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 4 June 2014- 4 December 2014

**HOME AFFAIRS, HEALTH AND EDUCATION**

**(SUB-COMMITTEE F)**

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ADVANCED THERAPY MEDICINAL PRODUCTS (ATMP) (7310/14)

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

Thank you for your letter of 2 June 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 18 June 2014.

We are grateful for your explanation of who the Government consulted in preparing its explanatory memorandum. We look forward to receiving a copy of the report that the Regenerative Medicine Expert Group (RMEG) will send to the Commission on the UK’s experience with Advanced Therapy Medicinal Products.

We are also grateful for your initial assessment of the proposed eight areas for action identified in the Commission’s report.

18 June 2014

APPLICATION OF PATIENTS’ RIGHTS IN CROSS-BORDER HEALTHCARE (6186/14)

Letter from Jane Ellison MP, Parliamentary Under-Secretary of State for Public Health, Department of Health, to the Chairman

Thank you for your letter on 20 March 2014 requesting further information on the efforts the Government is taking to recover monies from other EU Member States for NHS treatment provided to citizens of other EU countries through the European Health Insurance Card (EHIC) scheme.

Independent research commissioned by the Department of Health last autumn estimated that the total cost of NHS healthcare provided to EEA visitors and non-permanent residents and EEA-based expats is around £305m per annum; of which approximately £220m is potentially recoverable through the EHIC scheme, with the remainder potentially recoverable through the S1 and S2 mechanisms and other arrangements. The NHS currently only recovers around £50m, less than 20% of the total potentially recoverable. Both the Government and the NHS recognise that we have much to do to improve upon this recovery rate. As such, this work forms an integral part of the Department’s overall visitor and migrant NHS cost recovery programme. This European focus was strongly endorsed by the public responses to the Department of Health’s consultation last summer.

Although most EEA short term visitors are covered under the EHIC scheme, many are not being identified when they access NHS healthcare services whilst in the UK. Consequently, the costs of their care are not being recovered from their home countries. As part of the wider changes to NHS registration processes, the Department of Health is working with NHS frontline staff to raise awareness of both the EHIC scheme and the processes that exist for reporting the costs of care provided. Through this work NHS staff will be better equipped to identify EEA nationals who are not ordinarily resident in the UK and as such request and process their EHIC details (or, if appropriate, charge them directly where they do not hold entitlement to an EHIC or provisional replacement certificate).

Since 2009, the Department of Health has commissioned the Department for Work and Pensions’ overseas healthcare team to manage an easy-to-use online portal for the reporting of EHIC and S2 forms by NHS secondary care providers. This facility allows a hospital overseas visitor manager (or equivalent) to capture an EEA patient’s name, home address, EHIC number and expiry date and the total cost of healthcare provided. These details are then sent securely to be processed by the overseas healthcare team, and batched into larger invoices to other EEA member states. For the last
reporting year, several NHS secondary care providers reported several hundreds of thousands of pounds worth of treatment that they had provided to EHIC holders. Many other providers reported smaller, yet not inconsequential amounts. There is, however, much more to do. From April/May 2014 and on the basis of the portal reporting statistics, the Department of Health will begin having more direct conversations with those secondary care providers who have not as yet reported or for whom the expected and actual reporting figures are not aligned.

Until now EHIC reporting has been almost uniquely confined to acute secondary care settings. In the next six to 12 months, the Department of Health will be working with NHS colleagues in general practice (including the Royal College of GPs and the British Medical Association) to develop a process that captures any short term EEA visitor’s EHIC details and/or S1 forms when they access primary care. We hope that this will allow the NHS to report individuals’ primary care usage alongside the existent secondary care usage and therefore expand the range of services for which we reclaim costs from other EEA member states.

The visitor and migrant cost recovery programme will shortly be publishing its two-year implementation plan, which contains further details of the expansion of EHIC, S1 and S2 reporting. Alongside the plan, a toolbox will be published for the use by overseas visitor managers and other NHS staff. This will include a specific awareness-raising pamphlet on the four main mechanisms that non-resident EEA patients can use when seeking NHS care – either immediately necessary or elective – whilst in the UK.

My officials remain ready to provide any further detail on the programme that the committee might feel appropriate.

1 July 2014

Letter from the Chairman to Jane Ellison MP

Thank you for your letter of 1 July 2014 on the above report and in response to our letters dated 20 March 2014 and 26 June 2014. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered your letter at its meeting on 9 July 2014.

We are grateful for your explanation of the measures the Government is taking to recover from other EU Member States the costs for NHS treatment provided to their citizens through the European Health Insurance Card scheme. It is clear that there is large scope for the Government to recover more funds from other EU Member States, and we support the Government in its attempts to do so.

A response to this letter is not required.

9 July 2014

CEPOL (17043/13)

Letter from Mike Penning MP, Minister of State for Policing, Criminal Justice and Victims, the Home Office, to the Chairman

Thank you for your letter of 7 May to Rt Hon Damian Green MP on the Member State Initiative for a Regulation of the European Parliament and of the Council amending Decision 2005/681/JHA establishing the European Police College (CEPOL). I am replying as the newly appointed Minister for Policing, Criminal Justice and Victims.

The Regulation was adopted by Council on 6 May. I can confirm that the UK submitted the following formal minute statement:

_The UK supports the substance of this proposal. We are grateful to the co-sponsors for bringing it forward and to the Hellenic and former Lithuanian Presidencies for their constructive approach to its negotiation. However, it is still subject to a Parliamentary Scrutiny Reserve on our part, so we are unable to vote in favour at this time and must therefore abstain._

_Our support for the substance of the proposal includes its specification that the seat of the European Police College will be in Budapest. However, we only support this part of the proposal because the underlying measure being amended (Council Decision 2005/681/JHA) already specifies the location, meaning that any change must inevitably be made by legislation. We consider this to be an exceptional_
case and it does not affect our position that the seat of an EU Agency should generally be determined by common accord of the Governments of the Member States, as laid down in Article 341 of the Treaty on the Functioning of the European Union.

The statement recognised the importance of our Parliamentary scrutiny obligation and that we could not vote in this case.

As you know the Government’s primary concern has always been for CEPOL to move to Budapest as soon as possible, so as to not jeopardise the sale of Bramshill. As such we were prepared to play our part in ensuring that the costs involved in the move are met. Following discussions with the European Commission and Union partners, I now confirm that the UK has agreed to contribute €285,141.50 (approximately £225K) towards the total relocation costs of €897,987 (approximately £713K). The Commission will be contributing the same amount and the remainder of the costs will be met through the savings that will be generated in 2014 by the relocation of CEPOL to Budapest.

I trust you will agree that this represents good value for money for the UK when compared to the benefit to the taxpayer from the multi-million pound sale of the Bramshill site, both in terms of the capital sum from the sale, and from the site’s ongoing running costs, which are approximately £5M per annum. As part of the negotiated deal on costs, CEPOL will leave Bramshill by the end of September.

4 September 2014

CLINICAL TRIALS REGULATION (1275/12)

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

Thank you for your letter of 12 May 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 18 June 2014.

We are grateful for your confirmation of adoption of the proposal by the European Parliament on 3 April and by the Council of Ministers on 14 April.

A response to this letter is not required.

18 June 2014

CONDITIONS OF ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS IN THE FRAMEWORK OF AN INTRA-CORPORATE TRANSFER (12211/10)

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

Thank you for your letter of 14 May 2014 informing us of the adoption of this Directive the previous day. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered your letter at a meeting on 25 June 2014. We are grateful to be informed of this.

This Committee, as you say, had hoped that the Government would opt in to this Directive post-adoption. That remains our position, and we regret that you have decided not to do so. However we are grateful to you for giving your reasons.

26 June 2014
Letter from Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

I am writing to provide you with an update on the negotiations for the proposed EU General Data Protection Regulation (GDPR). This update follows meetings of the Justice and Home Affairs (JHA) Council on the 6 June under the departing Greek Presidency, and the Informal JHA Council on the 9 July under the incoming Italian Presidency.

The Greek Presidency secured a ‘partial general approach’ at the June meeting on aspects of the proposed GDPR relating to the transfer of personal data to “third countries”, that is mainly non-EU countries. The Italian Presidency held a discussion on Member State public sector flexibility at the July meeting.

I am also taking this opportunity to respond to a number of questions you raised in your letter of the 7 May.

GREEK PRESIDENCY – JUNE COUNCIL

I refer first to the partial general approach achieved by the Greek Presidency in June. This is an unusual step to take as the concept of a partial general approach is not provided for in the EU treaties and agreement to it does not legally bind the Council to final wording in the text.

However, the Presidency considered it politically expedient to be able to claim agreement on the subject of third country data transfers. The Presidency was supported by the outgoing EU Justice Commissioner, Viviane Reding, in this regard. This was seemingly to demonstrate some progress on negotiations which have now been ongoing for two and half years.

However, this partial general approach was heavily caveated, with the ‘agreement’ reached being subject to the following conditions:

i. Such partial general approach is to be reached on the understanding that nothing is agreed until everything is agreed and does not exclude future changes to be made to the text of Chapter V to ensure the overall coherence of the Regulation.

ii. Such partial general approach is without prejudice to horizontal questions, such as the legal nature of the instrument or provisions on delegated acts.

iii. Such partial general approach does not mandate the Presidency to engage in informal trilogues with the European Parliament on the text.

The effect of these conditions is therefore that the partial general approach does not formally commit Member States finally to the text that was presented to the Justice and Home Affairs Council in June. However, the partial general approach is likely to create a perception that there is a broad agreement to the content of the text relating to third country transfers (Chapter V) and, for that reason, the text may be considered to be a baseline from which further discussions will continue. It also sets a general direction for these discussions as the Council attempts to move towards consensus.

In terms of the specific conditions attached to the partial general approach, I would assess their significance as follows:

— Paragraph (i), which states that ”nothing is agreed until everything is agreed”, reflects a principle adopted by the Irish Presidency in the first half of 2013 where the Member States resisted intense pressure from the Commission to gain a rapid agreement on the text at the time. This seems to be a safety net provision which would allow the text to be revisited by the Council. My view is that this caveat allows any aspect of Chapter V to be reopened at any point before an overall general approach is agreed and, at this time, that is the position I would intend to take should other Member States suggest that it means something different. This is important given the significant pressure for full agreement (general approach) applied by the Commission in the run up to the European Parliament elections, when clearly the text was still not ready to be agreed. The inclusion of this caveat should allow the Member
States sufficient time to agree the text without being subject to disproportionate external pressure.

—

Paragraph (ii) recognises that the fundamental question of whether this proposal should be a Regulation or a Directive still remains open. The Government’s position is that this proposal should be a Directive, a view also supported by seven other Member States. Each successive Presidency has generally avoided dealing with this question by arguing that the form of instrument can only be resolved once the entire text has been agreed. However, you should also note the approach taken by the new Italian Presidency with regards to the linked issue of Member State public sector flexibility which I explain further on in this letter.

—

Paragraph (iii) is a key point as a Council Presidency should at no stage engage in trilogue discussions with the European Parliament until a full general approach has been agreed. The new Italian Presidency is committed to preserving this condition as they look to make further progress in negotiations. This condition must be preserved in order to prevent premature discussions being held with the Parliament on the final text.

By attaching these conditions to the agreement of a partial general approach, it is clear that the Greek Presidency was looking to make some form of agreement appear palatable to Member States despite the acknowledged outstanding issues of substance which still need to be revisited. However, as much as the Presidency attempted to make the partial general approach palatable, I remained sceptical; notably because this type of agreement would send out a message which is misleading in terms of reflecting the actual state of play of the negotiations.

For example, there are still issues which remain unresolved on third country data transfers, particularly around a narrowing of the ‘legitimate interest’ derogation and the pre-authorisation of non-standard contractual instruments before a data transfer can take place. That is why I spoke out against the partial general approach in the June Council meeting as, given the caveats set out and the acknowledged remaining differences on certain significant aspects of the text; I considered this to be an artificial agreement. Ultimately though, the Council concluded that there was partial general approach but I expect that this would not have been achieved without those caveats in place.

By way of further information, the meeting on the 6 June also featured an orientation debate on the proposed regulatory One-Stop Shop. The legal services of the Commission and Council remain at odds on the legality of the current version of this proposal, their fundamental disagreement having first been aired at the Council meeting of last December. The Council Legal Service has argued that the One-Stop Shop provides inadequate protection of personal data and therefore is in contravention of fundamental rights of EU citizens. It does so on the basis that the proposal might require an individual to seek redress in the courts or before the data protection authority of a Member State other than their own. The Commission legal service fundamentally disagrees.

This impasse between the two legal services and the wide divergence between Member States over the practical operation of the One-Stop Shop mean that any agreement on this topic will still require much more detailed consideration at the technical working group level.

ITALIAN PRESIDENCY – JULY INFORMAL COUNCIL

The Italian Presidency decided to raise the topic of public sector flexibility at its informal Council meeting on 9 July. The aim of this discussion was to deal with concerns, raised in particular by Germany that the proposed Regulation would not allow Member States to legislate to a higher standard at national level with regards to the public sector.

In its last report to the Government, the Commons Committee was interested to learn the reasons for the German preference for a Regulation. The German delegation at the Council working group has in the past indicated that it would accept a Regulation but only if it applies to the private sector.

However at the Council meeting, the German Federal Minister of the Interior (Thomas de Maizière) said that Germany had now accepted that it was not possible to have separate legal instruments for the public and private sector but a specific exception for the public sector was still necessary. This seemed to suggest support for a general Regulation as long as sufficient public sector carve-outs are included in the text. Germany argued that it was not realistic for them to adopt a lower standard of protection than currently exists in its public sector.
Other Member States mentioned that too much flexibility at Member State level for a higher level of protection would impede the free movement of data around the EU. The Commission opposed having a higher level of protection for the public sector through the provision of minimum harmonisation in that sector. The Government argued that many Member States wanted exceptions, including minimum standards for harmonisation which meant that a Directive was the right instrument. The Presidency concluded that further discussion was required in the technical working group in order to consider the best way that Member State flexibility could be provided for within the text under consideration but did not go as far as to opine on the preferred form of instrument.

To conclude, the Italian Presidency is planning further discussions in the autumn on the “risk-based approach” to data protection which the Government supports and the “right to be forgotten” particularly in the wake of the European Court of Justice judgment in Google Spain case. I will further update the Committee on developments in these areas in due course.

QUESTIONS RAISED BY THE COMMITTEE

I am also taking this opportunity to respond to a number of questions you raised in your letter of the 7 May. In particular, you wanted an update on whether the contentious issues highlighted in the government’s explanatory memorandum of 13 February 2012 have been resolved. I will address each of the questions in turn:

WHETHER PROGRESS HAS BEEN MADE ON ISSUES ABOUT DEFINITIONS, INCLUDING GENETIC AND HEALTH DATA:

The definitions have not been looked at for some time in the working group discussions including on genetic data. The most recent Presidencies have focused largely on international transfers and the One-Stop Shop. The use of health data has however been raised as an issue, particularly by the research community which is concerned that the European Parliament wants to impose new and unwarranted restrictions on health data processing for medical research purposes. We have noted these concerns and will negotiate to ensure that processing which is currently legitimate will be permitted under the new rules.

WHETHER THE INTRODUCTION OF A MANDATORY DATA PROTECTION OFFICER ROLE IS STILL TOO PRESCRIPTIVE:

Under the current working draft of the text, the designation of a data protection officer is no longer a mandatory obligation, unless required by Member State law. This change to the text was introduced under the Irish Presidency in the first part of 2013 as part of their commitment to applying a more risk-based approach to obligations on controllers and a desire to remove some of the more burdensome elements of the proposals. Therefore, given the designation of data protection officers is now optional we are satisfied that this addresses our concerns about the level of burden that this measure would impose on organisations.

WHETHER PROGRESS HAS BEEN MADE IN DEFINING A CHILD AS “UNDER -18”

There has been no consensus in Council in terms of defining the age of child. The age of a child is defined very differently across the 28 Member States of the EU and at this stage no form of agreement is close to emerging. The subject has not been discussed at the technical working group under the current Presidency term and will need to be revisited at future meetings of the technical working group.

WHETHER THE REQUIREMENT FOR A NOTICE OF A BREACH OF THE AGREEMENT WITHIN 24 HOURS HAS BEEN DISCUSSED:

The timescale for notifying a personal data breach to the supervisory authority has been discussed on a number of occasions at the technical working group level. A number of Member States, including the UK, questioned the practicality and desirability of having to notify a breach to the supervisory authority within 24 hours. In response, the Irish Presidency at the time revised this requirement to “without undue delay and, where feasible, not later than 72 hours”. While we would prefer the requirement to be simply “without undue delay”, we consider the qualification of “where feasible, not later than 72 hours” provides sufficient flexibility to the controller to assess the extent, nature and...
seriousness of the breach and take the appropriate action on the basis of such an assessment. This formulation also has the majority support of the Council.

**WHETHER THEY ARE SATISFIED THAT THE INDEPENDENCE OF NATIONAL DATA PROTECTION AUTHORITIES WILL BE PRESERVED:**

The UK, and the majority of Member States have strongly argued for preserving the independence of national supervisory authorities and that any changes to the data protection framework, and in particular the roles of the European Commission and the proposed European Data Protection Board (EDPB), must not impinge on this independence. We will continue to argue that the independence of national supervisory authorities is imperative, and that any new powers for the Commission or the EDPB must not encroach on this principle.

**WHETHER THE ‘RIGHT TO BE FORGOTTEN’ ISSUE HAS BEEN RESOLVED:**

We consider that the title the ‘right to be forgotten’ is misleading and may inadvertently give the impression that data subjects have an unfettered right to delete their data which does not exist in practice. The title the ‘right to be forgotten’ has been at the forefront of the political campaign of the Commission and there has been no real objection among other Member States to its inclusion. The other UK concern was that this right would place unreasonable obligations on controllers to notify third parties of a request for deletion of personal data. We consider that the “shall take reasonable steps” threshold is a helpful qualification to the right to inform third parties but we also believe this could be further strengthened by only requiring a controller to notify third parties they know are processing the data. On this latter point there is some support for further qualifying this right and we will continue to argue for its inclusion when the subject comes up for discussion again. We shall also continue to press to ensure that the circumstances in which controllers can be exempted from the right are the right ones.

We are also continuing to assess the implications of the recent Court of Justice of the European Union in Google v Spain. This has, entirely wrongly in my view, been presented by some as recognising a ‘right to be forgotten’. Properly understood, the right of individuals to request the removal of data from a search engine is not an absolute one and the ability of data controllers to assess whether the public interest favours retaining the data remains.

We consider that the removal upon request of search engine results could prove costly to administer and unworkable in practice. There are immense economic and social benefits which a free and open internet provides. Therefore, where appropriate, we should seek to preserve these benefits rather than restrict them. The Government is also conscious of the possible consequences of the judgment, such as a potential increase in caseload for the Information Commissioner’s Office in responding to complaints and ultimately, the volume of cases that may end up in the Tribunal on appeal. To mitigate this risk we need to make clear that the CJEU judgment does not give individuals an unfettered right to have their personal data deleted from search engine results.

With this in mind, the Government welcomes the work being undertaken by the Article 29 Working Party (the committee of European data protection regulators) to develop criteria to be used by search engine operators to consider requests for deletion. The guidance issued by this Committee will be of vital importance to search engines operators in striking the right balance between the privacy rights of individuals and other interests, including the public interest in retaining the information.

7 August 2014

**Letter from the Chairman to Chris Grayling MP**

Thank you for your letter of 7 August 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 10 September 2014. The Committee is very grateful for your full and detailed explanation of the progress of negotiations on the General Data Protection Regulation, and in particular of the reasons why they have taken and continue to take so long.

We share your view that the heavily qualified partial general approach agreed under the Greek Presidency should do little or nothing to limit the freedom of discussion in future negotiations, even in respect of Chapter V. However we hope you will resist any attempts by the Italian Presidency to
suggest that other provisions should be subject to such agreement until a satisfactory text of the whole Regulation has been agreed. We believe that it is undesirable even to give the impression that an unsatisfactory text is subject to any measure of agreement. If this further delays the negotiations, that must be a price worth paying in a measure of this importance.

We are grateful for your comments on the particular questions raised in my letter of 7 May 2014. We share the concerns of the research community that the European Parliament wants to impose new and unwarranted restrictions on health data processing for medical research purposes. The Head of Policy of Cancer Research UK has written to Baroness Prashar, the Chairman of the Sub-Committee, emphasising that concern, and stating that the Parliament’s amendments to Articles 81 and 83 “significantly compromise the scope of the research exemption”. We are glad that you undertake to negotiate to ensure that processing which is currently legitimate will continue to be permitted under the new rules.

You mention in passing that most recent Presidencies have focused on the One-Stop Shop. This seems to have been discussed by the DAPIX working party at seven meetings in 2013 and five meetings in the first half of 2014. Vice-President Reding regarded the One-Stop Shop as central to her proposals. Plainly this is causing difficulty in the negotiations, and we would be glad to have more details of this.

I had asked in my last letter how other Member States reacted to the impact assessment the Government produced in November 2012. You do not mention this. It would be interesting to know whether other Member States share your view that the Commission has underestimated the burden which the Regulation would place on businesses and national data protection authorities.

You end your letter by considering the right to be forgotten. You do not mention the Committee’s report EU Data Protection law: a ‘right to be forgotten’? (2nd report of session 2014-15) which had been published a week earlier. No doubt you will deal with the issue in the Government response which we expect by the end of September.

You will be aware that Simon Hughes said to us in evidence, unequivocally, that “The UK would not want what is currently in the draft, which is the right to be forgotten, to remain as part of that proposal. We want it to be removed. We think it is the wrong position. I do not think, both as an individual and a Minister, we want the law to develop in the way that is implied by this judgment, which is that you close down access to information in the EU that is open in the rest of the world.” Later he added: “... we are not going to shift our view in negotiations that the right to be forgotten must go.” (paragraphs 52-53 of the report)

We agree with you that the Court’s judgment “does not give individuals an unfettered right to have their personal data deleted from search engine results”. Our concern was with the Court’s criteria for removal of a link. This would be allowed where information “appears … to be inadequate, irrelevant … or excessive”, and there are no “particular reasons” why the public should continue to have access to that information. We felt these criteria were so vague as to be unworkable. We note that work is being undertaken by the Article 29 Working Party to develop criteria to be used by search engine operators to consider requests for deletion. We look forward to the outcome of this work, and seeing whether the guidance/criteria which the Working Party produces strikes the right balance, is easy to apply, and helps to mitigate the risks mentioned in your letter.

We retain the document under scrutiny.

10 September 2014

DRAFT EUROJUST REGULATION NEGOTIATIONS (12648/14, 12566/13, 11813/14)

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

I am writing to update you on developments regarding negotiations on the proposal for a Eurojust Regulation. Under the Greek Presidency, the first reading of all Articles was completed. The Italian Presidency has stated that they view this as a priority negotiation, and at the last working group in July produced a revised text covering Articles 1-17 (attached to this letter [not printed]). These Articles cover issues around competence, tasks and powers of Eurojust working as a College, powers of national members and governance including attendance of the European Public Prosecutor’s Office (EPPO) at Eurojust College meetings.
The Committee is aware that the Government had chosen not to opt in to the draft Eurojust Regulation at the start because the proposal creates substantial concerns; most notably by extending the mandatory powers of Eurojust National Members and because of the proposed interaction between Eurojust and the proposed European Public Prosecutor’s Office.

Turning to the text in question, Articles 2-6 relate to the tasks, competence and other functions of Eurojust. These are largely uncontentious. However, Article 3 contains references to EPPO which will clearly need further consideration as negotiations progress. In addition, the Government is pleased that the revised draft reinstates the current provisions that Eurojust when acting as a College can only issue non-binding opinions in the event of a conflict of jurisdiction between Member States (Article 4).

