



Ministry of
JUSTICE



Home Office

**Report to Parliament on the Application
of Protocols 19 and 21 to the Treaty on
European Union (TEU) and the Treaty on
the Functioning of the European Union
(TFEU) ('the Treaties') in Relation to
EU Justice and Home Affairs Matters
(1 December 2010 – 30 November 2011)**

January 2012



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Protocols 19 and 21 to the Treaty on European
Union (TEU) and the Treaty on the Functioning
of the European Union (TFEU) ('the Treaties')
in Relation to EU Justice and Home Affairs
Matters (1 December 2010 – 30 November 2011)**

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
and the Secretary of State for the Home Department
by Command of Her Majesty

January 2012

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Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) ('the Treaties') in Relation to EU Justice and Home Affairs Matters (1 December 2010 – 30 November 2011)

Second Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the Union (TFEU) in Relation to EU Justice and Home Affairs (JHA) Matters (1 December 2010 – 30 November 2011)

The Government commitments on enhanced Parliamentary scrutiny of the JHA opt-in

The first annual report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the Union (TFEU) in Relation to EU Justice and Home Affairs (JHA) matters for the period 1 December 2009 – 30 November 2010 was submitted in January 2011. This followed a Written Ministerial Statement (WMS) made by Rt Hon Baroness Ashton in June 2008 which outlined the then Government's commitment to strengthening Parliamentary scrutiny of the JHA opt-in.

In his WMS on 20 January 2011, the Minister for Europe outlined the Coalition Government's commitment to continue to honour the commitments made by Baroness Ashton and to further strengthen Parliamentary scrutiny of JHA opt-in decisions. This included a commitment to deposit a WMS in Parliament on all opt-in decisions or to make an oral statement where appropriate and necessary; reiterated the existing right of the House of Commons European Scrutiny Committee and House of Lords European Union Select Committee ('the Committees') to call a debate on an amendable motion on any opt-in decision; and, where there is strong Parliamentary interest, the Government expressed its willingness to set aside Government time for a debate in both Houses on its proposed approach.

Following the commitments made in January, eight¹ debates have been held (either on the Floor of the House or in Standing Committee) on the UK's participation in proposed EU legislation in the field of JHA. Further information can be found at Annex 1 to this report.

It is open to the Government to opt in to measures post-adoption and in such cases it will inform the Committees of its intention to do so. The Committees will have an opportunity to offer views on this. The Government will also consider whether to offer a debate on Government time on a post adoption opt-in decision if it is likely to attract significant Parliamentary interest.

¹ The House of Commons combined the debates on the draft Directive on establishing minimum standards on the rights, support and protection of victims of crime and the draft Regulation on mutual recognition of protection measures in civil matters.

Code of Practice

Baroness Ashton's statement also included a commitment to produce a Code of Practice setting out the Government's commitment to effective scrutiny of opt-in decisions. The Ministry of Justice and Home Office have worked with the Committees to prepare such a Code of Practice and this will be presented to Parliament as soon as possible. The Code of Practice will also include the commitments the Government made in January 2011 to further enhance scrutiny arrangements.

Opt-in webpage

As a further measure to assist Parliament and the public in exercising better scrutiny in the area of JHA, the Government agreed to set up a publicly-available JHA opt-in webpage. This lists all JHA opt-in decisions the Government has made since the entry into force of the Lisbon Treaty (including those subsequent to 30 November 2011), along with opt-in decisions that are under consideration and those that are expected in the coming months. The JHA opt-in webpage also explains how the JHA opt-in² and Schengen opt-out Protocols³ operate and how the Government makes decisions under these Protocols. The Government has made further improvements to the webpage following correspondence with the Member of Parliament for Daventry.

The JHA opt-in webpage can be located at the following link:
www.homeoffice.gov.uk/publications/about-us/legislation/jha-decisions

Protecting the application of the opt-in Protocol

The UK's participation in EU JHA measures is principally governed by Protocols 19 (Schengen opt-out) and 21 (JHA opt-in) to the TEU and the TFEU. A decision to opt in to a new legislative proposal must be communicated in writing to the President of the Council within three months of the date on which the final language version of the proposal is presented to the Council by the Commission. The Government does not, however, need to inform the Council if it decides not to opt in to a legislative proposal. Where the proposed measure builds on part of the Schengen *acquis* in which the UK participates, the UK has three months to opt out.

² **JHA Opt-in Protocol 21:** with Ireland, the UK can choose, within three months of publication, whether to participate in any new JHA proposal. If the UK does not opt in at the start, we can apply to join a measure on adoption. The UK cannot opt out once it has opted in. The UK still has a seat at the negotiating table if it does not opt in to a proposal but it has no vote and limits our negotiating weight.

