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 May to November 2009.

SOCIAL POLICIES AND CONSUMER PROTECTION (SUB-COMMITTEE G)

CONTENTS
ACTION AGAINST CANCER (11516/09)

Letter from the Chairman to Gillian Merron MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum (EM) dated 15 July 2009 was considered by Sub-Committee G at its meeting of 15 October 2009.

We note that the EM does not provide the Government’s view on whether the proposed Partnership would be consistent with the principle of subsidiarity. Do the Government think a European Partnership for the Action Against Cancer would be in line with this principle?

We would be interested to receive further detail of the financial implications to Member States as discussions between your Department’s Cancer Policy Team, International Division, and the Devolved Administrations proceed.

We note the unclear targets within the objectives and acknowledge your uncertainty as to how these were defined. We, like you, hope that further discussions about the Partnership would clarify this issue.

As the item is not legislative we are content to clear it from scrutiny but we look forward to hearing from you on the points raised above.

15 October 2009

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 15 October regarding the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Action Against Cancer: European Partnership.

I would like to thank Sub-Committee G for clearing the Government’s Explanatory Memorandum (EM) of 15 July 2009 from scrutiny. I note the Committee’s request for clarity on a couple of issues and will respond to these.

First, the Committee would like to know the Government’s view on whether the proposed Partnership is consistent with the principle of subsidiarity.

The Commission recognises that the legal basis for any action in the field of health largely falls on Member States according to Article 152 of the European Community Treaty. Our understanding is that the aim of the European Partnership for Action Against Cancer is to support Member States in their efforts to tackle cancer more efficiently through prevention and early diagnosis, identifying and promoting good practice in cancer-related healthcare, and collaboration on research and data. We are satisfied that this would bring added value in tackling cancer and that the proposed Partnership is therefore consistent with the principle of subsidiarity.

We published the “Cancer Reform Strategy” in December 2007 in England, which sets out a clear direction for the development of cancer services. The Strategy highlighted that further improvements in cancer services are needed to continue to reduce the gap in survival rates between the UK and the rest of northern and western Europe and America.

Evidence suggests that the most important reasons for lower survival rates than in other comparable countries are low awareness of the signs and symptoms of cancer; delays in patients presenting to their doctors; and patients having more advanced disease at diagnosis.

Whilst work is underway to address these issues in the UK, we believe that the Partnership, which will run between 2009 and 2013, will provide an opportunity to collaborate with partners in Europe to build on the progress that we have already made. It is on this basis that we support its objectives and look forward to working with the European Partnership Action Against Cancer.

Secondly, the Committee requested further detail of the financial implications to Member States. I hope that the Committee will appreciate that these are early days and that we are unable to give much clarity on the financial implications at this stage.

The Partnership was launched in Brussels on 29 September 2009 and the European Commission is now planning an initial meeting. We are expecting further details regarding the date and venue, but I understand that the purpose of the meeting would be to agree the structure of the co-operation and criteria for participation of different stakeholders; as well as to agree on the role of different stakeholders in the process and on main actions.
A senior official from the Department will attend and, following this meeting, we should know more and be in a position to provide further information on any financial implications.

19 November 2009

AGEING REPORT 2009 (9200/09)

Letter from the Chairman to Jonathan Shaw MP, Minister for Disabled People and Minister for the South East, Department for Work and Pensions

Your EM, dated 21 May 2009, was considered by Sub-Committee G at its meeting on 11 June 2009. We were interested to note the main findings of the 2009 Ageing Report. You stated that the information contained therein can be used to help inform national policy, but that this is an entirely voluntary step for Member States. That being so, we would be keen to know whether the Government intend to use any of these findings to inform UK policy. Given the lack of detail in your EM about existing policy in this area in the UK, we would also appreciate an indication of current or planned action.

In its Ageing Report, the Commission recommends a number of policy actions, calling for measures which can limit the expected increase in public expenditure, for example. Furthermore, it outlines several ways in which it expects to help combat the challenges presented by an ageing population. We would be grateful for an indication of the Government’s view of these recommendations and areas for action.

We recognise that this is a non-legislative document and are therefore content to release it from scrutiny, though we look forward to receiving your response to the points raised above.

11 June 2009

Letter from Angela Eagle MP, Minister of State, Department for Work and Pensions, to the Chairman

Thank you for your letter of 11 June, in response to my colleague Jonathan Shaw’s Explanatory Memorandum of 21 May, in which you asked for further information.

Firstly, you asked whether the Government intends to use any of the main findings of the 2009 Ageing Report to inform UK policy. My EM confirmed that compliance is voluntary, however recent publications by the UK Government (Empowering Engagement and Building a Society for all ages) demonstrates UK policies are sympathetic to the EU 2009 Ageing Report.

Secondly, you asked for an indication of current or planned action in this policy area. UK current and planned action has been set out in the publication “Building a society for all ages”, which sets out a number of key strategic objectives (www.hmg.gov.uk/buildingasocietyforallages) which include:

— PLANNING AND PREPARING FOR LATER LIFE: Good planning and preparation can have a huge impact on the quality of later life. Our new interactive “one stop shop” for helping people planning ahead will make it easier for people in mid-life to make decisions they need to on a range of issues such as their financial affairs and health concerns. In addition the new Active at 60 will provide people approaching their 60th birthdays with information about opportunities and entitlements, while all-in-one cards will give access to a range of local activities.

— OLDER PEOPLE AT THE HEART OF FAMILIES: as we age, our family structures are going to change too. We will publish a Families and Relationships Green Paper to look at how we can better support family members. A grandparents summit will look at the changing role of grandparents and what extra help they may need.

— WORK AND ECONOMY: it will be important to allow those who want to, to work longer. There is also the significant benefit to business of tapping in to the experience and commitment that older people can bring. We will bring forward the review of the Default Retirement Age to 2010 to reflect the change in economic circumstances since it was introduced. The Age Positive initiative will continue to raise awareness of training opportunities and help to improve employer attitudes to older workers.
— **IMPROVING FINANCIAL SUPPORT:** the Government’s state pension reforms will ensure that people have a solid foundation on which to save and reforms to the private pension system will produce change in the way people approach saving and planning for retirement.

— **BETTER PUBLIC SERVICES FOR LATER LIFE:** a society for all ages will need to recognise older people’s needs in the way it provides public services. A new health prevention package will focus on preventative services for conditions that often affect people in later life.

— **BUILDING COMMUNITIES FOR ALL AGES:** people in later life often provide the lifeblood of communities by playing an active role in neighbourhood life. We want to make the most of this strength so our Generations Together programme will fund 12 intergenerational projects across the country to break down barriers and challenge negative stereotypes.

This is further supported by the publication Empowering Engagement which announced the creation of a new UK Advisory Forum on Ageing. The Forum will have a key advisory role on implementation of the Ageing Society Strategy.

You also asked for an indication of the Government’s view of the policy actions and recommendations by the Commission to help combat the challenges presented by an ageing population. The UK actions are summarised in the previous paragraph (and are set out in detail in the publications mentioned) and are consistent with the Commission recommendations.

20 July 200

**CONSUMER ACQUIS ENFORCEMENT (11817/09)**

*Letter from the Chairman to Kevin Brennan MP, Minister for Further Education, Skills, Apprenticeships and Consumer Affairs, Department for Business, Innovation and Skills*

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee G at its meeting of 15 October 2009.

The Communication is of particular interest to the Committee in the light of our recent report on the Consumer Rights Directive, which will be debated in the House on 23 October. Indeed, the Commission notes that fragmentation of consumer law, which the Directive seeks to tackle, has been a barrier to effective enforcement of the consumer *acquis*. The Commission’s analysis is therefore welcome, and its suggested actions appear overall to be sensible.

We note your concern that some of the actions may have an impact upon the delivery of the policy outlined in the Government’s recent Consumer White Paper, and may also have resource implications. Our view is that the Commission must work in a collaborative manner with Member States rather than directing Member States to take actions that might not be fully aligned with their internal processes and policies.

We are content to release the Communication from scrutiny.

15 October 2009

**CONSUMER PROTECTION: MARKETING AND USE OF PAINT STRIPPERS CONTAINING DICHLOROMETHANE (6689/08)**

*Letter from Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department for Work and Pensions, to the Chairman*

I last wrote to you on 12 February 2009 about this dossier, following its passage through the European Parliament on 14 January, in a First Reading Deal.

I informed you in that letter that the dossier would return to Council for final agreement. This occurred on 23 and 24 April in the framework of an Agriculture and Fisheries Council. The text of the final version, following agreement by the jurists-linguists, is attached [not printed] for your information. There have been no changes of policy and the text remains substantially the same as that sent to you previously.

1 *Correspondence with Ministers, December 2008 to April 2009*
As I mentioned in my letter of 12 February, officials from the Health and Safety Executive (HSE) are working closely with manufacturers and formulators of dichloromethane-based paint stripping products to clarify their intentions concerning the application of the derogation for professional use. If the industry makes a reasoned case for the UK to invoke the derogation, HSE officials will put in hand the legislative action needed.

28 May 2009

CONSUMER PROTECTION LAWS (11696/09)

Letter from the Chairman to Kevin Brennan MP, Minister for Further Education, Skills, Apprenticeships and Consumer Affairs, Department for Business, Innovation and Skills

Your Explanatory Memorandum on the above Report was considered by Sub-Committee G at its meeting of 15 October 2009.

As you note, the assessment of the Network’s first two years of operations shows that it has not yet reached its full potential and a series of shortcomings have been revealed. We would be grateful if you would explain, with reference to practical examples, how those shortcomings have manifested themselves in the UK and how you consider they might best be addressed.

We are content to release the Report from scrutiny.

15 October 2009

Letter from Kevin Brennan MP to the Chairman

Thank you for your letter dated 15 October 2009. You have asked for an explanation, with reference to practical examples, on how the shortcomings revealed in the Commission’s Report manifested themselves in the UK and how they might best be addressed.

UK authorities have played an active role in the Consumer Protection Network which has been created to support the Consumer Protection Cooperation Regulation (CPC). The UK has supported the introduction of the CPC Regulations and the Network which are seen as essential for facilitating cross-border investigations and enforcement. However, it is clear that further improvement is necessary if the Network is to achieve its full potential.

The Office of Fair Trading (OFT) is the Single Liaison Office in the UK and one of the UK’s Competent Authority under the Regulations. I attach the UK’s biennial report on the application of the Regulation on Consumer Protection Cooperation published in January 2009. This report, prepared by the OFT but including views of all the UK’s Competent Authorities, provides a detailed analysis of the operation and effectiveness of the CPC in the UK, including areas where improvement is needed and suggestions for how this can be achieved.

The report states that the CPC Regulation has been successfully introduced in the UK. This was largely as a result of the positive action taken by the OFT to ensure successful introduction and implementation. The OFT undertook a number of initiatives to facilitate the introduction of the CPC including preparing guidance and providing training for UK enforcers and establishing an Enforcement Forum, where all UK designated Competent Authorities meet regularly to keep abreast of developments and identify any problems that arise in the enforcement of cross-border cases and the operation of the CPC Network.

Although better resourced than authorities in some Member States, the OFT has found that the introduction of the Network has had significant resource implications for the UK bodies involved, both in introducing and operating the new regime. A number of other difficulties have also been encountered including an initial fear of being overburdened with information and enforcement requests; the prospect of being forced to prioritise investigation and/or enforcement of suspected cross-border infringements (including those resulting in low-level detriment) over domestic cases; and technical problems with the CPC IT tool. Furthermore, the UK Competent Authorities have observed some inconsistencies in the quality of information and the clarity of the requests they receive from enforcement bodies in other Member States and there has on occasion been a failure to target these requests to the relevant authority.

In the OFT’s view, the EU finance and budget procedures are very complex and this has hindered the ability of authorities in some Member States to fulfil the required procedures. There has also been uncertainty in some cases as to whether the law of the Member State where the trader is established or the law of the Member State of the affected consumers is applicable.
The UK Government is pleased that the Commission has acknowledged these limitations and is taking steps to address some of these issues. For example, it has updated the IT software to improve its functioning, has produced a manual on EU finance procedures and has arranged a workshop on applicable law. The UK will continue to work constructively with the Commission and other Member States (including through attendance at quarterly CPC Committee meetings) to ensure that the CPC Network fulfils its potential to improve the efficiency and effectiveness of cross-border cooperation and enforcement.

9 November 2009

CONSUMER RIGHTS (14183/08)

Letter from Ian Lucas MP, Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills

I would like to bring to the Committee’s attention of the Government’s consultation response to the European Commission’s proposal for a Consumer Rights Directive (not printed).2

The purpose of the consultation document was to seek stakeholders’ views on the European Commission’s proposal for bringing together four Directives, the Doorstep Selling, Unfair Contract Terms, Distance Selling and Sale of Goods Directives, as a single horizontal Directive based on full harmonisation.

Generally the proposal was well received by businesses who support the objectives underpinning the Directive provided it remains a full harmonisation measure as proposed. However, consumer bodies expressed very strong concerns that the Directive would result in a reduction in consumer protection in certain areas. They are particularly opposed to reductions in consumer protection which would occur with the loss of the “right to reject” faulty goods and receive a refund and the introduction of a two-year liability period during which a seller is liable for faulty goods. It was also felt that there was room for improving the Directive, amongst others, in terms of its scope, definitions provided, etc.

Discussions in Council Working Group are ongoing and we expect negotiations to continue into 2010. The Committee on the Internal Market and Consumer Protection (IMCO) produced an initial Working Document on the Directive in May. This looked at the principles and objectives behind the proposal and we expect more detailed consideration of the Directive by the European Parliament to commence soon.

30 July 2009

CROSS-BORDER HEALTHCARE

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

I am writing to update you on the outcome of the European Parliament’s first reading of the Commission’s proposal for a Directive on the application of patients’ rights in cross-border healthcare.

The European Parliament has now completed its first reading, after voting to adopt John Bowis’ draft report, with some additional amendments, in the plenary session of 23 April. The Report was passed by 297 votes to 120 with 152 abstentions (the PES group abstained). A summary of the European Parliament (EP) Opinion is provided below, with the UK Government’s view on these amendments. Also provided below is some information on the views of the European Commission, as indicated by Commissioner Vassiliou when she attended the EP’s debate on this directive.

Negotiations on the directive are still ongoing in Council Working Group, and it is unclear when the Council will reach a Common Position. A recent meeting of Coreper concluded that there was still much to be discussed in working groups and Member States considered it too early to seek political agreement ahead of the next meeting of the EPSCO (Employment, Social Policy, Health and Consumer Affairs) Council in June. Although many Member States have raised concerns about the key issues the European Parliament has amended in its report, the Council has yet to debate these issues fully and reach a collective position. For that reason, I do not consider it appropriate to attempt to

predict the Council’s position on the issues below, but will write to you in due course when it looks as though political agreement on a text will be sought.

In total, the EP proposed 115 amendments to the text. Below is a summary of the key issues covered by their amendments. The full text is provided at annex 1 [not printed]3.

**ENTITLEMENTS TO HEALTHCARE**

Further emphasis that the organisation and delivery of healthcare is a Member State competence and that the determination of entitlements to healthcare should be for Member State authorities to decide.

Clarification that entitlements to healthcare may be decided at national, regional or local level.

Explicit clarification in the operative text that Member States may apply gatekeeping processes. In the UK, this means that a patient has to be advised by a GP or other appropriate healthcare professional first (as the “Gatekeeper”) to establish clinical need for further specialist treatment and determine NHS entitlement.

Changes the wording to article 6 (and corresponding Recitals 21 and 24); stating that patients should be entitled to “same or equally effective” treatment, rather than “same or similar” treatment, as in the Commission’s original proposal.

Proposals that Member States may decide to cover ‘related’ costs that are not payable in the “home” system e.g. therapeutic treatment or accommodation and travel costs. Additional entitlements may also be available for cross-border patients with rare diseases or disabilities. Furthermore, where there are different methods of treatment, cross-border patients should be allowed reimbursement for treatments tried and tested by ‘international medical science’, even if they are not available in their home system.

The UK Government welcomes the EP’s recognition that this directive must fully respect Member States’ competence for the organisation and delivery of healthcare systems, and the determination of entitlements to healthcare. The Government supports amendments that clarify that systems may operate at national, regional and local level, recognising the devolved and local systems that operate within the UK. We especially welcome the amendment that recognises the importance of arrangements such as “gate-keeping”, protecting the system in the UK that requires a patient to be advised by a GP or other appropriate healthcare professional first (as the “Gatekeeper”) to establish clinical need for further specialist treatment and determine NHS entitlement.

The Government remains concerned about the equity implications of this Directive; we do not believe that patients who decide to travel abroad for treatment should have an advantage over the vast majority of patients who wish to be treated near to home. Providing additional entitlements to cross-border patients also risks destabilising health systems. Therefore, we strongly believe that cross-border patients should not be entitled to any additional treatments under this Directive.

**SCOPE OF THE DIRECTIVE**

— The exclusion of “long-term care” from the scope of the Directive.

— The exclusion of organ donation from the scope of the Directive.

— Inclusion of “medical devices” in the scope of the Directive.

Recital 9 of the original proposal from the Commission suggests that care such as residential services is not covered by the draft Directive. The Government agrees that it may be helpful to explicitly exclude such long-term care from the operative provisions of the Directive.

Turning to the exclusion of organ transplantation, should the Directive exclude this, I am advised that none of the provisions of the text of the draft directive would apply to transplantation. This could mean that the UK would not be able to rely on any measures in the text which may be helpful, such as recital 12 suggesting that Member States do not have to accept a patient for planned treatment to the detriment of other patients with similar clinical need.

The issue is complex because excluding organ transplantation from the scope of the draft Directive does not mean that European case law is similarly disapplied. A patient seeking an organ transplant would still have recourse to Article 49 of the EC Treaty and would still be able to apply for an E112 under EC Regulation 1408/71.

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I will be considering our position carefully, particularly in light of the current Review, commissioned by the Secretary of State to examine policy and practice in the UK within the framework of European law, on the use of organs from UK deceased donors in respect of the referral, acceptance and transplantation of non-UK EU residents.

On the issue of medical devices, I note that the existing European Court of Justice case law already covers medical devices, such as spectacles.

**PRIOR AUTHORISATION**

- Prior authorisation should only be refused in the context of “fair and transparent” procedure, and that reasons for refusal should be made known in advance.

- Re-wording which appears to imply Member States would not have to wait for damage to the system to be evident before setting up prior authorisation schemes.

- The exclusion of certain patients from the requirement to seek prior authorisation: patients with rare diseases; patients with disabilities; patients with life-threatening conditions.

The Government believes that the Directive must provide further clarity on how prior authorisation will work in practice, as well as on what grounds prior authorisation may be refused. We therefore support the European Parliament’s call for fair and transparent procedures. We believe that the EP amendment is potentially helpful and may be of assistance in supporting Member States in setting up prior authorisation schemes without having to wait for damage to the system to be evident. However we would still like to see further clarity on this in the text. The Government believes that prior authorisation for hospital care is essential to manage effectively patient flows to avoid destabilising health systems or wasting resources.

Prior authorisation is also essential to help provide patients with the information they need to make an informed choice about accessing cross-border healthcare. For these reasons, we believe all patients should be required to seek prior authorisation for hospital care and we would like to see further guarantee that a prior authorisation system can exist from the outset, before any damage to health systems is inflicted. We also believe that the grounds for refusal require further clarity to protect Member States from further challenge in the courts.

At this stage it is difficult to see why patients with rare diseases for example, should be exempt from requirements to seek prior authorisation. Their treatment may well be highly specialised, potentially experimental and costly, the sorts of grounds held by the Courts to justify the use of prior authorisation schemes. Additionally, the “E112” system already provides a mechanism for allowing patients to obtain treatment in another Member State should they face “undue delay” in accessing that treatment in their home country.

**COOPERATION ON HEALTHCARE**

- Removal of the comitology requirement to reach an EU-wide definition of “hospital care”, leaving it up to Member States to define what constitutes hospital care for the purposes of applying prior authorisation.

The UK Government welcomes the amendment leaving it up to Member States to define what constitutes hospital care. However, we note that the EP did not delete any of the other comitology requirements contained in Chapter 4. The Government supports voluntary cooperation in these areas, and notes the excellent existing work already ongoing on areas such as European Reference Networks. However, we are concerned about the extent of delegated legislation through Comitology committees under this Directive. It is important to ensure that any cooperation measures are necessary over and above existing mechanisms. The scope of any Comitology must be clear, and limited to actions agreed by Member States as being necessary at an EU level in order to codify existing caselaw.

**PAYMENTS TO PATIENTS**

- Where patients have sought prior authorisation they should not have to pay upfront for treatment if they are not required to do so when accessing treatment in their home Member State. The Report proposes a system of state-to-state payments, and commits the Commission to conducting a
feasibility study into an EU-wide clearing house to facilitate the reimbursement of costs.

The UK Government is concerned that providing funds to all patients prior to treatment would not only increase the risk of fraud but could be inequitable for the majority of patients. A system of direct or upfront payment for all patients may damage the local healthcare systems that the vast majority of patients rely on, impacting on patients who cannot or will not travel for healthcare. Ensuring an equitable Directive means obtaining a Directive that prioritises the vast majority of patients who remain in the home system.

The Government is concerned that an EU-wide clearing house would be overly bureaucratic and disproportionately expensive, considering the very small numbers of patients who currently seek treatment abroad. Again, this would divert funds and resources away from the vast majority of patients who remain in the home system.

QUALITY AND SAFETY STANDARDS

- Removal of requirement for EU-wide standards on quality of healthcare, but requirement for EU-wide safety standards remains.

The Government firmly believes that the responsibility for setting quality and safety standards and assurances must remain the responsibility of individual Member States. Member States’ competence in running their own healthcare systems gives them exclusive competence in setting standards. The UK is supportive of existing voluntary work at an EU level to help Member States improve the standard of healthcare in their system, but this work on standards should remain voluntary.

Therefore, we think the EP text is helpful as it recognises that quality standards are the responsibility of the Member State of treatment. However, as quality and safety standards are intrinsically linked, I believe the proposal must be further amended to reflect the fact that safety standards must remain the responsibility of the Member State of treatment. I do not believe that quality and safety standards can be separated out, as the EP’s proposed amendment implies.

REDRESS

- The establishment of a European Patients’ Ombudsman.
- “Harm” to be defined by reference to the existing legal framework of the Member State of treatment.

The Government will need to consider carefully the proposal for an EU ombudsman. In general, we firmly believe that this Directive must remain focused on clarifying and codifying existing case law.

We welcome the amendment to the definition of harm, which accommodates differing legal systems of Member States.

SHARING OF INFORMATION BETWEEN MEMBER STATES

- Member States should be required to share fitness-to-practise information on their medical professionals.

The UK Government believes this Directive should focus as tightly as possible on the issue of codifying and clarifying existing case law on patient mobility. Therefore, though we continue to support the sharing of information on healthcare professionals’ fitness to practice data, we do not believe that this Directive is the appropriate vehicle for such measures. There is already an ongoing voluntary process around sharing healthcare professionals’ fitness-to-practice data the UK believes is creating helpful results, (e.g. the recent “Portugal Agreement”4) and continues to support.

