



Ministry
of Justice

**Fourth 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 European Union
(TFEU) (“the Treaties”) in Relation to
EU Justice and Home Affairs (JHA)
matters (1 December 2012 – 30
November 2013)**

January 2014



Fourth 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 European Union (TFEU) (“the Treaties”) in Relation to EU Justice and Home Affairs (JHA) matters (1 December 2012 – 30 November 2013)

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

January 2014

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You can download this publication from www.gov.uk/moj

ISBN: 9780101877220

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
ID 2615537 01/14

Printed on paper containing 75% recycled fibre content minimum.

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The JHA Opt-in Protocol and Schengen Opt-out 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 under Protocol 21 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 published by the Council. 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 and, again, notify the President of the Council of that decision.

The Government takes the view that the Protocols are triggered based on the content of a given legislative proposal, rather than the legal basis under which the European Commission has chosen to bring it forward. 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 binding JHA obligations.

The JHA opt-in and Schengen opt-out Protocols are separate from the UK’s decision under Protocol 36 to the TEU and TFEU to opt out en masse of all pre-Lisbon police and judicial cooperation legislation and to seek to rejoin only those measures that are in the national interest (“the 2014 decision”).

Government commitments on Parliamentary scrutiny of the JHA Opt-in

In June 2008 the Rt Hon Baroness Ashton made a Written Ministerial Statement (WMS) which outlined the then Government’s commitment to strengthening Parliamentary scrutiny of the JHA opt-in. This included a commitment to provide Parliament with an annual report.

The Coalition Government agreed to uphold this commitment and 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 to 30 November 2010 was submitted in January 2011. The second and third annual reports were submitted in January 2012 and April 2013 respectively. These reports were followed by a mid-year update. The third annual report was debated in the Moses room of the House of Lords before summer recess.

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 to announce all opt-in decisions or to make an oral statement where appropriate; reiterated the existing right of the House

of Commons European Scrutiny Committee and House of Lords European Union Select Committee (‘the Scrutiny Committees’) to call a debate on an amendable motion on any opt-in decision; and, where there is particularly strong Parliamentary interest, the Government expressed its willingness to set aside Government time for a debate in both Houses on its proposed approach (a “Lidington debate”). All of these commitments apply equally to the Schengen Opt-out Protocol.

During the course of 2013, two Lidington debates were held on the UK’s participation in proposed EU legislation in the field of JHA. The first debate considered a proposal to reform Europol. The second debate dealt with proposals to reform Eurojust and the setting up of a European Public Prosecutor’s Office (EPPO). In addition, there were a number of other debates which were held in Non-Government time.

Where the UK has not opted in within the initial three month window, it is open to the Government to indicate its wish to be bound by a measure after it has been adopted by the participating Member States. 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 in Government time on a post adoption opt-in decision if it is likely to attract significant Parliamentary interest.

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 Scrutiny Committee Clerks to prepare such a Code of Practice. The Code, which includes the commitments the Government made in January 2011 to further enhance scrutiny arrangements, was published in May 2013 and has now been included in the cross-Government scrutiny guidance and is also available on the JHA opt-in webpage at <https://www.gov.uk/government/publications/jha-opt-in-and-schengen-opt-out-protocols>

JHA opt-in decisions and Schengen opt-out decisions from the period 1 December 2012 – 30 November 2013

Annex 1 is a table of all JHA opt-in decisions and Schengen opt-out decisions taken from 1 December 2012 until 30 November 2013. These decisions are listed in chronological order.

Over the past year, the Government has taken 21 decisions on UK participation in EU JHA legislative proposals. In total the UK has opted in to 13 proposals under the JHA opt-in Protocol. The Government has decided not to opt in to 8 proposals.

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 last year included, in June 2013, the Government’s decision not to opt in to the **Directive on the protection of the Euro and other currencies against counterfeiting**. The Government agrees that the fight against counterfeiting requires robust national laws and effective international cooperation at the operational level, but we are content that our national law and the UK’s participation in international cooperation under the framework put in place by the Geneva Convention is

sufficient to ensure that the UK provides effective enforcement against counterfeiting. The Government took the view that participation in this Directive would have very little, if any, positive impact on UK enforcement or on the UK’s participation in international operational cooperation and could also have unwelcome legislative consequences for the UK particularly as regards obligations in respect of minimum penalties and jurisdiction over counterfeiting offences committed by UK nationals overseas.

