



HOUSE OF LORDS

European Union Committee

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9th Report of Session 2010–11

**Implementing  
the Stockholm  
Programme:  
home affairs**

Report with Evidence

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### *The European Union Committee*

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

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The Members of the Sub-Committee which prepared this report are listed in Appendix 1.

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### *Sub-Committee Staff*

The current staff of the Sub-Committee are Michael Collon (Clerk), Michael Torrance (Policy Analyst) and Joanna Lukens (Committee Assistant).

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## CONTENTS

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	<i>Paragraph</i>	<i>Page</i>
<b>Introduction</b>	1	5
<b>Action Plan Implementing the Stockholm Programme: a brief outline of home affairs</b>	7	6
<b>Box 1: Action plan: home affairs measures</b>	7	6
<b>Justice and Home Affairs Council</b>	8	7
<b>The evidence of the minister</b>	9	8
<b>Government's position on the Stockholm Programme and the Action Plan</b>	10	8
Measures which cause concern	13	8
Government priorities	14	9
Engagement with the European Parliament	15	9
Opt-ins	16	9
<b>The evidence of the Commissioner</b>	17	10
<b>Commission's position on the Stockholm Programme and the Action Plan</b>	18	10
Commission priorities	19	10
<b>Conclusion</b>	20	10
<b>Appendix 1: Home Affairs Sub-Committee</b>		11
<b>Appendix 2: Extract from the Action Plan</b>		12
<b>Appendix 3: The Government's Views</b>		15
<b>Oral evidence</b>		
<i>Mr James Brokenshire MP, Parliamentary Under-Secretary of State, Home Office; Ms Emma Gibbons, International Directorate, Home Office, and Mr Patrick Moody, International Policy Directorate, UK Border Agency</i>		
Oral Evidence, 13 October 2010		1
<i>Cecilia Malmström, Commissioner for Home Affairs, European Commission</i>		
Oral Evidence, 6 December 2010		11



# Implementing the Stockholm Programme: home affairs

## Introduction

1. The Treaty of Amsterdam, which came into force in 1999, provided for the progressive establishment of an area of freedom, security and justice (AFSJ). Subsequent legislation to achieve this was formerly split between the first pillar of the EU under Title IV of the Treaty establishing the European Community (TEC), where qualified majority voting and the United Kingdom opt-in applied, and the third pillar under Title VI of the Treaty on European Union (TEU), which was subject to unanimity and not subject to a United Kingdom opt-in. Since the entry into force of the Treaty of Lisbon on 1 December 2009 that distinction no longer applies.<sup>1</sup> The first and third pillars have been merged and all AFSJ legislation is now made under Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU). This includes legislation which is concerned with border checks, asylum and immigration (Title V, Chapter 2); judicial cooperation in civil matters (Chapter 3); judicial cooperation in criminal matters (Chapter 4); and police cooperation (Chapter 5).
2. For all substantive AFSJ legislation, Commission proposals are now subject to the ordinary legislative procedure: codecision between the European Parliament and the Council, which acts by a qualified majority. None of this legislation will apply in the United Kingdom unless it exercises its opt-in.<sup>2</sup>
3. On 10–11 December 2009, the European Council adopted the Stockholm Programme,<sup>3</sup> based on the Commission Communication “An area of freedom, security and justice serving the citizen”. This programme forms the agenda for EU justice and home affairs legislation from 2010 to the end of 2014, and replaces the previous five-year programme—the Hague Programme<sup>4</sup>—which covered the period 2005 to 2009.
4. On 14 October 2009 the Committee took evidence on the home affairs aspects of the Commission’s draft of the Programme from Phil Woolas MP, then a Minister of State at the Home Office, and produced a short report<sup>5</sup> which was presented to the House for information on 9 November 2009.
5. The Council agreed that the Commission should publish an Action Plan detailing how the various aspects of the Programme would be implemented. The Commission duly published a Communication<sup>6</sup> entitled “Delivering an

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<sup>1</sup> We discussed this important change more fully in Chapter 6 of our report *The Treaty of Lisbon: an impact assessment* (10th Report, Session 2007–08, HL Paper 62).

<sup>2</sup> i.e. unless within three months of a proposal being presented to the Council the United Kingdom notifies the President of the Council in writing that it wishes to take part in the adoption and application of the proposed measure: Article 3 of the Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice.

<sup>3</sup> Council Document 17024/09:  
[http://ec.europa.eu/home-affairs/doc\\_centre/docs/stockholm\\_program\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/docs/stockholm_program_en.pdf)

<sup>4</sup> The Hague Programme was the subject of a report by this Committee entitled *The Hague Programme: a five year agenda for EU justice and home affairs* (10th Report, Session 2004–05, HL Paper 84).

<sup>5</sup> *The Stockholm Programme: home affairs* (25th Report, Session 2008–09, HL Paper 175).

<sup>6</sup> COM(2010) 171  
final:<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0171:FIN:EN:PDF>

area of freedom, security and justice for Europe's citizens: Action Plan Implementing the Stockholm Programme" on 20 April 2010.

6. In this brief inquiry, conducted by the Home Affairs Sub-Committee,<sup>7</sup> we have looked only at the home affairs content of the Action Plan.

**Action Plan Implementing the Stockholm Programme: a brief outline of home affairs**

7. The Action Plan begins with an introduction setting out what the Commission considers to be the priority areas in the area of freedom, security and justice. Home affairs matters include:

- Ensuring the security of Europe, and
- Putting solidarity and responsibility at the heart of the EU's response.

Both of these categories as they appear in the Action Plan are reproduced in Appendix 2 of this report. An Annex attached to the Action Plan also lists the specific measures it envisages will be introduced for the duration of the Programme, alongside indicative dates of their publication by the Commission. A summary of the key points from both are reproduced in Box 1.

**BOX 1**

**Action plan: home affairs measures**

**Internal Security**

Following changes introduced by the Treaty of Lisbon, an Internal Security Strategy<sup>8</sup> (already published, 2010) will be implemented in order to tackle growing cross-border challenges, including a more coordinated approach to police cooperation, border management and civil protection and addressing all common security threats from terrorism and organised crime to man-made and natural disasters. Specific measures, which form part of the Strategy, include:

- A proposal for a Directive on the prevention of attacks against information systems (already published, 2010);
- The implementation of the "Solidarity Clause"<sup>9</sup> (2011);
- The development of an European Emergency Response Capacity (2011);
- A proposal for an EU Passenger Name Record (PNR) Directive (2011);
- A proposal for a comprehensive policy against corruption in Member States (2011);
- The introduction of a framework for freezing terrorist assets (2011);
- A proposal for the establishment of an EU Terrorist Financing Tracking Programme (2011);
- Enhancing border security through the establishment of an Entry Exit System (EES), a Registered Traveller Programme (RTP) and

<sup>7</sup> The members of the Sub-Committee and their declared interests are listed in Appendix 1.

<sup>8</sup> This is the subject of a separate inquiry by the Home Affairs Sub-Committee, which is ongoing.

<sup>9</sup> Article 222, TFEU.

a European Border Surveillance System (EUROSUR) (2011).

- The evaluation of the Data Retention Directive possibly followed by an amending legislative proposal (2010–2012);
- A more coherent approach to information-sharing between Member States and EU agencies (2013); and
- The establishment of an EU cybercrime centre (2013).

### **Asylum and Immigration**

The Commission intends to complete the Common European Asylum System (CEAS), while honouring the existing obligations to respect the fundamental right to asylum, including the principle of “non-refoulement”,<sup>10</sup> and also fostering a spirit of solidarity at the heart of the EU’s approach to asylum and resettlement policies. Specific measures include:

- A proposal considering the possibility of the joint processing of asylum applications within the EU (2014); and
- A proposal on a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions (2014).

With regard to migration, the Commission hopes to establish flexible frameworks governing the admission of legal immigrants in order to meet the needs of national labour markets, while also achieving uniform levels of rights and obligations for these individuals and ensuring the prevention and reduction of irregular immigration. Specific measures include:

- Proposals for Directives on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment<sup>11</sup> and the admission of third country nationals in the framework of intra-corporate transfers (both already published, 2010);
- Action Plan on unaccompanied minors (already published, 2010);
- The development of a Global Approach to Migration (2011);
- Proposal for an amended Directive on the right to family reunification (2012).