OTHER SIGNIFICANT AMENDMENTS

- Clarification that the “national contact point” does not have to provide legal advice to patients.

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4 The Portugal Agreement was agreed in autumn 2007 and is a collaborative voluntary work programme for professional healthcare regulators from within Europe. The Agreement sets out a range of actions that provide a framework for voluntary cooperation and the development of professional healthcare regulation in Europe throughout 2008 and 2009.
— Additional references to ensure that the Directive ensures equal treatment to persons irrespective of religion or belief, disability, age or sexual orientation.

— Helpful language that Member States can refuse requests from foreign patients for planned treatment where there would be a detriment to their home system.

The UK Government considers that these amendments are helpful.

EUROPEAN COMMISSION VIEWS

Commissioner Vassiliou attended the debate and indicated the Commission's position on the key issues within the proposal. A summary of the views she expressed can be found below, with a full transcript of her closing remarks at Annex 2 [not printed]5.

Quality and safety standards: The Commission believes that securing assurances of quality and safe health care is of fundamental importance to this Directive.

Assumption of costs: The Commission recognises that inequalities of revenue exist throughout Europe. However, addressing such inequalities is highly challenging, and what can be achieved in the context of this Directive is limited. Member States’ responsibilities in organising health care must be respected, and so it is up to Member States to decide on the arrangements of costs for treatment abroad, and to address equity concerns.

Prior authorisation for hospital care: The Commission believes that prior authorisation for hospital treatment has to remain a safeguard mechanism, and should only be applicable when there is a justified cause. Any “unconditional” system of prior authorisation would be an unnecessary barrier to patient mobility. The Commission believes that patient mobility will remain a “very limited phenomenon”, and so there will be a limited impact on health systems and budgets.

Definition of hospital care: The Commission believes that this should be defined through a Community list via the Comitology procedure, and that a definition based on national lists would lead to discrepancies as to what constitutes hospital care in each Member State.

Patient inflows: The Commission believes that mobility of patients is a limited phenomenon and they do not expect this to change. They therefore believe that it would be disproportionate for Member States to take measures to manage patient inflows.

Scope of the Directive: The Commission believes that rare diseases should remain within the scope of the Directive. Regarding organ transplantation, the Commission believes that, as transplantation is a medical procedure, it is difficult to justify why patients should not have the right to benefit from it as cross-border health care, as ruled by the Court. However, the Commission believes that the issue of organ allocation is a different matter. Commissioner Vassiliou has therefore asked experts in the Commission to look into this question to see how organ allocation could be dealt with in a different context.

3 June 2009

CROSS-BORDER HEALTHCARE: PATIENTS’ RIGHTS (11307/08)

From Gillian Merron MP, Minister of State, Department of Health, to the Chairman

I am writing to update you on the recent debate between EU Health Ministers on cross-border healthcare. I am also writing to you in response to your letter of the 21 May and your query about EU “jargon”.

EU Health Ministers debated the draft Directive for the application of patients’ rights in cross-border healthcare at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 9 June. You will receive a written Ministerial statement on progress at EPSCO Council, but given the Committee’s interest in the cross-border healthcare, I thought a more in-depth update would be appropriate.

Andy Lebrecht (Deputy Permanent Representative, UKRep) represented the UK, and was accompanied by senior officials from the Department of Health. Due to the recent Ministerial reshuffle, it was not possible for either my predecessor or me to attend.

Mr Lebrecht welcomed the progress that had been made in discussions under the Czech Presidency, and said that there was sound basis for future discussion under the Swedish Presidency. He said that good progress had been made on Chapters 1-3, (the provisions of the draft Directive which cover EU principles in healthcare and the rules for cross-border healthcare) and that the Council clearly recognised “fundamental principles” such as the Member State of affiliation’s right to determine entitlements to healthcare. However, there remained some technical issues to be addressed in these chapters. Furthermore, Mr Lebrecht highlighted that there were still issues that remained to be resolved, especially around the healthcare co-operation measures outlined in Chapter 4, which, he argued, needed to be valid, necessary and proportionate.

Whilst almost all the Member States who intervened thought good progress had been made in negotiations under the Czech Presidency, the discussion illustrated that two major areas of difficulty remain. The first concerns the question of whether certain types of healthcare providers should be excluded from the scope of the Directive (e.g. private providers who are not contracted to the state system). Roughly, half the Member States supported such an exclusion. The other half believed such an exclusion would be contrary to the existing Treaty-based jurisprudence and risked being swiftly struck down by the Court. The Government’s view on this matter is that the case law applies to all providers and that an attempt to have very broad exclusions written into the legislation at European level risks undermining the point of the Directive: to codify and clarify the existing case law to the benefit of patients and health systems. Mr Lebrecht therefore said that, in the view of the UK, the best solution to this problem is likely to be a Directive that is broad in scope, but allows Member States the flexibility to take decisions at a national level, where these are in line with the provisions of the Treaty.

There was also no real consensus about what to do with the various proposals for Member State co-operation on healthcare contained in Chapter 4, which are to be enacted through delegated powers to the European Commission or ‘comitology’. Many Member States, concerned to ensure that the Directive respects Member States’ competence in healthcare, do not believe that a legal basis for such co-operation is necessary or desirable. Others can accept limited comitology provisions in these areas. Mr Lebrecht re-stated the UK position that we would like this Directive to focus on codifying and clarifying the case law on patient mobility, and that we have serious reservations about the extent of co-operation measures outlined in Chapter 4.

Negotiations will now continue under the Swedish Presidency. The Swedes have indicated that they are optimistic that political agreement can be reached under their Presidency; a sentiment shared by many other Member States including the UK.

You may be interested to note that video footage of the Council meeting and the relevant documents presented by the Presidency can be found at the Council of the EU website: www.video.consilium.europa.eu.

I now turn to your letter and understandable wish to avoid using EU “jargon”. I agree that it is important we use clear and accessible language. However, I have been unable to find an easy term to replace “comitology committee”, which has become an established term within the EU. It has been suggested to me that we could preface our publications with a definition of the term (such as “Commission chaired bodies which bring together official representatives from the Governments of all Member States to assist the Commission in exercising their implementing powers6). However, I am very conscious that the definition above does not lend itself to brevity. If you have a suggestion for an alternative term for ‘comitology committee’, I would be very grateful to receive it. Failing such an alternative, I will continue to use this long-established term, which is recognised across EU Member States, but am grateful to you for highlighting the need to provide further explanation for the lay reader.

I hope you have found this helpful, and will of course continue to update the Committee as negotiations progress.

16 June 2009

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From the Chairman to Gillian Merron MP

Your letter, dated 16 June, and that of your predecessor, dated 3 June, were considered by Sub-Committee G at its meeting of 2 July. We appreciate your efforts to keep us informed of developments on this proposal and request that you continue to update us as negotiations progress.

We note the Government’s view, outlined in Dawn Primarolo’s letter, that cross-border patients should not be entitled to any additional treatments under the Directive. From reading the text of amendment 19, it seems that it would be up to individual Member States to decide whether to offer

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6 http://ec.europa.eu/transparency/regcomitology/aide.cfm?page=faq&CL=en
this facility. In that light, we would be interested to know whether you would nevertheless be content with the possible inclusion of this amendment, so long as it remained a matter for Member States’ own discretion.

In relation to the application of the draft Directive to organ transplantation, this issue is one which we will bear in mind during the progress of our scrutiny of the Commission’s proposed Directive and Action Plan on organ donation. Given our scrutiny of these proposals, and our Inquiry into the Commission’s Communication on organ donation, we would appreciate further information from you on this as soon as it is available, particularly in light of the work being undertaken by Commission experts. Until further information is forthcoming we will reserve our position on the exclusion of organ transplantation from the scope of the proposed Directive on cross-border healthcare.

In her letter, Dawn Primarolo outlined the Government’s opposition to providing funds for treatment in advance, direct to the healthcare provider in the host Member State. This system is one that we raised in our report (see paragraphs 89-90) and is something that we continue to support. Currently, we are unclear as to how this system would differ from the proposed system of reimbursement to the extent that it would have the ability to undermine the healthcare system in the home state; after all, the total sum being paid would not change as a result of direct payment in advance of treatment.

On the proposition of a European Patients’ Ombudsman, we would appreciate an update from you once the Government’s position has been decided.

Turning to your letter of 16 June, we too continue to be concerned about the extent of delegated legislation in the proposal outlined in Chapter 4 and endorse your efforts to resolve this concern. Please keep us informed of any developments.

We note the possible exclusion of private healthcare from the proposal and the Government view that the scope should be drawn fairly broadly, while leaving the finer details to the Member State authorities. This is an approach which we support and we would be interested to hear the reaction to this proposition from other Member States.

You will note that as a result of the debate on our report on Monday 8 June, this proposal has now been cleared from scrutiny. That being so, we are keen to follow the progress of this Directive and would be grateful if you could continue to update the Committee as matters develop, and in particular, on the points we have raised above.

2 July 2009

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 2 July.

In your letter, you raise a number of detailed questions, including the Government’s position on some of the European Parliament’s amendments and updates on discussions regarding the extent of delegated legislation in this draft Directive and whether the draft Directive can exclude private healthcare providers.

You also asked to be kept informed of the European Commission’s views on the possible exclusion of organ donation from the draft Directive.

Given that negotiations are about to resume at official level under the Swedish Presidency, I expect to be in a better position to reply to your points in more detail in due course. I will continue to keep you informed as negotiations progress.

22 July 2009

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 2 July. In my reply of the 23 July, I committed to providing a more detailed response once negotiations had progressed under the Swedish Presidency. I am now in a position to provide you with a further update on the issues raised in your letter.

ADDITIONAL ENTITLEMENTS FOR CROSS-BORDER PATIENTS

You noted the Government’s view that cross-border patients should not be entitled to any additional treatments under the Directive. You referenced the European Parliament’s amendment to recital 24 (AM 19) that allows that Member States may cover “other related costs, such as therapeutic costs provided that the total cost does not exceed the amount payable in the Member State of affiliation”. You asked whether, as this is a matter of Member States’ discretion, we might be content to include such an amendment.
The Government’s view remains that patients who opt to travel abroad for treatment should not be unfairly advantaged over patients who are unable, or unwilling, to travel abroad for treatment. Although the proposed recital leaves the matter to Member States’ discretion, we are concerned that it could create an expectation of additional treatment.

The Government’s position has consistently been that the Directive should aim to clarify existing case law on patient mobility, and should not create additional rights for cross-border patients. Therefore, at this stage, we remain opposed to this amendment. However, it will no doubt be an issue that the European Parliament will be keen to return to during second reading proceedings, so I envisage further debate on this in due course.

ORGAN DONATION

You also asked for further information on the issue of organ donation and transplantation. The Department of Health has been very keen to gain a greater understanding of the issue, in particular in an EU context. Since my last letter, Elizabeth Buggins, on request of the Secretary of State, published a review into the allocation of organs to non-UK EU residents. The report’s main recommendations were as follows:

— a ban of private clinical practice involving solid organs donated after death within the NHS
— changes to Secretary of State’s Directions and commissioning contracts to ensure NHS donated organs are only used for patients receiving their clinical care within the NHS, backed up by robust governance arrangements
— the implementation of a universal and equitable allocation process for donated livers
— the development of DH guidance to transplant centres to provide clarification within a complex domestic and EU legal framework on the eligibility criteria for people from abroad, and
— that the Government works with colleagues across the EU to help build capacity in developing transplant programmes in Member States or to build reciprocal agreements between neighbouring countries

The Department of Health will now be working to implement these recommendations.

A full copy of the Review can be found at:

In relation to the cross-border Directive, you are aware that the Commission have been giving further thought to the issue. Commission officials have said that they do not consider it possible to exclude organ transplantation (i.e. the surgical procedure) from the scope of the Directive, because it is a medical procedure that would be covered by the case law on patient mobility. However, aware of the sensitivities around how Member States allocate organs, and the concerns of the European Parliament, they have suggested that organ allocation might be excluded from the scope of the Directive. The Commission have cited some rare instances where the allocation of an organ and the actual organ transplant could occur separately and in different Member States. For example, a patient could have a family member willing to donate a “live” kidney. They could both request that the surgical procedure be performed in another Member State — i.e. they are “supplying” their own organ.

As excluding organ transplantation from the scope of the Directive would leave a “grey” area (because the case law would still apply), I believe this could be a neat legal and practical solution that addresses Member States’ concerns about organ allocation. My officials will be discussing the implications of this potential solution further with other Member States during ongoing negotiations.

METHODS OF PAYMENT

You raised the issue of providing funds for treatment in advance, direct to the healthcare provider in another Member State.

The Government has been clear from the start of negotiations that the justification for this Directive is to codify the existing case law on patient mobility and not to extend that case law. The case law only requires Member States to reimburse patients, not to organise and run state-to-state payments systems or establish an EU clearing house, as suggested by the Parliament, which could be
bureaucratic and costly. Although the sum of money required for the treatment would not change, the administrative costs, for example if PCTs were required to set up contracts with individual providers, could increase significantly.

I am concerned that providing payment “in advance” would increase the risk of incorrect payments or fraud. There is no way of being certain of the final bill for healthcare as, for example, the patient may be required to stay in hospital a day more or less, or there may be complications in their treatment; the bill would vary accordingly. Existing arrangements for healthcare abroad (such as the European Health Insurance Card), which require state-to-state transactions are not paid for in advance and neither is treatment covered on private insurance schemes, because it could result in healthcare providers being left out of pocket, or profiting, if the treatment does not run exactly as planned. Advance payments could also increase the risk of deliberately dishonest practices: fraudulent claims by patients, or gaming by healthcare providers.

The existing European Health Insurance Card and E112 form allow patients to access healthcare abroad at a reduced cost or free (for example, if they require healthcare whilst on holiday, or if they face “undue delay” at home). I believe the Directive should focus on facilitating the freedom to access and receive services abroad; as with many services, this can require payment upfront. Therefore, I will continue to support a Directive that remains focused on the existing case law, minimises the burden on health services in the UK and reduces the risk of under or over-payment.

EU PATIENTS OMBUDSMAN

My officials have met with representatives from the national Health Services Ombudsman to make them aware of the European Parliament’s proposed amendment. Should this issue return to the table at second reading, we would work closely with them to establish the UK position. In general, we remain concerned about how an EU Ombudsman would work with national bodies, and will seek to avoid duplication of roles that are clearly within Member State competence.

GENERAL UPDATE

I would like to take this opportunity to update you more generally on the progress of the Directive. Negotiations have been advancing well, and the Presidency appears confident that political agreement can be reached at the EPSCO (Employment, Social Policy, Health and Consumer Affairs) Council meeting on 1 December. I am optimistic that a text can be agreed during this time that meets our key negotiating objectives. As you noted in your letter, you share my concerns about the extent of delegated legislation in Chapter 4. Let me reassure you that my officials have been pressing this point in negotiations, stressing that any comitology provisions should be proportionate and should not delegate additional powers to the Commission on matters of Member State competence. The majority of other Member States are in favour of, or at least accept, the comitology provisions on the proposal; many, however, share our concerns about proportionality and subsidiarity. I am optimistic that we are moving towards a text that looks to address these concerns.

You also wrote of our shared belief that the scope of the Directive should be fairly broad. Again, this is an issue that has undergone significant debate in Council working groups, and the Presidency have made a strong case for adopting a text which reflects the existing case law on patient mobility. Negotiations are, by nature, unpredictable, but at this stage I am content that they remain on a satisfactory course.

In summary, I am hopeful that the Council will be in a position to agree to a text at the next Ministerial Council and will provide a thorough update to your Committee if a first reading text is agreed.

20 October 2009

Letter from the Chairman to Gillian Merron MP

Your letters, dated 22 July and 20 October, were considered by Sub-Committee G at its meeting of 29 October 2009.

We found your responses to our queries informative and comprehensive. The information that you provided on the recent work undertaken by Elizabeth Buggins into the allocation of organs to non-UK EU residents was of particular interest to us.

We would wish to clarify three further points. First, it is of course the case that Member States retain the right, under Article 152(5) TEC, to organise and deliver their own health services. We therefore question whether it would in fact be legally possible to prevent a Member State from granting
additional entitlements to cross-border patients should a Member State choose to do so. We would also appreciate further explanation of your policy on this matter as we are not wholly convinced that the granting of additional entitlements is unacceptable as long as it is budget neutral.

Second, we would agree that the suggested separation of organ transplantation and organ allocation may be a useful solution. Clearly, the legal and cooperative framework for organ transplantation and donation is being tackled in a separate Directive and Action Plan and we look forward to news from you on the progress of those discussions. As you know, both documents (16521/08 and 16545/08) are still held under scrutiny by our Committee.

Third, we note your continued resistance to the prospect of direct transfer of funds between the Member State of affiliation and the health provider in another Member State. We took a different view in our report as we considered that a system requiring the patient to make an up-front payment raises issues of equity as it will exclude those without the necessary financial resources from using cross-border treatment. While expressing support for direct transfers between providers, we emphasised that it should be for Member States to decide whether to exercise this option. The emerging consensus on this issue in Council is unclear to us and we would therefore appreciate an update from you.

We look forward to information from you on the above points prior to any agreement in Council.

30 October 2009

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 30 October.

You raised the issue of additional healthcare entitlements for cross-border patients. I accept that there is nothing in the Directive to prevent Member States from reimbursing patients for treatments that they would not be able to receive at home, if they wish to do so. Let me also reassure you that I have no intention of suggesting that Member States should be prevented from funding “additional” treatments.

So far as the UK is concerned, however, I do not envisage that we will provide additional reimbursement for treatments that they would not be entitled to receive at home. I believe this raises equity concerns, as it would disadvantage patients who could not, or did not wish to, travel. I have indicated previously that the European Parliament is interested in this issue and that I expect the debate to be reopened at Second Reading.

I will of course keep you updated on the Directive and Action Plan on Organ transplantation and donation, which are still held under scrutiny by your Committee, and any developments on this issue in relation to the cross-border healthcare Directive.

Finally, you asked for an indication of the consensus in Council on the issue of methods of payment. I can tell you that the majority of Member States have wished to focus on codifying the existing Article 49 case law on patient mobility, which provides for reimbursement of expenses incurred by the patient. I do not envisage further debate on this issue prior to EPSCO Council.

I would like to give you a final update on progress before the Ministerial Council meeting on 1 December, when the Presidency will ask Member States to agree to a compromise text. I believe that the text of the Directive has been greatly improved and now reflects Member States’ competence to organise and run their own healthcare systems. I believe that the Government’s objectives, as previously outlined to you, have been met during the negotiations on this proposal and that the text represents a positive outcome for the UK.

However, at this point first reading political agreement at the December Council is not guaranteed. As I indicated in my previous letter, a minority of Member States oppose the Directive because (consistent with our reading of existing case law) all providers, including private providers, are included in the scope. As negotiations progress, I will continue to support the Presidency in making the case for a Directive that reflects the existing case law on patient mobility and does not contain unjustified exclusions for certain types of healthcare providers.

The detail of how the Directive and existing social security arrangements under Regulation 1408 (soon to be replaced by Regulation 883/2004) interact has also yet to be resolved. Again, the UK supports the Presidency, who wishes to see reimbursement under the two systems aligned in order to provide clarity to patients and to avoid financial or administrative duplication. A small number of Member States are yet to agree to the Presidency’s proposed way forward.

It is clear that these are the two outstanding issues that need to be resolved in order for political agreement to be achieved. Therefore, the Presidency has focused discussion entirely on these two
points, so the issues that you have raised will not be discussed before the Health Council. However, we will certainly return to these points in discussion with the Parliament as part of the Second Reading process.

I will update you after Council to inform you of the outcome of discussions and the implications for the UK.

19 November 2009

DISEASES: EARLY WARNING AND RESPONSE SYSTEM (EWRS) FOR EPIDEMIOLOGICAL SURVEILLANCE (10148/09)

From the Chairman, to Gillian Merron MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum dated 11 June 2009 was considered by Sub-Committee G at its meeting of 2 July 2009.

We welcome the co-operation of the UK Government with the European Centre for Disease Prevention and Control to improve the efficiency of contact tracing procedures implemented as a result of notifications posted through the Early Warning and Response System. We note that a package of legal instruments is set to be introduced in 2010 and will be interested to consider the issues highlighted in this report in relation to the proposals that are brought forward. In your EM, you state that some instruments will also be proposed in the shorter term. We would be interested to know when exactly these are expected.

We look forward to hearing from you on the point raised above and are content to release this item from scrutiny.

2 July 2009

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 2 July.

In your letter, you asked when the shorter term measures to strengthen contact tracing for public health purposes mentioned in the above report will be proposed. Although European Centre for Disease Prevention and Control has confirmed that the review of the legislation will proceed during 2010 they have not responded yet on the specific issue of the shorter term measures. We hope to have a reply in the next few weeks and I will write again once we have clarification.

21 October 2009

DWP PRIORITIES DURING THE SWEDISH PRESIDENCY

Letter from Angela Eagle MP, Minister of State, Department for Work and Pensions, to the Chairman

Now that the Swedish Presidency of the EU is underway and it is clearer what business the Presidency is expecting to take forward, I would like to take the opportunity to update you on my Department’s plans and priorities over the coming months. This letter sets out the key dossiers that will be progressed.

The overarching theme of the Swedish Presidency is “Taking on the Challenge”, with the biggest challenges identified being the economy, jobs and competitiveness, as well as leading and agreeing on an international climate agreement. The Presidency is particularly ambitious in its work on the economic crisis, and its aim is to work to restore confidence in the financial markets, combat the negative impact of the crisis on growth and employment and create long-term solutions for sustainable growth, employment and open markets. Their official Work Programme has now been published and can be found at:


In the areas of employment and social policy, the Swedish Presidency places a similar emphasis to ours on the importance of implementing structural reform, social and labour market inclusion, building on the existing Lisbon Strategy for Jobs and Growth and reflecting on the future of the Lisbon Strategy.
post-2010. The key themes of high growth, full employment and social inclusion have already been reflected in the Presidency’s Informal Meeting of Employment and Social Policy Ministers, held on 8-9 July 2009 in Jonkoping, Sweden. The priority for this Informal was labour market inclusion in a post-2010 Lisbon perspective, of particular importance due to the current economic crisis. There was an emphasis on increasing access to employment particularly through promoting mobility, upgrading skills and matching skills with labour market needs. A statement reporting more fully on the Informal appears in the 16 July Hansard.

There is only one Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council scheduled to take place during the Presidency. This will be held on 30 November in Brussels. Although the Presidency has issued a provisional agenda for this meeting, it may change during the run up to the Council. Officials will provide your committee with an annotated agenda and I will make the usual written statement in advance of the Council meeting to set out the finalised outcomes that the Presidency will be aiming for, and how these fit with UK objectives.

