HOUSE OF LORDS
European Union Committee

House of Lords
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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 31 March 2015 – 10 July 2015

JUSTICE, INSTITUTIONS AND CONSUMER PROTECTION

(SUB-COMMITTEE E)

CONTENTS

ACCESSION TO THE HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (5218/12, 5306/12, 5312/12)

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

Thank you for your letter of 26 March to the then Justice Secretary. When these proposals were first issued the Explanatory Memorandum explained that both the Justice Secretary and Foreign Secretary had an interest in these proposals. Following the CJEU's Opinion that there is exclusive competence in this area, and the process that has been agreed subsequently for taking these and future proposals forward, it has been agreed between the Ministry of Justice (MoJ) and Foreign and Commonwealth Office (FCO) that it is more practical for the formal lead for scrutiny to pass to FCO given that FCO Ministers are responsible for agreeing the assessments of those countries acceding to the 1980 Convention and deciding which accessions the UK should support. MoJ will retain a significant interest in this work.

In his letter of 9 March Mr Grayling explained that the Commission had drafted benchmarks against which it was suggested proposals for future acceptances of the accessions of countries would be assessed. There has been general acceptance of these benchmarks and that they should be used for assessing the ability of the countries in the current eight proposals to apply the Convention. I enclose [not printed], as requested, a copy of these benchmarks.

Assessments of Andorra and Singapore were completed. As these assessments did not give rise to any concerns about these countries' ability to apply the Convention, the Council Decisions for both were duly adopted at the June Justice and Home Affairs Council. Unfortunately it was not possible between the time of the General Election and the JHA Council to agree the Government's position on these proposals and to inform your Committee. As you know the responsibility to keep your Committee informed is something that I take seriously, but regrettably the need for the override of scrutiny on this occasion was unavoidable.

I enclose [not printed] a copy of the texts of these Council Decisions. As you will see the main changes to the Commission's proposals are to take account of Opinion 1/13, the fact that some Member States have already accepted the accessions, and that the decision follows an assessment process.

There have also been some technical changes to the text of the declaration to be made by each Member State when accepting the accessions (Article 1) to ensure it is more consistent with the wording of previous Council Decisions.

The Government was keen to ensure that the text reflected the UK's decision to opt in to these proposals. It believes that the agreed wording of recital 12a is consistent with that position.

Consideration of the six other countries, i.e. Albania, Armenia, Morocco, Russia, Seychelles and Gabon, is being addressed at working level and we will get in touch with more details in future. These assessments will be a key element in the negotiation of these proposals with other Member States in

the Council's Civil Law Committee before they are referred to the JHA Council, most likely in October.

Turning to your letter of 26 March you asked if the States Party to the Convention have ever considered whether a peer review mechanism would improve compliance with the obligations of the Convention and the Government's views on such a peer review. There is no formal system of peer review but a mechanism does exist for States Party to raise concerns about how the Convention is being operated. In advance of Special Commission meetings on the Convention, States Party are asked to answer a questionnaire which includes questions about whether any problems have been experienced. When answering these questions States Party can state whether the information provided should remain confidential or not. On the basis of the information provided, the Hague Conference can encourage particular countries to make any necessary changes or improvements but there is no enforcement mechanism. While not perfect, the Government supports the action that is taken currently.

You also asked whether, in the Government's experience, Europol ever plays a role in tracing abducted children so that the return mechanism of the Convention is engaged. Under the Convention it is the responsibility of the Central Authority, courts and other authorities, such as the local police services, in the country where the child has been taken or retained, to use all appropriate measures to trace the child. Europol would not be involved; their role is to support EU law enforcement officers in countering international terrorism and organised crime.

8 July 2015

APPLICATION OF SPECIFIC MEASURES TO COMBAT TERRORISM, AND REPEALING DECISION 2014/72/CFSP (UNNUMBERED)

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

I am writing with regard to the aforementioned instruments, which you cleared from scrutiny whilst requesting further information. The documents relate to the EU's counter terrorism asset freezing regime or 'CP 931.'

The EU General Court judgment was to annul the CP 931 listings of Liberation Tigers of Tamil Eelam (LTTE) and Hamas on procedural rather than substantive grounds. As you are aware, the Council has agreed to appeal both decisions. You asked on what grounds the Council was appealing. In the LTTE case, the grounds for appeal are outlined in the EU Official Journal, a copy of which you can find via the following link:

http://eur-lex.europa.eu/legal- content/EN/TXT/?qid=1427730262589&uri=CELEX:62014CN0599

The Council's grounds for appealing the Hamas judgment have not yet been published in the Official Journal.

In parallel to the appeals, and as part of the six-monthly review process, the Council decided that it would seek to remedy the procedural points made in the two General Court judgments within the CP 931 review process. The European External ActionService and the Council created a template for Statements of Reasons for listingsunder the regime. Using this template, all the Statements of Reasons for the entire regime were updated during the review period. The template ensures that the Council addresses the key findings of the Courts in the LTTE and Hamas cases. This includes an explanation of why the relevant national competent authority decision meets the CP 931 listing criteria, and provides for an examination of legal rights to defence and right to effective judicial protection under the legislation of non-EU member states upon which any listings are based.

7 April 2015

Letter from Baroness Neville-Rolfe, Minister for Intellectual Property, Parliamentary Under-Secretary-of-State, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 26 March 2015 in which you cleared the above documents from scrutiny. I am writing to provide a final update now that first reading negotiations have been completed and to address the remaining questions you raised. I also enclose [not printed] the most recent versions of the proposals.

In previous correspondence (10 September 2014 and 10 March), I have set out the detail on various key issues. This letter focuses on the changes that have arisen since my last update.

UPDATE ON PROCESS

The Commission, Council and the EU Parliament reached a provisional agreement on this dossier on 21 April 2015. The text of the agreement will now undergo a process of legal-linguistic revision before formal adoption by the Council and a confirmation vote in the European Parliament. In view of these steps, it will likely be the end of this year or early next year before the proposals come into force. From that point, the UK will have three years to transpose the harmonising Directive into UK law, requiring changes to the Trade Mark Act 1994.

As you know, for the reason outlined below, the UK has consistently opposed the overall package and will continue to oppose it when it is presented for formal approval.

OVERALL OUTCOME

The General Secretariat of the Council published the enclosed [not printed] compromise texts on the proposed Directive and Regulation on 8 June 2015. The overall outcome of negotiations may be seen as a good one for the UK, as we were able to secure almost all of our negotiating objectives. However, despite the UK's strong opposition, the final text maintains a clause that could allow future revenue surpluses at the OHIM to be transferred to the EU budget. The compromise clause included some prescribed conditions, but nonetheless I objected in the Competitiveness Council on 28 May to the principle of transferring to the EU money that derives from trade mark and design registration fees, and which should be retained for the benefit of users of the intellectual property system. The Government's position on this dossier therefore remains that, despite being broadly satisfied with the full reform package, we are unable to support it and this was recorded in the minutes.

SURPLUS REVENUES OF OTHER EU AGENCIES

In your last letter (26 March 2015) you asked whether the surplus budget of any other EU agency is transferred to the EU budget or whether the proposal in respect of the OHIM would set a precedent.

