

House of Commons: Written Statement (HCWS85)

Home Office

Written Statement made by: **The Secretary of State for the Home Department (Mrs Theresa May)** on 10 Dec 2014.

Justice and Home Affairs post-Council Statement

The Justice and Home Affairs (JHA) Council was held on 4 and 5 December in Brussels. My right hon Friend, the Secretary of State for Justice (Chris Grayling MP) and I attended on behalf of the United Kingdom. The following items were discussed.

The Justice Day began with a discussion on the proposed General Data Protection Regulation. The Presidency sought a partial General Approach on a number of articles intended to provide Member States with flexibility to adapt the application of the rules to their public sectors, and on Chapter IX, on rules for data processing for research, scientific and journalistic purposes. The Commission encouraged Member States to accept the compromise between common standards and a measure of flexibility now available for particular national approaches. A majority of Member States, including the UK, agreed the deal.

The discussion of the Data Protection Regulation continued with an orientation debate on the Presidency's proposed structure for a "One Stop Shop" mechanism, which is intended to reduce burdens for business by enabling all of their operations in different Member States to be overseen by the data protection regulator in their home State. While there was support for the principle and most Member States accepted the compromise proposed by the Presidency, the UK and a number of other Member States expressed concerns that, with legally binding powers for the European Data Protection Board (EDPB) to resolve disputes, the model proposed would fail to achieve the stated objectives of legal certainty, quick decisions and proximity for the data subject. The Presidency concluded that a majority of Member States accepted the basic elements of its proposal, including the proposed European Data Protection Board, but noted that questions remained, and tasked the official-level working group to develop the detail in the light of this steer.

The Presidency also provided a separate update on the proposed Data Protection Directive covering the processing of personal data for criminal justice purposes. The file remains under discussion, and the working group has recently focused on the scope of the Directive. The UK Government believes that the priority should be on agreeing the text of the General Regulation.

The Council adopted a general approach on the proposed Directive on the Presumption of Innocence in Criminal Proceedings. Commissioner Jourová supported the Council compromise, though regretted that the absolute right to silence and right not to self incriminate had not been fully upheld in the proposed text. The UK has not opted into the Directive.

There was a partial General Approach on the draft Eurojust Regulation, covering all parts except the provisions covering its relationship with the European Public Prosecutor (EPPO) and data protection. However, the Commission stated that they still have a number of issues with the text, including the need for them to be able to participate in administrative decision-making because of their budgetary responsibility, and the proposed compensation mechanism. On the EPPO, Ministers concluded that there was a need to strengthen the Prosecutor's independence within the supervisory regime. They noted the Presidency's suggested drafting but mandated further discussion at expert level on this issue. The UK is not participating in the EPPO and has not opted in to the draft Eurojust Regulation.

Political agreement, supported by the UK, was reached on the proposal to amend the EU Insolvency Regulation 1346/2000. The Presidency noted the importance of this file for cross-border insolvency and the considerable work that had gone into finding an acceptable compromise with the European Parliament. The next step is for the text to be finalised by lawyers before adoption under the Latvian Presidency.

The Council adopted a general approach on the proposed Regulation on Small Claims, which the Government generally welcomes. The Council has agreed a threshold of £3,137 for the maximum value of a claim under the Regulation, but expects this to be one of the issues for negotiation during trilogue with the European Parliament, which will start in January.

Next, the Council endorsed, without discussion, orientation guidelines for the negotiation of the draft Regulation on Simplifying the Cross-Border Acceptance of Certain Public Documents (abolishing the process of “legalisation”). The guidelines will steer discussions at Working Group level, and narrow the scope of the draft Regulation; allow certified translations to be accepted in other Member States, and allow for simple translations of original national documents rather than translated standalone forms with their own evidentiary value.

In a “state of play” update on the proposed Legal Aid Directive, the Presidency noted that there were still divergences of views between Member States, some of which advocated more flexibility on the provision of legal aid in the case of minor offences, while others wished to see the Directive extended to ordinary legal aid, beyond the provisional legal aid proposed by the Commission. The Presidency will provide the incoming Latvian Presidency with a document setting out their understanding of the main outstanding points in the negotiations. The UK has not opted into this Directive.

The Presidency gave a state of play update on the draft Directive on the fight against fraud by means of criminal law (the so-called “PIF” Directive), noting that a few substantive issues remained. These included whether to include VAT in scope, the definition of fraud, and the definition of serious offences.