The following items are provisionally listed for adoption/political agreement at the November Council:

- Proposal for a Council Regulation extending the provisions of Regulation (EC) no 883/2004 and regulation EC No […] to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality

We also expect that Council Conclusions will be agreed on promoting labour market inclusion, as a contribution to the discussion on the post 2010 Lisbon agenda, and that this will also be subject to a policy debate.

We are broadly happy with the way the Swedish Presidency plan to take forward negotiations on these existing dossiers, and I look forward to continuing to work closely with your committee to achieve the necessary scrutiny clearance before any agreement at Council.

I hope you find this information helpful, and I will keep you informed of developments in preparation for the Council in November.

20 July 2009

EMPLOYMENT: SHARED COMMITMENT FOR EMPLOYMENT (10628/09)

Letter from the Chairman, to Angela Eagle MP, Minister of State, Department for Work and Pensions

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee G at its meeting of 9 July 2009.

We welcome the Communication and consider that it is an important element of the EU’s response to the financial crisis, although we note that much of it is aspirational and it is up to the Member States to choose whether to deliver the Commission’s suggestions.

We were surprised that you consider there to be no financial implications flowing from the Communication. On the contrary, we note that the Communication includes suggestions on possible amendments to the rules applicable to delivery of the European Social Fund, including any derogation from the principle of co-financing for the period 2009-10. Your policy on that was not clear from your EM, although we are aware from press reports that the Government did not adopt a favourable approach in the course of the recent European Council. We would appreciate clarity on the Government’s approach to the suggestion, particularly as the Commission specifically excludes any impact on distribution of funds between Member States and on the annual ceiling within the financial perspectives.

We noted with interest the Commission’s proposal that a new budget-neutral EU microfinance facility for employment be established. Your view on that proposal would also be welcome.

We are content to release the Communication from scrutiny and look forward to your comments on the points raised above.

9 July 2009
Letter from Angela Eagle MP to the Chairman

Following my Explanatory Memorandum of 22 June on the above, you wrote on 9 July about the proposals therein on amending the European Social Fund (ESF) and establishing a Microfinance facility.

The Commission have now published their draft decision on the Microfinance facility and I understand that Baroness Vadera will write to the Scrutiny Committees as the Department for Business Innovation and Skills will lead on this.

The Department for Work and Pensions has management and budget responsibility for the ESF programme in England, but the Commission has not yet published its proposals for giving Member States the option of suspending the requirement to provide national match funding in 2009-2010. When the proposal is published, possibly later this month, we will of course study it in detail and submit an Explanatory Memorandum.

You raise the issue of budget implications. We will consider the impact of the proposals on the EU budget in this and future years, of course. As usual, we will want to see the financial framework and the principle of budget neutrality respected.

10 July 2009

Letter from Shriti Vadera, Minister for Economic Competitiveness, Small Business and Enterprise, Department for Business, Innovation and Skills, to the Chairman

In your letter of 9 July to Angela Eagle Minister of State at DWP, regarding the Commission Communication 10628/09 A Shared Commitment for Employment you asked for views on the new Progress Microfinance Facility. As the Minister responsible for this policy area I thought it would be more appropriate to respond to you on this point directly.

On June 3 the Commission announced a series of proposals under the theme of a Shared Commitment for Employment which included setting up a Microfinance Facility. It has now published a proposal reallocating €100m (£87.29m) from the Progress budget and one to set up the Progress Microfinance Facility. It proposes that the EIB and EIF will administer the scheme and that the budget should leverage additional funds (up to €500 million). These funds would be used to increase micro-credits which will support those who have lost their job, disadvantaged persons including the young who wish to set up a business. It will also support micro-enterprises in the social economy (providing employment). Explanatory memoranda on these proposals will follow in due course but I wanted to write to you to alert you to these proposals before the Houses rise.

I understand the Swedish Presidency is very keen to progress these proposals very quickly during the summer recess and early indications are that these will go to Council later in the autumn. I believe that UK micro-enterprises should benefit directly from the new Microfinance Facility. My Officials are working to ensure that the proposals are flexible and meet the needs of the UK. They will also work to ensure the proposals bring value to existing mechanisms to support microfinance (the Enterprise Finance Guarantee and the Community Investment Tax Relief Scheme) rather than adding duplication. An Explanatory Memorandum on these proposals will be provided by 27 July.

16 July 2009

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

Letter from the Chairman to Jonathan Shaw MP, Minister for Disabled People and Minister for the South, Department for Work and Pensions

Your letter of 30 April 2009 on the above proposals was considered by Sub-Committee G at its meeting of 14 May 2009.

We are grateful for your comprehensive response to my letter of 26 February, including the Regulatory and Equality Impact Assessments. On the matter of the legal base, we note that you are reserving the Government’s position pending discussion in Council. We look forward to an update from you in due course.

We accept your reasoning that arrangements for matters such as monitoring, reporting, nomination to the Committee on the Rights of Persons with Disabilities and representation at meetings of the Convention may be best achieved informally, such as by way of an agreed Code of Conduct. In that instance, we would assert the need for a clear Code of Conduct setting out the respective
responsibilities of the Community and Member States. We would be grateful for an indication from you as to when such a Code of Conduct might be drawn up.

We are grateful for the research that you have undertaken into the existence of any precedents for the inclusion of clauses on amendment and denunciation within similar Community Decisions, and for your clarification that there do not appear to be any such precedents. On the matter of their inclusion in this instance, we await further information from you as discussions progress.

You had previously indicated that you and other Member States were working to revise the Draft Declaration of competences, and you had also reserved your position with respect to the exclusion of the armed forces. We would be grateful for an indication of progress in both of those areas.

15 May 2009

Letter from Angela Eagle MP, Minister of State, Department for Work and Pensions, to the Chairman

As we are approaching Recess I thought it might be helpful to update you on progress on these proposals.

Your letter of 15 May, in response to Jonathan Shaw’s letter of 30 April, asked for an indication of progress in respect of consideration of the Draft Declaration of Competence and the proposed reservation in respect of the armed forces in the above proposal.

Subsequent to Jonathan’s letter of 30 April there have been two meetings between the Commission and Member States (11 May and 23 June) to discuss competency issues. However, most Member States, including the UK, were not in a position to provide substantive comments as they are still considering these matters. Consequently, Member States have been asked to provide their substantive comments on the draft declaration of competency and the division of competence between the Commission and Member States by 27 July. We are working on the compilation of a UK response. Member States have also been asked to flag up any other concerns they may have about the proposal by the same date, and to comment on the proposed reservation in respect of the armed forces.

The Commission will then revise the draft declaration of competence and it is proposed that there should be another substantive discussion between the Commission and Member States in September.

I will write to you again following that meeting.

5 July 2009

Letter from Angela Eagle MP to the Chairman

When I wrote to you on 5 July to update you on progress on these proposals, I promised to write to you again following discussions during September.

Keen to achieve Community agreement to the proposals for ratification, the Swedish Presidency has significantly accelerated the pace of negotiations to the point where it is aiming to obtain a Council Decision in mid-November, where unanimity will be required. Major progress has been made in the meetings between the Commission and Member States on 1 September, and particularly 5 October, as well as in subsequent discussions with the Swedish Presidency. A number of the issues of concern to the UK have now been addressed. Conclusion of the negotiations is therefore imminent.

The current position is as follows:

— The Commission has accepted the UK’s and other Member States’ considered view that Article 13(1) of the European Treaty should be used as the legal basis for the draft Decision, in conjunction with Articles 95 and 300(2), 1st sub-para, second sentence. This reflects the legal bases used for the decision regarding signature.

— The draft Declaration of Competence has been significantly redrafted to make ensure that it provides clarity as to the respective roles of the Community and Member States, and accurately and clearly records where the Community will be exercising competence and where there are areas of shared competence. The revised draft reflects the approach proposed by the UK.

— There is agreement (albeit reluctant on the part of some Member States) that there should be a reservation in respect of service in the armed forces. The UK has been in a minority of one in not wanting this
reservation to be limited to Article 27.1 of the Convention. However, the Presidency propose to redraft Recital 6 of the Decision to remove any specific reference to “employment” and the Commission have suggested that the Community should place on record its view that the existing UK reservation is compatible with Community law as part of the formal conclusion process. In the light of this, Ministry of Defence officials have accepted this outcome as one which sufficiently secures the UK position in respect of the reservation.

With regard to the Commission’s proposals on focal points, monitoring, reporting, nominations to the Committee for Disabled People etc, as you are aware we have argued that most of this detail should be set out in a Code of Conduct rather than on the face of the Decision, and that the Code of Conduct does not need to be finalised in order for the Decision to be made. There has been agreement that this will be done, with the exception of the articles on the focal point, nomination to the UN Committee on the Rights of Disabled People and representation at the UN Conference of States Parties, which the Presidency and Commission consider should remain in the body of the Decision itself. We are concerned about the precedent that may be set for future human rights conventions or international treaties to which the European Community and Member States are parties and are continuing to press on these points to be in the Code of Conduct, or else for the wording to be amended to make clearer how they relate to Community and Member State competence. However, the UK may be in a minority of one amongst Member States on these points.

You have previously asked when the Code of Practice would be drawn up. We understand that this will happen after the Decision is agreed. The Decision will not be deposited with the United Nations in New York until all Member States have ratified the Convention themselves, and there is likely to be a considerable window of opportunity during which the Code can be agreed given the timetables some Member States are working to.

The Presidency is currently looking to secure a Council Decision at the General Affairs and External Relations Council meeting on 16-17 November, and notwithstanding that there are later Council meetings during their Presidency. Since there are outstanding issues – and a final draft text of the proposals has yet to emerge – this is clearly an ambitious timetable. We have therefore flagged up that the UK’s Parliamentary scrutiny reservation remains in place, and that whilst we hope that it will be possible to lift it by mid-November that may not necessarily be possible.

As I have said, we are waiting for a final draft text of the Council Decision to emerge and I will send this to you as soon as it is available. However, I thought it right to let you know now of the position that has been reached, and of the very strong impetus that the Swedish Presidency has now built up to achieve agreement in the next month. You will know that the UK ratified this important Convention on 8 June and we fully support EU ratification. This ambition is one that we share with disabled people and their organisations, who will be keen that the Convention is ratified by the European Community, just as it has been by the UK. I hope that this can be achieved shortly.

22 October 2009

Letter from the Chairman to Angela Eagle MP

Your letters of 5 July and 22 October on the above proposals were considered by Sub-Committee G at its meeting of 5 November 2009.

We note that the matters of the legal base, reservation for the armed forces, and the Declaration of Competences have been resolved.

On the provisions for monitoring, reporting, focal point, nomination to the Committee on the Rights of Persons with Disabilities and representation at meetings of the Convention, it seems that you have made some progress but would like to see further textual changes. As you will know, we have taken the view that clarity on the respective responsibilities of the Community and Member States is necessary, regardless of whether this is achieved through a Code of Conduct or the body of the Decision itself.

In our letter of 15 May, we also asked about progress on the inclusion of clauses on procedures for amendment or denunciation. We would be grateful for that information.
Discussions on the proposed Decision for conclusion of the Convention have moved forward to the extent that we are now content to release it from scrutiny, but we would nevertheless request that you keep us informed of developments as negotiations come to a conclusion.

We understand that discussions on the proposed Decision on the Optional Protocol remain on hold pending completion of negotiations on the first Decision. We will therefore continue to hold the Optional Protocol Decision under scrutiny.

5 November 2009

Letter from the Chairman to Angela Eagle MP

Your Explanatory Memorandum (EM) of 5 November 2009 was cleared at the Sift on 10 November and then discussed by Sub-Committee G at its meeting of 19 November.

We were pleased to note that an agreement has been reached on conclusion by the Community of the UN Convention.

You will be aware that we have consistently emphasised that clarity on the respective responsibilities of the Community and Member States is necessary, regardless of whether this is achieved through a Code of Conduct or the body of the Decision itself. Substantial details of how the Community and Member States are to co-operate have been left to the Code of Conduct, which must be agreed before deposition of the instrument of formal confirmation. We would appreciate an indication from you of the likely timescale and process for drawing up the Code of Conduct.

Discussions have been deferred on the Optional Protocol (which we are continuing to hold under scrutiny) but, now that the Decision on conclusion has been finalised, we anticipate that those discussions may move forward. Clarification from you on this would also be helpful.

We look forward to information from you on the above points.

26 November 2009

EQUAL OPPORTUNITIES: ROMA INCLUSION (11530/08)

Letter from Vera Baird MP, Solicitor General, Government Equalities Office, to the Chairman

I am pleased to provide the further information on the policy line that we have been following in Council in relation to Roma inclusion as you requested.

In negotiations under the Czech Presidency, we were broadly supportive of draft Council Conclusions on Roma inclusion. These have rightly identified the Roma as a group which experience disadvantage, discrimination and exclusion in many Member States. We agree that Roma inclusion policies are most effective when aimed at mainstreaming Roma into wider society. And we welcome reference to stakeholder involvement at all levels, including at the local level, in the design and implementation of policies. Above all, we have been keen to ensure that the Council Conclusions reflect the fact that the principal responsibility for ensuring Roma integration and inclusion lies with individual Member States.

For ease of reference, I enclose a copy of the Council Conclusions (not printed) on Inclusion of the Roma adopted at the EPSCO Council meeting of 8 June 2009 in Luxembourg. We believe that they strike an appropriate balance in emphasising the various roles and responsibilities of Member States, EU institutions and civil society in addressing Roma exclusion.

We will continue to monitor the development of the European Roma Platform, initiated by the Czech presidency. It has the potential to act as a forum for non-governmental organisations (including Roma ones), Member States and the European Commission to exchange good practice on Roma inclusion.

The Commission has committed itself to producing a progress report on Community Instruments and Policies for Roma Inclusion ahead of the Second European Roma Summit under the Spanish Presidency. In the event of further Conclusions we anticipate adopting a similar approach to negotiations.

27 October 2009

8 ec.europa.eu/social/BlobServlet?docId=2808&langId=en
Letter from Jonathan Shaw MP, Minister for Disabled People and Minister for the South East, Department for Work and Pensions, to the Chairman

I am replying to your letter of 12 December 2008*, which asked to be kept informed on: work to clarify whether Article 6 of this proposal is consistent with Member States’ competence for organising and financing their social security systems; the potential burdens imposed by this proposal; an update on our work assessing the impact of the proposed legal base of Treaty Article 141(3); and plans to consult stakeholders.

I am sorry not to have replied sooner. This was delayed in anticipation of these negotiations moving forward at Council Working Group but, in fact, this has not been a priority for the Czech Presidency, with little time devoted to it.

I also regret that I still have only very limited progress to report from Working Group. However, after a long gap, negotiations resumed on 29 April and 5 May where other Member States showed reasonable support for our concerns about the issue of national competence, and the Commission gave us some reassurance that it would be possible to comply with the social security requirements of the Directive by allowing assisting spouses the choice of contributing as a self-employed person. However, we will continue to work on this issue and keep you informed of progress. There was also good support for our view that the self-employed cannot reasonably be offered “leave”.

On the specific points you raised:

ARTICLE 6 – SOCIAL PROTECTION FOR ASSISTING SPOUSES

The Czech presidency has recently proposed amendments that introduce greater clarity and try to move the text towards greater accommodation of national law. These amendments received some support at Working Group. However, we remain concerned that the proposed Directive infringes Member States’ competence to organise and finance their social security schemes. We will continue to work on this issue and keep you informed of progress.

POTENTIAL BURDENS

In the UK currently both employed and self-employed workers must meet employment and earnings conditions before being able to access a maternity allowance. As drafted, Article 7 would mean that a pregnant self-employed worker in the UK would be able to get Maternity Allowance regardless of how long she had been self-employed, whereas an employed pregnant worker would be subject to employment and earnings conditions.

We would find this unacceptable since it is reasonable that a person should demonstrate a level of attachment to the labour market before drawing an allowance to help them take time off work. We are therefore negotiating to maintain conditions of eligibility in line with the existing Pregnant Workers’ Directive.

On the impact of assisting spouses on the National Insurance system, we believe that our existing system would be able to accommodate the provisions of the Directive, but we continue to examine the details and test our position with the European Commission.

TREATY ARTICLE 141(3)

The use of Article 141(3) as a legal base for this Directive has been the subject of some further discussion since the Explanatory Memorandum was completed, including substantive discussion in negotiations. An issue is that this Directive differs from those that have previously been proposed under this Article, as it does not deal on its face solely with matters of discrimination on grounds of gender. Rather it deals with a disadvantaged group, which the Commission claims to have shown in its background documentation is predominantly made up of women. We are actively considering the wider implications of this legal base.

CONSULTATION

We are not aware of any discrimination against assisting spouses in the UK – male or female – on grounds of gender. Nevertheless, we currently still intend to have a light-touch consultation of

* Correspondence with Ministers, December 2008 to April 2009
representative bodies of businesses where assisting spouses are known to participate, for example in farming, to ensure that there are no gaps in social protection cover and that the revised Directive will not impose unjustified burdens on businesses. The timing of this is still uncertain, as we hope to link it to a firmer draft text, where the practical impact of proposals, if any, is likely to be less significant. As you requested, I will advise you on the outcome of any consultation exercise.

Looking ahead, the pace of negotiations remains uncertain. It is not clear whether this will be a priority for the Swedish Presidency, and the European Parliament elections and selection of a new Commission will inevitably delay progress on this and other legislative instruments.

Since there is no apparent sex discrimination against assisting spouses in the UK, it is also not a priority for the UK. Indeed, the revised proposal now seems largely redundant for the UK, although the Commission and the European Parliament -- particularly the Committee on Women’s Rights and Gender Equality, which has lobbied for this new measure -- clearly see a need for it in some Member States.

I hope that this response is helpful, despite the limited progress of negotiations. I can assure you that we will continue to monitor developments closely and, where we identify UK interests, continue to lobby at Working Group and brief MEPs. We will, of course, maintain the UK scrutiny reserve and report on any significant developments.

I also regret that I still have only very limited progress to report from Working Group. However, after a long gap, negotiations resumed on 29 April and 5 May where other Member States showed reasonable support for our concerns about the issue of national competence, and the Commission gave us some reassurance that it would be possible to comply with the social security requirements of the Directive by allowing assisting spouses the choice of contributing as a self-employed person. However, we will continue to work on this issue and keep you informed of progress. There was also good support for our view that the self-employed cannot reasonably be offered “leave”.

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I hope that this response is helpful, despite the limited progress of negotiations. I can assure you that we will continue to monitor developments closely and, where we identify UK interests, continue to lobby at Working Group and brief MEPs. We will, of course, maintain the UK scrutiny reserve and report on any significant developments.

21 May 2009

Letter from the Chairman to Jonathan Shaw MP

Your letter dated 21 May 2009 was considered by EU Sub-Committee G at its meeting held on Thursday 11 June 2009.

While we appreciate your explanation for the delay in response to our earlier letter, we would have appreciated an earlier communication from you about some of our enquiries which were not dependent upon further progress in relation to the proposal.

Nevertheless, we are grateful for the comprehensive response that you have now provided, and we would like to accept your offer to keep the Committee updated on the issues relating to national competence concerns arising from Article 6 of the proposal, and on the outcome of the Government’s consultation. We particularly welcome the Government’s ongoing efforts to address the concerns that Article 6 of the proposal could impinge upon Member States’ competence to organise and finance their social security schemes.

In relation to Article 7 of the proposal, we were concerned to note your assessment that this would mean a pregnant self-employed worker in the UK would be eligible for Maternity Allowance regardless of how long she had been self-employed. This being the case, we support the Government's efforts to negotiate to maintain conditions of eligibility in line with the existing Pregnant Workers Directive. However, we would appreciate an indication of how such a compromise might be affected by the introduction of the revised Pregnant Workers Directive.

You state that the Government believe the UK National Insurance system could accommodate the provisions of the Directive. We would like to request greater detail about how this accommodation will be achieved and would appreciate an update as discussions with the Commission progress.

We note your use of language that the Commission “claims to have shown” that the disadvantaged group this proposal deals with is mainly made up of women. We would therefore like to ask whether the Government are satisfied by the evidence base for this proposal, or whether you consider that further research is need. We will continue to reserve our position on the legal base of the proposal pending the Government’s consideration of its wider implications.

We recognise that the Government believe “the revised proposal now seems largely redundant for the UK”. However, we would like to know whether this is a view shared by other Member States, or whether they are likely to derive benefit from any new legislation that is agreed.

We will continue to hold the proposal under scrutiny and look forward to hearing from you further on the points raised above.

11 June 2009
Letter from Angela Eagle MP, Minister of State, Department for Work and Pensions, to the Chairman

I am replying to your letter of 11 June in which you asked for further details on the following specific points:

**ARTICLE 7 AND THE PREGNANT WORKERS DIRECTIVE**

You said that you are concerned about the impact of the revised Pregnant Workers Directive on securing agreement to provision in the self-employed Directive that Member States should be able to set eligibility requirements for Maternity Allowance. Article 11(4) of the existing Pregnant Workers Directive allows Member States to set eligibility conditions for maternity pay or an allowance. This provision is not affected by the Commission’s proposals to amend the Pregnant Workers Directive and the existing Article 11(4) is retained intact. Allowing Member States to set conditions in national legislation is an established and accepted provision of the existing Pregnant Workers Directive. We would not expect any Member State to support the removal of eligibility requirements.

**UK NATIONAL INSURANCE SYSTEM**

The Government has a number of measures in place to assist lower paid workers, specific legislation in relation to family members employed in a business, and a series of tax incentives. These act to promote the inclusion of this group, on terms that are generally better than those for the self-employed.

The Social Security Contributions and Benefits Act 1992 (SSCBA 1992) creates two types of people who are compulsorily subject to contributions. These are explained in more detail in the annex.

Many assisting spouses are likely to be in a partnership with their spouse and therefore they will already be self-employed and paying Class 2 and 4 National Insurance. A feature of the UK income tax system is independent taxation so that both will enjoy their own Personal Allowance. In addition, a partnership structure provides for the sharing of profits so that the marginal rate of tax for the family unit may be reduced.

Another common approach that we see in the UK is for the spouse who is in business to pay the assisting spouse a wage, pitched to trigger social security benefit entitlements, but below the personal tax threshold and the level at which Class 1 National Insurance must be paid.

We therefore take the view that our current solutions to this social issue comply with the objectives of Article 6 of the Directive. If the Directive required an overly prescriptive approach which was out of line with the existing UK system, then it is possible that the Directive could present considerable difficulties for the UK in terms of fairness to other groups, maintaining an equitable system for everybody and costs to HMRC and UK businesses. However, we believe that these risks may be reduced through negotiations.

**EVIDENCE BASE FOR THE PROPOSAL**

We are writing to the European Commission to ask them to provide further detail on the evidence they used for their assessment. We will also be confirming the position in the UK by consulting representative groups when a firmer text emerges. We will keep you informed of our progress.

