



# HOUSE OF LORDS

European Union Committee

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The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 1 December 2010 to 31 May 2011.

## HOME AFFAIRS

### (SUB-COMMITTEE F)

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## ATTACKS AGAINST INFORMATION SYSTEMS

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

Thank you for your letter of 27 October, in which you asked to be informed whether or not the UK has opted in to this proposal. I am writing to let you know that the Government has decided that the UK should opt in to this Directive.

I am grateful for the comments made by your Committee in that letter on the Explanatory Memorandum relating to this Directive. I note that you have cleared the draft Directive from scrutiny, and I will ensure that the concerns raised in your letter are reflected in the negotiating mandate for the UK. I will keep you informed of the progress of negotiations.

*31 January 2011*

### **Letter from the Chairman to James Brokenshire MP**

Thank you for your letter of 31 January 2011 which the Home Affairs Sub-Committee of the European Union Committee considered at a meeting of 9 February 2011. We understand that the Council was notified of the United Kingdom opt-in before Christmas, and we would have expected to receive a letter several weeks ago informing us of that.

In my letter of 27 October 2010 I said that we cleared the document from scrutiny. I added that where this draft Directive required an extension to the criminal law of the United Kingdom jurisdictions, or the addition of an extra-territorial jurisdiction, we believed that these changes were desirable, and that the United Kingdom should opt in to this measure. We are glad therefore that the United Kingdom did in fact opt in.

*9 February 2011*

## **Letter from James Brokenshire MP to the Chairman**

I would like to inform you of the desire of the Presidency to seek full agreement on the text during the next Justice and Home Affairs (JHA) Council on 11 and 12 April. The Presidency had previously indicated that they would seek partial general agreement at the Council, but without specifying the detail of what they were seeking to agree. Their decision to seek full agreement was not trailed before this week. We did not seek this approach, and do not support it.

I am aware that your Committee has cleared this Directive from scrutiny.

We do not have the final text that will go to the JHA Council, and indeed there will be meetings over the course of the next week to resolve the outstanding issues on the Articles, meaning we will see several versions before the final package is known. However, but on the basis of the initial text, your Committee questioned whether the wording in Articles 3, 4 and 5 on “cases which are not minor” was clear enough, especially when the Directive is subject to the jurisdiction of the European Court of Justice. We agree with the point made by your Committee, and have raised this point during negotiations. While most Member States do not wish to have the text removed, we have ensured that a recital has been included that states that Member States may determine what constitutes a minor case in accordance with their national law and practice. We support such an approach as the decision about whether to prosecute in a particular case can then be left to prosecutorial discretion.

Your Committee asked that the UK gain greater clarity on the mens rea in the text for Articles relating to offences. We have had some success in this, as the Presidency agreed to strengthen the text in this area slightly, and has brought it closer to that used in the Council of Europe Cybercrime Convention. We will continue to press for greater clarity and amendment to the text.

The Presidency and a majority of Member States would like an amendment to Article 3 to include a requirement for a security measure to have been breached. This does not preclude Member States going further and not requiring such a measure to be breached. Whilst our preference was for the text to be more ambitious in requiring Member States to have in their law an offence for illegal access to a computer system without such a condition, we propose to support this approach.

On penalties for the offences, the Presidency view is that for any of the offences listed in Articles 3 to 8, there should be a maximum sentence of at least two years. Discussion continues on the level of penalties for the offences when committed with aggravating circumstances, along with discussion on the detail of the aggravating circumstances. This remains a contentious element of the text. The structure of the Directive has changed in this area, with Article 10 now forming part of Article 9.

The question of including the misuse of identity data to commit offences under Articles 3 to 7 as an aggravating circumstance has been discussed in detail. There is no clear majority on this issue at present. The Government’s position remains that we should continue to oppose the inclusion of this within this Directive, as while identity theft is a major concern in cyber crime, it is not an issue exclusive to cyber crime.

We have concerns regarding the issue of extra-territorial jurisdiction being extended to those with habitual residence in a Member State. The Presidency has proposed that the question of whether to extend extra-territorial jurisdiction to those individuals should be a matter for the Member State. We are continuing to argue against jurisdiction based on nationality.

*1 April 2011*

## **CRITICAL INFORMATION INFRASTRUCTURE PROTECTION: TOWARDS GLOBAL CYBER-SECURITY (8548/11)**

### **Letter from the Chairman to Mark Prisk MP, Minister of State, Department for Business, Innovation and Skills**

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 11 May 2011 and cleared it from scrutiny.

The document is in the nature of a progress report on the 2009 Communication “Protecting Europe from large-scale cyber-attacks and disruptions: enhancing preparedness, security and resilience” which was the subject of our report Protecting Europe against large-scale cyber-attacks, published in March 2010. One of our conclusions was that a full assessment of the value of the Communication would only be possible when we could see how it was followed up. We did not envisage that this assessment

would take place less than 2 years after the publication of the Communication. We are not therefore surprised that this document is only a preliminary assessment.

We are disappointed to see that little progress has been made in establishing CERTs in those Member States which have inadequate provision for them, and that “a network of well-functioning national/Government CERTs in all Member States” has to wait till 2012, particularly since this will result in EISAS being delayed until 2013. Member States and the EU institutions rely on each other for many security matters, and they are all at risk of the security lapses of the weakest.

On the other hand, we are pleased to see you describe the pan-European exercise on large-scale network security incidents which took place on 4 November 2010 as “successful” and “a highlight of the work programme”. You add that it “has resulted in the key future deliverable of an EU cyber-incident contingency plan”. This contrasts with the highly pessimistic view taken in the Government’s EM on the 2009 Communication, which described the idea of an exercise before the end of 2010 as “highly aspirational”, and with the view of Lord West of Spithead who said in evidence to us that it was “really not a starter ... if they tried to do it, and it would be then probably without proper preparation, you would not learn anything from it, it would just be a bit of a mess”. We are glad that these fears apparently proved groundless.

In conclusion I would say that we were struck by the fact that, both at the Commission and in London, issues of cyber-security, cyber-attacks and cybercrime are dealt with by different departments (DG HOME and DG INFSO in the Commission, and BIS, the Home Office and the Cabinet Office in London). There is considerable overlap in these issues, so such a division of responsibilities puts a premium on effective coordination between the different departments involved, and on avoiding gaps in the formulation of policy.

We do not require a reply to this letter.

*12 May 2011*

ENISA: EUROPEAN NETWORK AND INFORMATION SECURITY AGENCY (14358/10,  
14322/10)

**Letter from the Chairman to Edward Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Business, Innovation and Skills**

Thank you for your letter of 24 November 2010. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 1 December 2010.

The Committee notes the legal advice that has been received and is supportive of any moves which can be made within the Telecoms Council to improve the utility of ENISA’s facilities in Athens, since we continue to take the view that its location in Heraklion is a real handicap.

The Committee is now content to clear the outstanding document from scrutiny.

No reply to this letter is expected.

*1 December 2010*

EU INTERNAL STRATEGY IN ACTION: FIVE STEPS TOWARDS A MORE SECURE  
EUROPE (16797/10)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union is grateful for the explanatory memorandum you have provided for this document. As you know, it is the subject of the inquiry on which the Sub-Committee has recently embarked, and therefore will be kept under scrutiny.

The Committee looks forward to receiving written evidence from the Home Office for this inquiry and, in due course, oral evidence from Home Office officials and ministers.

We do not require a reply to this letter.

15 December 2010

### **Letter from James Brokenshire MP to the Chairman**

I am writing to inform you that the Justice and Home Affairs Council on 24-25 February will be asked to adopt Council Conclusions on European Union document (No.16797/10), Commission Communication on the EU Internal Security Strategy in Action: Five steps towards a more secure Europe. I am aware that the European Union Committee maintains this document under scrutiny for the duration of the enquiry into Internal Security. The text is marked "Limité" and is being provided in confidence under the arrangements agreed last year for sharing these texts with the Committees.

I attach for your information the latest draft of the Conclusions which remain under negotiation in the Council. We have already secured several amendments to clarify that, whilst we support the overarching priorities in the Communication, we will consider specific proposals as they are brought forward. Specifically, we have secured changes that: reflect the need to strike an appropriate balance between prevention and dealing with the effects of security threats; make clear that the Council will consider specific proposals as they come forward; replace references to "deepening" the area of freedom, security and justice with "further strengthening"; and address the important issue of ensuring that membership at COSI reflects the operational focus of our work.

We are also seeking changes to the latest text, including removal of specific references to common foreign and security and defence policy in relation to the external aspects of EU security whilst still acknowledging the importance of working with third countries. Provided these amendments are made and other textual changes are consistent with the views the Government has expressed, we will want to be in a position to agree the Conclusions at the Council.

I believe that blocking agreement would harm relations with other Member States, especially the Hungarian Presidency, as well as the Commission. It may also jeopardise the amendments we have secured. Given the ongoing scrutiny of the Communication I considered it appropriate to inform you of the current situation. The evidence session for your enquiry on 2 March will of course provide an opportunity for any questions arising from the conclusions to be addressed.

14 February 2011

### **Letter from the Chairman to James Brokenshire MP**

Thank you for your letter of 14 February 2011 explaining that the JHA Council next week will be asked to adopt Conclusions on this document. The letter, and the draft Conclusions which you enclosed, were considered by the Home Affairs Sub-Committee of the European Union Committee at a meeting on 16 February 2011. The Committee were grateful to you for having made the Conclusions available to us in a timely fashion.

As you know, documents which are the subject of an inquiry remain under scrutiny for the duration of the inquiry. If the report recommends a debate, the document will be cleared from scrutiny only once the report has been debated. However the House of Lords Scrutiny Reserve Resolution provides that the minister "may give his agreement in relation to a document which remains subject to scrutiny ... if the European Union Committee has indicated that agreement need not be withheld pending completion of scrutiny".

The Home Affairs Sub-Committee agree with you that a failure by the Government to agree these Conclusions might harm relations with other Member States and the Commission, and might jeopardise the amendments you have already secured. While we continue to keep the document under scrutiny, we agree that you should if you think fit agree to these Conclusions, with any minor amendments that may be made.

It would be helpful if you could let us have the final Council Conclusions as soon as they are available. The Sub-Committee look forward to your giving evidence to them on 2 March, and hope that you will be able to tell them then what was agreed at the Council.

16 February 2011

## EURODAC: COMPARISON OF FINGERPRINTS (14919/10)

### **Letter from the Chairman to Damian Green MP, Minister of State for Immigration, Home Office**

Thank you for your letter of 19 November 2010 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 1 December 2010.

We note your reasons for believing that an opt-in was needed for each of the three drafts of this proposal, although in your view none was needed for the draft Regulation on the IT Management Agency. We would not have expected either the Commission or the Council Legal Service to express a view that the United Kingdom opt-in does not apply, since there is no question but that it does. Nor would we have expected them to argue that a fresh exercise of the opt-in was unnecessary, even if they thought so.

What we might have expected them to say was that a fresh exercise of the opt-in was necessary in the case of the Regulation on the IT Management Agency; but they apparently shared your view on this. As I said in my letter to James Brokenshire on that Regulation, we are not persuaded by your views, but believe further debate on this is unnecessary.

We will continue to keep this document under scrutiny until we hear from you whether or not the United Kingdom has opted in to this proposal.

*1 December 2010*

### **Letter from Damian Green MP to the Chairman**

Thank you for your letter of 1 December, in which you asked to be informed whether or not the UK had opted in to this Regulation in accordance with Protocol (No 21) to Title V of Part Three of the Treaty on the Functioning of the European Union.

I am now writing to let you know that the Government has decided that the UK should opt in. This is in order to secure continued access to EURODAC for immigration purposes, as it plays a vital role in combating abuse of the UK's asylum system.

*11 January 2011*

### **Letter from Chairman to Damian Green MP**

Thank you for your letter of 11 January 2011 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 19 January 2011. The Committee also considered the written statement you made on 11 January.

We are glad to know that the United Kingdom has opted in to the draft Regulation. We now clear this document from scrutiny.

*20 January 2011*

## EUROPOL: SCRUTINY OF ACTIVITIES (5659/11)

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 2 March 2011.

Although the language of article 88 TFEU on the scrutiny of Europol and article 85 on the evaluation of Eurojust is different, this Committee has always taken the view that there is no need in practice for different arrangements to apply for Parliamentary oversight. We therefore think it unfortunate that this Commission Communication deals only with Europol. We would welcome your assurance that in any future discussions in Brussels the Government would press for both Eurojust and Europol to be covered by one arrangement for Parliamentary oversight.

The Commission favours setting up "a permanent joint or interparliamentary forum" consisting of both the national Parliaments' and European Parliament's committees responsible for police matters.

Its powers would include inviting the Chairman of the Management Board to appear before the new body. The Commission would like to be “actively involved” in the work of the new body.

The oversight of Europol’s activities by the European Parliament increased considerably with the coming into force of the Europol Decision on 1 January 2010. The House of Lords has always received very full cooperation from Europol when examining its activities; we received evidence from the then Director during our inquiry which led to the report *Europol: coordinating the fight against serious and organised crime* (29th Report, Session 2007-08, HL Paper 183), and the present Director gave evidence to us in December 2010 for our current inquiry into the EU Internal Security Strategy.