You will know that the majority of EU agencies, draw at least some funding from the EU budget. By contrast, the only self-financing agencies are the OHIM, the Community Plant Variety Office (CPVO) and the Translation Centre for the Bodies of the European Union (CdT). The basic regulations for these agencies specify the maintenance of a balanced budget as a core principle, which means that accumulation of surpluses or deficit should be avoided[1]. However, there is no provision on how potential surpluses should be treated. Similarly to OHIM, both CPVO and CdT have generated considerable surpluses, but have adopted different approaches to the issue of cash balance. More specifically, the CdT currently implements a policy of annual reimbursement of surplus to its users, while the CPVO has adopted a policy of reducing fee levels. (OHIM has itself significantly reduced its fees on several previous occasions.)

For other EU agencies, the principle of "balancing subsidy" applies[2], so that any agency surplus for a given financial year has to be repaid to the EU budget (in the following year) up to the level of the total EU subsidy paid. The provision on transfer to the EU budget within the trade mark reform package could therefore set a precedent for self-financed agencies, although the impact of a precedent

[1] Article 139 paragraph 2 of the OHIM basic Regulation, Article 108 paragraph 2 of the CPVO basic Regulation No 2100/94, Article 13 paragraph 2 of the CdT basic regulation state that "the revenue and expenditures shown in the budget shall be in balance"

[2] Article 21 paragraph 3 (c) of the Financial Regulation No 966/2012

would be limited in light of the relative rarity of self-funded agencies and the unique nature of the OHIM.

UPDATE ON MOST RECENT CHANGES AGREED

Since our last update to you, further changes have been made in the compromise texts, reflecting further discussions among co-legislators both at technical and political level. I've outlined below the agreement reached in trialogue negotiations on the remaining contentious issues along with the final outcomes reached on the UK negotiating priorities, which are highlighted again for ease of reference.

DELEGATED POWERS FOR THE COMMISSION

We worked effectively to achieve the UK negotiating objective 'minimise the use of Delegated Acts.' As anticipated, the Council did have to accept the reinstatement of some of the Delegated Acts maintained by the European Parliament, which sees them as an important new tool post-Lisbon. Nonetheless, the original proposal had initially contained more than 60 Delegated Acts, enabling the Commission to legislate on matters in a way that would have seen a significant shift of responsibility and oversight away from Member States. By contrast, the final compromise text includes fewer than 20 delegated powers. The majority of non-technical delegated powers are now removed, such as the power, initially included, that would have allowed the Commission to set the level of fees at OHIM - which the UK strongly opposed.

FUNDS AND FINANCING

You may recall that during the final stages of the trialogue negotiations the Commission attempted to reach a deal on the financial aspects of the package by promoting a bundle approach. However, this did not receive enough support among Member States, so the proposals to allocate part of OHIM's revenue to fund the Court of Justice and the EU School in Alicante were withdrawn.

The final text does include using part of OHIM revenue to offset costs incurred by national offices resulting from procedures related to the EU trade mark system. This is capped at 5%[3] of OHIM revenue, but in the event of a budgetary surplus may be increased up to 10%.[4] The agreed text includes a condition introduced by the European Parliament, that offsetting of costs should not cause a budgetary deficit for OHIM.[5] This provision is likely to have implications in determining the years in which payments to national offices may be payable.

On the cooperation framework, the final text is now cast in terms that OHIM and Member States shall cooperate to promote convergence of practices and tools in the field of trade marks, but permits national offices to opt-out, restrict or temporarily suspend their cooperation in projects. To have avoided a mandatory cooperation framework represents a significant negotiating win for the UK in line with our objective to 'pursue a voluntary cooperation framework'.

The final agreement on fees aligns with the UK position that renewal fees should be reduced to the level of the application fees and that fees for revocation, oppositions and appeals should be lowered. The final text maintains these fees at the level outlined in my letter of 10 September, but on application fees, the compromise reached sees a slight variation reflecting the one class one fee development. Thus upfront fees for one class are reduced from 1,050 to 1,000 Euros, but the cost for three classes increases from 1,050 to 1,200 Euros.

The UK view has been that too steep a reduction in the level of application fees could have unintended consequences such as potentially encouraging registrations that are unnecessarily broad. However, we are satisfied that the reduction agreed is not significant enough to have such an impact and are pleased that the agreement strikes a sensible balance between reducing the costs to businesses and maintaining the integrity of the system.

OHIM GOVERNANCE

The agreed text is similar to our previous update of September 2014 and is consistent with our objective of 'keeping OHIM as managerially independent as possible' in that it reduces the Commission's control over candidates for the President of the OHIM and removes the provision

[3] Article 139 paragraph 3 (a) (b)
[4] Article 139 paragraph 3 (a) (d)
[5] Article 139 paragraph 3 a (c) CTMR

establishing a smaller Executive Board, which would have exposed OHIM to the risk of greater Commission's influence.

However, the final text[6] provides for two representatives from the Commission on the OHIM Management Board (rather than one), plus, for the first time a representative from the European Parliament. (This latter development flows from the EU's political agreement on its decentralised agencies set out in 'The Common Approach' – the board of several other EU Agencies include MEP members.) All the above representatives will have voting rights, whereas the existing Board member from the Commission currently has no voting rights. The UK did not support these provisions, but Board membership remains balanced by representatives of all 28 Member States, all of whom also have voting rights.

GOODS IN TRANSIT

The final text7 is the same as our previous update of March and represents a positive outcome for the UK. You will recall that we achieved an outcome that balanced the importance of tackling counterfeiting with the need to protect legitimate trade. The final text for the goods in transit provision is therefore consistent with UK objective of 'limiting the impact of anti-counterfeiting measures on legitimate trade.'

SMALL CONSIGNMENTS

As outlined in my update of March and in line with the UK preference, the provision on small consignments was not taken forward.

CHANGE OF OHIM NAME

The reform package includes a provision to change the name of OHIM to the 'European Union Intellectual Property Office.'[8] Achievement of this outcome was driven by the European Parliament (seeking to achieve transparency in EU agency names). A name change was not a priority for any Member State, nor favoured by OHIM, and there was some support for retention of the OHIM brand.

TECHNICAL PROVISIONS

Underpinning our negotiating objectives were many detailed technical aspects to improve the overall functioning of the European Trade Mark system. We have been active in this area and whilst we have not been able to secure every preferred UK position, we have secured significant changes to the original Commission's proposals in line with our priority of 'ensuring that technical changes work for SMEs.' Our previous updates detailed some of the changes that we successfully negotiated. I will not repeat those here. To the extent that the final text includes a small number of further technical changes, we are content that the changes are improvements.

Thank you for the interest your Committee has shown in the trade mark reform. Your consideration and analysis have been instrumental in achieving what we have secured in this reform package.

I hope this letter is helpful, but please let me know if there are any other issues you would like me to clarify.

2 July 2015

[6] Article 125 paragraph 1 CTMR
[7] Article 9, paragraph 5, subparagraph 2 CTMR and Article 10 paragraph 5 TMD
[8] Article 2, paragraph 1, CTMR

DESIGNATION OF THE 2019 EUROPEAN CAPITALS OF CULTURE AT THE EDUCATION, YOUTH, CULTURE AND SPORT COUNCIL (8101/15)

Letter from Ed Vaizey MP, Minister for Culture and the Digital Economy, Communications and Creative Industries, to the Chairman

I am writing to inform you that at the Education, Youth, Culture and Sport (EYCS) Council on 19th May there is an agenda item designating the European Capitals of Culture in 2019 for adoption. Under dissolution scrutiny arrangements this will require an override.