Articles 7-9 relate to Eurojust National Members. As mentioned above, the issue of the powers of National Members under Article 8 are among the most contentious provisions in the proposal. As the committee will be aware, the proposal as initially drafted extended the powers of Eurojust National Members in ways that would conflict with criminal justice arrangements across the UK and change the nature of Eurojust. This would cut across the separation of powers between police and prosecutors in the common law systems in England & Wales and Northern Ireland. The Government believes that the revised document is encouraging on this point: there is now a general acceptance among Member States that the new Regulation should contain a derogation along the same lines as the existing Article 9(e) (as indicated under footnote 7), which ensures that Member States are not obliged to give powers to their National Member (therefore enabling them not to do so where this would conflict with their national criminal justice arrangements). They key now will be to ensure that the precise drafting of the derogation fully safeguards our criminal justice arrangements and we will take this forward at the working group.

Articles 10-17 relate to the College, the Executive Board, and the Administrative Director. The key issue here relates to the governance arrangements for Eurojust.

Our preference in relation to reform of Eurojust’s governance has been for administrative and management tasks to be transferred to an external Management Board, as is the case for other EU Agencies including Europol. In contrast, the Commission proposed an Executive Board with a strong Commission presence. Unfortunately, while a number of Member States opposed the Commission proposal, there was very limited support for the Management Board. At the June JHA Council, Member States approved a ‘middle way’ approach consisting of an Executive Board with more limited Commission involvement. While, given the outcome of the June Council, it is clear that there will be an Executive Board, we continue to be concerned that this approach may not effectively reduce the administrative burden on National Members and that it may erode the primacy of the College in decision making. We are accordingly working within the Executive Board proposal to improve it as far as possible. In respect of the question of the primacy of the College, we are pleased that an addition has been made to Article 14 to make clear that the Executive Board shall be accountable to the College.

There are several other issues raised by the changes in Articles 10-17.

Firstly, the revised text under Articles 12 and 14 allows for the EPPO to receive all agendas of College and Executive Board meetings and participate in such meetings (without a right to vote). We will continue to seek changes ensuring that Eurojust has the ultimate say on when the EPPO can attend College and Executive Board meetings. In addition we are concerned at the suggestion in Article 11 that Member States may be compensated where they appoint a substitute National Member where their National Members are appointed as President or Vice-President and will work to ensure that this does not result in an increase in the overall budget of Eurojust; and Article 13 has been amended in respect of the voting arrangements where a National Member becomes a President / Vice-President – our key concern here is to ensure that it remains ‘one Member State, one vote’, as the current text provides.

28 August 2014

Letter from Karen Bradley MP to the Chairman

I am writing to provide you with a further update on developments regarding negotiations on the proposal for a Eurojust Regulation. You will recall that I sent an update of the Italian Presidency’s revised text covering Articles 1-17. The Presidency has now issued another document 12648/14 revising the Commission’s proposal Chapter III, Chapter V - with the exception of the Articles dealing with the European Judicial Network (EJN) (Article 39) and European Public Prosecutor’s Office.
Your Committee will be aware that the Government had chosen not to opt in to the draft Eurojust Regulation at the start because the proposal creates substantial concerns - most notably by extending the mandatory powers of Eurojust National Members and because of the proposed interaction between Eurojust and the proposed EPPO.

The main issue for the Government within this revised text concerns EPPO access to Eurojust data, including UK data. We believe data should only be exchanged with the EPPO with the consent of the originating Member State. I am encouraged that the revised document is going in that direction, but think there are further changes to be made to satisfy us in this regard and will continue to press hard to seek further safeguards for the UK in this area.

We are also seeking changes to ensure that Council permission is required before Eurojust can post a liaison Magistrate to a third country as in the current Eurojust Council Decision.

The Italian Presidency is seeking to produce a revised text in full for discussion before the end of its Presidency and I will update the Committee on any developments accordingly.

26 September 2014

EASO REGULATION 430/2010 (17760/13, 17767/13)

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

Thank you for your letter dated 5 February regarding the Council Decisions to extend EASO to Norway, Iceland, Switzerland and Liechtenstein in which you asked to be kept informed of any further progress. I am writing to inform you that on 11 February the Council adopted a decision on the signing of the EU Council Decisions that allow Norway, Iceland, Switzerland and Liechtenstein to participate in the EASO and forwarded the conclusion of the arrangements to the European Parliament for its consent.

Despite attempts to do so we were unable to secure an amendment to the language used in the recitals to reflect our opt-in position and as anticipated we did not receive any support from the Council or the Council Legal Service during negotiations. However, we maintained our right to opt-in to these Council Decisions regardless, and we wrote to the Presidency of the Council of the European Union to inform them that we would be opting in to these arrangements and put down a minute statement to that effect on 3 February.

30 June 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 30 June 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 9 July 2014.

We are glad to know that these Decisions have been adopted, concluding the cooperation arrangements between the European Asylum Support Office and Iceland, Liechtenstein, Norway and Switzerland. We do wonder why it has taken over four months to inform us of this, but we do not expect a reply to this letter.

9 July 2014
Letter from the Chairman to Jane Ellison MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Thank you for your explanatory memorandum (EM) of 6 May 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 25 June 2014.

We endorse the view expressed in your EM that cooperation on healthcare in the EU should be driven by and be responsive to the needs and priorities of the citizens of Member States. We are also pleased to note that the Department for Health participates in initiatives to improve the functioning of healthcare systems across the EU. The Communication has no direct legislative or financial impact on the UK and we have decided to clear it from scrutiny.

We wrote to you on 20 March 2014 after we considered you EM on a Report from the Commission on the application of patients’ rights in cross-border healthcare, and asked for further information on what efforts the Government were taking to recover monies from other EU Member States for NHS treatment provided to citizens of other EU countries through the European Health Insurance Card scheme. We would be grateful for a response to that letter.

26 June 2014

Letter from the Chairman to Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office

Thank you for your letter dated 3 June 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 25 June 2014.

We are grateful for your answers to the questions we raised in our letter of 14 May. We note that your concerns about the legal base of the proposed Decision and the EU’s competence to act were shared by other Member States. We believe that COREPER’s decision at its meeting on 23 May not to adopt this proposed Decision, and a similar proposed Decision relating to the ILO Protocol, was the correct one.

We appreciate that you could do little about the timescale which led to this Committee having little time to scrutinise the proposal in detail before the ILO Conference that started on 28 May. However, we wish to highlight for future reference the undertaking given to us by the Minister for Europe that we would receive documents from the Government with sufficient time for us to conduct our scrutiny work.

26 June 2014

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office and Shailesh Vara MP, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Thank you for your letter dated 7 May. We are writing to update your Committee on the negotiations for the new strategic guidelines, and to request that you clear from scrutiny 7838/14 “The EU Justice Agenda 2020 – strengthening trust, mobility and growth within the Union” and 7844/14 & 7844/14 ADD 1 COM(2014)154 “An open and secure Europe: making it happen”.

As you are aware, the strategic guidelines for future development in the JHA area are due to be agreed at the European Council meeting on 26 June. As part of this ongoing process the Home
Secretary and the Justice Secretary attended the JHA Council on 5 June, at which the strategic guidelines were discussed, but no JHA Council contribution to the process was proposed or agreed. All Ministers agreed on the need to focus on implementation and consolidation of existing legislation, action to tackle trafficking in human beings and people smuggling, action on Counter-Terrorism and Counter-Radicalisation, and the need for increased cooperation between Member States and with third countries.

The Home Secretary intervened to express disappointment that the JHA Council was not in a position to offer a strong contribution to the European Council when all previous discussion in Council has indicated the Council’s desire to do so. She also stressed the importance of including action to tackle fraud and abuse of free movement, strengthen the EU’s external border to stop illegal migration, tackle trafficking in human beings and the crime of modern slavery, and action to improve the exchange of criminal records and the return of prisoners to their countries of origin, and a mechanism for Member States to review the guidelines once issued.

We are disappointed that the Presidency did not invite Ministers to agree a JHA Council contribution to the programme at the June JHA Council meeting. Instead the Presidency, after reflecting on the views of Ministers, submitted a letter to the President of the European Council. This letter was sent on 10 June. We attach [not printed] this for your information – it is classified as “limité” text, and is therefore shared with the Committee in confidence: it is not for publication.

The letter from the Greek Presidency does recognise the consensus among Member States for a shift in focus towards implementation and enforcement of existing rules, enhanced operational cooperation, partnerships with third countries and internal security priorities such as combating organised crime and trafficking and smuggling in human beings. However, the letter does not fully reflect the views of Member States on issues of solidarity and burden sharing (where a number of Member States have called for greater emphasis on the need for Member States facing migratory pressures to improve their national systems), and on free movement (19 Member States have previously raised the need to tackle abuse and fraud).

We are now working closely with other Member States and the EU institutions ahead of the June European Council to ensure UK priorities are reflected in the new strategic guidelines. We will update the Committee on the outcome of the June European Council on this matter as soon as possible.

Documents 7838/14 and 7844/14 & 7844/14 ADD 1 COM(2014)/154 relate to the Commission’s contribution to the new strategic guidelines, which took the form of two Communications (one from DG Home, and one from DG Justice). We submitted a joint Explanatory Memorandum on 31 March 2014. Your Committee has retained these documents under scrutiny.

The Government has engaged fully with your Committee throughout this process. We provided written evidence to the Committee’s inquiry into the post-Stockholm Programme, and James Brokenshire and Shailesh Vara gave oral evidence on 5 February 2014. The Government submitted its formal response to the Committee’s report on this matter on 5 June 2014.

Due to the usual arrangements of appointing Select Committees at the beginning of each Parliamentary session, we understand that the House may not be in a position to debate your Committee’s report and the Government’s response before the strategic guidelines are agreed at the June European Council. This is unfortunate but unavoidable. We are keen to avoid a scrutiny override and acknowledge that both our Departments and your Committee agree on the broad approach in the post-Stockholm Programme. On that basis we write to request scrutiny clearance of the above texts ahead of the Council. Of course the individual measures in the Programme will continue to be subject to scrutiny.

We would like to thank your Committee again for its ongoing and thoughtful work on this programme.

17 June 2014

Letter from the Chairman to Karen Bradley MP and Shailesh Vara MP

Thank you for your letters of 30 May and 17 June.

It is troubling that Member State governments in the JHA Council were not able to agree a formal contribution to the guidelines which will govern JHA policy over the next five years. Instead, a
Presidency letter has been sent to the European Council. This is not a statement of the Council nor a public record. This is a disappointing result in view of the importance of the subject matter.

It is not clear from your letter of 17 June exactly what it was that prohibited a contribution being proposed — from the outside it seems a surprising development. We would be grateful for a more detailed explanation.

To date the only formal contribution to the strategic guidelines is from the Commission in the form of these two Communications. Consequently, it is possible that the strategic guidelines will be largely based on the Communications. We would therefore be grateful to know exactly what contribution the UK made to the contents of the strategic guidelines in the absence of a formal Council contribution, and how agreement on the draft guidelines was reached.

We do not think the Communications have to be cleared to avoid an override. The Prime Minister is not agreeing to their adoption in the European Council. He is agreeing to the adoption of strategic guidelines, which are likely to have a limité status, and a draft of which has consequently not been deposited. Agreeing to the adoption of the strategic guidelines will not therefore trigger an override of the scrutiny reserve on the Communications.

We have decided to retain the Communication under scrutiny until the Government decides whether to opt into the Regulation on the Justice Programme of the EU Budget. As your letter of 30 May confirms, UK legal practitioners will not be eligible for funding for training under the Justice Programme, the amount of which is €378 million. At the time, the Committee was surprised by the Government’s decision not to opt into the Justice Programme, particularly because under its predecessor UK-based organisations had been the third highest recipients of funding. The Lord Chief Justice also wrote at the time, expressing concern at the Government’s decision and asking it to reconsider. We echo that concern, and ask the Government to exercise its right to opt into the Justice Programme at this stage.

We look forward to hearing from you within ten days of receipt of this letter.

26 June 2014

Letter from Karen Bradley MP and Shailesh Vara MP to the Chairman

Thank you for your letters of 26 June on the Strategic Guidelines for the EU’s next Justice and Home Affairs programme. Given that they both addressed the same issue we have decided to combine the replies.

The Strategic Guidelines were agreed by the Prime Minister at the European Council of 27 June and are attached [not printed].

As mentioned in our letter to your Committee of 17 June, the Government was disappointed that the Greek Presidency did not invite Ministers to agree a formal JHA Council contribution to the programme. The Greek Presidency decided instead to send a letter to the President of the European Council summarising what it considered should be covered in the strategic guidelines following the discussion at the June JHA Council (our previous letter of 17 June provided a copy of this letter.) The Home Secretary intervened at the June JHA Council meeting to express disappointment that the Council would not agree and provide a formal contribution. The Government did not consider that the Presidency letter properly reflected the discussions that had been held in Council or dealt sufficiently with our priorities. Consequently, we engaged in further lobbying through other channels. This lobbying built on the Government’s initial letter to the Lithuanian Presidency when discussions on the new Strategic Guidelines began last year, as well as numerous conversations and exchanges at Ministerial and official level over the past few months.

Our efforts resulted in considerable success and the Government is content with the final Strategic Guidelines, which we consider to reflect our priorities. We welcome the overall tenor of the new Guidelines, which are genuinely strategic with a clear steer towards practical cooperation. This also seems to accord with the Committee’s own recommendations on this matter, as set out in your report of 14 April. The Guidelines also place a focus on proper implementation of existing measures rather than new legislation and are clear that the priority is to transpose, implement and consolidate existing legal instruments (all paragraph 3).

As you are aware from our evidence to your inquiry, the Government had five key priority areas on which we wanted to see action in the new guidelines:
— Preventing the abuse of free movement rights;
— Strengthening the EU’s external border;
— Action against human trafficking;
— More effective return of prisoners to their country of origin; and
— Improved exchange of criminal records.

We secured a specific and strong reference to preventing the abuse of free movement. Paragraph 12 of the Guidelines reads, “As one of the fundamental freedoms of the European Union, the right of EU citizens to move freely and reside and work in other Member States needs to be protected, including from possible misuse or fraudulent claims”. Misuse’ encompasses not only illegal immigration but also the exploitation of free movement rights, including for the purposes of organised criminality. In the UK we have seen fraudulent claims by EU nationals to public services, for example, social welfare, as well as fraudulent claims by non-EU nationals to entry and residence rights. We strongly welcome the inclusion of this broad language in the guidelines and we hope that this will lead the Commission and Member States to be more proactive, rather than reactive, in this area.

We welcome the substantial reference to strengthening the external border and working more effectively to reduce illegal migration with the Guidelines aiming to support efforts to tackle “irregular migration flows”. We also agree fully with the Guidelines where they say, at paragraph 8, that a “sustainable solution can only be found by intensifying cooperation with countries of origin and transit, including through assistance to strengthen their migration and border management capacity”. Whilst we are usually excluded from measures that build on Schengen border arrangements we have a strong interest in ensuring that those arrangements remain robust.

We were also successful in ensuring two strong and explicit references to the need for action against human trafficking. Paragraph 8 identifies a focus on “addressing smuggling and trafficking in human beings more forcefully, with a focus on priority countries and routes”, and paragraph 10 recognises the importance of “preventing and combating serious and organised crime, including human trafficking and smuggling”. We are pleased to have secured two robust references to this area and consider it to properly reflect the priority the Government attaches to the fight against modern slavery.

In regards to effective return of prisoners to their country of origin, our key aim has always been to ensure full implementation of the Prisoner Transfer Framework Decision (PTFD). Consequently, we are pleased with the focus on ensuring full implementation of all existing legislation.

The Government also sought a reference to the need to improve cross-border information exchanges, particularly in relation to criminal records. Paragraph 10 of the Guidelines explicitly calls on the EU to help facilitate and coordinate work in this sphere and we welcome this.

The Government would also bring the Committee’s attention to the following points in the Guidelines, which we consider to be welcome:

— Improving the link between the EU’s internal and external policies. Paragraph 2 contains a clear reference to this. The Government was also pleased to see recognition that such an approach “has to be reflected in the cooperation between the EU’s institutions and bodies”. We believe there is far more that can be done in this regard.

— Role of the EU Counter Terrorism Coordinator. Paragraph 10 reaffirms the importance of this role in helping to maximise synergies between the internal and external elements of the EU’s counter terrorism policy.

— EU Passenger Name Record (PNR). Paragraph 10 of the Guidelines recognises the importance of this instrument to public safety and security. The Government welcomes this support as it believes that it is essential that the EU swiftly adopts an EU legal framework that provides for the exchange of intra-EEA PNR to tackle the issues of foreign fighters, trafficking and organised crime. We hope this will act as a springboard for renewed energy on this dossier, particularly from the European Parliament.

— Simplifying access to justice. Paragraph 11 of the Strategic Guidelines includes welcome references to the need to promote effective use of technological innovations in the Justice area, including greater use of e-justice.
Council-led review mechanism. Paragraph 13 calls on the EU institutions and the Member States to ensure the appropriate follow-up to the guidelines and makes clear that the European Council will hold a mid-term review in 2017 which reflects the Governments aims.

The Government note that the reference to the European Public Prosecutor’s Office (EPPO) only refers to “advancing negotiations”, rather than a commitment to prioritising and concluding negotiations. As the Committee is aware the Government does not consider that the case has been made for the creation of the EPPO. We are aware that your Committee shares similar concerns.

The Government was also successful in opposing a reference to either the mutual recognition of asylum decisions or codification of legislation in the Guidelines. We consider this to be a particularly good result given references to both appeared in earlier drafts.

We hope your Committee will welcome the new Strategic Guidelines as they largely reflect what was recommended in your report of 14 April. We believe the Guidelines will provide a good basis for activity in the area of justice and home affairs for the next five years.

We note the Committee’s decision to clear the Commission’s Communication “An open and secure Europe: making it happen” and to retain the Commissions Communication: The Justice Agenda 2020 – Strengthening Trust, Mobility, and Growth within the Union under scrutiny until the Government decides whether to opt into the Regulation on the Justice Programme. As you know, under Protocol 21 the UK may, at any stage after a measure has been adopted, indicate its wish to participate. The Government will consider the value of a post-adoption opt-in and will write to you in due course.

9 July 2014

EU MOBILITY PARTNERSHIP WITH JORDAN (UNNUMBERED)

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

I am writing to update you on proposed EU Mobility Partnership with Jordan, which was the subject of my predecessor’s letters of 20 September and 8 November.

Although Jordan is not considered a priority country with regard to immigration, you will recall that it was my predecessor’s ‘in principle’ view that UK participation in the EU Mobility Partnership might provide means of broadening our engagement with Jordan and contribute to the mitigation of migration and security risks in the region.

We have now received the proposed text for the political declaration of the Mobility Partnership, and I have reviewed our earlier ‘in principle’ view in order to reach a final decision on UK participation. On the basis of that review, I have decided that the UK should not now participate in the Mobility Partnership as I do not believe that our participation would bring any significant benefits either to ourselves or to Jordan. This is particularly so given the £600 million we have provided to Syrian relief efforts, which represents substantial concrete support for Jordan and other countries in the region dealing with the outflow from Syria. It remains possible for the UK to join the Mobility Partnership at a later date should we consider it important to do so.

I will write to you again in due course to advise you of any further progress on this Mobility Partnership and similar instruments under the framework of the EU’s Global Approach to Migration and Mobility (GAMM).

4 June 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 4 June 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 18 June 2014.

We note your explanation as to why the Government have changed their mind about participating in the Mobility Partnership with Jordan.
We would be grateful to receive further updates on related issues as they arise, particularly in relation to the Commission’s forthcoming evaluation of the Global Approach to Migration and Mobility (GAMM).

18 June 2014

EU PROPOSAL FOR A MANDATE TO NEGOTIATE AN EU READMISSION AGREEMENT WITH TUNISIA (UNNUMBERED)

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

I am writing to advise you of our decision on participation in a mandate to negotiate an EU Readmission Agreement (EURA) with Tunisia. I apologise for the delay in writing to inform you about the mandate. Unfortunately, the UK was not notified of the publication of the Council Decision which triggered the opt-in.

On 31 July 2014, a mandate for the EU Commission to negotiate an EURA with Tunisia was published. As you are already aware, EURAs ensure reciprocal procedures for the identification, documentation and return of persons illegally entering or remaining in EU Member States. We decide participation in EURAs on a case by case basis.

While Tunisia is not an immigration returns priority for the UK (in 2013 and the first quarter of 2014 there were only 13 and 10 enforced returns respectively), obtaining travel documents from the Tunisian embassy is difficult and involves lengthy verification checks. We would not enjoy an operational advantage if we were to maintain our bilateral arrangement for conducting returns to Tunisia and consider a collective EU approach may help to unblock our current problems with redocumentation.

We have also participated in a migration Mobility Partnership with Tunisia. The Mobility Partnership is not intrinsically linked to the EURA but there is provision in it to open negotiations for a readmission agreement. Participation in the EURA might demonstrate continued UK support for cooperation and capacity building objectives contained in the Mobility Partnership.

Should our position on Tunisia change, there will be a further opportunity to for us to decide whether we participate in the EURA when proposals to sign and conclude it are published. These proposals will of course be deposited for Parliamentary scrutiny.

I can also advise that the EURA with Turkey which was signed on 16 December 2013 came into force on 1 October 2014. The UK opted in to the Decision to conclude this agreement. We welcome the EURA with Turkey, which we believe will form an important part of broader co-operation between the EU and Turkey on a wide range of Justice and Home Affairs matters.

5 November 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 5 November 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 26 November 2014.

Although this is not readily apparent from your letter, we understand that what happened on 31 July 2014 was the submission by the Commission to the Council of a proposal for a Decision on the negotiating mandate for the Commission to negotiate a readmission agreement with Tunisia. This presumably was classified RESTREINT and so not published. We also understand that the Government opted in to this draft Decision on 31 October 2014, and is participating in the negotiations on the Commission’s negotiating mandate.

We are glad that the negotiations with Turkey have at last come to a successful conclusion and that an agreement is now in force.

A response to this letter is not required, but we look forward in due course to seeing the draft Decisions on the signature and conclusion of an agreement with Tunisia.

26 November 2014
Letter from James Brokenshire MP, Minister for Immigration and Security, Home Office, to the Chairman

Thank you for your letter of 14 May 2014 regarding the Communication on EU Returns Policy. You asked for some further information on the concerns raised in my explanatory memorandum on the Communication.

I can also advise that Council Conclusions, which flow from the Communication on EU Returns Policy, have been published. These focus on practical cooperation and capacity building for future EU Returns work and were adopted at the JHA Council on 5 June. The Conclusions are acceptable to the UK, as the proposals which previously concerned us in the Communication do not appear or have been significantly changed.

With regard to the proposal for a handbook on returns, Council Conclusions restrict its scope to issues already covered in existing EU returns legislation. This suggests that any handbook would cover the actions which Member States can take to tackle abuse, rather than focusing inappropriately on fundamental rights. We will continue to support this position if work on the handbook is taken forward.

The Council Conclusions do not provide for compulsory monitoring on Frontex flights. The experience of other Member States on monitoring is that it is not possible to independently monitor every return operation and some limit monitoring to only the boarding of a flight. Frontex joint return operations are co-funded and coordinated by Frontex but organised by Member States. They follow the requirements of Article 8(6) of the Return Directive, which provides for an effective monitoring system for forced returns but does not require the presence of monitors on every flight.

Our own experience is that monitors are not always available, due to their own capacity issues. To require a monitor to be on every Frontex flight would mean that a flight could be delayed or cancelled if a monitor was not available. We consider it is more reasonable for the presence of monitors to be sought rather than making their availability a pre-condition for every flight.

The UK does not routinely monitor the treatment of foreign nationals after they have been returned. We would not return individuals who are at real risk of mistreatment. Allegations may be referred to us in a number of ways; for example, via FCO diplomatic posts, campaign groups or friends and family of a returnee. The number of such allegations is not recorded centrally. However, if we receive specific allegations that a returnee has experienced ill-treatment on return, these are taken extremely seriously and we would of course follow up. Action taken in response would depend on the individual circumstances of the case.

The Council Conclusions also contain a proposal for a pilot project to improve the number of returns to specifically identified third countries. While we endorse the principle of upstream engagement and joint cooperative working at a practical level, we consider that Member State participation in any joint working should be voluntary and decided on a case-by-case basis. This reflects the EU’s broader approach on upstream engagement under the Global Approach to Migration and Mobility (GAMM). We have secured language on the pilot project in the Council Conclusions to make clear that participation should be voluntary for Member States.

