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 1 December 2013- 3 June 2013

HOME AFFAIRS, HEALTH AND EDUCATION

(SUB-COMMITTEE F)

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

Thank you for your explanatory memorandum (EM) of 28 April 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 14 May 2014.

ATMPs have enormous potential to treat and cure diseases. We note and share the view of both the Government and the European Commission that a balance must be struck between effectively safeguarding public health and promoting innovation in this rapidly developing field.

We note that you have not provided the usual list of those consulted in the preparation of the EM. We would have expected at least the Cell Therapy Catapult to have been consulted given its purpose to grow a UK cell therapy industry and clear interest in the regulatory environment. We would welcome clarification of who was consulted in the preparation of the EM.

Furthermore, we acknowledge that the Commission’s Report does not set out in detail how it will take forward the eight areas for action identified, but we would welcome details of your initial assessment of the proposed areas for action.

We look forward to your response to these questions within the usual 10 working days.

14 May 2014
Letter from Earl Howe to the Chairman

ATMP REPORT

On 14 May your committee discussed my Explanatory Memorandum on the European Commission’s report on the ATMP Regulation and asked who the Government had consulted in the preparation of the Memorandum and what the Government’s initial assessment is of the European Commission’s proposed areas for action.

CONSULTATION

The Government engages with a variety of stakeholders on a continuous basis about ATMPs including the recent report. Following the House of Lords’ report on regenerative medicines, the Government set up the Regenerative Medicine Expert Group (RMEG). At the last meeting of the RMEG sub-group on regulation and licensing, chaired by Cell Therapy Catapult and attended by a range of stakeholders, my officials presented the Commission’s report and the group briefly discussed the report. In that meeting it was agreed that the Medicines and Healthcare Products Regulatory Agency (MHRA) would coordinate a response from the RMEG to the European Commission highlighting the UK experience with ATMPs. I would be happy to share this response with you once available.

INITIAL ASSESSMENT OF THE PROPOSED AREAS FOR ACTION

Without any detail on the proposed areas for action it is difficult to provide you with the Government position. Generally, we believe that more time is needed to fully assess the impact of the Regulation before we decide whether any legislative changes should be made. I have set out below in general terms how the Government looks at the areas identified by the Commission. The work under the RMEG that I referred to above will feed into the Government’s thinking. We will use their work to start influencing the new European Commission who will have to take a view on whether and when to revise the regulation.

— Clarification of the scope of the ATMP Regulation by fine-tuning the current definitions of ATMPs and by reflecting on the appropriate regulatory framework for new innovative products that many not be captured by existing provisions.

— Considering measures to avoid disparities in the classification of ATMPs in the EU;

Given the developments in technology and science, we have seen the emergence of new borderline issues between different regulatory regimes such as medicines, medical devices and tissues and cells. It is important that there is clarity in the EU about under what regime products are regulated. The Government would also welcome the coordination of classification of ATMPs to avoid disparities in classification across the EU.

— Clarification of the conditions for the application of the hospital exemption, as well as the role of data obtained therefrom in the context of marketing authorisation procedures;

The Hospital Exemption is a mechanism to provide patients, under controlled conditions such as a medical prescription and manufacture in GMP inspected and compliant sites, early access to unlicensed ATMPs (those that do not hold either an authorisation for Clinical Trial or a full Marketing Authorisation). The scheme has had very limited uptake in the UK but wide use has been made of the UK’s ‘Specials’ scheme under Article 5(1) of 2001/83/EC. The MHRA has seen examples where data from such early clinical experiences are being used to inform applications for clinical trials which should improve their outcomes, which is not only a benefit to patients but will also hasten such products’ move to a stage where they may be submitted for full (Marketing) Authorisation. For ATMPs with very small markets, it is unlikely that any organisation will apply for a Marketing Authorisation and therefore, the continued supply of such products will be entirely under either the Hospital Exemption scheme or Article 5(1).

For ATMPs that have been granted Marketing Authorisation, there are concerns that essentially similar products could continue to be manufactured in parallel under the Hospital Exemption scheme and therefore undermine the continued supply of such authorised products.
Under the ‘Specials’ scheme, unlike under the Hospital Exemption, an unlicensed product cannot be supplied when an equivalent licensed medicinal product can meet the clinical needs of the patient.

Within the report, we note the proposal to provide ‘additional clarification’ to the role of derogatory provisions under Article 5(1) as referred to above, and will give special scrutiny to any proposals in this regard to such clarifications. The Government will be vigilant for any inconsistencies in measures proposed for the protection of products with Marketing Authorisations and those that may adversely affect patients’ continued access to ATMPs in small markets.

—

Revising the requirements for the authorisation of ATMPs with a view to ensure that applicable requirements are proportionate and well-adapted to the specific characteristics thereof, having specific consideration to autologous products.

The Government is in favour of proportionate regulation but at the same time believes it is important to ensure an adequate level of public health protection. We agree with the Commission that autologous products prepared in a hospital setting should be regulated in a more proportionate way.

—

Streamlining the marketing authorisation procedure.

The Government is in favour of streamlining and simplifying the procedures where possible but recognises that the main problem is that ATMP developers lack the funding and regulatory expertise needed to navigate through the marketing authorisation procedures.

—

Extending the certification procedure and clarification of the link between the certification and the marketing authorisation procedure.

The Government would welcome both an extension of this scheme and a clearer linkage to the marketing authorisation procedure.

—

Creating a more favourable environment for ATMP developers working in an academic or non-for-profit setting, including by promoting early contacts with the authorities through the application of the fee reduction for scientific advice and by extending the certification scheme to these developers.

—

Considering possible fee incentives to reduce the financial impact of post-marketing obligations.

ATMPs are centrally authorised through the EMA and a number of fee incentives are already in place for SMEs and hospitals including for scientific advice, marketing authorisation applications and post-marketing obligations. This could potentially be extended to academia and not-for-profit organisations. In considering this, we would also need to take into account the financial impact on the MHRA in case they are not fully remunerated for the work they do on behalf of the EMA.

The MHRA was early to recognise that the majority of activity in the ATMP sector was being conducted by academic and not-for-profit organisations and has been active in making early stage contact with such organisations. It has utilised its existing mechanisms to provide advice and guidance including regulatory advice meetings for early stage meetings, several in conjunction with other regulators such as the Human Tissue Authority, and the scientific advice meetings at later stages. As part of the wider Government growth agenda to create a more favourable environment for pharmaceutical development, the MHRA established an Innovation Office as a single portal to help organisations that are developing innovative medicines, medical devices or using novel manufacturing processes to navigate the regulatory processes in order to be able to progress their products or technologies.

I hope this very early assessment of the Commission’s proposed areas for action which sets out current Government thinking is helpful. We will continue to work with stakeholders on this and in particular within the RMEG.

2 June 2014
Letter from the Chairman to Damian Green MP, Minister for Policing and Criminal Justice, Home Office

Thank you for your explanatory memorandum of 13 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 15 January 2014.

We note the advantages of the new site for CEPOL in Budapest set out in the accompanying Impact Assessment and welcome the Government’s decision to participate in the Common Accord reached at the JHA Council in October. We also understand the need to re-house CEPOL rapidly in order to facilitate the sale of the UK base in Bramshill. We assume that, given the Government’s decision to apply to rejoin the original CEPOL decision when the block opt out under Protocol 36 comes into effect, you will intend to opt-in to this Regulation regarding the new site. I would be grateful if you could confirm that this is indeed the Government’s intention.

We would welcome further information about your concerns over European Parliament involvement in this decision. We would also be grateful if you would let us know your assessment of the suitability of the proposed new site and expect further information when it becomes available about what, if any, moving costs would fall on the United Kingdom.

We would expect a reply on the opt-in point within ten working days and on the other matters raised in due course. In the meantime, we retain this document under scrutiny and look forward to future updates.

16 January 2014

Letter from Damian Green MP to the Chairman

Thank you for your letter of 16 January on the Regulation of the European Parliament and Council to relocate the European Police College from Bramshill to Budapest. I am sorry you have not had an earlier reply.

As you know, CEPOL currently shares the Bramshill site with the College of Policing. The need to seek greater efficiencies and improve the support that the College will be able to provide to policing in the future meant that the decision had to be taken to close the site and relocate the College of Policing. This was not an easy decision, but with running costs of some £5m per annum, the UK is no longer able to justify keeping this historic site in the public estate at the tax payer’s expense.

As soon as Bramshill was placed on the market in the summer of 2013, we initiated discussions with the Lithuanian Presidency with a view to finding a new temporary host for CEPOL as soon as possible. Further to the common accord by member states on the selection of Budapest as the temporary seat at the JHA Council in October 2013, the next step is for the Council and the European Parliament to reach agreement on initiative.

The formal publication of the Regulation is an important step towards ensuring that CEPOL vacates the Bramshill site in good time for any sale. Buyers would expect vacant possession, so in the context of securing the sale it is very much in UK interests to support the proposal.

27 February 2014

Letter from the Chairman to Damian Green MP

Thank you for your explanatory memorandum of 12 February 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 March 2014.

As you know, we too were not persuaded of the case for merging CEPOL and Europol proposed by the Commission. We noted the advantages of the proposed site in Budapest during our scrutiny of the Member State Initiative on the relocation. We are mindful, however, that the 2005 Council Decision will be superseded by any new Europol Regulation once that is agreed. We expect an update on your decision on whether, as we hope you will decide, to opt in to the Member State Initiative before the opt-in deadline of 9 March and a full response to our letter of 16 January in due course.
In the meantime, we retain this document under scrutiny and look forward to further updates on discussions concerning the relocation of CEPOL.

5 March 2014

Letter from Damian Green MP to the Chairman

Further to my letter of 27 February, the Government has decided that the UK should opt in to 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).

The current CEPOL Council Decision states that the headquarters of CEPOL shall be in Bramshill. The Regulation replaces the part of the CEPOL Council Decision that specifies Bramshill, with a statement that the seat shall be in Budapest. The Bramshill site is owned by the Home Office, and is also currently used by the College of Policing. The site costs the Home Office £5m per annum to run, and is not economically viable. The Home Secretary therefore decided in December 2012 that Bramshill should be sold. It was placed on the market in the summer with a listing price of £20-25m, and we are on schedule to complete the sale by March 2015. The sale of Bramshill means that we will be unable to continue housing CEPOL there.

The publication of the Regulation is an important step towards ensuring that CEPOL vacates the Bramshill site in good time for any sale. Any Buyer would expect vacant possession, so in the context of securing the sale it is very much in UK interests to support the proposal. CEPOL have been guaranteed occupation of the site until September 2014, as the new site in Budapest will not be ready to house CEPOL until the end of August 2014.

We are keen to cooperate fully in the process of moving CEPOL from Bramshill to its new location. To give CEPOL staff some much needed assurance this process needs to be completed quickly. The Regulation has been helpfully brought forward to accommodate our objectives in moving CEPOL from Bramshill. Opting in to the measure will maintain the good momentum we have built with other Member States and the European Parliament to secure our objective of relocating CEPOL and selling Bramshill. It is therefore important we opt in to give us the best possible chance of ensuring a positive and timely outcome.

It is also important to note that if the UK does not opt in to the proposal to relocate CEPOL, and if it is subsequently adopted by the rest of the EU, the UK will remain bound by the underlying CEPOL Council Decision. Under such circumstances, it is possible we would be ejected from the underlying measure under Article 4a(2) of our JHA opt-in Protocol (Protocol 21).

If (as is likely) the Member State Initiative is agreed before 1 December 2014, then the CEPOL Council Decision would become subject to Commission and ECJ enforcement powers from the date of the initiative’s adoption and would no longer be within scope of the 2014 opt out.. However, as you know, the current CEPOL Council Decision is one of the set of 35 measures that we are seeking to rejoin.

In your letter of 16 January, you ask about an assessment of the suitability of the new site and what, if any, relocations costs would fall to the UK. All Member States, including the UK are supportive of the relocation of CEPOL to Budapest. The headquarters offered by Hungary for CEPOL are situated in the city centre of Budapest, easily accessible from most European capitals by cost-effective transport. The office space and facilities being offered exceed the requirements defined by CEPOL. All the facilities, and their management, are being offered free of charge by Hungary.

The funding of relocation costs is still to be determined but our primary aim has always been to ensure the move takes place as quickly as possible. The UK has committed to enter into negotiations with the Presidency, CEPOL and Union partners in order to ensure that the regular budget of CEPOL is not jeopardised as a result of the move.

You also asked about our concerns over European Parliament involvement in the decision. We have in the past objected to specifying Agencies’ seats in legislation on the grounds that these decisions should be taken by the Member States by “common accord”, and not by the co-legislators. We appreciate the importance of this, and in particular of resisting any expansion of the European Parliament’s competence in this area. However, in this case we cannot avoid Parliamentary involvement in the decision as existing Council Decision already specifies the location of CEPOL’s headquarters, and that measure can only be amended by an instrument agreed under the Ordinary Legislative Procedure, which by definition requires the Parliament’s consent. We will, however, resist any attempt by the European Parliament to do anything other than endorse the decision on CEPOL’s location, as taken by Member States’ at Council, by approving its move to Budapest. We will also
submit a formal “minute statement” if the measure is adopted, making it clear that we are only
supporting a measure that states the seat of an Agency in the exceptional circumstances of this case,
where the underlying measure being amended already specifies the location.

I apologise that the EM deposited on 13 December 2013 stated an incorrect opt-in deadline date.
We have now confirmed with the Council that the opt-in deadline is 13 March 2014.

14 March 2014

Letter from the Chairman to Damian Green MP

Thank you for your letter of 14 March 2014 which the Home Affairs, Health and Education Sub-
Committee of the Select Committee on the European Union considered at its meeting on 26 March
2014.

As you know, we accept the case for taking a prompt decision on the proposed new site for CEPOL
and we support your decision to opt in to the Member State Initiative. We regret, however, that you
did not respect our request that you inform us of the decision whether or not to opt in and the
reasons for it before the opt-in deadline passed; that seems to us hard to reconcile with the Lidington
and Ashton commitments concerning scrutiny of opt-in decisions. We would welcome an explanation
of how this came about and an assurance that it will not reoccur.

We note the implications for the UK’s block opt-out.

We would welcome a report in due course about the compromise approved by the Committee of
Permanent Representatives (Coreper) on 5 March 2014 concerning this Regulation.

We retain these documents under scrutiny and look forward to future updates.

26 March 2014

Letter from Damian Green MP to the Chairman

Thank you for your letter of 26 March on the Government’s decision to opt in to 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).

Your letter points out that we did not inform you of the decision whether or not to opt in before the
deadline. Paragraph 10 of the Code of Practice on Scrutiny of opt-in and Schengen opt-out decisions
commits the Government to notifying the Parliamentary Scrutiny Committee of an opt-in decision as
soon as we have informed the Presidency. As we did not inform the Presidency of our opt-in decision
on this matter until the deadline itself, 13 March, unfortunately it was not possible to inform the
committee in advance. However, I repeat my apology for the fact that our Explanatory Memorandum
of 13 December 2013 incorrectly recorded the opt-in deadline. I corrected this in my letter of 14
March.

Our concern from the outset has been to minimise the impact of the sale of Bramshill on both
CEPOL staff and on the operations of the Agency. With that in mind, we are very pleased to see that
an agreement on the legislative matters for the move is now within sight. Our primary aim has always
been to ensure the move takes place as quickly as possible and we are committed to doing all we can
to assist with the relocation.

The Permanent Representatives Committee (Coreper) approved on 5 March the result of the
Trilogue negotiations on the Member State Initiative to amend the existing Council Decision on the
European Police College (CEPOL), and agreed to inform the European Parliament that Council would
adopt the text as agreed at Trilogue provided that the text was provided unchanged at Plenary. The
European Parliament’s Committee on Civil Liberties, Justice and Home Affairs also approved the
agreement on 10 March,

The Trilogue between the Presidency, Commission and European Parliament agreed that the UK
should ensure a smooth transition of CEPOL to its new location, without jeopardising the regular
budget of CEPOL. The agreed text also states that the Commission is asked to assess within 18
months if the Council Decision establishing CEPOL is working properly, “taking into account the need
to ensure CEPOL’s status as a separate Union agency”.

26 March 2014
I understand that the European Parliament Plenary vote on the draft Regulation on the relocation of CEPOL is taking place on 16 April and it will go to Council for adoption on 6 May. I attach [not printed] a copy of the latest draft text for your information.

24 April 2014

Letter from Damian Green MP to the Chairman

Further to my letter of 24 April, I am writing to update you on the latest position 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).

The European Parliament Plenary vote on the draft Regulation on 16 April approved the proposed Regulation. I attach [not printed] a copy of the Council document summarising the result and giving the full text.

The draft Regulation is scheduled to go to ECOFIN Council for adoption on 7 May.

The funding of relocation costs is still to be determined but we are prepared to play our part in ensuring that the costs involved in the move are met. We are in discussions with the Commission and all relevant Union partners to seek a swift resolution to this important issue. Our primary concern is for the move to take place as quickly as possible so as to not jeopardise the sale of Bramshill.

6 May 2014

Letter from the Chairman to Damian Green MP

Thank you for your letters of 24 April 2014 and 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 7 May 2014.

We are grateful for your update on the progress of negotiations. We would welcome further information on the financial obligations placed on the United Kingdom by the commitment to ensure a smooth transition of CEPOL to its new location without jeopardising the regular budget of CEPOL. We are disappointed that we did not have this information before the Council adopted the Regulation on 6 May 2014. We are further frustrated that the late provision of this update means that an override will be unavoidable if the Council adopts the Regulation on 6 May and the UK votes to support it, as we believe it should.

We remain disappointed that you did not comply with our request that the Committee be notified of the Government’s decision whether or not to opt in to this Regulation before notice was given to the Presidency. We do not see informing us after opting in as being in line with your commitment “to upholding the right of Parliament to hold the Government to account on EU issues” and ensuring “that the views of the Scrutiny Committees, benefiting from expertise in the area and having a strategic overview of the UK policy on the EU and our engagement on Justice and Home Affairs business, inform the Governments decision making process.” No opportunity was in the event provided to debate the Government’s decision to opt-in before it was given effect. This situation seems most unsatisfactory to us and inconsistent with the commitments given to Parliament, and we intend to raise this point in tomorrow’s debate on the annual report on the UK’s opt-in and opt-out decisions.

7 May 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 28 November 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 11 December 2013.
We are grateful for your update on the progress of negotiations on this proposal. We support your position that any agreement should make the EU a competitive location to carry out clinical trials in comparison to the rest of the world.

We retain this document under scrutiny and look forward to receiving further updates about the progress of negotiations on this proposal in due course.

11 December 2013

Letter from Earl Howe to the Chairman

I am writing you to ask you to lift the parliamentary scrutiny reserve on the Clinical Trials Regulation. In December, the Lithuanian Presidency and the European Parliament reached agreement on the text of the regulation. The text will now need to be formally adopted by the European Parliament and the Council of Ministers.

I last wrote to you on 23 September and 26 November.

The Government is satisfied that the current text meets the Government’s negotiating objectives as set out in the Explanatory Memorandum I sent you in August 2012 and believes that the regulation will help make the EU an attractive place to do research.

Below I outline how the regulation has changed compared to the European Commission’s original proposal.

AUTHORISATION PROCESS

The proposed efficiencies in the authorisation process - worth £595 million in savings according to the Commission’s impact assessment - have all remained in the text. These include the EU portal and database, the single submission, the joint assessment of multi-state applications and the single decision at national level (combining the currently separate regulatory and ethics approvals).

It has been agreed that the European Medicines Agency (EMA) will be responsible for building and maintaining the portal and the database and not the European Commission. The Government supports this because this will allow Member States to directly influence the development of the IT through the Management Board of the EMA. Because the IT is of vital importance for the implementation of the Regulation, provisions have been include in the text, on the basis of a UK proposal, that will allow for an independent audit of the functionality of the IT commissioned by the EMA Management Board and that will ensure that the Regulation will only apply once the IT is fully functional.

The Commission’s proposal was very low on detail on how the joint assessment process would work but the current text clearly describes the different steps in the process. The different phases include an initial assessment by the reporting Member State, a coordinated review involving all concerned Member States based on the initial assessment and the consolidation by the reporting Member State. The reporting Member State will take the considerations of the concerned Member States duly into account when finalising the assessment report and is responsible for recording how these considerations have been dealt with. The conclusion of the Reporting Member State will be the conclusion of the concerned Member States who may only disagree with these conclusions on the following grounds:

— When participation in the trial would lead to an inferior treatment than in normal clinical practice in the concerned member State;
— Infringement of national legislation on the use of human cells, abortifacients or narcotic substances;
— Disagreement with the conclusion of the reporting Member States based on safety and data reliability and robustness considerations submitted in the joint assessment process.

The timelines agreed for authorising clinical trials are up to 60 days if there are no questions from Member States and up to 91 days if there are questions. The timelines have been lengthened compared to the Commission proposal which was 41 days without questions and 65 days with questions. Tacit approval (if no decision is taken within the 60 day period the authorisation is deemed to be given), although controversial among Member States, has remained in the text.

The Government would have preferred to have seen timelines closer to the Commission’s proposal but there was very little support from other Member States for this who thought more time was
needed for the multi-assessment process and the coordination between regulator and ethics committees at national level. Although longer than we would have liked, the Government thinks the agreed timelines are acceptable given that the timeline includes joint assessment of multi-state applications and a joint ethic/regulatory decision at Member State level. UK only trials (50 percent of authorisations in the UK) will continue to be authorised well within the agreed timelines.

The concept of low-intervention trials has remained in the text. These are trials with authorised medicines used within their marketed indication or their use is evidence based that do not pose more than minimal additional risk to the patient. The shorter timeline for authorisation for these types of trials as proposed by the Commission has been removed.

Overall, the authorisation process for clinical trials conducted in the EU will be much simpler and efficient than it is today. Sponsors will only have to submit one application for a trial in the EU to the EU portal where they now have to submit two applications in every Member State (to the regulator and the ethics committee). The joint assessment of multi-state application within one timeline will benefit sponsors further and so will the single decision at Member States level. This will make it easier to do clinical research in the EU.

ETHICS COMMITTEES

The Commission’s proposal only referred to Member States and not ethics committees or national competent authorities. This was done to reflect divergent practice in Member States. In the current text, ethics committee has been defined and it has been clarified that an ethical review must be performed and that this must be done by an independent ethics committee. Where the Commission proposed to take the view of at least one patient into account when assessing application, this has now been changed to lay person because it is not always possible to have patients participate in the assessment.

INFORMED CONSENT

The text has been amended to reflect that clinical trials on incapacitated subjects and minors can take place not only when there is direct benefit to the subject involved but also when there is some expected benefit to the population represented. In this situation the trial may only pose minimal risk and may only impose minimal burden in comparison with the standard treatment.

The text also introduces provisions for clinical trials on pregnant and breastfeeding women and provides Member States the possibility to maintain additional measures for clinical trials on persons in the military service, persons deprived of liberty or persons in residential care institutions. Although the Government believes the existing provisions covered all of these groups, we see no harm in having these provisions.

Another amendment is the introduction of simplified informed consent in cluster trials at Member State level only. Cluster trials are large scale trials with medicines used within their marketed authorisation in which GP practices or hospitals are randomised instead of the patients. The simplified consent must be in line with national legislation and is subject to review by an ethics committee.

NATIONAL INDEMNIFICATION MECHANISM

In my letter of 23 September I explained to you the Government’s position on the proposed National Indemnification Mechanism which would oblige member States to take over the role of private insurers in insuring clinical trials. Member States unanimously rejected this proposal and this obligation has now in agreement with the European Parliament been removed from the text. It has been replaced by a general text requiring Member States to ensure that systems for compensation for damages suffered by a subject resulting from participation in a clinical trial are in place. These systems can be either private or public.

TRANSPARENCY

Transparency on clinical trial data was an important issue for the European Parliament. As proposed by the Commission, all trials conducted in the EU will need to be registered and a summary of the results will need to be submitted to the EU portal within one year after the end of the trial. In addition to this, the content of the summary has now been included in the annex of the regulation and the requirement to include a lay summary has been introduced.
In addition, clinical study reports that have been submitted in support of a marketing authorisation will have to be submitted to the EU database by the applicant within 30 days after a marketing authorisation has been granted, the decision making process has been completed or the applicant has withdrawn the application. The EU database will be publicly accessible except for when confidentiality is justified on the grounds of protecting personal data, protecting commercially confidential information, protecting confidential communication between Member States or ensuring effective supervision of the conduct of the trial by a Member State.

I believe the Regulation will have a very positive impact on our knowledge of what clinical trials are actually taking place because trials will need to be registered. In anticipation of the application of the regulation, the Health Research Authority (HRA) has already made trial registration a condition of a favourable ethics opinion. The availability of summaries of all trials and clinical study reports where available will also have a great impact on transparency on clinical trial results. And as part of the Regulation, the Commission will produce guideline on the formatting and sharing of raw data on a voluntary basis.

REVIEW CLAUSE

A review clause has been included which obliges the Commission to do a review within five 5 years after the date of application of the Regulation. This review will include an assessment of the impact that the Regulation has on scientific and technological progress and the measures required to maintain the competitiveness of European clinical research. If appropriate, the Commission will present a legislative proposal to update the provisions in the Regulation.

CONCLUSION

I foresee some challenges in the implementation of the Regulation. The EU portal and database will need to be fully functional before the Regulation can apply and the Government will therefore influence the development of the IT where it can. Also, Member States will need to ensure that coordination mechanism are in place between the regulator and ethics committee and that ethics committees can work to the agreed timelines. I believe that in the UK, we are in a good position to do this with the work that the Health Research Authority (HRA) has been doing on streamlining ethical review and the existing collaboration between the HRA and the Medicines and Healthcare Products Regulatory Agency (MHRA).

In conclusion, I believe that the Regulation can help make the EU an attractive place for clinical research and that the text that is now on the table is a great improvement compared to the existing Directive and should be supported. I therefore ask you to lift the parliamentary scrutiny reserve on the Regulation.

21 January 2014

Letter from the Chairman to Earl Howe

Thank you for your letter of 21 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 February 2014.

We are grateful for your outline of how the text agreed by Presidency and the European Parliament differs from the European Commission’s original proposal. We note that you consider that the Agreement will help to make the European Union a more attractive place to conduct clinical research, something which this Committee welcomes.

We have therefore decided to clear this document from scrutiny and would be grateful to receive a final notification once the proposal is agreed.

5 February 2014

Letter from Earl Howe to the Chairman

On 5 February your committee cleared the Clinical Trials regulation from scrutiny. You asked me to notify you once the proposal is agreed.
I am pleased to inform you that the regulation was adopted by the European Parliament on 3 April and by the Council of Ministers on 14 April. I expect the text of the regulation to be published soon in the Official Journal of the European Union.

12 May 2014

COMMISSION COMMUNICATION: AN OPEN AND SECURE EUROPE: MAKING IT HAPPEN (7844/14)

Letter from the Chairman to Karen Bradley MP, Minister for Modern Slavery and Organised Crime, the Home Office and Simon Hughes MP, Minister of State, Ministry of Justice

Thank you for your explanatory memorandum of 31 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 7 May 2014.

As you know, we published our Report Strategic guidelines for the EU’s next Justice and Home Affairs programme: steady as she goes (HL Paper 173) last month which addressed many of the issues raised in the above Communication and in your Explanatory Memorandum. We look forward to receiving the Government response to our Report within the usual 8 weeks and to debating it and the Report in due course. In the meantime, we retain this Communication under scrutiny and would welcome updates on the negotiations concerning the new strategic guidelines.

7 May 2014

COMMISSION COMMUNICATION: OPENING UP EDUCATION (14116/13)

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

Thank you for your letter of 11 December, following my evidence session with the E.U. Sub-Committee on Home Affairs, Health and Education. You asked for an update on the discussions at the Education, Youth, Culture, Audiovisual and Sport Council (EYCS) which met in Brussels on 25 November to discuss the Communication. Some clear themes did emerge. I was not able to attend, but the UK was represented by the Skills Minister for Wales Ken Skates, and my officials were also in attendance.

All Member States were keen to develop open educational platforms at national level but equally there was a strong feeling that the importance of traditional teaching should not be overlooked. It was felt that the sector was still evolving and any regulation at this stage would be premature and run the risk of hindering and not helping developments.

There was general agreement that the role of Governments – and by extension the EU – should be one of assisting educational establishments to explore how best to use the new technologies. The Erasmus + programme was cited as a possible vehicle to support open education initiatives and projects.

We expect conclusions to be drafted under the incoming Greek Presidency for consideration at a Council in February 2014. Based on the November debate, my view is these conclusions will be general in nature and ones which we would support. There was no support for EU-wide action. Rather, the majority of Member States did feel the EU might add value, potentially in funding, quality assessment or qualification recognition and it is likely therefore these areas are where the conclusions might concentrate.

In the specific issue of schools, although there was some concern over the ability of teachers to make best use of the new technology, again there was no support for any EU-wide action. I think it fair to say therefore my concerns in this area have receded significantly.

The Committee raised the point about the use of the phrase “non-binding. It is of course correct that all Council conclusions carry equal weight, although they cannot require Member States to take action. Our intent was simply that our position would be to try and ensure that the conclusions
would not be drafted in such a way that they would be seen by the European Commission as a call or encouragement to develop regulatory proposals.

10 January 2014

Letter from the Chairman to David Willetts MP

Thank you for your letter of 10 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union took note of at a meeting on 22 January 2014.

