisations.

In "A Budget for Europe 2020" the Commission identified the need for a simpler and more transparent budget to overcome the problems that arise from the complexity of programme structures and the existence of multiple programmes. The entire package reduces the existing 11 funds¹ under the Justice and Home Affairs area for the period for 2007-2013 to four funding programmes under this heading for 2014-2020: the Asylum and Migration Fund, Internal Security Fund, Justice and Rights and Citizenship funding programmes for 2014-2020.

The existing funds were negotiated by the previous Government and, at a time of fiscal austerity, giving careful consideration to the value of the activities that the programme intends to fund balanced against the UK financial contribution, this Government has decided not to opt in to the proposed Regulation for the Justice programme.

There have, so far, been three meetings of the ad hoc Friends of the Presidency working group set up to negotiate this dossier, in which the UK participation has been constructive and well received. The Government has sought amendments to improve the text, for example in Article 10.2 giving Member States a stronger role to play and supporting moves to remove the drug elements from the Programme to avoid overlaps and duplicity and provide a holistic approach to the reduction and prevention of drug supply and demand. A copy of the Presidency's latest version of the proposal is attached [not printed]. The Danish Presidency is keen to reach agreement to a partial general approach on this dossier, as well as the other Justice and Home Affairs programmes² at the June JHA Council (7-8 June). This will involve reaching agreement on the proposals with the exclusion of budgetary matters and any horizontal issues. As the UK has not opted in to the draft Regulation we will not have a vote in Council.

14 May 2012

Letter from the Chairman to the Rt. Hon Lord McNally

Thank you for your letter of 14 May which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting of the new Session, on 23 May. We are grateful for the further information you have provided. The Select Committee's inquiry into the proposals for the next Multiannual Financial Framework has been completed and we now clear this proposal from scrutiny.

24 May 2012

Letter from the Chairman to the Rt. Hon Kenneth Clarke MP

Thank you for your letter of 10 May providing an update on the progress of this proposal. The Justice, Institutions and Consumer Protection Sub-Committee considered it on 23 May at its first meeting of the new Session of Parliament and we now clear it from scrutiny.

24 May 2012

MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME (10610/11)

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

Thank you for your letter dated 24 April 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 May 2012. We have decided to retain the proposal under scrutiny.

We are very grateful for the detailed explanation of the European Parliament's proposed amendments. We note that the European Parliament has a list of 244 amendments and that your letter focuses on those which concern the Government. Of those you highlight we would like to take this opportunity to lend our support to your stance on any change to the provisions likely to affect

¹ Five Justice funds (Fundamental Rights and Citizenship (FRC), Daphne III, Criminal Justice (JPEN), Civil Justice (JCIV) and Drugs Prevention and Information (DPIP) and six home affairs funds (European Refugee Fund, European Return Fund, European Integration Fund, Prevention and Fight against Crime (ISEC) and Prevention, Preparedness and Consequence Management of terrorism and other security-related risks(CIPS))

² The Asylum and Migration Fund, Internal Security Fund, and Rights and Citizenship funding programmes for 2014-2020.

the role victims of crime play in the UK's criminal justice system. In addition, the negotiation of the provisions governing vulnerable victims has already formed the basis of correspondence between us and, following your reassurance that all victims of crime will be the subject of an assessment as to their vulnerability, we too would not welcome any changes to these provisions.

In relation to compensation for victims of crime, we note that the agreed text includes a provision conferring a right on the victim to a decision on compensation from the offender in the course of criminal proceedings. In addition, Measure D of the Roadmap for strengthening the rights and protections of victims envisages a review of the EU's existing Directive on compensation to crime victims, and based on its 2012 Work Programme it is the Commission's intention to bring forward legislation to ensure that victims of crime receive fair and appropriate compensation in all Member States. It is the Committee's view that in relation to compensation, victims of crime should be treated equally throughout the Member States and ought not to be at a disadvantage as to the availability of compensation they receive on the basis of the state within which they fall victim to crime.

We note that the European Parliament has proposed that the judiciary be included in the list of personnel that the Member States are required to give specialised training to in order to "sensitise them to the needs of victims" but you believe that mandatory training of the judiciary interferes with judicial independence. The Committee is not convinced by your argument and we have some sympathy with the Parliament's view.

We look forward to considering the agreed text when it emerges from the negotiations in due course.

24 May 2012

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

Thank you for your letter of 24 May in response to the Justice Secretary's last update on this proposal.

The Justice Secretary mentioned in his last letter that the Danish Presidency hoped to reach a first reading deal by the end of its tenure in June. It seems likely that they will fulfil this ambition. An agreed text is likely to emerge during parliamentary recess making it difficult, if not impossible, to provide this to you for consideration before agreement is sought to adopt the proposal. I am therefore writing to seek your agreement to lift your scrutiny reservation on the basis that the agreed text is in line with that which we have previously seen and shared with the Committee and the amendments you have been advised of.

