



HOUSE OF LORDS

European Union Committee

3rd Report of Session 2014–15

The United Kingdom opt-in to the draft CEPOL Regulation

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The European Union Committee

The Committee considers matters relating to the European Union.

The Committee scrutinises EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold it to account. The Committee 'holds under scrutiny' any documents about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny. The Government must give reasons for any breach of the scrutiny reserve.

The Committee also conducts inquiries and makes reports. The Government is required to respond in writing to a report's recommendations within two months of publication. If the Committee wishes, the report is debated in the House of Lords, during which a Minister responds to the points made by the Committee and the speakers during the debate. Reports are also usually sent to the European Commission, for it to consider and respond to any relevant points and recommendations.

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The Members of the Sub-Committee on Home Affairs, Health and Education, which conducted this inquiry, are:

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The United Kingdom opt-in to the draft CEPOL Regulation

Introduction

1. On 16 July 2014 the Commission brought forward a proposal for a Regulation relating to the constitution and functions of CEPOL,¹ the European Police College.² The legal basis for this proposal is Article 87(2)(b) of the Treaty on the Functioning of the European Union (TFEU), in Title V of Part Three of the Treaty. The Regulation will therefore, unlike the Council Decision under which CEPOL is currently constituted,³ apply to the United Kingdom only if the Government notifies the Presidency within three months of the proposal being presented to the Council that the United Kingdom wishes to take part in the adoption and application of the Regulation—in other words, it opts in to it.⁴ In this report, prepared by the Home Affairs, Health and Education Sub-Committee,⁵ we consider whether the Government should do so.
2. Europol, the EU agency dealing with coordination of the fight against serious and organised crime, is a very different body from CEPOL. Nevertheless the current proposal relating to CEPOL—the CEPOL Regulation—can only be understood in the context of an earlier proposal relating to Europol.

Europol

3. Europol is the EU agency for cooperation in law enforcement. It was originally established as an intergovernmental body in 1995 and became operational in 1999. It is currently constituted on the basis of a Council Decision adopted in 2009, which entered into force on 1 January 2010 and which re-established Europol as an EU agency funded through the EU budget.⁶ A draft of this measure was the subject of a report by this Committee in 2008.⁷
4. Europol's aim is to achieve a more secure Europe by supporting Member States in their fight against serious organised crime and terrorism. It helps the work of Member States' law enforcement authorities by gathering, analysing and sharing information, and coordinating operations. It has developed expertise in tackling cross-border drug trafficking, money

¹ The acronym comes from the French name of the European Police College, Collège européen de police.

² Proposal for a Regulation of the European Parliament and of the Council establishing a European Union agency for law enforcement training (CEPOL), repealing and replacing the Council Decision 2005/681/JHA ([COM\(2014\)465](#)) final, Council doc 12013/14).

³ Council Decision of 20 September 2005 establishing a European Police College (CEPOL) and repealing Decision 2000/820/JHA ([2005/681/JHA](#), OJ L256, 1 October 2005, p 63).

⁴ Article 3 of Protocol (No 21) to the Treaties on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice. The three months run from the publication of the last language text, and expire on 24 November 2014.

⁵ The members of the Sub-Committee are listed in Appendix 1.

⁶ Council Decision of 6 April 2009 establishing the European Police Office (Europol) ([2009/371/JHA](#), OJ L 121, 15 May 2009, p. 37).

⁷ European Union Committee, [EUROPOL: Coordinating the fight against serious and organised crime](#) (29th Report, Session 2007–08, HL Paper 183).

laundering, fraud, cybercrime, human trafficking, and the forgery of money (including euro counterfeiting), among other offences. It facilitates cooperation through the production of regular assessments including the European Organised Crime Threat Assessment (OCTA), which profiles the structure and operation of organised crime groups, and the annual EU Terrorism Situation and Trend Report (TE-SAT), which provides a detailed account of the state of the terrorist threat across the EU. Operationally, Europol deals with more than 9,000 cases a year, providing support through subject-focused analysis work files and encouraging the establishment of cross-border Joint Investigation Teams. Europol has no executive or coercive powers to conduct investigations or make arrests in the Member States. Approximately 800 staff work at Europol's headquarters in The Hague.