**VIEWS OF OTHER MEMBER STATES**

In a preliminary look at the EP’s First Reading Amendments, the UK view had good support, not least on the question of competence. Most other Member States continue to hold the proposal under scrutiny.

I hope that this response is helpful and can assure you that we will maintain the UK scrutiny reserve and report on any significant developments, including the outcome of our consultation.

12 August 2009

**ANNEX**


“Employed earners” – broadly people gainfully employed under a contract of service who are required to pay Class 1 National Insurance on their earnings over £110 each week, and others – “self-employed earners” – who pay a flat-rate Class 2 contributions of £2.40 each week and a Class 4
contribution as a percentage of taxable business profits. Class 1 contributions count towards a wider range of contributory benefits than Class 2 contributions.

The income tax and National Insurance systems create incentives for the spouse's business to include the assisting spouse as a partner in the business paying Class 2. However, if the spouse is not included as a partner in the business, the system also creates incentives for the spouse's business to pay them a wage which can then trigger entitlements to contributory benefits as an employee.

A spouse or civil partner working in the business, if they are not a partner in the business, is treated as an “employed earner” under National Insurance legislation, (Paragraph 3, Schedule 1 to regulation 2 Social Security (Categorisation of earners) Regulations 1978). This applies whether or not that person actually has a contract of service.

The income tax and National Insurance systems create incentives for the spouse's business to pay the assisting spouse. When an employing spouse's business pays a wage it receives a deduction in the computation of its taxable business profits.

In a family unit, paying a wage to an assisting spouse is doubly tax efficient because as well as reducing the taxable business profits of the spouse’s business, the UK’s independent taxation system means that the assisting spouse enjoys their own personal tax allowance (£6475) which is set against the wage. In effect the family unit can get a modest slice of income, tax free.

The wage ceases to be quite as tax efficient if it exceeds the personal allowance of £6475 (£124.51 per week) so the wage is often pitched below £110 per week. However, the Government has moved to protect lower paid workers and part-time workers, including assisting spouses, by setting the “Lower Earnings Limit” (LEL) at £95 per week, so that if the wage is pitched below the level that triggers Class 1 liability and tax, but above the LEL, the worker can still receive future benefit entitlements as an employed earner.

Letter from the Chairman to Jonathan Shaw MP

Your letter dated 12 August was considered by EU Sub-Committee G at its meeting held on Thursday 15 October 2009.

Thank you for your clear and concise response to our queries. We were pleased to note that given the retention of Article 11(4) in the revised Pregnant Workers Directive, you are confident that your desire to maintain conditions of eligibility for the Maternity Allowance should be unaffected by the implementation of any revised Directive.

We note your full account and reasoning behind the Government's view that current solutions in the UK with regard to the affiliation of assisting spouses to the social security system of self-employed persons are in line with the objectives of Article 6 of the proposed Directive. Nevertheless, as you highlight, should an overly prescriptive approach be required under the Directive, this could present considerable difficulties for the UK. That being so, and given your view that these risks could be reduced through negotiations, we would be grateful if you could keep us updated on this matter.

We were pleased to note that you have asked the Commission to provide further information on the evidence used for their assessment and that you will be consulting representative groups once a firmer text emerges. We look forward to updates on your progress.

Given the likelihood that significant changes will be made to the text of the proposal, and pending the consultation of representative groups in the UK, we will continue to hold this item under scrutiny. We look forward to an update from you in due course.

15 October 2009

Letter from Angela Eagle MP to the Chairman

Thank you for your letter of 15 October. I am writing now to update you on the latest developments with this Directive and, in particular, to alert you to the Swedish Presidency's ambitious proposal to reach political agreement at the 30 November Employment and Social Policy Council (EPSCO).

This represents a change in the pace of these negotiations, which had not been a priority for preceding Presidencies. Sweden now sees it as an important potential achievement for their Presidency, which has already prioritised other gender equality issues.

The Government therefore hopes to be able to support the Presidency's approach, although there are some important remaining issues for us, set out below. However, subject to the successful resolution of those points, I would greatly appreciate your Committee's assistance in clearing these proposals from scrutiny, to this very demanding timetable. My officials have reminded the Presidency
of the need to circulate a new formal text quickly, and I will submit this to you at the first opportunity, but there is a risk that this will not appear until very shortly before Council.

For the moment, I attach the latest working text.

On the Government’s remaining issues of substance with the proposal:

**LEGAL BASE – ARTICLE 141(3)**

I am sorry that it has taken so long to provide a definitive view on the appropriateness of the legal base, but can assure you that this has received a great deal of consideration between officials, legal advisers and at Working Group.

As you know, the core issue has been whether Article 141(3) EC was the correct legal basis to support the Directive’s underlying aim, to ensure equal treatment between men and women engaged in an activity in a self-employed capacity, and in particular in respect of social protection coverage.

On balance, the Government is persuaded that the power allows measures to be adopted that bring about substantive equality between men and women. So Article 141(3) can be used as the basis for measures to redress disparities between men and women, and bring about equality of outcome, including in terms of the social protection provisions of Article 6. (A more detailed note is attached.)

**COMPETENCE**

However, the Government is also of the view that the measures to achieve this equality must respect national competence for the detailed organisation of our insurance and social protection schemes. We believe this is achievable, as below, although the Presidency’s preferred timetable is challenging. We understand that some half a dozen other Member States share this concern to ensure that national competence is fully respected, and we aim to work with them to ensure this. To this end, the new recital 6a already helpfully sets out Member States competence, and recital 18a confirms that existing mandatory national schemes fulfil the requirements of the Directive.

**ARTICLE 1A – SCOPE**

On the substance of the proposed Directive, my letter of 12 August explained how UK tax and insurance legislation, including generous tax allowances, encourage family businesses to organise themselves in such a way that the spouse is either an employee or business partner, and therefore insured. People already insured in this way would, in fact, be outside the scope of the Directive, which aims to capture uninsured “assisting spouses” – i.e. the spouses or life-partners of self-employed workers, as recognised in national law, “not being employees or business partners”, who actively “participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks”.

**ARTICLE 6 – SOCIAL PROTECTION**

Article 6 of the proposed Directive would then provide that these assisting spouses “can benefit from a level of social protection”, and that this “is granted only upon request”. This is substantively the same as the current 1986 Directive, with which the UK already complies through its voluntary (Class 3) insurance, which provides cover for state retirement and bereavement pensions, and is therefore our preferred option.

**ARTICLE 7 – MATERNITY BENEFITS**

We also believe that UK maternity benefits fulfil the conditions of Article 7(3), and that there is no discrimination in access to the “existing” services highlighted, e.g. UK public or private employment agencies for those seeking temporary replacement workers.

The Commission has been sympathetic to the UK’s position that our scheme already provides incentives for family businesses to ensure that assisting spouses are properly protected, and we are exploring possible drafting amendments to the Directive, to clearly recognise the UK’s approach and provide added assurance on maternity benefits.

**EVIDENCE BASE FOR THE PROPOSAL**

The Commission has recently responded to our request for more detail on the evidence they used to justify bringing forward this proposal. Much of this seems to have come from their consultation of stakeholders, which the Commission has always conceded expressed divergent views on the need for
a new Directive but, on balance, sided with those advocating this approach. There’s also some reliance on UK labour market figures but, as HMRC and DWP officials have also discovered, it is difficult to break this data down to specifically identify assisting spouses, and even more difficult to further distinguish those that are currently uninsured. Indeed, the Commission has conceded that it has always recognised that statistics on the number of assisting spouses were not reliable, emphasising instead the accepted common ground that there is reliable evidence of a significant gender gap in terms of entrepreneurship and self-employed activities, with entrepreneurs mainly men and assisting spouses mainly women. The Commission also stress two sources: a June 2008 European Policy Evaluation Consortium (EPEC) study, on the implementation of the principle of equal treatment of men and women engaged in activity in a self-employed capacity and assisting spouses, which identifies a significant number of UK unpaid “family workers”, 60% female, but which includes family members other than uninsured assisting spouses; and a 2006 Survey of Social Security Entrepreneurs, which found that in Europe at least two thirds of assisting spouses were female. We do not find these sources persuasive of the need for such a measure in the UK, but it is clear that many Member States do support the need for EU level action, with negotiation focussed on the best fit for divergent national schemes, that respects national competence, including on specific rules for access, contributions and benefits.

CONSULTATION

In previous reporting to your Committee, I have also mentioned that it was our intention to consult representative groups once a firmer text emerged. The lack of such a text has again delayed this light touch consultation and, coupled with the Presidency’s hopes for agreement at the November Council, we are now urgently exploring options for seeking views via existing links to business and stakeholder groups. However, we do think it is significant that HMRC and DWP are unaware of any lobbying on behalf of uninsured assisting spouses.

LATEST WORKING PARTY DISCUSSIONS

Following the summer break, Member States resumed their discussion of the draft Directive at Working Parties on 10 September and 5 October. Negotiations will continue on 3 November, and probably for at least one other meeting.

Many Member States still have difficulties with important detail of the text. At the last meeting, around 6 Member States shared the UK’s concern that some of the proposed equality measures are too prescriptive and fail to properly recognise their national competence for the organisation and financing of their social protection systems.

However, few are disputing the need for a new Directive, and the Presidency believe that the outstanding drafting issues can be resolved satisfactorily and quickly, so that they can deliver political agreement – under qualified majority – at the 30 November EPSCO.

I hope that this information is helpful.

I also hope that, subject to my submitting a formal text which secures the objectives outlined above, you can clear this proposal from scrutiny in time for the 30 November EPSCO. My officials will continue to impress on the Presidency the importance we attach to having up to date texts to submit for scrutiny.

27 October 2009

ANNEX

USE OF ARTICLE 141(3) AS THE BASIS FOR ARTICLE 6

Scope – Article 141(3) extends to substantive as well as formal equality.

The wording of Article 141(3) is wide, referring generally to “the principle of equal opportunities and equal treatment”. In comparison, Article 13 EC referred more specifically to “action to combat discrimination”. Furthermore, Article 141(3) is clearly intended to apply more widely than Article 141(1) in many respects: it is not restricted to employed workers or to equal pay. The Community has competence in this area, and Article 141(3) is the natural legal basis to use for measures whose primary objective is to bring about equality between men and women in matters of occupation which concerned or primarily concerned equal treatment. In addition, the ECJ has indicated that social provisions in the Treaty should generally be interpreted widely (case C-307/05 Del Cerro Alonso).

Occupation – Assisting spouses are engaged in an occupation, within the meaning of Article 141(3).
The definition of an assisting spouse in the proposed Directive includes spouses or life partners, as defined in national legislation, who “habitually … participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.” Assisting spouses are “occupied” because they contribute directly to the work of the self-employed worker. The definition excludes spouses and partners who were engaged in un-associated domestic work. Because assisting spouses did the same work as self-employed workers, their work was remunerated in the same way, in that they shared in the household income that was the direct result of their work.

Letter from the Chairman to Angela Eagle MP

Your letter dated 27 October was considered by EU Sub-Committee G at its meeting held on Thursday 5 November 2009.

We are grateful for the detail that you have provided on the progress of negotiations and we note the considerable progress that has been made.

We support your approach of continuing to strengthen the language in order to emphasise that Member States remain competent for the organisation and financing of their social protection systems.

On that basis, and given the Presidency’s commitment to this dossier, we are content to release the proposal from scrutiny. We trust that you will keep us closely informed of developments, including on your consultation of relevant stakeholder groups in the UK.

5 November 2009

Letter from Angela Eagle MP to the Chairman

Thank you for your clearance of this proposal, on the basis of my letter of 27 October, that the latest Presidency text satisfied most of the Government’s earlier concerns, and that we would seek drafting amendments to recognise more clearly the UK’s approach and provide added assurance on maternity benefits.

The Swedish Presidency has made good progress on a number of our key concerns. However, I have to inform you that we were unable to secure the drafting amendments on maternity benefits at Council Working Parties on 3 and 16 November. As a result, we still have some concern that the text is overly prescriptive and fails to fully respect the principle of proportionate action. In particular, in meeting the primary objective of equality between men and women, it takes insufficient account of the detailed organisation of our national insurance and social protection schemes.

Our specific concern is over what we believe to be a very small number of assisting spouses who are not already formally employed in the family business, or elsewhere. We understand that Article 7 of the Directive, as currently drafted, would require us to pay a UK maternity allowance to these women, without their meeting the precise employment conditions that other recipients must meet. However, we also recognise that, in order to qualify as an assisting spouse under the Directive, these women are making a real contribution to the family business. For example, Article 1a requires that they “habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks”. There is therefore an argument that this contribution should be better recognised. And legal advice is that the “national law” condition would not excuse inaction on our part simply because these women do not currently satisfy the letter of our employment conditions.

As mentioned in my October letter, the reason that there are so few uninsured assisting spouses in the UK is that our tax and national insurance legislation provides strong incentives for family businesses to organise themselves so that the spouse is either an employee or business partner, and therefore insured. Where the business has sufficient profits to pay tax, the value of these incentives significantly outweighs any administrative cost to the business, and is well publicised. The value of these incentives is well known to tax advisers and is an important feature of their advice to family businesses. More detail is in the attached Annex.

We also think it significant that HMRC and DWP are unaware of any lobbying on behalf of uninsured assisting spouses. However, we have sought to test the adequacy of current UK tax and national insurance provision through an informal consultation of representative business groups, including the Federation of Small Businesses, the British Chambers of Commerce and the Institute for Family Business. The limited responses to date confirmed that there is no particular interest in this issue.

Precise data is very limited on the numbers of assisting spouses since these people are, by definition, not on our tax and national insurance records. Nevertheless, we currently estimate that up to 1600 uninsured assisting spouses could be pregnant in any one year, with potential maternity allowance
costs of approximately £2 million annually. However, it is important to note that we believe that virtually all these women would qualify for maternity allowance, and the family business would save money, if they were to choose to organise their business to take advantage of the incentives that our tax and national insurance legislation provides.

During negotiations we have offered a range of drafting solutions: to better align the maternity allowance provision with the overarching social protection provisions of Article 6, which recognises the range of Member State provision and with which we remain content; and to improve the fit with current UK qualifying conditions for maternity benefit, by better linking them to employment, while recognising that by the Directive’s own definition the spouse must actively participate in the business. We have also worked with another large Member State to lobby partners, the Presidency and Commission.

The proposal went to COREPER on 19 November. We were again seeking to improve the text, on the principle that it is disproportionately restrictive. However, as at Working party and an earlier COREPER, it seems likely that the Presidency will pursue its ambition to secure political agreement at the 30 November Employment and Social Policy Council, and that there will be a qualified majority to support the current text. In that event, I propose to defend our priority; the current drafting of Article 6, where we are content with the text negotiated by the Swedish Presidency, and to restate our concerns with Article 7.

21 November 2009

EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION (11531/08)

Letter from Vera Baird MP, Solicitor General, Government Equalities Office, to the Chairman

Thank you for your letter of 23 April 2009 thanking me for a prompt and comprehensive response. We are content that you are holding the proposal under scrutiny, given, as you point out, the dialogue is far from complete on this Directive.

In my letter dated 27 March I outlined my intention to send you the Government public consultation document on the Directive as soon as it became available along with the Impact Assessment of the Directive.

I am pleased to say that both are attached and the public consultation will run from 5 May to 28 July. Copies of the consultation document can also be downloaded from: www.equalities.gov.uk/international/eu_directive.aspx

14 May 2009

Letter from the Chairman to Vera Baird MP

Your letter dated 14 May 2009 was considered by EU Sub-Committee G at its meeting held on Thursday 11 June 2009.

We are grateful to you for sending us the Government’s Impact Assessment and consultation document on the above proposal, as promised.

As there are not yet any updates on the dialogue in relation to this proposal, we do not have anything to add to our most recent letter, dated 23 April. However, we would like to reiterate our request to be kept informed about the progress of negotiations, particularly in relation to the issues of scope, timetable and respect for national legislation concerning the status and activities of organisations based on religion or belief.

We will continue to hold the proposal under scrutiny and look forward to hearing from you further as soon as more information is available.

11 June 2009

10 Correspondence with Ministers, December 2008 to April 2009
Your predecessor’s letter dated 20 May 2009 was considered by EU Sub-Committee G at its meeting held on Thursday 11 June 2009.

While we are grateful for the comprehensive response to our queries, we regret that this has taken nearly five months and would urge that future contact on this, and other proposals, is more timely.

We welcome the clarification about the level of flexibility foreseen over allergen labelling of loose foods, and how this might apply in the UK, for example, through oral transmission of such information. However, we are concerned about the Government’s ability to ensure that such information is routinely given to consumers; and indeed about how the establishments concerned could prove that such information was given should a dispute later arise between the trader and the consumer over (undisclosed) allergens in their food.

Your predecessor reported that the FSA is consulting stakeholders to help the Government ascertain a practical minimum font size and to inform negotiations; a move which we welcome. We would be grateful for further information on who is being targeted as part of this consultation and what, specifically, they are being asked about.

As you will note from previous correspondence, the issue of voluntary origin labelling is a particular area of concern for this Committee. We note that the Government appear supportive of origin labelling being done on a voluntary basis, as it provides a legal and enforceable basis for recommendations in the FSA’s current guidance on origin labelling. Nevertheless, your predecessor stated that the Government will aim to ensure that consumers receive sufficient information to make informed choices. We wish to reiterate our concern over the voluntary labelling of origin and request greater detail about how the Government will ensure sufficient information is given to consumers if such labelling remains voluntary.

Given the number of outstanding issues we have in relation to this proposal, and the relatively early stage of proceedings, we will continue to hold this document under scrutiny. We look forward to your response on the points raised above.

11 June 2009

Letter from Vera Baird MP to the Chairman

Thank you for your letter of 11 June. The negotiations on this draft Directive have been proceeding at a fairly slow pace and it is now timely to update you on progress and answer your specific questions.

CZECH PRESIDENCY

The Czech Presidency held two working parties on the Directive during the last months of their Presidency and both focused on Article 4 of the Directive (the provisions relating to disability).

The Czech Presidency report submitted to the EPSCO summarised their Presidency’s drafting suggestions as follows:

— to further align the provisions with the text of the UN Convention on the Rights of Persons with Disabilities;
— to clarify the key concepts defining the equal treatment of persons with disabilities, including the general obligation to ensure that persons with disabilities have "access on an equal basis with others" within the areas covered in the Directive’s scope (instead of "effective and non-discriminatory access", as proposed by the Commission) and the more specific obligation to provide "reasonable accommodation" where needed in a particular case;
— to acknowledge the time that it would take to implement the more far-reaching elements of the Directive by stipulating that the provisions requiring adaptation of existing buildings or infrastructures would be subject to progressive implementation;
— to ensure that the Directive does not create a new and disproportionate burden on businesses and small and medium-sized enterprises; and
— to improve the legal certainty of the provisions and the internal consistency of the draft Directive, including with respect to its scope.
Delegations, including the UK, took a broadly favourable view of the Czech Presidency's approach as a step in the right direction, particularly welcoming the attempt to clarify the text, to provide for the gradual implementation of certain provisions and to align the draft Directive more closely with the UN Convention.

However, the Czech Presidency report also outlined how far the Directive has to go before agreement can be reached and outlined further issues that need to be considered including division of competence, the legal basis and subsidiarity – none of which were discussed or progressed under the Czech Presidency.

**SWEDISH PRESIDENCY**

The Swedish Presidency began on 1 July and the first working party on the Directive took place on 17 July. There have been a further four working parties, with two possible further working parties planned for the remainder of the year.

**TIMETABLE**

It is extremely unlikely that the Directive will be agreed under the Swedish Presidency as, in our assessment, there are too many issues unresolved at this stage. We will be looking to the Spanish presidency to progress the Directive.

**COMMUNITY COMPETENCE**

The Government continues to be concerned about the intended impact of the proposed Directive in a number of areas, including in relation to housing, education, social protection, social advantage and health services. Further clarification is needed given the limited community competence in these areas.

The focus of the negotiations has been Member States' desire for greater certainty as to what these provisions are seeking to achieve. As you are aware, the Community only has the power to legislate using Article 13 in areas where it otherwise has competence. We, and other Member States, are concerned to ensure that the implications and effect of the Directive are fully understood before it is agreed.

**RELIGION OR BELIEF**

Given the progress of the negotiations it is not possible at this stage to be certain of the effect of the Directive on organisations based on religion or belief. As mentioned below we are currently completing our analysis of the responses received to the consultation exercise and we will want to ensure that these responses are taken into account in our negotiating position.

**CONSULTATION EXERCISE**

The 12 week government consultation on the draft Directive ended on 28 July. The consultation generated over 2000 responses and GEO officials met with over 25 stakeholder groups during the consultation period. GEO officials are currently analysing the responses to the consultation and will publish a summary of the responses later this year. We will send you this summary once it has been published. We will also send a copy of the updated Impact Assessment.

11 November 2009

**Letter from the Chairman to Vera Baird MP**

Your letter dated 11 November was considered by EU Sub-Committee G at its meeting held on Thursday 19 November 2009.

In our letter of 23 April 2009, we asked you, with specific regard to the assessment of risk under Article 2(7), which additional factors were under consideration. As this point has not been addressed in your most recent letter, or that of 14 May, we would like to reiterate our request for this information.

We thank you for your update on the progress of negotiations under the Czech Presidency and note that matters are likely to continue progressing at a slow pace. As matters move forward, we would appreciate more timely updates from you, and would be grateful if you could provide us with a fuller account of what was discussed at each of the working party meetings under the Swedish Presidency.
Given the time lag between your last and your most recent letter, we were particularly disappointed by the lack of detail therein.

We note your continuing concerns about the intended impact of the proposal in a number of areas of limited Community competence – you specifically mention housing, education, social protection, social advantage and health services in your letter. To this end, we would like to ask how the potential impact across the EU is being assessed and what Member States are doing to secure greater certainty as to what these provisions are seeking to achieve. Furthermore, we would appreciate a fuller account of the Government’s concerns in relation to each of the areas you have highlighted.

With regard to your offer to send a copy of the analysis of consultation responses and the updated Impact Assessment when these are available, this is something we appreciate and we look forward to receiving these documents in due course. In the meantime, and pending a response to the points we have raised above, we will continue to hold this proposal under scrutiny.

20 November 2009

EUROPEAN HERITAGE LABEL

Letter from Barbara Follett MP, Minister for Culture and Tourism, Minister for the East of England, to the Chairman

The United Kingdom (UK) Government has recently responded to a European Union (EU) public consultation on the proposed European Heritage Label (EHL). This letter is to let the Committee know what this response contains and to bring the Commission’s proposals, which are due to be published in 2010, to the attention of its Members.

The aim of the proposed EHL is to highlight sites and monuments that have played a key role in European history and to raise their profile as tourist attractions. The impetus for it came from a tripartite French, Spanish and Hungarian initiative in April 2006 which hoped to “strengthen the support of European citizens for a shared European identity and foster a sense of belonging to a common cultural space”.