The Council is proposing to designate the European Capitals of Culture for 2019 in Bulgaria and Italy. Since Parliament is in Dissolution it has not been possible to obtain scrutiny clearance from your Committee prior to the Council meeting. As this is a routine and non-controversial decision which has no implications for the UK and does not involve any new policy initiatives, I have taken the decision to support the decision in the absence of scrutiny clearance. I hope you will understand why I supported this established cultural programme on this occasion.

15 May 2015

EU APPROVALS BILL 2015 (UNNUMBERED)

Letter from Priti Patel MP, Minister for Employment, Department for Work and Pensions, to the Chairman

I am writing to inform you about the above mentioned Bill that was introduced in the House of Lords and that I think will be of interest to you and your committee. Below is a short synopsis of the EU Approvals Bill, which had its First Reading in the House of Lords on Thursday 25 June and has a Second Reading scheduled for Monday 6 July.

The purpose of the Bill is to approve two draft decisions of the Council of the European Union. This is to fulfil a requirement in section 8 of the European Union Act 2011 ("2011 Act") which will enable the United Kingdom to vote in favour of the draft decisions.

The first draft decision is on the participation of the former Yugoslav Republic of Macedonia as an observer in the work of the European Union Agency for Fundamental Rights ("the FRA"). The FRA's function is to provide assistance and advice on fundamental rights to the EU institutions and Member States. It collects and analyses data across the EU and provides advice by way of reports and opinions, thereby raising awareness of fundamental rights. The FRA is open to the participation of candidate countries as observers.

The second draft decision is to update the instrument that formalises the Tripartite Social Summit, the long-established forum for high-level consultation between the EU institutions and the EU social partners. The need for a new decision arose because the Treaty of Lisbon repealed the part of the EU Treaty that the original decision had used (Article 202).

At the same time as renewing this decision under a new legal base (Article 352), the Commission has sought to take account of a number of high level changes within the EU in the intervening decade, such as: the role of the TSS in relation to the Europe 2020 agenda for jobs and growth, launched in 2010, which replaced the Lisbon agenda; recognising the TSS as part of EU social dialogue arrangements; a joint chair role for the President of the European Council and name changes of some of the employer federations.

This is a short Bill with 2 clauses in total. The first clause approves the decisions which are based on Article 352 of the TFEU. Pursuant to section 8 of the 2011 Act, approval by an Act of Parliament is required before the United Kingdom may vote in favour of the draft decisions. The second sets out the extent, commencement and short title of the Bill.

I confirm the scrutiny history for both draft decisions below.

THE DRAFT DECISION ON THE PARTICIPATION OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA AS AN OBSERVER IN THE WORK OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

The draft decision was originally deposited in Parliament on 24 January 2011 and cleared the scrutiny requirements then in place. The House of Commons European Scrutiny Committee cleared it

without a report to the House (decision reported in the Seventeenth Report of the ESC, Session 2010-12, HC 428-xv). The House of Lords European Union Committee cleared it at the sift on 1 February 2011, and it was sent for information to the Sub-Committees on Foreign Affairs, Defence & Development Policy, and on Justice & Institutions (decision reported in the Progress of Scrutiny Eleventh Edition, EUC-11). However the draft decision was not pursued within Council at that time. This was due to a block by Greece, which has since been lifted. The 2011 Act came into force in the interim and when the proposal re-emerged in April 2014 the UK placed a scrutiny reserve on the decision pending approval by an Act of Parliament.

THE DRAFT DECISION IN RELATION TO THE TRIPARTITE SOCIAL SUMMIT FOR GROWTH AND EMPLOYMENT

The proposal cleared UK Parliamentary Scrutiny in both Houses in 2014. The House of Commons European Scrutiny Committee cleared it in March 2014 with a short Report which noted that a Bill would be necessary because of the use of Article 352 TFEU. The House of Lords European Union Committee cleared it at the sift on 7 January 2014 and it was sent for information to the Sub-Committee on the Internal Market, Infrastructure and Employment.

2 July 2015

EU CHARTER OF FUNDAMENTAL RIGHTS (8707/15)

Letter from the Chairman to Michael Gove MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your Explanatory Memorandum dated 9 June 2015. It was considered by the Justice Sub-Committee at its meeting of 30 June 2015.

We have decided to retain the matter under scrutiny.

The Commission's report is no more than a measured and factual analysis of EU action in this area for the year 2014. Unfortunately, except for the three specific matters raised by you (asylum applications, Data Protection and the Google Spain judgment) your accompanying Explanatory Memorandum provides little detailed discussion or analysis of the report's contents. Whilst we note from your Explanatory Memorandum that you will have expressed your views on the matters raised by the report "as part of the scrutiny process of them individually", there are four matters that we wish to raise with you that have not, as yet, been the subject of direct Parliamentary scrutiny.

First, is the announcement in the report's introduction of the Commission's first colloquium on the state of play of fundamental rights in the EU under the auspices of the First Vice-President of the Commission, Frans Timmermans. This development appears to signify a very high-level commitment in the Commission to the Charter and its principles, yet you have not commented on this development. Does the Government welcome the Commission's idea, and do you intend to engage with the process and/or make submissions.

Second, the report notes a doubling in the number of human rights based infraction proceedings brought by the Commission against the Member States, but you do not comment on the underlying trend. Is the increase in Charter based infraction proceedings a concern for the Government? Are you able to offer the Committee an explanation for the increase? In response to the increase in asylum based infraction proceedings, you say that the Government has updated its guidance on the handling of sexual orientation based asylum applications. Can the Minister confirm that the Government has implemented the eight recommendations for action in this area suggested by the Independent Chief Inspector of Borders and Immigration in October 2014?

Third, the report touches on the Court's Opinion that the EU legislation dealing with the EU's accession to the European Convention on Human Rights is incompatible with the Treaties. Whilst the Commission says in the report that it remains committed to the EU's accession and the issue remains one of "paramount importance", you have also remained silent on this significant matter. Are you able to update the Committee on the state of play of the EU's efforts to accede to the European Convention? What is the new Government's policy towards the EU's accession to the European Convention?

Fourth, in the section of the report headed "Human rights dimension of EU external actions" the report suggests that three quarters of the EU's decisions imposing economic sanctions on individuals

and entities are held to be illegal by the EU's courts. Can you explain why so many of these decisions are overturned by the Courts? And, what is being done about it?

We look forward to considering your response by 15 July 2015.

1 July 2015

EU DECENTRALISED AGENCIES: FIRST PROGRESS REPORT (8789/15)

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

I am writing to apologise that we did not deposit the European Commission's first progress report on the implementation of the Common Approach on decentralised agencies in December 2013. This omission, which has only recently come to light, was the result of a regrettable oversight. As it was presented by the Commission without a formal inter-institutional cover sheet, it slipped through our normal scrutiny processes and officials did not realise we did not ensure effective scrutiny of documents.

However, I am pleased to submit the Explanatory Memorandum for the second progress report, which supersedes the first report, and provides the Committees with more detail on the implementation of the Common Approach.

The Government remains committed to updating the Committee in a timely manner on issues involving EU decentralised agencies, and I take my responsibility in doing so seriously. We recognise the important role the Committee has in the scrutiny process of EU legislation and proposals, and we welcome the work the Committee does. I look forward to hearing your views on the second progress report in due course.

18 June 2015

INTERNATIONAL COOPERATION TO COMBAT MATCH-FIXING (6720/15, 6721/15)

Letter from the Chairman to Tracey Crouch MP, Minister for Sport and Tourism, Department for Culture, Media and Sport

Thank you for your Explanatory Memorandum of 18 March 2015, which was considered by the EU Justice Sub-Committee at its first meeting of the new Parliament on 23 June.

