



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 November 2012 – 8 May 2013

HOME AFFAIRS, HEALTH AND EDUCATION

(SUB-COMMITTEE F)

CONTENTS

AGREEMENT BETWEEN THE EUROPEAN UNION AND RUSSIAN FEDERATION ON DRUG PRECURSORS (5654/13, 5656/13)	3
APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE.....	4
ASYLUM PROCEDURES (11207/11)	4
BALANCE OF COMPETENCES REVIEW: DEPARTMENT OF HEALTH	5
CIVIL PROTECTION MECHANISM (18919/11).....	6
CLINICAL TRIALS REGULATION (12751/12)	7
COMMON EUROPEAN ASYLUM SYSTEM (16929/08).....	8
CROSS BORDER THREATS TO HEALTH (18509/11).....	9
CYBERSECURITY (6225/13).....	10
DATA PROTECTION: IMPACT ASSESSMENT (5833/12, 5834/12, 5852/12).....	12
DRAFT EU ACTION PLAN ON DRUGS (2013-2016).....	13
DRAFT EU DRUGS STRATEGY (16693/12, 12036/3/12).....	14
DRUG PRECURSORS (14514/12, 14394/12).....	16
EURODAC (10638/12)	18
EURODAC CENTRAL UNIT: ANNUAL REPORT (2011) (14139/12).....	19
EUROPEAN INFORMATION EXCHANGE MODEL (17680/12)	19
EUROPEAN NETWORK AND INFORMATION SECURITY AGENCY (ENISA) (14358/10)	19
EU- ARMENIA READMISSION AGREEMENT (16909/12, 16910/12).....	20
EU BUDGET: HOME AFFAIRS FUNDS (17285/11, 17287/11, 17289/11, 17290/11).....	21
EU BUSINESS UNDER THE IRISH PRESIDENCY: BIS	23

EU-CAPE VERDE READMISSION AGREEMENT (14237/12, 14235/12).....	27
EU-TURKEY READMISSION AGREEMENT (11720/12, 11743/12).....	29
GENERAL DATA PROTECTION REGULATION (5853/12)	29
INFORMATION TO PATIENTS AND PHARMACOVIGILANCE (6549/12, 6550/12, 6551/12, 6552/12).....	31
INNOVATIVE HEALTHCARE FOR THE 21ST CENTURY (17568/12).....	31
INTEGRATION OF THIRD-COUNTRY NATIONALS (5119/13)	31
INTRA-CORPORATE TRANSFERS (12211/10, 12208/10)	34
JHA OPT-IN AND SCHENGEN OPT-OUT WINDOWS	34
JHA OPT-IN: CO-FINANCING RATE OF FUNDS (14123/12, 14181/12).....	34
MARKETING AND USE OF EXPLOSIVES PRECURSORS (14376/10)	35
MEDICAL DEVICES (14492/12, 14493/12, 14499/12)	36
MOBILITY PARTNERSHIP WITH MOROCCO	38
NETWORK AND INFORMATION SECURITY ACROSS THE UNION (6342/13)	40
ONE-OFF ORAL EVIDENCE SESSION ON HEALTH MEASURES	40
PRICES OF MEDICINAL PRODUCTS FOR HUMAN USE (7315/12).....	41
PROCEEDS OF CRIME (7641/12)	42
PROFESSIONAL QUALIFICATIONS (18899/11)	44
PRÜM DECISIONS (17679/12)	46
RESEARCHERS DIRECTIVE (7869/13).....	46
RETHINKING EDUCATION: INVESTING IN SKILLS FOR BETTER SOCIO-ECONOMIC OUTCOMES (14871/12)	47
SCHENGEN ACQUIS IN THE REPUBLIC OF BULGARIA AND ROMANIA (14142/10)	47
SCHENGEN-EVALUATION MECHANISM (11846/12, 5754/6/12)	48
SECOND MANDATE- SCHENGEN EVALUATION	51
SIS II (9485/12)	52
SIS II EXPENDITURE	52
SIS II MILESTONE TESTS (9485/12).....	53
SOLIDARITY CLAUSE (18124/12).....	54
THIRD MONEY LAUNDERING DIRECTIVE (6230/13, 6231/13).....	54
TOBACCO PRODUCTS DIRECTIVE (18068/12).....	55

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (7933/13)	59
VISA EXEMPTIONS (16016/12)	59
VISA POLICY TO SPUR ECONOMIC GROWTH (16019/12)	59
2014 OPT-OUT DECISION	60

**AGREEMENT BETWEEN THE EUROPEAN UNION AND RUSSIAN FEDERATION ON
DRUG PRECURSORS (5654/13, 5656/13)**

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

Proposal for a Council Decision on the signing of the Agreement between the European Union and Russian Federation on drug precursors – 5656/13

Further to my Explanatory Memorandum of 4 February regarding the above Agreement between the European Union and Russian Federation on drug precursor chemicals, I am writing to confirm that it has now been concluded that the JHA Opt-in Protocol is not triggered in this case.

The reasons for this are as follows:

The scope of the Agreement between the Parties is to strengthen co-operation between them to prevent diversion from the legitimate trade in precursors, and Article 1(2) mentions, in particular, monitoring of trade and providing mutual assistance. There are no express references for law enforcement agencies to use information collected for law enforcement or other JHA purposes; if we were to say that the opt-in applied to the type of information exchange contemplated in this Agreement, on the basis that it could potentially be used for law enforcement purposes, the same could be said in respect of any information exchange which is generally subject to criminal law measures in the Member States.

Considering Article 3(1) in particular, it is far from established from the text of the provisions that the police would be caught within the types of competent authorities to which Article 3 relates. This provision concerns the competent authorities of the Parties (i.e. EU and the Russian Federation) and passing on information about trade monitoring, so it is not clear why the police forces of individual Member States would be considered to be covered by this.

It is relevant that data sharing in this Agreement is constrained by the EU's level of participation in the 1988 UN Convention. Currently there is a strong argument that the reporting and monitoring obligations undertaken by the EU in respect of its obligations under the 1988 Convention are limited to Article 12 of the Convention: there is no suggestion that the monitoring and reporting extends to law enforcement purposes. This also points away from any binding legal content that may trigger the opt-in. Article 4 of the agreement states:

ARTICLE 4

Mutual assistance

The Parties shall within the scope of this agreement provide each other mutual assistance through exchange of information referred to in Article 12 (10) point a) of the 1988 Convention to prevent the diversion of scheduled precursors to the illicit manufacture of narcotic drugs or psychotropic substances. They shall, in accordance with the legislation of the Parties, take appropriate steps to prevent diversion.

Therefore it is concluded that the Opt-in Protocol is not triggered.

Your Committee cleared this EM from scrutiny on 6 February.

11 April 2013

APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE

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

I am writing to update you of my Department's ongoing work on the transposition of Directive 2011/24/EU on the application of patient's rights in cross-border healthcare.

Please find enclosed a note [not printed] updating you on progress with this work. Please let me know if any additional information would be of use or of interest.

10 April 2013

ASYLUM PROCEDURES (11207/11)

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

I write to update the Committee with progress on the above dossier.

The breadth and detail of the proposals to codify asylum procedures has meant that the negotiations have progressed relatively slowly on this dossier. The Stockholm Programme set a 2012 deadline for adoption of the different proposals forming the second phase of the Common European Asylum System (CEAS) and so as the end of the year approaches the pace of this negotiation has increased.

As the Committee will recall the UK has not opted in to this proposal and our main priority for has been to ensure that provisions regarding access to the asylum procedure contained language consistent with the EURODAC and Dublin Regulations, in which we do participate. This was important to ensure clarity around the obligations on Member States to take and transmit fingerprint data to the EURODAC database. This has been a complex part of the negotiation, but I am satisfied that the current text meets our needs.

The recitals in the latest text, which Council, the European Parliament and the Commission accept, make it clear that the UK will not be taking part in the measure and that it will therefore not be bound by it. Trilogue discussions continue and while it is now unlikely that adoption will be proposed before the end of this year, we fully expect rapid moves to conclude work on the dossier early in the New Year. The UK will not be entitled to vote on its adoption; however, I think it wise to inform you of the latest position.

21 December 2012

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 21 December 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 16 January 2013.

The Committee is grateful for your update on the progress of this proposal and the overview of the Government's key objectives in the negotiations.

We also note that the negotiations are drawing to a close and will look forward to receiving further information about the agreed form of this proposal in due course.

16 January 2013

BALANCE OF COMPETENCES REVIEW: DEPARTMENT OF HEALTH

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

As you know, the Foreign Secretary launched the Balance of Competences review in July 2012 in order to establish a clear understanding of how the European Union's activity impacts on the UK's national interest. In his written Statement of 23 October, he set out how the review would be taken forward, outlining that there will be 32 reports split over four semesters, each led by a specific Government Department but involving significant cross-government co-ordination.

The first semester, spanning from now until Summer 2013, will review the following areas:

- An overview of the Internal Market (Department for Business, Innovation and Skills)
- Taxation (HM Treasury)
- Animal Health and Welfare and Food safety (Department for Environment, Food and Rural Affairs)
- Health (Department for Health)
- Development (Department for International Development)
- Foreign Policy (Foreign and Commonwealth Office)

As the Foreign Secretary made clear, each Department will take a rigorous approach to collecting and analysing evidence, including launching a public call for evidence. Given the wide range of Parliamentary expertise in these areas, we are keen to ensure that the Review benefits from the knowledge and experience of Parliamentarians from all sides of the House. Your Committee will have a valuable contribution to make. I have therefore encouraged Departments to contact your Committee and the appropriate Departmental Select Committees as they publish their calls for evidence.

The Department for Business, Innovation and Skills is likely to be the first to publish their call for evidence for the Internal Market synoptic report, expected later this week. The other lead Departments will follow shortly thereafter, with all calls expected to be published by the end of November.

15 November 2012

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

Further to the letter dated 15 November from Rt Hon David Liddington MP, I am pleased to inform you that the Department of Health has today launched its public call for evidence.

The call for evidence period will run until 28 February 2013, and will involve engagement with the public, the health sector, devolved administrations and EU partners and stakeholders. Following the call for evidence the Department will publish a full report on EU competence in health, which will provide more detailed legal analysis as well as taking into account the evidence presented.

As Mr Lidington set out, I am contacting you as I consider that your Committee has a valuable contribution to make. The call for evidence is now available on the Department of Health website at:

<http://www.dh.gov.uk/health/2012/11/eu-balance-competence-review/>

It can also be found on the Foreign and Commonwealth Office website:

<http://www.fco.gov.uk/en/global-issues/european-union/balance-of-competences-review/>

I very much hope that you are able to participate in this engagement process, and my officials will be in touch to discuss how you would like to be involved. In addition, written evidence can be submitted until midday on 28 February 2013 to BalanceofCompetences@dh.gsi.gov.uk.

27 November 2012

CIVIL PROTECTION MECHANISM (18919/11)

Letter from Chloe Smith MP, Minister for Political and Constitutional Reform, Cabinet Office to the Chairman

I am writing to update the Committee on the negotiations for a Union Civil Protection Mechanism and provide details of the Irish Presidency's priorities for civil protection (a copy of the Irish Presidency programme for civil protection is appended at annex).

Negotiations on the draft Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism are continuing in the Council working party. The UK and like-minded Member States (Germany, Austria, Netherlands, Slovenia, Sweden, Denmark and Finland) have continued to press for changes to the Commission's proposals. The Irish Presidency, who is keen to reach swift agreement and begin trilogue, has increased the pace of meetings, and is pushing Member States and the Commission to compromise. The Presidency's ambitious timetable envisages seeking approval of a partial general approach at the Justice and Home Affairs Council meeting on 5-6 March.

Negotiations have confirmed – in line with UK negotiating ambitions - that the voluntary pool should be truly voluntary, so that Member States can decide whether to commit assets to the pool and to withdraw them without explanation if events or other concerns prevented a Member State from making these response capacities available in a specific disaster. The financial incentives for participating in the voluntary pool look set to be limited to adaption and certification costs, rather than common funding for on-going running costs of Member States' assets committed to the pool. Co-funding levels for transport of assistance are still to be resolved, with the UK and like-minded states unconvinced about the Commission's proposals to increase co-funding to 85% and 100% (from the current 50%). Finally, on EU funding for capacity gaps the like-minded states have sought to limit EU activity to identifying, rather than funding the filling of, capacity gaps.

In parallel, the European Parliament's ENVI Committee has now approved its final report, which is largely supportive of the Commission's original proposal. The formal European Parliament Plenary vote on this report is scheduled for 31 January.

My officials will continue to work closely with other Member States, the Commission and the Irish Presidency to address the areas of concern identified in the Explanatory Memorandum.

In addition to their aim of completing negotiations on the Union Civil Protection Mechanism and beginning to work on subsequent implementation measures, the Irish Presidency has also identified a number of other civil protection priorities. Recognising the cross-sectoral nature of critical infrastructure protection the Presidency plans to facilitate consideration of the review of the Directive on the Identification and Designation of European Critical Infrastructure (EPCIP Directive). A Commission Communication outlining the future direction of the Programme is expected during the Irish Presidency. The Government wishes to see the Programme revised and updated but would wish to be sure that any changes contribute to the aim of improving the protection of critical infrastructure in the EU. It is not yet clear whether any proposals in this area would attract the JHA opt-in.

The Irish Presidency also plan discussions (in conjunction with the Terrorism Working Party) on the Commission's review of the EU CBRN Action Plan. The comprehensive breadth of the EU CBRN and Explosives Action Plans, spanning issues of Prevention, Detection, Preparedness and Response provide a valuable opportunity to enhance the capabilities and resilience of Member States through sharing of best practice, common methodology and, where appropriate, risk and mitigation information. The Government broadly supports a more joined-up approach to CBRN and Explosives but wants to avoid new unnecessary legislation as a result of the European Commission's report on its review of the Action Plans.

Finally, the Irish Presidency plans allow for due consideration and deliberation of Commission and High Representative proposals on the implementation of the Solidarity Clause (Article 222 TFEU). The Government sees the clause as a statement of political will among Member States that should not add any new obligations or duplicate existing EU structures and arrangements. The Government's Explanatory Memorandum on these proposals will be submitted shortly.

1 February 2013

Letter from the Chairman to Chloe Smith MP

Thank you for your letter of 1 February 2013 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 13 February 2013.

We are grateful for the information you have provided on the Government's recent efforts to shape the development of this proposal and the update on the progress of these negotiations.

We are now content to clear this document from scrutiny but will look forward to receiving further updates on the progress of this proposal in due course.

14 February 2013

Letter from Chloe Smith MP to the Chairman

Thank you for your letter dated 14 February in which you stated that the Committee was content to clear this document from scrutiny.

As you are aware the Irish Presidency hopes to soon be in a position to agree a partial general approach in the Council in preparation for trilogue. I will ensure that you and your Committee are kept updated as this progresses.

25 February 2013

CLINICAL TRIALS REGULATION (12751/12)

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

I am writing to update you on the negotiation on the European Commission's proposals for a clinical trials regulation and the outcomes of the Government's public consultation on the proposal.

The Government has begun negotiations with other Member States and it is to be expected that by the end of the Irish Presidency in June we will have had a first read-through of the Commission's proposal to identify points of consensus and disagreement. To date, Member States have discussed the authorisation procedure, substantial modifications, the application dossier, protection of subjects and informed consent, safety reporting, manufacturing of investigational product, labelling and IT infrastructure.

The Medicines and Healthcare products Regulatory Agency (MHRA) held a public consultation from 6 November until 31 December to seek stakeholder views on the Commission's proposal and the Government's view on the proposal. I committed to consult with you again if there was any change to the Government's policy approach following this consultation.

I was pleased to see that 63 stakeholders submitted a response to the consultation. Responses were very supportive of the Government's negotiating strategy and the Commission's proposal. The consultation did not raise any issues that would require the Government to change its policy position.

Although generally very supportive, respondents did give very clear signals in a number of areas:

- Timelines for authorisation should not be extended considerably beyond what is proposed in order for the EU to remain competitive in a global environment.
- Although respondents supported the EU portal, there were clear concerns around the practicalities of the portal and the need for the portal to be fully functional from the date the new legislation applies.
- Although only some respondents had experienced difficulties with obtaining insurance, and this was only for multi-state trials, a majority of stakeholders saw benefit in a national indemnification mechanism as proposed by the Commission.
- Many respondents had concerns around the proposed definitions of 'clinical trial', 'clinical study' and 'low-intervention trial' but no alternative definitions were suggested.

- Concerns around differing interpretation by Member States were raised which is understandable considering the experience with the Directive.
- Concerns around the proposed text on clinical trials in incapacitated subjects and in emergency situations were raised.

These comments clearly support the Government's agreed negotiating position. The issue around definitions will be discussed further with interested stakeholders. Stakeholder concerns around clinical trials in incapacitated subjects and in emergency situations have already been fed into negotiations in Brussels. The concerns around timelines and the EU portal confirm the Government's views on these issues.

The impact of the introduction of a national indemnification scheme requires careful consideration, especially the impact on the NHS and potential financial consequences need to be considered in more detail before the Government can take a position on this.

I will provide you with an update on the negotiation after the Irish Presidency.

5 April 2013

COMMON EUROPEAN ASYLUM SYSTEM (16929/08)

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

I am writing to advise the Committee of developments on the proposal to recast the Dublin Regulation and to ask the Committee to clear the Regulation from scrutiny by Friday 14 December, for the reasons set out below.

As you will recall from the letter from my predecessor dated 28 May, negotiations on this proposal were deadlocked for a significant period of time over the issue of whether a "suspension" or "emergency" clause should be included, as originally proposed by the Commission. We were firmly opposed to the inclusion of the suspension clause. Such was the strength of feeling on this issue in Council that a compromise was proposed, based around the development of an "early warning and support mechanism" led by the European Asylum Support Office (EASO). We strongly supported this proposal, which also received support from the majority of Member States. This enabled us to give our agreement and subsequently the Danish Presidency secured agreement of the Council at COREPER in April to open formal discussions with the European Parliament, based on a text for the Regulation that did not include a suspension clause.

I am pleased to report that during trilogue negotiations we have been successful in securing all our key objectives. We are confident that the final Regulation will enhance our ability to reduce abuse of the asylum system, in particular "asylum shopping" by asylum applicants.

In particular, we secured acceptable text in relation to the Early Warning Mechanism, the use of detention within the Dublin process and the approach to be taken towards cases involving family unity, including bringing together persons who are related to each other, but who do not form part of the nuclear family. The Committee will recall the concerns about the Commission's original proposals relating to family unity, however, we believe the text that has emerged after some very complex negotiations represents an acceptable compromise that meets the operational needs of the UK Border Agency. Our concerns about the right of applicants to request a personal interview, guarantees for unaccompanied minors, the nature of remedies against transfer decisions and the provision of legal aid have also been resolved.

After the successful conclusion of negotiations on the detail of the articles themselves, negotiations have taken place on the method by which the Council and the Parliament should confer powers on the Commission to adopt measures to implement the Dublin Regulation. Council has consistently argued for measures that would maximise Member States' oversight of key elements (i.e. through the use of "Implementing Acts" in contrast to the alternative "Delegated Acts", which provide greater latitude for action by the Commission). A complex negotiation with the European Parliament has very recently resulted in the securing of a compromise where the Council has accepted the use of "Delegated Acts" in two articles (relating to families and minors) in return for a recital guaranteeing consultation with Member States and that 'Implementing Acts' remained in all other areas. As a result COREPER approved the comitology position on 15 November.

As such, negotiations of the Dublin (III) Regulation are almost complete, nearly four years after they began. The Presidency hopes that the Regulation will be officially adopted at the Transport Council on 20 and 21 December, meeting the 2012 deadline. Although earlier indications had been that there

would simply be a report on the state of play in negotiations at the JHA Council on 6 and 7 December the Presidency has, at short notice, decided to put the Regulation to the JHA Council as an "A" Point to secure political agreement to the Regulation. Final adoption by the Council at First Reading would then follow (on 20 December at the earliest). I understand that at the JHA Council there will be no formal vote and no record of the way each Member State might vote at Council. Nonetheless, Home Office and UKRep officials have been in close contact with the Presidency to make it clear that we are not in a position to lift our Parliamentary Scrutiny Reserve at the JHA Council.

4 December 2012

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 4 December 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 December 2012.

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

We further note that this proposal is on the agenda for political agreement at the forthcoming JHA Council meeting on 6 and 7 December.

Therefore, we have decided to clear this document from scrutiny but would be grateful for further updates about the progress of the proposal in due course.

6 December 2012

CROSS BORDER THREATS TO HEALTH (18509/11)

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

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

Article 12 was deleted at the EPSCO Health Council meeting in June. At the Public Health Working Group meeting on 3 September the Commission restated their reservation on its deletion. They felt that it was important to include provisions of this sort and were prepared to discuss drafting alternatives which might be more acceptable to Member States. However, our position remains unchanged, we oppose article 12 and believe this Article runs contrary to the principles of subsidiarity, adds little value, and consequently recommend its deletion. This position is supported by the majority of other Member States.

The current position, following the latest Working Group, is that the draft of the Decision being considered by the Presidency now largely meets all the concerns the UK had with the original text. Consideration is being given to removing powers given to the Commission by way of implementing acts to give greater scope for procedures to be determined within the Health Security Committee. There is greater clarity on the scope of the Decision and wording has been agreed which limits the potential for unnecessary duplication to overlap with systems set up under other binding Union provisions.

We expect challenges to come in the European Parliament negotiations whose position seem to be developing in a different direction to the Council and is more clearly aligned with that of the Commission. We have therefore taken the opportunity to provide MEP's with a briefing which includes comments on the Parliamentary Rapporteur's amendments.

The Rapporteur's Report was considered by the European Parliament and the Committee on the Environment, Public Health and Food Safety (ENVI) on 10 July and the Government's comments on the proposed amendments were made on 17 September. The ENVI committee voted on 18 September; with a plenary vote scheduled for w/c 22 October 2012.

In broad terms the Government's view on the proposed amendments are that we do not agree with the Rapporteur's inclusion of threats caused by defective active implantable medical devices or the misuse of medication within the scope of the Decision (Recital 3 and Articles 2 amendments 13-15) as extending the scope to active implantable medical devices would cause unnecessary overlap and

duplication with other legislation. This amendment was clearly included by the Rapporteur as a reaction to a particular incident but the very specific drafting does not fit well with the general way in which the scope is otherwise drafted. This concern of the Parliament may be dealt with by a drafting that is being considered by the Presidency which would allow Member States or the Commission in exceptional circumstances, to refer health threats other than those covered by the scope of the Decision, to be coordinated by the Health Security Committee.

Measures taken under this Decision need to be informed and guided by the national experts on the ground, who have direct experience and knowledge of the relevant threats, and will be best placed to lead a response. The effective coordination of such a response will be best achieved through strengthening the Health Security Committee and its internal procedures. This Decision needs to strengthen coordination between Member States while preserving the capability of Member States to respond swiftly to local conditions and circumstances on the ground, without unnecessary bureaucratic delays.

Although there are some outstanding issues which require attention, all the UK's main concerns have been addressed and there is nothing that feels particularly intractable from either the Council's or the Government's perspectives. Many of the discussions now concern the procedures within the Health Security Committee such as the appointment of experts.

I have attached the latest Presidency "limité" text for information which is shared with the Committee in confidence and is not for publication [not printed]. We will continue to keep you advised on any further progress, but in the meantime would be grateful for your agreement to clear the proposal from scrutiny, so the UK can participate effectively and exercise its voting rights within the Committee.

5 November 2012

Letter from the Chairman to Anne Soubry MP

Thank you for your letter of 5 November 2012, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 14 November 2012.

