HOUSE OF LORDS
European Union Committee

House of Lords
London
SW1A 0PW
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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 August 2018 – 31 December 2018

EU HOME AFFAIRS SUB-COMMITTEE

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Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter of 6 July 2018 about the proposed Regulation establishing the Asylum and Migration Fund, which was considered by the EU Home Affairs Sub-Committee on 5 September 2018.

We would welcome further information on the following:

- what the existing balance is between UK contributions to, and receipts from, the Fund;
- whether the UK intends to seek third country participation in the Fund;
- what assessment the Government has made of the benefits of seeking to join the fund as a third party;
- what assessments the Government has made of the value of opting into this Regulation to establish the Asylum and Migration Fund.

We look forward to receiving your response to this letter within ten working days.

12 September 2018

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter of 12 September 2018.

You asked for answers in relation to the 10153/18: Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund which was considered by the EU Home Affairs Sub-Committee on 5 September 2018.

I shall answer each of your questions in turn:

1. *what the existing balance is between UK contributions to, and receipts from, the Fund*

The UK opted in for the 2014-20 budgetary period. Under the 2014-20 programme the UK was the largest recipient of AMIF funds - the current estimated value of funds due to the UK is approximately €530m (£473m).

The initial value of the total fund was approximately €3.5b (£3.1b). This has since increased to about €6b (£5.3b) to assist member states in managing the migration crisis that arose since 2015. The UK's contribution was on average 12.48% between 2014 -2020.

Funds are split between national programmes and EU actions. For national programme activities AMIF provides up to 75% of the funding for actions. It also covers 'pledge' funding for refugee resettlement (the EU funds member states €10k (£8.9k) or €6k (£5.3k) per refugee resettled) of which the UK is claiming €120m (£107m) at present as part of the overall €530m (£473m).

The current distribution key allocates the UK 15.49% of the funds (excluding resettlement).

The receipts we have received to date are as follows-

- 5 receipts for pre – financing totalling £86.7m / €108m spread over 3 years. These receipts were allocated to the percentages laid out in the UK's national program. Asylum 20%, Legal Migration 20%, Returns 54.23% and Technical Assistance 5.77%.

- 2 receipts for the settlement of annual accounts totalling £65.4m/ €73.7m - July 2016 settlement of 2014-2016 accounts £52m/ €58.5m and June 2017 settlement of 2017 accounts £13.2m/ €15.2m. Please note; the pre-financing figure is considered when we receive our payment from the Commission following the submission of our annual accounts. Therefore, these are net figures.

2. *whether the UK intends to seek third country participation in the Fund*
3. *what assessment the Government has made of the benefits of seeking to join the fund as a third party;*
4. *what assessments the Government has made of the value of opting into this Regulation to establish the Asylum and Migration Fund.*

As the government has stated, the UK has an interest in certain EU programmes and policies. The government is currently considering the AMIF proposals. However, it is important to note that the Commission's proposed regulations are only an initial set of proposals, which may evolve, and critical details will be determined by future discussions.

In line with the agreed approach to EU business, we are participating in the next MFF working-group discussions on the basis that the UK is currently a full member of the European Union and we will engage where there are UK interests. The government is encouraging the Commission to design future EU programmes in a way that ensures options remain open to maximise the mutual benefits available to all parties.

Participation as a third country should be taken in the national interest. As such, the UK will only participate when we consider that there will operational, policy or legal benefits to the United Kingdom. The government has also been clear that participation in programmes is subject to agreeing appropriate governance arrangements. These should ensure that both parties can shape the activities covered, recognising the need to respect the autonomy of the EU's decision making, and the need for adequate UK control over any financial contributions. Until the regulations are finalised, I am not able to say whether the terms of participation will be acceptable to the UK, or offer any assessment of the proposals in their initial form.

17 October 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE INTERNAL SECURITY FUND FOR THE PERIOD 2021-2027 (10154/18)

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter of 6 July 2018 about the proposed Regulation of the European Parliament and of the Council establishing the Internal Security Fund for the period 20212027, which was considered by the House of Lords EU Home Affairs Sub-Committee on 5 September 2018.

We would welcome further information on the following:

- whether the UK intends to seek third country participation in this Fund;
- what assessment the Government has made about the benefits of joining the fund as a third party;
- what assessments the Government has made about the value of opting into the Regulation.

We look forward to receiving a response to this letter within 10 ten days.

12 September 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter of 12 September 2018 about the Internal Security Fund. Apologies for the delay in responding.

You asked whether the UK intends to seek third country participation in this Fund. It is possible for third countries to seek to participate, and once our future security relationship with the EU is clear we will consider participating as a third country in different programmes on a case by case basis. However, I would note that we did not see any benefit in participating during the last MFF period as the current ISF programme did not provide anything beyond our own domestic capability.

You asked what assessment the Government has made about the benefits of joining the fund as a third party. We will not be in position to undertake this assessment until the nature of our future relationship with the EU is settled – we will undertake the assessment at that point.

You asked what assessments the Government has made about the value of opting into the Regulation. As the regulation will only come into force in the next MFF period, we could opt in currently as full members of the EU, however we could not then participate in the fund as it be after our exit from the EU and the expected end of the proposed implementation period. As such we have not opted in.

18 October 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE, AND AMENDING REGULATION (EC) 1987/2006 AND COUNCIL DECISION /533/JHA AND REPEALING REGULATION (EU) 1077/2011 10654/17 ADD 2 29 JUNE (10820/17)

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter dated 27 June 2018.

I am writing to inform you that the trilogue process between the European Council and European Parliament at the Committee of Permanent Representatives (COREPER) concluded on 4 June. The UK abstained from the vote seeking unanimous political agreement from Member States as the dossiers had not cleared scrutiny. I apologise that we were not able to give you advance notice to clear the dossier. As I noted in my previous letter of 30 May 2018, we had anticipated political agreement at COREPER at the end of June, however, the Bulgarian Presidency sought to move more quickly on this file.

As noted in previous correspondence, the Government also undertook to explore the prospects of agreeing a Council Decision to confirm our full participation in eu-LISA while we are EU members. Discussions regarding the precise terms are ongoing but without a new Decision, we would not be able to participate in the Regulation as a whole as we would be excluded from those parts of it that deal with the new Schengen-building measures that we do not take part in. A new Decision avoids the need for separate Regulations and possibly separate configurations of the Management Board dealing with the management of systems in which we do and do not participate. We are confident a new Decision will be formally adopted at the same time as the Regulation itself. We anticipate this will be shortly under the Austrian Presidency at the first Council meeting after legal-linguistic translations have been completed. This could be as early as the 11-12 October Justice and Home Affairs Council.

28 September 2018

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter of 28 September 2018 about the proposed Regulation for the operational management of large-scale IT systems (eu-LISA), which was considered by the EU Home Affairs Sub-Committee on 24 October 2018.

We would ask you to provide an update on the negotiations on the Proposal and the new Council Decision as soon as they are agreed.

We look forward to receiving your response to this letter. In the meantime we will continue to hold this document under scrutiny.

25 October 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A CENTRALISED SYSTEM FOR THE IDENTIFICATION OF MEMBER STATES HOLDING CONVICTION INFORMATION ON THIRD COUNTRY NATIONALS AND STATELESS PERSONS (TCN) TO SUPPLEMENT AND SUPPORT THE EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM (ECRIS-TCN SYSTEM) AND AMENDING REGULATION (EU) NO 1077/2011 (10940/17)

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter of 24 July 2018 which was considered by the EU Justice SubCommittee at its meeting of 16 October. We decided to retain the proposal under scrutiny.

We would be willing to continue to grant a scrutiny waiver if the Government wishes to support a text in Council prior to the Christmas recess, provided that there are no significant changes to the proposal.

As before, we would ask that you keep us up to date with any developments in respect of this proposal (and in particular how the proposal may impact the UK as a third country after Brexit).

We look forward to a reply in due course.

16 October 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

I am writing to provide an update to your Committee on the progress of this dossier.

As you may recall, the two key outstanding issues in the dossier which prevented the conclusion of the trilogue discussions under the Bulgarian Presidency were on the inclusion of dual nationals and determining the criminality threshold above which fingerprints must be loaded into the centralised system. In an effort to reach a political compromise on these issues, the Bulgarian Presidency sought to bring them together in a package.

The key concern for the European Parliament (EP) was that dual nationals were effectively EU nationals who also held a third country nationality and so treating them differently by requiring their fingerprints to be taken under certain circumstances in ECRIS-TCN would be discriminatory, given there is no such requirement for EU nationals in ECRIS.

To address those concerns, while recognising the high ambition of Member States to see the continued inclusion of both dual nationals and a fingerprint "threshold" in the proposal, the compromise proposed the inclusion of dual nationals in ECRIS-TCN on the proviso that the taking of their fingerprints would not be subject to a minimum threshold, but in accordance with national law. I believe that this compromise is one which the UK could support, given the inclusion of dual nationals was a key UK objective for ECRIS-TCN, ensuring that an important loophole is not exploited whereby those who hold dual nationality can hide previous criminality.

However, the EP were unable to accept this approach, arguing that the mere fact that dual nationals are put into a different database is a discrimination because they are not treated the same way as EU-citizens are in ECRIS.

Given that the outstanding issues in the dossier remain unresolved, it is expected that the dossier will not be put forward for agreement at October Council. The Presidency will continue to seek a compromise with the EP, with the view to putting the dossier to a vote at December Council. I will endeavour to keep your Committee updated on the progress and developments on ECRIS-TCN as promptly as possible.

18 October 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter of 16 October 2018. I am writing to provide an update to your Committee on the progress of this dossier. I apologise for the delay in replying. The last meeting between Member States and the Presidency on the trilogue negotiations took place on Monday (6 December) and in responding to your letter I wanted to set out the most recent position to you.

As you may recall, the two key outstanding issues in the dossier are on the inclusion of dual nationals and determining the threshold above which fingerprints must be loaded into the centralised system. The key concern for the European Parliament (EP) remains that dual EU-TCN nationals are effectively EU nationals who also hold a third country nationality and by treating them differently by requiring their fingerprints to be taken under certain circumstances in ECRIS-TCN would be discriminatory, given there is no such requirement for EU nationals in ECRIS.

The EP continues to be opposed to the inclusion of dual nationals in the dossier and has enquired whether Member States can show further flexibility on the fingerprints issue. The EP has proposed removing the minimum rule on fingerprints in its entirety, meaning that fingerprints of all TCNs and dual nationals would only be entered in accordance with national law.

In seeking a compromise with the EP, Member States had offered to concede the lower threshold for fingerprints in order to ensure dual nationals were included in the ECRIS-TCN system. However, the EP's counter proposal - that the threshold for taking fingerprints of all TCNs is required only where it is permissible under a Member State's national law - is one which Member States have rejected given it significantly undermines the effectiveness of the system. As fingerprints are the primary form of identification, the UK supports a high ambition for fingerprints in the ECRIS-TCN proposal and will continue to do so.

Given that the majority of Member States were strongly opposed to the EP's suggestion, the Presidency will return to trilogues with the mandate to hold firm on fingerprints and continue to seek an agreement on the outstanding issues.

These issues remain unresolved and so at present I consider it unlikely that this dossier will be resolved under the Austrian Presidency and will thus fall to the Romanian Presidency to progress. As requested, I will endeavour to keep your Committee updated on the progress and developments on ECRIS-TCN as promptly as possible.

With regard to how the proposal may impact the UK as a third country after Brexit, the draft text does provide a facility for third countries to indirectly enquire about identity information held in the ECRIS-TCN centralised system. Indeed, the draft text states that Eurojust should also have direct access to the ECRIS-TCN system in order to act as a conduit for third country access in relation to requests for criminal records information for the purposes of criminal proceedings. Whilst this does not allow for third countries to make requests for other purposes, it does offer a helpful route in for third countries and other international organisations to identify where TCN convictions are held across the EU.

I trust this addresses your concerns.

11 December 2018

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION OF THE ARRANGEMENT WITH THE KINGDOM OF NORWAY, THE REPUBLIC OF ICELAND, THE SWISS CONFEDERATION AND THE PRINCIPALITY OF LIECHTENSTEIN ON THE PARTICIPATION BY THOSE STATES IN THE EUROPEAN AGENCY FOR THE

OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE (11804/18)

PROPOSAL FOR A COUNCIL DECISION ON THE SIGNING, ON BEHALF OF THE EUROPEAN UNION, OF THE ARRANGEMENT WITH THE KINGDOM OF NORWAY, THE REPUBLIC OF ICELAND, THE SWISS CONFEDERATION AND THE PRINCIPALITY OF LIECHTENSTEIN ON THE PARTICIPATION BY THOSE STATES IN THE EUROPEAN AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE (11805/18)

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your EM received on 4 October 2018 about the proposed Council Decision on participation of Norway, Iceland, Switzerland and Liechtenstein in eu-Lisa, which the House of Lords EU Home Affairs Sub-Committee considered at a meeting on 24 October 2018.