Thank you for your support for the Government's stance on the role of victims. We expect the agreed text will link some rights to the victim's "active participation" rather than to the victim's "role in the relevant criminal justice system" which the European Parliament found unclear. From the UK's point of view, this should not affect the obligations in the text. There is no suggestion of any amendment that would change the role that victims play in the UK's criminal justice system or, for example, the extent to which the Government must refund expenses for attendance as a victim not a witness or to pay for interpreters that are not necessary for the purposes of giving evidence.

On the matter of the inclusion of judges in the list of personnel to whom Member States are obliged to give specialist training I should perhaps clarify the position. The Government is not against such training in principle. On the contrary; it is clearly very important. Our concern is rather that it is not for Member States to train judges - in the UK and in many other jurisdictions training is provided by the judiciary themselves.

I shall of course provide the Committee with an agreed text as soon as possible.

29 May 2012

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

I am writing with a further update on this proposal as negotiations have progressed since my letter of 29 May. I hope that this further information will assist the Committee when considering my earlier request to clear this proposal from scrutiny.

ARTICLE 2

Proposed amendments made by the European Parliament (EP) to define gender based violence and the 'legal status' of the victim have not been incorporated into the draft Directive.

ARTICLES 3 AND 4 – RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

The European Parliament's proposal that a victim may be permitted to access a case file has not been incorporated into the draft Directive. The notification of the release of an offender is to be available where the victim has expressed a wish to receive it. This is in line with the notification scheme operated by the National Offender Management Service for victims of sexual or violent crimes.

ARTICLE 7 (6 OF THE COMMISSION PROPOSAL) – INTERPRETATION AND TRANSLATION

At the time of my previous letter it seemed likely that these rights would be linked to a victim's 'active participation'. Negotiations continue on whether this phrasing or the language used in the General Approach text, 'in accordance with their role in the relevant criminal justice system' is preferable. Either of these permutations would be acceptable as they would have no effect on the role a victim plays in the UK criminal justice system.

ARTICLE 8 (7 OF THE COMMISSION PROPOSAL) – RIGHT TO ACCESS VICTIM SUPPORT SERVICES

Support is to be available from the time the authorities are aware of the victim and is time limited to be linked to the duration of criminal proceedings and an appropriate time after. This is consistent with current domestic practice whereby victims are referred to support providers following the report of a crime.

ARTICLE 21 (18 OF THE COMMISSION PROPOSAL) - IDENTIFICATION OF VULNERABLE VICTIMS

The proposed list of victims who are considered to be vulnerable has not been included in the draft proposal. A briefer list is included including, amongst others, victims of terrorism and hate crime but these are illustrative of offences where particular attention should be paid to the possibility of the victim having specific needs. It is not a presumption of vulnerability.

ARTICLE 23A – PREVENTION (NEW PROPOSAL)

The European Parliament's proposed provision has not been incorporated into the draft Directive.

ARTICLE 24 – TRAINING

Training for the legal profession is to be recommended rather than mandatory and therefore does not impinge upon judicial independence.

I shall of course provide the Committee with an agreed text as soon as possible.

11 June 2012

Letter from the Chairman to the Rt. Hon Lord McNally

Thank you for your letters dated 29 May and 11 June 2012 which were both considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 13 June 2012. We have decided to clear the proposal from scrutiny. We are grateful to you for your clarification of the Government's stance on the provision of judicial training and we look forward to considering the agreed text in due course, in particular the detail of the provisions governing compensation for victims of crime and the training of the legal profession.

14 June 2012

Letter from Baroness Wilcox, Parliamentary Secretary for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 12 January in which you raised a number of further questions on the proposed Directive. Discussions on the draft proposal have continued between Member States and the Commission; I am now in a position to both address your questions and at the same time provide an update.

A new proposal drawn up by the Presidency on 10 February was discussed during the Council Copyright Working Group meeting on 17 February. A further revision was issued on 2 March; discussions continued through the Working Group and the proposal was considered by COREPER on 14 March; the Committee voted to begin trilogue discussions with the Commission and European Parliament. The information below is based on the most recent revision (which is attached at Annex A) [not printed] and reflects recent discussions.

The attached document which is a Presidency text in preparation for the first informal trilogue is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limited marking. It cannot be published, nor can it be reported on in any way which would bring details contained in the document into the public domain [not printed].

EU VS. NATIONAL MEASURES

You asked whether action at EU level would be more effective than national measures. The Government fully supports the specific goal of the Commission's Digital Agenda for Europe, namely the creation of a legal framework to facilitate the digitisation and dissemination of cultural works in Europe through a Directive on orphan works.

