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

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

**HOME AFFAIRS, HEALTH AND EDUCATION**

**(SUB-COMMITTEE F)**

**CONTENTS**

ATTACKS AGAINST INFORMATION SYSTEMS (14436/10) ................................................................. 2
CIVIL PROTECTION MECHANISM (18919/11) .................................................................................. 3
CLINICAL TRIALS (12751/12) ............................................................................................................. 5
CO-FINANCING RATE OF FUNDS (14123/12, 14181/12) ................................................................. 5
COMMON EUROPEAN ASYLUM SYSTEM: LEGISLATIVE PROPOSALS (11214/11, 16929/08,
  11207/11, 14919/10, 14863/09) ........................................................................................................ 5
CROSS BORDER THREATS TO HEALTH (18509/11) .................................................................. 9
CYPRIOT PRESIDENCY PRIORITIES: HEALTH ........................................................................... 13
CYPRIOT PRESIDENCY PRIORITIES: JHA ISSUES .................................................................... 14
DATA PROTECTION (5852/12, 5853/12, 5833/12, 5834/12) ............................................................ 17
DRAFT DIRECTIVE ON THE PROCEEDS OF CRIME (7641/12) ............................................ 20
ERASMUS FOR ALL: STUDENT MOBILITY DATA (17188-11, 17574/11) .................................. 24
ESTABLISHING A EUROPEAN CYBERCRIME CENTRE (8543/12) ........................................ 25
EU BUDGET: HOME AFFAIRS FUNDS (17285/11, 17289/11, 17287/11, 17290/11) .......... 25
EU-CAPE VERDE: READMISSION AGREEMENT (14237/12) ..................................................... 27
EU-TURKEY READMISSION AGREEMENT (11720/12, 11743/12) .................................... 27
EURODAC (10638/12) ....................................................................................................................... 30
FRAMEWORK OF AN INTRA-CORPORATE TRANSFER (12211/10, 12208/10) ................... 31
HEALTH FOR GROWTH PROGRAMME 2014-2020 (16796/11) .................................................. 32
Letter from James Brokenshire MP, Parliamentary Under-Secretary for Crime and Security, Home Office, to the Chairman

I am writing to update you on progress in the negotiations on this Directive, and to alert you to the possibility of a first reading deal which will lead to the adoption of the text. I attach the draft text as an Annex. I would like to summarise where we are in terms of the approach that we have taken.

In our Explanatory Memorandum of 13 October 2010, (14436/10) we set out a number of concerns that we had with the original draft of the Directive. We believed that the UK was broadly compliant, but had concerns regarding the possible creation of new offences, and of increases in sentences, on which we said that we would seek to negotiate. We also undertook to address concerns raised by your Committee regarding the inclusion of references to minor cases, and in clarifying the extra-territorial provisions.

We have negotiated strongly with the Commission and with other Member States, and we believe that no major new offences will need to be created, and that the existing UK penalties for offences will be sufficient to meet the requirements of Article 9 of the Directive. In the Explanatory Memorandum we said that we would give further consideration to Article 7; we now believe the UK to be compliant.

We were unsuccessful in preventing the extension of extra-territorial jurisdiction by nationality for the offences in the Directive, as set out in Article 13, but we were successful in making the decision on whether to extend extra-territorial jurisdiction to habitual residents a matter for Member States to decide.

We have secured changes to the text of Article 15 to ensure that reporting of cybercrime by Member States to the Commission is based on existing data collected by Member States, and that there is no additional requirement for data collection.

We believe that we have been successful in negotiating an adequate solution to the question of defining minor cases, through the inclusion of a Recital that confirms that what constitutes a minor case is a matter for Member States. We have also ensured that the mens rea for the offences is enhanced in the text of Articles 3 to 7. We have also ensured that the reference in Recital 17 to Articles 1, 2 and 4 of Protocol 21 have been deleted, as sought by your Committee.

We will need to amend the Computer Misuse Act 1990 to create an offence of importation of tools to meet the requirement of Article 7, as importation is not covered in the existing provision (section 3A) in the Act. We will also need to include extra-territorial jurisdiction by nationality in the Computer Misuse Act 1990. This is an extension of the existing provision.
We believe that the text as it stands reflects the interests of the UK, and we believe that the UK can accept the draft Directive attached at Annex A [not printed].

20 June 2012

**Letter from the Chairman to James Brokenshire MP**

Thank you for your letter of 20 June 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 27 June 2012.

We are grateful for the overview of the changes that have been made to the text of the Directive.

However, we are puzzled by your statement at the end of third paragraph in your letter that you believe the United Kingdom to be compliant with Article 7 of the Directive as your later statement, as this appears to be contradicted by the penultimate paragraph which states that the Computer Misuse Act 1990 will have to be amended in order to meet the requirements of the same provision.

We would be grateful if you could clarify this within the standard ten days.

We will also look forward to receiving further updates on the progress of this proposal in due course.

28 June 2012

**Letter from James Brokenshire MP to the Chairman**

Thank you for your letter of 28 June, in which you asked for clarification of a point in my letter to your Committee of 20 June in relation to the above Directive.

Your point of concern was my statement in the third paragraph that the UK was compliant with Article 7 of the Directive, whilst in the penultimate paragraph I set out the changes that we would need to make to UK legislation as a result of the Directive, including a change to Article 7.

The third paragraph should have included the reference to the need to amend the Computer Misuse Act 1990 to include the importation offence, as well as referring to it in the penultimate paragraph, which was the summary of changes.

Please accept my apologies for any confusion this caused. I will keep you informed of the progress of this Directive.

13 July 2012

**Letter from the Chairman to James Brokenshire MP**

Thank you for your letter of 13 July 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 25 July 2012.

We are grateful for your clarification about the need to amend the Computer Misuse Act 1990 in order to comply with Article 7 of the Directive. We look forward to receiving further updates on the progress of this proposal in due course.

26 July 2012

**CIVIL PROTECTION MECHANISM (18919/11)**

**Letter from the Chairman to the Rt. Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, Cabinet Office**

Thank you for your helpful letter of 8 May 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 23 May 2012.

We are grateful for the information provided on cooperation with NGOs and humanitarian agencies, and for the general update on the progress of negotiations. We look forward to receiving a further update on these in due course, as you propose.
However, in the short term we would be interested in receiving an update about any progress that has been made regarding the legal base and subsidiarity issues, which we note the Government had concerns about as per the explanatory memorandum, within the standard ten days.

In the meantime we will continue to hold this proposal under scrutiny.

23 May 2012

Letter from the Rt. Hon Francis Maude MP to the Chairman

Thank you for your letter of 23 May 2012 requesting an update regarding the legal base and subsidiarity issues.

Our view is that Article 196 TFEU provides the correct legal base for the proposed Decision. Regarding the scope of the Decision, while it is possible to argue it goes too far in some respects, on balance we have concluded that it broadly permits the provisions currently in the Decision that enable the Commission to require certain activities of Member States that are necessary to help achieve the objectives referred to in Article 196(1) i.e. supporting and complementing Member State action and promoting operational cooperation and consistency in international prevention work.

With regard to our concerns about the legal base for EU support for all actions in third countries to which the proposed Decision refers, we have concluded that the substance of the proposed Article 16 of the Decision does not go beyond the power in Article 196(1)(c) to promote consistency in international civil protection work, especially as the proposed Article 16(2)(b) and (10) make clear that it is for Member States to decide whether to deploy their capacities.

Other Member States continue to consider their own views on the scope of Article 196; however, it appears that most have also concluded that all the provisions are within the scope of TFEU 196. When coupled with our own conclusions, we have therefore focussed on policy rather than legal arguments in pressing for the removal or softening of those obligations which cause us most concern and are seeking further clarification where necessary. We will however continue to watch carefully as negotiations progress to ensure that the scope of Article 196 is not exceeded.

In my Explanatory Memorandum, I highlighted three specific proposals which I was concerned challenged the principle of subsidiarity, these were: the proposed EU-level stand-by arrangements for a European Emergency Response Capacity; the development of EU-subsidised assets; and the measures to empower the Commission to establish, maintain and deploy a logistical support and assistance capability which is already provided voluntarily by seven Member States in the form of eight Technical Assistance and Support Teams (TAST).

I raised the importance of subsidiarity and of a voluntary approach that builds on Member States’ existing arrangements when I met Commissioner Georgiva in February this year. My officials have also raised these concerns in the initial discussions on the proposal. As negotiations progress, we will continue to seek to uphold the principle of subsidiarity and proportionality and of a genuinely voluntary cooperation, among Member States which does not ultimately affect the right of Member States to decide on the shape and form of assistance that might be provided in light of circumstances at the time.

I will provide you with a further update in due course.

13 June 2012

Letter from the Chairman to the Rt. Hon Francis Maude MP

Thank you for your letter of 13 June 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 27 June 2012.

We are grateful for the information you have provided on issues relating to the legal base and subsidiarity. We look forward to receiving further updates on the progress of negotiations on this proposal in due course.

28 June 2012
CLINICAL TRIALS (12751/12)

Letter from the Chairman to Earl Howe, Parliamentary Under-Secretary of State for Quality, Department for Health

Thank you for your explanatory memorandum of 6 August 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 10 October 2012.

We consider this to be a very important proposal and note, in particular, the concerns that have been raised about the impact of the Clinical Trials Directive on the UK’s competitiveness in this sector by healthcare stakeholders and Members of the House of Lords.

For these reasons we have decided to retain this document under scrutiny and may choose to conduct enhanced scrutiny of the proposal at a later date – perhaps through a one-off oral evidence session. With this in mind, we would be grateful for copies of any submissions from stakeholders on this issue received by the Department of Health.

In the meantime, we look forward to receiving further updates about the progress of negotiations on this proposal in due course.

11 October 2012

CO-FINANCING RATE OF FUNDS (14123/12, 14181/12)

Letter from the Chairman to Damian Green MP, Minister for Policing and Criminal Justice, Home Office

Thank you for your explanatory memorandum of 8 October 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 17 October 2012.

We consider the aim of these proposals to be important and therefore believe that the Government should opt-in to both proposals. We note, in particular, the EM’s statement that there would be no financial implications for the United Kingdom if these proposals were adopted.

We acknowledge the Government’s concerns that increasing the co-financing rate may reduce the overall value of SOLID funds. We believe these concerns could be partly ameliorated by making it mandatory for recipient Member States to submit to the Commission either a draft annual programme or a draft revised annual programme applying the increased EU co-financing. At present, this approach is optional.

We also support your view that United Kingdom support for the proposals should be conditional on it not affecting the Multiannual Financial Framework for the period 2014-2020.

We have decided to hold this document under scrutiny and will look forward to receiving further updates about the progress of these proposals in due course.

26 October 2012

COMMON EUROPEAN ASYLUM SYSTEM: LEGISLATIVE PROPOSALS (11214/11, 16929/08, 11207/11, 14919/10, 14863/09)

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

I am writing to update you on the progress of negotiations for legislative proposals forming the second stage of the Common European Asylum System, which the EU has committed to completing by the end of 2012.
The Danish Presidency has successfully used higher level political discussions to break the deadlock in negotiations with a compromise text being adopted by the Committee of Permanent Representatives on 21 March. The Presidency is now in trilogue discussions with the European Parliament in an effort to reach an early second reading agreement. The next Justice and Home Affairs Council in June will receive an update on how trilogue is progressing and will be asked to give political guidance.

You will recall that the UK did not opt in to this Directive. One of our concerns was that the Commission's proposal would allow asylum seekers to have greater access to the labour market by obliging Member States to grant them permission to work if their claim has been outstanding for six months, rather than 12 months as stated in the current Directive. This was met with significant opposition from Member States who shared our view that this would act as a “pull factor” by encouraging individuals to make unfounded claims for asylum. The agreed Council text therefore retains the 12 month threshold.

We also had several objections to the provisions on detention (Articles 8-10). Firstly, we believed that the restrictions on the use of detention proposed by the Commission (Article 8) were unnecessary given that Article 5(4) of the European Convention on Human Rights provide for an individual to challenge the lawfulness of their detention before the courts. Secondly, the provisions had the potential to limit the UK Border Agency’s ability to operate its Detained Fast Track (DFT) system as the Commission’s proposal contained a prescriptive list of the grounds under which asylum seekers may be detained (Article 8(3)).

This understandably led to protracted negotiations with several Member States and the Commission maintaining scrutiny reserves over specific provisions. We were able to prevent provisions providing guarantees for detained asylum seekers (Article 9) being copied across to the Dublin (III) Regulation, which instead allows for Member States to set these by national law. Furthermore, our detention practices are consistent with the safeguards contained in the compromise proposal at Article 9, which states that administrative authorities may order detention provided individuals have the right to apply to the judiciary for release.

The criteria for determining the circumstances whereby Member States would be entitled to grant asylum seekers less favourable social welfare assistance than their own nationals has continued to be a contentious issue. The Commission’s original proposal had set out that this could only occur in cases where differing standards were “duly justified,” and that the inequality was addressed by the simultaneous provision of other support in kind. This requirement does not appear in the compromise text, with Member States instead being entitled to differentiate where the support for their nationals is set at a level which provides them with a higher standard of living than they are required to provide to asylum applicants under the standards set out in the recast Directive.

We will continue to participate in trilogue negotiations in an effort to secure the best possible text and once a final proposal is agreed will give consideration as to whether we wish to be able to request to make a post-adoption opt-in to the Directive.

Discussions of the proposal have gone well, including recent discussions on the use of detention within the Dublin procedure. Previously, the negotiations as a whole were deadlocked over the issue of whether a “suspension or emergency clause” should be included in Article 31, as proposed by the Commission. As you will recall this would have allowed the Commission to order transfers to a Member State to be suspended if those transfers would exacerbate serious pressures on that Member State’s asylum system. We were firmly opposed to the inclusion of this clause.

The Polish Presidency sought to break the deadlock by proposing that, instead of a provision for suspension, the Dublin Regulation could contain an “evaluation system” (also known as an “early warning and support mechanism”) for Member States’ asylum systems. The aim of this system would be to examine data about those systems to obtain early warning of potential problems, enabling a programme of support to be agreed before the Member State’s situation deteriorated and Dublin transfers to it were called into question.
I am pleased to report that this suggestion received significant support from the majority of Member States and the concept has been further developed into concrete proposals by the current Danish Presidency in the place of a “suspension clause”. In principle, I believe that the proposal for an evaluation mechanism has merit. When the quality of a Member State’s asylum system deteriorates, Dublin transfers to that State can become more difficult or even (as is the case with Greece at present) impossible. Poor quality asylum systems in other Member States can also encourage asylum seekers to travel on to the UK. Both consequences are undesirable and it makes sense to try to stop them happening through appropriate early warning and intervention.

It is, however, important that any evaluation system is focused on practical cooperation between Member States. As such our position has been that the European Asylum Support Office (EASO), the EU Agency that promotes practical cooperation on asylum matters within the Union, should play a key role in the mechanism.

The Presidency secured agreement at COREPER on 4 April to open discussions with the European Parliament on the Regulation. While we are broadly content with the current text, it will be important to see how the proposals evolve through the co-decision process. I will provide further updates as this develops.

**Amended proposal for a directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) (Document 11207/11) (asylum procedures directive).**

You will recall that the UK did not opt in to this Directive. Negotiations have progressed slowly, however, the proposal is working through the political chain and we can expect trilogue discussions to begin with the European Parliament by the end of the month. Our main priority continues to be to ensure that provisions regarding access to the asylum procedure in Article 6 are consistent with the EURODAC and Dublin Regulations to ensure clarity around the obligation to take and transmit fingerprint data to the EURODAC database.

Amended proposal for a regulation of the European Parliament and of the Council concerning the establishment of “EURODAC” for the comparison of fingerprints for the effective application of Regulation (EC) No […/…] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or stateless person] (EURODAC Regulation). (Recast) (Document 14919/10).

This dossier has not been discussed since the first half of the Hungarian Presidency in 2011. The deadlock has been a result of the Commission’s decision to remove provisions which allowed law enforcement access to the EURODAC central database for the prevention, detection and investigation of terrorism and other serious criminal offences. At the JHA Council at the end of April the Commission announced its intention to present a new version of the text to Ministers at the JHA Council on 7 and 8 June. We continue to await developments: once published the new text will be deposited with the Committee for scrutiny, followed by an Explanatory Memorandum.

**Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (Recast) (Document 14863/09 + ADD1, ADD2, ADD3 ADD4 (qualification directive).**

You will recall that the UK did not opt-in to the recast Qualification Directive. This was adopted by the Council on 24 November 2011 and is likely to come into force in late 2013 or early 2014.