We can nevertheless see the advantages of all national Parliaments joining with the European Parliament in scrutinising the structure, management, functions and working of Europol, though emphatically not its operational side. We do not however see why this can only be achieved by a new permanent body, as the Commission suggest; in our view a sufficient case has not been made out for such a body, nor any justification for the resources that would inevitably be involved. We would not support the creation of such a new body.

Nevertheless we would not think it sensible to leave the field free for the European Parliament to move ahead with their own proposed arrangements. To do so would risk the role of national Parliaments, highly desirable in a field where national authority remains important, being marginalised. We would therefore favour building on existing bodies such as the meetings of the Chairmen of the Justice and Home Affairs Committees of national Parliaments which have already been organised under some Presidencies, or the Joint Parliamentary Meetings sometimes convened by the LIBE Committee of the European Parliament. Such meetings could be arranged more regularly in future (possibly once a Presidency) and could involve some members of the European Parliament (thus being similar to but separate from the meetings of CAFODS which it is being suggested should take over the role of the WEU Assembly). If the Government agrees with this approach we would be content for it to be put forward when the Commission’s Communication comes up for discussion in the Council.

There is one additional point we should like to make clear. We have in the past seen it suggested that Regulations made under article 88 TFEU would lay down the conditions under which the European Parliament and national Parliaments would scrutinise the work of Europol. We emphasise that there is no way in which such Regulations could be binding on national Parliaments. The procedures referred to in Article 88 are those governing Europol; it is for the European Parliament and national Parliaments, and them alone, to determine the modalities of cooperation between them.

In view of the importance of this subject, we are keeping this document under scrutiny. We do not require an immediate response to this letter, but look forward to being kept informed of any developments.

3 March 2011

## EVALUATION OF EU READMISSION AGREEMENTS (7044/11)

### **Letter from Damian Green MP, Minister of State for Immigration, Home Office, to the Chairman**

I am writing to advise you of our decision not to opt into negotiating mandate for the proposed EU Readmission Agreement with Belarus.

You will be aware that EU Readmission Agreements provide for reciprocal administrative arrangements to facilitate the return and transit of persons who no longer have a legal basis to stay in EU Member States.

The UK has to date opted into all 13 EU Readmission Agreements which are in force. These agreements are with Russia, Sri Lanka, Hong Kong, Macau, Ukraine, Albania, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Bosnia-Herzegovina, Moldova, Georgia and Pakistan.

However, in this case we did not believe that the proposed agreement would deliver clear benefits for the UK. The number of illegal migrants removed or deported to Belarus is very low. Moreover, the UK Border Agency already enjoys good cooperation with officials there and we do not have any operational problems with returns to Belarus which a Readmission Agreement would solve.

There is of course the opportunity to participate in the Belarus Agreement later on when it gets to the signature and conclusion stages and we will inform the Committee further then with customary Explanatory Memoranda. We can also seek to participate in the Agreement post adoption.

*28 March 2011*

**Letter from the Chairman to Damian Green MP, Minister of State for Immigration,  
Home Office**

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 6 April 2011. They also considered your letter of 28 March 2011 concerning the UK position on the negotiating mandate for an EU readmission agreement with Belarus at the same time.

While your Explanatory Memorandum responds to a number of the recommendations contained in the above document, we note that it remains silent on a number of others; in particular, the one which states that bilateral readmission agreements between Member States and third countries should not be used in preference to an existing EU readmission agreement. We would be grateful for an overview of how many third countries which are party to an EU readmission agreement are also party to a bilateral readmission agreement with the UK, and what proportion of returns are made under the EU as opposed to the bilateral agreement.

With regard to the proposal for a pilot project to monitor the treatment of third country nationals after they are returned to a partner country, we note that you consider that such an initiative would be inappropriate and impractical. We do not find these considerations convincing, and consider that the approach set out in the Communication, including engagement with appropriate non-governmental organisations, is a sensible way of approaching this issue. If, as you seem to suggest, third country nationals are well treated after their readmission to a partner country, then it is only reasonable that reliable empirical data be collected to reinforce this assertion. We hope therefore that you will reconsider your negative attitude, in principle, to the Commission's proposals.

However, notwithstanding our position on this matter, we do not think that it would be wise for the Commission to proceed with a pilot project until they have assembled a more complete data set which will allow such a project to rest on surer foundations. In this respect, we were concerned to learn that a number of Member States did not provide any data at all to the Commission when they were preparing the evaluation document and that some of the data which was provided was incomplete. Therefore, we consider that this should be tackled as a priority and once the available data has improved, we would then consider a pilot project to be a worthwhile initiative.

With regard to the data provided by the UK to the Commission ahead of the evaluation, we note that only aggregate return numbers by country were provided for the period 2006-09. We would be grateful if more detailed information were provided, broken down on an annual basis and between forced and voluntary returns, in order that we can gain a more accurate picture of the utility of these agreements from the UK perspective.

We further note the UK's decision not to opt in to the negotiating mandate for the EU readmission agreement with Belarus. This is the first occasion on which the UK has chosen not to participate in the negotiations for such an agreement. Given the current political situation in Belarus, following the recent fixed elections, we do not think that it is at all safe to assume that the number of illegal migrants will remain low or we will necessarily be able to rely on bilateral cooperation with Belarus. Furthermore, opting in to the negotiating mandate in no way obliges the UK to opt in to the agreement which may result. Therefore, we are not convinced by your reasons for breaking with precedent in this instance and would be interested to hear about your reasoning in more detail and with respect to the points raised above. We would also be interested to know, in general terms, if the Government is minded to negotiate agreements with third countries on a bilateral basis or if their involvement with EU agreements will continue to be a priority.

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

We would be grateful for your response to the above points within the standard deadline of ten working days.

*6 April 2011*

## Letter from Damian Green MP to the Chairman

Thank you for your letter of 6 April 2011 regarding the recent evaluation by the EU Commission on the operation of EU Readmission Agreements.

You asked how many third countries party to an EU Readmission Agreement are also party to a bilateral agreement with the UK and the proportion of returns made under both types of agreement. A readmission agreement takes precedence over any pre-existing bilateral agreement. Returns to countries where a readmission agreement is in force will be conducted under that agreement rather than the previous bilateral arrangements. Our returns processes are consistent and compatible with the terms of readmission agreements in which the UK is a participant.

You asked us to consider our attitude to the Commission's proposals on monitoring the treatment of third country nationals after they are returned. We shall continue to place great emphasis on careful consideration of claims and case by case consideration of the risks posed to returnees. Each and every asylum and human rights claim is carefully considered in accordance with our international obligations and take account of the latest information about conditions in the country as they impact on the individual claimant. We continuously monitor the situation in asylum intake countries drawing upon recognised and respected governmental and non governmental sources. Those found not to be in need of protection have a right of appeal to the independent appellate authorities.

We do not have any powers to require individuals forcibly removed from the UK to maintain contact with UK authorities and it is unlikely that individuals would cooperate unless they believed that bringing us allegations of mistreatment would persuade us to review their case. Persons motivated in that way are unlikely to present a fair and objective picture. More active monitoring of returnees may also create other risks. Individuals may find themselves subject to adverse attention from the authorities if, following their return, they appeared to be of interest to a foreign government such as the UK. Of course, if the UK Border Agency received any specific allegations that a returnee has experienced ill treatment then these would be investigated further.

The exception to the government position on monitoring is where a person has been deported from the UK under Deportation with Assurances (DWA) arrangements. These require very specific assurances as to the treatment of a very small and special group of deportees and it is right in these particular cases to have post return verification so that we know the assurances are being adhered to.

With regard to a statistical annual breakdown on the number of forced and voluntary returns to EU Readmission Agreement countries, I attach [not attached] relevant information for the period you have requested and additionally statistics for 2010. Returns statistics for Pakistan and Georgia are included. However, it should be noted that the EU Readmission Agreement with Pakistan did not come into force until 1 December 2010 and with Georgia until 1 March 2011.

You have also questioned the recent decision not to participate in the mandate to negotiate an EU Readmission Agreement with Belarus given the current political situation there. The political situation in Belarus has remained difficult for many years now and we are aware that the human rights situation in Belarus has significantly deteriorated since the presidential elections in December 2010. However, asylum applications from Belarus to the UK are low (15 applications for asylum excluding dependants in 2009 and 25 in 2010). The situation following the elections may lead to a slight increase in asylum applications this year but we have yet to see any leading indications that it will do so. In 2006, the year of previous presidential elections, which also led to significant allegations of human rights abuses, there were 55 asylum applications. It therefore seems very unlikely that the UK is about to become a significant destination for those seeking asylum from Belarus.

We are not experiencing problems conducting returns to Belarus and do not see that participating in the readmission agreement would offer the UK any benefits over the agreement we already have. We will of course keep the situation in Belarus under review and we can always consider participation in the EU Readmission Agreement with Belarus at a later date.

Finally, you asked whether the government is minded to negotiate bilateral agreements with countries going forward or if involvement with EU Readmission Agreements will continue to be a priority. Government policy on EU Readmission Agreements is simply to assess on a case by case basis whether participation in an agreement would benefit the UK returns effort to the country concerned. We intend to continue this approach as and when mandates to negotiate new agreements arise.

18 April 2011

### **Letter from the Chairman to Damian Green MP**

Thank you for your letter of 18 April 2011. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 11 May 2011.

We are grateful to you for providing the statistical breakdown of forced and voluntary returns to EU Readmission Agreement countries. We also note the further information you have provided about the Government's decisions regarding other aspects of the Communication, as well as the negotiations for an EU-Belarus readmission agreement and any further EU readmission agreements which are opened for negotiation.

However, with regard to the opening of the negotiating mandate for the EU-Belarus readmission agreement, while we are of the view that the negotiations will have to take account of the unsatisfactory conditions in Belarus and the need to avoid making unnecessary returns, we remain perplexed as to why a decision was made not to opt in at this stage, since agreeing to the negotiating mandate would not in any way have obliged you to opt in to the resulting agreement. We would therefore welcome further clarification about your reasons.

While we continue to have strong reservations about your approach to some of the Commission's proposals, including the pilot project, we have nevertheless decided to clear this document from scrutiny.

We would be grateful for your reply within the standard deadline of ten working days.

*11 May 2011*

### **Letter from Damian Green MP to the Chairman**

Thank you for your letter of 11 May 2011 advising me that the recent Commission Communication on the evaluation of EU Readmission Agreements has been cleared from scrutiny.

Your letter also asked why a decision was made not to opt in to the mandate to negotiate an EU Readmission Agreement with Belarus, when agreement to participate in the mandate would not have obliged the UK to opt into the resulting agreement.

While I appreciate that participation in the negotiating mandate would not have required the UK to opt in to the final agreement with Belarus, there were a number of reasons for not doing so.

Firstly, there was our relationship with European Partners to consider. To participate in a negotiating mandate but not the final agreement would likely send a negative message to partners that the UK did not value the final agreement reached and could cause us difficulties in future diplomatic relations.

If we participated in the negotiating mandate and later decided not to participate in the final agreement, the UK Government would have incurred administrative and resource costs associated with sending officials to Brussels and possibly Minsk to pursue discussions on mandate negotiations. This would not be prudent in a time of financial constraints.

The overriding consideration, however, was that Belarus is a low priority country for the UK in the area of immigration returns. Returns numbers to Belarus are small and we do not have any re-documentation problems which an EU Readmission Agreement would help address. Participation in the readmission agreement would not add any administrative value to the UK returns effort and would be outweighed by the administrative effort in terms of time, costs and resources to take negotiations forward.

*24 May 2011*

## **EXTERNAL BORDERS: COMBATING ILLEGAL IMMIGRATION**

### **Letter from Damian Green MP, Minister of State for Immigration, Home Office, to the Chairman**

I am writing to update you on the Commission report on the implementation of the Council Conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration.

The Council Conclusions were agreed in February 2010 as a response to French calls for an EU 'crisis summit' following the arrival of 124 Kurdish migrants from Syria on Corsica in January 2010.

The Conclusions call for the reinforcement of the capabilities of Frontex (including further developing joint return operations and flights), closer Member State cooperation on surveillance (particularly through EUROSUR – the European Surveillance System), and more engagement and practical action on migration with third countries, especially Libya and Turkey.

Although we are excluded from full participation in Frontex on ‘Schengen-building’ grounds, we strongly support its work to co-ordinate the efforts of Member States to raise standards of border management, and recognise the key role it plays in protecting the external borders of the EU. We are keen to continue our co-operation and involvement in Frontex, and participate in a number of Frontex activities to strengthen the external Schengen borders.

Several measures in the Conclusions are ongoing initiatives that are a continuation of existing programmes. These include: developing the role of the European Asylum Support Office (EASO); promoting practical cooperation and capacity building; systematic implementation of the Global Approach to Migration (i.e. upstream work with third countries); and further developing the networks of Immigration Liaison Officers (ILOs).