Has the Government considered how this proposed Council Decision may affect the UK's negotiations with the EU about future participation in eu-Lisa? Does the Government plan to seek a similar arrangement to the one proposed in this document?

I look forward to receiving a response from you within ten working days. In the meantime we will clear these documents from scrutiny.

25 October 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMMON STANDARDS AND PROCEDURES IN MEMBER STATES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS (RECAST) - A CONTRIBUTION FROM THE EUROPEAN COMMISSION TO THE LEADERS' MEETING IN SALZBURG ON 19-20 SEPTEMBER 2018 (12099/18)

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for the Explanatory Memorandum (EM) received on 9 October 2018 about the Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) – a contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018 (Document No. 12099/18), which the House of Lords EU Home Affairs Sub-Committee considered at a meeting on 31 October 2018.

The EM includes a list of criteria that the Government will use when deciding whether to opt into the proposal. We would be grateful if you could give us more information about how far the proposal meets these criteria. Until we receive this information, it will be difficult for the Committee to scrutinise this proposal fully.

The EM suggests that an opt-in decision will not have a bearing on Brexit negotiations. Nevertheless, you plan to assess the implications of the UK being "partially, but not fully, involved in a reformed Common European Asylum System". Has the Government considered whether, should the UK indicate a willingness to cooperate to some degree with EU asylum structures post-Brexit, such an indication could have a positive bearing on the EU's approach to the future relationship discussions?

The Committee have decided to hold this document under scrutiny, and I look forward to receiving a response from you within ten working days.

1 November 2018

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

I write to provide a response to the letter from your Committee of 1 November on the above proposal and provide further information concerning the Government's approach.

You asked how far the proposal meets the criteria that was listed in the Explanatory Memorandum (EM) for this EU Document, this should instead be considered as a list of issues the Government will consider in taking the opt in decision. As set out in the Explanatory Memorandum, the Government will assess a combination of factors to determine whether to opt into this proposal, including; national sovereignty of our borders and the UK's exit from the EU, where we will no longer be party to EU Asylum procedures. We are also taking into consideration the fact that we did not opt into the previous version of this Directive, our own return procedures have subsequently altered since, and we consider our return procedures to be more successful than those of other EU Member States.

It should be noted that the Government does agree with many of the proposals of the Commission. This approach should go some way to strengthen return processes in other Member States and improve EU working relationships with third countries; a key feature of our returns successes. We will continue to consider these issues as a package in concluding whether it is in our national interest to opt into the recast Directive.

We do not believe that any decision the Government takes whether to opt in or not to opt into this proposal will influence our future relationship discussions with the EU. The UK maintains the right to decide on which EU measures we opt into and historically it has been the case that we have not signed up to all procedures in the Common European Asylum System, only those we view as in the best interests of the UK. We will continue to fully assess the implications of this and how we will work with CEAS in the future. On our future relationship, we believe that cooperation on asylum and migration issues is in the interests of the UK and EU after we leave. The Government is committed to a securing an effective partnership with the EU on asylum matters, including practical cooperation. We are leaving the EU, not Europe therefore we are considering a full range of options to ensure effective cooperation continues.

I hope this letter assists you in your further scrutiny.

11 December 2018

PROPOSAL FOR A REGULATION ESTABLISHING THE EUROPEAN CYBERSECURITY INDUSTRIAL, TECHNOLOGY AND RESEARCH COMPETENCE CENTRE AND THE NETWORK OF NATIONAL COORDINATION CENTRES (12104/18)

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for the Explanatory Memorandum (EM) of 17 October 2018 on the above file, which the House of Lords EU Home Affairs Sub-Committee considered at its meeting on 28 November 2018.

Your EM provided little detail on the Government's views on the proposed Regulation. I appreciate that negotiations on this file are still at an early stage and look forward to a more detailed overview of the Government's policy position as talks progress. I would also be interested to know what further consideration the Government has given to the potential subsidiarity concerns (highlighted in the EM) regarding the justification of further EU action in this area.

The EM confirms the Government's intention to continue working with the EU in ways that promote the long-term economic development of Europe and pursue a free, open and secure cyberspace. How will this be achieved after the UK's withdrawal from the EU, if the UK does not have a role in the proposed Competence Centre – and other relevant EU agencies – or participate in the network of National Coordination Centres? Will you seek amendments to the draft Regulation to allow for the possibility of third country participation?

I note that the Government has no plans to undertake a consultation with UK stakeholders on the proposed Regulation. Why is this?

I look forward to receiving your response, including an update on the general progress of negotiations on this proposal, within ten working days. In the meantime, we will continue to hold this file under scrutiny.

28 November 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PREVENTING THE DISSEMINATION OF TERRORIST CONTENT ONLINE – A CONTRIBUTION FROM THE EUROPEAN COMMISSION TO THE LEADERS' MEETING IN SALZBURG ON 19-20 SEPTEMBER 2018 (12129/18)

Letter from the Rt Hon Ben Wallace MP, Minister for Security and Economic Crime, Home Office

Thank you for the Explanatory Memorandum (EM) received on 10 October 2018 about the proposal for a regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online – A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018, which the House of Lords EU Home Affairs Sub-Committee considered at a meeting on 31 October 2018.

The Members of the Sub-Committee asked me to pass on their appreciation for the comprehensive and thorough nature of this EM. You anticipated all the questions that they would have asked, and provided a very helpful and detailed explanation of the proposal.

We are content to clear this document from scrutiny, and do not require a response.

1 November 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN BORDER AND COAST GUARD AND REPEALING COUNCIL JOINT ACTION N°98/700/JHA, REGULATION (EU) N° 1052/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND REGULATION (EU) N° 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL A CONTRIBUTION FROM THE EUROPEAN COMMISSION TO THE LEADERS' MEETING IN SALZBURG ON 19-20 SEPTEMBER 2018 (12143/18)

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for the Explanatory Memorandum (EM) of 17 October 2018 on the above file, which the House of Lords EU Home Affairs Sub-Committee considered at its meeting on 28 November 2018.

I note that negotiations on this file are at an early stage, but would be grateful for an update on the progress of discussions so far. In particular I would be grateful for further detail on:

- Any clarity gained on future UK access to the FADO database;
- Whether provisions in Subsection 2 of the proposed Regulation will facilitate the level of continued cooperation to strengthen the EU's external border that you hope to achieve in the future UK-EU relationship, after any transition period;
- The expected timetable for taking negotiations on this file forward under the Romanian Presidency.

In the meantime, we have decided to retain the file under scrutiny. I look forward to receiving your response to this letter within ten working days.

28 November 2018

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter of 28 November 2018 following the European Union Committee's consideration of the above proposal on the same date.

As you have noted, discussion on this file is at an early stage but I have provided the latest updates that I can for each of your points.

Any clarity gained on future UK access to the FADO database

As you are aware, the Commission aims to move FADO into a regulation that the UK would be unable to opt into if we were remaining in the EU, as it builds on the Schengen borders acquis. This is also an issue for Ireland. We asked the Presidency how the Commission had envisaged the UK continuing to access the data on that legal basis, recognising the UK's significant role to date with the FADO database. We have since been advised that the Commission is working on a possible solution to suit all Member States. The Commission is also considering how the UK might continue to play a role in handling this data after leaving the European Union. We are awaiting the outcome of that and will update you.

Whether provisions in Subsection 2 of the proposed Regulation will facilitate the level of continued cooperation to strengthen the EU's external border that you hope to achieve in the future UK-EU relationship, after any transition period

This Sub Section (Articles 72-79) concerns cooperation between Member States and the Agency with third countries. We are still considering what form our support might take, as well as our options beyond a transition period and in the event of a no deal but we hope to continue our constructive working relationship with the European Border and Coast Guard.

The expected timetable for taking negotiations on this file forward under the Romanian Presidency

A partial General Approach (on the returns and third country cooperation elements of the proposal) was agreed at the Justice and Home Affairs Council on 6 December under the Austrian Presidency. There are ambitions to reach agreement on the whole regulation before the European Parliament elections in May, however, the remainder of the proposal is substantial.

In general, Member States are supportive of the proposal but there are still many aspects that require further consideration by all and therefore a number of scrutiny reservations have been lodged.

20 December 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ENISA, THE "EU CYBERSECURITY AGENCY", AND REPEALING REGULATION (EU) 526/2013, AND ON INFORMATION AND COMMUNICATION TECHNOLOGY CYBERSECURITY CERTIFICATION ("CYBERSECURITY ACT") (12183/17)

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

I am writing to provide an update on the proposed Regulation on ENISA, the "EU Cybersecurity Agency", and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification ("Cybersecurity Act"). I last wrote to you on the 11th July to confirm the outcome of the UK's vote in favour of the General Approach for this file at Telecoms Council on 8th June.

In September, the European Parliament adopted its position for negotiations with the Council, which began formally on the 1st October. This position is aligned on many aspects with the General Approach reached in the Council, including on industry involvement, self-certification, international standards and the importance of a process driven approach.

The key area where the Parliament's approach differs on the ENISA aspect on the text is on the role of ENISA, where it retains a strong role in operational cooperation. We will continue to work with

Member States to consider compromises in relation to ENISA's role in operational cooperation to ensure these support effective incident handling at a national level.

With regards to the certification proposals, the key areas which differ are on the process by which a certification scheme can be developed and proposed, a proposal for mandatory certification for operators of essential services and on assurance levels, where the General Approach text contained a number of changes as a result of lengthy technical discussions.

We assess the general intention of those changes to the process of the development and proposal of a scheme to be positive, providing the process remains clear and takes due account of industry expertise. We have some concerns with regards to the proportionality and flexibility of mandatory certification for operators of essential services and are working with Member States to consider what compromises might be appropriate. On assurance levels, we would like to see a number of changes which were a result of lengthy technical discussions retained.

In regards to timing, trilogues will continue throughout October and it remains the Presidency's intention to conclude negotiations by December 2018. I will therefore be looking to provide an update on these discussions and seek scrutiny clearance in advance of the final vote.

5 November 2018

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your letter dated 5 November 2018 on the above files, which was considered by the EU Home Affairs Sub-Committee at its meeting on 21 November.

I am grateful for you for updating the Committee on the progress of trilogue negotiations following the Council's General Approach on the proposal in June.

I note the Presidency's aim to conclude negotiations in December and your intention to seek scrutiny clearance in advance of this. We would be grateful if any such request were accompanied by a comprehensive update on trilogue discussions, any significant compromise amendments, and the key factors which will determine whether the UK votes in favour of the final text.

I look forward to receiving your clearance request in good time for the Committee to consider it in advance of the final vote.

22 November 2018

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your letter of 22nd November in response to my update on the proposed Regulation on ENISA, the "EU Cybersecurity Agency", and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification ("Cybersecurity Act"). I last wrote to you on the 11th July to confirm the outcome of the UK's vote in favour of the General Approach for this file at Telecoms Council on 8th June. I am pleased to be able to provide a comprehensive update on trilogue discussions which have now concluded.

Five informal trilogues were held between 13th September and 10th December. At the last informal trilogue on 10th December an agreement was reached between the European Parliament and the Council.

As noted in my previous correspondence, there were many aspects where the European Parliament's proposed amendments aligned with the General Approach reached in the Council, including on industry involvement, self-certification, international standards and the importance of a process-driven approach. These were also aspects that the UK had successfully influenced and we therefore found to be positive developments. I have outlined below detail on the trilogue discussions on key areas where the Parliament's approach differed from the General Approach:

Part 1 - ENISA

The European Parliament proposed to include a role for ENISA in helping Member States to establish and implement vulnerability disclosure policies. This concept was welcomed by the Council with some amendments, including that it be on a voluntary basis. A recital was proposed to explain the concept and this explanation is compatible UK Government policy.

The Permanent Stakeholders' Group was renamed the "ENISA Advisory Group" as preferred by the European Parliament in order to differentiate between stakeholder groups. The Council was happy to compromise on this point, on which the UK did not hold strong views.

The European Parliament also expressed a preference for more regular cybersecurity exercises. Smaller Member States raised concerns about their capacity for this, whereas larger Member States including the UK were able to be more flexible. As a compromise which took into account those concerns about capacity, it was agreed to hold regular cybersecurity exercises with a largescale exercise every two years. The UK was happy with this approach, which provides a balance and allows for some flexibility in regularity.

The area of most disagreement in relation to ENISA was on the role of ENISA in operational cooperation, with the European Parliament preferring a stronger role for ENISA. Some minor text changes were agreed in order to ensure ENISA had a clear and substantive role, but which still ensures the tasks remain in 'support' of operational cooperation among Member States, with technical support being at their request and information being analysed on the basis of voluntarily shared information. The UK was happy to agree to these small changes providing that they remained in support of Member State operational activity. We were aligned with a number of other larger Member States on this point.