More generally, we consider the EU should consolidate existing work on EU Returns before pursuing any new legislative activity. This would include work to ensure existing EU Readmission Agreements are properly functioning before pursuing new ones.

24 June 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 24 June 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 9 July 2014.

We are grateful for your answers to the questions we posed in our letter of 14 May.

A response to this letter is not required.

9 July 2014
Letter from the Chairman to Mike Penning MP, Minister of State for Policing, Criminal Justice and Victims, the Home Office

Thank you for the Explanatory Memorandum of 7 August 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 10 September 2014.

We understand and sympathise with the concerns expressed in paragraphs 21 to 26 of the EM. The Commission’s proposals would indeed significantly expand CEPOL and change the nature of its work. We agree that CEPOL should continue to be a body whose aim is to coordinate the work of senior police officers.

Paragraph 20 of the EM states that the Government is committed to reaching decisions on opt-ins on a case by case basis, and paragraph 22 states that in making a decision on whether to opt in you will need to consider the extent to which the Commission proposal can be improved.

This Committee, in its 2009 report The United Kingdom opt-in: problems with amendment and codification (7th report, session 2008-09), drew attention to the problem that would arise if the UK decided not to opt in to a measure amending an earlier measure which applied to the UK (whether or not because it had opted in). In this case the first measure, the 2005 Council Decision, was a third pillar measure requiring unanimity, and therefore not subject to a UK opt-in. However, post-Lisbon, the new Regulation is subject to the opt-in. Article 39 of the new Regulation repeals the 2005 Council Decision. If the UK does not opt in to the Regulation, none of the Regulation applies to the UK, including Article 39. As regards the UK, the 2005 Decision would then remain unrepealed, and so would continue to apply to the UK, while the new Regulation would apply to the other Member States.

This reasoning in our report was accepted by the Commission but not by the then administration nor, initially, by this Government. However in 2012 the Government stated that it accepted this in full: see the Written Statement of Lord Henley on 14 March 2012.

It seems to us therefore inevitable that the Government must opt in to the Regulation at some stage. If it did not do so, the UK would remain bound by a Council Decision giving CEPOL limited powers, while the other Member States would apply legislation giving CEPOL wider powers, a scientific committee, and different organisational and financial provisions. This would obviously be unworkable, and in our view could not fail to trigger the procedure of Article 4a of Protocol 21, resulting effectively in the UK’s expulsion from CEPOL, with responsibility for the financial consequences.

In our view the only remaining question is whether the Government should opt in at this stage, during the three months allowed by Article 3 of Protocol 21 (which, we understand, expire on 24 November), or whether it would be enough for the Government to opt in after the Regulation has been adopted.

If you agree with us that the Government must inevitably opt in at some stage, it seems to us that there is a clear advantage in doing so now. This will give the message that the UK intends to continue to support and be part of CEPOL, and will also give the Government a formal place at the negotiating table when attempts are made to amend the Commission’s draft. When Parliament resumes next month we will be adopting a report to the House formally calling on the Government to opt in. We anticipate that the Government will make time available for that report to be debated as soon as possible.

We are keeping this document under scrutiny.

We are grateful too for your letter of 4 September 2014 giving the details of the adoption of the Regulation amending the seat of CEPOL (Document No 17043/13) on 6 May 2014. We clear from scrutiny that document, and the associated Commission Opinion (Document 5522/14). We agree with you that the savings achieved from the sale of Bramshill justify the UK contribution to the cost of relocation.

10 September 2014
Letter from Mike Penning MP to the Chairman

Thank you for your letter of 10 September on the new draft CEPOL Regulation. I note that you agree that CEPOL should continue to be a body whose aim is to coordinate the work of senior police officers.

I can confirm that if the UK does not opt in to the proposal and if it is subsequently adopted by the rest of the EU, the UK will remain bound by the underlying CEPOL Council Decision. I also note that should the Government decide not to opt in, you believe that this would be unworkable and trigger the procedure under Article 4a of Protocol 21 of the Treaty on the Functioning of the European Union. You state that this would result in the UK’s expulsion from CEPOL.

The Government considers that the interoperability test set out in Article 4a of Protocol 21 sets a high threshold. The amended version of an existing measure must be inoperable for participating Member States or the Union. However, as the participating Member States will be working within the provisions of the new Regulation, the Regulation will not be inoperable for those Member States and therefore will not be inoperable for the Union either. Whether UK participation in CEPOL is workable does not impact the interoperability test. Therefore, we disagree that the procedure in Article 4a of Protocol 21 must be engaged. That being said, in a situation whereby most Member States are subject to the new Regulation, and the UK or Ireland remains subject to the existing 2005 Decision, the Commission may consider that this creates some practical difficulties. However, such a situation is purely hypothetical at this stage.

As Lord Bates stated in the debate on 3 November, the Government is currently considering its position on whether to opt in to the Regulation. I will inform you as soon as this position is established through a Written Ministerial Statement.

12 November 2014

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 12 November 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 26 November 2014.

My letter of 10 September 2014, to which you are replying (perhaps somewhat belatedly), has of course now been rather overtaken by events. The points made in my letter are included and amplified in the Committee’s report The United Kingdom opt-in to the draft CEPOL Regulation, and that was, as you say, debated on 3 November. In the course of that debate Lord Bates made the same points that you have now made in your letter.

You confirm that, if the Government does not opt in to the CEPOL Regulation either now, when it is in draft, or post-adoption, the current Council Decision establishing CEPOL will continue to apply to the UK. Yet you contest the Committee’s view that, in such a case, the problems would be sufficient to satisfy what you call the “interoperability” test (I think you mean “inoperability”) in Article 4a of Protocol 21. At this stage this can only be a matter of conjecture, and I hope that it will remain so and that the Government will opt in either now or post-adoption.

Nevertheless, I think the problems caused by having an agency with two different constitutions may be real. Let me give a few examples. Is CEPOL to have a Director appointed by a Governing Board (on which the Commission is not represented) for a term of 4 years, or (as the current draft of the Regulation provides) an Executive Director appointed by a Management Board (on which the Commission is represented) for a period of 5 years? No doubt the UK would not in practice challenge the appointment of an Executive Director. Would the other Member States want the UK to contribute to the resources of a scientific committee in which it plays no part? Would they expect the UK to designate a national unit to contribute to CEPOL’s work programmes, when under the law applying to the UK it has no obligation to do so? Would they expect the UK to contribute to the training of junior police and customs officers from other Member States, when such officers from the UK could not take part in the training?

As I say, I hope these will remain questions to which we never find the answers. I look forward to hearing, either directly from you or through a Written Ministerial Statement, whether the Government did in fact opt in to the draft Regulation before 24 November.

26 November 2014
Letter from the Chairman to Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office

Thank you for your letter of 15 May 2014 on the Europol negotiations which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 18 June 2014.

We are grateful for your full update on the progress of negotiations. We continue to believe that effective international cooperation is vital to national security, and that Europol is an integral part of this. We share your satisfaction that the latest text seems not to impose obligations on national agencies to initiate investigations where they regard this as unnecessary or undesirable, and we also agree with you that the exemptions in relation to data sharing are an improvement. We believe however that you are right to press for texts which could not be differently construed by the Court of Justice.

We share your concern about the provisions on Parliamentary scrutiny. The European Parliament’s latest text is so prescriptive that it comes close to imposing obligations on national Parliaments, and produces a mechanism which would at best be cumbersome, and which gives the EP a dominant role, including the sole responsibility for convening and hosting meetings of the Joint Parliamentary Scrutiny Group.

You say that you feel it is ultimately for national Parliaments and the European Parliament to decide on the most appropriate process. However national Parliaments, unlike the EP, of course have no say in the negotiating process, and can only rely on their national Governments. We believe that it is the Government’s responsibility to attempt to negotiate texts which are in the UK’s national interest; and that this interest includes the interests of Parliament. We would therefore like to know what the Government intends to do to ensure that Articles 53 and 54 of the draft Regulation contain provisions which are not prescriptive, do not impose obligations on national Parliaments, allow for a flexible scrutiny of Europol’s activities, and give national Parliaments a say at least equal to that of the EP.

We continue to retain this document under scrutiny. We would be grateful if you could continue to provide updates on the negotiations as they develop.

18 June 2014

Letter from the Chairman to Karen Bradley MP

Thank you for your explanatory memorandum of 7 July 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 30 July 2014.

We are pleased to know that you believe the text of the Europol Regulation agreed for the General Approach represents good progress on the Government’s key conditions for opting in after the Regulation has been adopted. It seems to us too that there has been significant improvement on the main issues.

You will recall from my letter of 18 June 2014 that our key concern was the Parliamentary scrutiny of Europol. We are pleased to see that Article 53 of the revised text largely ignores the detailed amendments proposed by the European Parliament and follows the original Commission text with only immaterial amendments. The result would be to leave it open to national Parliaments and the European Parliament to decide on when, where and how to scrutinise Europol without any regulatory constraints.

While this answers some of the questions in my letter, it does not answer my specific question about the Government’s responsibility for ensuring that Articles 53 and 54 do not contain provisions which are unduly prescriptive. The latest text will now be the subject of trilogue discussions, and the European Parliament can be expected to press to restore some provisions from their draft. I would be grateful for your confirmation that the Government will do all it can to resist this, and I would be grateful for an early reply.
We clear from scrutiny the original Commission draft (Document 8229/13 and its 5 Addenda), but continue to keep under scrutiny the latest draft (Document 10033/14). We would be glad to be kept updated on the progress of negotiations.

30 July 2014

**Letter from Karen Bradley MP to the Chairman**

Thank you for your recent letter responding to my Explanatory Memorandum on the Council’s General Approach text in respect of the above dossier.

On the issue of parliamentary scrutiny of Europol, I share your view that it would be preferable to retain the current Council text insofar as this is possible. This being the case, I can confirm that I have instructed my officials to seek to join together with like-minded Member States to oppose the European Parliament’s vision in this area, thereby seeking to ensure that effective parliamentary scrutiny of Europol is not fettered by an overly prescriptive regime set out within the Regulation.

I will of course continue to update you on the progress of negotiations on this important dossier.

28 August 2014

**Letter from the Chairman to Karen Bradley MP**

Thank you for your letter (undated but, we understand, signed on 28 August 2014) in reply to my letter of 30 July 2014. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered your letter at its meeting on 10 September 2014.

We are glad to learn that you share our view on the issue of parliamentary scrutiny of Europol, and are grateful that you have instructed your officials to oppose the European Parliament’s proposals, and to seek to ensure that effective parliamentary scrutiny of Europol is not fettered by an overly prescriptive regime.

We are grateful for your undertaking to keep us updated on negotiations on this and other issues.

10 September 2014

**EU VISA POLICY (8401/14), SMARTER VISA POLICY FOR ECONOMIC GROWTH (8478/14), ESTABLISHING A TOURING VISA (8406/14), DRAFT ‘SMART BORDERS’ PROPOSALS ON AN EU ENTRY/EXIT SYSTEM AND REGISTERED TRAVELLERS PROGRAMME (6928/13, 6930/13, 6931/13)**

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

Thank you for your explanatory memoranda of 28 April 2014 and your letter of 29 April 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 18 June 2014.

Your explanatory memoranda state that, as the UK does not participate in the immigration and border aspects of the Schengen acquis, these proposals have no policy implications for the UK. During a visit to China in 2013, the Chancellor of the Exchequer announced the introduction of a new pilot scheme which will allow selected Chinese travel agents to apply for UK visas by submitting the EU’s Schengen visa form, rather than two separate applications. This was in recognition of the fact that, in 2012, 210,000 UK visas were issued to visiting Chinese nationals who went on to contribute around £300 million to the British economy. It therefore seems to us that these proposals will indeed have significant policy implications for the UK. We would be grateful for an assessment of the implications of these proposals for the UK’s border security, and for the tourism and higher education industries.

We have decided to retain these documents under scrutiny and look forward to receiving your response within the usual 10 working days.

18 June 2014
Thank you for your letter of 18 June. I apologise for the delay in replying to your Committee. As you will appreciate, we wanted to canvas opinion from across the Department to be able to address the issues you raised.

You have asked for an assessment of the effect these three new proposals on EU visa policy would have on the UK’s border security, competitiveness of the UK’s tourism industry and the attractiveness of the UK as a destination for third country visitors, such as China.

Taking your points in order:

**BORDER SECURITY**

The vast majority of the Commission’s recommendations are aimed at improving customer accessibility to the Schengen visa application process and aimed at simplifying the visa application process for legitimate travellers. As such they should not adversely impact on the UK’s border security

The one possible exception to this is the recommendation to issue single entry visas at the border to promote tourism. The Commission has not yet published a stand-alone proposal on this and without that level of detail it is difficult to assess the level of any risk that this could pose to the UK. Generally speaking, it is vital that visa liberalisation is well managed and not open to abuse. Historically we have been concerned about the EU’s policy of visa liberalisation (for example from the Western Balkans) which has been subject to considerable abuse, and which has had an impact on the UK as well as the Schengen area. Recent visa liberalisation experiences have – to some extent – burnt Schengen’s fingers and have resulted in changes being made to Regulation 539 and specifically to the introduction of a suspension clause. We therefore think it is unlikely that Schengen colleagues would agree to such recommendations lightly and without being satisfied that the risks of abuse were minimal and could be managed. We understand that our EU partners share some of our own reservations on the scope of the Commission’s proposals.

**Impact on the Tourism Industry and Attractiveness of the UK for Visitors**

Visas do introduce some additional, but necessary checks on those wishing to visit the UK. But our visa processes and our visa issuing service standards ensure that the impact on legitimate travellers is minimised. A 25% growth in visa applications is forecast for 2015/6 which is an indication that tourists are not being put off visiting the UK because of the need to apply for a visa. The existence of a visa regime and the cost of that visa are also not considered key to an individual’s decision about whether or not to visit the UK for reasons other than tourism. Factors that do influence this decision include the ease of travel to UK destinations, presence of family members in the UK and business opportunities in the UK.

It should be noted that the Commission is recommending process changes rather than visa regime changes. These changes are aimed at making the Schengen visa application process more accessible to customers. We already offer a world class visa service which compares very favourably to that of Schengen and will continue to do so in the event of all/some of these recommendations being implemented.

That said, we are not being complacent and we continue to make changes to our visa application process to ensure that we continue to encourage legitimate visitors. We have already launched several operational initiatives that provide additional incentives and advantages to those who are likely to do the most to improve our economy – as an example China and the Gulf region are both beneficiaries of a streamlined visa application process. We now offer a priority visa service in over a hundred locations and we are in the process of reviewing customer service standards.

With regards to the Chinese market in particular you will be aware that we recently launched a new application service which is simpler, more user-friendly, with translated and intuitive questions, asking customers only those necessary for their individual application. Early feedback has been positive. We are also working closely with our Schengen colleagues to ease the customer journey for those wanting to apply for a UK and Schengen visa. We have started to accept Schengen application forms plus a short addendum form providing mandatory information for us that is not included on the Schengen form. We are also hoping to soon launch the “China Single Visa Application Centre Visit” whereby applicants can apply for a Schengen visa at a UK VAC. We are currently having discussions on this with our Schengen and Chinese partners.
As the EU proposals are still being developed, we feel that it is too soon to undertake a detailed assessment of possible impact. We will, however, stay close to work on these proposals and will provide further updates when the initial proposals are refreshed.

1 September 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 1 September 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 15 October 2014.

We are grateful for your answers to our questions about the possible impact of these proposals on the UK’s border security and tourism industry. We note the efforts the Government is making to facilitate UK visa applications in China and in the Gulf region.

We clear from scrutiny Document 8478/14; please note that this is the Commission report and not, as stated in the heading of your letter, the Visa Code.

We also clear from scrutiny the draft Regulation establishing a touring visa (Document 8406/14), and the draft Regulation on the Visa Code (which is Document 8401/14 and not, as stated in the heading of your letter, 8478/14) which, because they are Schengen measures, which will not involve the UK in their adoption. We would however like to make clear that we are clearing these documents only because the UK has no part to play in the adoption of any of them.

We remain very interested in the development of these proposals and the progress of the negotiations. Your letter of 1 September did not address our question about the impact of these proposals on the UK’s global competitiveness as a higher education destination. This is an issue which this Committee, and other Committees in this House, have considered many times in recent years and we would be grateful for a response.

15 October 2014

EXAMINING THE APPLICATION FOR INTERNATIONAL PROTECTION OF UNACCOMPANIED MINORS WITH NO FAMILY MEMBER, SIBLING OR RELATIVE LEGALLY PRESENT IN A MEMBER STATE (11864/14)

Letter from the Chairman to Mike Penning MP, Minister of State for Policing, Criminal Justice and Victims, the Home Office

Thank you for your explanatory memorandum of 30 July 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 10 September 2014.

You say in paragraph 13 of the EM that the Government, although it argued against the Court’s interpretation of Article 8(4) of the Dublin III Regulation in the MA case, respects that interpretation. We assume it follows that, although you mention in paragraph 14 of the EM a number of points you wish to see clarified, you accept in principle the amendments to be made to Article 8(4) by the draft Regulation.

You say in paragraph 11 of the EM that the Government is committed to reaching decisions on opt-ins on a case by case basis, and you list the factors you will take into account in this case: the fact that the Government has previously opted in to Dublin system measures; the “particular implications” of being partially but not fully involved in Dublin III; and whether you could achieve any necessary amendments.

This Committee, in its 2009 report The United Kingdom opt-in: problems with amendment and codification (7th report, session 2008-09), drew attention to the problem that would arise if the UK, having opted in to a measure, subsequently decided not to opt in to a measure amending the first measure. In that case the problem arose, fortuitously, from an earlier attempt to amend Dublin II and the associated EURODAC Regulation. In paragraph 12 of that report we said:

There is however both an operational and a legal necessity for the Dublin Regulation to apply in exactly the same way in the United Kingdom as in the other Member States. It imposes on each participating
State mutual obligations which must be identical, otherwise the different regimes applicable in different Member States would in some cases lead to different results in determining the jurisdiction which should decide the claim.

This is as true now as it was then. If the UK fails to opt in to the amending Regulation, the current draft of Article 8(4) will continue to apply in the UK while the amended text will apply in the rest of the EU. It is true that the difference would not be great, since Article 8(4) would apply as interpreted by the Court of Justice, and this is what Article 8(4a) purports to do. But the wording is not identical, and Article 8(4b) to (4d) would not apply in the UK.

You will be aware that Lord Henley, in a Written Statement on 14 March 2012, confirmed that the Government accepted in full the Committee’s reasoning in its 2009 report. We hope therefore that you agree with us on the importance of the Government opting in to this draft Regulation, and moreover of doing so before the three months expire on 16 October, rather than waiting until after the Regulation has been adopted.

In other circumstances we would have incorporated these views in a report which could have been debated by the House in Government time. Plainly this is not feasible since the three months expire three days after the House resumes. We would however be grateful to hear from you, well before that date, what the Government’s intentions are in relation to opting in.

We have noted what seems to us to be an error in Recital (2) of the draft Regulation. The recital begins:

After adoption of the Regulation (EU) No 604/2013 the Court of Justice ruled in case C-648/11 that ….

Regulation 604/2013 was adopted on 26 June 2013. The judgment of the Court of Justice was delivered on 6 June 2013, and so before rather than after adoption of the Regulation. No doubt all the negotiations on the Regulation had been concluded before the judgment was available, but it seems to us that the recital is nevertheless factually inaccurate. If you agree, perhaps you would ensure that this is corrected.

We are keeping this document under scrutiny.

10 September 2014

ITALIAN PRESIDENCY PRIORITIES FOR HOME OFFICE JUSTICE AND HOME AFFAIRS (JHA) ISSUES OVER THE NEXT SIX MONTHS (UNNUMBERED)

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

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

We know that JHA Councils will take place on:

— 8 and 9 July (informal),
— 9 and 10 October, and
— 4 and 5 December

But of course these dates may be subject to change

This is the twelfth time Italy has held the Presidency of the Council of the European Union. The Italians have announced that their Presidency’s three priorities will be growth, Mediterranean issues and migration. The latter two priorities, in particular, contain much Home Office business and we can expect a strong focus on irregular migration across the Mediterranean. We also expect the Italians to pay particular attention to: security and terrorism (including foreign fighters); drug trafficking; human trafficking; organised crime infiltration into legal economy; asset seizure; and cyber security.
On migration, the Italians will place particular emphasis on the EU's response, under the “Task Force Mediterranean” programme, to the deaths of migrants at sea. They are likely to press for an enhanced EU response, including work with third countries and additional support for those Member States which see themselves as Europe’s ‘frontline’, as well as the effective adoption of measures to fight illegal migration more generally. The Italians are particularly keen to promote partnership with third countries as a way to tackle illegal immigration flows. During their Presidency they will try and start up a new dialogue with Eastern African countries/Horn of Africa.

The new European Commission will be appointed during the Italian Presidency, and is due to take office on 1 November. This means that the existing Commission will be largely in “caretaker” mode for much of the Presidency, though we still expect some legislative proposals from it, not least in respect of the European Police College (CEPOL). We will work closely with the new Justice and Home Affairs Commissioners, as well as the new High Representative for Foreign Affairs and Security Policy, to build a good working relationship and ensure that they are aware of UK priorities.

The UK’s 2014 opt-out decision will continue to be a priority under the next Presidency. We are confident that Italy will engage positively and help to conclude this matter formally.

With the exception of the expected new Regulation on CEPOL, the Presidency’s legislative work is likely to focus on taking forward existing negotiations rather than starting work on new measures. The Presidency will also need to begin implementation of the new “strategic guidelines for legislative and operational planning” in the JHA area that we expect the June European Council to agree.

The Italian Presidency will also begin discussions on a new Internal Security Strategy, to replace the existing one which expires this year. They may hold a discussion on this at the July Informal Council. At the same time, the Commission will begin consultations in advance of a Communication that we expect from them in early 2015. We understand the Commission believe that the existing five priorities (organised crime; counter terrorism; cybercrime; border management; crisis management / civil contingency planning) are still the right ones but want to take account of emerging threats such as energy fraud and environment crime.

On migration, asylum and border control, we expect the Italian Presidency to take forward a range of dossiers, including:

— The recast of the visa code, in particular relating to practices of issuing maritime visas and border control;
— Integrated management of the external borders (both through the implementation of EUROSUR and Maritime Operations Regulation, and through progressing the ‘Smart Borders’ package);
— A pilot project on enhanced joint returns;
— Progress on the legal migration Directives; and
— Revisiting the role of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), the senior official level working party with oversight of EU migration and asylum policy.

The mass displacement of people by the Syria crisis, increasingly linked to flows from the Southern Mediterranean, will also remain a focus of activity. In this regard, we will want to see the swift implementation of the EU Regional Development and Protection Programme for those displaced by the Syria crisis and will continue to play an active role on the programme’s steering committee.

With regard to legal migration, negotiations continue on a Directive on the entry of third country nationals for the purpose of research and study. As your Committee is aware, the UK has not opted in to the proposal. We will continue to provide updates on the progress of this measure.

During the Italian Presidency we will continue to press the EU to take effective action to tackle the abuse of free movement rights, working with other Member States which have similar concerns on this issue. We expect there will be a continuing focus on this issue as part of the implementation of the “roadmap” on migratory pressures (‘EU Action on Migratory Pressures – A Strategic Response’). We are also seeking a commitment to further work on this issue in the post-Stockholm JHA work Programme; as stated above, the Italian Presidency is expected to have discussions about implementation of that Programme.

We expect the counter terrorism (CT) focus to continue to be on the issue of foreign fighters returning from Syria, particularly in light of the recent attack in Brussels. The Italians have indicated
that they are willing to look more closely at the situation in the Western Balkans in this respect. We expect the Italians, like the Greeks, to continue with the theme of combating anarchist terrorism.

Following Ministerial endorsement of the EU Strategy for Combating Radicalisation and Recruitment to Terrorism, which was revised under the Greek Presidency, the Italians have indicated that they may wish to produce accompanying guidelines for Member States to use on a voluntary basis. The Italian Presidency will continue work under the EU Policy Cycle programme of cooperation against organised crime. A new set of EU Organised Crime Priorities 2014-17 was agreed by the JHA Council in June 2013, and the Presidency will be responsible for continuing to monitor progress against these priorities through the Standing Committee for Internal Security (COSI). The priorities will be delivered through a series of Operational Action Plans focusing on improving operational collaboration between Member States under the different crime areas.