We agree that the explanatory memorandum accompanying the Commission's proposal for these two draft Decisions does not provide a clear rationale for claiming EU exclusive external competence over certain Articles of the Convention. This is not to say that there is no basis for the claim, but a far more detailed analysis of how EU internal rules are affected would be required before concluding that a claim exists. On first consideration, the effect of Articles 3(5) and 11 of the Convention on the single market seems to have the most merit; we cannot see at this stage how the Convention will affect either internal EU rules on criminal legislation and procedure, or international trade. The negotiations currently underway will be examining these issues, and we ask for an update on those negotiations.

Beyond the question of competence, we, like you, also question whether these two proposals comply with the principle of subsidiarity. The Convention appears to have been drafted with subsidiarity very much in mind in that it leaves all forms of regulation and cooperation to the State, rather than seeking to harmonise national sanctions and procedures. Whilst the Commission can play a role in supporting Member States in combating match-fixing under Article 156 TFEU, we are not at this stage convinced that the EU has to sign the Convention for it to do so.

We would be grateful to know the deadline for the Government's opt-in Decision, which may expire shortly, and your decision on whether to opt in.

Malta has requested an Opinion of the Court of Justice of the EU on the consistency of the Convention with EU law. We understand that Malta has a significant on-line gambling industry through the tax-breaks and incentives it offers to betting operators. It argues that the Convention infringes EU rules on the single market. We note that the Convention provides at Article 11 for the possibility of States blocking websites of betting operators, blocking financial flows between illegal betting

operators and consumers, and banning advertising to enforce a restriction on illegal betting. As a consequence, Malta argues, a betting operator licensed in one Member State could be prohibited from trading in another Member State, if the law of the latter State proscribes some of the betting methods which are legal in the former State. This would be an impediment to an internal market.

We would be grateful to know your views on the strength of Malta's legal concerns and whether you agree with them, and also for an indication of when the Court of Justice's Opinion can be expected.

We are conscious that Gibraltar also has a significant on-line betting industry, and we would be grateful to know its views on the Convention, and whether it participated in its negotiation.

We look forward to reply to this letter within the usual ten days.

In the meantime, the documents remain under scrutiny.

24 June 2015

JUSTICE PRIORITIES FOR THE LUXEMBOURG PRESIDENCY OVER THE NEXT SIX MONTHS (UNNUMBERED)

Letter from Dominic Raab MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice, to the Chairman

The Luxembourg Presidency of the Council of the European Union runs from July 2015 until December 2015. I am writing to provide an overview of the 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 Luxembourg Presidency is planning to host the following JHA Councils:

— 9 – 10 July (Informal Council in Luxembourg);

— 8 – 9 October (Luxembourg);

— 3 – 4 December (Brussels).

Luxembourg has identified two key legislative justice priorities, namely the new EU Data Protection package and the European Public Prosecutor's Office (EPPO).

Following the agreement of a Council General Approach on the General Data Protection Regulation under the Latvian Presidency, Luxembourg will be under pressure to make progress on negotiations on the other half of the package, the Data Protection Directive, which covers data processing for law enforcement purposes. The Luxembourgers have proposed a roadmap to agree the whole data protection package by the end of 2015, which will include a General Approach on the Directive at October JHA Council. This is an ambitious target and we may see the data protection negotiations extend into the Netherlands Presidency. You will be familiar with our concerns about the Data Protection Regulation, especially the potential burdens on SMEs and impact on freedom of expression.

The Luxembourgers have indicated that progress on the draft Directive on the fight against fraud to the Union's Financial Interests by means of Criminal Law (the so-called "PIF" Directive) and the Eurojust Regulation would also be prioritised, given their links with the EPPO. On the PIF Directive, the incoming Presidency will seek to break the impasse with the European Parliament over whether the Directive's scope should include VAT offences. Although not opted in, the UK is following negotiations closely. As you will be aware, neither the EPPO, Eurojust nor the PIF Directive are led by my department. Home Office Ministers are writing to you separately setting out the Presidency's plans on the two former files, and HM Treasury Ministers will keep you updated on the latter.

During their Presidency, Luxembourg is likely to oversee the adoption of the revision of the European Small Claims Regulation, which the UK has to date supported, and also hope to take forward the proposed Council Decisions authorising Member States to accept the accessions of Albania, Armenia, Gabon, Morocco, the Russian Federation and Seychelles to the 1980 Hague Convention on Child Abduction. Following a 2014 opinion from the European Court of Justice such accessions must be agreed by the Council and, as they are family matters, must be agreed by unanimity. The UK has already supported the accessions of Andorra and Singapore, and has submitted to the Commission its assessments on the ability of the other six countries to apply the Convention.

The main non-legislative priority would be the EU's accession to the European Convention on Human Rights. The incoming Presidency would like a motion underlining the Council's will to move towards accession to be put to Ministers at the October Council. We have concerns about the impact accession would have on legal certainty in the UK. The Commission is also a planning a best practice sharing conference in October for justice Ministers on preventing radicalisation in prisons, with Council conclusions considered at December's Council. We are, as ever, mindful of the need to avoid "competence creep" in such areas.

1 July 2015

LUXEMBOURG PRESIDENCY PRIORITIES: HOME OFFICE JUSTICE AND HOME AFFAIRS (JHA) ISSUES (UNNUMBERED) – IS THIS E?

Letter from James Brokenshire MP, Minister for Immigration and Security, Home Office, to the Chairman

Luxembourg will hold the rotating Presidency of the EU Council of Ministers for the twelfth time from 1 July to 31 December 2015. I am writing to give you an overview of likely Presidency activity on Home Office dossiers. I hope this will assist your Committee in planning for the JHA Councils in this period, and for any opt-in decisions.

We understand that JHA Councils will take place on:

— 9 and 10 July (informal),

— 8 and 9 October, and

— 3 and 4 December, but of course these dates may be subject to change.

In light of Luxembourg's extensive experience, this six month Presidency is likely to be efficient and well run, and they will be keen to reach consensus on key issues. Luxembourg has announced that its Presidency's JHA priorities will be migration and terrorism. On terrorism it strongly supports our aims, in particular dealing with the threat from foreign fighters.

My officials have already met with representatives from the incoming Presidency to discuss our Counter Terrorism priorities on information sharing of passenger and criminal convictions data, on best practice sharing to tackle terrorism online, and on aviation security. We will continue to work closely with Luxembourg in these areas.

We expect Luxembourg to pay particular attention to: implementing the new Internal Security Strategy (ISS); making progress on the data protection package; the proposed European Public Prosecutor's Office (EPPO); and both the EU Migration Agenda and the Smart Borders Package. They will take forward existing negotiations, including on Europol – which is currently subject to trilogue negotiations – New Psychoactive Substances and the PNR Directive.

Luxembourg is a strong supporter of the EPPO, and will be mindful of the Commission's objective of putting an independent EPPO in place by 2016. We are clear that the UK will not participate in an EPPO. Nonetheless, the Government is fully engaged in this negotiation, and where issues raised may impact on the UK, we actively remind others of our concerns. Any further progress on Eurojust will be dependent on progress on the EPPO.

The Presidency places particular emphasis on Passenger Name Records (PNR), intending to conclude the Directive. The Directive remains with the European Parliament's Civil Liberties and Freedom (LIBE) Committee for further consideration. The Government remains committed to the use of PNR as a way of tackling serious crime and terrorism, in particular foreign fighters, although not at the expense of data protection and civil liberties. We will continue to identify opportunities for pursuing a unified European approach to collecting passenger information.

