



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

This edition includes correspondence from 9 May 2013- 30 November 2013

HOME AFFAIRS, HEALTH AND EDUCATION

(SUB-COMMITTEE F)

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AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION ON THE TRANSFER
AND PROCESSING OF PASSENGER NAME RECORD DATA (12637/13, 12645/13)

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

Thank you for your explanatory memorandum (EM) of 7 August 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 September 2013.

You will be aware that this Committee has for many years taken an interest in the use of *Passenger Name Record* data for the prevention, detection, investigation and prosecution of terrorism and serious crime and generally supports the Government's assessment that the use of PNR data is a proven and vital tool in this area. In 2007 we published a report on the EU/US Agreement (*The EU/US Passenger Name Record (PNR) Agreement*, 21st Report of Session 2006-07, HL Paper 108) and last year we reported on the draft PNR Directive (*The United Kingdom opt-in to the Passenger Name Record directive*, 11th Report of Session 2010-12, HL Paper 113), encouraging the Government to opt in to it, which it has done.

We have therefore considered carefully the EU/Canada PNR Agreement which is the subject of these two Council Decisions, and whether the UK should opt in to them. We have concluded that it would be desirable for the Government to opt in to the Council Decisions concerning the signing and conclusion of the Agreement. We note, in particular, that your EM considers that no financial implications would arise for the UK from such a decision and that PNR data is already being transferred between the UK and Canada on the basis of provisional arrangements under the existing 2006 EU/Canada PNR Agreement.

With regard to the proposed EU PNR Directive we understand that the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee rejected the proposal at a meeting on 24 April 2013 and that the proposal was then referred back to the LIBE Committee for further consideration by a European Parliament, meeting in plenary, on 10 June. We are unclear what the next steps will be for the consideration of this proposal, including the likely date of its adoption, and note that the last update on the progress of negotiations was received from the Government on 2 April 2012. We would therefore be grateful for further information about these developments, the Government's perspective on them, as well as an overview of the current form of the proposal, including its scope with respect to intra-EU flights as this Committee and the Government would prefer it to include.

We have decided to retain these documents under scrutiny. We look forward to receiving further updates on the progress of these proposals, including your decision regarding the opt-in and the date by which this has to be made, in due course.

11 September 2013

Letter from Mark Harper MP to the Chairman

Thank you for your letter of the 11 September and for considering the Explanatory Memorandum regarding the EU-Canada PNR agreement during your meeting on the 11 September 2013 (Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union).

I can confirm that the last versions of the proposed Council Decisions on the EU-Canada PNR agreement were translated on the 26 August. The UK therefore has until 26 November to respond to the Council Presidency with its decision on whether to opt in.

I am grateful to the Committee for its continued interest and general support of the Government's assessment of PNR more generally. As you rightly indicate, the EU PNR Directive (which is separate from the EU-Canada PNR agreement) has been initially rejected by the Civil Liberties, Justice and Home Affairs (LIBE) Committee. Following consideration by the Council of Presidents, the dossier has been referred back to LIBE for further review. Additional discussions are underway in Brussels between the Rapporteur and the shadow Rapporteurs and we anticipate that a further vote will take place before the end of the year. Once we have a clearer picture of how the PNR Directive is likely to proceed, I shall write to you with a further update.

14 October 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 14 October 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 23 October 2013.

We welcome your clarification of the opt-in date and look forward to receiving information about your decision whether to opt-in to the Council Decisions concerning the signing and conclusion of the EU/Canada PNR Agreement, in due course.

We will continue to retain these items under scrutiny and look forward to receiving further progress updates in due course.

23 October 2013

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

I am writing to inform you of the Government's decision to opt-in to the Council Decisions to sign and conclude the EU-Canada Passenger Name Records Agreement.

I anticipate the Agreement going to the December JHA Council as an A point; I hope your Committee will be able to clear this dossier from Parliamentary scrutiny prior to Council to enable us to participate in that vote.

These decisions relate to a draft Agreement between Canada and the European Union to allow the use and transfer of Passenger Name Record (PNR) data to the Canadian Competent Authority. PNR is a record of each passenger's travel requirements which contains all information necessary to enable reservations to be processed and controlled by air carriers.

The UK has recognised first-hand the benefits of PNR through its own border systems programme (formally e-Borders), which has already been used to arrest suspects wanted for serious offences such as murder, rape and kidnap. For this reason, the Government remains committed to the use of PNR as a way of tackling serious crime and terrorism but not at the expense of data protection and civil liberties.

The agreement provides that Canada shall ensure that its competent authority processes PNR 'strictly' for the prevention, detection, investigation and prosecution of terrorism and other serious crime that is transnational in nature. Such processing constitutes a legitimate objective for the purposes of Article 52 of the Charter of Fundamental Rights of the European Union. PNR data has a clear value in combating these types of crime, which goes to the necessity of the measure to protect the public.

The agreement is strictly limited to the transfer of PNR for the purposes of preventing and combating terrorism and other serious transnational crime. It is therefore not directly applicable to the control of immigration but could be used to help fight people trafficking.

We are in regular contact with the airline carriers, on whom the burden for provision of PNR data rests. They are required by Canada to provide such data already; this agreement will provide the legal coverage they need to do so. The arrangements envisaged are already in operation in practice and the proposed agreement will not have undue impact on the carriers' existing systems.

I shall be writing to you shortly with an update on how the PNR Directive is likely to proceed.

21 November 2013

ATTACKS AGAINST INFORMATION SYSTEMS (14436/10)

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

I am writing to update you on progress in the negotiations on this Directive, and to alert you to the possibility of a formal agreement and adoption of the text, which we expect to happen in July. I attach the latest draft text that we have as an Annex [not printed]. This is not the final text; when I have that I will pass it to you – the language is still being adjusted by the jurist linguists. I have set out the position that we have reached in previous letters, but I would just like to briefly summarise the current position, as it has been some time since my last letter.

In our Explanatory Memorandum of 13 October 2010 (14436/10), we set out a number of concerns we had with the original draft of the Directive. We believed that the UK was broadly compliant, but had concerns regarding the possible creation of new offences, and of increases in sentences, on which

we said that we would seek to negotiate. We also undertook to address concerns raised by your Committee regarding the inclusion of references to minor cases, and in clarifying the extra-territorial provisions.

We have negotiated strongly with the Commission and with other Member States, and whilst we may need to make some amendments to the Computer Misuse Act 1990 to ensure compliance with the Directive, we believe that the majority of our offences and existing UK penalties for offences will be sufficient to meet the requirements of Article 9 of the Directive.

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

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

We believe that we have been successful in negotiating an adequate solution to the question of defining minor cases, through the inclusion of a Recital that confirms what constitutes a minor case is a matter for Member States. We have also ensured that the *mens rea* for the offences is enhanced in the text of Articles 3 to 7. I believe that the text as it stands reflects the interests of the UK, and that the UK can accept the draft Directive.

During the discussions in the Parliament, a number of Recitals were added to the text, covering a range of areas. Many of these seek to clarify on aspects of the Articles, or explain why particular Articles are in the directive.

1 July 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 1 July 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 10 July 2013.

We are grateful for your update about the progress of the above proposal and note that the Government is now content with the current version of the text.

We note that following your letter the European Parliament approved the proposal on 4 July. We further note that if the UK's opt-out decision is exercised by 31 May 2014 and this proposal is adopted ahead of the deadline for the application of that decision on 1 December 2014 then this may result in the removal of Framework Decision 2005/222/JHA from the list of approximately 130 police and criminal justice measures that will no longer apply to the UK.

We look forward to receiving confirmation of this proposal's adoption in due course including the implications for the scope of the opt-out decision.

10 July 2013

Letter from James Brokenshire MP to the Chairman

I am writing to inform you of the formal agreement and adoption of the text of this Directive, which has now been published in the Official Journal of the European Union. When I wrote to you on 1 July to update you on the progress of the Directive I said that I would pass the text to you, and it is attached as Annex A [not printed].

The Directive has now entered into force, and repeals and replaces Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems (number 60 on the list of measures), thereby removing it from scope of the 2014 opt-out decision. The list of measures within scope of the 2014 decision will be updated shortly.

9 September 2013

CLINICAL TRIALS REGULATION (12751/12)

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

Thank you for your letter of 5 April 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 19 June 2013. I apologise for the delay in replying which was due to an administrative oversight in both the Department for Health and in our Committee Office.

We are grateful for your update on the progress of negotiations on this proposal and we note that UK stakeholders consider that the Commission's proposal is likely to decrease the administrative burden for trial sponsors, as well as making the EU a more attractive place for the conduct of clinical trials in future.

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

19 June 2013

Letter from Earl Howe to the Chairman

I am writing to update you on the negotiation on the European Commission's proposals for a clinical trials regulation. I last wrote to you about this on 5 June 2013.

EUROPEAN PARLIAMENT

In the European Parliament, the lead committee (ENVI) voted on 29 May and unanimously adopted 290 amendments to the European Commission's proposal. ENVI also voted to give the rapporteur a mandate to commence dialogue negotiations with the Council and the European Commission with the aim of reaching an agreement in principle before the end of the year. One of the main concerns of the European Parliament is to ensure increased transparency on clinical trial data and a number of amendments have been made in this area. These include specifying in the Regulation the content of the summary of clinical trial results that will be made public for every clinical trial in the EU and obliging marketing authorisation holders to publish clinical study reports that have been submitted in support of a marketing authorisation application within one month of a regulatory decision having been made. I support these amendments which I believe will increase transparency.

COUNCIL OF MINISTERS

In the Council, the Irish Presidency concluded a complete discussion of the whole proposal by the end of June and the Lithuanian Presidency is now coordinating compromises aimed at finding an agreed position in Council. The Lithuanian Presidency is also working towards an agreement in principle with the European Parliament before the end of 2013.

I support speedy progress on this negotiation in order to deliver the benefits to the way clinical trials are authorised across the EU as soon as possible, and I will continue to ensure that the Government engages actively in the negotiations. I feel confident that the negotiations have developed in line with the Government's objectives as outlined in my Explanatory Memorandum of 6 August. There are a number of areas in which the Government position has developed further and which I would like to inform you about.

EUROPEAN COMMISSION INSPECTIONS

The European Commission proposes audits of third country regulatory systems to ensure that they comply with principles similar to the Regulation, as well as audits of Member States to verify that compliance with the Regulation is correctly supervised. I wrote to you that the Government was seeking further clarifications on the need for these provisions.

It has now become clear that the European Commission's role will be limited to the audit of Member States' regulatory systems, whilst the inspection of clinical trial activity will remain a responsibility of the Member States. I consider that these audits can play a useful role in ensuring harmonised implementation of the Regulation across Member States, which has been one of the difficulties under the current Directive. The joint assessment process for multi-state trials increases the importance of ensuring that all Member States apply the Regulation in a consistent way.

As for third country audits, I consider that these could help increase our knowledge of whether clinical trial data has been generated in a regulatory system that ensures subject safety, subject rights and data reliability. This is important because clinical trial data from third countries is used in support of Marketing Authorisations. This will however not take away the need to decide whether an inspection of clinical trial activity needs to be triggered in a third country when an application for a marketing authorisation is assessed.

For the reasons above, I support the principles of the Commission proposal.

NATIONAL INDEMNIFICATION MECHANISM

The Commission proposes to oblige Member States to set up a National Indemnification Mechanism: a not-for-profit, government-run scheme which is aimed at non-commercial trials, allowing sponsors to insure their trial for free. In my Explanatory Memorandum of 6 August and my letter of 5 June I wrote that the Government was sceptical about the effectiveness and sustainability of the scheme. I have explored the need for a scheme through a public consultation and a further specific survey of stakeholders on insurance practice and have concluded that the Government should oppose the obligation to set up a National Indemnification Scheme.

The Commission's impact assessment in this area is weak and is based on one report which found that premiums for insurance of commercial trials have increased by 800 percent. The same report states that this increase was not seen in academic research. The evidence that the Commission uses in its impact assessment does not therefore seem to support the rationale for its proposal which is aimed at academic researchers. My officials have raised this with the Commission but the Commission has been unable to provide further evidence that would support their proposal for a National Indemnification Mechanism.

The outcomes of the public consultation did not give me a clear picture of the actual size of the problem as it relates to the UK. My officials have therefore circulated a survey to all respondents to the public consultation to ascertain how much the scheme would be used, to get a better idea of the impact on resources and to better understand problems in insuring clinical trials. 30 responses were received, the majority of which from non-commercial researcher. Respondents gave very clear signals in a number of areas:

- Premiums appear not to have risen in the past 10 years. On the contrary, many respondents indicated they had seen a decrease in premiums over the last decade. This does not support the Commission's suggestion of an 800 percent increase.
- Sponsors do not generally appear to experience difficulties obtaining insurance. Some respondents did raise that it is sometimes difficult to obtain insurance for multi-state trials but this is a consequence of the obligation in some Member States to take out national insurance.
- Insurance is not perceived as a hurdle for the conduct of trials in the UK.
- There does not appear to be a lack of competition in the UK clinical trials insurance market. Respondents indicated that they had sufficient choice in insurers. This does not support the Commission suggestion that sponsors have limited choice in insurance.
- Claims appear to have been limited but could potentially be high. Although respondents indicated that pay outs have been limited, one respondent referred to a pay out of £500,000.
- It is not evident that sponsors would actually use the national indemnification mechanism. Many respondents said that they this would depend on whether the conditions would be similar to their current insurance and some said they would only use it if it was free of charge.

The outcomes of the survey do not confirm that there is an insurance problem as suggested by the Commission. The evidence that has been gathered by my officials demonstrates that the insurance market for clinical trials is working in the UK and that insurance is not generally considered a problem by sponsors.

Based on the evidence gathered I can only conclude that the Commission is seeking a solution for a problem that does not exist, at least not in the UK. Moreover, I have concerns about how the scheme would be able to sustain itself when the Government would not be able to charge academic

sponsors. Commercial sponsors would need to pay for the scheme but they have indicated that they have no interest in the scheme. The costs of pay-outs and for running the scheme would have to be borne by the Government. The UK is not alone in these concerns. Discussions in Council have demonstrated that there is no support from Member States.

23 September 2013

Letter from the Chairman to Earl Howe

Thank you for your letter of 23 September 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 30 October 2013.

We are grateful for your update on the progress of negotiations on this proposal.

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

31 October 2013

Letter from Earl Howe to the Chairman

In the two months since I last wrote to you on 23 September, the negotiations have progressed further. The Lithuanian Presidency has managed to find an agreed position in Council and received a mandate to start triilogue negotiations with the European Parliament and the Commission.

The Council's position largely reflects the Government's negotiating objectives as outlined in my explanatory memorandum of 6 August 2012. One point of concern that remains is the timelines for authorising clinical trials which a majority of Member States would like to see lengthened. With David Willetts, Minister of State for Universities and Science, I have written to Ministers across the EU to urge them to agree competitive timelines that promote research in Europe.

Given the helpful position of the European Commission and European Parliament on this issue, I am hopeful that the triilogue negotiations will lead to an agreement on sensible and globally competitive timelines for authorising clinical trials. My officials continue to engage with MEPs, the Presidency, the Commission and stakeholders on timelines and other issues as the negotiation progresses.

Once I have a clear idea of what the final text will look like I will write again to ask you to lift the parliamentary scrutiny reserve on the proposal.

28 November 2013

COMMISSION COMMUNICATION: EUROPEAN HIGHER EDUCATION IN THE WORLD (12453/13)

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

Thank you for your explanatory memorandum of 5 August 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 September 2013.

This Committee's report on *The Modernisation of Higher Education in Europe* (27th Report of Session 2010–12, HL Paper 275), and its recent scrutiny of the Commission Communication on 'Rethinking Education' (Document No 14871/12) and the proposal for a Researchers Directive (Document No 7869/13) covered many of the issues raised by this Communication. We reaffirm these views. We continue to believe that the EU can and should make a positive contribution to the modernisation of European higher education but it must be pragmatic and concentrate on areas where it can truly add value. For its part, we consider that the Government should place higher education at the centre of its growth agenda, domestically and across Europe, by drawing on the potential of both the EU and the Bologna Process.

We support your emphasis on the work of the existing intergovernmental Bologna Process in the internationalisation of Europe's higher education sector, and your position that the EU should concentrate on areas where it can add value, for example, Master's loan guarantee facility as part of

Erasmus +. We are also glad that you agree with our report's cautious line on the merits of the U-Multirank project; in this respect we would be grateful to receive an update from you once the first results of the project become available next year.

We note that the Government's own internationalisation strategy – *International Education: Global Growth and Prosperity* – emphasises a “warm” welcome for international students, including emphasising that there is no cap on the number of international students that can come to the UK. We particularly welcome the recognition in that strategy that it is in the UK's interest that the sector should continue to grow rapidly in the years ahead. However, as we have already made clear to you on a number of occasions our view is that in order to achieve these objectives genuine international students should be removed from the public policy implications of the Government's policy of reducing net migration. We do not believe that anything short of that will allow the UK to preserve its competitive position with other Member States and more widely in terms of attracting international applicants to its universities.

We note that Council Conclusions are likely to be adopted on this Communication in November and therefore are content to clear this document from scrutiny. However, we would be grateful for a briefing ahead of that Council meeting on how your concerns about an EU initiative on digital learning, immigration rules, and bilateral links are being addressed. In this respect our officials will be in touch about possible dates for a one-off oral evidence session to discuss the interaction of the domestic and EU internationalisation strategies more generally.

11 September 2013

Letter from David Willetts MP to the Chairman

Thank you for giving me the opportunity to present oral evidence on developments in European higher education on 30 to sub-committee F on 30 October. During the session, I promised to provide further written evidence on two points.

I said I would send a note to the Committee with precise figures on students from the Indian subcontinent and China and whether we are maintaining our market share. This is attached [not printed].

During an exchange with Lord Morris, I said I would drop the Committee a note if there were any examples of reciprocal agreements between Governments or at institution level with regard to healthcare for students. I can now confirm we have no examples of such agreements and are not aware of any.

27 November 2013

COMMISSION COMMUNICATION: OPENING UP EDUCATION (14116/13)

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

Thank you for your explanatory memorandum of 11 October 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union took note of at a meeting on 6 November 2013. As you will be aware, this Communication was cleared at the sift.

I am writing to thank you for the quality of this explanatory memorandum which was clear and full. I am also most grateful to you for giving oral evidence on higher education to the Sub-Committee last week.

6 November 2013

COMMUNICATION FROM THE COMMISSION – FIREARMS AND THE INTERNAL
SECURITY OF THE EU: PROTECTING CITIZENS AND DISRUPTING ILLEGAL
TRAFFICKING (15369/13)

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

Thank you for your explanatory memorandum of 14 November which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 27 November 2013.

Like you, we support the Commission's objectives of protecting citizens and disrupting illegal trafficking of firearms which underpin this Communication. We look forward to receiving further correspondence if and when any legislative proposals are brought forward.

We would be grateful if you could give us some idea of the Government's plans for ratifying the new UN Arms Trade Treaty signed by the UK in July of this year and what, if any, implications there are for the EU in the application in of that Treaty. Could you also say what steps the Government are taking to persuade other Members States to ratify that Treaty without delay and thus to expedite its entering into force? And could you indicate what steps the Government will take to ensure that the EEAS lobby third countries to sign and ratify the Treaty?

We are content to clear this item from scrutiny and looking forward to receiving a reply to questions in the preceding paragraph.

28 November 2013

CONDITIONS OF ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONALS
(7869/13)

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

I am writing to inform the Committee that the Government has decided not to opt in at this stage to the above proposal for a Directive of the European Parliament and of the Council.

The Government recognises that some elements of the proposal are broadly in line with the UK's Points Based System; however, having analysed the contents of the proposal we have identified a number of issues that are not compatible with the reforms we have made and give rise to particular concern. These include the requirement to provide all non-EU nationals completing higher education studies and research in the UK with a 12-month extension for the purpose of seeking work; the potential to undermine the UK's ability to apply additional sponsorship requirements and a genuineness test to applicants; and the extension of social security entitlements.

The Home Office consulted key corporate partners on this proposal. Only two responses were received, each from the education sector. The responses encouraged the Government to ensure that the UK remains as competitive as possible in this area, but did not advocate the UK's participation in this proposal.

Having analysed the proposal and following the consultation we have concluded that the measure would undermine the UK's ability to control immigration in the national interest and we have decided that the best course of action is not to opt in at this stage.

This decision is in no way an indication that we do not take seriously the issue of attracting talent, boosting competitiveness through research and innovation and ensuring the protection of those that may be vulnerable to exploitation. The Government considers it to be of the greatest importance. That means, however, that we must get the detail right and be fully cognisant of the operational impact of any legislative changes.

We will take a full part in the negotiations on the Directive and will seek to shape it in the national interest.

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

12 July 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 12 July 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 24 July 2013.

We note that the Government has decided not to opt in to the above proposal at this stage. As you are well aware this Committee takes a different view from the Government about the potential advantages to the UK of measures to facilitate the movement of researchers and other categories covered by this draft Directive and of the desirability of achieving a situation whereby the access of such persons is made easier in other Member States than in the UK.

Given the importance of researcher and student mobility to so many parts of the UK's economy, we are surprised to note that only two stakeholders responded to the Government's consultation on the proposal. We would therefore be grateful for more information about which organisations the Government approached, and received responses from, during its consultations on this proposal.

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

25 July 2013

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 25 July about the Government's consultation on this proposal, requesting more information about which organisations the Government approached, and which responded to the Government's request for comments on the proposal.

The Home Office wrote to organisations representing the education, business, industry, research, science, engineering, humanities and the arts sectors. The organisations consulted were:

- Arts Council;
- Association of Colleges;
- Biotechnology and Biological Sciences Research Council;
- British Academy;
- British Council;
- British Universities' International Liaison Association;
- Campaign for Science & Engineering;
- Confederation of British Industry;
- English UK;
- Guild HE;
- Immigration Law Practitioners' Association;
- National Union of Students;
- Research Councils UK;
- Royal Academy of Engineering;
- Russell Group;
- Study UK;
- The Royal Society;
- UK Council for International Student Affairs;
- Universities UK;
- Universities UK International Unit;
- Wellcome Trust.

Responses were received from the Russell Group and Exporting Education UK. As I mentioned in my previous letter, neither advocated participation in the proposed Directive.

9 September 2013

Letter from the Chairman to Mark Harper MP

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

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

9 October 2013

DRAFT EU DRUGS ACTION PLAN 2013-2016 (5418/13)

Letter from Jeremy Browne MP, Minister of State for Crime Prevention, Home Office, to the Chairman

Thank you for your letter of 24 April about the Draft EU Drugs Action Plan 2013-2016.

In your letter, you stated you were grateful for the clarification of the UK's collaborators on the issue of identifying and monitoring new psychoactive substances (NPS), but sought further information on whether international collaboration includes exploring alternatives to banning NPS. Our NPS Action Plan commits the UK Government to keeping the effectiveness and impact of the legal framework in relation to NPS under review as well as exploring alternative approaches adopted in other countries and evidence of their impact on the sale of NPS. We look forward to seeing the Commission's proposals for new EU legislation on NPS, which the Commission has indicated, will enable a faster response to the emergence of substances; and better align laws in the field of drug control, product and food safety, consumer protection and medicines to cover the wide variety of substances that emerge.

You asked what revisions were made to the EU Action Plan after the Horizontal Drugs Working Group (HDG) on 18 April. Within the 'drug demand reduction' and 'supply reduction' chapters of the EU Action Plan, indicators were amended and finalised, alongside the methods of data collection to ensure no additional reporting burdens on Member States. There were stylistic changes which were made to the 'Co-ordination' chapter of the EU Action Plan. Some changes were made to the 'International Co-operation' chapter, to strengthen wording regarding who the EU should cooperate with and on what issues, such as supporting third world countries in addressing and preventing illicit drug cultivation through alternative development. A key drugs threat for the UK is from West Africa which has now been acknowledged within the 'International Co-operation' chapter as a region of priority. Very few changes were made to the 'Information, Research, Monitoring and Evaluation' chapter, but a new indicator of the 'Early Warning System on NPS' has been included.

The next HDG was scheduled to meet on 17 May, but was unfortunately cancelled due to strike action, and has been re-scheduled for 23 May. It is hoped that at this final HDG meeting under the Irish Presidency, agreement will be reached in order to submit the EU Action Plan for adoption to the Justice and Home Affairs Council, which is being held on 6-7 June.

I include the latest version of the EU Action Plan with this letter [not printed], and trust this information provides you with reassurance of the good progress being made by UK officials at the HDG towards final adoption of the plan.

21 May 2013

Letter from the Chairman to Jeremy Browne MP

Thank you for your letter of 21 May 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 5 June 2013.

In response to our question about the UK's international collaboration in exploring alternatives to banning new psychoactive substances (NPS), we note your reference to the Government's NPS Action Plan and its commitment to exploring alternative approaches.

Thank you for including a copy of the draft Action Plan together with your letter. We are pleased to note that many of the recommendations from our 2012 report are reflected in the text.

We have decided to clear this document from scrutiny ahead of its likely adoption by the Justice and Home Affairs Council meeting on 6-7 June.

5 June 2013

DRUG PRECURSORS (14394/12, 14514/12)

Letter from the Chairman to Jeremy Browne MP, Minister of State for Crime Prevention, Home Office

Thank you for your detailed letter of 8 May 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 22 May 2013.

We consider that these proposals appear to constitute a proportionate response to the weakness that the Commission has identified in the current controls of AA [acetic anhydride] and medicinal products containing ephedrine and pseudoephedrine.

We note that the Government considers that both proposals are now in line with the UK's interests.

While it is not made clear in your letter we also understand that these documents are both due to be adopted at the Competitiveness Council on 29-30 May.

We have therefore decided to clear these documents from scrutiny but would appreciate further updates about the progress of these proposals in due course.

22 May 2013

EU ERASMUS PROGRAMME (UNNUMBERED)

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

I am writing to update you on developments in negotiations on the above texts, for which a partial general approach (PGA) was agreed at the May Education Council last year (my letter of 23 April 2012 to Lord Roper and his of 26 April refer). Since I last wrote to your Committee, negotiations have focused on seeking to reconcile the original Commission proposals, the Council PGA texts and amendments proposed by the European Parliament. Negotiations with the Parliament began in November, and proceeded slowly until recent weeks. I am therefore writing to report the most recent developments and to request clearance of the above item from scrutiny.

The UK's key aims were to retain the streamlining and efficiency gains for the education and youth programmes set out in the Commission's original proposal; to keep the name Erasmus for All; resist the use of delegated acts to implement the programme; and restrict use of the new sports programme to support non-profit sports events. Following cross-Whitehall consultation we also supported the proposed Masters loan guarantee facility, which was not included in the PGA, but only provided that it was allocated a sufficient percentage of the budget for it to be viable. As you expressed particular interest in the facility, a detailed description of it is provided at Annex A [not printed].

The discussions revealed a large degree of consensus on the more technical content of the proposed legislation. The Irish Presidency reached agreement in COREPER on 26 June on a compromise package they considered acceptable to the Parliament on the more contentious issues, excluding the level and profile of the budget, but giving indicative percentage budget allocations to the various strands. The contentious issues and their outcomes were:

- The name, where the Parliament originally preferred 'YES Europe' to 'Erasmus for All'; the eventual compromise is 'Erasmus +', the '+' being linguistically neutral.
- Parliament wished to reinstate the sectoral brand names removed in the PGA (Erasmus, Comenius, Leonardo, Grundtvig and Erasmus Mundus), with separate objectives for each. The compromise is to reinstate the brand names but not to have separate objectives for them, which had the

Parliament insisted would have removed much of the simplification inherent in the proposal.

- Parliament wanted a separate budget heading for youth and higher budget percentages for all strands than in the PGA. Our aim here was to ensure the maximum budget flexibility and sufficient budget to make the Master's loan facility viable. The last was achieved; unfortunately as the Parliament and most Member States favoured specific and high percentages for various strands, it proved impossible to keep a large margin of flexibility, and in the end there is a separate budget for Youth, and all of the budget is specifically earmarked, leaving only 5% flexibility between the strands. We did, however, in addition to securing a high enough percentage for the Masters loan facility, manage to reduce the percentages for administration and management, both as compared to the Parliament's and some other Member States' preferences. The detailed percentages are listed at Annex A [not printed].
- Use of delegated acts to implement the programme. In common with other Departments facing a general push by the Parliament for use of delegated acts, we opposed this, which in this Programme would have meant the Parliament rather than the Member States in the Programme Committee deciding on the annual Work Programme and budget. In the end the Parliament retreated, and the Programme will be implemented using implementing acts.
- The Masters loan guarantee facility. Despite considerable opposition from other Member States, either to the facility or to providing it with sufficient budget, this has been agreed with a compromise between the most intransigent Member States' preference for 2% budget and the Commission's proposed 5%, i.e. 3.5%. We were able to support this as the Commission assured us that they did consider that sufficient for the scheme to be viable. As the Lords Inquiry into Modernisation of Higher Education expressed support for the facility, I am attaching further detail on the scheme at Annex B [not printed].
- Support for non-profit sports events: the PGA removed the original proposal that the Programme could support these; the Parliament wished to reinstate them. As we consider that the primary focus should be on grassroots sport, and do not consider there is evidence that such events increase participation in sport at grassroots level (based on the nature of events that have previously been supported by the EU), we and other Member States pressed for such support to be limited. The eventual compromise was that such support is limited to a maximum of 10% of the budget for the Sports element of the Programme, that is 0.18% of the overall Programme budget.

Thus all of our aims except for a slight change to the name of the programme, and high budget flexibility have been achieved. The Parliament has already agreed to a first reading, unexpectedly early; we expect the programme will come forward for final adoption by co-decision in the autumn.

As far as the Erasmus + budget and its profile are concerned, the agreement included only budget percentages; any decisions on the overall budget and profile remain subject to an overall settlement of the Multi-Annual Financial Framework (MFF) which is satisfactory to the UK. The Irish Presidency proposed a broadly pro rata reduction to the figures in the original Commission proposal of €17bn, which implies an Erasmus + budget of some €13bn. This would still represent a real increase relative to 2013 spend, but is in line with the priorities agreed in the MFF settlement reached by Heads of Government at the February European Council. Negotiations on the budget are now expected to conclude under the Lithuanian Presidency, probably in September.

We shared the Irish Presidency's desire to secure agreement during its term, in order to ensure that the programme, which is of considerable importance to UK universities, businesses and other research organisations, can start on time with no interruption in funding. The Irish Presidency did well to get agreement within its term. It is in the UK's national interest that negotiations conclude in a timely manner such that Erasmus + may be launched in a timely fashion, not least as we intend to issue a competitive tender to choose the National Agency to implement the programme in the UK. With this in mind, I hope that the Committee can clear the above items from scrutiny.

Finally, I wrote to you on 10 October 2012 to supply Erasmus data analysed by ethnicity, social class and disability which you had requested, and in your reply of 17 October you asked if these data could

be again supplied in a year's time. These data have previously been produced only biennially, but we have managed to find the resources to provide them annually in future. The latest set should be with you before your recess, though regrettably are not likely to be available before the Commons rises on 18 July.

15 July 2013

Letter from David Willetts to the Chairman

I wrote to you on 10 October 2012 to supply Erasmus data analysed by ethnicity, social class and disability for 2010/11 which you had requested, and in your reply of 17 October you asked if these data could be again supplied in a year's time.

These data have previously been produced only biennially, but as I mentioned in my letter of 15 July updating you on the Erasmus for All, now Erasmus+, programme, we have managed to find the resources to provide them annually in future. I am pleased to inform you that the latest data for 2011/12 have now been received from the British Council and HESA, and I attach a copy [not printed].

In each case HESA has restricted the UK HE student groups with which the Erasmus groups are compared to full-time students who are nationals of one of the Erasmus participating countries, in order to ensure, as far as possible, comparability between the groups; and in order to minimise the possibility of the data being used to identify individual students, the numbers have been rounded to the nearest 5.

Subject to that, for disability, the data show a continuing growth in participation, from 6.10% in 08/09 to 6.41% in 10/11, and now 6.85% in 11/12. For ethnicity (total excluding White, Unknown and Non-UK) there is also a continued increase, from 8.59% to 8.81% and now 9.73%. Although these may appear small increases, for ethnicity the growth in the proportion of the target groups represents an increase of over 10% in a single year; for disability the comparable figure is close to 7%.

There has been a slight fall in the proportion of relevant groups by socio-economic classification. Whereas there was an increase in the proportion from non-managerial/ immediate backgrounds between 08/09 and 10/11 from 15.21% to 16.30%, this fell slightly to 15.93% in 2011/12. There has, nevertheless, been an increase in the actual number of students from the relevant groups in 2011/12, from 1730 to 1800, a rise of 4%. We will continue to encourage the British Council, and the future National Agency for the programme, to do all they can to ensure increases in all three categories.

22 July 2013

Letter from the Chairman to David Willetts

Thank you for your letter of 15 July 2013 which was considered by our Home Affairs, Health and Education Sub-Committee at its meeting on 24 July.

We note that the Government appears to have achieved the majority of its objectives during the negotiations on this proposal. We welcome, in particular, the 3.5 per cent budget allocation to the Masters' loan guarantee facility. As you will be aware we endorsed this facility in our report on *The Modernisation of Higher Education in Europe* (27th Report of Session 2010–12, HL Paper 275).

With regard to your request for scrutiny clearance we recall that this was granted on 17 October 2012.

We look forward to receiving further updates as negotiations conclude.

25 July 2013

Letter from the Chairman to David Willetts

Thank you for your letter of 22 July 2013 regarding the above matter. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 11 September 2013.

We are grateful for the updated data on student mobility that you have provided. We welcome the indications that participation rates are improving, however modestly.

We continue to consider widening participation in Erasmus and other mobility programmes to be very important and will look forward to receiving further data updates in due course.