Five of the measures are being taken forward by the Standing Committee on Operational Cooperation on Internal Security (COSI). These five measures deal with:

- Frontex Working Arrangements with third countries sharing common goals with the EU regarding border security (in particular, accession and candidate countries, and neighbouring third countries) (measure 4).
- the collection, processing and systematic exchange of relevant information between Frontex, other EU Agencies and Member States (measure 6);
- the development of the European Surveillance System (EUROSUR), which will establish a mechanism for Member States’ authorities to share operational information related to border surveillance and for cooperation with each other and with Frontex at tactical, operational and strategic level (measure 12);
- the exchange of information on illegal immigration, trafficking in human beings and falsification of documents (measure 16); and
- solidarity and the integrated management of external borders by Member States – in particular the European Patrol Network (EPN), which co-ordinates Member States’ maritime and surveillance activity along the southern and eastern maritime borders of the EU (measure 17).

We are broadly supportive of the initiatives within the report and are actively involved in the relevant working groups. I updated your Committee on the latest iteration of the text to amend the Frontex Regulation and the ILO Network Regulation by letters on 21 February and 1 March, and I intend to update you shortly on the EU Turkey Readmission Agreement, the EU Belarus Readmission Agreement and a Commission Communication on the evaluation of Readmission Agreements. In general, we would prefer to see the conclusion of existing readmission agreement mandates before opening new ones. Measure 25 in the report refers to dialogue with Libya. However, the overarching EU-Libya Framework Agreement, which drives this practical cooperation dialogue, has been suspended following the instability in Libya. We will seek to update you on progress with individual measures currently under scrutiny as developments occur.

*15 March 2011*

#### **Letter from the Chairman to Damian Green MP**

Thank you for your letter of 15 March 2011. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 6 April 2011.

We strongly endorse the Government’s support for the development of Frontex and EUROSUR and we believe that the UK has an important stake in the effectiveness and success of these two initiatives. These developments will also be considered in our forthcoming report on the EU Internal Security Strategy.

With regard to the work of the European Asylum Support Office, which we understand commenced operations in November 2010, we would welcome an initial analysis from the Government of how this organisation is proceeding so far. This will enable us to take a view on whether this area could benefit from any further scrutiny at this stage.

We would be grateful for your reply within the standard deadline of ten working days.

*6 April 2011*

### **Letter from Damian Green MP to the Chairman**

Thank you for your letter dated 6 April 2011 in which you request an initial analysis from the Government of how the European Asylum Support Office (EASO) is proceeding in its operations so far.

Since the adoption of Regulation No 439/2010 of the European Parliament and of the Council of 19 May 2010, the EASO Management Board has met twice in Malta. The inaugural Management Board meeting was held on 25 and 26 November 2010 where the Chair of the Management Board Mr Stephane Frattaci (France) was appointed. The appointment of the new Executive Director of the EASO, Dr. Rob Visser was also announced and he is now in place focusing on the day-to-day management of the agency.

The Management Board has also met to discuss more practical matters of the EASO including agreeing a Work Programme for the forthcoming year and taking over of a number of practical cooperation projects that were previously run on a less formal basis by the General Directors' Immigration Services Conference (GDISC).

Additionally, progress was made to launch later this year the EASO Country of Origin Information Portal which will allow EU Member States to access and share country reports to aid asylum decision making. It is expected that the EASO will be fully up and running in Valetta by June 2011.

The biggest challenge facing the EASO since its inauguration is the continuing weakness of the Greek asylum system. Since his appointment, the Executive Director has swiftly reacted to the Greek request for EU support for the implementation of the Greek Action Plan on the Management of Migration Flows and the Reform of the Asylum System (GAP). Various EU Member States, including the UK, have responded to the call for the deployment of Asylum Support Teams to Greece to coordinate and provide assistance to their asylum procedures.

UK officials participated in EU expert missions to Greece in December 2010 to help identify serious weaknesses in the current asylum system and make strong recommendations for increased capacity and improvements to the current procedures.

Following these missions an Operating Plan allowing the deployment of Asylum Support Teams under Chapter III of the EASO Regulation was officially signed on 1 April 2011 by the Executive Director and the Greek authorities. On the same day a Joint Declaration was signed with Minister of Citizen Protection, Christos Papoutsis who affirmed his commitment to improving asylum procedures over the next two years. The deployment of Asylum Support Teams is likely to commence in May or shortly thereafter.

Despite the fact that the EASO is yet to be fully up and running, we feel that it has responded well to the situation in Greece. This has been acknowledged by the Commissioner for Home Affairs, Cecilia Malmström.

The EASO has yet to intervene in the ongoing situation in Italy and Malta caused by the influx of migrants from North Africa. However, the Executive Director has made it clear that EASO would be prepared to assist if requested by the Member States concerned.

*18 April 2011*

### **Letter from the Chairman to Damian Green MP**

Thank you for your letter of 18 April 2011. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 11 May 2011.

We are grateful to you for providing a helpful overview of the development of the European Asylum Support Office so far, as well as the support that it has already been providing to the Greek authorities.

We look forward to conducting further scrutiny of the agency's work after it becomes fully operational from June 2011 onwards.

No reply to this letter is expected.

*11 May 2011*

## FRONTEX: EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION (6898/10)

### **Letter from Damian Green MP, Minister of State for Immigration, Home Office, to the Chairman**

I am writing to update your Committee on the progress of the negotiations on the Regulation to amend the Frontex Regulation in the European Council working group on Frontiers and in European Parliament. The UK is not a participant in this Regulation.

Your Committee cleared the measure from scrutiny on 18 March 2010.

The Commission published an impact assessment in February 2010 reflecting the Agency's core objectives and activities and defining the scope of the amending Regulation. Following extensive discussions on the future of Frontex, the preferred option was a combination of the following sub-options:

- A revised mechanism with compulsory contributions of equipment from Member States combined with the gradual acquisition/leasing by Frontex of its own equipment, based on further analyses of needs and costs;
- A revised mechanism with compulsory contributions of human resources from Member States combined with a pool of border guards on semi-permanent detachment from Member States to Frontex, with the status of national experts;
- Awarding the Agency a co-leading role for the implementation of joint operations, with detailed rules for the operational plan, evaluation, and incident reporting;
- Allowing Frontex to finance and implement technical assistance projects in third countries and to deploy liaison officers in third countries;
- Giving Frontex a limited mandate to process personal data related to fighting criminal networks organising illegal immigration, under condition that such processing of personal data by Frontex is lawful, necessary and proportionate in relation to the tasks of the Agency;
- Giving Frontex a coordinating role in implementing joint return operations;
- Giving Frontex a mandate to analyse operational risks and requirements in the Member States.

The preferred option was reflected in the Commission's legislative proposal with the exception of giving Frontex a limited mandate to process personal data related to fighting criminal networks organising illegal immigration. Although the Commission considered that all possibilities to reinforce the fight against criminal networks organising illegal immigration should be explored, it wanted to wait for an overall strategy on information exchange between Agencies in the Justice and Home Affairs field.

The UK supports the proposal to amend the Frontex Regulation as it provides more effective deployment of Member States' border guards and technical equipment to Frontex operations. Also, increased engagement with third countries will allow practical action to stem illegal migration flows. However we were disappointed the Commission decided not to reflect the preferred option to give Frontex a limited mandate to process personal data as we were (and remain) of the view this would enable better information flows from operations to the law enforcement agencies that can use the data to counter organised immigration crime.

A first reading agreement on this measure is a priority for the Hungarian Presidency and has been provisionally placed as an agenda item for the JHA Council in June. The major changes to the draft to amend the Frontex Regulation as agreed in Council are:

Article 3b (Composition of Frontex Joint Support Teams): The original proposal on Frontex Joint Support Teams stated that Member States should make their border guards available at the request of the Agency unless faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request will be made at least 30 days before the intended deployment. This text has been amended in Council to show that Member States' border guard contribution should instead be planned on the basis of annual bilateral negotiations between Member States and Frontex and that any

request made by Frontex will be made at least 45 days before the intended deployment, and Member States should accede to this request unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

Article 7 (Technical Equipment): The original proposal on the acquisition of technical equipment stated that Member States should make their technical equipment available at the request of the Agency within 30 days of intended deployment unless faced with an exceptional situation substantially affecting the discharge of national tasks. This text has been amended in Council to show that the contribution by Member States to the pool of technical equipment and its deployment should be planned on the basis of annual bilateral agreements between Member States and Frontex and that further requests for technical equipment should be made at least 45 days before the intended deployment unless the Member State is faced with an exceptional situation substantially affecting the discharge of national tasks. A further amendment in the text allows any expenditure incurred by Frontex in the acquisition or leasing of equipment to be provided for in its budget.

Article 11 (Information Exchange Systems): The original proposal on Information Exchange Systems did not allow the Agency to collect, gather and manage personal data. However the Commission have now accepted that there are benefits in Frontex doing so in certain circumstances relating to cross border crime, such as human trafficking and people smuggling, and have amended the text to include a provision on this. The ability to share information has been amended now to include the possibility of the information being shared with European Agencies in addition to the Commission and Member States. Subsections have been added setting out measures for data protection and the processing of personal data in the context of joint return operations; joint operations; pilot projects and the deployment of rapid border intervention teams. The processing of personal data is limited to persons who are reasonably suspected of involvement in cross-border criminal activities, illegal migration or human trafficking. Not all Member States are yet able to fully endorse the current text and further discussions on this article will recommence at the next meeting of the working group on 11 February.

Article 13 (Cooperation with European Union agencies and bodies and international organisations): The original proposal on cooperation with European Union agencies has been expanded in Council to clarify that the onward transmission of personal data to other European agencies shall be subject to specific working agreements and to the prior approval of the European Data Protection Supervisor.

Discussions on the text in the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Foreign Affairs as part of the European Parliament's consideration of the text are also coming to a close.

In the European Parliament, most of the amendments tabled dealt with fundamental rights. Approaches for further reference to the respect of fundamental rights range from:

- One single initial declaration to be included in the Regulation - supported by the LIBE Committee's European People's Party (EPP) and the Alliance of Liberals and Democrats of Europe (ALDE)
- Inserting references to Fundamental Rights in almost every article of the proposal - supported by the Greens European Free Alliance and the Confederation of European Left as well as the Committee on Foreign Affairs' Opinion for the LIBE Committee
- A balance between the first two approaches - supported by the Group of the Progressive Alliance of Socialists and Democrats

Further major LIBE Committee proposals include:

- The establishment of an Advisory Board on fundamental rights that would be available for Frontex to consult
- Merging the articles that deal with the setting up of Frontex Joint Support Teams and Rapid Border Intervention Teams to provide a European Border Guard System for the deployment of all Frontex operational activities
- Supporting the Commission's proposal for the Agency to have the ability to purchase or lease its own technical equipment
- Supporting the proposal to give Frontex a remit to process personal data to share with European Law Enforcement Agencies in order to fight against cross border crime

- Giving the European Parliament a greater role in monitoring the Agency's working arrangements with third countries to increase democratic scrutiny

The LIBE Committee remain undecided as to whether Frontex should be given a mandate to coordinate voluntary returns.

The UK supports the proposal to amend the Frontex Regulation as it provides more effective deployment of Member States' border guards and technical equipment to Frontex operations. Increased engagement with third countries will allow practical action to stem illegal migration flows. Also, allowing Frontex to exchange personal data with Member States and law enforcement agencies will help fight against organised cross border crime.

Once the LIBE Committee have agreed their position they will engage with the Hungarian Presidency and the Council working group on Frontiers to produce a compromise text to put before the European Parliament and for agreement in Council.

*21 February 2011*

### **Letter from the Chairman to Damian Green MP**

Thank you for your letter of 21 February 2011. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 23 March 2011.

The Committee is grateful for your detailed explanation of how negotiations have progressed regarding this proposal. In particular, the Committee notes the addition of the provision which would allow Frontex to process personal data in cooperation with other EU law enforcement agencies. Subject to adequate application of data protection standards, the Committee considers this to be a welcome development, which is also consistent with the content of the EU Internal Security Strategy. The Committee's inquiry into this Strategy continues.

The Committee would be grateful to receive further updates about the proposal as the negotiations progress.

No reply to this letter is expected.

*23 March 2011*

## **GRANTING AND WITHDRAWING INTERNATIONAL PROTECTION (14959/09, 8526/11)**

### **Letter to the Chairman from Damian Green MP, Minister of State for Immigration, Home Office**

I am writing to update you on developments in the negotiations for a recast Directive on minimum standards on procedures for granting and withdrawing international protection. As you will know the UK has not opted in to the negotiations on this proposal.

Progress in Council has been slow, with many Member States registering strong objections to many of the changes proposed by the European Commission. The level of objections has led to the European Commission announcing that it will present a new proposal in order to facilitate discussions. This is likely to be presented in early June, along with a similarly revised proposal to recast the Directive laying down minimum standards for the reception of asylum seekers. As you are aware the Government does not agree that further legislative measures offer the best way forward: in our view any identified gaps in the implementation of existing obligations are better addressed through the delivery of practical help to build capacity on the ground, as foreseen in the remit of the European Asylum Support Office (EASO).