³ **Schengen Opt-out Protocol 19:** Within three months of publication, the UK, with Ireland, can choose whether to participate in negotiations on any new draft proposal which builds on that part of Schengen in which the UK participates i.e. the police and judicial cooperation elements of Schengen (we do not participate in the frontier control elements). If the UK does not opt out at the start, it is automatically bound.

It is vital for UK interests that the opt-in Protocol is applied in a consistent manner. The Government has, during the past 12 months, noted the publication of measures in non-JHA policy areas which include provisions imposing JHA obligations but which do not cite a Title V legal base (the normal TFEU legal base for a JHA proposal). It is the Government's position that the UK is not bound by such measures, unless it has opted into them pursuant to the Protocol.

The Government has also reviewed its policy on asserting the opt-in Protocol in circumstances where the EU is exercising exclusive external competence. The Government's position is that the UK is entitled to decide whether or not to participate in any measure where the EU is exercising exclusive external competence.

The Government believes that this approach best protects the interests of the UK in seeking to retain the widest possible freedom of choice in relation to EU measures containing JHA obligations.

JHA opt-in decisions and Schengen opt-out decisions from the period 1 December 2010 – 30 November 2011

Annex 1 is a table of all JHA opt-in decisions and Schengen opt-out decisions taken from 1 December 2010 until 30 November 2011. These decisions are listed in chronological order.

Over the past year, the Government has taken 17 decisions on UK participation in EU JHA legislative proposals. In total the UK has opted in to nine proposals under the JHA opt-in Protocol, including one decision to opt in to a measure post adoption (the Directive on Human Trafficking). The Government has decided to not opt in to eight proposals. The Government did not take any decisions under the Schengen opt-out Protocol, as no Schengen-building measures were proposed during this period.

Whilst decisions are taken collectively by Government and the majority are the responsibility of the Home Office and the Ministry of Justice, it is worth noting that the lead on these proposals falls to a wide range of Departments.

Key opt-in decisions made by the Government

Decisions of particular prominence this year included, in December 2010, the Government's decision to opt in to the Directive on attacks against information systems and in May, the decision to opt in to the EU Passenger Name Records (PNR) Directive, followed by the decision to participate in the Agreement between the EU and Australia on the transfer and use of PNR data. The decision to opt in to the main PNR Directive was preceded by debates in both Houses, on the Floor of the House of Lords and in Standing Committee in the House of Commons.

The Government also opted in to a Directive on establishing minimum standards on the rights, support and protection of victims of crime and a Regulation on civil protection measures in August. The Directive and Regulation are the first steps in the Budapest Roadmap on victims, which was agreed at the Justice and Home Affairs Council on 3–4 June 2011. The Government offered both proposals for debate to Parliament. The House of Commons debated this on the Floor of the House on a take note motion. Both Committees agreed with the Government's decision to opt in.

In September, the Government made the decision not to opt in to the Directive on the right of access to a lawyer in criminal proceedings. This was debated on a Government motion in the House of Commons and the subsequent vote was in favour of the Government's decision. After holding evidence sessions to inform their view the House of Lords European Union Select Committee also agreed with the Government's decision not to opt in.

Also in September, the Government decided not to opt in to proposed Directives on the minimum standards on procedures in Member States for granting and withdrawing international protection, and the laying down of minimum standards for the reception of asylum seekers.

Dossiers currently under consideration

Seven legislative proposals which are currently subject to Ministerial and Parliamentary consideration with respect to an opt-in decision:

- Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other
- Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation
- Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund
- Proposal for a Regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management
- Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management
- Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Justice Programme
- Proposal for a regulation of the European Parliament and of the Council establishing an action programme for customs and taxation in the European Union for the period 2014–2020.

Forthcoming dossiers over the next 12 months

Annex 2 outlines legislative proposals which we expect to be brought forward over the next 12 months, based on information provided by the European Commission, notably in its Work Programme for 2012, and that are likely to (subject to confirmation when the text of the proposal is available) require a decision on UK participation under the JHA opt-in Protocol. This list remains indicative and subject to change by the Commission; it is also possible for groups of Member States to bring forward proposals in this area. A summary of each measure is provided.

A number of international agreements and measures in other policy areas that may include JHA obligations are expected to be brought forward. These will also require decisions under the JHA opt-in Protocol.

The Government continues to negotiate a number of Directives to which we have already opted in, with the aim of securing the best possible result for UK interests. This includes the Directive on victims, the Regulation on civil protection measures and the European Investigation Order.