A solution at EU level to the problems of access to orphaned works (and one that meets the needs of UK interests) is needed as it would enable pan-European access to many important historical and cultural works. The Hargreaves Review of Intellectual Property and Growth recommended that the Government should legislate to enable licensing of orphan works and the Government broadly agrees with the Review's recommendations. As a result, the UK Government has recently consulted on proposals for domestic legislation that would permit the use of orphan works. This consultation explored options for enabling use of a wide range of orphan works for both commercial and non-commercial use. The current text of the EU proposal preserves the right of Member States to make provision for the use of orphan works that go beyond any EU solution. Whilst a broader European Directive could enable greater use of works across the 27 member states, the current EU text represents a compromise proposal. The domestic and EU proposals should be seen as complementary with the EU proposal representing a first step in dealing with this important issue.

UNPUBLISHED WORKS AND PHOTOGRAPHS

An orphan works scheme that limited authorisation to only published or broadcast works could have the effect of restricting access to culturally and historically valuable works that have never been published or broadcast. The inclusion of unpublished works (war diaries for example) into the scope of the Directive will enable greater public access to many important documents and recordings. The rights of any rightsholders remain of high importance and the Directive does not diminish those rights. A provision that unpublished works must already have been made publicly accessible with the permission of the rightsholders has been included by Member States. Only where it could reasonably be assumed that the rightsholders would not oppose their use under the terms of the Directive will the provisions of the Directive apply. In addition, the provisions of the Directive do not affect legislation relating to, inter alia, data protection and privacy. There is a strong case for the inclusion of photographs in an orphan works Directive. For example, around 90 per cent of still photographs in UK museums are believed to be orphaned.

The photographic industry has a number of concerns; some, centred on the commercial aspects of the use of orphan works, but also on the relative ease with which photographs can become orphaned, particularly in the digital age. Photographs are outside the scope of the proposed Directive (other than those contained within other works, books for instance). The Directive does however include a clause providing for an annual report on the possibility of widening the scope of the Directive in the future, therefore photographs may be considered at that time.

MEMORANDUM OF UNDERSTANDING: KEY PRINCIPLES ON THE DIGITISATION AND MAKING AVAILABLE OF OUT-OF-COMMERCE WORKS

Turning to your point on the Memorandum of Understanding (MoU), out-of-commerce works differ from orphan works: out-of-commerce works involve a conscious decision not to make them available for commercial reasons as opposed to orphan works which are the result of lost or unknown information as to who is the rightholder. The roots of the MoU lie in the high transaction costs for users that often arise from the need to seek multiple permissions from rightholders in the course of the mass digitisation of copyrighted works. The MoU and the proposed Directive both contribute to the goals of the Commission's Digital Agenda, but the two initiatives are separate and serve different needs- the MoU will contribute to mass digitisation of cultural works, but will not necessarily increase access to orphan works. For instance, the MoU would cover a book where the rights holder is known, but the book is not commercially available. The MoU would not enable access to a book where the rights holder was unknown or could not be found.

MEMBER STATE OF FIRST PUBLICATION

You also asked for an update on our progress in seeking clarification on identifying more clearly the Member State of first publication. The latest draft states that the diligent search shall be carried out in the Member State where the work was first published or broadcast. The introduction of unpublished works into the scope of the Directive highlighted a problem relating to identification of the state of first publication. The Commission's proposed solution is that in the case of unpublished works the diligent search shall be carried out in the Member State where the organisation that made the work publicly accessible is located. A further safeguard provides that, where necessary, a diligent search for any work - published or not - shall include consultation of information available in other countries if appropriate.

DIGITAL COPYRIGHT EXCHANGE

You asked for an update on the findings of the feasibility study on developing a UK Digital Copyright Exchange (DCE) and the Government's response. Phase 1 of the independent feasibility study into developing a DCE concluded, on the basis of the evidence collected, that copyright licensing processes in the UK compare well with other countries in the world but there is much that still could be improved. For instance, copyright licensing could be made more streamlined, easier and cheaper to use, especially for the small and medium-sized enterprises (SMEs). A copy of the report of the first phase of the study can be found at: <http://www.ipo.gov.uk/dce-report-phase1.pdf>. Phase 2 of the Study began in April 2012 and will report to Government before the 2012 summer Parliamentary Recess. The second phase will focus on seeking solutions to the issues with copyright licensing identified in the report; the DCE will be one of the potential solutions examined.

