



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

This edition includes correspondence from 1 June 2011 to 30 November 2011.

HOME AFFAIRS (SUB-COMMITTEE F)

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ANNUAL REPORT ON IMMIGRATION AND ASYLUM 2010 (10772/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 29 June 2011.

The Committee notes the content of the above report and will continue to monitor the various measures referred to in the European Pact on Immigration and Asylum and the Stockholm Programme as they develop, including consideration of any future proposals which are published by the Commission and deposited for scrutiny.

In the meantime, the Committee is content to clear this document from scrutiny.

No reply to this letter is expected.

29 June 2011

ASYLUM SEEKERS: INTERNATIONAL PROTECTION STATUS AND STANDARDS FOR RECEPTION (11207/11, 11214/11)

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

These two proposals were considered by the Home Affairs Sub-Committee of the House of Lords European Union Committee at a meeting on 6 July 2011. They also considered, and are grateful for, your letter of 22 June 2011 concerning the United Kingdom's ongoing involvement in the negotiations on the original proposal for a recast of the Asylum Procedures Directive.

We are particularly concerned with the position on the United Kingdom's opt-in, and because these proposals raise almost identical issues, we deal with them both in this letter.

The Ashton undertakings on enhanced scrutiny of proposals requiring a United Kingdom opt-in decision apply, and we are grateful for the full and rapid EMs.

You will be aware that the previous proposal for a recast Reception Conditions Directive pre-dated the Treaty of Lisbon and was not therefore subject to the Ashton undertakings. The Committee nevertheless published a report for the information of the House, but not for debate, drawing attention to the serious problems which would arise if the Government did not opt in to the proposal (*The United Kingdom opt-in: problems with amendment and codification*, 24 March 2009; 7th report, Session 2008-09, HL Paper 55).

The previous proposal for a recast Asylum Procedures Directive was covered by the Ashton undertakings. Together with the Asylum Qualifications Directive it was the subject of a report (*Asylum directives: scrutiny of the opt-in decisions*, 4 December 2009; 1st report, Session 2009-10, HL Paper 6) urging the United Kingdom to opt in. This report was debated on 12 January 2010. The minister made clear that the previous Government did not intend to opt in, nor did it.

It seems to the Committee that the following issues now arise in relation to both proposals:

- whether they are in fact new proposals raising the possibility of a United Kingdom opt-in under Article 3 of the Protocol, or whether the United Kingdom would be able to opt in only post-adoption under Article 4;
- what legislation will apply to the United Kingdom if it does not opt in to the new proposals;
- whether the other Member States might exercise their right under Article 4a of the Protocol to eject the United Kingdom.

DO THE NEW PROPOSALS ALLOW A NEW OPT-IN UNDER ARTICLE 3?

Paragraph 9(i) of both EMs states "In accordance with article 3 of Protocol No 21 ... the UK opt-in applies to this proposal". We agree; in accordance with the view we have consistently expressed, a new proposal from the Commission, even if it replaces an earlier proposal, triggers a new possibility of a United Kingdom opt-in under Article 3. However our previous correspondence with Home Office ministers on the proposal to set up an IT Management Agency suggests that this was not then your view.

The first proposal for an IT Management Agency was made by the Commission on 24 June 2009, and the United Kingdom opted in to it on 23 September 2009. After the entry into force of the Treaty of Lisbon the proposal lapsed, and on 19 March 2010 the Commission issued a fresh proposal ranging considerably wider, since it now had to cover third pillar as well as first pillar issues. Nevertheless neither the Government nor the Commission treated this as a fresh proposal for the purposes of the United Kingdom opt-in; the Government declined to opt in to this proposal in June 2010, saying that the opt-in made to a different proposal the previous year continued to be valid, a position with which the Commission concurred.

To be consistent, the Government should now be arguing that their failure to opt in to the earlier proposals for Asylum Procedures and Reception Conditions Directives continues to be valid. We are glad to see that you have now abandoned this argument. The Commission however seems to adhere to this line: recital (45) of the Asylum Procedures proposal and recital (28) of the Reception Conditions proposal refer only to an opt-in "in accordance with Article 4 of that Protocol", i.e. a post-adoption opt-in; there is no reference to an opt-in under Article 3. The implication is that the Government, not having opted in to the first recast proposals in January 2010, no longer have the right to opt in to these amended recast proposals in the next 3 months, so that if they wish to opt in they have to wait until after the proposals have finally been adopted.

We would be glad to know what has brought about your change of view. We would also like to know whether the Council Secretariat now share your view, and would therefore allow the Government to opt in if they so wished. If the Secretariat's view is still the same as that of the Commission, presumably they would not treat an attempt by the Government to opt in under Article 3 as valid.

WHAT LEGISLATION WILL APPLY TO THE UNITED KINGDOM IF IT DOES NOT OPT IN

These proposals, like their predecessors, take the form of a measure repealing and replacing the earlier measure. This Committee argued in its reports in March and December 2009 that if the Government did not opt in to the proposals, the provisions effecting the repeals would not be binding on the United Kingdom, so that the current measures would not be repealed for the United Kingdom and would continue to apply in their unamended form. The Government disputed this, stating that the repeals would be effective for all Member States, even for those which had not opted in.

The Commission now state in the recitals of both these documents that the existing Directive continues to be binding on the United Kingdom. It seems from paragraph 16 of each of the EMs that the Government now accept that they will continue to be bound by the existing Directives. However we understand that in recital (47a) of the version of the Asylum Qualification Directive that is due to be considered by COREPER on 7 July these final words have been omitted on the advice of the Council Legal Service. We would be glad to have your assurance that the omission of these words does not change the meaning, and that in your view all three Directives in the form in which they currently apply to the United Kingdom will remain applicable in that form notwithstanding their repeal and replacement in other Member States.

What is not clear is why it does not appear to concern the Government that reception conditions of asylum seekers in the United Kingdom will continue to be governed by EU law, albeit different EU law from that applying in other Member States. We would be glad to have your comments on this.

THE EFFECT OF ARTICLE 4A OF THE PROTOCOL

It is now the case that, if the other Member States believe that the failure of the United Kingdom to participate in the amending Directive renders it inoperable, they can disapply the existing measure. You say in paragraph 16 of the EMs that this is unlikely, since neither measure, in its amended or unamended form, creates reciprocal obligations between Member States. We accept this, but believe it is not the only consideration. In earlier drafts of the amended Dublin Regulation there were cross-references to the Reception Conditions Directive. For example, in the version in document 16929/08, Article 27 of the Dublin Regulation prescribed the minimum standards of detention of asylum-seekers, in particular minors, by reference to provisions of the Reception Conditions Directive. We pointed out that it was not clear whether this Article, which is of course directly applicable, would in the United Kingdom be setting standards of detention by reference to the original or the amended Reception Conditions Directive.

Phil Woolas, the Minister of State in the previous Government, said in a letter to me of 10 September 2009 that the Government considered the cross-referencing to be unacceptable, and that they would "be seeking to negotiate these cross-references out of the current proposal". We would be glad to know if these efforts were successful. If they were not, so that there are still cross-references, they will not make the Reception Conditions Directive inoperable, but might they not cause problems in the operation of the Dublin Regulation, which does of course create reciprocal obligations?

With regard to the substantive changes that the Commission has made to a number of provisions in both of the proposals, we note that the Government continue to have concerns about their potential impact on the operation of the United Kingdom asylum system, if adopted. We have in the past suggested that the best way to address these concerns is to opt in to the draft measures and attempt to influence the negotiations. We note in paragraph 14 of the two EMs the matters which you will take into account in deciding whether or not the Government should opt in to either or both of the revised proposals – or at least to attempt to do so, bearing in mind what appears to be the view of the institutions on the legality of an opt-in at this stage. We would be glad to know what decision you reach.

We would welcome your reply to these questions within the standard deadline of ten working days. Meanwhile we will keep both documents under scrutiny.

6 July 2011

Letter from Damian Green MP to the Chairman

Thank you for your letter of 6 July on these Directives. You raise a number of concerns linked to the operation of the UK's opt-in Protocol. I am pleased that the Committee agrees with the view expressed in the EMs that the opt-in applies. On the related issue of the alleged inconsistency of the Government's approach towards these directives and that taken towards proposals for the IT

Management Agency I recall that this issue has arisen previously in correspondence between us in connection with proposals to recast the EURODAC Regulation. As explained in my letter of 19 November 2010 on the EURODAC proposal (document 14919/10) our view is that although the IT Management Agency proposal presented in March 2010 included extra elements, these were not elements within Title V of the Treaty on the Functioning of the European Union (TFEU) to which the UK's opt-in Protocol applied. The new elements were Schengen elements and as such fell outside the scope of the Title V TFEU opt-in Protocol. In contrast the changes to the proposed Asylum Procedures and Reception Conditions Directives, like those relating to EURODAC, when compared to the earlier versions are wholly within the scope of Title V of Part 3 to the TFEU, meaning the opt-in was triggered.

You also point out that the Recitals on the UK's participation refer to the possibility of our opting in post-adoption under Article 4 of the opt-in Protocol rather than Article 3. The wording of the Recitals has not been discussed in the Council Working Group, indeed the current Polish Presidency has said it will not consider the Recitals until basic agreement has been reached on the Articles themselves. But given their reactions to our position on EURODAC, mentioned above, the Government finds it significant that neither the Commission nor the Council Secretariat has dissented when the UK's position regarding the application of the opt-in to these proposals has been set out in the recent Council Working Groups. For this reason we do not believe that the wording in the Recitals should be taken as suggesting that the Commission does not accept that we could opt in under Article 3 of the Protocol on the basis that the proposals are new, but I should add that in the event that we opt-in we would seek to have the Recitals amended to reflect the correct position.

Turning to Article 4a of the Protocol, which allows us to be ejected from a measure if we do not opt in to a proposal that amends it and that decision makes the measure inoperable for the other Member States, we note that there is no provision for us to be ejected from another measure altogether on the grounds that our failure to opt in to a completely different instrument has made that measure inoperable. Such an interpretation would be stretching the meaning of Article 4a and we consider it unlikely that the Commission would be able to propose our ejection in these circumstances.

Even if it were legally possible to do so, the Commission would face considerable political difficulties in seeking to eject us from the Dublin and EURODAC Regulations as a result of our not participating (if that is the decision we take) in these Directives. The existing Dublin and EURODAC Regulations extend to Ireland, although that country does not take part in the current Reception Conditions Directive. Dublin and EURODAC have also been extended by agreement to Denmark, Iceland, Norway, Switzerland and Liechtenstein (although not yet operational in the latter), none of which take part in the existing "minimum standards" Directives on asylum or would be entitled to take part in the Directives currently under negotiation. So I believe that the Commission would have great difficulty arguing that participation in Dublin and EURODAC necessarily requires the countries taking part also to be bound by these Directives. We have, however, attempted to remove cross-references to the Directives from the Dublin proposal during negotiations and have been successful in removing many, for example those that suggest that Member States must be complying with the Reception Conditions Directive in its entirety or risk having transfers suspended.

On the question of the possible impact of a differently worded Recital (47a) of the Qualification Directive regarding the terms of its repeal and replacement I can advise you that the Government considers that that the UK will remain bound by the Directive in the form in which it currently applies. This is because the texts of the relevant articles in the proposals under negotiation are effectively the same. In answer to your next question about the possible consequences of having reception conditions in the UK governed by different EU law from that applying in other Member States we do have concerns about remaining bound by a residual piece of legislation, but we would need to weigh these concerns against the consequences of being bound by the more detailed provisions in the new Directive if we opted in to it. As you have noted we have concerns about the potential impact of a number of provisions in the proposals on the operation of the UK's asylum system if adopted. Opting in and then seeking to influence the negotiations, as you suggest, is an option, however, as part of the decision making process we also have to consider the risks associated with that option, as if we did opt in we would be bound by the Directives even if we failed to negotiate out the elements of major concern.

28 July 2011

Letter from Damian Green MP to the Chairman

I am writing to inform you that the Government has decided not to opt in to either of these Directives.

In my Explanatory Memoranda of 20 June, I set out a number of concerns that the Government had with each of the proposals. I will not repeat all these concerns, but you will know that we felt that the draft Procedures Directive would over-regulate our asylum system, and would threaten our existing procedures for accelerating the consideration of asylum cases (the Detained Fast Track). We were also concerned that it would place unnecessary restrictions on our ability to make appeals against the refusal of clearly unfounded asylum claims non-suspensive (that is, capable of being exercised only after the applicant leaves the UK).

Turning to the draft Reception Conditions Directive, we were concerned that the restrictions on detention- in particular the requirement that all decisions to detain be authorised by a judge within 72 hours- would place an unacceptable financial and administrative burden on the UK Border Agency and the Courts, and were unnecessary when (as in the UK) detainees already have the right to challenge the legality of their detention or to apply for bail. We were also particularly concerned about the requirement to grant asylum seekers access to the labour market after six months, which we feared would act as a “pull factor”, encouraging unfounded asylum claims from people who did not need protection but wished to be able to work.

In your letter of 6 July, you reminded me that your Committee has previously suggested that the best way to address our concerns about the proposals would be to opt in to them and seek to influence the negotiations and have them amended. It is true that our discussions with other Member States have indicated that many share our concerns. If we opted in it is therefore likely that we would obtain some amendments to them that might make them less harmful from our viewpoint.

However, the Directives are subject to the EU’s ordinary legislative procedure, which includes co-decision with the European Parliament. The Parliament has not yet considered the proposals, but in discussions on earlier proposals under the second phase of the common European asylum system (including the first drafts of these proposals) it has taken a position much closer to that of the Commission than to that of the majority of Member States.

Even if we are able to persuade other Member States to agree with our concerns about the proposals, the Directives that are finally agreed are likely to be a compromise between the position of the Member States and that of the Parliament. This creates a real risk of the eventual outcome, by which we would be bound if we had opted in, including measures that we could not accept.

We have therefore not opted into the Directives. We will, however, remain engaged in the negotiations on them to protect the UK’s interests in those aspects, such as the provisions on detention that could influence the asylum measures in which we do take part- particularly the draft “Dublin III” Regulation. We will also work, as far as we can, with other Member States in the negotiations to ensure that the new Directives are as workable as possible for those Member States that are participating in them. I will update the Committee on the negotiations as they progress.

The Government will communicate this decision to the House of Lords in a Written Ministerial Statement, once the Parliamentary Recess has ended.

19 September 2011

Letter from the Chairman to Damian Green MP

Thank you for your two letters of 28 July and 19 September 2011 which were considered together by the Home Affairs Sub-Committee of the House of Lords European Union Committee at a meeting on 12 October 2011.

We are glad now to be in agreement that the United Kingdom opt-in applies to these Regulations. We hope that you will be successful in persuading other Member States to amend the recitals so that they refer to Article 3 of the Protocol; the failure of the Government to take any action will only be construed as a failure to opt in if the other Member States agree that Article 3 is applicable.