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

We further note that this proposal is on the agenda for political agreement at the forthcoming EPSCO Council meeting on 7 December and we are now content to clear this document from scrutiny but would be grateful for further updates about the progress of the proposal in due course.

14 November 2012

CYBERSECURITY (6225/13)

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

Thank you for your explanatory memorandum of 27 February 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 20 March 2013.

We are pleased to see that the Communication reflects many of the recommendations in our reports Protecting Europe against large-scale cyber-attacks (5th Report of Session 2009-10, HL Paper 68) and The EU Internal Security Strategy (17th Report of Session 2010-12, HL Paper 149). We continue to believe that the EU has a role to play in coordinating Member State activities, spreading best practices, and bringing other Member States up to speed in terms of cyber-security.

Our reports also emphasised that active EU collaboration with NATO, the UN, the OECD, and other international organisations, is an indispensable part of securing greater cyber-security. We also noted that securing a coordinated response at the global level was the main theme of the international cyberspace security conference, which the Government hosted in London on 1-2 November 2011. We would welcome some information on how the Government is following up that conference.

The international dimension is reflected in the text of the Communication, but is not mentioned in your EM. Given that the Government signed an agreement with India on 19 February on cyber-

security, we would be grateful to know the Government's position on the international dimension of the EU Strategy, including how this may interact with existing and future bilateral efforts by the UK in this area.

We have decided to retain the document under scrutiny and, in the meantime, look forward to receiving your response to the above points within the usual 10 day period.

We are also now content to clear Document No 8543/12, regarding the European Cybercrime Centre, from scrutiny.

20 March 2013

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

Thank you for your letter of 20 March in response to my Explanatory Memorandum of 27 February on the EU's Cybersecurity Strategy. You asked for more detail of how the Government is following up the 2011 London Conference on Cyberspace. We are pleased that the London Conference has, as the Foreign Secretary intended, established a series of dialogues between international parties on a broad range of issues around cyberspace. These include a range of issues from international security and cybercrime through to the economic & social benefits of cyberspace including Freedom of Expression online.

As you will be aware, the Budapest Conference on Cyberspace took place in October 2012 and, inter alia, moved further the debate on capacity building for cyber security. Following this, the Foreign Secretary announced a £2m cyber security capacity building fund. This has led to the creation of a UK Global Centre for Cyber-Security Capacity Building, which will provide independent advice to countries and donors on how to build a secure and resilient internet. We are discussing with other nations how they might contribute to capacity building including through our G8 Presidency.

The third conference in the series will be in Seoul in October 2013. We are working closely with the South Korean government who are keen to continue the themes of the London Agenda. This conference will come at an important moment in the run-up to a series of important conferences in 2014, such as the 10 year review of the World Summit on the Information Society (out of which many of the structures for Internet governance originated), and the Plenipotentiary Conference of the International Telecommunications Union (ITU).

You also asked for more information about the Government's position on the EU's international activity on cyber and how this interacts with the UK's existing and bilateral efforts. In advance of the June Council Conclusions, we are discussing with the Commission, EEAS, and other Member States how best to develop and implement the international aspects of the EU Communication. We see potential for the EU to add value on our international cyber objectives, not least through the weight of its collective voice. But we also want to make sure it does this on the basis of a clear mandate from Member States and in a way which is consistent with the Government's established positions on EU competence and external representation.

9 April 2013

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

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

We are grateful for your update on developments since the international cyberspace security conference in London on 1-2 November 2011. We are pleased to see that the UK appears to be playing a leading role in building capacity around the world to improve resilience to cyber-crime and were grateful to receive a copy of David Willetts MP's useful update on the proposed Directive (Document No 6342/13) in his letter to William Cash MP of 16 April 2013.

We are now content to release this document from scrutiny but we will continue to retain Document No 6342/13 under scrutiny.

No response to this letter is required.

24 April 2013

**Letter from Helen Grant MP, Parliamentary Under-Secretary of State for Justice,
Ministry of Justice, to the Chairman**

I am writing to let you know about the Government's Impact Assessment of the EU Commission's data protection proposals, which I am publishing today.

Earlier in the year, Ken Clarke and Lord McNally provided you with Explanatory Memorandums on the proposals, as well as impact checklists providing a quick assessment of their costs and benefits. The Impact Assessment published today has benefitted more fully from the Call for Evidence conducted in February and March, as well as detailed discussions with affected groups in a range of sectors.

As you will recall, on 25 January 2012, the European Commission published a draft data protection regulation which will impact on business, the public sector and charities and a draft data protection directive, covering the police and judicial sector. The Commission's Impact Assessment, which accompanied the proposals, estimates that the new regime would bring a net administrative saving to the EU, totalling €2.3 billion each year. As the Government's Impact Assessment shows, we disagree with this assessment and believe that the burdens the proposed Regulation would impose far outweigh the net benefit estimated by the Commission. For the UK alone the annual net cost of the proposal (in 2012-13 earnings terms) is estimated at between £100 million and £360 million a year.

For clarity, this Impact Assessment focuses on the proposed Regulation. Under Article 6A of the UK's Title V Opt-In Protocol we believe that the proposed Directive will have a limited effect on the United Kingdom, in that will only apply to data being processed under an EU instrument that binds the UK. Therefore, criminal justice system agencies within the UK will avoid being bound by the Directive when processing personal data outside of such provisions.

It is worth noting that organisations which process criminal justice data will also process personal data covered under the Regulation and so some of the monetised costs and benefits stemming from the Regulation could be shared (for example, the cost of designating a data protection officer). The Directive would require transposition into UK law, at which point domestic legislation would also be needed to cover that processing purely internal to the UK. There is therefore a degree of flexibility for Member States in determining how the EU-level rules in the proposed Directive would be transposed and a fuller assessment of the costs and benefits specific to the proposed Directive will be produced nearer the point of transposition.

The Government is seriously concerned about the potential economic impact of the proposed data protection Regulation. At a time when the Eurozone appears to be slipping back into recession, reducing the regulatory burden to secure growth must be the priority for all Member States. It is difficult therefore to justify the extra red-tape and tick box compliance that the proposal represents. For example, we estimate the costs for UK small businesses of simply demonstrating compliance with the new rules at around £10 million every year (in 2012-13 earnings terms). A further serious issue is the possibility of stifling innovation through prescriptive and inflexible rules on gaining individuals' consent and informing them about the processing of their personal data, whilst offering people an unworkable 'right to be forgotten'. Instead the focus must be on achieving the right ends: meeting people's rightful expectation that their personal information is used lawfully, proportionately and securely, whilst being able to offer them the goods and services they want and need.

Negotiations on the proposals are expected to continue until 2014, with the new legal framework coming into force in 2016, although this timetable is subject to the usual uncertainties. With the evidence set out in the Impact Assessment enclosed [not printed], the UK Government will continue to push for a data protection framework fit for 21st century realities that is proportionate, and that minimizes the burdens on businesses, the public sector and other organisations, whilst giving individuals real protection in how their personal data is processed.

22 November 2012

Letter from the Chairman to Helen Grant MP

Thank you for your letter of 22 November 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 December 2012.

We note that the UK impact assessment on the draft Regulation highlights in stark terms the financial implications of implementing the proposal in its current form. We note that the House of Commons

Justice Committee has also expressed concerns about this in its recent report on the draft Regulation and we endorse their conclusions and recommendations in this regard.

We support your intention to negotiate for a data protection framework that will stimulate economic growth and innovation without imposing excessive administrative and financial burdens on the public and private sectors, as well as providing data subjects with a proportionate level of protection.

We look forward to receiving further updates about the progress of this proposal, alongside the draft Data Protection Directive, in due course.

19 December 2012

DRAFT EU ACTION PLAN ON DRUGS (2013-2016)

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

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

This Committee conducted an inquiry from October 2011 to March 2012 into what form the EU Drugs Strategy 2013-2020 should take, and our report *The EU Drugs Strategy* was published on 16 March 2012. Our report made a number of recommendations to both the Government and the Commission, and it is not clear from your explanatory memorandum whether these have been taken into account in the current draft of the EU Action Plan 2013-2016. For example, we note that you have engaged with the Irish Presidency of the EU to include actions to tackle New Psychoactive Substances. Our report supported “the exploration of alternatives to banning new psychoactive substances, such as placing them within regulated markets similar to those that already exist for alcohol and tobacco, which attempt to control use through education and treatment rather than criminalisation”.

We note with regret that neither the Government nor the Commission in their responses to our report have taken up one of its main recommendations that there needs to be a much wider and more imaginative public debate about the EU’s future Drugs Strategy (2013-2020) and about the Action Plan (2013-2016).

We would therefore be grateful if you could write to us in response to these points and could provide more detail about the content of the draft Action Plan and the Government’s views on its proposals.

In order to aid our consideration of this document we would be grateful if you could provide us with a copy of the most recent version of the Action Plan, alongside your response to this letter.

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

14 March 2013

Letter from Jeremy Browne MP to the Chairman

Thank you for your letter of 14 March about the Draft EU Drugs Action Plan 2013-2016. Firstly, let me show my appreciation to your Committee for the inquiry conducted into the EU Drugs Strategy 2013-2020 and the subsequent report; *The EU Drugs Strategy*, which was published 16 March 2012.

In your letter, you asked what actions the Government were taking to tackle New Psychoactive Substances (NPS). To build on the NPS UN resolution 2012, which was adopted at the UN Commission on Narcotic Drugs, the UK with Australia and Japan, introduced a resolution at this year’s Commission to once again draw attention to the challenge of NPS. It encouraged the international community to have a comprehensive and integrated approach to NPS detection, research, analysis and identification, to collect and share information on the health harms and risks, and take a proactive approach internationally to the forensic identification and monitoring of NPS. This resolution was co-sponsored by 41 Member States from every UN region.

Furthermore, the UK, as part of its Presidency of the G8, will chair expert meetings next month on both NPS and transnational organised crime in West Africa. The G8 NPS experts’ meeting will develop our collective understanding of the global challenges with a view to improving the global response to NPS through identification and reporting.

You also raised the need for a wider public debate about the EU's future Drugs Strategy and the Action Plan (2013-2016). The Government's response to the Home Affairs Select Committee report on drugs was published on 7 March 2013. In that, we announced a Home Office study on international comparators that will review new evidence on what works in other countries and what the UK can learn from it.

Additionally, I can confirm that your Committee has the latest draft of the EU Drugs Action Plan 2013-2016. The EU Drugs Action Plan 2013-2016 is circulated approximately one week prior to the Horizontal Drugs Working Group (HDG) where it is discussed and negotiated. The next HDGs will be held on 18 April and 17 May. When the next working texts become available in April and May they will be circulated to the European Union Committee. At present, the EU Action Plan is progressing well. UK officials have offered comments throughout the process, including language against Government priorities, such as recovery, NPS research, Afghanistan and Pakistan, cutting agents, and EU funding, which have been taken into account. Therefore, we expect discussions to lead to final agreement so the final text can be adopted in June 2013.

11 April 2013

Letter from the Chairman to Jeremy Browne MP

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

We are grateful for your clarification of who the UK is collaborating with on the issue of identifying and monitoring new psychoactive substances. It is not clear, however, that this international collaboration includes exploring alternatives to banning new psychoactive substances. We would be grateful for a precise reply on this point, which was taken up in our report on The EU Drugs Strategy (26th Report of Session 2010-12, HL Paper 270), about this point.

The Government's announcement in March of a review of international legislation on drugs is welcome. We encourage the Government to be open-minded in considering the range of approaches that exist around the world.

We note in your letter that another meeting of the Horizontal Drugs Group took place on 18 April and that the next meeting will take place on 17 May, and that revised versions of the Draft EU Drugs Action Plan 2013-2016 are usually prepared approximately one week before each meeting. In order to aid our scrutiny of the Action Plan we would be grateful if you could provide the Committee with a detailed update on the revised Action Plan, in advance of its adoption, alongside a response to the above queries.

24 April 2013

DRAFT EU DRUGS STRATEGY (16693/12, 12036/3/12)

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

Thank you for your explanatory memorandum of 26 November 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 December 2012; and your request for the "urgent consideration" of this document as it is due to be adopted by the JHA Council on 6 and 7 December 2012.

The fact that this document was not deposited at an earlier date is indefensible. If it had been this would have allowed adequate time for more considered scrutiny by this Committee. We note that the previous draft EU Drugs Strategy for 2005-2012 was deposited well in advance of its adoption in early December 2004, as set out in your EM. Furthermore, the fact we published a comprehensive report on this very subject should have made it clear that we would like to scrutinise this document as soon as the first draft version became available. We would be grateful for an explanation of the reasons for the late deposit of this document.

We note that the new EU Drugs Strategy maintains a focus on drug demand and supply reduction. We expressed doubt about these themes being treated as the Strategy's main policy objectives in our report on the form of the next Strategy, which was published on 16 March 2012 – The EU Drugs Strategy (26th Report of Session 2010-12, HL Paper 270). However, we are pleased to see that the

Strategy's cross-cutting themes reflect many of the recommendations made in the same report, including its strong emphasis on the role of research and evaluation in improving the collection, analysis and distribution of information among Member States and the valuable contribution made by the European Monitoring Centre for Drugs and Drug Addiction, which we visited in Lisbon during our inquiry.

We also note that the Government's recent review of their domestic drug strategy, which was launched in December 2010, takes good account of the EU dimension including the role of the new EU Drugs Strategy.

With reluctance we have decided to clear this document from scrutiny. I would be grateful for your response to our concerns about the late deposit of this document within the usual 10 days; and in view of the wider implications for the whole scrutiny process of this cavalier behaviour by the department, I am sending a copy of this letter to David Lidington MP in his capacity as the Minister for Europe.

6 December 2012

Letter from Jeremy Browne MP to the Chairman

Thank you for your letter of 6 December regarding the deposit date of the draft EU Drugs Strategy. Firstly, let me thank you and your Committee for your decision to clear the EU Drugs Strategy from scrutiny. Your decision enabled the Strategy to be adopted at the Justice and Home Affairs Council on 7 December.

I apologise that the Committee was not formally presented with initial drafts of the Strategy and that the consequent late deposit did not allow your Committee sufficient time to consider the recent Explanatory Memorandum which included the latest version of the draft Strategy. The text of the Strategy being prepared for adoption was published on 23 November and officials worked quickly to ensure an Explanatory Memorandum was laid on 26 November. This was able to cover two iterations of the Strategy. Prior to this date, officials had shared previous versions of the Strategy informally with your Clerk on 4 July and 9 November.

Please be assured that the late deposit of the document and Explanatory Memorandum in this case was the result of a misunderstanding about what was required rather than a disregard of the scrutiny process. I would like to take this opportunity to say that this Department remains fully committed to the scrutiny process and I regret that this situation has arisen. We will ensure that future proposals of this nature are provided to the Committee in good time.

17 December 2012

Letter from the Chairman to Jeremy Browne MP

Thank you for your letter of 17 December 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 9 January 2013.

We are grateful for your apology regarding the late deposit of this document and note your assurance that this was due to a misunderstanding rather than the scrutiny process being disregarded. We also note that informal contact between your officials and the Clerk to this Committee, which took place regarding the draft Strategy, but would like to make clear that these exchanges can in no way be regarded as a substitute for the Government's obligation to deposit the document with the Committee in good time.

We would be grateful to receive a copy of the EU Drugs Strategy in the form adopted by the Council.

We trust that the improved arrangements for scrutiny which you have promised will be applied to the first EU Drugs Action Plan, which has been brought forward under the new EU Drugs Strategy, and that this Committee will be consulted on its content in good time.

10 January 2013

DRUG PRECURSORS (14514/12, 14394/12)

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

Thank you for your explanatory memorandums of 15 October 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered together at a meeting on 31 October 2012.

We consider that the proposals appear to be a proportionate response to the weakness that the Commission has identified in the current controls of AA and medicinal products containing ephedrine and pseudoephedrine. We further consider that there could be some longer term benefits to the UK in creating a European database on drug precursors. For that reason, whatever the outcome of your consideration of the applicability of the UK's opt-in (on which see below) we believe it is in the UK's interest to participate in these measures.

We note that you are considering whether both proposals may engage a Title V TFEU legal base, therefore triggering the UK's Opt-in Protocol. We reiterate our consistent view that Protocol 21 only applies with respect to proposals and measures that expressly cite a legal base falling within Title V. In this instance we do not consider it to be clear that the addition of a Title V legal basis would be justified. Please let us know when you have reached a definitive position on this point.

We have decided to retain these documents under scrutiny, and would like to receive updates about the progress of these proposals in due course.

1 November 2012

Letter from Jeremy Browne MP to the Chairman

Thank you for the scrutiny given to my Explanatory Memoranda dated 15 October regarding the proposed changes to controls of Acetic Anhydride (AA) and medicinal products containing ephedrine and pseudoephedrine.

I am pleased to hear that you agree with the recommendations contained within them. I have also now reached a definitive position regarding the citation of a Title V legal base and consider that the addition of a Title V legal base would not be justified in this instance.

The overall aim of the Regulations is to establish a licensing and control system over certain drug precursors in respect of both trade within the EU and that between the EU and third countries, and for this system to be subject to monitoring via a database. In my view, these aims properly fall within the scope of Article 114 and Article 207 as they promote the free movement of precursors by establishing a harmonised regime for their licensing, in the absence of which 27 separate systems for their control could be established, thereby hindering the free market. In short, the proposals seek to regulate and monitor the legitimate trade in precursors. There is no suggestion that the database to be established under the Regulations will be used for police and law enforcement purposes; nor do we consider that such a use would be permitted within the competence granted to the Commission.

I will also ensure that your Committee receives updates about the progress of these proposals.

14 November 2012

Letter from the Chairman to Jeremy Browne MP

Thank you for your letter of 14 November 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 28 November 2012.

We are grateful for your confirmation that the Government does not consider that the proposals engage a Title V TFEU legal base.

We have decided to retain these documents under scrutiny. We look forward to receiving further information on the progress of these proposals as the negotiations continue in due course.

28 November 2012

Letter from Jeremy Browne MP to the Chairman

In a letter dated 14 November 2012 I promised to keep you informed on the progress of the negotiations surrounding the proposed changes to the above Regulations.

The UK Government was broadly in favour of the measures proposed as they represent a proportionate response to the identified weakness in current controls around Acetic Anhydride (AA) and medicinal products containing ephedrine and pseudoephedrine, a point you noted in your letter of 5 November 2012. There were nevertheless a number of issues on which we were seeking to negotiate.

PROPOSAL AMENDING REGULATION 273/2004 – AMENDING CONTROLS AROUND ACETIC ANHYDRIDE (AA)

You may recall we had two main reservations with the proposals; namely, the exemption from charging microenterprises to register as an 'end user' of AA and the indefinite delegation of powers to the Commission to implement delegated acts.

The discussions at the Council have resulted in an agreement that Member States' Competent Authorities may require companies selling AA, and users of the substance regardless of their annual turnover, to pay a fee for a licence or a registration, so long as the fees do not exceed the cost of processing the application. This is a principle which has been enshrined in the existing Regulation since its implementation in 2004.

The Home Office Drugs Licensing Unit operates on a principle of full cost recovery and no 'cross subsidy' (where some applicants might pay more to cover the costs involved in licensing other smaller companies), so the removal of the exemption for charging microenterprises meets the requirements of the UK position.

While the Home Office acknowledges that the cost involved in obtaining a licence for AA represents a financial burden for microenterprises, we do seek to minimise this burden wherever possible by applying a risk based approach to assessing applications. For example, we would visit only those applicants dealing in large amounts of AA with a high turnover of stock, since they represent a greater risk of diversion. Other applicants representing a smaller risk are assessed solely on a paper investigation.

The cost is relatively low: £435 for a first time registrant and £109 for an annual paper-based renewal. This would increase to a possible maximum of £1,153 if a visit is necessary, although this would apply only to the highest risk applicants. This is felt to be a proportionate burden given the risks involved in handling or trading in these substances and the need to safeguard against the diversion of these substances into the illicit trade.

Regarding the delegated powers, the discussions at the Council resulted in an agreement that the delegated powers would last for a period of five years. At that point they would be tacitly extended for the same period, unless the European Parliament or the Council objected not later than three months before the end of each period. This is in line with the preferred UK position.

PROPOSAL AMENDING REGULATION 111/2005 – AMENDING CONTROLS AROUND MEDICINAL PRODUCTS CONTAINING EPHEDRINE AND PSEUDOEPHEDRINE

Our reservations around these proposed changes were twofold.

The first related to the length of time of the delegation of power to the Commission to implement the articles containing delegated acts. The conclusion of these discussions was the same as those for Regulation 273/2004 as stated above and therefore was in line with the UK position.

The second was determining which part of the UK Government would issue the Pre Export Notifications (PENs) for exports, to certain countries, of medicinal products containing ephedrine and pseudoephedrine. Since the Council has now agreed that the Regulations should include a requirement for an export authorisation, which carries a charge, to be issued along with the PEN, this means that the Home Office unit currently responsible for issuing (drug) Precursor Chemical export licences is well-placed and able to assume this role.

Since the income attached to the export authorisation will cover the cost of the PEN submission, an exporter will not be subject to the additional burden of contacting a second regulatory body to effect a shipment. Instead the whole process can be conducted by staff already familiar with the processes used for other substances, making use of existing systems and making it logical and time efficient for the applicants.

The next step for both of these proposals is for them to go forward to Coreper and then on to first reading at the Council and a vote in the European Parliament. At the time of writing we are still waiting for a date for this.

8 May 2013

EURODAC (10638/12)

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

Thank you for your letter of 18 October 2012 regarding the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 31 October 2012.

We are grateful for your confirmation that the Government has decided to opt-in to this proposal with which we concur.

In respect of the concerns expressed in our letter of 4 July about law enforcement agencies having access to the EURODAC database, we welcome your commitment to maintain high data protection standards within the measure during the negotiations, as well as the removal of the provision that would have allowed Europol access to the database to conduct analysis of a "general nature or of a strategic type".

We have decided to retain this document under scrutiny and would be grateful for further updates about the progress of negotiations in due course.

1 November 2012

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 1 November on this proposal, which requested updates on progress.

Negotiations are moving at a fast pace and while adoption is unlikely to be proposed before the end of the year, we fully expect rapid moves to conclude work on this dossier early in the New Year.

This is to advise you that provisions permitting Europol access for the purpose of an analysis of a "general nature or of a strategic type" have been removed from the text under negotiation. The text now provides that Europol can compare fingerprint data with EURODAC where this is necessary in a specific case. Systematic comparisons would not be allowed, as they would not be for Member states. In addition, it is envisaged that all of the following conditions would need to be met before Europol could have access:

- The offence being investigated falls within Europol's mandate;
- Comparison of the fingerprint data with the data stored in Europol's own information processing systems does not identify the person in question;
- The comparison is needed "to support and strengthen action by Member states in preventing, detecting and investigating terrorist offences or other serious criminal offences falling under Europol's mandate"; and
- There are "reasonable grounds to consider that such comparison with EURODAC data will contribute to the prevention, detection or investigation of any of the criminal offences in question.

The Government believes that access to EURODAC, subject to these conditions, could provide Europol with a useful additional tool to support Member States' investigations. One of Europol's key functions is to analyse criminal intelligence data provided by different Member States' law enforcement agencies to identify potential cross matches. Not all of this information can be transmitted freely to all Member States, as the Member State providing it will have stipulated how it should be handled and which partners may have access to it.

This means that Europol will sometimes have a broader picture of a particular investigation than individual Member States. That picture may lead it to conclude that a comparison with EURODAC is needed to identify a suspect or victim of an offence when this will not be apparent to Member States. Europol has advised that this could be particularly useful in dealing with offences such as human trafficking, as traffickers sometimes instruct their victims to claim asylum in order to get them into the EU. Knowing when and how a trafficking ring's victims entered the EU could provide important

information about how the organisation works, and enable Europol to provide information to Member States that contribute to its disruption.