In addition, negotiations continue on a number of proposals where, although the UK did not opt in during the initial three month period, it remains the Government's objective to seek to amend the text in such a way that it will allow the UK to consider participation post adoption,; for example, in relation to the proposed Regulation on a European Account Preservation Order and the Directive on Access to a Lawyer.

**Lord Chancellor and Secretary of State for Justice, and the
Secretary of State for the Home Department**

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Annex 1: JHA opt-in and Schengen opt-out decisions taken between 1 December 2010 – 30 November 2011

	Proposal	Decision-making process	Reasoning for Government's decision
1	<p>Title Proposal for a Council Decision on the position to be taken by the European Union in the EEA Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement</p> <p>Ref. 13493/10</p> <p>Legal base Articles 48, 218(9) & 352 TFEU</p> <p>Department Department for Work and Pensions</p>	<p>Date of Publication 10/09/10</p> <p>Deposited to Parliament 08/10/10</p> <p>Date of Explanatory Memorandum 15/10/10</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision N/A</p> <p>Parliament notified of decision 19/01/2011</p>	<p>The proposals would have the effect of extending social security coordination to non-active persons (that is, people who have never worked or paid contributions) moving between the EU and EEA.</p> <p>The Government does not support the extension of such rights to people from countries outside the EU. The proposal was replaced by a new proposal on 8 March 2011 (Ref 7591/11). The only change was the removal of Article 352 TFEU from the substantive legal bases.</p> <p>As the Government had not opted in to the original proposal, it confirmed its decision to Parliament not to opt in to the replacement proposal on 17 August 2011.</p>
2	<p>Title Proposal for a Directive of the European Parliament and of the Council on attacks against information systems and repealing Council Framework Decision 2005/222/JHA</p> <p>Ref. 14436/10</p> <p>Legal base Article 83(1) of the TFEU</p> <p>Department Home Office</p>	<p>Date of Publication 30/09/10</p> <p>Deposited to Parliament 05/10/10</p> <p>Date of Explanatory Memorandum 13/10/10</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 23/05/11</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in</p> <p>EU notified of decision 29/12/10</p> <p>Parliament notified of decision 03/02/11</p>	<p>The Directive seeks to address the threat from large-scale attacks on information systems by ensuring that Member States have adequate legislation to allow the prosecution and punishment of those organising, committing or supporting large-scale attacks. It also seeks to ensure that Member States respond quickly to requests from other Member States for assistance in cyber crime cases. The Government opted in to the Directive to support the work to tackle cyber crime at EU level. This is an international problem, and we need to work with partners to ensure that we have equivalent legislation and processes to provide mutual support.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
3	<p>Title Proposal to recast the EURODAC Regulation concerning the comparison of fingerprints for the effective application of the Dublin Regulation</p> <p>Ref. 14919/10</p> <p>Legal base Article 78(2)(e) of the TFEU</p> <p>Department Home Office</p>	<p>Date of Publication 11/10/10</p> <p>Deposited to Parliament 12/10/10</p> <p>Date of Explanatory Memorandum 25/10/10</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in</p> <p>EU notified of decision 11/01/11</p> <p>Parliament notified of decision 11/01/11</p>	<p>The Regulation will govern the operation of the EURODAC fingerprint database, which collects the fingerprints of asylum seekers, and certain illegal entrants to the EU, in order to help Member States to determine who is responsible under the Dublin Regulation for dealing with an asylum claim. The Government opted in because it is committed to the Dublin system, of which EURODAC is an essential part, as it helps tackle the problem of people abusing asylum systems across Europe by making multiple claims in different EU Member States.</p>
4	<p>Title Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety</p> <p>Ref. 17409/10</p> <p>Legal base Article 87(2) of the TFEU</p> <p>Department Department for Transport</p>	<p>Date of Publication 03/12/10</p> <p>Deposited to Parliament 02/09/2010 (informal text)</p> <p>Date of Explanatory Memorandum 13/09/10 & 21/12/10 (SEM)</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 25/01/11</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision 21/03/11</p> <p>Parliament notified of decision 05/04/11</p>	<p>The Government did not opt in to the CBE Directive because, on balance, it did not appear to be in the UK's best interests to do so. While broadly supportive of the Directive's objectives, the Government's two main concerns were over the set-up and running costs and the 'driver/keeper issue'. Under our current laws, drivers can only be prosecuted for road traffic offences, and the Directive only provided for the exchange of vehicle keeper information, thus giving concerns around our ability to effectively pursue fines against the drivers of the vehicles, in the absence of effective provision to compel foreign registered keepers to disclose who was driving the vehicle when the offence was committed.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
5	<p>Title Proposal for a Council Decision concerning the conclusion of the European Convention on the legal protection of services based on, or consisting of, conditional access (Signature and conclusion)</p> <p>Ref. 18126/10</p> <p>Legal base Article 114 of the TFEU</p> <p>Department Department for Culture, Media and Sport</p>	<p>Date of Publication 17/12/10</p> <p>Deposited to Parliament 19/12/10</p> <p>Date of Explanatory Memorandum 14/01/10</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in</p> <p>EU notified of decision 22/03/11</p> <p>Parliament notified of decision 22/03/11</p>	<p>The proposal from the Commission for the signing of the Council of Europe Convention on Conditional Access included a number of legal points on which the Government took issue. There was a risk that if the Government was not successful in securing a change to the legal base for the proposal, and the proposal proceeded in something like its original form, that it would include areas of JHA competence where the Opt-in would apply. As a precautionary measure the Government decided to exercise its Opt-In. The Council Decision agreed on 29 November 2011 included one very small area of JHA competence to which the UK stated it would be bound by virtue of the Opt In decision.</p>