On Article 4a of the Protocol, we think you may have misunderstood the point we were making. We pointed out that the failure of the United Kingdom to opt in might render another measure – the Dublin Regulation – inoperable. We did not say that these were grounds on which the United Kingdom could be ejected; on the current wording of Article 4a, plainly it could not. What we were pointing out is that other Member States may be led to think that there should be grounds for

ejecting the UK if its failure to opt in makes any measure inoperable, and not only the measure which has been amended. This however would require an amendment of the Protocol.

We are glad that the Government agrees “that the UK will remain bound by the [Qualification] Directive in the form in which it currently applies.” However you add: “This is because the texts of the relevant articles in the proposals under negotiation are effectively the same.” We do not understand this. The similarity of the current and amended texts may be a reason for not being concerned about the change, but is surely irrelevant to the legal question whether or not the current text continues to apply. If the current text continues to apply, this can only be because the provision repealing it does not apply to the United Kingdom; the content of the amended text cannot affect this. We would be glad to have your confirmation that this is also your view.

It is helpful to have your explanation, in your letter of 19 September 2011, of the reasons why the Government has not opted in to either Directive. The result, as we understand it, will be that the United Kingdom will be bound by the amended Regulations on asylum jurisdiction (Dublin II and EURODAC), but not by the three amended Directives (Qualification, Procedures and Reception Conditions). In the case of those three Directives the United Kingdom will remain bound by the existing versions, while the amended versions will apply to the other Member States. We would be glad to have your confirmation of this. However we do not believe this is a satisfactory outcome. Even if the United Kingdom succeeds in eliminating the cross-references between the texts of the Regulations and Directives, it cannot fail in the future to lead to complications, some perhaps unforeseen, as the asylum systems applying in the United Kingdom continue to diverge from those applicable in the other Member States.

We would be glad to be informed of the position adopted by Ireland on these opt-ins.

We would welcome a reply within the standard deadline of ten working days. Given the importance of these documents, we will keep them both under scrutiny.

12 October 2011

Letter from Damian Green MP to the Chairman

Thank you for your letter of 12 October. I will respond to your points in the order in which you made them.

You ask that the Government seek amendments to Recital 45 of the Procedures Directive and Recital 28 of the Reception Conditions Directive to make it clear that Article 3 of our opt-in protocol is applicable to these measures and that we could have chosen to opt in within the three month period that followed their publication.

I do not consider this to be necessary now that the three month period has passed without our having opted in. We no longer have the right to opt in under Article 3 and the only way in which we could now choose to participate in the Directives would be by opting in post-adoption under Article 4. It is therefore right that the Recitals now refer solely to Article 4.

I am grateful to you for clarifying the point you were making about Article 4a of the Protocol and am pleased that you agree with our interpretation of the current wording of that Article.

We are not aware of any demand from other Member States or the EU Institutions for Article 4a to be amended to allow us to be ejected from a measure on the grounds that our failure to opt in to another measure makes the first one inoperable.

It would in any case be extremely difficult to argue that our decision not to opt in to these Directives makes the Dublin Regulation inoperable. As I said in my letter of 26 July, that Regulation currently applies to Ireland, which does not take part in the existing Reception Conditions Directive. It has also been extended to Denmark, Iceland, Norway, Switzerland and Liechtenstein (though is not yet operational in the latter), although these countries are not bound by any of the existing “minimum standards” Directives and will not be participating in the measures replacing them. The Dublin Regulation operates perfectly well with these countries so I do not see how our decision not to take part in the replacement Directives on Procedures, Reception Conditions and Qualification could possibly be seen as making it inoperable in respect of the UK.

I am sorry that you did not find my letter of 26 July sufficiently clear on the consequences for our continued participation in the Directives being repealed by these measures of the difference in wording between the recital on the participation of the UK in the recast Qualification Directive that is currently under negotiation, and the wording of the recitals in these measures. What I meant was

that the different wording of the recitals has no material effect here because the wording of the operative Articles dealing with the repeal of the earlier Directives is the same in all three measures.

Article 32 of the draft Reception Conditions Directive, Article 40 of the draft Qualification Directive and Article 53 of the draft Procedures Directive all provide that the underlying measures are repealed, in each case, "for the Member States bound by this Directive". That will make it clear that the intention of the EU legislature is not to remove the underlying Directives from the *acquis* altogether, but only from the *acquis* as it applies to the Member States taking part in the new measures. That does not include the UK, so I agree with you that the repeals will not apply to us.

You are of course correct to say that the consequence of our decision not to opt in to these Directives (and of the previous Government's decision not to opt in to the replacement Qualification Directive) is that we will be bound by different EU legislation on asylum than will the other Member States. I note your view that this is not a satisfactory situation, but consider that the consequences for the UK of opting in to the Directives as drafted and being bound by the unnecessarily onerous obligations that they lay down would be still less satisfactory. I therefore believe that the Government's decision not to take part in them is the right one for the UK.

Finally, I can inform you that Ireland has also not opted in to these Directives.

24 October 2011

Letter from the Chairman to Damian Green MP

Thank you for your further letter of 24 October 2011 which was considered by the Home Affairs Sub-Committee of the House of Lords European Union Committee at a meeting on 9 November 2011.

We are grateful for your very full explanation of the policy issues. We note your view that the fact that the Government has not opted in to these two Directives should not cause difficulties with the operation of the Dublin Regulation, and we hope that you will be proved right.

We are also grateful to you for pointing out that the repeal provisions now expressly state that the repeals are only "for the Member States bound by this Directive." As far back as March 2009 we said in our report that, even without those words, this was the effect of those provisions, because they were contained in a measure which did not apply to the United Kingdom. The Commission agreed with us; your predecessors at the Home Office disagreed. We are glad to see the matter resolved by the express addition of these words.

We remain concerned about recital (45) of the draft Procedures Directive, and the equivalent provisions in the other two Directives. We accept that a reference to Article 3 of Protocol 21 is no longer appropriate, since the United Kingdom has not opted in. But it is important that the recitals should state as a fact, and not simply by implication from the reference to Article 4, that the new Directives do not apply to the United Kingdom. The present draft does not do so.

So far as we are aware, every other measure, whether pre- or post-Lisbon, where the United Kingdom had an opt in which it did not exercise, has a recital reading:

In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by or subject to its application.

This is the provision which is needed. It can of course then end "... and continue to be bound by and subject to the application of Directive 2005/85/EC" (and the equivalent numbers for the other Directives). (In the case of pre-Lisbon measures the reference is of course to the TEC rather than TFEU.)

The draft recital does cite Article 4a(1) of Protocol 21. This provision makes clear that the Protocol, and in particular Article 4a itself, governs measures, like these Directives, amending a measure which the United Kingdom has already opted in to. It is however irrelevant to the question whether the Directives apply to the United Kingdom. A reference to Article 4a(1) may be useful to put beyond doubt the fact that the Protocol applies to these Directives, but in our view a reference to Articles 1 and 2 of the Protocol is essential to make clear that the Directives do not apply to the United Kingdom.

Since there are no policy issues outstanding, we clear both these documents from scrutiny. We would however welcome a reply on this drafting issue within the standard deadline of ten working days.

9 November 2011

Letter from Damian Green MP to the Chairman

Thank you for your letter of 9 November.

I agree with you that the Recitals to these two Directives should state as clearly as possible that the UK is not participating in them. The existing drafts do state that we “are not bound by” each Directive. But the customary wording to which you refer, stating that we “are not taking part in the adoption of [the Directive], and are not bound by it or subject to its application” would be clearer and more consistent.

We will therefore seek to have the Recitals amended when they are discussed in the negotiations.

I understand that the Qualification Directive will contain the wording that we will now be seeking. We will provide more details of that once formal agreement between the Council and Parliament on that Directive is reached, which we expect to happen shortly.

21 November 2011

BULGARIAN AND ROMANIAN NATIONALS' ACCESS TO THE LABOUR MARKET

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

I am writing to inform you that I am today announcing the Government's decision to extend the current restrictions on Bulgarian and Romanian nationals' access to the labour market to the end of 2013.

The transitional restrictions applied to Bulgarian and Romanian workers have been in force since 1 January 2007. Under the terms of Bulgaria and Romania's Accession Treaty, these restrictions may be extended beyond five years if to do otherwise would result in serious labour market disturbance. The Government has sought advice from the Migration Advisory Committee on whether there is a risk of such labour market disturbance in the event of the restrictions being lifted at this stage. The Committee, in its report published on 4 November, concluded that the UK labour market is currently in a state of serious disturbance and that lifting the current restrictions at this stage would risk negative impacts on the labour market.

The Government has, in the light of the Committee's advice, decided in accordance with paragraph 5 of Annexes VI and VII of the Treaty concerning the accession of Bulgaria and Romania to the EU to retain the current measures regulating access to the labour market. We believe that maintaining the current restrictions is a proportionate means of addressing any disturbance or threat. I am notifying the European Commission of this decision and I am taking the necessary legislative action to extend the period of application of the current Regulations.

On a related point, you will wish to be aware that the Commission published on 15 November a report to the Council on the functioning of the transitional arrangements on free movement of workers from Bulgaria and Romania (document 16923/11). I will provide the Committee with an Explanatory Memorandum in respect of this document shortly.

23 November 2011

COMMUNICATION ON MIGRATION (9731/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 8 June 2011. They also considered again your letter of 20 April 2011 concerning the implications for migration to the EU of the current events in Arab countries. We are grateful for the information in that letter and for your comprehensive Explanatory Memorandum, and

note your detailed views on a number of the initiatives which are covered in the Communication, which we consider to be a significant document.

In particular, we consider future developments regarding the governance of the Schengen Area, including the possible resurrection of internal border controls on a temporary basis, to be extremely important as they will undoubtedly have implications for the management of the UK's own borders.

Significant elements of the Communication have also already been, or are, subject to scrutiny by us. Where this is not the case we look forward to considering the individual measures as and when they are brought forward by the Commission.

In the meantime, we are content to clear this document from scrutiny.

No reply to this letter is expected.

8 June 2011

DRUGS: COMMISSION COMMUNICATION (15983/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 23 November 2011.

As you know, the Committee is currently conducting an inquiry into the EU Drugs Strategy. This Communication is highly relevant, and we will therefore be keeping it under scrutiny for the duration of the inquiry.

We do not require a reply to this letter. However the Committee are looking forward to hearing oral evidence from you on Wednesday 7 December 2011, when they will certainly have questions relating to this Communication.

24 November 2011

ENISA: EUROPEAN NETWORK AND INFORMATION SECURITY AGENCY (14358/10, 14322/10)

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

Following the Telecommunications Council on Friday May 27 in Brussels I am happy to inform you that the 18-month extension of ENISA's current mandate was formally adopted unanimously and without discussion. The negotiations on the new Regulation continue.

I would like to draw your attention to the post-Council statement made by Ed Vaizey, Minister for Culture, Communications and Creative Industries, that highlighted the pressure from the Commission on the upcoming Polish Presidency for a First Reading deal with the European Parliament. As anticipated there was resistance from Greece and her allies on the planned five-year mandate set out in the new Regulation which officials here are working to counter.

The European Parliament also held a formal hearing on ENISA late last week, where clear indications were made by Members of the Parliament that they would be pushing for the Agency to take on operational functions (on network monitoring and response) – something which I would seek to oppose strongly.

I anticipate that there may be a formal European Parliament position by the end of the year, and I look forward to updating you on this in due course.

14 June 2011

Letter from the Chairman to Mark Prisk MP

Thank you for your letter of 14 June 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 29 June 2011. We are grateful to you for keeping us up to date with developments.

We agree with you that there should be no extension of ENISA's functions to cover operational matters, not least because geographically it would be singularly ill-suited to directing such matters. You will recall that in our March 2010 report on Protecting Europe against large-scale cyber-attacks we were critical of the location of ENISA in Heraklion, a view I repeated in my last letter to you of 1 December 2010. In our report last month on The EU Internal Security Strategy we recommended that the proposed new Cybercrime Centre should be located within Europol rather than ENISA, and that any additional resources should be devoted to this. Consequently we fully support the Government's argument that ENISA's mandate should be extended by no more than five years.

No reply to this letter is required, but we look forward to further updates as the negotiations progress.

29 June 2011

EUROPEAN AGENDA FOR THE INTEGRATION OF THIRD COUNTRY NATIONALS (13290/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 14 September 2011.

We note your approach to the Communication's recommendations. While we consider that some degree of national coordination is desirable regarding integration policy we further consider that the document's lack of reference to the potentially valuable role of the local, voluntary and private sectors in this area is unfortunate. In this respect, we would appreciate updates on your efforts to mitigate this omission during the documents' consideration in the JHA Council meetings in September and December this year.

In the meantime, we are content to clear this document from scrutiny.

No reply to this letter is expected.

14 September 2011

EUROPEAN STATISTICS ON SAFETY FROM CRIME (11664/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 14 September 2011.

It seems to us that the primary, indeed the only, purpose of the Regulation is to allow the collection of uniform statistics. We do not believe it is relevant to the legal base that those statistics may be used to inform policy-making in the field of justice and home affairs. We do not therefore agree that the Government should consider an attempt to have the legal base amended by the addition of a provision from Title V of Part Three TFEU. We assume that the Government's purpose in attempting to make this change would be to give the United Kingdom the option of not opting in to the Regulation. We believe it would be unfortunate if the resulting statistics were uniform for the whole EU except the United Kingdom, Denmark and (possibly) Ireland.

While the continued use of data extracted from national surveys inevitably gives results which are not uniform and comparable across all Member States, we are concerned that this may also be true of the survey envisaged by the Regulation. We hope that, in the negotiations on this draft Regulation, the Government will ensure that the result provides genuine value for money.

Although we do not require an immediate response to this letter, we would be glad to hear from you in due course on the progress of negotiations, and in particular on whether or not the legal base is amended. If it is, we would expect a supplementary explanatory memorandum dealing with the question of the United Kingdom opt-in. Meanwhile, we are keeping this document under scrutiny.

14 September 2011

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 14 September regarding the above Regulation. You asked to be kept informed on the progress of negotiations and in particular on questions about the legal base of the Regulation.

Having given the issue further consideration, I agree with your Committee that the legal base of the Regulation should not be challenged.

You also expressed concerns about apparent lack of comparability of the proposed survey. I too share your concerns about the need to ensure the result provides genuine value for money.

There has been one meeting of the European expert level group since publication of the proposal at which some delegations expressed concerns that the results of the proposed survey would not be comparable and that the costs imposed did not represent reasonable value for money. The UK supports this view and argued for the proposed survey to have a clearer focus on issues of relevance with respect to domestic and EU policy. A further expert group meeting is scheduled and we expect negotiations to run for some time. I will keep you informed of progress.

11 October 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 11 October 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 October 2011.

We are glad that you now agree that the legal base of the Regulation should not be challenged. We are also glad that you and other delegations share our view of the importance of ensuring that the cost imposed represents value for money.

We clear the document from scrutiny. We do not require an immediate reply to this letter, but would be glad to be kept informed of the progress of negotiations, as you suggest.

19 October 2011

EVALUATION OF EU READMISSION AGREEMENTS (7044/11)

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

Thank you for your letter of 24 May 2011. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 8 June 2011.

