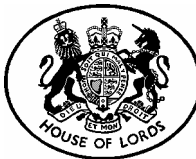


From: **THE LORD GRENFELL**  
Chairman of the Select Committee on the European Union



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*Fighting illegal immigration: should carriers carry the burden?:* Government's Response to the Sub-Committee's Report on Document 5183/04, *Initiative of the Kingdom of Spain with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data*

Thank you for your letter of 1 April giving the Government's Response to our Report—*Fighting illegal immigration: should carriers carry the burden?*, which Sub-Committee F (Home Affairs) of the Select Committee on the European Union considered at a meeting on 21 April along with the text of the draft Directive that you submitted on 19 April (7595/04).

We did, of course, have the opportunity to register our views on this measure in the debate on Baroness Harris's Unstarred Question on 20 April, and we have carefully considered Baroness Scotland's response to the debate. Notwithstanding the Government response and the debate, we do not believe that the Committee's main criticisms of the Directive have been met. There are also a number of aspects of the proposal on which further information is required. We are not prepared therefore to clear the document from scrutiny.

First, we remain unconvinced of the justification for the proposal and its proportionality to the potential benefits. You say that Advance Passenger Information (API) enables a "thorough and rigorous screening" of passengers to take place, but the system will simply identify on a hit/no hit basis those whose names are already contained in the relevant warnings index. This will not provide a basis for risk assessment. You also claim that API will be of considerable assistance in identifying facilitators, passengers travelling on improperly or fraudulently obtained documents and passengers who destroy or dispose of their documents *en route*, but without explaining how it will achieve those desirable objectives. The system will identify only those already on the warnings index: it will not identify any of those categories of people unless they are unwise enough to travel with a document in the name of someone who has already come to the adverse attention of the immigration authorities. Nor has the proposal's effectiveness in countering organised crime and security threats been substantiated.

Secondly, we have noted that there are likely to be discrepancies between the Member States in their implementation of the Directive. We have acknowledged that, if the scheme were to go ahead, there would be clear advantage in being able to deny boarding to inadmissible passengers. But, if, as you imply, other Member States may not operate on that basis, it will only add to the complexity of the scheme. We also note that the Directive will not apply to intra-EU flights—contrary to what you told us when you gave evidence to us—but that the Government intend their domestic scheme to apply to such flights. In our view if there is to be an EU *regime* for advance passenger information, it should apply uniformly. We would be interested to know if you have consulted the Commission about the proportionality of this aspect of your proposals in relation to Community law on freedom of movement.

Thirdly, we have considered the Regulatory Impact Assessment (RIA) that the Home Office has belatedly produced, but I have to say that we found it wholly unsatisfactory. No attempt has been made to cost the option that you appear to favour i.e. integrating implementation of the Directive into the Government's own *Authority to Carry* scheme, despite the fact that you have been working on this for several years. For option 2—the only option for which any costings are given—only three figures are provided, with no explanation of the basis on which they have been calculated. The RIA prays in aid as a justification for introducing API solutions the need to prevent increasing queues developing in arrivals halls, when this proposal is likely to generate much greater delays on departure.

We note that, according to your latest Explanatory Memorandum, the reason for the lateness of the RIA was that you did not consider it appropriate to submit one until you had a definitive text. That is, of course, contrary to the Cabinet Office guidelines, which recommend that an initial version should accompany the first Explanatory Memorandum. It is, moreover, inconsistent with the explanation given in your letter of 1 April, that “the Government had previously considered that production of an RIA was not necessary on the basis that no new regulations would need to be introduced”.

The main message of the Committee's Report was that the obligation that the Directive would place on carriers was disproportionate to its likely benefits and that it should not be introduced without a careful calculation of those costs and benefits. The RIA, which shows every sign of having been put together at the last minute, does nothing to provide that assessment and I am afraid that, unless a better justification of this proposal can be provided, we are not prepared to clear the document from scrutiny.

Fourthly, Article 6 of the draft provides an exemption from the requirement to delete the data within 24 hours where “the data are needed later for the purposes of exercising the statutory functions of the authorities responsible for carrying out check on persons at external borders in accordance with national law and subject to data protection provisions under Directive 95/46/EC.” That appears to be a very wide exception and we would be grateful for clarification of the circumstances in which it would apply.

Fifthly, in the Explanatory Memorandum you refer to a Directive on passenger data that the Commission is proposing to bring forward in June. We would be glad to know what lies behind that initiative, which could provide the basis for a properly thought out measure on advance passenger information.

Finally we understand that a further version of the draft Directive is available (8058/04). Is it intended to deposit it?

I am copying this letter to Jimmy Hood MP, Chairman of the Commons European Scrutiny Committee; and to Dorian Gerhold, Clerk to the Commons Committee; Michael Carpenter, Legal Adviser to the Commons Committee; Les Saunders (Cabinet Office); and Stuart Young, Departmental Scrutiny Co-ordinator.

GRENFELL

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