The European Parliament has continued its consideration of the proposal on Asylum Procedures in parallel, culminating in a debate on its First Reading position, the detail of which is set out in Document 8526/11. The Parliament adopted 97 amendments, many of which support the Commission's stated aim of improving the quality of initial (first instance) procedures and harmonising towards higher standards that protect the rights of asylum seekers. For example the Parliament suggests that Member States set a minimum time limit of 45 working days during which an applicant may exercise their right to an effective remedy and that a minimum time limit of 30 working days shall apply to applicants in an accelerated procedure (Amendment 93). To put this in context the current

time limits applicable to the lodging of asylum appeals in the UK are 10 working days for the normal procedure and 2 working days for the accelerated procedure ("Detained Fast Track").

The European Parliament Rapporteur, Sylvie Guillaume (Progressive Alliance of Socialists and Democrats (S&D), France), said that the Report should send a strong signal to the Commission and the Council. It is worth noting that following explicit advice from the Commission the European Parliament finalised its First Reading position at this time specifically in order to maximise its influence over the Commission's revised proposal. The Rapporteur also expressed her regret that discussions were blocked in Council. Cecilia Malmström, the European Commissioner for Home Affairs, attended the debate. She indicated that the vote of the Parliament would feed into the revised proposal that the Commission will present in the near future in order to give a boost to the stalled negotiations in Council. The latest indications from Brussels are that the Commission will present its proposal in June, when it will be deposited for scrutiny by your Committee in the usual way, followed by the submission of an Explanatory Memorandum.

*10 May 2011*

## GRANTING AND WITHDRAWING REFUGEE STATUS (13404/10)

### **Letter from the Chairman to Damian Green MP, Minister of State for Immigration, Home Office**

Thank you for your letter of 19 November 2010. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 1 December 2010.

The Committee note with interest your preferred approach to how evaluations of the implementation of Directives by Member States should be conducted and agree that this may improve the quality and accuracy of future reports.

The Committee is now content to clear this document from scrutiny.

No reply to this letter is expected.

*1 December 2010*

## HUNGARIAN PRESIDENCY PRIORITIES FOR CIVIL PROTECTION

### **Letter from the Rt Hon Baroness Neville-Jones, Minister of State for Security and Counter-Terrorism, Home Office, to the Chairman**

I am writing to you as Chairman of the House of Lords Select Committee on the European Union to inform the Committee about the Hungarian Presidency's priorities for civil protection.

The new Presidency plans to have 2011 Council Conclusions in two fields. The first is in relation to flood management, for which the Presidency propose including all elements of disaster management. It will take an integrated approach to cover not only flood prevention, preparedness, response, and recovery, but also the need for cooperation and coordination among different authorities concerned with flood management. The Presidency aims to link this work to the use of existing early warning systems, advanced satellite-based technology and psycho-social support teams, as well as other areas of cooperation intended to increase security.

The second field is the assessment and spatial mapping of risks following proposals in 2009 Council Conclusions on a Community framework on disaster prevention within the EU. These Conclusions asked for Community guidelines to be developed on methods for hazard and risk mapping, assessments and analyses to facilitate best practice and comparability between Member States. National risk assessment and the spatial mapping of natural and man-made hazards are relatively new areas of work for many Member States. The guidelines, which have now been issued, focus on international standards and are intended to raise knowledge about and use of risk assessment as a tool for national disaster management. Comparability of national risk assessments will facilitate the Commission's work in preparing in 2012 an overview of the major risks which may be faced by European Union countries in the future.

The Presidency also proposes to monitor a number of other fields of work. These include the EU's legal basis for civil protection, particularly in regard to evaluating the Civil Protection Mechanism and

Financial Instrument, and progress in the international work of European Programme for Critical Infrastructure Protection.

The Presidency will continue the review of the EU Crisis Coordination Arrangements which was initiated in 2010 by the Belgian Presidency. The Crisis Coordination Arrangements are intended to facilitate EU-level political coordination of the response to emergencies. The review will enable changes to take account of the new legal and institutional framework following the Lisbon Treaty.

The Presidency also aims to follow a number of related work streams, including:

- civil protection elements of the EU's Internal Security Strategy and of the resulting Commission Communication on "The Internal Security Strategy in Action: Five steps towards a more secure Europe";
- council working parties on terrorism and on threats to Chemical, Biological, Radiological and Nuclear safety;
- the Commission's aim of establishing a European Voluntary Humanitarian Aid Corps; and,
- civil protection aspects of the mid-term review of the Action Plan for the European Consensus on Humanitarian Aid.

*16 February 2011*

## IMMIGRATION LIAISON OFFICERS (ILO) NETWORK

### **Letter from Damian Green MP, Minister of State for Immigration, Home Office, to the Chairman**

I am writing to update you on the above proposal. Phil Woolas' letter of 7 October 2009 advised you of his Government's support for the proposal and of the decision to exercise the UK's opt-in to the extent that the measure was governed by the former Protocol on the Position of UK and Ireland in respect of Title IV of the Treaty establishing the European Community.

Despite continuing efforts by this Government, the European Commission have argued that the Immigration Liaison Officers (ILO) Regulation is a measure building on part of the Schengen acquis in which the UK does participate, and that it has no non-Schengen elements which would now be considered to fall within Title V of Part Three to the TFEU to which Protocol (No 21) on the position of the UK and Ireland in respect of the area of freedom, justice and security would apply. Accordingly, they consider that the UK's opt-in under the Title V protocol to this proposal does not therefore apply. The Belgian Presidency favoured the Commission position.

On 14 December the European Parliament voted to adopt an amended text at first reading. I have attached a copy of that text [not printed], which includes changes the European Parliament sought in order to give the European Asylum Support Office and independent bodies such as UNHCR significant influence over ILO network activities. The amended text has been negotiated with the Council and limits engagement to a level compatible with the ILO role in addressing illegal migration. This Government continues to support the substance of the amended Regulation as a practical measure to increase EU co-operation against illegal migration.

The Council is expected to be asked to adopt the amending Regulation on 14th March. I have decided that the UK should abstain from the vote, as the best means of seeking to protect its Title V opt-in position without appearing critical of the aim of the Regulation. The Hungarian Presidency has accepted my request for a Declaration stating that the UK considers the Title V opt-in Protocol applies and that it reserves its position in respect of material future measures. This will be attached as an addendum to the text of the proposed amending Regulation. Ireland supports our position on the opt-in and has indicated that it is likely to abstain. France has also indicated it will abstain on a point of substance. On the basis of qualified majority voting, we expect the amended Regulation to be adopted.

*1 March 2011*

### **Letter from the Chairman to Damian Green MP**

Thank you for your letter of 1 March 2011 about this Regulation, which will by now have been adopted by the Council. The Home Affairs Sub-Committee of the Select Committee on the European Union considered your letter at a meeting on 23 March 2011.

Phil Woolas, your predecessor as Minister for Immigration, wrote to me on 7 October 2009 explaining that the United Kingdom had decided to opt in to the proposal, which in his view – and, it seems, in yours – was “in part a non-Schengen related immigration measure”. We note that the Commission, and the Council apart from Ireland, do not accept this view, and that the Regulation as adopted contains no recital relying on the purported United Kingdom opt-in. In this it follows the Regulation it amends, No 377/2004. We have also seen the declarations made by the United Kingdom and Ireland affirming their view about the partial application of what is now Protocol 21.

We have also seen the reply to your letter from the Chairman of the Commons European Scrutiny Committee dated 10 March 2011, which was copied to me. We entirely share his view, expressed in paragraphs 3 to the end, that the basis of United Kingdom participation is “increasingly opaque”, for the reasons he gives. There has to be agreement among all concerned in the legislative process about the legal basis of the legislation they adopt. Accordingly we too would be glad if you could raise these issues with the Commission and Council, and let us know their response.

*23 March 2011*

### **IMPLICATIONS OF CURRENT EVENTS IN ARAB COUNTRIES ON IMMIGRATION**

#### **Letter from the Chairman to Damian Green MP, Minister of State for Immigration, Home Office**

At a meeting on 6 April 2011 the Home Affairs Sub-Committee of the European Union Committee considered the implications for migration to the European Union of the current events in Arab countries, and in particular Tunisia, Egypt and Libya. This is a matter of interest to the Committee, especially since the 2008 report on Frontex.

We would be glad to know what your assessment is of how the Arab Spring is likely to affect both migration to Member States and asylum applications, and your view of any specific repercussions this may have for the United Kingdom.

We would be grateful for a reply to this letter within the standard deadline of ten working days.

*6 April 2011*

#### **Letter from Damian Green MP to the Chairman**

Thank you for your letter of 6 April regarding the implications for migration to the European Union of the current events in Arab countries.

The “Arab Spring” and in particular recent events in Tunisia, Egypt and Libya, has indeed provoked an increase in migrant flows, much of this within the North Africa region and to Italy and Malta. The unrest in Libya alone has caused the displacement of more than 500,000 people. We are therefore supporting provision of humanitarian support in the region and efforts to repatriate these people swiftly and safely.

The EU has also seen approximately 29,000 irregular migrants arriving on its Southern shores, of whom the majority are Tunisians seeking work. There is little evidence that many of the migrants who have so far arrived in the EU are attempting to travel on to the UK, particularly as the majority have expressed a desire to travel to other Member States such as France and Germany. But there remains a real risk that migrants of other nationalities will start to arrive in southern Europe and seek to travel to the UK. We are monitoring the situation very carefully and working with European partners, including Frontex, to ensure that border controls and immigration capability on both sides of the Mediterranean are as strong they can be. We are also co-operating across government at both Ministerial and official level to plan for possible scenarios and deliver effective contingencies in case of increased migration flows from the region.

Asylum intake in the UK remains relatively stable and there is little evidence that events in North Africa have yet led to a flow of asylum seekers arriving in the UK. However, there is some indication

that, starting from a very low base, asylum applications from Libyan nationals who were already in the UK before the crisis have started to rise. We are working closely with Libyan students, their sponsors and their dependants in the UK to ensure that they are aware of all the options open to them and wherever possible that they are able to continue their studies.

The migration implications of the “Arab Spring” as it unfolds, including the possible impact on asylum applications, will depend heavily on a variety of factors: the continued response to the humanitarian situation at Libya’s borders; the outcome of the situation in Libya and wider; and the prosperity and stability of emerging democracies in the region. I am in close contact with Ministerial colleagues in the Foreign and Commonwealth Office and Department for International Development in this regard.

*20 April 2011*

## JHA NEW SCRUTINY PROCEDURES AND OPT-IN

### **Letter from James Brokenshire MP, Parliamentary Under Secretary of State, Home Office**

I write to offer a meeting to discuss Home Office scrutiny performance, the progress of new scrutiny procedures and our application of the JHA opt-in.

The Home Secretary and I are keen to ensure that we engage with your Committee in this important area.

There may of course be other matters you would wish to raise with me and I would welcome the opportunity to explore these further with you. We have not had chance to meet since October 2010.

My officials will make arrangements with your office and I look forward to our meeting.

*30 March 2011*

## MEPHEDRONE CONTROL MEASURES (15330/10)

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

Thank you for your letter of 26 November 2010 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 1 December 2010. We are grateful for the very prompt reply.

We welcome the Commission’s acknowledgement that they got the legal base of the Decision wrong, and are putting it right. We are also grateful for the Commission’s acknowledgment of the error in their explanatory memorandum, and for your apology for the errors in your own.

The Committee are content to clear this document from scrutiny. The Committee’s Clerk has already told your officials of this to enable them to lift the United Kingdom’s scrutiny reserve, since I understand that the Decision is coming before the JHA Council for agreement tomorrow, 2 December.

We do not require a reply to this letter.

*1 December 2010*

## MONEY LAUNDERING: DATA PROTECTION FOR SUSPICIOUS ACTIVITY REPORTS (ELMER DATABASE)

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

Thank you for submitting the review by the Information Commissioner's office, (ICO) into SOCA's use and operation of the ELMER database to Lord Sassoon. As Minister responsible for the Proceeds of Crime Act (POCA) under which Suspicious Activity Reports (SARs) are made, it has been passed to me to reply, and I would first like to apologise for the time this has taken.

I would like to echo your thanks to the ICO for their helpful and thorough review. I was glad to see that the review identified some of the areas of good practice by SOCA, in particular that the security, policy and procedures in relation to SAR Online appear sufficiently robust and that access to ELMER is tightly controlled with unused accounts reviewed and deleted if necessary.

I am also glad that the ICO review highlighted that direct access to ELMER is also not as widespread as had first been suggested, and identified that any information derived from SARs is only shared with agencies that do not have direct access to ELMER after a full risk assessment by SOCA. These are all important measures in ensuring that the use of SARs is both effective and proportionate.

As you will know, identifying and tackling money launderers is a key part of our approach to tackling crime and disrupting organised criminal finances, and the Government aims to step up activity in this area. The information and intelligence derived from SARs will continue to play an invaluable part in assisting law enforcement.

However, I share fully your concerns about the need to ensure that our approach to tackling money laundering is both effective and proportionate. The Coalition Programme sets out very clearly this Government's commitment to protect and uphold civil liberties.