The Committee notes your further reasons for choosing not to participate in the negotiating mandate for the EU-Belarus readmission agreement. However, we remain unconvinced about your approach to this matter.

No reply to this letter is expected.

8 June 2011

EXPLOSIVES PRECURSORS (14376/10)

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

I am writing to update you on the proposed EU Regulation on the marketing and use of explosives precursors. I attach a copy of the UK Impact Assessment. This Impact Assessment looks at the

economic costs of implementing the Regulation, as originally proposed by the European Commission in September 2010. Once a Regulation is agreed, a further UK impact assessment will be carried out.

I estimate that the Regulation will affect between 20,000 and 50,000 business premises (14,000-34,000 separate enterprises) in the UK. This is based on the assumption that a fraction of many different industries will be affected. However, due to the niche use of some of the concentrate chemicals, it is likely that only a small selection of businesses such as some specialist retailers may be affected. This would result in the estimated costs to businesses being far lower.

The cost to UK business comes from administrative costs and profit loss, estimated at approximately £30M per annum. The majority of this is an administrative time cost which includes checking products and notification of suspicious transactions. This administrative burden will not necessarily result in financial outlay. Of this total, costs to individual businesses will vary depending on whether they are wholesalers, retailers or producers, but on average will be around £2000 per business premise in the first year and £1000 per premise thereafter.

The greatest cost to public authorities would come from running a licence scheme. Evidence from existing schemes in the UK suggests that the economic cost of running a central licence scheme will be around £500,000 per annum, based on a worst case scenario around the numbers of licences issued. This equates to a financial outlay of up to £775,000 per annum (including staff taxes and pension costs). This cost includes staffing a unit to issue the licences and the cost of compliance officers to monitor retailers and industry adherence to the law.

CHANGES TO THE REGULATION TEXT

The attached document [not printed] is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for sharing of EU documents carrying a limited marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain.

Since negotiations started in January this year, various changes to the text have been proposed. Concerns were expressed by some Member States around the cost and burden of a licence system to allow members of the public to purchase concentrated chemicals. As a compromise, a proposal was made to allow Member States to choose between a licence system or a registration at point of sale system. The latter would be similar to that already employed in the UK under the Poisons Act where customers are required to give their details and sign a register when purchasing restricted products. For those Member States which have no public market for the concentrated chemicals, a complete ban on above threshold concentrations could be employed. Such a ban would extend to import and transit through a country, as well as the restrictions in place under licensing - members of the public travelling through Europe would need to comply with the system in place in the country they are in.

The draft Regulation includes a safeguard clause. This allows Member States to react quickly to imminent threats to their National Security by being able to place restrictions on chemicals either already covered or not presently covered as an emergency action. Notification of such an action would then be made to the Commission and other Member States. Should the action be deemed justified by the Commission, they would use the powers invested in them under the delegated acts procedure to amend the Regulation. However, should they feel that the action made under the safeguard clause was not justified, the Member State would be bound to remove the new restriction. A recent amendment to this clause recognises that some Member States have existing national legislation that goes beyond the proposed Regulation. The amendment to the safeguard clause would allow existing legislation to remain in place. For the UK, this ensures that current control of chemicals legislation in place in Northern Ireland remains. The scope of the two instruments regarding the chemicals regulated differs and each should complement the other.

The draft Regulation also includes a Review clause. There has been much discussion around expanding the scope of the Regulation to include business to business transactions but many Member States, including the UK, have expressed concern that the impact of this has not been examined. Discussions with industry suggest that such an expansion would be costly and burdensome. The UK already has voluntary measures in place, working with industry to raise awareness of who is buying the chemicals. However, the Clause enables a review of the Regulation four years after it comes into force when the issue of expanding the scope is likely to be addressed. This will enable an assessment of the impact of expanding the scope to be carried out.

The original restriction around ammonium nitrate in the draft regulation was taken from the existing Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation. During

negotiations, it became clear that by placing ammonium nitrate in the new Regulation, there would be an inconsistency in that members of the public would now be able to apply for a licence to buy high strength ammonium nitrate (as opposed to a ban under REACH). To remove this ambiguity a suggestion has been made to leave the current provisions in REACH but monitor ammonium nitrate at all concentrations for suspicious transactions. The UK has no preference as long as the security restrictions around sales to the public remain as strict as those in REACH.

I also thought I would take this opportunity to update you on progress made following our response to your questions around access to ammonium nitrate. Progress on a voluntary agreement on the security of the nitrogenous fertiliser supply chain has been slow. With limited staff resource in the European Commission, efforts are currently focused on getting the explosives precursors Regulation finalised. However, this remains a priority for UK counter-terrorism security efforts and as a result we wrote at Ministerial level to Commissioner Malmström earlier this year stating our commitment to supporting an EU- wide scheme based on our existing and robust Fertiliser Industry Assurance Scheme (FIAS). From initial meetings held, we believe that there will be a good level of participation from the Europe-based fertiliser industry. We continue to engage with the European Commission to drive this work forward.

Following the terrorist attack in Oslo, we worked with industry to review our existing controls and schemes around ammonium nitrate fertiliser. We identified a number of areas for improvement and, as a cross government effort, have been working with our industry partners to make these improvements. However, through all our efforts, we must continue to balance the freedom of persons such as farmers to legitimately use ammonium nitrate fertiliser against the risk of misuse by a minority. At the same time, I recognise that attacks such as those in Oslo can only be prevented by tackling a range of issues, of which access to explosives precursors is only one. Outside the scope of this EU Regulation, work is being done to address other areas of concern such as extreme right wing and lone-wolf terrorism.

THE UK POSITION

I support the Regulation but recognise that it places a new regulatory burden on businesses. We remain committed to reducing this burden as far as possible and will endeavour to remove any unnecessary regulatory measures being placed on business where there is no contribution to security. As part of our commitment, any resulting legislation must be proportionate, avoiding unnecessary levels of bureaucracy and safeguarding against discrimination of members of the public with a legitimate use for some of the chemicals.

I have examined both licensing and registration at point of sale as options for implementation and favour the application of a licence scheme in the UK. Although overall this is a more expensive option than registration, it offers greater security benefits. The difference in economic costs to the retailer between licensing and registration of consumers is minimal with the difference in cost between the two systems being placed on the public authority.

I will continue to use voluntary approaches to raise awareness among retailers, industry and consumers to complement the efforts of the Regulation. This will include through the enhancement of existing industry partnerships such as those in the fertiliser sector.

Finally, the Regulation only places restrictions on sales to the general public and I recognise that this provides a potential vulnerability in the legislation regarding business transactions. However, the impact of expanding the scope to include business to business transactions has not been assessed either by the European Commission or in the UK IA. The proposed Regulation does include the monitoring of suspicious transaction to include business to business transactions. The inclusion of a review clause in the Regulation will allow us to examine the effectiveness of the current restrictions, with the option of expanding its scope to professional users once the impact of such a decision has been adequately assessed.

NEXT STEPS

The proposal was put for discussion at COREPER on 4 November, and the Polish presidency hope to start a trilogue with the European Parliament on 7 November. The discussion at COREPER and with the European Parliament will focus on three issues- the use of a dual system of licensing and registration, as outlined above, the placing of ammonium nitrate restrictions in the new Regulation rather than remaining in REACH, also outlined above, and the use of delegated acts by the European

Commission to make changes to the annexes of the Regulation. This last point has already been the subject of scrutiny correspondence and our position remains the same.

November 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter, undated but received on 8 November 2011, which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 16 November 2011. They were grateful for your very full explanation of the current position, and for the Impact Assessment and the latest draft of the Regulation. They had also heard about progress on this front from the Minister for Immigration when he gave evidence to them on 14 September 2011.

The estimated costs to industry of the licensing scheme proposed are certainly substantial, and cause us some concern, but the case for a Community-wide scheme of the sort under consideration seems to us compelling on security grounds. We are therefore prepared to accept your view that the expense is justified by the anticipated reduction in the threat to public security, and we clear this document from scrutiny.

It does however seem to us that an individual (like Anders Behring Breivik) who is not on a watch list and can set himself up as legitimate purchaser of explosives precursors would still not be caught by this Regulation. We do not require an immediate reply to this letter, but would be grateful for your views on this point in due course.

16 November 2011

FIREARMS TO BE USED IN COMPETITION AT 2012 GAMES

Letter from the Rt. Hon. Nick Herbert MP, Minister of State for Policing and Criminal Justice, Home Office, to the Chairman

I am writing to let you know that under the European Communities Act 1972, we are making a small change to our controls on firearms to facilitate European competitors in taking part in the 2012 Games.

The European Weapons Directive 1991 introduced the European Firearms Pass (EFP), a form of 'passport' for those who had been authorised by their own country to possess sporting firearms to travel with these to other states. Our own controls require all visitors wishing to possess firearms in the UK to obtain a British Visitors Permit (BVP) from our police, which includes providing evidence that they are trusted to possess firearms in their own country, for example a copy of their domestic hunting or target-shooting licence. However, when the UK adopted the 1991 Directive we required shooters from the EU to provide the police with an original EFP when applying for a BVP in order to enter the UK with firearms.

Even with advance notice of our requirements, this could cause substantial administrative problems for the police and competitors from the EU in the lead up to the 2012 Games. We are amending our controls so that the police can process applications for BVPs on the basis of a copy of an EU competitor's EFP, rather than the original. This is a minor deregulation, placing visitors from the EU in broadly the same position as those coming to the UK from outside the EU. The police are satisfied that the proposal is an administrative point and does not present any danger to public safety. A Statutory Instrument to achieve this has been laid before Parliament and will come into force on 1 October 2011.

The amendment is to be made under section 2(2) of the European Communities Act 1972. This is to improve the implementation of the 1991 Directive in the context of the 2012 Games, and in response to concerns from British EU target shooting organisations. We are satisfied that the 1972 Act is the most appropriate mechanism for achieving this change. The amendment is not specific to the Games themselves. However, we intend to consider the impact of the amendment as part of a wider review of how future controls might operate in relation to sports shooting following the 2012 Games.

1 September 2011

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

I am writing to inform you that the Regulation on the European Union (EU) IT Agency was adopted by the Council at the General Affairs Council (GAC) on 12 September. I attach the final text on which this decision was taken [not printed]. I also wish to inform you that the Government voted against the Regulation at the final vote in the Council based on a wider point of principle. I set out an explanation below. I am sorry that I have not been in a position to update you fully until now.

Overall, I am pleased to say that the UK has been successful in achieving its negotiating aims on the substance of the IT Agency Regulation. This includes full UK participation with voting rights on the Management Board of the Agency. This resulted from a legal solution that overcomes our “asymmetric” participation in the Schengen Acquis without drawing us into other elements of Schengen.

There was, however, a separate point of principle which was of concern to the Government in determining its final vote. This resulted from negotiations to secure a deal at First Reading between the Council and the European Parliament. The issue was that the location of the Agency has been specified within the main text of the Regulation - at the request of the European Parliament. While the Government does not have concerns in practice about the chosen location of the Agency (the administrative headquarters will be in Tallinn and the servers will be located in Strasbourg), we were concerned about the point of principle this raised. Typically, the decision on the location of Agencies is not included within the main text of EU legal instruments because they are a matter of common accord between Member States (and not subject to co-decision).

Other Member States initially shared the UK’s concern on this point of principle, but to mitigate the risk of precedent-setting, the Council agreed a Declaration at the June Justice and Home Affairs Council to accompany the Regulation stating that the inclusion of the location “in no way constitute[d] a precedent for deciding on the seats of EU agencies in the future”. On this basis, a Qualified Majority in Council was formed in favour of agreeing the text for a First Reading in the European Parliament. Despite the Declaration, however, the Government wished to register its displeasure at the inclusion of the location in the main body of Regulation. That is why, given this point of principle, we have felt it necessary to vote against the final text at the GAC. We have also explained our position in a short accompanying Minute Statement, which reads:

The United Kingdom (UK) is voting against the Regulation of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale IT systems in the area of freedom security and justice owing to the inclusion of Article 10(4), which specifies the seat of the Agency within the main text of Regulation.

Through its vote, the UK reaffirms its view and reiterates the position set out in the Council declaration that:

- The location of EU Agencies should continue to be made by common accord of the Representatives of the Governments of the Member States; and
- The inclusion of this text does in no way constitute a precedent for deciding on the seats of EU Agencies in the future.

Given that the Government was content with the Regulation in all other respects, it is disappointing that we were left unable to vote positively. However, it was important to record our disapproval on this point of principle and to reinforce the view that the inclusion of the location in the Regulation did not set a wider precedent

13 September 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 13 September 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 12 October 2011.

We are glad that, after all the vicissitudes involving the different drafts of this proposal before and after the entry into force of the Treaty of Lisbon, and in particular over the United Kingdom opt-in, it has finally been adopted, and we look forward to the agency beginning its work in due course.

We are however perturbed that the Government saw fit to vote against adoption of the Regulation by the Council. We believe the reason you give did not justify this, and that this Committee should have been consulted before you took this step.

It is true that, as you say, it has not in the past been the practice to include in the instrument setting up an agency a provision on its location. It was this which, in the case of ENISA, allowed the Greek Government, once Greece had been named as host of the new agency, to locate it in Heraklion without further discussion with other Member States. This decision was criticised by the Committee in our report *Protecting Europe against large-scale cyberattacks* (18 March 2010, 5th report, session 2009-10). It seems to us that reaching prior agreement on the location of a new agency, and including it in the instrument setting it up, is a good way to avoid such problems in future.

Your objection to this seems to be simply that, because the Regulation is adopted by co-decision, the European Parliament thereby acquires a say in the location of the agency; and you say that the provision resulted from negotiations to secure a First Reading deal. We do not understand this. The first Commission proposal, in June 2009, that is to say over two years ago, included a provision reading: "The seat of the Agency shall be [...]". It was thus clear from the outset that, once agreement had been reached on location of the seat, this would be set out in the Regulation. The amended proposal of March 2010 contained an identical provision. We do not see how you can say that the provision results from a First Reading deal, and would be grateful for your explanation.

Nor do we see why, even if the Government objects to this provision, it should regard it as a matter of such high principle as to require it to vote against the adoption of the Regulation. But if this was the case, we would expect to have been told this at the outset, to allow us to put the contrary argument. However neither the previous Government's EM of 14 July 2009, nor the EM which you signed on 25 May 2010, give any indication of the Government's views. We would be glad to know why we have been informed of them only now.

We would be grateful for a reply to this letter within ten working days.

12 October 2011

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 12 October in response to my letter of 13 September about the IT Agency Regulation (8151/10).

I am sorry that we did not draw to your attention our eventual concerns on the location provision ahead of the final vote on the Regulation.

Throughout the negotiating process our primary concern had always been to secure and maintain the UK's participation in the Regulation in light of the legal complexities posed by the nature of our participation in the Schengen acquis. Although a holding provision was, as you say, included within the legal status article in earlier versions of the text, it was not apparent that this would give us cause for concern until the final phase of the negotiating process, when the Council, European Parliament (EP) and the Commission sought to agree a First Reading deal.