No response to this letter is required.

11 September 2013

EU'S GLOBAL APPROACH TO MIGRATION & MOBILITY (17254/11)

Letter from Lord Taylor of Holbeach, Parliamentary Under- Secretary State for Criminal Information, Home Office, to the Chairman

I write following the debate on the Global Approach to Migration and Mobility that took place on 6 June. I am grateful to you and the Committee for producing the report and for tabling the motion which led to such an interesting debate. I am also grateful to the noble Lords for their valuable contributions to that debate.

This letter addresses the substantive points raised during the debate that I did not address on the day.

MOBILITY PARTNERSHIPS AND THEIR EVALUATION

Several questions were raised with regard to the Global Approach to Migration and Mobility (GAMM), in particular on the subject of Mobility Partnerships and their evaluation. In this regard, the Government welcomes the European Commission's intention to develop the first biennial implementation report on the GAMM, which I understand will be published later this year. This report will present an assessment of the various programmes and projects which fall under the GAMM, including Mobility Partnerships, as well as identifying future priorities.

I note Lord Sharkey's concerns with regard to the previous evaluation of the Moldova Mobility Partnership. The Mobility Partnership instrument has been further developed under the renewed Global Approach to Migration and Mobility and clearly it is important that the more substantial Mobility Partnerships now being developed, including the partnership with Morocco recently co-signed by the United Kingdom, are evaluated in an effective manner. The Government awaits the Commission's evaluation report with interest. Following receipt of that report, we will consider whether further steps should be taken to ensure the proper evaluation and effective use of Mobility Partnerships.

The Government agrees with the Committee on the need for a more focussed approach under the GAMM, concentrating on key objectives. Indeed, I hope that the aforementioned Commission evaluation report will mark a further step towards a more strategic orientation under the GAMM.

With regard to strategic priorities, I am grateful to Lord Hannay and to Viscount Bridgeman for reiterating the Committee's views on the importance of enhanced engagement with countries including Pakistan and Turkey. On Pakistan, I understand there are no current plans for using the new Common Agendas Migration Mobility (CAMP) instrument (similar to a Mobility Partnership, which is reserved for the countries of the EU neighbourhood). I welcome the current EU engagement with Pakistan under the new Silk Route Partnership, as well as the leading role being played by the UK in the development of this Partnership.

I believe Turkey's EU accession status precludes the development of a Mobility Partnership with that country. However, the UK is working closely with our EU partners, as well as bilaterally, to enhance our engagement with Turkey both on the improved management of migratory pressures and on tackling other cross-border harms. This includes work in the context of the Silk Routes Partnership, which is chaired by Turkey.

Lastly, I would like to reiterate that, while the Government welcomes the opportunity to work with our European partners and third countries through Mobility Partnerships and under the GAMM more broadly, we will always weigh up the benefits, costs and risks of participation in GAMM instruments, and do so only where we believe this will benefit the UK and be in line with our broader migration policy.

ASYLUM AND RESETTLEMENT

In the context of our Title V opt-in, Lord Hannay noted that the UK had decided not to participate in several elements of legislation underpinning the Common European Asylum system (CEAS). The Government chose not to opt into these recast Asylum Directives because we considered that doing so would have a negative impact on our ability to operate our own asylum system. We were particularly concerned that the proposals, based on enhancing the rights of all asylum seekers, genuine or not, would act as a pull factor for fraudulent claimants to the detriment of genuine refugees. We have no plans for future participation in any of the recast Asylum Directives as we do not judge that this would be in Britain's best interests.

However, we do not believe that this has prevented us from making a difference in terms of EU policy on asylum. We have been strong advocates for practical cooperation within the EU. In our view, such practical cooperation has a more useful impact than the further layer of legislation represented by the CEAS, and we are committed to continue working with our EU partners in order to address the challenges we all face in preserving the integrity of our asylum systems and helping those who are genuinely in need. On this basis, we fully support the work of the European Asylum Support Office, and have sent our own experts to other Member States such as Greece to help build capacity and share best practice.

The Earl of Sandwich raised the matter of resettlement and the Gateway programme, and asked about the resettlement of Afghan interpreters. The Gateway programme is a scheme whereby UNHCR transfer an annual quota of identified refugees to the UK. We accept 750 refugees through Gateway annually. We are not using the Gateway programme to resettle Afghan interpreters who qualify for relocation to the UK as we did in Iraq. In hindsight, the use of the Gateway programme for the Iraqi scheme was inappropriate as it displaced other deserving refugees from the UK's quota. This is why the Government will not use this programme to resettle those who qualify for relocation to the UK under the Afghan severance scheme.

ILLEGAL IMMIGRATION AND OVERSTAYERS

With regard to cooperation with European Agencies and Frontex, Lord Hannay referred to the importance of the UK's role in FRONTEX and the development of EUROSUR (European Border Surveillance System), both of which aim to improve the security and surveillance of the EU's external borders. We remain committed to supporting the EU's efforts in this area because we know that illegal migration is a global problem which is tackled more effectively by countries working in cooperation with each other. We also know that illegal migrants often travel through Europe on their way to the UK; for this reason, strengthening the external Schengen borders provides a direct benefit to UK, as such action in turn enhances the security of our own borders.

Lord Hannay also pointed to the fact that the majority of irregular migrants in the EU actually enter legally and then overstay. In this regard, I note the legislative proposals currently being taken forward by the European Commission and the Member States of the Schengen area under the banner of 'Smart Borders', which includes a proposal for an EU Entry/Exit System. The Entry Exit/System would electronically register the dates of entry and exit of all third country nationals admitted for a short stay to the Schengen area, including all those not subject to a visa requirement. This system is intended to generate reliable data on overstayers, as well as issuing an alert on individuals who have not exited the Schengen area following the expiry of an authorised stay, alerts that will help authorities to take action against these overstayers.

TRAFFICKING IN HUMAN BEINGS

The Earl of Sandwich and the Lord Bishop of Derby raised the topic of human trafficking, its links to prostitution, and the position regarding the Trafficking Convention. The Government published its Human Trafficking Strategy in 2011. The strategy has four key areas: improving care for victims; working with other countries to stop people becoming victims in the first place; strengthening our borders so that victims cannot enter the country and traffickers are stopped; and making sure agencies within the UK work together to identify the traffickers and bring them to justice. There is also a separate chapter in the strategy on child victims of trafficking, which sets out the actions we will be taking to prevent child trafficking and protect victims, recognising children's particular vulnerabilities.

The UK has signed and ratified the European Convention on Action against Trafficking. The UK has also opted into and implemented the EU Directive on Preventing Trafficking and Protecting its Victims. Trafficking is a terrible and often secret crime and the Government is committed to tackling the criminals behind this abuse. Police forces and the Serious Organised Crime Agency work with partners in Europe and around the world to detect and disrupt those involved in trafficking. Joint Investigation Teams with the Romanian police have led to successful prosecutions in Romania and the rescuing of victims.

The Government funds support for adult victims through a contract with The Salvation Army. Victims referred to the service through the National Referral Mechanism can access tailored support including, where appropriate, accommodation, physical and physiological treatment and support with return and reintegration.

LEGAL MIGRATION AND FAMILY REUNIFICATION

Lord Teverson and Lord Clement Jones raised the issue of alignment of visa policy with that of the Schengen area, and the particular question of Chinese tourist visas. With regard to the Schengen area's visa policy, the United Kingdom remains outside the immigration and visa elements of the Schengen area. This means that we are free to manage our own border controls and determine our own visa regime.

While the UK maintains a close interest in the visa dialogues of those EU Member States that apply the Schengen provisions, the Government has no plans to change the application of our existing visa regimes. It is perhaps worth noting that some similarities already exist between UK and EU visa requirements, including the roll out of biometrics for UK visa applicants similar to that now being undertaken by our EU partners on the basis of a phased programme. The UK visa operation continues to deliver an effective service in high value and often high volume areas, whether its customers are tourists, business travellers or students. The policy framework is responsive while also allowing us to maintain the integrity of our border controls.

On the specific question of Chinese visas, the UK is open for business and tourism and China is one of our priority markets. In terms of visa operation and visa issuing, we already deliver an excellent and high quality service in terms of processing time, convenience and value for money. We now have twelve regional visa application centres conveniently located around China, a greater number than any other non-Asian country. We are able to offer premium VIP lounges in Beijing, Shanghai and Guangzhou, and there are a number of additional visa services available for those planning to travel to the UK.

We work hard to attract *bona fide* travellers, and the numbers coming to the UK from China are up year on year, with a commensurate increase in spending. For example, 2012 International Passenger Survey statistics show 24% more Chinese visitors to the UK than in 2011. Furthermore, across the various categories, the majority of Chinese visa applicants who apply for a visa to travel to the UK (around 96%) not only receive a visa, but also speak positively of the experience. While we will continue to make further improvements where possible, we will ensure that these changes will not compromise border security.

A number of noble Lords also raised the subject of family reunification. Lord Sharkey, in particular, sought greater clarity on the Government's decision to not opt into the EU Directive, a decision we made in order to retain the ability to set our own family migration policy and in the context of potential abuse of the family reunification, in particular by third-country nationals. In her contribution to the debate, my noble friend Baroness Hamwee reminded the House of her report on this topic; I believe that the debate that I expect to follow the publication of that report will provide an opportunity to examine that decision in greater detail.

STUDENT VISA POLICY

Turning to the Government's student visa policy, on which many noble Lords made a contribution, I draw attention to my previous letter of 14 February, sent to the noble Lords who participated in the full and stimulating debate on this topic on 31 January. That letter set out the Government's position in detail. I will not attempt to cover the same issues again in this letter, but will address some of the additional points raised and highlight recent developments in this area.

I should begin by once again reiterating that there is no cap on the number of international students that can come here to study. A number of noble Lords spoke of the perception overseas that the UK does not welcome international students. The Government has always been clear that talented international students are welcome here, but I recognise that there have been negative perceptions. During his visit to India in February, the Prime Minister emphasised that there is no intention of placing a cap on the number of genuine students who can come, and that we must work hard to overcome misconceptions. As Lord Hannay rightly stated, education continues to be one of our most successful exports and the Government will continue to send out the message that international students will find a warm welcome here.

It is true that the Government's student visa reforms, aimed at tackling significant levels of abuse in the system, have resulted in the number of student visas issued reducing by more than a third. However, the latest data shows that these reductions have come from the non-university sector, and the latest Higher Education Statistics Agency (HESA) data shows a 1.5% increase in the number of international students at our universities. Earlier this month, UCAS announced that applications from non-EU students are up 5.5% compared to this time last year. Visa data also shows a 5% rise in CAS (Confirmation of Acceptance for Studies) for university students. The university sector now accounts

for almost three quarters of student visas, up from about half in previous years. These statistics demonstrate that the university sector continues to attract international students, while those sectors where abuse was most prevalent are seeing a decline in numbers.

Many noble Lords suggested we should focus on increasing our share of the international student market. My noble Lords Lord Hannay, Lord Sharkey, Lord Bew and the Earl of Sandwich noted that while we are seeing international students from a number of markets – notably China – rise significantly, we are seeing some decline in others, such as India. This reduction must be seen in the context of very significant rises in the numbers coming from India and the rest of the sub-continent in previous years. We still continue to welcome large numbers of Indian students to the UK. Indeed, in the year to March 2013, almost 16,000 visas were issued to Indian students, putting India second only to China in the number of students it sends to the UK. The rise in Chinese students shows there is no structural impediment to recruitment in India or elsewhere.

Some commentators have argued that the UK is losing market share, in particular to the US and Australia. However, comparisons with other countries are difficult due to the lack of up to date published data and the difficulty of comparing data sources from different countries. The OECD provides the official data for international comparison, but the most recent data is from 2010 and is therefore of limited value. Nevertheless, a fall in UK market share would not necessarily equate to falling numbers of students coming to the UK. With a growing market – the number of foreign students almost doubled from 2.07m to 4.12m between 2000 and 2010 – we could have increases in student numbers but a decline in market share.

Furthermore, reporting changes in percentage market share is misleading as it may mask growth within a country and in the size of that country's tertiary sector. For example, according to the OECD the UK market share of foreign tertiary students rose by 2% between 2000 and 2010. This meant a 140% increase in actual student numbers. In comparison, US student numbers grew by 44% in the same period, yet their market share fell from 23% to 17%.

The increasing popularity of non-traditional destinations for international study is also important. The OECD shows that tertiary-level foreign students at study destinations outside the UK - USA, Canada, Australia, Germany and France - grew by 125% from 849,575 in 2000 to 1,908,964 in 2010. As such, the corresponding market share for these countries increased from 41% to 46%.

Several noble Lords made reference to the Government's net migration target, advocating the removal of students from net migration statistics. I addressed this matter in some detail in my letter of 14 February. As the Earl of Sandwich commented, the internationally recognised UN definition has to apply. The Government remains committed to applying the UN's definition of net migration, which includes all migrants changing their place of residence for 12 months or more.

The Earl of Sandwich suggested that the number of students who stay in the UK permanently is negligible. In fact, the best evidence currently available suggests that large numbers of international students are staying on in the UK after their studies. The number of migrants entering the UK for formal study trebled between 2001 and 2011 to 250,000 a year, but the latest ONS net migration statistics show that the numbers of non-EU nationals leaving the UK is not increasing in similar numbers. This suggests that large proportions of those students are still in the UK.

The Home Office's 2010 study *The Migrant Journey* aimed to improve our understanding of migrants coming to the UK, their countries of origin, their purpose for migrating and how long they stay. It remains the most complete picture of the behaviours over a five year period of those who have come to the UK on student and other visas. It found that 20% of students (approximately 37,000) who came to the UK in 2004 were still here legally in 2009.

The study has recently been repeated for migrants arriving in 2005 and 2006, and a similar proportion of those who entered as students remained in the UK after five years – 21% (approximately 39,000) and 18% (approximately 38,000) respectively were still legally in the immigration system in 2010 and 2011. Of course, the figures do not capture any that may have remained unlawfully. The study also reports that 13% of those given settlement in 2009 and 16% of those given settlement in 2010 and 2011 originally came to the UK as students.

A number of noble Lords made points about the operational activities of the UK Border Agency in implementing the Government's student migration policy. Lord MacGregor referred to complaints against the UK Border Agency and some of its actions and procedures. Noble Lords will be aware that on the 26 March the Home Secretary announced the decision to end the executive agency status of the UK Border Agency and bring its functions back within the Home Office. In place of the UK Border Agency there is now a UK Visas and Immigration command and a separate Immigration Enforcement command. By creating two entities instead of one, we will be able to create distinct

cultures with the UK Visas and Immigration service focused on providing a high-volume service that makes high-quality decisions.

I described in my previous letter some of the work being done by the Home Office to engage more closely with the higher education sector. The UK Visas and Immigration Directorate and the Department for Business, Innovation and Skills continue to work together with the sector on the co-regulation approach to enforcing sponsorship obligations. One of the first tasks of the co-regulation Steering Board has been to develop a higher education training and familiarisation programme for UK Visas and Immigration's new specialist Higher Education Assurance Team, which aims to ensure the team has a thorough understanding of the sector. UK Visas and Immigration has also worked closely with Universities UK and Guild HE to deliver sponsorship workshops to 96 higher education institutions. These workshops have received very positive feedback.

The noble Baroness Prashar referred to the UK Visas and Immigration interviewing programme, the extension of which was announced by the Home Secretary in December. UK Visas and Immigration will continue to increase the number of interviews conducted to more than 100,000. Of course, many of our competitor countries also use interviewing as part of their visa application process, and the extension of the programme will not affect genuine students.

The noble Lord MacGregor made reference to the Brazilian Government's Science without Borders scholarship programme. The UK welcomes participants on this programme, and is already hosting more than 2,000 students as part of the scheme, with a further 1,800 expected to come in September. Of course, participants on the programme must be able to meet our basic, common sense visa requirements – including the requirement that, to study at degree level, they must be able to speak intermediate English.

Finally, Lord Hannay asked about the impact of the Immigration Bill. The Bill will ensure that this country continues to attract people who will contribute and deter those who will not. We recognise the contribution that university students make to the economy and to the reputation of our universities. The Bill is about fairness and we are considering the contribution all migrants make, not just students, and ensuring that the level of access to public benefits and services is commensurate.

We are considering which migrants should have free access to the NHS and will consult on this over the summer. We are also considering where else immigration status should be checked when accessing services, as we already do for access to the labour market.

We have stated that landlords will be required to conduct certain checks and we will also be consulting on the detail. We will ensure that students are fairly treated and are not subject to double checking. For example, as universities already check the immigration status of their overseas students it will be unnecessary for universities to conduct repeat checks in their capacity as a landlord providing student accommodation.

INTEGRATION

Many of my noble friends also raised the matter of integration, and the Government's belief that communities, businesses and voluntary bodies should be able to lead local efforts in this area. I can assure my noble friends that the Government's approach in the area emphasizes the importance of people of all backgrounds having the opportunity to take part in local and national decision making, and of increasing opportunities and tackling persistent inequalities in access to training, jobs, education and business finance, as well as ensuring a strong, shared sense of the mutual commitments and obligations which underlie personal and social responsibility.

With regard to localism, the Government believes that local communities know their own local areas best, and it is for them to determine which services or initiatives best align with the needs of their own areas. We believe that the Government's involvement should be by exception only. On that basis, we have moved away from a top-down approach involving targets and inspections, to enable local authorities and their partners to lead on integration.

The Government agrees with Lord Rosser's view that the ability to speak English and effective integration are of great importance. That is why we require migrants coming to work or study or as partners of permanent residents to have an appropriate level of English before entry, and why there is an additional requirement that those seeking to live here permanently or naturalise as British citizens demonstrate an understanding of language and life within the UK.

We have also revised the Life in the UK Test and the Life in the UK Handbook on which it is based. We have moved away from questions on obscure statistical information and mundane matters to focus on British history, culture and traditions, our democratic system of Government, and the legal

system. This change of emphasis will help migrants gain an understanding of the development of British society and the values which underlie it.

FREE MOVEMENT

Concerns were raised by Lord Hodgson regarding the strains on our communities resulting from free movement within the EU. The Government supports the legitimate exercise of the right to free movement, which also provides many advantages to UK citizens. However, free movement rights are not unconditional and depend on the fulfilment of the responsibilities that go with them. The Government does not tolerate abuse of free movement which undermines its credibility and the public support amongst those of our citizens who see the increasing pressures on their communities.

At the same time, the ability to claim social welfare benefits, and to access health services in other Member States is an attractive pull factor for a minority of EU citizens who move to another Member State solely to take advantage of these benefits, without any intention of working, studying or supporting themselves. As the Prime Minister announced in his speech in March, we are creating a new statutory presumption that after six months EEA nationals who come to the UK to look for work will have no right to reside in the UK and no access to benefits, unless they can demonstrate that they are genuinely seeking work and have a genuine chance of getting a job.

We are also addressing the issue of access to social housing, by issuing new statutory guidance to ensure that local authorities set a residency requirement, or minimum period of residence in an area before a person qualifies for social housing. This would mean someone would have to live in an area for, say, 2 or 5 years before they could even go on the waiting list. We will also make sure that, whenever we can, the NHS claims back the cost of treating EU nationals from their home country.

At the European level we have consistently raised the problem of fraud and abuse with other EU Member States, and we are working to curb such abuse domestically, and together with our European partners. We will also examine the scope and consequences of the free movement of people across the EU as part of the Review of Balance of Competences in 2013.

In closing, I thank you for the Committee's report on the GAMM and for affording noble Lords the opportunity to discuss it fully.

22 June 2013

Letter from the Chairman to Lord Taylor of Holbeach

Thank you for your comprehensive and informative letter of 22 June 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 10 July 2013. We note the contents of the letter with interest but would like to make some further points on three of the areas covered, regarding the Morocco Mobility Partnership, student visas and free movement.

With regard to the Mobility Partnership that the EU has recently signed with Morocco we note your agreement with the Committee that such instruments are evaluated in an effective manner. You will recall that our GAMM report recommended that "any future Mobility Partnerships should contain clear provision for integrated monitoring or evaluation mechanisms to assess quantitative benchmarks, including the views of the target beneficiaries. These mechanisms should play a prominent role from the very beginning of the process". We have reviewed the text of the Morocco Mobility Partnership and regret to note that it contains no such provision. We would be grateful for your thoughts about this omission.

With regard to student visas we remain of the view that genuine international students should be removed from the public policy implications of the Government's policy of reducing net migration. We do not believe that anything short of that will allow the UK to preserve its competitive position with the EU in terms of attracting international applicants to its universities.

With reference to the debate on student visas that took place in the House of Commons on 6 June, shortly before the debate began on our GAMM report in the House of Lords, we note that Mark Harper MP, the Minister for Immigration, stated that the Government "will work in partnership with our excellent universities to continue to increase the number of international students who come here from around the world". We welcome this statement and would be grateful if you could confirm that this is indeed the Government's policy in this area.

In this context, we also note with some dismay the Secretary of State's announcement on 3 July of a Department for Health consultation on migrant access and their financial contribution to NHS

provision in England, which will potentially include a non-reimbursable "health levy" on non-EEA migrants staying for up to five years of at least £200 a year, including international students. This seems to us likely to add a further competitive disadvantage for the UK in comparison to other Member States, none of whom we assume make such a charge.

With regard to free movement within the EU, we are of the view that the free movement of persons is a fundamental part of the Single Market. While we support the general aim of the Government to find effective means to prevent benefit fraud by foreign nationals, we underline the need to respect the UK's obligations under the EU Treaties. We also note that with respect to the nationality of benefit claimants, particularly recipients of Jobseekers' Allowance, there is currently a deficit of data available, including in relation to nationals from other Member States. We would therefore suggest that any action proposed by the Government in this area should take care to be predicated upon a firm evidential base.

We will take these considerations into account when we come to scrutinise any relevant Commission proposals in this area; and the House may also have them in mind when the time comes to consider the Immigration Bill, which was announced in the Queen's Speech.

10 July 2013

Letter from Lord Taylor of Holbeach to the Chairman

Thank you for your letter of 10 July 2013 following my letter of 22 June regarding the debate on the Committee's Report on the EU's Global Approach to Migration and Mobility.

With regard to the points you make on the Morocco Mobility Partnership and the question of its evaluation, I believe we are in agreement on the need for this and future Mobility Partnerships to be evaluated effectively. I note the Committee's proposals for how such evaluation should be undertaken, to which you refer in your letter, including the integration of the mechanisms proposed by the Committee 'from the very beginning of the process'.

While the Morocco Mobility Partnership contains no formal provision with regard to evaluation of the kind set out by the Committee, there is a clear intention by the European Commission to work with participating Member States to track and evaluate progress of this and other Mobility Partnerships. I note also that negotiations on the text of the Morocco Mobility Partnership were already well established when the Committee's Report on the GAMM was published in December 2012. Of course, the question remains as to whether the current process is sufficiently robust to ensure that the Morocco Mobility Partnership and those that will follow it are effective.

I believe that the first biennial implementation report on the GAMM, which is intended for publication this September, will provide a useful opportunity to take stock and if necessary re-visit current arrangements. Following publication of the implementation report, should we consider that there is a need to strengthen current arrangements for the evaluation of Mobility Partnerships; the Government will consider your Committee's recommendations in setting out our views on the changes required.

In relation to international students, my previous letter set out the Government's position. We now have in place a robust visa regime that welcomes all genuine students to the UK provided they meet certain criteria, such as the ability to speak English. The challenge now is to work together to overcome the negative perceptions and to make sure that prospective students know they will find a warm welcome here.

As the Immigration Minister said during the 6 June debate in the Commons, the Government wants to support the higher education sector to continue to increase the number of international students in our universities. UK Visas and Immigration is working closely with the higher education sector to ensure education providers understand their sponsorship responsibilities and can recruit international students with confidence.

The publicly funded healthcare systems in the UK are structured very differently to those in many other EU Member States. In the UK, healthcare is funded through general taxation and is free at the point of delivery to residents and migrants. Many other Member States operate compulsory insurance-based schemes which require temporary migrants (including non-EEA students) to purchase health insurance to cover the costs of any care in either the public or private system. Individuals are required to provide details of their insurance cover when they visit the doctor or hospital. We do not therefore believe it is the case that a levy, set at a proportionate level, and which enables migrants to access free NHS services, would result in the UK becoming less competitive than our EU partners. In addition, many of our competitor countries internationally only grant student visas on confirmation of

specific student health insurance cover, as is the case in Australia and New Zealand (premiums are approximately £230-300pa per person for limited cover).

29 July 2013

Letter from the Chairman to Lord Taylor of Holbeach

Thank you for your letter of 29 July 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 September 2013.

We are grateful for the further information that you have provided about the Government's position on the evaluation of the Morocco Mobility Partnership, international students and the proposed health "levy" on immigrants.

We note in particular that you will take into account the Committee's recommendations regarding the evaluation of the Morocco Mobility Partnership should you consider it necessary to strengthen the current arrangements in due course. We also welcome your confirmation that the Government wishes to support the UK higher education sector in continuing to grow the number of international students that choose to come here to study.

No response to this letter is required.

11 September 2013

EU MOBILITY PARTNERSHIPS WITH JORDAN AND AZERBAIJAN AND EU COMMON AGENDA ON MIGRATION AND MOBILITY (CAMM) WITH INDIA (UNNUMBERED)

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

I am writing to update you on proposed EU Mobility Partnerships (MPs) with Jordan and Azerbaijan and the EU Common Agenda on Migration and Mobility (CAMM) with India. In your letter of 24 April, you requested that we should update you on the progress of these instruments.

As you know, Mobility Partnerships are voluntary, tailor-made, non-binding agreements for cooperation on migration issues negotiated between the EU and third countries. EU Member States can decide whether or not to participate in any given Partnership, in which aspects of the agreement they will participate, and what offers to make in this regard.

We are clear that we will not be bound by any mobility elements in such Partnerships, particularly those that would require changes to our existing migration policy. We are also clear that we will not participate in any elements relating to the portability of social security benefits. The same principles also apply to Common Agendas on Migration and Mobility (CAMMs), a similar instrument intended for use with third country partners beyond the EU's immediate neighbourhood.

Although Jordan is not considered a priority country with regard to illegal immigration, UK participation in the proposed EU Mobility Partnership would provide an avenue to increase our engagement with Jordan, broadening the relationship beyond its current focus on mutual legal assistance. Conversely, non-participation may have repercussions for our bilateral relationship. A closer relationship between Jordan and the EU, facilitated in part by the Mobility Partnership, would also be a positive step towards mitigating security and migration risks in the region, a key UK objective.

On this basis, we have made an in-principle decision to participate in the proposed Mobility Partnership with Jordan, subject to the negotiation of a satisfactory text.

The EU is also proposing a Mobility Partnership with Azerbaijan. Azerbaijan is not a priority country for the UK in terms of migration. After assessing the benefits, costs and risks of UK participation, both from a migration and broader foreign policy perspective, the Government has decided that the UK will not participate in this Partnership.

I wrote to you on 9 April to advise you on developments regarding the EU's proposed Common Agenda on Migration and Mobility (CAMM) with India. This will be the first use of the CAMM instrument. CAMMs are similar instruments to Mobility Partnerships, but are 'lighter touch' in character and without the explicit focus on Schengen visa facilitation and readmission characteristic of Mobility Partnerships.

In my letter of 9 April, I advised you that a draft EU-India CAMM had been drawn up in the context of discussions between the Commission, the European External Action Service (EEAS) and officials from the UK and other Member States, and that I would write to you again in due course to inform you as to whether or not the UK would participate in this instrument. While India numbers among our most important international partners, our existing relationship is very strong, both in the area of migration management and more broadly, and is unlikely to be enhanced by our participation in this instrument. On this basis, the Government has now decided that the UK will not participate in the EU-India CAMM.

I will write to you again in due course to advise you of any further progress on these and similar instruments under the GAMM framework.

20 September 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 20 September 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 09 October 2013.

We are grateful for your helpful update on the EU Mobility Partnerships with Jordan and Azerbaijan, the EU Common Agenda on Migration and Mobility (CAMM) with India, and the latest developments with Turkey and Pakistan as part of the Silk Routes Partnership.

I have to say that the Committee is somewhat concerned at the rather disputable criteria which seem to be guiding the Government's decisions on whether to opt-in to the Mobility Partnership with Azerbaijan and the GAMM with India. We agree with the arguments in favour of opting in to the agreement with Jordan, which are basically of a political nature; but we do not understand why the same considerations do not apply to Azerbaijan and to India, both countries which, in quite different ways, would seem to be important to the UK and to the EU for both commercial and foreign policy reasons. What are the criteria used to assess whether the UK should become party to mobility partnerships and CAMMs?

9 October 2013

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 9 October regarding the Government's 'in principle' decisions regarding the proposed EU Mobility Partnerships with Jordan and Azerbaijan and the proposed Common Agenda on Migration and Mobility (CAMM) with India.

I note your concern regarding the decision not to participate in the proposed Mobility Partnership with Azerbaijan and the India CAMM, and welcome your agreement with the Government's 'in principle' decision to participate in the Jordan Mobility Partnership and the arguments underlying that decision.

You ask about the criteria applied by the Government in making such decisions. The nature of these EU instruments and the diversity of the countries with which they are being developed do not lend themselves to a single set of criteria. Rather, our decisions are based on a number of linked considerations including the importance of the partner country both in migration terms and in terms of broader Government interests; the strength of the UK's existing bilateral relationship (and the likely impact of the proposed decision on that relationship); and the likely benefits to be gained in working jointly with EU partners on migration issues, as against working bilaterally. For example, we have very effective bilateral cooperation with India on migration matters.

Given this set of considerations, the Home Office works closely with the FCO as well as other relevant departments in deciding on UK participation in a given Mobility Partnership or CAMM. In particular, the advice of the FCO post in the partner country is vital assessing the potential impact on the UK's broader relationship were we not to participate. Such advice, alongside migration and broader policy interests and consideration of our bilateral work with the country in question, underlay my decision that the UK should participate in the Jordan Mobility Partnership, but not in the Azerbaijan Mobility Partnership or the India CAMM.

As ever, we are clear that we will not be bound by any elements that would require changes to our existing migration policy, including provisions relating to enhanced mobility for third country

nationals, even where we do intend to participate in such EU instruments. We are also clear that we will not participate in any elements relating to the portability of social security benefits.

8 November 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 8 November 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 November 2013.

We note your explanation as to why the Government have agreed to participate in principle in the Mobility Partnership with Jordan, and not to participate in the Mobility Partnership with Azerbaijan or the EU Common Agenda on Migration and Mobility (CAMM) with India.

We would be grateful to receive further updates on these issues as they arise, particularly in relation to the Commission's forthcoming evaluation of the Global Approach to Migration and Mobility (GAMM). We continue to attach importance, as I am sure you do, to such evaluations being carried rigorously and transparently.

20 November 2013

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

I write to update the Committee with progress on the remaining dossiers that form the second stage of the Common European Asylum System (CEAS). The Committee has already cleared the proposals listed above from scrutiny but asked to continue to receive updates on progress of negotiations. The Stockholm Programme set a deadline of the end of 2012 for adoption of the second stage CEAS. It was not, however, possible for the negotiations to be completed to that timetable.

The Irish Presidency has worked hard to draw together all remaining strands of the negotiations. I understand that they intend to seek either adoption of or political agreement on the above proposals at the Justice and Home Affairs (JHA) Council on 6 and 7 June.

As the Committee will recall the UK has not opted in to all the proposals listed above: we opted in to the proposals to recast the Dublin and Eurodac Regulations, but we are not participating in the proposals to recast the directives on Reception Conditions and Asylum Procedures. Where we have not opted in our priorities have been to ensure that provisions regarding access to the asylum procedure or concerning the use of detention contain language and principles consistent with the Dublin and Eurodac Regulations. We have also sought to ensure that the relevant recitals in the texts of the directives make it clear that where the UK is not taking part it will not be bound by the measure and that this position is clear where there are connections or cross-references between the different proposals. I am satisfied that the texts for the recast Asylum Procedures Directive and Reception Conditions Directive meet our needs.

We have opted in to the Dublin and Eurodac Regulations. Political agreement on the Dublin Regulation was secured at the Justice and Home Affairs Council last December. The Presidency now intends to seek formal adoption of that text, along with those on Asylum Procedures and Reception Conditions, at the JHA Council in June. I understand that the European Parliament will then adopt the texts at a Plenary Session in the week commencing 10 June.

The recast Eurodac Regulation, however, is not quite at the same point in the process between the institutions. At the JHA Council in June the Presidency will seek political agreement from Council on the Eurodac text, after which time the European Parliament will endorse the text before it returns to later Council for formal adoption. This is likely to be the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 20 June.

During the final stage of trilogue negotiations on the Eurodac proposal the European Parliament sought a number of amendments to the text agreed by Council. I am satisfied that our position in key areas of the proposal has been protected, in particular on law enforcement access and data storage

for asylum purposes. The text retains the link between law enforcement access to Eurodac and a prior request being made through the Prüm Council Decisions. New references suggested by the European Parliament on conducting searches in the Visa Information System (VIS) respect the fact that the UK does not participate in VIS.

The Committee will recall that the Commission proposed to reduce the period for which illegal migrants' fingerprints can be stored in Eurodac from two years to one. The European Parliament supported the reduction. Council's preference, reflecting our own, was to resist the reduction to one year. Robust negotiations in trilogue secured a compromise agreement with both the European Parliament and, the Commission, accepting Council's proposal for a storage period of 18 months.

In the face of strong opposition from the European Parliament, the Council has also ensured that proposals to "unblock" the fingerprints of recognised refugees have been retained. This ensures that Member States will know if they later try to claim asylum elsewhere. Some restrictions have been placed on the availability of this data when subject to law enforcement searches; however, I believe they are acceptable in context of the UK's position on such access. The text otherwise maintains robust data protection standards without restricting the effective operation of the Eurodac system.