CEPOL

5. In the first EU 5-year Justice and Home Affairs Programme, agreed at Tampere in October 2009 following the entry into force of the Treaty of Amsterdam, the European Council decided that “A European Police College for the training of senior law enforcement officials should be established. It should start as a network of existing national training institutes. It should also be open to the authorities of candidate countries.” CEPOL was first set up in 2000,⁸ but was re-established as an EU agency in 2005 by a new Council Decision which entered into force on 1 January 2006.⁹
6. CEPOL brings together senior police officers from across the EU and aims to encourage cross-border cooperation in the fight against crime, and the maintenance of public security and law and order, through training and exchange programmes and the sharing of research and best practice. The training and learning opportunities for senior police officers cover issues ranging from leadership to law enforcement techniques and EU cooperation to economic crime. Activities are designed to facilitate the sharing of knowledge and best practice and to contribute to the development of a common European law enforcement culture.

The proposed Europol Regulation

7. On 27 March 2013 the Commission presented a proposal for a new Europol Regulation, one of whose effects would have been to merge CEPOL with Europol.¹⁰ The intention was to replace the 2005 Decision establishing CEPOL and the 2009 Decision establishing Europol by a Regulation establishing a single “European Union Agency for Law Enforcement Cooperation and Training”. The tasks of the new Europol would go wider than those of the existing agency, and would include a Training Academy to take the place of CEPOL, though again with wider functions than those of the existing CEPOL.

⁸ Council Decision of 22 December 2000 establishing a European Police College (CEPOL) (2000/820/JHA, OJ L336, 30 December 2000, p 1).

⁹ Council Decision of 20 September 2005 establishing a European Police College (CEPOL) and repealing Decision 2000/820/JHA ([2005/681/JHA](#), OJ L256, 1 October 2005, p 63).

¹⁰ Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA ([COM \(2013\)173](#) final).

8. The proposed new Europol Regulation was based on Articles 87(2)(b) and 88 TFEU, and so would apply to the United Kingdom only if the Government opted in to it within three months. This Committee prepared a report, published on 7 June 2013,¹¹ in which we urged the Government to opt in to the proposed Regulation.
9. When that report was debated on 1 July 2013 Lord Taylor of Holbeach, the Parliamentary Under Secretary of State at the Home Office, said that the Government had not decided whether to opt in.¹² On 5 September 2013 James Brokenshire MP, the Parliamentary Under Secretary of State for Crime and Security, said in a Written Ministerial Statement:

“The government has decided that the UK will not opt in to the regulation at the initial stages but that it should opt in post-adoption, provided that Europol is not given the power to direct national law enforcement agencies to initiate investigations or share data that conflicts with national security. The UK will remain fully engaged in the negotiations at all levels.”¹³

The proposed merger of CEPOL and Europol: our views

10. Our report on the draft Europol Regulation made a number of points on the substance of the proposal which are not relevant for present purposes, but we said this about the proposed merger of CEPOL with Europol:

“The potential merger of EU agencies is anticipated in a Joint Statement on decentralised agencies, which was endorsed by the European Parliament, Council and the Commission. It states that ‘merging agencies should be considered in cases where their respective tasks are overlapping, where synergies can be contemplated or when agencies would be more efficient if inserted in a bigger structure’.¹⁴ However, we note that in June 2012 the Commission presented a paper to the Council Standing Committee on Operational Cooperation on Internal Security (COSI), which stated that a merger of Europol and CEPOL risked ‘diluting training under the politically more eye catching pressures of operational law enforcement’.¹⁵ While we accept in general the possible merger of EU agencies we consider that the Commission has not yet made a convincing case for the merger of Europol and CEPOL in terms of reducing duplication, achieving efficiency savings and increasing effectiveness.”¹⁶

The proposed merger of CEPOL and Europol: the views of others

11. We were not alone in having doubts about the proposed merger. Both the Government¹⁷ and the Director of Europol¹⁸ expressed concern; it was

¹¹ European Union Committee, *The UK opt-in to the Europol Regulation*, (2nd Report, Session 2013–14, HL Paper 16).

¹² HL Deb, 1 July 2013, [col. 1063](#)

¹³ HC Deb, 5 September 2013, [col. 29WS](#)

¹⁴ Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, 19 July 2012.

¹⁵ COSI, *European Training Scheme (ETS) and the reform of CEPOL*, 15.6.2012, Document No 11506/12.