Until the First Reading negotiations, there had been a qualified majority within Council in favour of a mechanism that would secure agreement amongst Member States on the location, but simultaneously preserve the principle that the seats of Agencies should remain a matter for Member States. With that view prevalent in the Council we had not identified the holding provision as a risk.

The view in Council shifted when it became clear that, in order to conclude the negotiations at First Reading, the Council would need to compromise on this issue with the EP. The EP requested the inclusion of the physical location of the Agency in the final version of the text to agree a deal at First Reading. It was at this stage that, with closer analysis of the implications, we concluded that we needed to take a principled stand, culminating in our vote against the Regulation at the final stage of its adoption.

With the benefit of hindsight, we should have identified the risk that the text could ultimately specify the location of the Agency at an earlier stage. At the time, however, we did not believe there would be a departure from established practice until the First Reading negotiations played out and the qualified majority in Council collapsed.

On the point of principle, the Government, as I know you are aware, has a commitment to ensure that there will be no transfer of power or competence from the UK to the EU over the course of this Parliament. This includes a rigorous guard against power or competence creep in any form. We

ultimately took the view that for the EP to gain co-decision on an issue which had previously been agreed by common accord among Member States would be a form of competence creep, which would constitute a precedent for the future.

This is not to say that the location of Agencies cannot or should not be agreed in advance of finalising the relevant instrument - simply that this process should happen alongside the preparation of the instrument, not within it. I completely agree with you that it is critical to ensure that there are sensible and rigorous processes in place for agreeing locations that are fit for purpose. The UK is calling for a set process for Agency creation, to ensure that there is a genuine requirement for any new Agency, and that location choices are made according to that Agency's needs and present value for money. This should include a transparent and city-specific bidding system for allocations of any future Agencies.

To conclude, in the case of the IT Agency we should have identified and highlighted this issue to you sooner. I am sorry that, on this occasion, that did not happen. We will ensure that future Explanatory Memoranda and correspondence address this issue when it arises.

31 October 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 31 October 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 9 November 2011.

We are grateful to you for your full explanation of how this matter came about. We agree that this issue should have been identified and highlighted sooner, and we are grateful for your undertaking that this will happen in the case of creation of future agencies.

We do very much agree with you that, whatever process is involved in the decision on the location of an agency, and whatever the involvement of the European Parliament, it must result in the choice of seat which is best suited to the particular operational requirements of the agency. We therefore believe that these considerations, rather than the procedure by which that choice is reached, are the matter of greatest importance. As you know, we have always criticised the way in which the current system has worked, in particular in the siting of the seat of ENISA in Heraklion. We therefore support your call for a new process for agency creation, including a transparent and city-specific bidding system for allocation of any future agencies.

We do not require a reply to this letter.

9 November 2011

GRANTING AND WITHDRAWING INTERNATIONAL PROTECTION (14959/09, 8526/11)

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

Thank you for your letter of 10 May 2011 informing us that the Government had opted in to the draft PNR Directive. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 8 June 2011. The Sub-Committee also looked at the Ministerial Statement you made the same day to the House of Commons.

You will be aware that in its report, published on 11 March 2011, the Committee encouraged the Government to opt in to the Directive, and that the House of Lords agreed with this recommendation in the debate on 17 March. We are therefore of course very pleased that the Government has opted in, and will be able to play a full part in the negotiations.

At the end of the debate Lord Hannay of Chiswick, the Chairman of the Sub-Committee, said: "We are keeping the Directive under scrutiny because there are many features of it which still need serious examination, in particular the purposes for which the data can be used, the length of time for which they can be kept, and the adequacy of the data protection provisions." The Sub-Committee has now therefore looked at the substance of the text in the form in which the draft was published.

The data protection provisions have been criticised by the European Data Protection Supervisor, by the UK Information Commissioner, and by the Information Commissioners of the Member States

meeting as the Article 29 Working Party. It seems to us that the adequacy of these provisions is likely ultimately to depend on whether a new Data Protection Directive is negotiated in time, and whether it has stronger and more satisfactory provisions than the current Framework Decision. This is something which causes us concern, since it is possible that these conditions will not be fulfilled. We are also worried that there seems to be very little control over which security authorities are to be nominated by Member States as their Passenger Information Units, and whether those authorities will have adequate security and data protection measures. This may be of particular concern in those newer Member States which do not have a tradition of protection of individual personal data. These are all matters which we hope the Government will pursue in the course of the negotiations.

As you know, the Committee supports the Government in its attempt to extend the Directive to intra-EU flights. We understand that this is meeting with some success in the negotiations.

We are keeping this document under scrutiny. While we do not require an immediate reply to this letter, we would be grateful for full reports on the progress of the negotiations, in particular on those aspects we have raised in this letter.

8 June 2011

Letter from Damian Green MP to the Chairman

Thank you for your letter of 8 June.

You are correct to say that it is the draft Directive, rather than the negotiations themselves, that the UK has not opted in to. I confirm that we have continued to take part in the negotiations on this instrument, and that we will remain engaged in them whether or not we opt in to the amended proposal that the Commission brought forward on 7 June.

Although the Government does not support a common asylum policy involving further legislative harmonisation, we recognise that it is important to protect the UK's interests in those aspects of the Directive, such as the treatment of applicants with special needs that are likely to influence the measures in which we do take part- particularly the draft "Dublin III" Regulation. We are also committed to working with other Member States in the negotiations to ensure that the new Directive is as workable as possible for those Member States that are participating in it.

The Explanatory Memorandum that I submitted on 20 June gives the Government's view on the effect of Article 4a of Protocol 21 should we not opt in to the amended Directive of 7 June, though I am not at this stage able to say what the Government's opt-in decision will be.

22 June 2011

JHA OPT-IN PROTOCOL

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

I am writing on behalf of the Justice Secretary and myself to set out the Government's approach to the interpretation of the JHA Opt-in Protocol – specifically, in what circumstances we consider that the opt-in is available.

This complex issue has been the subject of considerable Parliamentary interest, as has been demonstrated through correspondence with, and appearances in front of, your Committees.

In answer to some of your letters and questions we said that we were reviewing the UK approach in this area. This review has now been completed, and I am therefore writing to explain our position.

We believe it is vital for UK interests that the Opt-in Protocol is applied in a consistent manner. In the majority of proposals presented by the Commission and eventually adopted by the Council and European Parliament the availability of the opt-in is clear. However, there have been a number of cases in recent months of measures which include JHA content, but not as their primary purpose. This content has varied from provisions imposing legally binding obligations to provisions reflecting political commitments or containing declaratory statements. Where these provisions are part of a larger measure which concerns non JHA matters, and the JHA provisions can be regarded as ancillary, the position of the Commission is generally that a JHA legal base need not be cited due to the

“predominant purpose test”; this is the general rule that a measure need only cite the legal base which corresponds to the “predominant purpose” of the measure in question.

In our view, however, content which imposes JHA obligations is different because of the need to ensure that the right of the UK and Ireland to decide whether or not to opt in is respected as set out in our Protocol, which has equal status to the Treaty. On this basis our view is that a JHA obligation in a measure should never be regarded as ancillary for the purpose of the predominant purpose test and will always justify the citation of a JHA legal base. It is clear that in such circumstances we consider that the UK is not bound by a measure which creates JHA obligations unless we have opted in pursuant to the Protocol. Furthermore, we consider that this is the case irrespective of whether a JHA legal base has been cited. On this basis, if we are unsuccessful in arguing that a JHA legal base should be cited in a measure we would nonetheless assert that the opt-in applies where the measure creates obligations in the JHA field.

Conversely, we do not consider that the opt-in is available, nor would we press for the insertion of a JHA legal base, if a proposed measure contains political commitments or declaratory statements which impose no JHA obligations.

We have also reviewed the UK position on the issue of exclusive external competence, and have decided to depart from the policy we inherited from the previous Government. We consider that the opt-in does apply to all measures containing JHA obligations, even where the EU has exclusive external competence in relation to those obligations based on the adoption of internal JHA rules that bind the UK. This means that if an internal EU rule, to which the UK previously opted in, was subsequently extended to a third country we would consider that the opt-in applies to the extension of that measure and would reserve the right to decide whether or not to participate in the new agreement, even if the EU was exercising exclusive external competence.

We are aware that the Parliamentary Committees have argued that the opt-in is only available if a JHA legal base has been cited. Despite this, we believe that the approach I have outlined best protects the interests of the UK in seeking to retain the widest possible freedom of choice in relation to EU measures containing JHA obligations. We also believe that it reflects the wording and purpose of the JHA Opt-in Protocol, which makes clear that if a measure is “pursuant” to Title V then the opt-in is available and the UK can choose whether or not to participate.

I hope you are satisfied with this explanation of our policy, but I would of course be very happy to answer any further questions you might have on this matter.

In the meantime I would like to take this opportunity to assure you that we will continue work with the EU Institutions to increase understanding of the operation of the JHA Opt-in Protocol and acceptance of the position of the UK on this matter. Through these efforts we hope to avoid unnecessary friction over these difficult issues.

Finally, I would like to thank you and your fellow Committee Members for your detailed consideration of EU JHA affairs. While we will not always agree, you play a crucial role in helping us explore some of these very complex and important issues.

3 November 2011

MIGRATION: MOBILITY AND SECURITY WITH THE SOUTHERN MEDITERRANEAN COUNTRIES (10784/11)

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

I am writing regarding a question that was raised during the European Union Select Committee on 4 May. During the session, the Earl of Sandwich asked David Lidington MP, Minister for Europe to comment on the effects of migration in relation to the current situation in Libya. He was particularly keen for further information on the possibility of having a 'Frontex 2' with a wider membership beyond the Schengen area, in order to deal with immigration, and in particular illegal immigration. This has been passed to me to provide a response to the Committee.

Since the turn of the year the EU has seen over 40,000 irregular migrants arriving on its Southern shores. As I indicated in my letter of 20 April there is little evidence so far that many of them are attempting to travel on to the UK but we are very conscious of the potential for that to change, particularly as we see fewer Tunisians and more migrants from Asia and sub-Saharan Africa arriving in

Italy. We continue to monitor the situation very carefully and are working hard with partners, including Frontex, other Member States and international organisations to both respond to the humanitarian crisis and to strengthen the border security and immigration capability on both sides of the Mediterranean. But we are also developing contingency plans to strengthen UK borders and manage an increase in asylum applications in the event that efforts to manage the impact of the events in Libya within the region prove only partially successful.

The establishment of Frontex was considered a necessity following the removal of internal borders and has assisted in delivering a more professional example of border management to Member States in the Schengen area. The UK has taken part in a number of joint operations led by Frontex and we support EU action to enhance its role and capabilities. However, the European Court of Justice in December 2007 rejected an appeal by the UK against our exclusion from full participation in the Frontex Regulation as it found that the establishment of Frontex builds on a part of the Schengen agreement in which the UK has decided not to participate - the establishment of an area of free movement without internal borders. The UK decided to maintain its own border controls within the European Union and I believe that remains the right decision.

In these circumstances, we believe that the current Frontex model in which the UK is able to take part in operations on a case-by-case basis is the only viable option. It is in the UK's interests for the EU to have a strong external border, and we will continue to work with Frontex and the Schengen countries on border security issues.

For the same reasons given by the European Court it would not be possible for third countries to become participants in Frontex. But we do believe that close co-operation with such countries is an essential part of securing the external border of the EU. That is why we are actively encouraging partnerships between Frontex and the border and maritime authorities of countries in North Africa, particularly Tunisia, to help prevent dangerous sea crossings and disrupt illegal trafficking routes.

More generally, we continue to work closely with our European partners on migration from North Africa. At the Justice and Home Affairs Council in Brussels on 9 June, the Home Secretary noted the need for effective and transparent management of migration, mobility and security, including the development of realistic partnerships with North African countries through the EU's Global Approach. The Home Secretary emphasised the importance of practical cooperation with countries like Tunisia to support them in building their borders, asylum systems and capacity to return illegal migrants to their countries of origin.

I continue to be in close contact with Ministerial colleagues in the Foreign and Commonwealth Office and Department for International Development to ensure that we remain well placed to monitor, influence and respond to events in North Africa.

16 June 2011

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 29 June 2011. They also considered your letter of 16 June 2011 responding to a question that the Earl of Sandwich put to the Minister for Europe, David Lidington MP, when he appeared before the Select Committee on 4 May. We are grateful for the information in that letter and for your comprehensive Explanatory Memorandum, and note your detailed views on a number of elements contained in the Communication.

This Communication raises a number of interesting and important issues, among other things about the forthcoming Mobility Partnerships and the way in which these new initiatives should be financed. I have written to you separately inviting you to give oral evidence to the Sub-Committee, and these are issues perhaps best dealt with on that occasion.

We will not therefore need a reply to this letter, but we will keep this document under scrutiny.

29 June 2011

**MONEY LAUNDERING: DATA PROTECTION FOR SUSPICIOUS ACTIVITY REPORTS
(ELMER DATABASE)**

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

In my letter to you, also written today, about the Government's response to the Committee's report on the ELMER database, I said that I would be writing to you separately about the use of the proceeds of piracy in the financing of terrorism, an issue which also arises from our 2009 report Money laundering and the proceeds of terrorism.

When we last raised this issue in March of this year we were told, rather to our surprise, that letters should be addressed to the FCO Minister with responsibility for Africa, Henry Bellingham MP. I accordingly wrote to him on 9 March 2011, but copied my letter to you and to Lord Sassoon, the Commercial Secretary to the Treasury. All the subsequent correspondence was also copied to you and to him, but for convenience I attach copies of all five letters, ending with my letter of 12 May 2011.

In that letter I concluded the correspondence by saying that we continued to be surprised by the Government finding no credible evidence of a link between piracy and terrorism, but that we would not be taking that point further for the moment.

There is however another issue which, since it arises from the Proceeds of Crime Act 2002, is undoubtedly the responsibility of the Home Office. We accept, as we have always done, that the assembly in the United Kingdom of money for the payment of a ransom to pirates is not itself a criminal offence. However we remain baffled that so little is done by the authorities to seek detailed information about their activities from those involved. Such businesses may not report these as suspicious activities, since they may not regard their own or their clients' activities as suspicious, but the information surely remains highly relevant if the authorities are not to deprive themselves of an essential thread in tracing how money could get into the hands of terrorists. Moreover it can hardly be maintained that such ransom money is not destined to reward a criminal activity, and thus warrant a suspicious activity report.

In a joint supplementary memorandum to our inquiry in May 2009 the Home Office and the Treasury informed us that consent from SOCA "may be required when assembling ransom money in order to provide a defence to the money laundering offence under section 328(1) of the Proceeds of Crime Act." If such consent is required, is it always sought? Does SOCA always insist on being given all the necessary information before it grants that consent? Does it now (contrary to what we were told in evidence) consider prosecuting those assembling ransoms if they do not seek such consent?