28 May 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 28 May 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 12 June 2013.

We are grateful for your update on the progress of negotiations on these Commission proposals. As indicated in your letter, we note that these documents were due to be discussed at Justice and Home Affairs Council on 6-7 June and at a further Council Meeting later in the month.

We would therefore be grateful for a further update regarding the outcomes of both Council meetings in due course.

14 June 2013

EUROPEAN LAW ENFORCEMENT TRAINING SCHEME (8230/13)

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

Thank you for your explanatory memorandum of 3 May 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 22 May 2013, alongside Document 8229/13.

We note your opposition to the introduction of the proposed European Law Enforcement Training Scheme. We further note that the future of this proposal is contingent, to a substantive degree, on the outcome of negotiations on the draft Europol Regulation, particularly with respect to the proposed merger of Europol and CEPOL (the European Police College). This matter, among others, will be addressed in a short on the draft Europol Regulation that the Committee intends to publish in early June.

In the meantime, we have decided to retain this document under scrutiny and will look forward to receiving further updates about its progress in due course.

22 May 2013

EUROPOL (8229/13)

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

Thank you for your explanatory memorandum of 3 May 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 22 May 2013, alongside Document 8230/13.

The Committee decided that this was a proposal which should be the subject of a report on the decision which the Government should take on the United Kingdom opt-in. A short report is therefore likely to be agreed and published in early June, which you will receive a copy of in due course. The Committee notes the concerns that the Government has expressed in its EM about a number of provisions in the proposal. These will be considered in the Committee's report, alongside other matters which the Committee expects the Government to respond to in the subsequent debate on that report.

As you know, the Government has undertaken that such reports will be debated on the floor of the House in Government time. A motion will therefore be tabled in due course in the name of Lord Hannay of Chiswick, the Chairman of the Home Affairs, Health and Education Sub-Committee. The Committee expects that the report will be debated as early as possible and in any event before 30 July when the period for opting in expires.

The Committee would also like to pursue a separate point by way of correspondence. On 13 May Home Office officials forwarded the Committee secretariat the following statement by the Gibraltar Government, regarding the proposal, which they requested should be noted:

"The proposed Regulation poses certain concerns for Gibraltar which are being looked into. The main issue is that Gibraltar and the UK are separate jurisdictions. However, the proposal is worded in a way that does not allow this separateness to be acknowledged. This is particularly relevant in relation to the functions of the National Unit. Therefore Articles 6(2) and 7(3) require the contact point (National Unit) to exercise competence in another jurisdiction. Gibraltar has a concern with the exercise of competence in this regard. Gibraltar would welcome a formalisation of how the relationship between UK's National Unit and the Royal Gibraltar Police should function."

As National Units have already been established by each Member State under the existing Europol Council Decision, and are not substantively altered by the proposed Regulation, we are unclear why this presents any difficulties with respect to the position of Gibraltar. Furthermore, as Scotland and Northern Ireland are also separate jurisdictions – albeit within the UK, unlike Gibraltar – we are also unclear why this presents any difficulties relative to the existing arrangements that are in place.

We have decided to retain this document under scrutiny and will look forward to receiving a response to the above points within the usual 10 days.

22 May 2013

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 22 May. I look forward to studying your report on the draft Regulation and to the results of the debate on the Floor of the House.

You asked a specific question about the interaction of the Europol National Unit with Gibraltar, following on from the 13 May statement of the Government of Gibraltar.

The current Europol Council Decision (Decision 2009/371/JHA) does not extend to Gibraltar but, as I said in the explanatory memorandum, this Regulation would apply there if we opted in to it. In that case, we would therefore need to ensure that appropriate arrangements were in place for our National Unit to exercise its functions in regard to Gibraltar by the time the Regulation came into force. Like you, I am not convinced that this should pose an insurmountable problem, given that the National Unit is already accustomed to working with the different legal jurisdictions that exist in the UK. We will discuss this with the Government of Gibraltar as the negotiations develop.

5 June 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 5 June 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 12 June 2013.

We are grateful for your clarification about the current status of Gibraltar in relation to the existing Europol Decision and the proposed Regulation, which would repeal and replace it.

Further to the publication of our report on *The UK opt-in to the Europol Regulation* (2nd Report of Session 2013-14, HL Paper 16), which was published on 7 June 2013, we welcome the arrangements that have been made for the House to debate the matter on 1 July.

In the meantime, we will continue to retain this document under scrutiny and will look forward to receiving further updates about this matter in due course.

14 June 2013

Letter from James Brokenshire MP to the Chairman

I am writing to inform you that I have today proposed the following Government Motion for the 15 July debate in the House of Commons on the draft Europol Regulation.

'That this House takes note of the European Union Document 2013/0091 and Addenda 1-65 relating to the draft Regulation of the European union agency for law Enforcement Cooperation and training (europol) and agrees the Government should opt in to the Regulation post-adoption provided that Europol is not given the power to direct national law enforcement agencies to initiate investigations or share data that conflicts with national security.'

It follows from this that, contrary to the resolution passed by the House of Lords on 1 July, the Government is not minded to opt in to the draft regulation at this time. I think it would be helpful if I explained our reasons.

As a starting point I want to make clear that our position has no immediate consequences for our collaboration with Europol. The current legal base for Europol (The Europol Council decision of 2009) continues to apply to the UK, and, as the Government announced today, we intend to rejoin the existing Europol Council decision when we opt out of pre-Lisbon crime and policing measures in 2014.

We do not expect the new regulation to be agreed until 2015 at the earliest. When it is adopted, we will be able to apply to join it then, and intend to do so provided the conditions set out in the motion are met.

The Government acknowledges that Europol plays a key role in supporting Member States in tackling organised crime and other forms of serious crime and terrorism, and that our law enforcement agencies work closely with it at many levels. These capabilities improve the level of security within the UK and amongst other Member States. Moreover the Treaties prevent Europol from having coercive powers and this is clearly reiterated in the text of the proposal.

However, the opt-in decision must be taken on the basis of an assessment of the overall balance of the promised text. Despite the benefits Europol affords the UK, the proposal contains significant implications for the balance of competence between the UK and the EU in relation to policing. The Government is particularly concerned that the draft would increase obligations on the Member States to provide data to Europol and call into question the operational independence of our police forces in exercising control over their own data. There are important issues, and while we do support Europol, we cannot agree to participate in it at any price.

As Lord Taylor acknowledged in the debate on 1 July, it is important that Member States provide Europol with data in order to ensure it remains effective. However, the Government does not believe that an increased legal obligation is the correct way to do this. It would interfere with Member States' ownership of their own law enforcement intelligence, and, most crucially, there are no exemptions that permit a Member State to refuse information on the basis of national security, the need to protect ongoing investigations or for where an individual's safety may be at risk. The protection of national security is clearly one of the most important functions of any Government, and we cannot recommend opting in to a measure that could make this more difficult.

The draft Regulation also contains a presumption that Member States will comply with a request by Europol to initiate an investigation, as well as a stronger requirement to explain why an investigation has not been carried out. Given that ECJ jurisdiction will apply this has implications for the independence of our law enforcement agencies, as there is a risk that a Member State's refusal to comply with a request from Europol could be challenged before the Court. The Government cannot accept any suggestion that law enforcement authorities should be accountable to an EU Agency, or that the scope for them to consider and decide their own operational priorities should be reduced.

If the UK opted in now, and we could not gain amendments to the texts during negotiations, we would be bound by the elements which cause us concern, and would be subject to infraction if we failed to abide by provisions in the Regulation.

The Government will, however, continue to engage fully in the negotiations in order to make the case for the amendments it is seeking. We will keep you informed as negotiations progress, and will reconsider the opt-in decision once the text of the Regulation is agreed and adopted.

9 July 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 9 July 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 17 July 2013.

I think we must agree to disagree on the best method of securing our shared objective that the UK should opt-in to the new Europol Regulation. That is to say whether, as suggested in your letter, to pursue this objective without opting in at this stage or whether, as we proposed in our report *The UK opt-in to the Europol Regulation* (2nd Report of Session 2013-14, HL Paper 16), to opt in before the expiry of the 30 July deadline and negotiate from that firm basis. As you know the House subsequently endorsed this report on 1 July.

With reference to the Government's further announcement about the UK's 2014 opt-out decision, which was made on the same day as your letter, we note that it is the Government's intention to seek to rejoin the existing Europol Council Decision if the opt-out is exercised, which the UK remains bound by in the meantime.

We will continue to retain this document under scrutiny and in the meantime I would be grateful if you could provide us with regular updates on the progress of negotiations in due course.

17 July 2013

Letter from James Brokenshire MP to the Chairman

I am writing to inform you of the opt-in decision the Government has made on this draft regulation.

On 9 July, I wrote to notify you of the Motion that the Government had proposed for the 15 July "Lidington" debate in the House of Commons. That Motion asked the Commons to agree that the Government should opt in to the measure post-adoption provided that Europol was not given the power to direct national law enforcement agencies to initiate investigations or to share data that conflicted with national security.

I explained that this meant that the Government was not recommending that we opt in to the measure during the initial three-month provided for by Protocol 21 to the Treaty on the Functioning of the European Union.

Following the Commons' approval of this position on Monday evening, I can now inform you that the Government will not be opting in to the measure at this stage, for the reasons set out in my earlier letter. The Government has communicated that position to the House today in a Written Ministerial Statement.

This does mean that the Government has taken a different position to that reached by the House of Lords following the debate on 1 July. However, I can assure you of our commitment to playing a full and constructive role in the negotiations and to opting in to it once the Regulation has been adopted, provided the conditions we have set out are met. We will provide regular updates to your Committee as the negotiations progress.

18 July 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 18 July 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 11 September 2013.

We note with regret the Government's final opt in decision regarding the above proposal, which was made following the House of Commons debate on the proposal on 15 July. We have already made clear in our report on *The UK opt-in to the Europol Regulation* (2nd Report of Session 2013-14, HL Paper 16), which was endorsed by the House of Lords on 1 July, and our letter to you of 17 July that we disagree with this decision.

With respect to the ongoing negotiations on this proposal we would be grateful for an account of what elements of the proposal have already been discussed by the Member States and at what level, as well as an indication of the likely schedule for future negotiations.

We note that on 9 July Agustín Díaz De Mera MEP, the rapporteur for the proposal, published his draft report for consideration by the Civil Liberties, Justice and Home Affairs (LIBE) Committee and that subject to any amendments it is likely to be adopted by the European Parliament by the end of this year. In this respect, what is the likely timescale of its consideration by the Justice and Home Affairs Council? You have indicated that the proposal is not likely to be adopted until 2015 but is there a possibility that – assuming that the Member States can reach agreement on the provisions relating to the proposed merger of Europol and CEPOL, the transmission of data to Europol and its role in initiating investigations – agreement could be reached in Council ahead of the European Parliament elections in May 2014 and the appointment of a new Commission by the following October? In any event, will the status of negotiations reached at that point be affected in any way by the outcome of those elections and the constitution of a new Commission?

Assuming that the proposal is not formally adopted until 2015, we note that the UK will continue to be bound by the Europol Council Decision. However, this is contingent upon the Government successfully rejoining this measure following the application of the opt-out on 1 December 2014 and no gaps developing in the meantime. We would be grateful for your views on how this aspect of the opt-out will interact with the adoption of the new proposal.

Turning to the matter of joint scrutiny of Europol by the European Parliament and national parliaments, we note that you wrote to William Cash MP on 19 June (regarding the proposed Europol Regulation) and stated that:

The Government supports the scrutiny of Europol by national Parliaments. However, we have reservations about the specific procedure set out in Article 53(1) of the Regulation, and would expect any process to be agreed by the European Parliament and national Parliaments. We believe it is important to have a clear demarcation between the role of the European Parliament and national Parliaments. Any joint role in scrutinising Europol should be in line with Article 9 of the Protocol on the Role of National Parliaments.

We find the above statement confusing in two respects. Firstly, specific procedures are not set out in Article 53(1) of the proposal. Secondly, your expectation that any process should be agreed by the European Parliament and national parliaments has been an implicit part of the discussions, as far as we are concerned, between the European Parliament and national parliaments since joint scrutiny was first proposed at the end of 2010 and is also explicit in Article 9 of the Protocol on the Role of National Parliaments, to which you make reference.

The Diaz De Mera report, to which we have referred, includes proposals for more specific joint scrutiny procedures and the LIBE Committee has invited contributions from the national parliaments on these by 10 September. While we agree with you that any process should be agreed between the European Parliament and national parliaments, and should therefore not be the Government's concern, we would nevertheless welcome clarification about any particular reservations you have about the proposed scrutiny procedures. In the meantime we enclose a copy of the Committee's contribution to the LIBE Committee's discussions about joint parliamentary scrutiny in which we have expressed serious concerns on the rapporteur's proposal for the establishment of a 'Parliamentary Scrutiny Unit'.

We will continue to retain this document under scrutiny and in the meantime and will look forward to receiving your response to the above points within the standard 10 day period.

11 September 2013

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 11 September requesting an update on the proposed new Europol Regulation.

I note the Select Committee's position on the Regulation and in doing so assure you that the Government position not to opt in to the Europol Regulation at this time was not taken lightly. The Government position acknowledges both the importance of law enforcement cooperation and the need to retain the operational independence of UK law enforcement agencies. That is why we have been clear that we will opt in to the measure post adoption provided that Europol is not given the power to direct national law enforcement agencies to initiate investigations or share data that conflicts with national security.

You have asked for an update on the negotiations in Council. Discussions on the Europol Regulation have so far been at working level in the Law Enforcement Working Party. There has been a first reading of Articles 1- 8 of the proposal and a revised compromise text on these first eight Articles is expected to be issued by the Presidency by the end of October. There has also been an initial discussion of Chapters V and VI of the proposal. To date these working level discussions have demonstrated common ground in a number of areas but there is no formal agreement on amendments to the text at this stage. A progress report on negotiations is expected at Ministerial level in the December JHA Council; we will of course update Parliament on that discussion in the usual way via the post-JHA Council statement at the appropriate time.

The timeframe for adoption of the new Europol measure remains unclear but, in our view, it is unlikely that the Council will be in a position to agree the text of the Regulation before the May 2014 elections in the European Parliament, or indeed before the end of 2014. This is for a number of reasons. Negotiations in Council are proceeding slowly. The crucial issue of the merger between CEPOL and Europol has not yet been resolved, as the Commission has yet to make a final decision. Furthermore, a number of other issues of principle such as the obligations to share data with Europol, and Europol's role in initiating investigations, remain outstanding. A great number of technical issues also need to be resolved, and there are links to other ongoing negotiations at EU level which make agreement before the end of next year extremely difficult. The Data Protection packages in particular may impact on the length of the Europol negotiations given that data protection is integral to the functioning of Europol and there is a need to ensure a consistent and appropriate approach to data protection across the board.

You ask whether the status of the negotiations will be affected by the election of a new European Parliament and the appointment of a new Commission. Both events could have an impact on the direction of the dossier, but until the outcome of the election and the constitution of the new Commission is clear we will not know what this might be. As the proposal is subject to the Ordinary Legislative Procedure, the European Parliament's agreement is essential before it can be adopted. Equally a new Commission would have the ability to amend or reissue the proposal should it wish to do so.

You also ask about the interaction of the new measure with the Government's decision to opt out of pre-Lisbon crime and policing measures on 1 December 2014 and to seek to rejoin the current Europol Council Decision. I can assure you we will be working hard to ensure negotiations to rejoin measures progress as quickly as possible. The Europol Council Decision will continue to underpin the UK's participation in Europol until the new Regulation has been adopted and has entered into force. As noted above, we judge that this is unlikely to happen before 1 December 2014.

With respect to the issue of Parliamentary Scrutiny and Article 53(1), our concern is that, as drafted Article 53 (1) refers to the concept of the Chairperson and the Executive Director appearing 'before the European Parliament, jointly with 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. In any case the Government has some concerns about the principle of joint scrutiny by the European Parliament and national Parliaments. We would not wish to see the role of national parliaments supplanted in this work.

Like you, we have concerns about the proposal by the Rapporteur Diaz de Mera for a Parliamentary Scrutiny Unit (PSU) to be created by the Europol Regulation. Firstly, as set out above, our view is that the Europol Regulation is not the place for such a proposal to be tabled. Furthermore the proposed amendments do not detail how the PSU would operate and would be introduced without the agreement of national Parliaments. The new body would also sit in the European Parliament and be convened by the Chairman of the competent European Parliament Committee. This creates a risk that the European Parliament would in effect take over the process. We agree that Agencies should be scrutinised but any process to do so should not replace the role of national Parliaments.

26 September 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 26 September 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 9 October 2013.

We welcome your update on the ongoing negotiations and likely schedule, and your response to our specific questions. We would be grateful if you could provide analysis on the revised compromise text on Articles 1-8 that you anticipate at the end of this month in a timely manner following its publication. We look forward to your regular update after the December JHA Council meeting.

We would value additional information about what representations you have made expressing concerns regarding the perceived ambiguity surrounding Article 53(1).

We will 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 the updates requested in due course.

9 October 2013

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 9 October.

You ask about our representations made regarding the ambiguity in the drafting of Article 53(1) on Parliamentary scrutiny. I can confirm that the Government has already made clear in Brussels our shared concerns, as set out in my recent correspondence to you. Those views have been noted by the Presidency and will be considered in further detail at a later meeting, although we do not yet know when that will be. I will provide further information as this matter is taken forward in the working group.

I will of course provide an update following the December JHA Council meeting, alongside the usual reporting of the Council. I will also write by the first week in November with a detailed analysis of the revisions to Articles 1-8.

24 October 2013

Letter from James Brokenshire MP to the Chairman

Further to my letter of the 24 October, I am writing to give you details of the draft compromise text of Articles 1-8 of the Europol Regulation proposal, which was produced by the Presidency in October.

I hope my summary set out below is helpful in terms of providing an update to you on the negotiations so far.

As you are aware the first two Articles of the proposal dealt with the establishment of Europol and the definition of various terms. On the issue of the merger between Europol and the European Police College (CEPOL) the position of the Council remains unchanged since June, i.e. that the merger should not go ahead. The text on this point however has not been deleted instead references are in square brackets to demonstrate that it is a 'parked' issue. We remain committed to opposing the merger and deleting it from the Regulation. Other changes to the definitions are minimal and seek to clarify that Europol's role is to support Member States. We encourage the clarification, but do not think it makes a significant difference to the meaning of the text.

In general the objectives and tasks of Europol (Articles 3 and 4) have not been fundamentally altered since the original proposal. Article 5 regarding Europol's role in participating in Joint Investigation Teams (JITs) clarifies that Europol cannot play a coercive role in JITs.

As you are aware the Government's biggest concerns are with Articles 6 and 7, which deal with Europol's power to request Member States to initiate investigations and the increased obligation to provide data to Europol. There has been some movement on this aspect of the text. It is promising that this new draft version of the text softens the presumption that Member States will comply with a request from Europol and reinserts the exemptions to providing Europol with information where providing it would pose a risk to national security, ongoing investigations or an individual's safety. At working group level a significant number of Member States pushed for the reinsertion of these exemptions, so there is clear support on this point. The European Parliament's *rapporteur* has also proposed their reinstatement.

The Presidency's proposals would also amend the proposed duty on Member States to cooperate with Europol (Article 7(1) of the Commission's proposal), turning it into a reciprocal obligation on both sides to cooperate with each other. We see this as a positive change, although we are still keen to clarify whether a "duty to cooperate with Europol" would impose obligations on Member States over and above the "duty of sincere cooperation" laid down in the EU Treaties.

The Government still has a number of other issues with the draft text on these Articles. For example, although we welcome the softening of the presumption that Member States' law enforcement authorities will comply with a request from Europol to open an investigation, we are keen to see a stronger reference to their discretion in this area to ensure that it is clear they have the final say on whether an investigation will be initiated. We are also concerned that the new text does not restore the wording of the existing Europol Council Decision to the effect that Member States' data transfers to Europol will be "on their own initiative". We will continue to argue this point in the negotiations. We also have concerns about some of the new wording around timescales to input data to Europol.

The compromise text does not propose significant amendments to Article 8 of the draft Regulation, which deals with the role of Member States' Europol liaison officers.

There is still a long way to go as the negotiations are likely to continue into 2015 given the breadth of issues involved. In addition the compromise text has not yet been discussed at working level and as you are aware there are no guarantees in these negotiations. My officials are continuing to work closely with like minded Member States on our key concerns, as well as lobbying the European Parliament.

As mentioned in my previous correspondence we expect a progress report at the JHA Council in December and I will update you further after the usual reporting of Council.

7 November 2013

Letter from the Chairman to James Brokenshire MP

Lord Hannay of Chiswick attended a consultative meeting between the European Parliament's LIBE Committee and representatives of national parliaments in Brussels on 14 November to consider the draft amendments to the new Europol regulation before the LIBE committee, in particular those relating to parliamentary oversight.

The meeting was poorly attended by national parliaments (only seven were represented); but the Irish Parliament's Joint Committee on Justice, Defence and Equality and the French National Assembly's EU Affairs Committee submitted written contributions (enclosed) [not printed] which were very much in the direction we would have wished.

Lord Hannay said the House of Lords' views had been given to the rapporteur in September (see Lord Boswell's letter of 11 September – copy enclosed [not printed] for ease of reference). We preferred a light oversight arrangement based on existing periodic meetings of the LIBE committee with the chairs of national Home Affairs Committees and we wanted to avoid any interference with Europol's operational authority. Lord Hannay asked how the proposed LIBE amendments matched up to those objectives. The proposal for a Parliamentary Scrutiny Committee composed of representatives of the LIBE Committee and national parliaments made reasonable sense. But the provisions for it were tilted far too far towards the European Parliament; they must be balanced if they were to work. We shared the Irish and French objections in that respect. As to the proposed Parliamentary Scrutiny Committee Unit we believe this strays well over the border into potential operational interference with Europol and we would have serious misgivings about the whole concept of such a unit, all the more so now that we have seen its terms of reference.

In the following discussion the following main points arose:

- EUROPOL / CEPOL merger - universally rejected except by one Belgian MEP.
- Parliamentary Scrutiny Committee - a good deal of support for our views (Hungary, Latvia, France, Poland, Denmark) although no one else seemed to have focussed as clearly as we had on the Unit. Some comments by MEPs about the size of the proposed committee but they were met firmly by representatives of bi-cameral national parliaments that all chambers would need to be in it.
- Data Protection - much general rhetoric but mercifully few specifics about the reaction to the Snowden affair.

We think this meeting was mildly useful, although we question whether the LIBE Committee's proposed amendments to the Europol regulation will be much, if at all, changed (although the rapporteur, Díaz De Mera, responded very gently to the criticism).

Your letter of 7 November updating us on the Council's negotiations on the Europol regulation was extremely useful and timely; we will be replying to it separately.

I hope we could have an exchange once your views on the parliamentary oversight issues are a bit clearer. We have done a lot work on this (3 consultative meetings with the European Parliament to date) and would hope to be able to make a positive contribution.

20 November 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letters of 24 October and 7 November 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 27 November 2013.

We are grateful for your response to our question regarding Article 53 (1) and the thorough update on the progress of negotiations. We look forward to your further update following the December JHA Council meeting.

In your explanatory memorandum of 3 May 2013 you expressed concern that the requirement for Europol to develop centres of specialised expertise for combating certain types of crime could be an "open-ended commitment" with significant budgetary implications (whilst welcoming initiatives like the European Cybercrime Centre). You intended to seek clarification on this issue in negotiations and we would therefore welcome further information about whether you are satisfied that this has been resolved.

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. As we said in Lord Boswell's letter to you reporting on Lord Hannay's recent attendance at a meeting between the LIBE Committee of the European Parliament and representative of national Parliaments, we would particularly welcome an opportunity to discuss the arrangements for the future Parliamentary oversight of Europol when that text of the draft Regulation becomes the object of active negotiations.

28 November 2013

EUROPEAN LAW ENFORCEMENT TRAINING SCHEME (8230/13)

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

Thank you for your explanatory memorandum of 3 May 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 22 May 2013, alongside Document 8229/13.

We note your opposition to the introduction of the proposed European Law Enforcement Training Scheme. We further note that the future of this proposal is contingent, to a substantive degree, on the outcome of negotiations on the draft Europol Regulation, particularly with respect to the proposed merger of Europol and CEPOL. This matter, among others, will be addressed in a short on the draft Europol Regulation that the Committee intends to publish in early June.

In the meantime, we have decided to retain this document under scrutiny and will look forward to receiving further updates about its progress in due course.

22 May 2013

GENERAL DATA PROTECTION REGULATION (5853/12)

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

Thank you for your letter of 2 May 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 22 May 2013.

We are grateful for your update on the progress of negotiations on this measure, as well as the prospective timetable for its adoption. We also note that a Communications Data Bill did not feature in the Queen's Speech on 8 May.

We will continue to retain this document under scrutiny and look forward to receiving further updates about the progress of negotiations in due course, particularly regarding the Government's stance on the 'right to be forgotten'.

22 May 2013

Letter from Lord McNally to the Chairman

Thank you for your letter dated the 22 May 2013. I am writing to provide you with an update following the Justice and Home Affairs (JHA) Council on the 6 June in Luxembourg where the EU Data Protection proposals were subject to discussion. The Justice Secretary represented the UK at this meeting.

The Irish Presidency had previously stated its intention to reach agreement on key aspects of the data protection package by the end of its term. When I last wrote to you on the 2 May 2013, I had raised with you the possibility that the Irish Presidency might seek a 'partial general approach' on the first four chapters of the proposed Regulation at the JHA Council on the 6 June. In advance of the Council meeting we had raised, along with a majority of other member states, strong concerns about seeking premature agreement for reasons of (the Commission's) political expediency. We also stated that, should negotiations be rushed and the quality of the text be compromised, we risk a highly prescriptive instrument that could damage business growth and employment prospects and which could leave the EU uncompetitive in the global digital economy for years to come. We will continue to push for 'quality first' in negotiations under the upcoming Lithuanian Presidency.

Following consultation with Member States and strong opposition to seeking a partial general approach, the Presidency instead tabled a 'key issues' paper (Annex B) [not printed] for discussion at the JHA Council, which invited member states to 'generally support' seven conclusions in the paper. In the paper, the Presidency sought endorsement of specific topics within the proposed Regulation, such as on the definition of consent, the principles of data processing, the territorial scope of the instrument and public access to documents. Some of these topics proposed by the Presidency, such as access to public documents, have not been discussed in the Council working group. While I consider it is important to engage constructively, it is clear that none of the text is currently ready for any form of agreement or even 'general support'. Agreeing to any form of conclusion on one part of the text at this stage risks causing difficulties when there are interlinked topics across different parts of the instrument.

To this end the UK, having secured the support of Germany and France, tabled a working document which acknowledged the significant progress made by the Irish Presidency but which was clear that there cannot be final agreement on any part of the text at this stage of the negotiations. The UK position, backed by Germany and France, was supported in Council by Denmark, Hungary, Slovenia and Austria. As a result of this joint approach, the Irish Presidency concluded only that there had been significant progress on the 'key issues' in the Council paper and that discussion had provided a good basis for further work.

In your Committee report of the 21 May, in addition to asking for an update on the outcome of the JHA Council you also raised a number of additional points: firstly, whether the latest draft is sufficiently different to the original proposal to warrant it being deposited with the Committee for fresh scrutiny. On this point, I attach the revised version of the text of Chapters I-IV that was presented to the Council on the 6 June for your information (Annex C) [not printed]. However, I do not consider at this stage that the revised text in Chapter I-IV needs to be deposited with the Committee for fresh scrutiny since no agreement was reached in the JHA Council on these chapters. While the text presented at Council reflects discussions at working group level it will be subject to further consideration and change when discussions resume on these chapters later in negotiations. For example, while progress has been made under the Irish Presidency to incorporate a risk-based approach to obligations on data controllers, I consider this can and should go further. We will continue to make the argument for strengthening the risk-based approach to further reduce the level of burdens on business and to strike the right balance between innovation and growth and providing appropriate safeguards to protect citizen's data.

Secondly, you asked for an update on negotiations on the "right to be forgotten" provision and whether the department had been successful in its opposition to the provision. This provision was not included as one of the 'key issues' that the Irish Presidency was seeking general support for, and

furthermore, given no form of agreement was reached on any part of the text in Chapters I-IV this provision will need to be considered in more detail in Council. While I support strong deletion rights as exists under current legislation, I do not support the 'right to be forgotten' as proposed by the European Commission. It is not technologically possible to remove all trace of data uploaded on the internet and this 'right' raises unrealistic expectations for data subjects. Furthermore, the obligation to inform other controllers of a request under the 'right to be forgotten' should be made clearer. We will continue to make the case for greater clarity and a more proportionate approach around this measure in negotiations.

The UK delegation recently met the incoming Lithuanian Chair of the Council Working Group. Lithuania has not yet set out any specific plans for their Presidency beyond continuing to read through the text from the point where the Irish Presidency left off. We understand, however, that they intend to have a busy programme of working groups in the remainder of 2013 and so we are preparing for the negotiation to continue to progress as quickly as it has under the Irish. We expect also that the Commission will push Lithuania to seek a 'general approach' in Council as soon as possible, and certainly by the end of their Presidency. We have highlighted with the Lithuanian Presidency a number of topical issues of importance to the UK (risk-based approach, pseudonymised data and the so-called 'one-stop shop') and it is our intention to continue to engage with Lithuania in the coming months on these topics. I will provide a further update on the Lithuanian's plans and our proposed approach in due course and certainly before the summer recess.

25 June 2013

Letter from the Chairman to Lord McNally

Thank you for your letter of 25 June which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 3 July 2013.

We are grateful for your update on the outcomes of the Justice and Home Affairs Council meeting on 6 June 2013. We would welcome in due course a view from the Government on the extent to which the recent revelations in the press about the US surveillance of the internet and electronic communications are likely to affect the views of the European Parliament and of other Member States. In the meantime we decided to retain this document under scrutiny.

3 July 2013

Letter from Lord McNally to the Chairman

Thank you for your letter of 3rd July where you asked how recent allegations about US surveillance are likely to affect the views of the European Parliament and other EU Member States in the context of the ongoing negotiations on the EU data protection framework. I am writing to respond to your question.

Article 4(2) of the Treaty on European Union provides that the EU has no competence in relation to national security. This is a matter solely for national governments and is therefore not within the scope of the 1995 Data Protection Directive, the Data Protection Framework Decision (2008) or the proposed new Regulation and Directive.

Our position in the current data protection negotiations therefore remains the same. The Government wants to see EU data protection that protects the civil liberties of individuals while allowing for economic growth and innovation and providing for the necessary and proportionate use of data by law enforcement agencies. The most recent Working Group on the proposed Regulation, which took place on 3rd and 4th July, did not discuss the allegations and no new amendments have been proposed to date.

The US has proposed a separate discussion on these issues with Member States and arrangements for organising a high-level group are underway. We are, in principle, supportive of discussions between the EU and the US on data protection issues. The Commission has a legitimate role in acting as the Guardian of the Treaties and ensuring that EU law has been complied with. But we are clear that EU law on data protection does not extend to national security, and so the Commission has no remit in this area. I understand that the European Parliament is also intending to conduct its own inquiry into the allegations and will report at the end of the year.

22 July 2013

Letter from the Chairman to Lord McNally

Thank you for your letter of 22 July which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 September 2013.

We note that you consider the revelations about US surveillance to be a national security issue, and that the Treaty on the Functioning of the European Union provides that the EU has no competence in this area. We are also grateful for your clarification that no new amendments to the proposals have been proposed to date as a result of the revelations.

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.

11 September 2013

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

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

Following my letter of 25 February 2013, I am writing to update you on the progress of negotiations on the new EU Home Affairs Funds (the Asylum and Migration Fund, the Internal Security Fund (Police) and the Horizontal Regulation laying down the general provisions for these funds).

Contrary to expectations, these Regulations were not discussed at the June JHA Council and inter-institutional negotiations ('trilogue') between the Council, the European Parliament and the Commission continue on the detail of the Regulations. Some suggested amendments to the Commission's original proposals were agreed earlier this year by the EP Civil Liberties, Justice and Home Affairs Committee (LIBE). In the Council structures we have ensured the deletion of language that had the potential to prejudice the UK's opt-in position in respect of Common European Asylum System (CEAS) and other EU measures. We will continue to work with the Presidency to ensure that the UK's priorities (reducing administrative burdens and increasing effectiveness of all EU Funds) are taken forward as the negotiations continue.

An overall reduction of 9% to the Home Affairs funding heading has been agreed, negotiations are on going to consider where the reductions will be made within the individual Regulations. Agreement on individual budgets is likely to take place at COREPER during September.

Based on the current progress of trilogue negotiations there is little possibility that the funds will be adopted at the October JHA Council. It is likely that adoption will be delayed until December. As you are aware, the MFF is due to take effect from 1 January 2014.

In the meantime, the Commission has embarked on a series of 'in principle' Policy Dialogues with Member States, in order to mitigate delays in adoption of the Regulations. As you will be aware, the Regulations require such Dialogues between the Commission and Member States to agree the principles of the National Programmes, which will in turn establish the use of the funds allocated at a national level under the shared management element of the funds. The UK dialogue which, will cover the Asylum and Migration Fund (as the measure in which the UK is currently participating), is scheduled to take place on 21 October.

As you are also aware we have a commitment to review our participation in the Internal Security Fund (police) post-adoption and I would like to reassure you that we will follow the scrutiny process as part of that review. That means we will provide an EM on the adopted text and allow time for Parliament to opine in order to inform the Government position.

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

15 October 2013

Letter from the Chairman to Mark Harper MP

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

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 also look forward to receiving an update on the 'in principle' policy dialogues.