Part 2 - Cybersecurity Certification

There were a number of discussions relating to the process by which a certification scheme can be developed and proposed. The European Parliament proposed that there be a **rolling work programme** published by the Commission which would identify strategic priorities for future European Cybersecurity Certification schemes. The Council, including the UK, assessed the general intention of these changes to be positive, as they provided additional clarity and we were content that the programme's proposed consultation process provided for sufficient industry input.

For schemes proposed outside of the rolling work programme, the European Parliament were not convinced that the **European Cybersecurity Certification Group (ECCG) should be able to request a scheme** directly to ENISA. While the UK was flexible on this point, there were a number of Member States who wished to maintain this. A compromise was reached on this point whereby in duly justified cases, the Commission or the ECCG may request ENISA to prepare a scheme outside the work programme.

The European Parliament also proposed that a **'Stakeholder Cybersecurity Certification Group'** be established to advise the Commission on strategic issues related to the Cybersecurity Certification Framework including the preparation of the rolling work programme. This would replace the certification advisory role which originally sat with the ENISA Advisory Group. For the development of schemes, the European Parliament proposed ENISA set up Ad Hoc working groups to provide tailored expertise. The UK was in support of these proposals, which would bring in additional industry expertise and it was agreed these should be included.

An article which would require the manufacturer or provider of certified products or services to provide **supplementary information** related to its cybersecurity was introduced. The concept was proposed by the European Parliament and acknowledged by the Council acknowledged as potentially adding value in providing the end user with awareness and trust. The Council and the European Parliament agreed a compromise which would provide for supplementary information which would be proportionate to the value and would not overburden businesses. The UK was content with this compromise, which allowed for greater flexibility in the method by which the information was provided and in the content.

The General Approach text in relation to **assurance levels** was broadly agreed to in its existing form in trilogues, acknowledging these were a result of lengthy technical discussions within the Council. It was very important to the UK to retain the compromises which had been reached during this time.

The most difficult discussions took place around the European Parliament's proposal that there be mandatory certification for operators of essential services under the NIS Directive. This was strongly opposed by a number of Member States including the UK. We had been supportive of the voluntary nature of the original proposals and were concerned that the mandatory certification proposal would be a disproportionate approach that could making those services more vulnerable as a result of lengthy certification processes. Our recommended approach was to wait until there was the necessary evidence to warrant mandatory certification and to consider what approach would be best in the context of specific schemes. A compromise was developed which allows for a future assessment to be carried out which would consider the merits of schemes in operation and whether any shall be made mandatory through relevant Union legislation. We were therefore content to agree to such an assessment as a compromise.

The European Parliament and the Council both agreed to introduce the concept of **peer review**. There were some differences in relation to the scope and level of detail. The UK would have preferred to have this detail set out in the schemes. However, we were prepared to be more flexible on this point in order to seek concessions on the issue of mandatory certification. While the UK would prefer a Peer review mechanism which is less prescriptive than that proposed, it does not raise any major concerns.

On the main aspects of the proposals therefore, the UK is content that the compromises that have been reached continue to align with our principles of flexibility and proportionality; are open and transparent; in line with wider international standards and take account of industry expertise.

There is one outstanding point of concern for the UK. At a very late stage of the negotiations a proposal put forward by the European Parliament was adopted to include a task for ENISA to promote cyber security policies *'related to sustaining the general availability or integrity of the **public core** of the open internet'.*

The language 'public core (of the open internet)' originated in a report by the Global Commission on the Stability of Cyberspace relating to discussion of possible norms for state behaviour in cyberspace and was subsequently reflected in the Paris Call for Trust and Security in Cyberspace launched by President Macron at the Internet Governance Forum on 12 November 2018. The UK remains concerned about the use of the term 'public core' in this context which we consider is contrary to the multi-stakeholder model of internet governance and may undermine positions taken by the EU and Member States regarding avoiding fragmentation of the internet. Our signature to the Paris Call was made on the basis that the international community should work further towards appropriate language on this issue and that the Paris Call should not be considered legally binding due to these concerns.

While we gained some support from like minded Member States on this point, the European Parliament were not content to amend this language other than to include as part of the related recital a clarification that *"The **public core** of the open internet, meaning its main protocols and infrastructure, which are a global public good".*

We would therefore seek to vote in favour of the Regulation, noting our overall support for the Regulation. However we will also look to include alongside our vote a Minute Statement, in order to put on record the UK's formal position in relation to the language on 'public core'.

If this Regulation comes into force before the UK leaves the EU on 29th March 2019, or within the Implementation Period if the Withdrawal Agreement is in effect from 29th March 2019, then it will have direct effect in UK law. We will need to take domestic legislative action to correct any deficiencies that may occur when it no longer has direct effect.

I hope that you will find this a comprehensive update and that you will be able to grant scrutiny clearance for the UK to vote in favour of this file. A vote is expected early January and so I would be grateful for urgent consideration of this.

22 December 2018

COMMUNICATION ON 'ENHANCING LEGAL PATHWAYS TO EUROPE: AN INDISPENSABLE PART OF A BALANCED AND COMPREHENSIVE MIGRATION POLICY' (12193/18)

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your EM dated 17 October 2018 on the above file which was considered by the EU Home Affairs Sub-Committee at its meeting on 12 December 2018. I can confirm that we are content to clear this file from scrutiny.

One of the key recommendations of the Communication is that the Union Resettlement Framework Regulation (11313/16) should be swiftly adopted. We continue to hold this proposal under scrutiny and I would be grateful if you could provide an update on progress in negotiations on the file since your last letter to this Committee in March 2018.

12 December 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMITTEE OF THE REGIONS ON STRENGTHENING EU DISASTER MANAGEMENT: RESCEU SOLIDARITY WITH RESPONSIBILITY (14883/17)

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DECISION NO 1313/2013/EU ON A UNION CIVIL PROTECTION MECHANISM (14884/17)

Letter from Oliver Dowden CBE MP, Minister for Implementation, Cabinet Office

Thank you for the assessment on the proposal to amend the legislation underpinning the Union Civil Protection Mechanism (UCPM) by the European Commission and for your response to my letter of 17 May.

You asked for an update on the progress of the UCPM negotiations, especially how the UK's concerns about subsidiarity are being taken into account. Following agreement on an initial compromise text by the Council at the Working Party on Civil Protection on 19 July and a meeting of the Committee of Permanent Representatives (Coreper) on 25 July, which agreed a mandate to begin trilogue negotiations with the European Parliament, I am now able to provide you with additional information on the negotiations.

As mentioned in my previous letters, negotiations at the official-level Working Party on Civil Protection have progressed well. After several months of challenging negotiations, the required majority in favour of the Council compromise text was reached. The UK maintained a positive and constructive approach throughout the negotiations, ensuring that the agreed compromise text addressed the Government's concerns.

The Government is generally supportive of the Commission's commitment to improving the Mechanism, but expressed concerns related to the principle of subsidiarity and the Commission's proposals for disaster response. The Commission's initial proposal consisted of Commission owned response assets (rescEU). The Government's view is that national governments are primarily responsible for planning to ensure that all natural and man-made risks are managed appropriately, including response capabilities required to manage a reasonable worst-case scenario. The role of the Commission should be limited to supporting and coordinating the activities of Member States.

Throughout the negotiations, the Government maintained the position that activity by the European Commission should not undermine, or be a substitute for, States' own investment in core civil protection capabilities. Assets should not, therefore, be directly owned or operated by the Commission. A large majority of Member States echoed these concerns and negotiated a compromise text, which maintained the principle of subsidiarity. New wording in the compromise text makes clear that the ownership and operational control of response assets remain with Member States. I believe the Government's concerns have been broadly addressed in the current compromise text, and provide

a good basis for further negotiations. The Commission will continue to support and coordinate the activities of Member States during responses to disasters.

The UK supported the Presidency compromise text and the decision to progress to trilogue negotiations. However, there is scope to strengthen aspects of the compromise text during the trilogue negotiations. The UK has suggested additional wording for the compromise text to be considered during trilogue negotiations, which ensures that there is a clearer link to the role of the Commission in supporting and coordinating the activities of Member States. Whilst Coreper accepted that the compromise text sufficiently provided a mandate for trilogue negotiations to begin, it is worth noting that the outcome of the negotiations may result in a compromise text, which substantially differs from the current compromise text. Should this happen, the Government will evaluate the new text and review its position accordingly.

The trilogue negotiations will begin when the European Parliament resumes in September. The Presidency of the Council currently plans to seek agreement from the Council of Ministers on the final compromise text at the Justice and Home Affairs Council in December 2018 following trilogue negotiations.

I am providing a copy of the compromise text under the established arrangements for sharing limité documents with the Committee.

I hope this information is satisfactory for the Committee.

6 August 2018

Letter from the Chairman to Oliver Dowden CBE MP, Minister for Implementation, Cabinet Office

The EU Home Affairs Sub-Committee considered the communication from the Commission to the European Parliament, the Council and the Committee of the Regions strengthening EU Disaster Management: rescEU Solidarity with Responsibility and the proposal for a decision of the European Parliament and of the Council amending decision No 1313/2013/EU on a Union Civil Protection Mechanism at a meeting on 21 November 2018.

We are content to clear these documents from scrutiny, and do not require a response.

22 November 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ESTABLISHMENT, OPERATION AND USE OF THE SCHENGEN INFORMATION SYSTEM (SIS) IN THE FIELD OF POLICE COOPERATION AND JUDICIAL COOPERATION IN CRIMINAL MATTERS, AMENDING REGULATION (EU) NO 515/2014 AND REPEALING REGULATION (EC) NO 1986/2006, COUNCIL DECISION 2007/533/JHA AND COMMISSION DECISION 2010/261/EU (15814/16)

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter dated 27 June 2018, and for clearing the above file from scrutiny. I write to inform you that the Bulgarian Presidency decided to seek approval for the final compromise text of the draft Regulations at the Committee of Permanent Representatives (COREPER) on 19 June. I understand that the Committee Clerk had been informed of this by the Home Office's Parliamentary Team on 12 June, but I offer my apologies that further advance warning was not feasible in this case. The UK abstained from the vote seeking unanimous political agreement from Member States as the dossiers had not yet cleared scrutiny. As requested, I am writing to provide an update on the outcome of the negotiations.

As you know, the Government sought changes to allow greater scope to use the information in SIS II alerts for wider law enforcement and border control purposes than the legislation previously catered for. Unfortunately, the new regulations do not change this position, and it remains the case that an alert may only be used for purposes other than those for which it was entered where there is a need to

prevent an imminent serious threat to public policy and public security, on serious grounds of national security or for the prevention of serious crime. Whilst this is disappointing, the compromise text does not reflect a departure from the existing terms of the Council Decision.

Throughout the course of the negotiations, however, the Government successfully sought a number of other changes and clarifications to the general approach agreed by the Council last November. This includes successfully amending Article 37, which, as noted in my last correspondence, concerns the process of conducting 'specific' and 'inquiry checks'. I am pleased to inform the Committee that the compromise text is explicit that such requests must be dealt with in accordance with the national law of the executing Member State. In addition, the Government successfully secured amendments to Article 21, which as originally drafted, would have made it compulsory to create an alert in cases where a person or object is sought in relation to a terrorist offence. The text now contains an exception that provides that Member States will not need to create an alert where doing so "is likely to obstruct official or legal inquiries, investigations or procedures related to public or national security". The Government considers this provides adequate discretion to not create an alert where the police or security services would not wish to do so.

We will shortly be able to share with the Committee the final text of the regulations that concluded at the COREPER meeting in June. Article 75 of the Police Regulation (and corresponding articles of the wider SIS package) makes clear that the Commission shall adopt a Decision setting the date for operational implementation no later than three years after the entry into force of the Regulations themselves – subject to confirmation of operational readiness and testing activities.

28 September 2018

PROPOSAL FOR A COUNCIL DECISION ON THE SIGNATURE OF THE AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF ARMENIA ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION. (16909/12)

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION OF THE AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF ARMENIA ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION. (16910/12)

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

The House of Lords EU Home Affairs Sub-Committee considered the proposals for a Council Decision on the signature and conclusion of the Agreement between the European Union and the Republic of Armenia on the readmission of persons residing without authorisation, and related correspondence at a meeting on 31 October 2018.

We are content to clear this document from scrutiny and do not require a response.

1 November 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL REBUILDING TRUST IN EU-US DATA FLOWS (17067/13)

Letter from the Chairman to Edward Argar MP, Parliamentary Under Secretary of State, Ministry of Justice

The House of Lords EU Home Affairs Sub-Committee considered the Communication from the Commission to the European Parliament and the Council Rebuilding Trust in EU-US Data Flows, and prosecution of criminal offenses, and related correspondence at a meeting on 31 October 2018.