EU negotiating mandate to allow Norway, Iceland, Switzerland and Liechtenstein to participate in the European Asylum Support Office (EASO).

On 28 July 2011, the Presidency, following an earlier recommendation from the Commission, published a draft negotiating mandate that would allow the Commission to open negotiations with Norway, Iceland, Switzerland and Liechtenstein leading to agreements that would allow them to participate in the EASO. The Presidency has now secured approval of the negotiating mandate.

We strongly support the participation of these countries in the EASO, which would be in line with our position that, rather than producing new legislation, the Commission and Member States should focus on building practical cooperation on asylum matters.
However, I would like to flag that this issue raises a difficult opt-in point. As you know, my position is that our special position as a Member State with the right to opt in applies to all measures in the Justice and Home Affairs field. Unfortunately, the EU institutions disagree; arguing that the opt-in does not apply here on the grounds that the measure is governed by the EU’s exclusive external competence.

I have put down a formal statement making it clear that in our view the opt-in does apply and that we expect the Commission to have regard to this fact when negotiating the agreement. Nevertheless, this issue is likely to remain contentious and has the potential to cause difficulties for the scrutiny timetable. I will provide further updates when the Commission completes the negotiations and proposes further Council Decisions authorising the EU to sign the agreements. In line with our position, this will require us to take further opt-in decisions.

28 May 2012

Letter from the Chairman to Damien Green MP

Thank you for your very informative letter of 28 May 2012 on the above proposals which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 13 June 2012.

We welcome your helpful updates on the progress of negotiations on these measures. Whilst the views of the Committee remain those already established in earlier correspondence, we look forward to receiving further information from you as it becomes available.

With regard to paragraph nine of your letter, we are concerned about the wide gap which exists between the support given to asylum seekers and UK nationals in the same circumstances, particularly the disabled and 16-17 year olds, and would welcome your observations on the compatibility of these arrangements with the Reception Conditions Directive. We wonder if this was a material factor in the decision not to opt in to this measure.

14 June 2012

Letter from Damian Green MP to the Chairman

Thank you for your letter of 14 June in which you ask questions regarding the recast version of the aforementioned Directive.

The stipulation contained in Article 17(5) of the Commission’s original proposal for this Directive would have restricted Member States’ ability to set asylum support rates by providing that a decision to make them lower than equivalent benefit rates for nationals would need to be “duly justified.” Although this was a factor in the UK Government’s decision not to opt in to the recast Directive there were other issues of concern with the Commission’s proposal. These included the inclusion in Article 9(2) of a requirement for a judge to authorise any detention ordered by administrative authorities within 72 hours. This provision was not compatible with the UK Border Agency’s Detained Fast Track System. It was also considered that the relaxation in the qualifying period for access to the labour market for asylum seekers from twelve to six months (Article 15) could act as a pull factor by encouraging migrants to come to the UK and claim asylum for financial reasons.

Furthermore, the Government’s view is that the EU should not be focusing its energies on implementing a Common European Asylum System (CEAS) through further legislative harmonisation. This approach creates paper based solutions for problems which in fact require practical cooperation in order to be resolved. This along with specific concerns over the proposals, led to our decision not to opt-in to recast version of this Directive, as well as the Qualification and Asylum Procedures Directives.

You also asked about the extent to which current asylum support arrangements are compatible with the recast version of the RCD, particularly in relation to 16-17 year olds and the disabled. Article 17(5) of the agreed text allows for Member States to set asylum support rates at a lower level than equivalent benefit levels for nationals, provided these “ensure a standard of living higher than what is prescribed for asylum seekers under this Directive”. It also amends the Commission’s original proposal by stating that the provision should be read in conjunction with Recital (20), which has also been amended to make it clear that “Member States may grant less favourable treatment to asylum seekers compared to nationals as specified in this Directive.”

Articles 17(1) and (2) of the Directive establish basic principles regarding the quality of living which material reception conditions should afford to asylum seekers. These provisions are currently
unaltered from the Commission’s proposal and state that Member States are required to ensure that material reception conditions provide an “adequate” standard of living which “guarantees [the applicant’s] subsistence and protects their physical and mental health.”

Although asylum support rates are lower than equivalent income support rates, this is not incompatible with the recast Directive. It reflects the temporary nature of the support. The rates also take into account the availability for asylum seekers under section 95 of the Immigration and Asylum of the Act 1999 of fully-equipped free accommodation which includes the payment of utility bills.

With regard to the support arrangements available for disabled asylum seekers as compared to UK nationals who have a disability, while Section 115 (b) and (d) of the 1999 Act provides that asylum seekers are not entitled to receive Severe Disability Allowance or Disability Living Allowance, by virtue of Section 116 of the same Act Local Authorities are under a statutory obligation to provide support to asylum seekers with a care need. This applies provided the need has not arisen because of destitution or the physical effects, whether existing or anticipated, of being destitute.

Finally, you also enquired about the support rate paid to 16 and 17 years old. The support rate in respect of these individuals is lower than that for under 16s to reflect that 16 and 17 year olds are not required to continue in full-time education and therefore are in a position akin to adult asylum seekers.

As such I believe that the current asylum support arrangements are sufficient to ensure that the essential living needs of all asylum applicants are met and that they are compatible with Article 17(5) of the current Council text.

I will provide further updates on negotiations on all other outstanding elements of the Common European Asylum System legislative package in due course.

18 July 2012

Letter from the Chairman to Damien Green MP

Thank you for your letter of 18 July 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 25 July 2012.

We are grateful for your response to our questions and look forward to receiving further updates on the remaining elements of the Common European Asylum System in due course.

26 July 2012

CROSS BORDER THREATS TO HEALTH (18509/11)

Letter from Anne Milton MP, Parliamentary Under-Secretary of State, Department of Health, to the Chairman

Further to Lord Roper’s letter of 2 February 2012 and Earl Howe’s reply dated 16 February 2012, I am writing to provide an update on the Government’s position and to seek your agreement to lift the Committee’s scrutiny on this proposal.

There have been several meetings of the EU Public Health Working Group which have discussed in more depth the Serious Cross-border Threats to Health proposal. The Danish Presidency has produced a compromise text that has been discussed. The amendments made by the Presidency to the original text all accord with the UK’s overall objectives.

The final working group met on 5-6 June and the Presidency will produce a revised proposal and a series of questions. The new text and questions will go to COREPER on 14 June and they will select a few questions to frame the discussions at the EU Employment, Social Policy, Health and Consumer Affairs Committee (EPSCO) on 21-22 June.

In general, the direction of travel amongst Member States aligns with UK interests and from a policy perspective, we are supportive, in particular, of amendments put forward by Germany which address the UK concerns and objectives identified in our earlier Explanatory Memorandum below; these were:
1. THAT THE SCOPE OF THE DECISION WOULD BE LIMITED TO MEASURES RESPONDING TO PUBLIC HEALTH THREATS, RATHER THAN THE THREATS THEMSELVES.

In the Presidency’s compromise text the scope of the proposed decision had been tightened through changes to Articles 1-3, in particular the amendments to the definition of ‘serious cross border threat to health’ in Article 3 (g) act to limit the scope of the Decision in a manner proposed by the UK.

The reference to ‘sources’ of threats has been removed from Article 1(2) and we supported a further amendment to Article 2(1), such that the Decision should only apply ‘to public health measures’ in case of serious cross-border threats to health.

2. TO AVOID DUPLICATION WITH EXISTING MONITORING, REPORTING AND ALERT AND INFORMATION SHARING SYSTEMS, FOR INSTANCE UNDER THE CIVIL PROTECTION MECHANISM. SPECIFICALLY, WE HAD CONCERNS THAT THERE WERE OBLIGATIONS TO PROVIDE INFORMATION THAT WENT BEYOND INFORMATION ON THREATS TO HEALTH.

The Commission Article 4 (2) (iii) provides for Member States to provide the Commission with information on the ‘business continuity arrangements in critical sectors of society’. This potentially goes further than just response planning for health threats and may require Member States to provide the Commission with information that concerns civil contingencies.

It also has the potential for duplication with other systems. We supported the deletion of this sub paragraph where by the information to be provided and under what procedure will be determined by the Health Security Committee, instead of being set out in the Decision and then further determined by the Commission.

The Presidency text proposes the deletion of Article 9(h), which requires Member States to communicate ‘measures other than public health measures’. We supported the deletion of this sub paragraph. We consider that Article 2(2) needs to be further strengthened to ensure no overlap with other existing mechanisms.

3. TO OPPOSE ANY COMPETENCE CREEP AND MOVEMENT TO HARMONISE MEASURES IN RESPECT OF MEMBER STATES’ PREPAREDNESS AND RESPONSE PLANNING FOR HEALTH THREATS RESULTING FROM THIS DECISION.

We had concerns that the duties to consult with the Commission and other Member States in respect of our preparedness and response planning would be more onerous than the current obligations under Decision 2119/98. In the Presidency text at Article 4(4) the word ‘consult’ has been changed to ‘inform’. At Article 11 (2), ‘consult’ has been changed to ‘inform and consult’. This mirrors the wording in Decision 2119/98 and we are content from the working groups that the intention is to continue the current level of liaison and consultation.

IN LORD ROPER’S LETTER DATED 2 FEBRUARY 2012 HE RAISED A NUMBER OF ADDITIONAL CONCERNS.

The scope of the proposed decision has now been tightened reflecting changes to Articles 1-3. Article 2 has been strengthened to ensure that there is no overlap with other legislation and the Decision does not take precedence over other existing mechanisms. The reference to ‘sources’ of threats has been removed and we would agree that this should not be within the scope of the proposal and that it should apply to public health measures in case of cross border threats to health and to the epidemiological surveillance of the communicable diseases and related special health issues.

He also raised the issue of threats not being restricted to the EU, citing the example of voluntary joint procurement of vaccines. Article 5 covers joint procurement of any medical countermeasure to support the clinical response to a cross border health threat.

If there was sufficient demand a joint procurement could be launched by a group of Member States with coordination by the Commission to cover any procurement. We see no objection to that as in some circumstances it could be more efficient. Although the UK is not participating in the first such planned procurement for pandemic specific vaccine. However, there could be other procurements in the future if there was sufficient demand, to which we could opt in or out at the time.

LORD ROPER ASKED ABOUT THE POTENTIAL CONTRIBUTION OF THE WHO INTERNATIONAL HEALTH REGULATIONS (IHR) TO THIS PROPOSAL.

There are many potential cross-border threats on which we regularly share information with our EU colleagues, under the criteria and mechanisms established by the legislation that is being revised, that
fall short of meeting the IHR criteria for reporting to WHO as potential emergencies of international concern. Examples include outbreaks of Legionnaires’ disease and outbreaks of salmonella related to internationally distributed foodstuffs, where multilateral (rather than simple bilateral) coordinated response is required but there is no question of seeking to restrict international trade or travel, nor a need for active Commission intervention.

The range of provisions within the EU legislation include specific responses, such as mechanisms for agreeing EU-wide case definitions that add value to the broader set of responses covered by the IHR.

The UK is not participating in the planned joint procurement of pandemic flu vaccine because we have already started our vaccine Advanced Purchase Agreement (APA) procurement and we have contracts in place for the replacement of our antiviral stockpiles.

The Committee raised specific concerns about Article 12 which relates to common temporary health measures and felt that powers delegated to the Commission needed to be more clearly defined. We believe this Article runs contrary to the principles of subsidiarity and adds little value and that this Article should be deleted. This view was supported at the last Working Group meeting by other Member States. The Commission has put down a strong reserve on the deletion of this Article but the Presidency has indicated that this Article will be a topic of discussion at the EU Employment, Social Policy, Health and Consumer Affairs Committee (EPSCO) on 21-22 June.

We will continue to keep you advised on any further progress on negotiations but in the meantime I would be grateful if the Committee would now waive scrutiny on this Proposal.

14 June 2012

Letter from the Chairman to Anne Milton MP

Thank you for your letter of 14 June 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 June 2012.

Your explanatory memorandum on this proposal was submitted on 10 January 2012. In spite of our letter of 2 February 2012 requesting further information, we received no further substantive communication from you until 14 June 2012. As the Government have clearly been actively participating in negotiations during this time, it is not clear why a response to our letter of 2 February was not sent a great deal earlier. The standard response time is ten days. We would ask that in future, you update us on a more frequent basis to enable us to conduct the required scrutiny more effectively.

Your letter requested that we clear this proposal from scrutiny. We are unsure why this was considered necessary, as it was only discussed in general terms, rather than agreed, at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 20-21 June. Therefore, we will continue to hold this proposal under scrutiny and look forward to receiving an update on the recent discussions at the EPSCO Council and a fuller explanation, within the standard ten days, as to why you prefer the deletion of Article 12 rather than a clearer definition of the current text.

If and when the decision appears close to being taken in the Council, we will be prepared to consider clearing the text from scrutiny to avoid a scrutiny override.

28 June 2012

Letter from Anne Milton MP to the Chairman

Thank you for your letter of 28 June 2012 where my letter of 14 June 2012 was considered by the Home Affairs, Health and Education Sub-committee of the Select Committee on the European Union at its meeting on 20 June 2012.

With respect to your second paragraph a response was made by Earl Howe to your letter of 2 February 2012 on 16 February 2012, a copy of which is attached to this letter. However, please accept my apologies that this was a holding reply and with hindsight, a further update letter since Earl Howe’s holding reply to the Committee would have been helpful.

Our negotiating position on this proposal has been to:

— To ensure the scope of the Decision focuses on measures to respond to the health consequences of threats from sources of biological, chemical,
environmental and other unknown origin, rather than to combat the threats themselves.

— Avoid duplication with existing monitoring, reporting and alert and information sharing systems e.g. under the EU Civil Protection Mechanism. The proposal should be amended so that it does not take precedence over alternative appropriate procedures already in place in other sectors.

— Oppose any competence creep and movement to harmonisation of measures in respect of Member States’ preparedness and response planning for health threats, resulting from this Decision.

The Government remains concerned that the Commission’s position on Article 12 would allow the Commission to use urgent delegated acts to adopt “common temporary public health measures to be implemented by Member States”. During Council working group discussions the UK and other Member States indicated that the article remains vaguely drafted and its scope is potentially extremely wide. Of particular concern is that it is understood this article could be used to adopt additional border control measures. Clarity has been sought from the Commission by the Government and several Member States, on the meaning and intentions behind this article. The Commission did say that it was ‘unlikely’ that the Article would be relied upon to adopt border control measures but, significantly, did not rule it out.

As currently drafted, the Commission would adopt measures under this article by urgent procedure delegated acts, which would be immediately implemented. We consider that Article 12 proposes too far-reaching powers for the Commission, bearing in mind that such delegations ought to be used only to “supplement or amend certain non-essential elements of the legislative act” and may not be used in relation to “essential elements of an area”.

At the orientation, debate during the EPSCO Council meeting held on 20-21 June 2012 one of the questions was the Commission’s power to take extraordinary temporary health measures under Article 12. The Government’s position continues to be that this article runs contrary to the principles of subsidiarity and adds little value and we, like virtually all Member States, agreed with the Presidency’s proposal to delete this article.

The two remaining questions at the orientation debate covered the Commission’s role in the co-ordination of preparedness planning and the composition of the Health Security Committee.

With respect to co-ordination of preparedness planning there was broad consensus that the co-ordination of response planning was primarily an issue for Member States, and that effective co-ordination could be effectively conducted via the Health Security Committee, without any need for binding measures.

In terms of the membership of the Health Security Committee, most Member States, including France, Germany and Sweden, felt that it was important for the Committee to meet at a sufficiently high level to enable it to take decisions rapidly. There was then a spectrum of views as to what extent such a high level standing committee should be bolstered by expert participation in response to specific threats. The Government’s position like, Portugal, Italy and Finland, favoured a degree of flexibility in this regard, whereas countries like the Netherlands, Spain and Greece favoured keeping the Committee’s membership relatively constant. Some Member States, such as Belgium, Poland and Romania, suggested the Health Security Committee could convene ad hoc expert groups or working parties to provide more specific expertise. The Commission agreed that it was important that the membership of the Health Security Committee was sufficiently high level to enable the committee to make decisions.

We are now at the stage where there has been an exchange of views in the European Parliament and the Committee on the Environment, Public Health and Food Safety (ENVI) Rapporteur, Gilles Pargneaux published his report on 20 June, with a discussion on the Rapporteur’s report to follow on 10 July. The ENVI committee is due to vote by 18 September with a plenary vote scheduled for w/c 22 September.