12 December 2012

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 12 December 2012 regarding the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 9 January 2013.

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

We welcome the inclusion of further conditions in the proposal that Europol would have to meet before it can access the EURODAC database.

We have decided to clear this document from scrutiny but would be grateful for further updates about the progress of the proposal in due course.

10 January 2013

EURODAC CENTRAL UNIT: ANNUAL REPORT (2011) (14139/12)

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

Thank you for your explanatory memorandum of 12 October 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 14 November 2012.

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

No response to this letter is required.

14 November 2012

EUROPEAN INFORMATION EXCHANGE MODEL (17680/12)

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

Thank you for your explanatory memorandum of 9 January 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 16 January 2013.

We note that the majority of the EU measures considered in this document are caught by the UK's 2014 block opt-out decision and we expect to consider these measures further in the context of the Committee's current inquiry.

In the meantime, we have decided to clear this document from scrutiny.

No response to this letter is required.

16 January 2013

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

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

I am writing to inform you that the ENISA regulation has now been agreed in Coreper and formal adoption is due to take place at the next Telecoms Council in April.

I can confirm that the Agency will not be taking on more operational tasks, and the mandate of the Agency will remain limited to seven years. A review will be commissioned after five years. Part of the agreement entails the establishment of an Executive Board. The Executive Board will be a non-

decision making body which will prepare administrative and budgetary decisions which will then be referred to the Management Board. We feel this is an acceptable compromise, and will seek to ensure that the Executive Board is as light touch as possible, and does not create unnecessary bureaucracy or additional administrative burdens.

In terms of the location of the Agency, agreement has been reached with the Greek government to open a new branch office in Athens which should increase the Agency's efficiency. This office should become operational later this year. The regulation will contain a factual reference to the location of the branch office.

11 February 2013

Letter from the Chairman to the Rt Hon David Willetts

Thank you for your letter of 11 February 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 27 February 2013. We are grateful to you for keeping us up to date with developments.

You will be well aware of this Committee's views from previous correspondence and from our reports on Protecting Europe against large-scale cyber-attacks (5th Report of Session 2009-10, HL Paper 68) and The EU Internal Security Strategy (17th Report of Session 2010-12, HL Paper 149). You will recall that we broadly supported the Government's position on all the matters under negotiation.

The Cyber-attacks report, in particular, supported making facilities available to ENISA in Athens in order to improve its efficiency and accessibility. We are therefore particularly pleased to note that agreement has been reached on opening a branch office in Athens for this purpose.

No response to this letter is required.

1 March 2013

EU- ARMENIA READMISSION AGREEMENT (16909/12. 16910/12)

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

Thank you for your explanatory memorandum of 12 December 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 19 December 2012.

You will remember from past correspondence that the Committee has always supported the UK's participation in Readmission Agreements, and we wrote to you last year expressing our regret that the Government was not going to take part in the negotiations with Belarus and Armenia. More recently we also supported the Government's decision to opt-in to the Council Decision concerning the conclusion of the EU-Turkey Readmission Agreement, while expressing disappointment about their decision not to opt-in to the Council Decisions on the signing and conclusion of the EU-Cape Verde Readmission Agreement.

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

In this context, we would like to draw your attention to our recent report on The EU's General Approach to Migration and Mobility (8th Report of Session 2012-13, HL Paper 91), which was published on 18 December, and repeats the Committee's support for the UK's participation in all EU Readmission Agreements, including the ones with Belarus and Armenia.

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

19 December 2012

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 19 December regarding the Explanatory Memorandum on the Council Decisions to sign and conclude a Readmission Agreement with Armenia (16909/12 and 16910/1/12).

The Government has decided that the UK should not opt in to the Council Decision to sign and conclude the Agreement with Armenia. As you note in your letter, a decision to participate would have no financial implications, but the Government considers that the proposal offers the UK no clear benefits and for this reason we do not feel it is appropriate to opt in. There is little irregular migration from Armenia to the UK and we have no operational problems with returns which an EURA would help to resolve. It would be possible for the UK to seek to participate in the Agreement post-adoption if these circumstances were to change.

I should note that the fact that the UK does not participate will not prevent other Member States from benefiting from the Agreement.

14 March 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 14 March 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 27 December 2012.

We note with regret your decision not to opt-in to the Council Decisions concerning the signing and conclusion of the EU Readmission Agreement with Armenia with disappointment.

We have already set out in some detail our reasons for advocating the UK's participation in this Readmission Agreement, and in other EU Readmission Agreements in our report on The EU's General Approach to Migration and Mobility (8th Report of Session 2012-13, HL Paper 91). We hope the Government will decide to opt-in to both Council Decisions on Armenia after their adoption.

We will continue to retain these documents under scrutiny and expect to receive further updates on the progress of the proposals in due course.

27 March 2013

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

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

I am writing to thank the Committee for clearing the above Regulations [17285/11, 17287/11] from scrutiny. I would also like to update you on the progress of negotiations on these Funds as negotiations begin to draw to a close and we approach the December Justice and Home Affairs (JHA) Council, where the Cypriot Presidency is expected to seek to agree a Partial General Approach on the text, with a first reading deal with the European Parliament in parallel. It is expected that this will refer to the content of the Regulations and not include agreement on any numbers, where overall budget negotiations are being led elsewhere.

We believe that we have generally been successful in getting the texts to an acceptable place. Our main concerns now are to avoid amendments in trilogue which seek to increase administrative burdens in managing the Funds, either by adding reporting layers or by presenting formulaic approaches to consulting on, evidencing and reporting on the national programmes.

12 November 2012

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

I am writing to thank the Committee for clearing this Regulation [17289/11] from scrutiny. I would also like to update you on the progress of negotiations on these Funds as negotiations begin to draw to a close and we approach the December Justice and Home Affairs (JHA) Council, where the Cypriot Presidency is expected to seek to agree a Partial General Approach on the text, with a first reading deal with the European Parliament in parallel. It is expected that this will refer to the content of the Regulations and not include agreement on any numbers, where overall budget negotiations are being led elsewhere.

The Asylum and Migration Fund has completed its final reading at the Friends of the Presidency group. Negotiations within the working groups have proceeded at a satisfactory pace alongside various bi-lateral discussions between the Presidency and Member States. We have provided the Presidency with a detailed account of our reasoning and top priorities for this Regulation and they have thanked us for our assistance ahead of trilogies with the Commission and the European Parliament.

Our key negotiating objectives were to limit the additional funding available to incentivise relocation actions, to oppose the creation of a common Union resettlement programme, to alter the language surrounding references to 'strengthening the Common European Asylum System (CEAS)' and to seek an amendment to the proposal of the Delegated Acts procedure for setting resettlement priorities to give Member States greater control.

Internal relocation actions within the fund have remained voluntary for Member States. In addition, the prevalence of these actions has been minimised throughout the text.

An amendment has now been made in the text to ensure that involvement within the common Union resettlement programme is voluntary for Member States. We will seek to maintain this position.

The UK proposal regarding our preferred language in terms of solidarity rather than the explicit reference to strengthening CEAS, has received little support from other Member States, as expected. In light of this, we are seeking amendments to indicators which will be used to measure the achievement of this objective in order to ensure that participation of the UK in the CEAS legislation is not a pre-requisite for funding under the AMF. Further, we have sought to clarify that the Regulation will not prejudice the UK's opt-in and have proposed a further amendment to the text to ensure this. This amendment is included in the latest version of the text circulated by the Cypriot Presidency.

As we updated previously, a number of Member States, in addition to the UK, are opposed to the use of the Delegated Act procedure in relation to the amendment of the list of priorities for the proposed Common Union Resettlement Programme. Whilst this position has broad support in Council, we expect strong opposition from the European Parliament. We will seek to ensure that safeguards for Member States are included in the basic act.

12 November 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 12 November 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 21 November 2012.

The Committee is grateful for your update on the progress of the negotiations on these proposals.

We also note that the negotiations are drawing to a close and will look forward to receiving further information about the agreed form of both proposals in due course.

22 November 2012

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 12 November 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 21 November 2012.

The Committee is grateful for your update on the progress of this proposal and the overview of the Government's key negotiating objectives in the negotiations.

We also note that these negotiations are drawing to a close and will look forward to receiving further information about the proposal's agreed form in due course.

22 November 2012

Letter from Mark Harper MP to the Chairman

Following letters from myself and James Brokenshire MP of 12 November 2012, I am writing to update you on the progress of negotiations on the Home Affairs Funds (the Asylum and Migration Fund, the Internal Security Fund (Police) and the Horizontal Regulation laying down the general provisions for these funds). Contrary to expectations, these Regulations were not discussed at the December JHA Council. However, a mandate for negotiations with the European Parliament (EP) was

agreed. As expected, this does not include agreement on provisions with budgetary implications, as overall negotiations on the next EU budget had not yet been concluded.

Both funds are currently awaiting EP first reading. The EP Civil Liberties, Justice and Home Affairs Committee (LIBE) have agreed on suggested amendments to the Commission's original proposals and inter-institutional negotiations ('trilogue') between the Council, the LIBE Committee and the Commission are now beginning. We hope to achieve a first reading deal once the amounts under the next EU budget are agreed.

We will work with the Presidency to ensure that during these negotiations the UK priorities of reducing administrative burdens and increasing effectiveness on all funds are taken forward. In addition on the Asylum Migration Fund, language within the Regulation which had the potential to prejudice the UK's opt-in position and the use of the Delegated Act procedure to amend the list of priorities for the proposed common EU resettlement programme have now been removed. We will seek to maintain these amendments during negotiations in trilogue.

We undertake to provide a further update on the Home Affairs Funds in due course.

25 February 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 25 February 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 6 March 2013.

The Committee is grateful for your update on the progress of these proposals and will look forward to receiving further information as the negotiations progress, including the budget settlement for each fund, in due course.

7 March 2013

EU BUSINESS UNDER THE IRISH PRESIDENCY: BIS

Letter from the Rt. Hon Vince Cable MP, Secretary of State for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

I am writing to summarise briefly the areas that we expect to be most active during the Irish Presidency.

SUMMARY

The Irish Presidency will be given shape by four European Councils: on 7-8 February, 14 March, 30 May and 28 June, covering trade, Multi-Annual Financial Framework (MFF), economic reform and growth and the Banking Union. However the exact agendas for the Councils have not yet been issued.

BIS's main interests will be in the Competitiveness, Employment and Social Affairs (EPSCO), and FAC-Trade Councils, though we also have substantial interests in proposals going to the Environment and Energy Councils and Education Councils. The Competitiveness Council meets on 18/19 February and 22-23 May, with an Informal in Dublin on 1-3 March. EPSCO meets on 28 February and 20 June with an Informal on 7-8 February. The FAC Trade has an informal on 17-18 April and a formal meeting on 18 June, coinciding with the G8 Summit on 17-18 June in Lough Erne.

MULTI-ANNUAL FINANCIAL FRAMEWORK (MFF)

The Irish will aim to bring negotiations on the Multi-Annual Financial Framework to conclusion. Under the Cypriots progress was made on the negotiating box (a document similar to council conclusions containing overall numbers on budget size), although key UK objectives on the size and financing of the budget are not yet satisfied. Progress on all the associated legal instruments will be dependant on the Irish Presidency resolving the financial dimension of the negotiation. The main legal instruments, on which BIS has the policy lead, are covered below separately specifically: Structural and Cohesion Funds, Horizon 2020, Euratom and International Thermonuclear Experimental Reactor (ITER), COSME, Galileo and Erasmus for All.

The Irish Presidency will aim to ensure that COSME is delivered to achieve greater alignment between Horizon 2020 and Cohesion Policy instruments while retaining the important distinction between the two programmes. Final agreement will only then be reached when figures are slotted in following resolution of overarching Multi-Annual Financial Framework discussions

The Commission has proposed that ITER is funded outside the MFF. HMG strongly opposes this, and the UK, (along with FR and DE), are unwilling to negotiate the ITER proposal while ITER remains off budget. The expectation is that ITER will come back on budget as part of the eventual MFF agreement.

Depending on whether there is an agreement on the multiannual financial framework, Ireland aims by the end of its Presidency to have reached agreement with the European Parliament of the cohesion package of legislation, including the Commons Provisions Regulation, so that programmes might start early in 2014.

INTERNAL MARKET

The growth agenda will dominate. The Cypriots, as anticipated, have made limited progress, consequently there are many priorities from Single Market Act I (SMA) identified by the European Council still outstanding. Notwithstanding this, the Commission published the SMA II in October which contained further plans for enhancing the single market in other areas, particularly in energy and infrastructure.

The task for the Irish presidency will be to ensure that the commitments given in two communications on the Services Directive and Single Market Governance published last July are fully carried out. These communications were a great success for UK early engagement and may go a long way to delivering UK priorities for full implementation and enforcement of the existing Directives.

Progress on the proposed amendment to the rules on Recognition of Professional Qualifications has been slow but the Irish Presidency is keen to work towards a first reading deal which may mean agreement by the end of February. We have made good progress from the original text in a number of our key areas but have outstanding concerns over the use of delegated acts and the minimum training requirement for medical professionals. We will continue work to seek a resolution acceptable to the UK on these issues.

Since the general approach on the Accounting Directive last year, there has been no formal discussion of the chapters dealing with the preparation of financial statements. Chapter 9 of the Directive, which focuses on the reporting of payments to governments by extractives companies, has been the focus of all trilogue meetings to date. We expect discussions on Chapter 9 to draw to a conclusion shortly and formal discussion of the remaining chapters to begin. On these chapters, the UK was able to secure a number of important changes to the Commission's original proposals during negotiation of the Council's position. The Irish Presidency is expected to produce a full compromise text shortly and will be seeking a First Reading agreement in early/mid 2013.

On the Commission's proposals on audit, the Irish Presidency has made clear its intention to develop a General Approach from the Council in the next 6 months. Concerns that the proposals are disproportionate have made progress difficult thus far but the presidency is devoting time and resources aimed at developing a consensus.

The Irish Presidency will also take forward various aspects of the EU better regulation agenda. There will be Competitiveness Council Conclusions in May on the Commission's recent Regulatory Fitness and forthcoming SME Scoreboard Communications, and also ongoing work to improve the use of Impact Assessments in Council.

The Presidency has said that they will take Women on Boards as far as possible. The Commission Directive, adopted on the 14 November, is currently being considered by Member States and discussions on the proposal are due to start in working groups in February.

One of the key priorities for the Irish Presidency is advancing the Digital Single Market by making progress on the draft Regulation for e-identification and other trust services (e-IDAS), cyber security and EU data protection. E-IDAS were a priority under the Cyprus Presidency and the Irish have confirmed that it will remain a priority for them. It is a very technical and potentially contentious proposal, including issues around the references to Member State liability and the proposed use of delegated and implementing acts. Progress on this dossier has been slow and the timetable for taking it forward is ambitious.

The Irish Presidency will be seeking to reach urgent agreement with the European Parliament on the European Network and Information Security Agency (ENISA) dossier, as the Agency's current mandate expires in September.

Closely linked to this will be the new work in this field on cyber, where we expect the Commission to bring forward a Communication on an EU Cyber Security Strategy, as well as a Directive on Network and Information Security at the end of January.

We are concerned that the Presidency will try and rush discussions on data protection at the Commission's behest to the detriment of the final instrument. The current draft Regulation has a considerable number of flaws in terms of the prescriptive nature and practicality of approach. MoJ, who lead on the document, are pressing for a directive instead. There is a serious risk that the document will lead to significant burdens on business whilst stifling research and innovation.

The Irish hope to get an agreement in May on State Aid rules. State Aid is a Commission competence.

INTELLECTUAL PROPERTY

Agreement on the Unitary Patent Regulation and associated language regulation was reached at the end of the Cypriot Presidency. The Irish Presidency hopes to host a signing ceremony for the inter-governmental agreement on the Unified Patent Court in the margins of the February Competitiveness Council. Following this, focus will turn to implementation of the system.

Negotiations on the proposed Directive on Collective Rights Management, which is intended to facilitate cross-border licensing of online music and improve the governance of collecting societies, have progressed during the Cypriot Presidency. The Irish Presidency has indicated in their Presidency plan that this dossier is a priority, so activity on it should increase. They are planning a political debate at the May Competitiveness Council.

CONSUMER POLICY

The proposals relating to alternative and online dispute resolution (ADR and ODR) are expected to be adopted in the spring, from which Member States will have two years to implement the legislation.

It is also likely that the Package Travel Directive will be formally adopted by the Commission during this Presidency, although it is not an Irish Presidency priority.

INDUSTRY AND GOODS SINGLE MARKET

A new Product Safety and Market Surveillance Package is expected to be adopted in mid-February with negotiations starting shortly after. This will include an EU Regulation to revise the General Product Safety Directive and an accompanying new Market Surveillance Regulation. The package will be completed by a non-legislative Communication from the Commission on a multi annual plan for market surveillance.

The Presidency aims to finalise the alignment package, the proposal to align nine existing product safety or performance Directives with the common framework on the marketing and market surveillance of products under the New Legislative Framework.

On the Batteries Directive, the Presidency is likely to try for a first reading agreement on a proposal that ends a current exemption allowing the use of cadmium in cordless power tool batteries (cadmium is already prohibited in other consumer batteries).

RESEARCH AND SPACE

The Irish intend to build on the progress made by previous Presidencies in obtaining Partial General Approaches (political agreement) on the texts of the main instruments in the Horizon 2020 package, including the European Institute of Innovation and Technology. In addition to obtaining political agreement on the EURATOM aspects of the programme, they will be undertaking negotiations with the EP starting early in the year. The aim is to reach agreement on a compromise text which will allow Horizon 2020 to be launched on time in the autumn, although final agreement will obviously be conditional on the outcome of negotiations on the EU budget as a whole.

Council conclusions on the Communication on the European Research Area (ERA) were adopted at the Competitiveness Council in December 2012. These endorsed the Commission's non-legislative approach to completing the ERA by 2014 and included further information on how progress would be

monitored. Work will proceed with the Commission, through the ERA Committee (ERAC), to agree the detail of the monitoring process.

The work related to the EU's global satellite navigation systems Galileo and European Geostationary Navigation Overlay Service (EGNOS) will continue to be taken under the Transport Council. A new regulation on the protection of EU satellites (Galileo, EGNOS and others) from debris and other spacecraft is expected to be adopted.

Work will be undertaken on the relationship between the European Space Agency and the European Union during 2013 now that the Union has competence for space under the Lisbon Treaty. The Council is expected to adopt Conclusions in February agreeing to a debate about the future relationship.

The Commission is expected to adopt their Communication on a Space Industrial Strategy. This looks likely to set out the case for EU-level action in a number of space-related areas, including sharing of private Earth observation data. It may also put forward the case for a far more aggressive interventionist approach to building and supporting space-related industry.

Depending on the outcome of negotiations on the EU Budget, a proposal for the Regulation governing the Copernicus system (previously known as GMES - Global Monitoring for the Environment and Security) may begin under the Irish Presidency.

EMPLOYMENT

The Irish Presidency will focus on tackling youth joblessness through a Youth Employment Package. Following its Employment Package the European Commission has presented a similar range of initiatives and documents aimed at tackling youth unemployment. It comprises a proposal for a Council Recommendation on Establishing a European Youth Guarantee; a Communication launching a second stage consultation of European social partners on a possible Quality Framework for Traineeships; and an "umbrella" Communication on Moving Youth into Employment.

The Youth Guarantee recommends that all Member States make an offer of employment or education and training after four months' unemployment or where young people have been out of education for that length of time. The Government has cautiously welcomed the initiative in recognition of the need to do something about youth unemployment, but will be seeking flexibility over the headline period of four months.

The scope used by the Commission for the proposed framework for quality traineeships is very broad and it compares a wide range of offers for young people, each of which it terms 'traineeships'. The UK Government does not agree that a single European Framework for traineeships is necessary or desirable for all types of 'traineeship'.

A European Alliance for Apprenticeships would add no value to the apprenticeship system in England as this already largely fulfils the Commission's description of the good quality apprenticeships the Alliance would be intended to promote.

Negotiations on the Posting of Workers Enforcement Directive are ongoing, and the Presidency has allocated a number of working groups in order to progress Council discussion and work towards a general approach. The European Parliament is currently expected to hold its first reading plenary vote in May.

The Social Partners had until 31st December 2012 to conclude their negotiations on the Working Time Directive. The outcome of the discussions has not yet been announced, but the negotiating parties released statements in December outlining that little progress had been made and that agreement looked unlikely. If negotiations do fall through, the responsibility for amending the Directive will revert back to the Commission.

EDUCATION AND SKILLS

The Irish Presidency will focus on the skills agenda and qualifications linked to it, teacher training, and the social dimension of Higher Education.

Rethinking Education: The recent Communication sets out the Commission's ideas for future activity in a wide range of education policy areas: compulsory education (primary and secondary), vocational education and training (VET), and higher education. These suggestions for future activity are, broadly speaking, in line with domestic policy, however, there are some wide generalisations which need to be more tightly defined in future Commission policy documents. The Commission's language occasionally implies a too-prescriptive attitude to Member States' national policies. The UK has

strong reservations about this approach: all follow-up documents will therefore be subject to close scrutiny and we will be asking for cost/benefit analyses of proposed actions.

Erasmus for All: The UK supported the partial general approach on the Erasmus for All proposal for the next generation of Education, Youth and Sport programmes (2014-2020), agreed at the May 2012 Education Council. Under the Irish Presidency trilogues will be held to resolve the differences between the European Parliament position and that of the Education Council. The UK would like to achieve an outcome as close as possible to the partial general approach. We would particularly like to retain the name 'Erasmus for All' for the programme in preference to the European Parliament suggestion of 'Youth, Education and Sport (YES) Europe', and to retain the streamlining and efficiency gains for the education and youth programmes set out in the Commission's original proposal. The proposed Masters Loan Guarantee Scheme, which was not included in the partial general approach, will be discussed under the Irish Presidency. We have been giving this proposal careful consideration and hope shortly to have an agreed UK position on it.

TRADE

The main deliverable during the Irish Presidency for the EU's ambitious programme of FTA negotiations is expected to be the potential launch of negotiations with the USA. Assuming a positive report from the EU-US High Level Working Group on Jobs and Growth and the necessary political support from both sides of the Atlantic, negotiations could launch by the summer. The Prime Minister will use our G8 Presidency to maintain momentum on this. In addition, the Irish Presidency will be working towards: concluding negotiations with Canada, concluding technical work on the EU-Singapore FTA following political agreement in December, and the launch of negotiations with Japan and Morocco.

The Irish Presidency has inherited a busy portfolio of proposed trade regulations. Progress will be expected on Trade Omnibus I and II and on a new proposal for a legislative framework for taking measures to safeguard EU rights under multinational and bilateral trade agreements. We expect the Irish to give some time for negotiations on the proposed regulation on the access of third-country goods and services to the Union's internal market in public procurement but with a strong blocking majority we do not expect it to progress. We also expect new proposals from the Commission for modernising the EU's trade defence instruments by April. The proposals could very easily be divisive between Member States and the tone the Irish set for the discussion will be important.

Finally, negotiations on the European Commission's proposal for a regulation establishing financial responsibility in investor-state disputes are in their early stages. The Government supports the main principle underpinning the proposal, that whoever is responsible for the act leading to a claim by an investor under an EU bilateral investment treaty with a third country should bear financial responsibility if the claim succeeds. However, we are seeking certain adjustments to make it more effective and to address concerns about the division of competence in this area.

I hope you find the above information useful. The Department, of course, will keep you updated on progress of all of the key issues for the UK through the Presidency.