6	<p>Title Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</p> <p>Ref. 18101/10 ADD 1 and ADD 2</p> <p>Legal base Article 81(2) of the TFEU</p> <p>Department Ministry of Justice</p>	<p>Date of Publication 17/12/10</p> <p>Deposited to Parliament 21/12/10</p> <p>Date of Explanatory Memorandum 21/12/10</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 28/03/11</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in</p> <p>EU notified of decision 31/03/11</p> <p>Parliament notified of decision 05/04/11</p>	<p>The Brussels I Regulation establishes common rules governing which country's courts have jurisdiction in cross-border civil and commercial disputes and provides for the recognition and enforcement of judgments. It is a bedrock legal instrument and provides the legal certainty necessary to allow trade to be conducted with confidence. The European Commission's proposal to repeal and replace the current regulation, aims to resolve problems resulting from the interpretation of the Regulation by the ECJ and other practical changes to bring the regulation up-to-date.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
7	<p>Title Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime</p> <p>Ref. 6007/11</p> <p>Legal base Article (1)(d) and 87(2)(a) of the TFEU</p> <p>Department Home Office</p>	<p>Date of Publication 02/02/11</p> <p>Deposited to Parliament 04/02/11</p> <p>Date of Explanatory Memorandum 16/02/11</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 30/03/11</p> <p>EUC: Debate recommended? Yes</p> <p>Date of Lords debate 17/03/11</p> <p>Decision Opted in</p> <p>EU notified of decision 06/05/11</p> <p>Parliament notified of decision 10/05/11</p>	<p>Passenger name records help our law enforcement agencies to prevent, detect, investigate and prosecute terrorists and other serious criminals. Their power lies in the fact that, by using an automated system and interrogating it intelligently, we are able to sift data quickly and in such a way that they reveal patterns and make links that would otherwise not be readily apparent. PNR data therefore have a proven capability to protect our citizens from harm. Along with advance passenger information – API – PNRs are a crucial element of the UK's own e-Borders system. Critical to the Government's decision of opting into the directive was the aim of securing an ability to mandate the collection of PNR data on flights between two EU member states, for the full usefulness of the system to be realised. The Government made significant progress on this, ahead of the opt-in deadline, and the European Council has given a clear political signal that it favours collection of data on intra-EU flights, following a UK amendment to that effect. The Home Secretary pressed the argument for it at the April Justice and Home Affairs Council meeting, where 15 member states supported the UK's position to include intra-EU data collection. The draft directive as it stands is not perfect, but it is right that we work with our European partners to get a directive that best serves Britain's interests.</p>
8	<p>Title Proposal for a Council Regulation on Jurisdiction, Applicable Law, and the Recognition and Enforcement of Decisions in the Matters of Matrimonial Property Regimes</p> <p>Ref. 8160/11, 8145/11 & 8253/11 ADD1</p> <p>Legal base Article 81(3) of the TFEU</p> <p>Department Ministry of Justice</p>	<p>Date of Publication 29/03/11</p> <p>Deposited to Parliament 01/04/11</p> <p>Date of Explanatory Memorandum 08/04/11</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision N/A</p> <p>Parliament notified of decision 30/06/11</p>	<p>The Government did not opt in to this proposal. The main reason being that the concept of a matrimonial property regime (or equivalent for civil partners) does not exist in the UK in the sense understood in most other Member States. If the UK was to participate it would be more difficult for our courts to deal in a holistic way with all aspects of the financial provision of international couples on divorce or dissolution in cases which fall within the scope of these proposals. Many of the respondents to the public consultation expressed concerns about cost implications and legal complications arising from the proposal. There was also considered to be uncertainty about the interaction with succession law, which would cause further problems.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
9	<p>Title Proposal for a Council Regulation on Jurisdiction, Applicable Law, and the Recognition and Enforcement of Decisions Regarding the Property Consequences of Registered Partnerships</p> <p>Ref. 8163/11, 8145/11 & 8253/11 ADD1</p> <p>Legal base Article 81(3) of the TFEU</p> <p>Department Ministry of Justice</p>	<p>Date of Publication 29/03/11</p> <p>Deposited to Parliament 01/04/11</p> <p>Date of Explanatory Memorandum 08/04/11</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision N/A</p> <p>Parliament notified of decision 30/06/11</p>	<p>The Government did not opt in to this proposal. The main reason being that the concept of a matrimonial property regime (or equivalent for civil partners) does not exist in the UK in the sense understood in most other Member States. If the UK was to participate it would be more difficult for our courts to deal in a holistic way with all aspects of the financial provision of international couples on divorce or dissolution in cases which fall within the scope of these proposals. Many of the respondents to the public consultation expressed concerns about cost implications and legal complications arising from the proposals. There was also considered to be uncertainty about the interaction with succession law, which would cause further problems.</p>
10	<p>Title Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA</p> <p>Ref. 8157/10</p> <p>Legal base Article 82(2) and 83(1) of the TFEU</p> <p>Department Home Office</p>	<p>Date of Publication 29/03/10</p> <p>Deposited to Parliament 30/03/10</p> <p>Date of Explanatory Memorandum 08/04/10</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 09/05/11</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in post adoption</p> <p>EU notified of decision 14/07/11</p> <p>Parliament notified of decision 09/05/11</p>	<p>This Directive builds on and supports existing international instruments designed to combat human trafficking, in particular the Council of Europe Convention on Action against Trafficking in Human Beings, to which the UK is a signatory. In order to protect the UK's interests we decided not to opt in to the original Commission proposal but to wait until a final text was agreed. We were concerned that the text could widen during the negotiations, for example in ways that could affect the integrity of our criminal justice system. A finalised text was agreed in March 2011 which we determined would be acceptable to the UK. We therefore applied to the European Commission to opt in to the Directive. Opting in shows that the UK, already a world leader in its anti-trafficking work, is determined to tackle human trafficking and protect its victims.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
