

HOUSE OF LORDS

European Union Committee

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40th Report of Session 2005–06

**Behind Closed Doors:  
the meeting of the G6  
Interior Ministers at  
Heiligendamm**

Report with Evidence

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(Q) refers to a question in oral evidence

(p) refers to a page of written evidence

## **FOREWORD—What this Report is about**

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Home Office Ministers hold regular meetings with the ministers of the interior of the other five largest EU States: Germany, France, Italy, Spain and Poland. At the last such meeting in Heiligendamm in March 2006 the G6 ministers discussed their joint response to terrorism, illegal immigration and organised crime. The United Kingdom was represented by the then Home Secretary.

Decisions were reached at that meeting which, if taken forward, would involve important changes to current EU thinking and to declared Government policy. The Home Office releases no information about these meetings, which receive minimal publicity. Ministers should report back to Parliament routinely after such meetings.

Europe has experienced a rise of terrorism; the G6 ministers represent some of the countries which consider themselves most vulnerable. The exchange of information between law enforcement agencies is a major weapon in the fight against terrorism and other serious crime. The response of the ministers has been to reconsider the constraints which data protection rules place on the sharing of such data. The Committee has considered the decisions taken at the Heiligendamm meeting, and in particular the tensions between law enforcement and data protection.

We do not understand why the former Home Secretary should have apparently agreed with other G6 ministers to press forward with the “availability” principle and disregard data protection issues. This is contrary to the decision of the Member States in the Hague Programme, contrary to the advice of independent data protection authorities, inconsistent with what the Home Office Ministers had told us, and against the views of the Finnish Presidency. The exchange of information between the law enforcement authorities is important, but not so important that civil rights can be eroded.

# Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm

## CHAPTER 1: INTRODUCTION

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### Background

1. Of the twenty-five Member States of the EU, the six largest account for three quarters of its population.<sup>1</sup> Collective decisions of their ministers on major aspects of EU policy in the field of justice and home affairs, while not necessarily conclusive, will inevitably have a major impact on the future direction of that policy. One would therefore expect that meetings of those ministers, and decisions taken at their meetings, would attract wide interest from the media, from the European Parliament and national parliaments, from interested non-governmental organisations, and from academics and others.
2. This was not the case when the ministers of the interior of those Member States—the G6—met at the German Baltic resort of Heiligendamm on 22 and 23 March 2006. They discussed almost every aspect of EU policy of interest to them, and in many cases reached firm conclusions on the action which should be taken, and the timetable for it. However in the United Kingdom the meetings went almost entirely unnoticed. The Home Office did not issue a press notice, and the then Home Secretary, the Rt Hon Charles Clarke MP, who had attended the meeting on behalf of the United Kingdom, did not make an oral or written statement to Parliament. So far as we have been able to discover there was no contemporaneous comment in the broadcast media, and only minimal comment in any of the broadsheets.<sup>2</sup>
3. The German Ministry of the Interior published the Conclusions of the Heiligendamm meeting shortly afterwards. An English translation was made available to us, and it was this that aroused our interest. We set it out in full in Appendix 5.
4. The Heiligendamm meeting was the first at which Poland had been invited to join the ministers from the other five States, but it was not the first such meeting. The Home Office supplied us with the following background information:
  - The G6 meetings originated in 2003 out of discussions between former Home Secretary David Blunkett and French Interior Minister Nicolas Sarkozy. Until the Heiligendamm meeting and the addition of Poland this group went under the name of “G5” rather than “G6”. The format has stayed fairly constant, with the emphasis on informal ad hoc meetings, and meetings tend to take place (as at Heiligendamm) over a 24 hour period involving an overnight stay in the host country.

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<sup>1</sup> According to figures for 2004 supplied by Eurostat, of the 456.8 million inhabitants of the EU, 340.4m (74.5%) lived in Germany (82.5m), France (59.9m), the United Kingdom (59.6m), Italy (57.9m), Spain (42.3m) and Poland (38.2m).

<sup>2</sup> There were articles in the Financial Times and Daily Telegraph on Friday 24 March.

- The rotating chair was part of the original concept and the order came about as different members volunteered. The order is now set but precisely where Poland will fit into the cycle has yet to be agreed. As it stands the cycle runs Germany-UK-Italy-Spain-France. The exact timing of meetings depends on the chair. There are no set time intervals between meetings but they tend to occur at 3–6 monthly intervals. For the UK meeting no venue has been finalised but we are provisionally looking to hold it in or around Stratford-upon-Avon at the end of October.
  - The agenda for each meeting is decided by the host State. There is usually a degree of informal discussion about the agenda before each meeting, as well as preparatory meetings of senior officials. The expectation is that the agenda should reflect at least in part any work that has been ongoing since the last meeting but there are no fixed rules.
5. In a letter of 6 June the Home Secretary pointed out that there are other groupings of countries which meet regularly.<sup>3</sup> An example he gave was the Visegrád group. This is a grouping of ministers from the Czech and Slovak Republics, Poland and Hungary which was set up in 1991. One of their common aims was accession to the EU. Now that they have achieved this, they will have common interests as EU Member States, but these are mainly the interests of a regional group. We note that they have a website giving details of past and future meetings;<sup>4</sup> the G6 group does not. Other regional groups mentioned were the Benelux, the Baltic Sea taskforce, and the Nordic Cooperation Group.<sup>5</sup>
  6. In oral evidence to us, Baroness Ashton drew an analogy between the G6 and the Common Law club, the members of which are the United Kingdom, Ireland, Cyprus and Malta.<sup>6</sup> Again, although all four are EU Member States, their common interest lies outside their EU membership. We think all of these are very imperfect analogies; the countries of the G6 have nothing in common except their size, and hence the weight they can bring to bear in negotiations.
  7. **We see nothing objectionable in ministers from different Member States meeting informally for exchanges of views on any topics they wish. On the contrary, we believe such meetings are valuable in promoting dialogue and facilitating decision-making.** As the Union becomes ever larger, the need for discussions in smaller groups will grow. The danger comes when such meetings assume such a degree of formality, and the decisions reached such a degree of immovability, that they appear to take over from meetings of the Community institutions. We appreciate that these institutions are sometimes criticised, and in particular that with enlargement they have grown cumbersome and unwieldy. This problem will not be resolved in the short term now that the fate of the Constitutional Treaty is in doubt; but nor can it be resolved by some only of the Member States creating alternative fora.

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<sup>3</sup> Letter of 6 June to Lord Grenfell: see Appendix 4.

<sup>4</sup> [www.visegradgroup.org](http://www.visegradgroup.org)

<sup>5</sup> Evidence of Peter Storr, Q 100.

<sup>6</sup> Q 7.

### Transparency and accountability

8. From what we have said in paragraph 2 above, it will be clear that transparency was not among the attributes of this meeting. Statewatch pointed out that “there is no formal requirement to publish an agenda or minutes, there is no system of access to documents, there is no process of public consultation or impact assessment, and the existence or activity of any working groups...is unclear.”<sup>7</sup> Tony Bunyan, the director of Statewatch, elaborated on this in his oral evidence.<sup>8</sup>
9. These are meetings arranged not just weeks but months in advance, and it would no doubt be feasible to publish in advance the agenda, and any papers to be considered. While this would certainly be desirable, we are not ourselves inclined to be too critical of the failure to do so. The G6 group, though it has a degree of formality, has no formal constitution or position in the EU system. We can see that ministers wish to keep their agenda flexible until shortly before the meeting, and would not wish to hamper frank exchanges of views in advance of the meeting.
10. The position after the meeting is different. Statewatch has described these meetings as “utterly lacking in the rudiments of accountability as understood at national or EU level.”<sup>9</sup> Mr Bunyan spoke to the same effect in his oral evidence.<sup>10</sup> In our view it is desirable that, once the meetings have taken place and the ministers have reached decisions, these should be given the fullest publicity. The Home Office seems on the contrary to have gone out of its way to disclose little or nothing about the meeting.
11. We asked the Home Secretary to allow a minister to give oral evidence to us. He was initially reluctant to do so,<sup>11</sup> but on 27 June he agreed that Joan Ryan MP, a Parliamentary Under-Secretary of State at the Home Office, should give oral evidence to us the following day. She was accompanied by Peter Storr, the Director of the International Directorate at the Home Office, who was with the former Home Secretary at Heiligendamm. We put to Ms Ryan the failure of the Home Office to disclose anything about the meeting. She told us that the usual practice was to put the conclusions of G6 meetings on the website of the Ministry of the host State, as had been done in March. She offered to place the Conclusions of the October meeting on the Home Office website. She did not think access by English-speaking people to a German website, or indeed by Polish-speaking people to an English website, would cause any problems; there was no attempt to prevent anybody knowing what the Conclusions were.<sup>12</sup>
12. At a time when the European Council has agreed a new Policy on Transparency, with many of its debates open to the public and broadcast in all Community languages,<sup>13</sup> there is every reason why Parliament and the public should be given the fullest information about a meeting of this potential significance. Ministers returning from Council meetings are

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<sup>7</sup> Written evidence, p 14.

<sup>8</sup> Q 49.

<sup>9</sup> p 14.

<sup>10</sup> Q 58.

<sup>11</sup> See the correspondence between Lord Grenfell and the Home Secretary set out in Appendix 4.

<sup>12</sup> QQ 82, 88, 89, 93.

<sup>13</sup> Annex I to the Presidency Conclusions of the European Council, 15–16 June 2006, document 10633/06.

expected to report back by written ministerial statement; the same should apply to meetings of the G6. The Home Office should publish the Conclusions of all G6 meetings—in English.

13. **We recommend that the results of subsequent G6 meetings should be fully publicised by the Home Office. A written ministerial statement should be made to Parliament. The papers should be sent to this Committee, and to the Commons European Scrutiny Committee and Home Affairs Committee.**

### **The position of the other nineteen Member States**

14. A G6 meeting is not a forum in which ministers of some only of the Member States can purport to change EU policy, or even to make formal proposals for changes to EU policy (as opposed to expressing a hope or expectation that such policy will change). It is not clear that the ministers recognise this. The Conclusions record that other Member States “will be fully informed about proposals made by the G6 countries and can participate in their implementation”. This is an extraordinarily patronising way of referring to the interests of three quarters of the Member States. There is no suggestion that those States might have views of their own about the desirability of these proposals, and so far from being grateful for being allowed to participate in their implementation, might even be opposed to them. Ms Ryan told us that there was not “any desire or wish among the G6 to ride roughshod over small Member States”;<sup>14</sup> but that in our view is the result. The G6 should recognise that they are not the *Europe des Six*.
15. Inter-governmental groupings of this type, which lack the basic democratic requirements of accountability and transparency, have in the past led to the Schengen agreement and the Schengen Convention. Neither EU citizens, nor their representatives, nor indeed those Member States that were not originally part of the Schengen group, had any say on these policies of fundamental importance. They were presented with a *fait accompli*.<sup>15</sup>
16. A more recent example is the Prüm group. This group, initially of five Member States (Belgium, Netherlands, Luxembourg, Germany and Austria), was joined by France and Spain for the signature of a Convention on the exchange of DNA profiles, fingerprints and vehicle registration data.<sup>16</sup> This to our mind is a perfect illustration of the dangers of a small group of

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<sup>14</sup> Q 96.

<sup>15</sup> On 14 June 1985 Belgium, France, Germany, Luxembourg and the Netherlands—five of the (then) ten Member States—signed an Agreement gradually to abolish all controls at their internal borders. On 19 June 1990 they signed a Convention providing for the abolition of all internal border controls, together with a number of compensating measures on policing and immigration. Article 140 of the Convention provided that any Member State might become a party to the Convention, and between 1990 and 1996 all of the remaining (by then 15) Member States except the United Kingdom and Ireland signed Agreements to accede to the Convention. None of these Agreements made amendments to the Convention. On the entry into force of the Treaty of Amsterdam on 1 May 1999 the Convention and all these Agreements, together with a large body of implementing measures (the “Schengen *acquis*”), were integrated into the European Union.

<sup>16</sup> The Convention was signed at Prüm, Germany, on 27 May 2005. Ratification was approved by the Austrian Bundesrat on 21 April 2006, by the Spanish Senado on 6 June 2006, and by the German Bundesrat on 16 June 2006. It will enter into force between these three States ninety days after the deposit of the instruments of ratification. The ratification is less advanced in the other four States party. It will enter into force for each of these ninety days after the deposit of the individual instruments of ratification. On 4 July 2006 the Italian and German Ministers of the Interior signed a Joint Declaration recording the intention of Italy to accede to the Convention.

Member States taking steps which pre-empt negotiations already taking place within the EU institutions. Article 1(2) of the Prüm Convention provides that any Member State may accede to it, and Article 1(4) sets out the aim “of incorporating the provisions of the Convention into the legal framework of the European Union”. But those provisions are now set in stone, and are being treated as if they were already part of EU policy. Any Member State wishing to join the Convention must take it as it finds it.<sup>17</sup> If the Convention does become part of the legal framework of the EU, that framework will for practical purposes have been imposed by seven Member States on the other eighteen; and those eighteen include the United Kingdom.<sup>18</sup>

### **Matters discussed at Heiligendamm**

17. The matters discussed at Heiligendamm are recorded in the Conclusions under the following headings:

- Promoting integration and combating illegal immigration;<sup>19</sup>
- Fighting terrorism;
- Fighting drugs and organised crime;
- Principle of availability;
- Schengen Convention; and
- SIS II / VIS.<sup>20</sup>

This is followed by a brief summary of “the positive results of cooperation achieved so far”.

18. The Conclusions on two of these issues raised questions which we thought should be investigated. The first was the suggestion that law enforcement agencies should have access to Eurodac and to the VIS database. We deal with this in the following chapter. The second issue, dealt with in Chapter 3, is the relationship between the principle of availability and data protection.

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<sup>17</sup> Oral evidence of Tony Bunyan, QQ 56, 61.

<sup>18</sup> The United Kingdom would be bound only if it opted in. On 14 March 2006 Baroness Scotland of Asthal, in reply to a starred question asking whether the Government proposed that the United Kingdom should become a party to the Convention, told the House: “The Government are looking closely at the Prüm Convention. No decision has yet been taken. We expect to come to a preliminary view in the next few months.” On 22 June an official of the Commission told us that the United Kingdom was “in negotiations”. However in evidence to us on 28 June, Ms Ryan told us that nothing had changed since March (Q 129).

<sup>19</sup> We were interested to see that “With regard to returning illegal residents, the ministers agreed to coordinate their actions in dealing with countries of origin and transit particularly in the Mediterranean and Eastern Europe, to take coordinated action encouraging greater cooperation with third countries and to actively support the Commission in negotiating and concluding readmission agreements...” These are all matters on which we commented in our recent report *Illegal Migrants: proposals for a common EU returns policy* (32nd Report, Session 2005-06, HL Paper 166).

<sup>20</sup> Respectively the Second Generation Schengen Information System, which is the subject of a separate inquiry by Sub-Committee F of this Committee, and the Visa Information System.

## CHAPTER 2: POLICE ACCESS TO EURODAC AND VIS

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19. The issue of police cooperation arises in a number of contexts. Under the heading of combating illegal immigration, the Heiligendamm Conclusions state that “the ministers are committed to rapidly introducing the Visa Information System (VIS), including a sponsor’s database in VIS and police access to Eurodac, as well as full access of authorities responsible for internal security to VIS”.

### Eurodac

20. Eurodac is a fingerprint database established under the first pillar solely to assist in the determination of the country responsible for considering asylum applications. It requires all Member States to take the fingerprints of asylum applicants and of others apprehended for the irregular crossing of external borders. The fingerprints are transmitted to a central database which the immigration authorities of other Member States can access, allowing them to check the identity of asylum applicants, and to check whether an alien found illegally present in one Member State has applied for asylum in another Member State. Importantly, fingerprints are erased after ten years; earlier if a person has meanwhile been granted citizenship of a Member State.
21. The Regulation establishing Eurodac<sup>21</sup> does not contemplate police access to Eurodac, nor is there any reason why it should; the fingerprints are collected for the very specific purpose prescribed in Article 1(1) of the Regulation.<sup>22</sup> There is not at present any legislative proposal on the table to widen the scope of Eurodac. Police access to the database held by the Commission would be an entirely new departure.<sup>23</sup> The sole legal basis of the Regulation is Article 63(1)(a) of the EC Treaty,<sup>24</sup> and that alone would be insufficient to allow access for purposes other than those in Article 1(1), whose wording is taken directly from the Treaty.
22. In their Conclusions the ministers state that they “intend to intensify cooperation in fighting illegal immigration and link national centres. Experts from all authorities concerned (border police, police, immigration authorities) should work together to ensure information is shared at the necessary levels.” There are certainly arguments for a degree of interoperability between the databases of SIS, VIS and Eurodac to assist in combating crime;<sup>25</sup> if fingerprints are found at the scene of a serious crime,

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<sup>21</sup> Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316 of 1.12.2000. This is a first pillar measure, but any instrument allowing access for general law enforcement purposes would be a third pillar measure.