Your letter states that “an overall reduction of 9% to the Home Affairs funding heading has been agreed”. We assume that this reduction will make it more likely that the Government will decide on a post-adoption opt-in. As you know, we have previously recommended that funding in the next MFF should not fall below that at the end of the current MFF period in real terms. We would be grateful for clarification on the baseline used to reach this figure of 9%. We would welcome a response in the usual ten working days to this specific point.

We welcome your commitment to provide an EM regarding the Internal Security Fund post-adoption review in a timely manner so that the Committee can offer its views on that before the Government reaches a final decision.

30 October 2013

INFORMAL JUSTICE AND HOME AFFAIRS COUNCIL UPDATE (UNNUMBERED)

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

The Informal Justice and Home Affairs (JHA) Council was held on 18 and 19 July in Vilnius. The Security Minister James Brokenshire MP and I attended on behalf of the United Kingdom.

The Council started with a discussion on the fourth Annual Report on Asylum and Immigration, where the Commission noted that managed migration could fill labour shortages and positively impact on Member States' economies. It was therefore important to finalise work on the legal migration Directives (seasonal workers, intra-corporate transfers) and take an ambitious approach to the new Students and Researchers Directive. The Chairman for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) noted that there remained significant discrepancies between Member States' migration numbers. The International Organisation for Migration (IOM) thought that this was the greatest era of human mobility in history, whilst the UN Refugee Agency called for a more uniform implementation of the Common European Asylum System.

The majority of Member States supported the case for migration contributing to growth and stressed that the focus should be on attracting highly skilled workers, determined by the needs of the individual labour markets. Tackling illegal immigration and abuse of legal migration routes by organised crime was also a priority. A small number stressed the need for solidarity and burden sharing in light of migratory pressures at the external border. The Presidency concluded that the Council should focus on solidarity, including returns and proper implementation of readmission policies, and emphasised the importance both of encouraging legal migration matched to labour market needs and using the labour force already present on the territory of the EU. The Presidency also highlighted effective border management as a priority.

Turning to the refugee situation in Syria, delegations expressed concern about the deteriorating situation. The UN Refugee Agency (UNHCR) thought recognition rates for asylum seekers varied too much, contributing to secondary movements. The International Organisation for Migration (IOM) said the first priority was supporting the neighbouring countries and noted that the EU (Commission and Member States combined) was the largest single contributor in the region. The Commission announced the launch of the Regional Protection Plan (RRP) with an initial £10 million budget.

The UK said that the priority response should continue to be to provide humanitarian assistance to displaced people in partnership with neighbouring countries and the UNHCR. To that end the UK had now increased its pledge for the Syrian relief effort to over £340 million. In the longer term, regional protection was vital and the UK was therefore prepared to offer in principle £500,000 to the Regional Protection Plan. Some delegations indicated that they had made offers to take the most vulnerable from the area, whilst others highlighted the need for more uniform treatment of those requesting protection in the EU, stressing the role of the European Asylum Support Office. The Presidency noted the need to give money and support to countries in the region and that resettlement should not be the main method for dealing with the crisis.

The second session focused on cyber security issues where the Presidency set out the increasing threats posed in this area, arguing that the EU had to identify critical infrastructure and ensure a minimum level of protection. The Commission welcomed the Council Conclusions on the EU strategy on cyber security and stressed the importance of public-private sector cooperation, a point made by several Member States. The Commission said that the reporting of incidents was essential to get a better sense of the phenomena and noted that use should be made of the Directive on network and information security and Directive on attacks on IT systems. Europol noted the maturing capability of the European Cyber Crime Centre, which was building links to Eurojust and the European Network

and Security Agency (ENISA) to provide a better response to the threats. Europol was preparing an assessment of the current trends.

The UK welcomed work to support Member States in protecting themselves in cyberspace, agreeing on the importance of private / public partnerships. Computer Emergency Response Teams (CERTs) were also a positive step to develop capabilities in Member States, but their scope and functions had to meet Member States' requirements and respect existing structures. In the context of strong law enforcement the UK was establishing a National Cyber Crime Unit as part of the National Crime Agency, which we would want to ensure was plugged into the Europol Cyber Crime Centre. Other delegations stressed the importance of common minimum standards for e-identity, improved practical cooperation involving EU-LISA (IT Agency), Europol and ENISA, and application of the Budapest Convention. The Presidency concluded that the Friends of the Presidency group on cyber security should formulate recommendations on implementation of the Council Conclusions.

The Presidency invited Member States who wished to provide a temporary seat for the Europol Police College (CEPOL) pending a long term solution to submit their bids in writing by 16 September.

The last session focused on the next Justice and Home Affairs (JHA) Work Programme. The Commission said that it was important to learn lessons from recent experience, in particular the need to be able to act quickly in response to new events for example the Arab Spring, and thought that long term strategic goals were needed. It would produce a Communication in March 2014. The LIBE Committee Chairman noted that the Parliament would produce an own initiative Resolution by the end of the year.

The UK noted that Member States had a unique role in setting the JHA agenda, which was appropriate given the issues were close to national sovereignty. The UK favoured strategic guidelines setting the overarching principles and priority areas for cooperation, including practical efforts to reduce illegal immigration and a comprehensive approach to tackling free movement abuse. Other interventions also supported the need for a strategic approach, with a focus on consolidation and implementation, and alignment with EU funding. Various delegations also raised the importance of future action to tackle abuse of asylum and legal migration routes; illegal immigration; synthetic drugs; terrorism and radicalisation; cyber-security; and marine security and to address visa liberalisation and visa policy; and readmission and returns, including engagement with countries of origin and conditionality.

The Presidency concluded that it would work with the European Parliament and Commission to establish a way forward but all seemed to agree on the importance of implementing existing measures, the need for flexibility to respond to new events, and a Programme based on strategic guidelines rather than a catalogue of new legislation.

Justice Day began with a discussion of the implementation of the Stockholm Programme and the future of the work in the JHA area including strategic guidelines under Article 68 TFEU. The Commission proposed that headlines for the strategic guidelines should be on consolidation, implementation and enforcement of the Programme with a focus on support to mutual trust and confidence with the Rule of Law as a strong headline. The European Parliament thought the focus should be on fundamental rights and minimum standards in criminal procedural law, the EPPO and judicial cooperation.

Virtually all Member States endorsed a focus on implementation and consolidation with some pushing more overtly for greater evaluation. Some Member States thought focus should be on civil and fundamental rights with citizens needing a better understanding of the benefits of common rights. Others argued for a more economic focus.

The Presidency concluded there was support for a set of guidelines covering the themes of consolidation, implementation, fundamental rights and data privacy.

The Informal Council then discussed certain key issues relating to Data Protection: the consistency mechanism and the role of the European Data Protection Board (EDPB). Commissioner Reding argued that there was a clear need to respond to the PRISM allegations, as inaction would damage trust and confidence in the way public authorities use data. She also argued that the EU needed to engage constructively in the EU-US dialogue if there was to be meaningful progress on issues of key concern, including on redress and equal rights for EU citizens. She added that other matters were for the EU to decide. Those included the negotiations on the proposed data protection regulation, which would: clarify the territorial scope of the instrument, the international transfers regime; and obligations on controllers and processors, including cloud providers.

The European Parliament confirmed that it had committed to a vote after the summer break, the intention that 'trilogue' would commence in the autumn and with negotiations being concluded before the end of the European Parliamentary mandate.

The UK intervened to say that it was important to strike the right balance between privacy concerns and the economic opportunities of new business. These should be achieved in tandem. However, negotiations must not stray into areas of national security.

Nearly all Member States indicated that the consistency mechanism and the role of the EDPB were central to delivering a harmonised application of the instrument, with the Commission arguing that it would solve problems, such as concerns arising from Google Street View. The majority thought there was a need to manage the caseload of the EDPB to enable it to fulfil its role effectively. Therefore, it should be able to decline some cases, but there were differing views on the extent of the discretion that should be given to the EDPB.

The Presidency concluded that the majority supported the need for consistency and wanted a stronger role for the EDPB; referrals to the EDPB should be limited; but that further discussions were necessary on the scope of the consistency mechanism and the one-stop shop. On the broader issue of PRISM they understood concerns about the potential impact of US surveillance programmes on EU citizens and recognised a need to find solutions.

30 July 2013

INTEGRATION OF THIRD-COUNTRY NATIONALS (5119/13)

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

Thank you for your letter of 11 April 2013 regarding the above document which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 24 April.

We are very grateful for your detailed and helpful responses to each of the points we raised in our letter of 20 March.

We do not require a response to this letter.

13 May 2013

JUSTICE AND HOME AFFAIRS (JHA) COUNCIL AND EASTERN PARTNERSHIP MINISTERIAL MEETING, 7 AND 8 OCTOBER 2013 (UNNUMBERED)

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

I am writing to inform you about the agendas for the main meeting of the Justice and Home Affairs (JHA) Council and the Eastern Partnership Ministerial Meeting which will take place in Luxembourg on 7 and 8 June. The Justice Secretary, Chris Grayling MP, and I will attend on behalf of the UK.

The Justice day will begin with an orientation debate on the application of the "one-stop shop" in the draft Data Protection Regulation. The purpose is to reach consensus in Council on whether a "one-stop shop" data protection supervisory regime for businesses operating in more than one Member State can also ensure individuals to have effective access to redress. The European Commission remains keen for the data protection package (Regulation and Directive) to be adopted before the European Parliament elections next year.

The Presidency has also indicated that it may add the Counterfeiting Directive to the agenda with a view to reaching a possible general approach. This proposal has been cleared from scrutiny in the House of Commons but not in the House of Lords. The UK has not opted into this proposal but has participated in the negotiations and can opt-in to this measure post-adoption if appropriate.

There will then be a presentation from the Commission and an orientation debate on the proposals to reform Eurojust and create a European Public Prosecutor's Office (EPPO). Member States will be invited to give first impressions of the proposals and there will be an exchange of views.

You are aware that the UK will not take part in the EPPO. Following publication of the proposal, the UK will want to challenge the Commission's case for establishing it. The UK has yet to make a decision on whether to opt in to the new Eurojust Regulation. Whilst we value the current Eurojust

arrangements the new proposal does raise concerns, not least in granting additional powers to National Members of Eurojust and in its links to the EPPO.

Over lunch, we expect there will be a discussion about the Snowden allegations. This will take place in the context of ongoing EU-US discussions about data protection as well as a European Parliament inquiry into the mass surveillance of EU citizens.

The Justice session of the Eastern Partnership meeting will discuss: justice reform; judicial cooperation and recent (legislative and policy) developments in the area of justice.

The Interior session of the Eastern Partnership will discuss: the fight against corruption; the fight against organised and transitional crime; cybercrime and migration and mobility.

The Interior session of the main JHA Council meeting will begin with a presentation on the provisional arrangements to host the EU Police College, CEPOL. Italy, Ireland, Spain, the Netherlands, Greece, Hungary and Finland have submitted bids to temporarily host CEPOL. The UK's preference would be for a permanent solution to be found quickly as this would be the least cost for Member States and the better solution for CEPOL.

There will be a short update by the Commission on the interim report on the issues related to the free movement abuse, commissioned at the June JHA Council. The final report will be presented at the December JHA Council. The UK has provided a written contribution to the evidence base which is drawn from existing published and publicly available statistics on sham marriage and other types of abuses and are exploring what further material the UK provide over the coming months.

There will be a discussion on the protection of refugees from Syria. The Commission is likely to encourage Member States to agree to offer resettlement places to Syrians. The UK will reiterate the view that the focus should be on protection in the region and will stress support for the planned Regional Development and Protection Programme (RDPP) for Syrians, encouraging other Member States to also pledge their support.

The Commission will provide information on the first Annual Relocation Forum, held on 25 September. This forum provides a platform for Member States to discuss issues relating to the relocation of refugees and the opportunity to make voluntary relocation pledges. The UK does not support the concept of relocation, believing that this simply moves the problem around Europe rather than dealing with it at source, and that can encourage more irregular migration. As such, the UK has no plans to undertake any relocation at this time.

1 October 2013

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

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

Lithuania will hold the rotating Presidency of the EU Council of Ministers from 1 July to 31 December 2013. I am writing to give you an overview of likely activity during the Lithuanian Presidency on those dossiers covered by the Home Office. I hope this will assist your Committee in planning for the JHA Councils in this period, and for any subsequent opt-in or Schengen opt-out decisions.

The present timetable for consideration of dossiers at JHA Council under the Lithuanian Presidency is:

- 18-19 July (Vilnius), Informal Meeting of JHA Ministers
- 7-8 October in Luxembourg
- 5-6 December in Brussels

We do not expect that Justice and Home Affairs will be the core priority for the Lithuanians but they will inherit a substantive inherited agenda, which they will come under pressure to finalise as EP elections approach in May 2014 and the Commission enters its final year of its current mandate. The key measures likely to be introduced, negotiated and delivered under the Lithuanian Presidency are as follows.

POLICE AND SECURITY

A review of the EU Strategy for Combating Radicalisation and Recruitment to Terrorism is expected. We are looking to use this opportunity to share our experience and best practice of delivering PREVENT in the UK.

According to its Work Programme, the Commission will also publish a Communication on firearms and the internal security of the EU in autumn 2013. This will set out future legislative measures that the Commission intends to bring forward. The opt-in will not apply to the Communication itself, but would be likely to apply to any of the measures in it when they were proposed. In addition, the Lithuanian Presidency is planning a conference around 'Terrorist use of firearms', which is expected to be held around October. There are obvious synergies between the Communication and conference, which we are encouraging the Lithuanians to take into account (such as trafficking of illicit firearms and component parts).

Negotiations on the Passenger Name Records (PNR) Directive will continue under the Lithuanian Presidency. Although the European Parliament's LIBE Committee voted to reject the proposed Directive outright on 24 April, and this has delayed the law's progress, the matter has yet to go to the EP plenary. The next stage is a possible plenary vote as early as mid-June, which would subsequently lead to Lithuania managing the trilogue negotiations for the Council from July. The Directive remains a key priority for the Government. Our most important goal is to secure a Directive that provides for the collection of PNR on routes within the EU.

A review of the European Programme for Critical Infrastructure Protection (EPCIP) and the Directive on the identification and designation of European Critical Infrastructure (ECI) is ongoing. A Commission Communication outlining the future direction of the Programme, including any legislative implications, is expected at the beginning of the Lithuanian Presidency. The Government wishes to see the Programme revised and updated but would wish to be sure that any changes contribute to the aim of improving the protection of critical infrastructure in the EU. We anticipate that the Commission will not be proposing any new legislative instruments and that the proposals will be recommending a more practical approach to implementation of the Programme. The Government would support such an approach as it should deliver more tangible improvements to critical infrastructure protection in the EU.

We are yet to see the legislative proposals from the European Commission on New Psychoactive Substances (NPS). These are expected to be published in July, but may yet slip into the autumn. We are already working with the Commission to influence the legal base on which these proposals will be produced on the basis that they may trigger a decision on UK participation under the Schengen Protocol. The current NPS Council Decision is subject to the 2014 opt-out decision. If the new proposal is adopted and enters into force before 1 December 2014, and the UK decides to participate, Council Decision 2005/387/JHA will be repealed and replaced, thereby removing it from scope of the 2014 decision.

The Lithuanian Presidency will continue the work under the EU Policy Cycle programme of cooperation against organised crime and will be responsible for compiling the monitoring reports for the 2013 operational action plans. The new EU crime priorities for 2014-17 will be agreed by the JHA Council in June and the Presidency will be responsible for ensuring that the 2014 operational action plans are drafted and agreed by the Standing Committee for Internal Security (COSI) in November.

We expect the draft Directive on the freezing and confiscation of criminal assets to enter trilogue during the Lithuanian Presidency. There are significant differences between the Council and the Parliament on this dossier and we do not anticipate rapid progress. On a related matter, we expect the Commission to produce a legislative proposal to harmonise money laundering definitions, offences and sanctions in the latter half of this year. We will work closely with the Commission to seek to ensure that any proposals put forward do not undermine the UK's anti-money laundering regime. We would expect this to trigger the opt-in.

On 27 March 2013 the Commission published a proposal for a Europol Regulation which also proposes a merger with the European Police College (CEPOL). This proposal triggers the UK JHA opt-in. The Government has also committed to a debate under the Lidington arrangements on the opt-in decision, which is scheduled for 3 July. The Europol proposal will likely have its first full reading at technical level under the Lithuanian Presidency. At present, Member States and the European Parliament have not demonstrated any direct support for the merging of Europol with CEPOL. It is therefore anticipated that a decision on that element of the proposal will need to be made early on during the Lithuanian Presidency.

Significant progress has been made by the Irish in trilogue negotiations on the European Investigation Order (EIO). It is possible that they will have secured agreement on the more problematic clauses by the end of their Presidency. However, negotiations are likely to now be concluded during the Lithuanian Presidency.

We are also expecting proposals on the European Public Prosecutor's Office (EPPO) and Eurojust to be published before August. These proposals will be taken forward under the incoming Lithuanian Presidency. As your Committee will already be aware, the Government committed not to participate in the EPPO proposal in the Coalition Agreement. The Eurojust proposal will trigger a UK opt-in decision and the Government will consider this in the usual way. The Government has also committed to debates under the Lidington arrangements on the Eurojust opt-in decision.

The UK's SIS II "entry into operation" date is still currently scheduled for Q4 2014 and we do not expect any major developments during the Lithuanian Presidency.

MIGRATION, ASYLUM AND BORDER CONTROL

We will wish to see the Lithuanian Presidency oversee continued progress under the EU 'roadmap' on migratory pressures ('EU Action on Migratory Pressures - A Strategic Response'). As with previous Presidencies, Lithuania will need to provide a biannual update. The UK Government strongly supports continuing use of the roadmap as a 'living document' to coordinate strategic action on illegal immigration and broader pressures, including under its priority area on combating abuse of free movement rights by third country nationals.

We will also want to see further progress on the Greek Action Plan on asylum and migration management. The UK Government is significantly engaged in improving the current situation in Greece, both at bilateral and at EU levels.

We would also like to see further progress on enhanced JHA cooperation with Turkey, including under the EU roadmap for Schengen visa liberalisation and signature of the EU Readmission Agreement alongside progress on action focussed on the Greece-Turkey border. We would also support enhanced efforts to tackle illegal immigration elsewhere at the external borders of the EU, including Bulgaria's border with Turkey.

Further 'upstream', we will want the Presidency to ensure progress on the proposed Regional Protection Programme in response to the Syria crisis, which should support the countries of the region in absorbing those fleeing the crisis, and practical cooperation with key countries of transit and origin under the Global Approach to Migration and Mobility (GAMM), including EU support for the new 'Silk Routes Partnership' under the state-led Budapest Process.

Negotiations on the Commission's Smart Borders proposals will continue during the Lithuanian Presidency. These measures build on elements of the Schengen agreement in which the UK does not participate. We expect the Lithuanians will attempt to make substantive progress on Smart Borders but due to the scope and cost of the measures, we do not anticipate that they will be able to conclude negotiations by the end of 2013.

Similarly the Lithuanians will inherit negotiations on 3 legal migration dossiers: Intra-Corporate Transferees, Seasonal Workers and a Directive on the entry of third country nationals for the purpose of research and study. The UK has not opted in to the first two and the Government is in the process of taking a decision on the third.

FUNDING

We have been negotiating new Regulations to establish Home Affairs funding under the next Multi Annual Financial Framework (MFF 2014-2020). We opted in to the Asylum and Migration Fund (AMF) and accompanying Horizontal Regulation, but not to the Internal Security Fund (police). We are excluded from the Internal Security Fund (borders). Negotiations in trilogue are continuing to progress, and we expect the Lithuanian Presidency to need to bring these to a close. We have agreed to review our participation in the ISF (police) at that time and will contact you as part of that process.

JHA EXTERNAL RELATIONS

We understand that a primary focus for the Lithuanian Presidency across all areas will be on promoting the relationship between the EU and its Eastern Partners, with the October JHA Council involving a joint session with Eastern Partnership countries in advance of the third Eastern Partnership Summit on 28-29 November in Vilnius. The Eastern Partnership, which is a forum aimed at improving

the EU's political and economic trade and relations with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, aims to establish a zone of stability, security and prosperity around the EU.

The most contentious issue will be around whether or not to sign or initial Association Agreements and Deep and Comprehensive Free Trade Agreements with Ukraine, Moldova, Georgia and Armenia at the Summit. We will need to ensure the forthcoming assessment of Ukraine's progress deals sufficiently with migratory risks, and we will continue to track migration aspects of the Partnership more broadly. The Summit will also cover other priorities such as business opportunities in the region, energy, immigration and security and will set the overall framework of the Eastern Partnership for the following two years.

THE STOCKHOLM PROGRAMME SUCCESSOR

The EU's five-year multiannual programme for JHA cooperation, known as the Stockholm Programme, expires at the end of next year, and a decision on new strategic guidelines which will determine the EU JHA priorities from 2015 onwards is likely to be taken in December 2014. The negotiations of the new Programme will be the responsibility of the Home Office and Ministry of Justice.

Interest is growing in the replacement Programme and we understand that a half day discussion on it is likely to take place at both the Interior and Justice days of the July Informal JHA Council. Our intention is to engage in this discussion, understand the positions of other Member States, inform our thinking and start building effective alliances during the Lithuanian Presidency. We will keep Parliament informed as the negotiations progress.

Should your Committee be interested in further information on the priorities for this Presidency I and my officials would be happy to assist with an informal briefing session on topics you may be interested to hear more about.

11 June 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 11 June 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 June 2013. We have a number of points to make about the content of that letter.

With regard to the draft Directive on the freezing and confiscation of criminal assets, we would be grateful for further information about the progress of this measure, including an overview of the "significant differences" between the Council and the European Parliament. As you will recall this Committee has consistently urged the Government to exercise their right to opt-in to this measure once it has been adopted.

With regard to the Internal Security Fund (Police) measure, which will form part of the next Multiannual Financial Framework for the period 2014-2020, we note that the Government intends to "review" its participation in that measure in due course. We would be grateful for more information about the nature of this review.

With reference to the Stockholm Programme successor, which is also covered in your letter, we would like to notify you that the Committee has recently decided to conduct an inquiry into this area – which is likely to become known as the 'Rome Programme' – beginning in the autumn. We will provide you, and the Ministry of Justice, with further details about the scope of this inquiry in due course.

We look forward to hearing from you within the standard 10 days.

19 June 2013

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 19 June in response to my letter regarding the Lithuanian Presidency priorities. You requested further information on two specific dossiers. I understand Lord Taylor provided some information on these measures during the debate on the third annual report on the application of the JHA opt-in on 3 July, but I wanted to provide some additional detail, as sought in your letter.

You asked for information about our plans to review our participation in the Internal Security Fund (Police). As you are aware we did not opt in to that proposal at the initial stage but in reporting that

decision to Parliament we undertook to consider a post-adoption opt-in depending on the outcome of negotiations, and in particular the financial implications.

We have not begun our review of our participation in this measure as it has not been agreed and so the questions we had, particularly about the financial commitments, are still outstanding. When the measure is agreed, we will consider whether it is in the UK's interests to opt in or not, seeking the views of Parliament against the agreed text. The assessment will be considered in the same way as any other opt-in decision. As matters stand, we are still awaiting clarity on the budget to be allocated to the ISF (Police), and indeed trilogue is continuing on the substance of the text. We will of course update you when a deal appears to be imminent.

The draft Directive on the freezing and confiscation of criminal assets has just entered the trilogue process. You asked for an overview of the differences in approach between the Council and the European Parliament. The most significant differences centre on the provisions in the Directive that provide for non-conviction based confiscation (Article 5). The Council is seeking to limit the scope of Article 5 by ensuring that it does not apply where the suspect has died prior to a conviction, and by applying it only in cases of 'serious crime'. The Council's General Approach also includes a provision that will, in effect, allow Member States to continue to use conviction-based confiscation where the offender has been convicted following an in absentia trial.

The European Parliament is seeking to broaden Article 5 so that non-conviction based confiscation powers can be used in all cases (including those in which the suspect has died prior to being convicted) provided that certain criteria are met. The criteria are designed to ensure that non-conviction based confiscation remains a criminal law, rather than civil law, measure, and thus stays within the Directive's legal base. The European Parliament also proposes that if Member States already have a civil law forfeiture measure they are not also required to implement a criminal law measure. The UK supports this proposal.

We will continue to seek to influence the outcome of negotiations to ensure that the Directive does not imperil the UK's civil non-conviction based confiscation system. The Government has committed to reviewing its participation following adoption of the text and will consult Parliament in the usual way at that time.

8 July 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 8 July 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 17 July 2013.

We are grateful for the update you have provided about the status of, and the Government's position on, the Proceeds of Crime Directive and the Internal Security Fund (Police) measure. We will look forward to receiving further updates about these measures by way of separate scrutiny correspondence in due course.

No response to this letter is required.

17 July 2013

MAXIMISING THE DEVELOPMENT IMPACT OF MIGRATION (9886/13)

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

Thank you for your explanatory memorandum of 13 June 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 3 July 2013.

We note that the Government broadly welcomes the Commission's approach to preparations for the High-Level Dialogue on International Migration and Development, which will take place on 3-4 October 2013, and that while it endorses many of its recommendations it considers that others run contrary to UK policy.

As you will be aware the Committee considered the links between migration and development in chapter 6 of its report on *The EU's Global Approach to Migration and Mobility* (8th Report of Session 2012-13, HL Paper 91) and that the House debated that report on 6 June. In that report we considered that the EU's development aims in the migration context could be assisted by taking steps

to reduce trade barriers with non-EU countries. We also stated our belief that there was a general EU interest in pursuing proactive policies and adopting concrete actions in order to facilitate remittances, mitigate the effects of brain drain on countries of origin and assist diasporas to transfer skills to their countries of origin. We would be grateful for an account of how the Government believes that these points will be pursued in the UK and the EU's preparation for and engagement in the High-Level Dialogue.

We note that Council Conclusions are likely to be adopted on this Communication in July and therefore are content to clear this Document from scrutiny. However, we would be grateful for an overview of how your concerns have been addressed in those Council Conclusions, once they have been adopted, in due course.

Following the debate on the Committee's GAMM report, which took place in the House on 6 June 2013, we are also now content to clear Documents 17254/11 (Commission Communication on the GAMM) and 10784/11 (Commission Communication on a dialogue for migration, mobility and security with the Southern Mediterranean countries) from scrutiny. We are also most grateful to Lord Taylor of Holbeach for his very full follow-up letter of 22 June dealing with points raised in our debate.

3 July 2013

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 3 July clearing this document from scrutiny. I am writing to reply to the questions you raised in that letter.

You referred to the forthcoming Council Conclusions to be agreed in respect of this Communication, and asked for an overview of how my concerns have been addressed in these in due course.

Although we still expect the Council Conclusions to be agreed this month, they currently remain under negotiation. As drafted, they meet some but not all of the Government's concerns; in particular those relating to the Commission Communication's references to 'migrants' rights', the suggestion that there may be scope to work towards 'a new convention that addresses the rights of all migrant workers', and the Commission's proposed messaging on enhanced international labour mobility and the portability of social and pension benefits.

Council Conclusions require unanimity before they can be agreed, and we know that a number of other Member States share our concerns regarding the Commission's recommendations. On that basis, I remain hopeful that the current negotiations will produce an acceptable set of draft Council Conclusions, and I propose to write again to update you on the outcome once they have been adopted.

You also noted your Committee's consideration of the links between migration and development in the report on the EU's Global Approach to Migration and Mobility (GAMM), and in particular the Committee's views on the desirability of reducing trade barriers with non-EU countries, facilitating remittances, mitigating 'brain drain', and working with diasporas on skills transfer, and asked how the Government believes that these points will be pursued in the UK and EU's preparation for and engagement in the High Level Dialogue.

The Home Office is working closely with DFID and the FCO on UK and EU preparations for the High Level Dialogue. Our engagement reflects the Government's position on various aspects of the migration and development 'nexus', including those highlighted in your Committee's report on the GAMM. With regard to the particular areas raised in your letter, the Government is clear that strengthened international cooperation on trade, more open markets, and the reduction of barriers to trade are all desirable, including with regard to development outcomes. We also agree that the facilitation of remittances can have a positive effect on development, although it is also important to tackle abuse of remittance services. While 'brain drain' is an important area of the debate, we would like to see more nuanced discussion in this area, as the temporary emigration of skilled young professionals can also result in improved development outcomes, not least through skills transfers.

As requested, I will write to you again in due course and advise you of further progress.

9 July 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 9 July 2013 about the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 24 July 2013.

We note that some of the Government's concerns about the content of the Communication have been addressed in the draft Council Conclusions, which are still being negotiated, and will look forward to receiving a further update in the short term once the Council Conclusions have been agreed.

With regard to the links between migration and development, which are discussed in our report on The EU's Global Approach to Migration and Mobility (8th Report of Session 2010-12, HL Paper 91), we are pleased to note that the Government will take into account the Committee's recommendations in this respect during its preparations for the High-Level Dialogue.

25 July 2013

Letter from Mark Harper MP to the Chairman

Further to my letter of 9 July, I am writing to update you with regard to the issues raised in your letter of 3 July; in particular your request for an overview of how concerns regarding the Council Conclusions have been addressed in the final text.

As you know, the draft Council Conclusions met some but not all of the concerns raised in my EM. I am pleased to be able to inform you that final negotiations have addressed these outstanding concerns. In particular, references to 'migrants' rights' have been removed, as has the suggestion of working towards 'a new convention that addresses the rights of all migrant workers'. The revised language on enhanced international labour mobility and the portability of social and pension benefits is also acceptable from the Government's perspective.

We have ensured that the Council Conclusions acknowledge the shared competence of the EU and Member States in the areas of migration and development, and that they do not imply that the Commission's earlier Communication forms part of the joint position of the EU and Member States on the HLD.

On that basis, I have approved agreement of the Council Conclusions at COREPER ahead of their adoption at the AGRIFISH Council on 23 September, the first available Council.

I attach a copy of the final text of the Council Conclusions for your reference [not printed].

30 August 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 30 August 2013 about the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 September 2013.

We note that the Government's outstanding concerns regarding the content of the Council Conclusions have now been addressed, which are reflected in the text of the final version, of which we were grateful to receive a copy.

No response to this letter is required.

11 September 2013

MEDICAL DEVICES (14492/12, 14493/12, 14499/12)

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

Thank you for your letter of 24 April requesting further information about the Government's approach to exempting health institutions that manufacture and use their own in-vitro diagnostic devices (IVDs) 'in-house' from the requirements of the proposed IVD Regulation.

By way of background, I should explain that Directive 98/79/EC – the existing EU legislation covering IVDs – provides a complete exemption for health institutions that manufacture and use their own

IVDs ‘in-house’ from meeting any of the requirements of the legislation. Article 4 of the proposed IVD Regulation places additional requirements on all ‘in-house’ tests; the health institution will need to meet minimum standards (ISO 15189) and report safety issues to national regulators. In addition, the highest risk (class D) IVDs will not be able to make use of the ‘in-house’ exemption and will need to meet nearly all of the requirements in the legislation.

The Government supports the additional requirements proposed by the Commission. ISO 15189 is a comprehensive, externally assessed standard that specifies requirements for quality and competence that are particular to medical laboratories. Importantly, the standard covers the whole diagnostic process – it requires that all IVDs are shown to be fit for purpose and that there is evidence that they have been validated and shown to meet their defined specification. It also assesses the interpretation of the results. Accreditation to this standard will ensure consistent, high standards for health institutions. In addition, reporting problems to national regulators will ensure that regulators can quickly address any safety concerns and identify systematic issues.

I do not, however, agree with the European Commission that class D IVDs should be excluded from the scope of the ‘in-house’ exemption. The Government’s consultation provided further evidence that demonstrates the negative impacts that such a requirement would have, including an extremely high quality submission from the Health Protection Agency (now part of Public Health England). This shows that certain tests would not be available because of the time and cost implications of meeting the full regulatory requirements. Indeed health institutions would be unlikely to be able to CE mark some tests given their complex and evolving nature. Given that class D IVDs include those to “detect the presence of, or exposure to, a transmissible agent that causes a life threatening disease with a high or currently undefined risk of propagation”, there will clearly be significant negative public health impacts of the Commission’s proposal.

Stakeholders’ concerns about the use of the ‘in-house’ exemption do not relate to these circumstances. All stakeholders, including industry, recognise the need to allow the flexibility for health institutions to develop IVDs where CE-marked equivalents do not exist. Rather, some stakeholders expressed concerns that health institutions develop and use their own tests ‘in-house’ although high-quality and appropriate CE-marked IVDs exist.

The challenge for the Government is to consider how to tailor the ‘in-house’ exemption to address these legitimate concerns. I do not consider that the EU should address this issue by either removing the ‘in-house’ exemption – for the reasons outlined above – or by qualifying the exemption with additional rules and requirements. This is largely because of the difficulty of drafting legislation that would be able to address all of the potential scenarios involved in assessing, for example, when an ‘in-house’ test is equivalent to a CE-marked alternative.

The Government will, however, be proposing an amendment to the Commission’s proposal that will introduce a requirement for:

- Health institutions to provide competent authorities with a list of IVDs that are manufactured and used ‘in-house’;
- This list to include justification for the use of ‘in-house’ IVDs, in particular where CE-marked equivalents exist; and
- This list to be made public.

I consider that such an approach will help to ensure that the use of ‘in-house’ tests will be transparent and justifiable. It will also allow competent authorities to identify where health institutions use the ‘in-house’ exemption. Equally, making this information available publicly may stimulate the commercial development of IVDs where it is apparent that there are gaps in the market and result in higher quality, cost-efficient tests being available.