The Italians have stated that they also intend to focus on the fight against organised crime; in particular anti-corruption and anti-mafia issues. They also wish to galvanise EU action to prevent criminal infiltration of the legitimate economy. We expect them to present Council Conclusions on this issue, and to continue the momentum on the wider Anti-Corruption agenda following agreement of Council Conclusions on the EU Anti-Corruption report at the June 2014 JHA Council.

More widely we expect a push to tackle cybercrime, with attention focused on bank fraud and public/private sector collaboration, and on improved action to target online child sexual exploitation. The Italian Presidency's drug policy priorities will include placing further focus on the flows and use of illicit narcotics, reducing the use of new psychoactive substances, the misuse of controlled prescribed drugs within the EU, and steering EU preparations for the 2016 UN General Assembly Special Sessions on Drugs. We also expect emphasis to be placed on human trafficking, with action to draw up a handbook of good practices to identify trafficking victims. Following the publication of the EU Commission’s Communication on firearms and the internal security of the EU, the Italians will be working towards the development of a standardised system of collecting information on the use of firearms for criminal purposes.

We understand that the Passenger Name Records Directive (PNR) is not one of the Italian Presidency’s priorities. However, the value of PNR in tackling serious crime, including terrorism, is recognised nationally. Italy is one of fourteen Member States in receipt of EU funding to develop a national Passenger Information Unit (PIU). The Directive remains with the European Parliament’s Civil Liberties and Freedom (LIBE) Committee for further consideration. The Government remains committed to the use of PNR as a way of tackling serious crime and terrorism, in particular foreign fighters, although not at the expense of data protection and civil liberties. We will continue to identify opportunities for pursuing a unified European approach to collecting passenger information. I will write to you on this particular matter in more detail once the new LIBE Committee has been formed.

The Commission completed its review of the European Programme for Critical Infrastructure Protection (EPCIP) and the Directive on the identification and designation of European Critical Infrastructure (ECI) last year. It has not proposed a change in policy or any new legislative instruments but instead a more practical approach to implementation of the Programme. The Government supports the retention of the current policy and legal framework and the adoption of a more practical, cross-sectoral approach which should deliver more tangible improvements to the security of critical infrastructure in the EU. The new approach is being piloted through projects involving four critical infrastructures with a European footprint. These projects will continue throughout the Italian Presidency.

The Directive on the freezing and confiscation of the proceeds of crime was adopted in April 2014. As you know, we have not opted in to this Directive. Now that the text has been adopted, we will carefully consider opting in. The decision will be subject to Parliamentary scrutiny in the normal way. We were expecting a Commission proposal to harmonise money laundering definitions, offences and sanctions under the Lithuanian Presidency. However, the proposal has not been forthcoming. The Commission conducted a practitioner-level scoping study last year but we are not aware of any further developments on this proposal.

We expect that progress will continue to be made on the negotiation of the draft Europol Regulation, with trilogue involving the European Parliament beginning following the agreement of a Council General Approach in early June. It is possible that a final text could be agreed under the Italian Presidency, but we assess that it is more likely that negotiations will continue into 2015.
We expect them to prioritise progress on the European Public Prosecutor’s Office (EPPO) and expect ongoing debate within the Council regarding the structure and powers of an EPPO, as well as the drafting of the second half of an alternative proposal. We will continue to challenge any proposals in line with the wide-ranging concerns we share with both Houses and actively seek to protect our interests as a non-participating Member State in the proposal.

On the Commission’s parallel proposal to reform Eurojust, the Italian Presidency will continue work started under the Greek Presidency. A first reading of all the Articles is completed and the Greek Presidency has produced a revised governance document that will form the basis for further negotiations. We will continue to lobby against any mandatory expansion in the powers of National Members and to protect our position as a non-participating Member State in the EPPO in relation to any inter-linkages between the two texts. There has not been substantive discussion on this latter point and we would not expect it to be addressed until the position on the EPPO file becomes clearer. We would expect negotiations on this file to continue well into 2015.

We look forward to working with the Italian Presidency to ensure that the UK successfully connects in to SISII. Following the UK Government’s 2014 opt-out announcement, the UK has reiterated its intentions to rejoin SISII and to keep to our current “go live” in the last quarter 2014. The UK passed its Schengen data protection evaluation in October 2013; and the subsequent report was adopted in March 2014. This now allows the UK to begin the necessary SISII pre-verification (synchronisation of data), subject to the final adoption of the UK’s date for “go-live”. We have also recently undertaken the UK’s Police Cooperation Schengen Evaluation 2-5 June and we look forward to working with the Italian Presidency to finalise our report and recommendations.

We expect the Commission to publish a new Regulation governing CEPOL in July or September. This will trigger the JHA opt-in. The decision to bring the measure forward follows the rejection of the Commission’s earlier proposal (in the draft Europol Regulation) to merge CEPOL and Europol. We expect the draft Regulation to propose the changes the Commission believes are necessary to enable CEPOL to introduce the Law Enforcement Training Scheme (LETS) as set out in the Commission’s Communication of 27 April 2013 (doc 8230/13).

The Home Affairs EU funding Regulations establishing the Internal Security Fund and the Asylum, Migration and Integration Fund (ISF and AMIF) have now been adopted. The Commission is in the process of agreeing 7-year national programmes for all Member States. This includes the UK’s National Programme under the AMIF. We are considering whether to apply to opt in to the Internal Security Fund (Police). We will of course seek Parliament’s views in the customary way.

JHA OPT-IN

Apart from the draft CEPOL Regulation referred to earlier, we do not expect the Commission to bring forward any measures during the Italian Presidency on which the Home Office leads and which would trigger our JHA opt-in. Our 6 month update letter, due in July, and next annual report on the opt-in, due in January, will provide further updates.

16 June 2014

JOINT PROPOSAL FOR IMPLEMENTATION OF SOLIDARITY CLAUSE (18124/12)

Letter from Francis Maude MP, Minister for the Cabinet Office, Paymaster General, to the Chairman

Thank you for your letter of 14 May. I am writing to update you on negotiations on the draft Decision on the implementation by the Union of the Solidarity Clause.

The momentum of negotiations has continued, and the Presidency presented the draft document to COREPER in late May in an effort to reach a final agreement on the outstanding issues. The intention is that the Decision will be submitted for adoption by the General Affairs Council (GAC) on 24 June. This letter outlines the developments made since my letter of 1 May 2014, which I hope will enable your Committee to clear the document from scrutiny to allow the Government to support the Decision.

Negotiations on the geographical scope of the proposal, as set out in Article 2, have resulted in removal of the provision that sought to apply the arrangements to incidents in international waters
and airspace affecting ships and planes registered to Member States. The Decision will therefore apply to incidents affecting the territory of Member States or infrastructure situated in the exclusive economic zone or continental shelf of a Member State. This is in line with the Government preference, and I am satisfied that this provision is compatible with the territorial scope of the EU Treaties.

Regarding threat assessments at EU level there has been agreement among Member States that any assessments will be produced by the Commission, High Representative and Union Agencies at the request of the European Council, using existing arrangements for sharing information unless the European Council stipulates otherwise. There has also been agreement to including an explicit reference to Article 346(1) (a) TFEU in order to ensure that Member States are not placed under any obligation to share information which they consider to be contrary to their security interests. The Government believes this provides sufficient safeguards, and avoids the development of systems which may duplicate those already in existence.

Any role for the High Representative and EEAS in the event of a Solidarity Clause invocation remain as set out in my letter of 1 May, with roles remaining within existing areas of competence. This includes a role for the EU Military Staff in supporting the identification of appropriate military capabilities, and a role for the EEAS in providing information for situation reports.

Negotiations have also clarified the procedure for invoking the Solidarity Clause, which maintains an invocation directed at the Presidency, along with an invocation addressed to the President of the European Commission through the Emergency Response Coordination Centre (ERCC). There is agreement that the ERCC will act as the point of contact at Union level with Member States, with other EU crisis centres carrying out their existing responsibilities where relevant. The Government believes that maintaining the ERCC as the contact point provides a more workable arrangement, and that the proposal respects the appropriate competences between the institutions of the Union and between the EU and Member States. Discussions have also clarified the intention that any financial resources will be within the scope of existing Union instruments.

I hope that this letter provides sufficient information to enable your Committee to clear the document from scrutiny. I will provide of course a further update on the final outcome.

5 June 2014

Letter from the Chairman to Francis Maude MP

Thank you for your letter of 5 June 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 18 June 2014.

We are grateful for your update on the negotiations. We believe the result is satisfactory, even though, as we said at the outset of this correspondence, we do not believe that Article 222 TFEU empowers Member States to do anything which they could not do without it, or requires them to do anything they would not otherwise be required to do.

We are happy to clear the document from scrutiny, and look forward to hearing your report on the General Affairs Council.

18 June 2014

Letter from Francis Maude MP to the Chairman

Thank you for your letter of 18 June 2014, and for clearing the document from scrutiny. I am writing to inform you of the final outcome of the Decision on the implementation by the Union of the Solidarity Clause.

The Decision was adopted by the General Affairs Council on the 24 June and subsequently published in the Official Journal of the European Union on 1 July. It will come into effect on the twentieth day following publication. We judge that the outcome is satisfactory, with pragmatic and practical arrangements placing the Council at the centre of the political and strategic direction of the Union response.

As detailed in the Government’s Explanatory Memorandum and subsequent correspondence with your Committee, the Government was concerned to avoid any duplication with existing mechanisms, and we are satisfied that the final outcome adequately relies upon existing instruments to give the
Solidarity Clause practical effect. We are content that the geographical scope of the Decision is compatible with the EU Treaties and that the role of the European External Action Service (EEAS) is clarified. We welcome the inclusion of an evaluation procedure, clarity on the financial implications, and the inclusion of safeguards to make clear that Member States are not obliged to share information that would be contrary to Article 346(1)a TFEU.

10 July 2014

JUSTICE AND HOME AFFAIRS (JHA) COUNCIL 9 AND 10 OCTOBER 2014
(UNNUMBERED)

Letter from Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice and Theresa May MP, Secretary of State, Home Office, to the Chairman

We are writing to inform you of the agenda for the meeting of the Justice and Home Affairs (JHA) Council, which will take place in Luxembourg on 9 and 10 October. The Minister for the Courts and Legal Aid, Shailesh Vara MP, and I (Home Secretary) will attend on behalf of the UK.

The Interior session will begin with updates from the Commission, FRONTEX and the European Asylum Support Office (EASO) on the “Follow-up to the Task Force Mediterranean”. This is the programme of actions agreed last December to address the migration situation in the Mediterranean. The Presidency continues to drive forward a more prioritised approach to these actions. The Government broadly supports the Presidency’s priorities and recently reiterated its commitment to the Task Force in a French-led joint letter to Commissioner Malmström. The Government welcomes the proposed withdrawal of the Italian national operation Mare Nostrum, which has increased flows to the EU and been exploited by people smugglers. We also welcome the intention to develop an enhanced Frontex operation in the Mediterranean, focused on management of the EU’s borders rather than the search and rescue of migrants.

There will be an update on the revised Greek Action Plan (GAP) on Asylum and Migration Management. This item relates to migration pressures at the EU’s Eastern border, which have been overshadowed by the Mediterranean in recent months. Substantial improvements have been made to the Greek asylum process since 2010, with the assistance of EASO. However, more capacity building is needed to assist Greece with their reception centres and to clear the backlog of asylum cases. EASO emergency support will continue until the end of the year and plans will be put in place for more tailor-made support thereafter.

The Council will then discuss the implementation of the EU’s priorities in combating serious and organised international crime. This item is about the 12 cooperation projects launched last year, under the EU Policy Cycle, against particular types of cross-border crime, such as drug trafficking, organised immigration crime and cybercrime. Member States, the Commission and Europol are likely to welcome the success of the projects so far. The UK takes part in all of these projects. We lead the workstreams on Child Sexual Exploitation, Human Trafficking and Heroin, and we are “co-leads” on Firearms, Cocaine and Excise Fraud. The Government will stress the importance of operational cooperation against serious and organised crime, and will call for more action against organised gangs that are exploiting free movement. We will also raise the issue of the threat posed by violent offenders who take advantage of free movement arrangements and ease of travel within the EU to exploit the lack of data sharing and police intelligence on criminal records.

The Council will return to the issue of foreign fighters travelling to Syria and Iraq. Member States will be invited to discuss the Council Conclusions from the European Council on 30 August 2014 as part of an orientation debate. We expect the basis of the discussion to be a Presidency paper which will ask Member States to discuss two key issues. The first is how to make progress on the Passenger Name Records (PNR) Directive, currently stalled in the European Parliament, following the European Council’s call for it to be adopted by the end of the year. The second is whether the Schengen Border Code, in which the UK does not take part, should be amended to allow more thorough routine checks on EU nationals at the external border, in order to detect returning combatants more effectively. The Government will highlight the need for a quick conclusion of negotiations on the draft PNR Directive, leading to the agreement of a Directive which covers intra-EEA data. The UK is keen for the issue of foreign fighters to be discussed and continues to support action at the EU level.
Over lunch there will be a discussion entitled “Taking action to better manage migratory flows”. This will have a particular focus on the Central Mediterranean route, a priority for the Italian Presidency. The Government broadly supports the Presidency’s approach, particularly the focus on enhancing action in third countries to reduce illegal migration. We will underline the need for existing tools to be fully utilised to mitigate current migratory pressures, and to warn against new measures, such as relocation of asylum seekers within the EU, which could prove counterproductive, increasing pressures on Member States.

The Justice session will begin with an update on the state of play on the negotiations on the European Public Prosecutor’s Office (EPPO). Member States will be invited to discuss the “Single legal area” concept contained in the Commission’s original proposal as part of an orientation debate. The UK has made clear that we are not participating in the EPPO but we do play an active role in the negotiations to shape and protect our position as a non-participating Member State.

The Italian Presidency will then seek a partial general approach on Chapter IV (obligations on data controllers) of the proposed General Data Protection Regulation. This Chapter deals with, inter alia, general obligations on controllers, data security, data protection impact assessments and codes of conduct and certification. Successive presidencies have sought to strengthen the text in respect of the risk-based approach as a way of alleviating administrative burdens on business, and Small and Medium Enterprises in particular. The Government understands the need for a timely adoption of the proposal, but it is imperative that the new framework is right for both business and citizens, otherwise it risks damaging growth and failing to deliver better outcomes for individuals. We will be negotiating on this basis at Council.

The Italian Presidency intends to bring forward some issues arising from the proposed Directive on the Presumption of Innocence for discussion at Council, to provide a steer for further detailed work at expert level. The issue relates to the burden of proof and how to tackle differences of approach across the EU. In particular in some Member States judges as well as prosecutors have a role in seeking inculpatory or exculpatory evidence. The Presidency seeks guidance on how to reflect that in the proposal. It will also seek guidance on the approach to handling of presumptions of fact and making of inferences of unknown facts from those that are known. It is the Presidency’s stated intention to bring a proposed General Approach on this dossier to the December Council. The UK has not opted in to this dossier.

The Presidency will also be seeking a general approach by December on the draft regulation to simplify the circulation of certain documents within the EU by abolishing the need to legalise them; and to introduce multilingual common-format forms. The Government generally supports this initiative as it reduces red tape for citizens and businesses. However, the Government is seeking to limit the range of documents in scope and therefore the cost of implementing the Regulation, and to amend the format of the multilingual forms so that they do not have the same independent evidential value as the original national documents.

Over lunch there will be a discussion on confiscation. The Government strongly supports using both civil and criminal procedures to deprive criminals of assets obtained through crime. The European Commission published a draft Directive on Confiscation in 2012 as the existing legislation at EU level has not been implemented consistently. The UK decided not to opt in to the draft Directive at the outset because it poses a risk to the UK’s civil recovery regime.

8 October 2014

Letter from Simon Hughes MP, Minister of State, Ministry of Justice, to the Chairman

I am writing to provide you with an update on the proposed EU General Data Protection Regulation (GDPR) following the recent JHA Council on the 9-10 October in Brussels. At this meeting the current Italian Presidency of the Council secured a “partial general approach” (PGA) on Chapter IV of the GDPR dealing with provisions relating to obligations on data controllers. As with the previous PGA on Chapter V (international transfers), agreed under the Greek Presidency in June this year, a number of caveats were included as part of this agreement. The inclusion of these caveats was to reassure Member States that any partial agreement would be subject to further consideration to ensure overall coherence with the Regulation because of the cross-cutting nature of many of the issues involved. In particular, these caveats set out that:

— i. Such partial general approach is to be reached on the understanding that nothing is agreed until everything is agreed and does not exclude future
changes to be made to the text of Chapter V to ensure the overall coherence of the Regulation.

— ii. Such partial general approach is without prejudice to horizontal questions, such as the legal nature of the instrument or provisions on delegated acts.

— iii. Such partial general approach does not mandate the Presidency to engage in informal trilogues with the European Parliament on the text."

As you will recall, when the Greek Presidency secured a PGA on Chapter V of the GDPR, the Government objected in principle to the use of PGA. The reasoning for this objection was that PGA has no legal status in the EU treaties and, given the many caveats within it which would allow issues to be revisited, it is potentially misleading to present it as representing an agreement.

Furthermore, even if the caveats are viewed favourably as enabling the UK to revisit remaining concerns at a later date, the Government continues to believe that there are risks attached to agreeing to a series of partial general approaches on this basis. These include the risk that for all that they are not legally binding a PGA carries the perception of agreement at political level with the result that Member States may rely on that to preserve the Presidency’s text. Therefore it is likely that the adoption of a PGA means that it will be difficult in practical terms to revisit points of substance at a later date, regardless of the conditions set out by the Presidency. The UK therefore objected to the adoption of a PGA on Chapter IV.

Nevertheless, despite this objection to the use of PGAs, the Government is broadly supportive of the substance of the text of Chapter IV. Chapter IV is a key element of the overall package on the proposed GDPR in that it sets out the data protection obligations on data controllers when processing personal data. You will recall that the UK had previously raised significant concerns about the potential cost burdens on business of the original European Commission proposals, and in particular that the focus of the requirements was on prescription and process rather than delivering good data protection outcomes. To this end, the Ministry of Justice carried out an impact assessment which indicated (on the basis of the available information at the time) that the commission proposals would result in a significant net cost to the UK economy. In parallel, we also consulted with a broad range of stakeholders who reflected similar concerns about the possible cost burdens on business and the emphasis on a one-size fit all model that makes no distinction between the degree of risk of the particular processing operation. In earlier negotiations in Brussels on this topic, the majority of Member States called for the introduction of a more proportionate, risk-based approach to obligations on controllers.

In the first part of 2013, in response to the demands of the Council, the then Irish Presidency introduced a number of changes to the text of Chapter IV which sought to calibrate obligations on data controllers with the risk of harm to data subjects of the processing activity. For example, the obligation to notify a data protection authority of a data breach would only be required where it was likely to severely affect the rights and freedoms of data subjects where previously it was a blanket obligation for all breaches. In addition, they removed some of the mandatory requirements from the text, such as the requirement to designate a data protection officer.

On the basis of these changes, the Irish Presidency initially had hoped to secure a PGA at the June 2013 Justice and Home Affairs Council. However, despite the significant progress that had been made in delivering a more proportionate text, many delegations, including the UK, resisted this approach as it was considered that the risk-based approach should be further strengthened to strike the right balance between privacy rights and creating the right conditions for innovation and economic growth.

The current Italian Presidency has taken the Irish proposals further as part of recent discussions in Council. In particular, they have included risk triggers for certain obligations within the text so that data controllers only have to comply with an obligation where the processing activity is likely to present a high degree of risk. This approach has been applied to obligations, such as breach notifications, maintaining documentation records and impact assessments. In addition, the Presidency has sought to exempt small and medium-sized enterprises from certain obligations, unless the processing operation is likely to present a high degree of risk.

Nonetheless, there were a couple of areas which I should draw to your attention where we think the text could still be improved. The first of these is in the definition in recital 60b of “high risk” as “a particular risk” which takes no account of the seriousness of the risk of the processing. The UK will continue to argue that “particular risk” could be interpreted as capturing both high and low risk and that we therefore consider “serious” or “substantial” risk as a better descriptor. We had also hoped
to ensure that the requirement to produce a Data Protection Impact Assessment (DPIA) should be limited only to cases where there is an identified or inherent high risk to the rights of data subjects. The Presidency approach, which was adopted in the July PGA, differs: it assumes that some types of processing should automatically and always be subject to DPIAs, irrespective of the actual risk posed in particular circumstances. While there are certain cases where we recognise that an impact assessment should be mandatory because the nature of the processing is inherently highly sensitive (e.g. large scale CCTV monitoring), there are other areas suggested by the Presidency, such as profiling including for credit reference purposes, which do not automatically involve high risk.

Notwithstanding the above, we do believe that overall there have been significant improvements, not least the introduction of a more risk-based approach and removal of some of the mandatory obligations which we considered would impose disproportionate costs on business. We anticipate that these changes will result in a reduction in the cost of implementing a number of the proposals. The net impacts of the text’s changes are currently unclear. We are in the process of updating our impact analysis of the costs and benefits of the proposed legislation to take account of these changes. Once we have a revised assessment, I will be happy to write again to the Committee to provide this update.

The Italian Presidency has indicated that, for December JHA Council, it intends to secure a further PGA on Chapter IX which deals with provisions in relation to freedom of expression and statistical, scientific and medical research. We have consulted widely with key stakeholders and practitioners on these provisions who have indicated that they are broadly supportive of the current position in the text. The working text, in the main part, is a continuation of the existing rules in this area and will not impose further barriers to processing for these purposes. Further discussions are planned in the coming weeks on the regulatory one-stop shop mechanism, but it is not clear at this stage, since there is still much to agree at working group level, that it will be possible for the Italian Presidency to put this measure forward for agreement in December.

The Government’s overarching position continues to be that we need to strike the right balance between the protection of personal data and creating the right conditions for innovation and economic growth. In this regard, we do not want to see legislation that imposes disproportionate burdens on business or is unworkable in practice. We will continue to work with other Member States to make sure that the text best reflects these concerns and that any obligations are both proportionate and achievable. I will write to the Committee again following the Justice and Home Affairs Council meeting on the 4-5 December to inform you of the outcome of that meeting and any early planning for the Latvian Presidency in the first part of 2015.

19 November 2014

MEDICAL DEVICES AND A REGULATION ON IN VITRO DIAGNOSTIC DEVICES
(14493/12, 14499/12)

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

Thank you for your letter of 16 May 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 18 June 2014.

We are grateful for your update on the outcome of the European Parliament’s deliberations on the proposals, and those of the Council Working Groups, and we thank you for setting out the Government’s efforts to pursue their interests.

We will continue to retain these documents under scrutiny, and look forward to receiving further information on the development of these proposals in due course.

18 June 2014
Letter from George Freeman MP, Minister for Life Sciences, Department of Business, Innovation and Skills, to the Chairman

Earl Howe last wrote to you on this issue on 16 May and committed to a further update once the Italian Presidency was under way. I am also writing to request that your Committee lifts scrutiny as we near a conclusion to negotiations in Council.

PROGRESS IN COUNCIL

The pace of negotiations has picked up under the Italian Presidency. With no other health legislation currently being pursued by Council and a substantial team in place, the Italians are aiming to reach a common position in Council by the end of the year.

Whether they will be able to do so will depend on their ability to steer Council through a number of tricky, unresolved issues where there are differing views amongst Member States. Foremost amongst these remains the issue of pre-market scrutiny, which was most recently discussed at a Working Party meeting at the beginning of October. Encouragingly, the UK’s proposal described in Earl Howe’s most recent letter has been well received, with the majority of Member States opposing the introduction of additional measures over and above the pre-market checks undertaken by notified bodies.