11	<p>Title Proposal for a Council Decision on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service</p> <p>Ref. 9823/11</p> <p>Legal base Article 82(1)(d) and 87(2)(a) in conjunction with 281(5) or the TFEU (signature) Article 82(1)(d) and 87(2)(a) in conjunction with 218(6)(a) of the TFEU</p> <p>Department Home Office</p>	<p>Date of Publication 19/05/11</p> <p>Deposited to Parliament 23/05/11</p> <p>Date of Explanatory Memorandum 23/05/11</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in</p> <p>EU notified of decision 23/08/11</p> <p>Parliament notified of decision 24/08/11</p>	<p>The UK places considerable value on the collection and analysis of Passenger Name Record (PNR) data (that data collected by carriers in the exercise of their business) for the purpose of preventing terrorism and serious crime. The appropriate use of PNR data is vital in keeping the public safe. In line with this view, the Government believes that clear PNR agreements between the EU and third countries play a vital role in removing legal uncertainty for air carriers flying to those countries, and help ensure that PNR information can be shared quickly and securely, with all necessary data protection safeguards in place. This Agreement replaces the EU-Australia PNR Agreement which has been applied provisionally from June 2008. On 21 September 2010 the European Commission published a Communication on the global approach to transfers of PNR Data to third countries, together with a package of draft negotiating mandates for PNR agreements with Australia, Canada and the United States. The UK opted into the draft Council Decision to authorise the Commission to open negotiations, together with draft negotiating guidelines in December 2010. The Government fully recognise the importance of working with partners outside the EU given that the threats we face are global in nature and, in common with other EU Member States, we view Australia as a key partner. After due consideration of civil liberty, data protection and security issues, the Government has decided to opt in to the Council Decisions to Sign and Conclude the EU-Australia PNR Agreement.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
12	<p>Title Directive of the European Parliament and of the Council – establishing minimum standards on the rights, support and protection of victims of crime</p> <p>Ref. 10610/11 ADD1 & ADD2</p> <p>Legal base Article 82(2) of the TFEU</p> <p>Department Ministry of Justice</p>	<p>Date of Publication 24/05/11</p> <p>Deposited to Parliament 26/05/11</p> <p>Date of Explanatory Memorandum 02/06/11</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 11/07/11</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in</p> <p>EU notified of decision 25/08/11</p> <p>Parliament notified of decision 05/09/11</p>	<p>The proposed Directive will benefit UK citizens who are victims in other EU member states. It will allow UK citizens to move throughout the EU with confidence that should they fall victim to crime in any Member State, they will be afforded a minimum standard of rights and support. By opting in to this directive the UK will have the opportunity to strongly influence the text and ensure that the minimum standards victims can expect throughout the EU are clear, appropriate and affordable.</p>
13	<p>Title Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters</p> <p>Ref. 10603/11</p> <p>Legal base Article 81(2) of the TFEU</p> <p>Department Ministry of Justice</p>	<p>Date of Publication 25/05/11</p> <p>Deposited to Parliament 26/05/11</p> <p>Date of Explanatory Memorandum 02/06/11</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 11/07/11</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Opted in</p> <p>EU notified of decision 25/08/11</p> <p>Parliament notified of decision 15/09/11</p>	<p>The Government opted in to the draft Regulation because it will benefit vulnerable people in Britain who may now feel more confident to travel within the EU due to greater protection. The draft Regulation provides a quick and efficient mechanism. It aims to avoid those needing protection measures having to go through time-consuming court procedures and giving evidence on the same matters in another Member State in order to get the protection they need. The draft Regulation covers “civil matters” and follows on from the draft Directive on the European Protection Order which covers “criminal matters” which the UK has also opted into. The draft Directive was adopted on 20 October 2011. The two separate instruments are intended to complement each other so that as many protection orders as possible are covered despite the differences in Member States’ systems.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
14	<p>Title Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast)</p> <p>Ref. 11214/11</p> <p>Legal base Article 78(2)(f) of the TFEU</p> <p>Department Home Office</p>	<p>Date of Publication 01/06/11</p> <p>Deposited to Parliament 07/06/11</p> <p>Date of Explanatory Memorandum 20/06/11</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision 19/09/11</p> <p>Parliament notified of decision 13/10/11</p>	<p>The Directive would set down common standards across the EU for the treatment of asylum seekers while they are awaiting a decision on their asylum claims. The Government was concerned that the Directive would subject Member States' asylum systems to unjustified regulation and focus excessively on enhancing the rights of all asylum seekers whether their claims are valid or not, and have significant cost implications for the UK. It was particularly concerned with proposals that would allow asylum seekers to work after six months if a decision at first instance has not been reached and would place stringent restrictions on Member States' ability to detain asylum seekers where necessary. It considered the restrictions on detention to be unnecessary in a system such as the UK's where detainees have the right to apply to the Courts for release on bail, or to bring a legal challenge against their detention.</p>
15	<p>Title Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast)</p> <p>Ref. 11207/11</p> <p>Legal base Article 78(2)(d) of the TFEU</p> <p>Department Home Office</p>	<p>Date of Publication 01/06/11</p> <p>Deposited to Parliament 07/06/11</p> <p>Date of Explanatory Memorandum 20/06/11</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision 19/09/10</p> <p>Parliament notified of decision 13/10/11</p>	<p>This Directive would set down common procedures for the determination of asylum claims across the EU. However, the Government was concerned that the Directive would subject Member States' asylum systems to unjustified regulation and focus excessively on enhancing the rights of all asylum seekers whether their claims are valid or not, and have significant cost implications for the UK. The Government was particularly concerned about the proposed restrictions on accelerated procedures, and on the making of asylum appeals non-suspensive (where a right of appeal can be exercised out of country only), which would endanger a number of systems that the UK operates to manage straightforward asylum claims effectively- in particular the UK Border Agency's Detained Fast Track which provides speedy but fair decisions for any asylum seekers whose claims are capable of being decided quickly.</p>