In July 2013, the Government decided not to opt in to the proposal for a new **Europol Regulation** at the start of negotiations. Whilst the Government values UK membership of Europol as currently established, the proposed text for a new Regulation posed serious concerns. First, there was an increased obligation to provide data. Under the proposal Member States would not be exempt from providing data, even where it would conflict with national security, endanger ongoing investigations or an individual’s safety. We believe this conflict with the UK’s national interest. Secondly, while Europol can already request that a Member State initiates an investigation, the proposal went much further and includes an obligation to provide a reason if no such operation is conducted. Any reasons provided would be subject to challenge before the Court of Justice of the European Union. This creates a risk that the European courts could dictate what national law enforcement agencies should prioritise. This interferes with operational independence which is at the heart of UK policing. The Government is taking a full part in negotiations with a view to considering a post-adoption opt in.

In November 2013, the Government decided not to opt in to the proposals for a new **Eurojust Regulation** and a **Regulation setting up a European Public Prosecutor’s Office (EPPO)**. The decision not to participate in the EPPO was consistent with commitments in the Coalition Agreement. The Government decided it was not in the UK’s interests to opt in to the Eurojust proposal at the outset due to concerns with the published text; most notably, the proposed extending of the mandatory powers of Eurojust National Members and the interaction between Eurojust and the EPPO. The Government will conduct a thorough review of the final agreed text to inform active consideration of opting into the Eurojust Regulation, post adoption, in consultation with Parliament. Also in November 2013, the Government decided to opt into the **Council Decision concluding the Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) Data Agreement**. The UK has recognised first-hand the benefits of PNR through its own border systems programme (formally e-Borders), which has already been used to arrest suspects wanted for serious offences such as murder, rape and kidnap. For this reason, the Government remains committed to the use of PNR as a way of tackling serious crime and terrorism but not at the expense of data protection and civil liberties. The arrangements envisaged in the agreement with Canada are already in operation in practice and the proposed agreement will not have undue impact on the carriers’ existing systems. In November, the Government also opted in to the **Regulation amending the Regulation on Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast Brussels I Regulation)**. The Government believes that the proposed amendment, linked to the creation of a new Unified Patent Court (UPC) will be of tangible benefit to the United Kingdom’s legal economy and patent litigation business. Costs associated with the new Unitary Patent, which will have effect in all contracting Member States to the UPC Agreement, will be significantly lower than those which operate at present. The Government believes that it is in the United Kingdom’s interests to participate.

Since the period this report covers concluded, the Government has decided to opt out of **a package of two proposals (a Regulation and a Directive) on New Psychoactive Substances**. The Government considered that the proposals conflicted with the principle

of subsidiarity and would fetter the UK’s capacity to act independently in this area. Additionally, the Government has decided to opt in to **an agreement extending the EU-Switzerland Free Movement Agreement to Croatia** and a **Council Decision concerning the accession of Yemen to the World Trade Organisation**. Further detail on these decisions will be provided in the mid-year update to this report.

The Economic Secretary to the Treasury wrote to the European Scrutiny Committee on 28 October 2013 indicating that the Government did not intend to opt in to the **proposed Directive on the Protection of the Financial Interests of the EU against Fraud by Means of Criminal Law**, but would consider accepting the measure after it had been adopted by the other Member States.

Dossiers currently under consideration

Eleven legislative proposals were subject to Ministerial and Parliamentary consideration with respect to an opt-in decision at the time of going to print:

- Proposal for a Council Decision concerning the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation.
- Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny (PRAC).
- Proposal for a Council Decision on the conclusion of the Political Dialogue and Cooperation Agreement with the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.
- Proposal for a Regulation concerning the relocation of the European Police College (CEPOL).
- Proposal for amending Regulation establishing a European Small Claim Procedure and Regulation.
- Directive on procedural Safeguards for Children Suspected or Accused in Criminal Proceedings.
- Directive on strengthening certain aspects of the Presumption of Innocence.
- Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.
- Proposal for a Council Decision on the conclusion of a Partnership and Cooperation Agreement between the EU and Vietnam.
- Proposal for a Council Decision on the conclusion of a Partnership and Cooperation Agreement between the EU and the Philippines.
- Proposal for a Council Decision extending the European Asylum Support Office to the Associated States.

Forthcoming dossiers over the next 12 months

Annex 2 outlines legislative proposals which are expected to be brought forward over the next 12 months and that are likely (subject to confirmation when the text of the proposal is available) to require a decision on UK participation under the JHA Opt-in or Schengen Opt-out Protocols. 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.

The list for the year ahead is shorter than usual given this is the final year for the current Commission and their work programme has therefore focused on completion of current work rather than the publication of new proposals

In addition, it is likely that a number of international agreements and measures in other policy areas that may include JHA obligations will be brought forward. These will also require decisions under the JHA opt-in Protocol.