There remains, however, a small number of Member States – sufficient to form a blocking minority – along with the Commission who remain in favour of additional pre-market measures. This means that there will be a need to compromise. Our aim remains for any additional pre-market scrutiny to be clinically focussed and applicable to a narrowly defined range of products. Key points that we want to avoid in a compromise is a substantial duplication of a notified body’s own pre-market assessment and any shift of decision making away from notified bodies to Member States. We believe that the split of Member States means that this aim is achievable and we continue to work very closely with like-minded Member States as negotiations progress. At this stage there is not any text from the Presidency reflecting the current state of the debate, but I or my officials would be happy to share further details of the various proposals and positions of other Member States in confidence.

The position on the in-house exemption for IVDs is still positive. As Earl Howe outlined in his letter of 16 May 2014, the debate amongst Member States has noticeably shifted such that there is a clear acceptance that all classes of IVDs should be covered by the exemption. The discussion now on this issue is in relation to the conditions that should be attached to the exemption; we are working closely with NHS organisations to ensure that the minimum standards set out – such as accreditation to international standards – are sensible and proportionate.

PROGRESS IN THE EUROPEAN PARLIAMENT

Glenis Willmott – a UK MEP in the Socialists and Democrats group – has been appointed the new rapporteur on the medical devices dossier following the European Parliament elections. Peter Liese continues as rapporteur for the in-vitro diagnostic devices (IVD) dossier, as expected. Having adopted a first reading position prior to the elections, the rapporteurs are keen to enter trilogues soon.

NEXT STEPS

Whilst there remain a number of issues still to work through, we are nonetheless making progress in Council, largely through the sheer number of Working Party meetings. To meet the Presidency’s aim of reaching a common position in Council by the end of the year they intend to start taking specific issues to Coreper in November for discussion and decision if necessary. We do not consider it likely that there will be any separation of negotiations on the two Regulations to speed progress; the interdependencies between the two mean such an approach would only generate more work.

Such a common position would not constitute a formal adoption of a first reading position by Council, which would allow us to enter trilogues immediately under the Latvian Presidency. Whilst the intention is for the common position to cover the entire text of both Regulations, it is possible that some of the technical detail in annexes that is of little interest to the Parliament could be agreed in Council alongside trilogues in order to speed progress.

The ultimate aim of this is to achieve an early second reading deal, whereby the Council’s first reading position adopted after trilogues could be accepted by the Parliament without any changes. It is possible that the Italians may not tie up a common position by the end of the year, but either way there is a will to conclude negotiations under the Latvians. If this does not succeed then we would
likely enter a formal second reading process which would in all probability take us into 2016 before any agreement can be concluded.

As we will shortly be starting discussions at Council and Coreper to come to an agreement on compromise text and that progress is likely to be rapid, I would be grateful if your Committee could lift scrutiny on the basis that any agreed common position in Council falls within the parameters that I have outlined in this letter for our key negotiating objectives. Should this not be the case then I will urgently write to your Committee again with an update and to seek further clearance.

If it would be helpful my officials would be very happy to meet with the Clerk of your Committee to provide further details on the substance or progress of negotiations.

24 October 2014
did not provide you with an opportunity to consider the opt-in in relation to these proposals. We
have sought to negotiate the addition of a Title V legal base, or to split out the content into a separate
measure with a Title V legal base, to make it clear that this is JHA content. However we can no
longer expect to achieve these aims before the proposal is put to Council for a general approach by
the end of the Greek Presidency. We will therefore consider ourselves bound by this measure on
adoption, despite not opting in, until such a time as the CJEU were to strike down the measure.

THE REGULATION

Negotiations on the Regulation have progressed well, and there is now consensus among Member
States, along the lines of my previous updates, that the text is acceptable in its form, including on the
issue of the threshold which has been maintained at EUR 1000.

With respect to your query regarding the timing of the Impact Assessment following my letter of
February 2013, I confirm that we remain committed to publishing an impact assessment and consult
on the implementation of the Directive and the Regulation before transposing them into UK
legislation i.e. once the Directive is approved as is standard practice and in line with Better Regulation
processes. This timing is necessary to ensure that any Impact Assessment accurately reflects any
changes to the draft legislation agreed in negotiations following trilogues.

I trust this information will help your Committee in continuing effectively to scrutinise these
proposals on which the UK has secured a number of positive outcomes. Hopefully your Committee
finds itself able to clear the documents from, or waive, scrutiny to allow the Government to support
General Approach. I will of course write to you as a matter of urgency if there is any significant
movement ahead of General Approach.

10 June 2014

NETWORK INFORMATION SECURITY ACROSS THE EU (6342/13)

Letter from Lord Livingston of Parkhead, Minister of State for Trade and Investment,
Department for Business, Innovation and Skills, to the Chairman

I am writing to provide the Committee with a comprehensive overview of the progress made on the
Network and Information Security Directive over the summer as we expect that the pace of
negotiations will increase over the autumn months. I am writing to you on behalf of my colleague Ed
Vaizey MP, Minister for Culture and the Digital Economy, who is unable to send this letter as he is
travelling overseas.

In late June the Greek Presidency produced a revised Council position that summarised the previous
six months of negotiations. This was discussed in detail at the end of July at the first working group
discussion held under the Italian Presidency. I have attached [not printed] a copy of this text to this
letter which I share with the Committee in confidence given the document’s restricted classification.

The text reflects the UK Government’s position in a number of key areas and much of it closely
reflects the UK’s own written proposal for an amended text:

— Member States have been given a greater degree of control over the scope
of the proposal. The Greek text has included a definition of ‘essential
services’: this would allow Member States to determine which operators
that fall within the sectors set out in Annex II perform ‘essential services’
and would therefore fall within scope of the reporting requirements. This
provides reassurance that the final decision as to which operators are in or
out of scope lies with the Member State. There has also been a general
move in Council to tie this scope to infrastructure rather than apply it to
less critical operators.

— Whilst I expect there to be some changes to the language of this definition
over the course of the autumn, given the support in Council for this
principle of flexibility I am confident that it will remain within the Council
position. This aligns with the HMG position as having the flexibility to
determine which operators are within scope would allow the Directive to be
implemented in the UK in the least disruptive manner possible, taking account of the size and maturity of businesses. My officials will also work to secure language that further clarifies that the final decision on scope rests with the Member State.

The new draft also contains improvements on the definition of what would constitute a reportable incident. The HMG position has been to push to leave this up to the Member States to determine this nationally in a way that works for the sectors in question: an incident in the UK financial services sector would differ considerably from an incident in a Maltese port. The proposed Council text rejects the use of a delegated act to define an incident and instead includes three high level parameters that should be considered when determining what constitutes an incident (duration, number of affected users, geographic spread). Member States would then provide sector-specific guidance that interprets these criteria.

These criteria are derived from guidance on the implementation of the Telecoms Framework Directive which introduced reporting of incidents for the Telecoms sector. Over the summer my officials have discussed the suitability of them with their counterparts at Ofcom who are responsible for the Telecoms reporting. Key industry contacts have also been consulted as it is important that these criteria work for UK business. Broadly, I believe that the criteria are high level enough to provide the necessary flexibility for the UK to implement the Directive without difficulty or excessive disruption to industry.

The Greek text includes language that would allow Member States to implement voluntary reporting schemes, like the ones that the UK already has in place (for example the Cyber Information Sharing Partnership). However, at the working group discussion in late July, a large majority of Member States came forward to argue for mandatory reporting in order to achieve a minimum level of harmonisation. As the European Parliament and the European Commission both also support mandatory reporting schemes I suspect it will be difficult to defend this text.

My officials will continue to argue strongly in favour of voluntary reporting schemes; however, given the negotiating context, I will ask them to continue to push for greater flexibility on scope and the definition of an incident as mandatory reporting would only be acceptable if Member States have maximum flexibility on its implementation. My officials have used the summer break to discuss reporting with their counterparts in the other EU capitals that support voluntary reporting to see whether we can work en bloc to achieve further concessions elsewhere.

The Greek Presidency proposal includes two options for how to deal with the question of information sharing and operational cooperation. Influenced by a paper written by the UK and signed by ten other Member States, the Presidency has included a new Annex III that removes all mandatory obligations for information sharing and operational cooperation. Instead cooperation between the Member States would focus on technical issues, including regular meetings between the 28 EU Computer Emergency Response Teams (CERTs). Whilst a significant number of Member States felt that this new Annex III could form the solution to the question of cooperation, a number of Member States and the Commission continue to argue for a basic level of mandatory information sharing and operational cooperation.

Discussions at the July working group indicated that a possible solution could be a commitment in the Directive to developing a ‘roadmap’ outlining what future operational cooperation could look like. My officials have been working closely with CERT UK officials on this issue who are content that such a roadmap could be acceptable although this of course depends on the final detail.
Finally, the Greek proposal removed all uses of delegated acts from the proposal. This is clearly a welcome development and the UK will continue to strongly support this stance throughout the negotiations.

In addition to the proposed new text, before the summer break the question of whether a single (internal market) or dual (internal market and civil protection) legal base was appropriate. Differing views were given at the Council working group meeting at the end of July and the UK has been considering this point further ahead of the next meeting on 4 September.

I consider that a single internal market (article 114) legal base is appropriate. Whilst there are some elements of the proposal which, when viewed in isolation, may be regarded as less directly linked to the functioning of the internal market, this proposal is intended to be read in the round, not as individual or separate elements. When viewed in this way it is clearly linked to the functioning of the internal market. My officials intend to put forward this view when the issue is discussed at the Council working group on 4 September and I will write to update the Committees on the outcome immediately afterwards.

The Italian working group chair hopes to enter into informal trilogues with the European Parliament before the end of their Presidency. I believe that the principles of the Council position as put forward by the Greek Presidency are sound; however, there is still a considerable amount of detail that needs to be agreed before I would be happy to agree to negotiations starting with the Parliament. As I expect discussions to move quickly in September, I will write to update the Committee following the 4 September discussion on the legal base and again when more detail has been agreed.

28 August 2014

Letter from the Chairman to Lord Livingston of Parkhead

Thank you for your letter of 28 August 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 10 September 2014.

We are grateful for your update on the progress of negotiations during the Greek and Italian presidencies. We note that you have been successful in securing favourable amendments to the text, although there are ongoing concerns about whether reporting of incidents should be mandatory.

We look forward to further updates on this proposal which remains under scrutiny.

10 September 2014

Letter from Ed Vaizey MP, Minister for Culture and the Digital Economy, Department for Business, Innovation and Skills, to the Chairman

In my last letter I committed to writing to you following the 4 September working group to update you on the scheduled discussion on the Directive's legal base. In the event, the Italian Presidency decided that this exchange of views should take place after the Council has reached a final agreement on the policy content of the proposal as this will necessarily inform any decision on the legal base.

At the working group the Council discussed the new, revised Italian Presidency text which was distributed at the end of August. I have attached [not printed] a copy of this text to this letter which I am sharing with the Committee in confidence, given the restricted classification of the document.

The new Italian Presidency text continues the good work completed under the Greek Presidency and the main changes relate to the scope of the proposal and the new chapter on cooperation: these are broadly in line with the UK’s priorities for this file.

The new text further clarifies that the final decision on which operators would fall within scope of the requirements of the Directive rests with the Member State by introducing criteria that administrations should use to analyse whether an operator performs an essential service. The working group broadly welcomed this introduction of criteria as it allows Member States to make the final decision on which operators fall within scope of the reporting requirements whilst still providing a minimum level of harmonisation and avoiding a patchwork implementation across the EU.

The issue of which sectors would fall within scope of the proposal is still under discussion in Council. The Presidency has requested further discussion on this point although it seems likely that the Council position will include the energy, banking, finance, transport, health and water sectors and
some elements of internet infrastructure (for example internet exchange points). The Council has not yet reached a decision on whether information society services should be included in or out of scope and the UK will continue to push to minimise the burden on this sector.

This compromise text also proposed changes to the cooperation chapter which would eliminate any mandatory requirements for information sharing and operational cooperation. The new chapter splits the cooperation into strategic cooperation involving the Member State administrations and voluntary operational cooperation involving national Computer Emergency Response Teams (CERTs). This approach was broadly welcomed by the majority of Member States although a minority called for mandatory cooperation to be retained in the text. There could still be a further concession to these countries in the form of the CERT group developing a roadmap for future operational cooperation: I will write to the Committee if any further detail emerges.

The concept of ‘early warnings’ has been reintroduced into the text in Article 14.2 to deal with a situation when an incident on a network in one Member State could impact on users in another Member State. Whilst I recognise that it would be helpful to address this point in the Directive, I believe that the text as proposed is too vague and fails to provide adequate clarity to Member States on this point. This will be further discussed in working group meetings during September.

I will write to update the Committee on the outcome of these discussions and following any discussion on the legal base of this proposal.

11 September 2014

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 11 September 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 15 October 2014.

We are grateful for your update on the outcome of the Council Working Group meeting on 4 September and on the Government’s progress in securing its priorities in during negotiations.

We look forward to further updates on this proposal which remains under scrutiny.

15 October 2014

Letter from Ed Vaizey MP to the Chairman

I am writing to provide an update on the Network and Information Security Directive following my previous letter on 11 September.

In that letter I promised to provide an update on the Council discussion on the Directive’s legal base. I am pleased to inform you that the Council working group discussed this issue during September and has agreed with the UK position that the proposal should continue to use Article 114 as its sole legal base.

Since I last wrote to you there has not yet been a Council position agreed on the two outstanding issues of scope and operational cooperation and no new formal Council text has issued on the proposal.

Whilst there has been a general agreement that it should be up to Member States to decide which individual operators should fall within scope of the reporting requirements, there is not yet an agreement on which sectors should be included in scope of the Directive.

The UK and a number of other Member States have been strongly pushing to exclude information society services from scope of the Directive’s requirements. We believe that this legislation should focus on critical infrastructure sectors only and that including these sorts of digital companies would represent an unjustifiable regulatory burden. However, a group of Member States oppose this position and agree with the Commission that these companies should be included in scope. Whilst it is possible that a compromise could emerge that focuses on the infrastructure that underpins the internet which we could support, this issue remains unresolved.

The European Parliament has removed these operators from scope of the proposal so my officials are working closely with their Parliamentary counterparts to try to mitigate any move from Council to include them in our approach.
With regards to operational cooperation, again there are two divergent views in Council: whether to include operational cooperation or not. The UK position is to continue to oppose mandatory information sharing and operational cooperation but to consider whether to task the group of EU Computer Emergency Response Teams (CERTs) to develop a ‘roadmap’ that plots the path to operational cooperation in the future. As the European Parliament is also in favour of some form of operational cooperation I believe it would be far preferable for a group of CERT experts to develop plans for future cooperation, rather than setting this out in EU legislation.

Despite this failure to secure agreement on two fundamental aspects of this negotiation the Italian Presidency still intends to secure agreement with the Parliament this year. This week the Presidency held an informal, initial, principles-based discussion, broadly based on the principles agreed under the Greek Presidency, during which no detail of the Council position was disclosed. The result of this discussion will feed into the Council decision making process and will hopefully provide some direction for our own discussion, for example on scope.

The Presidency has tentatively scheduled discussions with the Parliament to exchange views on the detail later this month and next month, subject to reaching an agreement in Council on the outstanding points. I will write to update the Committee when a new text issues from the Presidency.

16 October 2014

Letter from Ed Vaizey MP to the Chairman

I am writing to provide an update on the Network and Information Security Directive in advance of the Presidency’s second informal trilogue with the European Parliament; this will be the first time that any detail of the Council’s position is shared with the European Parliament. I have attached [not printed] a copy of this text to this letter please treat this in confidence given its restricted classification.

I believe that the text moves the Council’s position in broadly the right direction. On scope, the Presidency has proposed a new, more restrictive criterion for Member States to judge whether digital services are in or out of scope; the Presidency has also proposed removing internet payment gateways, social networks and application stores from scope entirely.

Throughout this negotiation the UK position has been to reject any inclusion of digital services from within scope of the directive; however, a majority of Council and the Commission want to include them within scope in some form. As the Presidency’s proposed position is far more preferable than the Commission’s original text I believe that it makes sense to agree that this position is put forward to the European Parliament. One of the rapporteur’s top priorities for this negotiation is to exclude digital services from scope and my officials are working closely with counterparts in the European Parliament to try to ensure this position is maintained.

Regarding operational cooperation, the text includes new requirements for the group of CSIRT experts to discuss future further operational cooperation and the possibility to issue guidelines. Whilst my officials will continue to push for more flexible language on this and on the requirements around information sharing considering the decision to issue guidelines rests with the group itself, I am content that this is an acceptable approach.

Finally, in terms of timing we expect that COREPER will be asked to approve this position at a meeting on 7 November in advance of an informal trilogue with the European Parliament on 11 November. Based on the outcome of this meeting I would expect the working group and COREPER to further consider a position for a third informal trilogue later in November. Following any informal agreement between the Council and the Parliament I will submit the final text to the Committees along with an updated Explanatory Memorandum well in advance of any formal adoption at Council level. Given these timings I do not expect the Telecoms Council on 27 November to play any formal role in this negotiation: the current draft agenda for that Council meeting anticipates ‘information from the Presidency’.

28 October 2014

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 28 October 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 November 2014.
We are grateful for your further update on the progress of negotiations, and we are glad to see that you believe the text is moving in the right direction.

We clear the document from scrutiny. We do not expect a reply to this letter, but would be grateful to be kept informed of further significant developments.

5 November 2014

PARTICIPATION OF KOSOVO IN UNION PROGRAMMES (8775/13, 8776/13)

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

Thank you for your letter of 29 May 2014 in relation to the two proposed Council Decisions on the participation of Kosovo in EU Programmes, which the EU Sub-Committee on Home Affairs, Health and Education considered at its meeting on 18 June.

While we appreciate the difference of opinion between us on whether the UK opt-in is triggered in the case of a measure which contains JHA matters but does not have a Title V legal base, we are still disappointed that the Government has persisted in its approach. As we have said, we believe that the notion of a partial JHA measure is unlikely to be legally sustainable. It is an unsatisfactory precedent which may well cause problems in future.

In my letter of 12 June I told you that the EU Sub-Committee on Home Affairs, Health and Education would also consider the four proposals relating to Association Agreements with Moldova and Georgia. It did so at its meeting on 18 June. The same issues arise as in relation to Kosovo, and the Committee has no further points to make.

18 June 2014

POST 2015 HYOGO FRAMEWORK FOR ACTION: MANAGING RISKS TO ACHIEVE RESILIENCE (8703/14)

Letter from Oliver Letwin MP, Minister for Government Policy, Cabinet Office, to the Chairman

Thank you for your letter of 14 May 2014. I am writing to update your Committee on the Council conclusions in response to the Commission’s Communication, which were adopted last month. I have also included details of the incoming Italian Presidency’s civil protection priorities.

As detailed in the Government’s Explanatory Memorandum, the Government was largely supportive of the Commission’s Communication on the post-2015 framework for disaster risk reduction. In the subsequent discussions of the draft Council conclusions, the Government sought to address the few areas where it had reservations and is content that the final conclusions (attached [not printed]), which were adopted by the Justice and Home Affairs Council in June, take these into account.

Your letter underlined the importance of using targets and indicators carefully and avoiding imposing unnecessary burdens on Member States. Other Member States also agreed and the Council conclusions encourage setting politically acceptable, operationally feasible, measurable and achievable targets at the appropriate level.

During the Working Party negotiations it was confirmed that the Council conclusions would set out a general position but would not preclude Member States from determining their own positions in regard to the new post-2015 framework on disaster risk reduction. The Commission will participate in the UN Preparatory Committee process on a non-voting basis only, and will not negotiate on behalf of Member States.

We were not the only Member State who recognised the risk of the post-2015 framework straying into other areas where other UN bodies and organs had primary responsibility. The Council conclusions address this concern by being firmly focused on disaster risk reduction, which is within the purview of the UNISDR, but recognise the linkages with other areas, including the work on the post-2015 sustainable development goals.

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In the Explanatory Memorandum the Government shared its reservations about linking the post-2015 framework with the International Law Commission’s ‘Protection of persons in the event of disasters’ work, expressing our preference for ILC’s work to conclude with guidelines to inform good practice rather than a legally binding instrument. Other Member States shared our desire to avoid directly linking the post-2015 framework for disaster risk reduction with the ILC’s work and as a result there is no reference in the Council conclusions to this.

We are satisfied that the final Council conclusions provide a good basis for Member States to use as they prepare for the forthcoming UN led Preparatory Committee meetings on the post-2015 framework on disaster risk reduction.

ITALIAN PRESIDENCY PRIORITIES FOR CIVIL PROTECTION

The Italian Presidency intends to prepare draft Council conclusions on risk management capability, to support implementation of the prevention policy elements of the new Civil Protection Mechanism. To inform the Commission’s development of risk management capability guidelines, the Presidency will host a workshop in mid-July to discuss this topic and consider Member States’ responses to a questionnaire. The Government supports a risk based approach to disaster management and welcomes this work to assist Member States to develop their risk management capability.

The Presidency also plans to prepare draft Council conclusions on strengthening cooperation between civil protection and humanitarian aid authorities. These will be prepared based on working level discussions of a concept paper, a technical meeting and then a debate by Directors General for civil protection this autumn. The Government is supportive of increasing complementarity between the two areas, building on progress already made in this area.

As part of the 8 July informal Justice and Home Affairs Council meeting, the Italian Presidency is hosting a Ministerial meeting of the European Forum for Disaster Risk Reduction. The aim is to facilitate an exchange of views on the development of the post-2015 Disaster Risk Reduction framework. The Government welcomes the opportunity to continue discussions of the post-2015 framework before the UN’s Preparatory Committee meetings begin in Geneva later this month.

The Presidency also plans to facilitate discussions on cross-cutting issues of relevance to civil protection, including implementing the preparedness elements of the Integrated Political Crisis Response arrangements; developments under the European Programme for Critical Infrastructure Protection; and further discussions on the Commission’s Communication on CBRNE Agenda. The Government values this holistic approach to civil protection issues.

9 July 2014

PREVENTING RADICALISATION TO TERRORISM AND VIOLENT EXTREMISM:
STRENGTHENING THE EU’S RESPONSE (5451/14)

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

I wrote to you on 23 May 2014 to thank you for your letter of 22 May 2014 and to tell you that, since the House was prorogued, I was prepared to clear this document from scrutiny in advance of the JHA Council on 5-6 June.

The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union was able to consider your letter at its meeting on 18 June 2014.

We note that, while you would prefer Guidelines to a more formal and prescriptive Action Plan, the likely result will be an Action Plan which you will attempt to simplify. You say that this will be further discussed at the Terrorism Working Party, meeting today, and we would be grateful for an update on that discussion and on any further developments.

18 June 2014
Letter from James Brokenshire MP to the Chairman

Thank you for your letters of 23 May and 18 June and for your agreement to clear this document from scrutiny whilst the House was prorogued, in time for JHA Council. I am writing to update you on the progress of the EU’s strategy for Combating Radicalisation and Recruitment to Terrorism and its accompanying Action Plan.

I can confirm that the reviewed strategy was adopted at JHA Council on 5 June. As you know, the accompanying Action Plan is currently being negotiated at official level and was last discussed at the Terrorism Working Party (TWP) on 18 June. Whilst the timetable for adoption is not confirmed at this time, the Presidency have indicated that there will be detailed discussion on no more than two further occasions; 18 July and potentially in September.

You note that whilst the preference would be for Guidelines above a more formal and prescriptive Action Plan, the likely result will be an Action Plan which we will attempt to simplify. You will wish to note that this document will now formally be known as a set of Guidelines, a decision which has been upheld at the TWP. Deadlines for completion of each Guideline have been removed in favour of a review every two years ‘where appropriate’. We welcome these amendments as being in line with our request for broader, less rigid activities which allow for maximum Member State interpretation.

Our request to remove the identification of action leads for each Guideline has received opposition from other Member States and from the Commission. However, this document is not legally binding and there is clear understanding from the Presidency and others that the responsibility for combating radicalisation and recruitment to terrorism primarily lies with Member States, a point which has been highlighted at the beginning of the latest draft. Furthermore, the labelling of this document as Guidelines as opposed to an Action Plan reflects the reality that these are general ideas and principles rather than specified actions for completion. Therefore, we do not believe that the inclusion of action leads should prevent the UK from continuing to engage in negotiations and potential adoption of the text.