PUBLIC INTEREST MISSION

You asked for views on the amendments to Recital 17 and Article 7 particularly in the context of distinguishing between commercial and non-commercial use of orphan works. It is true to say that there is no specific definition of commercial use or otherwise, but the intention of the Directive is focussed clearly on providing access to cultural works that are held by institutions with a clear public interest mission. Whilst amendments have been made to allow the use of public private partnerships and to allow for the charging for access to such works (as many museums in the EU do for physical exhibits), the draft Directive is clear that these allowances must not impose any restrictions on use nor grant the commercial partner any rights of use and control of those works. The UK Government believes that it is important that there is a fair balance between the rights of copyright owners and access to culturally important works. The caveats in the proposal should achieve that balance.

DILIGENT SEARCH

The proposed Directive provides for a diligent search of a number of specified sources. The results of the search and – in the event that the work is found to be orphan – the subsequent uses made of the work will be recorded in a publicly accessible database. The UK Government's copyright consultation explored similar issues in respect of a domestic orphan works scheme. It proposed a solution that would enable the use of individual orphan works after a diligent search which was then confirmed by an authorising body such as a collecting society or a public body like the Copyright Tribunal.

The Intellectual Property Office is currently analysing the results of the consultation which closed on 23 March. I would be pleased to provide you with further information once the analysis has been completed. However, in terms of this EU proposal the circumstances and sources for diligent search are made clear within the Directive and its annex.

SINGLE EUROPEAN DATABASE

In order to address some Member States' concerns on the costs of a database at national level, the Commission has introduced a proposal for a single European database to record the diligent searches and uses of orphan works. The proposal is for the database to be hosted by the Office for Harmonisation in the Internal Market (OHIM) the body responsible for the Community Trade Mark and certain aspects of enforcement. The Council Legal Service consider the proposal to be legally sound and whilst the substance of the proposal could be considered sensible, further consideration is needed on whether the production and management of a database on orphan works falls within OHIM's current enforcement vires. We await further news of the Council's examination of the legal issues.

I hope that you will find this information helpful. The trilogue discussions are continuing; once a text has been agreed or should there be any significant developments I will write to you again.

14 May 2012

Letter from the Chairman to Baroness Wilcox

Thank you for your letter of 14 May 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 June 2012. The Committee was grateful for the update and sight of the latest text.

The Committee is sympathetic to the objective of facilitating mass digitisation advocated by Professor Hargreaves and notes that you consider this proposal to be a compromise first step to achieving this. We therefore regret the exclusion of photographs from the Directive and consider it important to retain a robust review provision, particularly to ensure that the future inclusion of photographs is kept on the table. We should be grateful if, when writing to us again, you would clarify what you mean by "the photographic industry" and provide more information on the nature of their concerns.

We favour, in principle, the inclusion of unpublished works within the scope of the proposal. Whilst accepting that a diligent search in respect of such works may require additional steps, we consider that these should be drafted to provide as much certainty as possible. Simply requiring an additional search when necessary does not provide this. Are there better alternatives, for example developing guidelines for when such a search is necessary or giving an authorised body a power to certify whether an additional search is necessary?

We accept that the provisions of the proposal concerning commercial use and the involvement of commercial organisations in the non-commercial exploitation of orphan works (for example through public-private partnerships) strike a fair balance between facilitating mass digitisation whilst avoiding distortions of competition and protecting rights holders.

We should be grateful for an update, in due course, on the progress of negotiations with the European Parliament, the prospects of a single European database, and the outcome of consultation on –

- a digital copyright exchange,
- the proposed mechanism for implementing the requirement for a diligent search.

28 June 2012

Letter from Baroness Wilcox to the Chairman

Thank you for your letter of 28 June in which you raised a number of further questions on the proposed Directive. Trilogue discussions between the Permanent Representatives Committee, the European Commission and the European Parliament on the draft proposal have concluded; I am now in a position to both address your questions and at the same time provide an update. I am also requesting that the Committee clears the proposal from scrutiny.

At the informal trilogue on 6 June an agreement was reached on the text of the proposed Directive. The document attached at Annex A was issued by the Presidency on 8 June and seeks approval of the final compromise text from the Permanent Representatives Committee. You are asked to note that although the attached document [not printed] carries a 'Limité' marking, the Council Secretariat has informed Member States that this may be disregarded.