### **Justice and Home Affairs Council**

8. The Action Plan was discussed by interior ministers in a meeting of the Justice and Home Affairs (JHA) Council on 3–4 June 2010. They were critical of the Action Plan because it was felt that some aspects went beyond what had been agreed in the Stockholm Programme, while other matters which had been agreed were omitted from the Action Plan. As a result, in their Conclusions the Council, rather than simply adopting the Action Plan, chose to note that there were inconsistencies between the two documents and urged the Commission only to take forward the matters that were in full conformity with the content of the Stockholm Programme. This did not affect the Commission’s right to proceed, and the Commission confirmed at

<sup>10</sup> A principle under international refugee law that forbids the return of a refugee to an area where they may be subjected to harm or persecution.

<sup>11</sup> This Directive was the subject of a report by this Committee entitled *Subsidiarity assessment: admission of third-country nationals as seasonal workers* (1st Report, Session 2010–11, HL Paper 35). The House endorsed this report on 20 October 2010 and submitted it to the EU institutions in the form of a Reasoned Opinion to the effect that the Directive did not comply with the subsidiarity principle.

the time that they intended to carry on as they had originally intended. However the Council and European Parliament will ultimately have the last word when they come to consider the individual proposals for legislation following the Action Plan.

### **The evidence of the minister**

9. We reproduce in Appendix 3 the relevant parts of the Government's Explanatory Memorandum on the Commission Communication, signed by the Parliamentary Under Secretary of State for Crime Prevention in the Home Office, James Brokenshire MP. He also supplemented the views set out in the Memorandum when he gave oral evidence to us on 13 October 2010. We are grateful to him and his officials for their assistance. A transcript of their evidence is published with this report. We comment here on a few of the more important points they made.

### *Government's position on the Stockholm Programme and the Action Plan*

10. In his opening remarks the minister said: "... we believe that there are a number of aspects in which the action plan differs markedly from the agreed Stockholm Programme. It was because of this disparity that the Government signed up to the Council conclusions ... in June." He went on to make clear that their agreement with the Council Conclusions "does not imply that the Government accepts the Stockholm Programme in its entirety ... this Government would not have signed up to the Stockholm Programme in the form that it was agreed and there are several elements of the Programme that do not reflect the views of the new incoming coalition Government ... we will consider each new initiative as it emerges from the programme, on a case-by-case basis, with a view to exercising our JHA opt-in protocol for legislative measures".<sup>12</sup>
11. We asked the minister how many Member States agreed with the Government's position and he replied that he felt that their view had been widely held in the JHA Council.<sup>13</sup> However, the minister also admitted that they could not constrain the Commission's right of initiative<sup>14</sup> and that, with reference to the failed terrorist attack in Detroit on 25 December 2009, "there needs to be that flexibility to take account of emerging new threats or emerging new risks".<sup>15</sup>
12. **We note the Government's concern that the Action Plan is inconsistent with the content of the Stockholm Programme. However we hope that their response to the Commission's detailed proposals will not be purely procedural, but will address the substance of such proposals; and we underline the importance of adopting a flexible approach in order to respond to unforeseen events in an effective manner, particularly regarding matters of internal security.**

### *Measures which cause concern*

13. When we asked which particular measures, contained in the Action Plan, caused the Government concern, the minister gave the following examples of matters going beyond what had been agreed in the Stockholm Programme:

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<sup>12</sup> Q 1

<sup>13</sup> Q 3

<sup>14</sup> Q 2

<sup>15</sup> Q 6

- the establishment of a European public prosecutor;
- the legislative proposal on improving financial compensation received by way of consular protection in crisis situations; and
- the proposed introduction of a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions (between Member States).

The Government were also disappointed that there was no reference to bringing forward measures to tackle the abuse of free movement rights in the Action Plan despite the Stockholm Programme containing clear commitments of this nature.<sup>16</sup>

#### *Government priorities*

14. We also asked which aspects of the Action Plan the Government considered to be a priority. The minister replied that they were particularly supportive of the proposed EU Directive on passenger name records (EU PNR Directive), which they believe should cover intra-EU flights and be brought forward by the Commission at the earliest opportunity.<sup>17</sup> The minister also stated that the Government were pleased about the inclusion of the proposed European Investigation Order in the Action Plan as they believed that would be an improvement on the current mutual legal assistance provisions that were in force. They are also supportive of any measures “dealing with the issues of terrorism, organised crime and respecting the rights and freedoms of member state citizens”.<sup>18</sup>

#### *Engagement with the European Parliament*

15. When we asked if they were building stronger links with the European Parliament, as a result of the Parliament’s more prominent role following the entry into force of the Lisbon Treaty, the minister replied that they were already engaging more with MEPs from the United Kingdom and across the EU, as well as organising more ministerial visits to that institution. They considered early engagement on this basis to be important with regard to their priority measures, including the EU PNR Directive.<sup>19</sup>

#### *Opt-ins*

16. With regard to the United Kingdom opt-in, the Government have previously stated that they are unlikely to opt in to any measure which is brought forward that involves compulsory “physical burden sharing of asylum seekers across EU States”.<sup>20</sup> When asked which further proposals in the Action Plan the Government were not minded to opt in to, the minister also confirmed that they would not opt in to a proposal concerning a European public prosecutor or any Schengen measures which involve the abolition of border controls. The minister added that when reaching a decision on a United Kingdom opt-in, in each instance their primary consideration would be the United Kingdom’s national interests, including consideration of security and civil liberties concerns, the control of immigration and the integrity of the

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<sup>16</sup> Q 4

<sup>17</sup> Q 6

<sup>18</sup> Q 7

<sup>19</sup> Q 11

<sup>20</sup> See paragraph 13 of the Explanatory Memorandum.

common law legal systems. He also reaffirmed that they would have regard in each instance to the views of this Committee, which they considered to be very important.<sup>21</sup>

### **The evidence of the Commissioner**

17. Cecilia Malmström, the Commissioner for Home Affairs, gave oral evidence to us on 6 December 2010 on a number of issues including, very briefly, the Stockholm Action Plan. We were grateful to hear her views, and a transcript of her evidence is also published with this report. We deal here briefly with her main points.

### *Commission's position on the Stockholm Programme and the Action Plan*

18. We asked what her view was of the rather mixed response which the JHA Council gave to the Action Plan in June 2010. She replied that she did not “think it got a mixed response because it was 85% to 90% identical to what Ministers agreed during the Swedish presidency” and that some of the Action Plan’s content had “been added as a result of the input of the European Parliament”, which they were obliged to do. She added that they had engaged with ministers regarding any problems that had arisen and that things were now progressing well, and she concluded: “Of course, it is a long programme, so if anything comes up in 2013 or 2014 by which time things might have changed, we will address them accordingly.”<sup>22</sup>

### *Commission Priorities*

19. We went on to ask what the Commission considered to be the priority elements of the Action Plan and she replied that, at present, the internal security strategy and the development of the Common European Asylum System were the most important areas. She added that the latter policy had recently become more of a priority because of problematic developments in Greece.<sup>23</sup>

### **Conclusion**

20. We make this report to the House for information. We have not recommended it for debate since much of the ground covered in the Stockholm Programme has been followed up in the Commission’s subsequent Communication on the EU Internal Security Strategy in Action on which the Committee is currently conducting a full and substantial inquiry. We would expect to recommend the report on that inquiry to the House for debate.

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<sup>21</sup> Q 12. A resolution of the House of 30 March 2010 obliges them to allow 8 weeks for parliamentary scrutiny before making an opt-in decision.

<sup>22</sup> Q 34

<sup>23</sup> Q 35. After a request was received from the Greek government in October 2010, a Rapid Border Intervention Team (RABIT)—a group of specialised border guards drawn from numerous Member States—was deployed by Frontex to Greece’s border with Turkey in order to combat significant levels of illegal border crossings in that vicinity.

## **APPENDIX 1: HOME AFFAIRS SUB-COMMITTEE**

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The members of the Sub-Committee which prepared this report were:

Lord Avebury  
Lord Dear  
Baroness Eccles of Moulton  
Lord Hannay of Chiswick (Chairman)  
Lord Hodgson of Astley Abbotts  
Lord Judd  
Lord Mackenzie of Framwellgate  
Lord Mawson  
Lord Naseby (until 13 December 2010)  
Lord Richard  
Lord Tomlinson  
Lord Tope (from 23 November 2010)

### **Declarations of Interests:**

Members declared no interests relevant to this inquiry.

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

## APPENDIX 2: EXTRACT FROM THE ACTION PLAN

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### Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions—Delivering an area of freedom, security and justice for Europe's citizens: Action Plan Implementing the Stockholm Programme COM(2010) 171 final

#### *5. Ensuring the security of Europe*

Europe is facing growing cross-border criminality. It is our obligation to work hand in hand with Member States, European Parliament, key third countries and the business community where appropriate, and do our utmost to ensure that EU citizens can live in a secure environment.