On SISII, Luxembourg is keen to ensure that there are no major issues identified in the UK's Schengen evaluation visit in June in order for the second Council Decision to be adopted by the October JHA Council.

The EU Agenda on Migration will be discussed at the informal JHA Council in July and there are likely to be Council Conclusions in the autumn, in response to the Commission agenda. The Presidency intends to resolve current debate on the Commission's proposals on relocation and resettlement, and to focus on more effective returns – including use of readmission agreements. It also plans to

progress operational proposals such as the centre in Niger and 'hotspots' to address current migratory pressures. The Presidency is aiming for adoption of the Students and Researchers Directive by the December Council.

The Presidency will also seek agreement to the proposal seeking to amend the terms of the Dublin Regulation governing the treatment of unaccompanied asylum seeking children. This proposal concerns the particular position of such unaccompanied children who have no family member, sibling or relative present in EU territory following the ruling from the Court of Justice of the European Union (CJEU) in the case of *MA and others* C-648/11. The European Parliament has recently agreed a position so that discussions can take place.

An invitation will be sent out for a breakfast meeting on statelessness. We expect this to be at policy level, so one of my officials will attend. The UK is one of the few Member States that has a policy on statelessness and Luxembourg believes others can learn from UK experience. We will of course be happy to share our experience and support efforts in other Member States.

Luxembourg will aim for a General Approach on the Visa Code to be recast by the end of its Presidency. It is aware this is ambitious, but hopes to make progress on political issues such as abolishing insurance requirements, reducing issuing delays, and issuing visas at borders. The Presidency will press on with the smart borders package, but there are no plans at present to re-open the Schengen Borders Code. The UK does not participate in these measures unless we opt in.

During the next six months we expect the new CEPOL Regulation to be agreed. The Government will need to take a post-adoption opt-in decision on this measure.

On New Psychoactive Substances, the Presidency is likely to explore options based on an Justice and Home Affairs legal base and will seek adoption by the December Council.

On the JHA opt-in, our next 6 monthly letter, due in July, will provide further updates.

The following legislative proposals have either been recently published or may be during Luxembourg's Presidency:

— The proposed Council Decision on the mandatory relocation of migrants under Article 78(3) TFEU, which allows for temporary action, published on 27 May.

— A permanent proposal on mandatory relocation which we expect to be published by the end of 2015.

— A proposal authorising the EU to sign the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism relating to foreign fighters and the Convention itself. These came out on 15 and 16 June.

The Government will need to take opt-in decisions on these measures during the Luxembourg Presidency.

25 June 2015

PROMOTING THE FREE MOVEMENT OF CITIZENS AND BUSINESSES BY SIMPLIFYING THE ACCEPTANCE OF CERTAIN PUBLIC DOCUMENTS IN THE EUROPEAN UNION (9037/13)

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

I am writing with regard to a General Approach, mainly concerning the Chapter about multilingual forms of civil status documents which will be presented at the Justice and Home Affairs Council today. It is important that the UK is able to support this General Approach in order to secure text which is acceptable to us.

I submitted an EM on the above document on 3 June 2013. Both Committees decided to retain the above issue under scrutiny and asked to be kept updated. I have written regularly with further information, notably on 25 February when I requested a waiver from Scrutiny to vote in support of a Partial General Approach which covered the abolition of apostilles, administrative cooperation between Member States and rationalisation of certified copies and translations.

I attach [not printed] in confidence a limité copy of the draft text and recitals proposed for the General Approach. The attached documents are 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 limité marking. They cannot be published, nor can they be reported on in any way which would bring detail contained in the documents into the public domain. You will see that the text has been considerably improved since the original draft proposal.

There have been many changes agreed in recent weeks to the proposed multilingual forms making them more acceptable to the UK. The multilingual forms are no longer autonomous forms with independent evidentiary value but are now simply translation aids which must be attached to a national document (specifically, certificates of birth, marriage, civil partnership and death for the UK, and some extremely rare cases where court judgments are used in lieu of certificates). This reduces any future risk of possible EU control over civil status documents. The EU flag/logo has also been removed from the template for translation aid forms which further reduces any perception of official EU influence over matters which are a national prerogative.

The format was originally proposed to include a minimum number of mandatory standard information fields (such as name, date and place of birth for birth forms). Following the change to a translation aid, a new format which increases the usefulness of the aids has been agreed. It will consist of a standard cover sheet which explains the underlying national document and gives personal information in the mandatory standard fields. A second sheet will be tailored to correspond to the underlying national document. For this part of the form the issuing authority will create a template by selecting the relevant entries from a comprehensive list of fields which will be held on the eJustice portal and translated by the EU Commission into all EU official languages. The issuing authority will use the software of the eJustice portal to automatically translate the fields chosen into the language of the receiving State specified by the citizen, and will transcribe the un-translated personal data into these information fields. Thus a bilingual translation aid will be produced. This will be easier for a receiving authority to read than a fully multilingual translation aid. In addition, a condensed translation of the chosen fields into all languages will appear at the foot of the page so that if necessary it can, with a bit more difficulty, be used as a translation aid into any official EU language. The translation aid can be printed out and personal data will not be stored on the eJustice system.

A particular concern for the UK has been the potential cost of producing these translation aids. The requirement to charge no more than the fee for the underlying national document has now been removed so we will be able to charge a cost recovery fee, subject to approval under the appropriate UK legislation. As details of the requirements for producing these aids have yet to be finalised, we are working to provide a cost assessment in the near future. The number issued will depend on how many eligible citizens request them, which is difficult to assess, but based on the number of documents for which apostilles destined for other Member States are currently requested we estimate a maximum of 25,000 such aids to be issued annually across the UK.

Overall we feel that the translation aids in their current format have removed the problems the UK felt most strongly about and will be of more use to the citizen than were the originally-proposed multilingual common forms.

A proposal by several Member States for a separate Political Declaration on external competence has been dropped; the wording will be in Article 18(2)b of the text of the Regulation. We are satisfied that this manages the external exclusive competence issue as far as is reasonably possible.

I regret that due to the vote taking place before your committee's next meeting I find myself in the position of having to agree to voting in support of this proposed Regulation before the Committee has had an opportunity to scrutinise the documents. As you know, the responsibility to keep your Committee informed is something I take seriously and the need for the override of scrutiny on this occasion in order to secure an advantageous General Approach is regrettably unavoidable.

15 June 2015

Letter from the Chairman to David Lidington MP

Thank you for your letters dated 13 April and 15 June 2015. They were considered by the Justice Sub-Committee at its meeting of 30 June 2015.

We have decided to retain the matter under scrutiny.

Turning first to the override. Bearing in mind the complications caused by dissolution, we are grateful to you for your efforts to avoid an override at the June Council meeting, and note that your decision

to override the scrutiny reserve was motivated by your desire to secure an "advantageous General Approach".

With regard to the content of the proposal, both your letters deal with the aspects of the text that formed the basis of the Government's concerns. Apart, from the possibility of an override, your letter of 13 April addressed the Committee's question about fraud and the inclusion of a specific Article dealing with exclusive external competence. The letter of 15 June explained the key changes to the agreed text: amendments to the form and status of the multilingual forms, the development of translation aids, the potential costs and, again, external competence.