We are grateful for your update on the outcome of the Education, Youth, Culture, Audiovisual and Sport Council (EYCS) discussions on this document on 25 November 2013, and for your clarification about the status of any Council conclusions that may emerge during the Greek presidency.

We have no outstanding concerns about this document which has already been cleared from scrutiny.

22 January 2014

CONDITIONS OF ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONALS
(12208/10), SEASONAL WORKERS AND INTRA-CORPORATE TRANSFERS (12211/10, 7869/13)

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

Your letter to me of 1 November 2012 clearing document 12208/10 from scrutiny asked that the Committee be kept informed of progress in respect of the Seasonal Workers and Intra-Corporate Transfer Directives. The purpose of this letter is to provide such an update, and also to inform the Committee of progress of discussions on the content of the Students and Researchers Directive published earlier this year.

SEASONAL WORKERS

The Council of Permanent Representatives (COREPER) reached agreement on the outstanding issues in respect of this proposal on 29 October and it will now go forward for adoption by the Council. Agreement was reached on the basis of a qualified majority and despite the fact that some Member States continue to have concerns about its content. In particular, the Dutch Parliament shares the Committee’s concern that the Directive does not accord with the principle of subsidiarity, and has had concerns about provisions which would require a seasonal worker to be allowed to remain on a Member State’s territory while an extension of stay is sought.

In my letter to you of 18 October 2012, I advised you that negotiations on the Directive had previously become bogged down on the question of the overlap between the Directive’s provisions for those coming for less than three months, and the operation of the Schengen regime. The final text makes clear that for Member States applying the Schengen acquis in full, the Directive will apply without prejudice to the Schengen Borders Code and visa list, and that where seasonal workers are seeking admission for less than 3 months, it will only regulate the admission of seasonal workers in respect of their access to employment.

The final text provides that where Member States do admit seasonal workers, they are to be admitted for a maximum period of between five and nine months in any twelve month period, with the possibility that Member States may apply a resident labour market test and/or numerical limits. As the original proposal contemplated, the final text contains provisions intended to foster circular migration. These would oblige Member States to ensure that a third country national who, in the previous 3 years, been admitted to a Member State as a seasonal worker, can enter that Member State again for the purpose of seasonal work. The text leaves it open to Member States to determine how this obligation is discharged. It remains unclear how the operation of this obligation sits with the provisions of the Directive allowing Member States to apply numerical limits to applications for admission as a seasonal worker.

There is provision for the application of sanctions against employers, including subcontractors, who do not fulfil their obligations under the directive, and provisions limiting the ability of employers to recover travel and accommodation costs through, for example, automatic deductions from wages. The final text allows Member States to depart from the principle of equal treatment in respect of
family and unemployment benefits and tax benefits, and in respect of education and vocational training (except insofar as it is directly linked to the worker’s specific employment activity).

It remains the Government’s position that the United Kingdom will not seek to opt into this measure. I announced on 12 September that the current Seasonal Agricultural Workers Scheme, which is currently open only to Bulgarian and Romanian nationals and would therefore be outside the scope of this Directive, will not be replaced when restrictions on Bulgarian and Romanian workers’ freedom to work here are lifted at the end of this year. Even if the Government did decide to introduce a future scheme for third country seasonal workers, there is no advantage to the UK in being bound by this measure, which would potentially limit our ability to determine how such a scheme should best operate to meet the needs of employers while protecting the interests of the worker.

INTRA-CORPORATE TRANSFERS

The intra-corporate transfers (ICTs) Directive is currently in trilogue with the European Parliament. Outstanding issues of substance include a continuing disagreement between some Member States and the Commission as to whether the Directive should allow Member States to operate “parallel” national schemes for ICTs outside the terms of the Directive; definitions of terms, where the current text departs from terminology used in trade agreements such as the General Agreement on Trade in Services; and the equal treatment provisions, where a number of Member States have a concern that the European Parliament’s position on the text would cause third country nationals admitted and transferred between Member States under the terms of the Directive to enjoy a higher degree of protection in respect of terms and conditions of employment than that afforded to EU national posted workers under the terms of the Posted Workers Directive. Notwithstanding these issues, it seems possible that the measure is close to agreement.

There remain key points on which the scheme of controls set out in the Directive departs from UK policy on the admission of ICTs. The Directive would impose a maximum duration of stay of three years, whereas it is our policy to grant up to nine years for the most senior employees. It seems likely that the final text will also provide that a period of no more than six months should elapse between the end of a posting and readmission as an ICT, whereas it is our policy to require twelve months. More generally, it remains the UK’s position that we do not wish to opt into a measure which would potentially remove our ability to apply our usual requirements to intra-EU movements of ICTs.

STUDENTS AND RESEARCHERS

I informed the Committee on 12 July that the UK had decided not to opt into the draft Directive at this stage. Ireland has also adopted the same position as the UK, and Denmark is excluded from participating in this Directive, and will also not be bound by it or subject to its application.

Whilst the UK has decided not to opt in at this stage, UK officials have participated in initial discussions on the content of the proposal. At this stage, key concerns voiced by Member States include that the proposal does not comply with the principle of subsidiarity; that pupils, remunerated and unremunerated trainees, volunteers and au pairs should not be included in the scope of the Directive, or that their inclusion should not be mandatory for participating Member States; and a concern that the Directive may not provide a sufficient degree of control and be open to abuse, particularly in view of its intra-EU mobility provisions. There does not yet appear to be sufficient agreement on the proposal for the Council to agree a mandate to enter into trilogue.

This Government has significantly reformed the immigration routes to the UK, ensuring that we continue to attract the brightest and best whilst reducing abuse of the system. The UK has considerable experience and expertise in developing policy and administering an effective system for students, researchers and other categories of migrants and the Government’s negotiating strategy is designed to avoid increasing the risks to the UK border. This includes UK officials engaging in negotiations to shape the text of this draft Directive, both so that it more closely reflects the policies that the UK has adopted (including, in the case of students, the use of a genuineness test; maintenance requirements, a limit on the time that can be spent in the UK as a student and limiting the ability for students to remain in the UK after their course ends to those who secure graduate level employment, have completed a PhD or who qualify for an extension of stay under the arrangements which we have introduced for graduate entrepreneurs), and in line with the UK’s wider interest in ensuring that migration into the EU as a whole is sufficiently controlled.

11 December 2013
Letter from the Chairman to Mark Harper MP

Thank you for your letter of 11 December 2013 regarding the above proposals which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 8 January 2014.

We are grateful for the updates you have provided on these three proposals. On the issue of seasonal workers, we note that the Government do not intend to replace the UK’s current Seasonal Agricultural Workers Scheme following the lifting of restrictions on Bulgarian and Romanian workers’ freedom to work in the UK. Are the Government therefore content that the demand from UK employers for seasonal workers can in the future be satisfied by the intra-EU movement of workers? Have consultations with UK employers been carried out on this matter?

We have decided to retain Document 7869/13 under scrutiny, and look forward to further updates as negotiations progress. We remain persuaded that efforts to facilitate the movement of, in particular, researchers are in the UK’s economic interests.

10 January 2014

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

Thank you for your letter of 10 January in response to Mark Harper MP’s letter to you of 11 December concerning three draft legal migration directives.

You have asked whether the Government’s decision not to replace the Seasonal Agricultural Workers Scheme (SAWS) following the lifting of restrictions on Bulgarian and Romanian nationals at the end of last year means that the Government expects that the demand for such workers can continue to be met from within the EU, and whether UK employers were consulted on this matter.

The Government’s decision not to introduce a replacement scheme was informed by advice from the independent Migration Advisory Committee. The MAC’s report, which was based on evidence from the horticultural sector, can be found at:


The MAC’s conclusion was that while there was a high degree of uncertainty around the effects on migration of lifting restrictions on workers from Bulgaria and Romania, they did not consider that the ending of the SAWS was likely to lead to a shortfall in the supply of labour to the horticultural sector in the short-term, with workers from the EU continuing to meet the sector’s seasonal labour needs. On that basis, the Government took the view that it was neither necessary nor justifiable to introduce a replacement scheme open to non-EEA seasonal workers, an arrangement which would amount to preferential treatment for the horticultural sector. At the same time, the Government has been clear that it will work closely with the horticultural sector both to address obstacles to the recruitment of workers from the UK labour market in order to meet seasonal labour needs, and to monitor the labour supply situation. A working group bringing together representatives from the sector and from the relevant government departments (including the Home Office, the Department for Environment and Rural Affairs and the Department of Work and Pensions) has been established for this purpose.

You have also indicated that you intend to keep the draft Directive on the admission of third country and researchers under scrutiny, and have commented that you remain persuaded that it is in the UK’s economic interests to facilitate the movement of non-EEA researchers. I have no disagreement with the view that the Government should not place unnecessary obstacles in the way of the movement of academics and researchers. The Government has been concerned to ensure that its immigration policies meet the needs of the knowledge economy. We have, for example, introduced the Tier 1 (Exceptional Talent) route, under which leading academics may be admitted on terms which provide them with free access to the labour market. Non-EEA researchers can also qualify under Tier 2 or Tier 5 of the Points Based System and will not be subject to resident labour market testing requirements if they are in receipt of an award of funding for scientific research from an external organisation and their role will be additional to the host institution’s normal staffing requirements. We also apply lighter touch labour market testing requirements to those coming fill a research post which is funded by the host institution. Academics based outside the UK who are coming here for temporary purposes incidental to their work overseas can also qualify for admission as an academic visitors. The Government’s view, however, is that decisions about how to manage economic migration are best taken at national level, and we do not consider that there is an issue with the
admission of non-EEA researchers to the UK which would be addressed by our participation in a measure which aims at a high degree of harmonisation of Member States’ policies in this area.

18 February 2014

Letter from the Chairman to James Brokenshire MP

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

We are grateful for your answers to our questions on the UK’s Seasonal Agricultural Workers Scheme, and we note the consultations you are undertaking with the horticultural sector.

Given that it is still being debated in the EU institutions, we have decided to retain Document 7869/13 under scrutiny, and look forward to further updates as negotiations progress.

5 March 2014

Letter from James Brokenshire MP to the Chairman

Your letter to Mark Harper MP of 1 November 2012 clearing document 12208/10 from scrutiny asked that the Committee be kept informed of progress in respect of the Intra-Corporate Transfer Directives.

The Directive was adopted by the Council on 13 May. The Committee has previously asked whether the Government would consider opting in to the Directive post-adoption. The finally agreed text of the measure does not argue for any change in the Government’s assessment of the case for opting in to it. It remains the Government’s view that any advantage which may accrue from participating in the Directive would be outweighed by the Directive’s impact on the UK’s ability to adjust our policies concerning the admission of such workers in response to national assessments of economic need, and to restrict such workers’ access to public funds. The Government also continue to consider that the intra-EU mobility provisions of the measure would undermine the UK’s ability to apply necessary checks on the admission of such workers where they arrive from another Member State.

14 May 2014

DATA PROTECTION IN THE EU AND EU-US DATA EXCHANGE (17067/13, 17069/13)

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

Thank you for your explanatory memorandums of 20 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 22 January 2014.

These are important issues to which we will give serious, detailed consideration. As such, we have therefore decided to undertake enhanced scrutiny of them and look forward to your assistance in that work. In the meantime, we retain these documents under scrutiny.

22 January 2014

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

I wanted to take this opportunity to provide the European Union Committee with an update on negotiations for the proposed EU data protection package. I also wanted to provide a further brief update on the negotiations to review the EU-US Safe Harbor Decision following on from the Justice Secretary’s explanatory memorandum on this topic dated 20 December 2013. As you know, I will be giving evidence to the Committee on 9 April 2014 on Safe Harbor.

You will recall that the two instruments under negotiation are a general data protection Regulation and a criminal justice data protection Directive. There has been a lot of activity on these dossiers in recent months although most of it has centred on the Regulation.

The LIBE (Civil Liberties, Justice and Home Affairs) Committee of the European Parliament agreed texts for the proposed Regulation and Directive on 21 October 2013. These texts were put to the
full plenary sitting of the Parliament on the 13 March 2014 and the Parliament has adopted its position at first reading on both the Regulation and the Directive. This fixes the Parliament’s position in political terms. Subject to the agreement of the Conference of Presidents in Brussels after the elections, these texts are likely to be used in ‘trilogue’ negotiations with the Commission and the Presidency of the Council of the EU in due course.

Progress in the Council of the EU on both dossiers has been slower and many technical and legal issues as well as important points of principle remain unresolved. This has prevented a ‘general approach’ being agreed which is a pre-condition to the ‘trilogue’ process commencing.

The Lithuanian Presidency had pushed to get agreement on the regulatory ‘One-Stop Shop’ mechanism at a meeting of the Justice and Home Affairs Council on 6 December 2013. In principle, the One-Stop Shop would enable EU businesses established in more than one Member State to engage with just one Data Protection Authority (DPA) instead of DPAs in every EU country in which they operate. However, the details are more complicated which has resulted in Member States still discussing how the One-Stop Shop would work in practice. The Lithuanian Presidency initially hoped to achieve a ‘partial general approach’ on this topic but any form of consensus on a preferred model for the One-Stop Shop proved elusive due to some Member States wanting to preserve ‘proximity’ between where the individual resides and where the regulatory decision would be made.

Further complicating this matter, the Council Legal Service argued that the Commission’s One-Stop Shop model is problematic. Its view was that the system set out under the Commission’s proposals favours the interests of controllers over data subjects to the extent that it is inconsistent with the data protection right guaranteed by Article 16 on the Treaty on the Functioning of the European Union. Nor in its view does the Commission’s proposal provide access to an effective judicial remedy. On the other side, the Commission Legal Service has disputed these assertions on the grounds that both are fundamentally misconceived. Many Member States, including the UK, have argued that this issue needs to be resolved before the Council can make further progress on the One-Stop Shop. However, almost four months on, there has been no breakthrough in these discussions.

At the most recent Justice and Home Affairs Council meeting on 4 March 2014, the current Greek Presidency of the Council had hoped to secure ‘general agreement’ on a number of measures, including territorial scope, pseudonymisation, profiling, data portability, the obligations on controllers and processors and provisions dealing with international transfers.

However, there was near uniform opposition from Member States to any form of agreement on the text as it was considered that the parts of the text under consideration were either not ready or had not been substantively discussed at the working group level. Against this background of opposition, the Presidency recast discussions as an orientation debate. In particular, the Presidency asked the Council to confirm “its broad support” on draft measures set out around territorial scope and “its understanding” on key principles of international data transfers. Furthermore, the Presidency also requested that the technical working group should continue its work on pseudonymisation of data, data portability and obligations on controllers and processors.

The prospects for agreement before European Parliament Elections in May were already slim, but the absence of agreement on the measures put forward at the March JHA Council, the disagreements between Member States on the proper role of the One-Stop Shop and the related dispute between the Legal Services means that there is no realistic prospect of agreement under the current Commission/European Parliament term. Given the demonstrative lack of progress in the Council, even the Commission has now reluctantly conceded that agreement on the file will not happen until the end of 2014. This would be in line with the conclusions of the October 2013 European Council.

There are also a number of other areas where there is currently no agreement in Council. In particular, there are divergent views on the territorial scope, consent, the ability to charge a fee for subject access requests, the system for international transfers, the role of the European Data Protection Board and the fines regime. Finally, there is a split in Council on the preferred form of instrument, with the Commission and a majority of Member States favouring a Regulation and the UK and a smaller number of other Member States supportive of a Directive.

On this point, we consider that changing the form of instrument to a Directive would provide for greater Member State flexibility in the transposition of the new framework and take better account of national tradition and legal practice. When we last wrote to the Committee, we had indicated that the following Member States had a preference for a Directive as the form of instrument: the UK, Denmark, Sweden, Belgium, Czech Republic, Hungary, Estonia and Slovenia. As it currently stands, the balance of Member States in favour and opposed to the form of instrument remains the same. This would leave the UK short of a blocking minority.
However, the pivotal Member State in these discussions is Germany. Germany had initially hoped to have a Regulation for the private sector and a Directive for the public sector but this position failed to gain sufficient traction among other Member States in the Council.

The UK has previously suggested to Germany that changing the form of instrument to a Directive could deliver their policy objective of a carve-out for the public sector. A German change in tack would shift the balance in Council and provide a blocking minority on the form of instrument. However, at this point, Germany remains to be convinced of this approach, whilst changing the form of instrument from a Regulation to a Directive remains a red line for the Commission. The approach of successive presidencies has been to defer consideration of the form of instrument until after the text of the instrument has been agreed in Council, so for now, the question remains unresolved.

With regards to the proposed criminal justice Directive, there has been much less activity on this dossier. The Justice and Home Affairs Council has not considered the proposed Directive with successive presidencies preferring to focus ministers’ attention on the Regulation. To some extent, many Member State delegations are waiting for more substantive agreement on the Regulation and then seeing what can be applied to the Directive so consideration of the two dossiers in tandem has not necessarily resulted in progress being made.

A number of Member States have questioned the timing of introducing a new law enforcement instrument when the existing 2008 Data Protection Framework Decision has not been fully implemented in all Member States. In addition, the Government retains a number of specific concerns on the Directive, for example on subject access request and reviewing agreements for international transfers of data. The UK delegation to the technical working group continues to raise issues around points such as these with Ministry of Justice and Home Office officials working closely in order to maintain an aligned position.

In relation to the Commission’s current review of the EU-US Safe Harbor agreement, I will be able to provide more detail on the current position during my forthcoming evidence session. To summarise though, the Commission continues to engage with the US Government on a bilateral level and we understand that steady progress is being made on the recommendations under discussion.

However a plenary sitting of the European Parliament on 12 March 2014 did vote for an immediate suspension of Safe Harbor. There is clearly still a lot of political pressure on this topic. My officials are conducting meetings with a range of stakeholders and also carrying out desk research on Safe Harbor so that the Government can have an informed view of how the system operates and, in particular, what the potential impact of suspension would be in terms of economic activity and the protection offered to individuals.

In the meantime I have noted that, notwithstanding the positive progress that has been made in EU-US discussions, the Commission continues to state publicly that suspension of Safe Harbor remains a serious option. I will be able to speak further on these points at the evidence session on 9 April.

7 April 2014

DEVELOPMENT IN EUROPEAN HIGHER EDUCATION (12453/13)

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

Thank you for your letter containing supplementary evidence of 27 November which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 11 December 2013.

Like you, we remain convinced that the UK needs to remain competitive in the global higher education market and specifically should be aiming to increase its market share. In that context, we express deep concern at the recent sharp drop in students coming from the Indian subcontinent. We welcome your efforts, and those of the Prime Minister, to improve recruitment of overseas students, and in particular welcome your commitment in the International Education: Global Growth and Prosperity strategy to “work with the British Council, UK Trade and Investment (UKTI) and others to communicate the UK education offer in key target markets including China, India, USA, Brazil, Mexico, Indonesia, Turkey, South Korea, Russia and emerging nations within Europe”.

We have previously stated our disagreement with the Government’s policy of treating international students as economic migrants in the context of the Government’s efforts to reduce net immigration numbers. We would like to know what assessment you have made of the Institute for Public Policy
Research’s report, *Britain wants you! Why the UK should commit to increasing international student numbers*, which addresses that issue.

We are grateful to your responses to our specific questions and would welcome an update on figures on students from the Indian subcontinent and China and the UK’s market share when additional Higher Education Statistics Agency and Organisation for Economic Co-operation and Development data are available in 2014.

We also look forward to an update on the discussions of European higher education at the November Education, Youth, Culture and Sport Council meeting.

11 December 2013

**Letter from David Willetts MP to the Chairman**

Thank you for your letter of 11 December, regarding recruitment of overseas students and associated actions in the International Education Strategy.

You asked specifically about recruitment of students from the Indian Sub-continent.

A current example of this action is work by the High Commission in Delhi, which is using the Great Campaign to promote positive messages on UK education. In November they launched a UK “Education is GREAT” campaign in Mumbai, which will go on to 20 or more of the biggest Indian cities. This is a joined up activity involving the FCO, UKTI and the British Council. They are also planning a number of UKTI road shows focusing on education. Looking beyond India, an International Education Council has been formed to ensure the education sector is fully involved in the implementation of the International Education Strategy. At the Council’s first meeting in September, members agreed to form a working group on improving the efficiency of the recruitment of international students, led by Kit Malthouse, Deputy Mayor of London. The working group will particularly focus on visas and report back with recommendations at the next meeting in February.

We fully recognise the economic, social and cultural benefits that international students bring to the UK. We are continually monitoring and assessing our offer to prospective international students and looking at how effectively we communicate to them that all genuine students are welcome in the UK. We have no cap on the number of genuine international students we welcome to the UK and we have no plans to introduce any such cap. We believe it is realistic for numbers of international students in higher education to grow by 15-20% over the next five years and this was our stated aim in the International Education Strategy.

You ask about the Institute for Public Policy Research’s report, which recommends that Government should abandon the net migration target. Net migration statistics are produced by the independent Office for National Statistics. These statistics define a migrant as someone changing their normal place of residence for more than a year, which is the UN definition. Net migration measures the difference between the number of people coming in to the UK and the number leaving, so if students return home after their studies, which many do, the impact on permanent inward migration to the UK will be minimal. The ONS has recently improved its methodology so that in future it will be possible to better identify students in the emigration flows to give a more accurate measure of the contribution of students to overall net migration. The key point is our student migration policy. There is no cap on the number who can come, and no plans to introduce a cap.

I am grateful for your continued interest and support in this important policy area. I will update you on figures on students from the Indian subcontinent and China when HESA figures for 2012/13 are published on 16 January 2014 and on the UK’s market share when the next OECD Education at a Glance is published, which is due to be in September 2014.

I am also enclosing [not printed] my update on the discussions of European higher education at the November Education, Youth, Culture and Sport Council meeting.

10 January 2014

**Letter from the Chairman to David Willetts MP**

Thank you for your letter of 10 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 22 January.

We are grateful for the information you provided in your letter about the Government’s ongoing efforts in increase the UK’s attractiveness as a higher education destination. But we have been
shocked by the size of the drop in students coming from the Indian subcontinent revealed in the HESA statistics published on 16 January.

We look forward to receiving your response to those HESA statistics and to hearing what action the Government intend to take to reverse this damaging trend in what is one of the UK’s most important higher education markets.

22 January 2014

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

I am writing to update you on the progress of the EU’s ‘Smart Borders’ proposals as requested in your Committee’s report of 26 March 2013. These proposals cover an EU (Schengen) Entry/Exit System (EES) and a Registered Travellers Programme for third-country nationals crossing the external Schengen border. The UK cannot participate in the ‘Smart Borders’ proposals on ‘Schengen-building’ grounds. However we will support the working group so that the system is robust and takes account of the standards and levels of security provided by UK systems.

Negotiations in the Council began at working group level in April 2013. Discussion has largely focussed on two issues – the use of biometrics within the Entry/Exit System and access for law enforcement authorities to data generated by the same system.

Firstly, the current proposal contains a three year transitional period to allow time for preparation of the means in all Schengen States to collect, through the EES, the biometrics from all third-country nationals entering the Schengen area. A large number of these States however, believe that making biometric collection compulsory from the start of the system is required to assist in identifying those overstaying in the Schengen area and to justify the costs of the EES. The proposals will now be taken forward with the intention that the collection of biometrics should commence from the outset.

Secondly, the current proposal envisages a decision, on whether to permit law enforcement access to data held by the EES, to be considered only after the system has been operational for a period of two years. However a large majority of Member States have formed a position that law enforcement access to data held by the EES is required from the start of the system in order to justify the high cost of the system. We support this position and have shared our experiences of developing a similar system through our Border Systems Programme where access to the data by law enforcement agencies has brought considerable benefits.

Regarding this issue of access for law enforcement purposes to data held by the EES, there has been no indication during discussions that this is a possibility with the EES and indeed a number of States have qualified their positions by noting that such access should be offered only where it is proportionate to do so and only for the prevention, detection and investigation of serious crimes.

Working group discussions will continue through the period of the Greek Presidency and beyond with a pilot project group of experts from Member States, the European Commission and the EU Agency for Large-Scale IT Systems examining a number of technical, cost-related and operational questions which have arisen. UK experts will participate in this project group.

I will write to you with a further update as negotiations continue to progress.

29 April 2014

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

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

Thank you for your explanatory memorandum of 30 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 15 January 2014. As you know, these documents were cleared at the Chairman’s sift on Tuesday 7 January 2014.
We note the disagreement between the UK Government and the Commission and Council Legal Services on the applicability of the UK’s JHA opt-in. As we have stated on previous occasions, we agree with your position that it should apply in these circumstances.

We would welcome further information on whether you will seek to have the text of the relevant recitals amended to reflect the UK’s participation in the measures without reference to Article 49(1) of Regulation No 439/2010 established the European Asylum Support Office (EASO).

We support the work of the EASO and welcome the Government’s constructive position of recognising that deepening cooperation with these countries adds value to EU-wide efforts to manage asylum issues. We look forward to updates in due course and a response to our question above in the usual ten working days.

16 January 2014

**Letter from Mark Harper MP to the Chairman**

Thank you for your letter dated 16 January regarding the Council Decisions to extend EASO to Norway, Iceland, Switzerland and Liechtenstein. I am pleased that you share the Government’s view that there are strong grounds for extending participation in the EASO to the associate countries and that we should opt-in to them.

We agree that the language used for the recitals in these Council Decisions does not reflect our opt-in position. Therefore, I have asked my officials to seek an amendment to any language that would suggest that we are automatically bound by the Council Decisions because we participate in the EASO Regulation (EU) 439/2010. However, you will be aware that neither the EU Commission, nor the Council Legal Service agree with us and believe that the signature and conclusion of these Council Decisions are a matter of EU external competence. Regrettably, both the Presidency of the Council of the European Union and other EU Member States are unsympathetic to our position. As you will be aware, Ireland takes a different approach to the interpretation of the JHA Opt-in Protocol and they do not accept that it is applicable in relation to these Council Decisions.

The Council Decisions are subject to a qualified majority vote by the Council of the European Union and without any support from other Member States it is quite likely that they will be adopted without us securing an amendment. As a matter of policy we do not oppose the associate countries participating in EASO and we see many benefits arising from their involvement in the Dublin Regulation and more general practical co-operation in asylum. Therefore, we would not intend to pursue this matter at the Court of Justice of the EU. Instead, if we cannot secure appropriate language that reflects our position under Title V of the Treaty of the Functioning of the EU, we intend to make our position clear by sending a letter to the Presidency indicating that we are opting in and putting our opt-in position on record by means of a minute statement.

30 January 2014

**Letter from the Chairman to Mark Harper MP**

Thank you for your letter of 30 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 5 February 2014.

We are grateful for the information provided concerning how the Government intend to deal with the Commission and Council’s disagreement with the UK’s position concerning the applicability of the opt-in. As you know, these documents were cleared at the Chairman’s sift on Tuesday 7 January 2014. We look forward to updates on the progress of these negotiations in due course.

5 February 2014
ESTABLISHING THE EU’S POSITION WITHIN THE INTERNATIONAL LABOUR ORGANISATION (8988/14)

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

Thank you for your explanatory memorandum (EM) of 9 May 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 14 May 2014.

We share your concerns about the possible assertion of EU competence over the entirety of the proposed International Labour Organisation Recommendation. We would like to know which aspects of the draft Recommendation you consider fall outside the EU’s competence, and what you plan to do to ensure that the distinction between EU and national competence is respected.

We also share your concern about the legality of using a Council Decision to bind the EU’s position in the International Labour Organisation. We are not convinced by the Commission’s argument that the International Labour Organisation Recommendation implies certain legal obligations. We look forward to your informing the Committee on the outcome of this aspect of negotiations on the EU’s proposal.

It is regrettable that neither House of Parliament will have eight weeks to consider the Title V implications of this proposal, but we appreciate that this is due to the timing of the International Labour Conference. However, we are disappointed to have received your EM over one week late, and this significantly reduced the time available to us scrutinise the proposal. We welcome the statement by Lord Taylor of Holbeach while winding the debate concerning justice and home affairs matters of Thursday 8 May that serious efforts will be made to avoid such a situation arising in the future.

We accept that, in the exceptional circumstances of prorogation, it would not be reasonable to risk causing a scrutiny override and are therefore prepared to clear this proposal from scrutiny, while expecting to receive a response to the points we have raised above within the usual 10 working days.

14 May 2014

Letter from Karen Bradley MP to the Chairman

Thank you for your letter of 14 May on this proposal and for clearing it from scrutiny. I would like to reiterate my apology for the late EM, and thank the Committee for their understanding in relation to the 8 week period to consider the JHA opt-in not being upheld on this occasion. This was due to the short period between publication of the proposal and the start of the ILO Conference. We have made known our dissatisfaction with this situation in Brussels.

You asked which aspects of the draft Recommendation fall outside the EU’s competence, and what the Government plans to do to ensure that the distinction between EU and national competence is respected. You also noted that the Committee shared the Government’s concerns about whether it was appropriate to use a Council Decision to bind Member States, and was not convinced by the Commission’s argument that the ILO Recommendation implies legal obligations.

As the Commission were pressing for this Council Decision to be agreed ahead of the start of the ILO Conference on 28 May, there have been a number of working group meetings to discuss the proposal. After the first substantive discussion, where a number of Member States, including the UK, raised concerns about the legal base for this proposal and the competence of the EU to act, the Greek Presidency proposed splitting the one Decision into three:

— A draft decision dealing with the non-Justice and Home Affairs (JHA) aspect of the instrument.
— A draft decision covering JHA content which the EU Institutions believe does not engage the UK’s opt-in (judicial cooperation in relation to human trafficking and victims of crime).
— A draft decision covering JHA content which the EU Institutions accept engages the UK’s JHA opt-in (immigration).