The EHL was formally launched as an intergovernmental initiative by several EU Member States in 2007. To date, 60 sites located in 18 European states have obtained the EHL, 17 of these are Member States of the European Union.

At its meeting on November 20 2008, the Council of Ministers adopted conclusions inviting the European Commission to submit to it “an appropriate proposal for the creation of a European Heritage Label by the European Union and specifying the practical procedures for the implementation of the project”, by which means the Council wishes to transform the current intergovernmental EHL into a formal European Union initiative.

The UK has doubts about the need for a new scheme – for instance it is likely to duplicate the UNESCO World Heritage Convention and it may impose further requirements on owners and managers of designated sites; it could also add complexity to the heritage protection system. These doubts were expressed by the former Secretary of State for Culture, Media and Sport, the Rt Hon Andy Burnham MP, at an informal meeting of EU Culture Ministers in Versailles in July 2008.

The UK Government, which is currently trying to reduce the number of national designations, believes that the UNESCO World Heritage List is sufficient for designating supra-national significance and the EHL would just duplicate this. UNESCO, which operates the World Heritage Convention, does not support the EHL either. There is a real risk that, over time, it could add to the complexity and burden of monitoring.

This is why the UK resisted making a final decision on participation in the intergovernmental scheme pending further information about costs, benefits, management and obligations placed on participating States. However, our concerns were largely addressed in the discussions at official level, where it was agreed that the scheme would be voluntary, which would allow a Member State to decide on the extent of any future participation.

Following the adoption of the Council’s conclusions and, in line with its procedures, the European Commission launched an impact assessment, which included a public consultation which closed on May 15 2009. The results of this, with the accompanying study, will be included in the final impact assessment report due to be published in autumn 2009 and will be used as a basis for any European Commission proposal concerning the EHL. If applicable, the proposal could be adopted by the Commission at the beginning of 2010. If the proposal requires the adoption of a legal basis, a co-decision procedure between the Council and the European Parliament will then be launched.
The UK responded to the Commission consultation and I enclose a copy of that response [not printed] for your consideration.

7 July 2009

FALSIFIED MEDICINAL PRODUCTS (17504/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State, Department of Health, to the Chairman

I am replying to your letter of 6 February 2009\textsuperscript{11}, in which you asked for clarification on whether we consider any of the measures proposed by the Commission to be disproportionate to the risk to patients and whether other Member States share our view. You also asked whether the proposal covers the direct to consumer supply of medicines via the internet.

The Government is confident that the measures identified by the Commission have the potential to reduce the threat of counterfeit medicines reaching patients. There is broad support for the measures proposed by the Commission from all Member States.

In particular the Government believes that the proposal for a safety feature on the outer packaging of Prescription Only Medicines has significant potential to protect patients from the threat of exposure to counterfeit medicine. It is also likely to be one of the most costly measures for businesses to implement. The safety feature is intended to enable identification, confirm authenticity and facilitate the tracking of a medicine as it moves through the supply chain from manufacturer to pharmacist. The Commission proposes to develop the technical proposals to implement this requirement in a Commission Directive. The measure is likely to rely significantly on the development and/or availability of suitable technologies, as well as compatibility with other national track and trace systems in the EU. However, at this stage of negotiations, we have no reason to believe that the costs of this measure will be disproportionate to the risks to patient safety, or that other Member States believe it to be so. In the negotiations we will want to ensure that the provision allows the security feature to be applied flexibly, and in particular in response to an identified risk.

The supply of medicines over the internet was not addressed by the Commission’s published proposal although the European Parliament has indicated that it may put forward proposals to address illegal internet trade. There are, however, steps that the Government and others have already taken to combat this threat. Registered pharmacies that provide online services are regulated by the Royal Pharmaceutical Society of Great Britain (RPSGB). The RPSGB has developed an Internet Pharmacy Logo, which can be used by regulated online pharmacies to confirm the legality of the services that they provide.

The Government believes that the provision of rational information to the public on the dangers of purchasing medicines over the internet acts as the most effective deterrent. A key element of the Medicines and Healthcare products Regulatory Agency’s published Anti-Counterfeiting Strategy is communication to the general public of the dangers of internet supply of counterfeit medicines. The overarching message is that unless medicines are purchased from a registered pharmacy – online or otherwise – there can be no guarantees of safety, quality or efficacy of medicines.

We have concluded a 12-week public consultation on the proposals. There is widespread support from stakeholders for firm action to tackle the threat from counterfeit medicines. The proposal for a safety feature attracted the majority of comments, with broad support for the proposal. We continue to discuss the proposals with stakeholders as negotiations progress.

Negotiations continue in Council and the consensus view is that the time is right to introduce legislation designed specifically to tackle this threat. Negotiations will continue into the Swedish Presidency and we do not expect agreement until 2010 at the earliest.

20 May 2009

Letter from the Chairman to Gillian Merron MP, Minister for Public Health, Department of Health

Your predecessor’s letter of 20 May 2009 regarding the above proposal was considered by Sub-Committee G at its meeting of 11 June 2009.

We were particularly interested in her comments on the safety feature, which she did not for the moment consider to be disproportionate to the health risk and which she noted was also the focus of

\textsuperscript{11} Correspondence with Ministers, December 2008 to April 2009
responses to the public consultation. Beyond the issue of proportionality, it strikes us that the measure raises broader issues of feasibility. We have noted with interest the European Parliament Rapporteur’s Working Document on the Proposal, which explains that the technology is under evaluation and efficiency results will be known only by the end of 2009. He adds that the measure does not take into account products that are bulk packaged outside the EU and then imported into the EU. We would therefore be interested in your views on how viable you consider this technology to be, and how practical the Commission proposals on its deployment are.

The European Parliament Rapporteur also suggests that the Proposal should take into account counterfeit medicinal products that are distributed through the internet. In her letter, your predecessor acknowledged this view within the Parliament but she did not comment on whether or not the issue could indeed be addressed within the proposal. We would be grateful for your view on this matter.

Pending responses to the queries above and information on the progress of negotiations, we will continue to hold the proposal under scrutiny.

11 June 2009

Letter from the Chairman to the Rt Hon Mike O’Brien MP

Your letter of 27 July on the above proposal was considered by Sub-Committee G at its meeting of 15 October 2009.

We found your response helpful and would agree that swift adoption of the legislation, and effective implementation of its provisions, would be desirable. Nevertheless, the negotiations are ongoing and the stance to be adopted by the European Parliament is particularly uncertain. We will therefore continue to hold the proposal under scrutiny and we look forward to information from you as discussions progress.

15 October 2009

Letter from Gillian Merron MP to the Chairman

I am replying to your letter to Mike O’Brien MP of 15 October 2009 in which you informed us of the recent discussions in Sub-Committee G.

The proposals remain in negotiation under the Swedish presidency, and to date only limited and tentative agreement to some aspects of the text have been achieved by the Member States.

We will continue to update the Committee as the negotiations progress.

19 November 2009

FOOD INFORMATION FOR CONSUMERS (6172/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

Further to your letter of 30 January 200912 I am grateful for your support and note the Committee’s broad agreement that the Government should press for a proportionate approach to negotiations on the draft Regulation on the Provision of Food Information to Consumers.

Due to the time elapsed since your letter, please find below a further update on negotiations and the additional information you requested on certain aspects of the proposal.

UPDATE ON NEGOTIATIONS

Discussions on the proposal have continued under the Czech Presidency. Whilst there has been some progress, many of the key issues in the proposal have not been discussed in detail, notably country of origin labelling. Early discussions with the Swedish delegation indicated their intention to push forward on this dossier during their presidency.

Discussion also took place in the European Parliament’s Environment, Public Health and Food Safety Committee, on 16 March. In light of the number of amendments tabled to the Commission proposal, the Committee has asked the rapporteur, Renate Sommer, to revise her report to take account of

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the amendments tabled to her initial report. With the European Parliament elections scheduled for June this year, discussions will be carried over to the new Parliament. The Government will therefore reconsider any amendments contained in the rapporteur’s redraft.

**ALLERGEN LABELLING ON NON-PREPACKED FOOD**

In the UK about ten people die every year from an allergic reaction to food and many more end up in hospital. In most cases, the food that causes the reaction is from a restaurant or takeaway. The Government supports in principle that Member States should have in place measures to provide allergen information in such establishments and for other food sold without packaging. However, the Government and other Member States feel there should be flexibility at a national level on how these measures are implemented.

The Commission’s proposal as drafted implies that allergen information should be marked or labelled. In catering establishments, it is not always practical to label foods for a number of reasons, including the variability of menus. It is therefore proposed that the Government presses for Member States to choose how allergen information is provided. This would permit, for example, allergen information to be transmitted orally as part of the sales transaction. This is in line with industry best practise guidance, issued by the Food Standards Agency (FSA)\(^1\), which encourages dialogue between the food business operator and the consumer. This approach will also help reduce the impact of the proposal in terms of avoiding additional labelling costs.

**CLARITY**

Since you received the last Supplementary Explanatory Memorandum (SEM), the consensus view of Member States is that a minimum font size is needed, but there has been no discussion on what this figure should be. There are a range of other factors that affect clarity, but the consensus view so far is that these other factors should be addressed either as an annex in the regulation or by Commission best practice guidance.

The Government supports this approach, and will be working to ensure that any minimum font size is proportionate and enforceable. As part of this work, the FSA is currently consulting stakeholders, to help inform negotiations, and determine not only what is a practical minimum font size, but to assess the need for any changes to the proposed exemption from minimum font size requirements for small packages – currently 10cm\(^2\) under the Commission’s proposal.

**ORIGIN**

I note your concern that the Commission’s proposal is supporting voluntary origin labelling. The proposal maintains current rules, which require origin information, where failure to do so might mislead. Where food business operators choose to give origin information, mandatory rules on how the type of information must be provided then come into effect. Where origin information is given for meat, the place/country of birth, rearing and slaughter must also be given. Where these stages occur in the same place/country, a single origin declaration may be given. The Commission’s proposal, in effect, provides a legal and enforceable basis for recommendations in the FSA’s guidance on origin labelling.

The Government agrees that country of origin labelling is important to consumers, and will aim to ensure that consumers receive sufficient information to make informed choices. The FSA is working closely with Defra to commission consumer research to gauge views on origin labelling to help further inform the Government position. In the meantime both Departments are exploring non-regulatory approaches, for example, encouraging further uptake of FSA best practise guidance.

**NEXT STEPS**

I will provide further information on this dossier as negotiations progress under the Swedish Presidency.

20 May 2009

\(^1\) [http://www.food.gov.uk/multimedia/pdfs/loosefoodsguidance.pdf](http://www.food.gov.uk/multimedia/pdfs/loosefoodsguidance.pdf)
Letter from the Chairman to Gillian Merron MP, Minister of State for Public Health, Department of Health

Your predecessor’s letter dated 20 May 2009 was considered by EU Sub-Committee G at its meeting held on Thursday 11 June 2009.

While we are grateful for the comprehensive response to our queries, we regret that this has taken nearly five months and would urge that future contact on this, and other proposals, is more timely.

We welcome the clarification about the level of flexibility foreseen over allergen labelling of loose foods, and how this might apply in the UK, for example, through oral transmission of such information. However, we are concerned about the Government’s ability to ensure that such information is routinely given to consumers; and indeed about how the establishments concerned could prove that such information was given should a dispute later arise between the trader and the consumer over (undisclosed) allergens in their food.

Your predecessor reported that the FSA is consulting stakeholders to help the Government ascertain a practical minimum font size and to inform negotiations; a move which we welcome. We would be grateful for further information on who is being targeted as part of this consultation and what, specifically, they are being asked about.

As you will note from previous correspondence, the issue of voluntary origin labelling is a particular area of concern for this Committee. We note that the Government appear supportive of origin labelling being done on a voluntary basis, as it provides a legal and enforceable basis for recommendations in the FSA’s current guidance on origin labelling. Nevertheless, your predecessor stated that the Government will aim to ensure that consumers receive sufficient information to make informed choices. We wish to reiterate our concern over the voluntary labelling of origin and request greater detail about how the Government will ensure sufficient information is given to consumers if such labelling remains voluntary.

Given the number of outstanding issues we have in relation to this proposal, and the relatively early stage of proceedings, we will continue to hold this document under scrutiny. We look forward to your response on the points raised above.

11 June 2009

Letter from Gillian Merron MP to the Chairman

Further to your letter of 11 June 2009 concerning the Government’s position on the EC Proposal for a Regulation on the Provision of Food Information to Consumers, please find below the additional information requested.

ALLERGEN LABELLING ON NON-PREPACKED FOODS

Allergy labelling for loose foods, including catering, is not a current regulatory requirement and it might be helpful if I set out our approach to date, which has been welcomed by industry and allergy consumer groups and has attracted attention internationally.

In January 2008, the Food Standards Agency (FSA) introduced best practice guidance in this area, in consultation with interested stakeholders, to improve the provision of allergen information to the consumer. To date, 3,100 copies of the main guidance document, over 80,000 copies of the accompanying leaflet and nearly 5,000 copies of the training poster have been sent out. These documents are also freely available on the FSA’s website. In 2010 the FSA will be assessing the effectiveness and impact of this guidance. This assessment will inform the development of future national rules.

As far as the Commission proposal is concerned, the Government is aiming to strike a balance between enforceability of any future Regulations (that will require the provision of information on allergens) and an outcome that actually helps consumers with allergies. Mandating allergen labelling on non-packaged foods is complex and needs to consider risks such as cross-contamination, which is much harder to control in a busy restaurant or in a bakery setting, as well as consumer perceptions on the availability or absence of labelling. Government advice is that in such situations there is a responsibility both on the part of the food supplier and of the allergic consumer to communicate rather than relying on labelling indications, as an allergic consumer might do for pre-packaged food.

In your letter you highlight the potential difficulty of enforcing the law should a dispute arise concerning the alleged non-disclosure of allergen information. This is certainly an area that will need to be considered when assessing impact as negotiations progress. In the meantime, under current food safety legislation, enforcement action can be taken by Trading Standards Officers in cases where
food sold loose which was described as not containing a particular food allergen, was suspected to contain that allergenic food.

CLARITY

Since our previous letter the FSA has sought views specifically on label clarity from over a thousand stakeholders, including food businesses, enforcement authorities and consumer and health organisations. Whilst the responses are still being analysed, preliminary findings suggest that the Commission's proposal for a minimum font size of 3mm is not practical – confirming views from previous consultation exercises. Food businesses appear to accept the principle of a minimum font size but would prefer this to be in the range of 0.8-1.2 mm. The consultation also asked for views on what would be a sensible and practical exemption from this minimum font size – in terms of small packages. There is no consensus on this point, but certain sectors such as the food supplement and medical foods, have highlighted that many of their products are relatively small and by the nature of the products must be labelled with a large amount of mandatory information.

The responses to the consultation will help inform discussions in the Council Working Group and enable the FSA to update its impact assessment in relation to label clarity and the FSA will continue to meet and discuss this issue with key stakeholders.

ORIGIN

I note that the issue of voluntary origin labelling remains a concern for the Committee. Whilst the Government agrees that country of origin labelling is important to consumers, there is little evidence that consumers demand or use origin information, beyond that, for example, of meat and meat products. To keep the regulatory burden of this dossier to a reasonable minimum, we will be testing the strength of the proposal in providing meaningful origin information to the consumer as the negotiations on this aspect of the proposal are discussed in detail. There have yet been no substantive discussions on this topic, but we expect these to begin in September.

I should reiterate the European Commission’s proposal, in effect, states that where there is any indication of origin mandatory rules on declaring the provenance of ingredients and in the case of meat, the place of birth, rearing and slaughter, would come into effect. The Commission is likely to have taken this approach in order to avoid further rules on mandation so as to avoid incompatibility with World Trade Organisation rules on trade barriers.

I trust you find these explanations helpful and I will, of course, keep you updated on any new developments.

21 July 2009

Letter from the Chairman to Gillian Merron MP

Your letter on the above proposal was considered by Sub-Committee G at its meeting of 22 October 2009.

Having noted the current situation in the United Kingdom in relation to the allergen labelling of loose foods, we would like to reiterate our request for information about the level of flexibility that is foreseen for such labelling under the Directive, and the approach that is likely to be taken in the UK once the Directive comes into force.

While we agree with you that communication between the allergic consumer and the supplier of non-prepackaged foods is an important part of avoiding food allergy incidents, we are not convinced that simply sharing best practice in this area will be sufficient to ensure that such information is routinely and accurately conveyed to the consumer. We recognise the desire to avoid undue burdens being placed on food suppliers, but we urge the Government to give further consideration to the introduction of stronger measures to encourage or require food suppliers to provide this information as a matter of course. We consider this particularly important in light of the Commission’s assertion that most food allergy incidents can be traced back to non-prepackaged food and its belief that this information should always be provided to the consumer.

We would be grateful for an update following discussions in Brussels as to how it is proposed to address the potential difficulty of enforcing the law in the event of a dispute about the alleged non-disclosure of allergen information.

With regard to minimum font size, we recognise the concerns that have been raised in response to the FSA’s consultation and we consider that the idea of reducing the minimum should be addressed during negotiations on the proposal. As to what type of small packages are likely to be exempt from
these requirements, we would be grateful for some examples and would appreciate clarification as to the Government’s view on this matter, specifically which packages they think should be excluded and which should not.

We note that the Government do not seem convinced of the merit of the mandatory provision of origin information to consumers, and would like to know whether this view is common to all Member States. We would also appreciate an update from you on the substantive discussions on this topic, which you told us were expected to begin in September.

Pending responses to these queries and progress on the negotiations relating to the proposal, we shall retain this document under scrutiny.

23 October 2009

HEALTH AND SAFETY: PREGNANT WORKERS AND WORKERS WHO HAVE RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING (13983/08)

Letter from Pat McFadden MP, Minister for Employment Relations and Postal Affairs, Department for Business, Enterprise and Regulatory Reform, to the Chairman

Many thanks for your letter of 23 April 2009 14, regarding the European Commission’s proposal to amend the 1992 Directive on pregnant workers and those who have recently given birth or are breastfeeding (92/85/EEC), in which you raise a number of questions. I am writing to respond to those questions, and to update you on progress at European Council and Parliament.

PROGRESS AT COUNCIL

This Directive has been a priority for the Czech Presidency and there have been a series of working groups to move towards a common position. However, progress has been difficult, given the broad range of systems that exist in different Member States. The Presidency has produced compromise texts which seek to remove many of the aspects of the proposal which were problematic to the UK. A progress report was made to European Council on the 8 June, before Sweden takes over the Presidency in July. As detailed below, ongoing discussions will look at the Pregnant Workers Directive alongside the Parental Leave Directive and will aim to work towards more mutually compatible improvements.

THE GOVERNMENT’S VIEW

You asked why the Government supports the Commission’s proposal when it is unlikely to add value to the UK system. The aim of the proposal is to improve the baseline of provision across Member States. The Government has a strong track record in helping working parents to balance their work and family life, including introducing 39 weeks’ paid maternity leave; paid paternity leave and the right to request flexible working. This has resulted in benefits to UK parents and employers. For example the number of mothers returning to the same employer after maternity leave has increased – now just 14% change employers on return, compared to 41% in 2002. It is these improvements that have put us in a strong position to support the Commission’s proposal to improve the minimum standards across Europe; standards that the UK already meets.

Our light touch system works for employees and employers – as can be seen in the success of the right to request flexible working – and we are keen that the principles of better regulation are a part of the improvements made to the minimum baselines at EU level.

FLEXIBLE WORKING ARRANGEMENTS

The right to request flexible working has proven to be a successful element of the UK’s package of measures to support employees in balancing work and family life. We remain concerned that a directive primarily concerned with the health and safety of new and expecting mothers is not the right vehicle for measures for flexible working provisions which should also be open to fathers and to carers of adults. The breakdown of negotiations on the Working Time Directive does not change that view; were any provisions in this area to be included in this Directive we would want to ensure they were compatible with the UK’s existing arrangements.

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SOCIAL PARTNERS

In July 2008, the social partners at European level informed the Commission that they would launch negotiations on parental leave with a view to revising the existing EU legislation 96/34/EC. At that time it was agreed that the negotiations could address other forms of family leave, such as paternity leave (a short period of leave for fathers around the time of the birth or adoption of a child), adoption leave (leave similar to maternity leave around the time of adoption of a child) and filial leave (to care for dependent family members).

The Social Partners have now concluded their negotiations and the text is being agreed amongst internal European Social Partner organisations before being sent to the European Commission. We expect that the proposal will be published by the Commission as soon as possible. This would enable Council to consider this alongside the Pregnant Workers Directive in the autumn.

PUBLIC CONSULTATION

In response to your fourth question on the public consultation; the consultation document has been published on the BERR website www.berr.gov.uk/consultations/page50579.html. In addition key stakeholders, including those representing parents and employers, were individually sent a link to the document and asked to contribute to the consultation. A list of those organisations specifically contacted is set out at page 50 of the consultation document. Officials are also meeting with stakeholders to discuss the proposal.

MATERNITY PAY

Officials have continued to discuss the proposed amendments to Article 11 on maternity pay, and Government lawyers have carefully considered both the existing wording and alternative texts suggested by the Presidency. Advice has also been sought from the Council Legal Service. Progress has been made at working groups on this issue and I believe it will be possible to resolve this matter with the Council in a way which provides the UK with the confidence that the Directive will not require Member States to pay full pay during maternity leave. Full pay continues to be unacceptable to the UK – we believe that the current Directive has the right approach in equating the minimum level of maternity pay with state sick pay. This enables Member States to build on that minimum taking account of their own social security systems and budgetary constraints.

EUROPEAN PARLIAMENT

On 6 May 2009, the European Parliament considered the Gender Equality Committee’s report on the proposed Directive. The European Parliament voted to refer the report back to the Committee for further consideration. This will take place under the new Parliament later in the year.

The Government awaits the Gender Equality Committee’s revised report and will consider its proposed amendments carefully. However the Government was concerned about some of the amendments proposed in the initial report; in particular we were concerned about proposals setting maternity pay at the woman’s usual salary or, alternatively a minimum of 80% of average salary. As explained we have been working to refine the Commission’s proposal on the pay point.

The Gender Equality Committee’s report also proposed amendments which would incorporate periods of paternity and adoption leave, including compulsory maternity leave, into the Pregnant Workers’ Directive. The Government is concerned that this is not the right vehicle for measures aimed at fathers or adopters. We think it is important to maintain distinct and special protection for working mothers who expect to or who have given birth. The existing Directive (92/85/EEC) does just this by being specifically based on the protection of the health and safety of pregnant, new and breastfeeding mothers.

ADDITIONAL PERIODS OF MATERNITY LEAVE

The proposed new Article 8(4) would provide for additional leave in certain circumstances. There has been discussion of this provision at official’s Working Groups. The Commission has confirmed that there is no intention that those Member States which offer generous maternity leave should have to extend their already generous provision as a result. Officials have discussed wording proposed by the Presidency which clarify this on the face of the directive.