I note the Committee will continue to hold this proposal under scrutiny and we will provide a further update when this is considered further in Council.

10 July 2012
Letter from the Chairman to Anne Milton MP

Thank you for your letter of 10 July 2012, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 25 July 2012.

We are grateful for the information you have provided on the progress of negotiations and the further explanation of the Government’s position.

We will continue to hold this proposal under scrutiny and look forward to receiving further updates as negotiations progress.

We do not expect a response within the standard ten days. However, as set out in our letter of 28 June 2012, we would ask that you do continue to update us on a frequent basis to enable us to conduct the required scrutiny.

26 July 2012

CYPRIOT PRESIDENCY PRIORITIES: HEALTH

Letter from Anne Milton MP, Parliamentary Under-Secretary of State, Department of Health, to the Chairman

I am writing to give you an overview of the main EU events that are planned during the next six months and to update you with the new Cypriot Presidency’s priorities on health. I hope this will assist you in planning the business of your committee.

During this Presidency, Cyprus intends to focus on the two main pieces of legislation that are currently under negotiation, the proposal for a decision on cross-border threats to health and the proposal for a regulation establishing the 3rd multiannual programme of EU action in the field of health for the period 2014 – 2020.

There is also potential, later in the year, for the Commission to bring forward proposals to revise both the clinical trials directive and the medical devices directives. The Presidency intends to initiate discussions on both of these after their adoption. The Government supports the revision of these pieces of legislation, and has been engaging with the Commission on both proposals.

The issue of chronic diseases will be addressed by highlighting the essential role of disease prevention, early diagnosis and health promotion programmes in combination with innovative approaches in healthcare and by addressing main health determinants. In this context, the Presidency will seek to agree Council conclusions in order to emphasise healthy living throughout the lifecycle, leading to a healthy ageing process.

The Presidency will also deal with the issue of organ donation and transplantation, aiming to agree Council conclusions based on the existing Action Plan on Organ Donation and Transplantation (2009-2015).

In addition, the Cypriots will be organising the following events during their Presidency:

— High-Level Conference on Healthy Ageing, 5th – 6th September 2012
— INNOVAHEALTH Conference (discussing open innovation in the area of Health, placing particular emphasis on personalised medicine, preventive health, e-health and nutrition), 12th – 13th October 2012
— Chief Medical, Chief Nursing and Chief Dental Officers Meeting, 9th – 10th October 2012
— Annual meeting of the Advisory Forum of EFSA (European Food Safety Authority), 5th – 7th December 2012

The health section of the formal EPSCO Council will be held on the 7th December 2012.

17 July 2012
CYPRIOT PRESIDENCY PRIORITIES: JHA ISSUES

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

Cyprus will take over the rotating EU Presidency on 1 July 2012. I am writing to give you an overview of likely activity during the Cypriot Presidency on JHA and Government Equalities Office (GEO) issues during the next six months, in terms of those dossiers covered by the Home Office. I also set out where dossiers will or are likely to attract the opt-in and therefore might be debated. I hope this will assist the Committee in planning the scrutiny of dossiers that will be put to the JHA Council in this period and any subsequent opt-in decisions.

The current timetable for consideration of dossiers at JHA Councils under the Cypriot Presidency is:

- 23-24 July (Nicosia) JHA Informal
- 19-20 September (Brussels) JHA
- 25-26 October (Luxembourg) JHA
- 6-7 December (Brussels) JHA

The Cypriots have indicated that the priorities for their Presidency in areas for which the Home Office is responsible will be: asylum; civil protection; trafficking; legal migration instruments; asset recovery; cultural property; training and coordination across law enforcement; and the integration of migrants.

Recently a dispute has arisen between the European Parliament and the Council over the legal base for the new Schengen Evaluation Mechanism. This has resulted in the Parliament putting five JHA dossiers on hold: the Schengen Borders Code; the Cybercrime Directive; the European Investigation Order; the internal security aspects of the 2013 EU budget; and the PNR Directive. This could herald a more difficult phase on Council-Parliament relations and could have an impact on further dossiers. It remains to be seen where this dispute will lead but it should be borne in mind when assessing likely progress under the Cypriot Presidency.

COUNTER TERRORISM AND DATA ISSUES

On Counter Terrorism the Cypriots plan to produce an ‘ideas document’ on the protection of soft targets, with a view to Council Conclusions in October. They are also planning a conference on Aviation Security on 31 October.

Negotiations on Passenger Name Records (PNR) data will shift to the European Parliament under the Cypriot Presidency after the Council agreed a General Approach on this Directive in April. We are aware the Cypriots have been working closely with the Commission to prepare themselves for negotiations in the Parliament and we hope the Directive will be agreed under their Presidency.

The Data Retention Directive is currently under review by the Commission who have indicated that they wish to make changes, including greater ‘harmonisation’, the adoption of a uniform retention period and the introduction of new measures governing access to the retained data, which we have resisted along with the majority of Member States. It is possible the Commission will publish an impact assessment and proposed changes to the Directive at some point during the Cypriot Presidency.

It is not yet clear whether any new Directive would attract the opt-in. This would depend on the exact nature of the proposals.

A review of the European Programme for Critical Infrastructure Protection (EPCIP) and the Directive on the identification and designation of European Critical Infrastructure (ECI) is ongoing. A Commission Communication outlining the future direction of the Programme, including any legislative implications, is expected towards the end of the Cypriot Presidency. The Government wishes to see the Programme revised and updated but would wish to be sure that any changes contribute to the aim of improving the protection of critical infrastructure in the EU. As with the Data Retention Directive, it is not yet clear whether any proposals in this area would attract the opt-in.
Policing and cooperation/legislation against crime

We expect the Cypriots to give priority to negotiating a Directive, proposed by the Commission in March, setting down minimum standards for the freezing and confiscation of criminal assets. Although the UK has not opted into this Directive we intend to take an active part in negotiations and will consider opting in at the post-adoption stage if a suitable text exists.

We had expected the Commission to propose a mutual recognition instrument at the same time as the Confiscation Directive but it has not been forthcoming. Our aim is to establish effective mutual recognition arrangements for both conviction and non-conviction based confiscation orders, in both the civil and criminal contexts. If such a proposal were brought forward, it would attract the opt-in.

In November, the Commission is likely to propose a new regulation governing the European Police Office (Europol), replacing the existing Council Decision dating from 2008. We do not think a new Regulation is necessary but if one is brought forward it will trigger the JHA opt-in. We have been engaging upstream with the Commission and other Member States to argue that any new Regulation should maintain Europol’s role as an organisation supporting cooperation between police forces, and not seek to assert any form of control over what those police forces do. As proposals for the Regulation are expected in November, negotiations will probably start under the Irish Presidency.

We understand the Commission intends to propose a new Regulation governing the European Police College (CEPOL) in November. Any new Regulation will trigger the UK’s opt-in. So far Cyprus has not been engaged in discussions around CEPOL and the negotiation of the new instrument is likely to happen under the Irish Presidency.

We expect the Commission to bring forward Directives on psychoactive substances and possibly drug trafficking shortly after the summer. Both measures would attract the opt-in. We can also expect draft revisions to legislation on drug precursors in July. As a single market measure this would not attract the opt-in. These measures and the development of the EU Drug Strategy will be the focus of the Cypriot Presidency in this area. A first draft of the new strategy will be presented by Cyprus in July and we hope that this will be adopted at the JHA Council in December.

In the area of the EU Policy Cycle for organised and serious international crime, a key priority for the UK under the Cypriot Presidency is to continue to promote practical cooperation in tackling organised crime, in particular by encouraging Member States to adopt administrative measures against perpetrators rather than relying solely on the criminal justice system. We will work with Cyprus to promote this ‘administrative approach’.

The Cypriot Presidency will also see the continued development of the eight Operational Action Plans (EMPACT) to promote cooperation against particular crime types. The UK is participating in seven of these projects and we are leading the projects on West Africa and Trafficking in Human Beings. In June, the eight projects will report to the EU’s Internal Security Committee on progress and the Cypriot Presidency will have a role to play in driving forward any agreed actions.

Subject to relations between the Council and EP, trilogue will continue on the European Investigation Order (EIO). Whilst these remain challenging there is an expectation that a first reading deal might be done by December. The Directive against attacks on information systems is at a more advanced stage, with COREPER on 29 June having agreed a text which, if accepted by the European Parliament in plenary could see the Directive adopted at the start of the Cypriot Presidency.

MIGRATION, ASYLUM AND BORDER CONTROL

On asylum, completing the Common European Asylum System (CEAS) will be a key priority for Cyprus. The centrepiece of their work in this area will be the EURODAC (II) Regulation, the latest proposal for which has recently been published by the Commission, and which attracts the UK’s opt-in. The Cypriots will aim to complete the Regulation under their Presidency in line with the Council commitment to complete the CEAS by December 2012. The Dublin (III) Regulation and the re-cast Asylum Procedures Reception Conditions Directives are also due to be finalised under their Presidency and they will be keen to ensure these are completed.

A key priority for the UK will be to ensure the implementation of the Council Conclusions ‘EU Action on Migratory Pressures – A Strategic Response’ (the Roadmap on Illegal Migration). This was agreed under the Danish Presidency at the June JHA Council. The Cypriots are likely to make implementation of this a priority and the UK is one of the Member States leading on the free movement aspects of this. We will work through the Presidency to ensure the Commission fully engages with this element of the roadmap.
The Roadmap also includes priorities focused on Greece and Turkey. The Government has been a vocal proponent of enhanced EU action on both countries. We have supported a more coherent and transparent approach in addressing the situation in Greece. We have also supported the Danish Presidency’s efforts to conclude the EU-Turkey re-admission agreement and have successfully lobbied on the need for enhanced cooperation with Turkey on a range of EU JHA dossiers. It is likely that relations between Turkey and Cyprus will hamper progress during the next six months. We anticipate further concerted action on Turkey following the commencement of the Irish Presidency in January 2012.

It is likely that the Commission will delay legislative proposals on the Smart Borders package for the Schengen area until December. Although these proposals will not apply to the UK we will need to assess what opportunities they present for making links with our e-Borders. However, we do not expect the Cypriots to make this a priority.

The Cypriots will be seeking to resolve the issue of Romanian and Bulgarian accession to the Schengen Area, currently blocked by the Netherlands. This will be discussed at the September JHA Council.

Cyprus will also want to take forward negotiations with the European Parliament on the Schengen Borders Code. We do not take part in this but it would allow border controls temporarily to be reinstated in those Member States that participate in the borders and immigration aspects of Schengen.

The Presidency also hopes to lead consultation with the European Parliament on the Schengen Evaluation Mechanism (SEMM) in which could take part in some areas, subject to a final decision on UK participation under the Schengen Protocol. The Cypriots will seek to have this adopted by the end of the year. However, the European Parliament and the Commission are disgruntled by the agreed Council position on the SEMM and may seek to work with the incoming Presidency to revisit this position. This would risk the UK’s ability to participate in the SEMM which depends on a change in the legal base, currently supported by the Council.

We expect the Commission to work to the existing Commission timetable on visa facilitation. The UK does not participate in the elements of the Schengen Acquis that relate to common visa policy and is not bound by EU visa facilitation agreements. Nonetheless, the UK is affected by this as it has sometimes led to increased numbers of undocumented irregular migrants at the UK border. A contentious issue will be the mechanism allowing a liberalisation to be suspended which will require careful steering through the European Parliament.

EQUALITIES

The European Commission work Programme for 2012 includes a legislative proposal to improve the gender balance on the boards of companies listed on stock exchanges. In March this year the Commission launched a consultation seeking views on action, including legislative measures that would introduce mandatory quotas. We have written to the Commission making clear that we do not support EU action. We expect proposals from the Commission to be brought forward in October 2012, therefore any first exchange of views would be under the Cypriot Presidency. However, the Cypriots are not currently supportive of quotas and this is unlikely to be a priority for them.

FUNDING

Despite an initial desire by the current Danish Presidency to complete the work on the Home Affairs funding programmes under the Multi Annual Financial Framework for the next EU budget (2014-2020), negotiations will now continue into the Cypriot Presidency. However, with the need to implement the necessary arrangements in 2013, there will be pressure to conclude work on the Asylum Migration Fund, Internal Security Fund, and the accompanying Horizontal Regulation by the autumn.

JHA EXTERNAL RELATIONS

Cyprus presented its priorities to the EU JHA External Relations Working Group in May. These included senior level EU meetings with the US, Russia and the Western Balkans. The Commission will publish its annual EU enlargement in the autumn which will include individual progress reports that are politically important for all aspiring Member States.
STOCKHOLM PROGRAMME

The Stockholm Programme is the EU's five year work programme governing JHA issues, running from 2009-2014. The Programme invites the Commission to submit a mid-term review of its implementation by June 2012. We are keen to ensure any review is not used as an opportunity to add unjustified new legislative measures to the Programme. The Cypriots will submit a paper allowing Ministers to express their views early in their Presidency.

26 June 2012

DATA PROTECTION (5852/12, 5853/12, 5833/12, 5834/12)

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

Thank you for your letter of 24 April 2012 on the above package of measures which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 23 May 2012.

We welcome the Government’s intention to participate in the Directive. However, we do find it regrettable that you did not raise the issue of the Schengen opt-out in your explanatory memorandum.

Given your view that the opt-out does indeed apply it was regrettable that the Government did not find time to debate the draft Directive before Prorogation (as it did in the Commons on 24 April) before the three month period expired on 14 May, thus failing to respect the Ashton and Lidington undertakings.

We agree with the Government’s decision to participate in the Directive and support in principle the strengthening of data protection rights for citizens. We also agree with the Government’s assessment shows the overall impact of both legislative acts in their current form could be negative. For this reason we will continue to hold this proposal under scrutiny. We look forward to receiving updates on the progress made in negotiations in due course.

23 May 2012

Letter from the Rt. Hon Lord McNally to the Chairman

Thank you for your letter dated 23 May 2012 on the response of the House of Lords European Union Committee on the above package of measures.

I apologise to the Committee that the Government did not draw the Committee’s attention to the opt-out sooner. The issue of whether the Directive should be considered as triggering the possibility of a Schengen opt-out or not is a complicated one and I do recognise that the Government reached its conclusion on this matter later than was ideal. As you mentioned, this means that a debate in the House of Lords did not take place before the opt-out decision deadline of 14 May 2012. The debate that was scheduled to take place in Grand Committee on the 21 May has now been put back until 20 June 2012. You will no doubt be aware that this will be on the floor of the House and will consider a Regret Motion submitted by Lord Pearson.

I would like to reassure the Committee that lessons have been learned by the Ministry of Justice in relation to the important issue of informing the Parliamentary Scrutiny Committees of opt-in or opt-out decisions and I thank you for your patience and understanding on this occasion. I have previously written to Bill Cash MP in similar terms. You will be aware that a debate did take place on the floor of the House of Commons on 24 April 2012.

In your letter, you state that the Committee agrees with the Government that the overall impact of the instruments in their current form could be negative. It is worth noting that the impact assessment checklists were prepared as an initial assessment of the instruments as they stood at publication on the 25 January 2012. In the case of the Directive, the assessment could not, at that time, factor in that the scope of its application to the UK will be significantly narrower than appears on the face of the instrument. As you requested, I will keep you informed on progress made in the negotiations, in particular regarding the Government’s assessment of the impact.

I am glad that the Committee agrees with the Government’s decision not to opt-out of the Directive under the Schengen Protocol. It is very important that the UK participates in this measure to facilitate
the continuation of data sharing arrangements with criminal justice agencies in other Member States and also contribute positively to negotiations in Council from the outset. Doing this is vital for the public security of the United Kingdom and will result in a better instrument at the end of the process.

As I explained in my letter to you dated 24 April, the Government considers that Article 6a of Protocol 21 of the Treaty on the Functioning of the European Union means that the Directive will have a limited application to the UK. The effect of Article 6a is that the Directive will only apply to the UK to the extent that police and criminal justice agencies process information under an EU measure that is binding on the UK (e.g. where the UK has opted into a relevant Title V measure). An example of processing where there is no relevant EU measure is domestic processing (for example exchanges between two UK regional police forces) – this is not presently regulated at EU level. The Government’s decision not to opt-out was taken having carefully considered this position and reaching a firm view that data processing carried out internally for law enforcement purposes should continue to be regulated at national level as it is now. It is my understanding that a number of other EU Member States hold a similar view.