While these proposals are marked limité and therefore not depositable for scrutiny, I attach [not printed] them to assist your consideration of these dossiers. The documents are being provided to the Committee under the Government’s authority and arrangements agreed between
the Government and the Committee for the sharing of EU documents carrying a limited marking. They cannot be published, nor reported on in any way which would bring detail contained in the documents into the public domain.

The compromise Council Decisions retained an Article 218(9) TFEU legal base, which the Government still do not believe to be appropriate for three reasons.

First, as your letter suggests, the ILO Recommendation does not have “legal effects” as it only requires ILO Member States to consider giving the Recommendation effect and report back to the ILO.

Secondly, the Government takes the view that Article 218(9) only applies where the EU is a member of the relevant organisation, which is not the case here. This position is supported by the Advocate General’s opinion in Case C-399/12.

Thirdly, under Article 3(2) TFEU, the EU has exclusive competence where an agreement may “affect common rules or alter their scope”. Given that the Recommendation does not have legal effect, it cannot “affect common rules or alter their scope”, and therefore cannot engage the exclusive external competence of the EU.

The Government therefore do not believe that there is a case for a legally binding Council Decision setting out how Member States should vote at the ILO Conference. It should be sufficient for Member States simply to coordinate their positions as necessary at the ILO conference, ensuring consistency where appropriate with EU law. At most, we could accept non-legally binding Council Conclusions setting out objectives in relation to the Recommendation.

Negotiations on this dossier were focused on legal base and competence questions. There was significant support for the UK position on legal base and EU competence amongst other Member States. COREPER considered the Council Decisions on the Recommendation on 23 May, and blocked adoption of these proposals. Accordingly, they will not now be adopted ahead of the ILO Conference that started on 28 May, and therefore will not be taken forward as they were specific to this Conference. The UK did not opt in to these measures as, for the above reasons, we do not believe that Council Decisions are appropriate.

The Presidency had also proposed to split the Council Decision agreeing a negotiating mandate for the ILO Protocol. We raised similar concerns during the negotiations on that Decision with the same levels of support amongst Member States. COREPER considered the Council Decisions on the Recommendation on 23 May, and blocked adoption of these proposals. Accordingly, they will not now be adopted ahead of the ILO Conference that started on 28 May, and therefore will not be taken forward as they were specific to this Conference. The UK did not opt in to these measures as, for the above reasons, we do not believe that Council Decisions are appropriate.

The Presidency had also proposed to split the Council Decision agreeing a negotiating mandate for the ILO Protocol. We raised similar concerns during the negotiations on that Decision with the same levels of support amongst Member States. I do not consider that any of the proposals in the draft Protocol engage the EU’s exclusive external competence. The Protocol as drafted imposes only minimum standards, or general obligations to take “effective measures” against forced labour. These measures would not in themselves require changes to the rules that the EU has already agreed in this area. They therefore would not affect those rules or alter their scope, as required by Article 3(2) TFEU. Therefore, Council Decisions establishing a negotiating mandate for the EU are not necessary. COREPER also blocked the adoption of Council Decisions in relation to the Protocol.

3 June 2014

EU PROPOSALS ON NEW PSYCHOACTIVE SUBSTANCES – REGULATION AND DIRECTIVE (13857/13, 13865/13)

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

Thank you for your letter of 11 November 2013 which the Home Affairs, Health and Education Subcommittee of the Select Committee on the European Union considered at its meeting on 11 December 2013.

We welcome the fact that the Government’s views on subsidiarity support the reasoned opinions issued by both Houses. We trust that the Government will press the Commission to give a full and rapid response to those reasoned opinions.

We note and share your view that there is insufficient information about the scale of licit trade in New Psychoactive Substances in Europe, the basis on which you propose to seek to change the current legal base of the Regulation. We expressed our concern about the lack of such information in our reasoned opinion published on 4 November when questioning whether the proposals were proportionate.
We have some doubts, however, about the validity of the government’s preferred legal base of Article 83 (1) TFEU. We therefore ask whether you consider it feasible to secure a negotiated change to the legal base of this proposal from Article 114 to Article 83 (1) TFEU? Is there likely to be support for such a move amongst other Member States?

Your letter states that “the Commission relies heavily on the underlying assumption that there is a significant market for NPS in commercial and industrial use”. Is the current regulatory environment for legitimate uses of NPS in the EU causing a genuine barrier to free movement and trade of those goods? In your view, could an Article 114 legal base apply in the case of a modest (at best) market? What assessment have you made of whether an Article 83 (1) legal base could be applied to the Regulation as currently drafted?

We would be grateful if you could send us periodic updates on the progress of negotiations on these two Commission proposals and if you could consult us on any matters such as opting-in that might arise if the legal base were to change. Furthermore, we would be grateful for a response to our specific questions within the usual ten days.

11 December 2013

Letter from Norman Baker MP to the Chairman

Thank you for your letter of 11 December on the above proposals. I write to respond to your questions and to confirm the Coalition Government’s position on the abovementioned draft EU proposals following the expiry of the three month opt-out decision period.

The most recent meeting of the Horizontal Drugs Group (HDG) was held on 9 December, and an informal meeting was convened by the Lithuanian Presidency on 10 December specifically to discuss legal base and subsidiarity. Both meetings were attended by my officials. I understand that at the Articles in the draft Regulation on free movement and market restrictions were discussed, each meeting was dominated by interventions on the evidence base, internal market legal base, subsidiarity and Member State competence to adopt domestic measures. My officials continued to contest all three areas strongly and I am pleased to note that the UK arguments on legal base and subsidiarity appear to be chiming with a number of other countries.

Some Member States have suggested that a public health legal base under Article 168 of the Treaties of the European Union (TFEU) would be appropriate, while others agree with us that the measure should cite Article 83(1) TFEU. Others are content with Article 114. We, with others, are pushing for a written opinion from the Council Legal Service. We will be encouraging the Greek Presidency to bring these issues before the full HDG in the New Year.

As you will be aware, it is my view that the trade in new psychoactive substances is overwhelmingly illicit and that a Title V legal base is therefore more appropriate.

What has become clearer over time is that the European Commission has used a broad definition of ‘legitimate use’ to include new psychoactive substances with medicinal use, plants and herbs and scientific research. We, and others, strongly contest this. Medicines, whether or not they have a psychoactive effect, are dealt with in a separate EU regime and draft Regulation which expressly excludes medicinal new psychoactive substances from the scope of the proposed internal market control mechanisms. The Commission’s justification for taking invasive single market measures is essentially made by reference to the trade in medicinal use of new psychoactive substances which is a separate market expressly excluded from the scope of the control mechanism which lies at the heart of the draft Regulation. We are also not convinced of the need to include plants and herbs, nor scientific research, in the theoretical market the Regulation purports to protect.

You ask whether we think it is feasible to secure a negotiated change to the legal base of this proposal from Article 114 to Article 83(1) of the Treaty on the Functioning of the European Union (TFEU). We are confident that the breadth of concern from across the Member States about a variety of issues with the draft Regulation places the United Kingdom in a good position to ensure the measure, if adopted, reflects our national interests.

We are not aware of any genuine barriers to trade arising from the current regulatory environment for trade in new psychoactive substances. Indeed, a large part of the justification from the Commission in its Impact Assessment is based on the anticipated future trade in new psychoactive substances, something for which, again, there is little, if any, evidence.

As to whether an Article 114 TFEU legal base could ever be appropriate for even a modest trade, we doubt that it could. Measures adopted pursuant to Article 114 are harmonising measures, with significant implications for the domestic competence of Member States in the areas they cover. It is
difficult to see how an Article 114 measure could be adopted in a manner which preserves the domestic competence of Member States to, for example, adopt more stringent measures for the control of new psychoactive substances. The derogations contained in Article 114(4) and (5) provide little cover in this regard, especially given it will be the Commission alone which will determine whether Member States may adopt domestic measures. You will recall from our evidence to your Committee that this was precisely one of our concerns with an Article 114 legal base.

Were an Article 83(1) legal base to be adopted, the Regulation would require significant amendments, including being redrafted as a directive.

I wish to emphasise that new psychoactive substances pose a significant global challenge and the decision to opt out should not in any way be considered to diminish our commitment to tackle this issue. As you may be aware, I informed Parliament on 12 December in a Written Ministerial Statement that the Coalition Government would conduct a review into new psychoactive substances.

Finally, I can confirm that the Coalition Government has decided to opt out of both of the NPS proposals under the Schengen Protocol and we have informed the EU Council Secretariat of our position. This is largely based on the arguments set out in the House’s Subsidiarity Reasoned Opinions. We do not think the proposals comply with the principle of subsidiarity and we want the UK to retain competence on regulating new psychoactive substances.

Notwithstanding our decision to opt out of these proposals at the outset, we will continue to negotiate at the HDG in Brussels in order to attempt to shape the current proposals in such a way as to achieve the most favourable outcome for the UK, particularly in our ability to respond quickly to public health risks posed by new psychoactive substances as they emerge on the market. Of course, I will send you periodic updates on the progress of the negotiations and will consult on any matters should the legal base change.

13 January 2014

Letter from the Chairman to Norman Baker MP

Thank you for your letter of 13 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 22 January 2014.

We note and share your view that there is insufficient information about the scale of licit trade in New Psychoactive Substances in Europe to justify the use of a single market legal base for the legislation. We therefore support the Government’s efforts to change the current legal base of the Regulation. We note that this view is shared by other Member States, and we agree that it makes sense to seek an opinion from the Council Legal Service on the appropriateness of the proposal’s current legal base. We assume that any such opinion would also cover the question of whether or not the proposals should be classified as “Schengen-building” measures.

You say in your letter that the level of concern about the legal base and other issues in the proposal means that the UK is likely to be able to get an agreement that reflects its national interests. We presume that would mean that Member States would retain the right to decide whether or not a substance should be banned within their jurisdictions. If this proves to be the case, can you confirm that the Government would then agree (or opt-in) to the proposal, whatever its legal base?

We are pleased to see you intend to continue to participate in negotiations on this proposal, many of whose facets other than those referred to above we believe to be useful and likely to be of benefit to the UK.

22 January 2014

Letter from Norman Baker MP to the Chairman

Thank you for your letter of 22 January.

You asked whether, if the EU new psychoactive substance proposals were revised so that Member States were able to take stricter measures, the UK would then choose to opt in to them. Whilst this is one of our key concerns about the proposals, it is not the only one. For example, we are not convinced by the robustness of the categories and therefore we would not want to be bound by the EU assessment of risk, where it might differ from the independent advice provided by the Advisory Council on the Misuse of Drugs.
As the discussions in Brussels have highlighted, the assessment of whether a new psychoactive substance poses a low, moderate or severe risk can change dramatically depending on a number of factors. An NPS will become more risky if taken in larger doses, if injected or taken with alcohol or other drugs (as with all drugs). Circumstances in the UK may be very different to those in other EU Member States. It therefore makes sense to retain discretion to impose our own national controls in certain circumstances. In this context it means being able to introduce drug controls, including temporary bans, without having to wait for approval from the EU or be constrained by EU risk categories.

Whilst the first analysis of the draft Regulation has nearly concluded in Brussels, it is clear that several Member States continue to have concerns on matters of principle. The next meeting of the Horizontal Drugs Group will be on 9 April where the Greek Presidency will circulate a discussion paper on the objectives and issues the Group is seeking to resolve. I will update you on negotiations as they progress.

19 March 2014

Letter from the Chairman to Norman Baker MP

Thank you for your letter of 19 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 2 April 2014.

We note and share your concern that Member States must have unfettered discretion to take action in relation to a specific New Psychoactive Substance in response to local circumstances and their assessment of the risk to public health. We enclose [not printed] for your information our reply to the Commission's response to our original Reasoned Opinion in the process of political dialogue.

We look forward to a further update on negotiations after the Horizontal Drugs Group meeting on 9 April.

2 April 2014

EU RETURN POLICY (8415/14)

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

Thank you for your explanatory memorandum (EM) of 10 April 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 14 May 2014. This Communication was cleared at the Chairman’s sift.

We published a report, Illegal Migrants: proposals for a common EU returns policy (31st Report, Session 2005-06, HL Paper 157) during the development of the EU Return Directive. Our report sympathised with efforts to achieve a common EU returns policy, so long as that policy allowed for persons to be returned to their country of origin safely and humanely, with respect for their human rights and dignity.

We would welcome further information on the concerns raised in your EM. In particular:

— Is it already clear that the proposed handbook on return practice which respects fundamental rights, would focus more on the rights of the individual rather than on the actions that Member States can take to tackle abuse? Would the best course not be for Member States (including the UK, even if it is not bound by the Return Directive) to make representations to the Commission that the proposed handbook also focus more clearly on action Member States are entitled to take to tackle abuse?

— Do you not think that, on balance, the Commission’s request to Frontex to adapt its code of conduct to ensure independent monitors are present at joint return operations is justified based on the information you have on the practice in other Member States; and

— Finally, we would welcome clarification of what processes the UK has in place to record and address specific allegations that returnees have experienced ill-treatment after return; how many such allegations have been
recorded in the last 10 years; and what sorts of action have been taken in response.

Further to paragraph 13 of your EM, we would also be grateful to know how the Government intend to influence future developments in respect of the EU’s returns policy.

We look forward to a response to these questions within the usual 10 working days.

14 May 2014

EURODAC (10638/12), EXAMINING AN APPLICATION FOR INTERNATIONAL PROTECTION LODGED IN ONE OF THE MEMBER STATES BY A THIRD-COUNTRY NATIONAL OR A STATELESS PERSON (16929/08), PROCEDURES FOR GRANTING AND WITHDRAWING INTERNATIONAL PROTECTION STATUS (11207/11), RECEPTION OF ASYLUM SEEKERS (11214/11)

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

I write further to your letter of 14 June to confirm to the Committee that the remaining dossiers forming the second stage of the Common European Asylum System (CEAS) were adopted in June 2013. The final versions were published in the Official Journal of the European Union on 26 June with the following references:

— Regulation (EU) No. 604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin Regulation);
— Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection; and

As the Committee will recall the UK has not opted in to all the proposals listed above. We opted in to the recast Dublin and Eurodac Regulations, but we are not participating in the recast Directives on Reception Conditions and Asylum Procedures. The recast Dublin Regulation (”Dublin III”) applies to applications for international protection lodged from 1 January and also to requests to take responsibility made to participating States from that date. The recast Eurodac Regulation will apply from 20 July 2015.

26 February 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 26 February 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 March 2014.

As you know, we have consistently encouraged the Government to opt in to the whole of this package of measures. We would be grateful for clarification on whether you intend to keep under consideration the possibility of post-adoption opt-in to the recast Directives on Reception Conditions and Asylum Procedures.

20 March 2014

EUROPOL (8229/13)

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

Thank you for your letter of 28 November.
You asked for an update on Article 4(1)(l), which would task Europol with “developing Union centres of specialised expertise for combating certain types of crime falling under Europol’s objectives, in particular the European Cybercrime Centre.” As you know we support the Cybercrime Centre and the expertise of Europol more generally. But we are concerned that such open ended tasking, as envisaged in the proposed Article, risks putting Europol under significant resource and budgetary pressure. This Article is of particular concern when read in line with page 8 of the Commission’s Explanatory Memorandum where the centre’s purpose is described as to “support Member States’ investigations or become the collective voice of the European investigators across law enforcement in the specific areas”. The Government believes that any such centres should firstly be subject to a decision by the Europol Management Board and then endorsed by the Council – this provides for a transparent and accountable process and ensures that Member States agree to Europol taking on the new role. Moreover, any such centres should be about focussing expertise and supporting Member States’ action. We do not support a “collective voice” as each Member State has different systems and operational priorities. There have not been any significant changes to this text as yet, but there has been a suggestion to delete this sub-paragraph and several Member States have proposed the deletion of the word “Union” from the drafting, which we would support. We will keep you informed of how this develops.

The December Justice and Home Affairs Council did not in the end discuss Europol substantively. It was an “Any Other Business” item with a short update from the Presidency. The final Working Group under the Lithuanian Presidency took place on 11 December. I can confirm that a first Reading of the Europol file has now been completed. At the most recent meeting the current Presidency presented compromise proposals around Chapter V of the Regulation on processing of information (between Europol and Member States, and access by other EU Agencies). However, there was little progress with several delegations indicating that they had substantial concerns about the arrangements for both sharing data and, in some cases, access to it by OLAF and Eurojust. The general tone of the negotiations, not least in arguing for maintaining the role of national units and limiting direct access to Europol’s databases by third parties, was in line with our overall position. The incoming Greek Presidency has currently scheduled 4-6 working days during which it has indicated it would wish to reach some level of agreement on the text as a whole at the technical level. The first meeting, on 16-17 January will consider Chapters IV (organisation of Europol), VI (relations with partners) and X (staff).

On the future Parliamentary oversight arrangements for Europol, I am grateful for your update in the abovementioned letter and your letter of 20 November reporting on the Committee’s exchange of views with the LIBE Committee. I share the Committee’s view about the need for a light oversight arrangement and the importance of ensuring that such scrutiny does not stray into potential operational interference.

Article 53 (Parliamentary Scrutiny) of the Commission’s proposed text was discussed in general terms at the Working Group in October. As I said in my letter of 26 September, our concern is that, as drafted, Article 53(1) refers to the concept of scrutiny taking place “jointly” between the European Parliament and national Parliaments. Although no specific procedures are set out to explain what is envisaged in this Article, we would be concerned by any suggestion that a new joint Parliamentary forum might be created. It would not be for the Council and European Parliament to establish such a forum through the Europol Regulation. Article 9 of the Protocol on the Role of National Parliaments makes it clear that it is for the European Parliament and national Parliaments, and not the European Parliament and Council acting as co-legislators, to determine the organisation of inter-parliamentary cooperation. For similar reasons we would strongly object to the Rapporteur’s proposal for a Parliamentary Scrutiny Unit being prescribed within the Regulation.

We do not yet know when the Articles about Parliamentary oversight will be revisited, but I would be very happy to discuss the issues raised by the Commission’s text and the views of the Rapporteur with you. I have asked my officials to liaise with you on finding a suitable opportunity next year.

16 December 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 16 December 2013 regarding the above document which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 8 January 2014.

We are grateful for your response to our question regarding Article 4 and the update on the progress of negotiations. We note that there was not a substantive discussion of the draft Regulation at the December JHA Council. We look forward to further updates in due course.
We are grateful for your agreement to a meeting regarding Parliamentary scrutiny of Europol and will liaise with your officials to fix a date.

We continue to retain this document under scrutiny. We would be grateful if you would address the immediate points in this letter within the usual 10 day period, and if you could provide updates in due course.

10 January 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 10 January requesting that you be kept updated on the progress of negotiations on the proposed Europol Regulation.

As you will be aware, the Government made clear at the time of the initial opt-in decision that in order for the UK to opt into the new Europol Regulation once it has been adopted two conditions must have been met. These were that the Regulation does not empower Europol to direct national law enforcement agencies to initiate investigations and that it does not require those agencies to share data that conflicts with national security.

COUNCIL NEGOTIATIONS

I am pleased to report that we have found that a number of other Member States share our concerns over the nature of the published text in both of these areas and this has enabled us to make good progress in achieving improvements.

On the power of Europol to request investigations, our primary concern has been that the requirement to give reasons where declining to initiate an investigation – a requirement that exists in the current Europol Decision – when taken with several changes to the text used in the Council Decision, raised a risk that the European Court of Justice (ECJ) could take the view that Member States are required to initiate investigations in some circumstances and could be challenged when they refuse to do so; for example, where they fail to give reasons or when the reasons provided are judged to be inadequate. We were also concerned that the inclusion of wording stating that “the National Units shall inform Europol without delay of the initiation of the investigation” appeared to suggest an obligation upon Member States. That text has now been removed and replaced with wording, which, when taken with the rest of the Article, would seem to pre-suppose no element of obligation and the ability to turn down the request - this is therefore a significant improvement.

On the issue of obligations to share data, the latest Council text is also improved from the original Commission proposal. In particular, an exemption in relation to sharing data with Europol where doing so could conflict with national security interests has been re-introduced to the text at our request and with the support of a number of other Member States. In addition, the latest text removes wording requiring Member States to share copies of bilateral or multilateral exchanges (with other Member States) with Europol. This is also very welcome.

While we are pleased with the direction of travel in these areas, we are not yet fully satisfied and feel the text could be clearer still in order to further reduce the scope for an unhelpful interpretation of these provisions by the European Court of Justice. As such, we will seek further improvements to these articles during the remainder of Council negotiations and then in the trilogue process with the European Parliament.

On the issue of Europol receiving personal data from private parties, while not perfect, the Council text on this issue is now much improved from the Commission’s original proposal insofar as it would now seem to introduce an obligation on Europol to provide any such data to the relevant National Unit before substantive processing, with the National Unit then defining the purpose for which Europol may undertake further data processing. The new text would therefore seem to alleviate concern that Europol would be able to effectively bypass National Units in processing such data.

Another issue which has been the subject of considerable debate during negotiations in the Council has been that of data protection supervision of Europol. As you will be aware, under the existing Council Decision, data protection supervision of Europol’s activities is carried out by the Joint Supervisory Body (JSB). However, the Commission has proposed that under the new arrangements this role should fall to the European Data Protection Supervisor (EDPS). We remain to be convinced that this is best approach as JSB supervision has worked quite well until now. If the EDPS is to take on the role, we would want to see its powers clearly defined in order to ensure that it does not adversely interfere with operational matters, and we would also want assurances that existing law
enforcement expertise would be transferred across to the EDPS from the JSB. I will keep you updated on how these discussions progress.

On the issue of parliamentary scrutiny of Europol, I reiterate that I share the view of both Scrutiny Committees that the draft Regulation’s provisions in this regard should not be overly prescriptive in order to retain flexibility, but, as I have said before, ultimately I feel it is for national Parliaments (working with the EP) to decide on the most appropriate process. I am aware that Lord Hannay recently engaged with the EP’s LIBE Committee on this matter and I understand that the Deputy Speaker of the House of Commons was due to take part in a discussion on this issue at the Conference of Parliamentary Speakers in Vilnius last month.

The Presidency are apparently seeking to agree a general approach at the June JHA Council and we believe the text may be sent to COREPER as early as today. We feel this may be ambitious as a number of Member States have raised significant concerns over the data protection Chapter in particular.

EUROPEAN PARLIAMENT FIRST READING TEXT

On 17 March the text resulting from the European Parliament’s (EP) first reading of the draft Regulation was published. The text is helpful for the Government in a number of areas, and particularly on those matters that we have identified as key conditions for opting in post-adoption.

In my view the text at Article 7(5) on the sharing of data by law enforcement agencies represents a clear improvement over the original Commission proposal. In particular, I am pleased with the “on their own initiative” text, which would seem to put greater power in the hands of the Member States. The language around “respond[ing] to Europol’s requests for information” would also seem to be preferable to the previous text, which simply said Member States provide Europol with information “without delay”.

Similarly, the text at Article 6(3) on initiating investigations is an improvement over the original Commission proposal. The first reading EP text reads: Member States shall give such requests due consideration and shall, through their National Units, inform Europol without delay whether an investigation will be initiated. The “due consideration” wording is in line with the current Council Decision and is helpful in our view as it presupposes that there is no obligation on Member States to initiate investigations.

Moving on to other matters, on data protection the EP text does not challenge the transferring over of data protection supervision from the JSB to the EDPS. Indeed, I understand that when the matter was put to a vote in the LIBE Committee and the EP plenary there was a very significant majority in favour of EDPS oversight. As previously mentioned, if data protection oversight is to move over to the EDPS we would want to see its powers clearly defined and we would also want assurances on the retention of existing law enforcement expertise.

15 May 2014

GENERAL DATA PROTECTION REGULATION (5853/12)

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

Thank you for your letter of 7 April which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 7 May 2014. We are also grateful to you for appearing before us to give evidence on Safe Harbour on 9 April 2014. We will send you a separate letter on that issue.

We note that the European Parliament has agreed its position on the proposed Regulation and Directive, but that things are moving slower in the Council. We would therefore be grateful for an update on whether the contentious issues highlighted in the Government’s explanatory memorandum of 13 February 2012 have been resolved, namely:

— Whether progress has been made on issues about definitions, including genetic and health data;
— Whether the introduction of a mandatory data protection officer role is still too prescriptive;
— Whether progress has been made in defining a child as ‘under-18’;
— Whether the requirement for notice of a breach of the agreement with 24 hours has been discussed;
— Whether they are satisfied that the independence of national data protection authorities will be preserved; and
— Whether the ‘right to be forgotten’ issue has been resolved.

We would also be interested to know how other Member States reacted to the impact assessment that the Government produced in November 2012.

We have decided to retain the document under scrutiny and look forward to receiving further updates from you on the progress of negotiations in due course.

7 May 2014

GLOBAL APPROACH TO MIGRATION AND MOBILITY 2012-2013 (6988/14)

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

Thank you for your Explanatory Memorandum (EM) of 12 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 2 April 2014.

As you will be aware, we produced a report in 2012, The EU’s Global Approach to Migration and Mobility, which considered the Commission’s 2011 Communication on the Global Approach to Migration and Mobility (the GAMM) and the UK’s participation in EU asylum and immigration measures. As such, we were grateful to receive your EM on the Commission’s report on the implementation of the GAMM in 2012-13.

We believe that the conclusions of our report are still relevant to the future development of the GAMM. We share your view that the control of immigration from third countries should remain, as it is now, the responsibility of individual Member States. We are pleased to see that both the UK Government and the Commission acknowledge that the issues covered in the GAMM cut across a number of different policy areas and administrative departments, and need to be dealt with as such.

We note the Government’s intention to continue its policy of opting in to GAMM-related agreements on a case-by-case basis, and we will continue to scrutinise proposals for such decisions in the light of our report’s conclusions and recommendations. We restate our view, however, that the UK should seek to play a full role in the development and implementation of the EU’s asylum policy, including the completion of the Common European Asylum System.

We have decided to clear this document from scrutiny, and look forward to receiving further EMs on these reports in the future.

2 April 2014

GOVERNMENT POSITION ON THE JHA OPT-IN (UNNUMBERED)

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

We are writing to set out the Government’s position on the application of the UK’s opt-in to justice and home affairs (JHA) measures under Protocol 21 to the Treaties. We are aware that your Committee has exchanged several letters with departments, including our own, on the subject of when the opt-in is available in the absence of a Title V legal base being cited. We are also aware that recent and prospective judgments from the Court of Justice of the European Union (CJEU) which touch on the question of citation of legal bases will be relevant to the UK’s JHA opt-in.

As you know, the Government’s starting position is that the UK’s JHA opt-in Protocol is triggered when a proposal contains any JHA content, rather than on the basis of which legal base the Commission has chosen for its proposal. This approach seeks to prevent the Commission from circumventing our opt-in rights by including JHA content in measures that do not cite a Title V legal base.
Protocol 21 is clear that it applies in respect of measures “pursuant to” Title V, the JHA chapter of the Treaty. It does not explicitly restrict the ambit of the Protocol to measures which cite a Title V legal base. Nevertheless, the Government will push for the addition of a Title V legal base in EU negotiations on a measure that we consider to have JHA content, unless that content is removed from the measure in the negotiations. That approach has been taken both when the measure is wholly concerned with JHA issues and in cases where the JHA content might be characterised as ancillary to a principal purpose.

However, the Government recognises that the principle of validity means that, as a matter of law, legislative acts of the EU must be assumed to be valid unless or until they are annulled by the CJEU. Accordingly, we recognise that, notwithstanding our opt-in decision, the UK would be bound by a JHA measure without a Title V legal base once it was adopted.

We should be clear that this only applies in cases where JHA is either the whole purpose of a measure (a “whole JHA” measure) or is one of two main purposes, neither of which is incidental (a “partial non-ancillary JHA” measure). In either case, asserting that we are not bound would call into question the validity of the entire measure.

The Government’s position is that the principle does not apply to cases where the principal purpose or purposes are not JHA-related. It follows that where the UK does not opt in to such proposals, we do not believe we would be bound by such so-called “ancillary” JHA provisions, because we would not be calling into question the validity of the entire measure.

We appreciate that your Committee takes a different view to the Government on the application of the UK’s opt-in. To be clear, where a proposal from the Commission does contain JHA content but does not cite a Title V legal base, the Government will, as usual, make an opt-in decision within three months of the publication of the final language version of the proposal. We will also give Parliament an opportunity (under the Ashton and Lidington commitments) to offer its opinion on whether the UK should opt in. Furthermore, in line with established policy, we will continue to consider bringing challenges before the CJEU where we believe there is JHA content but this is not reflected in the adopted text.

Because of the difficulties inherent in identifying JHA content in the absence of the correct legal base, there may be occasions where the Government fails to recognise JHA content in an EU proposal at the outset. We are endeavouring to keep these occasions to a minimum by raising the profile of JHA content in otherwise non-JHA dossiers across Whitehall. However, on those occasions where this is the case and we are subsequently successful in attaining a Title V legal base, we commit to going through the opt-in process post-adoption, including allowing a period for scrutiny before we finalise our decision. This would ensure that Parliament can scrutinise the Government’s approach to the opt-in aspects of such proposals and would apply whether the Government is minded to opt in or not.

The CJEU is considering the question of citation of legal bases in the context of case C-377/12, where the European Commission is challenging the Council Decision on signing the Partnership and Co-operation Agreement between the EU, its Member States and the Philippines (2012/272/EU). Judgment in that case is expected within a few months, and, we expect, before the summer recess. We will write again to you on the Government’s position in light of that judgment.