Whilst we note these developments, the Committee would welcome a clear explanation of (i) the proposed system introduced by the text agreed in June, and (ii) how the proposal will fulfil the stated aims of promoting the free movement of citizens by simplifying the acceptance of public documents. Does the Government believe that this proposal has the potential to simplify the practical problems faced by EU citizens when they move between the Member States?

Basing the proposed system on paper documents seems, in the modern computer-based era, to be rather old-fashioned. What is the extent to which the new system could be based on open-data, where national databases dealing with these documents in one Member State would be accessible to the relevant authorities in another Member State? Where do e-based documents fit into this system?

We note from your explanation in your letters that the proposed system appears to rely heavily for support on the Internal Market Information System and the e-Justice portal. To what extent can these two databases interact? Can they communicate with each other? Would it not be simpler and more cost-effective to build a system around these two databases, rather than paper copies of documents with paper cover sheets attached?

We are also interested in the inclusion in the General Approach text of a provision seeking to limit the potential for this proposal to create, in this area of EU cooperation, exclusive external competence. As you will know, based on the Court of Justice's case law, the general rule is in areas already covered by EU internal rules, external competence must be exclusive. But, this conclusion must have its basis in a comprehensive and detailed comparison of the relationship between the envisaged international agreement and the relevant EU law in force.

You say in your letter of 15 June that the final text includes a provision which "manages the external exclusive competence issue as far as is reasonably possible". Given the Court of Justice's rulings in this field, we would ask you to explain exactly what you believe is "reasonably possible" in this area. Is this specific proposal exceptional? Is there something inherent in the subject matter that lends itself to this approach? Can we expect to see similar provisions deployed to this affect in future EU legislation?

We look forward to considering your response by 15 July 2015.

1 July 2015

RESTRICTIVE MEASURES AGAINST IRAN (UNNUMBERED)

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

I am writing with regard to the aforementioned EU Council Decision and Council Implementing Regulation concerning restrictive measures against Iran. These documents provide for the relisting of 33 entities under the restrictive measures regime against Iran. These entities are Bank Tejarat and 32 subsidiaries of Islamic Republic of Iran Shipping Lines (IRISL). The original listings of these entities were successfully challenged at the General Court of the European Union and, following the judgments of 22 January 2015, were annulled.

The documents referenced above were published in the Official Journal of the EU on 08 April 2015, and entered into force on the date of their publication.

Whilst the written procedure for agreeing these relistings began on 31 March 2015, the Council decided to have the written procedure conclude on 7 April 2015, with the relistings coming into force the following day. This was an extension of six days (the written procedure was originally scheduled to finish on 1 April 2015) which was intended to avoid the relistings being published while nuclear negotiations were ongoing.

As the listing of the IRISL subsidiaries expired at midnight on 2 April 2015 (a period of two months and ten days from when the Council was informed of the judgment which annulled their listing), the decision to extend the written procedure was taken with the knowledge that there would be a risk of asset flight from the EU. The Council judged that this risk was less significant than the risk of upsetting the nuclear negotiations. There was no break in the continuity of the listing of Bank Tejarat.

ISLAMIC REPUBLIC OF IRAN SHIPPING LINES SUBSIDIARIES

By its judgment of 22 January 2015 in Joined Cases T-420/11 and T-56/12, the General Court of the European Union annulled the Council's decision to include 39 entities on the list of persons and entities subject to restrictive measures against Iran. This annulment came into effect at midnight on 2 April 2015. The attached [not printed] documents which are being deposited for post-adoption scrutiny relist 32 of these entities on the basis of new statements of reasons. These entities either provide essential services to, or are owned and/or controlled by, IRISL - itself a designated entity.

The General Court previously annulled the listing of IRISL itself, on the basis that the statement of reasons did not satisfy the existing criteria for designation. Accordingly the Court considered that the listings of IRISL subsidiaries were "vitiated" by the fact that, at the time of their designation, IRISL had not been validly identified as providing support for nuclear proliferation.

In response the Council amended the designation criteria by adopting Decision 2013/497/CFSP and Regulation (EU) 971/2013, extending the criteria to specifically reference IRISL (Article 23(2)(e)) and re-listed IRISL with a new statement of reasons. The Council has now agreed to re-designate these IRISL subsidiaries on the basis of their close association with IRISL (which is now a designated entity).

BANK TEJARAT

By its judgment of 22 January 2015 in Case T-176/12, the General Court of the European Union annulled the Council's decision to include Bank Tejarat on the list of persons and entities subject to restrictive measures against Iran. This annulment came into effect at midnight on 7 April 2015. The attached [not printed] documents relist Bank Tejarat on the basis of a new statement of reason.

The Court annulled the Council's decision because the Council was unable to support, with evidence, its allegations that the bank's accounts with Sepah bank and EIH were linked to proliferation or circumvention. Nor could it be said that the bank provided support for proliferation or aided circumvention as the bank had undergone partial privatisation in 2009 and the Government of Iran's shareholding in March 2013 was only 20.14%.

However, the Court provided that the Council had a period of two months and ten days, as from the notification of the judgment in which to remedy the infringements by adopting, if appropriate, new restrictive measures in relation to Bank Tejarat. Accordingly, this new Council Decision and Council Implementing Regulation relist Bank Tejarat, based on new statements of reasons.

As set out in the new statement of reasons, in view of the large amount of revenues which the Iranian Government obtains from the oil and gas sector, together with the fact that several projects for oil and gas development are carried out by subsidiaries of Government-owned and controlled entities, the Council considers that Bank Tejarat's provision of financial resources and financing services for such projects constitutes qualitatively significant support to the Iranian Government and therefore meets the conditions for designation under Article20(1)(c) and (b) of Decision 2010/413/CFSP and Article 23(2)(d) and (a) of Regulation (EU) 267/201 respectively.

The Council no longer relies on the Iranian State's minority shareholding in Bank Tejarat as a basis for its designation but considers that the Iranian Government's shareholding puts it in a position to influence the Bank's decisions, including its involvement in the financing of oil and gas projects regarded by the Iranian Government as a high priority.

SUMMARY

The relisting of these entities is an important contribution to maintaining the integrity of the Iran sanctions regime.

These relistings are appropriate, proportionate, adequately supported by evidence, and consistent with broader Government policy towards Iran, and the Joint Plan of Action. The agreement reached at Lausanne on the key parameters of a comprehensive nuclear agreement has not changed the Iran sanctions regime. The Iranians understand that we will continue to implement the existing sanctions

regime – including through re-listings – until sanctions relief as part of a comprehensive agreement begins.

The draft Council documents were only made available on 23 March 2015, eight working days before the annulment of 39 of these listings came into effect. I regret that this allowed little time for Parliamentary scrutiny and that an override was unavoidable. I recognise this is a recurring theme in my correspondence with the Committee and have set out previously both the efforts we are making to improve the scrutiny process and the practical constraints we are subject to.

20 April 2015

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

The Council Decision and Council Implementing Regulation specified above relist Bank Tejerat and 32 entities connected to Ocean Capital, an IRISIL holding company. Full details of all 33 entities are included in the Council Decision and the Council Regulation.

All 33 entities successfully challenged their listing in the EU General Court. Their judgments (two separate judgments- one for Bank Tejarat and one for the other 32 entities) were both handed down on 22 January 2015. The EU Council then had two months and ten days within which to consider whether or not to relist the entities. A quirk of the EU system (that the two months and ten days starts from the point at which the Council Secretariat is notified of the Court judgment) meant that the Bank Tejarat listing was due to expire on a different date (08 April 2015) to the 32 Ocean Capital-linked entities (02 April 2015).