29 May 2012

Letter from the Chairman to the Rt. Hon Lord McNally

Thank you for your helpful letter of 29 May 2012 on the above package of measures which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 13 June 2012.

We are grateful for your letter and will look forward to considering the Directive further in the debate which is scheduled to take place in the House on 20 June 2012.

We will continue to hold this proposal under scrutiny and will look forward to receiving updates on the progress made in negotiations in due course.

14 June 2012

Letter from the Rt. Hon Lord McNally to the Chairman

I am writing to inform you of the publication of the Government’s summary of responses to its recent Call for Evidence on the European Commission’s new data protection proposals, as requested in your 59th Report of Session 2010-12. As you will be aware, on 25 January 2012, the European Commission published a draft Data Protection Directive (covering the police and judicial sector) and a draft Data Protection Regulation (mainly impacting on individuals, business, the public sector and charities). The Government’s Call for Evidence, which was launched on 7 February and concluded on 6 March 2012, sought evidence on the potential impact on the UK of both the proposed Regulation and the proposed Directive.

The response document, a copy of which I enclose, summarises the evidence received from 145 respondents from across the public, private and third sectors, consumer groups and members of the public. In addition to inviting written responses to the Call for Evidence, officials from the Ministry of Justice took part in a series of bilateral discussions and roundtables to hear views from industry and rights groups. The response also sets out the next steps and how the Government will approach the forthcoming European negotiations.

Respondents to the Call for Evidence welcomed the opportunity for a revision of the current data protection framework. Rights groups and members of the general public welcomed the strengthening of individuals’ rights and greater transparency in the processing of personal data. However, businesses and some public sector organisations expressed their concerns about the additional burdens and unintended consequence stemming from the proposed Regulation. The evidence received will help to inform the UK’s position for the ongoing negotiations of the EU data protection instruments.

As you will recall, the Government’s aim is to secure a data protection framework that is proportionate, and that minimizes the burdens on businesses and other organisations, whilst giving individuals real protection in how their personal data is processed. The responses we have received have not altered this overarching position. However, the evidence about the potential costs of proposals, such as the mandatory designation of data protection officers, has been helpful in strengthening the Government’s case for a proportionate regime. Also, the evidence received from consumer groups and members of the public about the difficulties faced by individuals has allowed us to prioritise and focus on these areas. For example, we will support the provisions requiring transparency of processing, including the proposal for a new transparency principle and the
requirements for data controllers to provide accessible and easy-to-understand information about how personal data will be processed.

Alongside the summary of responses I am publishing the Impacts Checklists for the proposed data protection instruments, which I provided to your Committee earlier in the year. Primarily, the Checklists aim to assess the costs and benefits the proposed instruments could generate. These Checklists, informed by the Call for Evidence and other sources of information will form the basis of a fuller impact assessment which the Government is undertaking.

Throughout this process, the Government is committed to continuing to work with a range of interested parties. Negotiations are expected to continue until 2014 and we will of course keep your Committee informed of any developments at EU level.

28 June 2012

Letter from the Rt. Hon Lord McNally to the Chairman

You will have received my letter dated 17 July 2012 to Bill Cash [not printed] that provided an update on the Commission’s proposals, in particular following the European Scrutiny Committee evidence session attended by Crispin Blunt on 11 July 2012. I am writing to you now to inform your Committee of the progress made so far by the Government in negotiations on the data protection instruments. This letter reflects the wording of the letter sent to Bill Cash, but for the record constitutes the Government’s update to you and your Committee.

The Data Protection and Information Exchange (DAPIX) working groups have been meeting in Brussels since February in order to negotiate the instruments. Ministry of Justice and Home Office officials have attended to represent the UK. The main focus has been on the proposed Regulation, with only one day of negotiations so far having focussed on the Directive. Progress on the Directive has therefore been very limited, with the DAPIX working group only having discussed up to Article 4. At the most recent DAPIX session, which was held from 11-12 July, discussions reached Article 18 of the Regulation. However, the new Cypriot Presidency of the Council of the European Union sees the data protection package as a priority and has therefore scheduled six DAPIX working group meetings in order to advance the negotiations. The meeting of 11-12 July was the first such meeting. Although discussions would be held on both the Regulation and Directive during the course of this Presidency, the impression given was that, once again, significantly more time would be allocated to the Regulation.

The Cypriot Presidency would like to maintain the article-by-article review approach in the DAPIX working group started under the previous Danish Presidency but it would also like to hold thematic sessions on delegated and implementing acts, and administrative burdens. This is a positive development as it will enable wider discussion of the broader themes which cause concern and allow for more effective marshalling of arguments on a horizontal basis.

I consider that the UK is well placed to intervene on the subject of administrative burdens, given the 143 responses to the call for evidence held by the Ministry of Justice, many of which articulate concerns in this area further. This will be followed by a more substantive analysis of the European Commission’s own 241-page impact assessment which the MoJ will look to publish towards the end of 2012. We do not consider that the €2.3 billion worth of business benefits claimed by the Commission stands up to scrutiny and other Member State delegations have stated that they will be interested in reading our own analysis.

It is fair to say that the progress made to date reflects a desire by Member States to conduct a thorough review of all the articles and, in this regard, discussions have concentrated on several key points. In the Regulation, the text with regards to the definition of data, conditions for consent (and in particular ‘explicit consent’), information to data subject, and the so-called ‘right to be forgotten’ have been the subject of particularly intense discussion and scrutiny. I will write to the Committee again in due course in order to keep them informed of how these negotiations are progressing.

19 July 2012

Letter from the Rt. Hon Lord McNally to the Chairman

Thank you for your letter of 19 July 2012 on the above package of measures which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 25 July 2012.
We are grateful for your update on negotiations. We look forward to receiving further information in due course.

26 July 2012

DRAFT DIRECTIVE ON THE PROCEEDS OF CRIME (7641/12)

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

I am writing to thank you for your report of 27 April on the draft Directive on the freezing and confiscation of proceeds of crime in the European Union ('Confiscation Directive') and to inform you of the Government’s recommendation on the opt-in decision.

The Government welcomes the aims of the Directive. Asset freezing and recovery is a critical tool in our efforts to tackle organise crime both domestically and internationally. Many organised criminal groups work across borders and the Government set out in its 2011 Organised Crime Strategy its intention to increase the amount of assets recovered from overseas. It is in the national interest for all EU Member States to have wide ranging and effective asset freezing and confiscation powers. Enhanced cooperation at EU level would be a significant step forward in increasing overseas asset recovery.

As you say in your report, it is important that the UK continues to lead in this field, and has an influential role in negotiations on the Directive. At the same time, it is critical that we get the detail right and do not damage our domestic regime. After consultation with policy and operational partners, the Government is recommending that the UK does not opt in at this stage, with a view to negotiating the final Directive and considering, if there is a suitable text, a post adoption opt-in.

The Directive, as currently drafted, offers no direct benefit to our domestic asset recovery regime established by the Proceeds of Crime Act 2002 (POCA). Operational partners have also expressed concern that the Directive poses a risk to that regime, particularly to our non-conviction based confiscation powers. Non-conviction based confiscation powers are used for tackling the high level organised criminals who are able successfully to distance themselves from criminality thereby making it very difficult to secure a criminal conviction.

EFFECT ON OUR DOMESTIC REGIME

Article 5 introduces provisions on non-conviction based confiscation in limited circumstances. It requires that non-conviction based confiscation be possible in those cases where a criminal conviction cannot be obtained because the suspect has died, is permanently ill, or when his flight or illness prevents prosecution within a reasonable time and poses a risk that it will be barred by statutory limitations.

This Article is ambiguous. It appears to require non-conviction based confiscation where criminal proceedings have been brought and have failed to produce a conviction. However, it is not clear whether it addresses non-conviction based confiscation that is not linked to criminal proceedings at all. The UK’s non-conviction based confiscation powers, which are not linked to criminal proceedings, are much wider, and are based on civil law (they can be found in Part 5 of POCA). They have withstood repeated legal challenges on this point. If EU law were to confer greater protections on the defendants than currently required by the European Court of Human Rights under Article 6(1) (right to a fair trial in civil proceedings) of the European Convention on Human Rights (ECHR), this would significantly weaken our domestic regime. At present, the only way of transposing (at least part of) Article 5 of the Directive into domestic law would be through Part 5 POCA, which may open it up to fresh challenge in respect of the application of Article 6 ECHR.

Article 6 of the Directive allows third party confiscation of proceeds either where they were transferred to third parties by a convicted person or by someone falling within the scope of Article 5 or in respect of other property of a convicted person transferred to third parties. We believe that we are compliant with this Article and in some respects we exceed its terms. Our current domestic legislation which provides for third party confiscation is Part 5 POCA and this again introduces the risk of opening up Part 5 to challenge.

Given the nature of the risk identified it will be difficult to resolve these issues through negotiation, although we will of course seek to do so.
Article 8 provides safeguards aimed at guaranteeing the right to a fair trial. It requires an effective judicial remedy before a court, and the right to be informed on how to exercise such remedies. These safeguards equate to those found under Article 6(1) ECHR, not Article 6(2) and (3) ECHR which apply to criminal proceedings. We do not anticipate that they would impact on our civil confiscation regime. The obligation to provide a lawyer in non-conviction based confiscation cases at Article 8(5) would have implications for the legal aid budget, but initial indications are that many other countries share our opposition and we would have a high likelihood of successfully negotiating it out of the Directive.

The Government also has concerns about the potential impact of Article 4 of the Directive on our domestic extended confiscation measures. Article 4(2) prescribes the circumstances in which extended confiscation cannot be used, including for assets which are the product of alleged criminal activities for which the individual has previously been found innocent. As a minimum standards Directive, it is not clear how this restriction would apply in our domestic law. However, there is a risk that it would limit the circumstances in which POCA’s extended confiscation powers could be used, and thus weaken our extended confiscation powers. We may however be able to negotiate the text here.

Article 7(2) provides for the administrative freezing of assets without a court order. We do not currently provide for this in our domestic regime except for cash seizure. We will look to negotiate this out, although many Member States are in favour of such a provision.

LEGAL BASES OF THE DIRECTIVE

The Commission cites two legal bases for the Directive: Articles 82(2) and 83(1) of the Treaty on the Functioning of the European Union (TFEU). Article 83(1) is the principal legal base for this proposal. Article 82(2) appears to have been included on the basis that the draft Directive also makes provision in Articles 4 and 8 for safeguards in respect of the rights of individuals (defendants and suspects) in criminal procedure which relies on 82(2)(b) TFEU (defendant’s rights) for its legal base. Article 8 provides for a number of rights to be safeguarded including the right to be informed about the process, right to be represented by a lawyer and the right to an effective remedy. Article 4(2) introduces a double jeopardy exclusion in relation to extended confiscation.

In respect of Article 2(6) of the Directive a ‘criminal offence’ is defined for the purpose of the Directive by reference to nine former Third Pillar instruments which fall within the scope of the 2014 decision (on whether to accept ECJ jurisdiction for pre-Lisbon police and criminal justice measures), and two Directives that do not because we opted into them post-Lisbon. There is some ambiguity in the drafting of Article 2(6) in respect of which obligations from the cited instruments are actually “imported” into the draft Directive and we could expect to clarify this during negotiations.

NEGOTIATING OBJECTIVES

Irrespective of whether the UK opts in to the Directive we will take an active part in negotiating this Directive to shape it in the national interest. The current draft has areas of concern for the UK that we will seek to amend through negotiation. The UK has advanced legislation and a leading role internationally in this field. Even if we do not opt in at this stage, as the Government recommends, the UK will have a voice in negotiations. Our objectives will be to:

— clarify the scope of the Directive to ensure it does not compromise confiscation regimes that operate independently of criminal proceedings;
— clarify the obligations under Article 2(6) and ensure they are consistent with domestic policy and practice;
— amend Article 4(2) to remove the double jeopardy exclusion;
— clarify Articles 5 and 6 and ensure they do not compromise civil POCA proceedings;
— remove or amend the ‘administrative freezing’ power at Article 7(2);
— amend the safeguards in Article 8 so as not to add to the legal aid burden; and
— clarify Article 14, and in particular its relationship to the 2014 opt-out.

Our wider aim is to establish effective mutual recognition arrangements for both conviction and non-conviction based confiscation orders, in both the civil and criminal contexts. Whilst the draft
Directive adds nothing to our domestic asset recovery regime, mutual recognition arrangements could greatly improve our ability to recover the proceeds of crime which have been transferred to other Member States. The current draft does not contain any proposal to establish an effective system for the mutual recognition of confiscation orders, either of a criminal or civil nature. Law enforcement partners say that they would welcome such proposals and the Government will consider how best to use its influence in this matter.

11 June 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 11 June 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 June 2012.

Thank you for informing us of the Government’s decision (not, so far as we can see, a “recommendation” as you refer to it in your letter) not to opt in, at this stage at least, to the draft Directive. We are disappointed that you have decided to ignore the views of the House of Lords, set out in the resolution of 22 May, which recommended that the United Kingdom should opt-in to the Directive at the outset. The Committee continues to take the view that opting in at the outset would significantly enhance the chances of securing the negotiated changes to the draft Directive which are set out in your letter and with which we concur.

In addition, while we do not for one moment contest the right of the Government to come to a contrary decision to that of the House of Lords, we do find it regrettable that at no point in your letter do you appear to address the resolution or the views expressed in the debate that preceded its adoption. We are at a loss to see what purpose the Ashton and Lidington Undertakings serve if the views expressed by either House are not just overridden but apparently completely ignored.

We have no doubt the Government will be considering how best to bring to the attention of the House as a whole its decision not to accept its resolution and not to opt in to the draft Directive at this stage.

We also note that your letter appears to agree with the Committee’s view that the Directive should ideally contain provisions for the mutual recognition of confiscation orders. However, we note that when the House of Commons debated the draft Directive on 12 June, you stated that: “Our ultimate aim is to achieve better mutual recognition of both criminal and civil confiscation. The directive will not achieve that, and we will press for a further instrument or instruments in due course that would have that effect”. Therefore, we would welcome clarification as to whether the Government intends to raise this matter during the negotiations or to pursue it separately.

We would be grateful for a response to these points within the usual 10 days. Meanwhile we will be retaining the draft Directive under scrutiny and would expect to be kept informed of the progress of negotiations.

20 June 2012

Letter from James Brokenshire MP to the Chairman

I am writing to thank you for your letter of 20 June and to inform your Committee that the Government has decided not to opt in at this stage to the proposal for a Directive on the freezing and confiscation of proceeds of crime in the European Union. The Government explained its recommendation to Parliament in a letter to you and in the Lidington debate on this matter in the Commons on the 12 June which endorsed the Government’s proposed approach. I know that you will find the Government’s decision disappointing as it is contrary to the view of your Committee, and that of the wider House of Lords, as expressed at the debate on 22 May before the Government had come to a conclusion on this issue.

The Government welcomes the overall aims of the Directive and recognises the benefits of increased international cooperation to recover assets held overseas. However, as set out in my previous letter to you of 11 June, having analysed the contents of the directive and consulted with policy and operational partners, the Government identified a number of issues with the Directive, including a serious problem with Article 5 of the Directive which introduces provisions on non-conviction based confiscation in limited circumstances. Whilst I recognise that your Committee believes that opting in at this stage would be the best way to achieve our objectives during negotiations, the Government
considers the risk to our domestic regime to be too great to justify opting in under a process
governed by Qualified Majority Voting.

The UK already has strong powers which are successfully used to tackle criminal finances, and which
are already compliant with or stronger than many of those that the draft Directive proposes. As the
Directive offers no direct benefit and the risk to our domestic regime posed by Article 5 is sufficiently
serious, we have therefore decided that the best course of action is not to opt in at this stage.

The fact that we are not opting in at this point is in no way an indication that we do not take the issue
of cross-border organised crime seriously. The Government considers it to be of the greatest
importance. That means, however, that we must get the detail right and be fully cognisant of the
operational impact of any legislative changes. We will take a full part in the negotiations on the
Directive and will seek to shape it in the national interest, as I explained in my letter of 11 June. It is
our wider aim to explore the options for mutual recognition arrangements for both conviction and
non-conviction based confiscation. Mutual recognition arrangements would require careful
consideration but offer the opportunity significantly to enhance our ability to recover assets held in
other Member States.

Once the text of the Directive has been adopted we will carefully consider the case for a post-
adoption opt-in. Any such decision will be subject to Parliamentary scrutiny in the normal way, and
we will of course keep you updated on the progress of negotiations.