The Lisbon Treaty provides the Union with better tools to fight terrorism and organised crime.

An Internal Security Strategy, based upon the full respect of fundamental rights and on solidarity between Member States, will be implemented with care and firm resolve to face the growing cross-border challenges. It implies a coordinated approach to police cooperation, border management, criminal justice cooperation and civil protection. We need to address all the common security threats from terrorism and organised crime, to safety concerns related to man-made and natural disasters. Given the increasing use of new technologies, tackling efficiently those threats also requires a complementary policy ensuring the preparedness and resilience of Europe's networks and ICT infrastructure.

To be successful, this strategy needs to build on experience and lessons learnt. The time has come to assess our past approach, when the Union had to react to unexpected and tragic events, often on a case by case basis, and to capitalise on the new institutional set-up offered by the Lisbon treaty with a coherent and multidisciplinary approach.

The establishment of a strategic agenda for the exchange of information requires an overview of existing data collection, processing and data-sharing systems, with a thorough assessment of their usefulness, efficiency, effectiveness, proportionality and their respect of the right to privacy. It should also lay the ground for a coherent development of all existing and future information systems.

As a priority we need to take stock of the counter-terrorism measures put in place in recent years and assess how they can be improved to contribute to protecting our citizens and add value to Member States' action. The new institutional framework offers the Union an unprecedented opportunity to better interlink its different counter terrorism instruments.

Future measures on organised crime need to use the new institutional framework to the fullest extent possible. Trafficking in human beings, child pornography, cyber crime, financial crime, counterfeiting of means of payment and drugs trafficking, should be tackled in a comprehensive way. More effective prosecution and conviction are as important as attending to the needs of the victims of these crimes and reducing the demand for services from potential victims. Pooling Member State's law enforcement capabilities on specific drugs and routes will be a first concrete operational answer.

We also need to remove all the obstacles in the way of effective law enforcement cooperation between Member States. EU agencies and bodies such as FRONTEX, Europol and Eurojust, as well as OLAF, have a crucial role to play.

They must cooperate better and be given the powers and resources necessary to achieve their goals within clearly defined roles.

The Union will pursue an integrated approach to the control of access to its territory in an enlarged Schengen area, to further facilitate mobility and ensure a high level of internal security. Visa liberalisation will be pursued in particular with neighbouring countries in order to facilitate people-to-people contacts based on clearly defined conditions.

Smart use of modern technologies in border management to complement existing tools as a part of a risk management process can also make Europe more accessible to bona fide travellers and stimulate innovation among EU industries, thus contributing to Europe's prosperity and growth, and ensure the feeling of security of Union's citizens. The coming into operation of the SIS II and VIS systems will continue to be a high priority.

Protecting citizens from the risks posed by international trade in counterfeited, prohibited and dangerous goods also requires a coordinated approach, building on the strength of customs authorities. Protection against harmful and dangerous goods must be ensured in an effective and structured manner through a control-based risk management of goods, of the supply chain and of any type of goods flows.

Our efforts to protect people will include the EU's role in crisis and disaster prevention, preparedness and response. Further assessment and necessary action at EU-level in crisis management will be an immediate priority. The EU Civil Protection Mechanism will be strengthened to improve the availability, interoperability and coordination of Member States' assistance. Prevention also needs to be enhanced. The Union will implement the solidarity clause.

#### *6. Putting solidarity and responsibility at the heart of our response*

Robust defence of migrants' fundamental rights out of respect for our values of human dignity and solidarity will enable them to contribute fully to the European economy and society. Immigration has a valuable role to play in addressing the Union's demographic challenge and in securing the EU's strong economic performance over the longer term. It has great potential to contribute to the Europe 2020 strategy, by providing an additional source of dynamic growth.

During the next few years focus will be on consolidating a genuine common immigration and asylum policy. The current economic crisis should not prevent us from doing so with ambition and resolve. On the contrary, it is more necessary than ever to develop these policies, within a long-term vision of respect for fundamental rights and human dignity and to strengthen solidarity, particularly between Member States as they collectively shoulder the burden of a humane and efficient system. Once these policies consolidated, progress made should be assessed against our ambitious objectives. Further measures will be proposed as appropriate.

The Union will develop a genuine common migration policy consisting of new and flexible frameworks for the admission of legal immigrants. This enables the Union to adapt to increasing mobility and to the needs of national labour markets, while respecting Member State competences in this area.

The EU must strive for a uniform level of rights and obligations for legal immigrants comparable with that of European citizens. These rights, consolidated in an immigration code, and common rules to effectively manage family reunification are essential to maximise the positive effects of legal immigration for the benefit of all stakeholders and will strengthen the Union's competitiveness.

The integration of migrants will be further pursued, safeguarding their rights whilst also underlining their own responsibilities to integrate into the societies in which they live.

The prevention and reduction of irregular immigration in line with the Charter of Fundamental Rights is equally important for the credibility and success of EU policies in this area. The situation of unaccompanied children will be given special attention.

Our response to this global challenge requires genuine partnership with third countries of origin and transit and the incorporation of all migration issues in a comprehensive policy framework. The global approach to migration will thus be further pursued and implemented.

We must honour our obligation to respect the fundamental right to asylum, including the principle of “non refoulement”. The establishment of the common European asylum system and the European asylum support office should ensure uniform status, high common standards of protection in the EU and a common asylum procedure, with mutual recognition as the long term goal. Solidarity will be at the heart of our asylum and resettlement policy, both between Member States and with those facing persecution around the world.

Brussels, 20 April 2010

## APPENDIX 3: THE GOVERNMENT'S VIEWS

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### Extracts from the Explanatory Memorandum on the Commission's Action Plan, giving the Government's views on the policy implications of the Commission's plans for home affairs

Submitted by the Home Office on 7 June 2010

#### *Policy implications*

13. Introduction. The Communication prefaces the detailed Action Plan table with a preamble setting out the Commission's views on the priorities in the area of Freedom, Security and Justice. However, in the Stockholm Programme, the Council invited the Commission to present an Action Plan in order to "translate the aims and priorities of the Stockholm Programme into concrete actions with a clear timetable for adoption and implementation" (1.2.10, page 11). The Government is consequently not persuaded that this introduction is consistent with the Stockholm Programme.

At the same time, the Government, while recognising the importance of the Stockholm Programme itself, wishes to make it clear that this does not imply that it accepts the Programme in its entirety. It will consider each new initiative as it emerges in line with the JHA Opt-In Protocol to the Treaty on the Functioning of the European Union.

Annex—table of actions. The table lists proposed actions, the year they are to be brought forward and the institution/party responsible. They are arranged under headings which broadly reflect subject areas from the Stockholm Programme, although the order differs. The Government believes that there are a number of respects in which the Action Plan does not reflect the Stockholm Programme and several that do not reflect the views of the Government.

For example, on page 16, the section of the Action Plan dealing with EEA Free Movement rights contains no reference to bringing forward measures to tackle the abuse of these rights. The Stockholm Programme contained clear commitments to pursue such measures, including an invitation to the Commission to "monitor the implementation and application of these rules to avoid abuse and fraud", and "examine how best to exchange information, inter alia, on residence permits and documentation and how to assist Member States' authorities to tackle abuse of this fundamental right effectively" (2.2, page 14). The Government therefore does not believe that the Action Plan has adequately reflected the commitments in the Stockholm Programme.

On pages 55–56, the Action Plan makes reference to "a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions". This is inconsistent with the Stockholm Programme, which only invites the Commission to "consider, once the second phase of the CEAS [Common European Asylum System] has been fully implemented and on the basis of an evaluation of the effect of that legislation and of the EASO [European Asylum Support Office], the possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquired residence rights under EU law" (6.2.1, page 70). For this reason, the Government believes that the Action Plan goes further than the commitments on asylum in the Stockholm Programme and the Government is unlikely to opt-in to any arrangements involving compulsory physical burden sharing of asylum seekers across EU States.

Given the inconsistencies, at the JHA Council on 3 June I made clear that the Government does not endorse the Commission's Action Plan. The Government therefore supports Council Conclusions in which the Council notes that there are inconsistencies and urges the Commission to take only those initiatives that are in full conformity with the Stockholm Programme.

14. The Council has agreed Conclusions that were presented for adoption by Member States' Ministers at the Justice and Home Affairs Council on 3 and 4 June. The Conclusions are attached to this EM, for the Scrutiny Committees' information. The Government will consider the potential impacts of future proposals, including those which are consistent with the Stockholm Programme, on a case by case basis as they arise.