I firmly believe that the thoughtful and well considered recommendations by the ICO on how the policies and procedures in place for use and operation of the ELMER database should be changed will go a long way to helping further strengthen the protection of civil liberties whilst balancing the ability of law enforcement to tackle crime.

I know that Trevor Pearce, the Director General of SOCA has written to you setting out in some detail the work that SOCA is doing with the ICO to amend and update the policies and procedures, which address the first four recommendations from the ICO review. Once this work is completed, it will have a significant impact on ensuring that the information stored and retained on ELMER, and its replacement ARENA, is both effective and proportionate.

In terms of the last recommendation, that the Government considers again whether the current regime is proportionate, and if there is a need to introduce a de minimis requirement, I know that the previous Government rejected this approach, primarily due to the opportunities for criminals to exploit the threshold of any de minimis approach based on either value or on the seriousness of the crime.

In principle, I believe that at present this should remain the starting point. I know that there often may be very little correlation between the value of any sums laundered, and the seriousness of the offence, as can be seen with terrorist financing typologies for example. Reports on the laundering of small amounts can and do help in identifying and tackling serious crime.

A de minimis monetary threshold would be easy for money launderers to circumvent through splitting the money into sums falling below the threshold in order to avoid detection. Any de minimis approach based on the seriousness of the crime would also ignore that we know organised criminals will often operate across a wide range of crime types, and so an apparently trivial report may in fact be crucial in identifying a far wider criminal activity. I also believe that a threshold linked to serious crimes could introduce greater regulator burdens and risk for parts of the regulated sector, and that is something I am keen to avoid.

The current UK approach offers more value to law enforcement than those submitted on the basis of a minimum threshold of any kind where there is no critical assessment by the reporter. There is also no guarantee that simply introducing a de minimis approach without wider and detailed consideration would not have the unforeseen consequence of simply driving up reports where there is no suggestion of suspicious activity, but that are above any threshold.

Such an approach would benefit neither law enforcement nor the regulated sector, and could also be seen as disproportionate to the protection of civil liberties, so I strongly believe that any quick changes to POCA without full consideration of all the issues could have unhelpful and unintended consequences.

However, this does not mean that short term and long term improvements cannot be made. Not only for reasons of ensuring the regime is robust and proportionate, but also ensuring that in the current economic climate there is not unnecessary pressure put on resources across both law enforcement and the regulated sector.

With that aim in mind, I have asked officials to work with representatives of the regulated sector and law enforcement to look at what, alongside the work of SOCA to incorporate the findings of the ICO

review, can be done to further improve the effectiveness of the current regime, with particular regard to reducing unnecessary reporting and protecting civil liberties.

I have also asked officials to start discussions with representatives of the regulated sector and law enforcement to explore what, if any options there are for longer term changes to the current legislation. This work is complex, and will take time. I am aware that previous consultations on this issue have failed to reach agreement, and that there are a number of important factors to consider and balance. Nevertheless I believe that this is the right thing to do, and I will ensure that the ICO is involved in this once any proposals are at a more advanced stage.

I know that HMT plan to shortly issue a consultation on the money laundering regulations, and responses to this will prove helpful to both the short and long term work I have asked officials to take forward. Alongside this I have also asked officials to consider wider work on what more can be done to improve the monitoring and assessment of the use of financial investigation powers by accredited financial investigators (AFIs). I believe this work will also help ensure that the needs of law enforcement and the protection of civil liberties are properly balanced.

I hope this reply is helpful, and I am copying it to the Commercial Secretary, and to the Information Commissioner. I will write again later this year to provide a further update on the progress of the work I have commissioned.

*17 May 2011*

## PASSENGER NAME RECORD DIRECTIVE

### **Letter from Damian Green MP, Minister of State for Immigration, Home Office, to the Chairman**

Thank you for your letter of 27 October in which you acknowledged receipt of my letter of 7 October and indicated that you look forward to scrutinising draft decisions on the signature and conclusion of these agreements.

Whilst I note that you indicated that you did not expect a reply to your letter I felt it was appropriate to write and advise the Committee that following consultation with my Ministerial colleagues (in the European Affairs Committee) and the Devolved Administrations the UK Government has decided to opt in to these negotiating mandates.

We informed the Presidency of our decision on 1 December 2010 before the Justice and Home Affairs Council of 2/3 December 2010.

Following the adoption of the mandates and having regard to the likely duration of the subsequent negotiating process, I anticipate that the new PNR Agreements will be ready to sign and conclude in early 2011. The UK position is that the opt-in will also apply both to the signature and to the conclusion of the Agreements. I will of course write to you again providing a full analysis before any opt-in decision at those later stages is made. Similarly I will write once the draft EU PNR Directive is published.

*16 December 2010*

### **Letter from the Chairman to Damian Green MP**

Thank you for your letter of 16 December 2010 which the Home Affairs Sub-Committee of the Select Committee on the European Union considered at a meeting on 12 January 2011. The Committee has also considered the Written Statement you made on 20 December 2010.

We are glad that the United Kingdom opted in to the Decisions on the negotiating mandates for these agreements, and grateful to you for saying that you appreciate the importance of this Committee scrutinising in due course the draft Decisions on signature and conclusion of these agreements well before the Government has to decide whether the United Kingdom should opt in to them. In the past there has been pressure from the Presidency for agreements with third countries on PNR and other matters to be signed and concluded soon after they are initialled; we hope that you will emphasise to the Presidency the importance of Parliamentary scrutiny.

We also note what you say about the draft Directive, and we have seen from the Government's submission to our inquiry into the EU Internal Security Strategy the importance which the

Government attaches to having a Directive extending to intra-EU flights. We look forward to hearing the Government's views in more detail when the draft Directive is published, at which point we will also give you our own views.

We do not expect a reply to this letter.

*12 January 2011*

#### **Letter from Damian Green MP to the Chairman**

I am writing to inform you that on 2 February the European Commission published its EU Passenger Name Record (PNR) Directive.

As the Committee is aware the Government set out in its coalition agreement that it is committed to the UK's e-Borders Programme. Experience to date has shown that PNR data transfer and analysis is an important tool in the prevention, detection, investigation and prosecution of terrorism and serious crime and is vital to improving security.

I can confirm that the UK's opt-in applies to the Directive, meaning that we will need to signal our decision to the Council Presidency by 28 April 2011 (given the bank/public holidays at the end of April/beginning of May). I understand that the Presidency only plans to hold one Working Group during the UK's opt-in window. This is scheduled for 8 March.

In considering whether to opt in the Government will need to note that this Directive will be the starting point in providing a firm legal basis at European level for the transfer of PNR data from carriers to EU Member States.

I will keep your Committee informed as the process of finalising our decision continues.

*16 February 2011*

#### **Letter from the Chairman to Damian Green MP**

As you know, this Committee's report on the United Kingdom opt-in to the draft PNR Directive was debated in the House of Lords on 17 March 2011. The House agreed the Committee's recommendation that the Government should opt in to the Directive.

On 24 March I went with a number of other members of the European Union Committee to Brussels for one of the biannual meetings with British MEPs. Members of the Commons European Scrutiny Committee were also present. Among the Lords members was Lord Hannay of Chiswick, the Chairman of the Home Affairs Sub-Committee which prepared the report on the draft Directive.

The United Kingdom opt-in to the draft Directive was among the matters discussed. We briefed the MEPs present on the view of the Committee and the House, including the Committee's agreement with the Government on the desirability of the Directive applying to intra-EU flights. We are grateful for the information booklet from the Home Office and Borders Agency which helped in explaining the Government's line, and in particular the benefits of PNR data in countering terrorism and serious crime.

Timothy Kirkhope MEP, who is to be the rapporteur of the LIBE Committee on the draft Directive, was unable to be present at the meeting, but we were able to brief him afterwards.

We look forward to hearing from you about the Government's final decision on opting in.

*30 March 2011*

#### **Letter from Damian Green MP to the Chairman**

As promised during the debate in sub-committee F on 17 March, I am writing to advise your Committee that the UK Government has decided to opt in to this Directive and we have informed the Presidency of our decision accordingly. An oral statement will also be made to this effect this afternoon.

Having regard to the likely duration of the subsequent negotiating process, I anticipate that the new PNR Directive will be ready to sign and conclude in 2012.

I would also like to take this opportunity to provide you with details of the Information Commissioner's views on the Directive at this stage. The following detail is based on, and follows,

discussions between Home Office officials and those of the Information Commissioner's Office (ICO) with the authority to speak on the Commissioner's behalf. The below details set out the latest views of the ICO and provide the parallel view of the Government.

#### TARGETED COLLECTION OF DATA

As the Committee will be aware, the UK has tabled an amendment to the European Commission's draft Directive that would enable the collection of PNR data on intra-EU flights. It would also mean that data would be collected only on those routes with high levels of risk as opposed to all flights. The Information Commissioner is in favour of risk-based approaches, such as this, as they are in keeping with the important principle of proportionality.

#### DATA RETENTION AND "MASKING"

There are two issues under this heading. Firstly, the overall length of retention of data and, secondly, the point at which personal data is "masked" out. The draft Directive currently proposes that personal data should be masked after 30 days and then retained for a further five years. The ICO have cited the Canadian model as an example which follows a three-stage process of gradually reducing access to personal data over time and only retains data overall for three and a half years. We will undertake a closer examination of the Canadian model during the negotiations on the Directive and discuss our evaluation with the ICO. The ICO also suggested it would be helpful to have some kind of reporting mechanism on the number of times data has been re-personalised (i.e. had the masking removed). As you may be aware, the ICO is also part of the Article 29 Data Protection Working Party which has recently adopted an opinion on the draft Directive<sup>1</sup>.

#### DEFINITION OF SERIOUS CRIME

The ICO have queried the breadth of the definition of serious crime in the Commission's proposal and the proportionality of using PNR data for offences such as racism, xenophobia and sabotage. This is a point on which we will continue a discussion with the ICO.

#### SENSITIVE PERSONAL DATA

The ICO has raised questions about the necessity and proportionality of analysis of sensitive personal data and supports the filtering of sensitive data being done by carriers before pushing data to authorities. For operational reasons that it would not be prudent to put into the public domain, the Government supports the use of this data in limited circumstances and on a case-by-case basis. One of the issues with making the case here is to do so in a way that does not undermine operational effectiveness.

#### EVIDENCE BASE

The ICO are also looking for further evidence to show the proportionality and necessity of collecting and using PNR data both for counter-terrorism and serious crime. This is an important point on which we will continue our dialogue with the ICO.

*10 May 2011*

### PERSONAL DATA PROTECTION IN THE EU (15949/10)

#### **Letter from the Chairman to the Rt. Hon Lord McNally, Minister of State and Government Spokesperson, Ministry of Justice**

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 1 December 2010.

The Committee looks forward to considering the legislative proposal when it is published by the Commission and deposited by the Government in mid-2011.

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<sup>1</sup> The Working Party's opinion on the draft directive can be found at the following link  
[http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2011/wp181\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2011/wp181_en.pdf)

The Committee also notes that Member States were obliged to comply with the terms of the Data Protection Framework Decision by 27 November 2010. As it is likely that this measure will be superseded by the forthcoming legislative proposal, the Government's view on the financial implications of this change – particularly following any expense incurred by the UK in complying with the Framework Decision – would also be appreciated. In this respect, an overview of the how this measure has been implemented in the UK would also be useful.

In the meantime, the Committee has decided to clear this document from scrutiny.

We would be grateful for your reply within the standard deadline of ten working days.

*1 December 2010*

#### **Letter from the Rt. Hon Lord McNally to the Chairman**

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 1 December 2010 and cleared it from scrutiny. The Sub-Committee noted that the Member States were obliged to comply with the Data Protection Framework Decision (DPFD) by 27 November 2010 and asked the Government for an overview of how it has been implemented in the UK. It also noted that it is likely that the DPFD will be superseded by the forthcoming legislative proposal on data protection and asked for the Government's view on the financial implications of this change – particularly following any expense incurred by the UK in complying with the DPFD.

In the UK, existing data protection legislation provides for the processing of all personal data, including that covered by the DPFD. MoJ officials have carried out a comparative analysis, and consultation with UK Competent Authorities. This has confirmed that the Data Protection Act 1998 (DPA) already provides for the vast majority of that required by the DPFD and to the extent that it does not, existing administrative measures such as the statutory Code of Practice on the Management of Police Information issued by the Home Office in 2005 and subsequent Association of Chief Police Officers guidance issued in 2010, ensure that Competent Authorities are operationally compliant. To ensure that this compliance is maintained in the limited areas where it is not already required in statute, the Government is undertaking additional administrative measures. This is likely to include a code of practice issued in 2011.

In light of the above, the financial impact of this European legislation has been minimal to date. However, the Commission's communication makes it clear the new proposals will look at going much further than the current data protection framework in the field of police and judicial cooperation. Such an extension has the potential for significant financial implications and as such the Government considers it crucial that any new proposal has a solid evidence base and proper impact assessment to support it.