28 July 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 28 June 2012 on the above proposal which the Home Affairs, Health and
Education Sub-Committee of the Select Committee on the European Union considered at its meeting
on 11 July 2012.

We note your confirmation that the Government have decided not to opt-in to this Directive at this
stage and can only repeat our disappointment with this decision.

Our previous letter of 20 June quoted your statement from the 12 June Commons debate on the
draft Directive as follows: “Our ultimate aim is to achieve better mutual recognition of both criminal
and civil confiscation. The directive will not achieve that, and we will press for a further instrument or
instruments in due course that would have that effect”. We then asked for clarification as to whether
the Government intended to raise this matter during the negotiations or to pursue it separately.
Unfortunately, your recent letter fails to properly address this point so we would be grateful if you
could now do so.

We look forward to receiving a response within the usual 10 days. In the meantime we will continue
to retain the draft Directive under scrutiny and expect to receive further updates on the progress of
negotiations in due course.

12 July 2012

Letter from Lord Henley, Minister of State for Crime Prevention and Anti-Social
Behaviour Reduction, Home Office, to the Chairman

Thank you for your letter dated 12 July regarding the Confiscation Directive (Document No.
7641/12), enquiring how the Government intends to pursue its interest in establishing more effective
mutual recognition arrangements. We are obviously at an early stage in the negotiations on this
instrument. The Government will explore options for mutual recognition with our EU partners
through the negotiations on the Directive and through our normal contacts with the Commission,
European Parliament, and other Member States.

1 August 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 1 August 2012 on the above proposal which the Home Affairs, Health
and Education Sub-Committee of the Select Committee on the European Union considered at its
meeting on 10 October 2012.

Thank you for clarifying how the Government will seek to achieve the mutual recognition of
confiscation orders.
We will continue to retain the draft Directive under scrutiny and expect to receive further updates on the progress of negotiations in due course. Please keep us informed of any opportunities that may emerge either through negotiation on the Directive or through normal contacts with other Member States, for achieving the mutual recognition of confiscation orders.

11 October 2012

ERASMUS FOR ALL: STUDENT MOBILITY DATA (17188-11, 17574/11)

Letter from the Rt. Hon David Willetts MP, Minister for Universities and Science, Department for Business, Innovation and Skills, to the Chairman

In my letter of 3 February I said that updated data on student mobility analysed by ethnicity, socio-economic class and disability was expected to be available in May, and that I would send it to you then.

We only recently received the data from the British Council, and I therefore apologise on their behalf. Their explanation is that the delay was a result of the longer time it took this year to complete the verification of the Erasmus data-set, which was a consequence in part of the welcome increased uptake of the programme, and of the increased number of primary controls they consequently needed to carry out. They add that having reviewed their system they believe that in future the data should be available by June, and I have asked my officials to work with them to achieve this.

The data show small percentage point increases in students with disabilities, from non-white backgrounds and from non-managerial backgrounds. The same is true for Erasmus students, though in the cases of disability and ethnicity the increase is slightly less, whereas in the case of non-managerial backgrounds it is slightly greater.

Please find enclosed [not printed] the Analysis of Erasmus cohort 2010/11 by ethnicity and socio-economic group – latest data, with comparison to earlier years.

10 October 2012

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

Thank you for your letter of 10 October 2012. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered it at a meeting on 17 October 2012.

We are grateful for the updated data on student mobility that you have provided and appreciate the explanation for its delay. We welcome the indications that participation rates are improving, however modest. We would be grateful if you could provide us with an updated set of these figures in a year’s time.

We continue to consider widening participation in Erasmus and other mobility programmes to be very important. We note that a number of participants in the debate on The Modernisation of Higher Education in Europe report (27th Report of Session 2010-12, HL Paper 275), which took place in the chamber on 11 October, also emphasised this aim. We further note that Baroness Garden of Frognal responded to these particular points, and other matters, during the debate. We have taken note of her response and welcome its positive tone.

We are now content to clear Documents 17574/11 & 17188/11 (the Erasmus for All Communication and draft Regulation) from scrutiny.

No response to this letter is required.

17 October 2012
Letter from the Chairman to James Brokenshire MP, Parliamentary Under-Secretary for Crime and Security, Home Office

Thank you for your explanatory memorandum of 23 April 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 23 May 2012.

We welcome your support for the Commission’s proposal, as set out in this Communication, to locate the European Cybercrime Centre within Europol. As you will recall, this reflects the recommendation the Committee made in its May 2011 report on the EU Internal Security Strategy (17th Report of Session 2010-12, HL Paper 149).

We have already put our views to the Government on the issue of resources for the Cybercrime Centre. We continue to believe that this is unrealistic to look for that funding within Europol’s existing budget. We believe that some additional funding and resources will be needed if the Centre is to achieve its aims but agree that this will need to be found from the overall financial envelope provided for in the next Multiannual Financial Framework currently under negotiation.

We note that you are in the process of clarifying a number of elements of the proposal with the Commission. We would be grateful to receive a summary of the information you receive as soon as this is available. In the meantime we will continue to retain this document under scrutiny.

23 May 2012

EU BUDGET: HOME AFFAIRS FUNDS (17285/11, 17289/11, 17287/11, 17290/11)

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

Thank you for your letter of 26 April clearing these proposals from scrutiny. You asked to be kept informed about negotiations.

Summary of progress on negotiations:

INTERNAL SECURITY FUND (BORDER AND VISA):

Discussions have focused on the definition and scope of eligible actions, reducing administrative burdens, ensuring technical assistance will cover the actual cost of administrating the Funds and ensuring control remains with Member States rather than with the Commission, through the use of implementing acts over delegated acts. Our key concern is to ensure that arrangements for administering the Fund, given the link to ISF (police), remain consistent across all Home Affairs proposals and that any solutions to horizontal issues, such as technical assistance, remain acceptable. However, as noted, we are excluded from this Fund.

HORIZONTAL REGULATION LAYING DOWN PROVISIONS FOR ALL FUNDS:

The first reading took place on 21 and 22 March and 12 to 13 April and comments returned to the Presidency on 26 April. The second reading is scheduled for 24 and 25 May. It is not clear whether that will be sufficient for agreement on the text, however the tenure of the discussion at first reading points to significant consensus between Member States.

Our key concern has been to ensure that this Regulation should cite the appropriate legal base. As noted in my last letter, there was a suggestion during negotiations that it should be classified as building on the Schengen acquis since it will support the ISF (External Borders) Fund as well as the AMF and ISF (Police) Funds. The ISF (External Borders) Fund is of course a development of Schengen. However, it has been agreed at COREPER that this Horizontal Regulation is not Schengen related, maintaining the original proposal from the Commission. This decision was taken at the same time it was agreed that the Schengen classification of the ISF (Police) was inaccurate and should be removed. However, given that the provisions within the Horizontal Regulation will support the operation of the ISF (External Borders) Fund, it has been agreed that the associated countries, namely Norway, Switzerland, Iceland and Liechtenstein, will participate fully in discussions on this text. The Government believes that this is a pragmatic solution.
In the Explanatory Memorandum we also indicated a concern about the resource implications of the arrangements for shared management of the Programme, whereby Member States would allocate a proportion of funding directly in line with national priorities. In particular, this will require Member States to create teams to manage the Funds at a national level. Whilst the proposals allocate a percentage of the Funds to support the work of the teams e.g. staff costs, we have been concerned that the amount allocated is insufficient. Other delegations have shared that concern and there is a prevailing view that a minimum sum should be allocated through the Regulation, in addition to a percentage of the funds, to ensure that Member States have sufficient resources to manage the programmes at a national level. We welcome this approach.

More generally, we have continued to argue that administrative burdens and therefore costs for all parties, but particularly Member States, should be reduced and proportionate. We also take the view that expectations around the development of the content of the policy dialogue, the national programmes, procedures for consultation and reporting requirements should from the beginning be transparent, efficient, timely, appropriate, proportionate and avoid duplication. Discussions to date have seen some consensus on these elements from Member States in a direction that is helpful in addressing our concerns and the Commission has stated its intention, in principle, to reduce administrative burdens. We believe we will be able to achieve the majority of these aims.

INTERNAL SECURITY FUND (POLICE):

The first reading took place on 26 and 27 April and second reading is scheduled for mid June. We have a number of aims for this Regulation, many of which are technical in nature.

The JHA Council in January indicated that the ISF(police) would be the appropriate source for providing Member States with support to develop and implement systems for the use of Passenger Name Records to combat terrorism and serious crime. The UK has developed its own system and encouraged the need for EU funding to support other Member States in setting up their systems. The Presidency, Commission and a number of delegations have also indicated that they support this. We wish to ensure that the Article on eligible actions specifically includes developing and implementing systems for this.

In the previous multiannual financial framework the issue of tackling misuse of drugs was dealt through a number of programmes under health legal bases. This included the Drugs Prevention and Information Programme. For 2014-2020 the Commission has proposed to combine all drugs programmes, including health elements, in the Justice Funding programme. However, we take the view that elements of this work, such as tackling trafficking of drugs, is better addressed in the priorities of ISF(police) programme. Other delegations have also queried this approach to support counter narcotics efforts and the Presidency has therefore proposed that elements in the Justice programme pertaining to reducing the supply of drugs and drugs reinforcement are transferred to ISF(police) and elements that have a health legal base be transferred to the Health for Growth programme. We believe this is a sensible approach and expect to see necessary changes to all three proposals.

As with the Horizontal measure, we wish to keep administrative burdens to a minimum and, as already explained, ensure that the allowance for technical assistance to support national teams in administering the Fund through shared management is sufficient. We support the pragmatic solution already outlined which identifies a minimum sum for all Member States plus a small percentage.

On the distribution key in Article 10 of the Regulation, which is the basis for allocating resources to Member States under shared management, we have been seeking to delete the criteria on the number of designated Critical Infrastructures and the weighting for Gross Domestic Product (GDP). The tenure of discussions to date has shown that Member States have similar concerns. There is less consensus regarding the distribution key involving the allocation of resources against GDP.

ASYLUM AND MIGRATION FUND:

There have been no further working groups on the AMF since my last letter on the Home Affairs Funding package.

You also asked what the consequences were of not opting in to the ISF (police) measure. The most immediate consequence is that the UK will not be bound by the adopted text and will have no vote at the Council when it is adopted. However, we retain our seat at the negotiating table and are negotiating proactively to seek changes to the text to meet our concerns with what was proposed. Once we have a clear view of the final text, and the budget allocated within the deal on the next EU
Multi-Annual Financial Framework, we will consider whether an application to join the proposal post-adoption would be appropriate.

17 May 2012

EU-CAPE VERDE: READMISSION AGREEMENT (14237/12)

Letter from the Chairman to Damian Green MP, Minister for Policing and Criminal Justice, Home Office

Thank you for your explanatory memorandum of 8 October 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 24 October 2012.

You will remember from past correspondence that the Committee has constantly advocated United Kingdom participation in Readmission Agreements, and we wrote to you last year expressing our regret that the Government was not going to take part in the negotiations with Belarus and Armenia. More recently we also supported the Government’s decision to opt-in to the Council Decision concerning the conclusion of the EU-Turkey Readmission Agreement.

While we note the Government’s view that the United Kingdom’s participation in a Readmission Agreement with the Republic of Cape Verde may not make any immediate difference regarding the existing bilateral returns arrangements, we consider that it would be desirable for the Government to opt-in to the Council Decision concerning the signing and conclusion of the Agreement. We note, in particular, that your EM considers that no financial implications would arise for the United Kingdom from such a decision.

We look forward to receiving further updates on the progress of these proposals, including your decision regarding the opt-in, in due course.

26 October 2012

EU-TURKEY READMISSION AGREEMENT (11720/12, 11743/12)

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

I am writing to advise you of Danish Presidency plans for the handling of the proposed EU Readmission Agreement with Turkey and the potential impact on handling for parliamentary scrutiny.

You will be aware that EU Readmission Agreements provide for reciprocal administrative arrangements to facilitate the return and transit of persons who no longer have a legal basis to stay in EU Member States. Participation in EU Readmission Agreements is decided on a case by case basis and depends on the priority we attach to the country concerned in terms of immigration returns but also bilateral links with that country and wider priorities. To date we have opted in to all 13 agreements currently in force but did not opt in to the mandate to negotiate an EU Readmission Agreement with Belarus or Armenia.

We opted into the mandate to negotiate an EU Readmission Agreement with Turkey in 2002. Formal negotiations on the agreement began in May 2005. Turkey used to be a top 10 removals destination for the UK but in recent years the volume of migrants has fallen. There were 350 returns to Turkey in 2010 down to 252 in 2011 and we have good bilateral arrangements for conducting returns there. However, Turkey is a key source of illegal migration to the EU. Illegal migration flows across the Turkish-Greek border are a particular problem. In 2010, 3,558 Pakistani nationals crossed the Turkish-Greek border rising to 13,130 in 2011. Increased migration flows to the EU via Turkey from Syria are also a problem (Turkey admitted approximately 30,000 people from Syria in 2011). The EURA will help to stem EU illegal migration flows by securing the eastern border of the EU.

However, for the last year, Turkey has blocked finalising the EU Readmission Agreement on the basis it would only sign if the EU made a commitment on visa liberalisation. The Danish Presidency expects to overcome this final hurdle, presenting Council Conclusions on Turkey, which includes a commitment to consider visa liberalisation. Once Council Conclusions have been adopted (expected at the end of May), the Danish Presidency will push to sign the EURA before the end of its Presidency. This opportunity must be grasped now because Turkey has indicated that it will not cooperate with
the subsequent Cypriot Presidency in signing the agreement. In addition, there is a real risk that the Turks may lose interest if there is a time lapse. This means that the EURA needs to be signed by the EU and Turkey by 30 June.

Given the priority attached to the agreement and commitments (including from the UK) to tackle illegal migration from Turkey into the EU, there is a real push to drive finalisation of the agreement forward. We have some sympathy for this urgency. Notwithstanding the arguments around stemming illegal migration flows into the EU, Turkey is a key strategic partner on migration cooperation and in the wider area of Justice and Home Affairs. Swift finalisation of the EURA with Turkey will also ensure efforts in these areas are not undermined.

However, working to the Danish timetable has obvious implications for the UK opt in process. We do not expect publication of a text until early to mid June, during the Whitsun recess. That will be deposited as soon as it emerges with the usual EM. However, this will allow limited time for consideration by the Committees if the text is agreed in advance of the 30 June deadline. We are discussing options with the Presidency, which could include a waiver of the 3 month period to allow other Member States to go ahead without the UK. We will let you know of our decision as soon as possible, including our decision on whether we should opt in to the Council Decision to sign and / or the Council Decision to conclude the text.

16 May 2012

Letter from the Chairman to Damien Green MP

Thank you for your letter of 16 May 2012. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered it at a meeting on 13 June 2012.

You will remember from past correspondence that the Committee has consistently supported United Kingdom participation in readmission agreements, and we wrote to you last year expressing our regret that the Government was not going to take part in the negotiations with Belarus and Armenia.

We note the Danish Presidency’s reasons for hoping to conclude the negotiations with Turkey on the readmission agreement by the end of their Presidency on 30 June. However, we are unclear about the practicalities of your suggestion that the UK’s three month opt in period could be waived in order to facilitate this, and would therefore be grateful for further information about the implications for scrutiny of such an approach.

When the Council Decisions for Signature and Conclusion of the readmission agreement with Turkey are deposited, we hope to learn from your explanatory memoranda whether the Government intends to opt in to both measures. We look forward to scrutinising these measures in due course.

14 June 2012

Letter from the Chairman to Damien Green MP

Thank you for your explanatory memorandum of 27 June 2012. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered it at its meeting on 4 July 2012.

In our letter to you dated 14 June, we reiterated our consistent support for the UK’s participation in readmission agreements, including the prospective EU-Turkey agreement. That remains our view. In particular, the Committee believes that the UK should have the benefit of this agreement, and hence should opt-in to the Council Decision to conclude. We assume that you will also opt-in to the Council Decision to sign but your intention is not clear from the EM. In any event, in order to facilitate the UK’s participation in this Agreement we are content to release both documents from scrutiny.

We note that the drafting of the recitals and other provisions in both Decisions currently presume that the UK will not opt-in and would therefore be grateful for your confirmation that these provisions were amended and clarified before the Agreement was signed.