James Brokenshire MP

Parliamentary Under-Secretary of State, Home Office

# Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE EUROPEAN UNION  
SUB-COMMITTEE F (HOME AFFAIRS)

WEDNESDAY 13 OCTOBER 2010

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Present	Lord Avebury	Lord Mackenzie of Framwellgate
	Baroness Eccles of Moulton	Lord Mawson
	Lord Hannay of Chiswick	Lord Naseby
	(Chairman)	Lord Richard
	Lord Hodgson of Astley Abbotts	Lord Tomlinson

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## Examination of Witnesses

JAMES BROKENSHERE MP, Parliamentary Under-Secretary of State and Minister for Crime Prevention, Home Office, EMMA GIBBONS, Head of EU Section, International Directorate, Home Office, PATRICK MOODY, Director of International Policy Directorate, UK Border Agency.

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**Q1 The Chairman:** Good morning, Minister. Thank you very much indeed for coming along. Good morning also to your colleagues, Ms Gibbons and Mr Moody. It is very good to see you here for the first time—I have to say that I fear that it will not be the last time, but it is very good that you are here with your new responsibilities for home affairs. This Committee, as you know, concentrates on that. We have a slightly odd and awkward split with Sub-Committee E, which does justice. Sometimes that falls on one side of the Home Office and sometimes on the other, but this is the principal committee for home affairs. We are very grateful for you coming to give evidence. The session is open to the public. A webcast of the session goes out live as an audio transmission and is subsequently accessible via the Parliament website. A verbatim transcript is taken of your evidence and this will be put on the parliamentary website. A few days after this session, we'll send you a copy of the transcript to check for accuracy. We would be grateful if you could let us know if there are any corrections as quickly as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence, or have any additional points to make, we'd be very happy to take supplementary evidence put to us. As you know, we're looking for a second time at the Stockholm Programme. We looked at it first when it was adopted by the Council and now we're looking at the implementation action plan, which the Commission produced following approval by the Council. If you and your colleagues would like to introduce yourselves, that would be very helpful for the Committee. If you want to make some opening remarks, that would be entirely appropriate.

*James Brokenshere:* Lord Hannay, thank you. My Lords, thank you for inviting me to attend this evidence session to discuss the Stockholm Action

Plan and the implementation in relation to that. I'm pleased to be appearing before this Committee for the first time and hope that I can be of assistance now and on future occasions in evidence sessions that I am sure you will hold on other related matters. First, I introduce the officials who are here with me this morning. To my right is Emma Gibbons from the International Directorate of the Home Office. To my left is Patrick Moody from the International Policy Directorate of the UK Border Agency. If you will permit me, I would just like to make a very short opening statement on the negotiations surrounding the Stockholm Action Plan and on the Government's wider approach to engaging with the EU on home affairs issues, if that would be helpful. As your Lordships are aware, the Stockholm Programme was agreed by the European Council in 2009 and the Commission was invited to present an action plan in order to translate the aims and priorities of the Programme into concrete actions. As is made clear in the Government's Explanatory Memorandum on the action plan, we believe that there are a number of aspects in which the action plan differs markedly from the agreed Stockholm Programme. It was because of this disparity that the Government signed up to the Council conclusions on the Stockholm Action Plan in June. These conclusions, as you will be aware, noted the inconsistencies with the Stockholm Programme and urged the Commission to propose only those actions that fully conform to the Stockholm Programme. The conclusions in many ways sent a clear message to the Commission: that it should not undermine the role of national governments in setting the agenda for the EU work on justice and home affairs by departing from the decisions of heads of government. I wish to make clear, however—this is something that I have said at Justice and Home Affairs Council meetings—that

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

our agreement of the Council's conclusions does not imply that the Government accepts the Stockholm Programme in its entirety. As I stated at the JHA Council in June, this Government would not have signed up to the Stockholm Programme in the form that it was agreed and there are several elements of the Programme that do not reflect the views of the new incoming coalition Government. As set out in the coalition agreement, we will consider each new initiative as it emerges from the programme, on a case-by-case basis, with a view to exercising our JHA opt-in protocol for legislative measures. This may be something that you will want to discuss further. Those are my opening comments and I very much look forward to answering your questions on the action plan and related matters.

**Q2 The Chairman:** Thank you very much. That covers quite a bit of the area that I had been going to put as the first question to you, but not entirely. Perhaps you could be slightly more explicit on which parts of the Stockholm Programme that was approved by the European Council last December the coalition Government has difficulties with. Secondly, perhaps you could just say a word about the views of other governments that resulted in the rather lukewarm reception given by the Council to the Commission's Implementation Plan.

*James Brokenshire:* In relation to those issues about which we have some concerns, there are two principally, which relate to the establishment of a European public prosecutor and the development of a common EU asylum system. They were the two principal elements, as I have telegraphed at the Justice and Home Affairs Council meetings, that the new coalition Government has issues with, in relation to the original Stockholm Programme. In terms of the responses of other governments, I think that we will have to wait and see how this now moves forward. Obviously a clear message was telegraphed by various governments at the Justice and Home Affairs Council meeting that led to the conclusions, which were made around this feeling that Member States should be leading and setting that agenda and I suppose telegraphing that message quite clearly to the Commission. We cannot constrain the Commission's right of initiative, as provided in the treaty. In some ways, that may be where the Commission was coming from on those issues that perhaps it was suggesting it was unhappy with, as regards the terms of the Programme itself. The passage of time will determine whether the Council members will stand by the assertion that they will only consider measures falling out of the Stockholm Programme itself and, by implication, reject anything from the action plan that may be inconsistent with it. Certainly that was the message that was given at the

Council meeting and in the conclusions, but clearly we will have to see how that progresses.

**Q3 The Chairman:** What proportion of the membership, roughly, is feeling that way?

*James Brokenshire:* My mood from the meeting was that this view was widely shared. I made the perspective of the British Government clear during the Justice and Home Affairs Council meeting, and that was supported by a number of other States publicly in that session. My sense is that it was a fairly widely held view in terms of the conclusions that were subsequently represented, following on from the Council meeting.

**The Chairman:** Thank you very much. We're taking evidence from Cecilia Malmström, I hope within the next two weeks or so, on the same area. It will be interesting to hear what she has to say about that.

**Q4 Lord Avebury:** You have already mentioned some aspects in which the Commission's proposals differ markedly from the Stockholm Programme and I wonder whether there are any home affairs aspects of the implementation action plan that the Government feels are inconsistent with the Stockholm Programme, other than those that you have already mentioned, which was approved last December—for example, the proposed measure for physical burden sharing of asylum seekers across the UK.

*James Brokenshire:* We believe that substantial elements of the action plan went beyond what was in the Programme and, in some ways, elements of the Programme have also not been given sufficient emphasis. I have touched on the mutual recognition of asylum decisions. This was not a provision set out in the Programme, which instead called for the creation of a framework for the transfer of protection of beneficiaries with international protection when exercising their acquired residency rights under EU law. Also the action plan contains no reference to bringing forward measures to tackle the abuse of free movement rights. Again, the Stockholm Programme contained clear commitments to pursue such measures, including an invitation to the Commission to monitor the implementation and application of these rules to avoid abuse and fraud. The action plan also refers to a legislative proposal on improving financial compensation of consular protection in crisis situations. However, the Stockholm Programme merely invited the Commission to consider appropriate measures establishing co-ordination and co-operation necessary to facilitate consular protection. The other point that I would go back to is the fact that the action plan envisaged a Communication on the establishment of a European public prosecutor's office, from Eurojust, from the Commission in 2013. That obviously went

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

significantly beyond what was in the Stockholm Programme, in terms of having an assessment of the implementation of the Eurojust Council Decision and suggesting that new possibilities may then be considered, rather than having this very firm edge that was obviously stated in the action plan itself. These were some of the principal issues that we had identified in our examination of the action plan, which led to the statements and the approach that was taken at the Council meeting.

**Q5 Lord Avebury:** Although there was no provision in the Stockholm Programme for agreeing on a common recognition of asylum seekers, would that not be desirable in the long run?

*James Brokenshire:* We take a different view about mutual recognition of asylum decisions. We do not support the idea of mutual recognition. Genuine refugees, we believe, should be offered protection in the Member State where they first arrive. Obviously that is very much part and parcel of the existing arrangements. There is no obligation at the EU level for the UK to accept any migrants from other EU States. Decisions about who gets asylum in the UK, we believe, should stay in the UK. I think that there are issues that we can certainly examine and are examining in terms of practical co-operation around asylum. There are various measures that we are taking to assist in that regard, but it is very much that practical co-operation that we have sought to emphasise thus far, and that is very much where our emphasis lies.