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	Proposal	Decision-making process	Reasoning for Government's decision
16	<p>Title Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest</p> <p>Ref. 11497/11</p> <p>Legal base Article 82(2) of the TFEU</p> <p>Department Ministry of Justice</p>	<p>Date of Publication 14/06/11</p> <p>Deposited to Parliament 14/06/11</p> <p>Date of Explanatory Memorandum 29/06/11</p> <p>ESC: Debate recommended? Yes</p> <p>Date of Commons debate 07/09/11</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision N/A</p> <p>Parliament notified of decision 11/10/11</p>	<p>We agree that a Directive in this area is a good idea in principle: it could benefit UK nationals subject to the criminal justice systems of other Member States and it could build greater trust and confidence amongst competent authorities, who may be expected to accept and act upon decision or judgments made in other Member States. However, a number of provisions in the Commission's proposal, go beyond the requirements of the European Convention on Human Rights (ECHR) and would have an adverse impact on our ability to investigate and prosecute offences effectively and fairly. We could not be confident that all of these concerns would be addressed in the process of negotiations. We are working very closely with our European partners to develop an improved text which reflects the flexibility which Member States need in order to meet the requirements of the ECHR in a way which is consistent with the nature of their justice systems. If our concerns are dealt with, we will consider whether to apply to opt in once it has been adopted. We will consult Parliament about any decision to apply to opt in to the final text.</p>
17	<p>Title Proposal for a Regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters</p> <p>Ref. 13260/11 ADD1 & ADD2</p> <p>Legal base Article 81(2) of the TFEU</p> <p>Department Ministry of Justice</p>	<p>Date of Publication 27/07/11</p> <p>Deposited to Parliament 29/07/11</p> <p>Date of Explanatory Memorandum 08/08/11</p> <p>ESC: Debate recommended? No</p> <p>Date of Commons debate N/A</p> <p>EUC: Debate recommended? No</p> <p>Date of Lords debate N/A</p> <p>Decision Did not opt in</p> <p>EU notified of decision N/A</p> <p>Parliament notified of decision 31/10/11</p>	<p>The Government did not opt in to this Regulation because it identified that there was a lack of adequate safeguards for defendants. Many of the respondents to the Government's public consultation expressed fears about the possible dangers posed to all defendants and several highlighted the consequences to companies which were in the process of restructuring or rescue, given the apparent ease of obtaining a freezing order. Concerns were also raised about the burdens the proposal is likely to place on both the Government and banks, in particular through the provisions of access to information on bank accounts.</p>