While in principle we applaud the Government’s desire to respect the opt-in timetable process, we are concerned that the lack of clarity arising from the fact that the EU which signs the agreement is going to be slightly different to the EU which concludes (or ratifies) the agreement may cause confusion to the Turkish signatories. We would therefore be grateful for your reassurance that it has been made clear to Turkey at the signing stage that the UK intended to be bound by the agreement at conclusion.
We also support your efforts to facilitate a broader EU-Turkish partnership agreement concerning Justice and Home Affairs matters more generally, which we believe would provide obvious benefits to the EU.

We look forward to receiving a reply to this letter within the standard deadline of ten working days.

5 July 2012

**Letter from Damien Green MP to the Chairman**

Thank you for your letter of 5 July regarding the Explanatory Memorandum on the Council Decisions to sign and conclude a Readmission Agreement with Turkey. I am grateful for the Committee’s support for the UK’s participation in the Agreement and our wider work with regard to EU-Turkey cooperation on a range of Justice and Home Affairs issues.

With regard to the Explanatory Memorandum, I can confirm that the UK will not opt in to the Council Decision to sign the Readmission Agreement with Turkey. In light of the accelerated timetable for concluding the Agreement, we consider that we should allow the Council to proceed through the signature process without the UK. However, the Government recommends opting in to the Council Decision to conclude, which would bind the UK to the final Agreement. In terms of the signature process, the Council Decision to sign the Agreement has been adopted by the General Affairs Council, but has not yet been signed by the Turkish Government.

You ask about the drafting of the recitals and other provisions in both Council Decisions. As set out in the Explanatory Memorandum, we are now into the three month period during which the UK has to consider whether to opt in to the Council Decision to conclude the Agreement. Articles 1 and 2 of Protocol 21 (which state that the UK and Ireland are not bound by Title V measures) therefore apply until the UK notifies the President of the Council of its wish to participate in the instrument, at which point, Article 3 (notification of participation) will apply. While the Government recommends opting in, we have not yet notified the President of the Council whether we will participate in the Agreement. If we participate, the wording of the Council Decision to conclude will be amended accordingly.

Your letter also expresses concern that the Turkish Government may be uncertain whether the UK intends to be bound by the Agreement at conclusion. While the UK has not notified the President of the Council whether we will participate in the Agreement, we have publicly supported the Agreement and encouraged the Turkish Government to sign the Agreement. I have enclosed a copy of our declaration of 22 June [not printed].

17 July 2012

**Letter from the Chairman to Damien Green MP**

Thank you for your letter of 17 July 2012. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered it at its meeting on 25 July 2012.

We welcome your confirmation that the Government is minded to opt-in to the Council Decision on conclusion but will not opt-in to the Council Decision on signing. As we have already made clear you, we fully support the UK’s participation in this readmission agreement.

We are also grateful to you for providing the reassurances and clarity sought by the Committee regarding the text of the Council Decision on conclusion and the Turkish signatories’ awareness of the UK’s position regarding the signing and conclusion of the readmission agreement.

We look forward to receiving further updates on the conclusion of the readmission agreement in due course.

26 July 2012

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

I am writing to inform the Committee that the Government has decided to opt in to the draft Council Decision to conclude an EU Readmission Agreement with Turkey. The Government explained its view to Parliament in the Explanatory Memorandum submitted on 27 June and that approach was endorsed by the Committee in your letter of 5 July.
The Government welcomes the Agreement, which we believe will be valuable in easing the pressures on our borders and form an important part of broader co-operation with Turkey on a wide range of Justice and Home Affairs matters.

Illegal border crossings via Turkey are a very significant source of irregular migration into Europe, so the Readmission Agreement will help tackle the flow of illegal migration to the UK. Such upstream action is important for the UK, given that many of the irregular migrants recently encountered in Turkey claim to be of nationalities that would be difficult for the UK Border Agency to document and return if they succeeded in travelling on to the UK.

By participating in the Agreement, we will not only emphasise the value we place on close working with our European partners and Turkey to tackle irregular migration, but also make clear our intention to stay active in addressing a range of strategic interests that the EU and Turkey share. They include tackling terrorism and transnational organised crime, and promoting judicial cooperation in civil and criminal matters.

24 October 2012

EURODAC (10638/12)

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

Thank you for your explanatory memorandum of 18 June 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 4 July 2012.

With regard to the second iteration of the above proposal (Documents 13263/09 and 13322/09), we wrote to your predecessor on 29 October 2009 to explain how unhappy the Committee were with the Commission’s proposal that the data in EURODAC, collected for the particular purpose of determining jurisdiction for hearing asylum applications, should be used for the wholly different purpose of general law enforcement. As a result, when we wrote to you about the third iteration of this proposal (Document 14919/10) we expressed our contentment that the Commission had dropped this element of the proposal – albeit because of the delays in negotiations rather than for reasons of substance.

Now that provisions of a similar nature have been reinserted into the fourth proposal, we note that the conditions that would apply to law enforcement agencies’ access to the database under the second proposal include an additional requirement that systematic comparisons of fingerprint data should not be carried out. We further note that the Data Protection Directive, when adopted, could significantly strengthen the data protection standards that would otherwise apply to the fourth proposal under the Data Protection Framework Decision, which this Committee has voiced concerns about in the past. We have already indicated our support for the Government’s decision to participate in this Directive. While we are prepared to accept that our concerns have been mitigated in part, we continue to have concerns of a wider nature which we have already set out in the earlier correspondence. We hope the Government will take these concerns fully into account in the ongoing negotiations on this proposal.

Since EURODAC is an integral part of the Dublin system, in which the United Kingdom has always played an active part, we assume that the United Kingdom will wish to continue to be bound by the EURODAC Regulation as amended on the fourth attempt. We therefore assume that the Government intends to opt-in to this proposal but would be grateful for your confirmation of this in due course.

In the meantime we will continue to keep this document under scrutiny.

5 July 2012

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

I am writing in inform you of negotiations for a new third country agreement on the participation of Iceland, Norway, the Swiss Confederation and Liechtenstein (‘the Associated States’) in the work of the EU IT Agency (‘the Agency’). The Council has agreed that the Commission can start negotiations and in return the Commission has indicated that it wishes to finalise negotiations with the Associated States quickly.
The Agency was established by Regulation 1077/2011, with UK participation, and will take up its responsibilities on 1 December this year. Article 37 of that Regulation stated that arrangements shall be made in order to specify the nature and extent of, and the detailed rules for, the participation of the Associated States in the work of the Agency, including provisions on financial contributions, staff and voting rights.

The negotiating mandate itself is classified as EU Restricted, as is normal for such mandates, which means that it cannot be deposited. However, the Council Decisions to sign and conclude the agreement will be deposited as soon as they are published. We believe that they will trigger decisions regarding UK participation. We have indicated that we wish to be bound by the negotiating mandate, reflecting the fact that we support the work of the Agency and will want to maintain a role in its operation as well as the management of the IT systems for which it is responsible.

As soon as I have an indication of the timetable for this agreement, I will update you.

4 September 2012

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

Thank you for your letter of 5 July. I note your continuing concerns regarding the data protection implications stemming from extending access to the EURODAC database to Member States law enforcement authorities.

As the Explanatory Memorandum of 18 June sent by my predecessor as Immigration Minister made clear, whilst the Government acknowledges these concerns, it considers that the safeguards in this proposal satisfy the requirements of necessity and proportionality and comply with the principles of fundamental rights.

I can confirm that the UK has opted in to this Regulation in accordance with Protocol (No 21) to Title V of Part Three of the Treaty on the Functioning of the European Union. However, as part of our negotiating mandate which has been approved by the European Affairs Committee, we are committed to ensuring that the Regulation maintains robust data protection standards.

I would also like to update the Committee on how the negotiations have developed since the debate. On 10 October, COREPER agreed a text as a basis for negotiations with the European Parliament. The proposal for Europol to have access to EURODAC for the purpose of analyses of a “general nature or of a strategic type” has been deleted from this text. The Commission never provided a justification for this proposal, despite our pressing them to do so, and they have not objected to its deletion.

18 October 2012

FRAMEWORK OF AN INTRA-CORPORATE TRANSFER (12211/10, 12208/10)

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

Lord Roper’s letter to Damian Green MP of 25 January 2012 cleared document 12211/10 from scrutiny but asked to be kept informed of the progress of discussions in the Council and European Parliament.

The position on the draft Directive relating to intra-corporate transfers is that COREPER agreed the text of the Directive in May 2012 with a view to commencing trilogue with the European Parliament on the measure. We understand, however, that there been no progress to date with the trilogue process.

It remains the Government’s position that it is unlikely to seek to opt in to the Directive when it is presented for adoption. The current text would allow the UK to continue to operate its policy of applying a previous employment requirement of 12 months. The Directive still, however, prescribes a maximum length of stay of 3 years for managers and specialists (compared to the 5 years which may be granted under the UK’s Immigration Rules). More fundamentally, the Government would not wish to be bound by the provisions of the Directive relating to intra-EU movement and applying the principle of equal treatment in respect of access to social security.

On seasonal workers, I understand that document 12208/10 has yet to be cleared from scrutiny. Progress on the Council’s consideration of the seasonal workers’ Directive has recently stalled on the potential overlap between the scope of Directive’s provisions on visas and Schengen arrangements for
visas and, in particular, on the question of whether provisions regulating the admission of seasonal workers for a period of less than 3 months can rely on Article 79(2)(a) (which concerns the issue of long-term visas and residence permits) as their legal base. The Cypriot Presidency is keen to resolve this during its Presidency and is pressing for a solution which would distinguish between provision for the issuance of visas in such circumstances (which would be for Schengen or national rules, as appropriate) and provision for the authorisation of employment (which would be within scope of the Directive).

Member States have been fairly evenly split on the relative merits of this approach and the alternative option put forward by the previous Presidency, which would be to make no provision in the Directive concerning the admission of seasonal workers where they are coming for less than 3 months but nevertheless make provision concerning their rights and entitlements. The Government is not seeking to intervene in this debate, given the UK’s non-participation in the Directive.

18 October 2012

HEALTH FOR GROWTH PROGRAMME 2014-2020 (16796/11)

Letter from Anne Milton MP, Parliamentary Under-Secretary of State, Department of Health, to the Chairman

I write further to the recent meeting of the Council working group on public health held on 29 May 2012 and also to Simon Burns’ letter of 1 March 2012 to Lord Roper. This concerned the above proposal for a Health for Growth programme and recognised that the Committee would continue to hold the proposal under scrutiny, and made it clear that we need to ensure that:

— health was seen as important in its own right
— health inequalities were addressed
— appropriate weight was given to different elements of the programme
— that there was some continuity with the present programme

Also, although the UK overall is supportive of the proposed Programme, we considered the main focus should be public health rather than healthcare.

The proposed Health for Growth programme has been discussed at several meetings of the EU Public Health Working Group and, I am pleased to say, that good progress has been made on most of the above issues. For example, the Danish Presidency has produced revised texts that reflect our concerns, and contain other changes that we would generally support. This includes slight alteration of the title to Health and Growth, the reordering of objectives to make public health and promoting health more prominent, the inclusion of health inequalities, and the incorporation of Annex I into Article 4 to prevent duplication.

Note has also been made that activities and cooperation related to e-health, health technology assessment etc should be voluntary (as we had suggested). The most recent Presidency compromise text which reflects these and other amendments is attached. This “limité” text is shared with the Committee in confidence and is not for publication.

There are a few outstanding issues, the key ones of which are detailed below, but apart from these we now believe that all our main concerns have been addressed.

The unresolved issues include, for example, the suggestion by some Member States that countries which are relatively poor should receive more funding than those which are relatively affluent. We, along with some other Member States, take a different view for a number of reasons, including the need to retain quality as the principle determinant of the co-financing rate and the precedent that this would set. Co-financing helps ensure ownership of programmes and provides incentives to deliver effective programmes with sound financial management. Co-financing also makes it more likely that Member States will interrogate the value for money of the uses to which their receipts are put. This important principle needs to be maintained and current co-financing arrangements should not be eroded. This issue could not be resolved at the last Working Group meeting on 29 May and will now go to Coreper.

Another issue is to do with the continuity between the current programme and the Health for Growth Programme. At present discussions are taking place about the content for the workplan for
the final year (2013) of the current programme and we have suggested already that this should be seen as a transition year to help bridge the gap between the two programmes.

There was also an issue as to whether drug misuse should be included within the programme with recent changes to the Justice Programme that previously covered this topic. The Presidency proposed to delete references to drugs in the Justice Programme. Furthermore, in order to avoid overlaps and gaps between the relevant programmes, the Presidency suggested that activities related to “drug demand reduction” should be covered by the “Health for Growth” programme and have proposed reference to the need to “Support the exchange of good practice to reduce drug-related health damage”. We agreed with this approach. However, it is understood this will not involve a funding shift. It appears that other Member States have accepted the position and it is now not a matter of contention.

The EU Employment, Social Policy, Health and Consumer Affairs Council will consider the Health for Growth proposal on 22 June 2012, at which they hope to agree a partial general approach. The general approach is “partial” due to the fact that the level of the budget will not be agreed at this stage, but will be agreed during the separate multiannual financial framework negotiations led by HMT. We will continue to keep you advised on any further progress on the outstanding issues, but in the meantime would be grateful for your agreement to waive scrutiny based on our stance on these as set out above. This would enable the UK to participate effectively in the Council, based on the position set out in this and earlier letters.

6 June 2012

Letter from the Chairman to Anne Milton MP

Thank you for your letter of 6 June 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 13 June 2012.

We note your request that the Committee consider providing a waiver on scrutiny for this document in light of the Danish Presidency’s intention to ask for a partial general approach to be agreed by the Employment, Social Policy, Health and Consumer Affairs Council on 22 June. We note your statement that the budgetary aspects will not form part of the partial general approach, as this will be considered as part of the next Multiannual Financial Framework later in the year.

You may be aware that we published a report on The Multiannual Financial Framework 2014-2020 (34th Report of Session 2010-12, HL Paper 297) on 3 May 2012, which includes our consideration of this proposal. It is scheduled to be debated by the House in Grand Committee on 19 June 2012.

Therefore, we are now content to clear this proposal from scrutiny. We do not require a response to this letter.

14 June 2012

INFORMAL JUSTICE AND HOME AFFAIRS COUNCIL: 23 AND 24 JULY 2012

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

I am writing to update you on the Informal Justice and Home Affairs (JHA) Council which took place in Nicosia on 23 and 24 July. The Minister of State for Immigration, Damian Green MP, and the Lord Chancellor and Secretary of State for Justice, Kenneth Clarke MP attended on behalf of the UK.

The first plenary session of the Interior day considered the Third Annual Report on Immigration and Asylum. Discussions showed strong support for implementation of existing commitments in the Stockholm Programme, Migration Pact and the Roadmap on Migratory Pressures. Many Member States, including the UK, highlighted illegal immigration as their priority with a few pointing to the importance of returns and the UK stressing the importance of tackling the abuse of free movement. Agreement on the Common European Asylum System by the end of 2012 was assumed by many Member States with a few sounding caution or urging full implementation. The Commission highlighted the legal migration instruments and emphasised implementation of previously adopted texts in that area.
With some support, the Commission argued the need for legal migration, noting that even with high unemployment there were skills gaps in the EU. The UK and other Member States emphasised the importance of national decision making on numbers of migrants in line with their labour market needs. The UK cautioned against a one-size-fits-all approach and signalled its disagreement with further work on social security portability for third country nationals. All Member States agreed integration was important.

On the external agenda, the Commission pushed for a better and more efficient return policy in the context of Global Approach to Migration and Mobility. The UK cautioned against creating expectations on labour migration or using it as an incentive for cooperation.

During lunch Ministers received presentations from the UN Refugee Agency (UNHCR), International Organisation for Migration (IOM), the European Asylum Support Office (EASO), the Commission and Frontex on the current humanitarian situation in Syria. The regions (Turkey, Lebanon, and Jordan) were still managing the majority of the asylum seekers, with Turkey seeing the greatest movement across its borders. UNHCR estimated that there were around one million internally displaced people (IDPs) still in Syria, and while they were providing support, said that the EU had more tools at its disposal to support the regions (funding, resettlement, prioritising asylum applications). The IOM pressed for constant monitoring of the movements of IDPs, whilst the EASO provided some analysis of the current trends of Syrian asylum claims across the EU. The Commission highlighted the creation of a Regional Protection Programme (RPP) as the key response. Ministers agreed that the priority was to provide ‘on the spot’ assistance to the neighbouring States, via the NGOs and the agencies. The UK supported the development of an RPP and flagged support provided to the UNHCR, but stressed that cooperation with Turkey should still remain at the top of the agenda.