As mentioned in the Explanatory Memorandum of 24 November 2010 on the Commission's Communication, the Government has recently concluded a Call for Evidence on the current data protection legislative framework and a post implementation review of the DPA. These consultations included the framework in the area of police and judicial cooperation and the evidence gathered from Competent Authorities is currently being considered. The Government will continue to work with Competent Authorities on these issues to ensure that the legitimate operational requirements of the law enforcement community are safeguarded, alongside civil liberties, during the forthcoming negotiations.

*13 December 2010*

#### **Letter from the Chairman to the Rt. Hon Lord McNally**

Thank you for your letter of 13 December 2010. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 12 January 2011.

We are grateful to you for providing an overview of the implementation of the Data Protection Framework Decision in the UK, as well as the financial implications of this measure and the forthcoming legislative proposal on a comprehensive data protection framework. The Committee will look forward to considering this proposal when it is published by the Commission and deposited by the Government in mid-2011.

No reply to this letter is expected.

*12 January 2011*

### **Letter from the Rt. Hon Lord McNally to the Chairman**

I am writing further to my letter of 14 September 2010 informing you that the UK Government was launching a Call for Evidence on current data protection legislation and to the Explanatory Memorandum of 24 November (15949/10) on the European Commission's communication 'a comprehensive approach on personal data protection in the European Union'.

The public consultation on the European Commission's communication closed on 15 January. The UK response to the communication was submitted on 14 January, with a copy provided to the Committee at official level. The Presidency intends to adopt Council conclusions on the communication at the JHA Council meeting of 24 February. The Commission is then expected to publish its final proposals along with a related Impact Assessment in mid-2011.

The Government is now publishing its response to the Call for Evidence. The response summarises the evidence received between July and October 2010, involving around 160 written responses from a wide range of data controllers, including small businesses, large international organisations, consumer groups, local and central Government Departments and members of the public. As well the written responses to the published evidence paper, the Call for Evidence included a number of workshops and meetings with key interested parties which took place from August to October. Representatives from Government Departments, the wider public sector, businesses and charities attended these workshops. The response also sets out the next steps and how the Government will approach the forthcoming European negotiations.

Some of the major issues for respondents to the Call for Evidence included the definition of personal data and the implications for research (including medical research); the types of personal data which should be categorised as "sensitive personal data"; the expense of complying with subject access requests made under section 7 of the Data Protection Act 1998 (DPA); making it mandatory for organisations to notify individuals and the Information Commissioner's Office (ICO) when they breach the DPA; the uncertainty surrounding the role of consent in ensuring that processing of personal data is legitimate; and the effectiveness of the current systems in place to ensure lawful transfer of personal data to countries outside the European Economic Area.

At the same time as conducting the Call for Evidence, the Government published a provisional Post Implementation Review (PIR) of the Data Protection Act 1998 (DPA), which aimed to assess the costs and benefits the Act has generated. The Impact Assessment which accompanied the Call for Evidence has been updated to take account of evidence provided by respondents during the Call for Evidence process. The finalised PIR Impact Assessment is annexed to the response document [not printed]. Although this has the primary purpose of assessing how the DPA has worked in practice, the findings of the PIR will contribute to the UK's overall evidence base for negotiations on a revised EU legal instrument.

Throughout this process, the UK Government is committed to continuing to work with a range of interested parties to establish an evidence-based negotiating position for a revised data protection instrument.

*28 January 2011*

### **Letter from the Rt Hon Kenneth Clarke MP, Lord Chancellor and Secretary of State for Justice, to the Chairman**

When Lord McNally wrote to you on 28 January 2010 enclosing the UK's response to the Commission's Communication on "a comprehensive approach on personal data protection in the European Union" he informed you that the Hungarian Presidency intended to adopt Council Conclusions at the Justice and Home Affairs (JHA) meeting in February. I am writing to the Committee to confirm that the JHA Council adopted the above named Council Conclusions on Friday 25 February 2011; a copy is enclosed for your information [not printed].

The Conclusions set out the Council's views on the general principles arising from the Communication 'a comprehensive approach on personal data protection in the European Union' and do not prejudice the need for careful and detailed consideration of any legislative proposals. The Government agreed to the adoption of the Council Conclusions.

The Conclusions recognise the specific nature of personal data processed in the field of police and judicial cooperation in criminal matters. As noted in the Government's response to the Communication, we believe that the Commission should not take a "one size fits all" approach to the

revision of the data protection rules and that any revision of the rules must cater for the operational needs of the specific types of processing such as that done by law enforcement bodies.

The Conclusions encourage the Commission to consider enhancing the rights of data subjects through increased transparency. The Government supports proposals to strengthen individuals' rights and enhance their control so that the collection and use of personal data is limited to the minimum necessary and that individuals are informed how, why, by whom and for how long their data is collected and used.

The Conclusions state that any new proposals put forward by the Commission must be accompanied by a robust cost analysis and that any resource implications for business must be proportionate to the benefits delivered by appropriate safeguards for the more transparent processing of personal data. Specific areas for further consideration include the role of self regulation and reviewing the current system of notification for data controllers.

The Conclusions contain recognition of the economic importance of international data transfers and note that the existing arrangements for the transfer of personal data outside of the EU have not been fully successful. The Conclusions encourage the Commission to improve the current mechanisms which allow for the international transfer of data.

The Government expects to see rigorous evidence based arguments for the Commission's legislative proposals, including a full impact assessment, which it anticipates will be published later this year.

*9 March 2011*

## PROCEEDS OF PIRACY AND THE FINANCING OF TERRORISM

### **Letter from the Chairman to Henry Bellingham MP, Parliamentary Under Secretary of State, Foreign and Commonwealth Office, to the Chairman**

In July 2009 the European Union Committee carried out an inquiry into money laundering and published a report on Money Laundering and the financing of terrorism, (19th Report, Session 2008-09, HL Paper 132). This was prepared by the Home Affairs Sub-Committee.

In the course of the inquiry the Committee considered whether the proceeds of piracy, especially off the Horn of Africa, were used to finance terrorism. The Committee found it hard to believe that at least some of the money paid as ransoms did not end up financing terrorism. However in oral evidence to us the minister said: "... there is no direct evidence of the proceeds of piracy being directed towards terrorism .... I have been careful not to say that it is not going towards terrorism. What I have said is that we have not found a direct link to that". When the report was debated in the House on 7 December 2009 the same point was raised by members, and received from Lord Brett a reply to the same effect: "The Government regularly examine all available intelligence for evidence of links between piracy and terrorism. I have to say that, to date, we have found no evidence."

At a meeting on 9 March 2011 the Sub-Committee considered an article in The Times of 24 February 2011 suggesting that an agreement had been signed giving al-Shabaab a 20% cut of the proceeds of piracy in return for the use of a port controlled by them. I attach a copy of that article. This seems to lend credence to our view that some ransom money does indeed end up financing terrorism, and that there is now evidence of this. We would be glad to know whether you agree with the view expressed in The Times, and whether the Government proposes to take any action. We would also be grateful if you could tell us what, if any, action has been taken by the Government on the recommendations the Committee made (paragraphs 167-169 of the report) that the issue of monies accruing from Somali piracy should be pursued in the Financial Action Task Force.

In our inquiry we received evidence from Home Office and Treasury ministers, but I am advised that you now have ministerial responsibility for this. I am however copying this letter to James Brokenshire MP at the Home Office and to Lord Sassoon at the Treasury. It would be useful if we could have a reply within two weeks so that the Committee can consider whether there is a case for re-opening its earlier inquiry.

*9 March 2011*

### **Letter from Henry Bellingham MP, to the Chairman**

Thank you for your letter requesting additional information on the reports in "The Times" article on 24 February, which suggested an agreement between Somali pirates and Al-Shabab. You also asked what action had been taken by the Government on the Committee's recommendations in its report on Money Laundering and the financing of terrorism about pursuing monies accruing from Somali piracy in the Financial Action Task Force.

I will answer each question in turn.

#### **REPORTED LINKS BETWEEN PIRATE GROUPS AND AL-SHABAAB**

We continue to carefully consider all the information available to assess whether there are organisational links between pirates and terrorist groups operating in Somali. To date, we have seen no firm evidence that terrorists are using piracy as a means of raising funds, or that Somali pirates are involved in pursuing a political or terrorist agenda. We do know that pirates have developed a robust, adaptable and successful business model which they would not wish to jeopardise by involving a designated terrorist group.

However, it is possible there may exist some low level personal, clan, entrepreneurial links between individual pirates and those affiliated with extremist/insurgent groups in southern Somalia, including Al Shabaab.

We therefore assess that any such links, would not constitute a direct organisational link between pirates and terrorists. The Government's assessment therefore continues to be that there is no evidence of pirates funding terrorist groups. This is consistent with the views of our international partners.

The Committee can be assured we will continue to scrutinise incoming reports to ensure we maintain as accurate an understanding as possible and will write to both Houses if the situation changes.

#### **FINANCIAL ACTION TASK FORCE/ PURSUING MONIES ACCRUING FROM SOMALI PIRACY**

I hope that the Committee will be reassured to learn that work is being undertaken in the Financial Action Task Force to develop a typology on the financial flows related to maritime piracy. The production of this report is being co-authored by the United States and the Netherlands, with UK officials working closely with them. The final report is due to be published in June 2011 and we will update the Committee on the outcome of the report.

I should also add that the UK has been actively pushing for further international action on this important agenda. We are working directly with international partners to develop action to trace and recover ransom payments made to Somali pirates. In January this year the Foreign and Commonwealth Office hosted an ad-hoc meeting with specialist officials from the United States, France, Germany, Netherlands, Italy, Sweden, Denmark, Japan, the UN Office of Drugs and Crime and selected members of industry to discuss proposals for the disruption of the financial flows of piracy. The United States has built upon the ideas generated in London, hosting a conference with even wider participation earlier this month.

*17 March 2011*

### **Letter from the Chairman to Henry Bellingham MP**

Thank you for your letter of 17 March 2011 in reply to my letter of 9 March. The Home Affairs Sub-Committee of the European Union Committee considered your letter at a meeting on 6 April 2011.

The Committee are grateful for your information about the work being undertaken with the Financial Action Task Force and the work with other States, and they will certainly be interested to see the report which is to be published in June.

At the same time the Committee find it hard to see how, in the light of the information you have, it can still be the Government's assessment that "there is no evidence of pirates funding terrorists". The Times states that an agreement to that effect was "sealed" in the week beginning 14 February. Your own view is that any links that there are "would not constitute a direct organisational link between pirates and terrorists." Yet you concede that "there may exist some low level, personal, clan, entrepreneurial links between individual pirates and those affiliated with extremist / insurgent groups, including Al Shabaab". It seems to us that what matters is not whether any link is formal or informal,

but simply whether the proceeds of piracy are or may be reaching terrorist groups. On this issue we would be grateful for your further views.

We also do not see how, in those circumstances, the Government can sustain the view that those involved in assembling or paying ransoms do not need to seek prior consent from SOCA. We would be grateful for your comments on that point too.

Lord Hannay of Chiswick, the Chairman of the Home Affairs Sub-Committee, has been approached by the Chairman and operations director of Idarat Maritime Ltd, a company specialising in these matters. Depending on the further reply we receive from you, the Sub-Committee are considering inviting both the Government and representatives of the company to give them oral evidence on this important issue. This evidence could if necessary be off the record.

*6 April 2011*

#### **Letter from Henry Bellingham MP to the Chairman**

Thank you for your letter of 6 April 2011 which requested further information relating to Somali piracy.

As I set out in my correspondence on 17 March, the Government has examined all available intelligence for any evidence of confirmed links between piracy and terrorism, and continues to assess there is no credible evidence of operational or organisational links between the groups. We therefore do not accept the assertion made in "The Times" article of 14 February that there is a direct link between pirates and Al-Shabab. Whilst it is possible there are some ad hoc links between individuals, such as low level pirates and persons affiliated with extremist/insurgent groups, we have no evidence to support this as fact. This analysis is consistent with US and EU partners.

In light of the above, neither the Proceeds of Crime Act 2002 (POCA) nor the Terrorism Act 2000 (TACT) requires persons involved in facilitating or paying ransoms to pirates to seek prior consent from SOCA. Both Acts require persons to report suspicions concerning money laundering and terrorist financing to SOCA and since the money used to fund ransom payments to pirates is derived from legal means, Part 7 of POCA does not apply. Similarly, TACT does not apply because Somali pirates are not designated as terrorists. I can assure you that we keep the situation under close review and should the situation change in any way we will, of course, immediately inform the House.

The Government, together with the international community, agrees that stemming the flow of funds to Somali pirates is a key priority and that we need to tackle those who are financing piracy and profiting most from it. We are working with countries in the region and partners such as Interpol and the UN Office for Drugs and Crime to develop a strong case, backed by sufficient evidence, to prosecute the 14 identified pirate financiers. These financiers fund the majority of pirate operations and therefore receive a significant portion of most ransom payments. The money-laundering laws recently introduced in Kenya are expected to play a big part in helping us build the case against the pirates, as we believe approximately one third of ransom payments are transferred to Eastleigh, Nairobi.

I stand ready to provide any further information on this subject which you and the committee require.