You asked for clarification of the term "photographic industry" and for further information on the nature of their concerns. Those with the greatest concerns are commercial photographers who are worried that many digital photographs may be incorrectly declared orphan, particularly where the metadata has been removed without the rights holder's permission, either inadvertently or deliberately. It may be worth noting that it is already a civil infringement under copyright law to remove metadata from photographs without authorisation from the rights holder. If someone knowingly and without authorisation removes metadata they are committing a civil infringement. The copyright owner has the same rights in respect of such an action as they have in respect of other copyright infringement. The photographers argue that such infringements are difficult to prove and costly to pursue. We believe that the requirements of the diligent search and the limited scope of this directive will help to assuage some of their concerns

With regard to the single European database I can confirm that under the provisions of the proposal the relevant information concerning a diligent search will be administered by the Office for Harmonisation in the Internal Market (OHIM). The Government has no objections in principle to OHIM expanding its remit – in fact it is well placed to take on a broader role in intellectual property (IP) and its enforcement. But the relevance, cost and impact on existing activities should be properly considered at an early stage in future negotiations.

I note the Committee's comments regarding the additional steps that may be required when conducting a diligent search. The proposal directs Member States to the diligent search guidelines agreed in the context of the High Level Working Group on Digital Libraries established in the context of the i2010 digital library initiative, it may be desirable to apply the same guidelines to any additional searches. In the policy statement document "Consultation on Modernising Copyright" published on 2 July, the Government states that in respect of the domestic orphan works proposals a diligent search prior to use is key to the scheme. The Government is also mindful of the need to ensure the process is sufficiently straightforward to be of use to potential users therefore, the Government will consider the options and consult fully with stakeholders as part of the implementation process.

You also asked for an update on the findings of the feasibility study on developing a UK Digital Copyright Exchange (DCE) and the Government's response. As I said in my letter of 14 May, Phase 2 of the Study began in April 2012 with the Study expecting to report to Government this month. The details of this phase of the independent study are yet to be made known.

I hope that you will find this information helpful. Following legal and linguistic revision, the text agreed at the trilogue discussions is likely to come before the Permanent Representatives Committee in September; the Committee is expected to vote in favour and the proposal quickly moved to Council. In order that the UK is able to vote in favour of the proposed Directive, I request that the Committee lifts its scrutiny reserve. I will of course be happy to answer any questions on the text that the Committee might have.

10 July 2012

Letter from the Chairman to Baroness Wilcox

Thank you for your letter of 10 July 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 25 July 2012. We decided to clear this matter.

The Committee was grateful for the update and sight of the latest text. It would have been helpful, as we have previously requested, for the text to have been marked with the changes since it was last seen by the Committee, or your letter to have addressed the changes.

We are grateful for your response to our outstanding questions and consider that the evolution of the text supports our underlying objective of encouraging digitisation or is of insufficient significance to prevent clearance.

We should be grateful for an update in due course on the final outcome of negotiations, the outcome of consultations on implementation of this proposal, and on the outcome of the feasibility study on developing a UK Digital Copyright Exchange.

26 July 2012

Letter from Lord Marland of Odstock, Parliamentary Under Secretary for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 26 July to Baroness Wilcox; I am grateful to the Committee for clearing the proposed Directive from scrutiny. In your letter you requested an update on the approval of the proposed EU Directive and the subsequent transposition process, and further information on the Digital Copyright Exchange. I am now in a position to provide those updates.

The Directive was adopted by the Council of Ministers on 4 October 2012; Member States must implement the provisions of the Directive into their national legislation within two years. The Directive is a significant step in opening up the use, across Europe, of many often culturally important works; you may find useful a summary at Annex A of the main elements of the final Directive text.

Following publication in the Official Journal of the European Union within the next few weeks, Government officials will begin the process of transposing the provisions of the Directive into UK law. The transposition process will include a public consultation during which stakeholders may submit their views on Government proposals for implementing the Directive.

The Government aims to consult all interested parties to seek their views on the way that the provisions of the Directive can best operate in practice and we are considering closely the impact and interface between the EU Directive and the proposed domestic scheme being considered in the Enterprise and Regulatory Reform Bill. The Directive consultation is not expected to be published until later next year.

You also asked for an update on the findings of the feasibility study on developing a UK Digital Copyright Exchange (DCE). The study considered options for developing a functional digital market in rights clearance and a source of information about rights ownership, as recommended by the Hargreaves Review of Intellectual Property and Growth and accepted by the Government.

On 31 July 2012, Richard Hooper who led the feasibility study published the Phase 2 final report. This makes a number of recommendations on how copyright licensing could be simplified, including the establishment of an industry-led Copyright Hub based in the UK but linked to the growing national and international network of digital copyright exchanges, rights registries and other copyright-related databases.

The Report's main recommendation is for the creation of a not-for-profit industry-led, industry-funded Copyright Hub. The Copyright Hub will have five main purposes, to be:

- a signpost and a navigation mechanism to the complex world of copyright;
- the place to go for copyright education;
- the place where any copyright owner can choose to register works, the associated rights to those works, permitted uses and licences granted;
- the place for potential licensees to go for easy to use, transparent, low transaction cost copyright licensing;
- one of the authoritative places where prospective users of orphan works can go to demonstrate they have done proper, reasonable and due diligence searches for the owners of those works before they digitise them.