¹⁶ European Union Committee, *The UK opt-in to the Europol Regulation*, (2nd Report, Session 2013–14, HL Paper 16), para 14.

¹⁷ Explanatory memorandum of 3 May 2013.

opposed by the Director of CEPOL,¹⁹ and rejected by the European Parliament.²⁰ At the Justice and Home Affairs Council on 3–4 March 2014 the Council decided that CEPOL should not be merged with Europol. Reporting on the Council, in her Written Ministerial Statement the Home Secretary said:

“The interior day began with a debate on the new Europol regulation. Member states welcomed the good progress made in the Europol negotiations, but agreed that the proposed merger between the European Police College (CEPOL) and Europol should not take place. The Commission (Malmström) defended its initial proposal to merge the two agencies, but acknowledged the importance that both the Council and European Parliament attached to keeping them separate.

Member states were asked whether the Commission should be invited to propose a new regulation to update CEPOL’s tasks and take account of the Lisbon treaty. The UK, while agreeing that CEPOL and Europol should not be merged, questioned whether there was a genuine need for further reform of CEPOL (other than agreement of the member state initiative currently being negotiated to approve its relocation to Budapest). Some other member states agreed that any reform should not be brought forward simply for the sake of new legislation. However, the majority agreed that a new regulation should be proposed, and the Commission undertook to do this in due course.”²¹

12. The provisions of the proposed Europol Regulation which related to CEPOL were accordingly deleted.

The seat of CEPOL

13. Since CEPOL was set up in 2000 it has been located at Bramshill in Hampshire. The Government wrote to CEPOL in December 2012 and again in February 2013 indicating that it no longer wished to host CEPOL at Bramshill, as Bramshill’s second purpose, hosting the police training site for the National Policing Improvement Agency, was to end and the costs of maintaining the site for CEPOL alone were too great. On 8 October 2013 the Justice and Home Affairs Council reached political agreement that CEPOL would in future be hosted in Budapest (something which would not have been necessary if CEPOL had become part of Europol in The Hague); a Member State Initiative put forward a draft Regulation making this change; the Government opted in to it; the Regulation was adopted on 6 May 2014;²² and CEPOL moved to Budapest in September 2014.

¹⁸ Rob Wainwright: see Q146 of his oral evidence to the Committee for its report European Union Committee, *EU police and criminal justice measures: the UK’s 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159).

¹⁹ Letter of 16 April 2013 from Dr Ferenc Banfi to this Committee, published as Appendix 2 to the Committee’s report European Union Committee, *The UK opt-in to the Europol Regulation*, (2nd Report, Session 2013–14, HL Paper 16).

²⁰ First reading of the draft Europol Regulation on 25 February 2014 (Doc 10468/13).

²¹ HC Deb, 11 March 2014, [col. 18WS](#)

²² Regulation (EU) No 543/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Decision 2005/681/JHA establishing the European Police College (CEPOL) ([OJ L163](#) of 29 May 2014, p 5).

The proposed CEPOL Regulation

14. It would have been possible for CEPOL to remain constituted under the Council Decision under which it is currently established. There would then have been no change in its functions; the only change would have been its relocation to Budapest. However the Commission, as requested by the Council, has brought forward a proposal for a new CEPOL Regulation.²³ As we said at the outset, the legal basis for this proposal is Article 87(2)(b) TFEU, so that the Regulation, unlike the current Council Decision, will apply to the United Kingdom only if the Government opts in to it.

The Commission's objectives

15. The Commission, in formulating the role of the Training Academy which was to have been part of the new Europol, took the opportunity to amplify the role of CEPOL, and it has done the same in the CEPOL Regulation. It envisages a “new CEPOL with broader objectives and modernised governance”.²⁴ For this, it has some support from the 2009 Stockholm Programme, which called for a European training policy for law enforcement officers to address the increasingly complex and international nature of serious crime. The Commission explains this in its explanatory memorandum:

“The scope of CEPOL’s mandate is broadened so that it can support, develop, deliver and coordinate learning activities for law enforcement officials of all ranks (not only police officers of senior rank as is the case under the current CEPOL Decision) as well as to officers of customs and of other relevant services dealing with cross-border issues. The proposal envisages that the Agency will remain network-based, bringing together the network of training institutes of the Member States for the law enforcement officials and liaising with a single National unit in each Member State. The objectives of CEPOL are updated and clarified so that the Agency may improve awareness and knowledge of international and Union instruments, the institutions, agencies and bodies of the European Union; encourage the development of the regional or bilateral cooperation among the Member States; address specific criminal or policing thematic areas where training at EU level can add value in addition to the national level; and provide appropriate and preliminary training sessions for the participation in civilian missions in third Countries.”²⁵

The Government's view

16. The Government, in its explanatory memorandum, states that it supports the work of CEPOL “and its current mission to bring together senior police officers from forces in Europe”. It would like to continue to engage with it. However, it is “concerned that the proposed regulation as drafted goes beyond the current scope for CEPOL and creates additional obligations for Member States.” The proposed broader mandate would allow CEPOL to deal with the training of police officers of all ranks, and also customs officers

²³ Proposal for a Regulation of the European Parliament and of the Council establishing a European Union agency for law enforcement training (CEPOL), repealing and replacing the Council Decision 2005/681/JHA ([COM\(2014\)465](#) final, Council doc 12013/14).

²⁴ Commission explanatory memorandum ([COM\(2014\)465](#) final), p 3

²⁵ *Ibid.*, p 6

and officers of other agencies dealing with cross-border issues; the Government is unhappy with the removal of the requirement that all attendees on CEPOL courses should be senior police officers.²⁶

17. In 2013 the Commission published a Communication proposing a European Law Enforcement Training Scheme (LETS).²⁷ The LETS is intended to equip law enforcement officers with the knowledge and skills needed to prevent and combat cross-border crime through cooperation with their EU colleagues. Article 3 of the CEPOL Regulation seeks to align CEPOL's objectives with those of the LETS. The Government says:

“we are concerned that this would limit the flexibility for Member States to decide how police training should be delivered. The Government believes that the professionalism of the police should be police-led at a national or local level. We will resist an increased role for the EU in this area.”²⁸

18. Among other criticisms of the proposed broader mandate are the suggestion that Member States should designate a national unit to contribute to CEPOL's work programmes, and the proposal that CEPOL should have an 11-member scientific committee.²⁹

Opting in to the draft Regulation

19. These are all concerns with which we have some sympathy, and we support the Government in its intention to raise these issues at the appropriate time during the negotiations. For the present, however, the issue is whether and when the Government should opt in to the proposal. Article 3(1) of Protocol 21 allows the Government three months for this, running from the publication of the last language text. The English text is dated 16 July 2014, but we are informed that the Government has until 24 November to opt in. The Government states that it is committed to taking opt-in decisions on a case by case basis,³⁰ and it has not so far given any indication whether it intends to opt in to this proposal.

The consequences of not opting in

20. In our 2009 report *The United Kingdom opt-in: problems with amendment and codification*³¹ this Committee drew attention to a problem that does not seem to have occurred to anyone when Protocol 21 was drafted: what would happen if the United Kingdom decided not to opt in to a measure amending an earlier measure which applied to the United Kingdom, or a measure repealing and replacing an earlier measure. In this case the first measure, the 2005 Council Decision establishing CEPOL, was a third pillar measure³² requiring unanimity, and not subject to a United Kingdom opt-in. However, post-Lisbon, new Regulations relating to CEPOL are based on Title V of

²⁶ Government explanatory memorandum, paras 21-23

²⁷ [COM\(2013\)172](#) final

²⁸ Government explanatory memorandum, para 25

²⁹ *Ibid.*, paras 24 and 26

³⁰ *Ibid.*, para 20

³¹ European Union Committee, *The United Kingdom opt-in: problems with amendment and codification* (7th Report, Session 2008–09, HL Paper 55).

³² That is with a legal basis in Title VI of the TEU prior to its amendment by the Treaty of Lisbon.