*27 April 2011*

#### **Letter from the Chairman to Henry Bellingham MP**

Thank you for your further letter of 27 April 2011 in reply to my letter of 6 April. The Home Affairs Sub-Committee of the European Union Committee considered your letter at a meeting on 11 May 2011.

You repeat that the Government continues to believe that there is no credible evidence of operational or organisational links between piracy and terrorism, and you do not accept the article in The Times which appears to contradict this view. We continue to be surprised by the lack of evidence of such links, but in the circumstances we will not be taking this point further for the moment.

We do not therefore require a reply to this letter. However, given the seriousness of any possible leakage of funds into the hands of terrorists, we would be grateful if you would follow the situation carefully and let us know if there are any significant developments.

*12 May 2011*

## PROTECTION OF PERSONAL DATA

### **Letter from the Rt Hon Kenneth Clarke MP, Lord Chancellor and Secretary of State for Justice, to the Chairman**

Thank you for your letter of 6 October about the negotiating mandate for the above agreement. I am writing to update you on developments following the Justice and Home Affairs (JHA) Council on 3 December.

As I stated in my letter of 22 July, the Government strongly supports the proposed agreement and shares the European Commission's goal of continuing to ensure a high level of protection of the personal information that is transferred as part of transatlantic cooperation in criminal matters. Following negotiations, the UK has ensured that the negotiating mandate does not attempt to define national security. However, we have not been able to secure the explicit exclusion of existing bilateral agreements which was one of the Government's objectives.

On 3 December, the JHA Council held a Qualified Majority Vote on the adoption of the negotiating mandate for the agreement. I voted against adoption of the negotiating mandate, as the Government believes it is the UK rather than the EU that should negotiate rules concerning data exchanges between the UK and the US under their bilateral arrangements. Although some Member States expressed similar concerns, the negotiating mandate was adopted by a qualified majority.

The Commission intends to begin negotiations with the United States very shortly. At the conclusion of negotiations, the draft agreement will be presented to the JHA Council for adoption. I will keep the Committee informed of developments.

*13 December 2010*

### **PRUM: AGREEMENT BETWEEN EU, NORWAY AND ICELAND (17709/10)**

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

I am writing to update you on the Government's plans for implementing the Prüm Council Decisions and that we will not be able to implement Prüm in full before August 2011.

Full implementation of Prüm is inevitably complex, covering as it does DNA, fingerprints and Vehicle Registration Data, and implementation will inevitably take a significant period of time. We will also need to make sure that the way in which we implement Prüm is compatible with this Government's focus on civil liberties. For example, we need to bring our fingerprint and DNA retention policy in line with the Coalition Commitment to adopt the protections of the Scottish model. We will be bringing forward detailed proposals for the retention of DNA and fingerprints in a Protection of Freedoms Bill very soon. We think it important to carry out this preparatory work before looking towards exchange with other EU Member States.

Secondly, like all of government, the Home Office has a very tight Spending Review settlement for 2011-2015. Because of this, we have had to consider very carefully how we prioritise our resources across the department's business. Early work to identify the cost of meeting our Treaty obligations suggests that we will not be able to afford full implementation of all the Prüm requirements within this Spending Review period. Within this, we expect work to concentrate on the Vehicle Registration Data and DNA elements of Prüm later in the 2011-2015 period which we hope will go some way towards meeting our implementation obligations. Our intention is to apply for EU funding to assist with this. I will keep the Committee informed of any future developments on this matter.

The Prüm Council Decisions fall within those subject to the transitional arrangements in Protocol no.36 to the Treaty on the European Union and the Treaty on the Functioning of the European Union, where the UK must decide in 2014 whether to accept the extension of ECJ jurisdiction to all acts of the Union in the field of police and judicial co-operation in criminal matters adopted before entry into force of the Lisbon Treaty. That decision will be some time away and I hope to be able to update you in due course.

*7 February 2011*

### **Letter from the Chairman to James Brokenshire MP**

Thank you for your letter of 7 February explaining that the United Kingdom will not be implementing the Prüm Council Decisions in full by August 2011. The letter was considered by the Home Affairs Sub-Committee of the European Union Committee at a meeting on 16 February 2011.

We note and regret that the United Kingdom will not be fully implementing the two Prüm Decisions until well after the deadline – perhaps years after. We appreciate that this cannot entail infringement proceedings before the Court of Justice, but the fact remains that the United Kingdom will be in breach of obligations which it freely entered into. We wonder whether any other Member States will be in the same position.

You explain that “full implementation will inevitably take a significant period of time”. The Decisions were adopted 2½ years ago, and their content has been known since they were agreed respectively in June and November 2007. Presumably it was thought, when the Decisions were adopted, that 3 years would be long enough to allow full implementation. We would be glad to know if the technical details of mutual access to the databases of other States have proved more complex than anticipated.

We note that the Government has doubts about the compatibility of full implementation with civil liberties. When our report *Prüm: an effective weapon against terrorism and crime?* (18th Report, Session 2006-07, HL Paper 90) was published in May 2007, a month before the first Decision was agreed, we were critical of the high-handed way in which the German Presidency prevented the European Data Protection Supervisor from having an opportunity to give an opinion, and refused to incorporate data protection provisions at least equal to the minimal provisions then being negotiated for the Data Protection Framework Decision; and we also criticised the former Government for not having opposed this. We are glad to see that you are now attempting to rectify this.

We are grateful for your undertaking to keep us informed of future developments, including in due course the arrangements under Protocol 36. We would be glad to receive a reply to the points raised in this letter within the standard deadline of ten working days.

*16 February 2011*

### **Letter from James Brokenshire MP to the Chairman**

Thank you for your letter of 16 February in which you asked whether there are other Member States who will not be able to meet the Prüm implementation deadline and whether the technical details of mutual access to the databases of other States have proved more complex than anticipated.

We do not expect all other EU Member States to meet the Prüm implementation deadline. The European Commission has collated details from all participating Member States on their progress and circulated this in a format which does not identify individual Member States. There are a number of Member States that have declared that they will not be fully compliant by the August 2011 deadline. We anticipate that there will be others that may in fact miss the deadline, particularly as there is likely to be insufficient time between now and the deadline for all countries to fit in their evaluation.

Before we can make our DNA and fingerprint databases available for searching against (under the Prüm Decisions), we need to ensure that we have removed those records which are covered by the changes to the retention policy outlined in the Protection of Freedoms Bill. This exercise will take some time to complete once the legislation is in place.

Technical issues are not proving more complex than anticipated but there are a number of options from which we need to choose in relation to implementation of each of the provisions. We are still in the process of strategic planning and mapping these options to ensure that we are able to identify solutions which are both cost-effective and bring the most public protection benefits to the UK. Nevertheless, our work to this stage suggests that regardless of the solution that we ultimately choose, we will not be able to implement fully all of the Prüm requirements during this Spending Review period on the grounds of costs and the time available.

Thank you also for bringing your concerns about the Prüm data protection issues to my notice. I note that the Prüm decisions contain their own specific data protection provisions appropriate to the highly specialised nature of the data rather than those in the now agreed Data Protection Framework Decision. I understand Lord McNally wrote to you on 13 December 2010 providing an overview of how the Government has implemented the Data Protection Framework Decision in the UK. The Committee will wish to note that the supply of personal data provided for under the Prüm Council Decision will not be able to take place until the UK has undergone an evaluation.

Insofar as the Prüm search requests for individuals whose profiles are recorded on the UK national DNA database, the results of any search request will be reported to the other Member State on a 'hit, no hit' basis. Any consequent exchange of personal data following a hit on Prüm DNA search request will rely on already existing law enforcement and mutual legal assistance channels. Consequently, any disclosure of personal information about individuals whose profiles are on the UK database would be under existing conditions, including amongst other things the Data Protection Act 1998.

Our specific concerns on data protection are that we must first ensure that the DNA and fingerprints databases to be searched are cleansed of the great majority of records of innocent individuals before we implement Prüm.

I will keep the Committees informed of any future developments on this matter.

*4 March 2011*

#### **Letter from the Chairman to James Brokenshire MP**

Thank you for your letter of 4 March 2011 in reply to mine of 16 February. Your letter was considered by the Home Affairs Sub-Committee of the European Union Committee at a meeting on 23 March 2011.

We note the reasons you give for the past delays and further anticipated delays in the implementation of the two Prüm Council Decisions. We still believe that these delays are regrettable, and are surprised that the Government, when implementing measures adopted in June and November 2007, "are still in the process of strategic planning and mapping these options to ensure that [they] are able to identify solutions which are both cost-effective and bring the most public protection benefits to the UK".

We do not require an immediate reply to this letter, but would be grateful if you could let us know by the end of September what progress has been made in the implementation of these Decisions.

*23 March 2011*

#### **SCHENGEN ACQUIS: EVALUATION MECHANISM TO VERIFY APPLICATION (16664/10)**

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

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 23 March 2011.

The substance of the method for evaluating the application of the Schengen acquis seems to us to be satisfactory. However we share your concern lest the United Kingdom might not be able to participate in this to the extent needed for the police, customs and law enforcement aspects. We agree that the exclusion of the United Kingdom would not be consistent with the mutual trust between States on which the system is based, and feel that it would not be in our national interest.

In paragraph 27 of your explanatory memorandum you suggest as a possible solution having two parallel but separate measures. We understand that another possibility being canvassed is the solution adopted for the IT Management Agency: to have a separate Council Decision allowing for further limited United Kingdom participation in the Schengen acquis, this time only to join in the evaluation mechanism to the extent that it would deal with police, customs and law enforcement. We do not have a preference between these two solutions, either of which would, we believe, adequately safeguard British interests.

We understand that these questions are being discussed in the working party on 4 April, and we would be grateful if you could let us know the outcome of the discussions. Meanwhile we will keep the document under scrutiny.

*23 March 2011*

## SCHENGEN INFORMATION SYSTEM II (9893/10)

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

Thank you for your letter of 7 February 2011. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 16 February 2011.

The Committee notes the Government's preferred timetable for connecting to SIS II and would be grateful for further updates regarding any further significant developments in the development of the system at the EU and UK level.

While the reason for the delay in responding to the Committee's request for information is understandable, in future, we would appreciate the receipt of a holding letter providing the reasons for such a delay.

No reply to this letter is expected.

*16 February 2011*

## STATUS OF THIRD COUNTRY NATIONALS (10515/07)

### **Letter from Damian Green MP, Minister of State for Immigration, Home Office to the Chairman**

Thank you for your letter of 6 October in which you asked to be informed of any progress in the negotiations on the above.

I am writing to inform you that representatives of the EU Council and the European Parliament have now reached agreement on the above proposal on 15 November 2010. The Council adopted a General Approach along the lines of the agreement on 18 November, and the European Parliament is expected to endorse it later this month. At that stage, political agreement on the text will have been reached.

Following political agreement, the text will be formally adopted once jurist-linguists have translated it into all official languages of the EU. We expect that to happen in the New Year. Those Member States which participate in the amendment will need to transpose the amended provisions into their national law two years after it has been adopted.

I enclose a copy of the agreed text [not printed].

As the UK has not opted in to this measure, and does not participate in Directive 2003/109/EC, the amendment will not affect us.

I also need to clarify a point made in the Lord McNally's Written Ministerial Statement (WMS) to the House of Lords following the Justice and Home Affairs Council on 2-3 December 2010. The WMS reports the Belgian Presidency as saying that political agreement on the proposal had already been reached. Although the Presidency did indeed say that, this was inaccurate as the European Parliament had not yet voted on the agreement at that time. I hope this clarifies the position.

*21 December 2010*

## TERRORIST FINANCE TRACKING PROGRAM (8142/11)

### **Letter from the Chairman to Lord Sassoon, Commercial Secretary to the Treasury, HM Treasury**

The Home Affairs Sub-Committee of the Select Committee on the European Union considered this document at a meeting on 11 May 2011, and cleared it from scrutiny. The Committee are grateful for the very full and clear Explanatory Memorandum, and note that the review process appears to have got off to a reasonable start.

The Committee do not require a response to this letter, but would be glad to be kept informed of further reviews of the working of the Agreement.

12 May 2011

### THIRD COUNTRY NATIONALS: CONDITIONS OF ENTRY AND RESIDENCE IN THE FRAMEWORK OF AN INTRA-CORPORATE TRANSFER (12211/10)

#### **Letter from Damian Green MP, Minister of State for Immigration, Home Office, to the Chairman**

Thank you for your letter of 17 November 2010. I am grateful for the explanation of the mix up with previous correspondence. Please be assured that has caused no difficulty.

You indicate that you are keeping the document under scrutiny pending my reply on the additional points you have raised. On the first, the Government, in coming to its decision not to participate in the measure, was mindful of the argument that UK businesses might be put at a disadvantage if the UK were not party to a scheme designed to facilitate intra-EU mobility. It does seem to me that this is an argument that could cut both ways. While it is possible that an overseas business might be more likely to locate a branch in the UK if the Directive made it easier to post its UK-based workers elsewhere in the EU, it seems equally conceivable that a company that would otherwise have chosen to locate a branch in the UK might choose to locate it elsewhere in the EU if it became easier, as a consequence of the Directive, to post workers employed by that branch to the UK. So even if the Directive makes the EU as a whole more attractive as a destination for inward investment, it does not necessarily follow that the benefit would accrue to the UK.