The Government continues to participate in the negotiations on a number of proposals in respect of which the UK has already opted in, with the aim of securing the best possible result for UK interests. This includes the Data Protection package, Rights and Citizenship Programme, the European Investigation Order and the Asylum and Migration Fund.

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, the Directive on the protection of the Euro and other currencies against counterfeiting, the Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, the Regulation Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters, Europol, Eurojust and the Internal Security Fund.

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

Annex 1: Opt-in Decisions 1 December 2012 – 30 November 2012

Proposal		Decision-making process		Reasoning for Government's decision
1	Title Amended proposal for a Regulation of the European Parliament and of the Council establishing an action programme for taxation in the European Union for the period 2014–2020 (Fiscalis 2020) and repealing Decision N° 1482/2007/EC	Date of Publication	04/09/12	This proposal establishes a tax co-operation programme to improve the functioning of taxation systems within the EU by increasing co-operation between member states. The programme aims to contribute to the Europe 2020 strategy for smart, sustainable and inclusive growth, by strengthening the functioning of the single market. It also has the objective of driving technical progress and innovation in national tax administrations with the aim of developing e-tax administrations and contributing to the establishment of a digital single market. The UK has benefited from participation in predecessor programmes, in particular through involvement in multilateral controls which can assist with the detection of tax fraud. The programmes also fund the maintenance and development of EU communication and information exchange systems. This is an area where spend on research and development can represent good EU added value by providing economies of scale in the development of cross-EU networks.
		Deposited to Parliament	05/09/12	
		Date of Explanatory Memorandum	20/09/12	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
		Ref.	13346/12	
Legal base	Articles 114, 197 and 212 TFEU	Decision	Opted in	
Department	HM Revenue and Customs	EU notified of decision	04/12/12	
		Parliament notified of decision	05/12/12	
2	Title Proposal for Council Decisions concerning the conclusion of the agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation	Date of Publication	25/09/12	The Government did not opt in to this proposal as we consider there would be no clear benefit to the UK from participation. There is very little illegal migration from Cape Verde to the UK, and our existing good bilateral arrangements allow us to make returns there where necessary. It would be possible for the UK to seek to participate in the Agreement post adoption if these circumstances were to change.
		Deposited to Parliament	27/09/12	
		Date of Explanatory Memorandum	08/10/12	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
		Ref.	14235/12	
Legal base	Articles 79(3) and 218(6)(a) TFEU	Decision	Did not opt in	
Department	Home Office	EU notified of decision	N/A	
		Parliament notified of decision	06/02/13	
3	Title Proposal for a Council Decision authorising the Member States which are Contracting Parties to the	Date of Publication	26/09/12	The proposed Decision authorises Member States which are Contracting Parties to the Vienna Convention to ratify the Protocol of 12 September 1997 amending the Vienna Convention in the interest of the European Union, or to accede
		Deposited to Parliament	02/10/12	
		Date of Explanatory Memorandum	16/10/12	

Proposal		Decision-making process		Reasoning for Government's decision
	Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 ("Vienna Convention") to ratify the Protocol amending that Convention in the interest of the European Union, or to accede to it	ESC: Did a debate take place?	No	<p>to it. The Vienna Convention was established to ensure fair and adequate compensation is available in the event of a nuclear accident. The Protocol amendments will be beneficial to potential victims of nuclear accidents for which nuclear operators in States that are Contracting Parties to the Vienna Convention are responsible. In particular, they mean that an increased amount of compensation will be available in respect of a broader range of damage across a wider geographical area.</p> <p>The proposal will only apply to Member States that are party to the Vienna Convention i.e. Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Slovakia and Poland (Latvia and Romania have already ratified the 1997 Protocol). The proposal will not apply to the UK which is party to another international convention on liability for nuclear damage – the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended – which is based on similar principles to the Vienna Convention.</p>
		Date of Commons debate	N/A	
Ref.	14364/12	EUC: Did a debate take place?	No	
Legal base	Articles 81(2) and 218(6)(a) TFEU	Date of Lords debate	N/A	
		Decision	Opted in	
Department	Department for Energy and Climate Change	EU notified of decision	03/01/13	
		Parliament notified of decision	01/02/13	
4	Title Proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC, Decision No 575/2007/EC and Council Decision 2007/435/EC with a view to increasing the co-financing rate of the European Refugee Fund, the European Return Fund and the European Fund for the Integration of third-country nationals as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability	Date of Publication	26/09/12	The general objective of this proposal is to increase co-financing rates in order to ensure that Member States benefitting from financial support mechanisms, are given the opportunity to access current SOLID Funds more easily in order to continue the implementation of annual programmes in the areas of migration, asylum and external borders. This proposal applies only to those Member States currently benefitting from a financial support mechanism or those Member States which may be subject to such assistance within the 2013 annual programme period. The Commission advised that there is no impact on commitment on appropriations for the UK and that this proposal would be applied as an exceptional measure without prejudice to the 2014–2020 programming period.
		Deposited to Parliament	28/09/12	
		Date of Explanatory Memorandum	08/10/12	
		ESC: Did a debate take place?	Yes	
		Date of Commons debate	20/11/12	
		EUC: Did a debate take place?	No	
Ref.	14123/12	Date of Lords debate	N/A	