We hope you will be able to give us clear answers to these questions. It seems to us that this information should be readily available and could be valuable in following funds, whether or not they subsequently fall into the hands of terrorists. If this is so, we cannot understand how you could fail rigorously to enforce these provisions.

We would be grateful for an answer to this letter within ten working days.

8 June 2011

Letter from James Brokenshire MP to the Chairman

Thank you for your response of 8 June 2011, stating your concerns about the lateness of the previous response, and requesting further information before the report is debated in the House of Lords.

I first of all wish to offer my full apologies again for the lateness of the response, and that the reply did not contain all the information you wanted. I accept that this fell short of the standards that you rightly expect, and have taken action to ensure that this is not repeated.

I hope you will agree that this does not reflect the way in which the Department normally handles relations with your Committee. As I made clear in our helpful meeting of 15 June 2011, I very much respect and value the role of the Lords EU Scrutiny Committee, and the thoughtful insight that you bring to Home Office work.

In terms of updating you on the work done by SOCA on the recommendations of the review by the Information Commissioner's Office (ICO) I have attached a more detailed update on progress against the recommendations at Annex A [not printed]. Overall there has been good progress by SOCA, and

I understand the ICO recognise the commitment of SOCA in taking forward and implementing these recommendations.

However, some of the Recommendations have proven more complex to implement than first envisaged, and the original 3 month timescale agreed between SOCA and the ICO for fully fulfilling Recommendations 2 and 3, which pertain to relating to development and implementation of a retention and deletion policy has not been met. SOCA fully recognises that its final policy must comply with its obligations under the Human Rights Act (HRA) and Data Protection Act (DPA) whilst balancing its statutory obligations under Criminal Procedures and Investigations Act 1996 (CPIA). SOCA also needs to ensure it can assist its law enforcement partners to comply with relevant disclosure legislation in respect of SARs, and further ensure that any defendant or respondent is provided a fair trial or hearing.

The ICO are sighted on these issues and have attended SOCA's premises to discuss in more detail. SOCA welcomed the ICO's comments and, as there have been further developments, the ICO have been updated on progress. SOCA is keen to ensure, with the support of the ICO, an early resolution and implementation of the recommendations agreed. I would like to thank again the ICO for their constructive and collaborative approach.

In relation to the last recommendation, that the Government considers again whether the current regime is proportionate, and if there is a need to introduce a *de minimis* requirement, I am glad that you welcome the work being done by officials with law enforcement and the regulated sector to improve the effectiveness of the regime, including considering if legislative changes are necessary.

This work has been started through the SARs Committee, and I intend to update you on progress towards the end of the year, when the work is at a more advanced stage.

I am also glad you agree that there is no direct correlation between the value of the activity reported and the value of the information that may be derived from the report. We know that reports on the laundering of small amounts can and do help in identifying and tackling serious crime, and organised criminals will often operate across a wide range of crime types, so an apparently trivial report may in fact be crucial in identifying a far wider criminal activity.

In terms of how easy it would be for a money launderer to circumvent any monetary *de minimis* amount, that would of course depend on the level at which any *de minimis* element was set, but also how any other changes were implemented. That is why in my previous response I indicated that I am not minded to make any immediate changes without more detailed and wider consideration of all the issues – of which the work by officials with law enforcement and the regulated sector is a key part.

We know that money launderers will seek to test how easy it is to launder money through different parts of the regulated sector and other forms of money transfer, and exploit any loophole they may find. That is why a simple monetary *de minimis* threshold would be relatively easy for professional money launderers to circumvent, and would hinder a key part of the approach that we set out in our forthcoming Organised Crime Strategy to tackle criminal finances, including targeting the professional money launderers.

Such an approach would benefit neither law enforcement nor the regulated sector, and could also be seen as disproportionate to the protection of civil liberties, so I strongly believe that any quick changes to POCA without full consideration of all the issues could have unhelpful and unintended consequences.

I hope this reply is helpful and I hope you will accept my apologies again for the unacceptable delay with the previous response. As I previously committed, I will update you later this year with progress on the work by officials with law enforcement and the regulated sector, and I will welcome the valuable insight that your Committee can bring.

24 June 2011

MONEY LAUNDERING: GOVERNMENT RESPONSE TO COMMITTEE'S REPORT

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

Thank you for your further letter of 24 June 2011 in response to this Committee's report Money laundering: data protection for suspicious activity reports.

I am grateful for your apology about the delay in sending the Committee a response, and the inadequacy of the response in its first form. I am glad that we had the opportunity to discuss this on 15 June. As you say, this does not reflect the usual standards of your department's work with us. While we much appreciate the cooperation and the satisfactory responses that we normally receive, we cannot but register our criticism of the way this inquiry had so far been handled.

The last recommendation of the ICO, that the Government should consider changing the threshold for the making of suspicious activity reports, is one which the Committee first made in its original report in July 2009, and has repeated on a number of occasions since. The answer you have given in your two letters is in substance the same as was given by the previous Government in response to our original report. We are not persuaded by your reasoning, but note that you would believe it would be wrong to introduce a *de minimis* provision.

The ICO's first recommendation to SOCA, relating to access to the database, deals with the matter which most troubled us. It seems that access, though still wide, is now less wide and better controlled than it was. We are glad of this, and glad too to see that the ICO is still involved in this. We are however disappointed at the lack of progress on implementation of recommendations 6.1.2, 6.1.3 and 6.1.4, especially since the first two were supposed to be implemented within three months, by the end of March 2011. We will need further clarification as to when these recommendations will be implemented.

You end by saying that once this work is at a more advanced stage you will seek the views of the ICO. We have decided to invite the Information Commissioner ourselves to give evidence to us after the summer recess, so that we can hear directly from him. By then it will be over nine months since the publication of his report, and we would hope to hear that all the recommendations to SOCA have been fully and satisfactorily implemented. We will also be asking SOCA to give evidence on these points.

As you know, our report published in January this year was recommended to the House for debate, and a motion has been tabled for the House to take note of it. We intend to wait until after we have heard evidence from the Information Commissioner and SOCA before deciding about a debate.

We look forward to a reply to this letter within the usual ten working days.

6 July 2011

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

Thank you for your further letter of 6 July 2011 about the above report and I note the Committee's comments on the first recommendation, dealing with access to the database. I believe the work carried out here further strengthens the policies and procedures on access to SARs, which the ICO review team described as 'robust'.

On progress on recommendations 6.1.2, 6.1.3, and 6.1.4, I am pleased to say that SOCA has been working closely with the ICO on this and the Director General of SOCA has now written to the Information Commissioner with a proposal for a new policy on reviewing, retaining and deleting Suspicious Activity Reports (SARs.)

I attach a copy of this letter at Annex A [not printed], but in essence the policy would be that SARs would be retained for a maximum of six years, from the date on which they were entered on the database, before being permanently deleted. In addition, where SOCA are informed by law enforcement 'end users' that a SAR is clearly not linked to any criminal activity it will be deleted before that six year period has passed.

If the Information Commissioner accepts this proposal then SOCA will be able to move to implementing the outstanding recommendations, and have informed the Information Commissioner they intend to do so as soon as possible with all outstanding actions completed by the end of the year at the latest. If the proposal is accepted SOCA also aim to have deleted all the SARs on the database that are older than six years by the end of this calendar year.

I recognise your disappointment at the progress on implementing the recommendations by the Information Commissioner's review. I too would have liked progress to have been swifter, but recognise there was a clear need to ensure that the new policy did not have unforeseen consequences. As you were previously advised, some of the issues surrounding the outstanding recommendations did prove more complex to resolve than at first envisaged, which has been the primary cause of the delay. In particular, SOCA needed to ensure any new policy enabled it to meet

its statutory obligations under the Criminal Procedures and Investigations Act 1996 (CPIA). SOCA also needed to ensure it could appropriately assist law enforcement partners to comply with relevant disclosure legislation in respect of SARs, and further ensure that any defendant or respondent is given a fair trial or hearing.

These are complex issues, and I know you will agree that whilst the delay is unfortunate, it is also important to get this policy right. I hope you would also agree that, if the Information Commissioner agrees the proposal by SOCA, this will have gone some significant way to addressing concerns previously raised by you.

I hope this reply has been helpful, and as promised, I intend to write again before the end of the year with an update on the work by officials, law enforcement and representatives from the regulated sector to look at what short term and long term improvements can be made to operation of the current anti-money laundering regime, including suggestions for legislative changes, if needed.

20 July 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your further letter of 20 July 2011 in response to my letter of 6 July, and for the copy of the letter of 14 July from the Director General of SOCA to the Information Commissioner.

I told you in my last letter that the Committee had decided to invite the Information Commissioner to give evidence to them. Both the Information Commissioner and the Director General of SOCA have agreed to give evidence to the Committee on 12 October 2011, and we look forward to hearing from them about the progress being made by SOCA towards implementation of the Information Commissioner's recommendations.

I will write to you again after that evidence session. We do not require a reply to this letter.

14 September 2011

PNR: EU-AUSTRALIA AGREEMENT (9821/11, 9823/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered these documents at a meeting on 8 June 2011. We are most grateful for the full and helpful explanatory memorandum which your officials prepared at very short notice.

You will be aware that this Committee has for many years taken an interest in the use of PNR data for the prevention, detection, investigation and prosecution of terrorism and serious crime. In 2007 we published a report on the Agreements between the EU and the United States; in 2008 we reported on the EU draft Framework Decision; and this year we have reported on the draft Directive, encouraging the Government to opt in to it, which it has done. We were therefore hoping to have time to consider carefully the draft Agreement with Australia which is the subject of these two Decisions, and whether the United Kingdom should opt in to them.

On 12 January this year, in reply to a letter from Damian Green MP informing us that the United Kingdom had opted in to the Decision on the negotiation of an agreement with Australia, I wrote: "In the past there has been pressure from the Presidency for agreements with third countries on PNR and other matters to be signed and concluded soon after they are initialled; we hope that you will emphasise to the Presidency the importance of Parliamentary scrutiny." We understand that the Presidency wished to put these Decisions on the agenda for adoption by the Council tomorrow, and that it was only yesterday that Coreper decided to postpone consideration. We are glad of this. Even if the Presidency cannot be persuaded to allow the United Kingdom the full three months for it to consider whether to opt in, and for Parliament to consider the same issue, it is undesirable for Decisions on such an important agreement to be adopted in such haste. We hope that you will continue to take a strong line in future cases.

Nor in this case do we see any particular reason for haste. We see no need for the Agreement to take effect in August, as paragraph 56 of the EM suggests. The Agreement with Australia signed on 30 June 2008 will continue to be provisionally implemented by the Member States unless and until it is repealed by the entry into force of the new Agreement.

Turning to the substance of the Agreement, we have considered it as best we can in the time available. In particular we have looked at the categories of data which the carriers are bound to collect and transmit; the purposes for which the data can be used; the security provisions applicable to the data; the other bodies to which the data can be communicated; and the length of time for which the data can be kept. We are satisfied that these safeguards are adequate. Accordingly we clear both documents from scrutiny, and are content that the United Kingdom should opt in to both Decisions (as we assume is the Government's intention).

We do not require a reply to this letter.

8 June 2011

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

Thank you for your letter of 8 June. I am writing to let you know the latest position on the EU-Australia PNR Agreement. James Brokenshire will be writing to you separately on wider Polish presidency priorities for JHA issues.

The Justice and Home Affairs Council on 9th June did not take this as a discussion item, so the timetable for the Council Decision to Sign the Agreement is now likely to be delayed. The UK was very clear that, under the terms of the Treaty, we should exercise our right to allow Parliament to scrutinise the Agreement within the 3 month opt in window. I am glad that we now have the opportunity to enable this process to be completed properly.

I would also like to inform you that we have reached a collective Government position on the Agreement. Subject to the completion of Parliamentary Scrutiny, we would like to opt in to the Decision to Sign and the Decision to Conclude on the basis that the EU-Australia PNR Agreement is in the best interests of the UK and will provide clear legal cover for carriers to transmit data in accordance with the parameters of the Agreement. I am grateful to the Committee for clearing the Decisions from scrutiny at such short notice and for the indication that you are content for the UK to opt into both Decisions.

I will keep you informed of progress and update you further on the timetable to completion when we have further clarity on the matter.

21 June 2011

Letter from the Chairman to the Rt. Hon. Theresa May

Thank you for your letter of 21 June 2011 about the EU-Australia PNR Agreement which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 29 June 2011.

We are glad to hear that the Government has emphasised to the Presidency the need to allow time for full Parliamentary scrutiny, and also glad that, as we had assumed, it is the Government's intention to opt in to both draft Decisions.

We do not require an immediate reply to this letter, but are grateful for your undertaking to keep us informed of progress.

29 June 2011

Letter from the Rt. Hon. David Lidington MP, Minister of State for Europe and NATO, Foreign and Commonwealth Office, to the Chairman

On 16 June a formal request was made for the opening of negotiations for a Framework Agreement between the European Union and Australia. Member States have been asked for views.

We would support the opening of negotiations on a Framework Agreement. The EU has shared values with Australia, including in key areas such as Counter- Terrorism, Human Rights and upholding the Rule of Law and a strengthened Framework Agreement would be in the interests of both sides.

I am writing to notify the committee of the possible Justice and Home Affairs matters which may be involved within the agreement and to assure them that HMG will observe carefully the full proposal when negotiations begin.

The longstanding relationship between the EU and Australia was developed under a joint declaration on relations in 1997. Post-Lisbon the EU and Australia are keen to establish their relationship on a more robust footing.

The EU-Australia Framework Agreement will replace the Partnership Framework which was adopted in 2008 and updated in 2009. It will create a legally-binding overall Framework for the EU's relations with Australia.

4 July 2011

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

Further to my letter of 21 June I am writing to inform you that the UK's Permanent Representation to the EU has communicated the United Kingdom's formal notification to the Council Secretariat that the UK wishes to participate in the adoption of these Decisions. I will inform Parliament by way of a written ministerial statement as soon as recess is over.

24 August 2011

**PNR: PREVENTION, DETECTION, INVESTIGATION AND PROSECUTION OF
TERRORIST OFFENCES AND SERIOUS CRIME (6007/11)**

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

Thank you for your letter of 10 May 2011 informing us that the Government had opted in to the draft PNR Directive. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 8 June 2011. The Sub-Committee also looked at the Ministerial Statement you made the same day to the House of Commons.

You will be aware that in its report, published on 11 March 2011, the Committee encouraged the Government to opt in to the Directive, and that the House of Lords agreed with this recommendation in the debate on 17 March. We are therefore of course very pleased that the Government has opted in, and will be able to play a full part in the negotiations.

At the end of the debate Lord Hannay of Chiswick, the Chairman of the Sub-Committee, said: "We are keeping the Directive under scrutiny because there are many features of it which still need serious examination, in particular the purposes for which the data can be used, the length of time for which they can be kept, and the adequacy of the data protection provisions." The Sub-Committee has now therefore looked at the substance of the text in the form in which the draft was published.