<sup>22</sup> Article 1(1) reads: “A system known as “Eurodac” is hereby established, the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State, and otherwise to facilitate the application of the Dublin Convention under the conditions set out in this Regulation.”

<sup>23</sup> Written evidence of Statewatch, p 13.

<sup>24</sup> So far as relevant, this reads: “The Council...shall...adopt (1) measures on asylum...within the following areas: (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States”.

<sup>25</sup> See the Communication from the Commission to the Council and the European Parliament on improved effectiveness, enhanced interoperability and synergies among European databases in the area of justice and home affairs (Document 15122/05) (the Communication on Interoperability).

and there is evidence that an asylum-seeker may be involved, access to Eurodac might reveal valuable information about the person whose prints had been found.<sup>26</sup> Routine access is different. As the Commission put it, “neither claiming asylum nor a visa application indicates in any way that a hitherto innocent individual will commit a crime or a terrorist act”.<sup>27</sup>

23. If Eurodac is to be used for purposes other than those for which it was set up, a number of matters must first be addressed. Foremost among them are the issues of data protection, and whether law enforcement authorities will destroy fingerprints taken from Eurodac when they are erased from that database. As to the first of these, Ms Ryan agreed in oral evidence that the Data Protection Framework Decision (DPFD)<sup>28</sup> would need to be in place before there could be police access to Eurodac.<sup>29</sup> We are not aware that the second problem has yet been considered.
24. **We have doubts about the legality of police access to Eurodac under existing EU law, and recommend that the Government should examine the legality of what is proposed.**
25. **While a case can be made for allowing police access to data collected for a different purpose, we believe that the Data Protection Framework Decision should first be in place. We are concerned that the requirement to delete the data could be overridden if it is transferred onto police databases.**

### **The Visa Information System (VIS)**

26. The database of the Visa Information System contains the data on visa applicants needed for the exchange of information between those Member States which have abolished checks at their internal borders. VIS is not a law enforcement tool, but is being developed for the application of the Common Visa Policy.
27. Under point 6, the Heiligendamm Conclusions state:
 

“[The ministers] also emphasized that the authorities responsible for internal security of participating States must have full and effective access to both SIS and VIS to satisfy the interest of all EU Member States in efficient crime control.”

The “participating States” do not include the United Kingdom; the Council Legal Service regards VIS as part of the Schengen *acquis*, so that United Kingdom access to information on VIS is denied. Nevertheless Mr Storr emphasised the desirability of law enforcement authorities throughout Europe having access to the system.<sup>30</sup>
28. The position is not entirely analogous to Eurodac, since in the case of VIS there is already a Commission proposal on the table for access to the

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<sup>26</sup> *House of Commons European Scrutiny*, Session 2005–06, 15th Report.

<sup>27</sup> Communication on interoperability.

<sup>28</sup> Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (Document 13019/05).

<sup>29</sup> Q 101.

<sup>30</sup> Q 108.

information by law enforcement authorities.<sup>31</sup> Access under this proposal would be subject to important safeguards. Only designated national authorities would have access to the information; access would be limited to specific categories of serious crime; access must be necessary in a specific case; the information which can be accessed is limited; and further onward transfer of information would be restricted. Crucially, Article 8 of the proposed Decision provides for the DPFD to apply, and the Decision on access to VIS could not apply until the DPFD has entered into force.

29. In an explanatory memorandum of 19 December 2005 the Government welcomed this proposal, and stated that “it attaches importance to ensuring that an important mechanism exists to protect personal data processed under this proposal. The Government welcomes the provisions under Article 8 of the draft proposal and in particular notes the provision that the [DPFD] will apply to personal data processed under this instrument.” The application of the DPFD was also welcomed by the European Data Protection Supervisor in his Opinion of 20 January 2006. But both he and the United Kingdom Information Commissioner thought that the position of those countries which (like the United Kingdom) do not have direct access to VIS should be clarified, so that the DPFD applies to them too in relation to information from VIS sent to them by a participating State.
30. The proposal for access to VIS by law enforcement authorities is a document we continue to keep under scrutiny. We have had correspondence with Home Office ministers about it, and some of our questions have been answered, most recently in a letter from Tony McNulty MP of 20 February 2006. Mr McNulty wrote again on 2 March 2006 to provide us with the views of the Information Commissioner on this proposal. These raised a number of concerns which we were told would be taken into account during negotiations. We hope therefore that the “full and effective access” which the G6 ministers consider desirable continues to be subject to the rigorous safeguards contained in the Commission proposal, and to the application of the DPFD which the Government welcomed three months earlier.
31. **The Government should ensure that access to data in the Visa Information System for the purposes of crime control is subject to safeguards no less rigorous than those in the current Commission proposal, including those suggested by the data protection authorities.**

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<sup>31</sup> The Council Decision of 8 June 2004 establishing the Visa Information System (2004/512/EC) is a first pillar measure based on Article 66 TEC. However the Proposal for a Council Decision concerning access for consultation of the Visa Information Service (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences (Document 15142/05, 25 November 2005) is a third pillar measure: the legal base is Article 30(1)(b) and Article 34(2)(c) of the TEU.

## CHAPTER 3: DATA PROTECTION

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### The Principle of Availability

32. The principle of availability means that “throughout the Union, a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State, and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose...”.<sup>32</sup> If the information is available, it must be provided; the grounds for declining to do so are extremely limited.
33. All Member States have law enforcement agencies which collect information about individuals for use in the fight against crime. If that information is not accurate, not only is it of little or no use for that purpose, but it can be damaging to the individual concerned. As the recent problems with information stored by the Criminal Records Bureau (CRB) showed, it can be even more damaging where information is recorded against the wrong individuals. Between March 2002 and March 2006 there were 2,273 cases of individuals being wrongly listed by the CRB as having criminal records.<sup>33</sup> To someone who, because of being wrongly listed, has lost the opportunity of being offered a job it can be of little comfort to be told that this represented only 0.025% of the disclosures issued.
34. The importance of having procedures for checking the accuracy of information stored is clear. Every State has mechanisms for challenging that accuracy, but the data subject cannot challenge it unless he is aware that it is being held. Whether, when and how he is so informed, how and at what stage he can challenge it, and with what likelihood of success, are all matters left to national laws. It is equally important that the information should not be abused; access to it must be limited strictly to those who need it and it must be used only for the purpose for which it was supplied. These limitations too are at present subject to national law.
35. Terrorism and other serious crimes do not respect national boundaries, and it is therefore essential that the national law enforcement agencies of Member States should have access to information collected by the agencies of other States. Europol may also need it. But safeguards must be in place before this pooling of information can take place. If information collected under the law of one Member State and subject to the safeguards provided under that law is transmitted to another Member State, it immediately becomes subject to different and possibly lesser safeguards.
36. In oral evidence Baroness Ashton of Upholland, the Parliamentary Under-Secretary of State at the Department for Constitutional Affairs (DCA) responsible for data protection, told us that the United Kingdom had “a very strong and solid data protection framework”.<sup>34</sup> The Home Secretary compared it favourably with that of other Member States.<sup>35</sup> This emphasises our point: we would be under an obligation to send information collected

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<sup>32</sup> The Hague Programme, paragraph 2.1, agreed by the European Council on 4–5 November 2004.

<sup>33</sup> Written Answer by Joan Ryan MP, 5 June 2006, (HC) col. 270W.

<sup>34</sup> Q 14.

<sup>35</sup> Letter of 6 June to Lord Grenfell, Appendix 4.

under our system, and subject to relatively stringent safeguards, to countries which might offer a much lower degree of protection. Mr Peter Hustinx, the European Data Protection Supervisor (EDPS), made the same point in oral evidence: “I noticed Baroness Ashton referring to ‘robust legislation’ in the UK—but this involves all Member States. You never know which data you are going to get; you never know which data you are going to share with other countries.”<sup>36</sup>

37. In the Hague Programme the European Council invited the Commission to bring forward proposals for implementing the principle of availability in which “key conditions should be strictly observed”. These conditions included a guarantee of the integrity of the data; confidentiality of the data; common standards for access to the data; respect for data protection; protection of the individual from abuse of data; and the right to seek correction of incorrect data. And all this was to be without prejudice to the work in progress on the draft Data Protection Framework Decision (DPFD).<sup>37</sup> The importance of the two Framework Decisions, on the Principle of Availability and on Data Protection, going forward together was thus emphasised.
38. The Commission brought forward proposals for both Framework Decisions in October 2005. The Framework Decision on the principle of availability deals with six categories of information (DNA profiles, fingerprints, ballistics, vehicle registration, telephone numbers and other communications data, and data in civil registers for identifying persons) which are expected to be available (either directly online, or on request) for exchange between equivalent law enforcement agencies in Member States.<sup>38</sup>
39. The DPFD is intended to assist police and judicial cooperation in criminal matters. It will provide a regulatory framework for the exchange and processing of personal data between competent authorities of Member States, and for the transmission of such data to third parties. It has two main purposes: to ensure that any information that may be exchanged has been processed legitimately and in accordance with privacy rights and fundamental principles relating to data quality; and to see that the exchange of information between competent authorities is not prejudiced by different levels of data protection.
40. In an explanatory memorandum of 1 November 2005 Paul Goggins MP, then a Parliamentary Under-Secretary of State at the Home Office, told us that “the [United Kingdom] Presidency attaches importance to ensuring coherence” between the two Framework Decisions. In a letter of 9 January 2006 he said: “It is intended that the processing of personal data under this Framework Decision [on the principle of availability] should be in accordance with the provisions of [the DPFD]”.
41. Mr Hustinx, the EDPS, issued on 28 February 2006 a closely argued formal Opinion on the Framework Decision on the Principle of Availability. He concluded:

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<sup>36</sup> Q 28.

<sup>37</sup> The Hague Programme, paragraph 2.1, agreed by the European Council on 4–5 November 2004.

<sup>38</sup> Draft Framework Decision on the exchange of information under the principle of availability (Document 13413/05).

“Any legal instrument implementing the principle of availability should not be adopted without the prior adoption of essential guarantees on data protection as included in the proposal for a Framework Decision on the protection of personal data.”<sup>39</sup>

### Volte-face at Heiligendamm

42. The G6 ministers at Heiligendamm “highlighted the importance of improving cross-border information exchange between law enforcement authorities”, and suggested focusing on DNA, fingerprints and vehicle registration data. The Conclusions continue:

“The ministers underscored that rapid implementation of the availability principle must not depend on the adoption of a framework decision on data protection in the third pillar.”

43. This statement, described by JUSTICE in their written evidence<sup>40</sup> as “a remark...merely *en passant*”, was seen by them as “a cause for grave concern”. We agree. To divorce the progress of the two Framework Decisions in this cavalier fashion goes against the instructions of the European Council in the Hague Programme, against the Commission proposals, and against the views of the EDPS published barely three weeks previously. It is moreover inconsistent with what was said to us less than three months earlier by a Home Office minister.
44. We asked the present Home Secretary the reason for this abrupt reversal of policy. Dr Reid wrote:
- “The Government believes that for the fight against ever-more sophisticated crime, it is important to ensure any potentially drawn-out negotiations on the DPFDD do not block progress on the Principle of Availability.”<sup>41</sup>
45. Until 2001 data protection was the responsibility of the Home Office, but responsibility was then transferred to the DCA. We questioned the extent to which DCA ministers and officials had been consulted about this change of policy, and whether they agreed with it. In his letter the Home Secretary told us that the G6 view that the principle of availability should not be delayed by negotiations on the DPFDD was “the shared position of the Home Office and DCA”.<sup>42</sup>
46. While we do not doubt that, by the date of the Home Secretary’s letter, DCA had come to share the Home Office view that a policy change was desirable, we wondered at what stage DCA had reached this view, and in particular whether this was before the Heiligendamm meeting, or perhaps afterwards when they might have been presented with a *fait accompli*. Baroness Ashton assured us that the briefing carried by the former Home Secretary at the Heiligendamm meeting included a briefing provided by DCA and agreed by her “on issues particularly around data protection that were relevant at that meeting”.<sup>43</sup> We were not told to what extent, if at all, that briefing emphasised the importance of the two Framework Decisions proceeding together.

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<sup>39</sup> Opinion of the European Data Protection Supervisor on the Proposal for a Council Framework Decision on the exchange of information under the principle of availability (COM (2005) 490 final), OJ C 116 of 17.5.06.

<sup>40</sup> p 37.

<sup>41</sup> Letter of 6 June 2006 to Lord Grenfell, Appendix 4.

<sup>42</sup> Letter of 6 June 2006 to Lord Grenfell, Appendix 4.

<sup>43</sup> Q 2.

47. Baroness Ashton added that she did not believe the principle of availability should have to wait for the DPF<sup>44</sup> “providing (a) you are conscious that you will have to sign up to the DPF<sup>44</sup> at a Council of Ministers at some point, and therefore you need to be alive to the discussions and deliberations and to be sure it is working in that sense in tandem, and (b) therefore that you do not do something that would be outside that.”<sup>44</sup>
48. In oral evidence, Ms Ryan elaborated on the view expressed by the Home Secretary in his letter. She told us that the joint view of the Home Office and DCA, and indeed of the Government, was that the principle of availability and the DPF<sup>45</sup> were both priorities, and they would like to see both move forward quickly. But if negotiations on the DPF<sup>45</sup> were going slowly, they would not want the principle of availability slowed down in any way. This was the reason for the Heiligendamm statement. If this was what transpired, the principle of availability would have to be brought into force with interim data protection measures which would come under the DPF<sup>45</sup> umbrella once negotiations on this had been completed.<sup>45</sup>
49. One reason why the Home Secretary was not concerned about the two Framework Decisions proceeding at different paces was that “existing data protection rules will continue to apply until the DPF<sup>46</sup> negotiations have finished”. These rules are the “domestic data protection regimes for law enforcement and judicial processing that comply, at a minimum, with the Council of Europe Convention<sup>46</sup> on processing of personal data.”<sup>47</sup> Baroness Ashton seemed to be of the same view.<sup>48</sup> But the view of Mr Hustinx was that when the principle of availability was put into practice “all the problems will emerge which normally emerge”: a few countries had adequate safeguards and some did not, so that when the same data was shared it would be dealt with under different standards. This was bound to raise problems in criminal procedure investigations.<sup>49</sup>
50. At their conference in Budapest on 24 and 25 April this year the European Data Protection Authorities “remind[ed] Member States that sharing personal information between their law enforcement authorities is permissible only on the basis of data protection rules ensuring a high and harmonised data protection standard at European level in all participating states”. They also stressed that “existing legal instruments applicable in the EU on data protection are too general to provide effective data protection in the field of law enforcement.”
51. For all these reasons we believe that reliance on national data protection laws is insufficient.

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<sup>44</sup> Q 8.

<sup>45</sup> Q 118.

<sup>46</sup> Council of Europe Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981). Another relevant Council of Europe instrument is Recommendation R(87)15 of 1987 regulating the use of personal data in the police sector. Convention No. 108 is considered too general effectively to safeguard data protection in the area of law enforcement. The Recommendation is of more specific relevance but, unlike the Convention, is not binding. Furthermore, neither of these instruments applies to direct automated access, nor are there clear binding rules about the further processing of transmitted data.

<sup>47</sup> Letter to Lord Grenfell of 6 June 2006, Appendix 4.

<sup>48</sup> Q 8.

<sup>49</sup> Q 28.