We are content to clear this document from scrutiny and do not require a response.

1 November 2018

RECOMMENDATION FOR COUNCIL DECISIONS AUTHORISING THE OPENING OF NEGOTIATIONS FOR AN AGREEMENT BETWEEN THE EUROPEAN UNION AND THE HASHEMITE KINGDOM OF JORDAN (5033/18 + ADD 1), BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF TURKEY (5034/18 + ADD 1), BETWEEN THE EUROPEAN UNION AND THE LEBANESE REPUBLIC (5035/18 + ADD 1), BETWEEN THE EUROPEAN UNION AND THE STATE OF ISRAEL (5036/18 + ADD 1), BETWEEN THE EUROPEAN UNION AND TUNISIA (5037/18 + ADD 1), BETWEEN THE EUROPEAN UNION AND THE KINGDOM OF MOROCCO (5038/18 + ADD 1), BETWEEN THE EUROPEAN UNION AND THE ARAB REPUBLIC OF EGYPT (5039/18 + ADD 1) AND BETWEEN THE EUROPEAN UNION AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA (5040/18 + ADD 1) ON THE EXCHANGE OF PERSONAL DATA BETWEEN THE EUROPEAN UNION AGENCY FOR LAW ENFORCEMENT COOPERATION (EUROPOL) AND THE COMPETENT AUTHORITIES OF THE NAMED STATES FOR FIGHTING SERIOUS CRIME AND TERRORISM.

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter of 11 July 2018, requesting further details on how the UK intends to engage with the data-sharing arrangements envisaged in the proposals (between Europol and Competent Authorities of the eight proposed countries) once the implementation period comes to an end, and whether the Government will aim to replicate these arrangements.

The proposed data sharing agreements will provide the legal basis for Europol to share personal data with the Competent Authorities of the eight proposed countries. The agreements will not provide a legal basis for the exchange of personal data between Member States' law enforcement authorities and the eight countries outside of Europol.

As such, the future relevance of these data sharing proposals is intrinsically linked to the UK's future relationship with Europol following the implementation period. As the Committee is aware, we have proposed a new, coherent and legally binding agreement on internal security, which includes continued participation by the UK in key EU agencies (such as Europol). The nature of this relationship is subject to negotiation.

Your letter also asked for clarity on whether the UK has any existing data-sharing arrangements with the countries covered by these proposals. As I set out in my previous letter to the committee, UK law enforcement data sharing with these countries is risk assessed on a case by case basis. Engagement is very limited with most of the eight countries, except for Turkey which reflects its size, proximity and status as a member of NATO.

5 September 2018

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter received on 5 September 2018 about the Recommendation for Council Decisions authorising the opening of negotiations for an agreement between the European Union and the Hashemite Kingdom of Jordan (5033/18 + Add 1), between the European Union and the Republic of Turkey (5034/18 + Add 1), between the European Union and the Lebanese Republic (5035/18 + Add 1), between the European Union and the State of Israel (5036/18 + Add 1), between the European Union and Tunisia (5037/18 + Add 1), between the European Union and the Kingdom of Morocco (5038/18 + Add 1), between the European Union and the Arab Republic of Egypt (5039/18 + Add 1) and between the European Union and the People's Democratic Republic of Algeria (5040/18 + Add 1) on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the competent authorities of the named States for fighting serious crime and terrorism, which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 24 October 2018.

We are content to clear these documents from scrutiny and do not require a response.

25 October 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA BY THE UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES AND ON THE FREE MOVEMENT OF SUCH DATA, AND REPEALING REGULATION (EC) NO 45/2001 AND DECISION NO 1247/2002/EC (5034/17)

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

I am writing to provide you with an update on the EU Institutions Regulation (45/2001)(5034/17).

As you are aware, this Regulation sets out a general data protection regime for Union institutions and bodies, ensuring alignment with the General Data Protection Regulation (GDPR). The EU Institutions Regulation creates specific data protection rules that are consistent with the Law Enforcement Directive regarding Union agencies, and offices and bodies carrying out activities in the field of judicial cooperation.

Due to the strong link between this draft Regulation and the GDPR, there had been an increasing sense of urgency to reach a final agreement on the text before the GDPR came into effect on 25 May 2018. To this effect, at the trilogue talks on 16 May 2018, the Presidency and the EU Parliament Rapporteur unexpectedly succeeded in resolving most of the outstanding issues, and have now produced a compromise text.

On 21 May 2018, we were informed that the compromise text would be examined at the Coreper meeting on 23 May 2018, where it received clearance. The finalised text was agreed at the Coreper meeting on 6 June 2018. The text will not be formally adopted until it has finished the lawyer-linguist and European Parliament plenary process and then will be put forward for discussion at a forthcoming Council.

The UK abstained from voting at the meeting on 6 June 2018 as the file had not cleared Parliamentary scrutiny. We will be issuing a write round letter on this Regulation in due course, to enable us to finalise an agreed government position in time for the next Council meeting.

I will ensure to write to your committee with further updates as soon as any further information becomes available.

21 August 2018

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

I am writing to update you on the EU Institutions Regulation (45/2001) following the vote which took place at the Justice and Home Affairs Council on 11 October.

As you aware, the Regulation sets out the rules for processing personal data by the European Union institutions and bodies. The Regulation is being updated to align with the General Data Protection Regulation (GDPR), which came into effect in May 2018.

I would like to express my thanks to you and the Committee for granting a request for a scrutiny waiver on this file which enabled the representing Home Office Minister to vote in favour of the Regulation at JHA Council. As you are aware, our understanding was this vote would take place at ECOFIN on 2 October, but ultimately took place at the Justice and Home Affairs Council and passed without any interventions.

30 October 2018

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your letter of 30 October 2018 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, which the House of Lords EU Home Affairs Sub-Committee considered at its meeting on 28 November 2018.

We are content to clear this document from scrutiny and do not require a response.

28 November 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON HEALTH TECHNOLOGY ASSESSMENT AND AMENDING DIRECTIVE 2011/24/EU (5844/18)

Letter from Lord O'Shaughnessy, Parliamentary under Secretary of State for Health, Department of Health

I wrote to you on 2 July and promised to give you a further update on the above.

There have been two working parties since I last wrote to you and we expect that, following discussion at the working parties, the Presidency will send revised articles. As before, our position remains the same; we prefer a voluntary approach to collaboration on health technology assessments, and we continue to stress the importance of ensuring the quality of technology assessments.

The proposal is due to be tabled at COREPER on 23 November and at the European Council on 7 December.

I will update you further in the new year unless there are significant developments before then. As it is, I believe the original timetable will slip.

12 October 2018

DRAFT EUROPOL AND DENMARK OPERATIONAL AGREEMENT (7078/17)

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

The House of Lords EU Home Affairs Sub-Committee considered the draft Europol and Denmark operational agreement, and related correspondence at a meeting on 31 October 2018.

We are content to clear this document from scrutiny and do not require a response.

1 November 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND OF THE COUNCIL: PROGRESS REPORT ON THE IMPLEMENTATION OF THE EUROPEAN AGENDA ON MIGRATION (7199/18)

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter of 15 June 2018. I apologise for the delay in reply.

You asked for further information on the EU's total cost of migration controls, including how the success of migration controls is defined and measured. In the intervening period, the Commission published a set of post and interim evaluation reports on current funding programmes alongside new proposals for the next EU Budget (MFF 2021-2027). These reports, together with the Explanatory

Memoranda on them and follow-up letters go a substantial way towards answering the Committee's questions.

Of particular relevance, on 5 July 2018 I submitted Explanatory Memorandum 10119/18 on the Commission's interim and ex-post evaluations of the key EU Budget funds that cover migration activities; the Asylum and Migration Fund (AMIF) and the four Funds under the framework programme 'Solidarity and Management of Migration Flows'. As stated in that EM package, the UK was allocated €370m from AMIF for the seven-year period 2014–2020. The evaluation reports considered that AMIF proved to be an important instrument in handling the difficult situation, providing both short-term emergency support and more long-term capacity building in relation to asylum, integration and returns. Recognising that more still needs to be done, the report sets out that AMIF especially contributed to strengthening Member States' reception and processing capacities when confronted with the challenging migration flows.

In particular, the Commission's evaluation report concluded that the Funds have generated significant EU added value by (i) supporting actions with a transnational dimension, (ii) burden-sharing between Member States, (iii) boosting national capacities, (iv) optimising procedures related to migration management, (v) ensuring synergies, (vi) increased cooperation among actors dealing with visa processing, (vii) sharing of information and best practices, (viii) cross-border projects, (ix) trust among law enforcement authorities, and (x) staff training.

You specifically asked about UK funding for 'hotspots'. I would like to draw your attention to my letter of 16 August on 9072/18 in which I provided the latest information on the key current UK budget/project issues. As you are aware, the UK supports hotspots through deployments and not through funding, and this letter included information on the UK's deployments to Greece (including hotspots). In this letter, I also provided the latest information on the EU Trust Fund for Africa (EUTF) and UK projects in Africa, explaining our approach to aligning UK projects with EU efforts to increase their added value, and made clear in that letter that migration is an area where we want to continue to cooperate after we leave the EU but that this will be discussed as part of the EU exit negotiations.

11 October 2018

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter received on 11 October 2018 about the Communication from the Commission to the European Parliament and the Council: Progress report on the European Agenda on Migration (document 7199/18), which the House of Lords EU Home Affairs SubCommittee considered at a meeting on 24 October 2018.

I note that the Home Office sought and received clarification from the Committee on the information being requested in the form of revised questions. It is disappointing that this letter does not answer the revised questions, particularly considering the time taken to respond.

We note that you have not provided a response to our request for statistics on the total UK contribution to the EU budget for controlling migration into the EU, including the amount that the UK contributes to Frontex. It would be helpful if you could provide a breakdown that included the UK's expenditure in those countries that the EU has identified as source countries, as well as in so-called "hot spots".

We also note that you have not provided information about how the success or otherwise of the UK's financial contribution to EU migration controls is defined and measured. For instance, the Committee would be interested to know how the Government determines the results of its spending in the so-called "hot spots", including whether it evaluates the impact of its spending on migrant women and children.

I look forward to receiving a response from you within ten working days. In the meantime this document has been cleared from scrutiny.

25 October 2018

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter of 25 October 2018 regarding the total UK contribution to the EU budget that is in tum spent on EU migration controls.

Member States do not contribute to individual programmes but to EU budgets as a whole. The UK's financing share of the EU budget is based on a number of elements, such as the UK rebate and our customs duties transfers to the EU, and it fluctuates with changes to the levels and types of EU spending. It is therefore not possible to use the UK's financing share of the whole budget to calculate our contribution to specific EU programmes.

Furthermore, many EU programmes across different headings of the EU budget are deemed to contribute to 'controlling migration' to the EU indirectly. While many obvious 'migration' activities are funded by the Asylum and Migration Fund (AMIF), activities envisaged and delivered under other headings e.g. internal security, defence, humanitarian aid, economic assistance or trade also contribute to the overall approach to migration. For example, humanitarian aid spending providing assistance, relief and protection in third countries sits alongside country and regional development programming, which together aim to address the root causes of migration. Supporting displaced populations as close to their region of origin, combined with work to increase local economic and livelihood opportunities, aims to protect the most vulnerable and to reduce the danger to life from onward movements.

Due to these complexities, it is not possible to provide a definitive answer to the question set out by the Committee.

In terms of activities led specifically by the Home Office, you asked for the amount the UK contributes to the EU budget to fund Frontex. The EU budget funds Frontex for those Member States that are participants, but as the UK is not a participant, the UK does not contribute towards the administrative costs of the Agency. Instead, we make an annual financial contribution to the cost of those activities/operations in which we seek to take part as a partner, while experts and technical equipment on a case by case basis to support activities are on a cost-free basis.

The UK is also not a participant in the EU "hotspots" measure so we do not have direct access to the EU budget in this area of work. Instead, we support partner hotspot activity through the deployment of UK experts to the relevant EU agencies. In the case of UK expert deployments to the Greek islands, we do have an agreement with the European Asylum Support Office (EASO) for reimbursement of basic expenses from that agency's budget. For example, we have received a total of £93,716.42 for 10 deployments completed since April 2018. As we have completed 14 deployments since April 2018, we are still waiting on some reimbursements to come in. Currently we have 18 deployments in process, which means that we will receive most of these reimbursements after 4 January 2019 when EASO finances reopen.

Since 2014, the top source countries for migration to the EU through the Eastern Med route have been predominantly Syria, Iraq, Afghanistan, Pakistan, India and Turkey. In terms of the Central and Western Med routes, flows have included the nationals of Eritrea, Sudan, Nigeria, Guinea, Mali, Ivory Coast, Chad, Niger, Morocco, Tunisia and Libya. Spain has even seen arrivals from Central America. Therefore, the EU does not have a set list of source countries and is constantly reviewing the case for action on either a regional or country basis.