**Q6 Lord Mawson:** What Home Affairs aspects of the Implementation Action Plan does the Government consider to be a priority in terms of their potential benefits to the UK?

*James Brokenshire:* The main emphasis that we would give is around a common EU approach to the use of passenger name record data for law enforcement purposes. We support this measure and are actively lobbying the Commission to bring forward an EU Directive on passenger name records, which also covers intra-EU flights. The UK's e-Borders system has identified intra-EU routes as among the higher-risk routes for smuggling and other criminal activity. If we do not collect data on these routes, we'll be perhaps in the illogical position of making internal EU travel less safe than travel outside of the Union. Certainly we believe that early publication of that Directive including that coverage is vital to maintain the safety and the security of EU citizens. I know that one point that will come through from that is whether that is in some way inconsistent with what's just been said on the Stockholm Programme, changes thereafter and the action plan going in some ways beyond the Stockholm Programme. What I would counter on that is to say that, in large measure, the

emphasis on this was given as a consequence of, I'm pleased to say, the foiled terrorist attack in Detroit on 25 December, which took place after the Stockholm Programme had been agreed. Therefore, there needs to be that flexibility to take account of emerging new threats or emerging new risks, and being able to respond to it in that way.

**Q7 The Chairman:** What about the measures that are in the Stockholm Programme? You've told us a bit about ones that we don't like—that the British Government does not like—but which do you think would be beneficial if they were pursued actively?

*James Brokenshire:* One measure that I know that this Committee has looked at is the European Investigation Order, which seeks to bring together mutual legal assistance. We are pleased that that has moved forward in terms of the Stockholm Programme, since prosecutors were telling us that current judicial co-operation arrangements of the collection of evidence were flawed. In terms of other issues that we are supportive of, they are very much around dealing with the issues of terrorism, organised crime and respecting the rights and freedoms of member state citizens. However, as I've already said, we will examine these on a case-by-case basis as they emerge through from the Commission. They would be the broad area in which we are very much supportive and looking forward to seeing that work proceeding at a swift pace.

**The Chairman:** The first one you mentioned is Sub-Committee E's. Your evidence will be available to them and I am sure they will be very pleased to have that indication. That is very helpful.

**Q8 Lord Richard:** I wonder if you can help us with something that this Committee recommended but Parliament turned down, and that is views on the asylum procedures and qualification directives. As I understand it, that is now before the Council and the European Parliament. We have said that we will not opt-in to it. Can you tell us what the state of play is on that?

*James Brokenshire:* Yes. Negotiations on both are proving challenging. It is fair to say that they have been making some slow progress.

**Q9 Lord Richard:** Who is challenging what and whom?

*James Brokenshire:* It is the progress in seeking to get these in the appropriate way. Certainly the Procedures Directive has been particularly difficult and has attracted opposition from a number of Member States. There is a possibility, indeed, that the Commission will withdraw this proposal and table a new one next year. This would then retrigger the UK's opt-in. The presidency hopes to secure political agreement on the Qualification Directive before the

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

end of the year. However, I understand that there are still significant differences between Member States, even on that Directive, and it remains to be seen whether the presidency's ambition is actually realistic. Member States share in some ways our view that the Commission's proposals are overly complicated, will impose unnecessary costs and will make it harder to decide asylum claims efficiently and deter abuse of the system. Equally though, the European Parliament, which will have to agree to whatever measures become law, is much more sympathetic to the Commission's view, which makes it difficult to see where agreement may currently be reached. That is why I suppose I was saying that it was in some ways challenging.

**Q10 Lord Richard:** Is this a firm view of the Government or, to use your phrase, is there some flexibility in the interpretation of the Stockholm Programme?

*James Brokenshire:* If there is a new proposal that comes forward on the Procedures Directive, the UK's opt-in will be triggered. As I've said, it's something that we will consider on a case-by-case basis, so I would not want to prejudge any subsequent decision, should it take that turn of events. Clearly we will examine any revised proposals that may be published next year, on the same basis as we would, on a case-by-case basis, for any other.

**Q11 The Chairman:** I am sure the Home Office is very well aware that the Lisbon Treaty provisions in the area where you work mean that the European Parliament has a much more prominent role than it had ever had in the past in this legislation. Are you satisfied that you are really building up links, both at the political level yourself, with key players in the European Parliament, and your officials, with the various officials concerned?

*James Brokenshire:* That is a very fair point to make. We are conscious of the revised role that the European Parliament now has. Indeed, Damian Green, my colleague the Immigration Minister, visited the European Parliament in September, when he met MEPs to discuss, in particular, the passenger name records issue. The Home Secretary has also had conversations with key contacts on individual dossiers. I very much hope that I will be able to go to the European Parliament later this year, recognising the importance of the revised arrangements and how this now fits together.

**Q12 Lord Mackenzie of Framwellgate:** Could I ask the Minister if there are any other Home Affairs items contained in the Implementation Action Plan that the Government is not minded to opt-in to?

*James Brokenshire:* As I think I have already said during evidence to this Committee, we will consider whether or not to opt-in to proposals from the Commission on a case-by-case basis. In making those decisions, we will be putting the national interests at the heart of our decision-making. In considering new measures, we will include security, civil liberties and integrity of the UK common law systems as well as control of immigration. I've already indicated that the Government will not opt-in to a proposal concerning a European public prosecutor, and has no intention of joining Schengen measures that involve the abolition of border controls. In addition, though, we will have regard to the views of this Committee and the European Scrutiny Committee in reaching our decision on whether the UK should opt-in to any measure. Certainly, I would like to reassert that we stand by our commitment not to notify the UK decision within the first eight weeks of publication, unless exceptional circumstances exist.

**The Chairman:** That is very welcome, because it is extremely important to give us that space in which to formulate views.

*James Brokenshire:* Certainly for us the issue of scrutiny and giving you that space is very important.

**Q13 Lord Richard:** On this European public prosecutors argument, is our objection jurisdictional? Is it in terms of the mandate they are proposed to be given? Is it in terms of the way in which they would operate? Is it that we do not like an inquisitorial system, as opposed to an adversarial one? Can you give us a little run-down as to why it is so dreadful?

*James Brokenshire:* The broad issue that we take is about the protection of the UK criminal justice system and any intervention that the European public prosecutor may make in that regard. It is very much that principle issue around the UK criminal justice system and our ability to control what happens within this country. It is very much at that high level, which is why I suppose I've highlighted the principle objection that's been flagged by the Government around this, and why we have put down this very clear message right at the outset, in terms of why we do object to it and will not be opting in to a measure of that kind.

**Q14 Lord Richard:** It seems a bit inconsistent to say that in terms of the European one when we accept the International Criminal Court, for example.

*James Brokenshire:* I think the implications on the domestic situation here are why we have sought to maintain the position we have, and the rigour and robustness of the criminal justice system within the United Kingdom. It is at that principle level that we have sought to raise our objections, and how we strongly believe that the maintenance of the criminal

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

justice system within the UK is so essential. Any decision to challenge or change that would have to be considered exceptionally carefully as to what the overarching benefits would be to the United Kingdom as a consequence of that.

**Q15 Lord Hodgson of Astley Abbotts:** I understand the point you're making about the prosecutor. Why in those circumstances did we then opt-in to the European Investigation Order, which actually requires us to comply with a series of European jurisdictions, some of which have evidential gathering standards quite different to ours, and where a number of groups, such as Fair Trials International, are extremely concerned about the possibility of there being inbuilt inequality of arms between prosecution and defence?

*James Brokenshire:* It comes back to the point that I just made to Lord Richard, in terms of seeing that there would be benefit to the UK from doing so, and indeed the risks attached to not engaging within that. We were advised quite clearly that the current mutual legal assistance system is fragmented, confusing and subject to delays, and how it may currently take many months to obtain vital evidence. When the UK has been requesting this from other States, this has had a detrimental effect on the UK investigations and trials that are taking place. It's also the issue that, if we were to stand outside of the European Investigation Order, what would the consequences of that be. It seems quite clear that there would be significant adverse consequences to the UK, in terms of our mutual legal assistance requests that are then sent to other Member States, given that we would be relying on an old system rather than a new system as set out by the EIO, and whether this would mean that the priority of our requests would then be lowered as a consequence. It was in assessing those risks as well as weighing up the potential benefits that we took the decision that it was appropriate to opt-in to the European Investigation Order to address both those pros and those cons as well, and why it was a value judgment in that case that it was appropriate to opt-in, in that way.

**Q16 The Chairman:** Turning back to the public prosecutor issue, am I wrong in thinking that successive Governments have been quite pleasantly surprised by how well Eurojust is operating and that it is less of a concern to us than we thought it was going to be when it was set up? Does that not cast some doubt on what you call the "principle position" about the prosecutor?