The Presidency invited Ministers to take note of its latest text of the proposals on the applicable law and jurisdiction in relation to Matrimonial and Registered Partnership property regimes, which it hoped would be an acceptable compromise. It suggested a period of reflection to last no longer than until the end of 2015 to allow Member States to consider whether unanimity could be reached. The UK has not opted into these proposals.

Under AOB the Presidency invited Council to take stock of the activities undertaken over the course of 2014 by the Special Committee on organised crime, corruption and money laundering Committee (CRIM), established by the European Parliament.

The Latvian Justice Minister set out his priorities for their forthcoming Presidency. These included reaching a general approach on the Data Protection Regulation at the March Council, continuing work on the “PIF” Directive and the EPPO, reaching a general approach on the Legal Aid Directive by March, continuing work on the Small Claims Regulation, reaching agreement on the Access to Public Documents file, and continuing work on the Common European Sales Law.

The Interior day began in Mixed Committee which included a discussion on ‘Managing Migratory Flows’. This focused on the implementation of the October JHA Council Conclusions on this topic. The Commission introduced their “scorecard” on progress, and the incoming Latvian Presidency informed the Council of its commitment to continuing this work. There has been progress, including with the launch of the Khartoum Process, which focused on people smuggling and human trafficking in the Horn of Africa.

With regard to the Mediterranean, Member States continue to provide support for Frontex’s Operation Triton, while the Presidency confirmed that the Italian search and rescue operation ‘Mare Nostrum’ would be phased out by the end of January.

The Council underlined the importance of implementing the Common European Asylum System (CEAS) and of all Member States providing concrete solidarity to those facing particular pressures. There were calls from some Member States for further resettlement activities, including for a 'distribution key' guiding allocation among Member States, whilst others made clear their views that resettlement should remain voluntary. The Council agreed that proposals for enhanced Regional Devolvement and Protection Programmes would continue to be taken forward.

The UK emphasised the need to focus on upstream activities in countries of origin and transit and to tackle smugglers and traffickers, and joined other Ministers in calling for all Member States to fully respect their responsibilities under the CEAS, including the need to fingerprint and register claims.

The Commission presented its latest biannual report on the functioning of the Schengen area, highlighting increased illegal migration at the EU's external borders and calling for Member States to fulfil their commitment to share information on secondary illegal migration movements within the Schengen area. The Government has a strong interest in the effective functioning of the Schengen area and continues to work with European partners to tackle migratory pressures across the EU. The UK emphasised how the openness of the Schengen area and the principle of free movement continue to be exploited, for example by organised gangs and criminals, and how the EU needs to work harder to manage these risks and put the right safeguards in place.

The Council and the Commission noted achievements during 15 years of Schengen evaluation and agreed Council Conclusions which authorise the continuation of Schengen evaluation work within the Council under the new Schengen Evaluation Mechanism.

During the main Council, Member States returned to the issue of counter terrorism and in particular foreign fighters, following discussions on this issue at the October Council. Member States, along with the Commission and Europol, discussed how best to tackle the threat posed by those returning from Syria and Iraq, as well as efforts to tackle radicalisation.

Over lunch, the Commission (Avramopoulos) stressed its commitment to achieving an EU Passenger Name Records (PNR) Directive, despite the European Parliament's referral of the EU Canada PNR Agreement to the Court of Justice of the European Union. The UK expressed disappointment at the likelihood of significant delay and stressed that in the face of a severe threat it was now essential for Member States to press ahead with bilateral arrangements for PNR. There was general agreement amongst Member States that an EU instrument was needed to set common standards and protect privacy and that the Directive should still be pursued. The UK agreed, but stated that we would not support a PNR Directive which was overly constrained and that in the interim further progress on intergovernmental agreements should be pursued.

Under AOB, the Commission congratulated the Presidency for the organisation of recent meetings on the Rabat and Khartoum Processes in Rome and said work would continue on greater coordination across the board on migration issues. Slovenia informed Council of the outcome of the Salzburg Forum Ministerial Conference in Slovenia on 11-12 November. The Conference had discussed the fight against foreign fighters, support for the integrated approach for the Western Balkan regions, strengthening regional cooperation and the new Regulation for training of law enforcement authorities.

The Presidency set out the background to the Students and Researchers Directive and updated Council on the recent progress made, in particular on the scope. They hoped that Member States could agree to a compromise package by the end of the year, so as to begin negotiations with the European Parliament early next year. The Presidency also said that negotiations continued on the amendments to the Dublin III Regulation and aimed to reach agreement on a Council position. The Commission hoped that Council would reach a balanced position and that trilogues could start as soon as possible.