In terms of EU efforts on migration in African countries, the EU Trust Fund for Africa (EUTF) is the main vehicle. We estimate that around 15% of the EU's underlying €4.1 billion funding for EUTF is attributable to UK ODA. However, an exact calculation is not possible for the reasons highlighted earlier in this letter.

As you are aware, the UK has made additional contributions in addition to EU budget allocations by the Commission, and we have directly contributed €6m to date to the EUTF (with an additional €15m committed at the June European Council, but yet to be formally scheduled). The EUTF includes programmes such as the €46m Better Migration Management programme (2016-2019) in the Hom and East Africa which will provide capacity building to improve migration management, with a focus on strengthening regional cooperation on people smuggling and human trafficking.

In terms of EU efforts in the Eastern Med, the UK has committed €155 million of bilateral contributions in addition to central funding through the EU budget for the second €3 billion EU Facility for Refugees in Turkey.

On assessment of the EU's added value in work on migration, including the impact on migrant women and children, I previously drew the Committee's attention to the Commission's publication of post and interim evaluation reports for individual programmes. This includes the latest set published alongside the proposals for the next EU Budget (MFF 2021-2027). This information has been provided to Parliament through the normal processes and by the relevant lead Government Departments.

These Commission's evaluations include an assessment of the success or otherwise of EU activity under each programme. For example, the Commission's evaluation report on AMIF concluded that the Funds have generated significant EU added value by (i) supporting actions with a transnational dimension, (ii) burden-sharing between Member States, (iii) boosting national capacities, (iv) optimising procedures related to migration management, (v) ensuring synergies, (vi) increased cooperation among actors dealing with visa processing, (vii) sharing of information and best practices, (viii) cross-border projects, (ix) trust among law enforcement authorities, and (x) staff training.

Additionally, the EUTF is evaluated on a routine basis. An explanation of the evaluation process, which includes assessment of work with vulnerable migrants, as well as the latest reports in the public domain are available at:

https://ec.europa.eu/trustfundforafrica/contenUresults-monitoring-and-evaluation en

On FRIT, the Second Annual Report was published in March 2018 under 7181/18. This included the assessment of support to vulnerable refugees within Turkey, and the relevant explanatory memorandum can be found at:

http://europeanmemoranda.cabinetoffice.qov.uk/files/2018/04/EM 7181 18 Annual Repo rt Facility for Refugees in Turkey.pdf

In terms of UK bilateral projects in source countries, the CSSF (including Official Development Assistance (ODA)) supports work to reduce that risk in these countries where the UK has key interests. Through the CSSF, the UK and our international partners seek to address threats such as terrorism, corruption as well as illegal migration, trafficking and Modem Slavery. The National Security Council (NSC) agrees the countries, regions and themes the CSSF focuses on and the strategies for UK engagement with them. The CSSF delivers against more than 40 of these strategies, covering over 70 countries. This includes Afghanistan, Algeria, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Iraq, Kenya, Libya, Mali, Morocco, Nigeria, Pakistan, Somalia, South Sudan, Sudan, Syria, Tunisia and Yemen. The CSSF also works in the UK Overseas Territories. We cannot list every single country we work in for operational security reasons.

The CSSF has been allocated £1.28 billion for financial year 2018 to 2019. It is split between ODA that counts towards the UK aid target of 0.7% of GNI, and funding that is not ODA eligible. The CSSF, alongside other all other ODA spending departments, is working to improve transparency on both budget and evaluation results.

The CSSF 2017 /18 Report has recently issued. For each strand of work, the total lJK spend is stated. The CSSF Migration element is around £30M. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment data/file/727383/CSSF Annual Report 2017 to 2018.pdf

We apply CSSF and ODA criteria to all projects. All projects funded by CSSF including ODA therefore have to consider vulnerability and gender issues. And since 2016/2017, the evaluation of projects has included an assessment of success in delivering protection to the victims of trafficking.

30 November 2018

PROPOSAL FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO APPROVE, ON BEHALF OF THE UNION, THE GLOBAL COMPACT FOR SAFE,

ORDERLY AND REGULAR MIGRATION IN THE AREA OF IMMIGRATION POLICY (7391/18)

PROPOSAL FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO APPROVE, ON BEHALF OF THE UNION, THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION IN THE FIELD OF DEVELOPMENT COOPERATION (7400/18)

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter of 11 May regarding the Explanatory Memorandum on the Council Decision authorising the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the area of immigration policy (7391/18) and the Council Decision authorising the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the field of development cooperation (7400/18).

You asked for an update on the opt in decision. The Government decided not to opt in to the Decision related to immigration matters (7391/18). The Government considered that the UK can best pursue its national interest when having the ability to negotiate and approve the Global Compact for Safe, Orderly and Regular Migration on its own, while still having the ability to lean in and support the EU position as appropriate.

You also asked for an update on the negotiations. The negotiation process of the Global Compact for Safe, Orderly and Regular Migration has now been concluded. Throughout the process the UK has sought to establish a strong, rules-based system for international migration. At UNGA the Secretary of State for International Development indicated that the UK intends to endorse the Global Compact at the Intergovernmental Conference in Marrakesh, 10-11 December. It is unclear whether the Commission will seek to return to this Council Decision prior to the proposed adoption of the Compact in December.

25 October 2018

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter received on 25 October 2018 on the proposals for a Council Decision authorising the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the area of immigration policy and in the field of development cooperation, which the EU Home Affairs Sub-Committee considered at a meeting on 14 November 2018.

We are content to clear this document from scrutiny and do not require a response.

14 November 2018

PROPOSAL FOR A REGULATION ON STRENGTHENING THE SECURITY OF IDENTITY CARDS OF EU CITIZENS AND OF RESIDENCE DOCUMENTS ISSUED TO EU CITIZENS AND THEIR FAMILY MEMBERS EXERCISING THEIR RIGHT OF FREE MOVEMENT (8175/18)

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter following the European Union Scrutiny Committee's consideration of the above proposal on 11 July 2018.

I am writing to let you know that in November, the Council adopted a mandate to enter into negotiations on the file with the European Parliament. On 3 December, the Parliament agreed and

trilogue discussions will start in January. The Commission aims to support the co-legislators in adoption of the proposal before the next European Parliament elections.

The majority of Member States welcomed the compromise proposal which now has a longer application period after entering into force (extended from 12 to 24 months) as well as a longer phasing out period for cards that do not meet the standards.

The impact of this Regulation on Gibraltar is still under consideration, and you have kindly acknowledged that we will provide this information when possible.

20 December 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - ESTABLISHING A EUROPEAN LAW ENFORCEMENT TRAINING SCHEME (8230/13)

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

The House of Lords EU Home Affairs Sub-Committee considered the Communication form the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of the Regions - Establishing a European Law Enforcement Training Scheme, and related correspondence at a meeting on 31 October 2018.

We are content to clear this document from scrutiny and do not require a response.

1 November 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE MARKETING AND USE OF EXPLOSIVES PRECURSORS, AMENDING ANNEX XVII TO REGULATION (EC) NO 1907/2006 AND REPEALING REGULATION (EU) NO 98/2013 ON THE MARKETING AND USE OF EXPLOSIVES PRECURSORS (8342/18)

Letter from the Rt Hon Ben Wallace MP, Minister for Security and Economic Crime, Home Office

Thank you for your letter dated 6th June 2018 on the above proposal (the Regulation). I can now update you on our progress so far, including:

a) The main findings of the Government' impacts assessment of the impacts of the legislation in the UK, including our consultation.

b) Changes to the substances for which a member of the public may apply for a licence authorising access.

c) Whether the UK is duty-bound to apply these regulations at least until the end of the implementation period.

d) The principle of a more robust process to verify professional users at the point of sale.

With regards to point (a), the main findings of the Government's impact assessment follow. To produce this impact assessment, we consulted with businesses, suppliers and hobbyists of the relevant impacted chemicals, and their responses form part of the evidence given below. The impact assessment has also been cleared by Home Office Science.

The main benefit of the Regulation is the reduced risk of the misuse of explosives precursors and the enhanced likelihood of detection and deterrence, increasing the security of the UK public. The main costs of the Regulation are social rather than financial, due to the relatively small number of people directly impacted. The key affected groups and the impacts upon them are:

Individual Users, mainly hobbyists requiring chlorates/perchlorates (for activities such as pyrotechnics) and nitromethane (for activities such as drag racing). These groups would face the most significant social cost of no longer being able to participate in their chosen activity. There are no viable alternative chemicals for these uses. While the social impact to this group is high, they are a relatively small number.

Businesses would incur a small reduction of sales. Having consulted directly with the relevant businesses, it was found that sales to individual users are a small percentage of sales overall and therefore this cost is considered negligible. The Government would incur minor costs for reviewing licences, though this is considered negligible. There will be a requirement for the Government to deliver one awareness raising event and one report to the European Commission each year. However, these are actions the UK already commits to, so there are no extra costs.

With regard to point (b), the Regulation proposes to remove the ability for member states to license certain chemicals above a specific concentration, or set upper limits capping the level at which a licence can be issued. As mentioned above, the individual users of chlorates and perchlorates and nitromethane will be most significantly impacted as it will likely prevent hobbyists from participating in their chosen activity (such as pyrotechnics or drag racing).

As a result, I have decided to actively seek amendments to the current proposed text to try to maintain the UK's ability to license these chemicals. Since the UK began licensing access to these chemicals, we have received no evidence to suggest that any licensed individual has misused them. Therefore, our current assessment of the risk of these licensed chemicals suggests that this proposal would have a disproportionate impact on these groups.

With regard to point (c), the UK is bound by the current regulations under EU law, under the European Communities Act to March 2019 and then to the end of the implementation period, assuming a deal is struck in the UK withdrawal negotiations. After this point, any divergence from EU Regulations will be taken on a case by case basis.

Finally, with regard to point (d), the Regulation proposes a combined definition for professional users and farmers in order to demonstrate an on-going professional status and requirement for the chemicals for business or profession purposes. The amendments also now propose that an economic operator shall request the name, address and proof of identity of the prospective customer. This is in addition to requesting the trade, business or profession and the intended use of the chemical from the prospective customer, making the process more robust.

In order to keep pace with the European Commission's timings, clearance is sought from the EUC by 28th November, at which point there will be a European council vote on the final negotiated Replacement Regulation.

23 October 2018

Letter from the Chairman to the Rt Hon Ben Wallace MP, Minister for Security and Economic Crime, Home Office

Thank you for your letter received on 23 October 2018 about the proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 on the marketing and use of explosives precursors, which the EU Home Affairs Sub-Committee considered at a meeting on 14 November 2018.

We are content to clear this document from scrutiny, and do not require a response.

14 November 2018

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION, ON BEHALF OF THE EUROPEAN UNION, OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION ON THE PROTECTION OF PERSONAL

INFORMATION RELATING TO THE PREVENTION, INVESTIGATION, DETECTION, AND PROSECUTION OF CRIMINAL OFFENSES (8491/16)

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

The House of Lords EU Home Affairs Sub-Committee considered the Proposal for a Council Decision on the conclusion, on behalf of the European Union, of an Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses, and related correspondence at a meeting on 31 October 2018.

We are content to clear this document from scrutiny and do not require a response.

1 November 2018

PROPOSAL FOR A COUNCIL DECISION AUTHORISING MEMBER STATES TO BECOME PARTY, IN THE INTEREST OF THE EUROPEAN UNION, TO THE COUNCIL OF EUROPE CONVENTION ON AN INTEGRATED SAFETY, SECURITY, AND SERVICE APPROACH AT FOOTBALL MATCHES AND OTHER SPORTS EVENTS (CETS N°218) (8577/18)

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

I am writing to inform you of the Government's JHA opt-in decision in relation to this measure.

The Government considered that the EU has exclusive competence in relation to Article 11 of the Council of Europe Convention in so far as that provision governs cooperation between Member States' NFIPs, and therefore overlaps with the provisions of Council Decision 2002/348/JHA as amended by Council Decision 2007/412/JHA.

As a Member State, the UK cannot enter into international obligations in an area covered by exclusive external EU competence, where that competence binds the UK (as is the case here), unless first authorised by the Council. In the event that the Government decides not to opt in to the Council Decision, the authority that Decision will provide will not apply to the UK. In such a situation, the UK could not therefore become a party to the Convention without breaching its obligations under the Treaties.

As the Government wishes to become a party to this Convention, the Government decided to opt in to this measure.