22 January 2013

EU-CAPE VERDE READMISSION AGREEMENT (14237/12, 14235/12)

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

Thank you for your letter of 17 October regarding the Explanatory Memorandum on the Council Decisions to sign and conclude a Readmission Agreement with Cape Verde. (14179 and 14199/12)

The Government has decided that the UK should not opt in to the Council Decision to sign and conclude the Agreement with Cape Verde. As you note in your letter, the opt-in would have no financial implications, but the Government considers there would be no clear benefit to the UK from participation. There is very little illegal migration from Cape Verde to the UK, and our existing good bilateral arrangements allow us to make returns there where necessary. It would be possible for the UK to seek to participate in the Agreement post adoption if these circumstances were to change.

We have until 25 December to inform the Council of our opt-in decision, but in order to enable signature and conclusion to proceed, we plan to notify the President of the Council as soon as possible. The fact that the UK does not participate will not prevent other Member States from benefiting from the Agreement.

6 December 2012

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 6 December 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 19 December 2012.

We note with regret your decision not to opt-in to the Council Decisions concerning the signing and conclusion of the EU Readmission Agreement with Cape Verde. This is a particularly deplorable step backwards in the light of the government's earlier decision to opt-in to the negotiating mandate for an agreement with Cape Verde.

As we have already made clear to you, we believe the UK should participate in this Readmission Agreement. In that context, we would like to draw your attention to our recent report on The EU's General Approach to Migration and Mobility (8th Report of Session 2012-13, HL Paper 91), which was published on 18 December, and repeats the Committee's support for the UK's participation in all EU Readmission Agreements. We therefore urge the Government to opt-in to both Council Decisions after their adoption.

We will continue to retain these documents under scrutiny; we look forward to your response to the about points; and we expect to receive further updates on the progress of the proposals in due course.

19 December 2012

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 19 December 2012 regarding the Government's decision not to opt in to the Council Decisions concerning the signing and conclusion of the EU Readmission Agreement (EURA) with Cape Verde. Your letter regretted the decision not to opt in to this EURA and mentioned in this context your Committee's recent report on The EU's Global Approach to Migration and Mobility. Your report encourages the Government to opt in to all EU Readmission Agreements.

I am grateful for this report and will provide a full response in due course. With regard to our general policy regarding participation in EU Readmission Agreements, it may help if I provide some background to our position. As I said when you invited me to give evidence on 31 October, we are clear that it is in the UK's interest to weigh up the benefits of participation in each agreement, rather than opting in on a blanket basis without consideration. This includes an assessment of wider bilateral relationships.

Some EURAs may assist us in making enforced returns; at the same time, each EURA constrains the freedom of its signatories to negotiate subsequent bilateral agreements. The existence of a EURA does not guarantee that returns will be accepted by a third country, as implementation is variable and a EURA cannot force any third country to accept returns. If a country wishes to block or slow returns from the UK for political reasons, we believe it is unlikely that our participation in a EURA would dissuade them.

This is not to say that the Government wishes to withdraw from participation in EURAs. We are determined to remain fully involved in discussions and will exercise our opt-in where we believe participation will benefit the UK, or the UK's participation strengthen the EURA, as we have in the case of Turkey.

With regard to the EURA with Cape Verde, as I explained in my previous letter, we do not believe UK participation would in this case provide any benefit. There is little illegal migration from Cape Verde to the UK and our existing good bilateral arrangements allow us to make returns there where necessary. As always, we will continue to monitor the situation and might seek to participate post adoption if circumstances were to change.

As you know, we are currently considering the UK's position on the Council Decisions to sign and conclude an EU Readmission Agreement with Armenia, and I will write to notify you of the Government's decision as soon as possible.

21 January 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 21 January 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 6 February 2013.

Thank you for providing further information about the Government's general policy on the UK's participation in EU Readmission Agreements. As we have already made clear you, we fully support the UK's participation in this particular Readmission Agreement, as well as EU Readmission Agreements more generally, as set out in our report on The EU's General Approach to Migration and Mobility (8th Report of Session 2012-13, HL Paper 91).

We were puzzled by the assertion in your letter that "If a country wishes to block or slow returns from the UK for political reasons, we believe it is unlikely that our participation in a EURA would dissuade them." That is not the point we were making which was that discriminatory action of this nature would be contrary to the provisions of the EURA and would thus embroil them with the EU as a whole if they were to act in this way.

We have now decided to clear these documents from scrutiny. However, we look forward to receiving further updates on the conclusion of the Readmission Agreement in due course, including the Government's position on the possibility of opting-in to the Agreement after it has been adopted.

We also look forward to receiving notification of your opt-in decision with respect to the proposed EU Readmission Agreement with Armenia, as well as your response to the Committee's report, in due course.

6 February 2013

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

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

Thank you for your letter of 24 October 2012. The Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered it at its meeting on 14 November 2012.

We welcome your confirmation that the Government has decided to opt-in to the Council Decision on conclusion. We also support your more general engagement with Turkey in tackling terrorism, transnational organised crime, and promoting judicial cooperation in civil and criminal matters. We believe that such cooperation should provide obvious benefits both for the EU and the UK.

No response to this letter is required.

14 November 2012

GENERAL DATA PROTECTION REGULATION (5853/12)

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

Thank you for your letter of 22 November 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 December 2012.

We note that the UK impact assessment on the draft Regulation highlights in stark terms the financial implications of implementing the proposal in its current form. We note that the House of Commons Justice Committee has also expressed concerns about this in its recent report on the draft Regulation and we endorse their conclusions and recommendations in this regard.

We support your intention to negotiate for a data protection framework that will stimulate economic growth and innovation without imposing excessive administrative and financial burdens on the public and private sectors, as well as providing data subjects with a proportionate level of protection.

We look forward to receiving further updates about the progress of this proposal, alongside the draft Data Protection Directive, in due course.

19 December 2012

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

We write with regard to an article which appeared in the Guardian on 4 April – Britain seeks opt-out of new European social media privacy laws – which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 24 April 2013. The article suggested that the Government is seeking special treatment for the United Kingdom in relation to the application of Article 17 of the General Data Protection Regulation concerning the ‘right to be forgotten’.

We note that the last letter that the Committee received from you about the progress of negotiations on this measure was on 19 July 2012. We would therefore appreciate receiving an update about the progress of negotiations on the Data Protection Regulation, including the matters referred to in the above article, as well as the progress of the Data Protection Directive, within the usual 10 days. In addition, we would also like to know how the provisions of the proposed Regulation, including Article 17, and the proposed Directive interact with the relevant provisions of the Government’s Draft Communications Data Bill.

24 April 2013

Letter from Lord McNally to the Chairman

I last wrote to Parliament in January 2013 on the EU Data Protection proposals to respond to seven questions that had been asked by the European Scrutiny Committee. I also wrote in November 2012 on the publication of the UK’s impact assessment of the proposed Regulation.

At the beginning of its Presidency in January, the Irish Presidency stated that it intended to, ‘reach agreement in the Council on key aspects of the Data Protection package’. The pace of negotiations has quickened under the Irish Presidency and the Council Working Group completed its first read through of the proposed Regulation at the end of January. Since then, the Council has been considering proposed redrafts of the proposed Regulation and broader thematic issues. The Presidency will seek a partial general approach on the first four chapters of the proposed Regulation at the JHA Council on 6th-7th June. These chapters cover key aspects of the proposed Regulation including the principles of processing, the rights of the data subject and the obligations on the data controller.

The Guardian published an article on 4th April on the ‘right to be forgotten’ in the proposed Regulation. The article stated that the UK was seeking an opt out on this provision. This is inaccurate as the UK does not have an opt out on the proposed Regulation. I do not support the ‘right to be forgotten’ as proposed by the European Commission. It is not technologically possible to remove all trace of data uploaded on the internet and this ‘right’ raises unrealistic expectations for data subjects. Furthermore, it should be clear what is expected of a controller in the requirement to notify third parties of a data subject’s request for deletion.

With regard to the proposed Directive, negotiations in the Council are still proceeding on an article by article basis. The Irish Presidency is not expected to seek agreement on any part of the text by the end of its Presidency in June. Negotiations have been primarily focused on the proposed Regulation.

Despite the Irish Presidency’s intention to reach agreement on key aspects of the data protection package, it has said that the Council should not be pressured into agreement on the text for political purposes. I unreservedly support this position and I am of the view that the quality of the text should take precedence over the expediency of the negotiations. I am not in favour of seeking a partial general approach at the JHA Council in June. I do not think that the text is ready to be agreed and the quality of the whole instrument is vital. Discussions my officials have participated in with other Member States indicate that they are in a similar position. If the negotiations are rushed, we risk a highly prescriptive instrument that could damage business growth and employment prospects and which could leave the EU uncompetitive in the global digital economy for years to come.

The European Parliament, which is a co-legislator on this dossier, has also been considering the proposals. The Civil Liberties, Justice and Home Affairs Committee is currently due to hold a vote on the proposed Regulation and the proposed Directive in June.

Finally, my officials will continue to work with the Home Office to ensure that any future communications data legislation is not at odds with the EU data protection framework.

2 May 2013

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

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

Thank you for your letter of 22 October 2012 on the above proposals which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 31 October 2012.

The Committee is very grateful for your helpful overview of how the Government and the Commission intend to follow-up the substance of these proposals.

No response to this letter is required.

1 November 2012

INNOVATIVE HEALTHCARE FOR THE 21ST CENTURY (17568/12)

**Letter from the Chairman to Dr Dan Poulter, Parliamentary Under-Secretary of State
for Health, Department of Health**

Thank you for your explanatory memorandum of 7 January 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 6 February 2013.

Your EM states that the Commission's eHealth Action Plan is a voluntary measure and that it currently presents no major policy implications for the UK. We believe that this rapidly expanding sector offers major opportunities for the United Kingdom within the Single Market. However, we would like to urge you and the Department for Health's representatives on the eHealth Network to work to ensure that future developments in this policy area do not impose unnecessary administrative and legislative burdens on the UK health sector.

As the Communication is a non-legislative document, we have decided to clear this document from scrutiny.

No response to this letter is required.

6 February 2013

INTEGRATION OF THIRD-COUNTRY NATIONALS (5119/13)

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

Thank you for your explanatory memorandum of 11 February 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 6 March and again on 20 March 2013.

We note that paragraph 2 of the EM states that the Special report was "highly critical of the design and structure of the Funds, declaring them 'fragmented, burdensome and inadequately coordinated with other EU funds'".

We would like to know if the Government shares this view and, if so, how they intend to contribute to any efforts at the EU level to address these criticisms. We would also be grateful if you could tell us what the Commission's response has been to the Special report and what your view is on that response.

We further note that paragraph 32 of the EM states that there are no financial implications for the UK arising from the report. We are of the view that if problems with the operation of the Funds in question have been identified then there are potential financial implications for all of the Member States involved in projects which are receiving support from those Funds, especially as, with reference to paragraph 26 of the EM, "The EIF and ERF are in part funded by the UK through the EU budget".

We also note that the steps have been taken to mitigate the above flaws in the design of the Asylum and Migration Fund, which will replace the European Integration Fund and European Refugee Fund under the next Multiannual Financial Framework for 2014-2020. We would be grateful if you could

provide us with further information about which of these flaws, in particular, are being addressed in the Asylum and Migration Fund.

We look forward to hearing from you within the standard 10 days. You will note that this document has already been cleared from scrutiny.

20 March 2013

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 20 March in which you sought further clarification on some of the issues raised in the Explanatory Memorandum in respect of the above report.

Firstly I would say that we have some sympathy with the conclusion of the Report that the design and structure of the Funds are “fragmented, burdensome and inadequately co-ordinated with other EU funds”. As you know, the UK currently benefits from three of the so-called “SOLID” Funds – the European Refugee Fund, the European Integration Fund and the European Returns Fund. This additional funding has provided significant support to our domestic objectives and there have been some real successes at project level. However, some project beneficiaries have reported to us that they struggle to adhere to the complex reporting mechanisms in place. This means, for example, that it is difficult to include refugees and eligible third country nationals on the same programme. This in turn reduces efficiency as economies of scale are difficult to achieve. In addition, the perceived complexity of the EU financial rules means that some potential project beneficiaries have been reluctant to submit proposals for the European Integration Fund.

The Asylum and Migration Fund proposals (which I should emphasise are not yet finalised) go some way towards addressing this issue. In future, Member States will be required to develop a single multi-annual programme for AMF, rather than the multi-annual and annual programmes required for each of the current Funds. This will greatly simplify the planning process. It will also provide the opportunity for the UK and other Member States to focus more specifically on their domestic priorities. Although the draft legislation includes some mandatory objectives, because allocations are no longer ring-fenced for specific purposes, there will be greater flexibility for Member States to determine how they will be spent. So should there be, for example, a need to spend more of our allocation on returning clandestine migrants, it would be entirely possible to do so. Also, because of the amalgamation of the integration elements of the current European Integration Fund and European Refugee Fund, the integration needs of refugees and legally resident third-country nationals can now be met in the same programme. We believe that the ability to rebalance expenditure together with the removal of the requirement to submit annual expenditure programmes, are significant changes that will lead to greater efficiency.

The complex financial reporting mechanisms of the Commission have led to difficulties with securing the appropriate level of evidence to satisfy audit requirements. We have had to invest heavily in enhancing our audit capability in order to meet these stringent requirements. The evidence requirements of the Commission (including the need to retain receipts attributable to individual beneficiaries) have also imposed a considerable burden on the projects we support. I can assure you that during the protracted negotiations on AMF we have taken every opportunity to emphasise the need for simplified processes. We have suggested a number of changes to the draft that have helped achieve this aim and have supported other like-minded Member States who have made similar efforts.

The AMF proposals as they now stand include a reduction in the number of levels of audit and we believe this will go some way towards mitigating the issues identified in the ECA report. Furthermore, the AMF Horizontal Regulation gives Member States primary responsibility for the implementation and control of National Programmes. The Regulation allows Member States to develop national rules, subject only to a number of common, simple principles, to determine what expenditure is eligible. This change will further simplify the management process between the UK Responsible Authority and the Commission since interpretation of the rules will be a matter for the UK. I should add that Article 5 of the Regulation also provides safeguards for the effective control of financial interests should any irregularities be detected. In summary, then, we feel that in the context of AMF negotiations there has been significant progress towards addressing the concerns highlighted in the report.

The Commission’s response to the report (which is annexed to it) contains further details of steps they have taken to reduce the administrative burden on Member States. In some respects, the tone of the Commission response seems defensive but it is fair to say that there are a number of concrete actions that will serve to improve the situation once the AMF is implemented. Much of the Commission’s response focuses on complementarity with the European Social Fund and its differing

aims. The UK has addressed this by setting up regular dialogue between the Responsible Authorities for the funds in question and there is a commitment to open sharing of the respective draft programmes for 2014.

You note that in paragraph 32 of the EM we assert that there are no financial implications for the UK arising from the report. The report has no legal status, so on a strict interpretation the assertion is true. However, we will continue to highlight the difficulties with the current system and to press for a much clearer and simpler approach for the AMF.

28 March 2013

Letter from Mark Harper MP to the Chairman

Thank you for your letter of 20th March 2013 in which you sought further clarification on some of the issues raised in the Explanatory Memorandum in respect of the above report.

Firstly, I would say that we have some sympathy with the conclusion of the Report that the design and structure of the Funds are "fragmented, burdensome and inadequately co-ordinated with other EU funds". As you know, the UK currently benefits from three of the so-called "SOLID" Funds- the European Refugee Fund, the European Integration Fund and the European Returns Fund. This additional funding has provided significant support to our domestic objectives and there have been some real successes at project level. However, some project beneficiaries have reported to us that they struggle to adhere to the complex reporting mechanisms in place. This means, for example, that it is difficult to include refugees and eligible third country nationals on the same programme. This in turn reduces efficiency as economies of scale are difficult to achieve. In addition, the perceived complexity of the EU financial rules means that some potential project beneficiaries have been reluctant to submit proposals for the European Integration Fund.

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You note that in paragraph 32 of the EM we assert that there are no financial implications for the UK arising from the report. The report has no legal status, so on a strict interpretation the assertion is true. However, we will continue to highlight the difficulties with the current system and to press for a much clearer and simpler approach for the AMF.

11th April 2013

INTRA-CORPORATE TRANSFERS (12211/10, 12208/10)

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

Thank you for your letter of 18 October 2012 regarding the above proposals which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 31 October 2012.

We are grateful for the update you have provided about both of these proposals. As you will recall, we have already indicated our view that the UK's participation in the Intra-Corporate Transfer Directive could provide benefits, while the House of Lords endorsed this Committee's view that the Seasonal Workers Directive breached the principle of subsidiarity, after a debate which took place on 20 October 2010.

We have now decided to clear Document 12208/10 from scrutiny. However, we would be grateful for further updates about any substantive progress that is made regarding both proposals in due course.

1 November 2012

JHA OPT-IN AND SCHENGEN OPT-OUT WINDOWS

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

Some time ago Bill Cash, as Chair of the European Scrutiny Committee, urged the Government to seek a relaxation of the JHA opt-in and Schengen opt-out windows such that the month of August is excluded from the calculation of the three month.

Over the summer, I instructed officials to explore this matter with the Council Secretariat. Sir Jon Cunliffe (the Permanent Representative to the European Union) wrote to Uwe Corsepius (Secretary-General of the Council of the European Union), formally requesting that August is excluded from the calculation. Unfortunately, the Secretariat has responded that exclusion is not possible as the three-month deadline is set out on the face of the EU Treaties. As such, it is not open to Member States or the institutions to modify the calculation of the three-month deadline. The letter also confirms that the three months runs from the date at which the proposal is circulated as a Council document in all official language versions. I enclose a copy of the letter for your information [not printed].

9 November 2012

JHA OPT-IN: CO-FINANCING RATE OF FUNDS (14123,12, 14181/12)

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

Thank you for your letter of 26 October. I note that you considered the aims of this proposal to be important. Furthermore, I can confirm that any Member State benefitting from the higher co-financing rate must provide a revised annual programme as a mandatory requirement.

I am now writing to let you know that the UK has opted in to this proposal in accordance with Protocol (No 21) to Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU).

Practical cooperation and solidarity in support of well-managed migration is a powerful tool for securing British objectives in the wider EU sphere. This proposal provides a cost-neutral opportunity to achieve these objectives, whilst not undermining the primary responsibility of affected Member States to address weaknesses in their asylum and migration systems.

21 January 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 21 January 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 30 January 2013.

We are pleased that the Government has decided to opt-in to the proposals to increase the co-financing rate for the European Return Fund, European Refugee Fund, and the European Fund for the Integration of Third Country Nationals. We agree that it represents a cost neutral way for the UK to support efforts to secure the EU's borders, and to show solidarity with other Member States experiencing severe financial difficulties.

No response to this letter is required.

6 February 2013

MARKETING AND USE OF EXPLOSIVES PRECURSORS (14376/10)

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

Thank you for the letter from your Committee of 16 November 2011 clearing the above document from scrutiny. I am writing to update you that the Regulation was published in the Official Journal of the European Union on 9 February 2013.

The UK negotiated hard to secure improvements to the original proposal in order to reduce the risk of terrorist acquisition and use of explosives precursors whilst limiting the costs of implementation to business and the regulators. The final text (attached) is a good result for the UK. This is especially so for the inclusion of a safeguard clause that allows Northern Ireland to retain restrictions on additional explosives precursors.

I share your Committee's concerns about the substantial costs to industry but I agree that the case for a community wide scheme is compelling. I believe the final Regulation meets the aim of making attempts to purchase chemicals for home-made explosives more difficult whilst ensuring the impact on the public and businesses is proportionate.

In the letter, I was asked for my views on the applicability of the Regulation to counter individuals who acquire precursor chemicals for nefarious purposes by setting themselves up as a legitimate purchaser. The example given was that of Anders Breivik who rented a farm with the intention of using it as a legitimate cover to procure ammonium nitrate based fertiliser.

The Regulation restricts the sale of the specified precursors to the general public only. Professional users with a need for the chemicals for the purposes of their business or trade are exempt from the licensing regime of the Regulation. However, business to business transactions will be covered by requirements to notify authorities of suspicious transactions or significant losses or thefts of the specified chemicals. This means suppliers should check for transactions under unusual circumstances such as business requests for delivery to a residential address, new customers, unusual volumes or unusual intended use. There is anecdotal evidence that shows that voluntary 'Know Your Customer' advice of this kind is followed and that suspicious transactions involving business customers are either prevented or reported to the authorities. This requirement will help detect anyone attempting to use a business as a cover.

The Regulation also includes a review clause that allows review of its scope, including consideration to extend to the licensing regime to cover professional use in September 2017.

The Regulation is only one part of wider efforts to prevent terrorists accessing chemicals of concern in the UK. Business to business sales are already covered by voluntary measures and industry self-regulation within the UK. The measures taken together make it harder for terrorists to acquire explosives precursors in the UK. However, the measures can only reduce the risk, not eliminate it completely. We continuously review and improve the legislative and voluntary measures available to us.

7 March 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 7 March 2013, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 20 March 2012.

We are grateful for your overview of the final form of the Regulation, including the excerpt from the Official Journal of the EU. We also note your remarks regarding the potential costs to businesses and the public being kept to a proportionate level, as well as the potential application of the new regulatory regime to the circumstances involving Anders Brevik.

We do not require a reply to this letter.

20 March 2013

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

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

Thank you for your explanatory memorandum of 18 October 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 21 November 2012.

We welcome the emphasis in the proposed Regulations on improving transparency regarding the requirements for businesses wishing to develop and sell medical devices in the EU, as well as improving coordination among Member States and learning lessons from the recent PIP incident.

We also share your concerns that the Regulations could create new and burdensome layers of bureaucracy, and that there may be significant cost implications to the NHS if the exemption for “in-house” devices is removed.

We note that the Medicines and Healthcare products Regulatory Agency has recently launched a consultation on the proposed legislation, and that the Government will undertake their own analysis to quantify the financial impact of the proposals on the UK. We would be grateful if you could forward us the results of the consultation and the financial analysis once they become available.

As you will recall when you gave evidence to the Committee on 21 November, we asked about the quality control arrangements for medical devices that were put in place following the PIP scandal and whether they will remain in effect while the proposed Regulations are being discussed and agreed to at the EU level. We would be grateful for your response to this question.

We have decided to retain these documents under scrutiny. We look forward to receiving further information on the progress of these proposals as the negotiations continue in due course.

22 November 2012

Letter from Earl Howe to the Chairman

Many thanks for your letter of 22 November regarding the European Commission’s proposals for a regulation on medical devices and a regulation on in vitro diagnostic devices.

Whilst giving evidence to the European Union Committee on 21 November, I referred to the efforts to improve the regulatory system for medical devices before the draft regulations are agreed.

The driver for much of this work is the ‘Joint Plan of Immediate Actions’ which was published by the European Commission shortly after the PIP scandal. This set out a number of areas where the Commission would take action and other areas where Member States were expected to lead work.

One aspect of this work is the production of interim legislation by the European Commission to tighten the rules on the organisations which assess the safety of medical devices (termed 'notified bodies'). To clarify, this is secondary legislation which will amend the existing primary legislation – the medical devices directives – through an implementing act. We expect this to be agreed in early 2013 and enter into force shortly thereafter. The implementing regulation would then be superseded by the draft regulations on medical devices once they come into force.

The implementing regulation will establish more detailed requirements on notified bodies, which stretch from their organisational structure to their independence to the qualifications of their personnel. The implementing regulation will also make the supervision of notified bodies more rigorous.

The UK is also considering whether it is appropriate to seek to expand the scope of the implementing regulation to make audits of notified bodies by a team of different Member State experts mandatory. This improvement is already foreseen in the draft regulations on medical devices. However, we consider that early implementation of this measure through secondary legislation will ensure that the rules are being consistently applied across the European Union before the new regulations come into force.