*James Brokenshire:* It is a question of how the Action Plan has moved forward from the Programme itself. Perhaps going back to the initial question that I responded to on this, in essence, it was determined that there should be an assessment of Eurojust before

then deciding how to move forward in that way. It's the fact that the Action Plan sends out this very clearly telegraphed message that we automatically now move to the European public prosecutor, rather than having that proper assessment of Eurojust, seeing how it has performed and what may or may not be appropriate flowing through that. Emma, I don't know whether it would be appropriate for you to add anything in terms of how successive Governments have assessed Eurojust, to give the Committee that overarching view as to consistency.

*Emma Gibbons:* In terms of Eurojust, I think this Committee has recognised the value of Eurojust. Indeed, previous Administrations have acknowledged that. The distinction there is that Eurojust, however, has always played a role in supporting Member States' investigations at a national level. National sovereignty and the management of those investigations has still rested with the competent authorities in the UK, which have then sought the very valuable assistance from the Eurojust national desk in taking forward investigations. Obviously the EPP would take that a step further and transfer that sovereignty. In terms of its day-to-day activities, Eurojust continues to provide an excellent service, and I think that was evidenced quite recently, with the recent arrests around the alleged trafficking ring of children in the last couple of days, which Eurojust had been involved in co-ordinating across Member States.

**Q17 The Chairman:** If I have understood it rightly, you are saying that you would like to see discussion of this evolve on the basis of experience in Eurojust, more than with a big-bang public prosecutor proposal.

*James Brokenshire:* There are two elements. There is assessing the evidence and experience, which was very much reflected in the Stockholm Programme, but there is still that issue of whether in some ways sovereignty or control over our own domestic criminal justice system is being eroded and changed, and what the perceived benefits would be of doing so. At this stage, we're very unconvinced.

**Q18 The Chairman:** COSI is one of those dreadful acronyms, with which the European Union, like every other international organisation, is burdened. It was set up at the beginning of the year, I think. I wonder whether you could say a little bit about where it's got to, what your take on it is and what you think its potential for development is.

*James Brokenshire:* Clearly, these are and remain early days for COSI. It has met five times now since its creation, and is therefore beginning to start to find its focus. Where we have been seeking to focus perhaps the UK's efforts is on new ways of tackling organised crime, and focusing on targeting criminal assets,

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

exploring the potential for greater use of joint investigation teams and, for example, targeting the trade in chemicals used to bulk cocaine and heroine—working with the private sector to tackle organised crime in that way. We emphasise very heavily this approach on practical co-operation, in terms of how it's possible to make a real difference in that way. I am pleased that SOCA has been seeking to brief COSI to give some suggestions and has tabled a paper at a recent COSI meeting. I know from the feedback I received at the Justice and Home Affairs Council informally that was very well received in terms of, for example, sharing understanding of criminal markets, issuing alerts about vulnerabilities, targeting criminal finance and greater EU efforts on asset recovery. We would very much give that practical emphasis, rather than perhaps drawing some sort of new overarching framework or structure in that way. We very much see COSI as fulfilling those elements of practical co-operation.

**Q19 The Chairman:** I do not know if you had a chance to look at the report that we did on money laundering, in which we were rather critical of how active the Home Office had been in following up the issue of asset recovery. You might wish to glance at that at some stage. The general view of this Committee was that not quite enough effort was being put into it. It's a very complex subject, but perhaps you might like to look at that.

*James Brokenshire:* I would merely say at this stage, Lord Hannay, that aside from my responsibilities on Justice and Home Affairs matters, I have asset recovery and denial as part of the policy area in which I am engaged at the Home Office. This issue is important to me, and certainly I understand and recognise the significance of it in disrupting the activities of organised criminal gangs, and the importance of following money flows, for example, in relation to countering the drugs trade and those very sophisticated and organised criminal groups that are engaged in it. It is certainly not a point that is lost on me.

**Q20 Lord Hodgson of Astley Abbotts:** In looking at that, could I ask the Minister to bear in mind another point in the report, which was that we are collecting a phenomenal amount of data about our fellow citizens, most of which they do not know is being collected, most of which they do not know is accurate? A whole series of government agencies, such as social security agencies, have access to this, for the purpose for which suspicious activity reports were not designed in the first place. I hope when the Minister comes to deal with it he will bear in mind the civil liberty aspect of this as well.

*James Brokenshire:* I appreciate that comment. Certainly civil liberties and protection of the individual's rights are something that are very important to this Government. Indeed, in order that there can be confidence in the use of a whole range of powers, moving forward, so that law enforcement agencies and other agencies may properly use those sorts of powers, the issue of liberties and freedoms individually is very much part of that analysis, and understanding those points quite clearly. The point is well understood.

**The Chairman:** There was a reply given to a written question of a former member of this Committee, Lord Marlesford, that you are looking at some of these aspects again, particularly the ones that Lord Hodgson raised.

**Q21 Lord Mawson:** A lot of my work has been in the East End of London and working a lot in the public sector. Sometimes I'm very conscious that discussions happen up here, when sometimes the reality on the ground is quite different. It was quite interesting; one of the inquiries we did a while ago was looking at some of the aspects of Olympic security. The Minister came and he was very confident about certain things. When you pushed, you found that, actually, he had not even talked to Sir Robin Wales, the Mayor of Newham, about the realities of what's actually happening on the ground. I'm just wondering, in your new position, about the steps that will be taken to ensure these linkages between what's happening at this level and the practice in some of these organisations of what is actually going on, on the ground, in detail. How might you get a handle on some of that? Some of us worry about these disconnects, really.

*James Brokenshire:* The issue on the domestic policing landscape is something that falls beyond my strict responsibilities. However, we have set out quite clearly in the *Policing in the 21<sup>st</sup> Century* document how we would see the change to the policing landscape, indeed with the concept of the creation of a national crime agency to look at crimes that are national; and how that feeds into capability and a new landscape of policing and crime commissioners, so that there is a better and stronger linkage, not simply around organised crime but also around those crimes that are perhaps best addressed at a national level, which cross force boundaries, and how better to collectively pull that piece of work together. The concept from the streets to the community to the country and, indeed, the international response to all of these crimes is important, so that we have that clarity of response, and the strategic takes proper account of the tactical and the community in terms of assisting the consideration of policy decisions that may be made.

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

**Q22 *Baroness Eccles of Moulton:*** Minister, I'd like to ask you a question about the division in two of the Directorate of Justice, Freedom and Security, so that there's now a separate Home Affairs Directorate, and what your view is about whether this will be a positive help to the progress of the Stockholm Programme.

*James Brokenshire:* Obviously there's now the distinction between Home Affairs and Justice. Very much it's for the Commission to decide how it wants to organise itself. We will work with it, we are working with it, in the arrangements that it has established. I suppose the decision was taken due to the growing importance of policies related to this area and the work of the Union, allowing each DG to focus more resources and attention on each area. I think I can understand how we have reached the position that we have, but the separation also appeared to be perhaps a natural progression in the development of the Directorate-General for Justice and Home Affairs, and the Commission, reflecting an approach in many ways to such matters that we take internally as individual countries. Here in the UK, we have the Home Office and we have the Ministry of Justice. In some ways it perhaps recognises the internal organisational aspects that most Member States take in relation to this issue. There is some overlapping of responsibilities—indeed, I think your Chairman has indicated, in the way that this Committee operates, sometimes there is an overlapping of responsibilities between the two. I can say to this Committee that we've not encountered any particular problems caused by the split between Home Affairs and Justice thus far. The way that the Council meetings tend to operate is that we have one day on Home Affairs and the second day on Justice. It tends to be operated practically around that, and clearly there is good communication on both sides as to issues where there may be some overlapping interest between Home Affairs and Justice.

**Q23 *Lord Avebury:*** Can we turn our attention to data protection and to the proposal that we understand is coming around the track for a comprehensive data protection legal framework? Can I ask you, given the distinct data protection considerations that apply to information exchanges between law enforcement authorities, do you consider it wise or practical for the new comprehensive data protection legal framework to adopt a “one size fits all” approach in its application to all areas of EU activity, including former third pillar measures?