Proposal		Decision-making process		Reasoning for Government's decision
5	Legal base	Articles 78(2) and 79(2) and (4) TFEU	Decision	Opted in
	Department	Home Office	EU notified of decision	19/12/12
5	Title	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	Parliament notified of decision	25/01/13
			Date of Publication	18/12/12
			Deposited to Parliament	12/12/12
			Date of Explanatory Memorandum	12/12/12
			ESC: Did a debate take place?	No
			Date of Commons debate	N/A
	EUC: Did a debate take place?	No		
	Ref.	16910/12	Date of Lords debate	N/A
	Legal base	Articles 79(3) and 218(6)(a) TFEU	Decision	Did not opt in
	Department	Home Office	EU notified of decision	N/A
		Parliament notified of decision	21/03/13	
6	Title	Council Decision amending annexes II and III of Council Decision 9 June 2011 which approved, on behalf of the European Union, the 2007 Hague Maintenance Convention	Date of Publication	22/01/13
			Deposited to Parliament	N/A
			Date of Explanatory Memorandum	N/A
			ESC: Did a debate take place?	No
			Date of Commons debate	N/A
			EUC: Did a debate take place?	No
	Date of Lords debate	N/A		
	Ref.	5881/13	Decision	Opted in
	Legal base	Articles 81 and 218 TFEU	EU notified of decision	16/04/13

Proposal		Decision-making process		Reasoning for Government’s decision
Department	Ministry of Justice	Parliament notified of decision	N/A. Given the entirely technical nature of this proposal, the scrutiny committees agreed that it need not be deposited and was not subject to scrutiny. Therefore no WMS was issued.	
7	Title Proposal for a Directive on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)	Date of Publication	12/03/13	The Directive contains a provision which imposes a civil judicial cooperation obligation and therefore triggers the UK’s Justice and Home Affairs Opt-in Protocol. The proposal meets the criteria set out in the coalition agreement with regard to EU justice and home affairs measures. In particular, the Government considers that it is in the UK’s interest to opt-in to the proposal because of the greater consumer protection it will bring. The provision which triggers the Opt-in Protocol requires time limits for bringing claims to court to be extended if an ADR process is ongoing. Most ADR procedures are completed well within existing time limits, but this provision will ensure a consumer is not disadvantaged in the event that a time limit is due to expire while an ADR process is ongoing.
		Deposited to Parliament	26/02/13	
		Date of Explanatory Memorandum	17/09/2012. A further EM was submitted on 26/02/2013	
		ESC: Did a debate take place?	Yes	
		Date of Commons debate	15/04/13	
		EUC: Did a debate take place?	No	
	Ref.	17795/11	Date of Lords debate	
Legal base	Article 114 TFEU	Decision	Opted in	
Department	Department for Business, Innovation and Skills	EU notified of decision	18/04/13	
		Parliament notified of decision	24/04/13	
8	Title Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings	Date of Publication	10/01/13	The proposal meets the criteria set out in the Coalition Agreement with regard to EU justice and home affairs measures. In particular, the Government considered in the UK’s interest to opt into the proposal because it will be of general benefit to creditors and businesses in the UK and EU.
		Deposited to Parliament	19/12/12	
		Date of Explanatory Memorandum	09/01/13	
		ESC: Did a debate take place?	Yes	
		Date of Commons debate	04/03/13	
		EUC: Did a debate take place?	No	
	Ref.	17883/12	Date of Lords debate	N/A
Legal base	Article 81 TFEU	Decision	Opted in	
Department	Department for Business, Innovation and Skills	EU notified of decision	10/04/13	
		Parliament notified of decision	15/04/13	
9	Title Proposal for a Directive on	Date of Publication	07/02/13	The proposed Directive is a criminal law approximation