3 June 2014

GREEK PRESIDENCY PRIORITIES FOR HEALTH OVER THE NEXT SIX MONTHS (UNNUMBERED)

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

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

During this Presidency, the Greek Presidency intends to make progress on the legislation that is currently under negotiation. They hope to finalise political agreement on the tobacco products directive, the regulation on clinical trials, and the regulation on fees payable to the European Medicines Agency for pharmacovigilance. They aim to make progress in Council on the medical...
devices regulations. They hope to make progress on the directive relating to transparency of pricing of medicinal products.

At an informal Ministerial meeting on 28-29 April, Greece plans to chair a discussion on the impact of migration on health services.

There will be a meeting of the Heads of Medicines Agencies on 18-19 February. Following this, there will be a discussion on nutrition and physical activity at a ministerial conference on 25-26 February, as well as eHealth at the eHealth forum on 12-14 May; on both of these topics the Greek Presidency plans to adopt Council Conclusions.

The meeting of National Coordinators for Drugs will be held on 16-17 June followed by the Health Council meeting on 20 June in Luxembourg.

19 January 2014

GREEK PRESIDENCY PRIORITIES FOR HOME OFFICE JHA ISSUES OVER THE NEXT SIX MONTHS (UNNUMBERED)

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

Thank you for your letter of 13 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 8 January 2014. I see no reason to repeat here points in the Greek Presidency JHA priorities which are already covered in ongoing correspondence.

We do, however, wish to remind you of our recommendation that the Government opt in to the Directive on the freezing and confiscation of criminal assets should it be agreed under this Presidency.

We look forward to an update following the anticipated first presentation on the Revision of the EU Strategy for Combating Radicalisation and Recruitment to Terrorism in January.

We would also welcome further information about the Commission review of the European Programme for Critical Infrastructure Protection and the Directive on the identification and designation of European Critical Infrastructure.

We look forward to hearing from you in due course.

10 January 2014

HOME AFFAIRS FUNDS FOR THE PERIOD 2014-2020 (17285/11, 17287/11, 17289/11)

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

Thank you for your reply to Mark Harper of 30 October about the Home Affairs Funds. I apologise for the time it has taken to provide the information you have requested.

In the last week, the Budget for all the Home Affairs Regulations has been agreed and political agreement has been secured as the basis for a first Reading deal with the European Parliament on both of the Internal Security Fund Regulations (ISF (borders and police)). As you are aware, we are excluded from the Borders element (it relates to a part of the Schengen acquis in which we do not participate) and have not opted into the policing measure. First reading deals with the European Parliament are in sight in January, whilst negotiations continue on the other two Regulations: the Asylum and Migration Fund and the supporting Horizontal Regulation. We will send you the consolidated texts of the agreed measures once they are available and have of course provided an undertaking to seek your views on the possibility of participating post adoption in relation to the ISF (police) which will involve full deposit of the adopted text.

You sought clarification on the budget currently being proposed for the Home Affairs Funds and whether the final package will mean a change in the level of funding from 2007-2013 to 2014-2020. We previously referred to the overall reductions in the EU budget however in retrospect I believe that it is not possible to compare like for like given Member States and the Commission are approaching this from different starting points ie throughout we have worked on ‘payments’ and in 2011 prices, whilst the Commission has insisted on using ‘commitments’ as a baseline and have used ‘current’ and ‘constant’ prices.

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Instead the following provides the budget provisions as we have them now for the two Home Affairs Funds. These figures are sourced from the Commission and are based on ‘commitments’ rather than ‘payments’. These are also in 2011 current prices. This means the Commission has added a 2% uplift for each year. The borders Regulation has been settled at €2,760 million (£2,319m) and the policing Regulation at €1,004 million (£844m).

<table>
<thead>
<tr>
<th>Fund</th>
<th>Commission’s Proposal</th>
<th>Commission’s new Proposal</th>
<th>Convert GBP £1=1.19€</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Original</td>
<td>New</td>
<td>Original</td>
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<tr>
<td>(2011 prices)</td>
<td>€m</td>
<td>€m</td>
<td>£m</td>
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<tr>
<td>AMF</td>
<td>3,869</td>
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<td>ISF (total)</td>
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<tr>
<td>Home Affairs Programmes</td>
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<td>6,901</td>
<td>7,156</td>
</tr>
</tbody>
</table>

Should you wish to compare, the Commission, in its Impact Assessment accompanying the Home Affairs proposals in November 2011, set out the 2011 current prices (in commitments) for the 2007-2013 Funds. The total for the 3 predecessor Funds to the Asylum Migration Fund came to €2,114m (£1,776m), and for the 3 predecessor Funds to the Internal Security Fund came to €2,560m (£2,151m).

You also asked about the policy dialogue. The Commission embarked on a series of official-led policy dialogue meetings with Member States in the summer; a new innovation in the 2014-2020 Home Affairs Funds. The UK’s dialogue took place on 21 October about the Asylum Migration Fund, which is the only Fund we have opted in to. The Commission’s delegation was headed by Stefano Manservisi, the Director General for Home Affairs.

During the dialogue, the UK set out its plans drawing on our experience in using the current three ‘SOLID’ Funds (European Refugee Fund, European Integration Fund and European Returns Fund). The Commission accepted that the UK would focus work on returns, particularly voluntary returns, and it was agreed that the UK would not be supporting relocation objectives. The UK set out the localism agenda for integration objectives, which the Commission welcomed. The Commission also asked the UK to consider what joint Member States initiatives it might consider. The dialogue formed a good basis for the UK to start working up its proposed National Programme for the period 2014 – 2020.

16 December 2013

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

Thank you for your letter of 16 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 8 January 2014.

The Committee is grateful for your update on the progress of these proposals and we look forward to receiving further information as the negotiations progress. We remain disappointed at how long it has taken to respond to our specific question raised on 30 October 2013. For Parliament, including this Committee, to undertake its scrutiny functions effectively, information requested needs to be forthcoming in a timely manner.

We would be grateful if you could, in due course, provide figures and analysis comparing payment figures for home affairs funding at the end of the 2007-13 period with anticipated payments in 2014 (at 2011 prices).

10 January 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 18 February 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 March 2014.
The Committee is grateful for your update on the progress of these proposals and we look forward to receiving further information as the negotiations progress. We look forward to receiving an EM and adequate time to consider whether the Government should opt-in post-adoption to the Internal Security Fund (Police). In addition, we look forward to further analysis of home affairs funding once further data become available.

5 March 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 1 March 2013 on the draft Decision on the implementation by the Union of the Solidarity Clause. You asked to be kept informed of progress with the negotiations.

In the Council, discussions have been carried out first by the Irish and more recently Lithuanian Presidencies through a Friends of the Presidency Group. After a slow start, a number of recent developments go some way to addressing the UK’s concerns. These negotiations are still ongoing and we expect to see further trade-offs and changes, however, this letter gives a sense of where things stand now.

Negotiations have confirmed the central role for the Council in the implementation of the Solidarity Clause, underpinned by existing crisis arrangements, notably the Integrated Political Crisis Response (IPCR) arrangements, formerly the Crisis Coordination Arrangements. This strengthens the original intention of the Decision to not replace existing instruments, but rather to draw together those already in existence.

The latest proposal emphasises that the Clause may only be invoked in circumstances which overwhelm the response capacity of the affected Member State. Discussions on the question of criteria for invocation, revealed the practical and political difficulties in setting criteria. However, the right of other Member States to determine the most appropriate way of meeting their solidarity obligation remains, in line with Declaration 37 to the Treaties.

Discussions are continuing on how the existing arrangements will be drawn together. The original proposal suggested that the Commission’s new Emergency Response Coordination Centre would coordinate the operational activity at Union level, with this role potentially shifting to another centre in the Commission or External Action Service depending upon the nature of the event. We will continue to work with other Member States to ensure that a workable approach is agreed, which respects appropriate competences.

The latest proposal now includes provisions for a review and evaluation process. The recitals to the Decision now make it clear that the implementing arrangements will be delivered through the budget lines of existing EU instruments, and not lead to any increase in the EU budget. There has not as yet been any detailed discussion on the use of the Solidarity Fund, but we will continue to monitor this in line with the concerns set out in the Government’s Explanatory Memorandum. There is a general consensus that the Decision is not intended to have defence implications.

As detailed in the Explanatory Memorandum, the Government was concerned about the proposal to assess the means available to meet the major threats, identify possible gaps, and ways that these gaps may be addressed, which could duplicate existing arrangements to identify and fill potential capability gaps. Other Member States share our view and we expect this to be dropped from the final text.

Areas still to be agreed include the geographical scope of the Decision, with views split between a wider view of territory (to explicitly include ships and planes registered to a Member State in international airspace or waters, and off-shore critical infrastructure in the exclusive economic zone or continental shelf of a Member State), and a narrower view limited to the territory of a Member State as defined in the Treaties. The Government is concerned to avoid any inconsistency between the scope of Article 222 and the draft Decision, and therefore favours a narrower interpretation.

Further discussion is also required on the role of the EEAS in the context of the draft Decision. Agreement has not yet been reached on the proposal for the Commission and the High Representative to produce threat assessments at Union level to assist the European Council, to enable it to meet its duty under Article 222(4) to regularly assess threats to the Union. The Government wishes to avoid any duplication of existing mechanisms for producing threat assessments, and to avoid any additional reporting requirements or obligations to share sensitive information.
My officials will continue to work closely with like-minded Member States, the Commission and the current and upcoming EU Presidencies to further address the areas of concern identified in the Explanatory Memorandum.

10 February 2014

Letter from the Chairman to Francis Maude MP

Thank you for your letter of 10 February 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 26 February 2014.

We welcome the progress made in negotiations so far, in particular the confirmation of the central role for the Council in the implementation of the Solidarity Clause, the inclusion of provision for a review and evaluation process, and the emphasis being placed on utilising existing mechanisms rather than creating new ones in this field.

We also note that there are still some important issues to be resolved in this proposal, for example, its geographical scope and the role of the European External Action Service. We have, therefore, decided to retain this document under scrutiny. Further to paragraph 18 of your explanatory memorandum, we would be grateful to know whether you have received clarification on what would be the practical implications of the Solidarity Clause being invoked ahead of a terrorist attack.

We look forward to a response to our question within the standard 10 working days, and to receiving further updates about the progress of negotiations on this proposal in due course.

26 February 2014

Letter from Francis Maude MP to the Chairman

Thank you for your letters of 26 February in which the Committee requested further information on the practical implications of the Solidarity Clause being invoked ahead of a terrorist attack and information on the evaluation procedures for the European Emergency Response Capacity (EERC). I will address each of these questions in turn.

The Solidarity Clause (Article 222 TFEU) covers prevention, protection and response where a Member State is the object of a terrorist attack. To reflect this, the original proposal from the Commission and High Representative stated that the Solidarity Clause could be invoked by a Member State when it is the object of an ‘actual or imminent terrorist attack’. In its Explanatory Memorandum the Government was keen to understand the practical implications of invoking the Solidarity Clause before an ‘imminent terrorist attack’. This issue has been considered in negotiations, with many Member States noting that it is difficult to see how EU arrangements could extend to terrorism prevention other than through existing information-exchange arrangements. As such there appears to be a growing consensus that the Solidarity Clause would only be invoked once a terrorist attack was underway. We will continue to work with other Member States to ensure that a practical and workable approach is agreed, and that there are no obligations placed on Member States to share sensitive information, either before, during, or after a terrorist attack. Negotiations are continuing under the Greek Presidency, and I will provide your committee with a further update on progress of these negotiations in the near future.

In your letter on EM 18919/11: Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism, you asked about evaluation procedures for the EERC, (the voluntary pool of Member States response assets). The Civil Protection Mechanism Decision requires a series of activities to evaluate all elements of the legislation, including the voluntary pool. An interim evaluation is to be conducted by June 2017, a communication on the continued implementation of the Decision by end December 2018 and a final evaluation report by end December 2021. In addition, the draft implementing rules for the voluntary pool, which are currently being negotiated, are expected to include provision for monitoring and review of the voluntary pool to determine the extent to which it achieves the intended results. We will continue to work with other Member States to ensure that this evaluation considers the added value of the EERC.

17 March 2014
Further to my letters of 10 February 2014 and 17 March 2014, I am writing to update you on the progress of the negotiations on the draft Decision on the implementation by the Union of the Solidarity Clause.

Discussions on the proposed text are continuing under the Greek Presidency through a Friends of the Presidency Group. The pace of negotiations has now increased, reflecting the Presidency’s ambition to secure agreement before the end of June 2014. Progress continues to be made and a number of the elements raised in the Government’s Explanatory Memorandum have been addressed including the role of the Council, the underpinning of arrangements with existing crisis arrangements, provision for a review and evaluation process, and clarifying that the Clause would only be used in overwhelming circumstances.

Of the elements still being discussed, agreement now looks likely on the practical arrangements for drawing together and coordinating existing Union instruments that can best contribute to the response to a crisis. The Government continues to work to ensure that these arrangements are workable and respect the appropriate competences, both between the institutions of the Union and between the EU and Member States. The text currently states that the arrangements will function on the basis of no additional resources, and the Government will seek clarification on the reference to the Solidarity Fund to ensure it is in line with this principle.

There is more clarity on the role of the European External Action Service (EEAS) and High Representative in the context of the Solidarity Clause. There is general agreement that arrangements at Union level will be based upon existing Union mechanisms, which includes mechanisms in the EEAS as well as the Council, Commission and Union Agencies. The negotiations have made it clear that any such action would be within existing areas of competence.

Another area which includes a role for the High Representative is in the development of threat assessments at Union level along with the Commission. This proposal from the Commission and High Representative is intended to assist the European Council meet its duty under Article 222(4) TFEU to regularly assess threats facing the Union. The Government is continuing to work with other like-minded Member States to avoid any duplication of existing mechanisms for producing threat assessments, and to avoid any new obligations to share sensitive information.

There continues to be a split in views on how the geographical scope of the Decision should be set out, between a wider view (to explicitly include incidents affecting ships and planes registered to a Member State when in international airspace or waters, and off-shore critical infrastructure in the exclusive economic zone or continental shelf of a Member State), and text that simply mirrors that found in the Treaty (i.e. incidents affecting the territories of Member States (even if the incident originates outside the EU)). We will continue to work with like-minded partners to ensure an appropriate solution to this issue.

My officials will continue to work closely with like-minded Member States, the Commission and the Presidency of the Council of the European Union to address the remaining issues as negotiations move towards finalisation.

27 March 2014

Thank you for your letters of 17 March and 27 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 9 April 2014.

We are grateful for your update on the general progress of negotiations on the Solidarity Clause, but we have a number of questions resulting from your letters.

On the geographical scope of the proposed Decisions, we would be grateful if you could clarify the Government’s view, and that of its “like-minded partners”, on whether the Decision should cover incidents involving EU-registered planes and ships in international waters, or whether it should be confined to incidents on EU Member State territories.

Does the Government share the emerging view amongst Member States that it is difficult to see how Solidarity Clause arrangements could extend to terrorism prevention other than through existing information-exchange arrangements?

Given that it is a relatively new organisation with evolving activities, can you provide more information about the role that the EEAS will play, and the Government’s view on that proposed role?
Similarly, apart from seeking to avoid duplication of existing mechanisms, what is the Government’s view of any contributions that the High Representative could make in developing threat assessments at EU level?

We have decided to retain this document under scrutiny. We look forward to a response to our question within the standard 10 working days, and to receiving further updates about the progress of negotiations on this proposal in due course.

9 April 2014

Letter from Francis Maude MP to the Chairman

Thank you for your letter of 9 April 2014. I will first respond to your questions and then provide you with a further update on the progress of the negotiations on the draft Decision on the implementation by the Union of the Solidarity Clause.

Your Committee sought further detail regarding Article 2 of the proposal on geographical scope. While the Government would prefer not to explicitly include incidents affecting EU registered ships and planes in international airspace or waters, we believe that the decision on whether or not to include such a provision is ultimately a political decision for Member States in the Council. We have considered the consistency of Article 2 with Article 355 TFEU, which concerns the territorial scope of the Treaties, and consider that the two are not incompatible. However negotiations on the detail of Article 2 continue.

On the issue of how Solidarity Clause arrangements could extend to terrorism prevention, the Government shares the view that it is difficult to see how this could be done other than through existing arrangements for sharing information. In addition, we have been working with other Member States to ensure that there are no obligations placed on Member States to share sensitive information, in line with Article 346(1)a TFEU (which provides that Member States are not obliged to supply information contrary to their security interests), and that existing arrangements are used to share information. This includes information that may be provided to support the development of threat assessments at EU level.

Regarding the role of the High Representative and EEAS in the event of a Solidarity Clause invocation, we have been working to ensure that the proposal makes clear that any role for the EEAS and High Representative would only be within existing areas of competence. This may include, for example, a role for the EEAS in providing information for situation reports when there is an element of the crisis external to the EU. The current proposal also sets out a role for the EU Military Staff in supporting the identification of military capabilities that may be able to contribute to a response, while making clear that any actions with defence implications must be taken in accordance with CFSP provisions of the Treaties. When it comes to the role of the High Representative and EEAS in developing threat assessments at EU level, we again believe that this should again be done through existing information sharing channels.

More generally, the Greek Presidency is keen to maintain the momentum and aspires to reach agreement before the end of their Presidency, with progress being made on the other outstanding issues. There continues to be movement towards an agreement on workable arrangements for drawing together and coordinating the existing Union instruments that may be used in a response, which respect the appropriate competences between the institutions of the Union and between the EU and Member States. The Government, with the support of Member States and the Commission, has continued to support the principle that these arrangements will function on the basis of no additional resources.

I hope that the information provided in this letter addresses the questions you have raised and allows you to consider clearing the proposal from scrutiny. As negotiations move towards a final position my officials will continue to work closely with like-minded Member States, the Commission and the Presidency of the Council of the European Union to address the remaining issues, and I will continue to keep you updated on the developments.

1 May 2014

Letter from the Chairman to Francis Maude MP

Thank you for your letter of 1 May 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 May 2014.
We are grateful for your answers to our specific questions, which will help us in due course to clear this document from scrutiny.

Nevertheless, given the issues at stake in this proposal and the key issues still being discussed in negotiations, we have decided to retain this document under scrutiny. We look forward to receiving further updates about the progress of negotiations on this proposal in due course and will aim to respond promptly if and when a decision is imminent.

14 May 2014

JUSTICE PRIORITIES FOR THE GREEK PRESIDENCY OVER THE NEXT SIX MONTHS
(Unnumbered)

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

Greece will take over the rotating Presidency of the Council of the European Union on 1 January 2014. I am writing to provide an overview of the Presidency’s priorities in the areas of justice on which the Ministry of Justice leads. I hope that this will help in the planning of the scrutiny of dossiers that are likely to be considered by the Justice and Home Affairs (JHA) Council during this period.

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

— 23 – 24 January (Informal Council) in Athens, Greece
— 6 -7 March
— 5 -6 June

This is Greece’s first EU Presidency for 11 years, and it has said it will prioritise measures which aim to promote economic activity and growth, including justice initiatives. Greece has also expressed willingness to work on future developments in the area of freedom, security and justice now that the period of the Stockholm programme is coming to an end, and to define strategic guidelines for legislative and operational planning.

In particular, the Presidency will work to achieve progress on the Data Protection proposals, the Insolvency Regulation, the European Account Preservation Order (EAPO), the Directive on Counterfeiting the Euro and other currencies and the Directive against fraud to the Union’s financial interests by means of criminal law.

Greece has indicated willingness to support UK proposals on the JHA 2014 opt-out decision (Protocol 36), particularly on assisting with non-Schengen measures.

Achieving progress on the proposed Regulation for the general EU data protection framework and the proposed Directive for personal data processing in the field of police and judicial cooperation will be a key priority for the Greeks. They have no objections to the proposal for a One Stop Shop model of supervisory authority for both individuals and organisations, although this matter remains the subject of detailed discussions in Council. Both the proposed Regulation and the proposed Directive remain under Parliamentary scrutiny and still require considerable work. I will keep you updated on the progress of the negotiations.

The Greek Presidency has expressed its intention to pay particular attention to the revision of the Insolvency Regulation with the aim of reaching final agreement. The Government welcomes the priority and time devoted to these proposals in previous Presidencies. It considers that the Commission proposal is balanced, targeted at key issues and timely given the current economic situation. Given the importance of good insolvency procedures to promoting recovery and growth it is important to get this negotiation right and avoid the risk of losing the coherence of the original proposals with too many changes.

On the European Account Preservation Order, the Greeks have sought to reassure Member States that “all efforts will be made to complete negotiations on the remaining issues of the regulation with a view to reaching an agreement at first reading with the European Parliament on the whole of the regulation and the recitals by before the end of the current parliamentary term”. The UK did not opt in to this proposal because of concerns about the lack of safeguards for defendants. Negotiations are continuing and we continue to work with others to improve the text to enable consideration of a post-adoption opt in. We will, of course, consult Parliament on any decision to opt-in post adoption.
The Greek Presidency will also seek the adoption of the Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law. As you know, the Government decided not to opt in to this proposal. Although agreeing that a proportionate criminal justice response to counterfeiting requires robust national laws and effective international cooperation at the operational level, the Government’s view is that the Directive would have very little if any positive impact on UK enforcement or international operational cooperation and intelligence sharing, whilst presenting unwelcome legislative consequences for the UK.

As regards the EU’s relations with third countries in the field of judicial cooperation, Greece has sought to reassure Member States that it stands ready to continue the constructive dialogue for the benefit of European citizens.

20 December 2013

MANUFACTURE, PRESENTATION AND SALE OF TOBACCO AND RELATED PRODUCTS (18068/12)

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

Thank you for your letter of 20 November 2013.

I am sure that you are aware that the House of Commons European Scrutiny Committee has requested a debate to be held in their European Committee C. I am pleased to be able to tell you that we have now secured a date for this debate. It will take place on Monday 16 December 2013 at 16:30. I look forward to the opportunity to explain the progress of the negotiations in more detail.

I would also be delighted to meet with you as chair of the European Union Committee to discuss any concerns you may have on the progress of the Tobacco Products Directive.

As I informed you in my letter of 31 October, following the European Parliament vote on 8 October, trilogue negotiations are ongoing. As expected, these negotiations have focused on key areas of UK interest such as how to ban characterising flavours, the regulation of e-cigarettes and cross-border sales of tobacco products.

The Government is disappointed that the European Parliament did not support the regulation of Nicotine Containing Products as medicines. We are listening carefully to the arguments that are being made by the European Parliament for the approach that they support (for e-cigarettes to continue to be made available as general consumer goods, with specific regulatory requirements in place) and the position of other Member States on the regulation of these products. As you would expect, we are contributing to efforts that are being made by the Presidency to identify whether an acceptable compromise can be found on the regulation of e-cigarettes. I will stay in close touch with the Committee on developments regarding the regulation of nicotine containing products.

Due to the sensitive nature of the negotiations I am as yet unable to provide the detail of possible compromises in this letter. I fully appreciate that your committee is entitled to regular updates but, as I am sure you understand, our first priority must be to maintain UK efforts to best pursue our negotiating objectives.

I can assure you that we are continuing to press hard to achieve the UK’s priorities and that I will regularly update you on the final stages of the negotiation as soon as information is available. The next trilogue will be held on 3 December and I will write to you again shortly after this to inform you of any further provisional compromises reached. As per the Presidency’s aim, trilogue negotiations will hopefully be concluded by the end of the year with a view to adopting the revised Directive before the end of the current Parliament in May 2014. As such, I expect to be able to write to you informing you of the final outcome of the negotiations shortly after the Committee C debate on 16 December.

I greatly appreciate your understanding of the sensitivity of these negotiations. I and my officials stand ready to provide any further information to you that would be helpful.

2 December 2013

Letter from Jane Ellison MP to the Chairman

In my letter of 2 December, I committed to write to you again after the Trilogue meeting of 3 December. While negotiations are still ongoing, I am pleased to be able to provide some more detail.
on the compromises that are currently being considered and the UK's position in relation to those articles.

In general, the Trilogue process is progressing in a positive direction on many articles and I believe that we are making further headway towards our goal of ensuring the proposals are proportionate and meet our public health objectives. For example, Member States and the European Parliament (EP) have come to a provisional agreement on more stringent reporting requirements in relation to characterising flavours (article 6), on which more details are provided below. All parties provisionally agree that the misleading tar, nicotine and carbon monoxide yields should be removed from packs of cigarettes which the UK supports.

CHARACTERISING FLAVOURS (ARTICLE 6)

The UK Government welcomes the prohibition on characterising flavours, including menthol, which is in both the General Approach and the EP texts, and aligns with the World Health Organisation’s Framework Convention on Tobacco Control of which UK is a Party. Member States and the European Parliament have provisionally agreed to more stringent reporting requirements on characterising flavours.

While both the Council and EP agree that characterising flavours should be banned, the two texts take different approaches to achieve this objective, including the EP wanting a five-year transition for menthol flavour while the General Approach text envisages a 3 year transition for all flavours which have a certain market share. The UK supports the General Approach text but a compromise will have to be reached and discussions about the length and application of the transition periods are continuing in Trilogue. The most important thing is that characterising flavours will be prohibited.

NICOTINE CONTAINING PRODUCTS (ARTICLE 18)

The UK’s preference throughout negotiations on this Directive has been that Nicotine Containing Products (NCPs) are regulated as medicines. As you know, we were disappointed that in its Plenary vote on 8 October, the EP rejected this idea. As per earlier correspondence, we have continued to push for the regulation of NCPs as medicines during the Trilogue negotiations. However, it is very important to the EP that NCPs that do not make a medicinal claim should not be regulated as medicines and the EP has reaffirmed this position in recent Trilogue negotiations. We are working with other Member States to establish whether Council is ready to move away from the General Approach text to achieve a compromise.

Specifically, we are carefully considering if it would be possible to secure a proportionate compromise with the European Parliament whereby e-cigarettes are regulated so that they are not appealing to children and this emerging market is monitored and we are also seeking a final text whereby Member States will be able to set an age of sale for e-cigarettes. This possible compromise is still being discussed in Trilogue.

At this time, it is too early to speculate on the outcome of negotiations but it is possible that an alternative to medicines regulation for those NCPs that do not make a medicinal claim with a number of safeguards built in may result.

MEMBER STATE FLEXIBILITY (ARTICLE 24)

As outlined in earlier correspondence, Article 24, among other things, seeks to enable Member States to introduce more stringent provisions on tobacco domestically in some areas, which is relevant to the introduction to further policies which complement the Directive, such as standardised packaging, by Member States. Both the General Approach and EP texts move in the right direction in this regard, as compared to the Commission’s starting proposal. Both texts introduce some flexibility but in different ways. The General Approach text envisages Member State flexibility with regard to introducing more stringent rules in relation to additives and standardisation of packaging, where it is justified and proportionate in line with the Treaty. By contrast, the domestic flexibility envisaged in the EP text in relation to areas covered by the Directive is broader in scope. However, the EP text retains the power for the Commission to approve or reject such domestic measures, which was removed in the General Approach text.

The final text of Article 24 is now even more relevant given the Government’s announcement in November to take regulation-making powers to introduce standardised packaging. An independent review of the evidence for the public health benefits of standardised packaging is also underway. The Government will make a final decision on this policy once it has received the report of the review.
The UK continues to support the GA text on Article 24. I will write to you again when I am clearer on further compromises that have been provisionally agreed with the EP, including on Article 18.

9 December 2013

Letter from the Chairman to Jane Ellison MP

Thank you for your letter of 2 December 2013 on the above proposal, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 11 December 2013.

We note that the Lithuanian Presidency does not yet appear to have made any suggestion as to how to resolve the tension between the Commission’s and the Council’s proposals over Article 24, namely whether or not Member States can adopt further measures to restrict the labelling and packaging of tobacco products as long as they respect internal market principles. Given the Government’s recent announcement that it will investigate the possibility of introducing plain packaging in the UK, the Committee would be grateful for an update on this aspect of the negotiations at an early date.

In the event of the Government failing to persuade the European Parliament and a sufficient number of other Member States to support the policy of regulating nicotine containing products as medicines, we would expect to be informed of the consequences of that without delay.

We have decided to retain this proposal under scrutiny and look forward to receiving further updates on progress in due course.

11 December 2013

Letter from the Chairman to Jane Ellison MP

Thank you for your letter of 9 December 2013 on the above proposal, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 18 December 2013.

We are grateful for your explanation of the difference in policy positions between the European Parliament, the UK and the European Commission on the regulation of non-tobacco nicotine containing products (NCPs). You said that you are now investigating the possibility of securing a compromise with the European Parliament whereby NCPs are regulated so that they are not appealing to children, the emerging e-cigarette market is monitored, and that their sale is age restricted. Could you please elaborate on what you have in mind by “monitoring of the e-cigarette market”?

We note and support your position on the issue of Member State flexibility and the discussions taking place on Article 24 of the proposal. We would be grateful to receive further updates on this aspect of the negotiations, and other aspects as the negotiations proceed.

In the meantime, we have decided to retain this proposal under scrutiny.

18 December 2013

Letter from Jane Ellison MP to the Chairman

Thank you for your letters of 11 and 18 December following my recent letters of 2 and 9 December 2013. You asked for an update on the proposal for a revised Tobacco Products Directive (TPD) as soon as possible and I am pleased to be able to write to further update the Committee with a fuller narrative of the discussions in Brussels now that the final scheduled Trilogue has taken place earlier this week, and to request that the Committee’s scrutiny reserve is lifted.