Furthermore, the accreditation process will scrutinise the use of the ‘in-house’ exemption. In the UK, responsibility for the accreditation of medical laboratories within health institutions to ISO 15189 falls to the United Kingdom Accreditation Service (UKAS). The Medicines and Healthcare products Regulatory Agency (MHRA) has begun discussions with UKAS to discuss how, as part of the accreditation process, they could address whether the ‘in-house’ exemption is being used appropriately. The MHRA will continue discussions during any transition period to new legislation.

Taking all of these measures into account, I am confident that the right balance is being struck in the Government’s approach in the negotiations to allow the flexibility for health institutions to develop and use ‘in-house’ IVDs to high quality standards and public scrutiny. Officials in the MHRA regularly

meet with interested stakeholders – including industry and clinicians – and I am confident that this will be recognised as a sensible and pragmatic approach.

9 May 2013

Letter from the Chairman to Earl Howe

Thank you for your letter of 9 May 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 22 May 2013.

We are grateful for your clarification about the use of the ISO 15189 standard as a means of quality assurance of in-vitro diagnostic devices (IVDs), and for your explanation of some of the concerns of UK stakeholders with the current proposals.

We believe that your suggested amendments to the Commission's proposal are reasonable and we hope you will be able to secure agreement to them in Brussels.

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.

22 May 2013

NEW PSYCHOACTIVE SUBSTANCES (13865/13)

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

As promised in the explanatory memoranda of 8 October on the above EU proposals for a Regulation and Directive on new psychoactive substances (NPS), I write with further details about our assessments of subsidiarity and legal base.

SUBSIDIARITY

I turn first to the issue of subsidiarity. Whether any proposed action cannot sufficiently be achieved by Member States and would be better achieved by action at Union level must be informed, in part, by an assessment of the merits of the proposed action. This is particularly relevant where, as with the proposed NPS measures, there may be a spectrum of possible options for EU-level action, but not all EU action will comply with the principle of subsidiarity. The role of national parliaments under Protocol (No. 2) to the Treaties would be academic if they were constrained to assess issues of subsidiarity with no corresponding assessment of the parameters of the Union's proposed action in the relevant area.

In evidence before the House of Lords EU Select Committee on 16 October, I accepted that some EU action could be justified. The development and use of NPS is a fast moving area which transcends national borders. There are clear benefits to sharing knowledge and expertise at an EU level, providing the systems established to do so are swift and responsive. In the case of some new psychoactive substances, there are clear benefits to having EU-wide minimum standards. To the extent that the proposed Regulation builds on the existing measure in this regard, I am satisfied that it complies with the principle of subsidiarity.

However, the proposed NPS Regulation goes beyond this. It mandates not *minimum* standards across the EU, but *common* standards; it is a harmonisation measure. This appears to be a consequence of the premise that there is a substantial licit trade in NPS which underpins the draft Regulation. In our experience, the trade in legitimate NPS is minimal at best. This in turn has led to the draft Regulation citing a single market legal base (Article 114 of the Treaty on the Functioning of the European Union – TFEU), a matter to which I shall return shortly.

Article 4 of the draft Regulation provides that, "insofar as the Union has not adopted measures to subject a new psychoactive substance to market restriction under this Regulation, Member States may adopt technical regulations..." It is quite clear that Member States will no longer be able to control NPS as a matter of national competence.

This could have significant implications for our domestic legal framework for controlling drugs in at least two ways.

First, we may be compelled to declassify or downgrade the classification of existing controlled drugs if the new EU classification system leads to a lower EU classification. Because the new Regulation provides for a tiered scheme of restrictions, it is entirely possible that the EU may decide that a measure merits a *moderate* restriction, whereas our own scientific evidence suggests that it requires a severe restriction, with the ensuing categorisation under domestic drug control legislation. In the event of such a conflict, the categorisation under the Regulation would have to prevail.

While Article 114 TFEU contains two potential derogations for Member States, neither preserves national competence. Article 114(4) provides that Member States may apply for a derogation from a harmonisation measure to maintain existing national provisions on the grounds of major needs referred to in Article 36 TFEU. Article 114(5) provides that after the adoption of a harmonisation measure, a Member State may apply to introduce national provisions on certain narrow criteria relating to the protection of the environment or the working environment, on the grounds of a problem specific to that Member State. In either case, it is the Commission which is to decide whether to permit the Member State so to derogate from the measure.

Secondly, we will be compelled to comply with the requirements of Directive 98/34/EC if we want to classify NPS outside the proposed EU system, which would be a lengthy process. This is in contrast to the responsive system we have under the Misuse of Drugs Act 1971, which allows temporary bans to be imposed on emerging NPS pending a full assessment by the Advisory Council on the Misuse of Drugs and a classification decision by the Secretary of State.

The net effect of the proposed Regulation would be significantly to undermine the competence of Member States to introduce domestic drug controls. Put simply, we do not consider that such extensive Union action in this area is appropriate. Member States should not be prohibited from unilaterally introducing more stringent controls for NPS. It is not necessary to remove that decision-making power from Member States and place it at EU level. To adopt the language of the Treaty, such an objective cannot “be better achieved at Union level” when there is no justification for that objective in the first place (Article 5(3), Treaty on European Union).

Also, to the extent that Member States are permitted to introduce national measures, either through the Article 114 TFEU derogations or the process contained in Article 4 of the draft Regulation, the mechanisms for doing so are cumbersome and ill-suited to the speed required to deal with NPS. Given the manufacture of NPS for illicit use seeks to exploit the chemical differences in different psychoactive substances with the aim of evading the controls on existing substances, it is necessary for Member States to have the ability to respond to this emerging threat at pace. We cannot see how this aspect of the proposed system satisfies the requirement that action “be better achieved at Union level”.

Finally, the draft Regulation assumes that Member States will, and indeed, should, have a reactive classification system, whereby particular substances are classified after they have been released to the illicit market. It should be open to Member States to introduce other control systems, such as *proactive* classification systems, which impose prohibitions based on the psychoactive effect of any substance, rather than by reference to their precise chemical composition. I am aware that the Republic of Ireland deploys such an approach: see the Criminal Justice (Psychoactive Substances) Act 2010.

While I can't speak for other Member States, I am able to observe that if the EU adopted a *minimum* standards system, it would be more likely to be compatible with proactive classification systems, whereas the harmonisation approach of the draft Regulation is much harder to reconcile with proactive systems. Again, this restrictive feature of the draft Regulation goes to the issue of whether it satisfies the requirement that the proposed action is better achieved at Union level.

We are not satisfied, therefore, that the draft Regulation in its current form complies with the principle of subsidiarity.

LEGAL BASE

Assessment of the legal base for an EU measure must rest on objective factors that are amenable to judicial review, including the aim and content of the measure.

Our concerns in relation to the citation of an Article 114 TFEU legal base for the measure have their foundation in the overwhelmingly *illicit* nature of the trade in NPS. Many of the features of the NPS Regulation which do not comply with the principle of subsidiarity may be traced back to the unnecessary citation of an Article 114 legal base.

The Commission relies heavily on the underlying assumption that there is a significant market for NPS in commercial and industrial use, and for scientific research and development. By contrast, the UK's experience suggests the NPS trade is not "legitimate", with very few exceptions for commercial and industrial purposes.

Our view, therefore, is that the aim and content of this measure relate to matters which fall within Title V TFEU, in particular Article 83(1): offences relating to NPS are "particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences". In addition, it is accepted that there may be a "special need to combat them on a common basis". The second paragraph of Article 83(1) states that the areas of crime to which Article 83(1) applies may apply include "illicit drug trafficking". Indeed, the draft Regulation recognises the proximity of the "trade" in NPS to organised crime, the illicit drugs market and the need to draw on the experience of Europol: see Articles 6(2)(e), 6(3), 10(2)(b), 11(b), 12(1)(b), and 13(1)(c).

The draft Directive (which properly cites a Title V legal base) requires Member States to adopt criminal penalties for NPS which have been found to present severe risks and have been subjected to a permanent market restriction. In the experience of the UK, most if not all NPS will have to be so classified. Taken with the Directive, the primary effect of the Regulation, therefore, will be to subject new NPS to mandatory criminal classification. In our view, this reveals that the true aim and content of the draft Regulation relate to Title V matters.

We also consider this to be a Schengen-building measure, as drafted. Article 76 of the Schengen Convention (in which the UK participates: see Council Decision 2000/365/EC, Article 1(a)(i)), provides that the Contracting Parties shall:

Where necessary, and in accordance with their medical, ethical and practical usage, adopt appropriate measures for the control of narcotic drugs and psychotropic substances which in the territory of one or more Contracting Parties are subject to more rigorous controls than in their own territory, so as not to jeopardise the effectiveness of such controls.

The legal base for Article 76 was Article 95EC, which is now Article 114 TFEU. It was clearly aimed at single market measures regulating the licit trade of certain substances where there is potential for illicit use. While we do not accept that there is a substantial licit trade in NPS, if there was such a trade, it would clearly fall within Article 76 of the Schengen Agreement.

Should the Commission revise its view that there is a substantial licit trade in NPS, it is our view that any revisions to the draft Regulation would be likely to take it within the terms of Article 71 of the Schengen Agreement in any event. Article 71 contains equivalent provision governing measures relating to the illicit trade in narcotics and psychotropic substances.

It is also important for the draft Regulation to be categorised as a Schengen-building and Title V measure because doing so recognises the delineation of competences between the United Kingdom and the EU under Protocols 19 and 21 to the Treaties. The UK has conferred competence on the EU in these areas in accordance with the framework contained in those Protocols.

My concerns relating to subsidiarity and legal base are therefore linked to the incorrect premise on which the draft Regulation is based. I firmly believe that EU-level action is not required to harmonise EU-wide controls for NPS, and that any attempt to introduce controls at an EU level should be based on an accurate evidence-base and realistic assumptions.

I apologise that the explanatory memorandum was unable to go into this level of detail, and I hope that this letter helps to clarify the government's position.

11 November 2013

OUTSTANDING ISSUES FROM THE DEBATES ON EUROPOL AND THE THIRD ANNUAL REPORT ON THE OPT-IN (UNNUMBERED)

Letter from Lord Taylor of Holbeach, Lord Minister and Minister for Criminal Investigation, to the Chairman

I undertook to write following the recent debates in the Grand Chamber, on 1 July, and on the Floor of the House of Lords, on 3 July, dealing respectively with the new Europol Regulation and the third annual report on the opt-in.

Lord Taverne asked about the proposal to harmonise the offence of money laundering at EU level on page 33 (Annex 2) [not printed] of the third annual report on the opt-in. This proposal has not yet emerged from the Commission, and timing for its publication remains unclear. It will trigger an opt-in

decision when it does and we will provide the usual Explanatory Memoranda on the text within the deadlines we have undertaken to meet in the Code of Practice.

You asked about the incorrect legal bases cited in the report. I touched on this in my response to the debate but I wanted to make clear that, in referring to a letter to the Committee Chairman, the Government had in fact written to the Chairman of the European Scrutiny Committee. I also wanted to correct the Treaty references I gave during the debate. The correct legal bases are as follows:

- Council Decision concerning the coordination of social security systems with Turkey: Articles 218(9) and 48 TFEU.
- Directive on insurance mediation: Articles 53(1) and 62 TFEU.

You also asked for an update on the Directive on the right to access to a lawyer. I can confirm that the Directive is due to be adopted in the Autumn. As you are aware, a number of changes have been made to the text during trilogue negotiations; the Government now needs to consider whether to seek to opt in to the Directive once it has been adopted. We will consult the Parliamentary Scrutiny Committees on this matter and the Justice Secretary will provide a more detailed update in due course.

Lord Rosser posed a series of detailed questions. He asked what the impact would be on the second generation of the Schengen Information System (SIS II) if the UK opted out of measures subject to the 2014 decision. As you will be aware, the Government announced on 9 July that it will seek to re-join SIS II in exercising the 2014 opt-out decision. He then asked whether HM Treasury have provided an update on the Directive on the protection of the financial interests of the EU against fraud by means of criminal law. I can advise that they have not as yet done so but hope to be in a position to update Parliament shortly.

Lord Rosser also asked about the current position on the trade agreement between the EU and Colombia and Peru. Negotiations for an EU-Andean Free Trade Agreement (FTA) (covering both Colombia and Peru) were successfully concluded in 2011, with the text of the agreement signed on June 2012. The European Parliament approved the FTA in December 2012. Having been ratified through the Peruvian congress, the FTA was provisionally applied between the EU and Peru from 1 March 2013. Colombia is currently in the process of completing its own approval procedures; once these have been completed the FTA will enter into provisional application between the EU and Colombia as well. For the FTA to enter into full force, it is necessary for EU Member States to complete their domestic parliamentary procedures and thereby ratify the agreement. Within the UK's parliamentary process, there will be debates in both Houses on the FTA, which are likely to take place towards the end of 2013.

Lord Rosser asked about the effectiveness of the passenger name record Agreement between the EU and US Passenger Name Record (PNR) data is a vital tool to combat both terrorism and serious crime. The EU-US agreement has been in force for a little over one year. The Agreement has proved effective in facilitating multi-agency operations between the UK and US. Operations have targeted illegal immigration, smuggling, counter-narcotics, criminal and terrorist financing activity.

Finally, he asked how the Asylum and Migration Fund would be affected if we exercised the 2014 opt-out. I can advise him that it would not be affected at all. The 2014 block-out only applies to police and criminal justice measures adopted before December 2009. The AMF remains under negotiation and the UK has opted in. We will therefore be able to access the Fund once the Regulation has been adopted and the new EU budget taken effect from January 2014.

Lord Rosser also asked for an update on the forthcoming proposals in Annex 2 [not printed] of the report and which would repeal measures on the list of those subject to the 2014 opt-out. I would propose to provide this detail in the mid-year report on the opt-in, which the Government has undertaken to provide this month. That report will also provide further detail on pending opt-in decisions, where I provided an initial list during the debate. This was a matter that Baroness Smith had also queried during the Europol debate.

23 July 2013

PRIME MINISTER'S IMMIGRATION SPEECH AND OF THE INTER-MINISTERIAL GROUP
ON MIGRANTS' ACCESS TO BENEFITS AND PUBLIC SERVICES (UNNUMBERED)

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

Thank you for your letter of 17 April, responding to the publication of the report by the National Institute of Economic and Social Research into the potential impacts of future migration from Bulgaria and Romania. You raised three points, which I address below.

I agree with the conclusions of your Committee that we must learn the lessons from EU8 migration and that we, along with other national Governments, should communicate the benefits of free movement.

1.4 million British citizens live in other Member States and the ability of European citizens to take up a job, to set up a business, or to attend university in another Member State is a core element of the internal market, the benefits of which can be seen in the UK and across the European Union.

However, as the Prime Minister set out in his speech, the attractiveness of social welfare systems and public services which are free at the point of demand can create artificial pull factors for migration.

In the autumn of 2012 I established the Inter-Ministerial Group on Migrants' Access to Benefits and Services to explore these pull factors and prevent the abuse of welfare systems and public services by both EU and non-EU migrants who have no entitlement to benefit from them. The work of this group over the last seven months has resulted in the recent announcements by Prime Minister.

In relation to EU nationals the Prime Minister announced four key measures. Firstly, to prevent abuse by EU nationals who come to the UK with no intention of exercising Treaty rights we will limit the right to reside and access for benefits for jobseekers and retained workers so that it is only available for longer than six months if the EU national can demonstrate that he is both genuinely seeking work and has a genuine chance of getting a job.

DWP check the nationality and immigration status of claimants for Jobseeker's Allowance; however, nationality and immigration status are not recorded on the payment administrative systems meaning that data on the nationality groupings in receipt of Jobseeker's Allowance is not currently available. In future this will be available under Universal Credit. However, 75% of claimants for Jobseeker's Allowance cease to claim this benefit within six months.

Secondly, the Department of Health will ensure that wherever possible the NHS recoups the cost of treating EU and EEA nationals from the country responsible for funding their healthcare. In 2011-12 the UK claimed £48.7m from other Member States for treating EU and EEA patients present in the UK as temporary visitors, retirees or those seeking elective treatment in the UK funded by their home country. However, the Department of Health estimates that less than half of all chargeable visitors - EU and non-EU - are identified by the NHS and they collect payment from less than half of those identified. The Department of Health will therefore be working with the NHS to better identify and recover charges from chargeable patients.

Thirdly, DCLG will be issuing statutory guidance, pressing councils to use their new allocation flexibilities in the Localism Act to ensure that only those with well-established local residency and local associations qualify for a social home. This will apply to British as well as EU nationals.

In 2011-2012 Housing Associations and Local Authority landlords provided social lettings for 5,787 new tenants from the EU8 and EU2 countries, 1,576 social lettings for new tenants from other EEA countries and 6,012 social lettings for new tenants from all other countries (except the UK). Respectively these categories represent 3.9%, 1.1% and 4.0% of new tenants in that financial year.

The full data on social lettings made by Housing Associations and Local Authority landlords from 2007/08 to 2011/12, is published by DCLG at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/39282/Live_Table_754.xls

Fourthly, we will also be strengthening the Habitual Residence Test, which requires benefit claimants to demonstrate their legal right to reside and the factual evidence of their residence in the UK, by increasing the number, range and depth of questions asked to tighten requirements for evidence.

Migration by EU nationals with the sole intention of taking advantage of free movement rights is a concern not just for the UK but for many Member States. In April the Home Secretary, along with her counterparts from Germany, Austria and The Netherlands wrote to the Council Presidency and the European Commission about the pressure currently placed on towns and cities across our

Member States by such migration and the need for European level measures to address it. This will be discussed at the next meeting of the Justice and Home Affairs Council.

4 June 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 4 June 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 June 2013.

We are grateful for the further information about the available evidence underpinning the Government's policy approach to migrants' access to benefits and public services. However, we note that with respect to Jobseekers' Allowance, in particular, there is currently no available data on the nationality of the recipients of this benefit, including nationals from other Member States.

We understand that on 7 June the Justice and Home Affairs Council discussed the joint letter from the interior ministers of Austria, Germany, the Netherlands and the United Kingdom, expressing their concerns about the abuse of free movement rights by some EU citizens in order to gain access to benefits and public services in other Member States. The Council Conclusions state that all Member States agreed that the free movement of persons was a core value of the EU and invited the Commission to examine the implementation of free movement rules, including guidance on fighting abuse of these rules, and to present an interim report to the next JHA Council by October 2013 and a final report by December 2013. We would welcome some indication of the Government's analysis of the discussion at the Council and of how they intend to take this matter forward.

We share the view that the free movement of persons is a fundamental part of the Single Market. While we support the general aim of the Government to find effective means to prevent benefit fraud by foreign nationals, we underline the need to respect the UK's obligations under the EU Treaties.

We will take these considerations into account when we come to scrutinise any relevant Commission proposals in this area; and the House may also have them in mind when the time comes to consider the Immigration Bill, which was announced in the Queen's Speech.

19 June 2013

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 19 June concerning the discussion at the Justice and Home Affairs Council on free movement abuse. You asked for an indication of the Government's analysis of the discussion and how the Government intends to take this work forward.

The discussion at the Council followed the joint letter to Mr Alan Shatter then President of The Justice and Home Affairs Council, in which the Home Secretary, together with her Ministerial counterparts Hans Peter Friedrich (Germany), Johanna Mikl-Leitner (Austria) and Fred Teeven (Netherlands) confirmed their commitment to the principles of the free movement of persons but called for action to tackle its abuse, including those not exercising Treaty rights.

The Government welcomes the lunchtime discussion. Although there was a divergence of views between Member States about how best to deal with fraud and abuse, all Ministers agreed that the free movement was a core right that should be protected and expressed a wish to work together to address these issues. The Home Secretary, supported by a number of other Ministers, stressed the importance of taking effective action in order to ensure continued public confidence in free movement, and outlined particular examples of this abuse in the form of sham marriage, abuse of social welfare benefits, and criminality. The Home Secretary also called for follow-up work to take place and for the issue to return to Council. Following the discussion the Presidency asked the Commission to investigate the issue and report to the JHA Council in December, with an interim report to the October JHA Council. The EPSCO formation of the Council would also have an opportunity to provide input.

The Government will continue to work with the Commission and with other Member States to provide further evidence of the problem of abuse in order to inform the Commission's interim report and final reports.

In the margins of the Council the Home Secretary co-hosted a meeting with Minister Friedrich, attended by Ministers and officials from Austria, Netherlands and Denmark, agreeing to work together to explore common understandings of the problems of abuse and possible solutions.

5 August 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 5 August 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 September 2013.

We are grateful for your overview of the discussions on the abuse of free movement rights that took place at the Justice and Home Affairs Council on 7 June 2013.

Our Internal Market, Infrastructure and Employment Sub-Committee, which is currently considering the abuse of free movement rules, among other matters, in the context of its enhanced scrutiny of the Commission's proposal for a Directive to strengthen workers' rights to live and work freely in the EU, will find this overview useful alongside the oral evidence you provided to them on 22 July 2013 regarding the same.

No response to this letter is required.

11 September 2013

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 explanatory memorandum of 28 October 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 6 November 2013.

We concur with your view that the draft Recommendation complies with the principle of subsidiarity since it imposes no legal obligations on Member States and recognises their responsibility for action in this field. We would not, however, be likely to favour any extension of community competence for sporting activity.

We would be grateful if you would clarify the views of each of the devolved administrations and how they will seek to comply with the Recommendation. It would also be most helpful to know what consultation took place with Sport England regarding this matter. Finally, we would welcome a clear indication of which data requirements the UK could currently meet and which would require material additional to that already available.

We are content to clear this item from scrutiny but look forward to updates in due course and responses to the questions above in the usual ten day period.

6 November 2013

Letter from Jane Ellison MP to the Chairman

Thank you for your letter of 6 November confirming clearance of this item from scrutiny and requesting further information on the consultation process and how the UK will comply with the draft Recommendation on Health Enhancing Physical Activity (HEPA). I am grateful to your Clerk for agreeing a slight extension to the deadline you set for a reply in order that I could provide a full response.

DEVOLVED ADMINISTRATIONS

Officials in my department have consulted their counterparts in the Devolved Administrations (DAs), for their comments on the Explanatory Memorandum and to confirm that they are supportive of the Recommendation. The views of each of the DAs and their plans for complying with the Recommendation are as follows:

SCOTLAND

The Scottish Government has welcomed this Recommendation, which supports the adoption of well-developed and comprehensive policies to drive up HEPA across all member States in a cross-sectoral manner. The Recommendation is in line with the Scottish Government's cross-sectoral approach to reduce inactivity and hence its policy already aligns with these provisions. The Scottish Government is content to commit to the national strategy model set out in the Recommendation given the inclusion of caveats to the text of the Recommendation to the effect that the actions taken by the member States will depend upon national policies, legislation and practice. It would also welcome the opportunity to participate in the regular exchange of information and best practice on HEPA promotion.

With regard to its future plans, the Scottish Government will publish *A More Active Scotland – Building a Legacy from the Commonwealth Games* in December 2013, which will include actions in environment, transport, urban design, communications, workplace, the NHS and social care. Work is also planned with local government to test interventions from across different sectors.

WALES

The Welsh Assembly Government has confirmed that the Recommendation would be in line with current activity in Wales. This is with respect to working towards effective HEPA policies by taking a cross-sectoral approach and developing national strategies and action plans to deliver improvements in HEPA levels based upon these policies.

The Welsh Assembly Government has expressed concerns around monitoring the range of indicators in the Annex to the recommendation. It collects some but not all of these data. It has also pointed to possible financial implications, should the expectations of the European Commission extend beyond providing currently available data. In particular, while it might be desirable the UK to harmonise the collection of data on physical activity levels across the four countries, this could incur additional costs.

NORTHERN IRELAND

The Northern Ireland Executive has welcomed the Council Recommendation to promote HEPA across sectors. The Department of Health, Social Services and Public Safety, with other key Departments and stakeholders, will continue to promote participation in Physical Activity through its current integrated and cross-sectoral Obesity Prevention Framework *A Fitter Future for All*; the Department of Culture, Arts and Leisure's *Sport Matters Strategy*; and the recent Department for Regional Development's *Active Travel Strategy*. Monitoring and evaluation of participation will continue through the Health Survey Northern Ireland on an annual basis and the Sports and Physical Activity Survey (SAPAS, every 3 years). However, the Executive is unable to commit to the other recommendations without more information around the resource implications, capacity and skills required.

CONSULTATION WITH SPORT ENGLAND

The Department for Culture, Media and Sport consulted with Sport England on the draft Recommendation as part of our consultation on the text of the Explanatory Memorandum. Sport England was also invited to comment on the proposed indicators to evaluate Health Enhancing Physical Activity (HEPA) levels and HEPA policies in the EU. They were confident that the data requirements relating to sport could be met for England. However, there is currently no framework to support opportunities to increase access to recreational or exercise facilities for lower socio-economic groups, despite the range of Sport England programmes that do this.

DATA REQUIREMENTS

The UK is already able to offer data on the levels of physical activity across the population for all four countries; however, not all surveys report on an annual basis and some analysis will be required to derive UK data from the four datasets. Some data are available for funding that is allocated specifically to HEPA promotion, but this is incomplete and it is difficult to ascertain levels of investment by local authorities. Apart from in Scotland, there are no data for the training on physical activity in the curriculum of health professionals, for example number of hours for doctors and nurses. For all other quantitative indicators, data are available. Other indicators relate to whether specific HEPA policies are in place.

25 November 2013

PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS TO THE
WORLD HEALTH ORGANISATION'S FRAMEWORK CONVENTION ON TOBACCO
CONTROL (12605/13, 12606/13)

Letter from the Chairman to Sajid Javid MP, Economic Secretary, HM Treasury

Thank you for your explanatory memorandum of 31 July 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 11 September 2013.

We note that the Government is committed to implementing the Protocol and to working with the EU and the other Member States to the same end. However, while the EM makes it clear that the UK opt in applies to the first Council Decision (Document No 12605/13) you provide no indication of what the Government's decision will be in this regard nor by which date the decision has to be made. We assume that the UK will opt in to this measure, which we would support, but would welcome confirmation of this accordingly, alongside the relevant timescales.

When we conducted enhanced scrutiny on the earlier proposals for a revised Tobacco Products Directive (Document No 18068/12) and also subsequently on an EU Cigarette Smuggling Strategy (Document No 11014/13) we noted that the former proposal referred to the Protocol in the context of its provisions on tracking and tracing, while the latter proposal also made reference to ratification of the Protocol in its Action Plan. However, no reference is made to either of these earlier proposals in your EM on the Protocol. We would be grateful to receive further information as to how the Protocol interrelates to the proposed revision of the Tobacco Products Directive, particularly with regard to the tracking and tracing provisions in each measure.

We have decided to retain this proposal under scrutiny and look forward to receiving your response to the above points within the standard 10 day period.

11 September 2013

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

Thank you for your letter of 11 September on the above subject.

In respect of the opt-in, as I set out in my letter to William Cash MP of 14 October, which was copied to you, the UK is, by default, opted out of any Title V measures but can choose to opt-in and be bound by them.

To clarify the position, these draft decisions relate to signing the Protocol only. This signifies an intention to ratify the Protocol in due course but is in no way binding in itself. Unless there are compelling reasons to opt-in to the Title V aspects of the Protocol, the Government intends to maintain its default position to opt-out of the Title V aspects of the Protocol.

Opt-outing of the Title V aspects of the Protocol at this stage does not prejudice the UK's position going forward. We would retain the right to make a separate decision on exercising the opt-in when the substantive measures required to implement the Protocol are debated and finalised at the EU level. At that stage, further Council decisions will be necessary and we will be grateful for the views of the Committee in that regard.

In respect of how the Protocol interrelates with the draft Tobacco Products Directive (TPD), as currently drafted the track and trace proposals in the TPD go significantly beyond what is required in the Protocol. They also introduce a central role for the Commission in determining the rules and standards of the system by means of implementing acts, and approving the tracking and tracing data storage contractor and external auditor.

It is important to note that the draft TPD is a public health measure. The track and trace proposals are primarily intended to address the risk of tobacco products that do not comply with the requirements of the TPD. These illicit products undermine the protection provided by tobacco control legislation. The extension in the scope of the track and trace provisions in the TPD is therefore intended to meet public health objectives and improve the functioning of the EU internal market. If the track and trace proposals in the draft TPD satisfy the obligations of the Protocol we would not need to duplicate these requirements when we come to implementing the Protocol.

I hope that this meets your concerns and that the Committee will now be able to clear the decisions to sign this important Protocol. As we expect there to be a Council vote on these decisions on 18 November, it would be extremely helpful to have clearance by 14 November please.

8 November 2013

Letter from Nicky Morgan MP to the Chairman

I am writing further to my letter to you of 8 November to clarify issues that I understand are of concern to the Committee and I apologise for the delay in responding to you.

The Council will vote on the decisions at its 3 December meeting. The UK firmly supports the Protocol and played a leading role in negotiating its terms. I therefore want the UK to vote in support of EU signature at that meeting. Both decisions must be agreed by Council, and the non-JHA decision requires unanimous support to enable the EU to sign the Protocol. If unable to vote in favour, the UK could suffer direct reputational damage and questions will be asked about the Government's commitment to combating the illicit trade in tobacco products. As the Committee will appreciate, this is an issue that requires co-ordinated global action.

COMPETENCE

I understand the Committee has concerns that the EU could be acting outside its competence. This is also a concern for the Government.

The Council will consider two decisions: one relating to areas that fall within the Justice and Home Affairs (JHA) (Title V of the Treaty on the Functioning of the European Union (TFEU)) aspects, and another that covers the non-JHA aspects of the Protocol. It is important to note that the draft decisions relate only to the signature of the Protocol.

Currently, the competence for each of the Protocol articles has not been settled at EU level – although the UK has done its own competence analysis which will be used to inform the discussions regarding the division of competence between the EU and Member States at conclusion. The detailed split of competences for each of the Protocol articles will be discussed and agreed as part of that conclusion process. Once the competence for each article has been set out, I will write to the Committee again to confirm the final position.

IMPLICATIONS OF THE OPT-OUT

As the Protocol covers areas that relate to JHA, the Government intends not to opt in to the JHA decision. That is in line with existing Government policy and reflects the longstanding view that, it should fall to Member States rather than the EU to exercise shared competence in mixed agreements such as the Protocol.

The UK has argued consistently that as the JHA provisions are shared competence, it should be exercised by the Member States and not the EU. If that were the case, there would be no need for a JHA decision on signature because Member States would have signed up to the JHA provisions in their own right. However, the UK was unsuccessful in convincing other Member States to remove the JHA decision at this stage.

If the UK opts in to the JHA decision now, it would send the message that the UK agrees the EU has some exclusive competence in relation to the Protocol JHA content. The UK disagrees with this legal interpretation. It also means that the UK's hands would be tied when the Member States and the Commission discuss the division of competence during the conclusion stage.

Once the detailed competence analysis has been completed, the UK will argue again for Member States to conclude the JHA provisions in their own right. However, if not successful, and the EU exercises the JHA competence, the UK could choose not to opt-in to that decision and to conclude the JHA provisions as a separate contracting party.

As we have agreed in previous correspondence there are no competence issues with the non-JHA provisions.

18 November 2013

Letter from the Chairman to Nicky Morgan MP

Thank you for your letters of 8 and 18 November 2013 about the Decisions relating to the signature of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control (EMs 12605/13 and 12606/13) which will now, we understand, be coming to the Council for decisions on 3 December; and thank you for the clarifications we have received at the official level which have helped us to understand better some of the complex issues involved.

Our understanding now is that the UK will on 3 December be joining consensus on 12605/13 (Proposal for a Council Decision on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Trade Organisation's Convention on Tobacco Control, in so far as the provisions of the Protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned); and that the UK will not participate in the decision on 12606/13 (Proposal for a Council Decision on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Trade Organisation's Convention on Tobacco Control, in so far as the provisions of the Protocol are concerned which fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned) following the UK's decision to not opt-in at this stage. Both decisions will thus hopefully be approved on 3 December. On that basis we welcome the position reached, since we consider that the objectives of the Protocol are very much in our national interest, and we are content to clear both Decisions from scrutiny.

The Committee also agrees that the problems over the respective competence of the EU and of member states relate more to the phase when the Council authorises the conclusion of EU accession to the Protocol rather than to that of signature. We will expect to be consulted in due course and in good time before the Government reaches any decision on the instruments for conclusion.

For the avoidance of future misunderstanding I should say that the Committee does not recognise the concept of a "default position" over opting in or not opting in to a Title V based measure. In each specific case the Government have to take a decision before the expiry of the time limit of 3 months set down in the Treaties; and before taking any such decision the Government should consult this Committee.

21 November 2013

PUBLIC HEALTH INSURANCE SYSTEMS (7452/13)

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

Thank you for your explanatory memorandum (EM) of 16 April 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 22 May 2013.

We note that the amended proposal addresses many of the Government's concerns about the previous draft of this measure (Document No 7315/12) but that they still have some outstanding concerns.

We have decided to retain this document under scrutiny, and look forward to receiving further information on the development of this proposal in due course.

We have decided to clear Document No 7315/12 from scrutiny as it has been superseded by the current proposal.

22 May 2013

READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION: AZERBAIJAN (15493/13)

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

Thank you for your explanatory memorandum of 13 November 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 27 November 2013.

We support the UK's participation in this Readmission Agreement. As stated in our report on *The EU's General Approach to Migration and Mobility* (8th Report of Session 2012-13, HL Paper 91) we believe that it is in the UK's national interest to participate in these Readmission agreements, irrespective of the precise current level of re-admission cases with the country in question. Given the level of UK commercial interests and investment in Azerbaijan and the fact that we opted in to the mandate to negotiate this agreement, we urge the Government to opt in to both Council Decisions before 31 January 2014.

We have decided to hold these documents under scrutiny and would be grateful to be informed on whether you decide to opt-in to the Council Decisions before you give notice to the Council.