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Annex 2: JHA opt-in and Schengen opt-out decisions expected in 2012

Proposal title	Lead Department	Summary of proposal
Special Safeguards in criminal procedures for Suspected or Accused Persons who are vulnerable	Ministry of Justice	This is Measure E on the Criminal Procedural Rights Roadmap adopted by the Council in 2009. The Commission state in the Work Programme for 2012 that the measure will ensure that special attention is shown to suspects who are unable to follow the content of criminal proceedings against them due to their age, mental or physical condition.
Compensation of crime victims	Ministry of Justice	Measure D of The Budapest Roadmap committed the Commission to a "Review of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims". We have urged the Commission to be mindful of the ambit of the Treaties when considering legislative proposals, as well as the financial constraints that Member States are currently facing.
E-Justice	Ministry of Justice	We understand that this measure will be mainly about giving a legal base to this work in areas such as the protection of data. We will not want this to go any further than necessary because one of the important features of e-justice work is the fact that it is non-legislative.
An EU framework for collective redress	Ministry of Justice and Business and Innovation Skills joint lead	This initiative will follow from the Commission's 2011 Green Paper on collective redress at the EU level. Collective redress is where more than one person with the same or a similar dispute against one party can join their actions collectively in one legal action. It is, as yet, unclear whether the JHA opt-in will apply to this proposal.
Proposal for revision of Regulation on applicable law on non-contractual obligations with particular attention to limitation and prescription periods for cross-border road traffic accidents	Department for Transport, possibly Ministry of Justice	This initiative aims at reviewing the "Rome II" Regulation 864/2007/EC on the law applicable to non-contractual obligations in civil and commercial matters, including cross-border road traffic accident disputes, based on an application report.
Proposal to amend the current EC Regulation No 593/2008 on the law applicable to contractual obligations (Rome I)	Ministry of Justice	The Government expects a proposal to be published towards the end of 2012, though a Green Paper will issue before the legislative proposal. This proposal aims to amend the current EC Regulation No 593/2008 on the law applicable to contractual obligations (Rome I). Under Article 27 of Rome I, the Commission are required to carry out a review on the issue of assignment (Article 14). As a result of this review, a legislative proposal is expected in this area.
Draft EU Directive on data protection in policing and criminal justice	Ministry of Justice	In November 2011, the European Commission announced it was planning to publish proposals for a new comprehensive instrument for data protection at the end of January 2012. It is likely that the Commission will propose two legislative instruments. The first is likely to be a Regulation to replace the current Data Protection Directive 95/46/EC, which applies in a large number of areas (former first pillar) but does not extend to criminal matters. The second is likely to be a Directive that will cover processing of personal data by the police and other criminal justice actors (former third pillar) and will replace the current Data Protection Framework Decision. It is yet unclear as to whether the JHA opt-in will apply to this proposal.