The incoming Latvian Presidency explained its priorities for Interior business. It would concentrate on implementation of the strategic guidelines for the Justice and Home Affairs area, as agreed at the June European Council, with a particular focus on: countering foreign fighters, renewing the EU Internal Security Strategy and continuing the work on a comprehensive and structured approach to managing migratory flows. It would continue legislative work on the Students and Researchers Directives, amendments to the Dublin Regulation, the Visa Code recast, Europol, the European Police College (CEPOL) and the Smart Borders package and continue progress with PNR. A special priority for the Latvian Presidency would be strengthening co-operation with Eastern partners. Latvia would host an Eastern Partnership meeting in the margins of the informal Council on 29-30 January.

On both days, under AOB, Council was informed of the outcome of the EU-US JHA Ministerial meeting, on 12-13 November.

Article 10 of Protocol 36 to the Treaties

Under the arrangements in Article 10 of Protocol 36 to the Treaties, which were negotiated by the last Government, the United Kingdom had the right to opt out of all EU police and judicial cooperation measures adopted before the entry into force of the Lisbon Treaty. In July 2013, following votes in both Houses of Parliament endorsing the Government's decision, the Prime Minister formally exercised the opt-out. This decision took effect on 1 December 2014 and on that date the United Kingdom opted out of more than 100 EU police and criminal justice powers.

The Government has always been clear that we wanted to remain part of a smaller number of measures which give our police and law enforcement agencies vital and practical help to tackle serious crime and keep the public safe. Following consultation with operational partners and the relevant Parliamentary Committees, and detailed discussions with the European Commission, the Council and other Member States, the Government reached final agreement to rejoin 35 crucial police and criminal justice measures with debates in both houses on the 10 and 17 November this year.

On 20 November 2014, following votes in both Houses of Parliament endorsing the Government's package, the Prime Minister notified the President of the Council of Ministers of the United Kingdom's wish to rejoin the 35 measures set out in Command Paper 8897: *Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union*. A copy of the Prime Minister's notification letter has been placed in the House Library.

A Council and a Commission Decision were required to give effect to the United Kingdom's application to rejoin the measures. These processes were concluded on 1 December and copies of both Decisions were deposited in Parliament on 4 December. Explanatory Memoranda for both Decisions have now also been deposited in Parliament.

The Government voted, via the written procedure, to approve the adoption of the Schengen Council Decision, in order to ensure that it entered into force on 1 December without an operational gap for our law enforcement agencies occurring. This decision required the overriding of the Scrutiny Reserve Resolution, but did no more than approve the UK's participation in the six Schengen measures that had already been endorsed by both Houses of Parliament. Given unanimity was required for the measure to pass, the Government had to vote to approve this Decision to ensure that the package of measures could come into operation as soon as possible, to avoid a legal vacuum which could have arisen, to allow negotiations to conclude, and in order to conclude an advantageous package deal with other Member States.

The Commission Decision, which contained no more than a short provision approving the UK's application to rejoin the 29 non-Schengen measures, did not require the formal endorsement of the United Kingdom or other Member States prior to its adoption.

Two further Decisions relating to this matter were adopted by the Council at the Transport

Telecommunications and Energy (TTE) Council on 27 November. The UK did not have a vote on the Transitional Decision, but voted in favour of the Financial Consequences Decision in order to secure the advantageous deal we had reached with other Member States and ensure that the package of measures could come into operation as soon as possible. The European Scrutiny Committee did not clear the draft Council Decision on financial consequences from scrutiny ahead of this Council. As a result, this decision required the overriding of the Scrutiny Reserve Resolution to allow negotiations to conclude, and in order to conclude the deal with other Member States.

The Government's undertaking not to override scrutiny save in exceptional circumstances is embodied in Scrutiny Reserve Resolutions of the House of Commons (last updated in 1998) and the House of Lords (in 2010). These Resolutions are the cornerstone of the scrutiny procedures and provide assurance to Parliament that Ministers will not agree to measures in the Council of Ministers unless scrutiny has been completed. Ministers are committed to the scrutiny process and do not override them lightly. However, the circumstances were such in this case that it was necessary in order to deliver on a significant and successful negotiation where the measures implemented an outcome endorsed by both Houses of Parliament.

The Government is confident that the deal reached is a good one for all parties and that the smaller package of measures that we have rejoined will give our police and law enforcement agencies vital and practical tools to maintain co-operation with our European partners.