28 November 2013

RECOGNITION OF PROFESSIONAL QUALIFICATIONS (18899/11)

Letter from Lord Green of Hurstpierpoint, Minister of State for Trade and Investment, UK Trade and Investment, to the Chairman

I am writing to inform you of the recent political agreement on the revision of the Mutual Recognition of Professional Qualifications Directive.

In June the Irish Presidency concluded the trilogue negotiations with the European Parliament and European Commission. We expect to reach a first reading deal in the plenary of the European Parliament in the autumn with the Directive being adopted in early 2014.

We have managed to secure our main priorities and welcome the agreement that was reached.

The UK priorities secured in the final text are as follows.

Transparency initiative: (Article 59) asks Member States to review their regulated professions. This process could also help ensure structural reform across the EU in this area and make it easier to do business in important sectors. There were several attempts by reluctant Member States to remove this article which we have successfully retained.

Basic medical training: In the current Directive, the minimum training requirement for doctors provides an option to calculate the duration by hours (Article 24 'Basic medical training' - six years or 5500 hours). We were in favour of the revised text "five years and 5500 hours" as it fits our educational system and managed to secure the amendment despite the opposition from a number of Member states. The outcome of the negotiations is 5 years and 5500 hours is a positive achievement and an example of the successful UK lobbying.

Language controls for health professionals: (Article 53) the current wording of the text ensures the possibility of language knowledge controls for professionals with patient safety implications and other professions in case of serious doubt. It also ensures the role of the Competent Authority in the process. There has been a great deal of focus on this subject in Parliament and the press so again, the text represents a significant success for UK lobbying.

Alert mechanism: (Article 56a)- It is important that competent authorities are obliged to inform each other whenever a decision is made to restrict a professional's practice. The text is in line with our priorities.

Administrative cooperation and online processes (Article 57): The mandatory use of the Internal Market Information system (IMI). The IMI has proven its worth in facilitating important information exchanges between Competent Authorities. Putting applications online through the Points of Single Contact set up under the Services Directive will help overcome some of the bureaucracy professionals face and speed up the recognition process.

We had some concerns over the following points in the proposal which have been resolved in the course of the negotiation process:

European Professional Card (EPC) (Articles 4a, 4b, 4c, 4d): The compromise text ensures that the European Professional Card will be introduced so that professionals may request it on a voluntary basis and subject to certain conditions. Moreover, the decision concerning the rules for introducing the EPC will be made by the Commission in consultation with Member states (implementing acts with examination procedure). This is a considerable improvement on the original text.

Relevant prior learning: We were seeking to introduce the reference to prior learning which should be taken into account when universities run shorter courses. However, the view of the Commission and a number of other Member States was that prior learning should be dealt with within the limits of academic recognition.

Delegated acts and implementing powers (Articles 14, 20, 21a, 25, 31): We have been seeking to ensure the processes for making decisions are clear and continue to involve Member States. Where Delegated Acts were proposed, their scope has been limited and they will not give powers to the Commission to amend the competences of a profession.

Partial access: This reflected case law and was introduced to enable the carrying out of certain activities of a regulated profession where this is feasible and subject to conditions.

Professional traineeships: We were happy that this was limited to the recognition of traineeships carried out in another Member State.

11 July 2013

Letter from the Chairman to Lord Green of Hurstpierpoint

Thank you for your letter of 11 July 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 24 July 2013.

We are grateful for your update about the progress of the above proposal. We note that the Government is now content with the current version of the text and that a number of objectives which we also supported have been achieved, most particularly in respect of language qualifications for doctors, on which we reported in October 2011 – *Safety First: Mobility of Healthcare Professionals in the EU* (22nd Report of Session 2010-12, HL Paper 201). We welcome this evidence that by making persistent representations the UK can achieve important objectives while strengthening and expanding the Single Market.

We look forward to receiving confirmation of this proposal adoption in due course.

25 July 2013

REVIEW OF THE BALANCE OF COMPETENCES (UNNUMBERED)

Letter from Mark Harper MP, Minister for Immigration, Home Office and from Mark Hoban MP, Minister for Employment, Department for Work and Pensions, to the Chairman

We are writing to you regarding the Review of the Balance of Competences launched by the Foreign Secretary in July 2012. As part of the commitment in the Government's Coalition Agreement to examine the balance of competences between the United Kingdom and the European Union, the Home Office is leading two reports in semester two of the review. These reports will look at Asylum and Immigration, and into the Free Movement of Persons. The Free Movement of Persons report will be jointly led by the Department for Work and Pensions (DWP).

The Home Office launched a Call for Evidence on 16 May 2013 for both reports as part of the review. Interested parties are invited to provide evidence with regard to the impact or effect of the competence in their area of expertise.

Please find attached [not printed] the Call for Evidence documents for Asylum and Immigration and the Free Movement of Persons, which set out the scope of the reports and include a series of broad questions on which we ask contributors to focus. The deadline for submissions will be 5 August 2013.

The Free Movement of Persons report will cover the overall application and effect of the Free Movement of Persons, one of the so called 'Four Freedoms' of the EU Internal Market. The Asylum and Immigration report will cover the asylum and immigration competences that affect nationals from outside the EU/EEA, those not exercising EU/EEA rights, and the control of the UK's borders. The Calls for Evidence contain more detailed information on the scope of the reports.

The result of the reports will be a comprehensive, thorough and detailed analysis of the balance of competences in the areas of Asylum and Immigration and the Free Movement of Persons. It will determine how competence in these areas operates and ultimately what this means for the UK. It will aid our understanding of the nature of our EU membership; and it will provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU.

16 May 2013

SCHENGEN-EVALUATION MECHANISM (11846/12, 5754/6/12)

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

I write to inform you of significant developments on the Schengen Evaluation Mechanism (SEM), and how they relate to the amendments to the Schengen Borders Code (SBC).

The Home Secretary attended the JHA Council on 7 June, where the Presidency confirmed that a deal had finally been reached with the European Parliament (EP) and the Commission following months of trilogue negotiation. The EP has now voted in favour of the deal, and adoption will possibly take place in July or September. I attach to this letter the unclassified texts of the compromise which is now secured.

As you are already aware Member States reached a general approach on the SEM in June 2012, including a change to the legal base to facilitate UK participation. The resulting Council position laid out an evaluation process based on Article 70 and this formed the basis of the Presidency's negotiating mandate. Jeremy Browne wrote to you on 21 February 2013 explaining the Council's position of 7 June 2012 and highlighted issues which were still under trilogue negotiation.

I am pleased to report that the compromise is in line with the Council's position on the SEM and has also addressed all the remaining issues to our satisfaction and benefit. While compromises were necessary to secure EP agreement, they do not undermine UK participation or our rights as part of a peer-to-peer system which involves the Commission and EP.

The final compromise texts confirm that:

- The legal base is Article 70 TFEU;
- The practical evaluation process is based on Article 70 and is therefore that laid out in previous correspondence;
- The Commission accepts that it will have a coordination and administrative support role, within the terms of Article 70, and that the power to adopt recommendations and decisions will rest solely with the Council;
- The EP and national Parliaments will be given supervised access to restricted documents and will receive summary reports which are edited for the public domain, although the exact process will be set up by the Commission and will not be included in the Regulation itself;
- The Commission will ask for risk analysis where appropriate as part of its preparation for evaluations;
- The EP has also accepted that all Articles covering the temporary re-imposition of border controls mechanism will be in the SBC (in which we do not participate); and
- There will be no legal link between the SEM Regulation and the SBC and the EP will have no rights as regards the SEM Regulation which go beyond those allowed by the Article 70 legal base. The Council has, however, agreed to consult the EP, through an existing Council administrative process, as regards any future proposals to amend the SEM Regulation.

The adoption of this compromise will deliver all UK negotiating objectives, including participation; mean that the EU has fully delivered on the 2010 European Council's wishes for consistency and stronger Schengen governance; and remove all reasons which caused the EP to block progress on the five key EU measures including the Passenger Name Records Directive and the European Investigation Order.

24 June 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 24 June 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 3 July 2013.

The Committee is grateful for your helpful update on the progress of this proposal and will look forward to receiving notification of the measures' adoption in due course.

3 July 2013

Letter from James Brokenshire MP to the Chairman

I am writing to update you on SISII developments since my Explanatory Memoranda sent on 24 June. On 24 July the Prime Minister wrote to the President of the European Council providing formal notification of the UK's opt-out of all pre-Lisbon criminal law and policing measures. This decision follows a vote in both Houses and the announcement by the Home Secretary on 9 July. The Government indicated in a written statement that it intended to seek to rejoin 35 individual measures: SISII is one of those.

The SISII Programme is currently being formally evaluated to see that the UK has met, or is capable of meeting, its Schengen acquis obligations (as set out in the Convention implementing the Schengen Agreement and associated EU legislation). A successful evaluation is a prerequisite for the UK connecting into the EU Central SISII. The UK is required to undertake two mandatory evaluations in data protection and SISII Supplementary Information Request at the National Entry (SIRENE) Bureau; and one non-mandatory (but recommended) evaluation in police and judicial cooperation.

The UK gave its Schengen Evaluation presentation to the EU Schengen Working Group in Brussels on July 10. Both the final UK Schengen questionnaire and programme of events were adopted and thus the UK has now officially entered into the Schengen Evaluation process. The UK completed its Schengen questionnaire on 6 September. This covered our position on the three Schengen areas we participate in: data protection, police and judicial co-operation (including the UK's drug trafficking enforcement) and SISII.

The data protection evaluation visit will take place from 21 - 24 October. We have worked with the Ministry of Justice; the National Crime Agency (who will run the UK SIRENE Bureau), national policing leads, Police Scotland, the Police Service of Northern Ireland, Border Force and the Information Commissioner's Office (the UK's independent national supervisory authority) to deliver the evaluation.

Successfully negotiating our data protection evaluation will allow us to begin the necessary SISII pre-validation (aligning our national systems to SISII) next Spring. The UK Programme remains on track for entry into operation during the last quarter of 2014.

11 October 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 11 October on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 23 October 2013.

The Committee is grateful for your helpful update on the evaluation process. We look forward to an update on the outcome of the evaluation, in due course.

23 October 2013

SERIOUS CROSS-BORDER THREATS TO HEALTH (18509/11)

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

I am writing to update the Committee on the Proposal for a Decision of the European Parliament and of the Council on serious cross-border threats to health. The proposal was discussed at Health Council in Brussels in December, although was not tabled for agreement. On the 30 January, Coreper approved the mandate for the trilogue negotiations with the Parliament.

The trilogue negotiations went well, and the Irish Presidency was able to negotiate an agreed text that maintained the removal of article 12. In order to achieve this objective, it was necessary to compromise in other areas. In particular, the Presidency was forced to make concessions in relation to article 4 of the proposal, which is concerned with the co-ordination of preparedness planning. Some of these changes have the effect of altering the obligations of Member States to share

information and consult each other and the European Commission. However, I do not believe that these amount to a material extension of existing obligations and so do not believe that they are of concern.

The proposal text is now being finalised by Jurists/Linguists to clear legal/language points after which it will return to Council for final agreement.

16 August 2013

Letter from Anna Soubry MP to the Chairman

I am writing to update the Committee on the Proposal for a Decision of the European Parliament and of the Council on serious cross-border threats to health.

The proposal was discussed at Health Council in Brussels in December, although was not tabled for agreement. On the 30 January, Coreper approved the mandate for the trilogue negotiations with the Parliament.

The trilogue negotiations went well, and the Irish Presidency was able to negotiate an agreed text that maintained the removal of article 12. In order to achieve this objective, it was necessary to compromise in other areas. In particular, the Presidency was forced to make concessions in relation to article 4 of the proposal, which is concerned with the co-ordination of preparedness planning. Some of these changes have the effect of altering the obligations of Member States to share information and consult each other and the European Commission. However, I do not believe that these amount to a material extension of existing obligations and so do not believe that they are of concern.

An error in the printed text was approved at the Environment, Public Health and Food Safety Committee (ENVI) meeting held on 5 September 2013 and the proposal will now go to a plenary session of the European Parliament next week for final approval.

9 September 2013

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 9 September 2013, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 9 October 2013.

We are grateful for the information you have provided on the progress of negotiations and note that the Government is now content with the current form of the proposal.

We would be grateful to receive an update on discussions when the proposal has final agreement in the European Parliament and the Council.

9 October 2013

Letter from Jane Ellison MP to the Chairman

Thank you for your letter dated 9 October. I am writing to update the Committee on the Proposal for a Decision of the European Parliament and of the Council on serious cross-border threats to health.

Council adopted the Proposal after Parliament's 1st reading on 7 October and the final Act was signed on 22 October 2013 which ended the procedure in Parliament. The Decision was published in the Official Journal of the European Union on 5 November and will enter into force on 6 November 2013.

This will significantly strengthen the Health Security Framework in the European Union and implementation in particular the provisions related to the Health Security Committee will be discussed in detail in its next plenary meeting on 28-29 November 2013.

11 November 2013

Letter from the Chairman to Jane Ellison MP

Thank you for your letter of 11 November 2013, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 November 2013.

We are grateful for the information you have provided on the conclusion of negotiations and agreement on the proposal.

We now consider correspondence on this matter to be closed. No response to this letter is required.

20 November 2013

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

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

I am writing on behalf of James Brokenshire and myself. The Government has committed to provide the Parliamentary Scrutiny Committees with a regular six-monthly update to the list of opt-in decisions which were annexed to the joint Home Office and Ministry of Justice annual report to Parliament on the JHA Opt-in. The third annual report, which was published on 25 April this year, included decisions taken between 1 December 2011 and 30 November 2012. The updated annex [not printed], which I enclose, lists decisions taken in the period between 1 December 2012 and 31 May 2013.

During this six-month period, nine decisions were made under the JHA Opt-in Protocol and none was made under the Schengen Opt-out Protocol. The UK opted in on six occasions and did not opt in on three occasions. For the Ministry of Justice, this included the decision under the JHA Opt-in Protocol to opt in to the Council Decision amending annexes II and III of Council Decision 9 June 2011 which approved, on behalf of the European Union, the 2007 Hague Maintenance Convention. The Government has also decided to not opt in to the Directive on the protection of the euro and other currencies against counterfeiting by criminal law. On the Home Office side, the Government opted in to the proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC, Decision No 575/2007/EC and Council Decision 2007/435/EC with a view to increasing the co-financing rate of the European Refugee Fund, the European Return Fund and the European Fund. The Government decided not to opt into Council Decisions concerning the conclusion of readmission agreements with Cape Verde and Armenia.

Since 31 May the Government has taken a further three opt-in decisions. We have opted in to a Council Decision concluding, on behalf of the EU, a UN Firearms Protocol. We have not opted in to the new Europol Regulation and a Directive on the admission of third country nationals for the purposes of scientific research, studies, pupil exchange, unremunerated training or voluntary service. These decisions will be reflected on the next end of year report. In addition, the Government is currently considering an opt-in decision on the EU-Ukraine Association Agreement.

In the coming months the Ministry of Justice and Home Office are expecting further opt-in decisions on the following proposals:

- Proposal to reform Eurojust (HO)
- Proposal on a European Public Prosecutor (HO)
- Proposal for criminal law measures on fighting money laundering (HO)
- Proposal on special safeguards in criminal procedures for suspected or accused persons who are vulnerable (MoJ)
- Initiative regarding legal aid in criminal proceedings (MoJ)
- Information exchange, risk-assessment and control of new psychoactive substances
- EU-Canada Passenger Name Records (signature and conclusion) (HO)
- Extension of IT Agency to Associated States (signature and conclusion) (HO)

- Extension of European Asylum Support Office to Associated States (signature and conclusion of international agreement) (HO)
- Proposal for a legislative instrument on e-justice (MoJ)
- Proposal to amend the current EC Regulation No 593/2008 on the law applicable to contractual obligations (Rome I) (MoJ)
- Proposal to amend the current EC Regulation No 864/2007 on the law applicable to non-contractual obligations (Rome II) (MoJ)

The proposals on Eurojust, money laundering and psychoactive substances measures will repeal measures from the 2014 JHA opt-out decision list should we choose to opt in, although our assumption is that none will be adopted before December 2014, when the opt-out decision takes effect. The existing measures will therefore remain within the scope of the 2014 decision.

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

- Minimal rules on sanctions and their enforcement in commercial road transport (DfT)
- Protocol to World Health Organisation Framework Convention on Tobacco Control (HMRC)
- Possible recast of Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (HMRC)
- Legal and technical framework for a European Terrorist Finance Tracking System (HMT)
- EU-Canada Free Trade Agreement (BIS)
- EU-Singapore Free Trade Agreement (BIS)
- Kazakhstan accession to WTO (BIS)

It is also possible that other wide ranging EU international agreements will require an opt-in decision.

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

17 July 2013

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

Letter from the Chairman to Sajid Javid MP, Economic Secretary, HM Treasury

Thank you for your explanatory memorandum of 2 July 2013 on the above Communication. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union deemed it of sufficient importance to warrant a process of 'enhanced scrutiny'. We took oral evidence on 17 July from Mr Nicolas Ilett, Director Investigations II, and Mr Austin Rowan, Advisor, from the European Anti-Fraud Office (OLAF). We are also grateful to your officials, Mr Donald Toon, Director of Criminal Investigation, and Mr Andy Leggett, Deputy Director Alcohol, Tobacco & Gambling Taxes, from HMRC, for providing us with oral evidence on 24 July. We were also grateful to receive follow-up letters from OLAF and HMRC providing further information on certain points that arose during their respective oral evidence sessions.

In general, we support the aims of the Commission's Cigarette Smuggling Strategy. We note that there is broad agreement between the Commission's EU strategy and the UK's domestic strategy; and the evidence we received from both OLAF and HMRC on some key aspects of the illicit trade bore this out. We also note that cigarette smuggling is an international business; highly lucrative and constantly evolving; and that tackling it is dependent on many factors, such as availability of resources, cooperation between judicial and law enforcement authorities, and the strength of sanctions.

We would like to make the following points about the Strategy and its future development:

EU CONSULTATION ON THE CIGARETTE SMUGGLING STRATEGY

We were disappointed to hear from HMRC that the Government had had little opportunity to respond to consultations during the development of the Strategy, and that as a result, many of its details still needed to be discussed. For example, this included how 'Joint Mobile Teams' will be composed, and how excise duty points within the EU may be simplified. As the Cigarette Smuggling Strategy will be an 'evolving' document, we encourage the Government to contribute now proactively to its further development in cooperation with other Member States.

COOPERATION AGREEMENTS AND THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

We were pleased to hear from OLAF and HMRC about the effectiveness of the EU cooperation agreements with the 'big four' manufacturers in reducing levels of illicit trade in their products. We believe that the Protocol to Eliminate Illicit Trade in Tobacco Products agreed in November 2012 as part of the Framework Convention on Tobacco Control (FCTC) will significantly reinforce the EU's strategy of reducing the levels of illicit trade in tobacco at a global level.

We were grateful to receive supplementary evidence from OLAF saying that they will be requesting the European External Action Service (EEAS) to lobby third countries to sign the Protocol once the EU has done so. However, we do not necessarily agree with the sequential approach that the Commission has chosen to adopt in this instance. We believe it would make good sense for the EU, through the EEAS and with support from Member State governments, to lobby third countries to sign the Protocol while the EU itself is preparing to do so (on or before 9 January 2014). We recommend that the Government encourages the Commission and the EEAS to lobby third countries to sign and ratify this Protocol to Eliminate Illicit trade in Tobacco Products as soon as possible; and should work actively themselves to achieve the greatest possible implementation of its provisions.

EFFECT OF THE ECONOMIC CRISIS

OLAF said it had no evidence that the economic crisis has had an effect on the market for illicit tobacco in the EU, although there is some suggestion that Greece has seen an increase in the consumption of illicit tobacco in recent years. HMRC said the crisis is changing smokers' purchasing patterns but there is still insufficient data to determine how individuals are impacted.

CRIMINAL ACTIVITY IN THE EU

Both OLAF and HMRC emphasised the international nature of the trade in illicit tobacco, and we agree with the EU Strategy's focus on preventing products from entering the EU in the first place.

OLAF and HMRC agreed that differing levels of taxation and duty in EU Member States do play a role in incentivising tobacco smuggling, and this is evidenced by the UK's problem with the illicit trade in tobacco where duty is paid in lower taxed Member States. They also acknowledged that the European transit system is being used to illegally circulate tobacco in the EU. HMRC said there is a balance to be struck in terms of how effective changes to rules governing the free flow of goods in the Single Market might be in relation to tackling illicit tobacco compared with what the overall impact may be on legitimate activity into and within the EU. We note that the House of Commons Home Affairs Committee launched an inquiry in July 2013 which will investigate these issues in the UK context in more detail. We encourage the Government to continue working with partners at the EU level to ensure that appropriate sanctions are in place to deter tobacco smugglers, while not diluting the sanctions currently in place at the UK level.

While OLAF is the lead agency in the EU responsible for this strategy, it pointed out that it is not a criminal law enforcement body and there are limits to what it can do in its co-ordination and investigation activities. The Commission strategy recognises this, and the accompanying Action Plan outlines the authorities among whom greater cooperation will be necessary if the strategy is to be a success, namely, FRONTEX, INTERPOL, EUROPOL, EUROSUR and EUROJUST. Equally, we note HMRC's insistence that individual relationships between UK liaison officers in other Member States and in third countries remains just as important as the UK's formal cooperation with agencies such as Europol and Eurojust. This will be particularly important as OLAF has had to withdraw its liaison officer from Beijing due to financial constraints, although we hope the EEAS office will be able to fill this gap. We believe that it is in the UK's interests to strengthen the cooperation between the different Member State and EU organisations involved in tackling tobacco smuggling.

We note HMRC's cautious support for the Commission's proposal to create 'Joint Mobile Teams', and that it is awaiting further detail on how these teams would be structured and administered. We

are aware that UK law enforcement agencies find cooperation in Europol's Joint Investigate Teams to be of great benefit, and we would be grateful for further details on the Commission's plans once they become available. As outlined in our report on EU police and criminal justice measures: The UK's 2014 opt-out decision (13th Report, Session 2012-13, HL Paper 159), we believe the most effective way for the UK to cooperate with other Member States in tackling cross-border crime is to continue participating in the relevant EU measures. In the context of tackling cigarette smuggling, we therefore welcome the Government's stated intention to rejoin Europol, Eurojust and the European Arrest Warrant.

HMRC'S STRATEGY FOR TACKLING TOBACCO SMUGGLING

We noted the National Audit Office (NAO) report on the UK Border Force, which was published on 4 September and concluded that while it had succeeded in reducing passport queuing times it needed to perform its other activities more effectively. This included the seizure of illicit tobacco which was below target during the first months of 2012-13. An earlier NAO report, which was published on 6 June, also concluded that while HMRC's renewed strategy for tackling tobacco smuggling was logical and good progress had been made in some areas it did not yet have an integrated approach to deterring and disrupting the distribution of illicit tobacco within the UK. Furthermore, it found that while HMRC had met all but one of its key operational targets for tobacco in 2011-12 it had failed to meet any of its targets in 2012-13. The Committee noted with concern the recent National Audit Office report on the UK Border Force, which suggested that, among other things, its role in tackling the illicit trade in tobacco products may have been given a lower priority than other activities. If this is indeed the case then this could undermine the overall efforts by the EU to effectively tackle this criminal activity. We would welcome a clear response from the Government to the findings in this report.

LABELLING AND PACKAGING

During our enhanced scrutiny in March 2013 of the proposal for a revised Tobacco Products Directive, we received evidence from the European Carton Makers Association, the Tobacco Manufacturers Association and individual tobacco companies that greater standardisation and harmonisation of packaging would create a "counterfeiters charter", and make tobacco products easier for counterfeiters to copy. ASH and the Government disagreed, saying that counterfeit tobacco is not necessarily attractive because the packaging is accurately copied but rather because it is cheaper to purchase than legitimately produced tobacco. In relation to our enhanced scrutiny of the EU Strategy, OLAF said that further standardisation of packaging is unlikely to create a further incentive for counterfeiters to produce illicit products, as their capacity to do so is already at such a high level. HMRC said there is insufficient data to prove the argument either way.

When writing to the Minister in April 2013 on the proposal for a revised Tobacco Products Directive, we chose not to comment on the issue of standardised/plain packaging as no EU measures on this matter were proposed, and at that stage it was unclear what the Government's own intentions in this area were. Since then, the Government have announced that they will not be seeking to introduce plain packaging in the UK during this Parliamentary term. Based on the evidence we have received, we are not convinced that steps taken at either the Member State or EU level to standardise tobacco packing will necessarily lead to an increase in the trade in illicit tobacco, but we would encourage the Government to consult widely with UK, EU and international stakeholders before making any decision on this issue.

MONITORING AND EVALUATION FRAMEWORK

We recognise that, due to the cross-cutting nature of the Strategy, many of the indicators in the monitoring and evaluation framework refer to the implementation of agreements and instruments by agencies other than OLAF. For its part, OLAF said it can implement the strategy within its existing resources by redistribution of staff, where necessary. HMRC said the framework needs to provide a better view of the costs involved, the impact that it is seeking to have on the illicit trade and the tangible benefits that would be derived from the activities. Given that the detail of initiatives such as Joint Mobile Teams still needs to be worked out, we agree with HMRC that the monitoring and evaluation framework should evolve as the detail of the strategy becomes clearer.

We look forward to hearing from you within the standard 10 working days.

11 September 2013

Letter from Sajid Javid MP to the Chairman

Thank you for your letter dated 11 September.

The Committee's support for the Commission's Cigarette Smuggling Strategy, and its recognition that this complements the UK's successful domestic strategy to reduce illicit trade in tobacco products is very welcome. Working in cooperation with partners in the EU and overseas is an integral element of the UK's current strategy to tackle tobacco fraud, which has been very successful in reducing the size of the illicit market in the UK. Your letter raised a number of specific points about the Commission's strategy and its future development which I refer to below:

EU CONSULTATION ON THE CIGARETTE SMUGGLING STRATEGY

The Government is contributing proactively to develop the strategy in co-operation with other member states. Since the Committee hearing, discussions on the proposed strategy have commenced in the Customs Cooperation Working Group. The Presidency has drafted Council Conclusions setting out the general approach to the strategy and we are consulting with other Government Departments to agree the UK response.

COOPERATION AGREEMENTS AND THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

The UK is committed to signing the Illicit Trade Protocol agreed as part of the Framework Convention on Tobacco Control (FCTC) and considers this an important element in the EU's strategy to reduce levels of illicit trade in tobacco at a global level. Draft Council Decisions on signature of the Protocol were published in July and submitted for Parliamentary scrutiny, which continues. The UK is working towards signing the Protocol by the end of 2013.

I agree that the impact of the Protocol on the level of illicit trade globally is dependent upon third countries signing and implementing the Protocol fully and effectively. To date, 23 countries from around the world have signed the Protocol.¹ For the Protocol to be most effective, we need to see as many FCTC Parties as possible ratify it.

The UK is well respected as an active supporter of the FCTC and its implementation and worked hard to support the development and agreement of the text of the new Protocol. Through the UK's membership of a newly created FCTC working group on sustainable measures to strengthen the implementation of the FCTC, we will be looking for opportunities to encourage FCTC Parties to sign the Protocol. The European Commission is also a member of this working group and has played an important role in recent years in supporting the implementation of the FCTC.

The Government has set out its intention for the UK to sign the Protocol. When this happens, we will also look for opportunities to promote the Protocol internationally, including during bilateral discussions with other FCTC Parties.

CRIMINAL ACTIVITY IN THE EU

HMRC and Border Force have a comprehensive range of sanctions and penalties available that are proportionate to the offence. These range from seizure of illicit goods, civil penalties and assessments for unpaid duty, to seizure of vehicles used for smuggling, to criminal prosecution and recovery of the proceeds of crime. The sanctions available and their effectiveness are regularly reviewed to ensure they remain appropriate to support the objectives in the tobacco strategy to reduce illicit trade in tobacco products.

Sanctions in the UK are generally comparable, or more severe than sanctions available in other countries, notably when compared to countries where tobacco smuggling is not a criminal offence. The UK supports the EU strategy to increase sanctions in member states where current sanctions do not provide an adequate deterrent.

HMRC has a network of overseas Fiscal Crime Liaison Officers (FCLOs) who work with law enforcement agencies and international organisations to tackle the illicit trade. In 2011, the FCLO network was expanded and coverage now extends to over 60 countries. While FCLOs primarily work on a bi-lateral basis their activity is complemented by various EU initiatives. HMRC has permanently seconded an officer to Europol to exploit and engage with pan-European intelligence and

¹ Belgium, Burkina Faso, China, Colombia, Costa Rica, Fiji, France, Gabon, Greece, Kenya, Libya, Lithuania, Montenegro, Myanmar, Nicaragua, Panama, Qatar, Republic of Korea, South Africa, Syrian Arab Republic, Tunisia, Turkey and Uruguay.

analysis on tobacco fraud, and support projects driven by Europol. HMRC's FCLO network stretches beyond Europe into key countries such as China, Malaysia and the USA.

HMRC works closely with OLAF (the anti-fraud unit of the EU Commission) collaborating at a strategic level by sharing information and analysing risks. Operationally, HMRC cooperates bilaterally with other member states in Organised Crime cases and shares sensitive operational intelligence. HMRC has initiated and delivered joint operations with other Member States, funded by OLAF. This collaborative working is an effective tool in sharing best practice, enhancing relationships with key overseas agencies and developing a common understanding of the tobacco smuggling threat which is vital given the international nature of the fraud.

HMRC is fully engaged with Europol on the EMPAQ (European Multidisciplinary Platform Against Criminal Threats) Project "Containers" which is looking at cigarette smuggling from source country, via the EU into the UK. We will be the driver for the EMPAQ Excise Project which starts a four year cycle in January 2013 with all member states and OLAF included.

TACKLING CROSS-BORDER CRIME

The Government has stated in the command paper² that the UK will opt out of the EU Police and Criminal Justice Directives (i.e. the Lisbon Measures) which includes those covering interaction with Europol, Eurojust and the European Arrest Warrant. However, as you have commented, the UK is keen to rejoin the Europol, Eurojust and the European Arrest Warrant directives, but this is subject to the agreement of all EU Member States.

HMRC has had an embedded officer based in Europol for several years, and the Crown Prosecution Service has a lawyer based in Eurojust.

HMRC'S STRATEGY FOR TACKLING TOBACCO SMUGGLING

The joint HMRC / Border Force strategy to tackle tobacco smuggling has been very successful in reducing the level of illicit trade in the UK. HMRC publishes its estimates of the tax gaps for cigarettes and hand-rolling tobacco annually. Latest estimates show that the tax gap for cigarettes has fallen from 21% in 2000 to 9% in 2010/11 and the tax gap for hand-rolling tobacco has fallen from 61% in 2000 to 38% in 2010/11.

Annual revenue losses have fallen during the same period from £3.4bn to £1.9bn.

The current strategy was launched in 2011, underpinned by £25m additional investment provided by this Government's Spending Review. Good progress has been made against all key objectives as illustrated below:

- Cigarette seizures have increased by 7%, to 1.85bn sticks seized in 2012/13.
- Hand-rolling tobacco seizures have increased by 36% to 1055 tonnes seized in 2012/13.
- Supplies of UK product to high risk markets have reduced by 20%. Revenue losses prevented through criminal investigation action to tackle organised crime have increased by 35% to a total of £691m in 2011/12 and 2012/13;
- New assessments and penalties have been issued totalling £26m.

HMRC continues to develop its approach to tackling illicit tobacco within the UK. That work is now led by Criminal Investigation directorate and inland officers have been trained to a high standard in investigation skills. Numbers of criminal prosecutions, civil penalties and assessments for duty are increasing. HMRC and Border Force are developing an holistic inland strategy utilising regional campaigns targeted on the highest risk illicit tobacco 'hotspots' in the UK and involving close working with other UK agencies, such as Trading Standards.

The Home Office will be responding to the National Audit Office (NAO) on their report Border Force: Securing the border with a formal response by October. The response will cover the six recommendations made in the NAO report, including a response on operational performance and recruitment and resourcing at the border

² (<http://www.official-documents.gov.uk/document/cm86/8671/8671.pdf>)

LABELLING AND PACKAGING

The Committee's views on how standardised packaging might impact on the market for illicit tobacco are welcome. I will pass these views to my ministerial counterparts at the Department of Health who have policy responsibility for tobacco control.

On tobacco packaging, I refer the Committee to the written statement made by the Secretary of State for Health on 12 July 2013.³ The Government have decided to wait until the emerging impact of the decision in Australia can be measured before we make a final decision on this policy in England.

A UK-wide consultation was undertaken on standardised packaging in 2012. The consultation asked specific questions about illicit trade and cross-border shopping. A report of the consultation has been published, and copies are in the parliamentary libraries. The Government will continue to consider the evidence on tobacco packaging, and will listen to the view that stakeholders have, including on the possible impacts on the illicit tobacco market.

MONITORING AND EVALUATION FRAMEWORK

A clear framework for monitoring and evaluating the success of the strategy provides transparency on the costs and benefits from the activities carried out within the strategy. I agree that the monitoring and evaluation framework needs to evolve to ensure it is an effective measure of cost and impact of activities. The Government will work with the EU Commission to ensure that the costs of the proposals are quantified and resources are targeted towards the areas that will have the greatest impact.

27 September 2013

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

We are grateful for the letter from your predecessor dated 27 September 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 16 October 2013.

We are pleased to note your commitment that the UK will continue to work with other Member States in the development of the Commission's strategy. We also welcome the UK's participation in the newly created Framework Convention on Tobacco Control (FCTC) working group on sustainable measures to strengthen the implementation of the FCTC, and that the UK is looking for opportunities to encourage countries to sign up to the accompanying Protocol to Eliminate Illicit Trade in Tobacco Products.