Richard Hooper believes that by creating a single marketplace for copyright licensing it would not only reduce the costs of licensing and simplify a complex system but would also bring together key players to have a more effective exchange and use of rights.

The Government supports the further work recommended by Richard Hooper and will work alongside the private sector to deliver this initiative; Government is providing the member of staff who supported Richard Hooper's study on secondment to the DCE in order to provide continuity to the process.

A copy of the final report can be found here: <http://www.ipso.gov.uk/dce-report-phase2.pdf>

I hope that you will find this information helpful. I will of course be happy to answer any further questions on the Directive that the Committee might have.

10 October 2012

Letter from the Chairman to Lord Marland

Thank you for your letter of 10 October confirming that this proposal has now been adopted. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 October 2012.

We were grateful for the further information on your plans for implementation of this Directive and welcome the development of a Copyright Hub which can play a significant role in facilitating the digitisation of orphan works.

We do not expect a reply to this letter

25 October 2012

PUBLIC ACCESS TO DOCUMENTS (9200/08)

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

I am writing further to my letter on 27 March 2012 about the ongoing discussions concerning the recast of Regulation 1049/2001 (Access to Documents). In that letter I provided an outline timeframe for discussion of the recast at Working Party level at the European Council.

Although I am not yet in a position to share an agreed text for scrutiny, I can now inform the Committee that a mandate for the Presidency to enter trilogue negotiations with the European Parliament and the European Commission was agreed by Working Party on 27 April and by COREPER on 10 May. Those negotiations will now begin and the outcome of those discussions will hopefully lead to a common position at Council.

As I have mentioned previously, the Danish Presidency focused on ten specific areas of the recast on which they sought agreement. Those areas were:

- Expansion of the institutional scope of the regulation in line with the Lisbon Treaty.
- The definition of a document and the point at which a document becomes subject to the regulation.
- The Commission proposal for a specific exception for documents relating to selection and procurement procedures.
- The alignment of the regulation with the Aarhus Convention and its transposition in EU law, regulation 1367/2006.
- The proposal of the European Parliament to require the appointment of information officers in institutions subject to the regulation.
- The appropriate balance between access to information and data protection.
- The situation of large files, particularly in relation to investigative files.
- The processes relating to consultation with member states about requests relating to documents emanating from member states.
- The extent to which documents surrounding legislative processes and legal advice as part of that process should be proactively released.

I will write when further information becomes available.

28 May 2012

Letter from the Chairman to the Rt. Hon Lord McNally

Thank you for your letter of 28 May 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 June. We decided to retain this matter under scrutiny.

We are grateful for the update, including the issues on which negotiations are focussed, but are unable to take a view on these without more detailed information, preferably in the form of text under negotiation. We understand, however, that negotiations have again stalled.

28 June 2012

SERVANTS OF THE EU: REGULATIONS AND CONDITIONS OF EMPLOYMENT
(11964/11)

Letter from the Chairman to Mark Hoban MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum of 12 July 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 25 July. We decided to clear this matter.

In doing so we noted the Court of Auditors has not ventured a view on the savings claimed by the Commission, in respect of which a full Impact Assessment is awaited from the Commission.

We should be grateful if future updates on the negotiations on the substantive proposal could specifically address the points raised in this Report by the Court of Auditors.

We do not require a response to this letter.

26 July 2012

STATUTE FOR A EUROPEAN FOUNDATION (6580/12)

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

Thank you for your letter of 24 April which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting of the new Session, on 23 May. We are grateful for your detailed commentary responding to our earlier questions. We retain the proposal under scrutiny.

The Committee takes the view that this is a potentially useful initiative. We note that the proposed Regulation would be facilitative. While many UK charities may not find it helpful to establish a European Foundation, it appears that some may well wish to take advantage of a form of organisation which could operate more easily in more than one Member State. We recognise that a common definition of "public benefit" will be needed.

We will consider the proposal further in the light of developments and look forward to any further comments you may receive from UK stakeholders and to information on how other Member States react to the proposal. Subject to that, we do not expect a reply to this letter.

29 May 2012

STRATEGY FOR A BETTER INTERNET FOR CHILDREN (9486/12)

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

Thank you for your Explanatory Memorandum dated 18 May 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 June 2012.

We have decided to retain the proposal under scrutiny.

Aside from the Commission's focus on self-regulation, an approach you welcome, your Explanatory Memorandum appears to be quite sceptical about the Commission's ambitions, in particular, "in times of austerity" as regards the potential cost of the Commission's plans and the possible threat of future EU legislation. Indeed, in welcoming self-regulation you say that it is the Government's intention to "try and head off any legislative proposals from the Commission, where we feel that they would be unwarranted or ineffectual" despite the fact that you do not intend to consult on the Commission's suggestions.