The data protection provisions have been criticised by the European Data Protection Supervisor, by the UK Information Commissioner, and by the Information Commissioners of the Member States meeting as the Article 29 Working Party. It seems to us that the adequacy of these provisions is likely ultimately to depend on whether a new Data Protection Directive is negotiated in time, and whether it has stronger and more satisfactory provisions than the current Framework Decision. This is something which causes us concern, since it is possible that these conditions will not be fulfilled. We are also worried that there seems to be very little control over which security authorities are to be nominated by Member States as their Passenger Information Units, and whether those authorities will have adequate security and data protection measures. This may be of particular concern in those newer Member States which do not have a tradition of protection of individual personal data. These are all matters which we hope the Government will pursue in the course of the negotiations.

As you know, the Committee supports the Government in its attempt to extend the Directive to intra-EU flights. We understand that this is meeting with some success in the negotiations.

We are keeping this document under scrutiny. While we do not require an immediate reply to this letter, we would be grateful for full reports on the progress of the negotiations, in particular on those aspects we have raised in this letter.

8 June 2011

PROCEEDS OF PIRACY AND THE FINANCING OF TERRORISM

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

Thank you for your letter of 17 May 2011 headed "Response to the Information Commissioner's Review of SOCA's use and operation of the ELMER database." We take it that this is the Government's response to this Committee's report Money laundering: data protection for suspicious activity reports.

Your letter said: "I know that Trevor Pearce, the Director General of SOCA, has written to you setting out in some detail the work that SOCA is doing with the ICO to amend and update the policies and procedures ..." In fact I have received no such letter. However the Clerk has now obtained from your officials a copy of a letter from Mr Pearce to the Information Commissioner dated 23 December 2010. I assume this is the letter to which you are referring. The Home Affairs Sub-Committee of the Select Committee on the European Union considered both letters at a meeting on 8 June 2011.

I note your apology for the time taken. I have to say that the delays are most unfortunate. The Information Commissioner sent me his report under cover of a letter of 29 November 2010. On 15 December 2010 I wrote to thank him. I also wrote to Lord Sassoon, as the Treasury Minister responsible for money laundering, enclosing a copy of the report, and saying that I looked forward to hearing his reactions to the recommendations in the course of January. Knowing that responsibility for the topic is divided between the Treasury and the Home Office, and that the Home Office is responsible for SOCA, I sent a copy of that letter and the Information Commissioner's report to Baroness Neville-Jones.

This Committee was anxious to make sure that the Information Commissioner's report was made public, and we published it annexed to our own report on 20 January 2011. On 24 January Lord Sassoon wrote to me in reply to my letter of 15 December saying that the issues raised in the Commissioner's report were issues on which the Home Office leads, and that he had asked the Home Office to reply more fully.

It is not the concern of this Committee which Department, and which Minister in that Department, replies to the Committee's reports on behalf of the Government, but it is of the greatest concern that such replies should be full and timely. Paragraph 4.5.6 of the Cabinet Office Guidance to Departments reads: "The Government must reply formally in writing to reports published by the Lords Scrutiny Committee. **It has undertaken to respond to the Committee's reports that reach substantive conclusions or recommendations by no later than two months after publication or within six weeks where this is possible i.e where the reports are short and where the issues are not complex.**"

This report was short, and specifically asked for the views of ministers on the steps that the Government and SOCA would take to comply with the Information Commissioner's recommendations, and ours. Your Department had been aware of the issues raised for over a month before the publication of the report. There could be no possible reason for a response to reach me later than two months after publication, i.e. by 20 March. In fact your letter, received after a number of reminders from the Clerk, was dated nearly a further two months later, and even then did not include the views of SOCA. Where the response includes the views of an Executive Non-Departmental Public Body like SOCA, it is the Government's duty to ensure that those views are included in its response. This is no way to treat a Parliamentary Committee.

You wrote to me on 30 March 2011 offering a meeting to discuss Home Office scrutiny performance, and any other issues I wished to raise. I am grateful for this offer, and I understand that a meeting has been arranged for next week, on 15 June. I look forward to meeting you again then. Perhaps this is an issue we could discuss.

I turn now to the substance of your letter. In relation to the recommendation addressed by the Commissioner to the Government the key, as you say, is whether the current requirement to report all suspicious activities, whatever their value, is proportionate. We accept that there is no precise correlation between the value of the activity reported and the value of the information that may be derived from the report. We accept too that money launderers would attempt to use a threshold to their advantage, though we are not persuaded that this would necessarily be as easy as you imply. We do not however understand your suggestion that introducing a de minimis approach might drive up the numbers of reports "where there is no suggestion of suspicious activity, but that are above any

threshold". If there is no suggestion that an activity is suspicious, there is no reason why a report should be made, whether or not there is a threshold, and whatever it may be.

Nevertheless we are pleased that you have asked your officials to work with the regulated sector to see what can be done to reduce unnecessary reporting and protect civil liberties, and in the longer term to see what can be done to improve the current legislation. Whether this will achieve the desired result will depend very much on how energetically this work is pursued. We would be grateful to be kept informed of progress on a regular basis.

In his letter to the Information Commissioner of 23 December 2010, Mr Pearce set out a programme for SOCA to undertake improvements to the data protection regime governing ELMER, and undertook "to deliver this programme within the 3 month timeframe you indicate, commencing on 4 January 2011". This is now over 5 months ago, and we would be glad to hear, either from you or directly from Mr Pearce, what progress SOCA has made, and the views of the Information Commissioner on the extent to which his recommendations have been complied with.

Although we will be meeting in less than a week, it would be helpful to have a reply for the Sub-Committee to see within the usual period of ten working days.

As you know, our report was recommended to the House for debate, and a motion has been tabled to enable the debate to take place. We are however delaying finding a date for the debate until we have your reply to this letter.

Our interest in this of course arises from our 2009 report Money laundering and the proceeds of terrorism. Another issue arising from that report which continues to trouble the Committee is the use of the proceeds of piracy in the financing of terrorism. I am writing separately about this.

8 June 2011

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 8 June following up issues from the committee's inquiry in 2009 on money laundering and terrorist financing. As you acknowledge there is no UK law against the payment of ransoms, although we do counsel strongly against doing so, as we believe making concessions only encourages such activity.

In relation to your questions, under the Proceeds of Crime Act if an individual knows or suspects they are dealing with criminal property, (including for example, if they know or suspect this when assembling or making a ransom payment) then they should submit a suspicious activity report to SOCA. If the reporter wishes to obtain a statutory defence for carrying out that activity then they would need to provide SOCA with sufficient information so a properly informed consent decision can be taken by SOCA.

On that basis I am afraid there is nothing that we can usefully add to the evidence provided to the Committee in 2009 and the previous Government's response to its report (Cm 7718), in particular the statement that:

"We do not believe that it is for the Government to tell a person in what circumstances to seek consent from SOCA. Our view remains that decisions on whether consent is required should be made on a case-by-case basis.

It remains the case that if a person knows or suspects that they are dealing with criminal property then they should submit a SAR. If the reporter wishes to obtain the statutory defence in respect of carrying out that activity then they must obtain consent. If they are concerned about jeopardising the secrecy of ransom negotiations by reporting or seeking consent, it is possible that they may have a reasonable excuse for not seeking consent until after the transaction, although of course the final determination of what constitutes a reasonable excuse in any case is a matter for the courts."

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

I note that you have also asked a number of questions about the intelligence and consent requests which SOCA receives and about the steps taken as a result. As I am sure you are aware, SOCA are not the lead investigating agency on piracy and whilst it is not possible to describe specific operational processes, SOCA has confirmed that it shares information which it receives with its partners in order to develop the understanding of the authorities in relation to money laundering and terrorist financing, and to aid the investigation of these crimes.

We continue to carefully consider all the information available to assess whether there are organisational links between pirates and terrorist groups operating in Somali. To date, we have seen no firm evidence that terrorists are using piracy as a means of raising funds, or that Somali pirates are involved in pursuing a political or terrorist agenda. We do know that pirates have developed a robust, adaptable and successful business model which they would not wish to jeopardise by involving a designated terrorist group.

However, it is possible there may exist some low level personal, clan, entrepreneurial links between individual pirates and those affiliated with extremist/insurgent groups in southern Somalia, including Al Shabaab, but we assess that any such links would not constitute a direct organisational link between pirates and terrorists.

The Government's assessment therefore continues to be that there is no evidence of pirates funding terrorist groups. This is consistent with the views of our international partners.

24 June 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 24 June 2011 in reply to mine of 8 June 2011. It was considered by the Home Affairs Sub-Committee of the European Union Committee at a meeting on 20 July 2011.

We appreciate that the SARs system relies on those who become aware of suspicious activities to report them, and that SOCA does not take the initiative. We are however surprised that, where the activity in question (the assembling of a ransom) is that of the person who should be doing the reporting, SOCA does not think it right to take a rather more proactive line, both by bringing home to those assembling ransoms the need to file SARs, and by taking steps to discover these activities where they should have been but have not been reported.

We also appreciate that it is for the prosecuting authorities to decide whether, in any particular case, a failure to obtain consent, and hence to obtain the statutory defence, should be prosecuted; but it is SOCA which will have decided whether or not such consent should be granted, and we hope that the information on which SOCA bases its decision will be shared with the prosecuting authorities.

On the issue of whether the payment of ransoms finances terrorism, we have now seen the Home Secretary's Written Ministerial Statement on 7 July 2011, reporting to both Houses on the G6 meeting in Madrid, which states: "The Home Secretary also underlined that the payment of kidnap ransoms was against international law and served to bolster terrorist and criminal groups." She was talking about the Maghreb. Is it really the case that payment of kidnap ransoms is known to bolster terrorism in the Maghreb, but that there is no evidence that it does so in Somalia?

The statement that "the payment of kidnap ransoms was against international law" is an error, and I am grateful for the Home Secretary's letter of 19 July 2011 acknowledging that it is only the payment of kidnap ransoms to terrorists which is contrary to international law. The Sub-Committee considered that letter this morning. No doubt the Home Secretary will consider whether she should make a further WMS when Parliament resumes.

We would be grateful for an answer to this letter within ten working days.

20 July 2011

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 20 July 2011, in response to the government's letter of the 24 June 2011 and I am replying on behalf of the Parliamentary Under Secretary of State for Crime and Security. I apologise for the delay in replying.

As you know, there is no UK law prohibiting the payment of ransoms. But under the Proceeds of Crime Act 2002 if an individual knows or suspects that they are dealing with criminal property a suspicious activity report should be submitted to SOCA. So if the assembly of a ransom does not involve criminal property, there is no need to make a report to SOCA before completing a transaction

The Government recognises and values the Committee's concerns, but the current lack of evidence linking piracy and the financing of terrorism makes it unsuitable at this point for SOCA to take any greater role. We will obviously keep the assessment of the links between pirates and terrorist groups

operating in Somalia under close review. SOCA will obviously also continue to respond to any suspicious activity report with the appropriate action.

More generally, as you are aware, SOCA has the general management of the SARs regime which includes monitoring compliance with the scheme. This involves close cooperation with appropriate partners, including the prosecuting authorities.

I hope this resolves your concerns and helps address any further issues.

8 August 2011

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 20 July 2011, in response to the government's letter of the 24 June 2011. I apologise for the delay in replying.

As you know, there is no UK law prohibiting the payment of ransoms (where financing terrorism is not involved). As previously advised, under the Proceeds of Crime Act 2002 if an individual knows or suspects that they are dealing with criminal property then they should submit a suspicious activity report to SOCA. But if a person comes to a transaction with clean hands and deals with clean money then it is possible that they would take the view they are not committing any offence under POCA and so would not seek the consent of SOCA. If, however, the person chooses to notify SOCA they would deal with that in their normal manner.

More generally, as you are aware, SOCA has the general management of the SARs regime which includes monitoring compliance with the scheme and taking appropriate action if a lack of compliance has been identified. This involves close cooperation with appropriate partners, including the prosecuting authorities.

The Government recognises and values the Committee's concerns regarding possible links between the payment of ransoms and terrorist finance in Somalia. There is currently no evidence of any formal organisational relationship between pirates and terrorist organisations operating in Somalia but I can assure you that we are keeping this assessment under close review. Different terrorist organisations use different methods to raise funds. Some groups, such as Al Qaeda in the Islamic Maghreb, rely on kidnap for ransom as a primary source of income. Other groups, such as Al Shabaab, seem to favour other fundraising methods, for example imposing local taxes on commercial activity.

I hope this resolves your concerns and helps address any further issues.

12 October 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your two letters of 8 August and 12 October 2011 in reply to mine of 20 July 2011. They were considered by the Home Affairs Sub-Committee of the European Union Committee at a meeting on 19 October 2011.

The main point made in my letter was to ask for your comments on the Home Secretary's Written Ministerial Statement of 7 July 2011. Your first letter made no reference to this. I am sorry that we have had to wait a further two months for an answer to this question, and I am glad to have your apology for the delay.

As you will know, it has always seemed to this Committee highly unlikely that some proportion at least of the proceeds of piracy did not go to finance terrorism, and it has always been the Government's view, first in the response to our 2009 report and most recently in your two latest letters, that there is no evidence of this. Now, as a result of our repeated questioning, you tell us that "kidnap for ransom" is "a primary source of income" for Al Qaeda in the Islamic Maghreb. This is not of course strictly the proceeds of piracy, since the seizure does not take place on the high seas. That apart, it seems to us that there is little to differentiate the raising of money for terrorism by kidnap for ransom taking place on land from the raising of money for terrorism by the seizure for ransom of a ship, crew or cargo on the high seas.

We understand that kidnap for ransom has now occurred in Kenya as well as in the Islamic Maghreb. This seems to us further to blur the distinction between kidnap on land and piracy on the high seas.

Successive Governments have undertaken to be as open with and helpful to Parliament as they can. We do not know how long the Government has been aware that Al Qaeda has been raising money by kidnap for ransom; we believe we should have been informed of this when it first came to light,

and we think it distinctly unhelpful that we should not have been informed of this highly relevant fact before now.

You also explain in your letter how the SARs regime applies to persons assembling and paying ransoms. We accept that, as you say, such persons will normally be coming to a transaction with clean hands, and dealing with clean money. The fact remains that they know, as does everyone else involved, that as soon as the money has been paid as a ransom it becomes the proceeds of crime and so distinctly dirty money. It seems to us remarkable that they should be left with the choice of whether or not to notify SOCA of the transaction. We hope that you will take another look at our views, and that you may be able to give effect to them.

We would be glad to have your response to this letter in due course.

19 October 2011

PNR: DRAFT AGREEMENT WITH THE UNITED STATES (10453/11)

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

Thank you for your letter of 20 July [not printed], in which you sought my views on a number of aspects of the EU-US PNR Agreement. The timetable for the Agreement is still not very clear: the text has not yet been initialled by either side, although I understand that there is a desire to do so on or around the tenth anniversary of 9/11 following a further round of negotiations. There is a strong possibility that the Agreement will be taken to the JHA Council in September and we will work closely with the Presidency to ensure that our opt-in is respected. I shall, of course, keep you up to date with any developments.