Moreover, as part of the joint plan for immediate action, the MHRA has audited the six UK notified bodies which assess high risk devices and taken action to support their assessment of clinical evidence. In addition, the MHRA has worked with the Commission on a non-binding check list of items to be verified by notified bodies during an audit of a manufacturer, which we expect to be published in the form of a Commission Recommendation at the beginning of 2013.

I will write to you again with the results of the public consultation by the Medicines and Healthcare products Regulatory Agency, which closes on 21 January 2013. I hope that the evidence provided during this consultation will allow officials to make a more thorough analysis of the financial impact of the draft legislation on the UK.

3 December 2012

Letter from Earl Howe to the Chairman

I last wrote to you on this issue on 3 December to respond to your questions on the Government's proposed policy approach to the European Commission's proposals for a regulation on medical devices and a regulation on in vitro diagnostic devices.

The Government has since begun negotiations with other Member States. Member States are having a first read-through of the Commission's proposals to identify points of consensus and disagreement. To date, Member States have discussed the scope and definitions, notified bodies, and the classification of medical devices.

Meanwhile, the MHRA held a public consultation from 12 November to 21 January 2013 to seek further evidence on all aspects of the proposals. I committed to consult with you again if there was any change to the Government's policy approach following this consultation.

I was pleased to see that more than 100 stakeholders submitted high-quality evidence to test and strengthen the Government's policy position. The majority of stakeholders agree with the Government's aim to strengthen the current regulatory framework on medical devices and remove or amend the elements of the proposals which place disproportionate burdens on the private or public sector.

In particular, the majority of stakeholders agree with the Government that introducing an additional layer of centralised European bureaucracy to scrutinise the safety of medical devices will delay patient access to new technologies and not strengthen patient safety. Stakeholders did not submit a lot of quantitative evidence on this point. Therefore MHRA officials continue to reach out to stakeholders bilaterally to collect evidence and assess the likely financial impact on the UK.

There was mixed support for the Government's preference to exempt high-risk in vitro diagnostic devices, which a single health institution develops and uses (termed 'in-house tests'), from the full regulatory requirements. Some stakeholders agreed with the Government that this will mean that tests remain available where there are no commercially available alternatives. This includes, for example, tests which need to keep pace with a changing viral genome and which need to be modified to provide a diagnosis.

Equally, some stakeholders expressed concern that in-house tests will not meet the same patient safety standards as commercial tests but recognised the need for these diagnostic tests where they

were no commercial equivalents available. I am of the view that this concern should be addressed through the governance of health institutions' pathology laboratories, such as accreditation to ISO 15189.

The MHRA is now strengthening the Government's position by drawing on the detailed stakeholder evidence on:

- the need for transparent stakeholder engagement throughout the regulatory system;
- the safety information which can most usefully be made available to clinicians and the public;
- the most appropriate risk-based classification of certain medical devices;
- a proportionate allocation of responsibilities on economic operators along the supply chain; and
- clear and precise wording in the regulations.

I trust that our officials will continue to work closely together as the negotiations progress.

27 March 2013

Letter from the Chairman to Earl Howe

Thank you for your letter of 27 March 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 24 April 2013.

We welcome the ongoing work that is being conducted by the Medicines and Healthcare products Regulatory Agency (MHRA) to gather evidence and assess the possible impacts of the proposals in the UK.

Your letter indicates there is a difference of opinion amongst stakeholders over whether the exemption from testing of high risk in-vitro diagnostic devices should be removed. We would be grateful if you could clarify your statement that concerns about the safety of these products could be addressed through the governance of health institutions' pathology laboratories, such as accreditation to ISO 15189. We would also be interested to know how such a process would work in the UK; whether it would be sufficient to reassure those stakeholders who have concerns, and how it would satisfy the requirements of the current proposals.

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

24 April 2013

MOBILITY PARTNERSHIP WITH MOROCCO

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

I am writing to update you on the progress on the EU-Morocco Mobility Partnership (MP) and some similar instruments which also fall under the umbrella of the EU's Global Approach on Migration and Mobility (GAMM).

As you know, Mobility Partnerships are voluntary, tailor-made, non-binding agreements for cooperation on migration issues, negotiated between the EU and third countries. EU Member States can decide whether or not to participate in any given Partnership, in which aspects of the agreement they will participate, and what offers to make in this regard. We are clear that we will not be bound by any mobility elements in such Partnerships that would require changes to our existing migration policy. We are clear, similarly, that we will not participate in any elements relating to the portability of social security benefits. The same principles also apply to Common Agendas on Migration and Mobility (CAMMs), a similar instrument intended for use with third country partners beyond the EU's immediate neighbourhood.

Firstly, I would like to update you on progress on the Morocco Mobility Partnership (MP). The EU and Member States have been negotiating this Partnership with Morocco and have now agreed the final draft of the political declaration on the Partnership, as well as proposed projects for practical

cooperation with Morocco. We have now been informed that the political declaration of the Partnership is going to COREPER on 10 April and then to a Council for agreement shortly after that date.

The UK has continued to work with the Commission and Presidency to influence the text of the proposed declaration and on its possible projects. We have agreed that the UK will participate in this Mobility Partnership in support of our wider work in the Southern Mediterranean region.

The UK has indicated that our participation in this Partnership will be through an offer of assistance in the area of Border Management. We are currently exploring what resources are available and expect to offer the Moroccans a visit to the UK to exchange information and best practices in this area.

On 3 May last year, I wrote informing you of a similar decision to participate in the Tunisia Mobility Partnership. Unfortunately, there has been a lack of substantial progress on the proposed Tunisian Partnership. The negotiations have continued at a slower pace than with Morocco, due in part to the broader political context with Tunisia. I will update you with any further developments as they occur.

I would also like to take this opportunity to update you on developments with the EU's proposed Common Agenda on Migration and Mobility (CAMM) with India. CAMMs are non-binding frameworks for cooperation in the area of migration and asylum between a third country, the EU and participating Member States. They are similar to Mobility Partnerships, but 'lighter touch' in character, and without the explicit focus on Schengen visa facilitation and readmission characteristic of the more substantial Mobility Partnerships.

A draft EU-India CAMM has been drawn up through discussions between the Commission, the European External Action Service (EEAS) and officials from the UK and other Member States. This would be the first use of the CAMM instrument. This draft CAMM has not yet been shared with India, but the Commission and EEAS now intend to use the agreed draft version to open negotiations with India, with the aim of reaching agreement on the CAMM in coming months. The UK has not made a final decision whether to participate in the EU-India CAMM; I will write to you again in due course to inform you as to whether or not the UK will participate in this instrument.

Lastly, I would like to inform you about progress on the proposed Silk Routes Partnership, which has been developed as part of the wider 'Budapest Process', a state-led multilateral forum for cooperation in the area of migration between European countries and their eastern neighbours. Although not formally an EU process, the EU and Member States include the Budapest Process under the GAMM framework as an element of the EU's external migration policy.

A Ministerial Conference launching the Silk Routes Partnership will take place in Istanbul on 19 April. The principal aim of this Conference is to confirm the refocusing of the Budapest Process on the Silk Routes region, and to launch the Silk Routes Partnership. The conference will focus on agreement and signature of a Ministerial Declaration, establishing the Silk Routes as an informal, voluntary and flexible framework for cooperation between participating Member States and the European Commission. The UK intends to participate in this new Partnership, which we believe will advance the aims of the UK's immigration policy. As with other elements of the GAMM, we will ensure that we are not bound to projects or initiatives under this Partnership which we do not believe to be in our interests; for example in the areas of mobility or portability of social security benefits for third country nationals.

16 April 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 16 April 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 24 April 2013.

We are very grateful for your helpful update on the progress of the Mobility Partnership negotiations with Morocco and Tunisia, as well as the Common Agenda on Mobility and Migration with India and the Silk Routes Partnership. We believe that UK interests will be best served by participating in all of these initiatives albeit subject to the caveats contained in your letter.

You will be aware the Committee's last report concerned the GAMM – The EU's General Approach to Migration and Mobility (8th Report of Session 2012-13, HL Paper 91) – which included the consideration of Mobility Partnerships in some detail. Among other things the report made the following recommendations:

- that Turkey and Pakistan, as major corridors for irregular migration into the EU, should be priorities for future Mobility Partnerships but that, in the meantime, the development of looser, more informal, forms of cooperation with other important third countries may be a more realistic approach before moving on to more formal agreements; and
- that the Government should press the Commission to accept the need for a thorough evaluation of the existing Mobility Partnerships and that more robust evaluation mechanisms should be included in any future Mobility Partnerships

We will look forward to receive further updates on the progress of these instruments in due course and would be grateful if you could take into account the above recommendations in future correspondence with the Committee.

24 April 2013

NETWORK AND INFORMATION SECURITY ACROSS THE UNION (6342/13)

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

Thank you for your explanatory memorandum of 27 February 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 20 March 2013.

The Government's position that the UK and any other countries with a sophisticated CERT network should not have to establish a separate national CERT is sensible, and in line with the recommendations of our report *Protecting Europe against large-scale cyber-attacks* (5th Report of Session 2009-10, HL Paper 68).

We note your concerns about the possible duplication of regulation in certain sectors, for example banking, and the administrative burden that the proposal could impose on businesses. We therefore support your intention to carry out a UK-specific impact assessment to get a more detailed picture of the potential costs to the UK of the proposal. We will look forward to receiving a copy of this impact assessment in due course and may wish to conduct further scrutiny of the draft Directive at that point.

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

20 March 2013

ONE-OFF ORAL EVIDENCE SESSION ON HEALTH MEASURES

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

The Government welcomed the Lords EU Select Committee's comprehensive hearing on the 21st November 2012, which provided a wide-ranging examination of many of the European health related issues relevant to the UK at this time.

Following my letter of 3 December 2012 on interim legislation governing medical devices, there remain two outstanding areas where the Committee required further information.

A question was raised by the Committee about the cross-border healthcare directive. I said I would write to the Committee about the numbers of patients being treated under this directive.

The Department of Health is currently working from a baseline of very limited data. There is currently no central requirement to collect data nationally. We understand from the NHS that currently, the number of people receiving treatment under the Directive, both residents from other EU Member States receiving treatment in the UK, and UK residents receiving treatment in other Member States, is low. Once the Directive is transposed, there will be a legal requirement on the system to collect data.

In addition, a question was raised on negotiations relating to basic medical training for doctors, and I said I would write with details of progress.

The European Commission published its legislative proposals for amending the Professional Qualifications Directive in December 2011 and the Department for Business Innovation and Skills, which has the lead on the Directive across Government, sought agreement to the related explanatory memorandum in January 2012. Since then we have been negotiating the Commission's proposed amendments on the Directive at a Council Working Group with other Member States and the European Commission. The text is still being discussed and we are hopeful that agreement will be reached mid-2013.

As you are aware, the proposal in Article 24 provides for basic medical training of 5 years and 5,500 hours. This was proposed by the European Commission to bring clarity to the existing text which currently in Article 24 provides for 6 years or 5,500 hours, but later at Article 25, relating to specialist medical training, refers to basic medical training as 6 years and 5,500 hours. The UK Government is supportive of the Commission's proposal for basic medical training of 5 years and 5,500 hours as a number of the UK's graduate medical courses are of 5 rather than 6 years duration, relying on meeting the existing 5,500 hours requirement.

During the evidence session I was asked to comment on Member States that are unsupportive of the Commission's proposals and those that are willing to support the UK's position. Negotiations in the Council are progressing well with the ambition to reach agreement by May. However the detail discussed within the Council Working Group is restricted, and I am unable to share specific details of the positions adopted by individual Member States at this time. However, I can say that a significant number of Member States have indicated that they would prefer the requirement for basic medical training to be 6 years and 5,500 hours. In this context we might come under pressure to amend this to 6 years and 5500 hours.

The Department of Health will continue to work with UKRep, the Department for Business Innovation and Skills, the General Medical Council and other key stakeholders to build support for the Commission's proposal as currently worded.

I hope this letter helps to clarify these two issues for the Committee.

21 January 2013

PRICES OF MEDICINAL PRODUCTS FOR HUMAN USE (7315/12)

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

I am writing to provide an update on negotiations for the above proposal.

Little progress has been made in negotiations on the Commission's proposals and there have been no substantive discussions on the articles about which you have concerns at the Pharmaceuticals and Medical Devices Working Group.

21 February 2013

Letter from the Chairman to Earl Howe

Thank you for your letter of 21 February 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 6 March 2013.

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

No response to this letter is required.

7 March 2013

PROCEEDS OF CRIME (7641/12)

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

I am writing to update you on our progress in negotiations on the proposed Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union (Document No. 7641/12).

The Directive has been considered at a number of official level meetings and will shortly be considered by Ambassadors in COREPER. The Presidency would like to reach agreement on a General Approach at the Justice and Home Affairs Council on 6-7 December. As you will remember, the UK has not opted in to this Directive and will not, therefore, have a vote at the JHA Council. Nevertheless, given the proximity of that meeting I am keen to ensure that you are kept fully informed of our progress in the negotiations so that you have the opportunity to consider the Directive in its latest draft before the JHA Council.

I set out below the important developments in the text of the Directive since negotiations commenced in May this year.

SCOPE OF THE DIRECTIVE

Member States have discussed the issue of the legal base and specifically whether or not non-conviction based confiscation (NCB) measures are permissible in a Directive on an Article 83(1) TFEU legal base and concluded that NCB confiscation is within the scope of the legal base provided that it has a clear link to criminal proceedings. On that basis, it is thought that the NCB measure at Article 5 of the Directive is within scope, but that civil forfeiture regimes which have no link with criminal proceedings are outside the scope of the Directive. The UK's civil recovery regime (found in Part 5 of the Proceeds of Crime Act 2002 (POCA)) is therefore outside the scope of the Directive. We agree with this analysis.

OBLIGATIONS UNDER ARTICLE 2(A)

The Commission has made clear in discussions that the purpose of the list of instruments at Article 2(a) is to ensure that Member States are clear which offences were within the scope of the Directive. This position has been widely supported by Member States. We successfully inserted wording into recital 21(a) to make clear that the scope of this Directive for the UK, were we to opt in, would be limited to those criminal offences harmonised in instruments in which the UK participates. This should ensure that the UK does not find itself required to apply the Directive's obligations in regard to offences defined in instruments to which the UK is not bound, or which it might choose to opt out of in 2014.

ARTICLE 4: THE DOUBLE JEOPARDY EXCLUSION TO EXTENDED CONFISCATION

We have successfully negotiated the removal of the double jeopardy exclusion in Article 4(2) of the original draft. This article no longer poses a risk to our extended confiscation regime.

The scope of Article 4 is now more restricted than the general scope of the Directive. Article 4 only applies to 'serious crimes' which are liable to give rise to an economic benefit. This development brings Article 4 more closely into line with our domestic legislation which has a restricted list of offences to which extended confiscation can apply (the 'lifestyle crimes' listed in Schedule 2 of POCA).

ARTICLE 5: NON-CONVICTION BASED CONFISCATION

Article 5 has been the most contentious article throughout negotiations. Our concern regarding this Article is that we can only implement it through our civil recovery regime though doing so would create a risk to that regime because of the criminal law legal base of the Directive. Were the UK to opt in to the Directive and implement Article 5 using our civil recovery regime there is a real risk that, in a future legal challenge, the fact that we would be relying on civil measures to implement a criminal law instrument could be relied on to assert that civil recovery powers are in fact criminal in nature and so criminal procedural rules and protections should apply. This would risk greatly weakening our civil recovery powers and hinder our attempts to tackle organised crime. This risk is still present in the latest draft of the Directive.

Most Member States do not have civil non-conviction based confiscation regimes and do not face the same problem with this Article as we do. In general, Member States have sought to change Article 5 so that they can comply with it without having to create new non-conviction based confiscation powers. Negotiations have reshaped the Article so that Member States can implement it by using in absentia prosecutions to achieve a conviction.

We will continue to pursue changes to this Article to mitigate the risk it poses to our civil recovery regime.

ARTICLE 6: THIRD PARTY CONFISCATION

Article 6 has been simplified over the course of negotiations. The UK could implement the latest version of Article 6 through the 'tainted gifts' provisions in Part 2 of POCA, whereby the value of any property passed on to third parties is included in the Court's calculation of criminal benefit and in the Confiscation Order made against the convicted individual. Since we will be able to implement this Article through the criminal law part of POCA, our civil recovery regime in Part 5 would not be put at risk by this Article were we to opt in to the Directive.

ARTICLE 7: THE 'ADMINISTRATIVE FREEZING' POWER

Article 7 has become less specific in its requirements over the course of negotiations. The obligation to create a system whereby freezing orders could be issued administratively prior to a court's sanction, found in Article 7(2) of the original draft of the Directive, has been removed. In its place is an obligation for Member States to have powers that allow 'urgent action to be taken when necessary'. The Directive does not define what is meant by 'urgent action' and this gives Member States freedom to decide whether or not a court order should be required before freezing action is undertaken.

ARTICLE 8: THE LEGAL AID BURDEN

We have successfully negotiated out the reference to a requirement for persons subject to the measures envisaged in Article 5 to be represented by a lawyer. We had concerns that this would have implications for legal aid. Article 8(5) now refers to 'the right to access to a lawyer' rather than stating that a person 'shall be represented by a lawyer' in NCB proceedings.

To further defend our position we have inserted wording into recital 18 to make clear that Article 8 does not create any obligations for Member States' legal aid systems.

ARTICLE 14: REPEAL AND AMENDMENT OF EXISTING INSTRUMENTS

I understand that Article 14 will have the effect of repealing Joint Action 98/699/JHA and amending Framework Decision 2001/500/JHA and Framework Decision 2005/212/JHA. Recital 7 of the Directive supports that view.

I will keep you updated on progress in the negotiations on the Directive as they move into trilogue, assuming the Presidency secures a position in the Council next week.

28 November 2012

Letter from the Chairman to Jeremy Browne MP

Thank you for your letter of 28 November 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 5 December 2012.

We are grateful for your detailed update on this proposal's progress in negotiations. We welcome the fact that you have remained active in the negotiations and have secured a number of changes to the proposal, which makes the text more palatable to existing UK law and regulation, with the exception so far of Article 5.

As you will be aware we recommended that the Government exercise its opt-in to this proposal at the outset and a motion to that effect was agreed by the House of Lords. In the current context, we would reiterate our view that the Government should opt-in to this Directive after its adoption, particularly if the provisions of Article 5 can be brought more into line with the UK's legal circumstances.

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

6 December 2012

PROFESSIONAL QUALIFICATIONS (18899/11)

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

I am writing to give an update on the progress of the negotiations of the revision of the Mutual Recognition of Professional Qualifications Directive.

In 2012 negotiations did not progress as rapidly as expected under the Danish and Cypriot Presidencies. However the Irish Presidency have made this dossier their priority for the Single Market, and will seek a first reading deal in the European Parliament, aiming to reach agreement before the end of their Presidency in July 2013. We appreciate this ambitious approach by the Irish Presidency and welcome the accelerated progress so far.

I will now outline where our focus lies during the remaining time of the negotiations and what we have managed to secure in the text so far.

There are four remaining priorities for the UK Government:

Transparency initiative: (Article 59) asks Member States to review their regulated professions. This process could also help ensure that structural reform across the EU in this area effectively makes it easier to do business in important sectors. Our key objective here is to ensure the initiative is neither removed nor weakened.

Basic medical training. In the current Directive, the minimum training requirement for doctors gives us an option to calculate the duration by hours (Article 24 'Basic medical training' - six years or 5500 hours). We would be willing to support the revised text "five years and 5500 hours" as it fits our educational system. However, a significant number of Member States favour a 6 year and 5500 hours approach. If the outcome of the negotiations is the increase to six years and 5500 hours, taking away the option to only count the duration of 5500 hours, this would detrimentally impact on how we deliver the basic medical training programme, and have significant financial implications for student and universities. If this were to occur, the original text of the Directive (i.e. pre-review) would be preferable.

Relevant prior learning. For graduate entrants, we want to ensure universities can give partial exemptions to the duration of degree programmes based on relevant prior learning. For example, for graduate entrants to medical or dental qualifications, relevant prior learning could be completion of a biomedical degree. Graduate entrant programmes for medical and dental qualifications are already established in the UK, and there is no concern on the part of regulators or the Department of Health in relation to the quality of graduates produced by such courses. Introduction of this principle is in line with European Court of Justice case law (the Tennah Durez case), and would provide greater legal certainty as to how the case law should be applied.

Delegated acts and implementing powers (Articles 14, 20, 21a, 25, 31) - We want to ensure processes for making decisions are clear and continue to involve Member States. However we do note that a lot of text improvements have been made where the power of the Commission to adopt delegated acts were replaced by the power to adopt implementing acts with examination committee procedure –the decision making procedure where MS are involved in the process through the committees. We are still negotiating the position where the Commission has reserved implementing powers without comitology.

WHAT WE HAVE SECURED SO FAR?

Language controls for health professionals: (Article 53) the current wording of the text will enable language knowledge controls of professionals where there are patient safety implications. It also ensures the role of the Competent Authority in the process. There has been a great deal of focus on this subject and the current text represents a significant success for UK lobbying.

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

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

We also have had some concerns about the following points in the proposals which have been resolved in the course of the negotiations:

European Professional Card (EPC) (Articles 4a, 4b, 4c, 4d)- we would be willing to support the proposed compromise text as it ensures that the European Professional card will be introduced on a voluntary basis and subject to certain conditions. Moreover any decision on the rules to introduce the EPC will be made by the Commission through consultation with Member States (an implementing act with examination procedure). This is a considerable improvement on the original text.

Partial access - the current text lists clear conditions which have to be fulfilled before granting partial access to a professional activity. Professions benefiting from automatic recognition (doctors, nurses, midwives, dentists, architects, vets, pharmacists) will be excluded from the partial access, which we welcome.

Remunerated traineeships – This permits access to professional training. The reference to remuneration has been removed in the current text, leaving flexibility to MS to decide about the remuneration of the professional traineeships, which we welcome.

The negotiations are progressing fast under the Irish Presidency and I will keep you informed on progress made.

14 February 2013

Letter from the Chairman to the Lord Green of Hurstpierpoint

Thank you for your letter of 14 February 2013 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 27 February 2013.

We are grateful for your letter providing a helpful update about the progress of this proposal, which we consider to be a very important measure. We are also glad to hear that the negotiations are now making rapid progress under the Irish Presidency. The mutual recognition of professional qualifications is an integral part of the Single Market and, so long as the necessary safeguards are maintained, very much in the UK's interest.

We are pleased to note that the Government's remaining negotiating priorities and progress made so far are in alignment with the recommendations contained in the Committee's report on the existing Directive – Safety First: Mobility of Healthcare Professionals in the EU (22nd Report of Session 2010-12, HL Paper 201), particularly regarding partial access, language controls and the status of the European Professional Card.

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

1 March 2013

Letter from the Lord Green of Hurstpierpoint to the Chairman

I am writing to seek scrutiny clearance for the revision of the Mutual Recognition of Professional Qualifications Directive. The discussions are progressing fast under the Irish Presidency and we are entering final stages of the negotiations. We appreciate this ambitious approach by the Irish Presidency and welcome the accelerated progress.

As noted in the recent letter of 14th February 2013, the Irish Presidency have made this dossier their Single Market priority and now aim for a first reading deal in the European Parliament.

The Presidency approached the Committee of Permanent Representatives (COREPER) on 1 March 2013 for a partial mandate to engage in the first informal trilogue with the European Parliament on three issues: the inclusion of notaries in the Directive, the transparency exercise relating to the number of regulated professions in Member States and the use of delegated/implementing acts. The mandate for negotiating towards a first-reading agreement with the European Parliament was granted.

The first informal trilogue is currently scheduled for the 20 March and the technical discussions have already started. It is intended to prepare and debrief on subsequent trilogues at COREPER, with detailed debriefings provided at Working Party level. For this, UK officials require clear negotiating lines.