In light of these factors there are three issues which the Committee would like to raise with you. The first concerns, as already mentioned, your apparent intention not to consult on the Communication. It seems to the Committee that this decision is rather at odds with the Commission's self regulatory focus. Perhaps the Government ought to seek stakeholder views on the practicalities of the Commission's ambitions before welcoming with such enthusiasm the Communication's focus on self-regulation? With similar concerns in mind, the Committee would welcome details from you as to the

extent of the consultation process undertaken by the Commission prior to publishing this Communication.

Second, there are aspects of the Commission's plans which it seems to the Committee could on the face of it help to make the internet a safer environment for children and would be better pursued by the Commission. Yet your Explanatory Memorandum says very little on these subjects and without a consultation how are the Government and this Committee to assess the Commission's position? For example, take the Commission's ambition under Pillar 3 to move towards a "generally applicable, transparent and consistent approach to age rating and content classification"; an EU-wide approach to this issue seems to the Committee to be sensible and the Communication makes it clear that the Commission will give industry time to introduce self-regulation but if industry fails the Commission will step in. Would this be an area where you think it might be necessary to "head off" unwarranted Commission legislation? (Other examples the Committee might cite would include regulating online advertising, the regulation of online gambling and the provision of transparent information on the cost of online services (Pillar 3).)

Finally, in relation to Pillar 2 and the raising of awareness amongst parents about the dangers children face when online. The Commission argues in support of their call to industry to widen the availability and use of parental controls that only 28% of parents in the EU block or filter the websites visited by their children yet at paragraph 77 of your Explanatory Memorandum you say: "it is the view of HMG that parents are the most important factor, and should take responsibility for the safety of their children when using the internet ...". How, in light of your budgetary concerns and your apparent opposition to Commission legislation, would you address the management of content which children access online?

We look forward to considering your reply within the usual 10 day deadline.

28 June 2012

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter of the 28 June with regards to your Committee's scrutiny of the above Communication. Your letter asks three questions and I will reply to each question in turn.

I. CONSULTATIONS

One of your major concerns is with regards to the lack of consultation of interested stakeholders who would have an interest in the self regulatory proposals, in the Communication.

As your Committee rightly points out, many of the proposed self regulatory actions depend on the support of industry and other stakeholders. Therefore, my officials are working with other Government Departments who have a role in online child safety, to garner the views of industry and other stakeholders. We will also share any concerns that industry raise with the Commission and the relevant Government Departments.

You should also note that my Department has already consulted two major beneficiaries, of the current Safer Internet Programme, namely Internet Watch Foundation and Childnet on the proposals contained within eTENS. They were, in the main, supportive of the proposals. Once the negotiation for both packages is complete (currently expected to be mid 2013), my Department will look to promote any new programme and its associated funding more widely within the UK.

You will also want to note that Tim Loughton, Minister for Children and Families, and Lynne Featherstone, Minister for Equalities and Criminal Information, who are the joint chairs of the executive board of the UK Council for Child Internet Safety (UKCCIS), have written to members of UKCCIS to seek their views and advice on parental internet controls. UKCCIS members include businesses and trade associations for the information and communications industries and relevant children's and parents' charities. The questionnaire accompanying the Ministers' letter includes questions on effective models for regulation.

With regards to any consultations carried out by the Commission prior to this Communication, they have not carried out an official one in this policy area since 2008. However, the Commission published a report entitled 'Protection of Children in a Digital World' in September 2011. This report looked at how Member States were implementing the Commission Recommendations issued between 1998 – 2006 on the protection of minors using online and audiovisual services. The findings of this report and the Council Conclusions associated with it were cited by the Commission as justification for this Communication.

2. SELF REGULATION AND HMG VIEWS ON ACTIONS FROM PILLAR 3

One of the central themes running through your letter is the question of HMG's support for self regulation over regulation. As I said in the EM, HMG is supportive of the self regulatory approach encouraged by the Commission. Self regulation, in HMG's view is more 'fleet of foot' in dealing with many of these issues than regulation and it is currently the preferred option in dealing with issues such as the removal of child abuse images from the internet and dealing with harmful content. However, that this does not mean that we would rule out regulation, if there is a strong case for it.

You also ask for our views on four proposals in Pillar three of the strategy, age rating and content classification; regulation of online advertising; online gambling; and the provision of transparent information on the cost of online services and whether, we would look to 'head' off any regulation in these areas, if any was forthcoming.