You mention the leaked opinion of the Commission Legal Service (CLS) on four particular points and I will seek to address these in turn. Firstly, you share the concerns of CLS about the width of offences which can fall under the definition of serious transnational crime. The definitions of "serious crime" and "transnational" are based respectively on the existing US-EU extradition agreement and the UN Convention on Transnational and Organised Crime. An offence is extraditable according to that Agreement if it is "punishable under the laws of the requesting and requested states by deprivation of liberty for a maximum period of more than one year". This is shorter than both the three year threshold in the EU PNR Directive and the four year threshold in the EU-Australia PNR Agreement. I agree that the definition is broad and we will continue to press the Commission negotiators for an explanation of how they think this is proportionate.

Secondly, you agree with the CLS criticisms of the data retention period of up to 15 years. However, I do not agree that the retention regime is "scarcely better than the 2007 Agreement". In addition to a 2 year reduction in the active database, there is also a provision requiring data to be masked after 6 months. This means that information capable of identifying an individual (name, other names on PNR, all available contact information, General Remarks and any collected APIS information) shall be masked out. In addition, once transferred to a dormant database, the data may only be accessed by a restricted number of authorised personnel following a higher level of supervisory approval before access. Dormant data shall only be repersonalised in relation to a specific case, threat or risk. The Commission's Communication on Global Approach did not specify maximum retention periods but stated that these should be no longer than is strictly necessary for the purpose. This is in line with the UK's policy position. Whilst the overall period may be longer than we envisage for our own e-borders system, we welcome the fact that there are greater restrictions on access as time elapses and that the effect of these retention rules on operations and investigations will be reviewed by DHS and discussed with the EU.

The US has told the Commission (and the UK direct) that they are still actively pursuing some of those involved in 9/11 who remain at large. The planning for those attacks dates back to 1996, meaning that if PNR data going back 15 years had been available, it would have assisted in these investigations by making previously unknown connections. Secondly, US contacts have told the Home Office that they can cite cases of major drugs importation networks that took 20 years to build. In order to build their understanding of such networks, access to data over an equivalent period is required. The US has not ruled out deleting the data before then if this seems appropriate (the text speaks of "up to 15 years"). I therefore share the view of the Commission negotiators that the differentiated threat level faced by the US as a prime terrorist target justifies a different retention period (to that in the EU-AUS Agreement and EU-PNR Directive).

Thirdly, you have concerns on the sharing of data by the Department of Homeland Security (DHS) with other bodies in the US and third countries. DHS may only share PNR data and analytical information with domestic government authorities on a case by case basis where this is consistent with the scope of the Agreement; where such sharing furthers the fight against terrorism and serious transnational crime and subject to written understandings and US law on the exchange of information between domestic government authorities. There is a new requirement that those authorities will apply equivalent or comparable data protection safeguards. DHS may only transfer PNR data and analytical information with the competent government authorities of third countries on a case by case basis where this is consistent with the scope of the Agreement and where they have ascertained that its intended use will be consistent. Other than in an emergency, DHS shall obtain prior assurances that comparable data privacy protections will be applied. The 2007 Agreement only covered the onward transfer of PNR data both domestically and to third countries, so the reference to analytical information is an improvement in the current text. A new provision requires that where the data of an EU citizen or resident is concerned, DHS shall inform the relevant Member State as soon as possible. I am aware that some Member States have taken the position that they should be informed in advance of any such transfer. However, I consider that the progress made in negotiations and the restrictive language of this provision provide adequate safeguards for EU citizens.

Fourthly, you believe that passengers resident in the EU will find it difficult to obtain redress if they can do so only in the US if they believe the US authorities have misused their personal data. The current Agreement spells out clearly how an individual may seek correction, rectification and redress, including when judicial mechanisms may be used. We have asked the US for further information on redress, which we will share with you in due course.

16 August 2011

Letter from the Chairman to Damian Green MP

Thank you for your letter of 16 August 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 12 October 2011.

We understand that, despite what you say, the Agreement was not initialled on the anniversary of 9/11, nor was it considered at the JHA Council on 23 September. We are grateful for your undertaking to keep us informed of developments. We would in particular be grateful if the draft Decision on Signature could be deposited as soon as it is received, since only then will we have a document which will formally be under scrutiny. It is also only then that you will have an instrument to which the United Kingdom opt-in applies. We assume however that you have already reached a decision on this, and would be grateful for your confirmation that the Government does intend to opt in to the Decisions on Signature and on Conclusion of the Agreement.

We are grateful for your very full comments on the points which have been troubling us. You agree that the width of the offences falling under the definition of serious transnational crime is "broad". We would have hoped you would seek to narrow it, rather than asking the negotiators to see if they can explain how it is proportionate. Since the Commission's own legal advisers believe that "this point alone puts the proportionality of the agreement in question", we think the negotiators may find this hard to justify. We continue to hope that you will press for amendment of this provision.

On the period of retention, we note the stringent conditions which apply once the data are dormant, but the fact remains that they can still be accessed for 15 years, as under the current agreement, even though they are dormant for much longer. While it will always be possible to find examples where an even longer period might have been useful, there must come a point when the privacy of individuals must prevail. We believe that the 5½ years under the Agreement with Australia is a better starting point.

We accept your explanation of the more stringent provisions on data sharing, and agree that they are an improvement. However it is still worrying that in an emergency the Department of Homeland Security can transfer data to a third country which may not have adequate data protection provisions, and that data about an EU citizen can be transferred without the Member State having been informed in advance.

We are grateful for your undertaking to share with us further information you receive from the US authorities on redress. It remains a concern to us that passengers resident in the EU who believe that the US authorities have misused their personal data can obtain redress only in the United States.

We would be grateful for a reply within ten working days.

12 October 2011

Letter from Damian Green MP to the Chairman

Thank you for your letter of 12 October regarding the EU-US PNR Agreement. I am sorry that I have taken a little over 10 working days to respond, but I was aware that Commissioner Malmström intended to make an announcement on progress at last week's Justice and Home Affairs Council.

As reported in the post Council statement, I am pleased to inform you that progress has been made between the Commission and the US on the basis of adjustments made to the text which I shared with you in July. We have not yet had sight of the new text; nor do we know exactly when it will be published, although I hope this will be in the coming weeks. I will, of course, deposit an Explanatory Memorandum as soon as possible after publication.

The Commission reported that discussions with the US had now reached an advanced stage, and a political understanding had been reached. On the question of retention period, the retention period would be 15 years for terrorism and 10 years for other serious crime. On the definition of serious crime, it was proposed that it apply to crimes punishable by 3 years under US law. With reference to the method of data transfer, the "push" method would be the norm, but "pull" could be used in very limited cases. There would also be a reference to the EU-US data protection negotiations. The Commission added that on third country transfer they were considering a solution similar to that in the Australia agreement.

The Agreement now needs to be transformed into a legal text and they hope to finalise this in the coming weeks. The UK supported the idea of an EU-US Agreement, and I am pleased that a political agreement had almost been reached. I supported the Commission's view that security and data protection could both be improved at the same time. I also said that PNR data was an absolutely vital tool in the fight against terrorism and organised crime, and we should continue to cooperate with the US for the security of all our citizens.

7 November 2011

Letter from the Chairman to Damian Green MP

Thank you for your letter of 7 November 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 16 October 2011. We are grateful for your comments on some of the matters we raised.

A definition of 'serious crime' by reference to a maximum term of imprisonment of 3 years rather than one year is an improvement, although there are numerous crimes which would not normally be regarded as 'serious' which are punishable by more than 3 years' imprisonment. Likewise a reduction in the retention period from 15 years to 10 in the case of offences other than terrorism is a move in the right direction, although this is still greatly in excess of the periods under the EU-Australia Agreement (5½ years) or the draft Directive (5 years).

It is not clear to us what the significance will be of a 'reference to the EU-US data protection negotiations'. We assume that the Agreement will contain its own provisions on data protection, and not simply refer to provisions which may result from ongoing negotiations.

These are all matters which we will examine when, as you say is now happening, these provisions are drafted as a legal text. We look forward to seeing that text appended to a draft Decision and deposited for scrutiny, together with your EM. You refer to the text being 'finalised' in the coming weeks. We hope it is clear that, even though the Commission and United States negotiators may hope that the text is final, we, like the European Parliament, may well still have comments to make.

We do not require a reply to this letter, but look forward to formal scrutiny of these documents.

16 November 2011

POLISH PRESIDENCY PRIORITIES

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

I am writing to you as chairman of the House of Lords Select Committee on the European Union to inform the Committee about the Polish Presidency's priorities for civil protection.

The new Presidency envisages December 2011 Council Conclusions on an integrated approach to more effective crisis communications, and has hosted an expert workshop on this subject.

In addition, the Presidency will host a multi-national exercise (Exercise Carpathex) in cooperation with the Czech Republic, Hungary and the Ukraine. The scenario is a CBRN incident during a high visibility sporting event. The Presidency have invited the UK to participate. A Home Office CBRN expert will attend. The Presidency will also host a security research conference on legal, technological and organisational factors affecting public safety.

The Presidency's draft December JHA Council agenda refers tentatively to future legislative proposals for the Civil Protection Mechanism and Financial Instrument. The Mechanism and Instrument constitute a legal framework facilitating mutual assistance among Member States and with non-EU countries in emergencies. The European Commission are currently working on proposals to revise this framework in the light of experience and of the Lisbon Treaty. These proposals are expected in the Autumn.

The draft JHA Council agenda also refers to a general debate on a proposal for arrangements for the EU to implement the Lisbon Treaty's Solidarity Clause (Treaty on the Functioning of the European Union Article 222). This Clause introduces an obligation on the EU and on Member States to act jointly under circumstances of disaster and terrorist attack.

4 August 2011

PRÜM COUNCIL DECISIONS (17709/10)

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

I am replying to your letter of 23 March which asked for an update by the end of September on the progress being made in relation to implementation of Prüm Council Decisions. I am very sorry not to have replied sooner.

As I explained in earlier correspondence, before we can share DNA and fingerprint data with other Member States we need to cleanse our national databases. The enabling legislation setting out our proposed retention criteria is currently before Parliament in the Protection of Freedoms Bill.

A further precursor for fingerprint exchange is that we need to ensure that fingerprints taken by the Police Service of Northern Ireland (PSNI) are placed on our national fingerprint database (IDENT 1) as these are currently stored on a separate system. We have recently begun a project to connect the PSNI systems with the police national computer and the IDENT 1 system. This will allow for a UK-wide collection of fingerprints which will allow other Member States to search against all the UK jurisdictions. I anticipate that this project will take about 18 months to complete.

My officials are also working with those in the Department for Transport to consider whether additional (secondary) legislation is required to enable us to share the information required under the vehicle registration data requirements (VRD) of Prüm. They are also looking at whether a bid might be made to the European Commission for funding to support implementation of these provisions. Progress on that will depend on the timing of the Commission's call for bids and the conditions for funding.

It is worth noting that the United Kingdom is not alone in being unable to implement the Prüm provisions before the August 2011 deadlines. At present only 11 Member States are to some extent operational with DNA exchange, 9 with fingerprints and 10 with vehicle registration data.

I will keep the Committee informed of progress in the implementation of these measures when significant milestones are reached.

9 November 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 9 November 2011 updating us on the progress being made on implementation by the United Kingdom of the Prüm Council Decisions. The letter was considered by the Home Affairs Sub-Committee of the European Union Committee at a meeting on 16 November 2011.

We note the reasons you give for the long delay in implementation of the two Decisions by the United Kingdom. You explain that a number of other Member States are in the same position, and there is no possibility of infraction proceedings, but the position is still not satisfactory. We shall however be relieved if one result is an improvement in the data protection provisions.

In your letter of 7 February 2011 you pointed out that these Decisions were subject to the transitional provisions in Protocol 36, and you said that a decision on whether to accept the extension of ECJ jurisdiction to measures in this category was “some time away”. It is true that the end of May 2014 is still 2½ years away. However you anticipate that the database project “will take about 18 months to complete”, and obtaining funding from the Commission – or obtaining a decision on funding – will not be a quick process.

We do not require an immediate answer to this letter, but we would be grateful for a further update on progress in 6 months' time, with particular reference to the position under Protocol 36.

16 November 2011

READMISSION AGREEMENTS WITH ARMENIA AND AZERBAIJAN

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

I am writing to advise you of our decision on participation in mandates to negotiate EU Readmission Agreements with Armenia and Azerbaijan. We have decided to opt in to the negotiating mandate concerning a readmissions agreement with Azerbaijan but not to opt in to the negotiating mandate concerning a readmissions agreement with Armenia.

You will be aware that EU Readmission Agreements provide for reciprocal administrative arrangements to facilitate the return and transit of persons who no longer have a legal basis to stay in EU Member States.

Participation in readmission agreements is considered on a case by case basis. While EU Readmission Agreements can have benefits, allowing the UK to engage with the EU and establishing common standards on returns, their value depends on the third country with which the Readmission Agreement is negotiated, the priority we attach to that country in terms of numbers of returns, and the degree to which we enjoy a good bilateral relationship with that country.

To date the UK has opted in to the 13 EU Readmission Agreements currently in force. These agreements are with Russia, Sri Lanka, Hong Kong, Macau, Ukraine, Albania, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Bosnia Herzegovina, Moldova, Georgia and Pakistan. However, the UK did not opt in to the recent mandate to negotiate an EU Readmission Agreement with Belarus.

In the case of Armenia, UK immigration returns are low. We have no operational problems in conducting returns which an EU Readmission Agreement would help resolve and do not believe that non-participation would adversely impact wider bilateral relationships. For these reasons and the additional burden participation in mandate discussions would place on administrative resources for an agreement of little value to the UK, we decided that the UK should not opt in to the negotiating mandate.

As with Armenia, UK returns to Azerbaijan are low and we experience no operational difficulties which an EU Readmission Agreement might resolve. However, the UK has a Memorandum of Understanding (MoU) with Azerbaijan which has allowed us to transit both immigration returns flights and military equipment to Afghanistan via Baku. We now fly directly to Afghanistan but maintain the MoU with the Azeris in the event that we might need to reopen the route. We have therefore decided to opt in to the negotiating mandate for Azerbaijan.

The UK maintains a neutral stance on issues between Armenia and Azerbaijan and has a good bilateral relationship with both countries. We are also confident we can allay any concerns on the part of both countries about the position we have taken based on the clear reasoning for our approach.

The UK has up to three opportunities to opt in to an EU Readmission Agreement – at the negotiating mandate stage, and then at the signature and conclusion stages. If we do not opt in at the negotiation stage we can choose to opt in at one of the later stages (although signature and conclusion are on occasion combined). We can also seek to opt in post-adoption, as with all EU JHA instruments. Therefore, if Armenia becomes a higher priority in terms of returns, we will have the opportunity to apply to the Commission to opt in post-adoption.

24 November 2011

SCHENGEN ACQUIS: EVALUATION MECHANISM TO VERIFY APPLICATION (14358/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 26 October 2011.