On the 28th February the European Affairs Cabinet Committee granted clearance for the final priorities for negotiations to support the Presidency in seeking Member State agreement to open negotiations with the European Parliament on the basis of the text as it currently stands.

I believe that we have secured our key priority objectives as set out in the previous letter of the 14th February 2012, namely: ensuring an effective process to review regulated professions; supporting the proposed shorter minimum training period for medical degrees and seeking greater flexibility in relation to dental and architecture training; providing for language checks for professionals who incur risks to patient safety, but not for other professionals; providing for stakeholder engagement and limits to the delegation of powers to the European Commission; and clarifying the status of the professional card and underlying applications process.

On this basis I ask that the committee clear the revision of the Mutual Recognition of Professional Qualifications Directive from scrutiny.

19 March 2013

Letter from the Chairman to the Lord Green of Hurstpierpoint

Thank you for your letter of 19 March 2013 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 27 March 2013.

We note that this proposal is now making rapid progress under the Irish Presidency and is expected to be agreed before the end of July 2013. We further note that the Government is confident that its priority objectives will be achieved with respect to the proposal.

We are now content to clear this document from scrutiny but will look forward to receiving further updates as the negotiations draw to a close.

27 March 2013

PRÛM DECISIONS (17679/12)

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

Thank you for your explanatory memorandum of 9 January 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 16 January 2013.

We note and regret that the UK has not yet implemented some aspects of the Prüm Decisions by the agreed deadlines. We will consider both the matter of missed implementation deadlines, as well as the merits of these measures, in the context of the Committee's current inquiry into the UK's 2014 opt-out decision.

In the meantime, we have decided to clear this document from scrutiny.

No response to this letter is required.

16 January 2013

RESEARCHERS DIRECTIVE (7869/13)

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

Thank you for your explanatory memorandum (EM) of 9 April 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 24 April 2013. We note that the opt-in deadline is 4 July 2013. We hope that, even if the Government decide not to opt-in at this stage, the possibility of opting in after the proposal has been adopted will be considered if any problems the Government might have with the present draft could be rectified during the negotiations.

As you will be aware from our report on The EU's Global Approach to Migration and Mobility (8th Report of Session 2012-13, HL Paper 91) we are concerned that discrepancies between the handling of the entry and residence of third country nationals, for the purposes of the activities covered by the proposal, by the UK and the other Member States could be damaging to the future prospects of the UK's higher education sector, which is an important component of the UK's economy.

As stated in your EM, we encourage you to consult relevant stakeholders such as the higher education sector in developing your response to the proposal and deciding whether or not at some stage to opt in.

We look forward to receiving further information about this proposal in due course.

24 April 2013

RETHINKING EDUCATION: INVESTING IN SKILLS FOR BETTER SOCIO-ECONOMIC OUTCOMES (14871/12)

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

Thank you for your explanatory memorandum of 20 December 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 16 January 2013.

We note that the Communication echoes the conclusions and recommendations of the Committee's report on The Modernisation of Higher Education in Europe (27th Report of Session 2010-12, HL Paper 275). The report states that the EU can play an important role in fostering greater collaboration between academia and businesses, and that UK students should be encouraged to avail of the opportunities to learn and work in another language, particularly at primary school level. We remain concerned that the acquisition of language skills in the United Kingdom remains far short of the desirable level.

However, we also share your concern that the cooperation mechanisms proposed in the Communication may lead to additional and unnecessary layers of bureaucracy. We support your intention to scrutinise closely any follow-up documents from the Commission in this regard and we intend to do the same.

In the meantime, we have decided to clear this document from scrutiny.

6 February 2013

SCHENGEN ACQUIS IN THE REPUBLIC OF BULGARIA AND ROMANIA (14142/10)

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

I am writing to inform you of new developments on the Schengen accession of Romania and Bulgaria.

Following almost a year of little progress, the Irish Presidency is renewing efforts to secure Schengen accession for both countries. They are building on the Council Conclusions agreed at the June 2011 Justice and Home Affairs (JHA) Council by all Member States, including the UK, which accepted that Romania and Bulgaria had met all the technical requirements necessary to accede to Schengen, and the European Parliament's positive opinion that the relevant criteria have now been met.

It is possible that a compromise allowing Romania and Bulgaria to join Schengen in phases will be put to the 7 March JHA Council for agreement. A first phase Council Decision would be tabled for adoption, to cover only the lowering of air and sea borders between Romania and Bulgaria and Schengen States. The text itself would be short and draw on the wording in Document 14142/10 with regards to air and sea borders. It would not go into any specific detail. Its significance would lie in the dates it would set for the lifting of air and sea borders, which are not yet known. As the UK does not participate in the border control elements of Schengen, we would not have a vote on this proposal. But we are watching developments closely to ensure that any impacts on UK border controls are kept to a minimum.

Given wider sensitivities surrounding this negotiation, we expect that the updated text would be published late in the negotiation and would be declassified only days before adoption at Council. My officials will of course provide you with the text as soon as it is published, but we must respect the EU classifications. I hope, therefore, that this letter will stand in good stead if the timetable runs as swiftly as anticipated and normal processes cannot be triggered in time, noting that the UK would have no vote on the proposed first phase Council Decision as currently constructed.

The Council Decision may also set a date by which the remaining elements of Schengen accession should be considered. Again, that date is not yet known. We understand that the Schengen policing elements, on which the UK does have a vote, would therefore be contained in a second phase decision alongside the lifting of land borders. This fresh proposal may be forthcoming later in 2013 or even into 2014. Although we do not participate in the border and immigration aspects of Schengen, we maintain a keen interest in the security of the EU's external border, especially in the Greek/Western Balkans area. My officials will keep you informed of any developments and timetable implications for this second phase proposal.

26 February 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 26 February 2013 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 13 March 2013.

We note that the Justice and Home Affairs Council meeting, which was held on 7 March 2013, did not adopt the first phase Council Decision, which will not apply to the UK, and deferred consideration of the beginning of Romania and Bulgaria's accession to the Schengen Area to a later date.

We will continue to retain this document under scrutiny, and will look forward to receiving in good time further updates about the date of its likely adoption. With respect to the forthcoming second phase Council Decision, which will apply to the UK, we would be grateful if you could ensure that a draft of this measure together with an Explanatory Memorandum is made available for scrutiny well in advance of the Council meeting that is likely to adopt it.

14 March 2013

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

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 23 October 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 31 October 2012.

We welcome your confirmation that the Government has decided not to exercise its right to opt-out of this proposal.

While we have already cleared this document from scrutiny, we look forward to receiving updates about any substantive progress this proposal makes in negotiations in due course.

1 November 2012

Letter from James Brokenshire MP to the Chairman

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

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

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

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

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

12 November 2012

Letter from Jeremy Browne MP to the Chairman

I am writing to inform you of developments on the Schengen Evaluation Mechanism (SEM), and how that now relates to the amendments to the Schengen Borders Code (SBC). SEM is listed on the agenda for the JHA Council on 7 March for political agreement yet remains subject to scrutiny.

As you are aware, Member States reached a general approach on the SEM last June, including a change to the legal base to facilitate UK participation. The European Standing Committee debated this on 3 September 2012 and the Government subsequently notified the House of its decision not to opt out.

In the meantime the Presidency has engaged in informal and extremely sensitive discussions with the European Parliament (EP) and the Commission to move the Schengen governance work forward. You will recall that the EP and Commission were unhappy about the changes made to the original Commission proposal, not least the fact that the legal base now excludes formal co-decision. COREPER has considered some further compromises to be offered but the document which sets those out is classified as *Limité*, preventing its deposit. I can however tell you that Member States' room for manoeuvre is extremely limited. Further meetings will take place between the Presidency, Commission and EP in the coming days, the outcome of which will dictate whether a final deal can be reached at the March JHA Council. If that happens we expect it to be on the basis of a last minute text which remains classified until just before the Council due to the sensitive nature of such discussions between the Institutions.

Therefore, to aid your consideration of these changes, the key gains to date and areas for compromise are:

- Most significantly, the legal base of the SEM will be Article 70 of the Treaty on the Functioning of the EU (TFEU). This reflects the agreement at the June JHA Council. All other proposed compromises work to this legal basis and, as a result, the UK's participation in the SEM to the extent that it participates in the Schengen acquis is secured. The Government welcomes this confirmation.
- Under the deal done in June Member States would adopt both the evaluation reports and the recommendations arising from an evaluation. However, it has become apparent that Article 70 does not envisage the Council having sole power and it must act with Commission involvement. To meet this requirement, and in a spirit of compromise, the latest idea is that the draft evaluation reports will be adopted by the Commission, while the Council will continue to adopt recommendations which ask a peer to act and implement changes to facilitate full application of the Schengen acquis. In our view, this brings the process fully into line with Article 70 and ensures that the Commission will have no decision-making power over the final recommendations which require a Member State to act. This respects national sovereignty.
- Article 70 TFEU requires that the EP and national parliaments are "informed of the content and results of the evaluation". The EP is requesting direct and routine access to *Restricted* and *Limité* documents, which in our view goes further than the rights envisaged under Article 70. Many Schengen evaluation documents are restricted under a blanket classification to ensure information which may impact on national security or operations is not made public. Currently, individual MEPs are granted access to classified documents subject

to an EU-wide set of rules which cover all EU business. These rules are routinely reviewed and updated and, during these reviews, the Government has supported increased transparency as long as access remains under controlled conditions and respects national security. We understand that further text changes to the SEM will make it clear that sight of Restricted and Limité documents must respect these EU rules.

- In our view National Parliaments' rights to increased access to evaluation information was not fully addressed in June or December 2012. The Presidency now envisages that national Parliaments will have the right to be informed directly by the Commission of the results of all Schengen evaluations and to be given a yearly comprehensive report by the Commission. It remains to be seen how this will work in practice. Once the Commission's transmission plans are known, my officials will work with you to ensure that the new UK process is made clear and practical. In the meantime, we will continue to keep you informed through the yearly summaries of Schengen evaluations.
- The text agreed in June permits the Commission to request a risk analysis from other EU bodies involved in the implementation of the Schengen acquis as part of the preparation for the evaluation. The EP is requesting that the Commission must seek such analyses and that they should also include an assessment of how corruption and organised crime may undermine the application of the Schengen acquis. The impact on future Member States is deemed minimal, as the creation of Chapter 24 in new Acts of Accession means that any new Member States must meet all such criteria and have implemented anti-corruption legislation before joining the EU. The UK already takes this issue seriously and has a leading role in the call for EU and worldwide anti-corruption work.
- As agreed at the June 2012 Council, the Articles covering the temporary re-imposition of border controls decision-making will move from the SEM into the SBC as an amendment to the SBC. The Government continues to support Member States of the Schengen area in their determination to retain control of their national borders, but as the UK does not participate in the borders elements of Schengen, we will no longer have a vote on such matters if they are deleted from the SEM.
- The UK accepts that the SBC may carry a non-binding and factual description of the SEM process, to record that the evaluations in the SEM will provide the evidence used in the temporary re-introduction of border control decisions. Yet the EP is seeking text that establishes a clear link from the SBC to the SEM. The UK does not support any additions to the SBC which impact directly on SEM decision making and the UK vote on SEM but, as we do not participate in the borders elements of Schengen, we will not have a vote on the resulting SBC text. We are therefore working with other Member States to ensure that our concerns are addressed.

Overall, I am content that these changes deliver UK objectives for the SEM and are in line with wider Government policy. Agreeing these compromises should assist in securing amendments required by the UK and also avoid further conflict with the EP and the Commission over the choice of legal base. The Presidency has assured Member States that it will grant no further concessions to the EP during the last phase of negotiation.

21 February 2013

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

Thank you for your letter of 21 February 2013 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 6 March 2013.

The Committee is grateful for your helpful update on the progress of this proposal and will look forward to receiving further information as the negotiations progress in due course.

7 March 2013

SECOND MANDATE- SCHENGEN EVALUATION

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

I am writing to provide you with a summary of Second Mandate Schengen evaluations during 2012 and to provide you with a forward look for 2013.

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

The Working Party for Schengen Matters (Schengen Evaluation) met on seven occasions during the Danish and Cypriot Presidencies. Both Presidencies concentrated their efforts on keeping a tight evaluation schedule.

The evaluations during 2012 were Second Mandate (on existing Schengen States). On the basis of the agreed five-year evaluation programme, regional evaluation of the Western Mediterranean and Nordic States continued into 2012 and significant progress was achieved on those countries in the field of data protection, police cooperation, land, air and sea borders and visas. SIS/SIRENE evaluations were set back and started in late 2012 due to work to bring in the Second Generation of the Schengen Information System - SISII). Work has also started to evaluate the eight EU Member States that acceded to Schengen in 2007.

These evaluations found no serious issues. The reports highlighted best practice as well as making recommendations for improvements. Once the reports were adopted, the States each produced an action plan covering implementation of all recommendations and gave regular updates to their peers via progress reports. France, Denmark, Finland, Iceland, Portugal, Spain, Sweden and Norway completed these follow up processes during 2012. Council Conclusions were adopted to confirm completion and that all basic criteria had been met in all areas except SIS/SIRENE.

Liechtenstein acceded to Schengen in late 2011 following the adoption of a Council Decision which confirmed that they had met the basic criteria needed for lowering of land borders controls with their neighbours. Yet Liechtenstein continued work to implement best practice, especially on their SIS system and related issues such as data protection and police access. Further Council Conclusions were therefore adopted in mid 2012 to welcome this and confirm that they had implemented all recommendations which went beyond the basic criteria.

Italy was revisited in early 2012 to review its SIS operations, which had been complicated by migration from SIS to SISII. Council Conclusions were adopted in late 2012 stating that recommendations had been implemented and that improvements have been made to create a single automated system.

Greece was evaluated in 2009/2010 and is still subject to significant scrutiny of its land, sea and air borders. Work continued throughout 2012 to implement its action plan and bring in practical improvements. A peer-to-peer mission to Greece was carried out in mid 2012 in order to assess this progress and to identify areas where Member States could offer assistance. It was noted that visible improvements have been made but that more work was needed. Greece has therefore focused on the provision of equipment and personnel in key border areas and on political discussions with its neighbours to decrease illegal transit to the EU through their territories. Greece is now on its 7th Progress Report and will continue its work this year.

Outstanding SIS/SIRENE evaluations and the evaluation of the Member States that joined in 2007 will continue throughout 2013. Following confirmation that recommendations from reports have been actioned fully or are timetabled for action, we expect to see a significant number of Council Conclusions in 2013.

Romania and Bulgaria's First Mandate (accession to Schengen) evaluations were completed in 2011. However, the finalisation of Council Decisions which will set the dates from which Schengen will apply in both countries are still outstanding. The Government will update you separately on this matter in due course.

Once Croatia accedes to the EU, which is expected during 2013, it will be given a seat at the Schengen Evaluation Working Group. Under the terms of its Accession to the EU, it has already established its EU external border regime, and will continue work to implement the criteria and meet the standards required for Schengen membership.

26 February 2013

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 26 February 2013 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 20 March 2013.

We are grateful for your very helpful letter, which provides a summary of the Schengen evaluations that took place regarding the existing Schengen states during 2012, as well as looking forward to 2013.

No response to this letter is required.

20 March 2013

SIS II (9485/12)

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

Thank you for your letter of 24 October 2012 on the above proposal which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 31 October 2012.

We welcome your confirmation that the Government has decided not to exercise its right to opt-out of this proposal.

We are now content to clear this document from scrutiny.

No response to this letter is required.

1 November 2012

SIS II EXPENDITURE

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

I am writing to inform your Committee of the SIS II spend to date and the spend the Government expects to incur up until the end of financial year 2014/15 if the UK decides to exercise its block opt-out and seek to 'rejoin' this area of cooperation. I have also outlined the projected benefits to highlight the net value of SIS II once operational.

The SIS II Programme cost up to the end of October 2012 is £75.60m and the total forecast spend up to the end of this financial year is £83.30m.

The current forecast spend during 13/14 is £9.47m and in 14/15 is £13.51m. Total Programme spend up to the end of financial year 14/15 is forecasted to be £106.28m.

The Programme's lifetime cash costs are forecast at £168m against an estimated £624m in net benefits to the UK over the first ten years of live operation.

The SIS II Programme's monetary benefits are categorised into:

- increased detections of EAW's at the UK's primary checkpoints;
- its barrier effect (detering entry);
- and recovery of lost and stolen UK passports.

SIS II will also provide greater identity assurance at the border primary checkpoints, improved public and law enforcement officer protection, improved judicial co-operation and improved police co-operation.

The above benefits have been agreed and quality assured by Home Office economists and financial modellers to ensure the Programme is in line with the HM Treasury Green Book. It was also agreed in 2010 by the Programmes HM Treasury Review that the Programme should include its identified recidivism rate for the cost of crime.

13 December 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 13 December 2012 regarding the above matter which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 9 January 2013.

We are grateful for your overview of the spend to date and the future spend the Government expects to incur as part of UK's preparations for joining SIS II if it were to continue participating in this measure, as well as the projected benefits of its participation. We will look forward to receiving further updates as the UK's preparations for joining SIS II progress.

It is clear that the costs already incurred are significant and we will consider that aspect in the context of our current inquiry into the opt-out decision.

10 January 2013

SIS II MILESTONE TESTS (9485/12)

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

I am writing to inform your Committee that the crucial SIS II Milestone 2 test was successfully completed in September 2012.

The test provides assurance that the Central SIS II (C SIS) technical infrastructure and hardware is capable of delivering the full C SIS requirements and of managing the interaction with Member States in an accurate and timely manner.

In addition, the core testing phase ('the Comprehensive test') has been successfully completed. This ensures that the C SIS and the Member States' national SIS systems are compatible. Member States which use SIS I+ are now conducting migration testing.

Finland has declared that its national system is slightly behind schedule but they are currently working with the Commission on a recovery plan and the Commission remain of the view that the C SIS Entry into Operation (EiO) date of Q1 2013 will be achieved.

The current UK priority is to ensure that development work on our own national platform is on target to connect to C SIS in Q4 of 2014, as programmed, and to ensure that there are no significant slippages to the go-live date of C SIS. The UK timetable allows contingency for up to 9 months delay on the revised C SIS EiO date (i.e. to December 2013) before it would impact the UK's delivery schedule. The UK will continue to closely monitor the progress of the C SIS project to ensure the early identification, and consideration of mitigation, of the risk of extended delay to the planned EiO date.

SIS II is, of course, one of the measures subject to the 2014 opt-out decision. The completion of these tests does not pre-empt a Government decision on SIS II with regard to the 2014 decision.

22 November 2012

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 22 November 2012 regarding the above matter which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 5 December 2012.

We are grateful for your confirmation that the UK successfully completed the SIS II Milestone 2 test in September. We will look forward to receiving further updates as the UK's preparations for joining SIS II progress.

We note that the legal measures establishing SIS II are subject to the forthcoming opt-out decision and we will consider these in the context of our current inquiry into that decision.

No response to this letter is required.

6 December 2012

SOLIDARITY CLAUSE (18124/12)

Letter from the Chairman to Chloe Smith MP, Minister for Political and Constitutional Reform, Cabinet Office

Thank you for your explanatory memorandum of 7 February 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 27 February 2013.

As you may be aware we considered the Solidarity Clause in our report on The EU Internal Security Strategy (17th Report of Session 2010-12, HL Paper 149). We concluded that the Clause did “not seem to empower Member States to do anything which they could not do without it, or require them to do anything they would not otherwise be required to do. It does however serve to emphasise the political will of the Member States to stand together in the face of adversity”. We stand by this conclusion and note that it accords with your own position on the proposal.

We agree with the areas that the Government intends to explore further and clarify as the negotiations on this proposal progress, particularly the possible financial implications and the role of the European External Action Service. We also support your belief that provision for the review or evaluation of the Solidarity Clause, post-activation, should be provided for in the proposal.

We also believe that the establishment of clear operational mechanisms for the Solidarity Clause’s operation to be important in terms of clarifying how the existing instruments and procedures will be drawn together, as well as clarifying the circumstances in which Member States may request assistance – particularly since it is only expected to be activated in exceptional circumstances.

In the meantime, we have decided to retain this document under scrutiny. We will look forward to receiving further updates about the progress of negotiations on this proposal in due course.

1 March 2013

THIRD MONEY LAUNDERING DIRECTIVE (6230/13, 6231/13)

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

Thank you for your explanatory memorandum of 4 March 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 20 March 2013.

As you may be aware we considered the Third Money Laundering Directive in our report on Money laundering and the financing of terrorism (19th Report of Session 2008-09, HL Paper 132). Among other things, we made the following recommendation: “Since the Government accept that they are accountable to Parliament for United Kingdom membership of the FATF, they should find a more systematic way to report to Parliament on FATF developments. Written statements after each plenary session would be a start”. With respect to the Government’s recent involvement in the FATF negotiations which have, in part, led to the production of the Commission’s proposal, we would be interested to know if any steps have been taken since the publication of the above report to account to Parliament regarding its participation in the FATF negotiations.

The Committee’s Money Laundering report also considered the Government’s failure to either sign or ratify the Council of Europe’s Convention on Money Laundering and Terrorist Financing (the Warsaw Convention) and recommended that steps were taken to address this. This recommendation was followed up in the Committee’s report on The EU Internal Security Strategy (17th Report of Session 2010-12, HL Paper 149), which noted that the previous Government had suggested they were on course to have ratified the Convention by September 2010 and concluded that “The Government’s continuing failure to ratify the Warsaw Convention is inexcusable. We repeat our view that this prevarication sends out a negative message about the Government’s commitment to this important matter. We again urge the Government to sign and ratify the Warsaw Convention without further delay”. We note that the Government’s response to this recommendation, which was received in July 2011, said that “the UK is essentially compliant with, and largely goes beyond the minimal requirements of, the Warsaw Convention”. We reiterate the views we expressed then and note, with regret, that to date the Government has still not signed or ratified the Convention. We believe that this lack of action by the Government sends the wrong signals to other governments where action against money laundering we consider to be inadequate. We would therefore welcome an update on the Government’s approach to this matter, including an indication of whether they

intend to become bound by this instrument in due course or if a definitive decision has been taken not to do so.

You may also be aware that the above report also considered the matter of ransom payments to pirates, which was followed up in our report on Turning the Tide on Piracy, Building Somalia's future: Follow-up report on the EU's Operation Atalanta and beyond (3rd Report of Session 2012-13, HL Paper 43), which stated: "We reiterate our previous conclusion in our 2009 report that those involved in assembling ransoms in the United Kingdom have a duty to seek consent for its payment and that not to do so, if necessary by filing a Suspicious Activity Report, may result in the commission of a criminal offence. We request that the Government now respond substantively to this recommendation". The Government's response to that report stated that "if an individual knows or suspects they are dealing with criminal property and if they wish to obtain a statutory defence for carrying out that activity, then they should submit a Suspicious Activity Report (SAR) to SOCA and obtain consent". A subsequent letter from the Government to the Committee, dated 31 January 2013, also stated "that to require those assembling a ransom to report that activity, and where appropriate to seek consent before payment of the ransom, would be a new departure". In this respect we note that Lord Astor of Hever, responding for the Government in the Grand Committee debate on the Somali Piracy report, stated that "Companies assembling ransoms in the UK must seek consent from the Serious Organised Crime Agency prior to payment. The Government do not make or facilitate substantive concessions to hostage-takers, including the payment of ransom. I would point out that it is not against UK law to pay piracy ransoms". He later agreed, in response to a question from Lord Davies of Stamford, that it was not a satisfactory situation that such payments were not illegal. With respect to our recommendation, and in light of the Minister's comments in the debate, we would be grateful if you could clarify the Government's current position on this matter.