### Negotiation of the Data Protection Framework Decision

52. We asked Mr Hustinx whether he thought the DPF was likely to be in force in time to provide safeguards for all the instruments on exchange of law enforcement information. He replied that discussions were progressing very slowly, partly because “national delegations tend to come from law enforcement areas which, up to now, largely prefer to ignore data protection”. He added: “I wish that the energy that the Heiligendamm Declaration seems to invest in pushing availability [was] equally invested in ensuring that this link is respected”.<sup>50</sup> We agree.
53. Finland now has the Presidency. In its preliminary agenda for its Presidency, issued on 24 May, it stated:
- “The principle of availability should be established as the cornerstone for information exchange from the beginning of 2008. Finland will take this project forward, paying particular attention to the data protection issues that have to be addressed in relation to police and judicial cooperation in criminal matters, before the principle of availability can be applied.”
- In oral evidence to us the Finnish Ambassador confirmed the importance of “comprehensive and uniform data protection provisions affecting individuals [being] created to counterbalance the principle of availability”.<sup>51</sup>
54. This in our view is the right combination of priorities. We were glad to hear from Ms Ryan that the Government strongly support the Finnish Presidency in pressing ahead with the DPF.<sup>52</sup> Baroness Ashton has written to say that Finland hopes that negotiations will be concluded under its Presidency; it intends to hold monthly meetings from September, “and the UK has made clear its full support for this desire to quicken the pace of progress on the proposal”.<sup>53</sup>
55. It is entirely understandable that ministers who are primarily responsible for security and for the fight against terrorism and serious crime should want to have at their disposal all available weapons. Among such weapons is the pooling of all relevant information. But it is the sign of a mature democracy that it can proceed with law enforcement measures without disregarding the rights of individuals.
56. **Notwithstanding the pressing need to share data among the twenty-five Member States for the purposes of fighting terrorism and other serious crime, we urge the G6 ministers not to take forward the principle of availability without ensuring adequate data protection safeguards.**
57. **If the G6 ministers are unhappy about the progress of the principle of availability, the solution is for ministers to invest equal energy in negotiations to take forward the Data Protection Framework Decision. This should be treated as a matter of high priority.**
58. **We urge the Government to support the Finnish Presidency in reaching agreement on data protection before the principle of availability can be applied.**

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<sup>50</sup> Q 40.

<sup>51</sup> His Excellency Mr Jaakkola Laajava, in evidence to the Select Committee on 4 July (Q 11).

<sup>52</sup> Q 119.

<sup>53</sup> Letter to Lord Grenfell of 27 June 2006.

## **CHAPTER 4: CONCLUSIONS AND RECOMMENDATIONS**

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### **Transparency and accountability**

59. We see nothing objectionable in ministers from different Member States meeting informally for exchanges of views on any topics they wish. On the contrary, we believe such meetings are valuable in promoting dialogue and facilitating decision-making. (*paragraph 7*)
60. We recommend that the results of subsequent G6 meetings should be fully publicised by the Home Office. A written ministerial statement should be made to Parliament. The papers should be sent to this Committee, and to the Commons European Scrutiny Committee and Home Affairs Committee. (*paragraph 13*)

### **Police access to Eurodac and VIS**

61. We have doubts about the legality of police access to the Eurodac database under existing EU law, and recommend that the Government should examine the legality of what is proposed. (*paragraph 24*)
62. While a case can be made for allowing police access to data collected for a different purpose, we believe that the Data Protection Framework Decision should first be in place. We are concerned that the requirement to delete the data could be overridden if it is transferred onto police databases. (*paragraph 25*)
63. The Government should ensure that access to data in the Visa Information System for the purposes of crime control is subject to safeguards no less rigorous than those in the current Commission proposal, including those suggested by the data protection authorities. (*paragraph 31*)

### **Principle of Availability and Data Protection**

64. Notwithstanding the pressing need to share data among the twenty-five Member States for the purposes of fighting terrorism and other serious crime, we urge the G6 ministers not to take forward the principle of availability without ensuring adequate data protection safeguards. (*paragraph 56*)
65. If the G6 ministers are unhappy about the progress of the principle of availability, the solution is for ministers to invest equal energy in negotiations to take forward the Data Protection Framework Decision. This should be treated as a matter of high priority. (*paragraph 57*)
66. We urge the Government to support the Finnish Presidency in reaching agreement on data protection before the principle of availability can be applied. (*paragraph 58*)
67. We make this Report to the House for information.

## **APPENDIX 1: SUB-COMMITTEE F (HOME AFFAIRS)**

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The members of the Sub-Committee which conducted this inquiry were:

Lord Avebury  
Baroness Bonham-Carter of Yarnbury  
Earl of Caithness  
Lord Corbett of Castle Vale  
Lord Dubs  
Baroness Henig  
Lord Marlesford  
Earl of Listowel  
Viscount Ullswater  
Lord Wright of Richmond (Chairman)

### **Declarations of Interests:**

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

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

Members declared no interests relevant to this inquiry.

## APPENDIX 2: MINUTES OF PROCEEDINGS ON THE REPORT

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**Wednesday 5 July 2006**

Present

Lord Avebury  
 Baroness Bonham-Carter of Yarnbury  
 Lord Dubs  
 Baroness Henig  
 Earl of Listowel  
 Lord Marlesford  
 Viscount Ullswater  
 Lord Wright of Richmond (Chairman)

The Committee considered the draft Report.

Paragraphs 1 to 24 (now 23) were agreed to, with amendments.

It was moved by the Lord Marlesford to leave out paragraphs 25 and 26 (now 24 and 25), and to substitute:

The collection and use of biometrics to establish a reliable record of personal identity is expanding in many countries. This identification data should be available for any legitimate government purpose. It therefore makes sense for the police to have access to the Eurodac fingerprint database. It is important that the legality of this police access should be clearly established under EU and domestic law.

The Committee divided:

*Contents*

Lord Marlesford

*Not-contents*

Lord Avebury  
 Baroness Bonham-Carter of Yarnbury  
 Lord Dubs  
 Lord Wright of Richmond

The amendment was disagreed to accordingly.

Paragraphs 27 (now 26) to 67 were agreed to, with amendments.

The Appendices were agreed to.

### APPENDIX 3: LIST OF WITNESSES

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The following witnesses gave evidence. Those marked \* gave oral evidence.

- \* Department for Constitutional Affairs
- \* Home Office
- \* Mr Peter Hustinx, European Data Protection Supervisor
- JUSTICE
- \* Statewatch

## **APPENDIX 4: CORRESPONDENCE WITH THE HOME SECRETARY**

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### **Letter of 10 May 2006 from the Chairman to the Rt Hon Dr John Reid MP, Secretary of State for the Home Department**

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union have considered the Conclusions issued by the German Federal Ministry of the Interior of the meeting of the Interior Ministers of France, Germany, Italy, Poland, Spain and the United Kingdom at Heiligendamm on 22-23 March 2006. As you will know, your predecessor attended that meeting. The Committee believe that the matters discussed at this meeting, and the conclusions reached, raise issues of importance, and they have decided to conduct an inquiry into these matters.

We fully support the purposes of the meeting: the promotion of integration, and the fight against terrorism and organised crime. There are however a number of points which we would like to examine further. We wonder to what extent the G6 proposals (such as exchange of best practice in the field of integration) go beyond current EU policy. To the extent that the G6 proposals do go further, they may appear to bypass some important measures currently being negotiated.

We note that the other 19 Member States “will be fully informed about the proposals of the G6 States and can take part in their implementation”, but we wonder whether other Member States will be sufficiently involved.

The Conclusions refer to a number of EU bodies such as FRONTEX and Europol. There are suggestions that they should have additional duties and priorities. We would be interested to know to what extent they, and other Member States, were consulted about this, and whether their existing constitutions allow for such an expansion of their mandate.

Lastly, we note the conclusion of the ministers that rapid implementation of the principle of availability should not depend on the adoption of a third pillar Data Protection Framework Decision (DPFD). Since the Commission proposal for the DPFD is already under consideration, we wonder whether it is sensible for the two proposals to be considered independently.

The Committee would like to invite you, or a Home Office Minister nominated by you, to write to the Committee giving the Government’s views on the significance of the Heiligendamm meeting, with particular reference to the points above, and subsequently to give oral evidence to them.

### **Letter of 6 June 2006 from the Home Secretary to the Chairman**

I am writing in response to your letter of 10 May in which you asked me to set out the Government’s views on the significance of the Heiligendamm meeting. As you will know that meeting was attended by my predecessor so I did not think it right for me to give oral evidence at this time. But I would be happy to brief your committee after the next G6 meeting, which I will be chairing and is provisionally booked for 26-27 October.

It may be helpful if I provide some context to the Heiligendamm meeting before answering your specific questions. The G6 (the G5 until the addition of Poland at Heiligendamm) is an informal grouping of Interior Ministers from six EU Member States. It meets on an ad hoc basis two or three times a year in the country holding the rotating chair. The current chair is Germany and the next one will be the UK.

Informal groupings of Member States such as the G6 are not unique in the EU; there are a number of such that meet outside the structures of the EU to discuss issues of mutual interest. For example, the Schengen Convention had its origin in an informal grouping of Member States and other current groupings include the Benelux and Visegrad countries as well as the Salzburg Group. These are not just regional groupings, for example, the Prüm group has brought together countries interested in taking forward the information sharing agenda.

The main aim of the G6 is to discuss issues of mutual interest in the areas of migration, organised crime and terrorism with a view to sharing ideas and best practice while identifying concrete actions that can be taken forward by all six or any number of them. Recent topics of discussion have included the integration of migrants and improving the exchange of information. But as the G6 is made up of EU Member States this is also a useful forum for discussing whether any of the ideas raised at G6 meetings might also be explored at EU level, or even be used as the basis of formal EU proposals. For example, G6 expert discussions on ID cards helped inform the EU conclusions reached under the UK Presidency of the EU, and G6 expert views on the implementation of the Principle of Availability were helpful in taking forward discussions in the “Friends of the Presidency” expert group.

As an informal group, without any decision making powers or secretariat, the G6 cannot and does not seek to impose the outcome of its discussions on the rest of the EU. Conclusions are made public at the end of each meeting to signal the political commitment of the six to the agreements reached during discussion but are not binding on anyone, certainly not other Member States or EU institutions. It is a forum where ideas can be frankly discussed, relations with important EU peers strengthened and practical co-operation improved.

In preparations for G6 meetings as with any other informal meetings it is the practice of the Home Office to consult other government departments and ensure that policy positions are agreed.

To answer the first of the specific points raised in your letter, there are times when G6 proposals will go further than current EU policy. Innovation and informal political discussion are part of the benefit of small informal groups (such as the G6). But there is certainly no intention to bypass or undermine EU measures that are either in place or in the process of being negotiated.

To the extent that G6 action affects only G6 members there is no need or requirement for other Member States to be involved. This would be the same for other bi-lateral and multilateral arrangements between EU Member States. However, by de-briefing colleagues from other Member States the G6 is open with non-members and does not preclude their involvement in action stemming from the G6.

Any G6 suggestions that EU bodies, such as Frontex and Europol, should be given additional duties are simply suggestions and reflect ongoing EU level discussions on the future of Europol, its relationship with other bodies and the sort of methodology that might be best to help prioritise their work. Any formal changes to EU bodies would need to go through the normal EU channels.

On the implementation of the Principle of Availability, the G6 view that work should not be delayed by negotiations on the Data Protection Framework Decision (DPFD) does not differ from those of many other Member States. It is also the shared position of the Home Office and DCA, who have worked closely together on a range of EU measures to improve information sharing, including the

DPFD. Securing a third pillar framework on data protection that adds value to existing arrangements remains the aim of both departments. If there are elements of the Principle of Availability that are ready to be implemented before negotiations on the DPF are complete it is the view of both Home office and DCA that these should come into effect as and when they are ready. It is of course the case that existing data protection rules will continue to apply until the DPF negotiations have finished. All Member States have domestic data protection regimes for law enforcement and judicial processing that comply, at a minimum, with the Council of Europe Convention on processing of personal data (the UK, amongst others, goes further than this and broadly replicates the provisions of the existing first pillar EU Directive), so a high level of data protection is already in place.

The Government believes that for the fight against ever-more sophisticated crime, it is important to ensure any potentially drawn-out negotiations on the DPF do not block progress on the Principle of Availability. However, we are hopeful that this need not be the case and our aim is to make as rapid progress as possible on achieving a successful outcome to discussions on the DPF.

I hope this provides a helpful assessment of the Heiligendamm meeting.

### **Letter of 7 June 2006 from the Chairman to the Home Secretary**

Thank you for your letter of 6 June in reply to mine of 10 May. Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered it at a meeting on 7 June.

We are grateful for the factual information you have given about G6 meetings in general, and in particular about the topics discussed at Heiligendamm.

That information is useful as far as it goes, but of course the members of the Committee would have wished to elicit further information on a number of fronts. This was why I invited you to nominate a Home Office Minister, and officials, to give oral evidence.

We appreciate your offer to give evidence yourself after the next G6 meeting. However, as my letter made plain, our inquiry is not into G6 meetings in general, but specifically into the meeting at Heiligendamm, and the conclusions reached at that meeting. As your officials have been told, the inquiry is a short one, and will lead to a report to be published before the Summer recess. Evidence in November about a meeting which took place in March will not therefore be relevant to the inquiry.

We understand your preference to give evidence in person, and hence your reluctance to ask one of your Ministers, or your officials, to give evidence to this inquiry. We strongly urge you to reconsider this. The officials who accompanied your predecessor to the meeting would at the very least be able to give us factual information as to what took place. The Sub-Committee will be meeting on Wednesday 14 June and Wednesday 21 June, and will be very willing on either of those dates to hear evidence on behalf of the Home Office. But thereafter, with or without that evidence, it will have to begin considering its report.

## **APPENDIX 5: CONCLUSIONS OF THE HEILIGENDAMM MEETING**

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### **Meeting of the Interior Ministers of France, Germany, Italy, Poland, Spain and the United Kingdom, Heiligendamm, 22 and 23 March 2006**

The interior ministers of France, Germany, Italy, Poland, Spain and the United Kingdom met in Heiligendamm, Germany, on 22 and 23 March 2006. They welcomed the interior minister of Poland as a new addition to their group founded in 2003.

The cooperation between the six countries is intended to provide an additional impetus to strengthening the area of freedom, security and justice. Similar to a “laboratory” this small circle will draw up concrete proposals to intensify co-operation in European home affairs. Other EU Member States will be fully informed about proposals made by the G6 countries and can participate in their implementation.

In order to promote integration and fight illegal immigration and terrorism, the ministers have agreed on the following specific measures.

#### **1. Promoting integration and combating illegal immigration**

The ministers emphasized the major importance of successful integration for the stability of society. Against this background, they agreed on an intensive exchange of information about their integration programmes and prerequisites, particularly information on types and methods of related tests, if in place. The ministers decided to set up an expert working group to analyze the possibility and main contents of an integration contract with immigrants or comparable instruments.

With a view to the dialogue with the Muslim Community, they agreed to inform each other about the consultation mechanisms and structures of dialogue in place in their countries as well as the inter-cultural and inter-faith dialogue and cooperation with countries of origin.

The ministers are convinced that for integration efforts to have lasting success European partners need to have a common understanding of the basis for migration into Europe and effective strategies for combating illegal immigration.

The ministers therefore intend to intensify co-operation in fighting illegal immigration and link national centres. Experts from all authorities concerned (border police, police, immigration authorities) should work together to ensure information is shared at the necessary levels. With the support of EUROPOL, joint investigative teams are to be deployed to combat smuggling and trafficking of human beings or related crimes.

The ministers are committed to working towards adopting a common list of safe countries of origin and support the Commission’s and the Presidency’s efforts to this effect.

In addition, the ministers are committed to rapidly introducing the Visa Information System (VIS), including a sponsor’s database in VIS and police access to EURODAC, as well as full access of authorities responsible for internal security to VIS. They welcomed the fact that based on the French BIODEV II initiative, diplomatic missions abroad and selected border checkpoints will make greater use of biometrics prior to the introduction of VIS.

With regard to returning illegal residents, the ministers agreed to coordinate their action in dealing with countries of origin and transit particularly in the Mediterranean and Eastern Europe, to take coordinated action encouraging greater cooperation with third countries and to actively support the Commission in negotiating and concluding readmission agreements as emphasized in their common letter to vice-president Frattini. The ministers have decided to take concerted action with the foreign ministers in order that the countries concerned significantly improve their rates of delivery of travel documents. They will assess the actions taken and results obtained with regard to the issuance of travel documents, and develop a common strategy for dealing with countries that still do not cooperate sufficiently.

The ministers agree that effective and long-term protection of the EU's external borders is a prerequisite for fighting illegal immigration including deployment of national joint support teams of experts in times of crisis; the latter should closely cooperate at operational level with the competent national authorities or centres.

Therefore, they agreed on intensive involvement in joint operations organized by FRONTEX. To improve the information basis, EUROPOL and FRONTEX should draw up joint situation reports and analyses on illegal immigration. This should be a high priority for Europol's Organised Crime Threat Assessment.

Ministers confirm that increased attention should be devoted to migratory flows from Africa, particularly insofar as they concern illegal immigration, and have agreed to intensify operational cooperation among EU members and improve dialogue and cooperation with African countries of origin and transit. This approach will contribute to implementing the activities foreseen by the "Global Approach on Migration" as set out in the Council Conclusions of 15 and 16 December 2005. The ministers will task an expert working group coordinated from the Canary Islands to establish a regional immigration network in the coastal area of Western Africa, comprising the officers already deployed in this region, in order to enhance operational cooperation and coordination. The same approach should be applied to other parts of Africa, Asia, Eastern and South-Eastern Europe.