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Proposal title	Lead Department	Summary of proposal
Framework of administrative measures such as the freezing of funds of persons suspected of terrorist activities within the EU (Art.75)	HM Treasury and Home Office joint lead	This measure will seek to establish a framework for administrative measures with regard to capital movements and payments, such as for the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups and non-State entities related to terrorist activities inside the EU. This framework would serve as a basis on which the Council could take decisions, upon proposal by the Commission.
Legal and technical framework for a European Terrorist Finance Tracking System (TFTS)	HM Treasury	The initiative will seek to provide for a European approach to combat terrorism and its financing through the centralised collection and analysis of financial messaging data. It also aims to create the possibility to provide more targeted data to US authorities under the EU-US TFTP Agreement.
Reforming Eurojust's structure	Home Office	If brought forward, this initiative will be aimed at developing and reinforcing Eurojust's functioning and determining arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.
Proposals on confiscation: minimum rules for the confiscation of criminal assets and mutual recognition of confiscation orders	Home Office	We understand the Commission intends to publish a package of measures on confiscation and recovery of criminal assets in early 2012. We are expecting two draft EU Directives dealing with certain categories of crime: one on setting equivalent minimum domestic legal standards and the other on mutual recognition of freezing and confiscation orders.
Establishing the European Police Office – EUROPOL	Home Office	We understand that the Commission is planning to further revise the legal base for Europol drawing on the possibilities offered by Article 88(2) of the TFEU. A proposal for a Regulation is expected in 2012, following an evaluation of the existing legal base, the Europol Council Decision, which is currently underway.
Reinforcing the protection of the euro against counterfeiting with criminal law sanctions	HM Treasury	The initiative would seek to build on and replace the Framework Decision 2000/383/JAI. It will aim to increase protection of the euro by providing more efficient criminal legislation and procedures, and a stronger monitoring of the EU rules in Member States. The Commission has said that it believes that citizens should be sufficiently protected against euro-fraud and counterfeiting by means of criminal sanctions.
Admission of third country nationals for the purposes of scientific research, studies, pupil exchange, unremunerated training or voluntary service	Home Office	This initiative aims to increase the attractiveness of the EU as a whole as a centre for research, studies, pupil exchanges, training and voluntary service. It will aim at further facilitating educational, training and cultural exchanges with third-country nationals and making the conditions of their entry, residence and intra-EU mobility more transparent and effective. This initiative will amend Council Directives 2004/114/EC and 2005/71/EC.
Minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking	Home Office	The aim of this proposal will be to update Framework Decision 2004/757/JHA, addressing shortcomings identified during the 2009 assessment, fostering a common EU approach to drug trafficking through approximation of offences and sanctions.
Information exchange, risk-assessment and control of new psychoactive substances	Home Office	The Commission aims to amend Council Decision 2005/387/JHA to improve the assessment process and some of the procedural steps for controlling psychoactive substances, taking into account experiences in the past three years. Amendments may include a closer linking with the pharmacovigilance system and the public health domain.

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Proposal title	Lead Department	Summary of proposal
Protection of the financial interest of the European Union, including by criminal law (PFI)	HM Treasury	<p>This initiative is the legislative follow-up on the Communication on the protection of financial interests of the European Union, including by substantive criminal law, under Art 325(4) of the TFEU. The objectives of the initiative, as set out by the Commission are to:</p> <ul style="list-style-type: none"> • use the momentum provided by the possibilities offered by the new Treaty • guarantee equivalent protection of EU financial interests by criminal law throughout the Union; and • establish a sufficient level of deterrence against fraud and other illegal activities at the expense of EU public money across the EU.
Customs penalties	HM Revenue and Customs	<p>This initiative has the dual objective of strengthening customs compliance by approximating the definition and qualification of offences and the level of corresponding customs penalties and ensuring an equal treatment to the economic operators with regard to customs penalties.</p>
Minimal rules on sanctions and their enforcement in commercial road transport	Department for Transport	<p>The Directive will aim to establish common minimal rules with regard to the definition of offences and sanctions, including criminal offences, in the field of commercial road transport. Such a harmonisation will contribute to reduce distortions of competition and the unequal treatments when committing infringements.</p>
Air carrier liability in respect of the carriage of passengers and their baggage by air	Department for Transport	<p>The technical revision of Regulation 2027/97 as amended by Regulation 889/2002 will ensure an adequate protection of passengers by keeping liability limits in line with inflation and to ensure coherence between EU law and international agreements.</p>



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