8 June 2009
Letter from the Chairman to Pat McFadden MP, Minister for Business, Innovation and Skills, Department for Business, Innovation and Skills

Your letter, dated 8 June was considered by Sub-Committee G at its meeting of 2 July.

We are grateful for your comprehensive response to our queries and the update on progress in Brussels on this proposal. While we consider your letter helpful in scrutiny of this item, there are several issues that we still wish to pursue.

Firstly, on the inclusion of flexible working within the proposal, we note that though the Government are still concerned that this Directive is not the place to include such provisions, you seem to say that they would accept their inclusion so long as the provisions are compatible with UK requirements. This seems to us a slight change in approach by the Government and we would therefore be grateful if you could clarify whether the UK will continue to press for flexible working to be excluded from the scope of this Directive, or whether you have accepted the inevitability of its inclusion.

We note that the social partners have concluded their negotiations on parental leave and that a proposal from the Commission is imminent. However, from your response we are still not clear why the social partners have not been addressing maternity leave as well as parental leave. We would be grateful for a more detailed response from you on this point and would request that you keep us informed about the progress of the new proposal to be published by the Commission on parental leave.

We were pleased to note the Government's confidence that the Directive will not require Member States to pay full pay during maternity leave, though we are still unclear about how the Government's original concern that this might be the case will actually be addressed in the proposal. We would therefore be grateful if you could provide us with greater clarity on this point. Do the Government, for example, have a form of wording or a specific amendment that could be made to the current text in order to satisfy their concerns?

Given the likely delay to consideration of this proposal due both to the rejection of the Gender Equality Committee's Report and the production of a proposal on parental leave by the Commission, and in light of the outstanding issues mentioned above, we will continue to hold the draft Directive under scrutiny.

2 July 2009

Letter from Pat McFadden MP to the Chairman

Thank you for your letter of 2 July following the Committee's meeting of that date.

I have noted your questions about the flexible working and maternity pay elements. Council working groups have continued to discuss the Commission's proposal to amend the Pregnant Workers Directive. I have enclosed the Progress Report (not printed) which the Czech Presidency provided for the June EPSCO meeting. Negotiations are ongoing and I will, therefore, undertake to write to you in respect of maternity pay and the right to request flexible working when the position becomes more clear.

In May the European Parliament plenary voted to refer the Gender Equality Committee's report back for further consideration. I have enclosed the Council's note of the plenary session (not printed). We do not yet know the likely timetable for the Committee's further work on this dossier.

The Committee has asked for more detail about the European Social Partners' discussions on parental leave, and in particular on the reasons why the social partners did not discuss maternity leave. In short, the social partners elected to revise their framework agreement on parental leave but not to consider other issues raised by the Commission in the field of work life balance.

The Commission carried out a two-stage consultation with the social partners on measures to support the reconciliation of work and family life before bringing forward its proposals for amendments to the Pregnant Workers Directive. In the first stage consultation, those social partners who responded acknowledged the importance of reconciliation. In the second stage consultation the Commission sought the social partners' views on a number of legislative and non-legislative options, including changes to parental leave and maternity protections as well as new provisions relating to filial leave, adoption leave and paternity leave. The responses of the social partners to the second stage consultation on the wider agenda are set out in Annex II to the Commission's Impact Assessment which accompanied the Pregnant Workers Directive proposal. Broadly, employers' organisations were against further regulation while trade unions would welcome the introduction of new types of leave. However, the social partners felt strongly that any review of their original agreement on parental leave should be done by them, and therefore began negotiations on that point. The framework agreement did not cover maternity leave.
The social partners signed their revised framework agreement on parental leave on 18 June. We would expect the Commission to shortly bring forward a proposal for a Directive to implement the new agreement.

22 July 2009

Letter from the Chairman to Pat McFadden MP

Your letter on the above proposal was considered by Sub-Committee G at its meeting of 22 October 2009.

We are grateful for your response and note that the social partners have been addressing parental leave and not maternity leave having elected to do so themselves.

On the two remaining points we raised in our last letter around flexible working and maternity pay, we note that you are unable to provide an answer to these questions at present. We would like to take up your offer to write to us as soon as the position becomes clearer, as also with an interim update if this is likely to be some time.

While these queries remain outstanding, and pending the further consideration of the Gender Equality Committee’s report, we will continue to hold the proposal under scrutiny.

23 October 2009

Letter from Pat McFadden MP to the Chairman

Thank you for your letter of 23 October, about the above proposal.

As you noted, we are unable to provide answers to your questions about flexible working or maternity pay. Further discussion on this report has still not been scheduled and there is currently no draft report available yet.

I will write again to update you when discussions have taken place.

10 November 2009

HEALTH: PREVENTION AND CONTROL OF HEALTHCARE ASSOCIATED INFECTIONS (HCAIs) (17427/08, 17430/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

Thank you for your letter dated 23 March 2009, seeking further information on our progress being made during Council negotiations of the draft Recommendation on patient safety and HCAIs.

In particular you have questioned the level of detail originally in annex 2 with regard to the principle of subsidiarity.

Work on this Council Recommendation has been progressing quickly and we have seen further amendments of the original draft. The most recent draft (Council Document 9009/09) is a significant improvement which addresses all of our key concerns.

After consistently raising concerns on subsidiarity in negotiations, the level of details originally in annex 2 have been modified.

— The level of implementation is now “Member state or regional” instead of “Member State”.

— The most contentious details relating to Member State competency have been removed, for instance the requirement relating to “integrating infection control into patient care plans”. Other areas have been re-drafted to a less detailed level, for instance specifying “appropriate organisational governance arrangements” instead of detailed wording on the structure and functionality required for governance arrangements.

— The language in this area of the text has been softened, with words like ‘ensuring’ replaced with alternatives like “promoting”.

We believe the new text is consistent with Member State competence and respects subsidiarity.

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With regards to the inter-sectorial body mentioned in the Council Recommendation the Recommendation now specifies “an inter-sectorial mechanism or equivalent systems”, allowing the UK the freedom to implement the coordination of healthcare associated infections strategy in the most appropriate way, and keep our existing structure which has worked well to date.

Overall, we are satisfied with the progress being made and believe that our interventions contributed to significantly improving this Council Recommendation that now fully meets the UK’s strategic long term objectives.

5 May 2009

**Letter from the Chairman to the Rt Hon Dawn Primarolo MP**

Your letter dated 6 May 2009 was considered by EU Sub-Committee G at its meeting held on Thursday 14 May 2009.

We are grateful for your timely and detailed update on the proposed Recommendation. In particular, we are pleased to see that the Government’s concerns in relation to the level of detail in annex 2 of the Recommendation, and its consistency with the principle of subsidiarity, have been addressed.

With this issue successfully resolved, we are content to release this proposal from scrutiny.

15 May 2009

**HEALTH PRIORITIES DURING THE SWEDISH PRESIDENCY**

**Letter from Gillian Merron MP, Minister of State for Public Health, Department for Health, to the Chairman**

I am writing to give you an overview of the program of events that are planned during the next six months and to update you with the new Swedish Presidency priorities on Health. I also provide a readout from the informal meeting of Health Council which took place under the Swedish Presidency on 6 and 7 July in Jonkoping Sweden. I hope this will assist you in planning the course of your scrutiny business.

During this Presidency, the Swedish priorities for Health will focus upon:

— E-health – with emphasis on improving cooperation between EU Member States on the quality of healthcare provision through utilising new technologies and strengthening the interoperability of information systems;

— Use and evaluation of medicinal products – with the aim of adapting the use of medicinal products so that they have better outcomes for patients;

— Anti-microbial resistance – with emphasis on creating better incentives for the development of more effective anti-microbial / anti-biotics;

— Pandemic influenza – the Swedish Presidency will chair and promote discussions on how Member States can work together to mitigate the effects of pandemic influenza A(H1N1);

— Alcohol related harm – the Swedish Presidency will support the implementation of the EU Alcohol Strategy and long-term preventive work to reduce alcohol related harm. The Swedish Presidency especially seeks to reduce the impact of alcohol advertising on young people; and

— Ageing – the Swedish Presidency intends to increase opportunities for healthy and dignified ageing and ensure that those who work with health and social issues cooperate better; placing the focus on the elderly person.

In terms of the inherited agenda, the Swedish Presidency will continue discussions on the Directive on patient mobility and cross-border healthcare. The Swedish Presidency will also continue discussions on the Directive on standards of quality and safety of human organs intended for transplantation, and facilitate discussions of Recommendations on smoke-free environments and seasonal flu vaccination.

You may also wish to note the program of health related events organised under the auspices of the Swedish Presidency which is attached.

You will be aware that an informal health council meeting took place on July 6 and 7 at which I represented the UK. Items on the agenda were: pandemic influenza; anti-microbial resistance; alcohol and alcohol related harm; and the draft Directive on patients’ rights in cross-border healthcare.
On pandemic influenza Member States agreed to continue the current co-ordination work through the Health Security Committee, with a particular focus on sharing expert thinking on the composition of at-risk groups, and best practice in minimising infection. There was support for the Commission to work with those countries without existing advance-purchase agreements for vaccines to develop procurement mechanisms and there was support for the Swedish Presidency proposal to re-activate the Friends of the Presidency Group in Brussels to take forward discussions on cross-cutting EU issues related to the pandemic.

The Swedish Presidency noted that there would be an extra Health Council, in early October to consider further action that might become necessary as the pandemic developed.

The Swedish Presidency invited Member States to give their views on the European Parliament's first reading opinion on the proposal for a Directive on patient mobility and patients’ rights in cross border healthcare. Ministers offered their views on those amendments which they considered to be helpful, and those which they felt ran contrary to key underlying principles (such as the need for Member States to be able to manage their own healthcare systems in a sustainable and equitable manner).

As the Parliament's opinion had not yet been discussed at Working Group level, Ministers were reluctant to enter into too much detail. However, it was clear that many Member States thought that a number of the Parliament's amendments were unacceptable. In terms of the Council's strategic approach there was a clear majority who believed that the Council should focus on producing a text that reflected its concerns, then deal with the Parliament at second reading.

The Swedish Presidency gave presentations and chaired brief discussions on alcohol and alcohol related harm as well as anti-microbial resistance. Both of these topics will be discussed further at official level during the Autumn as the Presidency aims to see Council Conclusions adopted in December in support of the EU Alcohol Strategy, and on stimulus measures for the production of effective antibiotics.

24 August 2009

MEDIA MUNDUS: AUDIOVISUAL CO-OPERATION PROGRAMME (5237/09)

**Letter from the Chairman to Barbara Follett MP, Minister for Culture, Creative Industries and Tourism, Department for Culture, Media and Sport**

Your letter dated 15 April 2009 was considered by EU Sub-Committee G at its meeting held on Thursday 7 May 2009.

We are grateful for your full and detailed response to my earlier letter and for your clarification on the points we raised. We particularly welcome the agreement that the management committee for MEDIA Mundus will be covered by the existing MEDIA 2007 arrangements.

We consider the funding arrangements for the scheme to be less clear-cut. In your letter, you mentioned the Government's view that funding for programmes should not come from unallocated budget margins. We would be grateful if you could explain how this can be reconciled with the effective agreement to this approach for the purposes of MEDIA Mundus (as a result of the UK raising its budget scrutiny reservation at the last Working Group on 6 April). We would also appreciate clarity as to whether or not the Government are content for the programme to be funded from the under-spend in the Commission’s Citizenship Budget Line and do not intend to raise this issue at further Working Groups.

You suggest that the programme will provide value for money for the UK, a point which we were pleased to note. We would appreciate further information on the extent to which this view is shared by other Member States in regard to their respective nations. Moreover, we would like to ask for more detail about how the Government will monitor MEDIA Mundus in order to ensure that it delivers value for money. For example, whether you might utilise the Commission’s indicators for this purpose.

Finally, you mentioned in your letter that MEDIA Mundus is likely to have a positive impact on European culture. We would be grateful if you could outline in more detail what you envisage these positive impacts to be.

We will continue to hold this proposal under scrutiny and look forward to hearing from you further on the points raised above.

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Letter from Barbara Follet MP to the Chairman

Thank you, and your fellow Committee members, for the response you sent on 13 May 2009 to my letter updating you on the proposed MEDIA Mundus Programme. I am happy to try to answer the questions the Committee raised and to clarify the situation for this proposal.

Firstly, the Committee has asked why the Government raised its Budget Scrutiny at the 6 April Audiovisual Working Group (AVWG) when we have stated that we do not agree with the Commission that MEDIA Mundus should be funded from the underspend of the Heading 3b (Citizenship) budget line, and if we are content for the programme to be funded in this way and not queried with the Commission at further Working Groups. The Government is supportive of the principle and aims of the programme and we want to see UK and European audiovisual professionals benefit from increased opportunities to promote their businesses and influence in the world, particularly during these tough economic times.

By the final AVWG of the Czech Presidency on 6 April every other Member State, as well as the European Parliament, had accepted this principle and we did not want to impede progress on finalising the proposal. There would be no further Working Groups in which Mundus would be discussed as the intention of the Commission and the Presidency was to pass this in the European Parliament before the June elections. If the programme was delayed there would be a risk that an agreement would not be reached in time for Mundus to take over from the MEDIA International Preparatory Action.

However, this is not to say that we have simply accepted the Commission’s plans for funding. In the last AVWG we stated our in-principle opposition to supporting programmes such as Mundus through underspend in budget lines, and HM Treasury will re-raise this issue at the European Budget negotiations next year. Their aim will be to persuade the Commission to examine where in the budget lines programmes are not fully utilising their funding and to use any potential surplus for Mundus. We would be very happy to keep the Committee informed as to the outcome of these discussions.

Secondly, the Committee asks if other Member States view the proposal as offering value for money, and how we will monitor the programme to ensure that value is delivered. During the Working Groups other Member States agreed with us regarding the need for rigour on the budget and the importance of effective oversight. Many Member States, including the UK, saw the existing MEDIA Management Committee as an important part of that process which is why we pushed for Mundus to be overseen directly by the Commission and included in the Management Committee’s remit. As you suggest it is likely that we would use the Commission’s own indicators to ensure the delivery of value for money.

Thirdly, the Committee has requested clarification of what positive impacts the MEDIA Mundus will deliver to European culture. This programme will afford audiovisual professionals the opportunity not only to engage with other professionals around the world but also to promote their products on a wider stage than they would otherwise be able. The Commission’s stated aim for Mundus is to help increase the amount of market penetration by European audiovisual works overseas, which would in turn drive up demand for these products and inject greater levels of funding into these culturally important projects. Under the MEDIA 2007 programme UK companies alone receive €7 million on average every year in grants which is a significant boost in funding. Whilst the levels of support given out by Mundus are likely to be less we still expect it to encourage the spread of European cultural products. In addition, the collaborations fostered between professionals in Europe and Third Countries will give rise to interesting and innovative co-productions.

Letter from the Chairman to Barbara Follett MP

Your letter dated 21 May 2009 was considered by EU Sub-Committee G at its meeting held on Thursday 4 June 2009.

We are grateful for your prompt response and consideration of the points we have raised in relation to this scrutiny item.

We appreciate your clarification that despite raising their budget scrutiny, the Government will be pursuing the issue of reallocating under-sPENDS in budget lines at the European Budget negotiations next year. We appreciate your offer to keep us informed about the outcome of these discussions and would be grateful if you could do so.
From your reply, we are not entirely clear about whether other Member States feel that the programme will offer them value for money. Nevertheless, we consider that the Government’s decision to monitor the success of the programme using the Commission’s own indicators is a sensible approach and one that we support.

We consider that our outstanding queries have now been addressed and would like to thank you for working so well with the Committee in its scrutiny of this item. Your prompt and detailed responses were of great assistance in our consideration of the dossier and we are now content to release this item from scrutiny.

4 June 2009

MEDICINAL PRODUCTS FOR HUMAN USE (17498/08, 17499/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

I am writing further to my letter of 4 February 2009 17, about the above proposals which you are holding under scrutiny.

The Council working group on the proposals has now met on two occasions. The Presidency intends to provide a report on progress to the June meeting of the Council. This is likely to reflect the fact that a majority of Member States have expressed concerns about the proposals, questioning whether there is a legitimate role for the industry in providing information about prescription only medicines. While the debate in the Council working group continues, the Government plans to proceed with public consultation to help us better understand their impact on UK patients and industry. I have asked my officials to send you a copy of the consultation document as soon as it is launched.

14 May 2009

Letter from the Chairman to the Rt Hon Dawn Primarolo MP

Your letter, dated 14 May 2009, was considered by Sub-Committee G on 4 June 2009. We are grateful to you for your regular updates to the Committee on these proposals and strongly endorse this approach.

Your letter provides a useful update on the Council Working Groups that have been held on these proposals. In particular, you mention that a majority of Member States have questioned the legitimacy of a role for the industry in providing information about prescription only medicines. We would appreciate more information about the grounds on which this is being questioned and would welcome an indication from you as to whether the Government concur with this assessment.

As the proposals remain likely to be subject to considerable negotiation, and as the UK’s public consultation remains outstanding, we will continue to hold both of these items under scrutiny.

4 June 2009

Letter from the Rt Hon Mike O’Brien MP, Minister of State for Public Health, Department of Health, to the Chairman

I am writing in response to your letter of 4 June to my predecessor Dawn Primarolo about feedback from the European Scrutiny Committee on these proposals.

You asked why some Member States questioned the role of the industry in providing information to patients. Historically, some Member States have taken the view that information from industry about products in which they have an interest will, by definition, be biased.

These concerns were again expressed at the meeting of the EPSCO (Health Council) on 9 June 2009. The UK Government has taken the view that the test, as set out in both European and UK law, is whether information “is designed to promote…” the prescription, sale or supply of a prescription only medicine. On this basis, it is not the source of the information which is the critical factor but rather its content.

In the UK, we already allow the pharmaceutical industry to communicate directly to the public in certain circumstances, e.g. on disease awareness or the provision of post prescription information to

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support good medicines taking. The industry also plays a role in drafting medicines guides, available through NHS Choices. This supports the Government’s aim to promote the availability of high quality information about treatments, including medicines, to enable and empower people in making decisions about their care.

I understand that my officials have sent you a copy of the public consultation launched by the MHRA on 21 May. I will write to you again to inform you of the outcome of that consultation.

I note that you continue to hold these items under scrutiny.

29 June 2009

Letter from the Chairman to Mike O’Brien

Your letter, dated 30 June 2009, was considered by Sub-Committee G at its meeting on 9 July 2009.

We are grateful to you for your response to our queries and look forward to an update from you about the outcome of the public consultation launched by the MHRA on 21 May.

We note that in the UK the communication of information by the pharmaceutical industry to consumers supports the Government’s aim to promote the availability of high quality information about treatments, including medicines, to the public. Furthermore, we recognise that the Government believe the critical factor is not the source of the information, but its content. Given this apparent difference of opinion between the UK and other Member States who have expressed concern about industry bias, we would appreciate clarification as to how the UK Government plan to approach this in negotiations on the proposals.

As the documents remain likely to be subject to considerable negotiation, and as the UK’s public consultation is ongoing, we will continue to hold both of these items under scrutiny. We look forward to hearing from you on the points raised above.

9 July 2009

Letter from Ann Keen MP, Parliamentary Under Secretary of State for Health, Department of Health, to the Chairman

I am writing in response to your letter of 9 July about feedback from the European Scrutiny Committee on these proposals that you are keeping under scrutiny. You asked how the UK Government plans to approach the negotiations, given the apparent difference of opinion between the UK and other Member States who have expressed concern about industry bias.

This proposal was considered by Council Working Group during the Czech presidency but, given the differences of opinion, Sweden and Spain have said that they will prioritise the counterfeit and pharmacovigilance strands of the pharmaceutical package during their presidencies. As this proposal is subject to the co-decision procedure the view of the European Parliament, expected in the autumn, will be key in determining the priority it is accorded by future presidencies. At present our negotiating aim is simply to keep the proposal alive until the Parliament has had the opportunity to give a view.

MHRA officials have met with industry and patient stakeholders as part of the consultation exercise MLX358 which runs until mid-August. At present we believe a majority of UK stakeholders would prefer the proposal to progress instead of being withdrawn since there is a significant risk that it could then be replaced with something more restrictive. Whilst the proposal remains active UK Government has opportunities to lobby for an outcome favourable to our interests.

We believe that there may be a lack of understanding in Europe about how 50 years of industry self regulation have been successful in the UK. We are using opportunities as they present themselves to further explain the UK regime – including to a number of the permanent representatives from other Member States when they visited the Agency recently. The actions of national industry trade bodies as well as European patient groups will be crucial to progress towards a more favourable response to the proposals at European level.

29 July 2009

Letter from the Chairman to Ann Keen MP

Your letter of 29 July on the above proposals was considered by Sub-Committee G at its meeting of 15 October 2009.
From your letter, it is clear that continued efforts by yourselves and others to lobby informally will be crucial in making progress on this legislation. We assume that you will be working similarly with Members of the European Parliament as they continue their work on the proposals.

In my letter of 9 July, we requested an update from you about the outcome of the public consultation. Subsequent to your letter of 29 July, the consultation has now closed and we would thus be grateful for that update.

15 October 2009

Letter from Gillian Merron MP, Minister of State, Department of Health, to the Chairman

I am writing in response to your letter of 15 October about the outcome to consultation of MLX 358 that ran from 21 May.

MHRA received 54 responses which will shortly be published on the MHRA website along with the Government response. I will ask my officials to inform you when they are published.

Overall, the majority of respondents agreed with the Commission’s proposal and the Government position, which is for a self-regulatory approach, underpinned by national enforcement provisions. The majority of respondents did not state a preference for information to be pre-vetted. There was no support for establishing a new European body to approve information prior to dissemination.

We therefore intend to continue our support for the proposal until the European Parliament has given a view. We now expect the First Reading to be in March or April next year.

I note you continue to keep the proposals under scrutiny.

18 November 2009

ORGAN DONATION AND TRANSPLANTATION (16521/08, 16545/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

Thank you for your letter of 23 April18 seeking further information on a number of issues on the draft Organ Directive as negotiations progress. Specifically, your Committee asked for further information on:

— the emerging consensus among Member States on the issue of the temperature at which organs are maintained in transit;
— discussions relating to the translation of the term ‘handle with care’; and
— progress in relation to the amendment of Article 17 relating to the anonymity of donors and recipients.

I am unable to provide your Committee with a progress report before June as negotiations are not expected to resume until then. I welcome your Committee’s ongoing involvement in these negotiations and will of course provide your Committee with an update on these and other issues relating to the draft Directive and Action Plan as negotiations progress.

19 May 2009

Letter from Gillian Merron MP, Minister of State, Department of Health, to the Chairman

Following Dawn Primarolo’s letter to you of 19 May, I am writing to you to provide an update to your Committee on the latest position in relation to current negotiations on the Organ Directive, as the first read-through of all this Directive’s articles has just been completed. I am also responding to the specific issues that you raised in your letter of 23 April.