## **2. Fighting terrorism**

In view of the continued threat posed by terrorism, the ministers will maintain the intensity of their counter-terrorism efforts. By taking the following specific measures they intend to enhance their cooperation even further:

—Sharing the task of drawing up joint analyses of Internet use by terrorist organizations ("check the Web"), with the participation of EUROPOL. This will allow the focused use of resources and will lead to notably better results.

—Developing joint support teams that will offer operational assistance in case of serious terrorist attacks: These expert teams or liaison officers will provide on-site support to an attacked country on its request.

—Institutionalizing mutual information visits to the national counter-terrorism centres to further improve the sharing of information and best practices and enhance cooperation.

—Mutually and systematically exchanging information on people expelled by G6 countries for preaching racial or religious hatred, or related activity.

### **3. Fighting drugs and organized crime**

The ministers stressed that fighting drug trafficking and organized crime is a continuing high priority. In this context, the ministers placed special emphasis on South America and the Caribbean as well as on Afghanistan, the Balkan Route, Turkey and West Africa. In order to fight drugs more effectively, they agreed that experts would look into best ways of cooperation between the relevant authorities of the six countries, including the possibility of setting up regional centres in the main countries of origin and transit. Therefore they have welcomed the initiative to make joint use of existing liaison networks in the Western Balkans should cooperate more closely in order to tackle any criminal activity. EUROPOL plays an important role as an information clearing house within the EU.

### **4. Principle of availability**

The ministers again highlighted the importance of significantly improving cross-border information exchange between law enforcement authorities, as already set out in the Hague Programme. To rapidly achieve this objective, they advocate focusing on DNA, fingerprints and motor vehicle registration data. At the same time they stressed that the promising model offered by the Prüm Treaty, including online requests and hit/no hit access, should be considered at EU level as soon as possible.

The ministers underscored that rapid implementation of the availability principle must not depend on the adoption of a framework decision on data protection in the third pillar.

### **5. Schengen Convention**

In order to achieve a tangible improvement of cross-border police cooperation in particular through the Convention Implementing the Schengen Agreement (CIS), the ministers seek to revise the CIS based on the standards of the Prüm Treaty. This includes, for example, allowing Member States to request assistance from other Member States in the case of major events, large-scale disasters and serious emergencies.

### **6. SIS II / VIS**

The ministers stressed that the planned introduction of the second-generation Schengen Information System (SIS II) and the Visa Information System (VIS) has high priority. They also emphasized that authorities responsible for internal security of participating states must have full and effective access to both SIS and VIS to satisfy the interest of all EU Member States in efficient crime control. In order to ensure a smooth transition to SIS II, the ministers agreed that the existing distribution of system operation responsibilities should remain unchanged.

### **7. Progress made so far**

The ministers welcomed the positive results of cooperation achieved so far and declared that they intend to continue their work in these areas unabated:

—The sharing of information in the field of counter-terrorism has been expanded significantly and will be intensified even further in the future (exchange of data concerning persons suspected of terrorist activity; setting up a joint email early warning system in case of theft of explosives, arms, etc; establishing a monitoring regime for primary substances used in the production of explosives).

—G6 countries have sent a clear message on illegal migration by organizing joint flights to return illegal immigrants, subject to individual removal orders. The sound cooperation mechanism established on the basis of a consolidated network of contact points has proved its worth. The G6 will increase the number of flights and intensify involvement of FRONTEX and the other Member States.

—The ministers' calls for including biometrics in national identity documents were incorporated in the decision of the EU Council of Ministers of Justice and Home Affairs on 1–2 December 2005.

The decision of the Council of Ministers for Justice and Home Affairs of 12 July 2005 designated EUROPOL as the central agency for euro counterfeiting, laying the groundwork for an even more efficient fight against euro counterfeiting and successfully implementing the initiative launched at the meeting of interior ministers in Garmisch-Partenkirchen.

## APPENDIX 6: OTHER REPORTS

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### Recent Reports from the Select Committee

#### *Session 2005–06*

Annual Report of the EU Select Committee 2005 (25th Report, HL Paper 123)

### Relevant Reports prepared by Sub-Committee F

#### *Session 2000–01*

A Community Immigration Policy (13th Report, HL Paper 64)

#### *Session 2001–02*

A Common Policy on Illegal Immigration (37th Report, HL Paper 187)

#### *Session 2003–04*

Handling EU asylum claims: new approaches examined (11th Report, HL Paper 74)

#### *Session 2004–05*

After Madrid: the EU's response to terrorism (5th Report, HL Paper 53)

The Hague Programme: a five year agenda for EU justice and home affairs (10th Report, HL Paper 84)

#### *Session 2005–06*

Economic Migration to the EU (14th Report, HL Paper 58)

Illegal Migrants: proposals for a common EU returns policy (32nd Report, HL Paper 166)

# Minutes of Evidence

TAKEN BEFORE THE EUROPEAN UNION COMMITTEE  
(SUB-COMMITTEE F)

WEDNESDAY 7 JUNE 2006

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Present	Bonham-Carter of Yarnbury, B	Listowel, E
	Corbett of Castle Vale, L	Marlesford, L
	Dubs, L	Wright of Richmond, L (Chairman)
	Henig, B	

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## Examination of Witness

Witness: BARONESS ASHTON OF UPHOLLAND, a Member of the House of Lords, Parliamentary Under-Secretary of State, Department for Constitutional Affairs, examined.

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**Q1 Chairman:** Minister, welcome and thank you for coming today. This meeting is on the record. There will be a transcript of it produced, which you will be sent if you want to check it. We are also broadcasting on the internet. For the record, this is part of an inquiry which this committee has decided to conduct into the meeting of the G6 under the previous Home Secretary, Charles Clarke, in Heiligendamm. Our hope and intention is to have a good look at this with other witnesses—we will be hearing further witnesses this morning—and to produce a report by the end of July, the recess. We are very grateful to you for coming to help us with this. My first question is whether you could describe the relative responsibilities for the subjects discussed at Heiligendamm between your department and the Home Office. I should say that we are hoping to get evidence from the Home Office. We do not yet have an appointment with a minister or official but we have seen, and I hope you may have seen, a letter from the Home Secretary which Lord Grenfell received very recently.

*Baroness Ashton of Upholland:* Indeed I have.

**Q2 Chairman:** That talks, quite encouragingly, about the consultation between your department and the Home Office. Against that background, what would you like to say to us about the relative responsibilities?

*Baroness Ashton of Upholland:* Might I put this in context as well, because in the context of our international work, as you will know, Chairman—and the committee will be very familiar with this,—we work as Justice and Home Affairs, civil and criminal justice bound together as one unit, in a sense, in our work in the EU. It is very common, and certainly during the presidency happened frequently, that Home Office ministers and officials will represent DCA and *vice versa*. In all of my deliberations, and I think I visited 15 countries

during the course of our presidency, I always carried with me a Home Office brief and spoke on behalf of the Home Office. Any international engagement between the two departments needs to be considered in that context, and the G6 is no different. The briefing that the then Home Secretary, Charles Clarke, carried with him, which I have read, contained within it a briefing that was provided by my department and agreed by me on issues particularly around data protection that were relevant at that meeting. If I might describe in that particular context, the ways the two departments operate is that DCA carries an overarching responsibility for data protection issues, including being in the lead on the Data Protection Framework Decision, which I know we may come on to. Within that, the particular responsibilities of the Home Office and the agencies working with the Home Office are of course extraordinarily relevant in the fields of looking at anti-crime, anti-terrorism and so on. Therefore, the Home Secretary in his work in G6 is operating of course as Home Secretary with those responsibilities, but in the context of a very joined-up approach to data protection.

**Q3 Chairman:** That is very good to hear because I must tell you that I think this committee had some concern that there might not have been adequate consultation before the Heiligendamm meeting. I am grateful to you for the reassurance that you have given us.

*Baroness Ashton of Upholland:* Indeed, just to add to that and why I was very keen to come to the committee and was delighted to accept your invitation, the conversations about these issues occurred, certainly under the previous Home Secretary and the new Home Secretary is yet to decide, at a monthly meeting on international relations, which we held jointly.

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**Q4 Lord Corbett of Castle Vale:** The conclusions of the G6 meeting were drawn up by the German Ministry of the Interior and designed to reflect of course the views of the six Member States represented there. They record ministers as believing that “rapid implementation of the availability principle must not depend on the adoption of a framework decision on data protection in the third pillar”. Does the Government go along with that view?

*Baroness Ashton of Upholland:* We have always thought the principle of availability is a very important part of our agencies being able to tackle information deficits between them; in other words getting information from each other. Even within that, there are basic data protection principles that apply, not least the domestic ones that apply here. We regard ourselves as having a very high standard of data protection. We regard ourselves in our work with the European Parliament and with the Council of Ministers on data protection as in a sense being a standard bearer for the kind of data protection principles one would have. So we operate within that domestic procedure. What is also clear, and members of this committee I would argue know very well, is that the detail of working through a dossier in the European Union, particularly one combining the Council of Ministers and the Parliament, takes time. There is a lot of goodwill around this dossier, a lot of desire on our part to make sure it is expedited quite quickly, but nonetheless it will take much longer. So there is no contradiction between this particular informal group of nation states wanting to start working more closely together and not waiting, as they could do, for what could be up to six or twelve months for that to come in, but doing so within the framework of their own domestic legislation.

**Q5 Chairman:** A reading of the communiqué from the G6 might lead one to suppose that this was, to a certain extent, downgrading the importance of a framework decision on data protection. Does your department not have concerns about that?

*Baroness Ashton of Upholland:* I do not have any concerns about that because it is not the reading that I put on it, partly, of course, Chairman, because I deal with the German Interior and Justice ministers all the time and I know the ministers, particularly the Justice ministers, very well for the G6 countries and because I attend the Council of Ministers on a regular basis as a representative, in a sense my interpretation would be based on what I know to be the way in which these nations are operating, both at the Council level and of course the way they are operating in the European Parliament. I interpreted it, I believe correctly, to be that we need to get on with making sure that this can happen. There has been no ripple effect from the Council of Ministers. It was not discussed at the Council of Ministers last week,

formally or informally, as being a difficulty or a problem, more a recognition of the need to keep information flowing appropriately.

**Q6 Chairman:** Was your department specifically consulted on that paragraph, which says that “the rapid implementation of the availability principle must not depend on the adoption of a framework decision on data protection”?

*Baroness Ashton of Upholland:* The German Interior Minister obviously did not consult with my department as to whether they should write that in. That was what the interior ministers discussed and what they concluded. I have no difficulty with it. Certainly before the meeting took place, our regular contacts at official and ministerial level with the Home Office led me to know absolutely that the then Home Secretary and the officials were completely alive to the position that we take on data protection as a nation and a government, and therefore that fits entirely with their desire to make sure that information is shared, but there is no attempt within that, and nor should it be read to be, to usurp or go against the data protection framework discussions and decisions, but rather to recognise that it will take longer and the need to get on with things for the future.

**Q7 Chairman:** Are you in your international contacts, particularly contacts with other Members of the European Union, aware of any unease among them, particularly of course on their exclusion from G6 meetings, but, apart from that, are you conscious of any unease about this apparent downgrading of the importance of data protection?

*Baroness Ashton of Upholland:* Nobody has suggested that to me, either in the Council or in the European Parliament. As for membership of the G6, I am sure there are nations that would like to participate in lots of informal groupings. We have a number of informal groupings within the European Union. For example, within DCA we have just instituted a Common Law Club, which are the four nations (Malta, Cyprus, Ireland and ourselves) that have a common law tradition. We will be meeting for the first time next week formally. That is not a threat to the European Union; it is merely a recognition that on particular issues discussions of 25 nations are difficult and there are useful and ongoing discussions that need to be had around particular areas where we share, in this particular case, a common law.

**Q8 Baroness Bonham-Carter of Yarnbury:** Are you saying that you do not think that an instrument of regulation needs necessarily to be working in tandem with availability?

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*Baroness Ashton of Upholland:* I think they have to fit together and they have to interlock. The two questions have to be, firstly: do you have to wait, in terms of the principle of availability, for the framework decision to be agreed? My answer to that would be: no, providing: (a) you are conscious that you will have to sign up to the DPF as a Council of Ministers at some point, and you therefore need to be alive to the discussions and deliberations and to be sure it is working in that sense in tandem; and (b) therefore that you do not do something that would be outside that. The nations concerned, all of whom have implemented data protection legislation, are all operating within their own domestic framework. What is being proposed within the data protection framework is not hugely different to what is already on the table. We are confident that the domestic arrangements we have, which will operate on the principle of availability, are very good and very secure and have no difficulty. In a sense, we would like that to be the adoption that happens right across the European Union

**Q9 Lord Dubs:** You may feel that you have already dealt with this question but let me put it anyway. You referred to the principle of availability. The Hague Programme states that the Commission must strictly observe the integrity and confidentiality of data, and must ensure respect for data protection. Do you think the Commission's proposals achieve this? I think you have already said the priority the Government gives to these safeguards.

*Baroness Ashton of Upholland:* Do you mean the Data Protection Framework Decision?

**Q10 Lord Dubs:** Yes.

*Baroness Ashton of Upholland:* I think the proposals go quite a long way to that. At the moment, we are in discussions, particularly with Martine Roure from the European Parliament who is leading on this and who I got to know well during the presidency. One of the commitments that you will be aware of during the presidency when we spent quite a lot of energy dealing with issues of data sharing and data retention was that we would also be very mindful of the data protection concerns that went alongside that. So the UK, though not presidency, has an enormous part to play in this and we intend to play that. What we are looking to do is make sure that we have a robust framework that is very workable. I have met personally with some of the agencies from police services, the security services and others, who have concerns. Might I express very simply what those are? Firstly, that they do not end up trying to operate domestically two systems that are different because of our fear that confusion could lead to people accidentally not sharing information that could be very important; and, secondly, having anything that

is so complicated that the individual trying to decide how to share that information is put off sharing it beyond the safeguards that you would want to see. We are trying to work with our colleagues in the European Parliament in particular at the moment, but also we will do so in the Council, to have a very good standard of data protection, which I think is inherent in the proposals, but one that fits well with our domestic regime so that we do not end up with results we do not want to have in terms of the sharing of information.

**Q11 Baroness Henig:** I think you have already covered my first question which was going to be whether you think that these negotiations will result in a satisfactory instrument. You have already implied that you think that will happen. Will it be in force in time to provide safeguards for all the third pillar instruments on exchange of information?

*Baroness Ashton of Upholland:* There is quite a lot of impetus to try to get this moving along quite quickly. It has not gone as quickly during the current presidency as some would have liked. It is quite a complicated dossier, and it is quite difficult as you work through each of the different articles. So what we have been working with the presidency on is trying to regroup that so that we deal with the big issues, the first of which is how to tackle this question of the third pillar of ensuring that the agencies can use it properly and effectively and it does not cut across domestic arrangements early on, so that we can then, in a sense, speed up when we deal with the other articles that are perhaps less significant. Certainly the Finns will take this forward in their presidency. My hope would be that we will see some serious steps forward. In my department, we have extremely good officials working on this and spending quite a lot of their time in Brussels too working with the Parliament. I cannot put a date on it yet but I think and hope it will be very soon.

**Q12 Baroness Henig:** Would it be fair to say that in a sense what nations are trying to achieve here is to expedite the process and get it moving quicker, and then try to set that agenda so that everybody will then move to the where we want to be more quickly than might otherwise be the case? Do I take it this is the sort of nature of the process?

*Baroness Ashton of Upholland:* The nature of the issues that a lot of our colleagues in Member States are dealing with, which we are dealing with too, mean that sharing of information is absolutely critical to conviction, to dealing with threats and so on. Therefore, it has to be at the heart of what we do in terms of crime prevention and so on. Doing that within the right context in terms of data protection is also critical. As I said, because we have good domestic arrangements, particularly in the G6

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countries but indeed across the EU, there is not a need to slow down in that, but there is a need to think about the overarching framework we are going to have eventually. I think you are right, if I might say, that it is about keeping the impetus going for nations that feel passionately that we need to get this right. Certainly ministers of the interior are at the forefront of that for very good reason and making sure that on the back of that we have a good, overarching framework that comes in as well so that they interlock. That is the critical part of it.

**Q13 Baroness Henig:** I am trying to suggest that the imperative might be positive rather than negative. That was really where I was coming from.

*Baroness Ashton of Upholland:* And I am agreeing with you.

**Q14 Chairman:** Minister, I am probably asking you to repeat something you have already said, but my attention has just been drawn to the declaration adopted at the Conference of European Data Protection Authorities in Budapest in April, which repeated the implied criticism in the Krakow declaration that the existing legal instruments applicable in the EU on data protection were too general to provide effective data protection in the field of law enforcement. Is that an implied criticism that you would go along with under this plan?