16 August 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN UNION AGENCY FOR ASYLUM AND REPEALING REGULATION (EU) NO.439/2010 (8742/16)

AMENDED PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN UNION AGENCY FOR ASYLUM AND REPEALING REGULATION (EU) NO 439/2010 - A CONTRIBUTION FROM THE

EUROPEAN COMMISSION TO THE LEADERS' MEETING IN SALZBURG ON 19-20 SEPTEMBER 2018 (12112/18)

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for the Explanatory Memorandum (EM) received on 9 October 2018 about the Amended proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 – A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018 (Document No. 12112/18), which the House of Lords EU Home Affairs Sub-Committee considered at its meetings on 31 October and 14 November 2018.

The EM includes a list of criteria that the Government will use when deciding whether to opt into the proposal. These are high-level criteria, and we would be grateful for a more detailed assessment of the extent to which the proposal satisfies them.

We note also that the Government did not opt into negotiations on the 2016 Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No.439/2010, of which this is an amended text. Have the changes to the proposal made a material difference to the Government's assessment of the benefits or drawbacks of opting in?

The EM highlights the proposal to establish a reserve pool of 500 asylum experts from Member States to allow for rapid deployment. Does the Government intend to provide any experts to this reserve pool – now, during the transition period, and, if circumstances allow, after the end of the transition period?

I wrote to you on 21 March 2018 indicating that we would continue to hold the 2016 document (Council No. 8742/16) under scrutiny. As this has now been superseded, we have decided to clear it from scrutiny.

I look forward to receiving a response from you within ten working days.

14 November 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE CREATION OF A EUROPEAN NETWORK OF IMMIGRATION LIASION OFFICERS (RECAST) (9036/18)

Letter from the Chairman to the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter dated 20 July 2018 on the Proposal for a regulation of the European Parliament and of the Council on the creation of a European network of immigration liaison officers (recast), which the EU Home Affairs Sub-Committee considered at its meeting on 5 September 2018.

We note that discussions are ongoing, and that it is not yet clear whether the Government plans to opt out of this proposal. We therefore ask that you keep us updated on the opt-out decision. In the meantime, we will continue to hold this document under scrutiny. I look forward to hearing from you in due course.

6 September 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING 'ERASMUS': THE UNION PROGRAMME FOR EDUCATION,

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department of Education

Thank you for your letter dated 11 July 2018 asking for further information about the Government's position on the future Erasmus programme.

You asked for more information about whether the UK will seek to continue participation in Erasmus beyond 2020, and about when the Government's position will be announced.

In the recent White Paper on the future relationship between the UK and EU (published 12 July), the Government stated publicly that "The UK is open to exploring participation in the successor scheme". The White Paper also made clear that "The UK and the EU should continue to give young people and students the chance to benefit from each other's world leading universities, including cultural exchanges such as Erasmus+".

Having been closely involved in the development of the current Erasmus+ Programme, we are now keen to explore what involvement in the new Erasmus programme could look like. We welcome the proposals for the 2021-2027 successor scheme to Erasmus+, which were published on 30 May. We will consider these carefully and participate in discussions on them while we remain in the EU.

UK participation in the successor programme will form part of negotiations to come about our future relationship with the EU. As such, the timing of a decision on our future participation is dependent on progress in the overall negotiations about our future relationship with the EU.

You asked whether the Government has evaluated the benefits to the UK of continued participation in Erasmus post-2020 and what findings were made, along with the costs to the UK to participate post-2020 and the expected number of participants.

The Government is undertaking a wide range of ongoing analysis in support of our EU exit negotiations and preparations. Our overall programme of work is comprehensive, thorough and is continuously updated. We are closely engaging with stakeholders on Erasmus+, which provides an opportunity for them to share their views on participation beyond 2020.

The Government supports initiatives for our young people to gain international experience, both through study and work placements abroad, to increase their language skills and cultural awareness, and improve their life chances and employability (in line with business expectations). The Commission's Proposal includes doubling the budget and tripling the number of mobilities, and proposes increased flexibility with regards to third-country participation, allowing for any category of third country to participate in accordance with conditions laid down in a specific agreement.

Of course, we would expect to make a fair financial contribution in exchange for continued participation. With regard to costs of future participation, the Proposal refers to reaching agreement on 'a fair balance as regards the contributions and benefits' but does not specify how any contribution from a third country would be calculated, suggesting that this would be a matter for negotiation. We will ensure that UK access is provided on a fair basis, recognising the potential scale of UK involvement, and we welcome the constructive discussions that are starting to take place.

With regard to the benefits of Erasmus+ and participant numbers, the Erasmus+ National Agency publishes detailed figures for the number of participants in the decentralised actions, and their funding, on its website at https://www.erasmusplus.org.uk/statistics, whilst the Commission publishes details of the funding awarded for centralised actions, and for incoming mobilities, in the Statistical Annexes to its annual reports on Erasmus+. The most recent can be found at https://ec.europa.eu/programmes/erasmus-plus/sites/erasmusplus2/files/annual-report-2016-statannex_en.pdf.

1 August 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department of Education

Thank you for your letter received on 1 August 2018, responding to my letter about the proposed Regulation to establish 'Erasmus': the Union programme for education, training, youth and sport and repealing regulation (EU) no 1288/2013, which the House of Lords EU Home Affairs Sub-Committee considered at a meeting on 5 September 2018.

We note that you have not provided a response to our request for information about the Government's analysis of the Erasmus programme post-2020, and of any potential benefits to the UK's participation post-2020. We also note that no reason was given as to why this information could not be provided. We therefore ask for a more comprehensive response to the matters raised in our letter of 11 July.

We will continue to hold this document under scrutiny. I look forward to hearing from you within 10 working days.

6 September 2018

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department of Education

Thank you for your letter of 6 September responding to my letter of 1 August.

You asked for a more comprehensive response as to what was the Government's analysis of the Erasmus programme post-2020, and of any potential benefits to the UK's participation post-2020.

The Government welcomes the proposals for the 2021-2027 successor scheme to Erasmus+, which were published on 30 May. We are considering these carefully and will continue to participate in discussions on them while we remain in the EU.

The model and structure of the new programme are essentially the same as those of the current Erasmus+ programme and we support this approach. We also support its objectives on outward mobility and education partnerships; the improvement of language skills; social mobility, learning from other high performing education systems; and strengthening the international dimension of the programme. These align closely with UK priorities.

As you note, the rationale for doubling the budget stems from a desire to extend the reach of the programme. The Commission cites, in its introduction to its proposal, that significant increases in budget have been called for by, among others, the Rome Declaration of Heads of State and Government in March 2017 and the Gothenburg summit of November 2017, as well as the European Parliament. It is likely that Commission officials consider tripling the number of exchanges, and the consequent doubling of the budget, as the most realistic change that can be practically accommodated in the seven-year period. The Commission has acknowledged that the steep rise in funding of the present Erasmus+ programme during its final three years has been challenging in many fields, and the proposed funding curve in the Erasmus 2021-27 proposal is a more gradual one. It is worth noting that the proposal is a basis for budget negotiations on the overall Multiannual Financial Framework, and may well not be the final outcome.

The budget attribution to Key Actions (such as exchanges, partnerships and support for policy reform) also shows a great degree of continuity. The main change is that although all educational sectors will get an increased budget in cash terms, this increase is lower for the higher education sector than for the others. This reflects the findings of the 2017 Mid-Term Evaluation of the current Erasmus+ programme that there is more scope for extension in these other sectors than for HE. This is because mobility exchanges have been running for longer in that sector, and most eligible institutions already take part, which is not the case for the other sectors. This is consistent with the UK's analysis and is in line with the Government's belief in the equal importance of technical and academic achievement.

Ultimately, the decision on future UK participation in Erasmus will be decided as part of the future partnership negotiations and the UK is open to exploring participation in this scheme. Clearly there are many moving parts, and the details of UK involvement will need to be subject to the wider decisions of the MFF package.

15 October 2018

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department of Education

Please refer to my letter of 15 October 2018 responding to your letter of 6 September seeking further information on the Government's analysis of the above proposal.

Since I wrote, the negotiations have progressed further and a Partial General Approach on this proposal is scheduled to be agreed at the Education Council on 26 November. A Partial General Approach is an informal political agreement in the Council that can make the next stages in the EU legislative procedure quicker and easier and facilitates agreement with the European Parliament at its first reading. I am writing to ask for the Committee's agreement to grant a waiver and allow the Government to support the Partial General Approach.

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

The important budget and third-country participation provisions remain square-bracketed in the text as they will be negotiated in the wider context of the EU's Multiannual Financial Framework for 2021-2027. The framework and scope of the Programme set out in the draft Regulation are essentially unchanged from the current Erasmus+ programme with three key strands ('Key Actions'): (1) learning mobility; (2) cooperation among organisations and institutions; and (3) support to policy development and cooperation. There are provisions for increased mobility, including for school children, a greater focus on language learning and inclusiveness and more flexible arrangements for participation by third countries, which the UK welcomes. During the negotiations several relatively minor changes have been made to the text. I am content that the revised text will be acceptable to the majority of Member States and the UK.

7 November 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department of Education

Thank you for your letters of 15 October 2018 and 7 November 2018, responding to my letter about the proposed Regulation to establish 'Erasmus': the Union programme for education, training, youth and sport and repealing regulation (EU) no 1288/2013. The EU Home Affairs Sub-Committee considered your letters at its meeting on 14 November 2018.

I am content to grant a scrutiny waiver to allow the Government to vote on the Partial General Approach for this proposal.

I note that negotiations are ongoing and are part of the wider decisions on the MFF package for 2021-27. As the negotiations progress, the Sub-Committee would welcome an update on the outstanding matters raised in previous correspondence.

As you will be aware, the Sub-Committee has commenced an inquiry into the UK's future participation in Erasmus and has issued a public call for evidence with a deadline of 21 November. We look forward to receiving a submission from the Government.

In the meantime, we will continue to hold this document under scrutiny. I look forward to hearing from you in due course.

14 November 2018

Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office

The Rt Hon Caroline Nokes MP, Minister of State for Immigration, forwarded your letter (dated 18 July 2018) to the FCO for a response on 3 August 2018.

In your letter, you requested further information about how cooperation with the EU in the field of consular affairs relates to negotiations on the future security partnership between the UK and the EU.

Under the provisions of Article 23 of the Treaty on the Functioning of the EU, *"every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection."* Council Directive (EU) 2015/637 sets out the cooperation and coordination measures to facilitate mutual consular protection for unrepresented EU citizens in third countries. The UK will continue to provide consular protection to unrepresented EU citizens on a reciprocal basis during the Implementation Period (30 March 2019 to 31 December 2020) agreed between the EU and UK. After exit, the UK is open to maintaining a close level of cooperation with the EU on crisis preparedness and consular affairs, including the provision of consular protection to unrepresented EU citizens in third countries, on a reciprocal basis.

Further information can be found in the technical note on coordination of external security, pubished by the UK government on 21 June 2018, at https://www.gov.uk/government/publications/technical-note-on-coordination-ofexternal-security.

The UK has significant expertise in crisis preparedness and consular affairs. Thanks to its extensive global footprint of 274 posts in 169 countries and territories, and its network of Honorary Consuls, the UK is able to provide professional consular services worldwide. In addition, British people who need assistance can access advice or help by calling the main number for the FCO or for any diplomatic or consular post 24 hours a day, 7 days a week.

20 August 2018

Letter from the Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office

Thank you for your letter of 18 July when you confirmed that the above had cleared scrutiny.

You requested further information about how cooperation with the EU in the field of consular affairs relates to negotiations on the future security partnership between the UK and the EU.

Negotiations for extending cooperation in the field of consular affairs is a matter led by the Foreign and Commonwealth office. I have therefore asked that the Rt Hon Sir Alan Duncan MP, Minister of State for Europe and the Americas, to provide a response.

I hope that he will provide you with the information that you require.

23 August 2018

PROPOSAL FOR A COUNCIL DECISION AUTHORISING MEMBER STATES TO SIGN AND RATIFY, IN THE INTEREST OF THE EUROPEAN UNION, THE PROTOCOL AMENDING THE COUNCIL OF EUROPE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA (ETS NO. 108) (9765/18)

PROPOSAL FOR A COUNCIL DECISION AUTHORISING MEMBER STATES TO RATIFY, IN THE INTEREST OF THE EUROPEAN UNION, THE PROTOCOL AMENDING THE COUNCIL OF EUROPE CONVENTION FOR THE PROTECTION OF INDIVIDUALS

WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA (ETS NO. 108) (9766/18)

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your letter of 25 July 2018 about the proposed Council Decision for the proposed Amending Protocol for the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which was considered by the EU Home Affairs Sub-Committee on 5 September 2018.

We are content to clear this document from scrutiny and do not require a response.