Our priorities lie with the drafting of Guidelines relating to tackling online extremism and creating targeted communication campaigns on an EU and Member State level to address current concerns. UK drafting suggestions on both of these issues have been incorporated into the text. We will continue to push for Guidelines which encompass national priorities, whilst harnessing the potential for more effective action at EU level. I will continue to keep you updated on progress with negotiations.

3 July 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter, undated but received on 3 July 2014, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 16 July 2014.

Like you, we are glad that this document will now be Guidelines which reflect the fact that the responsibility for combating radicalisation and recruitment to terrorism lies primarily with Member States.

We do not expect a reply to this letter, but are grateful for your undertaking to keep us updated on the progress of negotiations.

9 July 2014

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 9 July. I am writing to update you on the progress of negotiations for the Guidelines to accompany the revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism.

I was pleased to hear that you agree to the drafting of Guidelines to accompany the revised strategy, as opposed to an Action Plan. This document is designed as ‘guidance’ for Member States, to assist in the development of their own programmes to counter radicalisation and recruitment to terrorism. This reflects an understanding that the responsibility for combating radicalisation and recruitment to terrorism lies primarily with Member States.
I can confirm that negotiations on the Guidelines have come to a close at official level. The Presidency now plans to submit the Guidelines for adoption at Council.

You may recall that in my letter of 3 July, I detailed UK priorities for this document as including a need to focus on tackling online extremism and on creating targeted communication campaigns at EU and Member State levels in order to address current concerns, such as Syria and the foreign fighter threat. Officials have worked to align the Guidelines with these priorities. For example, we supported language at point 11, detailing the need to reduce availability of online material that promotes radicalisation to terrorism. In addition to this, drafting provided by the UK at point 6 calls for the explicit establishment of an EU Syria Strategic Communications Advisory Team “to offer assistance to all Member States and EU institutions” in developing targeted communication campaigns at EU and national levels.

Following careful consideration of the aims and objectives of these Guidelines, the alignment with UK policy priorities in this sphere, and the non-binding nature of the document, the UK has agreed to this document and will consent to its adoption at Council should it receive unanimous approval by Member States.

23 October 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 23 October 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 29 October.

We are grateful for your update, and glad to know that the negotiations have been successfully concluded.

30 October 2014

PROTOCOL OF 2014 TO THE FORCED LABOUR CONVENTION, 1930, OF THE INTERNATIONAL LABOUR ORGANISATION (13157/14, 13158/14)

Letter from the Chairman to Norman Baker MP, Minister for Crime Prevention, the Home Office

Thank you for your Explanatory Memorandum dated 30 September 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 22 October 2014.

The Committee agrees with the Government about the desirability of the United Kingdom ratifying the ILO Protocol; there seems to be no difference of opinion about this between the Commission and the Member States.

Whether, as the Commission believes, there are legal impediments to ratification by Member States which need to be removed by a Council Decision is a more complicated issue. You will remember from our correspondence with Karen Bradley in May and June that we shared your concerns about the attempt by the Commission to assert competence over the line to be taken by Member States on the ILO Recommendation, and on the negotiations on the Protocol. We were glad to see that other Member States took the same view, and that all the Decisions were blocked by COREPER. It is surely right that the Member States should negotiate in that capacity, and that they should coordinate their views because they wish to and not because they are required to.

The two draft Decisions under scrutiny raise rather different issues of competence. As you will know, this is by no means the first occasion on which the ratification of ILO Conventions has arisen, and in the past the UK and other Member States have agreed similar Council Decisions without raising objections on grounds of either competence or subsidiarity. As recently as 28 January this year the UK and the other Member States agreed two Council Decisions (2014/51/EU and 2014/52/EU) authorising ratification of two ILO Conventions on Decent Work for Domestic Workers and on Safety in the use of Chemicals at Work. For the first of these, the Government’s EM of 10 April 2013 on the draft Decision states, surprisingly, that the proposal for a Decision “is not a proposal for legislation”, and continues: “… there are no legal or procedural issues … there are no subsidiarity
concerns”. We would be glad to know on what grounds the Government has now decided that, in the case of the two draft Decisions under scrutiny, there are issues of competence and subsidiarity.

In that context we note that, subsequent to your EM, on 7 October the Court of Justice delivered its judgment in Case C-399/12, Germany v Council, in which Germany, supported by six other Member States including the UK, attempted unsuccessfully to overturn a similar Decision made in the context of an Agreement concluded in the International Organisation of Vine and Wine. Germany had opposed the adoption of the Decision, but presumably not with enough Member States to constitute a blocking minority. Given that those proceedings were begun in August 2012, we wonder why those seven Member States did not oppose the adoption of the two ILO Decisions in January 2014, and whether the other six are, like the UK, questioning the legal base of the draft Decisions under scrutiny.

As regards the opt-in, we entirely share your view that in the case of the first draft Decision the UK has an opt-in, and does not lose it simply because there are two Directives in the same field which apply to the UK. The Commission’s argument seems to us to be untenable. We fully support your attempt to have recital (9) amended, even though it may not be very logical to argue for amendment of a recital in a proposed Decision which, in the Government’s view, should never have been put forward.

In accordance with your current practice you do not say whether the Government would opt in. If you are successful in your arguments about competence, the question will not arise. If you fail in those arguments then, whether or not you succeed in amending recital (9), we would expect the Government to opt in so that it is in the same position as other Member States in relation to both Decisions, and does not appear to be conceding that the two Directives have led to the loss of the right to opt in.

We look forward to your reply on the issues of competence and subsidiarity, and to hearing whether you intend to exercise your right to opt in. Meanwhile we keep both documents under scrutiny.

22 October 2014

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

Thank you for your letter of 22 October to Norman Baker in relation to the proposed Council Decisions authorising Member States to ratify the International Labour Organisation (ILO) 2014 Protocol to the Forced Labour Convention, 1930. I am replying as Minister for Modern Slavery and Organised Crime, a remit which includes forced labour.

I welcome your agreement that the Government should ratify the ILO Protocol. We will follow due process to do this within the required timescales.

You have asked why the Government appears to be taking a different approach to the Protocol to the Forced Labour Convention to the approaches taken to other recent ILO Conventions.

It is necessary to view the Government’s competence concerns in the context of the Council’s decision not to adopt the draft decisions proposed by the Commission ahead of the Forced Labour Conference earlier this year. Our concerns at this stage are not in isolation; they were shared by a number of Member States. While the draft decisions under consideration are different to those defeated in the Council, the underlying competence concerns remain the same.

The Government’s focus is the proposed exercise of Union competence, and the nature of such competence, if exercised, on this occasion. The Commission has conceded in clear terms that there can be no impact upon the EU acquis by the adoption of the Protocol, as the Committee has noted. Under the circumstances, the issue of exclusive external competence should not arise. The Government cannot acquiesce in the assumed exercise of exclusive external competence in the face of such a clear concession by the Commission that the criteria for such competence to exist are not met.

We accept that the EU enjoys shared competence over the areas governed by the Protocol. The Council therefore needs to take a policy decision as to whether the EU should exercise its shared competence, with the Commission demonstrating how the principle of subsidiarity is met.

We consider Article 218 of the Treaty on the Functioning of the European Union to be appropriate for proposals of this nature. While we note what was said in paragraphs 53 and 54 of Case C-399/12,
those comments of the Court were made primarily in the context of dismissing arguments advanced by Germany about the non-applicability of Article 218(9) to an international agreement to which the EU is not a party, rather than defining the scope of the remaining provisions in Article 218.

It is also necessary to view the obiter comments in Case C-399/12 in the light of Opinion 1/13, which was handed down on 14 October 2014. The Commission sought the opinion of the Court on the nature of the competence of the EU in relation to the acceptance of the accession of a non-Union country to the Hague Convention. The EU is not a party to the Hague Convention. The request followed the Council’s decision not to adopt eight decisions enabling the Member States to deposit declarations of acceptance of acceptance in relation to eight third States. When determining admissibility, the Court considered the applicability of Article 218 as a whole to agreements to which the EU was not a party. It considered the Article 218(11) opinion procedure to apply to any agreement to which the remainder of Article 218 applied. It noted that where the EU is not a party to the relevant agreement, it must exercise its competence through the intermediary of the Member States (paragraph 44). At paragraph 50, the Court held that the draft decisions in question (which had been proposed pursuant to Article 218; see for example, COM(2011) 909 final, in relation to Seychelles) were sufficient to fall within the provisions of an “agreement envisaged” for the purposes of Article 218. We do not, therefore, consider that it is possible to object to this choice of procedural legal base in this instance.

I am pleased that you agree that the UK’s opt-in applies to the first draft Decision. The Government is considering whether or not to opt in to this proposal and will communicate its decision in due course.

The Council’s Social Questions Working Group considered this dossier on 31 October. Despite several Member States raising concerns with the legal base for the proposal and the competence for the EU to act, the Presidency noted its intention to put the dossier to COREPER in November and to the Employment, Social Policy, Health and Consumer Affairs Council on 1 December for adoption. We have engaged closely with other Member States but it is not yet clear whether there is enough support for a Blocking Minority under QMV rules. The Government will therefore consider its opt-in and voting positions ahead of the December Council.

13 November 2014

Letter from the Chairman to Karen Bradley MP

Thank you for your letter of 13 November 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 26 November 2014.

We are glad to see that, on the majority of the issues, the Committee’s views and the Government’s coincide.

We are grateful for your analysis of Article 218 TFEU in the light of the judgment of the Court of Justice in Case C-399/12, and its Opinion 1/13 of 14 October 2014. We encourage you to continue arguing as a matter of principle against the exercise by the Commission of competence, and its argument the Member States cannot ratify the ILO Protocol without authorisation from (effectively) the Commission.

There is one issue raised in my letter of 22 October 2014 which we do not believe you have answered satisfactorily, and that is the inconsistency between the line taken by the Government now, and the line it took in January this year when the UK and the other Member States agreed two Council Decisions authorising the ratification of two other ILO Conventions. We believe it is no answer to say: “The Government’s focus is the proposed exercise of Union competence, and the nature of such competence, if exercised, on this occasion.” (your italics). Nor does it seem to us to be relevant that, on this occasion, there was also a dispute over the part to be played by the Commission in the negotiation of the Protocol. Likewise, the fact that other Member States now share the Government’s view does not explain why, in January, in almost identical circumstances, the Government was prepared to adopt Council Decisions similar to those which it now, rightly in our view, declines to agree. We would be glad of your views on this issue.

We note that the two draft Council Decisions will be coming before the Council on 1 December, and look forward to hearing from you the outcome, and in particular whether there is acceptance of the
Government’s argument that it has an opt-in to the first proposal, and how that opt-in is exercised. Meanwhile we keep both documents under scrutiny.

26 November 2014

Letter from Karen Bradley MP to the Chairman

I write regarding the proposed Council Decisions authorising Member States to ratify the International Labour Organisation (ILO) 2014 Protocol to the Forced Labour Convention, 1930, which have yet to clear scrutiny.

I would like to clarify that my assessment of the case law is based upon our objective analysis of what the Court of Justice meant in Opinion 1/13 and Case C-399/12, specifically in relation to the applicability of Article 218 TFEU to international agreements to which the EU is not a party. It was not driven by the perceived effects on the EU institutions of adopting one approach or another.

It would not be appropriate for me to speculate about whether Opinion 1/13 is likely to reinforce the Commission’s position that the EU has exclusive competence, even though the relevant internal EU rules in this case are based on minimum standards, as is the Protocol. However, I am able to say that we have considered the position of the Protocol in light of that opinion, and remain of the view that the criteria for the EU to enjoy exclusive external competence are not met. Indeed, the Court emphasised (at paragraph 74) the need for a “comprehensive and detailed analysis of the relationship between the envisaged international agreement and the EU law in force...” As such the Court of Justice found that the standards imposed by the relevant internal rules were, in fact, common standards. We do not, therefore, consider Opinion 1/13 to depart from the established position that minimum standards are incapable of generating exclusive external EU competence.

Coreper on 14 November considered the proposals and discussed whether or not there was EU exclusive competence or shared competence in relation to the Protocol. As a result of this discussion, the Presidency is currently considering preparing revised proposals. We understand that the judicial co-operation Decision may be split into two measures, one reflecting the exercise of the EU's exclusive external competence, and one reflecting the EU’s exercise of shared competence. On the basis of discussion in Coreper, we understand that these proposals may accept that the JHA opt-in does apply to the shared competence proposal but still will not apply to exclusive competence proposal. If that is the case, we will still push for our opt-in to apply, and for relevant recitals to be added, to the exclusive competence proposal. We are awaiting sight of the revised decisions and will write to you again with our views when they Presidency bring them forward.

I hope that this information fully addresses your concerns and will enable your Committee to clear the EM from scrutiny, in time for discussion at the EPSCO Council meeting on 11 December.

3 December 2014

REBUILDING TRUST IN EU-US DATA FLOWS, AND THE FUNCTIONING OF SAFE HARBOUR (17067/13)

Letter from Simon Hughes MP, Minister of State, Ministry of Justice, to the Chairman

Thank you for your letter of 7 May 2014, which set out the conclusions and recommendations of the European Union Committee regarding two Communications from the European Commission on rebuilding trust in EU-US Data Flows, and on the functioning of the Safe Harbour Decision. The Government welcomes the enhanced scrutiny and would like to respond to each recommendation. The Committee’s conclusions and recommendations are set out in bold text below, followed by the response of the Government for each point.

I understand that the Information Commissioner’s Office and the European Commission will be responding separately to the Committee in respect of the specific points and questions in the letter which are addressed to them.

Suspension or Reform of Safe Harbour

The Committee recognized that, despite some weaknesses, the Safe Harbour arrangements offer clear benefits to citizens and businesses on both sides of the Atlantic. In its conclusions, the
Committee affirmed it was not persuaded of the case for suspension at the present time and endorsed the European Commission’s decision not to give effect to the European Parliament’s recommendation that Safe Harbour be immediately suspended. The Committee also supported the European Commission’s efforts to strengthen Safe Harbour’s provisions and felt the response from the United States due summer 2014 would be the appropriate moment for the European Commission, the Government, and other Member States to consider next steps.

The Government welcomes the conclusion of the Committee that Safe Harbour should be reformed rather than suspended. The Government is concerned that the European Parliament’s call for its suspension was premature, and that Safe Harbour can and should be made to work better for businesses and citizens. There are many benefits Safe Harbour brings. It helps to facilitate the transatlantic data flow, which is important for the economy. It also encourages the adoption of data protection principles by companies in the United States, which is important for European Union consumers. Suspension would bring risks, including an uncertain economic climate for businesses, and the possibility of important services for consumers being cut off.

It is the view of the Government, based on an initial qualitative impact assessment, that the net economic effect on the UK of the suspension of Safe Harbour would likely be negative given the potential for increased costs to business and government, higher prices, absent products, and possible job losses. However, this conclusion should be treated as tentative, as the precise costs and benefits are currently unclear.

The Government recognizes that there is a need to strengthen Safe Harbour, rather than suspend it, and remedy many of the functional weaknesses set out in the European Commission’s Communication. Our responses to the Committee’s conclusions and recommendations about the functional aspects of Safe Harbour are set out in the remainder of this letter.

TRANSPARENCY

The Committee recommended that the Government scrutinise the package submitted in due course by the United States to see whether it addresses the need for clarity for business; and that if it does not, they should make representations to the European Commission for it to consider this issue in its planned “stock-take”, which will follow the United States’ response.

The Government welcomes the Committee’s recommendation. Negotiations are still ongoing between the European Union and the United States, and so the Government has not yet had an opportunity to examine any detailed proposals for the revision of the Safe Harbour Decision. However, when a draft of such proposals is released, the Government will examine it carefully and will look specifically as to whether it addresses the need for clarity for business.

The Committee recommended that the Information Commissioner’s Office (ICO) update its website and literature with comprehensive and comprehensible information on Safe Harbour, and in particular on redress provisions. The Committee also recommended that the Government make representations to the Commission that the profile of the EU Safe Harbour panel be raised and that work be done to ensure that citizens understand their rights (including the right to redress) under Safe Harbour.

The Government welcomes and agrees with the Committee’s assessment that more public awareness is needed about Safe Harbour, its workings, and the rights it affords citizens. The Government supports increasing awareness and accessibility of Safe Harbour for both the corporate world and citizens to improve the system’s functioning and its participation rate amongst companies. The Government will liaise with the ICO about how this can best be achieved. The Government will also make representations to the European Commission concerning how best to promote awareness of Safe Harbour.

The Committee noted that the European Commission recognised in its Communication the value of the United States Department of Commerce’s work to make sure participating companies’ privacy policies included notices about Safe Harbour and a link to the Department of Commerce’s website where the list of current compliant members is maintained. The Committee recommended that the European Commission confirm whether or not the Department of Commerce has met its deadline of March 2014 for completing this work. The Committee also recommended that the Government take steps to ensure that this work is carried out effectively.

The Government supports the work of the United States’ Department of Commerce to make sure that participating companies’ privacy policies abide by the Safe Harbour principles, and will liaise with
the Commission to explore what progress has been made. The Government notes, as the Committee also has, that further steps beyond the Commission’s recommendations have already been taken by the Department of Commerce to highlight which companies have failed to renew their annual self-certification and are no longer current members.

The Government welcomes the steps that the Department of Commerce has taken in this regard, which the Government considers has helped to demonstrate improved implementation of the Safe Harbour Decision in practical terms. The Government understands that the Department of Commerce is also looking to improve consumer facing information for EU citizens and businesses, which would also be a welcome development.

REDRESS

The Committee recommended that the Commission consider whether it should be possible for all disputes over Safe Harbour to be brought to the European Union Safe Harbour panel in future.

The Government will liaise with the Commission and the Information Commissioner’s Office to explore the feasibility and consequences of a requirement to bring all disputes over Safe Harbour to the European Union Safe Harbour data protection panel. The Government considers that it may prove more effective to promote the availability of this panel but also bolster the accessibility of United States based alternative dispute resolution providers to EU citizens.

National Data Protection Authorities (DPAs) have an important role to play both individually and collectively in assessing the adequacy of Safe Harbour. However, the effectiveness of the panel may well depend on the content and nature of disputes. As the Safe Harbour Decision itself recognizes, national DPAs may have a more immediate role in relation to employment data disputes in particular and may often be better placed to address individual disputes. The Government considers that this is an area that needs to be explored in partnership with the Commission, other Member States, and DPAs. The Government will scrutinize the various options in greater depth when the Commission presents proposals for a revised Safe Harbour Decision following the conclusion of discussions with the United States.

The Committee recommended that the ICO, perhaps in the context of the Article 29 Working Party, consider further what actions the Safe Harbour Decision empowers national Data Protection Authorities (DPAs) to take.

As the Committee is aware, DPAs can already intervene in some cases if Safe Harbour rules have been broken. That includes cases where a government body in the United States or any independent recourse mechanism has decided that a company is violating Safe Harbour principles, or may do so (Article 3). The Government agrees that the effectiveness of these powers is a critical question to bear in mind when considering how the framework should be changed, and how DPAs and the data protection panel might improve the operation of any updated scheme.

This recommendation also relates in part to the Committee’s recommendation about the EU data protection panel and the balance of roles between national DPAs and those DPAs acting together. The Government agrees this is an area that merits further consideration. The Government will therefore liaise with the ICO to discuss how existing powers are currently used and also to discuss the detailed proposals emerging from the European Commission, so as to determine whether further actions may be needed and what form they may take.

The Committee recommended that the European Commission and the Government work vigorously to make sure that access to redress should never be prevented or inhibited by cost. The Government concluded that efforts to strengthen redress mechanisms would be crucial to the success or failure of the current negotiations over bolstering Safe Harbour.

The Government supports further consideration by the United States of how access to alternative dispute resolution providers may be improved, including the question of how the costs of dispute resolution and enforcement mechanisms should be met. The Government agrees that access to redress is central to the effective functioning of Safe Harbour and will consider further how this should be addressed when detailed proposals for revision of the Decision are presented.

ENFORCEMENT

The Committee welcomed the actions of the Federal Trade Commission (FTC) in recent years against companies making false claims or otherwise failing to comply with the Safe Harbour scheme.
However, the Committee concluded that further action must be taken due to the scale of the problem. The Committee also noted it was pleased that the European Commission, United States Department of Commerce, and the FTC were having constructive talks on intensifying *ex officio* validation of compliance. The Committee concluded that this needs to be a key part of any package of reforms to Safe Harbour.

The Committee recommended that a more credible compliance and audit regime, which is not simply driven by complaints, be established, and that the European Commission and the Government take further steps to achieve this. The Committee concluded that the European Commission should aim to make sure that investigating false claims is a priority for the FTC and suggested that this commitment would be strengthened if there were audits and frequent checks that were not entirely driven by complaints.

The Government welcomes any exploration of the use of *ex officio* investigations and will scrutinize the proposals to strengthen enforcement emerging from discussions between the United States and the European Commission. However, to the extent that enforcement by the United States against American companies operating in the United States remains central to the operation of Safe Harbour, the Government considers that the FTC would be best placed to determine how it allocates its resources to improve the effectiveness of the self-certification system. The FTC will consider taking action against non-adherence to Safe Harbour principles based on a variety of leads. This could include referrals from EU data protection authorities as well as checking compliance during the course of other investigations.

The Government supports the recommendation that investigations should not be purely complaint-driven, but the Government also observes that the FTC has already taken many actions on its own initiative against companies and have subjected companies such as Facebook, Google, and MySpace to twenty year privacy audits.

The Committee invited the ICO to disclose the efforts it takes to make sure that US companies claiming adherence to Safe Harbour do in fact comply with the scheme, and to consider whether these efforts could be strengthened.

While the Government understands that enforcement of Safe Harbour is largely the responsibility of the FTC, the Government will liaise with the Information Commissioner’s Office and with other EU Member States to discuss what may be done to strengthen enforcement, in particular in the context of improving Safe Harbour’s transparency for citizens and businesses. Actions taken to raise awareness of the rights afforded to citizens by Safe Harbour and of the complaints procedure may have positive long term consequences for Safe Harbour’s effective enforcement.

The Committee recommended that the European Commission and the United States commit to producing a regular evaluation of Safe Harbour’s implementation, similar to the reports produced concerning the transfer of Passenger Name Records and the Terrorist Finance Tracking Programme.

The Government supports actions taken to improve the functioning of Safe Harbour and welcomes the recommendation for regular evaluations of Safe Harbour’s implementation.

**Access by US Authorities**

The Committee considered the European Commission’s attempts to secure an agreement with the United States for an approach based on necessity, proportionality, and targeting concerning how national security concerns may be used as a reason to access data transferred under Safe Harbour. The Committee concluded the attempts seemed reasonable. However, it also recognised that security concerns were part of a broader conversation between the EU and the US on data protection and the digital single market.

The Committee noted and shared the Government’s view that national security remained a national responsibility and that European institutions had no competence in those areas. However, the Committee believed it would be in the UK’s interests to conduct a dialogue on the balance between privacy and security with the European Institutions and other Member States to ensure its position is understood. The Committee did not believe such a dialogue would compromise the position over competence.

The Government engaged in official level discussions with the European institutions, the United States Government, and some other EU Member States on national security during the course of meetings.
held in 2013. As set out in the Lithuanian Council of the EU Presidency’s statement of 19 July 2013, an ad hoc EU-US working group was established to consider data protection in relation to the personal data of EU citizens. Specifically, the group was “tasked with discussing questions of data protection”. These discussions concluded in September 2013 and led to the publication in November 2013 of the European Commission’s Communication “Rebuilding Trust in EU-US Data Flows”. Given that multi-lateral discussions have already taken place within the structured format of the ad hoc group that was formed, the Government does not consider that further dialogue with the EU institutions is now required.

As the Government noted in its evidence to the Committee, and as the Committee has also agreed, national security is a matter that does not fall within European Union competence. In the Government’s view, and reflected in the evidence of other witnesses, it is in any event not at all clear that concerns about surveillance arise as a result of deficiencies in, or even in connection with, Safe Harbour itself. As the Committee is well aware, beyond this very clear point of principle, competence issues are difficult to address in the abstract. The Committee can be assured, however, that we will consider very carefully any detailed proposals emerging for changes to the Safe Harbour framework in these respects.