Proposal		Decision-making process		Reasoning for Government's decision
	the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA	Deposited to Parliament	11/02/13	instrument proposed under Article 83.1 of Title V of the Treaty on the Functioning of the European Union. It builds on and updates the regime put in place by previous EU legislation and in particular the Framework Decision 2000/383/JHA. The stated objectives of the Commission's proposal are to counter the divergence in levels of sanctions between Member States and difficulties in cross-border judicial cooperation, which the Commission believes, have a negative impact on the effectiveness of the Union's policies to protect currencies, and in particular the euro, against counterfeiting. UK enforcement experience in the area of counterfeiting suggests that, should the UK be bound by all of the obligations contained in the Directive, it would have very little if any positive impact on UK enforcement or on the UK's participation in international operational cooperation and intelligence sharing. In light of this lack of utility and the concerns expressed above, the Government has decided that the UK will not be opting in to this Directive.
		Date of Explanatory Memorandum	15/02/13	
		ESC: Did a debate take place?	Yes	
		Date of Commons debate	23/04/13	
		EUC: Did a debate take place?	No	
		Date of Lords debate	N/A	
		Decision	Did not opt in	
Ref.	6152/13	EU notified of decision	N/A	
Legal base	Article 83 (1) TFEU	Parliament notified of decision	10/05/13	
Department	Ministry of Justice			
10	Title	Date of Publication	27/03/13	The protocol creates a legal regime for the transnational movement of firearms and contains practical measures designed to assist law enforcement by enhancing international co-operation and promoting greater transparency in the legal transfer of firearms. The Commission was mandated by the EU to negotiate six of the articles in relation to: record keeping; marking of firearms; deactivation of firearms; general requirements for export, import and transit licensing or authorisation systems; effective security of imports and exports; and brokering activities. The Commission signed the protocol on behalf of the community in 2001 with the intention of concluding it once the articles they negotiated had been enshrined in European law. This has been primarily achieved through amendments to the existing weapons directive 91/477 on the acquisition and possession of weapons
	Proposal for a Council Decision on the conclusion, on behalf of the EU, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organised Crime	Deposited to Parliament	28/03/13	
		Date of Explanatory Memorandum	16/04/13	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
			Date of Lords debate	
Ref.	7933/13	Decision	Opted in	
Legal base	Articles 114, 207 and 218(6)(a) TFEU	EU notified of decision	25/06/13	

Proposal		Decision-making process		Reasoning for Government's decision
Department	Home Office	Parliament notified of decision	12/09/13	<p>and the adoption of regulation 258/2012 to combat illicit arms trafficking through improved tracing and control of exports of civilian arms from the EU. These changes have already been transposed into UK legislation.</p> <p>The Government consider that it is in the UK's interest to opt into the proposal to conclude the protocol on behalf of the EU. The aims of the protocol are broadly welcome and are consistent with current EU policies on measures to counter transnational crimes, to strengthen the fight against the illicit trafficking of firearms and to reduce the spread and proliferation of small arms around the world.</p>
11	Title Proposal for a Directive on the admission of third country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing	Date of Publication	04/04/13	<p>The Government considers that policies regulating the admission of students, researchers and other categories of migrant covered by the new proposal are best determined at national level. We had concerns that the new proposal may undermine the reforms of the immigration system which the Government have undertaken in order to reduce abuse of the student route and protect the labour market while continuing to ensure that the United Kingdom continues to be an attractive destination for students from overseas. The measures may therefore undermine the UK's ability to control immigration in the national interest.</p>
		Deposited to Parliament	26/03/13	
		Date of Explanatory Memorandum	09/04/13	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
Ref.	7869/13	Date of Lords debate	N/A	
Legal base	Article 79(2)(a) and (b) TFEU	Decision	Did not opt in	
		EU notified of decision	N/A	
Department	Home Office	Parliament notified of decision	16/07/13	
12	Title Proposal for a Regulation on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA	Date of Publication	30/04/13	<p>The Government did not opt in at the outset to the proposal for a Regulation which would establish the European Agency for Law Enforcement Cooperation and Training, but has committed to opting in post-adoption provided the final text does not give Europol the power to direct Member States to begin investigations or to share data that conflicts with national security.</p> <p>Having analysed the draft proposal from the Commission the Government identified two very serious concerns with the proposal which would fundamentally change the relationship</p>
		Deposited to Parliament	18/04/13	
		Date of Explanatory Memorandum	03/05/13	
		ESC: Did a debate take place?	Yes	
		Date of Commons debate	15/07/13	
		EUC: Did a debate take place?	Yes	
Ref.	8229/13	Date of Lords debate	01/07/13	
Legal base	Articles 88 and 87(2)(b) TFEU	Decision	Did not opt in	
		EU notified of decision	N/A	