6 September 2018

ACCESS TO MEDICINES AND MEDICAL PRODUCTS IN THE EVENT OF A 'NO DEAL' EU EXIT

Letter from Lord Jay of Ewelme to Stephen Hammond MP, Minister of State for Health, Department of Health and Social Care

The Home Affairs Sub-Committee of the House of Lords EU Committee has been reviewing the Government's contingency preparations to ensure the UK has continued access to medicines and medical products in the event of a 'no deal' Brexit. On 31 October 2018 we heard evidence from Mark Dayan, Policy and Public Affairs Analyst, Nuffield Trust; Richard Freudenberg, Secretary-General, British Association of European Pharmaceutical Distributors; and Julian Maitland-Walker, Senior Partner, Maitland Walker LLP. We also received a comprehensive private briefing from DHSC officials, and are appreciative of their assistance, which has helped the Committee's private deliberations. Nonetheless we would be grateful to receive an on the record response from you to the questions below.

Contingency planning

In August you wrote to industry advising that the supply chains for medicines from the EU and EEA to the UK "may be affected by changes to border processes and procedures" in the event of there being no deal on Brexit.[1] Given that the Healthcare Distribution Association estimates that 45% of all medicines in the UK are imported from the EU, disruption to this supply chain could be felt acutely in the UK.[2]

We welcome the series of technical notices for contingency planning from Government, which provide some clarity on how these disruptions will be minimised. Officials also demonstrated that significant contingency planning had been undertaken. However, evidence from witnesses suggests there is still concern that a no deal Brexit may limit the availability of medicines and medical products in the UK.

- Do you consider that the contingency planning, however extensive, will remove all risk of disruption to the supply of medicines and medical products in the event of the UK leaving the EU without a deal?

Border delays

One witness told the Committee that there was little sign to date of potential delays on the border being addressed. This concurs with the findings in the National Audit Office's report *The UK border: preparedness for EU exit*,[3] which says: "The Government currently expects that, if the likelihood of a 'no deal' scenario increases over the autumn of 2018, then contingency operations could start from January

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[1] Matt Hancock MP, letter to medical suppliers, 23 August 2018,

https://www.gov.uk/government/publications/letter-to-the-health-and-care-sector-preparations-for-a-potentialno-deal-brexit

[2] Martin Sawer, Executive Director of the Healthcare Distribution Association, Oral evidence, Commons Health Committee, 5 December 2017, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-and-social-carecommittee/brexit-the-regulation-of-medicines-medical-devices-and-substances-of-human-origin/oral/75419.html

[3] National Audit Office, The UK border: preparedness for EU exit, https://www.nao.org.uk/wp-content/uploads/2018/10/The-UK-border-preparedness-for-EU-exit.pdf , p. 27.

or February 2019. This could include escalating planning for the priority delivery of vital supplies such as food and medicine."[4] The report also says: "In September 2018, BDG [Border Delivery Group] assessed that 11 of the 12 systems it monitors were at risk of not being delivered on time and to acceptable quality by 29 March 2019 (rated 'amber' or above)."[5]

- What percentage of NHS-purchased medicines and medical products are imported from or via the EU?
- What work have you undertaken to ensure the import of medicines and medical products is treated as a priority at the border in the event of no deal?

We understand that industry has been asked by Government to stockpile six weeks' worth of medicines and medical products. We note that in evidence to the Commons Health and Social Care Committee you said that the six weeks was a "planning assumption for how long we will need stockpiles of medicines before we are able to resume supplies either because the blockages at the border are relieved or there are other routes in place".[6]

- What did you mean by "other routes" and what plans have you made to secure these before 29 March 2019?
- How confident are you that the contingency measures deployed as an immediate response to secure the supply of medicines and medical products can be sustained beyond the first six weeks after Brexit, should this be required?

On 23 October 2018 you said that an invitation to tender for additional storage capacity had been made that day.[7]

- Can you provide more detail on the tender for additional storage capacity, including: the amount of funding awarded; the size of the storage obtained; and how much of that is for refrigerated storage.
- You told the Commons Health Committee that medical products with short shelf-lives (which cannot be stockpiled) would be flown in.[8] Mark Dayan told the Committee that this was sensible, but would "obviously be expensive, and potentially, logistically difficult".
- What plans has the Government made to secure and prioritise airborne routes for medical products?
- What is the expected cost of flying in medical products for a six-week period?
- Can you list which medicines and medical products will be prioritised to be flown in? If no such list exists yet, how will you prepare it, and when?

Inspections and certifications of batches for new products

You told the Commons Committee that, with effect from 29 March 2019, the Government would "unilaterally recognise EMA approvals and EMA batch testing to make sure there is no barrier in this space".[9] Mark Dayan warned that this was unlikely to be reciprocated by the EU, creating a strong incentive for companies to locate those processes and people to the EU. Julian Maitland-Walker agreed that companies were already "moving their licensing activities and licence applications out of the UK.

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[4] National Audit Office, The UK border: preparedness for EU exit, https://www.nao.org.uk/wp-content/uploads/2018/10/The-UK-border-preparedness-for-EU-exit.pdf , p. 27.
[5] National Audit Office, The UK border: preparedness for EU exit, https://www.nao.org.uk/wp-content/uploads/2018/10/The-UK-border-preparedness-for-EU-exit.pdf , p. 29.
[6] Commons Health and Social Care Committee, Oral evidence: Impact of a no deal Brexit on health and social care, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-and-social-care-committee/impact-of-a-no-deal-brexit-on-health-and-social-care/oral/92043.html
[7] Commons Health and Social Care Committee, Oral evidence: Impact of a no deal Brexit on health and social care, 23 October 2018, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-and-social-care-committee/impact-of-a-no-deal-brexit-on-health-and-social-care/oral/92043.html
[8] Commons Health and Social Care Committee, Oral evidence: Impact of a no deal Brexit on health and social care, 23 October 2018, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-and-social-care-committee/impact-of-a-no-deal-brexit-on-health-and-social-care/oral/92043.html
[9] Commons Health and Social Care Committee, Oral evidence: Impact of a no deal Brexit on health and social care, 23 October 2018, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-and-social-care-committee/impact-of-a-no-deal-brexit-on-health-and-social-care/oral/92043.html

Previously, quite a lot of licensing was done in the UK for the European Union. Now that is being moved primarily, I think, to Germany."

• What analysis has the Government conducted on the impact to the UK economy and employment of companies shifting their licensing activities from the UK to the EU as a result of a unilateral recognition of EMA approvals by the UK? How many companies have already shifted their activities or have indicated their intention to do so?

Introduction of new products to the UK

One witness was very concerned that pharmaceutical companies would give less priority to licensing a new drug in the UK post-Brexit, given that the UK would represent a smaller market than the EU. He cited evidence that smaller markets had slower lead times for the introduction of new drugs into those markets.

- What are the Government's plans to encourage drug companies to prioritise introducing new products to market in the UK?

The technical notice published on 14 September states that the EU is planning to implement new regulations for clinical trials but they "will not be in force in the EU at the time that the UK exits the EU and so will not be incorporated into UK law on Exit day under the terms of EUWA."[10] The notice goes on to say that the UK will "align where possible with the CTR without delay when it does come into force in the EU, subject to usual parliamentary approvals."

We note an article in the *Independent* on 3 October 2018 that UK patients have been cut from an international clinical trial to test a new heart attack drug because of uncertainties about registering new medicines after Brexit.[11] The article claims the drug company fears that data in the UK will no longer be acceptable to the European Medicines Agency once the UK leaves the EU.

- What action is the Government taking to resolve uncertainty about data from clinical trials conducted in the UK being accepted by the EMA?

Meeting market needs

One witness said there would be less flexibility post-Brexit for products to be redistributed to meet the needs of the market. For example, manufacturers can at present easily move products from one Member State to another to meet need. Losing this flexibility creates a risk that shortages of medicines in the UK may be harder to manage.

- What consideration has the Government given to the reduced flexibility of manufacturers to move products from the EU to the UK in response to market needs, and how do you plan to mitigate this risk?

I look forward to a response within ten working days.

22 November 2018

EU INSTITUTIONS REGULATION EC 45/2001

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport, to the Chairman and Lord Jay

I am writing to update you on the EU Institutions Regulation (45/2001) following the vote which took place at the Justice and Home Affairs Council on 11 October.

[10] HM Government, How medicines, medical devices and clinical trials would be regulated if there's no Brexit deal, https://www.gov.uk/government/publications/how-medicines-medical-devices-and-clinical-trials-would-be-regulated-if-theres-no-brexit-deal/how-medicines-medical-devices-and-clinical-trials-would-be-regulated-if-theres-no-brexit-deal

[11] Alex Matthews-King, "Brexit uncertainty sees UK patients cut from heart attack drug trial", Independent, 3 October 2018, https://www.independent.co.uk/news/health/brexit-heart-attack-drug-trial-research-european-medicines-agency-recardio-dutogliptin-a8566426.html

As you aware, the Regulation sets out the rules for processing personal data by the European Union institutions and bodies. The Regulation is being updated to align with the General Data Protection Regulation (GDPR), which came into effect in May 2018.

I would like to express my thanks to you and the Committee for granting a request for a scrutiny waiver on this file which enabled the representing Home Office Minister to vote in favour of the Regulation at JHA Council. As you are aware, our understanding was this vote would take place at ECOFIN on 2 October, but ultimately took place at the Justice and Home Affairs Council and passed without any interventions.

30 October 2018

UK'S JHA OPT-IN PROTOCOL

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

On 18 July 2018 the House of Lords EU Home Affairs Sub-Committee held an evidence session with Professor Michael Levi, Professor of Criminology, Cardiff University; Mr Richard Martin, Deputy Assistant Commissioner, Metropolitan Police; Mr John Binns, Partner, BCL Solicitors LLP; and Professor Estella Baker, Professor of European Criminal Law and Justice, De Montfort University.

On 5 September 2018, the Sub-Committee held a further evidence session with Claude Moraes MEP, Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE). Mr Moraes also sent the Sub-Committee a written evidence submission.

Full transcripts, to which the quotations and question numbers in this letter refer, are available at the EU Home Affairs Sub-Committee website, https://www.parliament.uk/eu-home-affairs-subcommittee.

The aim of these sessions was to investigate the operation of the United Kingdom's Justice and Home Affairs (JHA) opt-in during the proposed transition or implementation period. This letter draws on these sessions, and consists of a series of questions.

The JHA opt-in during transition

The Sub-Committee's evidence sessions focused on the provision set out in Part Four of the draft Withdrawal Agreement (published on 19 March 2018), and particularly Article 22(5), which states:

"During the transition period, in relation to measures which amend, build upon or replace an existing measure adopted pursuant to Title V of Part Three of the TFEU by which the United Kingdom is bound before the date of entry into force of this Agreement, Article 5 of Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union and Article 4a of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice shall continue to apply mutatis mutandis. The United Kingdom shall, however, not have the right to notify its wish to take part in the application of new measures pursuant to Title V of Part Three of the TFEU other than those referred to in Article 4a of Protocol No 21.

"In order to support continuing cooperation between the Union and the United Kingdom, under the conditions set out for cooperation with third countries in the relevant measures, the Union may invite the United Kingdom to cooperate in relation to new measures adopted under Title V of Part III TFEU."

The Sub-Committee's understanding of this provision is that, in effect, the UK will retain the responsibilities of EU Membership without any of the privileges of the UK's opt-in arrangements. The draft Agreement provides that the UK will remain bound during the transition period to those measures that the UK has opted into by 30 March 2019, when the transition period begins. For those measures, the status quo will be maintained until December 2020, when the transition period is set to end.

During the transition period the UK will not be able to opt into any new JHA measures. However, the UK will have the option to opt into any measures which amend, replace or build on existing JHA measures in which the UK already participates.

On the scrutiny of JHA measures during transition, Claude Moraes MEP told us (Q18): "We just do not know how [scrutiny] will happen because it will be very difficult for a kind of skeleton UKRep to

follow everything, so of course mistakes will be made and it will be difficult … If we have to build on a particular measure, we may miss out."

1. What avenues will be open to the UK to scrutinise or influence JHA measures during transition, once it loses its seats in the European Parliament and Council?

Other Member States' influence on the UK's JHA opt-in during transition

The draft Withdrawal Agreement maintains the section of Protocol 21 (Article 4a) under which EU Member States can "urge" the UK to opt-in and/or "bear the financial consequences" when the UK's non-participation "makes the application of that measure inoperable for the other Member States of the Union".

We asked witnesses about this draft provision (Q13). John Binns felt that "the likelihood of [this] happening during the transition period of 21 months" was "low", and Professor Estella Baker agreed. However, Mr Binns felt that if Member States were to invoke this provision, "I think there would need to be a vote in Council … by qualified majority."

2. What, in your view, is the likelihood that other Member States will take advantage of the provisions in the Withdrawal Agreement to "urge" the UK to opt into JHA measures? How would this work in practice: would there need to be a vote in Council? What would be the European Parliament's role?