The next plenary session focused on cybercrime, which all agreed was a significant issue that merited further consideration. The UK highlighted the Budapest cybercrime conference, which was planned for the autumn, and referred to its own existing national strategy. The UK also supported a call for more precision and consistency in the terminology used across the EU. In terms of challenges the majority of Member States pointed to the international nature of the crimes and the need for cooperation from other states. Many Member States, including the UK, pointed to the importance of public-private partnership and the challenges it presented. Europol said that it was 6 months from opening the Cybercrime Centre which would aim, amongst other things, to provide an information hub for Member States and to build expertise in particular in digital forensics.

The last plenary session considered Security Research, during which the EU Counter Terrorism Coordinator drew the attention of Ministers to the forthcoming Commission Communication on Security Industrial Policy as well as the Competitiveness Council's partial general approach on the Horizon 2020 Framework Regulation. The Counter Terrorism Coordinator urged Ministers to consider support for an EU Industrial Security Policy; to develop ways to overcome fragmentation of the security market in the EU; increase work on standardisation and certification; develop better dialogue between public and private partnerships; support necessary funding in the EU’s budget and examine “Technology Forecasting capability”. The Commission said it was crucial to make better use of technology and raised the need to address the gap between research and bringing a product to market.

Finally, the Bulgarian Minister gave a closed session update on the 19 July attacks.

The Justice Day began with a discussion on Data Protection where Ministers were asked to consider issues covering tailoring the proposals to small and medium enterprises; flexibility for the public sector; and a review of delegated and implementing acts. The Commission stated that they would like to see rapid progress on the Directive and Regulation package. The UK expressed support for the aims of the proposed Regulation and the need to balance rights and costs, but noted concerns about the impact and burdens on business, and in particular on small and medium-sized enterprises.

The next session discussed the Confiscation Directive. Many delegations indicated that they had domestic non-conviction based confiscation regimes but often with strong controls on their use and, in the context of the proposed Directive, many argued for a link to a criminal conviction. Some however saw a strong case for civil confiscation, arguing in favour of enlarging the scope of the proposal in this respect. The UK said that it had not been able to opt-in due to concerns about the choice of legal base, where the UK wanted to be absolutely clear that this would not affect domestic civil confiscation arrangements. Along with a few others, the UK suggested that mutual recognition might be the best way of approaching non-conviction based confiscation. The Chair of the LIBE Committee in the European Parliament recalled their Resolution that the person affected by a confiscation order must have the right to a fair trial and remedy. Some delegations, including the UK, responded by referencing the procedural rights roadmap, either noting that it was sufficient for this...
purpose or calling for consistency with safeguards in the Directive. The Presidency concluded that
generally Member States were in favour of civil confiscation being introduced without a prior
conviction, but had different approaches to the application of such a provision. The Directive would
include something on civil procedures.

The proposed Regulation creating a European Account Preservation Order was discussed over a
Ministerial Lunch. The Justice Secretary highlighted the UK’s main concerns with this proposal and
there was support for providing greater safeguards for debtors in the proposal.

31 July 2012

INFORMATION TO PATIENTS AND PHARMACOVIGILANCE (6549/12, 6550/12,
6551/12, 6552/12)

Letter from Earl Howe, Parliamentary Under Secretary of State for Quality (Lords),
Department of Health, to the Chairman

I am writing to provide your Committee with an update on progress for the European Commission’s
separate legislative proposals on information to patients and pharmacovigilance.

Your report of 14 March cleared the pharmacovigilance proposals (6551 & 6552/12) but asked to be
kept informed of progress. Tripartite agreement has now been reached on a text with minor changes,
in line with the UK position cleared through the European Affairs Committee. The legislation will be
published shortly with a 12 month implementation period.

Your second report of 14 March held the information to patients proposals (6549 & 6550/12) under
scrutiny. The Danish Presidency has reported to the Commission that member states had been
unable to reach agreement in Council and the proposals have consequently fallen. The UK priority in
negotiation was to ensure that any changes did not threaten existing UK practice and this has been
achieved.

9 August 2012

Letter from the Chairman to Lord Howe

Thank you for your letter of 9 August 2012 on the above proposals which the Home Affairs, Health
and Education Sub-Committee of the Select Committee on the European Union considered at a
meeting on 10 October 2012.

Thank you for confirming that agreement has been reached on Documents 6551/12 and 6552/12,
which have already cleared from scrutiny.

In light of the Council’s failure to reach agreement on Documents 6549/12 and 6550/12, we note that
the proposals have fallen as a result and have therefore decided to clear them both from scrutiny. We
would be interested to know if the Government intends to follow up the substance of these
proposals in any way.

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

11 October 2012

PROFESSIONAL QUALIFICATIONS (18899/11)

Letter from Lord Green of Hurstpierpoint, Minister of State for Trade and Investment,
Department for Business, Innovation & Skills to the Chairman

I refer to your letter of 8 March 2012 to Norman Lamb seeking an update on the revision of the
Mutual Recognition of Professional Qualifications Directive (MRPQ) which is currently under
discussion in the Competitiveness Council working groups. I am now the BIS responsible Minister for
this dossier.

Negotiations so far have made a limited progress, mainly because the Danish Presidency focused their
resources on other priorities. There were five Competitiveness Council working group meetings
under the Danish Presidency.

35
As we mentioned in our previous letter, the UK Government welcomes the proposed revision of the Recognition of Professional Qualifications Directive which contains several amendments with the potential to increase movement and build trust in the single market for professionals. We would like to ensure these proposals do not lead to disproportionate administrative cost and safeguard patient safety.

In particular one of the main priorities during the negotiations of the Directive is the transparency process during which we aim to review existing regulated professions across Europe, with the exception of health professions. The Government is pressing for an early start of this exercise. A number of Member States are carrying out an analysis with a view to deregulating their professions. The UK Government is supporting the process, working together with the like-minded Member States, and is calling for a more ambitious agenda with work starting as soon as possible.

The Government remains open to the concept of the European Professional Card and welcomes increased administrative cooperation. However, we are working closely with other Member States to ensure that our concerns on the practical effectiveness of the card and the need to test and pilot the card before its introduction are taken into account.

The Government welcomes the proposed drafting on the alert mechanism. In addition to the current proposal, we are seeking for an extension of the more proactive alert mechanism to all health and social care professions. It is also important that competent authorities are obliged to inform each other whenever a decision is made to restrict a professional’s practice.

Our priority on language checks is to ensure that an effective system is in place to safeguard patient safety. The Department for Health has recently completed a consultation on plans for greater safeguards on language skills for doctors under the existing Directive involving Responsible Officers. We are seeking further clarification from the Commission about the drafting of relevant provisions under the new Directive.

We also have been seeking to ensure that the update of the minimum training requirements in the draft Directive offers enough flexibility for universities that run courses for postgraduates, such as medical and dental degrees.

Lastly, we are seeking to ensure that the implementing acts and delegated acts in the proposal do not give the Commission unnecessary powers. In particular, we would like to see greater obligations to consult Member States and stakeholders.

My policy team has actively advanced our views in Competitiveness Council working groups to state and explain our position and build consensus amongst other Member States. There has been significant support for the UK position during the negotiations so far.

The Cyprus Presidency is planning to hold five working group meetings during the remainder of this year. I will keep you informed on the progress made throughout negotiations.

1 October 2012

Letter from the Chairman to Lord Green of Hurstpierpoint

Thank you for your letter of 1 October 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 10 October 2012.

We are grateful for your letter providing an update about the proposal. We consider this to be a very important measure and will look forward to receiving further updates as the negotiations progress.

In the meantime, we will continue to hold the document under scrutiny.

11 October 2012

SCHENGEN ACQUIS: EVALUATION MECHANISM TO VERIFY APPLICATION (14358/11, 11846/12, 5754/6/12)

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

I am writing to inform you of new developments on the Schengen Evaluation and Monitoring Mechanism Regulation (SEMM). In a bid to significantly increase the pace of negotiation and with the
aim of securing a common position at the June JHA Council, the Presidency has now proposed a compromise text. It has been written on the basis of informal discussions with the Commission and the European Parliament. Unfortunately its classification prevents its formal deposit with the Committees but this letter sets out in detail what is proposed and the Government’s position. We would welcome your views as a matter of urgency since there is a possibility this will be submitted for agreement at the 7 June JHA Council.

LEGAL BASE

As you know our long standing aim has been to secure UK participation through a change of legal base. Although the European Parliament still opposes such a change we have good reason to believe that the legal base may change to Article 70 of the Treaty on the Functioning of the EU (TFEU) as part of a wider compromise package. If the legal base changes to Article 70, then the UK will be able to participate, subject to a decision to remain bound under the Schengen Protocol.

You have supported us in seeking this legal base change and UK participation. A move to Article 70 of the Treaty on the Functioning of the EU (TFEU) would give us the easiest solution to UK participation in SEMM, as Article 70 anticipates our partial participation and avoids further complicated legal solutions. This legal base also reaffirms that Schengen and its evaluation are primarily peer to peer based and that final decisions should rest with the Council. We are therefore continuing to encourage the Presidency towards this outcome.

EXTENSION TO THE FIRST MANDATE

The Commission proposal specifically avoided repealing and replacing the First Mandate evaluation mechanism. UK inclusion in a First Mandate evaluation process is necessary in order for us to prove to our peers that we are ready to join SISII. There is no other mechanism yet available which would allow us to join SISII.

The EP’s LIBE Committee has however maintained its core requirement that the mechanism should be extended to the First Mandate so there will be consistency and standard approach to both candidate and existing Schengen States. Member States have been asked whether they can compromise on this issue as part of the package on the legal base.

We see merit in consistency and a standard approach to both candidate and existing Schengen States. But at that time, the possibility of legal base change to Article 70 and other split proposal solutions for UK participation in the Second Mandate looked remote, if not impossible given the resistance of the European Parliament to change the legal base from Article 77(2)(e) and loss of their co-decision powers. We will continue to negotiate to ensure UK participation in a First Mandate mechanism, in order that we can continue to work to and join to SISII. Now that there is fresh momentum for legal base change to Article 70, the Government is considering its position on whether this could be included in the new SEMM.

COMITOLGY AND THE ROLE OF THE COMMISSION

In order to deliver European Council demands for a strengthened mechanism to deal with any weaknesses at the EU’s external border the majority of Member States are now willing to compromise with the European Parliament on their second request: to give the Commission an active administrative and monitoring role through limited comitology.

The Presidency proposes that the Commission be given control of the administrative aspects of the mechanism. This means providing the secretariat for Commission and Member State meetings, the multiannual programme (Article 5), the annual programme (Article 6), the standard questionnaire (Article 8), the programme for on-site visits (Article 11), and providing information to the Council on the implementation of the action plan within the follow-up procedure (Article 13A). But they must consult Member States sitting in an Evaluation Committee at all decision stages of the mechanism, such that the Member States have to deliver an opinion in all cases before the Commission can act - Article 5(4)(b) of Reg 182/2011. This is especially important for the follow-up to the evaluations and the political decisions that will entail. The Council will also control the political act of informing the European Parliament. We understand that the Commission may accept this reduced role as a result of preparatory work on the compromise.

In my view, Commission control of the administrative aspects is sensible and the majority of Member States already envisage that role for the Commission. The key thing is that the Commission does not extend its decision making powers into areas of Member State competence and make political
decisions that are then binding on Member States. It is for the Council to take political decisions that are binding on their peers. We can envisage the Executive Committee voting system being used to deliver this, and will be seeking specific reference to Article 5(4) of Reg 182/2011 throughout the text to clarify and confirm which Institution has the power to act and when.

Three other issues have been brought into play in the new text.

**WHETHER THE ABSENCE OF CONTROL AT INTERNAL BORDERS SHOULD BE COVERED BY SUCH A MECHANISM**

The Rapporteur is seeking to extend the evaluation mechanism to cover the absence of internal border controls. The current agreed list of topics in the Regulation reflects the core groupings of the Schengen acquis and the current evaluations undertaken. The possible inclusion of internal borders in the land borders evaluations and of unannounced visits by the Commission is of particular concern to Member States that participate in the borders elements of Schengen. They regard internal borders as an internal security issue subject to MS competence. Any direct references to free movement have been avoided. However, the proposal could lead to increased scrutiny of arrangements at the juxtaposed controls (in particular for passengers travelling within the Schengen area from Brussels to Lille) and any on-board checks carried out on trains crossing the EU’s external border. It might therefore impact on the options being considered in relation to rail liberalisation. We are considering these developments.

**EVALUATION OF THE FUNCTIONING OF INSTITUTIONS RESPONSIBLE FOR EXECUTING THE ACQUIS**

This phrase may be added to the list of national and EU bodies that may be approached to be evaluated as part of the questionnaire and visits phases, to establish how a Member State implements the Schengen acquis in practical terms. We are seeking clarity from the Presidency on who this is intended to cover and if more definite text can be found to express that intention, as this is a legislative text.

**INCLUSION OF A REVIEW CLAUSE**

This will allow the Commission and Council to make further improvements to the mechanisms in the future. This seems sensible, given that the current peer-to-peer process is reviewed routinely and revised as needs and circumstances change.

If the Presidency’s compromise is brought to fruition without significant change from that indicated, then it will ensure that the UK can continue its work to join SISII, restrict Commission powers within existing competence under the Treaties, and ensure the Council’s retention of political power over Schengen. These are significant gains for the UK and the Council and we believe that this opportunity should not be lost.

**SCHENGEN OPT-OUT**

Given its level of controversy, the legal base change to Article 70 will be the last issue to be decided within the Council and may occur only days before the need to vote on a Council Common Position or at the 7 June JHA Council.

Article 70 TFEU will trigger a Schengen opt-out decision under Article 5 of the Schengen Protocol. Normal consideration of the opt-out is not only impeded by the lack of time available but also by the fact that we expect all texts to be classified as LIMITE until the final Presidency compromise is tabled for agreement at the Council. The Government is therefore considering a pre-emptive position on the opt-out, so that the UK can take an active rather than an interested party part in preparing the Council’s position so that it delivers UK objectives and can deliver a positive vote to secure the Council’s and UK’s significant gains in the envisaged compromise, as outlined above.

Factors bearing on our consideration are the fact that:

— Remaining bound would ensure that the UK’s participation in the Second Generation of the Schengen Information System (SISII) is not brought into doubt, given that it is a Government priority project;

— The UK maintains its active participation in the Schengen evaluation process to the extent to which it participates in the Schengen acquis; and
That the UK will maintain our position in supporting practical cooperation to
strengthen Schengen and the EU’s external border; and we protect our
wider influence, reputation and relationships.

We will keep you informed of our considerations on this issue.

17 May 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 17 May 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 13 June 2012.

In relation to the previous proposal (Document 16664/10), which we cleared from scrutiny on 20 July 2011, the Committee supported the Government in their view that the correct legal base for this Regulation should be Article 70 TFEU, which would allow the UK to play its part in the evaluation of those parts of the Schengen acquis which apply to it. We continue to support these arguments in relation to the amended proposal (Document 14358/11), which remains under scrutiny.

As anticipated in your letter, we note that agreement was reached on the revised amended proposal at the JHA Council on 7 June, which resulted in a breach of the scrutiny reserve resolution. While this breach is regrettable we appreciate that it was the Jubilee recess period that made it impossible for this letter to be considered in good time by the Committee despite it being sent to us on 17 May.

With regard to the application of the Schengen opt-out period, we assume that your suggestion that the Government may adopt a “pre-emptive position” regarding its application to this proposal means that the standard three month period during which a decision needs to be made has been waived in this instance. We would like to emphasise, that in most circumstances the three month period for opt-out decisions should be allowed to run its course, allowing the Committee an opportunity to consider the substance of the proposal and make their views known to the Government. However, in the circumstances, we consider that the Government’s approach in this instance was reasonable, particularly as you have already set out the substantive issues relating to the legal base to the Committee, with which we agree. Therefore, while we can accept that this instance should be treated as an exceptional circumstance; we trust that all future opt-out decisions will be approached by the Government in the conventional manner and we would be grateful for your assurance that this will be the case.

If the UK participates in the amended proposal, as currently drafted, we would suggest that the Government ensures that a recital is included in the text clarifying the extent of the UK’s participation. We would be grateful for your position on this suggestion.

Notwithstanding the breach of the scrutiny reserve resolution, and the waiver of the three month period for the opt-out decision, we have decided to formally clear this document from scrutiny. We look forward to receiving a response to this letter within the usual ten days.