Proposal		Decision-making process		Reasoning for Government’s decision	
Department	Home Office	Parliament notified of decision	18/07/13	<p>between Europol and Member States. Firstly, there is an increased obligation to provide data. In the proposal as drafted, Member States are not exempt from providing data, even where it would conflict with national security, endanger ongoing investigations or an individual’s safety. This conflicts with the national interest.</p> <p>Secondly, whilst Europol can already request a Member State to initiate an investigation, this proposal goes much further and includes an obligation to provide a reason if no such operation is conducted. Any reasons provided would be subject to challenge before the European Court of Justice. This creates a risk that the European courts could dictate what national law enforcement agencies should prioritise. This interferes with operational independence which is at the heart of UK policing.</p> <p>We will remain a full and active participant in negotiations on the Regulation and are committed to seeking to opt in post adoption provided that the above two concerns are met in the final text.</p>	
13	Title	Date of Publication	11/06/13	The EU-Ukraine association agreement, including a deep and comprehensive free trade area, will deepen and broaden the political and economic relationship between the EU, its member states, and Ukraine. The agreement process supports and encourages reform in Ukraine to bring it closer to EU norms, as well giving Ukraine gradual access to parts of the EU internal market. UK Government policy is to support a closer relationship between the EU and Ukraine, while continuing to make clear to Ukraine that they need to deliver demonstrable improvements.	
		Deposited to Parliament	12/06/13		
		Date of Explanatory Memorandum	14/06/13		
		ESC: Did a debate take place?	No		
	Date of Commons debate	N/A			
	Ref.	9856/13	EUC: Did a debate take place?		No
	Legal base	Articles 217 and 218(5), (7) and (8) TFEU	Date of Lords debate		N/A
Department	Foreign and	Decision	Opted in		
		EU notified of decision	03/09/13	We have not yet taken a decision on whether to recommend signature of the agreement which is dependent on sufficient progress on reform by Ukraine. I underlined all of these points	

Proposal		Decision-making process		Reasoning for Government’s decision
	Commonwealth Office	Parliament notified of decision	17/10/13	during my September visit to Ukraine. The Council decisions relate to an agreement which contains provisions relating to the temporary movement of natural persons for business purposes – known as “mode 4” trade in services – and the readmission of third country nationals, thus triggering the UK Justice and Home Affairs opt-in. I believe it is in the UK’s interest to opt in to these measures, which are an integral part of our wider approach on trade and support our other commitments in services and investment liberalisation.
14	Title Proposal for a Council Decision authorising Austria and Malta accede to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters in the interest of the European Union	Date of Publication	11/06/13	The Proposal is to allow Austria and Malta to accede to the 1965 Hague Service Convention. These Member States are the only two EU Member States not to have acceded to the Convention. There is no impact on the UK of this proposal. The Government believes that the wider significance of these proposals for external competence mean that it is in the UK’s interests to participate fully in future negotiations on this Proposal, including having the ability to vote.
		Deposited to Parliament	15/06/13	
		Date of Explanatory Memorandum	25/06/13	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
	Ref.	10748/13	Date of Lords debate	
Legal base	Articles 81(2) and 218 (6) TFEU	Decision	Opted in	
		EU notified of decision	05/09/13	
Department	Ministry of Justice	Parliament notified of decision	13/09/13	
15	Title Proposal for a Council decision on the approval, on behalf of the European Union, of the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock, adopted in Luxembourg on 23 February 2007	Date of Publication	12/06/13	The Luxembourg rail protocol is intended to facilitate the financing of high-value railway rolling stock by seeking to ensure protection, for example of a leasing company’s rights against defaulters by a method of central registration, priority and common contractual terms. One of the purposes of this is to reduce the costs of leasing contracts for rolling stock. The Government consider that the protocol is clearly advantageous to the UK and European rail industry, would provide greater security for the leasing companies of rolling stock, and would be beneficial both to borrowers by stimulating increased flows of capital at lower cost, and to equipment suppliers.
		Deposited to Parliament	24/06/13	
		Date of Explanatory Memorandum	10/07/13	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
	Date of Lords debate	N/A		
Ref.	11140/13	Decision	Opted in	
Legal base	Articles 81(2) and 218(6)(a)	EU notified of decision	10/09/13	
Department	Department for Transport	Parliament notified of decision	30/10/13	
16	Title Proposal for a Council	Date of Publication	25/07/13	The stability, security and prosperity of the south Caucasus