*James Brokenshire:* First of all, we've not yet seen the Commission's expected communication on the new legal framework. In terms of timing, we are expecting to see this probably later this year, with the new legal instrument expected around the middle of next year. In some ways, I suppose, the question has two

elements attached to it, which are slightly different. The first is the wisdom and the approach of whether there should be a single comprehensive data protection legal framework. The second is the “one size fits all” approach within that legal framework. We think a single legal framework could work across Justice and Home Affairs as a whole, including the area covered by the old third pillar. However, and I think this is perhaps where your question is focusing, the specific needs of law enforcement agencies would need to be catered for within that legislative framework. For example, they generally deal with unwilling customers, who want to avoid detection, and there are situations where you cannot necessarily provide fair processing information in advance, maybe to a suspected drug dealer, because they're under surveillance or, indeed, set time limits for data storage that would increase the risk of re-offending by convicted sex offenders. It's possible to have a framework but, within that, take account of certain specific sensitivities that would apply to a policing and law enforcement approach. I don't think that necessarily rules against having a comprehensive data protection framework.

**Q24 *Lord Avebury:*** How do we ensure that the views that you've just expressed are fed into those responsible for creating a legal framework?

*James Brokenshire:* As you may well be aware, the Government has launched a call for evidence on the review of the existing Data Protection Act. The evidence closed around 6 October, so we are currently assessing all of the inputs that have been received around that. We felt it was important to undertake that exercise so that, when the proposals come through later this year and into next year, we have corralled the evidence and those inputs to be able to influence more effectively the approach that may be taken on this issue. That was very much at the forefront of our thinking, knowing that this was coming down the track, in terms of being able to call that evidence to be able to influence in that way to ensure that perhaps some of the points that I've just enunciated will be properly reflected in negotiations.

**Q25 *The Chairman:*** Minister, the Commission has just produced two overview papers. They're not legislative documents but they're overview papers on counter-terrorism and on law enforcement information-sharing measures. We have them on our agenda today, for when this session is over. I wondered if you could say what you think about those and whether you think they provide an opportunity to have a look at the wood as opposed to the individual trees of these two areas of policy.

*James Brokenshire:* You've referred to the Commission overview of law enforcement information-sharing measures. In many ways, much

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

of this information, as you've rightly characterised, is factual information about some measures that are already in existence, but also some of the new measures that may be coming forward. Obviously I've already spoken about the Passenger Name Records Directive. The other interesting point that comes through from that particular document is the approach of trying to define some core principles that should be used to evaluate future proposals in this field. These for example include the right to privacy and data protection, proportionality, subsidiarity, necessity and cost-effectiveness. These are principles that the UK fully supports and which we hope that the new EU IT agency, when it comes into existence in 2012, will ensure are enshrined in all future initiatives. In terms of the counter-terrorism policy, obviously that was again a taking stock of the existing counter-terrorism approach. We support the peer evaluation of the national crisis response capacities in the field of counter-terrorism, which aimed to share best practice among EU Member States and to ensure that EU Member States' counter-terrorism legislation is robust. That is certainly beneficial in terms of being able to pull those things together. There is another question posed around this, which is whether there are suitable measures to evaluate and to assess. That's not what these documents per se provide. We will certainly continue to argue that evaluation is a very important element of policymaking at EU level, building on the requirement that any legislation must be based on a clear need to act. Therefore, evaluation is very much part and parcel of that.

**Q26 The Chairman:** I think our own reaction is that it contains rather useful material for us because, as you know, we're about to embark on a wider study of the Internal Security Strategy, in which I hope you will be able to help us at some later stage. We are not actually going to get our teeth into it until the Commission has produced its Implementation Plan, which I think is meant to be some time in November. We will be taking it up in much more detail. I do welcome what you say about using the tabling of this document as an occasion to press the need for proper evaluation after measures are introduced. I think there is too much of a tendency in the European Union to fire and forget. It would be very good if you were able to bring a little more focus to the consequences of what bits of legislation have been, and these two documents are actually rather valuable in that respect.

*James Brokenshire:* They certainly corral some information which I think is beneficial. The first document set some framework around potential assessment, which I think is helpful.

**Q27 Lord Tomlinson:** Can I add something to what you said, because I share your view about the documents? Also I think it's the first time in any Committee or Select Committee that I've actually been full of praise for the Explanatory Memorandum and the quality of the Explanatory Memorandum. Can I ask you to note that you've set a very high standard and that I hope that the rest of Government will maintain this standard in future, particularly when we get the legislative proposals?

*James Brokenshire:* I'm very grateful to you, Lord Tomlinson, for providing that feedback. I hope that we will be able to live up to that expectation. I'm sure officials will be very gratified by your comments. It is helpful to know what is of assistance in Explanatory Memoranda in being able to assist you in the scrutiny process.

**The Chairman:** They are absolutely vital; they really are vital. I'll mention in a minute one that we were less happy about, but it's not in the field covered by this morning. They are vital, because they can either be very enlightening, or they can be obfuscatory or misleading. They have all the potentials in all these ways.

**Q28 Lord Tomlinson:** If I could turn to the question of parliamentary scrutiny, the Treaty of the European Union anticipates the drawing-up of procedures for scrutiny of Europol's activities by both national parliaments and the European Parliament. Two questions arise from it. First, what does Her Majesty's Government anticipate will be the form of United Kingdom parliamentary scrutiny? Secondly, it appears to me that the Commission is anticipating an excessively leisurely timetable for developing such scrutiny. Should not this rather protracted approach be speeded up? Is the Government pressing for it to be speeded up, bearing in mind that this is the occasion when we want to use your Explanatory Memorandum? To sit around waiting for scrutiny and to get proposals maybe by 2013 seems a bit too protracted.

*James Brokenshire:* I would say at the outset we certainly believe that scrutiny of Europol's activities is essential to ensure there is proper accountability and, indeed, that there is also accountability, perhaps, in the ways that the UK works with that agency. There are already substantive opportunities for scrutiny of Europol's activities. I know that the Committee examined this back in 2008. I believe that there was a debate around these issues in 2009. However, obviously the Treaty does anticipate the possibility for enhanced arrangements, which is I think where we have now come to. We understand the Commission will bring forward a communication next year. Given the existing system, we do want to be confident that any additional scrutiny is

13 October 2010

James Brokenshire MP, Emma Gibbons, and Patrick Moody

proportionate and adds value, especially where this relates to operational activities.

**Q29 Lord Tomlinson:** Isn't it really a matter for Parliament to decide whether the scrutiny is proportionate?

*James Brokenshire:* I think it's still framing it in that way and setting out what proportionate looks like. I'm certainly a big fan of scrutiny and examination of the executive to ensure that we are properly held to account and that the activities we are undertaking are appropriate. It's a question of when you then get down to operational issues and what role scrutiny may have around operational matters. Some of this detail will be highly beneficial to understand from the Commission, when it brings forward its proposals. Certainly there is the recognition of the European Parliament's role in relation to scrutiny around this area. I know that's been very much the emphasis. There was one suggestion as to whether it should be the European Parliament that should then examine this issue and then look at the role of individual nations within that framework, as to the appropriate scrutiny that should be applied. I think that this is a complex and interesting issue on the boundaries and the effectiveness of scrutiny in a number of different areas, and that's why genuinely we're interested to see the proposals that the Commission will be coming forward with. Once we see that and perhaps get some feelings as to the initial responses to that, that may well drive the desire perhaps on timetable and the need for any such arrangements. Again, I would emphasise that there is scrutiny that is there. Indeed, we very much welcomed your own report on, for example, SOCA's interrelationship in this area and the need for us to be focused, from a domestic perspective, on our relationship with Europol. I think it is important to stress that there is that scrutiny that is there; it's a question of the appropriateness of anything that may come thereafter.

**Q30 The Chairman:** I think it's a racing certainty that the Commission will lean more towards the European Parliament's scrutiny than to scrutiny by national parliaments. I would hope that you would bear in mind that national parliaments now have a bigger role under the Lisbon Treaty than they did before. I don't think any of us wishes to displace the European Parliament from this; it has a perfectly obvious locus and a perfectly obvious role. Of course, in some of the budgetary areas, it has some actual measure of control. If you were to bear in mind the interests of national parliaments, that would be very welcome to us, because we would like to be kept properly informed and able to make our own views known.

*James Brokenshire:* I take that point very much on board and we would certainly be very interested to see the input and the thoughts arising from the Commission's proposals when they are published, and what balance the Commission has sought to strike between the European Parliament and national parliaments, recognising, Chairman, the very important point that you've underlined of the significant impact of national scrutiny by Member States and how that rightly fits into national agencies that flow through into working at an EU level—why there very much is that need for that balanced approach in relation to any scrutiny that is applied.

**Q31 Lord Mawson:** Following the European Parliament's initial rejection of the TFTP agreement earlier this year, do the Government believe that it would be prudent to involve this institution more closely in the future negotiation of international agreements—for example, any new PNR agreements with third countries, such as the US, Canada or Australia?