All 33 relistings came into force on 07 April 2015. A decision was taken at the time to delay the relisting of all 33 entities until early April, after the conclusion on 30 March 2015 of the E3+3 nuclear negotiations with Iran. This meant that the 32 Ocean Capital-linked entities were delisted for three working days (although Bank Tejarat's listing remained in force throughout). This decision was taken because on balance it was judged that the risk of asset flight during those days when the entities were delisted was not significant enough to jeopardise the nuclear negotiations by relisting during the final few days of talks.

I am aware that this sort of relisting is exactly the type of restrictive measure where the Committees have expressed concerns previously regarding the sharing of underlying evidence that has been used to inform the EU Council's decision making.

A review of our internal processes is ongoing in order to address the concerns highlighted in the ESC's 37th report of 18 March 2015. In my letter of 27 March 2015 I set out some of the steps already taken. Officials are continuing to explore ways that the FCO can better engage with the Committees. This internal review is ongoing and so I regret that in this instance I am not able to share the underlying evidence that informed the EU Council's decision to relist these entities.

11 June 2015

Letter from the Chairman to David Lidington MP

Thank you for your Explanatory Memorandum of 11 June 2015, which was considered by the EU Justice Sub-Committee at its meeting of 30 June.

From the beginning of this Parliament, the EU Justice Sub-Committee will scrutinise EU proposals for listings and relistings where the issues are predominantly legal. All other sanctions documents will continue to be scrutinised by the External Affairs Sub-Committee.

We note that the revised statement of reasons for relisting Bank Tejarat has changed focus significantly from the original listing. Can you explain why that is? We would also be grateful to know whether the new statement was based on open-source information, or is confidential.

The statement of reasons for the relisting of the 40 companies alleged to be owned or controlled by IRISL relies on their association with IRISL, as with the annulled listing. You mention that new evidence was also submitted to the Council. Was this open-source or confidential evidence, and to what extent is it reflected in the revised statement of reasons? Our assumption had been that the relistings merely follow from the relisting of the controlling company, IRISL.

We would be grateful to know whether any of the companies relisted under this Decision and Implementing Regulation were given an opportunity to comment on the revised statements of

reasons; and if so, to what extent their views were taken into account by the Council before the relistings were adopted.

We are grateful to you for explaining the reasons for the overrides and, given the documents were agreed while Parliament was dissolved, we regard the overrides as reasonable.

We will be considering how we scrutinise EU sanctions procedures more generally at our next meeting. On this occasion, we would be very grateful if you could provide us with a reply to this letter by 2pm next Monday, in time for our meeting on Tuesday 7 July.

In the meantime, the documents remain under scrutiny.

30 June 2015

Letter from David Lidington MP to the Chairman

Thank you for your letter of 30 June 2015 requesting further information on the aforementioned Council Decision and Implementing Regulation which provide for the relisting of a total of 33 entities under the EU's restrictive measures regime against Iran. I am writing to address the specific questions that your Committee posed.

You first asked why the statement of reason for Bank Tejarat has changed focus significantly from the original listing, and whether the new statement is based on open-source, or confidential, information.

Following the General Court judgment of 22 January 2015 in Case T-176/12, the listing of Bank Tejarat was annulled. The Council had initially relied on arguments that the listing was based on confidential information which could not be disclosed but this argument was unsuccessful following *Kadi II* and *Fulmen*. The Council continued to argue the case on the basis of the evidence available, which the Court concluded was insufficient to maintain the listing. Bank Tejarat remains an entity of economic concern, and its sanctions designation forms an important component of the Iran restrictive measures regime, the pressure of which has contributed positively to Iran's decision to enter into negotiations over its nuclear programme. During the period of two months and ten days following the judgment, the Council relisted this entity with a new statement of reasons which took into account the EU General Court's ruling and reflected the best available evidence at the time. The evidence to support this statement of reason is open source.

Secondly, you ask about the nature of the evidence presented to the Council in support of the relisting of entities associated with Islamic Republic of Iran Shipping Lines (IRISL), and the extent to which this evidence is reflected in the statement of reasons.

The listings of 40 entities, associated with IRISL, were annulled following the General Court judgment of 22 January 2015 in Joined Cases T-420/11 and T-56/12. This decision flowed from the prior annulment of IRISL in Case T-489/10 on 16 September 2013. IRISL was relisted on 27 November 2013, and following the judgment of 22 January 2015, the Council subsequently relisted 32 of the 40 entities concerned, on the basis of new statements of reasons. The evidence to support these revised statements of reasons is open source. The statements accurately reflect the evidence available at the time they were formulated.

You mention that your assumption had been that these relistings merely followed from the relisting of the controlling company, IRISL. It is incumbent on Member States to freeze the funds and economic resources of entities owned or controlled by IRISL, in accordance with Article 20(1) of Council Decision 2010/413/CFSP. However, while not strictly necessary, it is best practice, in order to ensure ease of compliance and implementation, to list such entities explicitly in Annex II of the same Council Decision and Annex IX to Regulation (EU) 267/2012. Where entities have been explicitly listed in these Annexes but, on review, the available evidence no longer supports the assertion that they are owned or controlled by IRISL, these entities should be delisted. It is on this basis the Council declined to relist 8 of the 40 entities whose listings were annulled in Joined Cases T-420/11 and T-56/12.

You ask whether any of the companies relisted under this Decision and Implementing Regulation were given an opportunity to comment on the revised statements of reasons. I can confirm that all of the entities concerned were notified of the Council's intention to relist them, and were subsequently granted 'privileged access' to the proposal presented by a Member State for their relisting. Entities are given an opportunity to make observations in light of this evidence, which the Council considers before adopting the legal texts which provide for their relisting.

6 July 2015

Letter from David Lidington MP to the Chairman

The Council Decision and Council Implementing Regulation specified above provide for the delisting of one individual and eight entities from the restrictive measures regime against Iran. Furthermore, the Statement of Reasons for six entities are amended.

These documents form one of the final pieces of the Iran sanctions regime annual review process. The changes implemented in these documents are not made in response to legal challenges by any of the individuals or entities concerned. They are pro-active revisions undertaken as part of the Council's due process updates with respect to this restrictive measures regime.

I am aware that documents relating to the EU's sanctions regime against Iran are of particular interest to your Committee. The annual review should be a process undertaken in good time, making allowances for EU Member State Parliamentary scrutiny. The political decisions relating to this part of the Iran sanctions regime annual review were taken in an EU geographical working group meeting towards the end of 2014.

Unfortunately, the resulting legal texts were not made available to Member States until 12 June 2015, for discussion on 15 June 2015 in the RELEX working group.

It was important that these texts were adopted before the conclusion of the E3+3 Iran nuclear negotiations and the agreement of any new Joint Comprehensive Plan of Action. These negotiations had been expected to conclude by 30 June 2015 – hence the need for these legal acts to be adopted before that date. In these extraordinary circumstances, a ministerial override of scrutiny was necessary. It is, however, extremely frustrating that this situation has arisen, given how long ago these changes were agreed in the EU geographical working group. My officials have expressed the strength of my feeling on this matter directly to the European External Action Service in Brussels and at the nuclear negotiations in Vienna.

7 July 2015

RESTRICTIVE MEASURES DIRECTED AGAINST CERTAIN PERSONS, ENTITIES AND BODIES IN VIEW OF THE SITUATION IN UKRAINE (UNNUMBERED)

Letter from the Chairman David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum of 8 June 2015, which was considered by the EU Justice Sub-Committee at its meeting of 7 July.