First, you should note that that industry is already working with both the Commission and HMG to put in place effective self regulatory measures in some of the above areas and others to help protect children online and prevent the need for any regulation. For instance, the online industry has already worked with the EU Commission to put together two self regulatory codes covering the use of mobiles and social networking sites by children and young adults. The Commission monitors these two codes and they believe that they are working effectively.

A high level industry CEO coalition including Facebook, Apple and France Telecom has also committed at EU level, to take action in 5 following areas over the next 18 months: simple tools for users to report harmful content and contact, age-appropriate privacy settings; wider use of content classification; wider availability and use of parental controls; and effective take down of child abuse material. Please note that some of the workstreams that you mention from Pillar 3, for instance, work on wider use of content classification are being carried out at EU level only. We understand however that progress is slow. We also believe that the success of the work of the industry coalition will be a key factor in the Commission deciding whether or not to bring forward legislation in certain areas. We will therefore encourage industry to continue to make any self regulation 'work', so ensuring the safety of children online, without the need for regulation.

With regards to online advertising, I believe that we should resist further European legislation because I am satisfied that the UK's current regulatory system is successful. The Advertising Standards Authority (ASA) administers a system of co-regulation and self-regulation for all advertising in this country. From March 2011, the ASA's remit was extended to explicitly cover online advertising including (but not limited to) paid-for search listings, viral advertisements, marketing on companies' own websites and advertising in non-paid for space (such as social media). At the time, the Government welcomed the ASA's steps to bring greater scrutiny to the online world and while, of course, the scope and scale of online advertising presents serious challenges for the ASA's regulation, we continue to believe that this is the right approach.

On online gambling, the Government is proposing to reform UK remote gambling regulation – by regulating at the point of consumption rather than at the point of supply. The primary purpose of the remote gambling reforms is public protection – specifically helping to tackle problem gambling, underage play and sports betting integrity. We believe these proposals are the right approach, and would resist any further European legislation in this area.

In Europe, despite the cross-border nature of this sector, online gambling is not covered by specific EU-level legislation. It is specifically excluded from the e-Commerce and Services Directives, due to opposition from some Member States. The European Commission intends to develop a sector-specific policy on gambling services, including a Communication on online gambling towards the end of 2012, as a follow-up to the 2011 consultation Green Paper. The Communication will evaluate consultation responses and identify key challenges for the co-existence of national regulatory models in the Internal Market and consumer protection initiatives to be taken at national and EU level. Any additional European legislation may cause duplication and possible confusion.

Finally, if industry is seen by the Commission to fail to implement self regulatory measures in the above areas and so bring forth draft regulation, then we would judge each proposal on its merit and of course would consult industry for its views on any proposals. On timescales for any regulation, my officials have had discussions with the Commission and they get the sense that the Commission will give industry the necessary time to implement solutions and that the solutions are working effectively before it proposes any regulations. My officials belief is that we will not see any draft regulations till 2014.

PILLAR 2 – PARENTAL CONTROLS

Finally, your Committee asks how we are going to address the management of content which children access online.

First, as mentioned above, the two UKCCIS Ministers have published a discussion questionnaire seeking views on the best ways to keep children safe online. The questions are directed at UK members and the public. The Ministers letter and the questionnaire are on the Department for Education's website at <http://www.education.gov.uk/consultations>. Responses to this questionnaire will therefore also help define what parents, charities, industry and others think about how best to achieve the aim set out in the Communication that industry should ensure that parental controls are available on internet enabled devices.

You should also be aware that by October 2012, the four main UK fixed ISP's have committed to providing all new customers with an unavoidable choice of whether or not to implement parental controls. TalkTalk have already implemented this, through its Homesafe product. Further industry initiatives in this field, such as an expected code of practice on public Wi-Fi could go some way to preventing the need for regulation.

I hope that this letter answers your questions, but do not hesitate to contact me, if you require further information.

12 July 2012

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter dated 12 July 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 25 July 2012. We have decided to clear the proposal from scrutiny.

We are grateful to you for the answers to our questions. On balance, from the perspective of online child protection, given the extent of the work and cooperation currently being undertaken in this field by the Government, Industry and the Commission highlighted by your letter we found your response reassuring. The Committee felt that your letter tended to focus on the UK's perspective rather than the wider EU which inevitably formed the focus of the Commission's Communication.

We remain of the view that there are sectors of the IT industry which would benefit from a pan-European approach pursued by the Commission, for example the four areas highlighted in our letter dated 28 June 2012. But, as you say the Commission will give the IT industry time to implement its own solutions and if this approach fails the Commission will step in with its own legislation. Like you, this Committee will consider any EU legislation which emerges from the Commission on a case-by-case basis when it is deposited in Parliament for our consideration.

We do not expect an answer to this letter.

26 July 2012