We would be grateful if we could be sent a copy of the Home Office's response to the National Audit Office report, particularly highlighting those relevant sections to tobacco smuggling, in due course.

Meanwhile, we would welcome a response to our recommendation that the UK actively encourages the EU's External Action Service to participate in the efforts to encourage other countries to sign up to the Protocol to Eliminate Illicit trade in Tobacco Products as soon as possible.

We look forward to hearing from you within the standard 10 working days.

17 October 2013

Letter from Nicky Morgan MP to the Chairman

Thank you for your letter dated 17 October which raised a number of specific points.

As requested I attach a copy of the Home Office's response to the National Audit Office's report: 'The Border Force – Securing the Border'. This response was issue on 2 October in advance of Border Force's appearance before the PAC oral session held on 9 October.

The Committee recommends that the UK actively engages the EU External Action Service (EEAS) to encourage other countries to sign up to the Protocol to Combat the Illicit Trade in Tobacco Products as soon as possible.

I am grateful for the Committees' view and I am keen for the Government to exploit opportunities to promote the Protocol with third countries, including if appropriate the EEAS. However, I am committed to the Government's broader objective to prevent growth of the EEAS' budget and ensure

³ <http://www.publications.parliament.uk/lpa/cm201314/cmhansrd/cm130712/wmstexV130712m0001.htm#13071273000005>

rigorous prioritisation of its finite resources. I am therefore cautious about making any additional demands for EEAS activity beyond its core remit.

However as per my response of 27 September the UK will continue to look for every appropriate opportunity to encourage third countries to sign the Protocol.

7 November 2013

THE 2014 DECISION OPT-OUT DECISION (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

Thank you for your report on the 2014 opt-out decision, which we noted with interest. We are grateful for your ongoing consideration of this important matter.

We would like to make you aware that we anticipate a short delay in providing the Government's response. We apologise for any inconvenience caused, but consider that this will allow us to provide a more substantial reply.

We look forward to engaging with you further on this important matter going forward, and will endeavour to respond to your report as soon as possible.

24 June 2013

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

I was grateful to have the opportunity yesterday to discuss the arrangements for the vote on the 2014 opt-out decision.

As discussed yesterday, the Home Secretary will today be making a further Statement on the 2014 decision, in which she will set out those measures the UK will seek to rejoin. We will then hold a debate, followed by a vote, on an amendable motion with an indicative set of measures the UK will seek to rejoin, on 15 July. A vote in the House of Lords will then be arranged for later this month. I noted your strong view that there should be a second vote on this matter, to ensure that Parliament has clarity on the final package of measures the UK will rejoin.

We will provide Parliament with a Command Paper today which will outline those measures the Government would seek to rejoin. We have also provided Parliament with the five explanatory memoranda on the measures within scope of the 2014 decision, which this Command Paper also contains.

We are grateful for your ongoing interest in this matter and look forward to continuing to engage with you.

9 July 2013

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

In your letter of 24 June 2013 you stated that there would be a "short delay" in providing the Government's response to the Committee's report on the UK's 2014 opt-out decision, which was due by the date of that letter.

In light of your announcement on the opt-out decision yesterday, including the publication of a Command Paper (8671) which contains the list of 35 measures that the UK will seek to rejoin if the opt-out decision is exercised and the five sets of explanatory memorandums, and given that the response is now over two weeks late, we request that it be made available to the Committee without further delay.

I also received a letter yesterday from James Brokenshire MP, the Security Minister, ahead of your statement, indicating that a vote will be arranged in the House of Lords later this month following a similar vote in the House of Commons that has been scheduled to take place on 15 July. I understand that the date of the House of Lords vote has now been scheduled to take place on 23 July.

We look forward to receiving clarification about the terms of that vote. We are also strongly of the view that inadequate time has been provided for the House to consider the Government's preferred approach to the opt-out decision, as set out in the Command Paper, and that this is in clear breach of the repeated undertakings given by the Government properly to consult Parliament about this important decision. This failure to engage appropriately with Parliament and its Select Committees is compounded by the lack of Government response to our report.

As you are aware, our Home Affairs, Health and Education and Justice, Institutions and Consumer Protection Sub-Committees intend to undertake a follow-up inquiry on the list of measures to which you intend to opt back in. Your intended timetable makes it impossible of course, for this work to be completed ahead of the initial vote but we expect to publish our follow-up report, later this year, ahead of the second vote on the final package of measures, which we understand will be arranged in both Houses following the outcome of the Government's negotiations with the Commission and Council.

10 July 2013

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

Firstly, we would like to express our sincere thanks to your Committee for its ongoing work on the 2014 opt-out decision. We are extremely grateful that you have undertaken to look into this issue in such detail and we congratulate you and your Committee for producing such a high quality, substantial and thought provoking report, EU police and criminal justice measures: The UK's 2014 opt-out decision. It was an extremely thorough analysis of the issue and we are sure it will help inform the debate on Tuesday evening.

We were also grateful to receive your letter of 10 July requesting that the Government's response to the report be made available to the Committee without further delay. We regret that, as yet, we have been unable to provide you with a response to your report. We are writing today to reassure you that we remain fully committed to responding to this report at the earliest opportunity. As your report itself noted, this is a complex issue and we want to ensure that we provide you with as much comprehensive and useful information as possible. In light of the debate and vote in the Commons on Monday there is now further information that can be included and we aim to provide as detailed a reply as possible.

You will be aware that on 9 July the Home Secretary reaffirmed the Government's intention to exercise the opt-out. This follows consultation with operational partners, discussions with the European Commission and other Member States, and detailed analysis of all the measures within scope of this decision. It also followed consideration of your report on the matter.

On the same day, we provided Parliament with Command Paper 8671, which highlights 35 measures the Government believes it is in the national interest to rejoin. This includes the European Arrest Warrant, Europol, Eurojust, SIS II, ECRIS and the European Supervision Order. Again, your report was very helpful in informing our consideration of which measures we should seek to rejoin. The Command Paper also includes five explanatory memoranda (EMs) on the measures within scope of the decision. We hope this information will help inform your Committee's detailed and thoughtful consideration of this matter further.

On 15 July, Members of the House of Commons had the opportunity to debate and vote on the Government's proposed approach. The motion, as amended by the Chairmen of the Home Affairs Select, Justice Select and European Scrutiny Committees, was as follows:

That this House believes that the UK should opt out of all EU police and criminal justice measures adopted before December 2009 and seek to rejoin measures where it is in the national interest to do so and invites the European Scrutiny Committee, the Home Affairs Select Committee and the Justice Select Committee to submit relevant reports before the end of October, before the Government opens formal discussions with the Commission, Council and other Member States, prior to the Government's formal application to rejoin measures in accordance with Article 10(5) of Protocol 36 to the TFEU.

You will be aware that this passed in the House of Commons with a majority of 97.

On 23 July, Members of the House of Lords will have the opportunity to debate and vote on this matter; we very much look forward to hearing your views in this regard. You ask in your letter that we provide some clarification around the format of the vote in the House of Lords. On 17 July, the following motion was tabled:

Lord McNally to move That this House considers that the United Kingdom should opt out of all European Union police and criminal justice measures adopted before December 2009 and should seek to rejoin measures where it is in the national interest to do so; takes note of the Government's proposals in Cm 8671; and invites the European Union Committee to report to the House on the matter before the end of October, before the Government opens formal discussions with the Commission, Council and other Member States prior to the Government's formal application to rejoin measures in accordance with Article 10(5) of Protocol 36 to the Treaty on the functioning of the European Union.

You will note that this invites your Committee to report to the House on the matter before the end of October, should you wish to do so. We have agreed not to commence formal negotiations with the Commission and other Member States until after 31 October. We have always been clear that we will give Parliament time to scrutinise this issue and we greatly value the important work of the Committees in doing so. We welcome your intention to reopen your Inquiry and would be happy to give further evidence. We hope that this additional time will allow for your Committee to undertake further work and would like to formally invite you to consider further which measures you believe it is in the UK's national interest to rejoin.

While we will provide a comprehensive response to your report, we thought it would be useful to address the principal conclusion in your report, namely that the Government has not made a convincing case for exercising the opt-out and, by doing so, risks national security. We very much hope that the announcement on 9 July and the views expressed by Parliament on 15 July have assured you that the Government takes this issue very seriously. The Home Secretary was clear in her Statement on 9 July that we should exercise the opt-out for reasons of principle, policy, and pragmatism.

On principle, it is our view that the UK's international relations in the field of police and criminal justice are a matter, first and foremost, for the Government. For example, the Government believes that, if necessary, we should have the option to amend our bilateral UK-US Extradition and Mutual Legal Assistance treaties as we and the US wish. However, currently any changes would need to be in conformity with the EU-US Agreements. As you will be aware UK-US extradition relations have not been free of controversy in recent years and where the Government is dealing with bilateral treaties that can lead directly to a citizen's loss of liberty then it is our belief that the Government should have a free hand to negotiate as it sees fit, and then be held accountable in Parliament for that. We believe this is an important point of principle that all Parliamentarians should support.

In terms of policy, the UK has, and will continue to have, the ability to choose whether it should opt in to any new proposal in the field of justice and home affairs. It is therefore only right that we take the opportunity to consider on a case-by-case whether we wish to retain the pre-Lisbon measures and allow the CJEU to exercise jurisdiction over them. The key question that the Government has asked itself in this regard is whether it is in the national interest to rejoin a particular measure.

In terms of policy we have also considered the role of the CJEU. We wish to be clear that the jurisdiction of the court by itself is not a bar to the UK either opting in to new Title V proposals, or rejoining pre-Lisbon measures. However, it does inform our consideration. On some occasions we will conclude that the benefits the measure brings will outweigh the risks attached to ECJ jurisdiction, and in others we will not.

Our joint view is that CJEU involvement in terms of substantive criminal law is an area of particular sensitivity. In light of the Pupino judgement, UK courts would be compelled to interpret UK law in line with CJEU judgments. While we acknowledge that the CJEU may well take a sensible approach here, we feel it is inevitable that this will eventually lead to a harmonisation of criminal law across the EU. We do not believe that it is helpful for policy judgements as to where the boundaries lie in these sensitive matters should happen anywhere other than the UK. Our view is that it should be for UK Parliament and courts to set and interpret matters of substantive criminal law. For example, Parliament has made careful policy judgements on the substantive law of racism and xenophobia and those policy judgements should be respected.

We are not alone in thinking that substantive criminal law is a matter of national concern. The Dutch Government's recent Subsidiarity Review said that: 'In the Netherlands' view, substantive criminal law is primarily a matter for the member states.'

Finally, we are being pragmatic. We will simply not be in a position to implement Prüm, which requires Member States to allow the reciprocal searching of their databases for DNA profiles, vehicle registration data and fingerprints, before 1 December 2014. We reiterated this point when we gave evidence to your Committee in February. Implementation will take years and require substantial funding. By choosing to remain bound by Prüm after 1 December 2014, we run the very serious risk of being infracted for failing to meet our obligations under EU law. The minimum lump sum fine for

the UK is €9.6 million. We have said before that we will not open ourselves up to the risk of such fines by seeking to rejoin measures we will not be able to implement within the deadline.

We are very clear in our responsibility to protect the UK against crime and terrorism and to keep our borders secure. Indeed, as the Home Secretary stated in Parliament on 12 June, our commitment to fight crime and protect the UK is exactly why we are creating the National Crime Agency, which will be a powerful crime-fighting body that deals with crime across borders, particularly serious organised and complex crime. The measures set out in Command Paper 8671 demonstrate our continued commitment to ensuring that our law enforcement partners have access to the necessary tools and frameworks to cooperate with our European neighbours to combat cross-border crime and keep this country safe.

Again, we would like to congratulate you for your high quality report and thank you for your ongoing work on this issue. We greatly appreciate the work of you and your Committee and look forward to engaging with you further going forward.

18 July 2013

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

We write following the debate held on the floor of the House on 23 July. As you will be aware both Houses of Parliament have supported the Government's proposal to exercise the UK's block opt-out of pre-Lisbon criminal law and policing measures (the '2014 decision'). The Government now has clear support to exercise the opt-out and to begin informal discussions with the Commission and Member States about rejoining measures where it is in the national interest to do so.

As you will be aware, there is limited time available in which to conclude our discussions to get the best possible outcome for UK interests and it is important that we prepare the ground for the formal negotiations in November. We wish to inform you that on Wednesday the Prime Minister took the first step in this process and formally notified the Presidency of the Council that the UK wishes to exercise its opt-out, in accordance with Article 10(4) of Protocol 36 to the Treaties. We, and the Prime Minister, believe that this is a necessary first step to achieving the best possible outcome for the UK.

We have always been clear that we will give Parliament time to scrutinise the whole process and we greatly value the important work of the Committees in doing so. The debate last week fulfilled the Government's commitment, made by the Minister for Europe in January 2011, to providing Parliament with an opportunity to vote on this matter, before the Government made a formal decision on whether to exercise the opt-out.

The motion passed by the House of Lords invited your Committee to submit a report on this matter. We would, in particular, welcome the views of the Committee by 31 October on which measures it believes the UK should rejoin, before we commence formal discussions with the European Commission, Council and other Member States.

Finally, as the Home Secretary said in her Statement to the House and Lord Taylor made clear in the House of Lords, the Government is committed to holding a further vote on the final list of measures the UK will formally rejoin. In line with our previous commitment a full impact assessment will be provided on this final list of measures in good time ahead of that vote. Your Committee might like to submit its views to the Government on the format of this vote in the report that you will be producing by the end of October.

As you are aware, the opt-out does not actually take effect until 1 December 2014. Consequently, whilst we hope to make good progress, we are afraid we cannot give a set date by which negotiations on the list of measures we will formally apply to rejoin will have concluded as this does not depend solely on the Government, but also on the willingness of the Commission and other Member States to reach agreement.

Further we look forward to providing evidence before the Committee on 9 October.

26 July 2013

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

Thank you for your letter of 26 July 2013.

I note that the Prime Minister has now formally notified the President of the Council of the UK's decision to exercise the opt-out. I am disappointed that no mention of this imminent first step was made by any of the Ministers who spoke in the debate in the House of Commons on 15 July and in the House of Lords on 23 July. My expectation and that of many others, I believe, was that the further debate and vote which you mention would provide the House with the opportunity to consider the whole package of opt-out and the measures which the UK would seek to rejoin, as my Committee's report recommended.

As requested by the House in the terms of the motion that was agreed on 23 July, I can confirm that the Committee will set out its views by 31 October in the form of a supplementary report to the House. On the question of which measures the UK should seek to rejoin, you will note that the House has already endorsed the list of 35 measures set out in Command Paper 8671 as the basis of these discussions and being in the UK's national interest to rejoin. Our follow-up inquiry will also examine other measures subject to the opt-out decision beyond those contained in this list, as well as the format of the further vote on the final list of measures which the Government has promised to hold in both Houses.

We note the uncertainty surrounding the timing and conclusion of the negotiations between the Government and the Commission and Council regarding the list of measures that the UK will seek to rejoin, including any transitional measures that need to be agreed to avoid gaps in the application of those measures developing. Despite this, we trust that the Government will make all efforts to advance these negotiations expeditiously in order to avoid the second vote being held at short notice prior to the opt-out taking effect on 1 December 2014. The House must have enough time to reflect upon this important matter ahead of that vote and I trust you will do all you can to avoid repeating the unfortunate circumstances which preceded the first vote on 23 July. To the same end we would also be grateful if you could provide us with regular reports on the progress of the negotiations, at significant junctures, after they commence in early November.

We also note your commitment to making an Impact Assessment on the final list of measures available to Parliament "in good time" ahead of that vote, which was originally promised to the House of Commons European Scrutiny Committee by James Brokenshire MP on 28 November 2012. That time should be much longer than the two weeks the House was given to consider 142 pages of explanatory memoranda in advance of the 23 July vote.

We look forward to further discussions about these parliamentary procedural matters, among other things, when we meet with Lord McNally and James Brokenshire MP on 16 October. In the meantime the Committee looks forward to receiving oral evidence from you about the opt-out decision as a whole on 9 October, and I look forward to receiving the Government's comments on my letter of 18 July to the Leader of the House which I believe you have seen.

30 July 2013

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

Thank you for your letters of 10 and 30 July and for your ongoing consideration of this important issue. We were also grateful for sight of your letter to the Leader of the House on 18 July.

We welcome confirmation that your Committee will set out its views on the 2014 opt-out decision in the form of a supplementary report to the House. We look forward to receiving your views on individual measures and the arrangements for the second vote. Your report will undoubtedly be useful in helping to inform our consideration of this matter further, and that of the House.

As we made clear in our letter of 26 July, the debates and votes in both Houses in July supported the Government decision to exercise the opt-out. We believe that notifying the President of the Council of Ministers of our intentions was a necessary first step in order to achieve the best possible outcome in the forthcoming negotiations. We remain committed to a second vote on the final package of measures the UK will formally apply to rejoin. We will provide the Impact Assessment in good time ahead of that vote to allow the House to consider it fully.

Your letter mentions the uncertainty surrounding the timing and conclusion of the negotiations regarding the final package of measures. We can assure you that we will be working hard to ensure that these negotiations progress as quickly as possible, though it is not possible to give an indication at this stage of when we expect to have concluded negotiations. These negotiations do not depend

solely on the Government, but also on the willingness of the Commission and other Member States to reach agreement. We will keep you updated on the progress of these discussions as soon as appropriate.

With regards to transitional arrangements, as we set out in our response to your report on 23 July, we believe it is in everybody's interests to try to eliminate any gap between the opt-out taking effect and rejoining any measures where we wish to do so. If there is to be any gap, and our starting position is that we do not believe that there need be, we will work to ensure that the transitional arrangements foreseen under Article 10(4) of Protocol 36 are such that measures continue to apply to the UK during that period.

Turning to your letter of 18 July to the Leader of the House, we would like to express our regret, once again, for the delay in providing the Government's response to your report. As we noted in our letter of 18 July, this is a complex issue and we wanted to ensure that we provided you with as full a reply as possible. We hope that our letter of 18 July, addressing the principal conclusion of your report, was useful ahead of the debate and vote on 23 July. We would also like to apologise for the delay in providing the five Explanatory Memoranda (EMs). Again, we felt it important to ensure that the information contained in the EMs was as comprehensive and detailed as possible.

We note your concerns regarding the time limit put forward for the Committee's follow-up work. While we have agreed not to commence formal negotiations until after 31 October to allow time for scrutiny, we are of the view that it is important to commence these negotiations at the earliest opportunity in order to achieve the best possible outcome. Indeed, your report in fact states that we should have commenced these discussions earlier: "[c]onsidering the legal complexities and uncertainty that may arise, were the Government to exercise the opt-out and seek to rejoin particular police and criminal justice measures, the Government would have done well to have commenced negotiations at a much earlier stage".

Finally, we would like to draw your attention to a drafting omission affecting the Accession Protocols (number 111 on the list) in the Schengen Explanatory Memorandum, Command Paper 8671 and the list of measures published on the Government website. It appears that reference to the Accession Protocol with Austria (Articles 2 and 4) has been inadvertently omitted from these documents. We would like to apologise for this omission and inform you that the list of measures on the website has now been updated to correct this error.

We can assure you that we remain committed to engaging fully with your Committee, and Parliament more generally, and look forward to appearing before you on 9 October.

11 September 2013

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

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

I attach the outcome of the European Parliament's first reading of the above proposal. It seems likely that this revised text will be acceptable to the Council, following informal contacts between the Parliament, Council and the Commission, thus avoiding the need for a second reading in Parliament. We therefore expect that the Regulation will be adopted by the end of the year.

Council Regulation 539/2001 sets out the EU mechanisms for imposing and lifting visa requirements on those third countries whose nationals must be in possession of a visa when crossing the external borders (Annex I, the negative list) [not printed] and those whose nationals are currently exempt from that requirement (Annex II, the positive list) [not printed]. The amendments in this Council Regulation focus only on changes to the mechanisms. We are aware that separate negotiations are ongoing with regard to changes to the positive list.

The UK does not participate in the border and visa elements of the EU Schengen Acquis that governs entry and exit within the European area. UK non-participation means that we will not adopt or implement any amendments to EU entry and visa rules or legislation that may be agreed by other EU Member States. The UK continues to manage its own national borders and entry requirements, including visa regimes.

That said, although the UK does not participate in EU common visa policy, we continue to monitor and review developments and the impact that these may have on our national borders. It is possible that Schengen visa lifts could have a knock-on effect in the UK and lead to an increased number of asylum seekers and illegal migrants in the UK. Conversely the tightening up of EU visa controls could

be beneficial to the UK, not only in preventing onward illegal immigration to the UK but also in international comparisons of visa requirements and customer services.

Under these amendments, changes have been made to the reciprocity mechanisms to be applied when a third country listed in Annex II (positive list) [not printed] applies a visa requirement to nationals of one or more Member States. Full visa reciprocity is a Union objective and is supported by legislation. UK visa policy differs in the sense that decisions regarding visa impositions or lifts are based on national security, immigration and crime risks. Reciprocity is more a political issue and is not a requirement under our legislation.

The changes also provide for the temporary suspension of the visa waiver for a third country listed in Annex II [not printed] in the case of an emergency situation, where an urgent response is needed to resolve the difficulties faced by one or more Member States. An “emergency situation” in this circumstance is described as a substantial and sudden increase in immigration abuse, asylum applications or rejected readmission agreements over a six month period, when compared to the same period in the previous year or the last six months prior to the implementation of the visa exemption. The UK can be affected by the knock-on effects of Schengen visa lifts and the subsequent ease of travel to as far as the UK’s border. We therefore welcome this suspension mechanism.

Again, the UK does not have a specific suspension mechanism in place but we are able to re-impose a visa requirement through an immigration rules change. We would do this if the national security, immigration or crime risks from a certain country became unacceptable. We do consider difficulties in returning nationals to a third country under “immigration risk” but we do not directly link visas and returns, nor do we impose a visa regime as a sanction for non co-operation on returns.

17 October 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 17 October 2013 updating the Committee on the progress of the above Regulation, 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 would be grateful for further explanation of the ramifications of the Government’s recent announcement of measures to facilitate the operating of visas for Chinese citizens for the issue of cooperation with the Schengen visa regime.

We look forward to further updates in due course.

No response to this letter is required.

30 October 2013

TOBACCO PRODUCTS (18068/12)

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

I am writing about the proposed European Tobacco Products Directive, following the evidence I gave before the House of Lords EU Sub-Committee F on 13 March 2013 and your subsequent letter of 24 April 2013. I am now in a position to provide more detailed answers to the questions that the Committee has asked.

PROTECTING TOBACCO CONTROL FROM VESTED INTERESTS

The Committee was keen to know more about how the Government is implementing its treaty obligations as a Party to the World Health Organization’s Framework Convention on Tobacco Control (FCTC), particularly with respect to Article 5.3 of the treaty. This Article of the FCTC requires Parties to protect public health policies with respect to tobacco control from the commercial and other vested interests of the tobacco industry in accordance with national law.

To assist Parties to the FCTC to meet their Article 5.3 obligations, non-binding guidelines have been developed and agreed through consensus of Parties. The guidelines draw on the best available evidence and the practical experience of the Parties in addressing the strategies used by the tobacco industry to interfere public health policies with respect to tobacco control. More information on FCTC guidelines can be found at Annex A [not printed].

The guidelines recommend that parties limit interactions with tobacco companies to those strictly necessary to enable effective regulation of the tobacco industry and tobacco products and to ensure that any such interactions that are necessary are conducted transparently.

The tobacco industry is welcome to provide its views in writing to the Department at any time and we welcome all responses to public consultations on tobacco control. However, the Department of Health limits its face-to-face interactions with tobacco manufacturers, and very few meetings are held. Any discussions with tobacco companies are generally limited to practical matters such as discussions about the implementation of legislation.

Recently, Departmental officials met with each of the major tobacco companies operating in the United Kingdom to gain more information about the potential costs to business of standardised packaging of tobacco products, so we could elaborate any further impact assessments necessary if this policy was to be taken forward. These meetings were needed as tobacco companies were reluctant to provide information that they regard as commercially sensitive through the written consultation process. Minutes of these meetings were taken (which do not contain any commercially sensitive information), and copies can be provided if you would like to see them.

Contact by other parts of government with tobacco companies is necessary and is not precluded by the FCTC. For example, HMRC meets with tobacco manufacturers to share information on the illicit tobacco trade to facilitate enforcement activity.

The Government's tobacco control strategy *Healthy Lives, Healthy People: A Tobacco Control Plan for England* (published in March 2011) includes a chapter on protecting tobacco control from vested interests. The Plan includes a commitment to ask all organisations engaging with the Department on tobacco control to declare any links with, or funding received from, the tobacco industry.

In addition, the Department encourages local authorities to follow the Government's lead and also take the action necessary to protect their tobacco control strategies from the vested interests of the tobacco industry.

The Department of Health is actively considering what more can be done to fulfil its treaty obligations, to ensure the utmost transparency in all dealings with the tobacco industry. My officials already receive many Freedom of Information (FOI) requests relating to tobacco control and, when appropriate, the responses are published on the Department's website.

SUBSIDIARITY

The Committee was interested in whether the Government had any concerns about subsidiarity with respect to the Commission's proposal.

I share the Committee's conclusion that the proposed Directive respects the principle of subsidiarity bearing in mind the objectives of this proposal, and share its analysis of the Reasoned Opinions issued by other national parliaments. In addition, with reference to the principle of subsidiarity, I aim to negotiate a final text which would allow Member States adequate freedom to maintain or take forward certain domestic public health policies, aiming for a higher level of health protection, where the evidence supports this and it is justified in accordance with the TFEU.

For example, the proposal for a revised EU directive sets out some rules on packaging of tobacco but does not require fully standardised packaging. The UK has run a consultation in relation to the introduction of standardised packaging for tobacco products in the UK. A decision is yet to be reached on this and as such, the Government seeks to preserve the option of taking domestic action to improve tobacco control in the future. In another example, while picture warnings are currently required on all smoked tobacco in the UK, the proposed Directive envisages an exemption for certain types of tobacco (such as cigars on which we require picture warnings). I will, therefore, be seeking amendments to the proposed Directive to address this.

INTERNATIONAL TRADE LAW AND OTHER INTERNATIONAL AGREEMENTS

I consider that the compatibility of this proposal for a directive with fundamental rights, international trade law and other international agreements, must be approached in the context of the proposal's legitimate objectives and effects. The requirements in this proposal would reduce some of the space available for the display of trade marks and restrict the opportunities for manufacturers to use certain features, words and pack designs.

Tobacco manufacturers understandably seek to protect such opportunities and direct the Committee's attention to international law relating to intellectual property. However, the

manufacturers' submissions overlook the legitimate objective of the proposal which is to improve the functioning of the internal market and thereby achieve a high level of health protection. The obligations set out in the international agreements identified by the Committee are qualified in respect of measures that protect human health. For example, the Committee notes the World Trade Organisation ("WTO") Agreement on Technical Barriers to Trade. Article 2.2 of that instrument provides, among other things, that technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective and that the protection of human health is such a legitimate objective.

The Committee also refers to the European Convention on Human Rights ("ECHR") to which the UK is a party and to which the EU is expected to accede. Article I of Protocol I to the ECHR which concerns property, entitles States to enforce such laws as it deems necessary to control the use of property in accordance with the general interest, which includes the protection of public health. Analogous observations can be made in relation to the other treaties identified by the Committee, in addition to other arguments specific to each instrument. The Committee has already noted Case 491/01 in which the Court considered the compatibility of the current Tobacco Products Directive 2001/37 ("the 2001 Directive") with international law among other things.

The proposed Directive would assist the UK to meet some of its obligations under the World Health Organization's Framework Convention on Tobacco Control ("FCTC"). The European Union is also a Party to the FCTC.

The FCTC provisions concerning reporting, packaging, labelling and advertising are particularly relevant to this proposal. Contrary to the tobacco manufacturers' submissions, the health warning requirements required under the 2001 Directive are not sufficient to ensure compliance with the FCTC. For example, the FCTC and its Guidelines indicate larger warning labels than required under the 2001 Directive and recommend the removal of TNCO data which are required under the 2001 Directive. Certain elements of the FCTC are beyond the scope of the Commission's proposal, for example the regulation of tobacco vending machines. Conversely, elements of the proposal go further than the FCTC in respect of illicit trade in tobacco products. Late last year, the text for a Protocol to eliminate illicit trade in tobacco products ("the FCTC Protocol") was agreed and is now open for signature. The proposals on tracking and tracing, and cross border sales in the proposed Directive look to go further than FCTC Protocol requirements.

TRACKING AND TRACING

The Committee asked whether it was the Government's opinion that one common EU approach to tracking and tracing tobacco products was better than 27 different Member State approaches.

The proposed Directive prescribes an EU system for tracking and tracing tobacco products, which goes further than the simpler approach set out in the FCTC Protocol. The Government recognises that there may be some advantages to an EU wide system but we must consider all the risks and costs of such an approach to ensure that we introduce arrangements that are effective and proportionate to the compliance burdens and economic impacts on business. If there is a strong case for an EU-wide tracking and tracing system, we will argue that such provisions are best introduced through the EU customs regime, where illicit tobacco has been addressed until now. This is an issue we are exploring with other Member States and the Commission during Council negotiations.

DELEGATED AND IMPLEMENTING POWERS

The Committee noted that the proposal envisages a large number of implementing and delegated powers and seeks the Government's view on this aspect of the proposal.

I have scrutinised the use of implementing and delegated powers throughout this proposal on a case-by-case basis as well as horizontally.

In all cases, I will seek in negotiations to ensure that these powers are appropriately defined and effectively constrained. For example, while I accept that it may be useful to adapt the maximum tar, nicotine and carbon monoxide (TNCO) yields taking into account scientific development in the future, I consider that the delegated power at 3(2) ought to be further circumscribed to permit revision only in a downwards direction. Similarly, details such as the font and format of the text and contents of the picture library are matters which are already harmonised, I consider that the delegated powers at 8(4)(b), 9(3)(b) and (c) could be redrafted as implementing powers consistent with the technical nature of this matter and advantages of such procedures.

In some cases, I believe the delegations to be justified, for example: the exercise of the implementing powers in article 5(3) that will enhance information sharing. I agree that the exemptions for certain types of tobacco product should be withdrawn if those products become more popular, particularly with young people, and support the aim of the delegated powers to enable a swift flexible response to such circumstances. The power at 9(3)(a) to update health warning messages is consistent with evidence that such messages must be regularly updated to ensure their continued effectiveness over time. As to the particular concern raised by the Committee regarding Member State discretion to regulate health warnings, I would observe that the format and content of health warning labels was previously regulated under the 2001 Directive which also provided for a comitology procedure to adapt the text.

Where the delegation is not clearly proportionate we will push for these powers to be removed. For example, the Government's preference is for the proposals for a tracking and tracing system to be removed from this Directive and taken up elsewhere. However, if they remain, I consider that the detailed terms and conditions of contracts between manufacturers and IT suppliers is a matter which might be left to the discretion of the Member State. Within the wider discussions on tracking and tracing, I will explore with the Commission whether the delegated power at Article 14(9)(a) is necessary.

Articles 21 and 22 of the proposal provide for controls on the exercise of those powers, although I am exploring with the Commission whether there is an adequate justification for the indeterminate duration proposed at Article 22(2).

COMMISSIONER BORG'S COMMENTS ON HOW CIGARETTE PACKAGING SHOULD LOOK

During my evidence session, I mentioned that I had recently met Commissioner Borg at an informal Health Council meeting in Dublin and that he had made some comments regarding the packaging of tobacco products and the need for it to reflect the product itself. I undertook to give you an account of his remarks. Unfortunately, I am unable to provide further details on this specific discussion since these informal meetings are not minuted. I can, however, provide some account of Commissioner Borg's opinion on this matter from his speech when the proposed Directive was published. In particular, I would draw your attention to the following part of the Commissioner's speech:

"Again I want to be very clear: a tobacco product should look like a tobacco product and not like a cosmetic or candy. My aim here is that people can take an informed decision when they look at a pack of cigarettes by getting the clear message that the product they buy harms their health."

The full speech can be found on the Commission's website at:

http://europa.eu/rapid/press-release_SPEECH-12-968_en.htm

THE POTENTIAL IMPACT ON THE ILLICIT TOBACCO MARKET

The Directive includes various measures which could impact positively on reducing the illicit trade in tobacco products, such as tracking and tracing and product authentication. Others could impact adversely on the illicit trade, such as requiring Member States to prohibit the placing on the EU market of certain types of tobacco products that would be available outside the EU.

It is worth reflecting that over the past decade, the UK Government, led by HMRC, has had great success in tackling illicit tobacco in the UK. The illicit trade is constantly changing as criminal gangs attempt to circumvent controls and avoid detection. In response, HMRC's anti fraud strategy has been continually refreshed to stay on top of new threats as they emerge. Since the first anti-fraud strategy was introduced in 2000 there has been a steady decline in the size of the illicit market. Latest HMRC estimates indicate the illicit cigarette market has more than halved - dropping from 21% to 9% in 2010/11. The hand-rolling tobacco illicit market has also reduced significantly, down from 61% to 38% over the same period.

Furthermore, the Government is not complacent and tackling illicit tobacco remains a priority. In 2011, HMRC published a renewed strategy to tackle the illicit tobacco trade titled Tackling Tobacco Smuggling: Building on our success. The strategy has been strengthened with around £25 million of re-investment funding to tackle tax fraud and avoidance.

The composition of the illicit market has also changed over the last few years and it is currently made up of three main product types: cheap white brands, counterfeit, and genuine products. The proposals may affect the risks associated with each of these product types differently, and may lead to the displacement of risk into other areas. The factors impacting on the illicit tobacco market are many

and complex and we have drawn no firm conclusion at this time on how this proposed Directive will affect them.