Since Dawn Primarolo’s letter, Health Working Group (HWG) has met on 23 June, 16 September, 21 October and 3 November. Negotiations on the first read-through of the Organ Directive’s Articles have just concluded. The negotiations have gone well and the Government believes that most of the UK’s concerns have, thus far, been taken on board by the Commission and other Member States. However, we await the revised text to determine whether this is the case and expect to receive this

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early in the New Year under the Spanish Presidency. We also await the views of the European Parliament as co-legislator on this proposal.

At Health Working Group on 16 September, the UK raised the concerns expressed by the Commons European Scrutiny Committee as to whether Article 152(4)(a) and Article 152(5) of the EC Treaty provided a sufficient legal basis for Articles 2, 13 and 15(1) of the draft Organ Directive. In addition, the UK raised similar concerns in relation to Article 9. A number of other Member States agreed that this issue needed examination. I will provide an update to your Committee once the outcome is known.

We have also had bilateral discussions with both the Commission and the upcoming Spanish Presidency to make sure our concerns on the Directive are well understood. In particular we have discussed:

— **AUTHORISATION**: The UK Government is keen to ensure that the regulatory burdens arising from this Directive are as light touch as possible. We are concerned that, as it stands, the Directive would require us to specifically authorise all hospitals engaged in organ donation and transplantation. We think this could be unnecessarily bureaucratic and will seek to make this more flexible.

— **ROLE OF THE COMPETENT AUTHORITY – DELEGATION OF FUNCTIONS**: Though the UK Government is content with the role given to Competent Authorities under Article 18, we wish to allow the Competent Authority to delegate a number of its functions to other organisations.

— **TECHNICAL ANNEX**: The UK wishes to ensure that the Directive does not prevent Member States from maintaining more stringent protective measures in addition to the minimum standards set out in the annex.

In your letter of 23 April, you sought further information on:

— the emerging consensus among Member States on the issue of the temperature at which organs are maintained in transit;

— discussions relating to the translation of the term ‘handle with care’; and

— progress in relation to the amendment of Article 17 relating to the anonymity of donors and recipients.

I will now deal with each of these points in turn:

At Health Working Group on 23 June, Member States considered Article 8 and discussed the issue of temperature at which organs are maintained in transit. There was agreement that the current text, which refers to ‘a certain temperature’, was too restrictive and needed to reflect the fact that often, as in the UK, organs are simply packed in ice and no specific temperature measurements are made. We believe this point will be addressed in the revised text we expect to see early on under the Spanish Presidency.

During discussion on Article 8, the UK also flagged up to the Commission and other Member States your Committee’s concerns that there was not one single commonly understood term or symbol for labelling shipping containers ‘HANDLE WITH CARE’. This point had not yet been considered by many other Member States; we will return to this point in discussions early next year.

Article 17 was discussed at Health Working Group on 16 September. The UK was supported by other Member States in relation to our concerns at the wording of this article which requires that all personal data of donors and recipients are rendered anonymous so that neither donors nor recipients remain identifiable. (In most cases live donors in the UK will know the intended recipient and in donation after death, it is sometimes the case that the donor family and recipient will, after time, want to correspond or meet.) Member States agreed that references to anonymisation should be deleted. There was general agreement on an alternative option: that all data should be processed confidentially in accordance with the requirements of the Data Protection Directive (implemented in UK law by the Data Protection Act).

The upcoming Spanish Presidency intends to publish the revised Directive text early in the New Year. As soon as possible after this, I will write back updating you on the latest position and whether our concerns have been sufficiently addressed in the revised text.

25 November 2009
Letter from the Chairman to Pat McFadden MP, Minister of State for Employment Relations and Postal Affairs, Department for Business, Innovation and Skills

Your Explanatory Memorandum of 10 September on the above proposal was considered by Subcommittee G at its meeting of 29 October 2009.

We consider that the proposal is a fair one which strikes the appropriate balance between the important principle of reconciling family and work life on the one hand and, on the other, respecting Member States’ competence to organise their own labour markets.

The Commission evaluates clearly the compatibility of the proposal with the principle of subsidiarity. We were less clear, however, as to your own view on why the proposal respects the principle of subsidiarity as the mere fact of updating an earlier Directive does not in itself constitute a valid reason. In that light, we would be grateful if you would expand on your reasoning. On the process, we are not entirely clear why it is appropriate for an Agreement such as this to be discussed by the social partners at the EU level rather than at the national level.

We note that the EU-wide small business organisation, UEAPME, was a party to the Agreement but we are aware that the UK small business community is not represented in that organisation. Could you explain, please, what efforts you have made to consult with UK small businesses to ensure that they are content with the proposed Directive.

Finally, we observe that your Impact Assessment is yet to be completed. We will hold the Proposal under scrutiny pending your responses to the points raised above and receipt of your impact assessment.

30 October 2009

Letter from Pat McFadden MP, Minister of State, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 30 October about the Committee’s consideration of the Explanatory Memorandum in respect of this proposal and setting out points on which the Committee would like further information.

The Committee asked about the Government’s Impact Assessment. This has since been sent to the Committee.

The Committee sought clarification of the Government’s view on the principle of subsidiarity with regard to the proposal. The Government believes the proposal respects the principles of subsidiarity. The aim of the revised Framework Agreement is to improve the baseline of provision across Member States. Parental leave provision varies widely across different Member States. Community-wide measures will achieve a common minimum European standard ensuring a level playing field for workers and employers.

The revised Framework Agreement requires that one month of parental leave should be granted on a non-transferable basis. Parental leave in the UK has been an individual, non-transferable right since its introduction in 1999. Requiring Member States to provide non-transferable leave is intended to encourage fathers to take parental leave and therefore support parents in sharing childcare.

The original Parental Leave Directive derives from a social partner agreement. The revised Framework Agreement was therefore drawn up and agreed by the social partners, including ETUC and Business Europe. This does not prevent Member States from discussing parental leave policy at a national level.

As the Committee notes, UEAPME was a party to the Framework Agreement, representing EU-wide small business. In order to find out the views of UK small business my officials have discussed the proposal with UK small business organisations including the Federation of Small Business, the British Chambers of Commerce, Engineering Employers Federation and the Institute of Directors. The groups were content with the proposal and did not raise concerns about the Directive itself. One group was concerned about the overall impact of leave rights for parents, taking account of the Government’s proposals for Additional Paternity Leave. The implementation of new provisions will of course be key for small businesses. The existing scheme takes account of business needs, for example by allowing employers to postpone a period of parental leave for up to six months if it would cause serious business difficulties. Government would of course carry out a consultation on the implementation of the directive if it is adopted. Our Impact Assessment includes a small firms impact test.
If the Committee is happy with the information I have provided I would be grateful if the Committee would consider lifting the document from scrutiny. There is a likelihood that the Council will achieve agreement on the Parental Leave Directive on 30 November 2009.

4 November 2009

Letter from Lord Young of Norwood Green, Minister for Postal Affairs and Employment Relations, Department for Business, Innovation and Skills, to the Chairman

The Explanatory Memorandum for the Parental Leave Directive was deposited in Parliament on 10 September 2009.

Following on from that, I am pleased to enclose the Government’s Impact Assessment (IA) (not printed).

The IA sets out the anticipated costs associated with the extension of Parental Leave. These are expected to be low. Data indicates that currently only 6-12% of eligible parents take any Parental Leave and of those who do take the leave, very few take the full 13 weeks available. Therefore, providing extra parental leave is unlikely to have a large impact on the number of weeks taken in total. We have assumed that of the eligible parents taking Parental Leave, 30% of mothers and 25% of fathers would use any of the extra weeks.

The administration costs would be small due to the low number of additional requests and the cost of employed agency workers gaining the right to request flexible working would be negligible. The overall cost of an additional period of Parental Leave has therefore been estimated between £4.6 and £14.5 million.

5 November 2009

Letter from the Chairman to Pat McFadden MP

Your letter of 4 November and Impact Assessment of 29 October were considered by Sub-Committee G at its meeting of 19 November 2009.

We are grateful for your letter, which we found to be satisfactory, and for the content of the Impact Assessment. While we acknowledge the clarification that you provided of the Government’s view on the proposal’s respect for the principle of subsidiarity, we regret the need to ask for that clarification. Bearing in mind the imminent entry into force of the Lisbon Treaty, with the additional powers given to national parliaments in relation to subsidiarity, it is imperative that Government Explanatory Memoranda provide a full analysis of coherence with that principle where applicable.

Your Small Firms Impact Test acknowledged that absences for parental leave could be more disruptive in a small firm. In response, it is noted that existing Regulations allow employers to delay leave for up to six months where the needs of the business make this necessary. As this provision is very important for small businesses, we trust that it will be maintained in the Regulations once amended for the implementation of this Directive. We would welcome information from you on how you intend to implement the Directive once it has been agreed in Council.

We are now content to release the proposal from scrutiny in advance of a Council decision on 30 November.

20 November 2009

PHARMACEUTICAL PACKAGE (17501/08, 17502/08, 17503/08, 17504/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

Further to my letter of 19 March19, I am writing with the additional information you requested on our Explanatory Memorandum on the pharmaceutical communication.

The Scrutiny Committee has asked for further information on the following:

— To outline the Government position on each of the non-legislative objectives set out in the Communication;

This is attached in the annex to this letter.

19 Correspondence with Ministers, December 2008 to April 2009
Whether or not the Commission’s Communication have any implications for NHS patients’ right of access to medicines.

One of the key aims of the Communication is to improve access to medicines, as highlighted in section 1.1, particularly in smaller Member States where there is a concern that not all medicines are on the market. You will see in the paper attached (not printed), the UK supports the objectives in section 1.1, and are already or will be involved in taking these forward.

14 May 2009

PHARMACEUTICAL PACKAGE: SAFE, INNOVATIVE AND ACCESSIBLE MEDICINES (17503/08)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister for Public Health, Department of Health

Your letter of 14 May 2009 [see Pharmaceutical Package] on the above document was considered by Sub-Committee G at its meeting of 4 June 2009.

We are grateful for your comprehensive response.

While we will continue to engage with you on the legislative aspects of the package, we are now content to release this Communication from scrutiny.

4 June 2009

PHARMACOVIGILANCE OF MEDICINAL PRODUCTS (17501/08, 17502/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

I am replying to your letter of 6 February 200920, in which you asked for clarification on what can be considered an Adverse Drug Reaction (ADR) and on the use of different names for the same medicine in different countries.

An adverse reaction is currently defined in legislation as “A response to a medicinal product which is noxious and unintended and which occurs at doses normally used in man for the prophylaxis, diagnosis or therapy of disease or for the restoration, correction or modification of physiological function”. The Commission proposes to amend the definition to “A response to a medicinal product which is noxious and unintended”. The proposal would widen the definition and would have the effect of increasing the number of reported reactions. Member States have expressed concern about the proposal as it moves away from the World Health Organisation’s accepted definition. However, the UK shares the Commission’s aim in amending the definition which will ensure that it will be beyond doubt that adverse reactions arising from the use of the product outside of its licensed indications should be reported. Negotiations continue on the proposed legislative text.

The Commission’s proposals will not impact on the use of different brand names for the same product marketed in several Member States. If a product is initially authorised under an EU procedure for marketing in a number of Member States, it is expected that the company will use the same name in each Member State. However, there are cases when, for trademark reasons, the same name cannot be used in every Member State, and in these circumstances the European Commission has to agree to a departure from this rule. In summary, therefore, many older products that may be on the market in a number of Member States and that were not subject to an EU procedure when first licensed may have different names in different Member States, but newer medicines (broadly those licensed since 1995) will usually have the same name.

The UK medicines regulator – the Medicines and Healthcare products Regulatory Agency – maintains a database of ADR reports that is able to identify and merge duplicate reports submitted by patients, healthcare professionals or licence holders, including in cases where reports are submitted in respect of the same medicine but under different brand names.

We will shortly launch a public consultation on the proposals. I have asked my officials to send you a copy of the consultation document as soon as it is launched. We have held discussions with the key industry trade associations and they are supportive of the proposals.

20 Correspondence with Ministers, December 2008 to April 2009
Negotiations continue between Member States in Council. The Commission’s proposal to establish a new EU scientific advisory committee (the Pharmacovigilance Risk Assessment Advisory Committee) with limited direct Member State membership has been widely opposed. Our view is that national Governments remain fundamentally responsible for the safety of medicines on national markets. Whilst we recognise that the current regime, which requires each Member State to be represented on each EU committee, is unwieldy and can represent a significant challenge (particularly for some smaller Member States), we believe that a move away from this model should not be introduced in the area of patient safety, which is a national competence and at the heart of the role of national agencies. We will seek to build a consensus in Council around retaining Member State representation on the committee.

20 May 2009

Letter from the Chairman to Gillian Merron MP, Minister for Public Health, Department of Health

Your predecessor’s letter of 20 May on the above proposals was considered by Sub-Committee G at its meeting of 11 June 2009.

We are grateful for her comments on ADRs but we fear that she may have misunderstood us. The concern expressed to us in the course of our inquiry related not to the use of different brand names for the same drug but to the use of the same brand name for different drugs. One such example is a medicine with the generic name captopril, which is marketed in the UK as Acepril. However, if a prescription for Acepril was issued in Switzerland, the correct generic name would be enalapril and if it was issued in Denmark, it would be called lisinopril (see paragraph 167 of our Report on cross-border healthcare). It may be the case that such confusions would still not constitute an ADR according to the definitions that she helpfully provided, but we would nevertheless appreciate clarification of that matter.

She noted that the Commission’s proposal to introduce a Pharmacovigilance Risk Assessment Advisory Committee has met with substantial opposition in Council. We observed that the UK Government were not originally opposed to this proposal, but that this support was based on an understanding that final decisions would be taken by the Committee on Human Medicinal Products. We would be grateful for clarity as to whether or not the Government’s original interpretation was correct.

We will continue to hold the proposals under scrutiny and we look forward to receiving information on the public consultation and on further developments in Council.

11 June 2009

Letter from the Rt Hon Mike O’Brien MP, Minister of State for Health Services, Department of Health, to the Chairman

I am replying to your letter of 11 June 2009 to Gillian Merron in which you raised further queries about the Commission’s proposals for strengthening the EU pharmacovigilance requirements.

In your letter you referred to the points made in paragraph 167 of the Committee’s report on cross-border healthcare. You mentioned possible confusions arising from the use of different names for the same medicine in different Member States, such as Captopril which is marketed in the UK as Acepril. In fact, confusions are more likely to arise if different medicines either have similar brand names in one Member State, or if different formulations of the same medicine are mistakenly considered to be interchangeable by prescribers. Current EU guidance requires marketing authorisation holders to report medication errors that result in adverse reactions to the national competent authority for medicines regulation (the Medicines and Healthcare products Regulatory Agency – MHRA – in the UK) so that if necessary appropriate regulatory action can be taken. Medication errors which do not result in adverse reactions should be reported in accordance with national guidelines. The Commission’s pharmacovigilance proposals will introduce a new legal obligation to report any medication errors received by the national competent authority for medicines regulation to the Eudravigilance database held at the European Medicines Agency (EMEA), as well as to any national patient safety agency such as the NPSA in the UK.

Our original interpretation on the decision making process in respect of pharmacovigilance issues was correct, in that it is proposed that the new committee would undertake scientific analyses, such as the assessment of safety data, and would make recommendations to the Committee on Human Medicinal Products (CHMP). The CHMP would remain the final decision-making body in respect of pharmacovigilance in the Community. In terms of the position we propose to take on the composition of the new committee, whilst the current regime which requires each national...
competent authority to be represented on each EU committee is unwieldy and becoming unsustainable – particularly for some smaller Member States – we have concluded after careful consideration that a move away from this model should not begin in the area of patient safety, which is a national competence and at the heart of the role of national medicines regulatory agencies. Our current position is therefore to oppose the proposed structure of the new scientific committee and to argue that it should follow the conventional format which would include representation from all national competent authorities.

We will continue to keep the committee updated on key developments in the negotiations.

26 July 2009

Letter from the Chairman to the Rt Hon Mike O’Brien MP

Your letter of 27 July on the above proposals was considered by Sub-Committee G at its meeting of 15 October 2009.

We are grateful for your comments on the matter of confusion arising from the use of different names for the same medicine in different Member States, an issue which we have raised in correspondence with you and in our report on cross-border healthcare. We welcome the requirement that any medication errors be reported to Eudravigilance, regardless of whether they cause an adverse reaction or not.

Clarification of your position on the composition of the new scientific committee is also welcome. We believe that, in principle, a scientific advisory committee need not necessarily be composed of representatives from each Member State but we acknowledge that, on the other hand, the policy area touched upon (patient safety) falls within national competence and the formation of the committee is therefore politically sensitive.

We are aware that the public consultation closed on 31 August. We look forward to information from you on the outcome of that consultation, as also on further developments in Council and the European Parliament.

We will continue to hold the proposals under scrutiny.

15 October 2009

Letter from Gillian Merron MP to the Chairman

I am replying to your letter to Mike O’Brien MP of 15 October 2009 in which you informed us of the recent discussions in Sub-Committee G. As you are aware, the MHRA has recently consulted on the pharmacovigilance proposals, and they are in the process of compiling a summary of the responses. In general, those who responded to the consultation were supportive of our proposed position.

We understand that you intend to continue to hold the above proposal under scrutiny, and we will continue to keep the committee updated as the negotiations progress.

19 November 2009

Scientific and technological co-operation between the EC and Ukraine (9177/09)

Letter from the Chairman to Lord Drayson, Minister of State, Department of Innovation, University and Skills

Your EM, dated 13 May 2009, was considered by Sub-Committee G at its meeting on 4 June 2009.

We are content to release this proposal from scrutiny.

Nevertheless, we wish to address the lack of clarity contained in your EM under “Timetable” for agreement of the Decision. We consider your statement that “the proposal will be submitted imminently for Decision by the Council” to be unnecessarily vague, and unhelpful for our scrutiny process. Information on the timetable for agreement is particularly important in order to try and avoid scrutiny overrides wherever possible. We would therefore be grateful if you could ensure that all future Explanatory Memoranda contain sufficient detail about the timetable for agreement.

4 June 2009
SEASONAL INFLUENZA VACCINATION (11970/09)

Letter from the Chairman to Ann Keen MP, Parliamentary Under Secretary of State, Department of Health

Your EM on the above proposal was considered by Sub-Committee G at its meeting of 15 October 2009.

While we note that the UK would be well placed to implement the proposed action in this Recommendation, we acknowledge your doubts about the Recommendation's compliance with the principle of subsidiarity and the Government's concern at the potentially prescriptive nature of the language used in the text of the Recommendation. While we find the objective of action laudable therefore, we strongly support your intention to clarify the scope of the proposal and to ensure that any action taken by the Commission fully respects the principle of subsidiarity.

Given the concerns you have highlighted, and your intention to negotiate changes to the text of the proposal, we will continue to hold this item under scrutiny. We would be grateful if you could update us as and when any significant revisions are made to the text.

15 October 2009

SMOKEFREE ENVIRONMENTS (11533/09)

Letter from the Chairman to Gillian Merron MP, Minister of State for Public Health, Department of Health

Your EM on the above proposal was considered by Sub-Committee G at its meeting of 15 October 2009.

We support the Commission's proposal that the Council recommend the introduction of comprehensive smokefree legislation across the EU and note the benefits this would be likely to have for all EU citizens. In addition, we note that policy implications for the UK are likely to be small, given the legislation already introduced throughout the four countries. However, we would be interested to know how the UK may be expected to improve the protection afforded to children and young people from secondhand smoke following introduction of the Recommendation.

Unfortunately, your EM did not include a section on subsidiarity in relation to this proposal. This is an important topic in our consideration of EU documents and we would appreciate clarification from you on this matter in relation to this proposal, particularly as it touches on an area of public policy which is primarily the competence of Member States. Please could you ensure that future explanatory memoranda contain this information as a matter of course.

We are content to release this item from scrutiny, though we look forward to hearing from you on the points raised above.

15 October 2009

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 15 October 2009, in which you raise the issues of subsidiarity and action the UK proposes to take to protect children and young people from second hand smoke after consideration of the Department’s Explanatory Memorandum by the Lords Sub-Committee.

SUBSIDIARITY

The UK considers the proposal for a non-binding Council Recommendation on smokefree environments a proportionate action by the European Community. Comprehensive smokefree legislation has already been implemented across the UK, which is proving to be popular and effective in preventing exposure to the hazards of secondhand smoke. Given the UK’s achievements in tobacco control, together with our good working relationships with counterparts in Europe, we believe that we already fulfil virtually all of the recommendations proposed.

We believe that exposure to secondhand smoke is a significant public health issue. The proposed Recommendation will help to secure effective measures across the EU to afford protection from exposure to secondhand smoke for all EU citizens, including UK citizens abroad. The Recommendation works hand-in-hand with the non-binding guidelines that have been made to
elaborate Article 8 of the WHO Framework Convention on Tobacco Control (FCTC). The FCTC is the world’s first public health Treaty, which 26 of the 27 EU Member States are parties to.

We will of course ensure that the Department’s future explanatory memoranda do contain a section on subsidiarity.

PROTECTING CHILDREN AND YOUNG PEOPLE FROM THE HEALTH HARMs OF SMOKING

The Government’s tobacco control programme has succeeded in significantly reducing smoking prevalence. Today, there are over 2 million fewer smokers in England alone, compared to a decade ago. However, smoking remains a leading cause of premature death and health inequality, with over 80,000 people dying each year from smoking related causes in England alone.

The uptake of smoking by young people remains a public health concern, with evidence showing that most smokers start smoking regularly before turning 18. While much has been done to reduce young people’s use of tobacco, including through raising the age of sale of tobacco to 18, allowing stop smoking medicines to be made available to teenagers and awareness raising through our marketing campaigns, we are committed to do more.

Likewise, we remain concerned about exposure to secondhand smoke in enclosed locations that are not covered by the Health Act 2006, such as private dwellings and private motor vehicles. Encouragingly, the number of people who say they do not allow smoking anywhere in the homes continues to rise.

Responsibility for public health, and smokefree environments in particular, has been devolved to the Devolved Administrations and all are planning to continue action in this area. As an example, in England, the Department of Health will publish a new tobacco control strategy before the end of this year. The strategy will set out plans to do more to protect young people from tobacco, as well as encouraging people to do more to protect young people from secondhand smoke.

We welcome the Recommendation on smoke-free environments, which will support the ongoing efforts throughout Europe to provide protection from the harms of tobacco use.

20 November 2009

WORK IN FISHING (10176/08)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department of Transport, to the Chairman

Following consideration of the above proposal, Lord Grenfell’s letter of 18 July 2008 advised me that this EM would be held under scrutiny pending the receipt of further information, including on the outcome of consultation with industry, our assessment of the costs that implementation of the ILO Convention would entail, and the result of our analysis of the changes needed to UK law. I am sorry that the timescale for the further work that was needed before we could respond has delayed the provision of this information, but I am writing now to provide this. For ease of reference, each answer is preceded by the Sub-Committee’s question(s) to which it relates.