*Baroness Ashton of Upholland:* I certainly know the people who are most involved and I know the declaration that you describe. When we look at the framework decision, that is one of the questions that we have to take into account, and certainly they are playing their part as our own Information Commissioner will be, in terms of what needs to happen to make sure the framework is fit for purpose, and tackle these issues. My own view is, and the UK position, is that we have a very strong and solid data protection framework. We have issues about making sure that people understand it effectively, and in particular the general public perhaps do not know what it is meant to do, and to understand that it is an enabling process as much as anything within the right context. Whether I think that criticism is valid or not, I am not sure I do think it is valid but I do think it is a good point to make and a reasonable starting point for those involved in data protection control to be putting forward as we begin to deliberate how we make sure the framework decision works effectively

**Q15 Baroness Bonham-Carter of Yarnbury:** Returning to Baroness Henig's point that this is a positive initiative for moving things forward, is there also a possible problem that the G6 adds another layer of security cooperation measures that risks confusing and fragmenting police cooperation at the general EU level?

*Baroness Ashton of Upholland:* I do not think so. The way that the EU works is both of 25 nations coming together and of a whole series of different smaller groupings that meet formally, less formally and informally to tackle issues of particular concern. I quite often will spend time with two or three other nation justice ministers talking about particular issues that we are concerned with. Last week I had bilaterals with five other states specifically because I wanted to talk about issues to do with human rights, and I felt that they would have something offer and we would have a good exchange on those issues. I have mentioned the Common Law Club. The G6 is another example. This is not unusual. For some Member States, you will see different groupings arise over time and then disappear. I do not think we see it as adding another layer to this. What Baroness Henig said is true about the impetus to get some nations together to move things forward. If I use the analogy of the Common Law Club, our ambition with that is to get the Commission to take common law more seriously by having four countries getting at them, if I put it like that, rather than just one. There are often groupings that come together for very particular purposes, but they do not in a sense get in the way or overlap.

**Q16 Lord Marlesford:** Minister, I suppose that in the whole of this subject there are three separate dimensions to it. First of all, there is the data protection which is necessary for the maintenance of privacy, preventing abuse, unnecessary intrusion, and that sort of thing. Secondly, there is the integrity of the information which you collect or which governments collect or the state apparatus collects. Thirdly, there is the need for effective and efficient records to be available for the purposes of fighting crimes of every sort, including obviously, particularly nowadays, terrorism. I do not want, at this moment, to focus so much on the data protection because my colleagues have mainly been talking about this but on the integrity of information, this is clearly pretty inadequate at the moment. There was a parliamentary answer on 11 May which said that since March 2004 there were 1,472 occasions when the Criminal Records Bureau details sent to the police on convictions led to mismatches with applicants for particular posts requiring clearance. That is obviously unsatisfactory. It may be a small percentage of error but it is still a lot of cases. Thirdly is this whole point of how effective is the system. On that particular one, one method of ensuring there are fewer mismatches is obviously always to have more crosses of information; you have date of birth at the simplest, finger prints and all the rest of it. There was a decision made by the Government not to use fingerprints for applicants for jobs for the purposes of matching. A decision not to do so, seems to me to

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be a mistake, but it is of course a matter of balance. I wonder if you would like to talk about these three things. I suppose, in a sense, each is paramount, but I suppose there will sometimes be conflicts. If in fact information is needed for crime fighting, which is seen as intrusive and dangerous or risky to individuals, then you have to be all the more careful, first of all to see there is appropriate data protection and, secondly, to make sure that the integrity of the data is good.

*Baroness Ashton of Upholland:* I agree very much with your last comment, Lord Marlesford, about the need to make sure that the information we have is secure, that we respect privacy and, in the context of data protection, make sure that we are able to share information appropriately, particularly when it is to do with criminal activity, or in the case of many of the examples from the Criminal Records Bureau, to deal with working with children and vulnerable adults as well. Might I deal with the last point first, and you described the number of cases, something like 2,200, where there had been a problem with the information that was given, but that is in the context of nearly nine million records that have been dealt with, so it is a very small percentage. I am not good at percentages but it is a terribly small percentage. Having said that, it is not a good outcome for the people concerned but nonetheless, in terms of looking systematically at the system, I would argue that the system is working pretty well. In those cases, 90 per cent were dealt with within 21 days and were put right. They were case where people had, unfortunately, the same date of birth and the same name and very similar information, so it was not the system failing; the system was throwing up particular problems, and of course we have to err on the side of caution. If it looks like it is the same person, it is better to do that and then correct it. Again, I am not suggesting for those individuals it was a happy or welcome outcome, though in the end it was sorted out for 90 per cent within 21 days. On the fingerprinting, a consultation did take place and there was no support for it. Although you might be right, Lord Marlesford, in many ways in saying government should do it anyway, actually it is very difficult to introduce a system when there is a very strong resistance and particularly when, as I have indicated, the system is working very well. We do need to do more at all levels to minimise errors, but I would not want the committee to feel that the Criminal Records Bureau was not working effectively, because those statistics do show that we have a problem but it is a very minor one. On data protection more generally, it is a critical part of everything we do that we make sure that data protection principles work effectively within the legislation we have domestically and within what we do within the European Union. Part of that is indeed making sure that all of us have good, proper

information held responsibly by different agencies. One of the ongoing debates within the Council, led largely by interior ministers but certainly I have participated in this joined-up way between our two departments, is to make sure that we do have information held effectively and that different agencies and different ministries take that very seriously. I am pleased to say that across the European Union, though some have got further to go in terms of perhaps the quality of the information in terms of computer records and so on and the speed of their ability to share it, nonetheless, I think we are moving in absolutely the right direction and that there is a general understanding of the importance of both data protection and data sharing.

**Q17 Lord Marlesford:** You said that on the question of fingerprints there was no support for it and that there was resistance to it. Of course we know that there is always controversy about using fingerprints or collecting fingerprints and much of the controversy about identity cards comes into that, but do you not see that overall it is really for the Government to make the decision? There are groups that will legitimately—they are pressure groups and a pressure group overstates its case to make it, and that is almost the definition of it—always argue against the collection of personal data because their concern is the protection of individuals from intrusion by the state. It is a laudatory objective. Ultimately, the judgement has to be made as to whether the criminal justice system in this country and now particularly pan-Europe and pan-EU is working as effectively as possible and that should be the ultimate criterion as to whether or not particular data is collected. The response to people who are worried about it being collected must of course be, one, the integrity and, two, methods of data protection. Would you accept that in general?

*Baroness Ashton of Upholland:* I do accept that and a lot of what you have said, Lord Marlesford, is relevant to the many and fascinating debates we had in the House of Lords on ID cards. The Government made a very clear case in all sorts of ways about the need to protect people's identity. If you take out the issues of crime and terrorism and left it simply with the ability to protect one's own identity, I thought the case was very well made. You will know how strong the resistance was to taking those issues forward and how difficult it was for the Government, in the end, to achieve what I believe is the right decision to have been taken for the protection of people's identity. When you look at something that is believed to be intrusive in terms of fingerprinting for these particular purposes, one has to look at the benefit that one would have for the cost of actually doing it. At the moment, it seems to me that we have a very small problem, and I agree it is a problem, in terms of the errors that were made about people's identity. Looking

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at them, and I have not studied them in detail because this is absolutely nothing to do with me except as a government minister appearing before this committee, but I have looked in enough detail so I could answer your questions, it does seem to me that to be able to tackle it requires what actually happened in 90 per cent of the cases, which is to be able to review them very quickly and sort out the identity of the individual. I am not entirely sure that fingerprinting would have added a huge amount to that. It might have prevented those cases, but there could have been other factors that would have been involved too. I accept the point in general and I think you have made a very good case for what we have done on ID cards, but I do not accept in this particular case it would make a huge difference, and it would be very costly to implement.

**Q18 Chairman:** Minister you have been very helpful, and thank you very much indeed. Can I revert to the first subject we covered and that is the question of joined-up government? Are you able to tell us when you saw the Home Secretary's letter and, secondly, are you able to tell us whether your officials were consulted in the drafting of it?

*Baroness Ashton of Upholland:* I saw a draft of the Home Secretary's letter. I may get this wrong because I forget what day I am on.

**Q19 Chairman:** It was dated yesterday

*Baroness Ashton of Upholland:* I saw it either at the end of last week or on Monday morning, I cannot remember which and I was sent a draft of it. My officials certainly were involved with that. The Home Office is entitled to send out letters from the Home Secretary itself without having to consult me, but they certainly shared it with me, which is what they would traditionally always do. The two departments are very joined up on the issues of justice and home affairs.

**Q20 Chairman:** I am rather banging on with this point because the Home Secretary's letter did not appear to have been copied to your department, which seems to me a rather odd omission but these things happen.

*Baroness Ashton of Upholland:* I have it here. I think that is purely because it was sent to me in draft and then sent to me in final version. It was just that somebody did not write "cc Cathy" on it.

**Q21 Earl of Listowel:** Please forgive me if this lies beyond your remit but some concern has been expressed about the degree of transparency of such formal meetings such as Heiligendamm. Do you think more could be done to meet those concerns?

*Baroness Ashton of Upholland:* There is a general debate happening across the European Union, and we heard about it in the House of Lords a little bit yesterday, about the whole question of transparency for Council meetings and for meetings between ministers. We are into that balancing act, I am afraid, because my own experience of the Council of Ministers (and we do have part of our meeting actually on camera) is that a lot of discussion goes on where people are trying to negotiate various positions. My only concern would be that in order to get to an agreement sometimes people have to move beyond their national positions and to be able to open themselves up for negotiation. I am always worried that when you have meetings where everybody is watching, though I am generally in favour of transparency, you sometimes prevent people from being able to do that so easily. Certainly in terms of the G6, I think it is absolutely vital, just as I believe at our Cabinet meetings, that ministers can sit down and talk to each other about issues of concern and debate and discuss what they might do about them in a way that enables them to trust and build confidence in each other, as nations and as ministers, and we should not lose that. In fact, we lose it at our peril. It is a balancing act.

**Chairman:** Minister, thank you very much indeed. We are most grateful to you. We wish you good luck.

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### Examination of Witness

Witness: MR PETER HUSTINX, European Data Protection Supervisor, examined.

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**Q22 Chairman:** Mr Hustinx, thank you very much indeed for coming today, it is very helpful. And I am glad that you were able to hear our previous evidence.

*Mr Hustinx:* Yes, it was very interesting indeed.

**Q23 Chairman:** I probably do not need to repeat, but I will, that this is an inquiry into the Heiligendamm meeting of six Interior Ministers and we very much welcome your attendance as the European Data Protection Supervisor. Can I ask you to start by giving us a brief description of exactly what your responsibilities are, what your job is and, in

particular, what responsibilities you have for Third Pillar matters?

*Mr Hustinx:* Thank you. Let me first say that I very much appreciate the invitation to come here and I have gladly accepted the invitation because you are looking into a subject which is very interesting and it has some issues which have a clear bearing on my task. As to my office, you will be aware that my office was established under the First Pillar as basically a new institution, independent from Council, from Parliament, from the Commission with three tasks. First, a supervisory task, secondly a consultative task, and thirdly a task which is referred to as cooperation. The supervision deals with ensuring

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that the Community institutions and bodies comply with data protection regulation on European levels; that is the supervisory task and it is on a European level only, there is no European overall supervision in that sense. In the supervision task I have only indirect connections with Third Pillar tasks; that is, when there is a task which is partly Community, partly Third Pillar then I might be involved. More relevant is the consultative task. The Commission is under the obligation to ask my advice on proposals for legislation which have an impact on data protection regardless of whether it is First or Third Pillar. I took that position in a policy paper last year, which is on my website, and it was supported, recognised and acted upon by the Commission and also, I must say, by the Parliament and the Council. My opinions on new legislation over the last year—I have recently published my annual report—reflect that due to the Commission's agenda the majority of opinions presently deal with Third Pillar related issues, like the Third Pillar data protection framework, the principle of availability, access to the visa information system and others. In terms of cooperation, which is framed as a task to cooperate with national authorities—national DPAs that is—and Third Pillar joint supervisory bodies like Europol, Eurojust, Customs, Schengen information system, it is cooperation with a view to promoting consistent data protection in the European Union. So that is the long range approach but it is very specific on cooperating with Third Pillar bodies, so both under consultation and cooperation. I am closely involved in Third Pillar matters, certainly the policy dimension of the Third Pillar; and that is what you are looking at too, I guess.

**Q24 Chairman:** Thank you very much indeed. Is there anything you want to say about your relationship with our Information Commissioner?

*Mr Hustinx:* Our relations are excellent and I do not make any exception because I have very good relations with all colleagues.

**Q25 Chairman:** I am sure.

*Mr Hustinx:* The UK Information Commissioner and myself are members of the so-called Article 29 Working Party, which meets on First Pillar matters. In the Third Pillar we also meet quite often and I heard a brief reference to the conference in Budapest, in Krakow, all occasions on which we meet and I have quite a lot of contact outside of the meetings with him personally. So they are excellent.

**Chairman:** Thank you very much. Lord Corbett.

**Q26 Lord Corbett of Castle Vale:** Mr Hustinx, are you satisfied that the procedure for your giving advisory opinions is adequate for making your views known? Do you feel the Commission, the Parliament and Member States take your views sufficiently into

account when they are developing policy? And are you involved at an early enough stage?

*Mr Hustinx:* The question has procedural aspects and substantive aspects, and let me deal with the procedure first. The procedure is not very explicit in the regulation which applies to my task, but it is very clear on one thing: the Commission should present a proposal whenever it has adopted it, and then I issue an opinion. I have established a methodology in this policy paper, which is on my website—and I share this widely with all institutions—of availability—and we will come to this in another context—for consultation in an earlier phase, and this is developing very positively. So I am involved practically from the point of inter-service consultation and sometimes earlier, just to give input and my staff gives input on the thinking process, and I observe that quite often informal comments are taken on board. The formal opinion is published in the Official Journal and taken on board both in Council and Parliament. Increasingly I am also invited to make presentations of this opinion and be part of a dialogue, and the practice is that as the discussions proceed quite often I am asked to give supplementary advice, mostly from Parliament, but also from the side of the Council. So from the procedural point I think I am very satisfied if we consider that this is an operation that is two and a half years old, barely. So this is developing well and I understand that everything needs to develop, so it is moving right. On the point of substance I am also quite satisfied in the sense that these opinions are looked at very, very seriously and elements of these opinions are also integrated. The Parliament uses the opinions to prepare amendments but I do observe that they play an important role in discussion in the Council as well. But there is of course a further perspective. Data protection, particularly in Council, is very often not first on the list of their worries—in fact it is something which needs to be done—so they come to it when it needs to be done. My perspective is—and I understand that this is an aspect of it—and my approach is—and I refer to this often in the opinions—that it is also a facilitator. Exchanging data in the Third Pillar among Member States is very much related to building trust, to say the least—it is also of course the protection to interests—so data protection should be looked at more, I think, in terms of a facilitator for good cooperation, and that is something which could be improved. So I keep making the message and I keep measuring the progress, but that is something which I want to share with you.

**Q27 Baroness Bonham-Carter of Yarnbury:** Turning to the G6 meeting at Heiligendamm, combating terrorism and crime is obviously extremely important, but we have the impression and concern

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that the Interior Ministers focused on this to the exclusion of individual liberties and, in particular, rights of privacy, which I think picks up on what you were just saying, that data protection is not their priority. Would you like to comment on that?

*Mr Hustinx:* I agree with you that particularly the conclusions published afterwards could have been stronger on that particular aspect, especially on two subjects: the subject of availability and then the famous sentence, “Availability, yes, but not waiting for the Data Protection Framework”, and that is language which has raised eyebrows. But also a little further, language like “unlimited, unrestricted access should be provided at all times”. Things like this should be subject to safeguards, therefore, I think, it is unfortunate language. Of course I did not attend all the discussions, but it sent a message which in fact triggered the declaration at Budapest which, to some extent, repeats things which had been said the year before, but exactly emphasised that it should be a close link for reasons we can expand on later. But it was widely seen as a matter of putting the priorities in a different way than before very, very clearly in a programme.

**Q28 Baroness Henig:** That is very interesting because you have actually answered my second question. So therefore in a sense following on from what you have just said, what then do you feel are the essential safeguards which need to be in place before the rapid implementation of the principle of availability?