I am pleased to be able to confirm to the Committee that the political agreement was reached yesterday in COREPER, subject to adoption by Health Ministers and the European Parliament in early 2014. I provide a summary of some of the main elements of the compromise text below:

Packaging and labelling

All cigarette and roll-your-own tobacco products will display combined health warnings (comprising both pictures and text) covering 65% of the front and the back of packages. Text warnings will be placed on the side of the packets. Minimum dimensions for the health warnings will ensure greater
visibility and that certain pack types, like the ‘lipstick’ type, will no longer be allowed. Promotional elements or features on the unit packet and any outside packaging that create an erroneous impression about its characteristics, health effects, hazards or emissions as well as reference, for example, to taste, smell or flavourings will be prohibited. Similarly the suggestion of economic advantage by including printed vouchers, offering discounts, free distribution, two-for-one or other similar offers will not be permitted.

INGREDIENTS

“Characterising flavours” (e.g. menthol, fruit and candy) in cigarettes and roll-your-own tobacco will be prohibited. Products with characterising flavours that have a sales volume of 3 per cent or more in the EU (such as menthol) will have a transitional period of four years. Reporting on ingredients will be significantly strengthened, in particular for additives in cigarettes and roll-your own tobacco. It will also be possible to prohibit products with additives that have been shown to increase significantly and measurably the toxic or addictive effect.

TRACKING AND TRACING

An EU-wide tracking and tracing system with security features (e.g. holograms) for tobacco products to combat illicit trade will be put in place. Cigarettes and roll-your-own tobacco products will be the first to be phased in to this system, with other tobacco products following later.

CROSS-BORDER DISTANCE (INTERNET) SALES

Member States are able to prohibit cross-border distance (internet) sales of tobacco products if they choose and retailers will not be permitted to supply consumers located in those Member States. In Member States where such sales are not prohibited, retailers must follow stricter notification rules and make use of an age verification system.

HERBAL PRODUCTS FOR SMOKING

There will be stricter labelling and ingredients reporting requirements for herbal products for smoking.

In my earlier correspondence, I also informed you that, at the time of writing, there were two main areas remaining for discussion during the Trilogue process: nicotine containing products (Article 18) and Member State flexibility (Article 24).

ARTICLE 18 (NICOTINE CONTAINING PRODUCTS)

You will recall that the European Parliament (EP) prefers to regulate nicotine containing products (other than those that make medicinal claims) as consumer products with the addition of extra regulatory safeguards. As the Committee is aware, the UK supported medicines regulation in accordance with the Commission’s original proposal and the General Approach text in June 2013. The EP could not agree to this and a compromise was necessary to reach political agreement on the Directive as a whole.

I am aware of the range of arguments on e-cigarettes, and I want to reassure the Committee that the Government has no intention to force these products off the market. However, I am very aware of the concern that e-cigarettes should not become attractive to young people. Also, in recognising how novel e-cigarettes are, I want to be able to monitor the emerging e-cigarette marketing more closely.

During negotiations on a compromise, the UK sought a number of safeguards to achieve these aims. Among the safeguards we sought were: limitations on the opportunities to make e-cigarettes appealing to children through advertising and promotion; requirements for manufacturers/importers of e-cigarettes to provide full information on all ingredients and emissions; a maximum level for nicotine in e-cigarettes and that they deliver a consistent amount of nicotine to the consumer. In addition, we wanted Member States to be able to charge proportionate fees associated with collecting and analysing data that is provided by the industry; and for the European Commission to undertake a comprehensive review of the nicotine containing product market.

A compromise between Member States and the EP has now been reached that deals specifically with the regulation of e-cigarettes. Other nicotine containing products will not be regulated under the Directive. Under the compromise text, e-cigarettes which are not required to be authorised as
medicines or which do not fall under the medical devices regime, are regulated as consumer products with specific additional regulatory requirements for these products which will provide further safeguards for consumers. These regulatory requirements include a limitation on the nicotine content of e-cigarettes, a requirement for manufacturers and importers to report on ingredients in and emissions resulting from the use of e-cigarettes and provide toxicological data, a requirement for the provision of information to consumers including a health warning on packaging and restrictions on advertising and promotion. In Article 23, the Commission are required to report on a range of issues including developments in the e-cigarette market, including uptake by young people and non-smokers and the impact on smoking cessation efforts.

We will now undertake further careful analysis of the Directive text to determine what more we should consider doing at domestic level to reduce the appeal of e-cigarettes to young people. For example, the Directive does not set an age of sale for these products which is something I want to see in place (the Directive would allow Member States to implement age of sale measures domestically).

**ARTICLE 24 (MEMBER STATE FLEXIBILITY AND STANDARDISED PACKAGING)**

I also mentioned Member State flexibility in relation to packaging (Article 24) in my last letters to the Committee. The UK has argued strongly for the freedom for Member States to go further than the Directive in relation to packaging where justified on the grounds of public health. I should clarify that the proposed revisions to the Tobacco Products Directive include provisions that will affect the shape and some types of branding on packets of cigarettes, but do not introduce full standardised packaging. The European Commission stated in its press notice of 18 December 2013 that ‘Member States that want to introduce plain packaging can do it under the justifications and conditions provided for in the Directive’.

That said, you will be aware that the Government has commissioned an independent review of the public health evidence on standardised tobacco packaging. This review will report in March 2014 and the Government will then consider whether to introduce standardised packaging and what the detail of that might be.

In recent weeks, the Presidency proposed some changes to the General Approach text on Article 24 which we would have preferred not to see and we argued strongly to retain the General Approach. Any text which differs from the General Approach opens up arguments about the relationship between the Directive and future national measures. When it comes to tobacco control legislation, we know that litigation by the tobacco industry is always a risk.

As with any negotiation, compromises have had to be made but we feel that the current text gives us sufficient room to proceed with the clauses in the Children and Families Bill which would allow legislation providing for certain standardised packaging measures to be introduced - if that is what, in due course, is decided.

I thank the Committee for its engagement on this important dossier. With this further update, I formally request that the Committee lifts its scrutiny reserve on this Directive to enable me to support the Directive that will be considered at Health Council, possibly as early as January 2014.

I note that the Committee has indicted that it may request a supplementary Explanatory Memorandum should we consider that the text of the ‘agreed’ Directive is significantly different from the original Commission proposal following the conclusion of the scheduled Trilogue process. DH officials are in discussions with your committee clerks on this issue.

30 December 2013

**Letter from the Chairman to Jane Ellison MP**

Thank you for your letter of 30 December 2013 on the above proposal, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 15 January 2014.

We are grateful for your explanation of the outcomes of the most recent negotiations on this proposal, and for your response to our question on how the e-cigarette market in Europe will be monitored.

We note that the Department for Health plans to send this Committee a supplementary explanatory memorandum on the proposal. We look forward to receiving that explanatory memorandum and will respond to it in due course, as well as then considering clearing this legislation from scrutiny.
16 January 2014

Letter from Jane Ellison MP to the Chairman

Thank you for your letter of 16 January 2014, in which you noted that I would be sending a supplementary explanatory memorandum (EM) in relation to the ‘final’ compromise text that secured political agreement on 18 December 2013, ahead of that text being made public.

I am pleased to say that the European Commission published the compromise text on 20 January 2014. This is the version that Member States and the European Parliament will be asked to formally approve in the coming weeks. Therefore, I am able to provide you with a new EM relating to the final compromise text and the text itself, both of which I attach [not printed].

I hope that this information will assist you in your deliberations on the Directive with a view to removing the scrutiny reserve that you have in place on the text. I will be happy to answer any further questions that the Committee may have.

27 January 2014

Letter from the Chairman to Jane Ellison MP

Thank you for your supplementary explanatory memorandum of 27 January 2014 on the above proposal, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 February 2014.

We are grateful for your explanation of the outcomes of the most recent negotiations on this proposal.

We have decided to clear this proposal from scrutiny in advance of the final trilogue negotiations. I would like to thank you, your predecessor, and the officials in your Department for your excellent engagement with the Committee during its scrutiny of this proposal.

We would be grateful for notification once the proposal is finally agreed by the Council and Parliament.

5 February 2014

MEASURES TO SIMPLIFY VISA APPLICATION PROCESS FOR VISITORS FROM CHINA (UNNUMBERED)

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

Thank you for your letter of 30th October asking for a further explanation of the ramifications of the Government’s recent announcement of measures to facilitate visa issuing for Chinese visitors wishing to travel to the UK as part of an authorised European tour group.

The changes we have introduced in China are purely operational and limited in scope. We are simply accepting a completed Schengen visa application form with a short addendum for UK purposes from those Chinese tourists travelling to the UK and to the EU Schengen area on an Approved Destination Status (ADS) tour. We have made no changes whatsoever to our visa regime for Chinese nationals. Our standard visa decision making process will continue to apply and we will continue to run standard immigration checks on all ADS visa applications.

We do not participate in the border and visa elements of the EU Schengen Acquis and we will continue to process and assess visa applications from Chinese nationals in accordance with UK domestic legislation. We have good levels of practical cooperation with our Schengen colleagues and we continue to co-operate with them on visa policy matters through our attendance at the EU Council Visa Working Group. The operational changes we have made to Chinese visit visa processing will not have any negative impact on our co-operation with Schengen. We will monitor the outcomes, but believe that this form of cooperation will actually strengthen our relationship with EU partners.

16 December 2013
Letter from the Chairman to Mark Harper MP, Minister for Immigration, Home Office

Thank you for your letter of 16 December 2013 concerning the Government’s announcement of measures to simplify the visa application process for visitors from China, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 30 October 2013.

We consider good links with China to be of great importance to the economic future of the United Kingdom. We therefore welcome your initial efforts to simplify the visa application for some visitors from China. But the assurance in your letter about this shift in UK policy not having a negative impact on our co-operation with Schengen suggests that you may not have fully understood the views expressed over several years by this Committee that it was in our national interest to promote closer cooperation between our own visas regime and that of Schengen. The recent announcement with respect to Chinese visitors is a small step in that direction. We would to know whether you are considering further steps of a similar kind. On a point of detail, we would be grateful if you could let us know what the additional information required under UK domestic legislation is that necessitates the addendum, in addition to the Schengen application form, and to assure us that the process is as streamlined as possible. We look forward to a reply within the usual ten working days.

10 January 2014

Letter from Mark Harper MP to the Chairman

Thank you for your letter to my predecessor of 10 January. I apologise for the delay in my reply to your Committee.

You asked three questions:

— Whether the Government is considering further steps of a similar kind to the simplified visa application process for Approved Destination Status (ADS) visitors from China.

— What additional information is required under UK domestic legislation that necessitates the addendum to the Schengen visa application form.

— Whether our visa process for these visitors is as streamlined as possible.

Taking your points in order:

— We do not currently have plans to introduce any further measures similar to the simplified process offered to Chinese ADS tourists. This measure was introduced as a customer service initiative for a very specific group of visa applicants – Chinese ADS tourists wishing to visit both the UK and Schengen. As stated in my predecessor’s letter of 16 December 2013, we have good levels of practical cooperation with our Schengen colleagues and we continue to co-operate with them on visa policy matters through our attendance at the EU Council Visa Working Group. But we have no plans to sign up to the border and visa elements of the EU Schengen Acquis. We will continue to process and assess visa applications in accordance with UK domestic legislation.

— The additional information required under UK domestic legislation is on the UK part of the ADS tour to enable visa officers to assess the application against the UK’s Immigration Rules for visitors and to be satisfied that the ADS applicant meets these rules. Mandatory security questions, which are put to all visa applicants, are also contained in the addendum.

— I am confident that we offer an extremely good customer service to our Chinese visa applicants. Our mainland processing operation is supported by a network of twelve visa application centres, far more than any Schengen country. We offer a 3-5 day priority service; visa application appointments in the evenings and at weekends and a “passport-passback” service. For ADS applicants specifically, we have reduced the amount of recommended supporting documentation and now require far less than some of our Schengen colleagues. We accept just one copy of the itinerary and flight
details for the entire tour group and have introduced a simple guide in Chinese.

19 March 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 19 March 2014 concerning the Government’s announcement of measures to simplify the visa application process for visitors from China, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 26 March 2014.

We are grateful to your response to our specific questions.

26 March 2014

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

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

I last wrote to you on this issue on 9 May to respond to your questions on the Government’s approach to exempting health institutions that manufacture and use their own in-vitro diagnostic devices (IVDs) ‘in-house’ from requirements of the proposed IVD Regulation.

The European Parliament (EP) held a plenary vote on 22 October on the amendments to the European Commission’s proposals. The vote covered both the proposals for medical devices and the separate IVD Regulation and provides a timely opportunity to update you further on progress on these dossiers.

Meanwhile, you will be interested to be aware that the Commission has published an Implementing Regulation which seeks to strengthen the oversight and operation of notified bodies and create more consistent standards across the EU.

EP AMENDMENTS ON MEDICAL DEVICES

On pre-market scrutiny, the EP voted in favour of removing the Commission’s proposals for additional pre-market scrutiny and replacing it with a scrutiny system of two parts. Firstly, certain high risk devices must only be assessed by ‘special notified bodies’. These special notified bodies would be designated and regulated by the European Medicines Agency (EMA). Secondly, a newly formed committee of clinical experts, the Assessment Committee for Medical Devices (ACMD), would further scrutinise a subset of these devices. This scrutiny process would involve the ACMD reviewing information submitted by the manufacturer on the clinical evaluation of the device, the post-market clinical follow-up plan and any information on marketing of the device in non-EU countries. Which devices it would scrutinise would be decided on a case by case basis according to specified criteria, such as the novelty of the device and an increase rate of serious incidents in the category or group the device belongs to. However, scrutiny would not be engaged where Common Technical Specifications or harmonised standards in relation to clinical evidence and post-market clinical follow-up were in place.

The Government position on the proposed changes by the EP remains the same as in my previous correspondence in relation to the scrutiny mechanism proposed by the Commission. We are against any form of additional pre-market scrutiny and believe that patient safety is best safeguarded through strengthening notified bodies and co-ordinating vigilance across the EU. We are concerned that the proposals dilute the responsibility for pre-market approval and will create a longer and more uncertain approval process. Therefore, the Government do not support the EP proposals for pre-market scrutiny.

The EP proposal also raises concerns for the Government on their approach to the reprocessing of single-use devices. This is the process by which medical devices, which have been labelled by the manufacturer as single-use, are reprocessed, assessed as safe and resold as a ‘new’ device. The core of the proposal from the EP is that all medical devices would be reprocessable by default and that a central list, maintained by the Commission, would detail all devices which are unsuitable for reprocessing and so may be labelled single-use. However, changes introduced at plenary created a
confused framework which seems to allow reprocessing of all single-use devices in certain circumstances. The Government is concerned that the proposals from the EP are unworkable – even before the changes were made at plenary – and we continue to support the proposal put forward by the Commission as a balanced solution to the issue.

EP AMENDMENTS ON IVDs

On the ‘in-house’ exemption for Class D IVDs, the EP voted in favour of widening the scope of the in-house exemption to include Class D IVDs where certain requirements are met. These requirements are that no suitable CE marked equivalent IVD is available, the health institution is accredited to ISO 15189 and the health institution provides the Commission and their competent authority with a list of IVDs being manufactured in-house. The Government is pleased that the EP recognised the need to extend the in-house exemption to cover Class D IVDs and considers their proposal to be broadly workable, subject to some minor changes.

The EP has proposed new provisions relating to regulating genetic testing which requires informed consent to be given explicitly and in writing for all genetic testing with mandatory counselling before any genetic test. The Government has serious concerns about these proposals. Firstly, we are concerned that they are outside the scope of the legislation which is concerned with issues relating to the placing on the market of IVDs and not their subsequent use. Secondly, the proposals are out of step with current clinical practice in the UK and do not recognise the significant differences between different types of genetic tests. We have worked closely with stakeholders such as the European Society for Human Genetics and the Foundation for Genomic and Population Health on this issue and will continue to do so as we seek to remove these provisions during negotiations.

On pre-market scrutiny the EP voted in favour of proposals similar to those for the Medical Devices Regulations, and our position on these proposals is the same as our position on the proposals for the Medical Devices Regulation.

PROGRESS IN COUNCIL AND PROSPECTS FOR AGREEMENT

Progress in Council continues to be steady as Member States are taking their time in working parties to read through the proposal in full. This process brings to the surface what are likely to be key issues but Council is not yet ready to present an agreed position.

The EP and Commission have been vocal about their desire to agree the regulations before the elections for European Parliament in summer 2014. The UK remains committed to finding agreement and hopeful that, despite a challenging timetable, productive discussions between the Council and the Parliament can take place. However, whilst we wish to make quick progress we are not prepared to rush into agreeing legislation that includes provisions that will be overly burdensome on businesses or insensitive to public health policy in individual Member States. It is critical that the final agreement strikes the appropriate balance between correcting the weaknesses whilst maintaining the strengths of the current EU system.

IMPLEMENTING LEGISLATION ON NOTIFIED BODIES

My letter of 3 December 2012 detailed the work that UK is involved in on the ‘Joint Plan for Immediate Action’ in advance of the new legislation being agreed. One aspect of this work has resulted in the European Commission publishing Implementing Regulation 920/2013 on 24 September. This is secondary legislation which affects the current Medical Devices and Active Implantable Medical Devices Directives.

The Implementing Regulation includes requirements for designation of notified bodies to be undertaken by joint audit; two other Member State regulators and a member of the Commission will attend the assessment of notified bodies and make recommendations to the responsible regulator.

The legislation also restrictions the validity of notified body designation to five years.

The Government hopes that this legislation will go a long way towards addressing concerns regarding the consistency in quality of notified bodies across the EU in the short term.

I will continue to write and keep you updated on the progress of the Medical Devices and IVD Regulations.

4 December 2013
Letter from the Chairman to Earl Howe

Thank you for your letter of 4 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 18 December 2013.

We are grateful for your update on the outcome of the European Parliament’s deliberations on the proposals. It was particularly helpful that you set out in some detail how the Government intend to pursue their objectives with which we are broadly in sympathy.

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 December 2013

Letter from Earl Howe to the Chairman

I last wrote to you on this issue on 4 December 2013 to set out the progress of these dossiers, particularly taking into account the European Parliament’s (EP’s) plenary vote held on 22 October 2013.

The EP held another plenary vote on 2 April to formally adopt their first reading position before the European Parliamentary elections in May. As such, this seemed a timely opportunity to update you further on progress.

PROGRESS IN THE EUROPEAN PARLIAMENT

The EP’s vote of 2 April did not make any changes to the amendments agreed in their plenary vote of 22 October. This means that it is now certain that both proposals will go to a second reading.

The rapporteur on the medical devices dossier, Dagmar Roth-Behrendt, is not standing for re-election and as such it will be necessary for the EP to appoint a new rapporteur to this dossier, which I expect to take place in the autumn. At present, there are no firm indications who this new rapporteur will be. Dr Peter Liese MEP is standing for re-election and, if re-elected I expect him to continue as rapporteur for the in-vitro diagnostic devices (IVD) dossier.

PROGRESS IN COUNCIL

Under the Greek Presidency, progress in Council continues steadily. Member States completed a first read through the majority of both proposals in January. Since then Working Parties have been held fortnightly and have discussed compromise texts. Unfortunately, however, we have made relatively little progress at agreeing final compromise text and closing down discussion on particular areas. As such we are now looking to the Italian Presidency to take a firm grip on negotiations and steer Council towards a political agreement between Member States – we are realistically looking at late in 2014 before this is likely to happen. This means that trilogues with the EP are unlikely to start until the Latvian Presidency at the earliest.

However, there have been some positive signs from Council on UK priorities, including a widespread agreement to extend the ‘in-house’ exemption to cover Class D IVDs and an overwhelming rejection of proposals to adopt a new article, similar to that adopted in EP, relating to genetic testing.

On the UK’s other main priority, pre-market scrutiny, there have been further discussions in Council but with little progress made towards a compromise position: Member States continue to be divided on whether an additional layer of pre-market scrutiny is needed. The UK has attempted to take steps towards a compromise by proposing a series of amendments, covering the quality of pre-market clinical evidence, placing greater controls on the use of approved devices and greater transparency in the pre-market process, aimed at answering criticisms about the current regulatory system without introducing further pre-market scrutiny. I will be happy to provide the Committee with further information about these proposals if it would be of value.

The UK remains committed to finding a final agreement which strikes the appropriate balance between correcting the weaknesses whilst maintaining the strengths of the current EU system.

I will write again to keep you updated on the progress of these proposals under the Italian Presidency.

16 May 2014
Thank you for your letter dated 20 March 2013, following the Explanatory Memorandum covering proposals for the Fourth Money Laundering Directive (the ‘Directive’), and a new Wire Transfer Regulation (the ‘Regulation’).

This response provides an update on the state of play of the Directive. Council negotiations on the Wire Transfer Regulation have not yet taken place. We expect discussions on the Regulation to begin under the Greek Presidency of the Council in 2014.

The Directive implements the revised Financial Action Task Force (FATF) Standards (“the Standards”), which the Government fully supports, having played an active role in their development and negotiation. Next year the FATF is due to begin its evaluation of countries’ compliance with these new Standards. The Government expects the UK to be evaluated in 2016 and is seeking to agree the Directive in a timely way so that domestic legislation can be amended to reflect the Standards by then. As identified in the Explanatory Memorandum, while the Government remains broadly supportive of the Commission’s proposals, there are a limited number which gave cause for concern. These include those related to the extension of scope on gambling sector regulation, the removal of thresholds for e-money products, the introduction of a supranational approach to risk assessment and mitigation, and third country equivalence.

In addition other Member States have proposed changes to the Commission’s proposals which also give rise to concern.

The Government has made progress on these issues through negotiations at Council Working Groups, which moved from experts to attachés in November. Ministers considered some of these issues as part of a status update at the 15 November ECOFIN. The Lithuanian Presidency hopes to agree a general approach on this file early in 2014.

In parallel, both the Directive and the Regulation are being discussed actively in the European Parliament under the joint-leadership of the Economic & Monetary Affairs (ECON) and Civil Liberties, Justice & Home Affairs (LIBE) committees, suggesting potential progress towards trilogue negotiations in January/February 2014.

An update on the proposals of concern to the UK in relation to the Directive is provided below.

**COMPANY REGISTRY OF BENEFICIAL OWNERSHIP**

Transparency of company beneficial ownership has been a priority for the UK’s 2013 Presidency of the G8. Following commitments made at the Lough Erne Leaders’ Summit and stakeholders’ responses to a consultation led by the Department for Business, Innovation & Skills, the Prime Minister announced on 31 October that the UK’s central registry of company beneficial ownership information will be made publicly accessible. A full response to the BIS consultation will be issued in early 2014. The Directive is an opportunity to secure EU wide commitment on transparency of company beneficial ownership, ensuring that companies know who owns and controls them and that this information is accessible to law enforcement, tax administrations and other relevant authorities—ideally through a central registry for greater transparency.

Ahead of the 15 November ECOFIN, the Prime Minister wrote to President Van Rompuy to encourage other Member States to follow the UK’s lead on this issue; a letter from MEPs to EU Finance Ministers also urged Member States to take action similar to the UK on company beneficial ownership. These letters gave renewed political impetus at ECOFIN, yet support remains patchy.

A number of Member States and MEPs are also now calling for registries of trust beneficial ownership. The Government recognises the need to improve the transparency of trusts to help prevent the use of trusts for illicit purposes, and is committed to implementing the Standards in relation to trusts in order to achieve this. However the Government does not believe that trust registries would be an effective option to addressing the risks associated with trusts.

**SUPRANATIONAL RISK ASSESSMENTS**

In line with the Standards, the Commission’s proposals require Member States to conduct a risk assessment of their money laundering and terrorist financing (ML/TF) regimes. The Government is supportive of this, and the PM committed in the UK G8 Action Plan to conducting a national risk
assessment by 2014. The Government recognises the need for Member States to share the findings of these assessments to help identify EU level risks, particularly where the findings lead to policy decisions at Member State level. However, the Government opposes granting powers to the Commission to introduce legally binding measures across the EU in response to a supranational assessment of risk.

Risk varies significantly across Europe, as it does globally. The assessment of risk is most effective at national level—with effective communication of that within the EU to identify and consider EU level risks. The Government will resist proposals to give the Commission new powers to introduce legally binding measures in response to a supranational assessment of risk.

THIRD COUNTRY POLICY

The Commission’s proposal discontinued Third Country Equivalence listing as established under the Third Money Laundering Directive, yet some Member States have called for its reintroduction. The Third Country Equivalence listing sought to identify third countries with equivalent ML/TF legislation in order to extend to those third countries the effective exemption from due diligence that exists for firms doing business with each other in Europe. The lack of objective and up to date information on which to make decisions on third country equivalences led to a listing process that was highly subjective, and criticised by the FATF during evaluations of EU Member States. For this reason, the Government will continue to resist other proposals to continue with either a ‘white list’ or ‘black list’ of third countries.

E-MONEY (ELECTRONIC MONEY)

The Government remains concerned at the Commission’s proposal to remove the threshold below which due diligence is not required for e-money products. This is expected to lead to different approaches to e-money by Member States, given the approach already taken by some Member States and what is being sought by some in negotiations on the Directive. Removal of the threshold could undermine the single market, the growth of this sector and financial inclusion. Council Working Group negotiations are progressing positively and the Government is working closely with industry representatives to ensure a proportionate and effective approach to e-money products.

GAMBLING SERVICE PROVIDERS

The Commission’s proposal extended the scope of the Directive to require regulation of all providers of gambling services. This would go beyond the scope of the Standards, which only apply to casinos. Given the disproportionate impact that this would have on the gambling sector in the UK, the Government continues to oppose this proposal.

Council Working Group negotiations are progressing positively and the Government is working closely with industry representatives to ensure a proportionate and effective approach to any extension of scope in the gambling sector.

POLITICALLY-EXPOSED PERSONS (PEPs)

The Government supports the Commission’s proposal on PEPs, which is to treat all EU PEPs as ‘domestic’ PEPs, which according to the Standards can be subject to a risk-based rather than prescriptive approach to customer due diligence. Not all PEPs present the same level of risk and the Government does not consider it necessary for all PEPs to be subject to the same level of due diligence by firms. The Government opposes other proposals for an EU list of PEPs, as that would undermine the risk-based approach that firms take, and lead to a tick-box approach to due diligence that is likely to be less effective in preventing the laundering of the proceeds of corruption. This view is supported by recent best practice issued by the FATF.

A broad definition of PEPs and support for a risk-based approach will allow a proportionate approach that can be adapted to different cultural and political contexts.

1 PEPs are defined as individuals entrusted with a prominent public position, their family and close associates. More information is available on the FATF website: http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf
COOPERATION BETWEEN FINANCIAL INTELLIGENCE UNITS (FIUs)

The Directive contains a small number of provisions which contain JHA obligations. These relate to cooperation between Financial Intelligence Units. The Government believes that JHA obligations require a JHA legal base, and is seeking to have these concerns addressed prior to agreement being reached on the Directive.

SANCTIONS AND SUPERVISION

The Government agrees with the Commission’s aim of harmonising sanctions, highlighting the need for measures to remain ‘minimum maximum’ in nature, i.e. they are the minimum that can be applied but can be exceeded. This is in line with the provisions of the Standards. Minimum sanctions requirements should be proportionate and in line with the powers and capacities of supervisors and self-regulated bodies. On supervision, the Government welcomed the Commission proposals and has secured progress in clarifying the issue of home-host country supervision in order to ensure minimal burden on businesses ‘passporting’ their services from one Member State into another.

Your letter of 20 March 2013 raised questions for clarification by the Government. Matters relating to payment of ransoms and the Council of Europe’s Warsaw Convention are for the Home Office to respond to and you will receive a response shortly. On the Warsaw Convention specifically, the current text of the Fourth Anti-Money Laundering Directive may have a bearing on our approach to the Warsaw Convention. The Government is carefully considering the interaction between the Directive and the Convention and will be in a position to reach a conclusion on the Convention once the text of the Directive has been settled. Regarding updating Parliament on proceedings at the FATF plenary sessions, it is now standard practice after each plenary for a summary of discussions to be laid in Parliament.

13 December 2013

Letter from the Chairman to Lord Deighton

The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered an Explanatory Memorandum on the above proposals in March 2013 and I wrote to you on 20 March setting out their views. In particular, I asked if you could provide us with an update about the Government’s current position on the payment of ransoms to pirates.

I would be most grateful if you could address this point (reproduced below) in the next ten working days.

You may also be aware that the above report also considered the matter of ransom payments to pirates, which was followed up in our report on Turning the Tide on Piracy, Building Somalia’s future: Follow-up report on the EU's Operation Atalanta and beyond (3rd Report of Session 2012-13, HL Paper 43), which stated: “We reiterate our previous conclusion in our 2009 report that those involved in assembling ransoms in the United Kingdom have a duty to seek consent for its payment and that not to do so, if necessary by filing a Suspicious Activity Report, may result in the commission of a criminal offence. We request that the Government now respond substantively to this recommendation”. We note that the Government’s response to this report stated “that to require those assembling a ransom to report that activity, and where appropriate to seek consent before payment of the ransom, would be a new departure”. We further note that Lord Astor of Hever, responding for the Government in the Grand Committee debate on the Somali Piracy report stated that “Companies assembling ransoms in the UK must seek consent from the Serious Organised Crime Agency prior to payment. The Government do not make or facilitate substantive concessions to hostage-takers, including the payment of ransom. I would point out that it is not against UK law to pay piracy ransoms”. He later agreed, in response to a question from Lord Davies of Stamford, that it was not a satisfactory situation that such payments were not illegal. With respect to our recommendation, and in the light of the Minister’s comments in the debate, we would be grateful if you could provide us with an update about the Government’s current position on this matter.