Your Explanatory Memorandum is unusually helpful in that it reveals the nature of the evidence underpinning these relistings. This, needless to say, greatly assists us in assessing the fairness of the relisting. We hope that the precedent is followed in future Explanatory Memorandums from your department.

Nonetheless, we are conscious that requests for similar information have not been met in the past, the reason given being that the Council discussions on sanction proposals, and the evidence forming the basis of those discussions, are classified as confidential. We ask you to explain why, on this occasion, you were able to provide the Committee with an explanation of the supporting evidence, and what would prevent you from doing so for future relisting proposals.

As you know, the EU Justice Sub-Committee is now scrutinising EU proposals for listings and relistings, where the issues are predominantly legal. We would therefore be grateful for a detailed explanation of the smarter sanctions policy, to which you make reference in the Explanatory Memorandum.

We regret that the Ukrainian authorities only provided the further evidence a few days before these four listings were due to expire, as it prevented any scrutiny of the relistings before they were adopted. What can you do to convince the Council to allocate more time for Parliamentary scrutiny of sanctions relistings?

In the circumstances of these relistings, however, we judge the override to have been unavoidable, and we have now decided to formally clear the documents from scrutiny.

We look forward to a reply to this letter within the usual ten days.

8 July 2015

Letter from the Chairman David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum of 20 May 2015, which was considered by the EU Justice Sub-Committee at its meeting of 30 June.

We decided to examine this renewal because of the Council's decision not to relist two individuals under the EU-Syrian sanctions regime after their listings had been annulled by the General Court. We would be grateful for your analysis of the Court's reasoning (your Explanatory Memorandum does not provide case references), and for a detailed explanation of the reasons why the Council did not relist them.

We ask you to confirm whether General Muhamad Maalla, who has been newly listed, was given an opportunity to comment on the statement of reasons, and whether he did so, in accordance with paragraph 18 of your Explanatory Memorandum.

We are grateful to you for explaining the reasons for the overrides and, given that the documents were agreed before the Committee was re-appointed, we regard the overrides as reasonable. We would, however, ask for the final versions of the documents to be deposited.

We will be considering how we scrutinise EU sanctions procedures more generally at our next meeting. On this occasion, we would be very grateful if you could provide us with a reply to this letter by 2pm next Monday, in time for our meeting on Tuesday 7 July.

In the meantime, the documents remain under scrutiny.

30 June 2015

Letter from David Lidington MP to the Chairman

Thank you for your letter of 30 June 2015 requesting further information on the Council's decision not to relist two individuals following the annulment of their listings by the EU General Court and its decision to list one new individual under EU Syria restrictive measures. I am writing to address the specific questions that your Committee posed regarding the aforementioned delistings and new listing.

You first asked for an analysis of the Court's reasoning for annulment and for an explanation of the reasons why the Council did not relist them.

Bassam Sabbagh was originally listed on 14 November 2011 for reasons including being the legal and financial adviser to Rami and Khaldoun Makhlouf and for providing financial support to the regime, including through funding a real estate project in Latakia with Bashar al-Assad. On 26 February 2015, the General Court annulled this listing in case T-652/11 (Sabbagh vs Council).

Mazen Al-Tabbaa was originally listed on 23 March 2012 for being the business partner of Ihab Makhlouf and Nizar al-Assad and for being the co-owner with Rami Makhlouf of a currency exchange company which supported the policy of the Central Bank of Syria. On 9 July 2014, the General Court annulled this listing, in joined cases T-329/12 and T-74/13 (Mazen Al-Tabbaa vs Council).

In both cases, the General Court found that the Council was unable to provide the Court with sufficient open-source evidence to support the assertions made in the statement of reasons. Following the annulments, the Council assessed whether there remained a strong policy imperative for relisting these two individuals, and, if so, whether further evidence existed that met the listing criteria, and which could be provided to the Court to defend the listing in the event of a further legal challenge. The Council assessed in both cases that these conditions were not met and therefore decided not to pursue relisting.

In your letter, you also asked whether General Muhamad Maalla was given the opportunity to comment on the statement of reasons pertaining to him following his recent listing.

The Council provides individuals and entities with the opportunity to present observations on the reasons for their listing. When agreeing new designations it is not possible to inform the individual or entity of their impending listing prior to the adoption of the measures. This is to ensure that asset flight does not occur before the measures have entered into force.

Instead, the individuals and entities concerned are informed at the point of designation, either individually if an address is known or through publication in the EU Official Journal. They are then

given the opportunity to request the information on which the listing was based and to present any observations on their listings. Where observations are submitted, the Council will review its decision to list in light of those observations and inform the individual or entity of its decision accordingly. An action for the annulment of a listing can also be brought before the EU General Court, within the period of 2 months and 10 days following notification of the measures in the Official Journal.

General Muhamad Maalla was therefore informed of his listing at the point of designation and given the opportunity to present observations.

6 July 2015

STATUTE FOR A EUROPEAN FOUNDATION (6580/12)

Letter from the Chairman to Rob Wilson MP, Minister for Civil Society, Cabinet Office

Thank you for your letter of 20 March 2015, which was considered by the EU Justice Sub-Committee at its meeting on 30 June.

We are pleased to see the Commission withdrawing proposals where there is no realistic prospect of agreement in the Council, and we now formally clear the proposal from scrutiny.

We welcome the Commission's initiative to lighten the burden of EU regulation where possible under the REFIT programme and the Agenda for Better Regulation.

We do not expect a reply to this letter.

1 July 2015

STRENGTHENING THE FOUNDATION OF THE EUROPEAN AREA OF CRIMINAL JUSTICE (17635/13, 17633/13, 17642/13, 17621/13)

Letter from the Chairman to Shailesh Vara MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice

Thank you for the letter dated 18 March 2015. It was considered by the Justice Sub-Committee at its meetings of 23 and 30 June 2015.

We have decided to retain all four proposals under scrutiny.

We are grateful for the update on these four criminal procedural rights proposals which are at various different stages of the EU's legislative procedures. We note (i) the confirmation that the previous Government decided that it would not reconsider, post-adoption, its decision not to opt in to the legal aid proposal and, (ii) the repeated intention to revisit, post-adoption, the opt-in decisions pertaining to the vulnerable child suspects proposal and the Directive dealing with access to a lawyer.

We would welcome an opportunity to pursue two particular matters raised by the letter.

First, regarding the vulnerable child suspects proposal, the Government's letter highlighted a number of areas where the European Parliament had "sought to go beyond the Commission's proposal". One of these concerned the availability of individual assessments of child suspects (Article 7). The letter explained that the European Parliament has included a requirement that child suspects be entitled to an individual assessment of their needs *before* the deprivation of liberty; however, the text agreed by the Member States required the assessment to be carried out "at the earliest appropriate" stage of the proceedings. The Committee would welcome an update as to how the discussion of this proposal has progressed since your most recent letter, including the specific issue of individual assessments.

Second, as you know, the Directive dealing with access to a lawyer was adopted by the participating Member States in October 2013. The previous Government repeatedly stated that it would revisit, post-adoption, its decision not to opt in to the Directive. Given that nearly three years have passed since the Directive was agreed by the participating Member States, we would welcome the new Government's analysis of the agreed text and its views on the merits, or otherwise, of the UK participating.

In order to facilitate our ongoing scrutiny of these proposals, we would be most grateful if, in future, we could receive one letter per individual legislative proposal.

We look forward to considering your response by 15 July 2015.

1 July 2015