*Mr Hustinx:* I would like to respond on different levels and to share with you the state of play and how I evaluate this. A very important moment was the Hague Programme, which emphasises very strongly the crucial role of information exchange being at this time in development crucial to improve law enforcement. Therefore, there was a need for introducing the availability principle subject to strict safeguards, and they are listed. Availability is a somewhat confusing term because it does not mean that everything should be available for everyone always, but it certainly meant that whatever is available for law enforcement authorities in one country should also be made available to others. So it is a general sharing obligation. Sending that message on non-discrimination but subject to safeguards, that link was very clear. The link is also very clear if one analyses the Commission proposals dealing with the Data Protection Framework and the availability framework—they practically refer to each other in many provisions. The discussion on the Data Protection Framework is taking place, although very slowly. Discussion on the availability framework is practically not taking place; it is generally assumed that that will not be adopted, it is too complicated. So Member States are looking for a

more phased approach, a more gradual approach and I would welcome that approach because indeed availability as developed in the draft framework decision does raise an enormous amount of substantive and technical issues. So Member States would like to adopt the Prüm Convention approach, which has some pros and cons but some of the pros are that it is more focused. But I would consider availability, at whatever scale, as a general principle that information cannot be refused, and this does not only apply to the UK and Germany or any other country—I noticed Baroness Ashton referring to “robust legislation” in the UK—but this involves all Member States. You never know which data you are going to get; you never know which data you are going to share with other countries. So I have made the point in the availability opinion and other opinions, that respecting the inherent linkage which was visible in The Hague Programme is indeed crucial, and then we need safeguards which are of the same level as the Directive 95/46 which applies in the First Pillar. For one thing the borderline between First and Third Pillar is getting increasingly complicated, so it is much better to have the same safeguard. My answer is that adequate and harmonised safeguards of the similar kind as already available in the First Pillar would be crucial in whatever context the availability is going to work. If there is a small scale targeted or a large scale approach, we would need similar safeguards. They do not exist yet. In the European framework there is a Convention of the Council of Europe which is general, and this is why the Directive was adopted in the First Pillar. All existing Third Pillar documents on Europol or on Schengen referred to this Convention and said that the Member States should have legislation at least of the same level as the Convention, but it is very general, and then taking into account some further provisions of a recommendation. But it is accepted that there is no detailed specific legislation yet. So when I read the signal in the Heiligendamm Declaration, it was understandable, in a sense, that, yes, discussion on the data protection framework takes some time—and some Member States seem to be doing a lot of discussion on this—but there seems to be more urgency to make progress with the availability principle; and I am afraid that is going to fail because when availability is put into practice all the problems will emerge which normally emerge. A few countries have adequate safeguards and some others do not, and certainly it is not harmonised, so the same data will be shared and it will be dealt with under different standards, and they are bound to raise problems in criminal procedure investigations and so forth and so on. So a minimum harmonisation, and an adequate level of protection of the same nature as provided by Directive 95/46, would be essential and that is what

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the draft framework decision is aiming at, plus some extras to deal with the specifics of law enforcement.

**Baroness Henig:** That is very helpful.

**Chairman:** I think Mr Hustinx has probably answered your second question.

**Baroness Henig:** Absolutely. Thank you, that is very helpful.

**Q29 Earl of Listowel:** To follow briefly on to that, I suppose a key problem concern might be the integrity of the information gathered, that if there are not good data protection measures throughout the European Union then one might get poor information being retained and operations being undertaken on the wrong footing because of it. So it serves the interests of public protection very strongly, perhaps, to have good data protection.

**Mr Hustinx:** I agree with that and I would like to emphasise that integrity has different dimensions. It is of course the accuracy of the information—sometimes that is a problem because information is not fully dependable, and it should be indicated how dependable it is—but there is also a problem under powers of the investigation, which have not been harmonised yet. So certain data has been collected or pieces of information have been collected, and the question is whether they can then be used and trusted in other countries. So we need common standards to apply—that is the approach of the framework on data protection. It does not concentrate on the sharing itself, it concentrates on setting common standards with a view to exchange of information, and that is very much needed from the data protection privacy point of view, and it is also crucial from an effective law enforcement view.

**Q30 Lord Dubs:** Could I ask a slightly different question? It looks as if there is going to be a problem between the EU and the United States as regards passenger data, passenger information following the decision of the Luxembourg Court. Can you comment on that? Is it within your responsibility for resolving this difficulty?

**Mr Hustinx:** It would be within the scope of the advisory role to give advice, but I want to mention that I was one of the interveners in the case in support of the Parliament. I did not support all the grounds put forward by the Parliament but I was very keen to have a decision of the court on the merits of the agreement. Unfortunately the court has not reached that point. It annulled the Commission and Council decisions on what is now seen as a technicality, that is the legal basis, but it did not deal with the merits. It also set a timeframe for solving the problem basically until the end of September, and the Commission—and I am aware of these activities as we speak—is trying to come to a solution which basically integrates the existing agreement in a different legal

framework, be it First, be it Third Pillar, and I would be involved in the process as it proceeds. If that is successful the problem is fixed but then we still have an agreement which is, according to many in the European Parliament, and also in my view, not well balanced, not including the adequate safeguards which are needed. The fact that the EU and the US could not make further progress on the agreement does not make it an adequate agreement in a legal substantive sense. It was probably the best available and I think it could be improved on substance.

**Q31 Lord Dubs:** I am trying to detect whether you are sounding optimistic or not in what you have just said.

**Mr Hustinx:** It is very important to make sure that this does not develop into a chaotic situation which leads to problems with the airlines, with travellers and so forth, so I think there is a great interest in finding a solution within probably a decision or an agreement requiring unanimity, and the first signs are that Member States are willing to cooperate on this, but, again on the substance I have some serious doubts as to what is happening. If you will allow me, the Canadians developed a PNR system, which is fully adequate; the Australians have a PNR system which is also quite adequate and they take different approaches—they are not known for being careless with their own national interests. So from that general angle there are some questions, but perhaps in the process one additional problem could be fixed and that is the discussion on pull and push. The US authorities have the possibility to access European reservation systems and pull the data, but the agreement said that as soon as possible this should be replaced by a push system, which is more targeted. The push system could be developed technically, and if we manage to make this part of the agreement then I consider that an improvement.

**Q32 Lord Marlesford:** Something that you said a moment ago which struck me as very important is the difference of standards on data protection within the different countries. One knows that there are occasions when people deliberately, from within the information systems, access information for wholly illegitimate purposes, and of course there has been a lot of publicity recently on the New York police case where the two detectives were found to have been convicted not only of committing terrible crimes themselves but regularly accessing data for the Mafia, and they have been sent to prison for life. What is the system that you can feel most comfortable with for ensuring that the weakest link in the chain does not actually become the strength of the chain in terms of the difference between different countries? Because presumably in theory the most efficient and practical system would be that everybody's databank should

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be accessible by anyone who authorised it from any other databank using it. In other words, you can have somebody from Lithuania accessing a British computer, et cetera. But there are great difficulties in that for the reasons I have suggested. What is the sort of framework that you would see emerging to try and deal with this problem of the weakest link in the chain?

*Mr Hustinx:* It is a problem in different areas. First of all you speak to security standards, and that is the crucial building block—but there are preliminary questions about how the system should be structured and so forth and so on—but as to security there are international standards, state of the art in the law enforcement field which should be applied. The problem is that in a European document there should be sufficient detail to make sure what is the standard which applies in all these countries; and then there is of course the practice under these standards which can only work on the basis of very close cooperation of supervisory authorities, sometimes waiting for mutual monitoring, visits and so forth and so on, but that is probably not sufficient for the kind of robust systems we need for law enforcement, accessing each other's systems. So a decision on availability, small scale or large scale, would have to go in the details of what exactly are the standards which need to be provided in order to make this successful. Let us not be mistaken, the availability principle is, first of all, to make available what is already there, so the authority in charge of the database would be in charge of the security applying to its own information, but once it is shared with others then the problem could emerge which you describe. The experience in the field of Schengen, particularly, is quite positive. There are regular visits of DPAs from other countries to measure, for instance, the level of protection in the new Member States, and they are quite positive. The Joint Supervisory Authority of Schengen organises these visits and it is quite effective, so a similar model could be applied in this context as well.

**Q33 Lord Marlesford:** Could I go on slightly to the specifics on the biometrics? DNA, fingerprints and vehicle registration data are meant to have early implementation on the principle of availability. Are there specific safeguards being put in place against misuse of them and are there any particular problems at the moment over biometric data?

*Mr Hustinx:* Let me deal with biometrics in general first. I have dealt with biometrics in a number of opinions and highlighted some of the new aspects which make biometrics sensitive and somewhat problematic. One of the problems is that it is not 100 per cent reliable, and that is unavoidable, that is in the nature of the biometric—even the best biometrics have a certain sense that it is based on probabilities. This is often overlooked and then it is used and then

there is a tendency to start using biometrics as a search key, the single key as a connecting factor, and that is not very wise. When it comes to DNA—you mentioned DNA also—there are of course many more specific problems. DNA is mentioned as a high potential in the availability discussions and is specifically mentioned in the Prüm Convention, which is of course part of this discussion. A distinction not made in the Prüm Convention, which is vital, I would think, is a distinction between DNA samples and DNA profiles. The samples have the full width of all genetic information in them and you retain them. They could be isolated at various points in time. The profiles are more like bar codes, but it is also a dynamic technology. Profiles show more and more information—they can predict race, et cetera. That distinction is not at all made in the Prüm Convention, so when the Prüm Convention provides for the establishment of DNA databases for analysis it is not clear to me what it is exactly providing for, and that would be a crucial point for further specification. Prüm is a good example of data protection and availability going hand in hand—there is a rather strong Chapter 7 on data protection—but it is also weak in many aspects because it subscribes to the classic approach of referring to Convention 108 and Recommendation 87/15 of the Council of Europe and it does not give all the specifics which would be needed. It is strong in terms of imposing logging and specific security safeguards but it is quite selective and it would set up among the Member States of the Prüm Convention a separate system; and it is entirely outside of the EU framework, so there is an institutional problem—the European Parliament is not involved, the Court of Justice is not involved. Maybe there is, of course, parliamentary control on a national level but that is piece by piece; it is not the full picture. So on the issues which are the crucial issues the Prüm Convention does not give the full answer. So the Commission is presently contemplating the introduction of more limited framework decisions to deal with availability sector by sector, possibly a proposal to deal with DNA and fingerprints on a European scale, and I would certainly see to it that these decisions, these proposals that is, will have better safeguards. But they would have to be considered, in my view, as further specifications of the general framework for the Third Pillar, and that is proceeding at a slow pace, and I am worried about that.

**Chairman:** Can I just interrupt before Lord Marlesford asks his next question? I think Lord Dubs might want to ask a rather more specific question about Prüm, which would be very helpful.

**Q34 Lord Dubs:** Thank you. You have referred to the Prüm Convention. I just wonder whether you can comment on this? What are your views on the Prüm

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Convention's information exchange provisions and what lessons can be learned from the provisions of Chapter 7 on data protection, in particular those dealing with the accuracy and integrity of the data?

*Mr Hustinx:* On accuracy it is a little weak. It is strong on logging and security but on accuracy it takes the position that the Member States have to guarantee the accuracy and reliability and whenever they come across a problem they have to share this. The framework decision, which deals with the practice of law enforcement, faces the problem of degrees of reliability, especially in intelligence—soft information can be unreliable and only reliable “provided that”. So the indication of the dimension of the nature of the information is crucial and that is totally ignored in the Prüm context. The lessons of Prüm are positive lessons that the gradual approach is positive, that it is practical, but it is weak on other aspects, and I have mentioned them before; and on integrity and accuracy the provisions are quite limited.

**Q35 Lord Marlesford:** It all ties in with what Lord Dubs was saying and what your response was. You have referred several times to the unreliability of biometric data.

*Mr Hustinx:* They are not totally reliable.

**Q36 Lord Marlesford:** Not totally reliable, exactly. The unreliability factor within them.

*Mr Hustinx:* Yes.

**Q37 Lord Marlesford:** But presumably this is best dealt with by having more than one, certainly two and maybe to have nearly three different biometrics so that you get a linkage and that is confirming the accuracy or not. Does the Convention take that approach at all, saying that it is desirable that there should always be multiple biometric information?

*Mr Hustinx:* No, it is not, nor is it referring to, again on DNA, a European decision around 2000 on the so-called markers, the quality criteria for DNA. So it is not going to these specifics, which I would consider as very important. So, yes, I think it is weak on that.

**Q38 Lord Marlesford:** So therefore one way of moving forward in terms of integrity of data would be to require, certainly in the case of biometrics, more than one biometric always in order to try and get across that?

*Mr Hustinx:* That might be a solution depending on what context we are dealing with. I am presently involved in the development of the visa information system and there I take the approach, which is also supported by the Rapporteur in Parliament, that biometrics could be used in cases where there is a problem for a targeted verification but could not be used, exactly for the reasons which were mentioned,

as the primary search key. So do not use fingerprints and facial scans to do “one too many” investigations, as they are called, just large scale because you end up with too many unreliable hits.

**Q39 Lord Marlesford:** Can you give us some estimate of the error rate for biometric data, the region of error in the use of biometrics?

*Mr Hustinx:* That depends on the biometrics. Fingerprints are considered very reliable; reliability is high in the 90s with 98, 99 and perhaps even higher. But considering the size of the databases that would still mean that if there is a refusal of a visa for refugees then this could still lead to considerable numbers and considerable inaccuracies. But for other biometrics, error rates are considerably higher. If the answer would be in a specific case of doubt to combine fingerprints and iris and facial scan that would be better. Of course it would take much more time and it could not be used in routine processes with large numbers, so there is a logistics problem; but, yes, that would be a good example.

**Q40 Chairman:** Can I ask you this rather general question—and to some extent you have covered the answer to this—are you satisfied with the progress of negotiations on the Data Protection Framework Decision, and do you think it will result in a satisfactory instrument? Will it be in force in time to provide safeguards for all the instruments on exchange of law enforcement information, particularly the time tabling of those instruments?

*Mr Hustinx:* There is room for considerable progress in that context. The Austrian Presidency started off actively but, due to factors not caused by them, discussions are progressing very slowly—after half a year maybe they came up with eight or nine articles, something like that. This is partly due to a problem that national delegations tend to come from law enforcement areas which, up to now, largely prefer to ignore data protection, possibly. So I am worried about the substance, what will come out at the end, and I am certainly worried about the timescale, and I wish that the energy that the Heiligendamm Declaration seems to invest in pushing availability was equally invested in making sure that this link is respected.

**Q41 Chairman:** I think you heard Baroness Ashton give us the impression that the meeting of the six at Heiligendamm had not raised any particular worries with those who were not there. Is that your impression or are you conscious of a worry about exclusion of other Members from Heiligendamm?

*Mr Hustinx:* I am not in the position to comment on what other Member States would feel about this, but I do know that the Budapest Declaration was designed to be an answer to what was seen as a signal,

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a clear switch in the policy, and that it would have been much better had the Declaration clearly said there was no switch; but it is suggested there was a switch and so this is why it caused concern. My comments on the slow progress on the framework decision support this. I have issued a very substantive opinion, which was very supportive of the initiative, and I have lined up a number of specific suggestions for improvement, and much of this has been

integrated in the Parliament's advice; but again, it is not acted on so far in Council.

**Q42 Chairman:** Thank you very much indeed, you have been extremely helpful to us and I am very grateful to you for coming today. Is there any last point that you want to make? We have had a very full discussion.

*Mr Hustinx:* I think I have used your time.

**Chairman:** No, we have used yours and we are very grateful to you sparing it.

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WEDNESDAY 14 JUNE 2006

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Present	Avebury, L Bonham-Carter of Yarnbury, B Caithness, E Corbett of Castle Vale, L (Chairman)	Dubs, L Henig, B Listowel, E Marlesford, L Ullswater, V
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**Memorandum by Statewatch**

1. Statewatch welcomes this chance to respond to the Committee as regards the meeting of the G6 ministers of the interior in March 2006. The questions raised by the committee will be addressed in turn.

*To what extent do the G6 proposals on intensified police cooperation for the prevention of crime and illegal immigration go beyond current EU policy? To the extent that the G6 proposals do go further, in what way do they depart from some important measures currently being negotiated in the field of exchange of law enforcement information and data protection?*

2. The reference to linking national centres and the call for experts from different agencies to work together are ambiguous, but appear to go beyond any legally binding measures already agreed at EU level. The extent to which these proposals go beyond measures being negotiated is unclear, but the wide scope of the conclusions appear to go beyond access to information on specific items (as provided for in the proposed Framework Decision on the principle of availability) and there is no specific reference to data protection rights.

3. The call for joint investigation teams reflects existing EU policies, but Europol cannot participate in such teams without the entry into force of a Protocol to the Europol Convention (which is still being ratified).