My understanding is that of those multinationals that do have a headquarters located in the EU, 50% of them are located in the UK. This suggests that there may be a number of reasons why multinationals have a strong preference for basing their EU operations here. I have seen no evidence to suggest the UK's non-participation in measures aimed at achieving a higher degree of intra-mobility for third country nationals has made, or will make, any difference to such corporate decisions. The UK's earlier decision not to opt in to the "Blue Card" has similarly had no discernable impact on migrants' or employers' decisions as to their destination of location.

On your second question about the possibility that the Government would consider opting in to the measure post-adoption, I would not wish to encourage a belief that a decision to opt in at that stage is a likely outcome. However, we would of course review the position in the light of how the measure shapes up between now and adoption.

I should also take this opportunity to update you in respect of the proposal for a draft Directive establishing a single application procedure and common set of rights for third country workers which the Committee cleared from scrutiny on 1 April 2009. There has been little progress on the measure since Phil Woolas MP wrote to you concerning the measure in July 2009. The principal outstanding issue remains the scope of the equal treatment provisions. The Presidency has been seeking to resolve the issue with the relevant European Parliament committee. A copy of the resulting text is enclosed [not attached].

15 December 2010

#### **Letter from the Chairman to Damian Green MP**

Thank you for your letter of 15 December 2010. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 12 January 2011.

The Committee has noted the announcement by the Home Office on 23 November 2010 regarding the establishment of a UK intra-corporate transfer scheme, and considered it briefly at a meeting on 1 December 2010. We would however be very glad to have your own assessment of how the UK scheme, once it is in force, would compare with the scheme in the draft Directive. That would help us to understand why you believe that the UK's non-participation in the proposed Directive would not put UK businesses at a disadvantage, and also why you seem to be of the view that they might even be put at an advantage. If the balance of advantage and disadvantage to the UK is so uncertain, as you suggest it is, we wonder whether opting in might not be the best course.

While we are aware that the Government has not previously opted in to EU legislation on the legal migration of third country nationals, we believe that each proposal should be considered on its individual merits, in particular as regards the possible disadvantages of not opting in. We therefore

welcome your assurance that you will consider the possibility of opting in to the Directive pursuant to Article 4 of Protocol 21, once it has been adopted.

We look forward to receiving a reply to this letter within the standard deadline of ten working days. Meanwhile we continue to keep this document under scrutiny.

*12 January 2011*

### **Letter from Damian Green MP to the Chairman**

Thank you for your letter of 12 January concerning the above. I am sorry for the delay in replying to you.

You have asked for my assessment of how the UK's arrangements for the admission of non-EU intra-company transferees would compare with the scheme for which the Directive provides. I should first say that my previous letter did not suggest that the UK businesses might be put at an advantage as a consequence of the UK's non-participation in the Directive. What I did suggest was that the assumed advantages to the UK of participation might not materialise if the operation of an intra-EU mobility regime persuaded multinationals that there was in fact no advantage to them in locating their headquarters in the UK. Nor, I should emphasise, is the balance of advantage my immediate concern. The real concern is that the intra-EU mobility dimension of the proposal may involve a diminution of the UK's ability to determine who crosses its borders.

The final content of the measure remains subject to negotiation and it is therefore uncertain how far the measure as finally agreed would allow the UK, if it did participate in it, to apply all the tests it currently applies to third country intra-company transferees. While the UK does not apply a resident labour market test in respect of intra-company transferees, it does apply other tests (for example, minimum salary requirements and skills tests) designed to ensure that the intra-company transfer facility is not used simply to substitute for resident labour. The UK certainly could not participate in a measure which did not allow Member States to apply such tests and the flexibility to determine nationally the threshold at which they are set.

Equally, however, if the measure did provide for such flexibility, the UK could not accept a position in which the intra-EU mobility provisions meant that another Member State was at liberty to choose the threshold at which they applied such tests, and that the UK was as a result obliged to admit onto its territory workers initially admitted to the territory of the EU by another Member State on the basis of criteria that were more generous than those that would otherwise be applied by the UK. This problem would be aggravated if the logic of the proposal meant that another Member State was encouraged to apply more generous criteria in order to secure a disproportionate share of the benefit that intra-EU mobility was intended to deliver to the EU as a whole.

The direction of the UK's policy towards the admission of non-EU intra-company transferees was announced by the Home Secretary on 23 November 2010. The Government's position is that numerical limits on numbers of non-EU economic migrants should not apply to intra-company transferees when those limits are implemented after 6 April 2011 but we will draw a distinction between those intra-company transferees paid a salary of more than £40,000, which may be admitted for more than 12 months, and those paid between £24,000 and £40,000, which may be admitted as an intra-company transferee for up to a maximum of 12 months. We consider the £40,000 threshold to be consistent with the UK's obligations to admit managers and specialists in the context of an intra-company transfer under the provisions of relevant international agreements, and the broad purpose of this restriction is to restrict length of stay at salary levels where there is a higher risk that the skill sets provided by such migrants substitute for skill sets readily available from the resident workforce.

The Government remains committed to ensuring that the UK continues to attract inward investment and to ensuring that our arrangements for the admission of intra-company transfers do not act as a barrier to this. The UK is committed to fulfilling its obligations under relevant international agreements, including its commitments under Mode 4 of the General Agreement on Trade in Services. In addition, the arrangements for the admission of intra-company transfers under Tier 2 of the Points Based System are transparent and objective and are designed to ensure, through the operation of the sponsorship system, that employers can plan for the transfer of their overseas employees with certainty and the minimum of bureaucratic delay. My own view is that the advantages offered by the UK's own arrangements outweigh any perceived disadvantage that might result from its non-participation in this measure.

As I have said, the Government will review the position in the light of the final text of the Directive on adoption.

16 February 2011

**Letter from the Chairman to Damian Green MP**

Thank you for your letter of 16 February 2011. The Home Affairs Sub-Committee of the Select Committee on the European Union considered it at a meeting on 23 March 2011.

The Committee is grateful for your detailed explanation of why the Government believes that the UK's intra-corporate transfer scheme will outweigh any disadvantages that may result from its non-participation in the proposed EU scheme. However, we continue to adhere to our previous view about the potential merits of opting in to the proposal.

Pending agreement being reached on the final form of the Directive, the Committee has decided to retain the document under scrutiny. In the meantime, the Committee would also be grateful to receive further updates about the proposal as the negotiations progress.

23 March 2011

**TOWARDS A STRONGER EUROPEAN DISASTER RESPONSE (15614/10)**

**Letter from the Rt Hon Baroness Neville-Jones, Minister of State for Security and Counter-Terrorism, Home Office, to the Chairman**

Thank you for your letter of 9th February 2011. You asked for my views on the risk of duplication between EU and NATO activities in the area of disaster response.

**EU AND NATO DISASTER RESPONSE ACTIVITIES**

There is indeed a risk of duplication between EU and NATO disaster response activities but this is lessening as their priorities become more complementary. In its dealings with both organisations, HMG seeks to minimise this risk.

The disaster response activities of the EU and NATO are largely complementary though there are overlaps. First, the EU MIC and the NATO EADRCC both enable the exchange of information to take place about disaster response needs and available assistance. The MIC shares with Member States information on disasters worldwide and benefits from the global presence of European Commission delegations. The scope of the EADRCC covers NATO Allies and Partners. The MIC and EADRCC now regularly exchange information with each other when each is activated by calls for assistance in a disaster. Their complementary strengths were shown in 2010 when NATO offered strategic airlift through the MIC to States seeking to transport emergency relief to Haiti and when it worked with EU Military Staff to facilitate air-transport of assistance for those affected by Pakistan's floods.

Second, NATO issues technical guidance on a range of matters some of which are also the object of EU work. For example, in 2008 NATO issued guidance on psycho-social care for disaster victims; and in 2010 EU Member States ensured that this guidance was acknowledged in the Spanish Presidency's Council Conclusions on psycho-social support in emergencies and disasters.

Third, NATO and EU both support multi-national civil protection exercises to enable practical exchange of expertise among participating States. Overlapping membership means overlapping participation. NATO's exercises tend to be less frequent, to involve many non-EU participants, and to be less relevant to countries with high disaster response standards such as the UK, as many participating states are starting from a lower base. Unlike NATO, the EU can subsidise exercises. The UK has benefited from over €1.45m in EU funding to support multi-national civil protection exercises in the past three years. These exercises have enabled the UK and our European partners to share expertise in CBRN disaster victim identification and in multi-agency disaster response arrangements.

NATO and EU disaster response activities therefore share significant similarities but also have complementary strengths. There is, however, a need to manage the risks of duplication through continued active engagement in both organisations.

## EU HUMANITARIAN ACTIVITIES AND THE UNITED NATIONS

In its Civil Protection Mechanism's legal framework agreed in 2007, the EU explicitly recognises that the United Nations has a leading role in disaster response. The Mechanism also specifies, however, that Member States have the responsibility to direct assistance in disasters affecting them. It is in practice unlikely, in any case, that the United Nations would play a leading role in the response to a disaster within the EU.

More broadly from a global perspective, DFID agree that EU humanitarian activities should be consistent with the United Nations' lead role within the international system. DFID also look to the United Nations, in particular the Emergency Relief Coordinator and the Office for the Coordination of Humanitarian Affairs, to provide a coordinating role to ensure that EU and NATO actions, along with those of other aid agencies and donors, are not duplicative. EU Council Conclusions agreed under the French Presidency in 2008 sought enhanced cooperation with the United Nations.

*1 March 2011*

## UK CONNECTION TO THE SECOND GENERATION SCHENGEN INFORMATION SYSTEM

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

Thank you for your letter of 8 July 2010 in which you asked for an update on the progress of the UK's SIS II programme and its connection date in light of the Commission's revised operational timetable for the central SIS II system.

I am very sorry that it has not been possible to reply to your queries sooner. The UK's SIS II programme has been the subject of a Major Project Review conducted by HM Treasury and the Office for Government Commerce and we wished to consider this, the delay to the central system and the outcome of the Home Office's spending review settlement before reaching a decision on the UK's next steps.

The Major Project Review assessed that the programme is in a good position to deliver its objectives but in the light of the announcement of the delay to the central system, it recommended that the UK's connection date be moved back until 2015. This would mitigate against the risk of there being any further delay to the central system or of one of the migrating Member States not being ready to connect at the go live date. It would also allow us to realise savings of £19m by the end of the next spending review period. We have decided to accept this recommendation. A UK connection date of 2015 means that for testing purposes we will need to be ready to connect in 2014, shortly after the central system is due to be ready and by which time migrating Member States should all have connected successfully.

This measure falls within those subject to the transitional arrangements in Protocol no.36 to the Treaty on the European Union and the Treaty on the Functioning of the European Union, where the UK must decide in 2014 whether to accept the extension of ECJ jurisdiction to all acts of the Union in the field of police and judicial co-operation in criminal matters adopted before the entry into force of the Lisbon Treaty. That decision will be some time away and I hope to be able to update you in due course.

You also asked to be kept informed of the impact of the milestone testing on SIS II. We will provide you with an update on the outcome and consequences of the second milestone test when it has taken place. It is currently scheduled to be completed in mid 2012.

*7 February 2011*

## VISAS: THIRD COUNTRY NATIONALS

### **Letter from Damian Green MP, Minister of State for Immigration, Home Office, to the Chairman**

I am writing to update you on the Outcome of the European Parliament's first reading of the proposal for a Regulation of the European Parliament and Council amending Regulation (EC) No 539/2001.

In accordance with the provisions of Article 294 of the Treaty on the Functioning of the European Union (TFEU) and the joint declaration on practical arrangements for the Ordinary Legislative Procedure (formerly codecision), a number of informal contacts have taken place between the Council, European Parliament and Commission with a view to reaching an agreement on this dossier at first reading.

The attached communication [not printed] of 15 November 2010 from the Council of the European Union (Document 16088/10) reports that the European Parliament voted on 11 November 2010 to adopt an amendment to the proposal for an amendment to Regulation (EC) No 539/2001, and instructed its President to forward this position to the Council and the Commission. The amendment corresponds to what was agreed between the three institutions and is expected therefore to be adopted by the Council.

The amendment adopted by Parliament to Regulation (EC) No 539/2001 is as follows:

1) In Annex I:

- the reference to Northern Mariana is deleted from Part I, as the citizens of that territory are holders of US passports and therefore citizens of the United States, already listed in Annex II.
- the reference to Taiwan is deleted from Part II, as the imposition of the visa requirement on citizens of this territory is no longer considered justified.

2) In Annex II the following text is added:

"4. Entities and Territorial Authorities that are not recognised as states by at least one member state: Taiwan(\*)

(\*) the exemption from the visa requirement applies only to holders of passports issued by Taiwan which include an identity card number.

This Regulation constitutes a development of provisions of the Schengen acquis in which the UK does not take part, in accordance with Council Decision 2000/365/EC 29 May 2000. The UK is therefore not bound by or subject to this.

The Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

*21 December 2010*