With regard to the documents under scrutiny, we note that the Government is broadly content with their scope and provisions. We also note that the Government will produce an UK impact assessment in due course, which will consider the potential financial impact on businesses resulting from the proposals, and we look forward to receiving a copy of this once it becomes available.

In the meantime, we have decided to retain this document under scrutiny. We will look forward to receiving further updates about the progress of negotiations on these proposals in due course.

20 March 2013

TOBACCO PRODUCTS DIRECTIVE (18068/12)

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

Thank you for your explanatory memorandum of 21 January 2013 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 6 February 2013.

We note that the Government is broadly supportive of the proposal and its aim of making smoking less attractive to young people. We further note that the Government is awaiting the results of consultations and research that it has commissioned on various aspects of tobacco usage in the UK in order to inform your response to this proposal. We would be grateful if you could provide us with summaries of responses received and the research results, as well as the more detailed impact assessment referred to in paragraph 56 of the EM, once these become available. We would also be interested to know whether the Government intends to consult UK stakeholders about the content of this proposal, beyond the provisions that concern standardised packaging.

As this is an important and substantive measure we have decided to conduct enhanced scrutiny on this proposal, which may involve hearing oral evidence from interested stakeholder organisations and the Government to inform our deliberations. Our secretariat will contact your officials to discuss this in due course.

We support your intention to consider whether the proposed use by the Commission of implementing and delegated acts is appropriate in terms of achieving the aims of the proposal.

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

In the meantime we look forward to receiving your response to the above points within the usual 10 days.

Letter from the Chairman to Anne Soubry MP

Thank you for your Explanatory Memorandum (EM) of 21 January 2013 on the above proposal, and for appearing before the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union on 13 March 2013 to give oral evidence. This letter summarises the Committee's deliberations on the Commission's proposal and also sets out its position on its merits. It also requests the Government's response on a number of points.

The Sub-Committee decided that this proposal was of sufficient significance to justify a process of 'enhanced scrutiny' and it has endeavoured to conduct its scrutiny of this proposal in a fully transparent manner. We received a considerable amount of written evidence and we are grateful to all those who agreed to make their submissions publicly available on the parliament website. Before your oral evidence session on 13 March, we also took oral evidence from the Tobacco Manufacturers' Association (TMA) and Cancer Research UK (CRUK) on 6 March.

On balance, we support the aim of the proposed revisions to the Tobacco Products Directive, particularly its focus on the protection of young people. However, we would like to make the following points about specific provisions:

SUBSIDIARITY

The TMA, Imperial Tobacco and Japan Tobacco International (JTI) considered that Article 168 of the EU Treaty expressly prohibits the EU adopting harmonising measures in the public health area regarding tobacco and that the proposal therefore constitutes a failure to respect the principle of subsidiarity. On the other hand, CRUK and the Government pointed to the internal market legal base of the Commission's proposal, Article 114 of the Treaty on the Functioning of the European Union (TFEU), and considered that this gave the EU competence to act because internal market legislation is a shared competence. We noted that the Court of Justice of the European Union upheld the use of an internal market legal basis and its compliance with the principle of subsidiarity with respect to Directive 2001/37 (which this proposal would replace) following a challenge brought by British American Tobacco and other tobacco manufacturers regarding its validity (Case C-491/01). We also note that a number of national parliaments issued Reasoned Opinions, before the deadline of 4 March 2013, expressing subsidiarity concerns about the present proposal but that the requisite threshold was not reached to require the Commission to undertake a review of the proposal. We further note that many of the Reasoned Opinions focussed on the proposal's provisions for the Commission itself to be empowered to adopt delegated and implementing acts, which, in our view, is more a matter of proportionality than of subsidiarity. We reached the view that the proposal has a sound legal basis and does not fail to respect the principle of subsidiarity. We therefore chose not to recommend to issue a Reasoned Opinion.

DELEGATED AND IMPLEMENTING LEGISLATION (ARTICLE 22 OF THE PROPOSAL)

The proposal would allow the Commission to adopt delegated and implementing acts under Articles 290 and 291 TFEU, and give the Commission greater competence over areas which would previously have been regulated at national level, such as withdrawing exemptions for certain products, changing the format and content of health warnings, and other issues. Your EM states that the Government is considering carefully whether each of the delegated and implementing powers is proportionate; and also whether they could result in implementation problems. We welcome this cautious approach to such delegated powers. We would be grateful if you could let us know whether you are now satisfied that the proposed use of delegated and implementing acts is proportionate or whether you intend to press for changes in the negotiations, which would give the Member States greater control over any further delegation of powers and could also allow Member States more flexibility to implement the proposal in ways which best suit national circumstances. We note the concerns expressed by a number of other national parliaments across the EU regarding the Commission's proposed use of delegated and implementing legislation within the proposal and consider that these raise important considerations which merit further scrutiny. We would like to know the Government's view on this aspect of the Commission's proposal.

CONSISTENCY WITH INTERNATIONAL LAW (PARAGRAPHS 7, 26 AND 45 OF THE RECITAL TO THE PROPOSAL)

The TMA, Imperial Tobacco and JTI argued that the health warning requirements in the current Tobacco Products Directive are sufficient to ensure compliance with the requisite provisions of the

World Health Organisation's Framework Convention on Tobacco Control (FCTC). They considered that the proposal's strengthening of these requirements went too far and that by doing so it infringes a number of fundamental legal rights to property, expression and trade, which are protected under international law, such as the World Trade Organisation's Agreement on Technical Barriers to Trade and the European Convention on Human Rights, among others. However, the Government and CRUK considered that the proposal would assist Member States in complying with their obligations in this respect under the FCTC. We would be grateful for clarification of the Government's position on the proposal's compatibility with the international treaty obligations of Member States and of the EU.

NON-TOBACCO NICOTINE CONTAINING PRODUCTS (NCPs), INCLUDING E-CIGARETTES (ARTICLE 18 OF THE PROPOSAL)

CRUK submitted evidence stating that tobacco companies are increasingly taking ownership of the e-cigarette market through mergers and acquisitions of smokeless tobacco companies. Given that the Government and Action on Smoking and Health (ASH) described how e-cigarettes were now, in their view, being marketed with bubble-gum flavours, which may make them attractive to young people and could act as a "gateway" to smoking real tobacco products, we agree with the Commission's proposal that some regulation of NCPs across the EU is necessary in order to protect public health.

CRUK and ASH argued that the proposal to include a warning on NCPs that "this product contains nicotine and can damage your health" could also add to the existing confusion between the risks associated with the tar in tobacco and nicotine. In addition, ASH told us that it could also potentially dissuade smokers wishing to quit from using products which could help them to do so.

CRUK stated that the Commission's desire to apply different regulatory regimes to NCPs based upon their nicotine content does not appear to be based on sound evidence. Together with the British Heart Foundation and ASH, they argued that all NCPs should be regulated as medicinal products, bringing them into line with other nicotine-replacement therapies. However, Dr David Upton and Clive Bates, former Director of ASH, considered that placing NCPs under medicinal products regulations would stifle their production as the certification process is both resource and time intensive. E-lites argued that there should be a framework of regulations to accommodate tobacco products, pharmaceutical nicotine-replacement therapies and "consumer products" such as e-cigarettes.

We understand that the Medicines and Healthcare products Regulatory Authority and the National Institute of Clinical Excellence will publish the findings of their research into the physiological effects of nicotine and the safety of NCPs vis a vis tobacco products later this year. We encourage the Government to use this information in the negotiations on the draft Directive in order to develop a more scientifically robust proposal to regulate NCPs in the EU. We believe that some regulation of NCPs is necessary but recommend that consideration should be given to doing so outside the scope of this draft Directive. The regulation of NCPs should be based on the results of scientific research into the physiological effects of nicotine while also considering the possible health benefits of the alternative that NCPs offer to smokers.

LABELLING AND PACKAGING (ARTICLES 7-13 OF THE PROPOSAL)

The Commission's proposal would allow Member States to introduce full standardisation of tobacco packaging and labelling as long as it is compatible with the EU Treaties. We note that the Government's EM and your oral evidence suggested that the Government is still reconciling the Commission's proposal with its own domestic plans for packaging and labelling, with respect to the results of the 2012 consultation on standardised packaging of tobacco products.

The TMA, JTI, and Imperial Tobacco argued that, if the Commission's proposal is implemented in its current form, tobacco companies would be left with insufficient space on their packaging to display, among other things, their logos and colour schemes, and that this would constitute a breach of their intellectual property rights. They also said that the banning of slim cigarettes and flavourings such as menthol in tobacco would inhibit creativity and innovation in the tobacco industry, as well as creating an illegal market to satisfy the demand for these products. Companies in the design and packaging sector also warned that tighter regulation on packaging and labelling would have a negative economic impact on their industry. In contrast, CRUK, the British Heart Foundation and ASH welcomed the Commission's plans in this area. They considered that other countries' experiences suggested that increasing the size of health warnings on cigarette packaging will help to deter people from smoking, as well as making it more difficult for companies to market products such as slim cigarettes in a way that might make them more attractive to young people in particular.

We agree with the Commission's proposal that information on tar, carbon monoxide and nicotine levels in cigarettes should be removed from tobacco packaging, and we note the Government's acceptance of this view.

We received evidence primarily concerning the Commission's proposals, but the arguments made also applied to any form of standardised packaging. We would therefore be grateful to receive notification of the Government's final position on the Commission's proposal to regulate the packaging and labelling of tobacco products. We would not wish to express a view on the merits of the Commission's proposal to prohibit certain tobacco products and to regulate the packaging and labelling of the majority of tobacco products without knowing the Government's own intentions in this area. We look forward to receiving further details about this in due course.

ILLICIT TRADE IN TOBACCO (ARTICLE 14, 16, AND 20 OF THE PROPOSAL)

The Government, Imperial Tobacco and the TMA questioned the Commission's use of this proposal as a means of implementing the FCTC protocol on illicit trade. They suggested that the issue of illicit tobacco could be best tackled through other means, for example, customs legislation. In particular, Imperial Tobacco stated that the requirements for tracking and tracing tobacco products are already covered under agreements between the EU Anti-Fraud Office (OLAF) and each of the tobacco companies, and argued that the Commission does not have the competence to legislate on this issue. Many witnesses felt that the illicit trade of tobacco products was inextricably linked to the regulation of tobacco packaging and labelling. The European Carton Makers Association (ECMA), the TMA and Peter Sheridan and Roy Ramm, former UK law enforcement officers, stated that intricate and constantly evolving tobacco packaging is the first line of defence against counterfeit tobacco, and that regulating it would create a "counterfeiters charter" as packaging and labelling with fewer divergent details would be easier for counterfeiters to copy. However, we note the recent report by the All Party Parliamentary Group on Smoking and Health on the trade in illicit tobacco stated that law enforcement agencies do not rely on packaging appearance to test whether products are illicit. Instead they use a number of security features found on existing packaging, including coded numbers and covert anti-counterfeit marks, all of which would remain in place if the Commission's proposal is implemented. ASH and the Government also told us that counterfeit tobacco is not necessarily attractive because the packaging is accurately copied but rather because it is cheaper to purchase than legitimately produced tobacco.

We were unable to get a clear idea of the scale of the illicit tobacco trade in the UK. CRUK told us that illicit tobacco constituted 9 per cent of sales in the UK, while the TMA cited a figure of 21 per cent. We would be grateful for clarification from the Government on this issue, including any robust statistics that may be available.

We believe that the trade in illicit tobacco is a major manifestation of internationally organised crime and that the Member States, alongside the EU, have an important role to play in tackling it. We note that the Commission is expected to publish an EU strategy to fight the illicit trade in cigarettes before the end of this year. We are concerned that there may be insignificant cooperation at the EU level to tackle this problem effectively. We would like to know in detail how the UK currently cooperates with EU agencies such as Europol, Eurojust and OLAF in this area and what your assessment is of these agencies' effectiveness in this regard. We would be grateful for further information from the Government about the present scale of the illicit tobacco trade in the United Kingdom and their view on whether the Commission's proposal would contribute to the fight against this trade. We would therefore like to hear from you how effective the Government believes existing EU and United Kingdom efforts to be in this area.

We look forward to receiving your response to the above points within the standard 10 days, at which point we may wish to comment further. We also look forward to receiving updates about the progress of the negotiations on the Commission's proposal in due course.

24 April 2013

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME
(7933/13)

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

Thank you for your explanatory memorandum of 16 April 2013, which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at its meeting on 24 April 2013.

We note your broad support for the Commission's intention that the EU should conclude the Protocol, with which we concur.

We have decided to retain this document under scrutiny. We look forward to receiving further information about this proposal in due course including the matter of the UK opt in.

24 April 2013

VISA EXEMPTIONS (16016/12)

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

Thank you for your explanatory memorandum of 28 November 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 December 2012.

We note the content of this proposal with interest and like you in particular welcome the removal of visa requirements for travel into the Schengen Area for citizens of British Overseas Territories, British subjects who do not have a right of abode in the UK, British overseas citizens and British protected persons.

As the proposal deals with a policy area in which the UK does not participate, we have decided to clear this document from scrutiny.

No response to this letter is required.

19 December 2012

VISA POLICY TO SPUR ECONOMIC GROWTH (16019/12)

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

Thank you for your explanatory memorandum of 3 December 2012 which the Home Affairs, Health and Education Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 December 2012.

We note that the Communication highlights the potential of tourism to stimulate growth in the EU economy and we further note that the UK is already making efforts to facilitate more tourism to the UK by streamlining its own visa procedures. In this context, we would like to draw your attention to our report on The EU's General Approach to Migration and Mobility (8th Report of Session 2012-13, HL Paper 91), which was published on 18 December, and which recommends that the UK should explore options for increased cooperation between the Common Travel Area and the Schengen Area.

We agree with your judgement that, while the Communication does not apply to the UK as a non-member of the Schengen Area, it will undoubtedly have implications for the UK's future visa and tourism policies. We therefore support your intention to monitor closely the EU's plans for revising its list of third countries whose citizens do not require a visa according to economic considerations.

As the Communication is not a legislative document, and deals with a policy area in which the UK does not participate, we have decided to clear this document from scrutiny.

No response to this letter is required.

19 December 2012

2014 OPT-OUT DECISION

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

Thank you for your letter of 15 October 2012 regarding the above matter, including the updated list of measures subject to the 2014 decision. With reference to the statement to the House of Commons on the same day, we welcome the Government's fresh commitment to holding a vote in both Houses before they make a formal decision on whether they wish to opt-out, including prior consultations on the arrangements for this vote with the relevant Parliamentary committees as well as on their views on the decision itself.

In response I would like to take this opportunity to provide an overview of our new inquiry into this matter, how we believe that the vote should be organised in the House of Lords, as well as asking some preliminary questions about the logistics of your approach to the opt-out decision.

OUR INQUIRY INTO THE OPT-OUT DECISION

The EU Committee has today issued a Call for Evidence for their inquiry into this matter and I attach a copy for your reference [not printed]. As I mentioned in my previous letter of 2 October, our Justice, Institutions and Consumer Protection and Home Affairs, Health and Education Sub-Committees will conduct this inquiry jointly. The deadline for the receipt of written submissions is 14 December, and we intend to take oral evidence in January and February 2013. We aim to publish our report to the House by the end of the 2012-13 session. We believe that this timescale is necessary to allow for the proper and thorough consideration of this complex and important matter.

We will of course look forward to receiving the Government's written submission by the stipulated deadline. Due to the importance of this matter we would also welcome the opportunity to receive oral evidence from you both. My officials will be in contact in due course to discuss potential dates for early next year.

THE ORGANISATION OF THE VOTE ON THE OPT-OUT DECISION

We are assuming that the House will be invited to vote on a Government motion for a resolution of some nature, which will be amendable. However, will this motion merely cover whether the opt-out should be exercised, or will it also cover measures that the Government would seek to opt back in to, were the opt-out to be exercised?

It would also be helpful to know whether the Government is intending to treat the votes in both Houses as binding or advisory. Furthermore, what would be the Government's response if either House refuses to concur with the motion or agrees an amended motion?

As we have already made clear, we would be grateful if the vote was not scheduled until the Parliamentary session, which starts in May 2013, after our report has been published and made available to the House.

In order to facilitate further discussions about these arrangements, I understand that the Committee secretariat has already suggested a meeting with the relevant Government officials to take this forward. I and my two colleagues, the chairmen of the respective sub-committees, will be at your disposal in this regard.

YOUR APPROACH TO THE OPT-OUT DECISION

With reference to all previous correspondence we have received from you about this matter, and the recent statement, we remain unclear about a number of points that are set out below.

- Our reading of the terms of Protocol 36 suggests that pre-Lisbon PCJ measures will only be removed from the list of measures subject to the 2014 decision once any post-Lisbon PCJ measure, which repeals and replaces or amends any of the original measures and to which the Government has decided to opt-in (or not opt-out), is formally adopted, having completed the whole EU legislative process. What is the Government's view about this?
- How does the Government's consideration of the opt-out decision, including the consideration of each PCJ measure by Home Office and Ministry of

Justice officials relate to the Review of the Balance of Competences, which was announced by the Foreign Secretary last July?

- In this respect what methodology have the same officials used to analyse each PCJ measure and have they consulted UK police and law enforcement authorities and the wider stakeholder community as part of this process? When do they expect to conclude their analysis of all the PCJ measures subject to the 2014 decision?
- Has the Government considered producing impact assessments on the consequences of either opting out, or not opting out?
- As PCJ measures have generally been implemented into UK law by way of primary legislation does the Government anticipate that this body of implementing legislation would be repealed if the opt-out is exercised? If so then how significant does it believe this task would be? Furthermore, what UK measures may be required to replace this legislation if it was repealed?
- When does the Government expect to be in a position to advise Parliament what PCJ measures it would like to opt back in to if the opt-out decision is exercised? Has the Government already commenced discussions with the Commission about this process?

We would be content if you were to decide to treat the above questions as being supplemental to those contained in the Call for Evidence, incorporating your responses into the Government's written submission accordingly, to be received by 14 December.

1 November 2012

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

It was most useful to have sight of your letter to William Cash of 7 November and of your preliminary answers to the very pertinent questions he asked in his letter of 17 October. I can well understand that you are not able at this stage to say which measures the Government will seek to rejoin were the opt-out to be exercised. However, I would like to emphasise that my Committee will not be able to complete its inquiry into this matter until an indicative list of these measures has been provided to us.

Your letter of 7 November also makes reference to the Government's ongoing analysis of the measures that fall within the scope of the opt-out decision. As this analysis will underpin the decisions you make regarding each measure, it would also be useful if this analysis was made available to the Committee.

Therefore I would be grateful if you could provide us with the above information in sufficiently good time for it to be considered within the overall timetable for our inquiry which I outlined to you in my letter of 1 November. Otherwise there may be delays in the submission of our report to the House on this matter and thus also in the House's consideration of the opt-out decision as a whole.

14 November 2012

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

I was grateful to William Cash and his colleagues for sending me a copy of their letter to you of 22 November about the handling of the opt-out decision.

The procedures to be followed in the House of Commons are, of course, entirely a matter for them and I make no comment on them. Our own preliminary thinking on the Parliamentary handling of this issue was set out in my letter to you of 1 November. Rather than pursuing the matter in greater detail in writing at this stage I would prefer to wait until you and the Secretary of State for Justice are ready to see me and my colleagues and then we can discuss the procedures to be followed in the House of Lords.

29 November 2012

Letter from the Chairman to the Rt. Hon Chris Grayling and Rt. Hon Theresa May MP

As you will be aware the EU Committee is currently conducting an inquiry into the above matter [Opt-out decision under Article 10(4) of Protocol 36 to the Treaty on the Functioning of the European Union.]

A request was made on 8 November 2012 for you both to provide oral evidence to the Committee on 13 February 2013 at 4.00pm. On 14 November 2012 an additional request was made for an informal oral evidence session with the responsible officials from the Home Office and Ministry of Justice to take place on 9 January 2013 at 4.00pm. While we are fully entitled to hold the latter session in public we have decided to hold it off the record.

The above requests have since been repeated on a number of occasions but we have yet to receive a response.

We are disappointed that these sessions have yet to be confirmed, especially in light of the Government's repeated undertakings to engage fully with this Committee, and others, before the opt-out decision is made.

We therefore require confirmation of both oral evidence sessions by 14 December 2012.

3 December 2012

Letter from the Rt. Hon Chris Grayling and Rt. Hon Theresa May MP to the Chairman

We are grateful to you and your Committee for the letters of 1 November, 14 November, 29 November and 3 December concerning the 2014 decision. In particular, we welcome the work your Committee is undertaking which will be useful in informing the Government's consideration of the 2014 decision. In the Committee's letter of 3 December you asked whether officials would be able to attend an informal evidence session on 9 January 2013, and if we would provide oral evidence on this matter on 13 February 2013. Although at this stage of the process we do not feel that it is appropriate for officials to provide oral evidence, we can confirm that we are both content to provide oral evidence on this matter on the proposed date.

In your letter of 1 November, you ask whether the vote in Parliament will be binding or advisory. The Government is still considering the form that the votes will take, including via initial discussions with your clerks, and we are grateful for your comments at this stage.

You asked for an undertaking that the vote in the House will not take place until your Inquiry has reported. We are happy to give that undertaking; we would like any debate in the House on this matter to be informed by your work. We understand that you and Lord Hannay will be meeting James Brokenshire and Lord McNally to explore some of these issues in December, and we look forward to hearing your views in more detail.

Enclosed is the Government's response to your Committee's call for evidence. You pose a number of additional questions in your letter of 1 November; these are addressed below.

1. Our reading of the terms of Protocol 36 suggests that pre-Lisbon measures will only be removed from the list of measures subject to the 2014 decision once any post-Lisbon PCJ measure, which repeals and replaces or amends any of the original measures and to which the Government has decided to opt in (or not opt out) is formally adopted, having completed the whole EU legislative process. What is the Government's view on this?

The Government's key objective is to reach a shared understanding with the Commission and Council on the technical and legal aspects of the 2014 decision in order to provide legal certainty for all involved. Officials have been having technical and legal discussions with the Commission and Council Legal Service in order to progress this, including whether 'adoption' or 'entry into force' is the date at which the underlying measures cease to be within the scope of the 2014 decision. To date there is no firm agreement on this point.

Whilst the date of 'entry into force' is clear on the face of the measure, that is not always the case: the default position if no date is given is 20 days after publication in the Official Journal. The date of 'adoption' can also be complicated. For non co-decision measures adoption takes place when the Council adopts the act. For co-decided dossiers there is a practice of writing the relevant date (shown in the Official Journal) as the date on which joint signature of Council and European Parliament Presidents takes place. While this is neater presentationally, it cannot be relied on as having any legal significance. The actual date of adoption for legal purposes varies depending on the stage:

- If first reading deal: the date when Council approves the European Parliament position [Article 294(4) TFEU]
- If first phase of a second reading deal: the date when the European Parliament adopts the Council position [Article 294(7)(a) TFEU]
- If second phase of a second reading deal: the date when the Council approves the European Parliament's second reading amendments [Article 294(8)(a) TFEU]
- If Conciliation/third reading deal: the date when the last of either the Council or the European Parliament votes to adopt [Article 294(13) TFEU]

The Government will update Parliament when this issue has been agreed.

2. How does the Government's consideration of the opt-out decision, including the consideration of each PCJ measure by Home Office and Ministry of Justice officials relate to the Review of the Balance of Competences, which was announced by the Foreign Secretary last July?

The 2014 opt-out is a separate decision that is provided for under the EU Treaties and one which we are obliged to make; the Balance of Competence review is a commitment in the Coalition Programme for Government. The review aims to deepen public understanding of the nature of our EU membership and provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU. As such, the review must be considered separately from the 2014 decision.