18 December 2013

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2 HL Deb 11 March 2013 col GC22
Letter from the Chairman to Lord Deighton

Thank you for your letter of 13 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 8 January 2014.

We are grateful for your update on the progress of negotiations on the proposals which in general we support, as we do the Government’s approach to them.

We are, however, deeply frustrated that the Government have not yet responded to our letter of 20 March 2013 seeking an update on their position on money laundering in the context of payment of ransoms to pirates. Parliamentary scrutiny depends on the free flow of information between the Government and Committees and on timely responses by Government to requests for information; and on this occasion we regret that the Government have so far failed to respond to a clear request. We trust that a response to our requests for clarification about the payment of ransoms will now be forthcoming within the usual ten working day period.

We continue to retain this document under scrutiny. We look forward to receiving further updates about the progress of negotiations on these proposals in due course in addition to a response to our specific question above.

10 January 2014

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

Thank you for your letter of 10th January to Lord Deighton asking for clarification on the Government’s current position in relation to Suspicious Activity Reports regarding ransom payments.

As the Minister with responsibility for this matter, I am replying on his behalf.

Although there is no UK law against the payment of ransoms in piracy cases, the Government strongly counsels against doing so, as making concessions only encourages such activity.

Under the Proceeds of Crime Act 2002, if an individual knows or suspects they are dealing with criminal property and if they wish to obtain a statutory defence for carrying out that activity they should submit a Suspicious Activity Report to the National Crime Agency (NCA) and obtain consent.

To obtain the consent of the NCA, they need to provide the NCA with sufficient information for a properly informed consent decision to be taken.

In circumstances where consent was not sought when it should have been, it is exclusively a matter for the independent prosecution authorities to consider each case on its merits, and to apply the tests of evidential sufficiency and public interest as set out in the Code for Crown Prosecutors.

I trust that this letter makes the Government’s position clear.

29 January 2014

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

Thank you for your predecessor’s letter of 29 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 12 February 2014.

Your letter sets out with admirable clarity the position in law with respect to those in the UK who may be engaged legally in assembling ransoms to be paid to pirates in return for the release of hostages and cargoes. But we wish to return to our initial point, the fulfilment by the British Government of its commitments under EU and UK laws designed to combat money-laundering.

It was clear to us, in our inquiry, that ransom payments are criminal property, as defined by UK law. Furthermore, there is surely no doubt that a substantial proportion of these transactions are subsequently being laundered. Do these circumstances not create a clear obligation on those assembling the ransoms to file a Suspicious Activity Report (SAR) in respect of them? If so when does the obligation arise? Are the Government actively taking steps to ensure that those assembling such ransoms are aware of the obligation to file a SAR; and are law enforcement agencies making the fullest use of any information provided by SARs to prevent any laundering of such funds?

I would be grateful for a response to these questions within ten working days.

12 February 2014
Letter from Lord Deighton to the Chairman

Thank you for your letter dated 10 January in response to the update provided on the Fourth Money Laundering Directive (the ‘Directive’) and a new Wire Transfer Regulation (the ‘Regulation’). I note that the Home Office has taken up your outstanding request for information on ransom payments and anti-money laundering.

I would like to provide you with an update on negotiations as the Greek Presidency seeks to reach a general approach on both the Directive and the Regulation – these usually being agreed in tandem. Indications are that the Presidency intends to agree a general approach within the next few weeks.

Council negotiations on the Regulation will begin on 14th March. While we expect these to be short, it is yet unclear how long it will take for the negotiating process to catch up with the Directive and allow for the usual joint Council agreement on both pieces of legislations.

Since the last update, the European Parliament Economic & Monetary Affairs (ECON) and Civil Liberties, Justice & Home Affairs (LIBE) Committees have jointly voted to approve their amendments to the Commission proposals for the Directive and Regulation. This position is expected to be considered by the European Parliament plenary sessions in March and April, ahead of its elections in May. The legislative process will restart in autumn 2014, once the new European Parliament is in session, at which point we expect the new MEPs will vote to retain the text agreed by the previous European Parliament.

Below, I set out the UK negotiating approach on the Regulation as well as summarise the main outstanding issues being discussed in Council in discussions on the Directive. Given the uncertain and compressed timetable for the proposals, I hope that this further update will be sufficient to enable your Committee to clear them from scrutiny, or grant a waiver, ahead of any Council General Approach that the Government is able to support.

THE REGULATION

UK Government welcomes the Commission’s proposal for the Wire Transfer Regulation which reflects the new global Financial Action Task Force (FATF) standards and address areas where gaps in transparency still remain. In particular we support the proposal in the Regulation to maintain the €1,000 threshold for wire transfers, below which information is included but not verified, as this is consistent with the FATF standards. This will address inconsistent implementation across the EU, which will make it easier for firms operating across borders or who operate in multiple EU jurisdictions. The UK Government supports the extension of obligations to Intermediary Payment Services Providers, providing this is balanced against the need for a smooth operating system of payments for banks and money transmitters. The Government continues to engage with the private sector to ensure a proportionate approach to the Regulation.

THE DIRECTIVE

COMPANY REGISTRY OF BENEFICIAL OWNERSHIP

The Government continues to encourage EU partners to lead from the front on this issue through an ambitious approach in the Directive. As set out in my December 2013 update, the Directive is an opportunity to secure EU wide commitment on transparency of company beneficial ownership, ensuring that companies know who owns and controls them and that this information is accessible to law enforcement, tax administrations and other relevant authorities-including through central registries of company beneficial ownership information.

The European Parliament Committees leading on the Directive voted on 20 February to approve mandatory registries of companies and trusts, and some Member States continue to call for registries of trust beneficial ownership. The Government recognises the need to improve the transparency of trusts to help prevent the use of trusts for illicit purposes, and is committed to implementing the relevant FATF standards in order to achieve this. However the Government takes the view that other mechanisms offer a more effective and proportionate way to address the money laundering and terrorism financing (ML/TF) risks presented by higher-risk trusts.

SUPRANATIONAL RISK ASSESSMENTS

The Directive provides for a Commission-led supranational risk assessment and the UK Government does recognise the need for greater EU-level coordination on the identification of common cross border risks. However the Government continues to resist any proposals to give the European
Commission new powers to introduce legally binding measures in response to a supranational assessment of risk. There is significant support for our position in Council.

THIRD COUNTRY POLICY

The UK and others have successfully resisted attempts to reintroduce a Third Country Equivalence listing process, the shortcomings of which I set out in my last letter to you. There has been growing support for the introduction of a new EU Black list of third countries with serious deficiencies in their anti-money laundering/counter terrorist financing (AML/CTF) regimes. The Government remains unconvinced as to the added-value of such a EU listing process given the existing, complex and resource intensive Black lists by the Financial Action Task Force (FATF).

E-MONEY (ELECTRONIC MONEY)

The threshold below which due diligence is not required for e-money products has been reintroduced though there remain intense discussions on the nature and scale of risk-mitigating conditions for this threshold to apply. As highlighted in our previous update, the Government continues to work closely with industry representatives to ensure a proportionate and effective approach to e-money products.

GAMBLING SERVICE PROVIDERS

The Government’s call for a risk-based approach to the gambling sector has received some support and Council Working Group negotiations have progressed positively. There remains some degree of opposition to granting Member States sole responsibility for exercising risk based exemptions over the sector and there have been recent calls for the Commission to have a say in this matter. The Government remains of the view that individual National Risk Assessment provides sufficient evidence for Member States to exempt certain providers.

COOPERATION BETWEEN FINANCIAL INTELLIGENCE UNITS (FIUs)

The Government continues to engage with Central Departments, European Commission and Council Legal Service in addressing concerns over the JHA obligations. We continue to seek agreement of a resolution prior to agreement being reached on the Directive.

10 March 2014

Letter from the Chairman to Lord Deighton

Thank you for your letter of 10 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 26 March 2014.

We note the Government’s view that it is making progress in the negotiations on the draft Directive, for example on beneficial ownership. Equally, however, we note that there are also aspects of the proposals about which the Government appears to have ongoing concerns, for example, granting the Commission new powers to introduce legally binding measures in response to a supranational assessment of risk, and ensuring a proportionate approach to e-money. Your letter of 10 March does not give any indication as to how these issues might be resolved in negotiations.

While we are in principle sympathetic to your request for a scrutiny waiver or clearance ahead of a possible agreement on a General Approach, we would expect more detailed information about the Government’s concerns and how they could be addressed in negotiations before granting such a waiver or clearance.

In addition, your initial explanatory memorandum on the proposals indicated that the Government planned to conduct an assessment of the proposal’s likely impact on the UK. Has such an assessment has been completed? If so, we would be grateful to receive a copy.

26 March 2014

Letter from Karen Bradley MP to the Chairman

Thank you for your letter of 12th February regarding Suspicious Activity Reports (SARs) relating to ransom payments. You asked for further information about the circumstances in which a SAR is
required, how these obligations are being communicated to the reporting sector and what steps are taken by law enforcement agencies in response to SARs.

**OBLIGATION TO SUBMIT SARS**

For an individual within the UK regulated sector, the obligation to file a SAR arises at the point where they know or suspect, or have reasonable grounds to know or suspect, that another is involved in money laundering. The Home Office and NCA do not advise on what constitutes suspicion, it is therefore a matter for the reporter to determine whether and when a SAR should be submitted. This obligation could in principle arise whilst the ransom money is being gathered, but is more likely to start at the point at which the pirate hostage takers, or anyone connected to them, receives property which represents their benefit from that criminal conduct.

This is because a ransom payment would be considered to be criminal property under UK law only at the point at which it became the property of the person who has benefited from criminal conduct (section 340 of the Proceeds of Crime Act 2002 (POCA)). In other words, the ransom payment becomes criminal property only once it is in the hands of the pirate.

Prior to that point, when a ransom payment is being assembled, there are circumstances when an individual within the UK regulated sector would be obliged to submit a SAR. This would apply where they have reasonable ground to know or suspect that the ransom payment may be used for the purposes of terrorism, as defined by sections 15-18 of the Terrorism Act 2000 (TACT) in which case a "consent" SAR must be submitted under TACT before the payment is made.

Non-regulated individuals are not obliged to file a SAR, but they may nonetheless seek consent from the NCA to do a prohibited act under POCA or TACT in order to have a defence against the commission of offences under those Acts. The decision to make a SAR under POCA or TACT is for the individual alone. The stage at which they do so will depend on the particular circumstances of the case and in particular, on the offence they are at risk of committing.

Where a request for consent is made in relation to potential POCA offences, the NCA considers it in the light of Home Office guidance (Circular 029/2008). Their decision is made on the facts of each case and the effect of their decision will be to confer, or not, a defence to a prosecution for a money laundering offence; it is not to judge the propriety of the planned ransom payment. In the event that a person did not seek consent, and the money was in all respects legal until it reached the hands of the pirates, it is unlikely that a prosecution for money laundering, solely because consent was not obtained, would be regarded as being in the public interest.

Where request for consent is made in relation to potential TACT offences, the NCA will engage with relevant law enforcement and HM Government partners to assess the intelligence available in order to make an informed and proportionate decision. Again, the decision is made on the facts of each case and the effect of their decision will be to confer, or not, a defence to a prosecution under TACT; it is not to judge the propriety of the planned ransom payment.

**STEPS BEING TAKEN TO ENSURE THAT OBLIGATIONS TO FILE SARS ARE UNDERSTOOD:**

In relation to information made available to those involved in assembling funds to pay as a ransom, the NCA website provides information and guidance on what a SAR is, when to submit a SAR and the legal basis for reporting SARs. It also provides links to the relevant Home Office Circulars. Advice and guidance on reporting suspicion and responsibilities under the Money Laundering Regulations is also available from HM Treasury approved supervisors. Links to the sector specific Anti-Money Laundering guidance, which is HM Treasury approved, are available on the HM Treasury website.

**STEPS BEING TAKEN TO ENSURE THAT LAW ENFORCEMENT AGENCIES MAKE THE FULLEST USE OF INFORMATION PROVIDED BY SARS**

SARs provide a vital source of intelligence for law enforcement agencies. The NCA identifies the most sensitive SARs and sends them to the appropriate organisations for investigation. The remainder are made available to UK law enforcement bodies via a secure channel. This intelligence is available to accredited staff and organisations for a period of six years and can be used to inform operational and strategic decisions.

I trust this letter provides further reassurance of the Government’s fulfilment of our international and domestic commitments to tackle money laundering in these circumstances.

9 April 2014
Letter from the Chairman to Karen Bradley MP

Thank you for your letter of 9 April 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 7 May 2014.

Your letter clearly sets out the obligations on individual both within and outside the regulated sector to file suspicious activity reports (SARs). We are grateful for this full reply to our question and your assurance that the UK is meeting its international and domestic commitments to tackle money laundering in these circumstances. We also note the availability of literature and Treasury approved supervisors to provide information and guidance on SARs. Finally, we welcome your confirmation that the intelligence provided in SARs is provided to the relevant law enforcement bodies and are a source of intelligence.

No reply to this letter is required. I feel bound, however, to make two observations. First, it should not have taken five years and many exchanges of correspondence for the Government to have provided a full and clear explanation of their position. And secondly there surely does remain some doubt as to whether ransom payments may be ending up financing terrorist activities and a high degree of probability that the proceeds are being laundered. That is not a satisfactory position. We will continue to discuss the progress of the above Directive with Her Majesty’s Treasury.

7 May 2014

Letter from Lord Deighton to the Chairman

After a period of relative quiet, the Greek Presidency is proceeding rapidly with the aim of securing a General Approach in the coming weeks. They have scheduled a final attaché meeting on 16 May on both the Directive and the Regulation to prepare discussions by Coreper on 28 May.

Given the potential for early prorogation and the fact that a deal could be tabled for agreement at official level as soon as 28 May, with Council consideration potentially days after, I am writing to update you on the current state of negotiations on the Fourth Money Laundering Directive (the ‘Directive’) and a new Wire Transfer Regulation (the ‘Regulation’).

THE REGULATION

As anticipated, negotiations on the Regulation have proceeded quickly and favourably following our April update. There has been a broad consensus on the need to align the scope and sanctions of the Regulation with the Directive, the need for European Supervisory Agencies to update their existing guidance on the Regulation and conclusive efforts in aligning the Regulation and the Payment Service Directive II’s key definitions. Going into the attaché meeting on 16th May, the main bone of contention relates to the EUR 1000 threshold under which information is included but not verified. The UK secured useful clarification by which firms may carry out additional checks below the threshold on the basis of suspicion of anti-money laundering and counter-terrorism. The private sector is content with this level of flexibility. However several Member States have since been pushing for a zero-threshold or the ability to lower the threshold to a level set at national level should they wish to do so on the basis of risk. Both options are not proportionate and are likely to create significant costs for firms operating across the EU. The Commission is firmly against these proposals and particularly fear a possible fragmentation of the single market should these go ahead. The Council seemed equally split in the last round of negotiations and the Government continues to engage accordingly including looking at potential compromise and liaising with the private sector.

THE DIRECTIVE

The meeting on the 16 May will be the first since February and no new compromise text has been made available since. Similarly, there has been no negotiation round as the Greek presidency aimed to get the Regulation on the same level of consensus as the Directive before resuming discussions. Extensive engagement has allowed us to get clarity, and in many instance positive signs, on where the Directive is heading to on key issues for the UK including on the issue of supra-national risk assessment and equivalence. On the former in particular our views have been duly reflected. The Government may need to show flexibility on black listing given our positive achievement on white listing in particular. The Government has stepped up engagement with the Commission, the Presidency and Member States on selected issues of concern. Further, the Government has considered the fall-back position and compromise options should there be a need for these during the
16 May meeting and ahead. The Government remains confident that a good deal may be secured in the coming weeks.

On companies’ beneficial ownership, our active leadership on a mandatory registry is bearing some fruits however pressures continue to build for a similar treatment of trusts. The Government’s views remain unchanged and we continue to argue that a mandatory registry of trusts would be a disproportionate and ineffective means to tackling the potential misuse of trusts. We are working closely with the Presidency, the Commission and EU partners to secure an acceptable deal – significant progress has been achieved.

With respect to your query on an impact assessment, the government has engaged extensively with all sectors, supervisors and departments gathering evidence to form UK negotiating positions as well as sharing compromise texts with them for their views. A standalone, full-fledged impact assessment will be carried out once the Directive is approved, in consultation with public and private sector partners.

8 May 2014

Letter from the Chairman to Lord Deighton

Thank you for your letter of 8 May 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 14 May 2014.

We note that the Government appear to be enjoying some success in their negotiations on the draft Directive and Regulation. Having received a full update on the key issues previously discussed we are now prepared to grant a scrutiny waiver on both the Regulation and Directive. We would welcome further updates on the progress of negotiations.

In addition, we welcome Government’s engagement with business on the two proposals but were somewhat surprised to read that an impact assessment was no longer going to be produced before agreement of the Directive but after. We would be grateful for clarification of the reason for this decision.

14 May 2014

MULTI-ANNUAL FINANCIAL FRAMEWORK (MFF) HOME AFFAIRS REGULATIONS UPDATE (17959/13, 17939/13, 17425/13, 16600/13)

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

Following James Brokenshire’s letter of 16 December 2013, I have taken responsibility for the EU portfolio and I am writing to inform you that political agreement has been reached on all four of the MFF Regulations.

As you are aware we opted in to the Asylum and Migration Fund and accompanying Horizontal Regulation, but not to the Internal Security Fund (police). We are excluded from the Internal Security Fund (borders) because it builds on the part of the Schengen Acquis that we do not participate in.

As you know, negotiations for the Home Affairs MFF package (2014-2020) started in 2012. The last remaining Regulations reached political agreement at COREPER on the 20 December 2012. The texts have been agreed upon by the European Parliament’s LIBE committee (9 January 2014) and we expect them to go to plenary in March before returning to Council for adoption. The Regulations will apply from the 1 January 2014 and a summary of negotiations for each one is noted below.

Please also find attached [not printed] the full version of the limité texts. The attached documents are being provided to the Committee under the Government’s authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limité marking. They cannot be published, nor can they be reported on in any way which would bring detail contained in the document into the public domain.

ASYLUM AND MIGRATION FUND (AMF)

The UK will receive a national allocation of €370m (£308m) and can apply for funding through the €360m (£299m) which is directly managed by the Commission. Throughout the trilogue negotiations
the UK sought to reduce administrative burdens and increase the effectiveness of all EU funds. Whilst not ideal, we achieved a set of minimum percentages that we can use effectively and which allows the UK to focus the majority of its budget on its main priority, returns. We also successfully included a condition to allow us to depart from the minimum percentages as long as an acceptable explanation is provided. We successfully ensured that intra-EU relocation and the resettlement of refugees remained voluntary.

HORIZONTAL REGULATION

Overall we were successful in negotiating a Regulation that allows for simplified implementation and generally greater flexibility, including the composition and implementation of partnerships and a monitoring committee. The UK was also successful in keeping implementing acts for both the Commission’s Annual Work Programme and the Mid-Term Review.

INTERNAL SECURITY FUND - POLICE (ISF–P)

As you know early on in the process we successfully removed recitals which built on the Schengen acquis legal base. Subsequently we also successfully secured changes to the criteria used to determine funding distribution, such as the removal of criteria relating to the number of “designated joint EU critical infrastructures” (of which the UK has none). We ensured passenger name record initiatives can be supported and also that objectives relating to tackling illegal drug supply were consolidated into this one Fund. As I have previously assured you, we will now consider the UK’s position regarding participation post adoption, providing an EM on a published text as soon as it is available.

NEXT STEPS

You were previously informed that the UK’s policy dialogue on the Asylum and Migration Fund took place on 21 October and discussions were positive. We now aim to submit the National Programme by 21 February. The Commission then has 6 months to comment, negotiate and approve the Programme. The Regulations will apply retrospectively from 1 January 2014 and can be allocated prior to the National Programme being fully agreed.

18 February 2014

NETWORK INFORMATION SECURITY ACROSS THE EU (6342/13)

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

I am writing to update the Committee on the negotiations on the Network and Information Security Directive. This Directive was proposed by the Commission a year ago, and progress in the Council under both the Irish and Lithuanian Presidencies has been slow.

The Network and Information Security proposal was discussed within the Telecoms Working Group and time was scarce. Both Presidencies elected to devote the majority of the group’s time to negotiating more mature or time critical dossiers, notably the proposed regulations on Electronic Identification and Other Trust Services and Guidelines for trans-European Telecommunications Networks.

Council concluded the first article-by-article read through of the Network and Information Security Directive in December. The comments from all Member States were preliminary and, given the complexity and sensitive nature of the topic, all delegations made it clear that a lot more discussion would be required before a final position could be reached.

In preparation for the December Telecoms Council, the Lithuanian Presidency produced a progress report on the discussions held under their Presidency which highlighted specific areas that would require further debate. I enclose [not printed] a copy of this report with this letter and have summarised the main conclusions below.

There was a broad desire amongst Council members to reduce the scope of the Directive. A number of Member States would prefer more flexibility to determine which operators would fall under the scope of the reporting requirements and concerns were expressed regarding the inclusion of public administrations and information society services.
Many Member States also wanted more flexibility around establishing a competent authority and Computer Emergency Response Team (CERT). A number of delegations said they would like clarity that Member States could set up more than one CERT and also that it should be made clear that it would be possible for existing bodies to perform the functions and tasks of the competent authority.

More discussion will be required on the proposed cooperation network and the tasks that this network would perform as well regarding the mandatory nature of the security breach reporting proposed in Article 14. Some Member States feel that this should be left up to Member States to determine whilst others see the value of mandatory reporting. There was a consensus in Council opposing the Commission’s proposed use of delegated acts throughout the Directive.

The Greek Presidency has said that given the paucity of discussion to date within Council, they will not aim to achieve a first reading deal before the European Parliament elections. Rather, they have stated their ambition is to secure a Council General Approach at the June Telecoms Council. I therefore expect the discussions on this file to intensify during the spring.

The European Parliament has made much swifter progress on the file and the lead committee, IMCO (Internal Market Committee) agreed their position on the proposal at the end of January. My officials worked very closely with Parliamentary contacts in the run-up to this vote and the UK’s influence can be seen in the Committee’s decision to exclude public administrations and information society services from the scope of the Directive. The Committee also agreed to text that would give greater flexibility to Member States to determine the institutional structures for reporting breaches and coordinating with other EU Member States which we broadly support.

Nonetheless, we do have strong concerns about IMCO’s decision to extend the proposal and include the food chain, water and internet exchange points within scope of the reporting requirements. In addition we will have to carefully consider whether the Committee’s changes to strengthen the cooperation network between EU Member States are necessary and proportionate. The IMCO decision will be voted on by the wider European Parliament at the March plenary session. We do not expect the Plenary to make any significant changes to it.

20 February 2014

Letter from the Chairman to David Willetts MP

Thank you for your letter of 20 February 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 March 2013.

We are pleased that other Member States share your and our concern about the establishment of Computer Emergency Response Team (CERT)s where countries already have sophisticated CERT networks. We also welcome the broad desire for flexibility concerning the rigid expansion of reporting requirements.

We would be grateful if you could indicate when you expect to produce a UK-specific cost-benefit analysis of the proposal. We would also welcome further information on whether other Member States share your concern about not imposing unnecessary regulatory burden on business. Finally, have other Member States raised concerns about potential negative impact on existing regulatory measures?

We would be grateful for a response to the above questions within the usual ten working days and look forward to further updates on this proposal which remains under scrutiny.

5 March 2014

Letter from David Willetts MP to the Chairman

Thank you for your letter dated the 5 March 2014.

My officials have conducted a call for evidence and initial assessment of the potential impact of the Commission’s proposal. Our estimates indicate that this proposal could impact up to 22,935 businesses in the UK. The required potential additional spending for these businesses would be £992.1m a year in the medium case scenario and £1,984.2m a year in the high scenario. More precise indications of the cost to businesses of the proposal are difficult to establish at this stage due to the lack of detail in the proposals. My officials therefore also compiled a summary of qualitative responses to our consultation. Both the impact assessment and the summary of responses can be found here at the below link, and copies are enclosed [not printed].

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We have sent this report with an accompanying explanatory note to the Commission, the European Parliament and members of the Council.


A number of other Member States have echoed our concerns about not imposing unnecessary regulatory burdens on business. Concerns have primarily centred on the range of market operators in the scope of the Directive, and the extent of the mandatory breach reporting requirements. A number of Member States have supported our request to remove ‘providers of information society services’ from scope as this sector is characterised by a large number of smaller businesses that would feel the regulatory burden of this proposal particularly keenly. The UK successfully lobbied the European Parliament’s IMCO Committee to remove these operators from the scope of the proposal.

Other Member States have been developing their own national strategies for addressing cyber security concerns, for example Germany, France and the Netherlands are all in the process of bringing forward domestic legislation in this area. These countries are all keen to ensure that the proposal does not have any negative impacts on existing and future regulatory and non-regulatory measures. My officials are working closely with their counterparts in these Member States to form common positions, where possible.

We expect more in-depth discussions of both of these issues when the negotiations on the proposal recommence in the Telecoms working group later this month.

11 March 2014

Letter from the Chairman to David Willetts MP

Thank you for your letter of 11 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 March 2014.

We are grateful for the further information you have provided about impact, and the views of other Member States on not imposing unnecessary regulatory burden on business and ensuring that the proposal does not have any negative impact on existing regulatory measures.

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

20 March 2014

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

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

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

We are very conscious of the globalisation of terrorism and of recruiting terrorists, and the indispensability of effective international action to combat radicalisation. We therefore note and support the review of the EU Strategy for Combating Radicalisation and Recruitment to Terrorism, to ensure it reflects current trends, experiences and best practice. We agree that this is primarily an area of responsibility for Member States but, like you, see the added value certain EU-level action could add. We welcome the Government’s efforts to ensure the revised Strategy reflects the need to prevent and counter radicalisation both inside and outside the EU. We look forward to regular updates on the progress of this review over the coming months. In addition, we would welcome further information on whether there are additional measures the Government would like to see included in the revised strategy.

We would welcome a response to the question above and an initial update after the discussion by the Terrorism Working Party on 6 March.

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

Thank you for your letter of 26 February following the Committee’s consideration of the Communication and its Explanatory Memorandum.

You asked for further information on whether there are additional measures which the government would like to see included in the revised ‘Strategy for combating Radicalisation and Recruitment to Terrorism’, currently being updated under the Greek Presidency.

We are broadly content with the direction of the strategy and support the increased focus on: the need to address all forms of extremism; counter radicalisation initiatives where the role of the internet and social media is concerned and; the need for greater coordination between the domestic and external elements of the EU’s counter radicalisation work.

We believe that the revised strategy presents an opportunity for enhanced coordination at European level and one area where we feel that this can be most effectively carried out is in communications. As both an approach and a means of delivery this is a cost effective and flexible method for coordinating an EU response to strategic threats which cut across Member State priorities. Coordinated communication efforts could improve EU and Member State capacity to: understand key audiences within communities of concern; assess appeal and traction of key messages in those communities and; enhance the pace and scale of a strategic communications campaign response. Communications campaigns could be an effective method for joint delivery of the strategy.

We are also advocating an increased emphasis on co-ordination with other multilateral partners in this field of work. The example we suggested was the Global Counter Terrorism Forum (GCTF) and centres of excellence in Countering Violent Extremism (such as the Hedayah Centre based in the UAE) as useful delivery partners for EU and Member State counter radicalisation work. As co-chair of the Horn of Africa working group, the EU has a significant stake in the GCTF and this strategy presents an opportunity for linked activity to be effectively delivered as opposed to simply creating another forum for sharing best practice. We had initial success including an indication to these groups within the strategy itself, however, whilst reference to the GCTF has been supported, our specific mention of the Hedayah Centre has not been welcomed by some Member States. There is a preference for more general language covering relevant multilateral organisations.

You have also asked to be kept informed about negotiations regarding the revision of the strategy. The Greek Presidency has presented a first draft for Member State comment and this was discussed at the Terrorism Working Party on 6 March. The UK welcomed Greece’s efforts in revising this important strategy and thanked them for incorporating a large number of our comments.

We urged against the need for an action plan to accompany the strategy on the grounds that the existing one had become long and unwieldy and did little to guide Prevent work. We stated that it would be preferable to have a short separate document setting out guidelines for interpretation at Member State level. Whilst a number of Member States agreed with the UK position, a number felt that an action plan was still necessary.

The UK commented that integration and social cohesion should not be carried out under the banner of Counter Terrorism. We explained that efforts to counter radicalisation and extremism rely on successful initiatives which aim to establish a stronger sense of common ground and shared values to enable participation and empowerment of communities. However, we highlighted that these initiatives alone will not deliver our counter radicalisation objectives and warned against the two strands of work being confused.

With regards to enhancing communications, we asked for greater importance to be attached to targeting online communications at the places/platforms which extremists and vulnerable individuals might use. We strongly endorsed the involvement of civil society and expressed our belief that the EU can and should support communities and governments in identifying appropriate voices to prevail over those of extremists.

The UK questioned whether the Council Standing Committee on Operational Co-operation on Internal Security (COSI) was best placed to provide strategic policy advice and guidance particularly as the Committee is not mandated to take policy decisions or give policy guidance.