JHA legal basis

Following his evidence session, Mr Moraes wrote to us with a description of the UK Government's "long history of not agreeing with the concept of 'legal basis' for non-JHA measures but that include JHA content". According to Mr Moraes, the Government

"argues that measures with JHA content fall into three categories:

- If an international agreement pursued solely a JHA purpose, which it describes as a 'whole JHA measure', the normal legal base rules would require just a JHA legal base for the relevant Decision containing the negotiating mandate or on signature or conclusion;
- If an international agreement pursued both a JHA and another objective with neither being incidental, what the UK Government calls 'a partial JHA measure', two legal bases would be needed for the relevant Decision—a JHA legal base and a legal base corresponding to the other objective;
- If an international agreement pursued two objectives, a JHA objective and a non-JHA objective, with the JHA objective being incidental to the non-JHA objective, an 'incidental JHA measure', then under the normal legal base rules the relevant Decision would only require the legal base that corresponded to the non-JHA objective."

3. Would you agree with Mr Moraes' categories?

We asked witnesses whether the opt-in provisions of the Withdrawal Agreement will apply to measures with JHA content, but without a JHA legal basis, and whether they believed that the EU could, once the UK becomes a third country, insist that the UK take part in measures that the UK had previously opted out of on the grounds that they contained JHA content.

Mr Moraes told us (Q20):

"It is still quite vague as to how the Council was going to deal with the encouragement to opt in. The general view on the [European Parliament's] Brexit steering committee was that in the withdrawal agreement, because not everyone has access to what is happening in the negotiations, this is a kind of convenience thing about existing opt-in arrangements that are then built upon or replaced. The Council will enter into a discussion on it, and there will be a mechanism for that in the transition period, and the Parliament will enter into it if it is a consent point."

In his written submission, Mr Moraes suggested:

"The European Parliament would…have a clear role if an international agreement [on a measure with a JHA legal basis] was reached. Under Article 218 on EU agreements with third countries, consent by the European Parliament would be required for the adoption of such agreements. For example, if an

agreement were reached to grant the UK access to Europol databases then this would need the consent of the European Parliament."

4. What discussions has the Government had about the likelihood that the UK will be obliged to take part in JHA measures during the transition period that it had previously opted out of? Has the Government made an assessment of the potential role of the Council and European Parliament in such a decision?

I look forward to hearing from you within ten working days.

14 September 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

I apologise for the delay in responding to your letter of 14 September on the application of the UK's JHA Opt-in Protocol during the proposed Implementation Period (IP). I had hoped to be able to provide confirmation of the opt-in / opt-out processes during the IP, to help guide your planning for scrutiny of opt-in / opt-out decisions during this period. Whilst the relevant text in the Withdrawal Agreement has been agreed, we are waiting for confirmation of those processes. The response below reflects our understanding, to be confirmed, that the current processes will not change significantly.

Your letter commented that "The Sub-Committee's understanding of this provision (i.e. Article 122(5) of the Withdrawal Agreement is that, in effect, the UK will retain the responsibilities of EU Membership without any of the privileges of the UK's opt-in arrangements."

I do not agree with this assessment. The UK will continue to be bound by the EU measures that we have already opted into. JHA opt-in and Schengen opt-out decisions taken since the Referendum have been taken in the full knowledge of our impending departure from the EU and after considering the operational, legal and political benefits of participating, alongside any impacts arising from the UK's forthcoming exit. The Withdrawal Agreement allows the UK to continue to participate in the tools and legislation we have already chosen to participate in for the Implementation Period, and to participate in amendments to those measures if we choose to do so. Given the length of time it takes the EU to negotiate and implement new EU legislation (on average around 2 years), it would be highly unlikely that any legislation setting up substantively new JHA tools, proposed by the Commission after March 2019 would come into force before December 2020. The UK therefore loses little from not being able to choose to be bound by such EU legislation.

Your letter asked: what avenues will be open to the UK to scrutinise or influence JHA measures during transition, once it loses its seats in the European Parliament and Council?

The UK will no longer be a EU Member State during the implementation period and will no longer attend most Council or Commission led meetings. However, as set out in the Withdrawal Agreement, common rules will remain in place and the UK may continue to participate in EU agencies and bodies where the presence of the United Kingdom is necessary and in the interest of the Union, or where the discussion concerns the UK and its citizens.

The UK will also retain the ability to choose whether to participate in measures amending or replacing existing EU legislation in which the UK participates, and the UK can also be invited to cooperate in any new JHA measures during the implementation period.

Whilst our ability to scrutinise or influence JHA measures during the IP will be limited, any JHA measures will only impact the UK where we choose. We will therefore need to place a greater emphasis on influencing the EU by influencing EU institutions and Member States outside of institutional structures and bilaterally.

Your Committee also asked what is the likelihood that other Member States will take advantage of the provisions in the Withdrawal Agreement to "urge" the UK to opt into JHA measures; how would this work in practice: would there need to be a vote in Council; and what would be the European Parliament's role?

The provisions in the Withdrawal Agreement maintain the effect of Article 4a of Protocol (No. 21) to the EU Treaties, including the procedure which applies where there is a determination by the Council that the UK's non-participation in an amended version of an existing measure makes the application of that measure inoperable for other EU Member States or the Union. Since the Treaty of Lisbon came into force in 2009, I am not aware of a single instance where this mechanism has been exercised to urge the UK to participate in a measure.

The Article 4a mechanism requires a determination by the Council by qualified majority voting. The European Parliament has no role in this process. If, two months after that determination, the UK has not chosen to opt in under either Articles 3 or 4 of Protocol (No. 21), the existing measure will no longer be binding or applicable on the UK. The EU may, on the basis of a proposal from the Commission agreed by a qualified majority of the Council, require the UK to pay costs associated with the cessation of this measure. The UK can nevertheless still choose to opt-in post-adoption at a later date.

I agree with your expert witnesses that it is unlikely those provisions would be used during the Implementation Period. At the very least, I would expect the UK to have the opportunity to consider a post-adoption opt-in decision, as we did with the Europol legislation and as we will do with the Eurojust legislation, before the Commission seeks to trigger the ejection mechanism under Article 4a.

Your letter asks whether I agree with the description set out by Claude Moraes MEP that:

"If an international agreement pursued solely a JHA purpose, which it describes as a 'whole JHA measure', the normal legal base rules would require just a JHA legal base for the relevant Decision containing the negotiating mandate or on signature or conclusion;

If an international agreement pursued both a JHA and another objective with neither being incidental, what the UK Government calls 'a partial JHA measure', two legal bases would be needed for the relevant Decision—a JHA legal base and a legal base corresponding to the other objective;

If an international agreement pursued two objectives, a JHA objective and a non-JHA objective, with the JHA objective being incidental to the non-JHA objective, an 'incidental JHA measure', then under the normal legal base rules the relevant Decision would only require the legal base that corresponded to the non-JHA objective."

I agree with the assertion that there are three categories of documents and that Mr Moraes has set out the 'normal' legal base rules as defined by the CJEU. It is worth noting that in the instances where there are two main objectives of an international agreement, the EU's position has generally been to split the Council Decisions on signature and conclusion into two separate Council Decisions, one covering the JHA aspects and one covering the non-JHA aspects.

It is also worth pointing out that Article 2 of Protocol (No. 21) applies specifically to measures and provisions in international agreements. Therefore, because of this wording in Protocol (No. 21), the position taken by this and previous administrations since 2011 is that because of the existence of the JHA opt-in Protocol, a JHA legal base should be cited for any obligations that fall within scope of the competences set out in Title V of Part III of the TFEU .

Nevertheless, even where a JHA legal base is not cited, including in a Council Decision authorising the signature or conclusion of an international agreement, the Government considers that the UK's JHA opt-in applies to JHA obligations. This is to ensure that the UK is not bound by JHA obligations where we do not choose to be so bound, which is the aim of the opt-in Protocol. In the case of a Council Decision relating to an international agreement, the opt in would apply to the extent that the Decision authorised the EU to enter into provisions of the international agreement falling within the scope of Title V of Part III of the TFEU.

The Withdrawal Agreement (Article 122) uses the same language as used in Protocol (No. 21) to the EU Treaties[1]. Protocol (No. 21) applies unmodified with the exception in Article 122(5), and therefore does not require a change in the UK's current approach to the application of the JHA opt-in to JHA obligations.

[1] Withdrawal Agreement Article 122(5): "…..measures which amend, build upon or replace an existing measure adopted pursuant to Title V of Part Three of the TFEU…". Protocol (No. 21): "…proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union….".

However, the opt-in provisions in Article 122(5) of the Withdrawal Agreement only apply to amending or replacing measures, and most measures, such as international agreements with third countries, which contain JHA obligations, are unlikely to be amended or replaced during the IP. Therefore, I would not expect the UK to be required to take opt-in decisions in relation to JHA obligations in measures that do not cite a JHA legal base often, if at all, during the Implementation Period.

Your letter asked what discussions the Government has had about the likelihood that the UK will be obliged to take part in JHA measures during the transition period that it had previously opted out of, and whether the Government made an assessment of the potential role of the Council and European Parliament in such a decision.

Article 122(1) is clear that measures the UK has previously chosen not to participate in would not apply to the UK during the IP. The provisions in the Article 122(5) of the Withdrawal Agreement are there to ensure that the UK can continue to participate fully in the EU tools in which we already participate, by allowing the UK to participate in any amendments to those tools. If the UK decided not to participate in such amendments, then Article 4a of Protocol (No. 21) allows the EU to consider ejecting the UK from the underlying measure. The UK may be invited to participate in new tools, but there is no obligation to do so.

1 November 2018

Letter from the Lord Jay to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter dated 1 November 2018 regarding the UK's Justice and Home Affairs Opt-in Protocol. The EU Home Affairs Sub-Committee considered your letter at itsmeeting on 28 November 2018.

I note that the latest text of the Withdrawal Agreement allows the transition period to be extended to 31 December 2022.

- In light of the possibility that the transition period could be extended to 31 December 2022, and your statement that it takes "on average around 2 years" to negotiate and implement new EU legislation, would you still maintain that it is "highly unlikely" that legislation setting up new JHA tools will come into force during the transition period? What assessment have you made of the risk to the UK from not being able to exercise its JHA opt-in during an extended transition period?

We note your arguments regarding the exercise of the UK's opt-in, including in respect of international agreements. The House of Lords EU Committee has, since 2011, repeatedly rejected the Government's arguments regarding its unilateral assertion of the UK's opt-in arrangements to EU measures brought forward without a Title V legal basis. The Lords EU Committee, along with the European Scrutiny Committee in the Commons, the Council and the Commission, has taken the view that the UK's Opt-in Protocol is only engaged when a proposal cites a Title V legal basis. With regard to international agreements, the EU Justice Sub-Committee undertook an inquiry into this issue, and its report, published in March 2015, challenged, among other matters, the Government's broad interpretation of the Opt-in Protocol particularly, the meaning of the phrase "pursuant to [Title V]", and criticized the Government's "misconceived" approach to the determination of the legal base of an EU measure with JHA content. We note that notwithstanding your reference to the consistent view of "previous administrations since 2011", the Government failed to submit a formal response to our 2015 report; a failure we reluctantly accepted after the result of the EU referendum in 2016.

Our 2015 report warned that the Government's policy on the unilateral assertion of the UK's opt-in, albeit in the context of international agreements, gave rise a to a "very considerable" risk of legal uncertainty. While we note your expectation that the Government will not be "required to take opt-in decisions in relation to JHA obligations in measures that do not cite a JHA legal base, often, if at all" during any transition period, we are now concerned that, as 29 March 2019 draws near, the Government's history of unilaterally asserting the application of the UK's opt-in to EU legislation that has not been brought forward pursuant to a Title V legal basis has the potential to create domestic legal uncertainty; in particular, but not limited to, those occasions where the UK has asserted that it is not bound by a specific EU measure (or any included JHA content) brought forward without a Title V legal

basis and where there is nothing within the text of the EU legislation indicating that the UK has decided that it is not bound. An example is Regulation 2017/2402 of 12 December 2017, laying down common rules on securitisation and creating a European framework for simple, and transparent and standardised securitisation.

In light of the Government's policy, we would be grateful for you answers to these questions:

- Since 2011, on how many occasions has the Government unilaterally asserted in the Council that the UK's opt-in arrangements apply to EU measures that do not include a Title V legal basis? How many times has the Government indicated that it is not participating in such measures? How many of these measures will apply to the UK on 29 March 2019?
- How does the Government plan to deal with the uncertainty that may arise as a result of these past actions? The Government's Explanatory Notes to the EU (Withdrawal) Bill said that the purpose of the legislation was to "convert EU law as its stands at the moment of exit into domestic law before the UK leaves the EU and preserve laws made in the UK to implement EU obligations". In light of this aim, do the provisions of the European Union (Withdrawal Act) 2018 offer a solution to the uncertainty created by the Government's unilateral assertion of the UK's opt-in arrangements? If so, which provisions?

I look forward to a response within 10 working days.

28 November 2018