The Committee asks for: JUSTIFICATION FOR THE INCLUSION OF ARTICLE 2, AND WHETHER THE GOVERNMENT FEELS IT WOULD BE BETTER FOR THE DECISION TO CONTAIN JUST ARTICLE 1.

Article 2 of the proposed Council Decision provides that Member States should endeavour to take the necessary steps to ratify the Convention as soon as possible, preferably before 31 December 2012. The justification for this article is that it is consistent with the EU’s wider policy, as set out in the Blue Book for maritime policy (the Commission Communication: an integrated maritime policy for the European Union, the subject of EM 14631/07), which supports the ratification and application of international labour conventions for the maritime sectors, including ILO 188.

The European Commission was closely involved in the preparation and negotiations of the Convention through European Union coordination, and the purpose of the proposed Decision is to enable and encourage Member States to take all the steps necessary for ratification without delay. At the ILO Conference in 2007 the Fishing Convention was adopted with support from EU Member States including the UK, and we fully support the aim of seeking to promote decent living and working conditions for fishers and the goal of a more level international playing field in the fishing industry.

22 Correspondence with Ministers, December 2008 to April 2009
The Commission’s Explanatory Memorandum on the proposed Council Decision states that it will “enable and encourage Member States to take all the steps necessary for ratification without further delay”. Article 2 appears to support the purpose of encouraging Member States to ratify, and on this basis the Government accepts the wording of Article 2.

The Committee asked about: the outcome of our consultation with industry. Meetings with the Fishing Industry Federations, as principal representatives of the UK industry, at which the fishing sector Convention has been discussed, have been held on 18 September 2007, 13 February 2008, 2 September 2008 and 11 February 2009. There has also been informal discussion with Nautilus UK, who represented the worker side in the UK delegation to the ILO Conference in 2007. So far the main outcome has been an expression of general concern that implementing the new Convention will disturb well-established arrangements and that some of the changes required would be detrimental to the UK industry. In particular, consultees oppose the introduction of medical certification requirements through the Convention.

Despite their concerns, the fishing industry recognises that the UK will implement the Convention in due course and we have agreed to keep them fully informed of implementation proposals.

You asked for: OUR ASSESSMENT OF THE COSTS THAT IMPLEMENTATION OF THE ILO CONVENTION WOULD ENTAIL.

In many areas covered by the Convention, existing standards for the majority of UK fishing vessels are at or above those required by the Convention but there are certain changes which would have cost implications. In particular, as noted above, the Convention introduces a requirement for medical fitness certification for all those working on fishing vessels over 24m in length or which stay at sea for more than 3 days. There is currently no requirement for fishers to have medical fitness certificates. A standard UK seafarer medical examination costs £80 and is valid for 2 years. It is estimated that approximately 1000 fishers would require medical certification to meet the Convention requirement, suggesting an overall cost of about £40,000 a year to industry.

Other changes, such as the requirement for all fishers to have a written work agreement, would also entail some costs for at least some sectors of the industry, but we are not sufficiently advanced with implementation (bearing in mind that the target date for ratification is the end of 2012) to be specific. However, through the tripartite structure of ILO, both sides of industry have effectively accepted the changes that the Convention will bring, and implicitly accepted any consequential costs. The Government is committed to working closely with the industry on implementation – as we are with the merchant shipping industry on the Maritime Labour Convention 2006 – to ensure that such costs are minimised as far as is consistent with compliance with the Convention.

The Committee also asked for: THE RESULT OF OUR ANALYSIS OF THE CHANGES TO UK LAW WHICH WOULD BE REQUIRED TO IMPLEMENT THE CONVENTION.

Approximately 19 sets of existing merchant shipping regulations would need to be amended. A schedule of the new and amended regulations required to implement the Convention are given at Annex A. A preliminary assessment of specific changes required to UK law in order to implement the Convention is attached at Annex B (Not printed).

You may also wish to be aware of a new issue, brought to our attention by the House of Commons European Scrutiny Committee, regarding the citation of “the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3)” of the EC Treaty in the draft Decision.

The procedure referred to is the consultation procedure required for use with Qualified Majority Voting. However, Article 42EC, the Treaty Base for the Community’s external competence in relation to the Convention (co-ordination of social security), requires Unanimity – so the Government’s view is that the second sentence of Article 300(2) appears to be the correct reference for this Decision.

The UK sought clarification from the Commission during the first substantive discussion of this proposal at Working Group on 11 March, and the Commission undertook to consider the matter further before the next meeting. We are reasonably confident that the UK’s view will prevail. Another Member State questioned the assertion that there are aspects of the Convention within the exclusive competence of the Community, and this will also be discussed at the next meeting of the Working Group.

I had hoped to be able to report in this letter the outcome of further Working Group discussion, which was provisionally scheduled for April. However, this did not take place and a date for the meeting has not yet been set. I will write to you again after this further Working Group takes place to update you regarding the further discussions. There have been indications that the Czech Presidency would like to move the Proposal forward for adoption at the Employment and Social Affairs Council on 8-9 June, but this has not yet been confirmed.
I hope this information is of assistance to the Scrutiny Committee in its further consideration of the ILO Convention.

14 May 2009

Letter from the Chairman to Jim Fitzpatrick MP

Your letter of 14 May 2009 was considered by EU Sub-Committee G at its meeting of 21 May 2009.

We regret the delay in receipt of your reply to my predecessor’s letter of 18 July 2008 as a swifter response would have given the Committee more time to consider the progress made on this dossier. However, we are grateful for the comprehensive information that you have now provided.

Our principal concern related to the inclusion of Article 2. We note your explanation that the Article encourages, rather than obliges, Member States to ratify by 2012 and that it is in line with the EU’s integrated maritime policy, which supports the ratification and application of international labour conventions for maritime sectors. We consider this to be a useful and satisfactory clarification, justifying the inclusion of the Article.

As regards implementation in the UK, we note that the fishing industry is still concerned but we are comforted to learn that the Government will work closely with the industry on implementation to ensure that costs are minimised as far as is consistent with compliance with the Convention. We are grateful for the information that you have provided on consultation and implementation, including the changes that will be required to UK law.

We observe that some of the technical details remain to be finalised and we look forward to information from you on the outcome of those discussions. In the meantime, we are content to release the proposal from scrutiny in advance of the June Council meeting.

21 May 2009

Letter from Paul Clark MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Jim Fitzpatrick wrote to you on 14 May 2009, providing the further information and clarification you requested as part of your Committee’s consideration of this proposal. I am now following up on his promise to update you after the next meeting of the Social Questions Working Group.

The Working Group convened at short notice on 24 September 2009. The outcome was that the Commission confirmed the opinion held by some Member States (including the UK) that ratification of the Convention need not be obligatory and that, pertaining to those parts of the Convention falling outside the exclusive competence of the Community, Member States that intend to ratify should not be obliged to do so by the target date of 31 December 2012.

The Government fully supports the aim of the new Convention, is in principle committed to working towards ratification, and accepts that UK law and practice should be changed in order to achieve this. However, the complexities we expect to encounter in implementing the Convention (explained in earlier correspondence) mean that we could not support the inclusion of an obligatory timescale for ratification.

On the issue of the Treaty base, in your Committee’s initial report on this proposal you alerted us to the apparently inappropriate citation of "the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300 (3)" of the EC Treaty in the draft Decision. As you may recall, we sought clarification from the Commission who undertook to consider the matter further. I am happy to be able to report that at the 24 September 2009 Working Group the Commission and the Member States agreed to replace the citation of the first sentence of the first subparagraph of Article 300(2) by the second sentence thereof. The current working text of the proposal reflects this change.

On this basis, we expect that Member States will be able to lift their remaining reserves, paving the way for agreement at the Employment, Social Policy, Health and Consumer Affairs Council on 30 November.

While we are giving priority to implementation of the Maritime Labour Convention, 2006 (MLC), which Member States were authorised to ratify in June 2007 (EM 10900/06 refers) and which we intend to be ready to ratify by the end of 2010, the Maritime and Coastguard Agency has begun to consider with fishing industry representatives whether elements of the ILO Work in Fishing Convention which require similar legislative changes for the protection of fishers as are required for seafarers under the MLC, can be taken forward at the same time.
In our earlier correspondence we reported that another Member State had questioned the assertion that there are aspects of the Convention within the exclusive competence of the Community. Discussions at the Social Questions Working Party on 24 September 2009 confirmed that the assertion was correct, and as a result, Article 1 of the proposed text was revised to put the matter beyond doubt.

16 November 2009

WORKFORCE FOR HEALTH IN EUROPE (17479/08)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

Thank you for your letter of 6 February 2009\(^2\), seeking further information to that provided in our Explanatory Memorandum (EM) dated 9 January 2009.

Further to my letter dated 10 March 2009, please find attached (not printed) at Annex A, a copy of the Government’s response to the European Commission Consultation on the European Workforce for Health. This response fully reflects the Government’s view of the Commission’s proposals. It also takes into account the views of the devolved administrations whom we have consulted.

19 May 2009

WORKING TIME DIRECTIVE AMENDMENTS (9554/05)

Letter from Pat McFadden MP, Minister for Employment Relations and Postal Affairs, Department for Business, Enterprise and Regulatory Reform, to the Chairman

I am writing to inform you that the proposal to amend the existing Working Time Directive has now fallen, without agreement being reached.

As you know, on 9 June last year the Employment Council agreed a Common Position consistent with UK objectives. On 17 December, the European Parliament voted through a number of amendments to that Common Position. These amendments included proposals to phase out the opt-out within 3 years and undo the solution the Common Position would provide to the problems caused by the ECJ Simap/Jaeger judgments on the issues of on-call time and compensatory rest. The European Parliament’s position was clearly unacceptable to the Council as a whole, and we therefore began a formal Conciliation process.

The Conciliation Committee met three times, with a number of additional informal trilogue discussions between the Presidency, European Parliament and Commission. Throughout the process, UK objectives for the negotiations remained unchanged, our fundamental requirement being retention of the right of individual workers to opt-out of the 48-hour maximum working week. Support from other Member States remained reasonably solid on this point. However, the European Parliament refused to even consider proposals that did not end or phase out the opt-out. This was not something that Council was ever likely to consider, so, given this fundamental difference, agreement was always going to be very difficult.

The distance between the European Parliament and Council was not so sizeable concerning the problems caused by the Simap/Jaeger ECJ judgments. There was readiness in Council to consider some movement towards the position of the European Parliament in this area. However, given the European Parliament’s position on the opt-out, whether agreement on the Simap/Jaeger issues was attainable became virtually irrelevant.

With the time available to reach an agreement rapidly running out, on the evening of 27 April the 3rd meeting of the Conciliation Committee agreed that there was no merit in continuing negotiations given that the distance between Council and the European Parliament continued to be so great. The impact of this outcome is that the existing Working Time Directive – and the ability for individuals to opt-out of the maximum 48 hour working week – has been preserved. This is clearly a good outcome for the UK. However, it is also true that, whilst the UK has implemented the Simap/Jaeger ECJ judgments and fully complies with them, for productivity and efficiency reasons we would have liked to have benefited from an increase in flexibility in the on-call time and compensatory rest areas. But as I have explained above, the European Parliament’s hard-line position on the opt-out meant that achieving this was impossible.

\(^2\) Correspondence with Ministers, December 2008 to April 2009
It is not clear what the next steps are for this dossier. The Commission will decide what action to take next – including whether or not to table another proposal on some or all of these issues. I will of course update you on any future developments on this dossier.

5 May 2009

Letter from the Chairman to Pat McFadden MP

Your letter of 5 May 2009 on the above dossier was considered by Sub-Committee G at its meeting of 14 May.

As you will be aware, the Government’s negotiating position throughout the work on this proposal has been closely aligned with the position of this Committee. We therefore welcome the fact that the individual opt-out has been retained but we regret the failure to resolve the issue of on-call time.

In your letter, you note that it is for the Commission to decide what action to take next. We would be grateful for an indication as to whether the UK Government will be working with the Commission to assert the importance of resolving the on-call time issue as soon as possible.

We are now in a position to release the amended proposal from scrutiny.

15 May 2009

Letter from Pat McFadden MP to the Chairman

Thank you for your letter of 9 May releasing the above proposal from scrutiny in the light of the failure of conciliation. I am grateful for the Committee’s welcome for the Government’s success as a result in retaining the individual opt-out.

I have deferred my formal response to the question in your letter thus far, hoping that further information on the Commission’s intended next steps would enable me to give you a fuller reply. In the meantime, my officials have been in regular contact with your Secretariat.

Given the amount of time that has passed, I felt I should now write even though the Commission’s intentions on the Directive continue to be uncertain. When addressing European Parliament hearings in September, President Barroso did announce his intention to undertake a two-stage social partner consultation on potential routes forward, but timing on this remains unclear.

The Government is of course aware that the failure of the conciliation leaves issues unresolved, in particular those you highlight relating to the difficulties caused for many Member States by the Simap and Jaeger ECJ judgments. We have consistently said that we would also like to see a solution to these, and continue to make as much clear in contacts with the Commission and other Member States. But our priority objective will continue to be to resist any proposal to return to the question of the opt-out in any way.

30 November 2009

YEAR OF VOLUNTEERING 2011 (10940/09)

Letter from the Chairman to Angela Smith MP, Minister of State for the Third Sector, Cabinet Office

Your EM on the above proposal was considered by Sub-Committee G at its meeting of 16 July 2009.

We note that while the Government are largely supportive of this proposal, there are two concerns which they wish to raise during discussions. In particular, we agree with your view that it will be necessary for an EU-wide definition of “volunteering” to be established prior to the European Year of Volunteering. We would be interested to know whether the UK Government have a provisional form of wording that they believe would be suitable, and similarly, whether there are any aspects of volunteering in other Member States that they would not wish to see reflected in a common definition.

You state that you do not wish to see the European Year of Volunteering conflict with the Government’s position on youth volunteering and mobility, an aim which we support. We emphasised when scrutinising the Recommendation on Young Volunteering (11428/08) that action to promote cross-border volunteering should not divert resources from existing national volunteering schemes.

Under the proposal, each Member State is to have a national coordinating body in order to help them lead on their own activity for the Year of Volunteering. We would be grateful for further information
on how these bodies might share best practice across the Member States. We would also like to know whether the UK has an existing organisation which could carry out this function, and what the costs involved in establishing and maintaining such a body are likely to be.

We note that the budget for the European Year of Volunteering will be €2 million in 2010 for preparatory work and €6 million during 2011. It strikes us that as an EU-wide budget, to be shared between the Member States, this might be considered relatively small (though we note the provision for co-financing) and we would therefore be interested to know whether you think the proposal can deliver on its aims with this budget. In addition, we would appreciate clarification as to whether or not the UK will choose to receive funding.

Finally, we were pleased to be able to consider this proposal before the House of Lords rises for the summer recess. However, we note that, having granted your Department a one-week extension to the original deadline for submission of 1 July, our staff experienced considerable difficulty in obtaining this EM from your Department in sufficient time for us to consider it ahead of the recess. Our staff can give your office further details if required, and I would be grateful if you could investigate matters to ensure that this does not happen again.

Pending clarification on the points raised above, we will continue to hold this item under scrutiny.

16 July 2009

Letter from Angela Smith MP to the Chairman

Thank you for your letter dated 16 July responding to my Explanatory Memorandum (EM) on the European Commission proposal for the European Year of Volunteering 2011. Thank you also for the rapid response from the Select Committee.

I would like to apologise for the delay in the EM reaching you, this was caused by officials within the Office of the Third Sector underestimating the time it would take to consult with a range of partners across Government on the proposal.

Your letter raised a number of points, which I shall respond to in turn. These were:

1. A request for further information on how we define volunteering in the United Kingdom and details of what we would consider an inappropriate definition of volunteering.
2. Information on who might take on the role of national coordinating body.
3. A view on whether the aims of the year can be delivered within the proposed budget.
4. Clarification on whether the UK will choose to receive funding from the Commission.

The Government’s definition of volunteering is “any activity which involves giving unpaid help as an individual to someone who is not a relative.” There are key principles behind this definition. The first is that volunteering is freely given and without obligation. The second is that it is an activity that benefits the wider community. The third is that it is undertaken with no expectation of financial reward. We would find any activities that involve compulsion or financial reward above the reimbursement of expenses as incompatible with these principles.

There are a number of third sector organisations that could act as the national coordinating body. Volunteering is a devolved issue and as such the coordinating body is likely to be different in each of the four nations. England, Northern Ireland, Scotland and Wales will be working closely to ensure that our work is as coordinated as possible and we would want to have a transparent process in deciding who fulfils this role/s.

We believe that the aims of the year can be fulfilled in the budget, particularly as many of the aims relate to work that is already ongoing in this country and in other Member States. We do, however, agree with your and the Committee’s comment that the budget will be relatively small when distributed amongst Member States.

The Government is likely to choose to receive funding from the Commission, but detailed discussions between the four nations will need to take place after recess. In addition an important point in our negotiations on the proposal will be the co-financing model, in particular whether in kind support can be considered.

20 August 2009

Letter from the Chairman to Angela Smith MP

Your EM on the above proposal was considered by Sub-Committee G at its meeting of 15 October 2009.
Following your response to our original letter of 16 July, we note that you did not address the question we raised as to the likely costs for establishing and maintaining a national coordinating body for the European Year of Volunteering. We would therefore like to reiterate our request for this information.

This point aside, we are grateful for your clear and succinct response to our queries, and we are content to release the item from scrutiny.

15 October 2009

Letter from the Rt Hon Angela Smith MP to the Chairman

Thank you for your letter dated 15 October regarding the Sub-Committee’s consideration of the European Year of Volunteering.

Your letter raised a question regarding the costs related to maintaining a National Coordinating Body for the year in the UK. At this stage we are not able to give final confirmation of these costs, particularly as we are waiting for final confirmation of the overall budget from the European Commission.

In the interim, officials in the Office of the Third Sector have begun preparing proposals for this body and the costs associated with it. As volunteering is a devolved issue these will be discussed with officials in Scotland, Wales and Northern Ireland.

Please be assured that we expect the costs for the coordinating body to come from within existing budgets. We will provide further information once a model for the body has been agreed and we receive final confirmation of the budget for the year.

16 November 2009

YOUNG PEOPLE: PROMOTING LEARNING AND MOBILITY (11968/09)

Letter from the Chairman to David Lammy MP, Minister for Higher Education and Intellectual Property, Department for Business, Innovation and Skills

Your Explanatory Memorandum on the above Green Paper was considered by Sub-Committee G at its meeting of 15 October 2009.

We note that the political drive for this initiative came from the November 2008 Youth Council and that you express slight scepticism about the initiative. We would be grateful if you would outline the position taken by the UK representative at that meeting of the Youth Council.

More generally, the aspiration of promoting youth mobility is, in principle, to be welcomed. As you note, however, the issue is complex as mobility must be of a certain quality and must have value for those concerned. It seems to us that determining what is considered to be “quality mobility” is crucial, and further policy initiatives flow from that consideration. By way of example, the placement of international students in halls of residence with other such students may not lead to “quality” mobility experiences. We would therefore be interested to learn how you see that concept being defined.

You state that the Green Paper has no financial implications. While we accept that none flow directly from the Paper, there are undoubtedly substantial financial implications from realisation of the goals outlined in the Paper. We would be grateful for more considered analysis from you on that aspect of the issue.

We are content to release the Green Paper from scrutiny, we look forward to your response on the above points and we trust that you will send us a copy of your response to the Green Paper once it is complete.

15 October 2009

YOUTH STRATEGY (9008/09)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State, Department for Children, Schools and Families

Your predecessor’s Explanatory Memorandum regarding the above Communication was considered by Sub-Committee G at its meeting of 11 June 2009.
We note that much of the Strategy is unlikely to have a material impact on UK policy but we would urge particular action in the areas of youth employment and social inclusion of youth. We would be grateful for an outline of Government policy in these areas and the extent to which you consider that this Strategy may assist the Government in developing those policies.

It is not clear how this Youth Strategy links to the EU's policy on children. This would seem especially pertinent if a more cross-sectoral approach, as suggested by the Commission and supported by the Government, is to be taken to youth policy. We would welcome your view on whether you consider this to be a good opportunity to take an equally cross-sectoral approach to policy on children, perhaps integrating the two areas.

We will release the Communication from scrutiny and we look forward to your comments on the issues raised above.

11 June 2009

Letter from the Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter dated 11 June 2009 in response to the Explanatory Memorandum on an EU Strategy for Youth Investing and Empowering. Following negotiations in Youth Working Party we are now in a position to respond prior to the proposed adoption of the related Council Resolution on a renewed framework for European cooperation in the youth field at Youth Council on 27 November.

In consultation with policy leads and devolved administrations we have lobbied the Presidency and other Member States to ensure UK domestic interests have been included in the framework and that the framework promotes meaningful exchange of good practice and appropriate use of indicators and methods of reporting.

We have particularly concentrated on social inclusion and youth employment, ensuring that there is action in these areas which adds value and is consistent with our domestic policy. Many of our interventions in Youth Working Party and our written comments have been included in the text, for example, introducing a special reference to community cohesion in the social inclusion field of action. It has been useful in negotiations that we share the Swedish Presidency priorities on improving access to education and training, empowering young people and combating social exclusion, particularly in the context of the current economic crisis.

We have worked closely with the Employment Committee and have ensured that youth employment remains a priority and work is consistent with messages from other Council formations. In particular youth employment is the overall priority for the first 18 months of the structured dialogue with young people.

You requested an outline of Government policy on youth employment and social inclusion of youth. Increasing employment opportunities, especially by improving skill levels, is central to the UK’s social inclusion approach. We are already sharing with other Member States what we are doing to avoid some groups like youth being left behind by economic recovery and thereby increasing the disadvantages they face. We have sent to EU partners information on the Future Jobs Fund, which forms a key component of our guaranteed offer to unemployed young people. This was included in “Backing Young Britain” – a new cross-departmental campaign launched by the Government on 29 July.

“Backing Young Britain” calls on businesses to create more opportunities for young people, for example, offering internships or apprenticeships. In addition we are continuing our emphasis on young people Not in Employment, Education or Training (NEET) such as through the September Guarantee which aims to ensure that every young person leaving compulsory education receives a suitable offer of a place in learning. The EU Strategy will therefore help the Government develop policies in these areas by facilitating the exchange of best practice with other Member States.

Negotiations in Youth Working Party have ensured that a cross-sectoral approach is taken to youth policy. We, along with other Member States, agreed with your point on the importance on taking this further and also linking the youth framework with policy on children. As there is no EU Council formation with formal responsibility for children’s policy the most effective way of doing this was by introducing references in the framework to encourage close cooperation between children’s policy and youth policy in all the fields of action.

I attach the draft Council Resolution (not printed) on the renewed framework for adoption at Youth Council on 27 November. My colleague Vernon Coaker will be attending and speaking on behalf of the UK and Welsh Minister, Jane Hutt, will also be attending as part of the UK delegation.

3 November 2009