This paper will next be discussed at the Council Working Party on the International Aspects of Terrorism on 13 March, which is attended by a representative from the Foreign and Commonwealth Office. Further Member State comments have been requested by 17 March. The Presidency plans to
present the final revised strategy to JHA Council in June. I will provide you with a further update in due course.

21 March 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 21 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 2 April 2014.

We consider that this whole area of work is gaining added relevance and urgency with increasing evidence of the involvement and radicalisation of EU citizens in the Syrian conflict.

We endorse your view that coordinated communication efforts should be a key theme of the revised strategy and that effective engagement with other multilateral partners in this work will be essential given the globalisation of terrorism and of recruiting terrorists, and the indispensability of effective international action to combat radicalisation.

We were not entirely clear about your preference for guidelines over an action programme. Are the two approaches not likely to amount to much the same thing?

We were also unconvinced that COSI could not play a useful coordinating role in a complex area where their members have considerable expertise.

We look forward to a response to our question above within the usual ten working days and to further updates in due course.

3 April 2014

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 3 April and for your continued support for the revision of the EU’s Strategy for Combating Radicalisation and Recruitment to Terrorism. I am writing to update you on progress and seek clearance in advance of JHA Council on 5-6 June, where the UK hopes to approve adoption of the revised strategy.

I agree with your assessment of the added relevance and urgency which is attributed to the review of this strategy in light of the conflict in Syria. The concern over the potential radicalisation of EU citizens in Syria is dominating the Counter Terrorism (CT) discussion in Brussels. Whilst national security remains firmly within the competence of Member States, collaboration is vital in mitigating the threat to Europe and we believe that that EU has a significant role to play in this area.

You ask for clarification on our opposition to an Action Plan which would accompany the strategy, specifically questioning the distinction between this and the guidelines which the UK has suggested as an alternative. We have argued against an Action Plan to date on the grounds that the existing one had become long and unwieldy and did little to guide Prevent work. We believe that broader guidelines would allow for more appropriate interpretation at Member State level, as opposed to prescriptive actions with specified deadlines and named action leaders. We wish to avoid an increase in EU direction being attributed to specific CT activity, on which Member States lead.

Although maintaining our opposition to the Action Plan, we will seek to influence this document so that, if it is agreed, it is more in line with UK Prevent objectives and enhances other Member States’ approach to counter radicalisation. If there is to be an Action Plan, we believe that the Terrorism Working Party (TWP) should devote sufficient time to ensure a good quality product that will deliver the necessary effect.

We will push for any Action Plan to contain simplified recommendations which do not presuppose Member State compliance, or assume that they have agreed to carry out each specified action. We have also insisted upon the removal of deadlines and any identification of action leads.

In your letter, you state that you remain unconvinced that the Council Standing Committee on Operational Co-operation on Internal Security (COSI) could not play a useful coordinating role in the delivery of this strategy. We opposed a reference to COSI in this instance, on the basis that the Committee is not mandated to take policy decisions or give policy guidance. We therefore opposed the reference in order to prevent COSI from overstepping its mandate and directing the work of Council working parties. The reference has since been removed from the text.
You also ask to be provided with updates on the revision process. The draft strategy has been discussed on a further three occasions; at the Council Working Party on the External Aspects of CT (COTER) on 13 March and at TWP on 8 April and 13 May. The Presidency’s draft Action Plan was considered at TWP on 8 April and will be further discussed on 18 June. The Presidency plans to present the final revised strategy to the JHA Council on 5 June, whilst the timeline for agreement of the Action Plan remains unclear.

22 May 2014

PROMOTING HEALTH-ENHANCING PHYSICAL ACTIVITY ACROSS SECTORS
(13277/13)

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

Thank you for your letter of 25 November 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 11 December 2013.

We are grateful for your responses to our specific questions and look forward to future updates.

11 December 2013

PROPOSED EU DATA PROTECTION PACKAGE AND NEGOTIATIONS ON EU-US SAFE HARBOR DECISION (UNNUMBERED)

Letter from Simon Hughes MP, Minister of State for Justice, Ministry of Justice

I wanted to take this opportunity to provide the European Union Committee with an update on negotiations for the proposed EU data protection package. I also wanted to provide a further brief update on the negotiations to review the EU-US Safe Harbor Decision following on from the Justice Secretary’s explanatory memorandum on this topic dated 20 December 2013. As you know, I will be giving evidence to the Committee on 9 April 2014 on Safe Harbor.

You will recall that the two instruments under negotiation are a general data protection Regulation and a criminal justice data protection Directive. There has been a lot of activity on these dossiers in recent months although most of it has centred on the Regulation.

The LIBE (Civil Liberties, Justice and Home Affairs) Committee of the European Parliament agreed texts for the proposed Regulation and Directive on 21 October 2013. These texts were put to the full plenary sitting of the Parliament on the 13 March 2014 and the Parliament has adopted its position at first reading on both the Regulation and the Directive. This fixes the Parliament’s position in political terms. Subject to the agreement of the Conference of Presidents in Brussels after the elections, these texts are likely to be used in ‘trilogue’ negotiations with the Commission and the Presidency of the Council of the EU in due course.

Progress in the Council of the EU on both dossiers has been slower and many technical and legal issues as well as important points of principle remain unresolved. This has prevented a ‘general approach’ being agreed which is a pre-condition to the ‘trilogue’ process commencing.

The Lithuanian Presidency had pushed to get agreement on the regulatory ‘One-Stop Shop’ mechanism at a meeting of the Justice and Home Affairs Council on 6 December 2013. In principle, the One-Stop Shop would enable EU businesses established in more than one Member State to engage with just one Data Protection Authority (DPA) instead of DPAs in every EU country in which they operate. However, the details are more complicated which has resulted in Member States still discussing how the One-Stop Shop would work in practice. The Lithuanian Presidency initially hoped to achieve a ‘partial general approach’ on this topic but any form of consensus on a preferred model for the One-Stop Shop proved elusive due to some Member States wanting to preserve ‘proximity’ between where the individual resides and where the regulatory decision would be made.

Further complicating this matter, the Council Legal Service argued that the Commission’s One-Stop Shop model is problematic. Its view was that the system set out under the Commission’s proposals favours the interests of controllers over data subjects to the extent that it is inconsistent with the data protection right guaranteed by Article 16 on the Treaty on the Functioning of the European
Union. Nor in its view does the Commission’s proposal provide access to an effective judicial remedy. On the other side, the Commission Legal Service has disputed these assertions on the grounds that both are fundamentally misconceived. Many Member States, including the UK, have argued that this issue needs to be resolved before the Council can make further progress on the One-Stop Shop. However, almost four months on, there has been no breakthrough in these discussions.

At the most recent Justice and Home Affairs Council meeting on 4 March 2014, the current Greek Presidency of the Council had hoped to secure ‘general agreement’ on a number of measures, including territorial scope, pseudonymisation, profiling, data portability, the obligations on controllers and processors and provisions dealing with international transfers.

However, there was near uniform opposition from Member States to any form of agreement on the text as it was considered that the parts of the text under consideration were either not ready or had not been substantively discussed at the working group level. Against this background of opposition, the Presidency recast discussions as an orientation debate. In particular, the Presidency asked the Council to confirm “its broad support” on draft measures set out around territorial scope and “its understanding” on key principles of international data transfers. Furthermore, the Presidency also requested that the technical working group should continue its work on pseudonymisation of data, data portability and obligations on controllers and processors.

The prospects for agreement before European Parliament Elections in May were already slim, but the absence of agreement on the measures put forward at the March JHA Council, the disagreements between Member States on the proper role of the One-Stop Shop and the related dispute between the Legal Services means that there is no realistic prospect of agreement under the current Commission/European Parliament term. Given the demonstrative lack of progress in the Council, even the Commission has now reluctantly conceded that agreement on the file will not happen until the end of 2014. This would be in line with the conclusions of the October 2013 European Council.

There are also a number of other areas where there is currently no agreement in Council. In particular, there are divergent views on the territorial scope, consent, the ability to charge a fee for subject access requests, the system for international transfers, the role of the European Data Protection Board and the fines regime. Finally, there is a split in Council on the preferred form of instrument, with the Commission and a majority of Member States favouring a Regulation and the UK and a smaller number of other Member States supportive of a Directive.

On this point, we consider that changing the form of instrument to a Directive would provide for greater Member State flexibility in the transposition of the new framework and take better account of national tradition and legal practice. When we last wrote to the Committee, we had indicated that the following Member States had a preference for a Directive as the form of instrument: the UK, Denmark, Sweden, Belgium, Czech Republic, Hungary, Estonia and Slovenia. As it currently stands, the balance of Member States in favour and opposed to the form of instrument remains the same. This would leave the UK short of a blocking minority.

However, the pivotal Member State in these discussions is Germany. Germany had initially hoped to have a Regulation for the private sector and a Directive for the public sector but this position failed to gain sufficient traction among other Member States in the Council.

The UK has previously suggested to Germany that changing the form of instrument to a Directive could deliver their policy objective of a carve-out for the public sector. A German change in tack would shift the balance in Council and provide a blocking minority on the form of instrument. However, at this point, Germany remains to be convinced of this approach, whilst changing the form of instrument from a Regulation to a Directive remains a red line for the Commission. The approach of successive presidencies has been to defer consideration of the form of instrument until after the text of the instrument has been agreed in Council, so for now, the question remains unresolved.

With regards to the proposed criminal justice Directive, there has been much less activity on this dossier. The Justice and Home Affairs Council has not considered the proposed Directive with successive presidencies preferring to focus ministers’ attention on the Regulation. To some extent, many Member State delegations are waiting for more substantive agreement on the Regulation and then seeing what can be applied to the Directive so consideration of the two dossiers in tandem has not necessarily resulted in progress being made.

A number of Member States have questioned the timing of introducing a new law enforcement instrument when the existing 2008 Data Protection Framework Decision has not been fully implemented in all Member States. In addition, the Government retains a number of specific concerns on the Directive, for example on subject access request and reviewing agreements for international
transfers of data. The UK delegation to the technical working group continues to raise issues around points such as these with Ministry of Justice and Home Office officials working closely in order to maintain an aligned position.

In relation to the Commission’s current review of the EU-US Safe Harbor agreement, I will be able to provide more detail on the current position during my forthcoming evidence session. To summarise though, the Commission continues to engage with the US Government on a bilateral level and we understand that steady progress is being made on the recommendations under discussion.

However a plenary sitting of the European Parliament on 12 March 2014 did vote for an immediate suspension of Safe Harbor. There is clearly still a lot of political pressure on this topic. My officials are conducting meetings with a range of stakeholders and also carrying out desk research on Safe Harbor so that the Government can have an informed view of how the system operates and, in particular, what the potential impact of suspension would be in terms of economic activity and the protection offered to individuals.

In the meantime I have noted that, notwithstanding the positive progress that has been made in EU-US discussions, the Commission continues to state publically that suspension of Safe Harbor remains a serious option. I will be able to speak further on these points at the evidence session on 9 April.

7 April 2014

READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION: AZERBAIJAN

(15493/13, 15494/13)

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

Thank you for your letter of 28 November 2013 regarding UK participation in an EU Readmission Agreement with Azerbaijan.

The Government has decided that the UK should not opt in to the Council Decision to sign and conclude the EURA with Azerbaijan, as we believe there would be little or no benefit to the UK from participation. Azerbaijan is a low priority returns country, with annual returns in single figures and no operational problems which an EURA would help resolve. We recently decided not to participate in the EU Mobility Partnership with Azerbaijan.

While we originally opted in to the negotiating mandate for the EURA on the basis that participation might be necessary in order to maintain a transit route for removals to Afghanistan, we no longer believe this to be the case. Our strong bilateral relationship with Azerbaijan on trade and security would enable us to open discussions should we need to resurrect the transit route via Baku. Furthermore, participation in the EURA could not compel the Azeris to accept returns if they were unwilling to do so.

We have until 31 January to inform the Council of our opt-in decision. The fact that the UK does not participate will not prevent other Member States from benefiting from the Agreement. If circumstances were to change, we could still seek to participate post-adoption.

27 January 2014

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 27 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 5 February 2014.

We reiterate our disagreement with the Government’s argument that there is little benefit to the UK from Agreements such as this one as we consider they can be important tools in facilitating returns to third countries particularly if bilateral relations were to weaken.

The Government’s Explanatory Memorandum regarding this readmission agreement said: “Participation in this Agreement would be a means of demonstrating solidarity with other Member States regarding readmission of illegal migrants, but if the UK were not to participate, this would not prevent other Member States from benefiting from the Agreement”. What assessment have you made of the impact of not demonstrating solidarity with other Member States regarding this readmission agreement? We look forward to a reply to this letter in the usual ten working days.

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

Thank you for your letter of 5 February 2014 to my predecessor regarding the Government decision that the UK will not participate in the EU Readmission Agreement (EURA) with Azerbaijan. I am replying as Minister for Immigration and Security.

As you are aware, the Government is clear that it is in the UK’s interest to weigh up the benefits of taking part in each agreement on a case by case basis, rather than exercising a blanket opt in. This includes an assessment of wider bilateral relationships. In the case of Azerbaijan, low levels of illegal migration and our strong bilateral arrangements for returns indicate that participation would not benefit the UK. If circumstances were to change, we would be able to opt in at a later date.

Regarding our assessment of the benefits of demonstrating solidarity with other Member States, the UK has taken part in official level working group meetings in Brussels to draw up and finalise the EURA. During these meetings neither Member States nor the European Commission indicated that the success of the EURA was dependent on UK participation. Nor has there been any indication from the Azeri side that they would be unlikely to cooperate in the EURA if the UK failed to sign up to it.

The fact that the UK does not participate in the Agreement will have no practical impact on the ability of Member States to conduct immigration returns under the EURA. Once in force, the EURA operates regardless of UK participation.

While UK participation in the EURA might show public solidarity with other Member States, the decision not to opt in demonstrates to the Azeris the importance we attach to our existing bilateral arrangements. It is also consistent with our recent decision not to opt in to the EURA with Armenia (which similarly has low levels of illegal migration to the UK and effective bilateral arrangements in place).

20 February 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 27 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 February 2014.

As you know, we disagree with the decision you have taken not to opt in to this agreement; and we would suspect that the Azeris, far from seeing that decision as demonstrating the value the UK places on existing bilateral arrangements, may well regard it as an indication of a semi-detached attitude to the EU’s policies in the field of Justice and Home Affairs. We are grateful for your answer to our specific question. No reply to this letter is required.

5 March 2014

RECOGNITION OF PROFESSIONAL QUALIFICATIONS (18899/11)

Letter from Lord Livingstone of Parkhead, Minister of State for Trade and Investment, UK Trade and Investment, to the Chairman

I wrote to you in December 2013 to inform you of the political agreement on the revision of the Mutual Recognition of Professional Qualifications Directive.

I apologise for the delay in reverting to you now, but I wanted to inform you that the Directive was published in the Official Journal of the European Union on 28 December 2013 and entered into force on 17 January 2014. We now have a transposition deadline of 18 January 2016.

With this end date in mind, we have already drafted an implementation plan and will be holding at least three public consultations. The first will likely begin in April 2014 and cover the general approach. The Department of Health will hold their own consultation on implementation for the health professions before the summer and once these have been assessed, we will publish a final consultation on draft implementing regulations.

12 March 2014
Letter from the Chairman to Lord Livingstone of Parkhead

Thank you for your letter of 12 March 2014 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 2 April 2014.

We very much welcome that this important building block in the completion of the Single Market has now entered into force. We note the Government’s plans for transposition of the Directive in the UK, and would be grateful if you would keep us informed as this process advances.

A response to this letter is not required.

2 April 2014

SECOND MANDATE SCHENGEN (CHECK FOR EM NUMBER)

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

I am writing to provide you with a summary of Second Mandate Schengen evaluations during 2013 and to provide you with a forward look for 2014.

As you know, the reports of individual Schengen evaluation visits and follow up assessments are classified as restricted. Council Conclusions summarising findings are published in the public domain only after they have been adopted. Council Decisions confirming compliance for those States seeking Schengen membership are deposited for scrutiny as soon as they are declassified for publication in the public domain.

The Working Party for Schengen Matters (Schengen Evaluation) met five times during the Irish and Lithuanian Presidencies. Both Presidencies concentrated their efforts on keeping a tight evaluation schedule.

The evaluations during 2013 were primarily Second Mandate (on existing Schengen States). On the basis of the agreed five-year evaluation programme, regional evaluation of the Nordic States and the eight EU Member States that acceded to Schengen in 2007 continued into 2013. Significant progress was achieved on those countries in the field of data protection, police cooperation, land, air and sea borders and visas. SIS/SIRENE evaluations which had been set back in 2012, due to work to bring in the Second Generation of the Schengen Information System (SISII), took place in 2013. Council Conclusions were agreed that confirmed that Norway, Iceland and Denmark’s SIS/SIRENE evaluations were successful and completed. Council Conclusions confirming that the Czech Republic and Malta’s evaluations excluding SIS/SIRENE had been completed were also agreed.

These evaluations found no serious issues. The reports highlighted best practice as well as making recommendations for improvements. Once the reports were adopted, the States each produced an action plan covering implementation of all recommendations and gave regular updates to their peers via progress reports. Follow up work on Norway, Iceland, Finland, Sweden and Italy was completed and also subject to Council Conclusions.

Greece was evaluated in 2009/2010 and is still subject to significant scrutiny of its land, sea and air borders. Work continued throughout 2013 to implement its action plan and bring in practical improvements. Greece presented its 7th Progress Report and a revised Action Plan “Schengen” and a further peer-to-peer mission to Greece was carried out in mid-2013 in order to assess this progress. It was noted that improvements in the management of its land border with Turkey are sustainable and Greece’s capacity to deal with new risks is increased. However, the improvements at the land border have contributed to a rise in migratory pressures at the Greece-Turkey sea borders and sufficient attention will need to be given to this issue in 2014. Greece is also pressing forward in political discussions with its neighbours to decrease illegal transit to the EU through their territories. It will continue its work throughout 2014.

Romania and Bulgaria’s First Mandate (accession to Schengen) evaluations were completed in 2011. However, the finalisation of Council Decisions which will set the dates from which Schengen will apply in both countries is still outstanding. We do not expect to see further progress on this until the latter half of this year. The Government will update you separately on this matter as soon as there is movement.
The UK started its evaluations to join SISII in 2013, with a Data Protection evaluation visit in October 2013. The evaluation process will continue throughout 2014 and the Government will update you separately on this matter.

Croatia acceded to the EU on 1 July 2013 and took up a seat at the Schengen Evaluation Working Group. Under the terms of its accession to the EU, it has already established its EU external border regime. It is now working to implement the criteria and meet the standards required for Schengen membership but it is too early to schedule evaluation visits.

The evaluation of the Member States which joined in 2007 will continue into 2014. Additionally, as Switzerland acceded to Schengen in 2008, they have started their first five yearly evaluation. However, no further Member State evaluation visits are planned for the latter half of 2014. Following confirmation that recommendations from existing reports have been actioned fully or are timetabled for action, we expect to see a significant number of Council Conclusions by November 2014.

This is because we are now in a hand-over period between the old Schengen evaluation procedures and those envisaged in the Schengen Evaluation Mechanism Regulation (SEM). The Council will continue to lead the evaluation procedures up to 26 November 2014, so there are hopes that all Second Mandate evaluation work under the old procedures will be completed by this date. The Commission has only just started consultations with Member States to work up practical processes to deliver the SEM from 27 November 2014. The Government will update you separately on this matter as soon as there is movement.

17 March 2014

Letter from the Chairman to Karen Bradley MP

Thank you for your letter of 17 March 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 26 March 2014.

We are most grateful for this full and helpful update.

26 March 2014

STEPPING UP THE FIGHT AGAINST CIGARETTE SMUGGLING AND OTHER FORMS OF ILLICIT TRADE IN TOBACCO PRODUCTS – A COMPREHENSIVE EU STRATEGY (11014/13)

Letter from Nicky Morgan MP, Economic Secretary, HM Treasury, to the Chairman

Thank you for your letter of 28 November on the issue of whether the UK should encourage the EU External Action Service (EEAS) to promote the signing of the Protocol to other countries.

Again I am grateful for the Committee’s view and remain keen for the Government to exploit all opportunities to promote the Protocol with third countries.

Since my earlier response, further conversations have taken place between HMRC and the Foreign and Commonwealth Office with regards the role of EEAS and the work that Service is already tasked the undertake. Following those discussions, we are now content to proceed with the Lords’ original recommendation.

I can confirm that UKRep are engaging actively with the Commission to encourage the EEAS and EU delegations in third countries in their attempts to lobby third countries to sign and ratify the Protocol.

10 December 2013

Letter from the Chairman to Nicky Morgan MP

We are grateful for your letter dated 9 December 2013 on the above Communication. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered it at its meeting on 18 December 2013.

We are pleased that the Government now agree that the European External Action Service (EEAS) and EU delegations in third countries should have a role to play in encouraging third countries to sign up to the FCTC Protocol and will be taking action to see that it is done.

A response to this letter is not required.

18 December 2013
Letter from Mark Harper MP, Minister for Immigration, Home Office, to the Chairman

Following our discussion in November last year about the future JHA work programme, I agreed to provide some further thoughts about the effectiveness of the current “Stockholm” JHA Programme, and in particular on the extent to which the Commission has taken a selective approach to its implementation, effectively “cherry picking” those parts of it that reflect its policy agenda, while ignoring others.

As the Government’s evidence to your inquiry makes clear, our view is that the Stockholm Programme focussed too closely on the specific legislative and practical measures to be delivered at the expense of defining the overall direction of EU cooperation in the JHA area. This did mean that it served as a menu of options for the Commission to choose from in accordance with its own priorities, rather than setting strategic priorities for the Union itself.

An example of this can be found in the explicit request in part 2.2 of the Stockholm Programme that the Commission monitor the application of the EU’s rules on free movement of people to avoid abuse and fraud, and that it examine how best to help Member States tackle this abuse effectively. The Commission took no action in this area, leaving it to the JHA Council to agree on steps to tackle free movement abuse in April 2012 through the “EU Action on Migratory Pressures - A Strategic Response”.

Furthermore, the European Council invited the Commission to propose a register of third country national convicted by the courts in all Member States. There has been no concrete progress in this area and no proposal.

On the other hand, the Commission has used the quite tentative references in the Stockholm Programme to considering both expanding the powers of Eurojust and setting up a European Public Prosecutor to propose sweeping legislation in this area, reflecting its own priorities for JHA cooperation.

We believe these examples show the difficulty that overly detailed guidelines can create, particularly in the absence of any effective system to monitor the Commission’s compliance with them. In our view, similar problems will be less likely to occur in future if the European Council focuses on producing a set of higher level strategic principles setting out the objectives of JHA cooperation over the coming years, and on establishing an effective, Council-led mechanism for ensuring that future legislative and other cooperation measures adhere to them. This will therefore be one of our key objectives in the negotiation of the new guidelines.

The Stockholm Programme was negotiated under the previous Government and we have always been clear that we do not support all of its contents. There are therefore some areas where we believe the Commission was right not to act, despite requests in the Programme that it do so. Examples include its decision not to propose an EU-wide Terrorist Finance Tracking System or an EU Crime Prevention Observatory, both of which would have been unnecessary. It is important that the new guidelines better reflect Member States’ need for practical measures that help them work together to improve their citizens’ security, and that they avoid unnecessary legislative commitments.

I look forward to giving evidence to the sub-committee formally on 5 February.

30 January 2014

TERRORIST FINANCE TRACKING SYSTEM PROGRAMME (17063/13)

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

Thank you for your explanatory memorandum of 1 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 8 January 2014.

We recognise the value and support collection of terrorist finance tracking and note the examples given in the latest joint report of its value. We commend the thoughtfulness and objectivity of the Commission’s Communication and support the Government’s conclusion that the current reciprocity arrangements are sufficient to allow EU Member States access to worldwide transfer of financial messaging data without developing an EU-specific system.
We would nevertheless be grateful for further analysis of the effect of the Commission's preferred option, namely maintain the status quo, when it comes to the acquisition of Automated Clearing Houses, “e-money transfers” or remittance services’ information. How valuable does the Government consider such information to be and what efforts, if any, are being made to capture this information, both at a UK and an international level?

We look forward to updates on the reactions to this Communication from the Parliament and Council in due course, and responses to our specific questions above in the usual ten working days.

10 January 2014

Letter from Lord Deighton to the Chairman

Thank you for your letter of 10 January 2014, following our Explanatory Memorandum of 1 December 2013.

The Terrorist Finance Tracking Programme (TFTP) uses Society for Worldwide Interbank Financial Telecommunication (SWIFT) messaging to track terrorist finance. SWIFT is a global system which accounts for billions of transactions each year, accounting for a large proportion of all financial transactions. The scale of SWIFT and the fact that it covers cross-border transactions is what makes the TFTP effective. Although alternatives to SWIFT exist, they account for a far smaller proportion of banking transactions and there are no plans to capture these financial data in the same way. However, the Government is aware that other payment mechanisms can be abused for the purposes of terrorist finance as well as money laundering and proliferation financing. The Government continues to assess the terrorist financing and money laundering risks of new payment mechanisms both domestically and in international fora such as the Financial Action Task Force.

On the payment methods which were highlighted in your letter; Automated Clearing House (ACH) is the system of financial messaging used in the USA; it is the responsibility of US financial institutions and US Government to manage their internal terrorist finance threats. UK financial institutions may use the Clearing House Automated Payment System (CHAPS) to make domestic payments. Financial institutions are expected to apply risk management processes to financial transactions and the Government works with them to raise awareness of terrorist finance and help them to identify risks. For example, the Money Laundering Advisory Committee informs the strategic approach to money laundering and terrorist finance prevention for the UK as a whole and includes members from Government, industry, law enforcement, and consumer representatives. It also reviews industry guidance notes, which are published by the Treasury.

The National Terrorist Financial Investigation Unit (NTFIU), which is part of the Counter Terrorist Command within the Metropolitan Police Service, mitigates the terrorist finance risks of remittances by working closely with Money Service Businesses (MSBs) in the UK. This means that when there is suspicion of terrorist financing, they have a contact to approach at the NTFIU. MSBs are part of the regulated sector, and so have a statutory duty to report terrorist finance and money laundering concerns to the National Crime Agency, where the NTFIU has an officer seconded. The NTFIU also provides training and expertise on terrorist financing risks to the Electronic Money Association (EMA) and their members.

I will of course keep the Committee updated as the TFTP is discussed at EU level.

26 January 2014

Letter from the Chairman to Lord Deighton

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

As previously stated, we recognise the value of terrorist finance tracking and support the Government’s position that the current reciprocity arrangements are sufficient to allow EU Member States access to worldwide transfer of financial messaging data without developing an EU-specific system.

We would, however, welcome a clear response to our question whether there have been any discussions with other international actors about the value of capturing other forms of financial information and what value the UK Government places on it. We note that the Commission Impact Assessment includes statistics suggesting that 58% of all payments were processed through automated
clearing houses within the EU. We would welcome a reply to this letter within the usual ten working
days.

5 February 2014

Letter from Lord Deighton to the Chairman

Thank you for your letter of 5 February.

The UK has had no discussions with international partners regarding new programmes to capture
other forms of financial information. The Commission, in its Impact Assessment, does highlight that
the Terrorist Finance Tracking Programme’s (TFTP) use of only one financial messaging provider is a
‘problem driver’. However, the Government feels that the SWIFT network is the most valuable
network for the programme given its global reach and coverage of cross border payments; it enables
over 8,300 financial institutions in more than 200 countries to exchange financial data securely.

SWIFT does handle a minor share of all money transfers in the world. In this context, the
Government appreciates the importance of Automated Clearing Houses as processing a large volume
of payments within the EU. However, the Commission sets out that there are considerable risks with
extending the programme to other ‘designated providers’, including concerns around the
proportionality of such a broadened scope, the impact on privacy and data protection rights, and the
additional burden and costs of increasing the complexity of the programme. Automated Clearing
Houses are run on a national (or EU) basis and generally process transactions that are considered
lower risk for terrorist finance than cross border transactions. The UK is therefore confident in the
Commission’s assessment that the benefits of adding multiple providers to the TFTP or equivalent
programme would not outweigh the significant costs of doing so.

18 February 2014

Letter from the Chairman to Lord Deighton

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

We are grateful for your response to our specific question. We look forward to updates on the
reactions to this Communication from the Parliament and Council in due course.

5 March 2014

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

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 of 24 February 2014 on the above report, which the
Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union
considered at its meetings on 12 and 20 March 2014.

We would be grateful for further information on what efforts the Government are 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.

20 March 2014

THE ELIMINATION OF FEMALE GENITAL MUTILATION (17228/13)

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

Thank you for your explanatory memorandum (EM) of 14 January 2014 which the Home Affairs,
Health and Education Sub-Committee of the Select Committee on the European Union considered at
a meeting on 5 February 2014.
We welcome the attention that the European Commission is giving to this issue, and we note the Government’s broad support for the recommendations in this Communication. Like the Government, we believe that it is highly desirable that other Member States are persuaded to accept the Commission’s recommendations for Member States to act against female genital mutilation, as we are doing.

We are, however, completely baffled by the statement in paragraph 22 of the EM that this Communication (our underlining) is inconsistent with the principle of subsidiarity. Since it has no legal base, how can it be against that principle? We do however concur with the Government’s view (paragraph 15 of the EM) that any legislative actions in this area would need to be considered very thoroughly from the point of view of subsidiarity and proportionality.

We support the Government’s plans to invite all other Member States to an international conference in spring 2015 to share good practice in tackling this issue. We would encourage the Government to be prepared to learn from the experience of other countries in tackling female genital mutilation, particularly in the area of prosecution of offenders.