Proposal		Decision-making process		Reasoning for Government's decision		
	Decision on the conclusion of a Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia of the other part, on a Framework Agreement between the European Union and Georgia on the general principles for the participation of Georgia in Union programmes	Deposited to Parliament	29/07/13	region, of which Georgia forms a part, is of strategic importance to the EU. Continued stability in the region helps to deliver the UK's prosperity and energy security goals. Progress towards EU standards and norms contributes to Georgia's prospects of becoming a peaceful and prosperous neighbour to the EU. As Georgia adopts the reforms necessary, it becomes an increasingly viable trading partner which shares European values. We therefore support Georgian progress and welcome the fact that Georgia has just initialled its association agreement with deep and comprehensive free trade area with the EU. This is an important landmark. The Council decisions allow Georgia to participate in European Union programmes and agencies, through its participation in the European neighbourhood policy. This will support Georgia's integration into EU networks, and will pave the way for further Georgian progress.		
		Date of Explanatory Memorandum	22/08/13			
		ESC: Did a debate take place?	No			
		Date of Commons debate	N/A			
		Ref.	12737/13		EUC: Did a debate take place?	No
		Legal base	Articles 217 and 218 (6) (a) TFEU		Date of Lords debate	N/A
Department	Foreign and Commonwealth Office	Decision	Opted in			
		EU notified of decision	25/10/13			
		Parliament notified of decision	10/12/13			
17	Title Proposal for a Regulation amending Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	Date of Publication	27/09/13	The Proposal is a minor and technical amendment to the recast Brussels I Regulation. It is needed to provide for the creation of the new Unified Patent Court, which will come into being shortly after the recast Brussels I Regulation in January 2015. The UK supports the creation of the Court and one of its Central Divisions will be hosted in London. It is expected to be put to December 2013 JHA Council for agreement on a general approach, and to be enacted before the dissolution of the current EP and Commission in Spring 2014.		
		Deposited to Parliament	09/08/13			
		Date of Explanatory Memorandum	15/08/13			
		ESC: Did a debate take place?	No			
		Date of Commons debate	N/A			
		EUC: Did a debate take place?	No			
Ref.	12974/13	Date of Lords debate	N/A			
Legal base	Article 67(4) and 81 (2) TFEU	Decision	Opted in			
		EU notified of decision	26/11/13			
		Parliament notified of decision	03/12/13			
18	Title Proposal for a Regulation on the European Union Agency for Criminal Justice Co-operation (Eurojust)	Date of Publication	21/08/13	The Government values UK membership of Eurojust as currently established where Eurojust's role is about providing support and co-ordination to investigations and prosecutions in cases of cross border crime. However, the Commission's new proposal creates substantial concerns; most notably by extending the mandatory powers of Eurojust National Members and through the proposed interaction between Eurojust and the parallel proposal for the establishment of a European Public Prosecutor's Office (EPPO). The Government has therefore		
		Deposited to Parliament	22/08/13			
		Date of Explanatory Memorandum	07/08/13			
		ESC: Did a debate take place?	Yes			
		Date of Commons debate	29/10/13			
		EUC: Did a debate take place?	Yes			
Ref.	12566/13	Date of Lords debate	04/11/13			
		Decision	Did not opt in			

Proposal		Decision-making process		Reasoning for Government’s decision
	Legal base Article 85 TFEU	EU notified of decision	N/A	decided not to opt in to the Eurojust Regulation at this time, but will conduct a thorough review of the final agreed text to inform active consideration of opting into the Eurojust Regulation post adoption.
	Department Home Office	Parliament notified of decision	02/12/13	
19	Title Proposal for a Regulation on the establishment of the European Public Prosecutor’s Office	Date of Publication	21/08/13	As confirmed in the Coalition Agreement, the Government will not participate in the establishment of any EPPO.
		Deposited to Parliament	22/08/13	
		Date of Explanatory Memorandum	07/08/13	
		ESC: Did a debate take place?	Yes	
		Date of Commons debate	29/10/13	
		EUC: Did a debate take place?	Yes	
		Date of Lords debate	04/11/13	
	Ref. 12558/13	Decision	Did not opt in	
	Legal base Article 86 TFEU	EU notified of decision	N/A	
	Department Home Office	Parliament notified of decision	02/12/13	
20	Title Proposal for a Council Decision on the conclusion of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data	Date of Publication	26/08/13	The UK has recognised first-hand the benefits of PNR through its own border systems programme (formally e-Borders), which has already been used to arrest suspects wanted for serious offences such as murder, rape and kidnap. The agreement provides that Canada shall ensure that its competent authority processes PNR ‘strictly’ for the prevention, detection, investigation and prosecution of terrorism and other serious crime that is transnational in nature. Such processing constitutes a legitimate objective for the purposes of Article 52 of the Charter of Fundamental Rights of the European Union. PNR data has a clear value in combating these types of crime, which goes to the necessity of the measure to protect the public. The agreement is strictly limited to the transfer of PNR for the purposes of preventing and combating terrorism and other serious transnational crime. It is therefore not directly applicable to the control of immigration but could be used to help fight people trafficking.
		Deposited to Parliament	24/07/13	
		Date of Explanatory Memorandum	07/08/13	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
		Date of Lords debate	N/A	
	Ref. 12637/13	Decision	Opted in	
	Legal base Articles 82(1)(d), 87(2)(a) and 218(6) (a) TFEU	EU notified of decision	26/11/13	
	Department Home Office	Parliament notified of decision	20/11/13	
21	Title Proposal for a Directive on the fight against fraud to the Union’s financial interests by means of criminal law	Date of Publication	23/07/12	The Directive is intended to provide dissuasive and effective measures to protect the EU budget from fraudulent activity. *The Directive raised complex and unprecedented issues concerning the opt-in process, further complicated by the prospect of a change of legal base in the course of the negotiations. The Government therefore indicated to Parliament by letter on 28 October 2013 that it did not intend to opt in to the proposal but would consider accepting the measure after it had
		Deposited to Parliament	13/07/12	
		Date of Explanatory Memorandum	15/07/12	
		ESC: Did a debate take place?	No	
		Date of Commons debate	N/A	
		EUC: Did a debate take place?	No	
		Date of Lords debate	N/A	