4. Police access to Eurodac is entirely new; there is no such access at present as the Eurodac database was established solely to assist the determination of the country responsible for considering asylum applications. Nor there is any legislative proposal on the table considering the extension of access to Eurodac.

5. A proposal for internal security authorities' access to the VIS is already under discussion. However, the idea of a "sponsor's database" in the VIS probably goes beyond the Commission's proposal to include the sponsor's name and address in connection with a visa application (or the name of a corporate sponsor with a contact's name: see Art 6(4)(f), COM (2004) 835, 28 Dec 2004).

6. The counter-terrorism measures referred to appear to be new.

7. The idea of renegotiating the Schengen Convention provisions on police cooperation in the manner referred to in the conclusions is new.

8. We would also like to draw the Committee's attention to the idea of "rapidly introducing the Visa Information System (VIS)" in the light of the French BIODEV test (EU doc no 7791/06) and confusion how the checks are going to be made when visa-holders enter and travel around the EU.

*The Conclusions refer to a number of EU bodies such as FRONTEX and Europol. There are suggestions that they should have additional duties and priorities. Do their existing constitutions allow for such an expansion of their mandate?*

9. As noted above, Europol cannot presently participate in the operations of joint investigation teams. The other measures referred to in the conclusions appear to fall within the scope of Europol's tasks as described in Art. 3 of the Europol Convention.

10. Frontex can already participate in "joint operations" (Art 3 of Reg 2007/2004 establishing the agency, OJ 2004 L 349/1). It also has the power to assist joint expulsion flights (Art 9 of the Regulation). The agency can conduct "risk analysis" (Art 4 of the Regulation), although it is not clear whether the G6 conclusions restrict themselves to this form of analysis by Frontex. Also, there is nothing in the Regulation that permits the Agency to draw up "situation reports". The agency can cooperate with Europol in accordance with the EC Treaty and the Europol Convention (Art 13 of the Regulation). This would seem to require some sort of formal agreement between the two bodies, but no such agreement exists.

*Lastly, the conclusions state that rapid implementation of the principle of availability should not depend on the adoption of a third pillar Data Protection Framework Decision (DPFD). Since the Commission proposal for the DPFD is also under consideration, and the two issues were initially linked, is it sensible for the two proposals to be considered independently?*

11. It is clearly entirely unjustifiable to consider these two issues separately. Since the purpose of the Framework Decision on availability is to make available to other Member States' police forces the entirety of personal data regarding certain categories of data which is stored by each Member State's law enforcement authorities, there needs to be a comprehensive instrument regulating the processing of personal data falling within the scope of the principle of availability in parallel with the application of that principle in practice.

#### ADDITIONAL POINTS

12. We would draw attention to the implications of (a) tackling the use of the Internet by terrorist organisations ("Check the Web", EU doc no 9496/06); (b) systematically "exchanging information on people expelled by G6 countries for preaching racial or religious hatred or related activity"; (c) the reference to biometrics in national identity cards.

#### ACCOUNTABILITY OF G6 MEETINGS

13. As a further point, Statewatch wishes to raise the question of the accountability of G6 ministers' meetings. The ministers themselves point out that at their initiative, the EU decided to require all Member States' citizens to be fingerprinted if they wished to obtain a passport. It could be added that other measures (the idea of a common list of "safe countries of origin", for instance) can be traced back to agreement of the G6 (formerly the G5) ministers.

14. This obviously raises fundamental questions about the accountability of these ministers' meetings, as there is no formal requirement to publish an agenda or minutes, there is no system for access to documents, there is no process of public consultation or impact assessment, and the existence and activity of any working groups, *et al*, is unclear. There is no system of control by national parliaments and/or the European Parliament.

15. In short, the G6 ministers' meetings are utterly lacking in the rudiments of accountability as understood at national or EU level, and should be terminated forthwith unless the issue of accountability is immediately and fully addressed.

Statewatch

(prepared by Steve Peers, Tony Bunyan and Ben Hayes)

30 May 2006

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#### Examination of Witness

Witness: MR TONY BUNYAN, Statewatch, examined.

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**Q43 Chairman:** Good morning, Mr Bunyan. Thank you very much indeed for coming to us. This meeting is on the record, there will be a transcript produced which will be sent to you if you wish to check it. We are also broadcasting on the internet. For the record, this part of the inquiry which this Committee has decided to conduct is into the meeting of the G6 at Heiligendamm under the previous Home Secretary, Charles Clarke. Perhaps I can open the bowling, Mr Bunyan, by asking with 25 Member States now in the European Union it must be sensible, surely, that small groups of ministers meet to discuss matters of common interest. Indeed, last week, Baroness Ashton said she regarded meetings of the G6 interior ministers as an example of this. Do you agree with that view?

*Mr Bunyan:* No, I do not, not surprisingly. I think we have got to look at these groupings we have got. We have got the G6 and the Prüm governments. The Prüm

constellation is the five original Schengen member governments plus Austria and Spain and then we have three of those also involved in the G6. The G6, of course, does represent three-quarters of the EU population, they are six of the biggest states. They started meeting firstly in Spain in 2003 and the second meeting in France in October 2003. Even at that meeting in October 2003 it was interesting that they were discussing and agreeing on things like establishing a list of safe third countries which, of course, found its way into the EU discussion in the Council and now for the Commission. Also they discussed the creation of an EU passenger name record system which is often forgotten because of the row with the United States, which was of course agreed the following year, 2004. They also discussed biometric passports. We have here a concept when we work with the ACLU in the States and internationally

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on what we call “policy laundering”. How policies are discussed in small groups like G6, Prüm, G8 and the principles are sorted out and then those broad strategic decisions are presented in different fora and pushed to the top of the agenda because they would have been sorted out amongst key Member States. If one was to look at G8, for example, some of the issues we are discussing here are ones we will be familiar with: the concept of apologia and glorification which there has been discussion in this country about. That idea originated in G8 with the Roma and Lyon groups as did, and we will come on to this later, the principle of availability where they discussed at great length the obstacles of the free movement of information amongst law enforcement agencies and where they very clearly stated that judicial authorisation, which is a big issue we might come on to later, in a number of Member States was seen as an obstacle to the free movement of information and intelligence. I think what we have got to say here is that one is not saying they should not meet—and again we will come on to this later—it is a question of the way in which they meet, the secrecy in which they meet and how much information we have about what they are discussing when they meet. I think we do have to be concerned with these different groupings which are, in a sense, an external pressure group of strong Member States amongst the 25.

**Q44 Chairman:** In many ways this particular group, the G6 group, is an extension of the principle of bilateral talks and discussions between Member States who think they have a common interest. I think you said you are not objecting to the principle of that? If it is going to get into EU law it has to trundle its way through that machine.

*Mr Bunyan:* There are two critical questions. One is the way in which they do it and how much do we know. By “we” I mean civil society, I mean national parliaments, the European Parliament, the public at large. How much chance do we have to know what has been discussed before they come to the conclusions which they then go on and work on within the EU formal environment. I do think this is a real problem about how much we know about what is going on. The other is the problem it obviously creates with the countries which are excluded, the other 19 countries which are not part of these discussions.

**Q45 Viscount Ullswater:** I want to try and get something clear in my mind. It seems that your objection is to the individual nation states meeting together in small groups, whether it is the G6, the Prüm or the G8, which is instigating policy or policy to be discussed. You are objecting to that rather than saying that the Commission has to initiate all policy for the 25 Member States. That is the distinction, is it not?

*Mr Bunyan:* In the real world Member States within the EU—which we are talking about here—or G8—the G8 is a global planning strategic body as distinct from the EU—are reality, they are happening. The question is do we know what they are discussing? Do we know what they are accepting and rejecting? Do we know what the debate is on the table? This is the problem, the G8 utterly lacks democratic process. Put it like this, when our ministers go away, whether to G8 or to G6, they are effectively discussing new policies and new directions, then agreeing them with their other Member States, whether it is G8 or G6, and then that is set in stone without any prior discussion about what are priorities, what should be on that agenda, what options should be on that agenda. They are set in stone in a way that any other Member State in the case of G6 or Prüm that wants to sign up to it in a sense has got to accept every dot and comma, certainly through the Prüm Treaty which is very like the Schengen Convention agreement. In other words, we have a situation where a small group of Member States go away and create an infrastructure with working parties and experts over a period of time in the case of Schengen and in the case of Prüm. They come up with their treaty or their agreement or their convention and they say to other Member States, “You can either agree this or not agree it”. There is a problem here because those Member States do not have the option at that point of saying, “We do not agree with this point or that point”. You cannot change a dot or a comma at that stage.

**Q46 Baroness Henig:** I am struggling a bit here. You used a phrase earlier on which I found quite interesting, you used the phrase “policy laundering”. Now policy laundering, I assume, fairly obviously has shades of money laundering which sounds really awful, yet what you have just been describing to me is normal diplomatic practice as has been carried out in the last 200 years. I cannot reconcile on the one hand your phrase policy laundering and, on the other hand, something which I would have thought all states would have done at different points in the League of Nations, the United Nations and every organisation which I can think about, which is to get together and say what they will or will not accept and give strategic steers. Can you reconcile the two for me because I am having difficulty?

*Mr Bunyan:* I understand what you are saying about diplomatic negotiation but there we are dealing in terms of the way things used to work. Now we are meant to have a democratic European Union, we are meant to have a situation where we know what is on the table. We are meant to have a situation where we know the options. We are meant to have a situation in which national parliaments, the European Parliament and, indeed, civil society can be informed

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and have a chance to put their views forward. Their views may not be accepted but there is a public debate. It is a classic case of the democratic deficit with the European Union, that people do not know what has been discussed, they do not know where the ideas have come from, they do not know their origin, they do not know the options which were rejected and accepted. This is the problem.

**Q47 Baroness Henig:** You are assuming that Europe marks a new departure, a new level of negotiation.

*Mr Bunyan:* No, I have always believed in liberal democracy, and I still do, and I would like to see the European Union also adopt liberal democratic standards, that is all one is basically asking for.

**Baroness Henig:** I understand that.

**Q48 Lord Dubs:** May I pursue that point, just to be quite clear. You used the expression “set in stone”, is your criticism that Prüm or these things once they have made a decision nobody can change it, none of the other countries has any influence and if they had you would not object?

*Mr Bunyan:* They are slightly different. The Prüm Treaty is of that character as is the Schengen agreement/Schengen Convention. Take, for example: when the applicant countries, the 10 new states, joined they had to adopt the Schengen *acquis* which by then became part of the Amsterdam Treaty, brought inside, they were not allowed to change a dot or a comma. Ten countries were told “You have to sign up to this”, without being able to say, “Hang about, where are the checks and balances here?” They were not allowed to do that. G6 is different. G6 is more similar to G8. This is where you get governments going away and on the advice of their officials coming up with ideas about what we should do. The idea of biometric passports, fingerprinting, the idea of the International Civil Aviation Organisation having what is called a facial image on it, all originated in G8 in this particular case. We have got examples where you get decisions taken in G8, then the United States meets with the EU troika, the presidency troika—that is the current, past and next presidency—in documents which of course we are not meant to have, but we do have them, so we see an idea originating in G8, the US meeting with the EU presidency troika and pushing ideas on safe country lists, mandatory data retention. Then, of course, that troika is influenced and comes back into EU circles to push issues up the agenda in the EU presidency. It is an unseen influence, it is an undemocratic unseen influence. If we can see it, if we can know where the ideas have come from and where they have originated, then we can have an open, democratic discussion. As I say, we may often lose those arguments, as we do, but that is not the point at issue here.

**Q49 Lord Dubs:** Surely, even Britain as a nation, British policy, will be subject to the same criticism that you are making of the EU system?

*Mr Bunyan:* To a degree. I am trying to think if I can give you an example. I think part of this is that we do not have access to the documentation. We only get conclusions out of G8, we get conclusions out of G6, we do not see the original documents. We do not see what the debate was within. Even after the decision was taken we do not get to see the documents which are discussed on which the conclusions were reached. In the EU we are in a different situation, which the UK is part of, where discussions are taking place and only after the decision is taken, at the moment the way the Regulation on access tends to work, you are allowed to see what the discussion and the options were. We fight against that because we need to know what has been discussed before the decision is taken.

**Q50 Chairman:** Can you tell me, Mr Bunyan, you say that generally we do not have access to some of these important background documents, was the English version of the German conclusion on Heiligendamm an official version or an unofficial version?

*Mr Bunyan:* I do not know. I received these conclusions from a very reliable source in the European Parliament the day after they were agreed.

**Q51 Chairman:** Do you know whether they are generally available or have you got a pal who looks after you?

*Mr Bunyan:* I knew the meeting was taking place, a very reliable contact in the European Parliament sent me the conclusions the next day, a copy of which I have supplied to this Committee in its original form. I immediately thought “This is interesting” and, as we have done on previous occasions when a conclusion is published, we have made them public so everyone can see them. We followed our normal procedure. I knew the source was reliable and we made it publicly available.

**Q52 Lord Marlesford:** I am still, I am afraid, mystified by your general approach to the whole thing. Policies which need implementation through legislation—let us take that first—proposals for legislation are put in the European dimension, they normally emerge from the Commission which, as Lord Ullswater points out, normally has the monopoly of putting forward proposals but, of course, there have always been negotiations behind the scenes, and always will be, as to what comes out as a proposal. Those proposals are then legislated for in a joint way, the Council of Ministers has to agree in one form or another and the European Parliament has a say and, of course, through the scrutiny process of the committees, for example, of this House all

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proposals for European legislation are subject to scrutiny by national parliaments, more or less effectively depending which country is doing it. That strikes me as a pretty open process. The proposals that are put forward may have emerged from private discussions but nothing can be done with those proposals if they need legislation until they have been considered by the wider forum, is that not correct?

*Mr Bunyan:* You are right at one level but that is a hidden level. If we take issues like biometric passports, mandatory data retention—

**Q53 Lord Marlesford:** You have mentioned several times biometric passports, tell us what is bugging you about biometric passports?

*Mr Bunyan:* What bugs me about them?

**Q54 Lord Marlesford:** In the process by which they have been agreed.

*Mr Bunyan:* The idea was first put forward by George Bush in a letter to the European Union on 16 October 2001, and then it became part of the G8 discussions. Then we had the idea that the Commission puts forward a proposal in the general sense. The problem then is, like on data protection, which is another issue we are discussing, the Commission puts forward a proposal which is then taken up by the Council's working parties. This is the critical stage. The Commission has the right to initiate, it puts the proposal on the table, like it does on data retention and like it did on biometric passports.

**Q55 Lord Marlesford:** Let us stick with biometric passports.

*Mr Bunyan:* The problem is the real discussion is happening in the Council's working parties. Those documents are not publicly accessible until after the decision is made usually, not all but most of the key ones are not available. Now if you look at the thing on biometric passports, you look back at what is happening on data protection, they are going through it clause by clause making substantive changes. I know this is getting complicated. You then get this bizarre process, to use another issue, which happened on data retention just before last Christmas where the UK presidency decided data retention, that is the retention of all our emails, phone calls, and everything, was so urgent four years after 2001 that it had to go through by "fast track". You get this bizarre proposal where you get a proposal, the Council amends it, the Council then goes into secret "trilogues" with the European Parliament and agrees a set of amendments which even the Parliament Committee is not allowed to change. So it is steamrollered through the Committee, steamrollered through the plenary session. Fast tracking of the European Parliament was introduced in order to deal with detailed

technical measures over which the Parliament might not want to waste its time. Instead we are seeing fast tracking being used for substantive controversial measures and, indeed, I have seen a document and negotiations have already started so that on SIS II they want to fast track that procedure as well. We are not meant to know that, I consider that to be outrageous. On the substantial issues like mandatory data protection and SIS II, you are dealing with a problem about the way it is working and also you have got a problem with the European Parliament in this sense, that they are prepared to enter into secret "trilogues" on controversial issues. One can understand it in terms of long technical proposals. I know it is complex but when you get inside the system the democracy is not quite as obvious.

**Q56 Lord Avebury:** Could I take you back to your remark about these matters being set in stone. I am thinking particularly about the Prüm Convention which you could not argue was set in stone because people could either accede to it or not as they saw fit. Since the Prüm Convention itself contains provisions for its incorporation in European law, and this is to happen within three years of the Convention being entered into force, this process will have to be aligned with the broader discussions on the third pillar and data protection under the third pillar. Would you not assume that whatever data protection there is ultimately in the third pillar it has to be at least as great as that which is provided in the Prüm Convention which itself, in Article 34, relies on the Council of Europe Convention. I know you do not think the Council of Europe Convention provides adequate data protection but that is the minimum. Will not all these other Member States which did not take part in the discussions on the Prüm Convention have an opportunity at that point of widening the data protection provisions that it provides?