14 June 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your explanatory memorandum of 20 June 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 4 July 2012.

In relation to the previous versions of this proposal (Documents 16664/10 and 14358/11), which we cleared from scrutiny on 20 July 2011 and 13 June 2012, respectively, the Committee supported the Government in their view that the correct legal base for this Regulation should be Article 70 TFEU, in order to allow the UK to play its part in the evaluation of those parts of the Schengen acquis which apply to it. We therefore welcome the revised version of this proposal (Documents 5754/6/12 & 11846/12) and consider that the Government should participate in this measure. We note that the period for the notification of the Government’s decision in this regard expires on 7 September 2012 and would therefore be grateful for an early indication of the Government’s decision.

We look forward to receiving your response within the usual 10 days and would hope to be able to clear this document from scrutiny before the summer recess so that no possibility of a scrutiny override would arise should the Council reach a decision in September. In the meantime we have decided to retain this measure under scrutiny.
Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 5 July seeking an indication of the Government position on the Schengen Evaluation Mechanism in advance of the deadline to exercise our opt-out under Article 5(2) of the Schengen opt-out Protocol.

The Government considers that the proposal which is now based on Article 70 secures all the UK’s negotiating aims following years of negotiation. The Government is therefore of the view that the UK should not opt out of this measure. In particular, we will need to undergo the Schengen evaluation process as and when we wish to connect to the Second Generation of the Schengen Information System (SIS II). Participation will also maintain our current role in ensuring candidate States’ readiness to lower their internal border controls as they become full participants in Schengen. The information we gather from the evaluation of others, in particular those countries which form the current EU external border or will form the EU external border, is useful in our analysis of in-country situations and risk assessment of organised crime and illegal migration.

I note that this accords with your position.

17 July 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 17 July 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 25 July 2012.

We welcome your intention not to opt-out of the revised version of this proposal and are now content to clear this document from scrutiny.

We also look forward to receiving updates on the progress of this proposal in due course.

26 July 2012

Letter from James Brokenshire MP to the Chairman

I am writing to inform the Committee that the Government has decided not to exercise its right, under Protocol 19 of the Treaty on the Functioning of the European Union and the Treaty on European Union (the Schengen Protocol), to opt out of the Regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.

The Government has taken this decision in accordance with the commitment in the coalition agreement, which states that we will approach legislation in the area of security and criminal justice on a case-by-case basis, with a view to maximising our country’s security, protecting Britain’s civil liberties and preserving the integrity of our criminal justice system.

The Government believes that our national interests are best served by participating in this Regulation. Through this mechanism we can ensure that Member States implement and continue to apply the correct standards, as required by the Schengen acquis, in order to maintain an area of lowered border controls which is secure for its citizens. Our participation will ensure our existing active role in the scrutiny of those policing and judicial co-operation elements of the Schengen acquis in which we participate.

23 October 2012

SCHENGEN INFORMATION SYSTEM (9485/12)

Letter from the Chairman to James Brokenshire MP, Parliamentary Under-Secretary of State, Home Office

Thank you for your explanatory memorandum of 17 May 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 13 June 2012.
We note the Government’s concerns about the practicalities of the partial application of this proposed Regulation to the UK and recall the analogous situation regarding the draft Regulation to establish an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Document 8151/10). This saw the eventual introduction of a separate Council Decision (Document 13595/10) to deal with the specific situation of the UK. While we appreciate that this concerned an opt-in rather than any opt-outs, we would be interested to hear the Government’s views as to whether a similar approach could also provide a solution in this instance.

We also understand that the deadline for the notification of the Government’s decision as to whether they will exercise their right to opt-out of this measure expires on 7 August 2012. We would therefore be grateful for an early indication of what the Government’s decision is in this regard. The Committee’s view is that the Government should participate in this measure as it will provide clear benefits for the UK law enforcement authorities, as the Government recognises in its own EM.

With regard to the date of joining SIS II, we note that you wrote to the Committee on 7 February 2011 and stated that this would occur in 2015. However, the EM makes reference to doing so during the fourth quarter of 2014. Is this simply two different ways of saying the same thing? Or is there a real difference in timing?

We look forward to receiving your response within the usual 10 days. In the meantime we have decided to retain this measure under scrutiny.

14 June 2012

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 14 June on the above instrument following my Explanatory Memorandum of 17 May. I am sorry that this reply has not reached you sooner; we wished to secure clarity on the next steps in Brussels before providing a response.

On the issue of the UK’s partial participation in the Regulation, I am glad to say that a solution has also been found. As initially proposed, this Regulation combined two earlier instruments into one, which left us in a position of partial participation, since only one of the earlier instruments applied to the UK. We have now secured agreement that the Regulation will be amended by splitting it in two. I hope you will agree that this is a helpful outcome since it provides clarity about the application to the UK (and Ireland): the measure dealing with the police and judicial co-operation elements will apply to the UK – subject to our Schengen opt-out decision - and the measure dealing with the Schengen border elements will not. This will represent an amendment to the original proposal; it is not proposed that the original measure will be withdrawn and negotiations re-started. We are content with this approach on the basis that the splitting of the instrument was at our request and achieves our primary objective of clarifying our participation. Moreover, there are no significant new obligations in the revised texts that affect the UK and the legal base remains the same. There are expected to be some minimal changes that will only affect migrating Member States (not the UK), such as time limits on migrating Member States as part of the migration process. We consider this approach a pragmatic response in the circumstances and without prejudice to how we would approach the splitting of an instrument where there were substantive changes or new legal bases added.

On the basis of the above, the Government would be minded not to exercise the UK’s right to opt out of the policing and judicial cooperation measure as participation in SIS II, which this measure will help establish, remains a Government priority given the strategic benefits the system offers, including reducing crime, greater identity assurance at the border and improved police co-operation.

The proposals will now proceed under the new Cypriot Presidency and are expected to be adopted in September. The UK’s three month opt-out period, taken from the publication of the originally combined proposal, will expire on 4 August. We would welcome your views in advance of that in order to inform our final view.

Finally, your letter sought clarification on the timing of the UK’s joining SIS II. The Explanatory Memorandum referred to a UK connection date of the fourth quarter of 2014. This remains the case, but connection will be followed by a period of testing and evaluation ahead of full “go live” of the system, which is not expected until 2015. I hope that helps clarify the position.

5 July 2012
Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 5 July 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 July 2012.

We are glad that you have secured a satisfactory outcome in the negotiations and agree that splitting the proposal into two separate measures is a sensible approach in the circumstances.

However, while we assume that this will involve a Regulation and a Council Decision, with the UK opt-out applying to the latter, you do not make this explicit in your letter. Furthermore, we query your suggestion that the UK opt-out period should run from the publication date of the original proposal and would instead suggest that the publication date of the new Council Decision (assuming that the measure in question adopts this form) should apply in this respect. Since, in this particular instance, the Government does not intend to opt-out, the issue is not of practical significance. However, a similar situation may arise with regard to future proposals, which are subsequently split and to which the UK's opt-in or opt-out applies. Therefore we believe that the Government should take steps to ensure that the earlier deadline is not reflected in the new measure in order to prevent the creation of such a precedent.

We also assume that both of the new measures will be deposited in due course accompanied by a fresh explanatory memorandum.

We look forward to receiving your response within the usual 10 days. In the meantime we have decided to retain this measure under scrutiny.

12 July 2012

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 12 July about the consideration of the above proposal by the Home Affairs, Health and Education Sub-Committee.

You asked if the split proposal would involve a Regulation and a Council Decision. The proposal has actually now been split into two separate Regulations, the text of which are identical save for the text in recital 37 of the preamble which makes clear that one Regulation builds on those Schengen measures in which the UK is taking part (and to which our opt-out decision applies), and the other Regulation builds on those Schengen measures in which the UK does not take part and so this Regulation does not apply to the UK (and so no opt-out decision applies).

I am very grateful to you for raising the important point of principle regarding the UK's right of opt-out. In this particular instance, the Government's view is that the splitting of the proposal would not re-start the UK's opt-out decision making period. The splitting of the proposal overcomes the problem of the United Kingdom's partial participation and, in the absence of substantive amendments or a new legal base, we do not believe that there is any value in pressing the Commission to withdraw the proposal and begin the process again.

We do not believe that this approach sets a precedent for future instruments given the particular circumstances of this dossier. Our general approach is that the opt-in/-out should be re-triggered during negotiations if a proposal has been modified substantially, so as to amount to a new proposal, or a Title V legal base has been added. We do not believe that this is the situation here.

I hope that on the basis of this explanation the Sub-Committee will now be content to clear this measure from scrutiny.

20 August 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 20 August 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 10 October 2012.

Thank you for confirming that the proposal has been split into two separate Regulations. We consider your rationale for not re-starting the scrutiny process following this split to be reasonable in the circumstances.

However, as the Justice and Home Affairs Council which was due to take place on 19 and 20 September was cancelled in late August, we understand that the measures have not yet been adopted.
Furthermore, as the deadline for the Government’s opt-out decision has now passed we would appreciate confirmation as to what decision was made. Once this has been received we would then be happy to consider formally clearing this proposal from scrutiny.

We look forward to receiving your response within the usual 10 days. In the meantime we have decided to retain this measure under scrutiny.

11 October 2012

Letter from James Brokenshire MP to the Chairman

I am writing to inform the Committee that the Government has decided not to exercise its right, under Protocol 19 of the Treaty on the Functioning of the European Union and the Treaty on European Union (the Schengen Protocol), to opt out of the Regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.

The Government has taken this decision in accordance with the commitment in the coalition agreement, which states that we will approach legislation in the area of security and criminal justice on a case-by-case basis, with a view to maximising our country’s security, protecting Britain’s civil liberties and preserving the integrity of our criminal justice system.

The Government believes that our national interests are best served by participating in this Regulation. Through this mechanism we can ensure that Member States implement and continue to apply the correct standards, as required by the Schengen acquis, in order to maintain an area of lowered border controls which is secure for its citizens. Our participation will ensure our existing active role in the scrutiny of those policing and judicial co-operation elements of the Schengen acquis in which we participate.

Our involvement will, also, protect our ability to participate in the only mechanism which will demonstrate to our peers that we are ready to exchange data through the Second Generation of the Schengen Information System when the time is right.

We will of course keep you updated on the progress of negotiations.

24 October 2012

SCHENGEN: INTERNAL BORDERS (14357/11, 14359/11)

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

On 26 October 2011 the Home Affairs Sub-Committee of the Select Committee on the European Union considered the two documents listed above and cleared them from Scrutiny.

I am writing to you now to update you on the Presidency’s handling of the dossiers, in particular because of links to the uncleared dossier about which my colleague James Brokenshire, Parliamentary under Secretary of State responsible for Crime and Security, will also be writing to you.

While agreement has been reached on political governance, negotiations have continued at Council working groups with regard both to the proposals on the Schengen Evaluation Mechanism (SEMM) and on the amended Schengen Borders Code (SBC) (including the mechanism for the temporary reintroduction of border controls).

At recent working groups the Danish Presidency has sought a compromise on the role of the Commission and alternative decision-making options for both SBC and SEMM, and on the scope of Schengen Evaluation. A number of Member States have, however, remained concerned about the proposals on the Commission’s role, both in relation to SEMM and on the SBC.

Working group discussions have remained confused, and the Presidency has failed to take them forward, with a common position remaining out of reach. As a result, the Presidency has now decided to end discussions at working group level, and instead look to progress the discussions of the proposals on the SBC and SEMM via COREPER.

You will also wish to note that as part of its attempts to gain Member State consensus on the Schengen Borders Code (SBC) and the Schengen Evaluation and Monitoring System (SEMM) the Presidency is now proposing to move a section of text (currently Articles 14 and 15 of the SEMM),
involving temporary re-imposition of borders where a Member State fails to meet its obligations with regard to the EU’s external borders, from the SEMM to the SBC.

The Government has no objection to moving this text from the SEMM to the SBC. There is clear consensus among other Member States and in the European Parliament for this change; moving these Articles would also free the SEMM from requiring a borders legal base, which would support the UK’s aim of achieving a change in the SEMM legal base, allowing UK participation.

9 May 2012

SECURITY INDUSTRIAL POLICY (13050/12)

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

Thank you for your explanatory memorandum of 6 September 2012, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 10 October 2012.

We note the contents of this proposal with interest and have decided to clear it from scrutiny.

No response to this letter is required.

11 October 2012

THE 2014 OPT-OUT DECISION

Letter from the Chairman to the Rt. Hon Theresa May MP, Home Secretary, Home Office

You wrote to my predecessor, Lord Roper, regarding the above matter on 21 December 2011 attaching a very helpful annex listing all of the police and criminal justice (PCJ) measures which fall within the scope of Article 10(4) of Protocol 36. That letter also repeated the undertakings made by the Minister for Europe, David Lidington MP, on 20 January 2011 in a Written Ministerial Statement, which committed the Government to a vote in both Houses of Parliament before they make a formal decision on whether they wish to opt-out, including prior consultations on the arrangements for this vote with the relevant Parliamentary committees.

These undertakings were repeated and made more precise in response to an Oral Question in the House of Lords on 20 June 2012 and in testimony by the Minister for Europe before the EU Committee on 3 July.

I was therefore grateful to receive your follow-up letter of 18 September, which updated this list and also repeated again the Lidington undertakings regarding Parliamentary engagement. You stated that:

The Government remains committed to ensuring that Parliament is able to properly scrutinise the 2014 decision and has given an undertaking to hold a debate and vote in both Houses on this matter. As I am sure you are aware the Government has also committed to consulting the relevant Committees as to the form of that vote. I will be writing in the coming months to invite you, and all other relevant Committee chairmen, to engage on this important issue.

However, so far no such consultations have taken place.

The EU Committee considers this matter to be one of major importance and has already decided to conduct a substantive inquiry (by its Justice, Institutions and Consumer Protection and Home Affairs, Health and Education Sub-Committees) on this matter – beginning at the end of this year and reporting by the end of the 2012-13 session – in order to inform the House’s future consideration of the decision.

I was therefore surprised and dismayed to read news reports of the Prime Minister’s announcement, during an interview in Brazil on 28 September, that the Government had already decided to exercise the opt-out before the end of this year. If this accurately reflects the Government’s position then this clearly cuts across the earlier undertakings to consult both Houses on such a decision before it is made. It may also, incidentally, pose problems for the timing of our intended inquiry. I would
therefore be grateful for clarification about the Government’s precise intentions in this regard at your earliest convenience.

2 October 2012

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

Thank you for your letter of 2 October.

You are aware that by 31 May 2014 the Government must inform the Council whether the UK accepts European Court of Justice jurisdiction over all former ‘Third Pillar’ Justice and Home Affairs measures adopted prior to 1 December 2009, or, alternatively, whether the UK decides to opt out of these measures (‘the 2014 decision’). This decision is pursuant to Article 10(4) of Protocol 36 to the Treaties. A fact sheet providing further information on this has now been placed in the House Library.

This Government has done its utmost to ensure that Parliament has the time properly to scrutinise our decisions relating to the European Union and that its views are taken into account. We would like to take this opportunity to reassure you that the 2014 decision will be no exception. On 20 January 2011 the Minister for Europe, by way of a Written Statement, set out the Government’s commitment not only to holding a vote prior to the final decision being taken, but also to consulting you on the arrangements for that vote. In line with the commitment made in January 2011, and following my statement to the House today, we would now like to seek your views on this matter. Should you be willing, we will instruct our officials to work with your office to organise such discussions. We hope that this response assures you of the Government’s continued intention to consult both Houses in this regard.

As explained in the Home Secretary’s letter of 21 December 2011, the list of measures in the scope of the 2014 decision is subject to change. In addition to the changes highlighted in the letter of 18 September 2012, we would like to draw your attention to some further changes to the list of measures within the scope of the 2014 decision. Following further discussions with the EU institutions, the Government now considers that the following measure is no longer within the scope of the 2014 decision:


Additionally, two further measures that are within the scope of the 2014 decision have been identified. These are:

— Council Decision 2003/169/JHA determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen acquis in accordance with the Agreement concerning the Republic of Iceland’s and the Kingdom of Norway’s association with the implementation, application and development of the Schengen acquis (number 134); and


The list of measures has been amended to reflect these changes and is attached to this letter. A copy has also been placed in the House Library.

We note that in the recent report on the EU’s policy on Criminal Procedure your Committee set out its intention to undertake an inquiry on this matter in 2013. We welcome this inquiry which will be important in informing the Government position on this matter. We agree that it is important for this to be undertaken in good time.

15 October 2012