Part Three TFEU and are subject to the opt-in. This would cause problems if the Government did not opt in to the new draft Regulation. Article 39 of the new Regulation will repeal the 2005 Decision under which CEPOL is currently established.³³ If the United Kingdom does not opt in to the Regulation, it does not opt in to any part of it, including Article 39. As regards the United Kingdom, the 2005 Decision would therefore remain unrepealed, and so would continue to apply to the United Kingdom, while the new Regulation would apply to the other Member States.³⁴

21. The reasoning in our 2009 report was accepted by the Commission but not by the then Government nor, initially, by this Government. Both Governments took the view that the earlier measure, if repealed by a measure applying to all Member States other than those which had not opted in, ceased to apply for all purposes. However in 2012 the Government accepted our reasoning in full. We set out in Appendix 2 the Written Statement by James Brokenshire MP, Parliamentary Under Secretary of State at the Home Office, on 14 March 2012.³⁵ In particular, like the Commission, the Government accepted our reasoning that although Protocol 21 refers only to “measures ... amending an existing measure” (of which the Regulation amending the seat of CEPOL is an example), it applies equally to a measure which repeals and replaces an existing measure, like the draft Regulation.
22. A failure by the Government to opt in would thus initially result in the United Kingdom remaining bound by the Decision giving CEPOL its existing powers, while the other Member States would be bound by a Regulation giving it a different constitution and wider powers. The Treaty of Lisbon amended Protocol 21 to deal with this type of problem by inserting a new Article 4a, paragraph 2 of which (in part) reads as follows:

Box 1: Protocol 21 to the Treaties, Article 4a(2)

However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of the United Kingdom or Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge them to make a notification under Article 3 [opt-in within 3 months of the proposal] or 4 [post-adoption opt-in]. For the purposes of Article 3 a further period of two months starts to run as from the date of such determination by the Council.

³³ Article 39 reads: “This Regulation replaces the Decision 2005/681/JHA as of the date of application of this Regulation.” However the title of the Article is “Repeal”, and the title of the Regulation refers to it “... repealing and replacing the Council Decision 2005/681/JHA”. It would be as well if these discrepancies were eliminated.

³⁴ The 2005 CEPOL Decision had as its legal basis Article 30 of the pre-Lisbon TEU. Article 30 was in Title VI, so that the Decision required unanimity, and was not then subject to the United Kingdom opt-in. The entry into force of the Treaty of Lisbon on 1 December 2009 resulted in Article 10 of Protocol 36 to the Treaties applying to the Decision, so that it became subject to the United Kingdom block opt-out. On 24 July 2013 the Government notified the Council that it wished to opt out of all measures to which Article 10 applied, including the 2005 Decision. The Decision was one of the 35 measures which the Government wished to opt back into under Article 10(5) of the Protocol. However the amendment of the Decision to which we refer in paragraph 13 of this report has the effect that, pursuant to Article 10(2) of the Protocol, the United Kingdom block opt-out no longer applies to it. The Decision will continue to apply to the United Kingdom after 1 December 2014, and it is therefore no longer included in the list of measures which the United Kingdom wishes to opt back into.

³⁵ HC Deb, 14 March 2012, [cols. 23-24WS](#)

If at the expiry of that period of two months from the Council's determination the United Kingdom or Ireland has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless the Member State concerned has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

23. A CEPOL whose constitution and powers were different in the United Kingdom from other Member States would certainly be “inoperable”. We have little doubt that if the Government did not either opt in to this draft Regulation before 24 November 2014, or opt in to the Regulation between its adoption and its entry into force, the other Member States would decide that “the existing measure [the 2005 Council Decision] shall no longer be binding upon or applicable to” the United Kingdom, which would thus in effect be expelled from CEPOL. The other Member States would no doubt also “determine that the United Kingdom ... shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.”³⁶

Recommendations

24. It seems to us therefore inevitable that the Government must opt in to the Regulation at some stage. In our view the only remaining question is whether the Government should opt in before 24 November 2014, or whether it should do so after the Regulation has been adopted but before its entry into force.
25. **We recommend that the Government should opt in to the draft Regulation now.** This will give the message that the United Kingdom intends to continue to support and be part of CEPOL, and will also give the Government a formal place at the negotiating table when attempts are made to amend the Commission's draft.
26. We explained in paragraph 9 that the Government has not opted in to the draft Europol Regulation, but has undertaken to do so post-adoption “provided that Europol is not given the power to direct national law enforcement agencies to initiate investigations or share data that conflicts with national security.” The result is that, despite the importance which the Government attaches to the work of Europol and to its contribution to the security of the United Kingdom,³⁷ it has no formal place in the negotiations on that draft Regulation. It should avoid putting itself into that position in relation to the draft CEPOL Regulation.
27. The reasoning in paragraphs 20–23 applies as much to the Europol Regulation as to the CEPOL Regulation. **We accordingly recommend that the Government opt in to the Europol Regulation before its entry into force.** If the Government does not do so, the United Kingdom will for a time be unable to contribute to and benefit from Europol's work. If the

³⁶ Protocol 21, Article 4a(3)

³⁷ See for example the evidence given by the Home Secretary to this Committee's inquiry leading to the report, European Union Committee, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159), Q295.