*James Brokenshire:* As I think I responded to an earlier question, Lord Mawson, we do recognise the important role—the enhanced role—that the European Parliament has, and therefore the need to engage with it at an early stage around a number of initiatives. Certainly I think the engagement of the European Parliament at an early stage in relation to the revised TFTP proposals was an essential and important step and, I think, aided the consideration moving forward. Consequently, we are engaging directly with the European Parliament. We have regular contacts with both UK and non-UK MEPs. I am very much hoping to visit the European Parliament later this year. We would expect the Commission and the presidency to do the same. It is not just Member States engaging with the European Parliament; it is very much the Commission and the presidency doing so as well, so that there is proactive engagement. Early involvement in the development of a measure and addressing some of their concerns—particularly, with TFTP, around data protection—was instrumental, for example, in gaining the European Parliament's acceptance to the revised agreement in July. I think that it evidences the need for that engagement and the need to recognise issues emerging from the European Parliament in that context.

**Q32 The Chairman:** Thank you very much, Minister, for being so frank with us and giving us such full answers on this first occasion. Perhaps I may just go outside the script of our meeting today and mention to you the issue of the subsidiarity assessment which you may have heard that we've made on the Commission proposal for the admission of third country nationals as seasonal workers, which we

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*13 October 2010*James Brokenshire MP, Emma Gibbons, and Patrick Moody

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took up within the eight-week period that we had. The Select Committee which this committee is a sub-committee of decided yesterday to recommend to the House that we issue a reasoned opinion next week. There will be a debate and a decision by the House. I wanted just to let you know of that. That was what I referred to rather obliquely as one where we thought the Explanatory Memorandum was slightly less than brilliant, as it implied that there were no subsidiarity problems. This sub-committee, and the full committee, took the view, and I hope the House will take the view, that there are subsidiarity problems and that therefore a reasoned opinion should be issued. I didn't want this occasion to pass without telling you about those proceedings and hopefully enlisting your support in responding positively at the debate next week, through whoever represents the Government in the debate, to the proposal that a reasoned opinion should be issued.

*James Brokenshire:* Certainly I will reflect on the comments that you've made and obviously the report that has just been issued, which I must confess I have not had an opportunity to read.

**The Chairman:** It was only issued late last night.

*James Brokenshire:* Albeit I have a copy now sitting in front of me. Obviously we will examine the comments that you have made in your report and respond

appropriately. As I understand it, and as you've said, there is a debate that's now been scheduled for 20 October. I will certainly pass on your thoughts and comments to my colleague who will be taking that debate in this House, so that they are properly cognisant and aware of the points that you've drawn to my attention on this occasion.

**Q33 The Chairman:** We don't want to labour the issue about the Explanatory Memorandum. Frankly, it's all water under the bridge now. We've taken a different view. This is a matter where it's for the Houses of Parliament to take the view, not necessarily the Government who are implicated in it. I just wanted to take this opportunity to explain the background. We will be slightly outside the time limits for a reasoned opinion, but Lord Roper wrote to the various institutions explaining that, because of the Summer Recess, we would be slightly outside it. We will see what happens.

*James Brokenshire:* Thank you for that. Equally, we will certainly consider your comments on Explanatory Memoranda, given the very clear message, both positively and negatively, which has been telegraphed from this Committee.

**The Chairman:** Thank you very much, Minister.

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MONDAY 6 DECEMBER 2010

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Present	Lord Hannay of Chiswick (Chairman) Baroness Eccles of Moulton	Lord Richard
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**Examination of Witness**

Witness: COMMISSIONER CECILIA MALMSTRÖM, [Home Affairs Commissioner].

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**Q34 *The Chairman:*** Commissioner Malmström, we are grateful to you for allowing us to come and seek your views on the Stockholm programme. I wonder how you interpreted the rather mixed response given by the Council to your implementation action programme when it was discussed in June. Have your intentions changed at all as a result? How do you interpret that reaction?

*Cecilia Malmström:* I do not think it got a mixed response because it was 85% to 90% identical to what Ministers agreed during the Swedish presidency when I was very active. Some clarification and specificities have been added as a result of the input of the European Parliament, which we were supposed to do, but it follows on from that. On any points of unclarity that might have arisen, we have tried to sort them out and specify them to Ministers. As from that first discussion we have not had any problems or mixed reception. I think we are all moving forward. Of course, it is a long programme, so if anything comes up in 2013 or 2014 by which time things might have changed, we will address them accordingly.

**Q35 *Lord Richard:*** Following on from that, what aspects of the implementation plan do the Commissioners now see as their priorities? It is a big plan and it has had a fair reception from the Council, but not much more than that, as I understand it. Where are your priorities now?

*Cecilia Malmström:* Right now, we have the internal security strategy, which we are going to discuss later. What I am working on mainly right now is the asylum package. It is a priority because it has to be decided before 2012, and it has become even more of a priority because of the very problematical situation in Greece. Member states are very much engaged on both asylum issues and Greece because they are related. Greece is the weak point in our asylum system today. Also, for my part, the Stockholm programme overlaps a little with the EU 2020 strategy on labour migration, mobility, legal migration and the demographic deficit. Things like that are being prioritised and are on the table as well.

**Q36 *Lord Richard:*** Apart from the second point about Greece, it is fairly long-term stuff. It is not going to happen urgently or quickly.

*Cecilia Malmström:* No, but if we are going to agree on the proposed directives, which are difficult and sensitive in the current climate—there are six of them, one of which has just been agreed with the Parliament, so there are five left—we will have to work on them, negotiate and probably amend them. So it will take time. The Council has just agreed in a paper with the current and the four incoming presidencies on a timetable in order to move forward. We can then make the necessary decisions before 2012.

**Q37 *The Chairman:*** Is the much greater involvement of the European Parliament in the particular area of asylum than it has ever had in the past throwing up any unexpected difficulties, or is it just merely making it all a bit more complicated?

*Cecilia Malmström:* No, I think that what is making it complicated is the very nature of these issues. They are sensitive, and the debate in many member countries on the current economic situation makes migration a sensitive issue. We can witness that in many countries. But the involvement of Members of the European Parliament so far has not made anything more complicated. On the contrary, they are constructive and ready to work hard. As I said, we have just agreed the long-term residence directive. All parties, the Commission, the Council and the Parliament, have made great efforts on what is the first building block in the whole package.

**Q38 *Baroness Eccles of Moulton:*** Commissioner, there is the question of a possible seasonal workers directive. Is the Commission likely to pursue this? In view of some of the national parliaments, including our own, not being very enthusiastic about it to the point of producing reasoned opinions, what is the current state of affairs?

*Cecilia Malmström:* The Commission issued the proposal in July, so it is on the table. I am well aware of your view and that of some other parliaments, and of course that feeds into the debate. We have had informal debates in the Council about it and the Parliament is also closely involved. It comes from the necessity to regulate what is a joint problem. We need these people, seasonal workers, in Europe. They come from different countries and work mainly in the agricultural and horticultural sectors, as well as the

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6 December 2010

Commissioner Cecilia Malmström

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tourism sector, for a period of up to six months, and we have seen many cases where these people are badly exploited. The aim of the directive is to make it beneficial for those who come. They will know in advance that if they come over, they have to follow certain rules. They will know that if they come, they can then come back the year after. That also limits irregular migration because most people want to stay in their birthplace, their own villages or towns. It will also bring some certainty to the labour market and to employers in Europe. We are of course aware of the difficulties in certain member states, but the discussion is going on and we will see where it leads. It is the intention of the Hungarian presidency to continue these discussions, and then we will see.

**Q39 The Chairman:** So the object you are really pursuing is to deal with what you consider to be abuses that have taken place among these people when they come into one or another member state. It is not to regulate everything, but to sort of put a floor under it.

*Cecilia Malmström:* Yes, I see it as one element of the different proposals to tackle the need for labour migration that we have in Europe. We will face severe problems in a few years' time. Those problems will vary between countries. Brussels will not dictate how many seasonal workers you should take and why and in what sectors. Should employers want these people to come over during very specific times and within these areas, we want to facilitate that, but also to make sure that there is a minimum standard of housing and salary for these people in order to avoid exploitation.

**Q40 Baroness Eccles of Moulton:** Is there also a question of illegal immigration wrapped up in this?

*Cecilia Malmström:* Many of the people who are working in seasonal areas today are already here on an illegal or irregular basis. If we could make these people regular, I think that everybody would benefit from that. The people would get security, they would be more visible, they would pay taxes, they could come back again and it would facilitate both their and their employers' planning. There is an element of that.

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