The Government is not aware of any evidence that would enable the quantification of any potential adverse impact of the proposals on tobacco packaging or flavourings on the illicit market. The Commission's impact assessment does not include a revenue assessment and I will be engaging with the Commission on this point. This issue needs to be regarded in the wider context and I believe that, overall, the proposal in its entirety will help to further protect the public, especially young people, from the harms from tobacco.

ESTIMATES OF THE IMPACT OF THE PROPOSAL ON THE UK

You asked if the Department of Health had carried out any of its own work to estimate the potential impacts of the Commission's proposal on the UK, as described in our Explanatory Memorandum in January. The Department's Checklist for Analysis is almost complete and we will send it to the Committee once it is finalised.

COOPERATION WITH EUROPOL, EUROJUST AND OLAF

You asked for details of how the UK cooperates with Europol, Eurojust, and OLAF and for an assessment of effectiveness in this area.

HMRC has a network of overseas Fiscal Crime Liaison Officers (FCLOs) who work with law enforcement agencies and international organisations to tackle the illicit trade. In 2011, with additional investment from the Government's Spending Review, the FCLO network was expanded and coverage now extends to over 60 countries. While FCLOs primarily work on a bi-lateral basis their activity is complemented by various EU initiatives. HMRC has a permanently seconded an officer to Europol to exploit and engage with pan-European intelligence and analysis on tobacco fraud, and support projects driven by Europol.

In addition, HMRC fully engages with Eurojust on cases with a UK nexus and works closely with OLAF, collaborating at a strategic level by sharing information and analysing risks. On an operational level, HMRC has initiated and delivered joint operations with other Member States, funded by OLAF. All of this work is effective in sharing best practice, enhancing relationships with key overseas agencies and developing a common understanding of the tobacco smuggling threat which is vital given the international nature of the fraud.

UK CONSULTATION ON STANDARDISED PACKAGING OF TOBACCO PRODUCTS

The Committee also requested information on the Government's decision on standardised packaging of tobacco products. You will have noted that there was no mention of standardised packaging in the Queen's speech on 8 May. The Government has not made a decision on this issue. We are closely watching what is happening around the world. We are going to take the time we need to consider fully all the points raised in consultation responses, all the evidence available and the relevant information.

I also note, as you will appreciate, the omission from the Queen's speech does not preclude Government from bringing the legislation forward in the future.

NICOTINE-CONTAINING PRODUCTS AND HARM REDUCTION

You expressed an interest in the scientific and market research coordinated by MHRA on nicotine containing products including e-cigarettes. I will write to you again once the MHRA is in a position to publish that research.

Andrew Black, the Department's Tobacco Programme Manager who gave evidence with me on 13 March, mentioned in his evidence that there is public health guidance currently under development by the National Institute for Health and Clinical Excellence (NICE) on harm reduction in nicotine addiction. I understand that this guidance will be published in June 2013 and we will send this to the Committee in due course.

OTHER INFORMATION

You brought two letters to my attention, which you had received from members of the public on the proposed Directive. My officials have written to these individuals and have provided copies to the Committee Clerk for the attention of members of the Committee.

Please contact me if there is any further information you would like.

17 May 2013

Letter from the Chairman to Anna Soubry MP

Thank you for your letter of 17 May 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 5 June 2013.

We welcome the efforts being made by the Department for Health to be as transparent as possible in its dealings with all stakeholders on this issue.

We are grateful for your comprehensive response to the questions in our letter of 24 April 2013. We note that you are still considering the results of your consultation on standardised/plain packaging and developments elsewhere in the world. We would be grateful for further information once the Government has reached a decision on this issue.

We have decided to retain this document under scrutiny and we look forward to receiving the promised information from NICE and MHRA once it becomes available. We would also be grateful to receive further updates on the progress of this proposal in the negotiations.

5 June 2013

Letter from Anna Soubry MP to the Chairman

In my earlier letter to the Committee, I promised that I would send you our Checklist for Analysis on the Tobacco Products Directive. A signed copy of this is enclosed [not printed]. Please note that the Checklist does not address the NCP aspects of the Directive which have their own impact assessment.

I also promised to provide you with more details of the Government's position on the regulation of nicotine containing products (NCPs), as proposed in Article 18 of the Commission's draft Directive.

NCPs, such as e-cigarettes, currently fall outside the scope of the 2001 Tobacco Products Directive. Member States take different approaches to the regulation of NCPs with some regulating NCPs as medicines, some regulating NCPs as tobacco products, some prohibiting NCPs altogether and others with no specific regulation.

The proposal seeks to establish a dose threshold above which NCPs must be authorised as medicinal products if they are to be allowed onto the market. Those falling below the threshold would be regulated as consumer products, with a specific health warning.

I advised you that the UK Government's position would be informed by further scientific and market research being co-ordinated by the Medicines and Healthcare Products Regulatory Agency (MHRA). That work has now concluded.

The Government's position on the regulation of NCPs formed a key part of the Tobacco Control Plan for England, published in March 2011. At that time, the MHRA published the outcome of a consultation exercise on the regulation of NCPs as medicines. The response to consultation was clear support for regulating NCPs as medicines, including from the Medical Royal Colleges, health professional bodies, the British Heart Foundation, Cancer Research, NHS bodies, Trading Standards bodies, the pharmaceutical and tobacco industry and some importers of electronic cigarettes.

The majority of importers and users of unlicensed nicotine products were opposed to regulating such products as medicines, fearing that this would mean an immediate ban on products currently available and that this could lead users back into smoking tobacco. Public health focussed organisations too raised concerns that an immediate move to medicines regulation would lead to potentially useful products being taken off the market and/or innovation being stifled.

The consultation highlighted the need for evidence around levels of nicotine that have a significant physiological effect and the need for further information on the impact of regulation on public health. The MHRA committed to co-ordinating a period of further scientific and market research with the aim of answering these questions. This work has been informed by the advice of an Expert Group of the Commission on Human Medicines (CHM) and has now reached a conclusion, which has shaped our response to the European Commission's proposals.

The European Commission's proposal would require that NCPs which contain nicotine levels exceeding certain amounts may be placed on the market only if they have been authorised in accordance with the provisions of the medicines directive. The draft Directive envisages NCPs with nicotine levels below these thresholds could be sold as consumer products featuring a health warning. The draft Directive also includes provisions for warning statements on the labels of products which contain nicotine below those thresholds.

The European Commission's proposal aligns broadly with the UK's expert advice about the need for a proportionate regulatory regime for NCPs. The work undertaken by the MHRA has included seeking expert advice on how medicines regulation can be adapted to the safety profile of these particular products, in terms of what evidence is required at the time of licensing, where products can be sold or supplied (e.g. in supermarkets or retail outlets), and flexibility around their packaging and labelling. The MHRA will publish an assessment of how to achieve a proportionate approach to the regulation of NCPs within the existing medicines framework, focussing on managing the risk of poor quality and ineffective products to maximise the potential benefits to public health within a smoking harm reduction regime. This approach would be more proportionate than banning some or all NCPs, treating them as tobacco products, or developing a bespoke framework, which would be likely to take some years at a time when the market for NCPs is increasing exponentially. Publication of this advice will enable us to influence the debate on how medicines regulation can be applied.

The Commission has not given a clear rationale for the thresholds of nicotine proposed. The proposed thresholds would capture most NCPs currently on the UK market but the public health implications of allowing for the development of a two tier approach will need to be further explored in the negotiations. In addition to ensuring licensed products meet appropriate standards of safety, quality and that they effectively deliver nicotine, regulation as medicines would allow for long term safety in use to be monitored (this does not relate to nicotine content alone) and regulatory action to be taken if risks are identified. It would also mean that important risks, around such products becoming a gateway to smoking tobacco and being used by children, can be managed by controls on medicines access and advertising. I propose to seek to negotiate a position that brings NCPs which are medicinal by function within medicines regulatory control.

Expert advice has also been sought on the Commission's proposal for a labelling requirement for products containing nicotine below the identified threshold, to state that "nicotine can damage your health". This is not scientifically valid for the levels of nicotine in question and I propose to seek to agree a warning that better meets public health objectives.

The MHRA will publish its expert advice in full, together with an assessment of the likely impact of the European legislation and I have arranged for the relevant documents to be passed to you. Separately but related, I will also pass to you a copy of the Public Health Guideline on Tobacco Harm Reduction, published by the National Institute for Health and Care Excellence on 5 June.

There is a clear benefit to the UK of regulating NCPs at EU level, to provide for a single market approach and an opportunity for the market to transition to a single form of regulation across the EU. This approach will enable products currently marketed to seek a medicines licence. Once the Directive is transposed in UK law, NCPs (above the threshold) would require a marketing authorisation before they could be placed on the market.

In the UK, there is a buoyant, competitive market in over the counter medicines worth around £2.5 billion annually, of which £100 million is for licensed nicotine replacement therapies (e.g. gums, patches, inhalators etc). This suggests that medicines regulation need not be a barrier to competition and innovation. Nor is there evidence that the cost of regulation need affect price or competition – for example there is a highly competitive over the counter pain relief market which has driven down prices. There are already measures in place that would facilitate the market in this area – for example, the lowest rate of VAT applied to licensed nicotine replacement therapy NRT (5%).

11 June 2013

Letter from Anna Soubry MP to the Chairman

I am writing further to my update letters of 3 and 11 June on this proposal, in order to request a scrutiny waiver on the proposal for a revised Tobacco Products Directive. Following discussion at Coreper on 14 June, the Presidency's intention is likely to seek a General Approach at Health Council (EPSCO) on 21 June. Should it not be possible to secure agreement on a General Approach, the Irish Presidency may seek to conclude a Partial General Approach by excluding those articles on which it has not been possible to find a compromise.

Please also find attached a link to the MHRA's website – <http://www.mhra.gov.uk> – where there is a link on the home page to a dedicated page on the regulation of nicotine containing products.

This includes a stand-alone impact assessment on the regulation of nicotine containing products and the paper considered by the Commission on Human Medicines on the application of medicines regulation to such products (the last two documents on the webpage).

I enclose a copy of the latest version of the proposal [not printed]. This document is marked as restricted, is not in the public domain, and is shared with the Committee in confidence. The Committee will note that a number of changes to the original Commission proposal have been made during the Council Working Group negotiations as the Irish Presidency has sought to find compromises. The most significant changes are:

Article 9

- The latest proposal requires the combined (picture/text) health warnings for smoked tobacco to cover 70% of the external area of both the front and back surface of the unit pack and any outside packaging. The Commission's original proposal required 75%.
- The transitional arrangements for the implementation of proposed requirements for combined health warnings for Member State whose tax stamps requirements would be impacted, have been extended to include fiscal marks too.

Article 10

- The latest proposal envisages that Member States may apply the same strict rules about warning labels to all classes of smoked tobacco including cigars. This amendment was made in response to concerns raised by the UK, following our earlier correspondence to the Committee, in which picture warnings are already mandatory on all smoked tobacco.

Article 12

- The proposal to prohibit placing slim cigarettes on the EU market has been removed.
- Instead, the Commission is tasked with monitoring developments in the market for these products.
- The reference to “misleading colours”, which was open to misinterpretation, has been removed.

Article 14

- The traceability and security features requirements now allow longer transition periods for all categories of tobacco products to comply.
- The latest text also allows fiscal marks to be used as the required security feature.

While we support the principle of enhanced tracking and security features and welcome the direction of travel, the UK Government still believes that it would be more appropriate and practical for tracking and tracing to be addressed both through existing EU customs and excise directives and through domestic action by Member States than through a revised Tobacco Products Directive. If tracking and tracing remains in this Directive we still wish to explore further with the Commission the advantages of an EU wide system, taking into consideration the risks and costs, to ensure that we introduce arrangements that are effective and proportionate to the compliance burdens and economic impacts on business.

Article 16

- It will be open to Member States to prohibit cross-border distance sales of tobacco entirely. This is a compromise with the large number of Member States in favour of an EU wide ban.

Article 18

- The proposed thresholds for nicotine levels and nicotine concentrations above which nicotine-containing products would need to be regulated as medicinal products have been lowered in the latest proposal from those set

out in the Commission's proposal, which is more in line with the UK's position.

Article 24

- The latest Presidency proposal has been amended to try to meet the concerns of the UK (and other Member States) which are aiming for a greater level of flexibility for Member States to maintain or take forward certain key domestic public health policies, aiming for a higher level of health protection, where the evidence supports this and it is justified in accordance with the TFEU.

The latest Presidency text is moving in the right direction but further work is required.

I am broadly supportive of the latest text. Bearing in mind the changes that have been made to the Commission's original proposal, I am disposed to vote favourably on a General Approach to the Directive at EPSCO, should a vote take place (notwithstanding any further changes that may be made between COREPER and EPSCO). The UK's support may well be important in determining the outcome of a vote because there has been opposition from a number of Member States to elements of this proposal.

I acknowledge that we still need to ensure that our positions on Articles addressing packaging and product description align with our on-going domestic deliberations on these matters, prefer other options to deal with tracking and security features and still seek further changes to the wording of Article 24. We will continue to pursue these objectives in further negotiations in the second half of 2013. However, taken as a whole, I believe that the current proposal is good for public health and that the outstanding issues should not prevent the UK from signalling our support for the proposal at EPSCO. The UK is recognised internationally as a leader on effective tobacco control policy, and an abstention may be damaging to our reputation in this regard.

I would, therefore, be most grateful if your Committee would agree to issue a scrutiny waiver, to enable the UK to fully engage in discussions at Council, and to vote on the proposal if required.

17 June 2013

Letter from the Chairman to Anna Soubry MP

Thank you for your letters of 11 and 17 June 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 19 June 2013.

We note your support for the Medicines and Healthcare products Regulatory Agency's (MHRA) recommendation to regulate all non-tobacco nicotine containing products (NCPs) as medicinal products, and your intention to negotiate for a similar position at EU level that brings NCPs which are medicinal by function within medicines regulatory control. We look forward to being notified of the outcome of negotiations on this issue at the Council meeting on 21 June.

We noted in your previous correspondence your preference for the Directive to allow Member States the option of maintaining or introducing more stringent national provisions on packaging if they so desired subject to certain requirements. We would be grateful for your view on whether Article 24 of the draft Directive, which sets out these provisions, may be unduly restrictive and fetter the scope for further domestic action to strengthen tobacco control.

We note that on 6 June the Commission published a proposal for an EU cigarette smuggling strategy. As a complement to our enhanced scrutiny of the Tobacco Products Directive we also intend to conduct enhanced scrutiny of the proposed strategy, including one or two oral evidence sessions. We expect to receive an explanatory memorandum about the strategy from HMRC by 24 June.

We have decided to grant a scrutiny waiver ahead of the Council meeting on 21 June but will nevertheless retain this proposal under scrutiny. We will look forward to receiving further updates on the progress of negotiations in due course.

19 June 2013

Letter from Anna Soubry MP to the Chairman

I am writing further to our recent correspondence on the Tobacco Products Directive to update the Committee following consideration of the Directive at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council meeting on 21 June 2013 where I represented the UK.

After detailed discussion and changes to the proposed text to address concerns of Member States, including the UK, the Council agreed a general approach to the Tobacco Products Directive. The UK secured a number of key changes to address our policy priorities including: the ability to maintain picture warnings on all types of smoked tobacco; a more flexible approach to cross-border distance sales; adequate freedom for Member States to take forward domestic public health policies in certain key areas, aimed at a higher level of health protection where this is justified, through a revised wording of Article 24; and reductions in numbers and breadth of delegated powers. The UK supported the general approach. Only four Member States were unable to offer their support, which meant that the UK vote was decisive in forming a qualified majority.

I enclose a copy of the text [not printed] on which a general approach was agreed. In earlier correspondence to the Committee I have outlined changes in the text from the original Commission proposal. In addition to the revision to Article 24, there are two other substantial changes from the previous version, a copy of which I enclosed in confidence with my previous letter to the Committee of 17 June:

- Combination picture/text warnings would now cover 65% of the front and back of packets, rather than the proposed 70% in the earlier text (and 75% in the Commission's original proposal).
- There would be no mandatory pan-EU ban on cross-border distance sales of tobacco products (contrary to the previous Presidency proposal, more in line with the Commission's original proposal) but Member States can choose to ban them should they wish.

I will ensure that the UK Government continues to seek further changes to the Directive, including on the tracking and security feature provisions, during the trilogue process in the second half of 2013. I will write again to the Committee ahead of that process, including an update on proposed amendments from the European Parliament.

1 July 2013

Letter from the Chairman to Anna Soubry MP

Thank you for your helpful letter of 1 July 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 10 July 2013.

We note that the Government appears to have achieved most of their objectives in the negotiations on this proposal so far, particularly the provision allowing flexibility for Member States to take forward domestic public health policies aimed at a higher level of health protection where this is considered to be justified, for example, plain packaging. We welcome this success.

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

10 July 2013

Letter from Anna Soubry MP to the Chairman

Thank you for your letter of 10 July 2013 in which you asked me to keep you informed of developments with regard to the draft Tobacco Products Directive. I note the Committee's decision to retain the proposal under scrutiny.

In my letter of 1 July 2013, I updated you on the outcome of the Health Council's consideration of the proposal and the General Approach that was agreed at the 21 June 2013 meeting.

I am now also in a position to update you on progress with regard to the European Parliament's consideration of the draft Directive. The Parliament's ENVI Committee voted in favour of a compromise text on 10 July 2013. This will be followed by a vote in Parliament in September 2013. The text agreed by ENVI is broadly welcomed by the UK Government because of its strong stance on public health.

Inevitably, however, there are differences between the compromise Council and Parliament texts. Of significant interest to the UK are:

- On the important Article 24, which is about Member States' freedom to introduce more stringent domestic measures, the ENVI Committee voted for an amendment which largely achieves the UK Government's goals,

except in one key respect. It opted to retain the Commission's proposal for a Commission power to approve or reject such domestic measures within scope of the draft Directive which the UK was successful in removing during negotiations in Council.

- On Article 18, the ENVI Committee of the Parliament text would require that all nicotine-containing products (NCPs), to be regulated as medicines rather than only those above a certain nicotine threshold as per the latest Council text and the Commission's proposal. In consequence, the Parliament text also removed the proposed a "health warning" on products below the threshold.
- On Article 12, the ENVI Committee of the Parliament text would maintain the prohibition of 'slim' cigarettes foreseen by the Commission proposal, whereas this was removed from the Council General Approach text.
- On Article 16, the ENVI Committee of the Parliament text would oblige Member States to prohibit all cross-border distance (e.g. internet) sales of tobacco within the EU, with an option for Member States to prohibit domestic distance sales too. The Council text does not foresee a pan-EU ban on cross-border or domestic distance sales but allows Member States to introduce their own bans, should they wish to.

I will ensure that the UK Government continues to seek to prevent a watering down of the Directive, an important public health measure, in the second half of 2013. I will write again to the Committee after the European Parliament's vote in Plenary next month ahead of the trilogue process.

16 August 2013

Letter from the Chairman to Anna Soubry MP

Thank you for your letter of 16 August 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 September 2013.

We note your broad support for the ENVI Committee's report and its strong stance on public health. However, as you have placed great importance in the past on securing Member States' rights to take additional measures on tobacco products to protect public health in certain key areas where this is proportionate and compatible with the EU Treaties, we note that one of the proposed amendments in the report may undermine this right. As stated in your letter, we would be grateful to know how you intend to proceed on this issue once the plenary vote in the European Parliament has taken place.

We also wish to inform you of our enhanced scrutiny of the Commission's proposal for a EU Cigarette Smuggling Strategy. We will be writing to Sajid Javid MP, the Economic Secretary to the Treasury, with our conclusions and recommendations on the Strategy shortly and will copy you into this letter. The issue of illicit trade in tobacco is closely linked to the Tobacco Products Directive, and we therefore hope that our deliberations on the Strategy will be of interest to you.

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

11 September 2013

Letter from Anna Soubry MP to the Chairman

In my letter to you of 16 August 2013, I promised to write to the Committee again following the planned European Parliament September plenary vote on the draft Tobacco Products Directive, with a summary of the key changes sought by the European Parliament and the Government's position on those changes.

You may be aware that, on 5 September, the European Parliament voted to delay its plenary vote on the draft Tobacco Products Directive from 10 September to 8 October 2013. Therefore, I will only be in a position to write to you again more fully along those lines after the European Parliament vote next month.

16 September 2013

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

Following my recent appointment as Public Health Minister, I am delighted to be able to take on the responsibility for the Government's tobacco control policies, including the vitally important Tobacco Products Directive (TPD). I look forward to full and regular engagement with the Committee as we seek to secure the best possible outcomes for the UK in the coming months.

In a letter to you of 16 September 2013, my predecessor promised to write to the Committee again following the European Parliament plenary vote on the draft Tobacco Products Directive, with a summary of the key changes sought by the European Parliament and the Government's position on those changes. Please also accept this letter as a reply to yours of 11 September, which crossed over Anna Soubry's letter of 16 September.

The Presidency aims to conclude the Trilogue negotiations by the end of the year with a view to adopting the revised Directive before the end of the current Parliament in May 2014. Therefore we expect to ask to lift scrutiny towards the end of the year.

As you will know, the vote was delayed from 10 September to 8 October 2013. The EP's positions on key aspects of the draft Directive are as follows:

- Support picture health warnings on 65% of the front and back of packs, with warnings at the top of the packs. This is identical to the Council's General Approach (GA) text, so it is unlikely to be re-opened in Trilogue negotiations. The original Commission proposal was for health warnings to be a minimum of 75% of the front and back of the pack. The UK has argued for bigger health warnings as they are more effective and believes that 65% is a good and pragmatic compromise and represents a good step forward across the EU.
- Tobacco products with characterising flavours including menthol should be prohibited. The GA and EP texts align on this issue. However, they take different approaches to achieve this objective in practice. The GA envisages that Member States (MSs) will prohibit the placing on the market of tobacco products with a characterising flavour, assisted in taking decisions by an Independent Advisory Panel. The Commission is empowered to adopt delegated acts to adopt maximum concentrations of additives in certain circumstances.

By contrast the EP text envisages that additives shall not be used in tobacco products unless they are approved in a harmonised EU-level list annexed to the Directive. Additives which impart a characterising flavour when used, or when used in sufficient concentration, may not be approved.

The UK is a signatory to the WHO Framework Convention on Tobacco Control (FCTC). FCTC guidelines state that

“there is no justification for permitting the use of ingredients, such as flavouring agents, which help make tobacco products more attractive.”

The UK Government would want to see anything that makes tobacco or tobacco products more attractive to children removed from the market. Therefore we welcome the prohibition of characterising flavours in both texts. However, the practicalities will be discussed further during Trilogue negotiations.

- Reject the regulation of all Nicotine Containing Products (NCPs) as medicines, instead applying controls inspired by (but not identical to) tobacco products, although some NCPs (which make medicinal claims (e.g. that they can help with quitting) will still fall within a medicines framework. The UK remains of the opinion that requiring NCPs over a threshold to have a medicines licence if they are to be marketed, as per the GA text is the most appropriate way forward. We will take this position during Trilogue negotiations.
- Ban packs of cigarettes with fewer than twenty sticks, as is already the case in the vast majority of Member States. We know that young people in England are more likely to buy packs of ten, compared to adults and that small packets increase the affordability of such products to minors. The UK supports the ban on small packets of cigarettes envisaged by both the EP and Council texts.

- Reject a ban on “slim” cigarettes, which aligns with General Approach text. This issue is unlikely to be reopened during Trilogue.
- Support the introduction of a “track and trace” system for tobacco products extending to the entire supply chain, which aligns with the General Approach. The EP text seeks to introduce additional requirements including provisions that scanning technology must not be owned by the tobacco companies, which in practice may be unnecessary and overly burdensome. The UK prefers the GA text and we will make these views known during negotiations.
- Ban cross border distance sales of tobacco products throughout the EU. The GA text envisaged an optional ban on cross border sales, meaning MSs can choose whether or not to introduce their own ban. The UK supports the GA text.
- Enable Member States to introduce more stringent provisions on tobacco domestically in some areas, which is relevant to the introduction of further policies which complement the Directive, such as standardised packaging, by individual Member States. Both the GA and the 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 GA envisages MS 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 GA text. The UK supports the GA text on Article 24.
- Vote in favour of the entire amended Directive.
- Give the EP’s rapporteur a mandate to engage in Trilogue negotiations with the Council. Achieving this mandate was vital, as it means negotiations are now commencing.

In summary, the UK Government broadly supports the EP vote on the Tobacco Products Directive. We are very pleased to see the move towards tougher action on tobacco with Europe-wide controls banning flavoured cigarettes and small packs and the introduction of stricter rules on front-of-pack health warnings. However, we are disappointed that the EP voted not to support the proposal to regulate NCPs as medicines. We will continue to push this and our other key objectives during Trilogue negotiations.

31 October 2013

UNION CIVIL PROTECTION MECHANISM (18919/11)

Letter from Chloe Smith MP, Minister for Political and Constitutional Reform, Cabinet Office, to the Chairman

In my letter dated 25 February I noted that the Irish Presidency hoped to agree a partial general approach in the Council in preparation or trilogue and I undertook to update you and your Committee as this progressed.

Since that last letter, the Irish Presidency led an initial discussion of the instrument in COREPER and concluded that it was not appropriate to take to Ministers in the Justice and Home Affairs Council. Instead they chose to pursue a different approach, facilitating informal discussions between the two different groups in an attempt to reach a compromise. This approach has finally borne fruit with all Member States agreeing to a final Presidency compromise position. As a result the Irish Presidency began trilogue negotiations with the European Parliament before handing over to the incoming Lithuanian Presidency in July. I will of course be happy to provide further updates about the trilogue negotiations if you would find that helpful.

The Lithuanian Presidency recently circulated details of their Presidency civil protection priorities. The incoming Presidency has assumed responsibility for the conclusion of negotiations with the European Parliament and Commission on the Civil Protection Mechanism. They are optimistic they

can reach a swift and favourable result. The Government will support the Presidency's efforts to reach an acceptable agreement before the current funding mechanism expires at the end of this year.

In addition, the Lithuanian Presidency has identified a number of other civil protection priorities, which are aligned with the overarching programme agreed between Ireland, Lithuania and Greece. The Presidency will host a workshop to discuss the safety of EU citizens in the event of events requiring the evacuation and shelter of significant number of people, the outcome of which could serve as the basis for Council Conclusions. The Government welcomes the opportunity to exchange good practices about this topic.

A Commission Communication on the future direction of the European Programme for Critical Infrastructure Protection and the Directive on the identification and designation of European Critical Infrastructure is expected imminently. The Lithuanian Presidency plans to facilitate detailed discussions on this in the Council Working Party on Civil Protection. The Government does not envisage that there will be any new legislative proposals but will want to ensure that any changes to the existing Directive and Programme contribute to the aim of improving the protection of critical infrastructure in the EU.

The Lithuanian Presidency also plans to facilitate discussions on a range of cross-cutting issues of relevance to civil protection, including the Solidarity Clause implementation, the EU Integrated Political Crisis Response Arrangements, the EU CBRNE Agenda, consular cooperation and humanitarian aid. The Government welcomes this holistic approach.

9 July 2013

Letter from the Chairman to Chloe Smith MP

Thank you for your letter of 9 July 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 24 July 2013.

We are grateful for your outline of the future initiatives to come from the Lithuanian Presidency in this area. However, we would appreciate more detail about the Government's policy positions during the negotiations under the Irish Presidency, and for an explanation of who the "two different groups" referred to in your letter are. We would also appreciate more information on what the compromise reached was, and how it reflects the Government's priorities.

We look forward to hearing from you within the standard 10 working days.

25 July 2013

Letter from Chloe Smith MP to the Chairman

Thank you for your letter dated 25 July in which the Committee sought further details about the Government's policy position during the negotiations on the draft Civil Protection Decision and the compromise that was reached among Member States in the Council.

The two different groups I referred to in my letter of 9 July were a northern group, comprising the UK and like-minded partners (Austria, Denmark, Finland, Germany, the Netherlands, Slovenia and Sweden), and a southern group involving Belgium, France, Italy, Romania, and Spain. Both groups had sufficient votes for a blocking minority.

My letter dated 1 February identified the two unresolved issues in the negotiations, namely co-funding levels for transport of disaster assistance and EU funding for capacity gaps. The final discussions under the Irish Presidency focused on these two issues. The Government's policy position during the negotiations, and that of our like minded partners, was to seek lower percentages for transport assistance and to ensure that any arrangements for EU funding to fill gaps in Member States' existing civil protection capability were proportionate, workable and did not substitute Member States' own investment in core civil protection capabilities.

The compromise which Member States reached ahead of trilogue meets the Government's negotiating objectives and addresses the areas of concern identified in the Explanatory Memorandum. In particular, it reduced the co-funding levels from the original Commission proposals. It also limited EU co-funding for filling gaps in response capacities to areas where risk assessment and gap identification processes confirm no capacities were available to Member States. The original proposals around the development of a common buffer against shared risks were amended to focus on the establishment and management of framework contracts to address potential significant shortcomings in response to extraordinary disasters. These arrangements would ensure such assets were under the

operational control of the requesting state who would pay for their operational use and a significant share of any applicable standby costs. We secured a cap on the percentage of the civil protection budget available for this activity (likely to be around €5m per annum). We judge that these criteria coupled with the involvement of Member States in the development of the associated arrangements provide adequate safeguards and respect the important principles of subsidiarity and proportionality.

As there have been some significant changes from the original Commission proposals, we anticipate some discussion from the European Parliament. However, we believe that the proposals are now in a much better shape, and with unanimous Council support we are hopeful that an acceptable agreement with the European Parliament will be possible.

1 August 2013

Letter from the Chairman to Chloe Smith MP

Thank you for your letter of 1 August 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 September 2013.

We are grateful for your explanation of who the “two different groups” referred to in your letter of 9 July were and for your overview of the compromise agreement reached in the Council on the above proposal.

We would be grateful for further updates about the progress of this proposal in due course.

11 September 2013

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME (7933/13)

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

Further to my explanatory memorandum of 16 April and your subsequent letter of 24 April, I am writing to provide further information about this proposal and the Government’s decision to opt in.

As you will be aware from the EM and my correspondence with the Commons Committee, we have been exploring the possibility of making the wording of the Draft Decision clearer, perhaps by identifying specific Articles (and elements within them) which fall within the competence of the EU. This was the formulation used when the EU ratified the parent Convention. The Commission do not, however, accept that greater clarity is needed and have indicated that most of their declarations of competence do not include an “article by article” analysis.

They have also reaffirmed their view that under EU legislation they cannot combine in one legislative document two different legal bases. They have made the point that the legal base they cited in relation to this particular Council Decision is a commercial one (exclusive competence) and that they cannot therefore also cite Articles 83 and 87 which cover JHA (shared competence) matters. The Government questions this interpretation.

The Commission have also noted that if they had wanted to conclude the part of the Protocol on criminal sanctions they would have submitted a second proposal with a Title V base. While this offers reassurance in relation to Articles 5 and 6 of the Protocol, the Commission have not specifically addressed our concern that there are also elements within Articles 9 and 11 which establish binding JHA obligations, and which are subject to the current Council Decision. It was suggested by the Commons Committee that both Articles appear to suggest an element of discretion in determining how they should be implemented and could be considered exhortatory rather than legally binding. However, in my view the wording of articles 9 and 11 goes further than simply encouraging action by member states, because it uses the language “shall take” the necessary measures/appropriate measures, and I read “shall” as having the effect of imposing an obligation.

As you are aware, it is the Government’s firm view that the opt-in is triggered by the presence of binding JHA obligations rather than by the citation of a JHA legal base, and this being so we have asserted that the opt-in applies to this Council Decision and are proposing to opt in prior to the adoption of the measure by the EU on 26 June. We will put on the record by means of a minute statement the Government’s position that the opt-in applies and that we have opted in.

Although there is some ambiguity in relation to the full extent of the Commission's declared competence, we remain very much in favour of the objectives behind ratification of the Protocol and I welcome your Committee's support in this regard.

I hope that your Committee will now be able to clear the Draft Decision from scrutiny.

On the basis that it is unlikely you will be able to clear the dossier from scrutiny ahead of its adoption on 26 June, I propose that the UK abstains from the vote in order to avoid a scrutiny override.

25 June 2013

Letter from the Chairman to the Damian Green MP

Thank you for your letter of 25 June 2013, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 3 July 2013.

Notwithstanding the Committee's view that the UK's opt-in is not applicable in this instance, we welcome your decision to opt in to the above proposal.

We are now content to clear this document from scrutiny. I am bound to point out that, if you had written to the Committee at an earlier stage to request scrutiny clearance, the confusion over the Government's abstention to avoid a scrutiny override need never have arisen. I understand that, in the event, Council approval of the decision will not take place until the meeting of the Agriculture Council on 15 July. In those circumstances and in light of our clearance of the document you will no doubt be taking steps to change the Government's abstention to a positive vote.

I would be grateful if you could confirm our understanding of the situation within the standard 10 days.

3 July 2013

Letter from Damian Green MP to the Chairman

Thank you for your letter of 24 April in which you welcome the Government's support for this proposal and clear the dossier from scrutiny.

As you will be aware, the Commons European Scrutiny Committee have retained this dossier under scrutiny. A copy of my letter is attached [not printed]. That being so I can confirm that the Government would make a positive vote in favour rather than abstain when the proposal is considered for adoption. We understand that the next step will relate only to seeking the European Parliament's consent; adoption of the proposal will take place at a later stage once this consent has been given.

18 July 2013

Letter from the Chairman to Damian Green MP

Thank you for your letter of 18 July 2013, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 11 September 2013.

We note that this proposal is now due to come before the Council for adoption at a later date than you originally indicated, at which point the Government intends to make a positive vote in favour rather than abstaining. As we have already indicated we support this decision and look forward to receiving confirmation of the proposal's adoption in due course.

11 September 2013