Government fails altogether to opt in, the United Kingdom will almost certainly be, in effect, expelled from Europol.³⁸

28. **We make this report to the House for debate.** The Government has undertaken³⁹ that reports such as this should be debated and, if necessary, voted on,⁴⁰ before the opt-in deadline.
29. We retain the draft CEPOL Regulation under scrutiny.

³⁸ For the view of the Director of Europol, Rob Wainwright, on the consequences of the United Kingdom ceasing to participate in Europol, see European Union Committee, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159), paras 194–195.

³⁹ Written statement by Baroness Ashton of Upholland, HL Deb 20 January 2011 [col WS 20-22](#). The undertakings are set out in full in Appendix 1 of European Union Committee *Enhanced scrutiny of EU legislation with a UK opt-in* (2nd Report, Session 2008–09, HL Paper 25).

⁴⁰ Most debates of Committee reports are on motions to take note, but debates on Opt-in reports are on motions “That this House agrees the recommendation of the European Union Committee ...” Such motions are amendable.

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Benjamin
Lord Blencathra
Viscount Bridgeman
Lord Faulkner of Worcester
Lord Jay of Ewelme
Lord Judd
Baroness Prashar (Chairman)
Lord Morris of Handsworth
Lord Sharkey
The Earl of Stair
Lord Tomlinson
Lord Wasserman

No interests relevant to the subject-matter of the report were declared by Members of the Sub-Committee

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho
The Earl of Caithness
Lord Cameron of Dillington
Baroness Corston
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Harrison
Baroness Hooper
Lord Kerr of Kinlochard
Lord MacLennan of Rogart
Baroness Prashar
Baroness Quin
The Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

During consideration of the report the following Member declared an interest:

Lord Kerr of Kinlochard
Chairman, Centre for European Reform

A full list of Members' interests can be found in the Register of Lords Interests <http://www.publications.parliament.uk/pa/ld/ldreg.htm>

**APPENDIX 2: WRITTEN STATEMENT BY THE PARLIAMENTARY
UNDER SECRETARY OF STATE FOR THE HOME DEPARTMENT, 14
MARCH 2012**

European Union Justice and Home Affairs Measures

We believe that European Union measures that impose justice and home affairs (JHA) obligations only apply to the UK if we choose to opt in to them. Since the entry into force of the Lisbon treaty, there have been a number of JHA proposals that repeal measures that we are currently bound by, and replace them with new ones. We have not opted in to all of the replacement proposals and there has been a question as to whether the measures that we currently do take part in (the “underlying measures”) would still bind us once the replacement has entered into force.

The policy we inherited from the previous Government was that the UK was not bound by an underlying measure when we did not opt in to a measure repealing and replacing that underlying measure. Following a review of this policy, the position of the Government is that:

the UK considers itself bound by an underlying measure when we do not opt in to a new measure that repeals and replaces it; and article 4a of the title V opt-in protocol (protocol 21 of the treaty on the functioning of the European Union) should be interpreted as applying not only to amending measures but also to repeal and replace measures.

Our position has been reinforced by the fact that the Commission has started to introduce express wording in repeal and replace measures which makes it clear that the underlying measures will continue to bind us if we do not opt in. It is highly likely that the Commission will in future routinely insert such language into new measures.

We acknowledge that this new policy carries a small risk of the UK being bound by arrangements which no longer operate in relation to the EU as a whole but continue to apply as between the UK and Denmark (and sometimes Ireland). This would happen when only the UK and Denmark (and sometimes Ireland) remain bound by an underlying measure following a “repeal and replace” proposal. However, we already accept this position in relation to amending measures as a consequence of article 4a of the title V opt-in protocol. Article 4a of the title V opt-in protocol provides that the UK remains bound by an underlying measure where a new measure amends it unless “the non participation of the UK and Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States of the Union ...”

In such cases, the measure would cease to apply to the UK.