NEXT STEPS

I would like to thank the European Union Committee for its considered and detailed analysis of the European Commission’s Communications on rebuilding trust in EU-US data flows, and the functioning of the Safe Harbour Decision. The Government is currently awaiting a State of Play update from the Commission concerning their negotiations on behalf of the EU with the US Government. This will take place on 30 June during a meeting of the Article 31 Committee of representatives from Member States.

A presentation of detailed proposals to revise the Safe Harbour Decision is expected near the end of summer. The Government will consider such proposals in light of the points and recommendations made by the Committee.

10 July 2014

Letter from the Chairman to Simon Hughes MP

Thank you for your letter of 10 July 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 30 July 2014. The Committee also received a letter from David Smith, Deputy Information Commissioner, on 21 July 2014 containing an update on the Information Commissioner’s Office’s activities.

We note the Government’s support for many of the conclusions and recommendations in our letter of 7 May. On the issue of enforcement, we recommended that a more credible compliance and audit regime, which was not simply driven by complaints, be established, and that the European Commission and the Government take further steps to achieve this. We sincerely hope that your response that the Federal Trade Commission would be best placed to determine how it allocates its resources to improve the self-certification system does not mean that the Government will not pursue our recommendation with the US authorities.

There are a number of issues which remain to be resolved, most importantly, whether the US will agree to limit its access to Safe Harbour data for national security purposes to a proportionate and necessary level.

We have decided to retain the two documents under scrutiny, and look forward to receiving further updates in due course.

30 July 2014

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Letter from to Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

I am writing to update you on the implementation of the Schengen Evaluation Mechanism (SEM) Regulation.

The Commission first explored when and how the preparatory work for visits should be conducted, in order to deliver the pre-visit processes laid out in the SEM Regulation by the required dates. It was conscious it would not receive a Frontex analysis until 31 August; that it must allow Member States and the European Parliament time for completion and scrutiny of the Member State responses to questionnaires; and yet give enough time to arrange logistics.

An Implementing Decision establishing the first Multiannual evaluation programme was adopted by the Commission on 18 June 2014. Evaluation visits under the new mechanism will start in January 2015, continuing the five-yearly cycle used under the old mechanism. This gives the Commission time to apply the correct processes for all SEM visits. The first countries listed for evaluation, during 2015, will be the Netherlands, Belgium, Germany, Liechtenstein and Austria. The Commission has not yet scheduled unannounced visits for 2015, pending the Frontex analysis, but Member States will be consulted on any subsequent changes to the Multiannual evaluation programme and on the first draft of the Annual evaluation programme.

Member States were consulted on revision of the evaluation questionnaire and an Implementing Decision establishing a new format was adopted by the Commission on 11 July 2014. This allowed the Commission to issue questionnaires to the Netherlands, Belgium, Germany, Liechtenstein and Austria for completion over the summer recess.

Given that evaluation visits will not start until January 2015, we believe that Member States, the European Parliament and national Parliaments will not see the first SEM evaluation reports until late spring 2015. To that end, my officials pressed the Commission for information on the transmission of documents. The Commission plans to update its secure transmission system which connects to encryption points within Member States’ Permanent Representations in Brussels and within the EP. My officials are in discussion with their equivalents in the UK’s Permanent Representation regarding this system and how EU restricted documents can best be captured and transmitted to the UK in a timely manner.

The Commission has still not explained how documents will be sent direct to national Parliaments. It is not clear if national Parliaments already have encrypted access to the Commission’s secure transmission system or if the system will need to be extended to include national Parliament contacts. We continue to press for such information. I propose that my officials contact yours to discuss how the Government and both Houses can work together to ensure that the obligations under this Regulation are fulfilled whilst respecting the classification of the documents.

28 August 2014

SIX MONTHLY UPDATE TO THE JOINT HOME OFFICE – MINISTRY OF JUSTICE ANNUAL REPORT TO PARLIAMENT ON THE APPLICATION OF THE JHA OPT-IN (UNNUMBERED)

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

I am writing on behalf of the Minister for Courts and Legal Aid, Shailesh Vara MP, and myself.

The Government has committed to provide the Parliamentary Scrutiny Committees with a regular six monthly update to the list of opt-in decisions which were annexed to the joint Home Office and Ministry of Justice annual report to Parliament on the JHA Opt-in. The Fourth Annual Report, which was published in January 2014, included decisions taken between 1 December 2012 and 30 November 2013. The updated annex, which I enclose [not printed], lists decisions taken in the period 1 December 2013 and 31 May 2014.
During this six-month period, 22 decisions were made under the JHA Opt-in Protocol, and 2 were made under the Schengen Opt-out Protocol. The UK opted in on 13 occasions and did not opt in on 11 occasions, including opting out under the Schengen Protocol on 2 occasions. For the Home Office, this included the decision under the JHA Opt-in Protocol to opt in to the proposal to move the European Police College (CEPOL) from Bramshill in the UK to Budapest, and the decision to assert the Schengen opt-out on proposals to tackle new psychoactive substances. On the Ministry of Justice side, the Government decided not to opt in to the procedural safeguards package covering measures on children suspected or accused in criminal proceedings, strengthening certain aspects of the presumption of innocence, and providing legal aid for suspects or accused persons deprived of liberty and legal aid in European Arrest Warrant proceedings. The Government also opted in to Council Decisions to sign Association Agreements with Georgia and Moldova, but did not opt in to the readmission provisions of Decisions to conclude Partnership and Co-operation Agreements with Vietnam, Singapore and the Philippines.

Since 31 May, the Government has taken a further 3 opt-in decisions. We have opted in to a Council Decision establishing the European Union position on the accession of Afghanistan to the World Trade Organisation, Council Decisions to sign an Association Agreement with the Ukraine, and a Decision establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work.

We expect that there will be relatively few new proposals over the coming months, ahead of the new Commission taking office. In the coming months, the Home Office and Ministry of Justice are expecting further opt-in decisions on the following proposals:

— Proposal amending the Dublin Regulation 604/2013 regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State;

— Proposal to reform the European Police College (CEPOL) and create a European Training System;

— Proposal to simplify travel formalities for EU citizens and third country family members; and

— Proposal for a mandate to negotiate an EU Readmission Agreement with Tunisia.

In addition, it is likely that further opt-in decisions will be required on the following proposals on which other Government Departments will lead:

— Proposal to sign and conclude Protocols to the Euro-Mediterranean Agreement allowing the Republic of Tunisia and the Republic of Lebanon to participate in Union programmes;

— Proposal to sign a Stabilisation and Association Agreement with Kosovo;

— Proposal for a Council Decision establishing the European Union Position on the Accession of the Seychelles to the World Trade Organisation; and


I trust that the Committee will find this update useful and look forward to working with you on JHA matters in the coming months. I will arrange for a copy of this letter to be placed in the House library.

18 July 2014

TELEPHONE SERVICE TRACKING PROGRAM (12719/14, 19063/13, 19064/1?)

Letter from the Chairman to Lord Deighton, Commercial Secretary, HM Treasury

Thank you for your explanatory memorandum of 25 September 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 29 October 2014. The document had already been cleared from scrutiny.
Earlier this year the Sub-Committee considered a Terrorist Finance Tracking System Communication, Impact Assessment and joint Report (Document Numbers 17063/13 and 17064/13). We would like to thank you again for your response to our questions regarding these documents. We now clear them from scrutiny.

30 October 2014

TRAFFICKING IN FIREARMS (7933/13)

Letter from Norman Baker MP, Minister for Crime Prevention, the Home Office, to the Chairman

Thank you for your letter of 11 September 2013 to my predecessor, in which you asked for confirmation of the adoption of the Proposal, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. The Proposal supplements the United Nations Convention against Transnational Organised Crime. Please accept my apologies for the delay in responding.

I am now able to confirm formally that the Protocol was adopted on 11 February, and the European Union signified its approval of the Protocol on 21 March 2014.

As you are aware, issues were raised in relation to the legal base cited and whether the UK’s opt-in was applicable. The Government’s view is that the opt-in was triggered by the presence of binding JHA obligations rather than by the citation of a JHA legal base. The Government was satisfied that a unilateral statement in the Council minutes would be sufficient to protect its position on the application of the UK’s opt-in.

When the Decision to conclude the Protocol was formally adopted at the EU General Affairs Committee on 11 February, the UK laid the following Minute Statement which set out our position:

“The Council is being asked to adopt a Proposal for a Council Decision, with Articles 114,207 and 218(6)(a) of the TFEU as its legal base, on the conclusion, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime (“the Firearms Protocol”).

The United Kingdom believes that Articles 83 and 87 of the TFEU should have been cited as legal bases to reflect the subject matter of Articles 9 and 11 respectively of the Firearms Protocol. Further, the UK considers that the Council Decision should have been split into two, to cover both the non-Title V, and the Title V, aspects of the Firearms Protocol. As the United Kingdom can accept the policy objectives of Articles 9 and 11 of the Firearms Protocol, it has notified its wish to take part in the adoption and application of this Decision, in accordance with Article 3 of Protocol No.21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union.”

4 September 2014

Letter from the Chairman to Norman Baker MP

Thank you for your letter of 4 September 2014, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 15 October 2014.

We are glad to know, even though belatedly, that the Decision authorising ratification of the Protocol has been adopted, and the Protocol ratified by the EU.

15 October 2014
Letter from the Chairman to Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice and Theresa May MP, Secretary of State, Home Office

Thank you for your letter of 3 July 2014 updating us on the progress of negotiations with the European Commission and the Council on the measures which the United Kingdom proposes to opt back into. This was considered by the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union at a meeting on 9 July 2014. They considered at the same time the above Commission Communication and its explanatory memorandum of 26 June 2014.

The Committee has now also seen the Command Paper to which you refer entitled “Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union,” issued by the Government on 3 July (Cm 8897), and including the full impact assessments. Since you are not the signatories of the impact assessments, you may not be aware that the Command Paper has no Table of Contents, that the impact assessments are unindexed, and that they do not follow the order of the lists on pages 6 to 8 (which is the order you have adopted in the annex to your letter). To receive such a poor quality paper is disappointing, and is singularly unhelpful to members of the Select Committee and its Sub-Committees, and indeed to all members of the House.

Your letter lists the five measures no longer in the original 35 which appeared last year in Cm 8671, and the five measures which were not in Cm 8671 but are now in Cm 8897. These lists are not the same as those in the Commission Staff Working Document, and the comparison in the Explanatory Memorandum is therefore different. Since the forthcoming debates in both Houses will be focusing on the measures which the United Kingdom will be opting back into, it is important to know that the Government’s list is the same as the Commission’s. We would be glad to have your immediate reply on this point.

You say in your letter that you have reached an “in principle” deal with the Commission on the non-Schengen measures, but that some Member States continue to have “technical reservations”. It is important for us to know, as far in advance of the debate as possible, whether any of these “technical reservations” are likely to result in changes to the list, or in changes to the classification of measures as Schengen or non-Schengen.

You do not refer in your letter to the Data Protection Framework Decision (2008/977/JHA) which has been re-classified by the Commission as a Schengen measure. It seems from the Explanatory Memorandum, and Cm 8897, that the Government agrees with this. We would be grateful for your confirmation that you do not anticipate that the need for Council approval will cause any difficulties for the United Kingdom opting back in.

We clear the Commission Staff Working Document from scrutiny. If there are any further changes between now and 1 December 2014 in the agreed lists of measures, we would be grateful to be informed of them as soon as they take place.

9 July 2014

UK’S 2014 BLOCK OPT-OUT DECISION (13683/14, 13680/14)

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office, to the Chairman

Thank you for your two Explanatory Memoranda of 3 November 2014 which were considered by the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union at a meeting on 26 November 2014.

These two draft Decisions are of course of critical importance to the Government’s application to opt back in to the 35 measures listed in the Annex to the first Decision. Our Clerk was informed by your officials last night that the Decisions are to be adopted tomorrow, 27 November, and published in the OJ the following day. You will of course be aware, not least from the amendment I tabled to the Government motion on 17 November, of the views not just of this Committee but of all the members who spoke in that debate about the Government’s handling of Parliamentary involvement in the whole saga of the block opt-out and subsequent opt-in. Nevertheless, we support the adoption of these two Decisions, and have decided to clear them from scrutiny.
There remain the two Decisions which will actually authorise the Government’s opt in to the 35 measures: a Council Decision in relation to the 6 Schengen measures, and a Commission Decision in relation to the remaining 29 non-Schengen measures. Until yesterday we had not heard from Ministers even about their existence, but were left to deduce this from the Treaties. Yesterday afternoon the Home Secretary gave me a hard copy of the draft Council Decision. It was not however accompanied by an EM. Although the Sub-Committee have seen it for information, they have not seen it for scrutiny, let alone for clearance from scrutiny.

The draft Council Decision is dated 19 November 2014. Paragraph 1.5 of the Cabinet Office Guidance on Scrutiny requires documents to be deposited in Parliament within 48 hours of circulation by the Council. We are therefore astonished that the draft Decision has not been deposited, and request that that it be deposited immediately. Ministerial agreement to the draft Decision at tomorrow’s Transport Council will then be treated as a scrutiny override.

We have not seen any text of the draft Commission Decision. We accept that, since Member States are not involved in its adoption, it is not for formal deposit or scrutiny. We nevertheless feel that it would have been appropriate to let the Committee see it in draft, especially in view of the repeated assurances we have received from Ministers about the importance they attach to the Parliamentary scrutiny process.

As in the case of any other scrutiny override, Ministers will have to explain to the House why the Committee was never even given the opportunity to scrutinise the draft Council Decision, let alone clear it from scrutiny. The Cabinet Office guidance provides: “Subject to any wishes expressed by the Committee, statements may be either written or oral but are usually written.” On this occasion, we would like an oral statement to the House as soon as possible after these Decisions are adopted on 1 December.

26 November 2014

Letter from the Chairman to Karen Bradley MP

Thank you for your letter of 26 November and your ongoing work on this important matter.

I am very pleased to be able to inform you that the processes required to confirm the UK’s participation the 35 police and criminal measures were concluded on 1 December without any issues.

I was extremely grateful that your Committee cleared the Transitional and Financial Consequences Decisions from scrutiny given these two Decisions were critical finalising the UK’s participation in the 35 measures. Both Decisions were approved by other Member States and adopted at the Transport Telecommunications and Energy (TTE) Council on 27 November. The UK voted in favour of the Financial Consequences Decision, but did not have a vote on the Transitional Decision.

As you point out, a Council and a Commission Decision were also required to give effect to the UK’s application to rejoin the package of measures approved by Parliament, and agreed with all other Member States. The Government has been transparent about the processes required to formally rejoin measures and set out details of these in Command Paper 8671: Decision pursuant to Article 10 of Protocol 36 to the Treaty on the Functioning of the European Union.

The Government voted, via the written procedure, to approve the adoption of the Schengen Council Decision in order to ensure that it entered into force on 1 December without an operational gap occurring. This followed extensive Parliamentary consideration of this matter in both Houses of Parliament. Whilst I apologise for the fact that this involved a breach of the Scrutiny Reserve Resolution, this technical Decision did no more than approve the UK’s participation in the Schengen measures that had already been endorsed by Parliament. Given unanimity was required for the measure to pass, the Government had to vote to approve this Decision to ensure that the package of measures could come into operation as soon as possible, to avoid a legal vacuum which could have arisen, to allow negotiations to conclude, and in order to conclude an advantageous package deal with other Member States.

I accept that this document was not deposited with Parliament within the normal timescales, and for that oversight I apologise on behalf of the Government. This document has now been deposited and the Government has provided an Explanatory Memoranda to accompany the Decision.

The Government did not receive a copy, either finalised or in draft form, of the Commission Decision approving the UK’s application to rejoin the 29 non-Schengen measures before it was adopted on 1 December and as a result we were unable to provide a copy to Parliament. As expected this
Decision contained no more than a short provision approving the UK’s application to rejoin the 29 non-Schengen measures already agreed by both Houses of Parliament and full details of all of these measures are included in Command Paper 8897: Decision pursuant to Article 10(5) of Protocol 36 to the Treaty on the Functioning of the European Union. As you acknowledge in your letter, there is no requirement for this document to undergo formal scrutiny, or for it to be deposited in Parliament. Nevertheless, the Government will provide it alongside an Explanatory Memoranda for your Committee’s consideration.

Finally, the Government will arrange for a Written Statement to be made to the House on this matter. Whilst I note your request for an Oral Statement the Government believes that this is not justified given the extensive hours already debated to scrutiny of the 2014 Decision in both Houses.

4 December 2014

UK’S BLOCK OPT-OUT OF PRE-LISBON CRIMINAL LAW AND POLICING MEASURES - THE “2014 DECISION” - (UNNUMBERED)

Letter from Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice and Theresa May MP, Secretary of State, Home Office, to the Chairman

We are writing to update you on the progress of negotiations with the European Commission and Council on the pre-Lisbon justice and home affairs measures that the United Kingdom proposes to rejoin in the national interest.

We are pleased to be able to report that good progress has been made in these negotiations and that we have reached an ‘in principle’ deal with the Commission on the non-Schengen measures. A list of measures is attached at Annex A [not printed]. Despite this good progress, negotiations have not yet been concluded on the overall package. This matter was discussed at the General Affairs Council on 24 June and some Member States expressed technical reservations. Discussion will continue with the aim of allowing those states in question to lift their reservations, but as they are nearing their conclusion we wanted to write to inform your Committee.

We have been clear throughout this process that the measures we seek to rejoin will be subject to negotiation with the Commission and other Member States. But – backed by the clear views expressed in Parliament, not least by the reports of your committee and others – we have been able to resist many of the changes demanded by the Commission and other Member States. The changes to the list that was set out in Command Paper 8671 in July 2013 are therefore as follows:

— Two measures – that relating to CEPOL, the European Police College, and that relating to Freezing Orders – have been ‘Lisbonised’ by the new CEPOL measure and the European Investigation Order respectively. As a result, these measures are no longer subject to the opt-out and fall off the UK’s list.

— The UK will no longer seek to rejoin the Special Intervention Units measure. The Commission considers this measure to be linked to the Prüm decisions which the UK will not seek to rejoin.

— The UK will no longer seek to rejoin the European Genocide Network and will instead rejoin the European Judicial Network. This follows submission of further evidence from the Lord Advocate, Frank Mulholland, the Crown Prosecution Service and other Member States on the operational benefits of the measure and practical examples of its use in tackling crime.

— The UK will now seek to rejoin three Europol implementing measures which the Government accepts are necessary to continue participation in the main Europol measure.

— The UK will not rejoin the Schengen Handbook as other Member States consider this measure to have been superseded by other measures.

— The UK will now seek to rejoin the SIS II networks measure which is considered by other Member States to be integral to the operation of SIS II.
The Government has also published Command Paper 8897 today. This includes full impact assessments on all of the measures that the Government proposes to rejoin.

We intend to hold a debate before summer recess so that Parliament can consider these measures before our negotiations in Europe are concluded. We are currently discussing this matter with the Business Managers and will update you when a suitable date has been agreed.

We look forward to engaging further with you on this important matter.

3 July 2014

Letter from Chris Grayling MP and Theresa May MP to the Chairman

Thank you for your letter of 3 July 2014 updating us on the progress of negotiations with the European Commission and the Council on the measures which the United Kingdom proposes to opt back into. This was considered by the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union at a meeting on 9 July 2014. They considered at the same time the above Commission Communication and its explanatory memorandum of 26 June 2014.

The Committee has now also seen the Command Paper to which you refer entitled “Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union,” issued by the Government on 3 July (Cm 8897), and including the full impact assessments. Since you are not the signatories of the impact assessments, you may not be aware that the Command Paper has no Table of Contents, that the impact assessments are unindexed, and that they do not follow the order of the lists on pages 6 to 8 (which is the order you have adopted in the annex to your letter).

To receive such a poor quality paper is disappointing, and is singularly unhelpful to members of the Select Committee and its Sub-Committees, and indeed to all members of the House.

Your letter lists the five measures no longer in the original 35 which appeared last year in Cm 8671, and the five measures which were not in Cm 8671 but are now in Cm 8897. These lists are not the same as those in the Commission Staff Working Document, and the comparison in the Explanatory Memorandum is therefore different. Since the forthcoming debates in both Houses will be focusing on the measures which the United Kingdom will be opting back into, it is important to know that the Government’s list is the same as the Commission’s. We would be glad to have your immediate reply on this point.

You say in your letter that you have reached an “in principle” deal with the Commission on the non-Schengen measures, but that some Member States continue to have “technical reservations”. It is important for us to know, as far in advance of the debate as possible, whether any of these “technical reservations” are likely to result in changes to the list, or in changes to the classification of measures as Schengen or non-Schengen.

You do not refer in your letter to the Data Protection Framework Decision (2008/977/JHA) which has been re-classified by the Commission as a Schengen measure. It seems from the Explanatory Memorandum, and Cm 8897, that the Government agrees with this. We would be grateful for your confirmation that you do not anticipate that the need for Council approval will cause any difficulties for the United Kingdom opting back in.

We clear the Commission Staff Working Document from scrutiny. If there are any further changes between now and 1 December 2014 in the agreed lists of measures, we would be grateful to be informed of them as soon as they take place.

9 July 2014

Letter from Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office and Shailesh Vara MP, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

Thank you for your letter of 9 July regarding the UK’s 2014 block opt-out decision. The Home Secretary and Justice Secretary have asked us to reply on their behalf.

We note that your Committee has cleared Commission Staff Working Document 9883/14 from scrutiny. However, we felt that it may be helpful to address a number of points in your letter to assist with future Parliamentary scrutiny of this complex matter.
The Lisbon Treaty sets out that all former Third Pillar measures will cease to apply to the UK on 1 December except where the United Kingdom decides to rejoin, or where an amendment to a measure has removed it from the scope of the opt-out and submitted the amended measure to the full powers of the Commission and Court of Justice of the European Union (CJEU) earlier. A full updated list of measures that the Government considers to be subject to the opt-out is included at Annex A to this letter [not printed]. This updated list will also be made available on the Government’s website. This list includes information on the measures that have been amended or replaced by post-Lisbon measures and indicates whether the Government has opted into these under the UK’s post-Lisbon opt-in arrangements. This list may be subject to further changes ahead of 1 December 2014 and, as request, if further changes do occur, we will ensure that Parliament is fully informed of these.

To assist with your scrutiny of this matter, details of those measures that have been added or removed from the Government’s list of measures subject to the opt-out, last published in September 2013, can be found below.

### Measures that have been added to the Government’s list of measures subject to the opt-out published in September 2013

- Council Act of 10 March 1995, adopted on the basis of Article K.3 of the Treaty on the EU, drawing up the convention on simplified extradition procedures between the Member States of the European Union (number 1 on the Commission list, added at number 138 to the Government’s list)

- Council Act of 27 September 1996 drawing up the Convention relating to extradition between the Member States of the European Union (number 4 on the Commission list, added at number 139 to the Government’s list)

- Council Decision 2006/697/EC of 27 June 2006 on the signing of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (Number 65 on the Commission’s list, added at number 140 to the Government’s list)

Further to discussions in the Friends of the Presidency Working Group, the Government agrees that the above measures are part of the relevant third pillar acquis. The 1995 and 1996 Extradition Conventions apply between Member States and Norway and Iceland as a result of Council Decision 2003/169/JHA (included at number 48 on the Commission’s preliminary list and on the Government’s list at number 134). Both will be replaced by the 2006 Agreement between the EU, Iceland and Norway on the surrender procedure between the EU, Iceland and Norway once that agreement comes into force. This is expected before 1 December 2014. Council Decision 2006/697/EC relates to the signature of this 2006 Agreement. The Government has opted-in to the subsequent proposal for the conclusion of that agreement which remains binding on the UK.

- Council Decision 2009/820/CFSP of 23 October 2009 on the conclusion, on behalf of the European Union, of the Agreement on extradition between the European Union and the United States of America and the Agreement on mutual legal assistance between the European Union and the United States of America (Number 93 on the Commission’s list, added at number 101 to the Government’s list)

The Government’s list of September 2013 included the international agreement to which this conclusion Decision relates to. Further to discussions in the Friends of the Presidency Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States and it has been added to the Government’s list.