As the Communication has no legislative or financial implications for the UK, we have decided to clear it from scrutiny. We would be grateful for a response within 10 working days on what appears to be a misunderstanding of the point of subsidiarity.

5 February 2014

Letter from Norman Baker MP to the Chairman

Thank you for your letter following the Committee’s consideration of the Communication and its Explanatory Memorandum.

Regarding the issue raised in the letter, Article 5(3) of the Treaty on European Union talks about proposed action, not necessarily legislative action, and Article 1 of Protocol 2 states each Institution shall ensure constant respect for the principle of subsidiarity. The Reasoned Opinion powers which national Parliaments have in policing the principle of subsidiarity are confined to draft legislative acts and therefore this is the focus of most Government and Parliamentary communications on the principle, as this is where Parliament can have greatest impact. However, the role of the Commission is broader and therefore extends to Commission Communications where such Communications propose action. The Government is alert to breaches of subsidiarity wherever they may occur and will continue to use any mechanisms within its powers (working group negotiations for instance) to ensure that the principle is abided by, as well as doing all it can to support Parliament to use its specific powers.

The Government recognises that tackling FGM will require a multi-pronged approach and there is some action in the Communication which, due to the scale and effects achieved, will add more value when taken at European level. This includes action to encourage EU level effective practice sharing, providing EU level funding and monitoring the transposition of relevant EU legislation.

It is our position that at Member State level we can achieve the following actions without the need for Union level action:

— Producing written guidance for professionals
— Devising and delivering training for professionals – including professionals in health, education and law enforcement
— Systems for proper co-operation and information sharing between different public agencies and public services
— The enforcement of our domestic criminal legislation by the police/CPS
— The provision of support services for victims who are based in the UK.

I do not feel that implementing them collectively, at EU level, will produce a better result in the UK given the significant amount of work we are already undertaking domestically. For example, the UK have already published multi agency practice guidelines for practitioners on FGM, designed for specifically for police, children’s services, teachers and health practitioners and we are in the process of developing an E learning package for safeguarding professionals. Similarly the Crown Prosecution have published an FGM action plan which seeks to achieve a prosecution for FGM.

In regard to your point on sharing knowledge on FGM in the EU, as stated in my Explanatory Memorandum we are fully committed to sharing effective practice, and learning from others’ experience, where skills and knowledge can be transferred across Member States, and we will
continue to seek opportunities to do this. In the spring of 2015, we will be hosting an event to share effective practice and learning to support colleagues across the EU in improving their own response to tackling FGM.

20 February 2014

Letter from the Chairman to Norman Baker MP

Thank you for your letter of 20 February 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 5 March 2014.

We are grateful for the clarification in your letter of the parts of the Communication that the Government consider to be best achieved at Member State level. We would expect this level of detail to be included in all future Explanatory Memorandums. Should any future legislation arise from this Communication, we will of course scrutinise its adherence to the principle of subsidiarity.

5 March 2014

THE FOUR FREEDOMS (ERASMUS+) (7621/14)

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

Thank you for your explanatory memorandum (EM) dated 27 March 2014 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 7 May 2014. As you know, this proposal was cleared at the Chairman’s sift.

We support the extension of the Erasmus+ programme to the EEA countries.

7 May 2014

THE FREEZING AND CONFISCATION OF PROCEEDS OF CRIME IN THE EUROPEAN UNION (7641/12)

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

I am writing to update your Committee on developments in the negotiations on the above Directive. The General Approach was reached in December 2012 and trilogue commenced in June 2013. A new text has been provisionally agreed, which I would like to share with you before it is formally agreed by the Parliament and the Council.

The most significant changes to the text relate to the non-conviction based (NCB) confiscation provisions. Article 5 of both the Commission text and that of the General Approach contained stand-alone NCB provisions. This article has now been deleted. The obligation to take measures to enable the confiscation of assets from those who have fled, or are too ill to stand trial, are now included in Article 3, and, as in the General Approach, may be met through holding trials in absentia or, if that is not possible, through the use of an NCB power (Article 3(2)).

Article 4, on extended confiscation, has also been significantly amended. The Directive now identifies those offences to which extended confiscation should at least apply. In the General Approach, extended confiscation applied to a person convicted of a ‘serious criminal offence’. However, the term ‘serious’ was not defined and was left to Member States to define. The Parliament and the Commission found that approach unacceptable and compromise was reached with the Council on a list of ‘serious’ offences.

The Parliament and the Council have also provisionally agreed a declaration calling upon the Commission to conduct a feasibility study for a separate instrument for NCB confiscation. This declaration will sit alongside the declaration agreed at the General Approach calling on the Commission to consider revising the mutual recognition arrangements in light of the changes brought about by the Directive. Given the upcoming European Parliamentary elections, and changes at the European Commission, I do not expect any proposals for an instrument on the mutual recognition of NCB orders to emerge in the short term.
I expect this text to be taken to COREPER in early December, and then for final agreement by the European Parliament in January 2014 and formal adoption by the Council in February 2014.

As you know, the Government did not opt in to this instrument at the pre-adoption stage. Once the text has been adopted the Government will carefully consider a post-adoption opt-in. This will be subject to Parliamentary Scrutiny in the normal way.

4 December 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 4 December 2013 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 18 December 2013.

We are grateful for your update on this proposal's progress in negotiations. We note that the deletion of Article 5 resolves one of the Government's major concerns about the proposal. We would be grateful for further information on whether the goal of better mutual recognition of both criminal and civil confiscation has been, or is likely to be achieved.

We have previously set out our position, which was endorsed by the House, that the Government should opt in to this proposal. Given the welcome progress made in negotiations, we strongly urge that the Government opt in to this piece of legislation when it is adopted. We welcome your commitment to consulting Parliament about any such post-adoption opt-in and would expect an Explanatory Memorandum to be deposited in a timely manner so that the Committee can offer its views on that before the Government reaches a final decision.

We will continue to retain this document under scrutiny and would welcome receive further updates on the progress of the proposal in due course.

18 December 2013

Letter from the Chairman to James Brokenshire MP

We note that the above Directive was adopted by the Council in March 2014. As you know, we have consistently argued that the UK should opt in to this measure; a view that was endorsed by the House. In our 2012 Report on the proposal we concluded that we had “no doubt” that the Government should opt in. We concluded that “confiscation would be a more effective weapon if there was better cooperation at international level” and that “if the Government failed to opt in to a measure setting out minimum provisions to be adopted by Member States, this would be against the national interest of the United Kingdom”, sending entirely the wrong message about the UK’s attitude to international cooperation.

We would welcome clarification of what action the Government intend to take to meet their commitment of 28 June 2012 that “once the text of the Directive has been adopted we will carefully consider the case for a post-adoption opt-in”. To inform our thinking and scrutiny of any decision we would also welcome a full analysis of the final text, setting out whether the UK’s negotiating objectives have been achieved. In addition, we would be grateful for a response to our question of 18 December 2013 about whether the specific goal of better mutual recognition of both criminal and civil confiscation had been achieved during negotiations.

7 May 2014

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

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

Thank you for your explanatory memorandum (EM) of 1 May 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 14 May 2014.

We agree that it is appropriate for the Commission to share its expertise in preventing and protecting against natural and man-made disasters, development cooperation and humanitarian aid to inform the consultation on the successor to the present Hyogo Framework for Action. Like you, we
consider it best for Member States to take forward those aspects of the Commission’s Communication with which they agree.

We share your view that targets and indicators should be used carefully in this area, and must not impose unnecessary burdens on Member States.

We would be grateful for an update on whether other Member States share the concerns raised in your EM in due course.

14 May 2014

THE PROGRESS OF EU READMISSION AGREEMENTS WITH TURKEY, CAPE VERDE AND ARMENIA (11720/12, 11743/12, 14237/12, 14235/12, 16909/12, 16910/12)

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

I am writing to provide an update on the progress of EU Readmission Agreements (EURAs) with Turkey, Cape Verde and Armenia.

As you will have seen, the EURA with Turkey was signed by the EU and Turkey on 16 December, with the launching of a simultaneous dialogue on Schengen visa liberalisation. Our own visa regime will not be affected; we do not participate in the borders and immigration elements of Schengen and do not intend to join them. However, we strongly support the EURA, 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.

As you are aware, in September 2012 we announced our decision to opt in to the EURA on conclusion, which we expect to take place in mid-February 2014. We are grateful for your Committee’s support in waiving the customary period for Parliamentary scrutiny at the signature stage; this enabled us to support the Danish Presidency’s attempts to secure the agreement in June 2012. We welcome its signature now.

I can also advise on the progress of two EURAs to which the UK has not opted in. The European Parliament gave its consent to the EURA with Cape Verde on 11 September and it was formally adopted at the Justice and Home Affairs Council on 7 October. The EURA with Armenia was adopted on 27 November and entered into force on 1 January 2014. There is little illegal migration from either of these countries to the UK and we have effective bilateral arrangements for returns. However, if there were to be any change in our position, it would be possible for the UK to seek to participate in either Agreement post-adoption.

9 January 2014

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 9 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered it at its meeting on 23 January 2014.

We are grateful to you for your updates on the status of these three Agreements. We restate our disagreement with the Government’s argument that there is little benefit to the UK from these Agreements as we consider they can be important tools in facilitating returns to third countries particularly if bilateral relations were to weaken.

We look forward to further updates on the conclusion of the Agreement with Turkey, which we have previously stated our support of, and to which we note with approval that it is the Government’s intention to opt in when the Council concludes the Agreement.

22 January 2014

77
Letter from the Chairman to Mark Harper MP, Minister for Immigration, Home Office
Thank you for your explanatory memorandum of 9 January 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 22 January 2014.
We welcome the UK’s involvement in setting up the Task Force, and encourage the Government to continue to support its operations.
We would be grateful for more information about the types of expertise the Government would be willing to contribute in developing information campaigns targeting potential migrants both in countries of origin and transit.
We have decided to hold this document under scrutiny, and look forward to receiving a response within the usual 10 working days.
22 January 2014

Letter from Mark Harper MP to the Chairman
Thank you for your letter of 22 January. I am pleased to hear that your Committee welcomes the Government’s support for the work of the Task Force.
You asked for more information about the expertise the Government would be willing to contribute in developing information campaigns targeting potential migrants both in countries of origin and transit.
The UK has an established record on communications work of this kind. Given our experience, I believe we are well placed to support work in the Southern Mediterranean and possibly also in transit and origin countries further afield. My officials feel we may also be able to explore new approaches in this context, based on recent communications work undertaken outside of the field of migration.
We are currently engaging with the Commission, the EU's External Action Service and the Greek Presidency on their plans for taking forward the Task Force proposals, including the proposal on information campaigns, in preparation for a discussion at the next JHA Council. On that basis, I propose that I write to you again in due course to advise you of further progress.
6 February 2014

Letter from the Chairman to Mark Harper MP
Thank you for your predecessor’s letter of 6 February 2014 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 12 February 2014.
We welcome the Government’s commitment to providing expertise in developing information campaigns to clearly communicate and raise awareness concerning the grave risks and dangers faced by migrants attempting to reach the EU through irregular channels. However, further to our original request in our letter of 22 January and your statement that the UK is well placed to offer assistance, we would be grateful for more detailed information about the types of expertise the Government is willing to provide.
We have decided to hold this document under scrutiny as you have indicated that further developments are likely. We would be grateful for a full response to our point above within the usual ten working days.
12 February 2014

Letter from James Brokenshire MP, Minister for Immigration and Security, Home Office, to the Chairman
Thank you for your response to my predecessor’s letter of 6 February 2014 regarding the Commission’s Communication on the Task Force Mediterranean.
You asked for more detailed information about the types of expertise the Government is willing to provide on information campaigns.
The information we intend to share is based on our previous experience, including current trial projects to reduce illegal migration and to dissuade would-be migrants from making dangerous journeys (such as the journeys to the EU highlighted by the Lampedusa tragedies). To date, we have run pilot communication projects in West Africa, the Middle East and South Asia involving local NGOs, religious leaders, and other credible individuals and organisations within target communities.

Our implementing partners have ensured communications have been adapted to each context. In communities where literacy levels are low, such as Afghanistan and Pakistan, word of mouth has been the primary means of information exchange. In other contexts like Iraqi Kurdistan where the economy is booming, our communications efforts have championed and celebrated the opportunities and benefits to young people of building their futures at home.

Early findings and feedback from NGOs on our pilot projects indicate that they have raised awareness and changed perceptions within target communities about the realities and risks of illegal migration. However, it is important to note that measuring the outcomes and impact of communications work is inherently difficult. We are actively exploring how we can develop better processes for verifying the extent to which communications efforts translate into revised or abandoned migration plans.

As mentioned in my predecessor's letter, we are currently engaging with the European Commission, the EU's External Action Service (EEAS) and the Greek Presidency on their plans for taking forward the Task Force proposals. These conversations will include sharing our experience of information campaigns. On that basis, I propose that I write to you again in due course to advise you of further progress.

You may also wish to be aware that follow up to the Task Force will be discussed at the 3-4 March JHA Council, which will be reported in the usual way by Written Ministerial Statement.

26 February 2014

Letter from the Chairman to James Brokenshire MP

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

We are grateful for your response to our specific question. We look forward to further updates on the work of the Task Force, including an update on the discussion at the JHA Council meeting of 3-4 March 2014.

26 March 2014

Letter from James Brokenshire MP to the Chairman

Thank you for your response to my letter of 26 February regarding my predecessor's Explanatory Memorandum (EM) on the above Communication.

You requested an update on the discussion at the JHA Council meeting of 3-4 March 2014. I also said I would provide you with an update on the contributions the UK will make to the work of the Task Force in relation to information campaigns.

At the March JHA Council Ministers received presentations from the European Asylum Support Office and FRONTEX on recent trends at the external borders, and asylum pressures, with a particular focus on developments in Syria. The UK, supported by some other Member States, called for clear timeframes to be put in place for ensuring that the actions agreed under Task Force Mediterranean were carried out. The UK reiterated its commitment to support information campaigns in countries of origin or transit, to dissuade individuals from travelling illegally to the EU. Some other Member States called for more assistance for Member States facing migratory pressures.

As mentioned in my last letter, we are currently working with EU partners on their plans for taking forward the actions agreed under the Task Force Mediterranean, including proposed action in the area of information campaigns. To date, we have shared the UK's experience in the development of information campaigns targeting potential migrants both in countries of origin and transit with the Commission and the European External Action Service, and we are now considering possible concrete contributions to new campaigns proposed for West and East African routes.

19 May 2014
THIRD COUNTRY NATIONALS AND POSSESSION OF VISAS (16016/12)

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

Thank you for your letter of 30th October asking for a further explanation of the ramifications of the Government's recent announcement of measures to facilitate visa issuing for Chinese visitors wishing to travel to the UK as part of an authorised European tour group.

The changes we have introduced in China are purely operational and limited in scope. We are simply accepting a completed Schengen visa application form with a short addendum for UK purposes from those Chinese tourists travelling to the UK and to the EU Schengen area on an Approved Destination Status (ADS) tour. We have made no changes whatsoever to our visa regime for Chinese nationals. Our standard visa decision making process will continue to apply and we will continue to run standard immigration checks on all ADS visa applications.

We do not participate in the border and visa elements of the EU Schengen Acquis and we will continue to process and assess visa applications from Chinese nationals in accordance with UK domestic legislation. We have good levels of practical cooperation with our Schengen colleagues and we continue to co-operate with them on visa policy matters through our attendance at the EU Council Visa Working Group. The operational changes we have made to Chinese visit visa processing will not have any negative impact on our co-operation with Schengen. We will monitor the outcomes, but believe that this form of cooperation will actually strengthen our relationship with EU partners.

16 December 2013

USE OF PASSENGER NAME RECORDS FOR LAW ENFORCEMENT PURPOSES (6007/11)

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

I am writing to update you on the progress of negotiations for the EU Passenger Name Records Directive.

The UK has recognised first-hand the benefits of its own border systems programme (e-Borders), where the analysis of PNR is used in a number of ways to target criminality. For this reason, the Government remains committed to the use of PNR as an effective investigation tool that builds our capability to tackle serious crime and terrorism while maintaining its commitment to data protection and civil liberties. This Government has been a key proponent of a PNR Directive, since we opted-in to the draft in May 2011. It remains the most certain way of complying with European data protection laws while being able to mandate passenger information on European routes.

The Justice and Home Affairs Council agreed a common approach in April 2012. In April this year, the European Parliament’s Civil Liberties and Freedom (LIBE) Committee voted on and rejected the Directive in its entirety; however, in July in Plenary session, the European Parliament returned the file to the Committee for further consideration and the file has remained with them since.

Following the US PRISM data surveillance allegations and the Snowden leaks in the summer, data-related dossiers have been overshadowed by the LIBE Committee’s focus on their “mass surveillance inquiry”; the EU PNR Directive among them. This has been confirmed by the UK rapporteur reporting a growing unwillingness among MEPs across the majority of political groups (Socialists and Democrats (S&D), Greens, Group of the European United Left (GUE) and Liberals) to progress the PNR Directive without first passing new Data Protection laws. The UK do not support this view as a PNR Directive is a way of formalising the regulation of PNR across Europe and the proposed Directive has inbuilt data protection safeguards that would afford passengers greater rights prior to the implementation of new data protection law.

The lack of support by MEPs is not reflected at Member State level (14 of whom applied for and have just received Commission funding to build PNR systems). A number of Member States consider PNR as part of the solution to helping tackle ‘foreign fighters’. You will be aware that we are seeing large numbers of individuals travelling out to Syria from Europe where they are gaining combat experience and forging connections with extremists. We – alongside many of our European partners – are concerned about the potential threat these individuals will pose as they return to Europe. The UK, alongside several European partners, has continued to lobby the European Parliament on the importance of this dossier including through written correspondence with the LIBE Chairman. Notwithstanding these efforts, the dossier still remains with LIBE with no likelihood of a vote being
scheduled this year. Moreover, we believe a vote after December will make it difficult for the dossier to pass to trilogue for consideration ahead of the European elections.

Looking ahead, the European Parliamentary elections are scheduled for May next year. Following them the UK will continue to pursue a unified European approach to collecting passenger information if this is not achieved before the election. If the European Parliament does not resume work on the current Directive, it is ultimately for the Commission to decide whether to re-propose a Directive but it will clearly secure more support if Member States remain committed to PNR.

We understand that the incoming Greek Presidency will not be pursuing this Directive as one of their key priorities.

16 December 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 16 December 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 8 January 2014.

Like you, we consider passenger name records to be a vital tool for the prevention and detection of serious crime and terrorism. We have previously stated our view that the case for EU-wide legislation in this area is compelling as is the case for that legislation covering intra-EU flights. We therefore regret the line taken by the European Parliament and their apparent disregard for the internal threat of terrorist action as a result of the Civil War in Syria. The Government will recall our previous concerns in relation to data protection and retention concerning the draft Directive. You have assured us that provisions in the current draft are “a stringent set of safeguards”, even though the period for which full data can be held has increased from 30 days to 2 years, and we have cleared this item from scrutiny. We share the Government’s view that further progress on a PNR Directive should not be subordinate to progress being made on the EU’s proposed Data Protection legislation.

We note the Government’s efforts to persuade the LIBE Committee of the importance of progressing this dossier and lack of optimism about agreement on it. We would be grateful for updates should there be any further developments.

10 January 2014

UNION CIVIL PROTECTION MECHANISM (18919/11)

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

I am writing to update you on the text agreed between the European Parliament and the Council as a result of trilogue negotiations and highlight how the final text met the Government’s concerns. I have also included details of the incoming Greek Presidency’s civil protection priorities.

As detailed in the Government’s Explanatory Memorandum and subsequent correspondence with your Committee, the Government was concerned that a number of elements of the Commission’s original proposal challenged the principle of subsidiarity. In particular, the proposed EU-level stand-by arrangements for a European Emergency Response Capacity; the development of EU-subsidised assets; and the proposed measures for a logistical support and assistance capability that would duplicate a capability already voluntarily provided by several Member States.

By working with a group of like-minded Member States (Austria, Denmark, Finland, Germany, the Netherlands, Slovenia and Sweden), we successfully influenced negotiations among Member States to secure changes from the original Commission proposal to bring it in line with our negotiating position. For example, we limited EU co-funding for filling gaps in response capacities to areas where risk assessment and gap identification processes confirmed that no capacities were available to Member States, and developed the original proposals around the development of a common buffer capacity to focus on the establishment and management of framework contracts to address potential significant shortcomings in response to extraordinary disasters.

Over the course of the negotiations, both Chloe Smith, former Minister for Political and Constitutional Reform and I have provided updates to your Committee, with Chloe Smith’s last update on 1 August 2013. Your Committee cleared the draft Decision from scrutiny on 13 February. Since then trilogue negotiations, which began under the Irish Presidency, were concluded during the
Lithuanian Presidency. The European Parliament’s position before the trilogue was closely aligned with the original Commission proposal; therefore we expected some pressure to increase co-funding percentages and to concede on the question of implementing versus delegated acts.

The Irish and Lithuanian Presidencies skilfully negotiated on behalf of the Council and gained the European Parliament’s agreement to the Council text for the majority of Articles, with a few minor textual changes. Despite early resistance, the European Parliament accepted implementing acts on all the Articles that the Council had originally proposed. On the financial elements of the Decision, the European Parliament accepted lower co-funding levels for transport of disaster assets than those originally proposed by the Commission (and supported by the Parliament). The final text also allowed for limited seed-funding to address gaps in response capacities, where no capacities were available to Member States, and 40% co-funding for standby costs of framework contracts. To satisfy the European Parliament’s desire to be involved in setting priorities for civil protection, a new annex was created allocating percentages of the civil protection budget for prevention, preparedness and response activities (20%, 50% and 30% respectively). If the mid-term review of the Decision should suggest a need to alter this balance then the Decision allowed for a delegated act to be proposed.

The key features of the final proposal include:

— Promoting a risk management approach with Member States required to share non-sensitive summaries with the Commission, who in turn would produce a cross-sectoral overview of natural and man-made disaster risks facing the Union;
— Requiring Member States also to report on their capability to manage the risks they face;
— Enabling peer reviews and the deployment of teams of experts to advise on prevention and preparedness measures;
— Creating a voluntary pool of Member States’ response assets that have been certified against agreed quality requirements, and enabling funding of one-off costs to adapt national response capacities for the voluntary pool;
— Enabling the Commission to fund the establishment and management of framework contracts to “address temporary shortcomings in extraordinary disasters”;
— Providing limited co-funding to address significant capacity gaps following a risk assessment process and cost-benefit analysis; and
— Setting co-funding of costs of transport of disaster assistance at 55% and up to 85% for assets from the voluntary pool.

From a Government perspective, we judge that this compromise package includes sufficient safeguards and provides a workable solution that respects the important principles of subsidiarity and proportionality.

The European Parliament plenary session on 10 December voted in favour of the compromise proposal, followed by COREPER and Council endorsement on 11 and 16 December respectively. The Decision was published in the Official Journal of the European Union on 20 December and applies from 1 January 2014, although it will take some time for the associated Implementing Rules to be prepared.

Greek Presidency Priorities

The Greek Presidency programme for civil protection focuses on developing joint or multi-national ‘modules’, i.e. civil protection capabilities of more than one Participating State that can be offered in the event of a request for assistance. The Presidency will host a workshop to discuss this and is planning subsequent Council Conclusions. The Government welcomes the opportunity to explore this issue further.

The Greek Presidency also intends to support the adoption of the implementing acts required by the new legislation and prepare draft Council conclusions on the contribution of the Civil Protection Mechanism to the UN Hyogo Framework for Action for Disaster Risk Reduction, and the ongoing revision of this Framework. The Government looks forward to discussing the post-2015 framework further with Member States.
The Presidency also plans to facilitate discussions on cross-cutting issues of relevance to civil protection, including the Solidarity Clause implementation, ongoing work on the European Programme for Critical Infrastructure Protection; and the EU CBRNE Agenda, following the publication of the Commission’s Communication in the first quarter of 2014. The Government values this holistic approach to civil protection.

5 February 2014

Letter from the Chairman to Francis Maude MP

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

We are grateful for your update on the outcome of negotiations in Brussels on this proposal. We are, however, disappointed that we did not receive an update from you in the period between August 2013 and January 2014 when important trilogue discussions took place under the Lithuanian Presidency.

In our letter to you of 6 March 2012, we recommended that robust evaluation procedures be put in place to monitor and ensure the added value of the European Emergency Response Capacity (EERC) on a continuing basis. We would be grateful to know if this is reflected in the agreement that has been reached.

As you are aware, we are conducting an inquiry into the EU’s future justice and home affairs programme (2014-2019), and we heard oral evidence on the issue of civil protection at our meeting of 15 January 2014. We appreciate that you were unable to send an official to attend the session due to the recent floods, and we were grateful to receive your written submission of 31 January on the issue of civil protection. We trust that our forthcoming report will be of use to the Government in its future dealings with the EU on the issue of civil protection.

26 February 2014

Letter from Francis Maude MP to the Chairman

Thank you for your letters of 26 February in which the Committee requested further information on the practical implications of the Solidarity Clause being invoked ahead of a terrorist attack and information on the evaluation procedures for the European Emergency Response Capacity (EERC). I will address each of these questions in turn.

The Solidarity Clause (Article 222 TFEU) covers prevention, protection and response where a Member State is the object of a terrorist attack. To reflect this, the original proposal from the Commission and High Representative stated that the Solidarity Clause could be invoked by a Member State when it is the object of an ‘actual or imminent terrorist attack’. In its Explanatory Memorandum the Government was keen to understand the practical implications of invoking the Solidarity Clause before an ‘imminent terrorist attack’. This issue has been considered in negotiations, with many Member States noting that it is difficult to see how EU arrangements could extend to terrorism prevention other than through existing information-exchange arrangements. As such there appears to be a growing consensus that the Solidarity Clause would only be invoked once a terrorist attack was underway. We will continue to work with other Member States to ensure that a practical and workable approach is agreed, and that there are no obligations placed on Member States to share sensitive information, either before, during, or after a terrorist attack. Negotiations are continuing under the Greek Presidency, and I will provide your committee with a further update on progress of these negotiations in the near future.

In your letter on EM 18919/11: Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism, you asked about evaluation procedures for the EERC, (the voluntary pool of Member States response assets). The Civil Protection Mechanism Decision requires a series of activities to evaluate all elements of the legislation, including the voluntary pool. An interim evaluation is to be conducted by June 2017, a communication on the continued implementation of the Decision by end December 2018 and a final evaluation report by end December 2021. In addition, the draft implementing rules for the voluntary pool, which are currently being negotiated, are expected to include provision for monitoring and review of the voluntary pool to determine the extent to which it achieves the intended results. We will continue to work with other Member States to ensure that this evaluation considers the added value of the EERC.

17 March 2014
Letter from Francis Maude MP to the Chairman

Further to my letters of 10 February 2014 and 17 March 2014, I am writing to update you on the progress of the negotiations on the draft Decision on the implementation by the Union of the Solidarity Clause.

Discussions on the proposed text are continuing under the Greek Presidency through a Friends of the Presidency Group. The pace of negotiations has now increased, reflecting the Presidency’s ambition to secure agreement before the end of June 2014. Progress continues to be made and a number of the elements raised in the Government’s Explanatory Memorandum have been addressed including the role of the Council, the underpinning of arrangements with existing crisis arrangements, provision for a review and evaluation process, and clarifying that the Clause would only be used in overwhelming circumstances.

Of the elements still being discussed, agreement now looks likely on the practical arrangements for drawing together and coordinating existing Union instruments that can best contribute to the response to a crisis. The Government continues to work to ensure that these arrangements are workable and respect the appropriate competences, both between the institutions of the Union and between the EU and Member States. The text currently states that the arrangements will function on the basis of no additional resources, and the Government will seek clarification on the reference to the Solidarity Fund to ensure it is in line with this principle.

There is more clarity on the role of the European External Action Service (EEAS) and High Representative in the context of the Solidarity Clause. There is general agreement that arrangements at Union level will be based upon existing Union mechanisms, which includes mechanisms in the EEAS as well as the Council, Commission and Union Agencies. The negotiations have made it clear that any such action would be within existing areas of competence.

Another area which includes a role for the High Representative is in the development of threat assessments at Union level along with the Commission. This proposal from the Commission and High Representative is intended to assist the European Council meet its duty under Article 222(4) TFEU to regularly assess threats facing the Union. The Government is continuing to work with other like-minded Member States to avoid any duplication of existing mechanisms for producing threat assessments, and to avoid any new obligations to share sensitive information.

There continues to be a split in views on how the geographical scope of the Decision should be set out, between a wider view (to explicitly include incidents affecting ships and planes registered to a Member State when in international airspace or waters, and off-shore critical infrastructure in the exclusive economic zone or continental shelf of a Member State), and text that simply mirrors that found in the Treaty (i.e. incidents affecting the territories of Member States (even if the incident originates outside the EU)). We will continue to work with like-minded partners to ensure an appropriate solution to this issue.

My officials will continue to work closely with like-minded Member States, the Commission and the Presidency of the Council of the European Union to address the remaining issues as negotiations move towards finalisation.

27 March 2014

Letter from the Chairman to Francis Maude MP

Thank you for your letters of 17 and 27 March 2014 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 9 April 2014.

We are grateful for your clear explanation of the monitoring and evaluation procedures that have been put in place for the European Emergency Response Capacity (EERC) component of the Civil Protection Mechanism.

9 April 2014