Proposal		Decision-making process		Reasoning for Government’s decision
Ref.	12683/12	Decision	Did not opt in	been adopted by the other Member States. Any such decision would be subject to consultation of Parliament according to the procedures set out in the Code of Practice. The UK is not convinced that strengthening criminal sanctions is the most effective way of preventing fraud against the EU's budget. There are also concerns regarding the inclusion of minimum terms of imprisonment, which would conflict with judicial discretion to ensure sentences are proportionate and have regard to all the circumstances of the case; a key principle of the UK sentencing system. The UK also cannot support provisions relating to freezing and confiscation or the inclusion of VAT in the Directive's scope
Legal base	Article 325 (4) TFEU	EU notified of decision	N/A	
Department	HM Treasury	Parliament notified of decision	28/10/2013*	

Annex 2: Opt-in Decisions 2014

Proposal title	Descriptions
Ministry of Justice	
Proposal for a legislative instrument on e-justice	The Commission is expected to issue a proposal in 2014 to provide a legal basis and data protection framework for e-Justice to support cross-border transactions. Depending the content of the proposal this may require an opt-in decision.
Proposal 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 to resolve this issue.
Proposal to amend the current EC Regulation No 864/2007 on the law applicable to non-contractual obligations (ROME II)	Under Article 30 of Rome II, the commission are required to carry out a study on the effects of Article 28 of this Regulation with respect to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents
Department for Transport	
Proposal for a Directive on the definition of criminal offences and sanctions in the commercial road transport field	The Commission has been considering publishing a proposal for a Directive 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 would be intended to contribute to reduce distortions of competition and the unequal treatments when committing infringements.
BIS	
Accession of Bosnia & Herzegovina to the World Trade Organisation	It is likely that the Bosnia and Herzegovina will be approved sometime in 2014. All accessions require an opt-in decision due to the extension of Mode 4 services commitments to the acceding state.
Accession of Seychelles to the World Trade Organisation	It is likely that the Accession of the Seychelles will be approved sometime in 2014. All accessions require an opt-in decision due to the extension of Mode 4 services commitments to the acceding state.
Conclusion of Free Trade Agreements with Canada and Singapore	Conclusions of Free Trade Agreements with Canada and Singapore will trigger JHA opt-in decisions based on Mode 4 provisions.

Proposal title	Descriptions
Home Office	
Proposal on fighting money laundering	Money laundering is already a criminal offence in all EU Member States and is listed in the Treaty as one of the areas where the EU may create minimum standards for offences and penalties. The Commission has concluded that the absence of a common approach in Member States to this issue hinders cross-border investigations and police cooperation, and is therefore suggesting the need to harmonise the offence of money laundering at EU level. It is possible that a proposal will emerge in 2014.
HMT	
Framework for crisis management and resolution for financial institutions other than banks	With a view to enhancing financial stability and in parallel to the framework for the banking sector, the initiative will ensure that non-bank financial institutions can be effectively resolved without causing systemic impact.
DECC	
Possible Directive on nuclear insurance and liability measure.	This would aim to address matters relating to civil liability to pay compensation to victims for damage from nuclear accidents and insurance of such liabilities. Depending on how drafted, it might give rise to JHA obligations – e.g. it might contain provisions about jurisdiction and the recognition & enforcement of judgments. More will be known when the Commission makes a presentation on this in Brussels in the week of 20 January.



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ISBN 978-0-10-187722-0



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