- Council Act of 29 November 1996 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities’ financial interests (number 11 on the Commission list, added at number 137 to the Government’s list)
This measure is a Protocol to the PIF Convention (number 8 on the Government’s list). The PIF Convention will be replaced by the Directive on the fight against fraud to the Union’s financial interests by means of criminal law (PIF) COM(2012)363, once adopted. Further to discussions in the Friends of the Presidency Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States and it has been added to the Government’s list.

Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (number 134 on the Commission list, added at number 141 to the Government’s list)

The UK is prevented from participating in the VIS by virtue of the ECJ ruling in Case C-482/08 UK v Council. Further to discussions in the Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States and it has been added to the Government’s list.

Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex (97) decl. 13 rev 2) (added at number 142 to the Government’s list)

Further to discussions in the Friends of the Presidency Working Group, the Government agrees that this measure is part of the relevant third pillar acquis for other Member States. However, the Government notes that this has been superseded by point 5.5 (adding a flag) of the SIRENE Manual in which the UK participates (Commission Decision 2008/334/JHA) and by point 6 of Annex VII of the Schengen Border Code (Regulation (EC) No 652/2006) which the UK does not participate in.

MEASURES REMOVED FROM THE GOVERNMENT’S LIST OF MEASURES SUBJECT TO THE OPT-OUT PUBLISHED IN SEPTEMBER 2013

Accession Agreements: Italy, Spain, Portugal, Greece, Austria, Denmark, Finland, Sweden.

The pre-Amsterdam accession agreements currently referred to in Article 1(b) of Decision 2000/365/EC were based on Article 140 of the Schengen Convention (which stated that any Member State may become a party to the Convention). Article 140 is no longer operative and was not given a third pillar legal base in Council Decision 1999/435/EC. Further to discussions in the Friends of the Presidency Working Group, the Government considers the better view is that these provisions are outside the scope of the opt-out. In any event, the Government considers that the UK’s participation in the Schengen acquis must be taken together with other Member States and the Associated EFTA States.

The Government further notes that the Articles and declarations of the relevant accession protocols included in Council Decision 2000/365/EC refer to various provisions which have been superseded. In relation to the Articles which refer to the Nordic Passport Union, the Government notes that these were given a Schengen Protocol legal base in Council Decision 1999/436/EC, and so are also outside the scope of the UK’s opt-out. In addition, these clauses continue to apply to the relevant Nordic countries and the UK’s position cannot affect that given that it is not part of the Nordic Passport Union.

You ask whether the Commission’s classification of the Data Protection Framework Decision as a Schengen measure will cause difficulties for the UK’s participation in the measure. The Government recognises and accepts the Commission’s classification of the measure, although we believe there are respectable arguments that this could also be classified as non-Schengen. Nevertheless, we do not anticipate any difficulties as a result of this classification and this matter is not in dispute.

Your letter refers to Command Paper 8897 Decision pursuant to Article 10(5) of Protocol 36 to the Treaty on the Functioning of the European Union. This Command Paper includes full and detailed Impact Assessments on each of the 35 measures that the UK is proposing to rejoin to aid consideration of the matter by the House, meeting the Government’s commitment to do so. As such we regret that your Committee is unhappy with the quality of the paper.

We hope that the General Debate on 17 July addressed your questions with regards to negotiations. Discussions continue with the aim of lifting the technical reservations that remain. We do not
anticipate further changes to the list, or changes to the classifications of the measures, as a result of these discussions and we remain confident that deal can be concluded ahead of 1 December.

We look forward to engaging further with you on this important matter.

5 August 2014

Letter from the Chairman to Karen Bradley MP and Shailesh Vara MP

Thank you for your letter of 5 August 2014, written on behalf of the Home Secretary and the Lord Chancellor and Secretary of State for Justice, in reply to my letter of 9 July 2014 on the United Kingdom block opt-out and the measures which the United Kingdom proposes to opt back into. Your letter was considered by the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union at a meeting on 10 September 2014.

We are grateful for the list of measures which have been added to or removed from the earlier list of measures subject to the Government’s block opt-out, and in each case the reasons for the change. We are also glad for your confirmation that the re-classification of the Data Protection Framework Decision as a Schengen measure will not cause any difficulties.

We are grateful too for Annex A, the full updated list of measures subject to the block opt-out. It is useful to have information about post-Lisbon developments. It would have been more useful still if it had included, for each measure the Government might have opted back into, a statement whether or not the Government intended to do so. An asterisk would have sufficed. Since this list is to be made available on the Government’s website, you may like to consider making this change.

You say you regret that the Committee “is unhappy with the quality of the paper”. Cm 8897 does, as you say, contain impact assessments on each of the 35 measures the UK is proposing to rejoin. We have no doubt that these are “full and detailed”, but they are very difficult to access. To give an example: if you are interested in Item 59 of Annex A, Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, and wonder whether the Government intends to opt back in, you will not find this in Annex A. You will find it in the list on page 7 of the Command paper, in no discernible order, between a 2002 measure on Joint Investigation Teams and the 1997 Naples II Convention on Customs cooperation. But if you should then wish to read the impact assessment, since there is no Index or Table of Contents, you have to look through the Command paper until you find it on page 183, between two measures on data protection.

In my letter of 9 July we pointed out that the letter from the Secretaries of State of 3 July listed the five measures no longer in the original 35 which appeared last year in Cm 8671, and the five measures which were not in Cm 8671 but are now in Cm 8897. We explained that neither of these lists is the same as those in the Commission Staff Working Document (9883/14), and we sought your confirmation that the Government’s list is the same as the Commission’s.

In your letter you state:

Discussions continue with the aim of lifting the technical reservations that remain. We do not anticipate further changes to the list, or changes to the classifications of the measures, as a result of these discussions and we remain confident that [a] deal can be concluded ahead of 1 December.

I should be grateful for your confirmation that the list to which you “do not anticipate further changes” is in fact the list in Cm 8897, and is the list agreed by the Commission; or if not, what the differences are.

I look forward to hearing from you of any significant developments in the negotiations leading up to 1 December.

10 September 2014

Letter from Karen Bradley MP and Shailesh Vara MP to the Chairman

Thank you for your letter of 10 September regarding the UK’s 2014 block opt-out decision.

We are pleased that your Committee found the updated list of measures subject to the opt-out useful and agree that using an asterisk to signify the measures the UK is seeking to rejoin in the national interest would be a helpful addition. We have asked our officials to make this change to the list and
we expect that this will be available on the Government’s website shortly. The overall list may continue to change up until 1 December but we will ensure that it is updated regularly so that the Government’s position is clear to your Committee and to Parliament. However, we would like to reiterate our explanation in the original Explanatory Memorandum that the Commission Staff Working Document (9883/14) has indicative value only and, in the event of a dispute, only the Court of Justice of the European Union (ECJ) will be able to determine whether a measure is part of the relevant former third pillar acquis.

We also note your Committee’s view on the quality of Command Paper 8897 and the Impact Assessments it contains. We will use this feedback in future publications and would like to apologise for any difficulties that this may have caused your Committee.

We would like to confirm that the 29 non-Schengen measures contained on pages 6 and 7 of Command Paper 8897 were agreed during negotiations with the European Commission earlier this year. Negotiations with the Commission have now concluded and we do not expect further changes to occur to this list. As the Home Secretary stated to Parliament on 10 July, we have also made good progress on the six Schengen measures, contained on pages 7 and 8 of Command Paper 8897, and the outline of a deal is clear. This matter was discussed at the General Affairs Council on 24 June but a small number of Member States expressed technical reservations. Two Member States have now lifted those technical reservations and we are now very close to reaching overall political agreement. We will of course update Parliament, as we have throughout this process, when agreement has been reached.

We look forward to engaging further with you on this important matter.

30 October 2014

Letter from the Chairman to Karen Bradley MP and Shailesh Vara MP

Thank you for your letter of 30 October 2014 in belated reply to my letter of 10 September 2014 on the United Kingdom block opt-out and the measures which the United Kingdom proposes to opt back into. Your letter was considered by the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union at a meeting on 5 November 2014.

We are glad to know at last that the list of measures in Cm 8897 is indeed the final list of the 35 measures which the Government is seeking to opt back into.

You say that the list in the Commission Staff Working Document (9883/14) “has indicative value only”. It would seem to us that it no longer has any value at all, and has been superseded by a fresh Commission list of 35 measures which, we are glad to say, coincide with yours. This list is contained in an Annex to a draft Council Decision of which you make no mention, even though it was published by the Council on 29 September and deposited by the FCO on 2 October. We should therefore have received EMs for this draft Decision, document 13683/14, and for an associated draft Council Decision which was deposited the same day (document 13680/14), no later than 16 October. They were received late on Monday 3 November, too late for them to be considered by the Sub-Committee today.

Our Clerk has repeatedly reminded your officials of the importance and urgency of these EMs. He has explained that today’s meeting of the Sub-Committee is the last before the recess, and that the Sub-Committee will not be meeting on 19 November when its members are visiting Brussels. They will therefore not be able to conduct formal scrutiny of these documents before 26 November, by which time the Decisions may well have been adopted.

We do not blame your officials for this delay, but we regard it as extraordinary that Ministers who have appeared before the Select Committee and stated their commitment to Parliamentary scrutiny should treat scrutiny of such important documents in such a cavalier fashion.

5 November 2014
Letter from Lord Deighton, Commercial Secretary, HM Treasury, to the Chairman

I am writing to provide you with an update on the Fourth Money Laundering Directive ("the Directive") and the Wire Transfer Regulation (the "Regulation") following discussion of both pieces of legislation by EU Permanent Representatives, following our letters last month. Agreement has not yet been reached, but the Presidency is on track to complete its stated aim of reaching General Approach by the end of the month.

Following extensive discussions between Member States and the Presidency over the last few days, a new version of the Directive (in line with the information we have provided to date) is to be put to Coreper on 18 June. I am pleased to confirm that our policy of close engagement with the Commission, Council Presidency and other Member States has meant that we are broadly content with recent progress and would look to support this version of the proposal as a basis for trilogue discussions with the European Parliament.

This follows the European Parliament having already adopted first reading positions on both the Directive and the Regulation ahead of their last session ending.

THE DIRECTIVE

On beneficial ownership specifically, negotiations to date have secured nuanced differential treatment of companies and trusts. Positive and explicit reference is made to central and public registries as a prime example of an acceptable mechanism for storing and accessing company beneficial ownership information. At the same time, more flexibility is granted over the handling of trust beneficial ownership. This nuanced asymmetry in treatment is in line with UK objectives.

On other issues, the latest compromise text is in a good place on risk-based exemption for the gambling sector and supra-national risk assessment. The commission will not issue legally binding measure on the back of the latter and we have also secured language that ensures that Member States' experts are involved in the assessment process. Significant progress has been made with respect to the exemption of e-money products from certain customer due diligence measure and we have successfully secured a hard-won compromise whereby reloadable e-money instruments under a certain threshold may also benefit from the derogation.

DIRECTIVE - COOPERATION BETWEEN FINANCIAL INTELLIGENCE UNITS (FIUS)

We have highlighted in the past a potential issue with the legal base of the Directive. The Government now takes the view that one of the predominant purposes of the measure is co-operation against criminal activity, particularly terrorist financing, which we consider to be Justice and Home Affairs co-operation. On that basis, and in line with the recent letter from the Home Secretary and Justice Secretary on the application of the JHA opt-in, we consider that despite not asserting the opt-in, and not opting in, the UK would be bound by this measure if it were to be adopted without a Title V legal base. We recognise now that we should therefore have asserted the opt-in at the beginning of negotiations and provided the Committees with an opportunity to give an opinion on whether the UK should opt in, in line with standard practice. We did not do so as we did not identify the content as being JHA in nature at an early stage. I apologise to the Committee that we did not provide you with an opportunity to consider the opt-in in relation to these proposals. We have sought to negotiate the addition of a Title V legal base, or to split out the content into a separate measure with a Title V legal base, to make it clear that this is JHA content. However we can no longer expect to achieve these aims before the proposal is put to Council for a general approach by the end of the Greek Presidency. We will therefore consider ourselves bound by this measure on adoption, despite not opting in, until such a time as the CJEU were to strike down the measure.
Negotiations on the Regulation have progressed well, and there is now consensus among Member States, along the lines of my previous updates, that the text is acceptable in its form, including on the issue of the threshold which has been maintained at EUR 1000.

With respect to your query regarding the timing of the Impact Assessment following my letter of February 2013, I confirm that we remain committed to publishing an impact assessment and consult on the implementation of the Directive and the Regulation before transposing them into UK legislation i.e. once the Directive is approved as is standard practice and in line with Better Regulation processes. This timing is necessary to ensure that any Impact Assessment accurately reflects any changes to the draft legislation agreed in negotiations following trilogues.

I trust this information will help your Committee in continuing effectively to scrutinise these proposals on which the UK has secured a number of positive outcomes. Hopefully your Committee finds itself able to clear the documents from, or waive, scrutiny to allow the Government to support General Approach. I will of course write to you as a matter of urgency if there is any significant movement ahead of General Approach.

10 June 2014

Letter from the Chairman to Lord Deighton

Thank you for your letter of 10 June 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 18 June 2014.

We are glad that the negotiations are proceeding satisfactorily, and that a General Approach is likely to be agreed by the end of the month.

We are however concerned to learn, 15 months after receiving your EM and very close to the conclusion of the negotiations, that you regard the provisions relating to cooperation between Financial Intelligence Units as having a substantial JHA content. This, as you say, should have been identified “at an early stage” – we would say, at the outset. I note and accept your apology, but I have to point out that I wrote to the Economic Secretary twice on 10 June in relation to a similar failure by Treasury officials to identify JHA issues in two other draft measures; and those were not the first. I asked then what steps the Treasury was taking to ensure that JHA issues are identified and brought to the Committee’s attention at an early stage. I repeat that question.

If the JHA content had been identified at the outset, the Government could and should have argued for the insertion of a Title V legal base, and once this had been done the Committee would have been afforded the usual opportunity to discuss whether the Government ought to opt in to this proposal. As you say, there is no prospect of altering the legal base at this stage. Since there is no Title V legal base, this Committee would regard the Directive as binding on the UK on adoption, regardless of it having a JHA content. As you know, we do not consider the opt-in as applying unless or until a specific Title V legal basis is included in the proposal.

You conclude this section of your letter by saying: “We will therefore consider ourselves bound by this measure on adoption, despite not opting in, until such a time as the CJEU were to strike down the measure.” We do not understand this. We are not aware of any proceedings in the Court of Justice, current or anticipated, seeking to strike down the draft Directive. We cannot believe you are suggesting that the Government intends to challenge in the Court of Justice a measure which the Government has supported throughout its negotiation, solely on the ground that it should not apply to the UK because the Government has not opted in. We would be grateful for an explanation of these words within the usual ten working days.

The draft Directive, as you know, broadens the scope of the Third Directive to cover domestic politically exposed person (PEPs), and PEPs working in international organisations. Anecdotal evidence we have received suggests that domestic provisions on PEPs are not always working satisfactorily, and we would be glad to have your assessment of this.

You said that you hoped the Committee would be able to clear the documents from, or waive, scrutiny to allow the Government to support the General Approach on 18 June. The Clerk has already explained to your officials that the scrutiny waiver in my letter of 14 May 2014 was not, and was not intended to be, limited to the period of the Prorogation of Parliament, but will apply during the full course of the negotiations. The Committee has therefore cleared both the draft Directive and
the draft Regulation from scrutiny, but would be grateful to continue to be informed of progress in
the negotiations.

18 June 2014

Letter from Lord Deighton to the Chairman

I would like to update you on progress in negotiations on the Fourth Money Laundering Directive and
Wire Transfer Regulation. Please excuse the oversight in not responding sooner to your query
regarding domestic regulation of politically exposed persons; this is an area of ongoing interest and
related work is outlined at the end of this letter.

Following our last correspondence, the Council agreed a General Approach in June 2014 and trilogue
negotiations began on 9 October, after the constitution of the eighth European Parliament. Good
progress has been made on the Directive, though differences remain between the Council and the
European Parliament. The focus of trilogues has been on the Directive and the Wire Transfer
Regulation has yet to be discussed.

The Government fully supports the aim of the Italian Council Presidency to conclude trilogue
negotiations by the end of the year, but this remains an ambitious timetable for conclusion of the EU
legislative process. UK officials continue to work with other Member States, MEPs and the European
Commission to secure an effective and proportionate outcome. I set out more detail on the key
issues of the Directive below.

Beneficial Ownership

Beneficial ownership has been the main focus of trilogues, with the European Parliament keen to
secure central registries of company and trust beneficial ownership. The UK has made progress in
Council towards differential treatment of companies and trusts, but the Council’s compromise
proposal was rejected by the European Parliament at the 25 November trilogue. Council discussions
will continue on a new compromise proposal and engagement with the European Parliament. The
Government remains engaged with all stakeholders.

E-money

Ahead of the General Approach, the Government secured a hard-won battle to ensure an exemption
from certain due diligence measures for re-loadable e-money products below a threshold and used
within a single Member State. This remains the Council position, and we are also working to build
support for further clarification that e-money products not benefiting from this exemption could still
be subject to simplified due diligence procedures should they be deemed low risk by a Member State’s
National Risk Assessment. This would limit unnecessary burden on the sector; the UK-based e-money
sector is the largest in the EU and plays an important role in financial inclusion.

Supranational Risk Assessment

The text on the supranational risk assessment (SRA) has been agreed in trilogues. Though
understanding the need for greater EU cooperation in assessing anti-money laundering risks affecting
the EU as a whole, it is crucial that a Commission-led assessment is based on information provided by
Member States in the context of their National Risk Assessments and focused on cross-border risks,
not a top-down assessment and not to be followed by legally-binding recommendations.

Agreement has been secured to prevent the Commission issuing legally binding recommendations on
the back of the SRA. UK officials are also actively involved in the Commission’s ad-hoc working group
created to develop the supranational risk assessment.

Equivalence

The Council remains keen to ensure that there is no third country equivalence process enshrined in
the Directive (‘White List’). The consensus both in the European Parliament and Council is for an EU
process to identify jurisdictions with severe deficiencies in their AML regimes (‘Black List’). Obliged
entities engaging in a business relationship or transaction with third parties from black-listed
countries would be required to carry out enhanced due diligence on these third parties.
The Commission is expected to draw heavily on the existing Financial Action Task Force (FATF) blacklisting process to draw up the EU blacklist, but would have the ability to add other countries. Final trilogue discussion concerns the mechanism by which the Commission would add countries. While the UK and others would favour an Implementing Act to secure Member States involvement, the EP has a strong preference for a Delegated Act process.

GAMBLING

In the latest compromise we managed to ensure that, aside from casinos, gambling services providers would be able to be exempt from the Directive on the basis of risk. Under the latest compromise, Member States granting such an exemption would have to notify and justify this decision to the Commission. The Commission would have no role in approving or rejecting the exemption. We continue to engage in order to manage expectations that the Commission should have such a role.

DIGITAL CURRENCIES

The Commission has discussed including digital currencies within the scope of the Directive, arguing that it is the only legislative opportunity to address potential risks posed by digital currencies in the near future. There is no Council agreement on inclusion at this late stage of negotiations, and European Parliament interest is unclear. The UK has maintained that, while there may be a need to regulate the sector, there is not sufficient evidence yet that regulation is necessary and to what extent - including whether the Directive is the right instrument.

DATA PROTECTION

The EP has proposed a number references to data protection. The effect of these is to create a bespoke data protection regime for AML that cuts-across wider Data Protection provisions under negotiations at the EU. The Government is keen to ensure that the final text does not give Data Protection a disproportionate prominence that would undermine and supersede firms' ability to comply effectively with their financial crime requirements.

JUSTICE AND HOME AFFAIRS (JHA) LEGAL BASE

You asked for clarification on the Government's position. The Government will consider itself bound by the new Directive, despite not opting in, until such a time as the Court of Justice were to strike down the measure. Once the measure has been adopted, the Government will consider whether or not we wish to challenge the legal base of the measure before the Court of Justice.

I also note your concerns on the handling of the UK opt-in overall. The Economic Secretary addressed this point in her update of 24 June on Shadow Banking.

POLITICALLY EXPOSED PERSONS

You requested an assessment of the proportionality of domestic treatment of Politically Exposed Persons (PEPs) under UK Money Laundering Regulations. Existing Regulations are clear that domestic PEPs should not be within scope, but we recognise that more can done to encourage firms to apply their legal obligations in a way that does not unduly restrict legitimate customers' access to financial services across the board.

I discussed this issue in the Lords on 14 October in an Oral Answer, and undertook to look at the revised industry guidance due to issue soon, to ensure that banks take a proportionate, risk-based approach which is sensitive to the real risks involved in these transactions. In the coming months, we will work with the Financial Conduct Authority, supervisors, trade associations and industry on transposition, including the PEPs aspects of the Directive.

4 December 2014
Letter from James Brokenshire MP, Minister for Immigration and Security, Home Office, to the Chairman

Further to my previous letter of 19 May, I am writing to update you on the discussion at the JHA Council on 5-6 June, the Government's assessment of the progress made in implementing the Task Force proposals, and our evaluation of the “added value” provided by the Task Force.

At the 5-6 June JHA Council, the Commission set out the activity now taking place in relation to the actions agreed by the Task Force Mediterranean (TFM).

Staff Working Document 17398/13 produced by the Commission (attached to this letter [not printed]) sets out the actions being undertaken across the five agreed ‘lines of action’ under the TFM. The document highlights that a great deal of action is underway to prevent dangerous and illegal sea crossings, to combat the people smugglers, and ensure protection for those in need. The table also reflects the UK’s commitment to these significant efforts.

In my view, the Commission’s document makes clear the value added by a coordinated response by the EU, its agencies and Member States. It is clear from this document that significant efforts are being made to take forward the actions agreed by the Task Force, and that these efforts are providing a far more coherent and substantial response that would have been achieved otherwise.

However, despite this response, it has proved very difficult to stem the illegal migratory flows, not least given the situation in Libya and the numbers fleeing the Syrian crisis. At present the numbers crossing the Central Mediterranean are at a record high, with increasing pressure on asylum systems across the EU. In order to streamline efforts under the Task Force, the June JHA Council agreed that prioritisation of EU efforts is essential, and that preventative work in countries of origin and transit should be the principal focus alongside enhanced efforts to tackle people smugglers and traffickers.

The Home Secretary supported these aims, calling also for increasing returns of those not in need of protection in order to dissuade migrants from making the dangerous journey across the Mediterranean. Although the challenges are considerable, only action ‘upstream’ in countries of origin and transit offers a genuine hope of reducing the numbers attempting these crossings. In this regard, the joint leverage that can be exerted by the EU under the TFM will play an important role in delivering these objectives in partnership with third countries.

This focus on the external dimension means that the EU’s External Action Service (EEAS) has a vital role to play. It is essential that we harness the EU’s broader external engagements to drive progress on migratory pressures and on preventing the facilitation of such dangerous voyages.

13 June 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 19 May 2014 and your further letter of 13 June 2014, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 18 June 2014.

Thank you too for the Staff Working Document you enclosed, which gives a useful picture of the activities being undertaken, and of the difficulties being met.

We have decided to clear the Communication from scrutiny, but would be grateful to continue to receive details of developments in the work of the Task Force Mediterranean.

Thank you for your letter of 19 May 2014 and your further letter of 13 June 2014, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 18 June 2014.

Thank you too for the Staff Working Document you enclosed, which gives a useful picture of the activities being undertaken, and of the difficulties being met.

We have decided to clear the Communication from scrutiny, but would be grateful to continue to receive details of developments in the work of the Task Force Mediterranean.

18 June 2014

The S1 form is a European healthcare entitlement for state pensioners living in a different EEA country (or Switzerland) to where their pension is paid. The S1 certificate of entitlement allows the state pensioner access to the healthcare system in the European country where they have chosen to retire, and for that country to reclaim costs.

The S2 mechanism entitles patients to state-funded pre-authorised treatment in another EEA country or Switzerland, with the treatment being provided under the same conditions of care and payment as for residents of that country.