In relation to the previous proposal, which we cleared from scrutiny on 20 July 2011, the Committee supported the Government in their view that the correct legal base for this Regulation would be Article 70 TFEU, which would allow the United Kingdom to play its part in the evaluation of those parts of the Schengen acquis which apply to it – and would also incidentally allow other Member States to evaluate the operation of SIS II in the United Kingdom, once it is up and running. We believe the arguments you put forward in the Explanatory Memorandum are powerful ones, and we hope you will continue to argue the case for United Kingdom participation, along with other Member States which support this view.

We do not require an immediate reply to this letter, but we look forward to hearing about the progress of the negotiations in due course. Meanwhile we keep this document under scrutiny.

26 October 2011

SCHENGEN ACQUIS: EVALUATION MECHANISM TO VERIFY APPLICATION (16664/10)

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

Thank you for your letter of 23 March, in which you asked for the outcome of discussions on the Schengen Evaluation Mechanism.

Since 4 April, the Schengen Evaluation Mechanism (SEM) has been tabled for discussion at a number of technical working group meetings. Examination of the actual mechanism process has been delayed, as the focus for Member States is the legal base chosen for this proposal by the Commission. Member States have now submitted their written positions and views on the legal base, as a starting point for constructive discussions in due course. The majority have indicated support for a move to Article 70.

This includes the UK. There are a number of reasons for taking this position. Article 70 covers the evaluation of all EU policies, including all aspects of Schengen - policing and judicial co-operation as well as internal border controls. For instruments with Schengen content, Article 70 also provides the easiest legal solution to UK participation. Article 3 (1) 3rd sentence of Protocol 21 explicitly provides that measures adopted pursuant to Article 70 TFEU shall lay down the conditions for the participation of the United Kingdom in the evaluations concerning the areas covered by Title V of Part III of that Treaty. This is in line with Article 1 (c) (i) of Council Decisions 2000/365 and 2002/1921 on UK partial participation in Schengen. This would avoid the need to find alternative and more complicated solutions to ensure UK participation such as through an 'IT Management Agency' solution or split instruments.

The UK appreciates that the Treaties give a reduced role to the European Parliament (EP) under Article 70, as compared to Article 77. We believe that the EP's role flows from the correct legal base and a desire to give the EP an enhanced role should not influence the choice of correct legal base. While they will lose the right to co-decision on the Regulation text, we support wording in the proposal that would ensure their scrutiny role as envisaged within the mechanism process itself.

Following events in North Africa, the Commission published a Communication on Migration - COM (2011) 248 (EM deposited 18 May). The Institutions, especially Member States following the June JHA Council and the European Council on 24 June, are now focused on strengthening Schengen Governance (including SEM). The next discussion on Schengen reform is expected at the Informal JHA Council on 18 and 19 July.

The European Council on 24 June drew on COM (2011) 248 and asked the Commission to introduce a safeguard mechanism in order to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons. Such an EU mechanism should comprise a series of measures to be applied in a gradual, differentiated and coordinated manner to assist a Member State facing heavy pressure at the external borders and could include inspection visits, technical and financial support, as well as assistance, coordination and intervention from Frontex. It could also, as a last resort, include the possibility of exceptional reintroduction of internal border controls in a "truly critical situation where a Member State is no longer able to comply with its obligations under the Schengen rules".

A Commission package of measures is expected from July onwards. There are a range of possible options for how this could be taken forward legislatively. The UK is not directly affected, except on proposals relating to evaluation and inspection. We will of course need to ensure that the package reflects those parts of Schengen in which we do participate; where we need to protect our current partial participation and continue to seek partial participation if we are excluded.

The package may include extensive amendments to the current SEM proposal, as well as updates to the Schengen Borders Code and revision of the Schengen Border Guards Handbook. It remains to be seen if this will necessitate withdrawal of the SEM proposal and re-tabling.

Given the legal base issue, the Commission package and possible Commission reworking of the SEM text, we do not expect further discussion on SEM until September under the Polish Presidency. We will update you as soon as there are significant developments.

7 July 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 7 July 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 20 July 2011.

We note the Government's preferred legal base, which is shared by the majority of the Council, for the proposed Regulation on the evaluation of the Schengen acquis. This would appear to be the simplest method for ensuring the UK's continued involvement in the areas in which it currently participates. We will look forward to receiving further updates about the progress of this proposal but anticipate that the European Parliament will adopt a robust position on the Council's preferred legal base.

In the meantime, the Committee is content to clear this document from scrutiny.

20 July 2011

SCHENGEN ACQUIS: THE REPUBLIC OF BULGARIA AND ROMANIA (14142/11)

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

The Home Affairs Sub-Committee of the House of Lords Select Committee on the European Union considered at a meeting on 14 September 2011 a LIMITE document numbered 14142/1/10 REV 1 which is the subject of an EM dated 25 July 2011, and which is a preliminary draft of this Council Decision.

The Committee is satisfied with the text, and would have cleared the document from scrutiny if it had been deposited. We understand that an unclassified text, identical in all material respects, will be deposited very shortly, and on that basis we are prepared to let you treat it as cleared from scrutiny.

We do not require a reply to this letter.

14 September 2011

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 21 September 2011 which the Home Affairs Sub-Committee of the House of Lords Select Committee on the European Union considered at a meeting on 12 October 2011, together with a LIMITE document 14302/11, being a draft of a first-phase Decision which does not deal with those parts of the Schengen acquis applying to the United Kingdom. We are grateful to you for keeping us up to date with developments.

The Committee has also seen a letter to me of 27 September 2011 from Nick Herbert MP, the Minister of State at the Ministry of Justice, which includes a summary of what took place in the Council on 22 September. We note that the Decision was not in fact agreed by the Council, and that the matter was referred to the October European Council.

In my letter to you of 14 September 2011 I wrote: "The Committee is satisfied with the text, and would have cleared the document from scrutiny if it had been deposited. We understand that an unclassified text, identical in all material respects, will be deposited very shortly, and on that basis we are prepared to let you treat it as cleared from scrutiny." Plainly, now that a phased approach is being adopted, no text that is deposited will be similar to the text we then saw, and you should not treat any of the current texts as cleared from scrutiny. When a draft Decision or Decisions are deposited, they will have to undergo the usual scrutiny process. If a Decision is adopted which does not apply to the United Kingdom at all, the question of an override will not arise.

We do not require a reply to this letter.

12 October 2011

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

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered these documents at a meeting on 26 October 2011.

The circumstances in which Schengen States may reintroduce internal border controls are of great topical interest. The Committee has noted the view of the Committee on European Affairs of the French Assemblée Nationale that the Commission's proposal that it should have the power to decide whether a border closure is justified is a breach of the subsidiarity principle.

However this is not a matter which directly affects the United Kingdom, nor do Government ministers have a vote on the matter. We therefore clear both the Communication and the draft Regulation from scrutiny.

26 October 2011

TERRORIST FINANCE TRACKING SYSTEM: AVAILABLE OPTIONS (12957/11)

Letter from the Chairman to Lord Sassoon, Commercial Secretary to the Treasury

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 14 September 2011, and cleared it from scrutiny.

The Committee note the Government's view that the advantages of terrorist finance tracking can be obtained through the US under Article 10 of the EU-US Agreement, without any need to go to the trouble and expense of setting up and running a tailor-made EU solution. They will consider this again when the Commission put forward a proposal for legislation.

The Committee do not require an immediate response to this letter, but would be glad to be kept informed of the results of the debate at the JHA Council on 22-23 September, and in particular the reactions of other Member States to the Government's views.

14 September 2011

Letter from Lord Sassoon to the Chairman

I am writing to your Committee to follow-up on Explanatory Memorandum 12957/11 regarding the development of an EU Terrorist Finance Tracking System (TFTS). The Government submitted this Explanatory Memorandum in response to the Commission Communication "A European Terrorist Finance Tracking System: Available options" and I now wish to update you on the outcome of the recent Justice and Home Affairs (JHA) discussion on 27th – 28th October on this issue. Damian Green, Minister for Immigration, attended for the United Kingdom.

The JHA meeting was a general orientation debate based on the Commission's Communication on a TFTS, adopted in July 2011. As the Government has made clear we fully support the current EU-US Agreement on the Terrorist Finance Tracking Programme (TFTP) and recognise that the development of a proposal for a TFTS is an important part of that Agreement.

At the recent JHA Council the Government made clear that the UK was yet to be convinced of the necessity of an EU-TFTS and highlighted that there were important questions around the legal base, operational and technical requirements and the potentially high costs involved. The Government also argued that an impact assessment would be required to provide answers to these questions.

There was also no clear consensus on any of the options proposed, and the Commission agreed to undertake further work, including an impact assessment, prior to further steps being taken on this dossier. I will update your Committee on this dossier as appropriate.

30 November 2011

UNACCOMPANIED MINORS: ACTION PLAN (9604/10)

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

Thank you for your letter dated 6 October 2010 concerning the Explanatory Memorandum for the action plan on unaccompanied minors (2010-2014).

I would like to apologise for the delay in replying to your letter.

Whilst you have cleared the document from scrutiny, you also suggested that we consider collecting further data on unaccompanied minors. You also requested an update on the Government's approach to the return of unaccompanied minors to Afghanistan once a suitable care provider had been identified.

In relation to statistics, you expressed regret that UKBA does not make a distinction between minors who are unaccompanied on arrival and those who are left unaccompanied after their arrival. It may be helpful if I clarify what statistical information we currently record on our case information database (CID). We can provide statistics showing whether a child is accompanied or unaccompanied at the point when they lodge their asylum claim. However, the vast majority of minors submitting independent asylum claims do so in country (for example at ASU Croydon) rather than on arrival at port. In these circumstances, it is often difficult to obtain verifiable statistical information regarding their entry to the UK and whether they were accompanied or unaccompanied. We do record detailed information of their account of how they arrived in the UK which are recorded both on CID and the individual case file but this information cannot be extracted for statistical purposes as it does not have a numerical value. I am confident the systems and procedures in place with regard to unaccompanied children are sufficient to ensure that their cases are closely monitored and that the welfare of unaccompanied children is a high priority at all stages of the immigration process. Of course, if a child subsequently locates family in the UK or for any other reason ceases to be unaccompanied, its records will be amended to show that he or she is accompanied.

In your last letter you asked about the steps underway to identify a suitable care provider in Kabul, so that we can consider returning some unaccompanied minors to Afghanistan before they turn 18 years of age. We have decided not to pursue efforts to obtain these care services through the tender

process we started last year. Instead, we are trying to obtain the services through joint work with other European countries (Norway, Sweden, Denmark and the Netherlands). This is quite a complex area of work. It is therefore difficult to assess when it will be complete, but we hope to have something in place before the end of the year. It goes without saying that we will not consider returning anyone unless we are satisfied we have put the necessary safeguards in place.

12 July 2011

Letter from the Chairman to Damian Green MP

Thank you for your letter of 12 July 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 20 July 2011.

We are grateful for the receipt of further information about the data that UKBA holds on unaccompanied minors. We would be grateful if you could provide us with a copy of the statistical data, which is referred to in paragraph three of your letter.

We further note the change in approach regarding the fulfillment of the Government's original plans for returning unaccompanied minors to Afghanistan. In this respect, we would like to be consulted in due course regarding the progress of the Government's joint work with other European countries.

We would be grateful for your response to the above points within the standard deadline of ten working days.

20 July 2011

Letter from Damian Green MP to the Chairman

Thank you for your letter dated 20 July 2011 concerning the explanatory memorandum for the action plan on unaccompanied minors (2010-2014) (document number 9604/10) in which you asked to be provided with the statistical data held by UKBA showing whether a child is accompanied or unaccompanied when they lodge their asylum claim.

Published National Statistics show that of the 2,800 main asylum applications from those aged under 18 in 2009, 2,565 were unaccompanied and 235 were accompanied. The published statistics show there were 1,485 main asylum applications from those aged under 18 in 2010 and 1,250 of these applications were unaccompanied and 235 were accompanied. On 25 August these figures will be revised within 'Immigration Statistics: April-June 2011'. Table as.03 will show the total number of main asylum applicants aged under 18 at application and Table as.08 will show the total number of unaccompanied asylum seeking children by age at application. The above numbers exclude those with unknown age.

It may be helpful if I clarify how these groups are defined by the agency. An 'accompanied' asylum seeking child is a child who is applying for asylum in their own right; and forms part of a family group; or is separated from both parents and is being cared for by an adult who by law has responsibility to do so or is in a private fostering arrangement. An 'unaccompanied' asylum seeking child is a child who is applying for asylum in their own right; and is separated from both parents and is not being cared for by an adult who by law has responsibility to do so¹.

The above figures show the number of accompanied and unaccompanied children who have claimed asylum in their own right. The majority of cases would have been identified as such at the point of claim, however, some children may move between the unaccompanied and accompanied categories whilst their applications are under consideration and their records will be updated e.g an unaccompanied child may locate a relative in the UK and go on to form part of their family group whilst pursuing a claim in their own right. As such the statistics provided reflect the child's circumstance at the time the data was collated rather than their circumstance at the point of claim.

You have also asked to be consulted regarding the progress of the Government's joint work with other European countries on plans for returning unaccompanied minors to Afghanistan. I am happy to keep you abreast of our plans and we will update you once we are clearer on the way forward.

3 August 2011

¹ As stated at Section 4 of the Asylum Instruction [not printed], "Processing an asylum application from a child."

Letter from the Chairman to Damian Green MP

Thank you for your further letter of 3 August 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 12 October 2011.

We are grateful for this further information. We would also be grateful if you could let us have, within the standard deadline of ten working days, figures for the number of minors returned unaccompanied to Afghanistan in 2008, 2009, 2010 and (to the latest convenient date) 2011.

We would be glad if you would, as you suggest, keep us informed of the progress of the Government's joint work with other European countries on plans for returning unaccompanied minors to Afghanistan.

12 October 2011

Letter from Damian Green MP to the Chairman

Thank you for your letter of 12 October 2011, following previous correspondence arising from the Explanatory Memorandum for the Action Plan on Unaccompanied Minors (2010 – 2014) (Document number 9604/10).

You asked for the annual number of minors returned unaccompanied to Afghanistan since 2008. The position, however, is that we have not enforced the departure of any Afghan minors during that period because of the lack of suitable reception and care arrangements. In a very small number of cases the individuals have returned voluntarily in order to be reunited with their families. This happens through the AVR scheme (assisted voluntary return) which is a scheme run by UKBA and Refugee Action to assist those wishing to return to their home countries, on a voluntary basis. In 2008, there were two cases of children returning to Afghanistan through the AVR scheme. In 2009, the figure was five children, in 2010 it rose to eight and so far in 2011 there have been seven children returning in this way.

We will, of course, keep you updated on progress of the Government's joint work with other European countries for returning unaccompanied minors to Afghanistan and will write to you again when further information is available.

1 November 2011

Letter from the Chairman to Damian Green MP

Thank you for your further letter of 1 November 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 9 November 2011. We are grateful for this further information, and for your undertaking to keep us informed of the progress of the Government's joint work with other European countries on plans for returning unaccompanied minors to Afghanistan.

No reply to this letter is required.

9 November 2011