3. In this respect what methodology have the same officials used to analyse each PCJ measure and have they consulted UK police and law enforcement authorities and the wider stakeholder community as part of this process? When do they expect to conclude their analysis of all the measures subject to the 2014 decision?

Analysis of these measures seeks to establish which are in the national interest. As part of this, the Government is looking at how a measure contributes to public safety and security, whether practical cooperation is underpinned by the measure, and whether there would be detrimental impact on such cooperation if pursued by other mechanisms. The Government will also consider the impact the measure has on civil liberties and rights.

The Government has held discussions with a number of interested parties, including the EU Institutions, other Member States, the Devolved Administrations and Gibraltar, Parliament and operational partners to inform its analysis. This analysis will be an ongoing process but the Government is committed to providing Parliament with as much information as possible as soon as is practical.

You will also have noted that the joint letter of 22 November from the European Scrutiny, Justice Select and Home Affairs Committees requests that we provide Explanatory Memoranda on the measures subject to the 2014 decision. We will be providing Explanatory Memoranda; however, we have suggested that this is done in a slightly different manner from that suggested in that letter. We have proposed that we provide Explanatory Memoranda on the following areas:

- Schengen measures
- Measures for which the Justice Secretary is responsible
- Measures for which the Home Secretary is responsible (1) – EU agencies, mutual legal assistance, drugs, proceeds of crime
- Measures for which the Home Secretary is responsible (2) – extradition, crime (including cyber and organised crime), fraud and counterfeiting, databases and automated information exchange, and all others
- Measures for which the Chancellor of the Exchequer, Foreign Secretary and Transport Secretary have responsibility.

We trust that this additional information will be useful. We hope to be in a position to provide you with the first of these by early January and to have provided all necessary Explanatory Memoranda by the middle of February, ahead of our appearance at your Inquiry. We regret that this is later than the deadline set for the submission of evidence to your inquiry but as I am sure you understand, we need to consider carefully the information we provide at this time. We do, however, wish to provide you with as much information as possible to allow you to exercise fully your role in this important issue.

4. Has the Government considered producing impact assessments on the consequences of either opting out, or not opting out?

Our analysis of the measures and their impact is still ongoing. At his appearance before the European Scrutiny Committee on 28 November, the Parliamentary Under-Secretary for Security, James Brokenshire, gave an undertaking that the Government will provide an Impact Assessment on the final package of measures that the Government wishes to rejoin, should the Government decide to exercise the opt-out.

5. As PCJ measures have generally been implemented into UK law by way of primary legislation does the Government anticipate that this body of implementing legislation would be repealed if the opt-out is exercised? If so then how significant does it believe this task would be? Furthermore, what UK measures may be required to replace this legislation if it was repealed?

The question of whether or not we would repeal implementing legislation would need to be considered on a case by case basis. For example, changes to primary legislation may be necessary if we were to opt out and not rejoin measures such as the European Arrest Warrant. Clearly, the legislation required to replace any repealed legislation would depend on the measures put in place, if any, to replace such EU measures. Consequently, at this stage it is impossible to give a definitive answer. However, should the UK opt out it should not be necessary to repeal legislation that has implemented the majority of minimum standards measures. In many such cases our domestic legislation predates the European legislation and would not repeal our domestic legislation. For example Council Decision 2000/375/JHA to combat child pornography on the internet has been implemented through a variety of measures. The UK legislation relating to illegal images of children is Section 1 of the Protection of Children Act 1978. The reporting point for the public for illegal images is the Internet Watch Foundation, which was set up by the internet industry in 1996. Police in the UK have consistently tackled illegal images and the creators of them.

6. When does the Government expect to be in a position to advise Parliament what PCJ measures it would like to opt back in to if the opt-out decision is exercised? Has the Government already commenced discussions with the Commission about this process?

We have opened discussions with the Commission and Member States on the 2014 decision. These discussions are at an early stage and it is not yet clear what approach our EU partners will take. In addition, we are keen to hear Parliament's view, discuss this issue with interested parties and continue to gather evidence before taking a decision. As such, it is similarly not possible at this stage to state when the Government will be able to advise Parliament which measures it will seek to rejoin.

14 December 2012

Letter from the Chairman to the Rt Hon Chris Grayling and the Rt Hon Theresa May

Thank you for your letter of 14 December 2012 regarding the above matter, including the Government's written submission to the Committee's inquiry.

While we are grateful to receive confirmation that you will both appear before the Committee on 13 February 2013 to provide oral evidence, we are very disappointed that you have refused our request to receive one informal oral briefing from the responsible officials in the Home Office and Ministry of Justice on 9 January. It was intended that this session would provide useful background information for our inquiry, concentrating on factual and procedural matters, in accordance with the spirit of the Osmotherly Rules.

As stated in our letter of 3 December, we agreed not to hold the session in public of for it to be on the record in order to facilitate the Government's engagement in the essential preparatory stages of our inquiry. The request for this session was also made on 14 November.

We are strongly of the view that this refusal runs contrary to the Government's repeated undertaking to actively engage with this Committee before the opt-out decision is made.

The points that we were intending to ask officials to brief us on 9 January are set out below and we should like your written response to these by that date:

- What can you tell us about the genesis of Protocol 36 during the negotiations on the Lisbon Treaty? Why were the transitional provisions on police and criminal justice matters included and what was the position of the Government at the time?
- Which of the 130 EU measures have not yet been implemented in the UK? Which are, to use your own words, defunct?

- What internal procedures apply to the opt-out decision, at the official and at Cabinet level?
- How are officials from the Home Office and Ministry of Justice working together on the preparatory work prior to the Government reaching a decision on whether or not to exercise the opt-out? Is one department taking the lead? Which other departments are involved or are being consulted?
- When did you begin analysing the measures subject to the block opt-out decision? When do you expect to complete this analysis? When do you expect that this will be made available to the Committee?
- When do you anticipate being able to communicate to us the list of measures which, in the event of the opt-out being exercised, the Government would seek to rejoin? Can you assure us that in any event this will be before we compile our report? If you cannot give us that assurance this will certainly have implications for the timing of our report.
- How widely have you consulted stakeholders on each measure and with whom?
- ACPO have referred to a Government request for them to produce alternative methods for bilateral cross-border cooperation. When will this work be available to us? Is any other contingency planning taking place?
- Have the views of other Member States been solicited? In particular have any consultations taken place with the Irish government? If so, when will their views be made available?
- When did discussions with the EU institutions begin on this matter? Can you tell us what form these discussions have taken with the Commission and the Council so far and when more formal discussions are likely to begin?

19 December 2012

Letter from the Chairman to the Rt. Hon Chris Grayling and the Rt. Hon Theresa May

I wrote to you on 19 December 2012 seeking additional information about a series of points. I asked for that information to be available by 9 January 2013, when the Committee began to take oral evidence into the above matter. I understand that in a subsequent discussion between one of the Committee's clerks and your officials it was agreed that this deadline could be extended to 14 January. I also note that your letter of 14 December promised to provide the Committee, as well as committees in the House of Commons, with five Explanatory Memoranda, which will cover all of the police and criminal justice measures caught by the opt-out decision. It also stated that you hoped to provide the first of these EMs by early January and the remainder by 13 February when you are due to provide oral evidence to the Committee.

This revised deadline has now long since passed by, despite repeated requests from our clerks to your officials, and neither the letter, nor any of the promised EMs, have yet been received. I also understand that no reason has been provided for these additional delays.

The delays in receiving this information are already having a negative impact on the conduct of the inquiry and, especially in light of the Government's repeated undertakings to engage fully with this Committee, and others, before the opt-out decision is made are a cause of dismay and frustration. I do not see how this can be considered consistent with the "significant role" of Parliament in holding the Government to account on its EU policies to which the Prime Minister referred in his speech last week.

I am sure that you will appreciate that the Committee's ability to consider this complex matter in a proper manner is being compromised by the lack of information being made available to the Committee so far.

I must therefore ask you to ensure that we receive the requested information without any further delay. Alternatively we may be compelled to consider delaying the oral evidence session on 13 February, in order to allow the Committee adequate time to study the desired information.

29 January 2012

Letter from the Rt. Hon Chris Grayling and the Rt. Hon Theresa May to the Chairman

Thank you for your letter of 19 December 2012 regarding the above matter. We apologise for the delay in responding to you. As we outlined in our letter of 14 December, at this stage we do not feel that it is appropriate for officials to provide oral evidence. We apologise that this may not be your preference. However, we would like to take this opportunity to assure you of our continuing commitment to engaging with Parliament and your Committee on this important issue. We look forward to giving evidence to your Committee on 13 February. In the meantime, your letter sought answers to a series of questions you intended to ask officials at an informal evidence session on 9 January.

1. WHAT CAN YOU TELL US ABOUT THE GENESIS OF PROTOCOL 36 DURING THE NEGOTIATIONS ON THE LISBON TREATY? WHY WERE THE TRANSITIONAL PROVISIONS ON POLICE AND CRIMINAL JUSTICE MATTERS INCLUDED AND WHAT WAS THE POSITION OF THE GOVERNMENT AT THE TIME?

In bringing forward the Lisbon Treaty the EU Institutions wished to bring the then “Third Pillar” (police and criminal judicial cooperation) into line with other Community working methods, where qualified majority voting, co-decision and full ECJ jurisdiction were the norm. They proposed both to apply the arrangements to new proposals and retrospectively to bring existing measures within the scope of full Commission enforcement powers and ECJ jurisdiction.

The previous Government’s stated policy towards this approach was that the UK should have a choice about its participation in any aspect of the new JHA arrangements under the Treaty. This resulted in a package of measures which involved an extension of the Opt-in Protocol to all JHA proposals and an amendment to the Schengen Protocol to allow us to choose whether to remain bound by measures building on that part of the Schengen acquis. The third element of this package was the right to choose whether to accept full Commission enforcement powers and ECJ jurisdiction, which would be applied to existing (pre-Lisbon) police and criminal justice measures after a transitional period of 5 years. This is reflected in Article 10 of Protocol 36.

2. WHICH OF THE 130 MEASURES HAVE NOT YET BEEN IMPLEMENTED IN THE UK? WHICH ARE, TO USE YOUR OWN WORDS, DEFUNCT?

We take our international obligations seriously and have implemented the vast majority of measures subject to the 2014 decision. However, there are a number that have not yet been fully implemented in the UK, details of which were provided to Parliament in responses to Parliamentary Questions on 3 and 4 July 2012 (attached at Annex A). Any further implementation of these will be considered on a case by case basis as part of the wider 2014 decision. However, as you will be aware:

- Council Decisions 2005/211/JHA, 2006/228/JHA, 2006/229/JHA and 2006/631/JHA concern the first generation Schengen Information System (SIS I), which the UK has not implemented and has no plans to implement in the future due to the fact that this Government is currently taking forward connection to the second generation of the SIS.
- Council Decisions 2008/615/JHA and 2008/616/JHA relate to Prüm, which the UK has not implemented. We have previously been open with Parliament that the money required to implement Prüm is simply not available; in a letter to the Chairman of the European Scrutiny Committee on 7 February 2011, the Parliamentary Under-Secretary of State for Security was clear that the UK was not in a position to fund Prüm at present.
- In response to a Parliamentary Question on 28 July 2012, the Parliamentary Under-Secretary of State for Security explained that Framework Decision 2009/905/JHA required accreditation in relation to DNA profiles by 30 November 2013 and accreditation in relation to fingerprint data by 30 November 2015.

As we noted in the written evidence we submitted to your Committee on 14 December 2012, our analysis of the measures we consider to be defunct or to have been largely superseded has not yet been completed. At this stage, and with the information available to us, the list we provided on 14 December (re-attached Annex B) stands.

The Committee will also be aware through the enhanced process for scrutiny of new opt-in decisions that the UK has already committed irrevocably to participating in certain new measures which will potentially impact upon the scope of the 2014 decision. Annex C to this letter recalls the measures

currently under negotiation which appear highly likely to be adopted in 2013 and will repeal and replace measures within the scope of the 2014 decision.

3. WHAT INTERNAL PROCEDURES APPLY TO THE OPT-OUT DECISION, AT THE OFFICIAL AND AT CABINET LEVEL?

4. HOW ARE OFFICIALS FROM THE HOME OFFICE AND MINISTRY OF JUSTICE WORKING TOGETHER ON THE PREPARATORY WORK PRIOR TO THE GOVERNMENT REACHING A DECISION ON WHETHER OR NOT TO EXERCISE THE OPT-OUT? IS ONE DEPARTMENT TAKING THE LEAD? WHICH OTHER DEPARTMENTS ARE INVOLVED OR ARE BEING CONSULTED?

As with opt-in decisions, this decision is a collective decision by Government. Senior Ministers from across Government will therefore consider and agree the UK position, taking full account of the views of Parliament.

Whilst the majority of measures within the scope of the decision fall to the Home Office and Ministry of Justice, and as such we are jointly leading on this work, some fall to other Government Departments such as HM Treasury, the Department for Transport, and Foreign and Commonwealth Office. There are, therefore, regular meetings between interested officials from relevant Government Departments in order to both analyse the measures and manage the process.

5. WHEN DID YOU BEGIN ANALYSING THE MEASURES SUBJECT TO THE BLOCK OPT-OUT DECISION? WHEN DO YOU EXPECT TO COMPLETE THIS ANALYSIS? WHEN DO YOU EXPECT THAT THIS WILL BE MADE AVAILABLE TO THE COMMITTEE?

6. WHEN DO YOU ANTICIPATE BEING ABLE TO COMMUNICATE TO US THE LIST OF MEASURES WHICH, IN THE EVENT OF THE OPT-OUT BEING EXERCISED, THE GOVERNMENT WOULD SEEK TO REJOIN? CAN YOU ASSURE US THAT IN ANY EVENT THIS WILL BE BEFORE WE COMPILE OUR REPORT? IF YOU CANNOT GIVE US THAT ASSURANCE THIS WILL CERTAINLY HAVE IMPLICATIONS FOR THE TIMING OF OUR REPORT.

Analysis of the measures within the scope of the 2014 decision began in earnest with the provision to Parliament of the initial list of the measures in scope in December 2011; an updated list was placed in the House Library on 15 October 2012.

This work is ongoing; it is not possible to say when we expect to complete this analysis as this cannot happen until discussions with operational partners, EU Institutions, Member States and other interested parties have taken place. Indeed, we hope that your Inquiry and the views of Parliament and the other Committees will help inform this work. As we said in our recent letter to your Committee, we will shortly be providing a series of Explanatory Memoranda which provide more information on each of these measures.

Consequently, and as indicated when you met James Brokenshire and Lord McNally this month, it is also not possible to say when we anticipate being able to provide you with a list of measures the Government may seek to rejoin if the opt-out is exercised.

As the Home Secretary said in a letter of 7 November 2012 to the European Scrutiny Committee, work is ongoing to establish whether a measure is in the national interest. Another consideration, of course, is the approach EU Institutions and other Member States are likely to take. We have opened discussions on this issue, but these are at an early stage and it is not possible to anticipate their outcome. For example, without understanding what, if any, conditions the Commission may set on the UK's application to rejoin a measure, it is simply not possible to say definitively which measures the UK will seek to rejoin.

We would like to assure you that we are committed to providing you with as much information as we can, when it is available, and are mindful of the timescale you have set for your Inquiry.

7. HOW WIDELY HAVE YOU CONSULTED STAKEHOLDERS ON EACH MEASURE AND WITH WHOM?

At Ministerial level we hope, in the near future, to meet again with our law enforcement partners and the prosecution agencies, discussions at both a Ministerial level and official level having already taken place. Indeed, discussions at an official level are frequent and ongoing.

The Parliamentary Under-Secretary of State for Security visited Northern Ireland on 15 January, where he met with the Northern Irish Minister for Justice, the Assistant Chief Constable and the Director of Public Prosecutions. He visited Scotland on 17 January, where he met the Scottish Cabinet Secretary for Justice, the Lord Advocate and representatives from the Association of Chief Police Officers in Scotland (ACPOS). Officials have been consulting their colleagues in the Devolved Administrations and Gibraltar throughout this process and will continue to do so.

In addition, officials will be holding a number of meetings with other interested parties, including the Law Society, Open Europe, and the Centre for European Legal Studies. Other groups, such as but not limited to Fair Trials International, JUSTICE and ECPAT UK, also have an interest in the 2014 decision and have been invited to official level discussions.

8. ACPO HAVE REFERRED TO A GOVERNMENT REQUEST FOR THEM TO PRODUCE ALTERNATIVE METHODS FOR BILATERAL CROSS-BORDER COOPERATION. WHEN WILL THIS WORK BE AVAILABLE TO US? IS ANY OTHER CONTINGENCY PLANNING TAKING PLACE?

As the Home Secretary said in her statement of 15 October, “we will consider not just opt-ins and opt-outs but the other opportunities and options that are available”. This is part of the consideration that would be expected of the Government. Within this, it has been necessary to ask operational partners to consider what alternative arrangements would be available to them. We will provide as much information as possible to Parliament and your Committee as soon as is practical.

9. HAVE THE VIEWS OF OTHER MEMBER STATES BEEN SOLICITED? IN PARTICULAR HAVE CONSULTATIONS TAKEN PLACE WITH THE IRISH GOVERNMENT? IF SO, WHEN WILL THEIR VIEWS BE MADE AVAILABLE?

We wrote to the Interior and Justice Ministers of all EU Member States following the Home Secretary’s announcement on 15 October. We have also had discussions with our counterparts on this issue at the December and January JHA Councils and plan to continue these conversations on the coming months. Specifically, the Home Secretary met with the Irish Minister for Justice and Equality, Alan Shatter, at the Justice and Home Affairs Council in late October and again in December. While we are unable to provide you with the views of another Member State’s Government, we are aware of their particular interest in this work, given the land border with Northern Ireland. We will continue to engage constructively with our EU partners to seek the best possible outcome for UK interests.

10. WHEN DID DISCUSSIONS WITH THE EU INSTITUTIONS BEGIN ON THIS MATTER? CAN YOU TELL US WHAT FORM THESE DISCUSSIONS HAVE TAKEN WITH THE COMMISSION AND THE COUNCIL SO FAR AND WHEN MORE FORMAL DISCUSSIONS ARE LIKELY TO BEGIN?

Initial discussions with the EU Institutions have been ongoing since spring 2012. To date, officials have had technical discussions with the Commission and the Council Secretariat which have focussed on the legal framework under which the decision will be made in order to ensure a shared understanding of the legal process around the 2014 decision. The most recent of these took place in Brussels in November 2012. In addition to these meetings, the Home Secretary has spoken to Commissioner Malmström twice since 15 October. The Justice Secretary has also spoken to Commissioner Reding on this issue. Further substantial discussions will take place shortly and once any agreement is reached, we will update you.

1 February 2013

Letter from the Rt. Hon Chris Grayling and the Rt. Hon Theresa May to the Chairman

We wrote to you on 14 December to set out further detail on the 2014 decision and to accept your invitation to provide evidence to the European Union Committee on the 2014 decision. We continue to appreciate the work that your Committee is doing to collect a wide evidence base and explore all elements of what is a large and complex decision.

At that stage we also committed to providing Explanatory Memoranda to help inform your inquiry into the 2014 decision. We hoped to have provided you with the first of those Memoranda in January and all Memoranda by mid February. However, whilst we plan to have all five of these with you as soon as possible, we will unfortunately not be able to provide them to you ahead of our forthcoming evidence session on Wednesday 13 February. We apologise that it has not been possible to maintain our planned timetable, and would understand if you therefore preferred to delay the session.

Once again, we are committed to providing the Explanatory Memoranda as soon as possible but wish to ensure that these are as informative and useful to your overall report as they can be. We sincerely apologise for any inconvenience this may have caused your Committee.

7 February 2013

Letter from the Chairman to the Rt. Hon Chris Grayling and the Rt. Hon Theresa May

I am writing in response to your letter dated 7 February, informing the Committee that the promised Explanatory Memoranda on the decision to be made under Protocol 36 will not be available until after 13 February.

I continue to look forward to seeing you both on 13 February for the evidence session with the Committee, which is of course an important element of the Committee's inquiry.

The promised Explanatory Memoranda must be provided promptly to avoid the risk of our report being delayed, but their unavailability will not unduly affect next week's evidence session.

8 February 2013

Letter from the Rt. Hon Chris Grayling and the Rt. Hon Theresa May to the Chairman

Thank you for the opportunity to give evidence to your Committee's Inquiry into the 2014 decision on 13 February. Following that evidence session, we would like to clarify two points.

Firstly, we would like to provide further information about our engagement with interested parties prior to the announcement of the Government's current thinking on 15 October 2012. The Committee expressed concern that our position asserting that operational partners and the devolved administrations had been involved in discussions prior to the October Statement was inconsistent with evidence received from those parties. However, we can confirm that discussions took place on a case by case basis with operational partners and the devolved administrations as work was undertaken to consider each of the measures in the scope of the decision.

As you are aware, our current thinking is based on an initial analysis of all measures subject to the 2014 decision. In conducting that analysis our officials engaged with operational partners on a measure by measure basis. The operational partners consulted varied from measure to measure and included, but were not limited to, the Serious Organised Crime Agency (SOCA), the Crown Prosecution Service (CPS), the Association of Chief Police Officers (ACPO), and the Metropolitan Police Service.

Officials also spoke to officials in the Scottish and Northern Ireland Executives, again to inform the initial analysis of individual measures. Our officials met with their counterparts from both Executives in March last year to discuss the approach being taken on the initial analysis of the measures. That was followed by regular contact at official level by phone and e-mail to discuss the decision. The Scottish and Northern Ireland Executives were given the opportunity to feed into the initial analysis of the individual measures and we understand that operational partners in Scotland and Northern Ireland were consulted via the Executives at that stage. Officials have also been speaking to counterparts in Gibraltar throughout the analysis of the measures.

This work helped to inform the Government's current thinking. However, as we explained during the evidence session, we felt that it was important to set out the Government's current thinking to Parliament when we did so in order to enable scrutiny of that position to take place. Following the announcement to Parliament we have been able to hold more detailed conversations with operational partners and the Devolved Administrations at Ministerial level.

Specifically, representatives from a number of operational organisations, including Europol and Eurojust, have met with the Chief Secretary to the Treasury, the Minister for Government Policy and the Minister for Security. Last month we met again with representatives from ACPO, SOCA, the Metropolitan Police, Her Majesty's Revenue and Customs (HMRC), the National Crime Agency and the Security Service. This month we have met with the Director of Public Prosecutions and representatives from the Serious Fraud Office and the Crown Prosecution Service. The Attorney General was also at this meeting.

We wrote to both Minister David Ford and Cabinet Secretary Kenny MacAskill immediately following the statement to Parliament in October. As set out in our letter to you of 1 February, we followed that with Ministerial level engagement, including a visit by the Minister for Security to both Edinburgh and Belfast. The Justice Secretary has also had discussions on the 2014 decision in Belfast.

Turning to the second point, we undertook to clarify the figures concerning Eurojust. We would like to confirm that the UK National Desk registered 151 new cases at Eurojust in 2011 and 2012, amounting to 5% of the total new cases registered in that period. Over the same period, the UK National Desk was approached by other National Desks to be involved in 387 other cases. This relates to 13% of the total new cases registered in that period. Therefore the percentage of new cases at Eurojust in 2011 and 2012 involving the UK was around 18%.

In relation to cases registered to the UK, the figure of 7% supplied by Eurojust to your Committees in their written evidence, and to the Home Office to inform our oral evidence, was not an analysis of the actual number of new cases opened at Eurojust. Rather, it was an analysis of the total number of requests, where the multi-national nature of Eurojust's work means that requests are often opened to more than one Member State. By considering actual cases rather than requests the UK was invited to be involved in 13% of the caseload in addition to its own 5%.

We are grateful for the opportunity to clarify these points and we look forward to further engagement with your Committee.

12 March 2013