*Mr Bunyan:* Not as I understand this Treaty. The problem with the Prüm Treaty is that it has, first of all, to be ratified in the Member States that signed it. That is procedure one. They have then got to implement it. Because they have agreed it, and their national parliaments have to ratify it in its present form, once they have agreed it, it is not open to any other Member State joining in to change it. This is exactly the way that the whole Schengen *acquis* was incorporated. When it came within the European Union, it was the original Member States' version that was brought in and adopted. This is a difficulty, that it cannot be changed. The second point you made about the Council of Europe is interesting, of course, because the 1981 Council of Europe Convention does include certain safeguards which the UK has always derogated from. It has always derogated from the provision on "You should not record information on racial or political views". It

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has always derogated from the provision which says—and this is an important issue we might come to—that the subject of police information in a particular case had a right to know the information held, not just a right to know if they ask, a right to be told it had been collected even if it was not used. This is something which may be covered by other questions. There is a very important distinction here. In fact, the Council of Europe 1981 is possibly ahead of what is currently proposed.

**Q57 Viscount Ullswater:** I am sorry to go back to a question which really was asked by Lord Marlesford because your answers, as far as I could understand them, were criticisms of the working of the European Union in its decision-making process rather than criticism of the G6 and the results of G6. All the business that you were talking about—co-decision, working groups—has to be taken through the Council of Ministers and agreed by all the nation states and that is the process that laws eventually reach our statute book having been agreed by the European Union. A lot of what you were saying, if I got it right, was saying this is very opaque and it is something going into closed conventions and you do not see the papers. That is the structure of the European Union and you seem to be criticising that. You may have that criticism, I do not say that you should not have it but you seem to be criticising that. If I could draw anything from what you are saying, you would be objecting to the Prüm Convention because you are saying that was agreed outside the auspices of the European Union and if states sign up to that they cannot change it.

*Mr Bunyan:* Yes.

**Q58 Viscount Ullswater:** I would agree that is another process, and I can see that you might object to that, but I cannot see how you could object to the conclusions because you say very clearly in your written evidence: “In short, the G6 ministers’ meetings are utterly lacking in the rudiments . . . and should be terminated”.

*Mr Bunyan:* I think some confusion has arisen because I was trying to answer a direct question I was asked just now. In relation to G6, it is obvious when you read some of the other evidence you have received that G6 is not just this three times a year meeting of ministers, they have also got meetings of experts. In other words, there is an infrastructure building up here very similar to G8. I would say, and I know it is an old argument, we have had it over the years over access to documents, that governments and ministers and the Commission want the “space to think” so that we cannot see what is going on. There is a certain minimum standard and what I think we would say is we need to have copies of the agendas of those meetings, copies of the minutes of those

meetings. We need to have a system of access to the documents considered at those meetings, and we need to have them in a way that we can have some consultation over what is going to be decided informally or formally agreed in an informal meeting on our behalf. We have a right to know those things. We need to say, therefore, before our Government goes away and agrees with five other Member States what are the priorities and what is the precise nature of the proposals to be supported. That should be presented to committees like this and you can say “Ah, you are going to G6 in three months’ time, can we please have the agenda? Can we please have the documents you are going to discuss so that we can take a view on this? Then we can call you in here before you go away and agree things which once you have agreed are then your priorities within the European Union.” I cannot see any reason why they can object to that.

**Q59 Earl of Caithness:** Can I move on from your dislike of the current system of how the UK structure works, how the EU structure works and how the US structure works, and get back to the conclusions of Heiligendamm. Given that the system operates in the way it does and decisions were made, are you happy that the G6 said that all the other Member States could participate in what they agreed?

*Mr Bunyan:* I think their attitude is that the other Member States be informed of what they have decided and when those ideas obviously progress—

**Q60 Earl of Caithness:** No, no, could you just answer my question, please, and that is do you think it is right that the G6 Members said all the other Member States can come in with their conclusions?

*Mr Bunyan:* We can see their conclusions. There are two elements to this. One element is what I have just answered in terms of having all the information on the agendas and minutes so we can see what has happened. The next level is the other Member States clearly once it enters the Council arena can have an equal say but you are talking about a bloc here, a bloc of powerful Member States who are likely to defend what they have agreed amongst the six of them, are likely to push those priorities to the top of the agenda. In other words, it is likely to exclude the influence of the other 19 Member States. It may be that the other 19 are happy with this, I suspect they are not happy with this, they can often see unseen influences come into what is appearing on the agenda of Council working parties. I am not saying that the other Member States cannot participate in the EU decision, clearly they can, but if you have got a committed bloc of six strong powerful and, in voting terms strong, Member States who are committed to a certain position or a certain path, it is quite difficult for those other Member States who may not have a

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unified position to actually put an alternative point of view. In other words, it is biasing what become priorities and what the outcome should be. Why can these discussions not take place within the proper formal side of the European Union? Why is it necessary to have them outside? We have Justice and Home Affairs Council meetings, we have informal Justice and Home Affairs Council meetings, we have working parties, why do these initiatives take place outside the great plethora of opportunities which exist within the European Union?

**Q61 Lord Avebury:** Could I return to the point I was seeking to make earlier about the Prüm Convention. First of all, would you agree that there is a distinction between, say, Heiligendamm or other meetings of that sort and actual conventions which are agreed by a certain number of Member States of the European Union? In the latter case surely you are not arguing that under international law it is not open to a set of Member States of the European Union to arrive at agreements and to incorporate them in conventions which they then open for signature by the other Member States, as has been done with Prüm. A point I was trying to make earlier about Prüm was that it could be subsumed in the wider discussions about the data protection standards which are to be applied to the EU third pillar and that was underlined in the declaration of the European data protection authorities at Budapest when they said that there was no alternative to creating a harmonised data protection standard through the third pillar. If and when that does happen, would you not agree that the standards will at least be higher than those which have been adopted in Prüm and, therefore, it is not really necessary to worry about the development of those standards by a minority of members of the European Union because they are a building block towards the wider third pillar arrangements?

*Mr Bunyan:* Yes. Of course data protection is only in one element in the Prüm Treaty. The second point is not all Member States are agreed at the moment that we are going to harmonise data protection. The Commission proposal is double-edged, at one level it is saying what is a European wide standard when you are exchanging between law enforcement agencies, and what may be exchanged, and at another level it is saying we cannot have two standards. We cannot have one standard data protection when we are exchanging between Member States and another standard at national level. The data protection commissioners are quite rightly saying we should have the same standard which the Council's legal service also says is possible but there are some Member States who do not want that to happen. They do not want that imposition on the national data protection rules from what is an EU decision. Logically you cannot have data being collected for

national purposes under one set of rules and then being exchanged under another set of rules. There is a battle going on. You are right to say that if that happens, we have one set of rules which would supersede anything which is in the Prüm Treaty. I think there is a connected issue, if I might take some liberty to explain how this does get complicated over the principle of availability, how this gets really complicated and one of the problems with Prüm. Now we know, in fact, that the discussion on the principle of availability is now being "postponed" at one level while the discussion on the data protection directory is continuing. In other words, they are not going to decide in the Commission on the principle of availability. On the other hand, what they are doing is they are saying, "Ah, but we want to get on with bits of it without agreeing the principle so we will create the ad hoc group on information exchange". When you get onto that document, which you are not meant to have, when we get down to the protection of DNA data, which is a crucial part of the principle of availability report, it says "as provided for in the Prüm Treaty". This Treaty agreed by these Member States, which has not yet been ratified by the national parliaments, is already being treated within the working party of the European Union as if it has been agreed and is already part of the ethos of the European Union. This is what we call policy laundering, that ideas are creeping in when they are not even part of the EU policy as a whole. Then it gets even worse, because then you get a Friends of Presidency Report, you might ask who the Friends of the Presidency are, on the principle of availability which then says "... and we took into consideration the proposals contained in the Prüm Treaty". It is this which mystifies people. When you do get all the documents you are meant to have, I mean I am not against the Prüm Treaty having a status if the Member States want to do it and to ratify it and clearly that would influence policy but it is very worrying when the provisions in the Prüm Treaty are already being discussed in Council circles as if it is a factor which is influencing where the EU is going. We put off agreeing the principle of availability but we get on with discussing EU-wide DNA database and an EU-wide fingerprint database and access to all vehicle registration systems without any need for data protection, this is where they are going in the Council. I think we have to understand this role of the Council as distinct from the proposal by the Commission is a very critical distinction. The Council in their working parties get into the detail, not just the policy of how they want it to work in practice.

**Q62 Lord Avebury:** Did you not just say that they would apply at least the Prüm data protection rules if they adopt this more limited set of agreements on matters such as DNA and the fingerprint database?

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*Mr Bunyan:* This is the complex thing. If the debate carries that we get one level, one standard for data protection for transfers and also for national level, that will clearly be in place and Prüm cannot overtake that.

**Q63 Lord Avebury:** Whatever the status of ratification of Prüm it will be quite open to the Council of Ministers to extract from the Prüm Convention the data protection rules?

*Mr Bunyan:* Of course.

**Q64 Lord Avebury:** And incorporate them in whatever they do for DNA.

*Mr Bunyan:* Of course, yes.

**Q65 Baroness Bonham-Carter of Yarnbury:** I think you have answered my question already which is that you clearly do not think there are adequate degrees of transparency as to how the G6 goes about its business. One of the things the Minister pointed out to us last week was when you are dealing with ministers from different countries and trying to come to resolutions and conclusions, there often needs to be a process whereby they can be persuaded to shift their position in private and if everything was open to minutes and so on no conclusions would come about. I just wondered what your reaction to that was.

*Mr Bunyan:* I understand, it is the old argument about the “space to think”. Of course you are going to have emails, you are going to have proposals going around before any meeting. You are going to have meetings in Brussels between the permanent representatives and the JHA Councils at another level. When we come to the level of the meeting itself, this is the argument, we need to see the agenda, the minutes, the documents on the table as well as the conclusions. Of course there are going to be negotiations and discussions before you get to the full meeting, but when you get into the actual meeting itself and what is on the table then we are saying, “Yes, we must know what is on the agenda, minutes, the documents and a system of access to those documents” which can apply and the regulations say “You cannot see this” for whatever reason. Of course you are going to have negotiation before an actual meeting, before even the agenda is agreed you will have a negotiation of the agenda because you circulate a draft agenda and another Member State says, “No, we want to put this on”. Of course something happens before and there are meetings before and discussions. When you get in that formal process then we are saying, “We need to know what is on the table. What are the options on the table? What are the documents on the table?” To give an example which can often happen, and it is not often realised, when you are in a Council working party—I have not been in one but I know people who have—

you have the Commission proposal, you have the Presidency proposal and then it has been described to me as a trolley is wheeled into the room and on this trolley there are Notes or SN documents<sup>1</sup> from Member States and these are distributed around the room. We have had a big fight to get access to those documents and the European Ombudsman decided in a case we took to them that those documents were part of the decision-making process and we had a right of access at least to a list of the documents if not to the documents themselves. When we see that Commission proposal, the conduct of it, and the Council proposal, remember in the actual meetings themselves there were lots of other documents floating around and, quite frankly, we have had a battle—I have used that example—because the Ombudsman made a special report to Parliament, the Parliament agreed with it, the Council, Mr Brunmayr, sent a letter saying they have all been instructed now to list all these Notes, SN documents being circulated. I met with Mr Brunmayr last December and I said, “What is happening?” He said, “Well, Tony, we put out a letter, the instructions are there, but quite frankly most of them are not doing it”. So you do have a battle. The influences which happen within a meeting are quite extraordinary.

**Q66 Baroness Bonham-Carter of Yarnbury:** You do not accept that the conclusion of the meeting is enough information?

*Mr Bunyan:* No. When you talk about conclusions actually with any Council conclusions a bit of PR creeps into the language used. It is only in some cases those of us who have studied the lexicon of the European Union can understand what lies behind a particular phrase and what the implication is of a particular phrase because we have actually seen the other background document and say, “Ah, that is what that means”.

**Q67 Baroness Henig:** I would like to explore your understanding of accountability because in a sense you have answered the question I might have put, you are clearly unhappy about accountability issues. That is really where you are coming from. I was wondering, therefore, whether you were locating this in the context of the European Parliament being too weak. You did refer earlier to a democratic deficit and, of course, we know there has been this long running discussion about the powers of the European Parliament and it needing to be stronger. Is that what you want to see, a stronger European Parliament?

*Mr Bunyan:* I would certainly like to see a European Parliament which had the same normal powers as a national parliament. I would like to see a parliament which had the power to initiate legislation, which does not seem to be an extraordinary idea, and a

<sup>1</sup> sans numero (unnumbered official documents)

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parliament which also had the power instead of this fuzzy co-decision where, quite frankly, some co-decisions are good decisions but some co-decisions at the end of the day are the lowest common denominator, I think the Parliament although it does have a power does not use it to actually say, "Take this back to the drawing board and come back with another proposal". We had this situation on the Regulation on access to documents. I remember in 2000 we called a meeting, the civil society groups called a meeting, of all the parties and said, "Hang about, the Council has got one position . . ." this is six months into it " . . . the Commission has got another position, the Parliament has got another position . . ." and all of the civil society groups were saying this, they were all in the room, the Court of Justice was there, the Ombudsman was there, and the Council . . . surely the Commission should be told to go back, having had six months of this, and come up with a new draft. The Parliament does not have those powers. It should have been saying, "Look this is a mess. Even the Council and the Commission could not agree in this particular case. Go back to the drawing board." I do not think it would be so terrible if they had to do that.

**Q68 Baroness Henig:** That is one issue, in a sense, from where you are coming from.

*Mr Bunyan:* That is a general point.

**Q69 Baroness Henig:** Yes. Your position actually does have a long and illustrious history and Viscount Cecil would be proud of you; this whole idea of open diplomacy and putting things on the table, and this idea of seeing agendas in advance, he was arguing 70 or 80 years ago and the Foreign Office was going berserk when he was arguing for it. It struck me when you were saying that, that for the next meeting what you would like is for an agenda, say, to be scrutinised by this body here and we would then say to ministers when you go away, take heed of what we say here, here and here, but Parliamentary democracy does not work that way, that is not my concept of Parliamentary democracy. I am not saying that there are not forms of democracy where that might be appropriate, but surely in terms of the way we normally work ministers go away and do things and we scrutinise them afterwards.

*Mr Bunyan:* That is one of the more recent problems we have had, the way democracy is working. Of course ministers have ideas and of course some ideas will come from meetings, but if they know what is on the agenda I see no problem with this Committee making its views known before the meeting; that is not to say that at the meeting an agenda item will not be interpreted in a particular way, and then we will hear about it after. In the conclusions there may be one item which is not exactly what was on the table

because that will happen in a meeting, we can understand that, but we must have a way in which it is not just this Committee because it is not just parliaments that are important, it is also important that civil society is involved, that civil society has an opportunity to make its views known to this Committee and to the other committees, so that when you get the ministers here with their agenda, you can not only have your own views but you can take into account civil society's views.

**Q70 Baroness Henig:** I see where you are coming from.

*Mr Bunyan:* In a democratic system I do not see why this is such an extraordinary demand.

**Baroness Henig:** When you elect MPs that is not normally how the system operates, I accept, and I can see where you are coming from. The Chartists, again, would be very happy with what you have said.

**Q71 Lord Marlesford:** Let us go back to this principle of availability and the data protection framework decision and the conflict between them. I can see that in deciding on availability, i.e. exchange of information, it is very important to take into account the data protection dimension.

*Mr Bunyan:* Sure, sure.

**Q72 Lord Marlesford:** Sometimes, I imagine, there will be conflicts, where people are not too happy about the data protection provisions and yet they see an urgent need for crime or terrorism fighting for exchange of information. How do you think that should be resolved?

*Mr Bunyan:* I will perhaps use an example. There is a proposal, originally from the Council and now from the Commission, saying that information on terrorism should be exchanged in the country where the terrorism investigation is happening with Europol and other Member States. That proposal is interesting because I have no objection that if you suspect somebody or a group of people are planning something, a terrorist event to kill or maim people, you should send that information around Europe to find out if anything else is known about them, at the investigative stage. If you take the example a couple of years ago now—and there have been many examples since—of the 10 Muslim men who were arrested in Manchester and held for a week and released without charge, the point about the way security and intelligence works here—and I am not talking so much about the police here, I am talking about security agencies, MI5 and Special Branch—when you look at 10 men you look at 10 men and 10 men's families, 10 men's friends, 10 men's workmates. The circle of people that could be involved with 10 men could be between 300 and 400 people. The names of 300 or 400 people could be

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passed around Europe, which may be legitimate, we do not know, because it could be a bomb on a Tube or whatever. The problem with the proposal is this: there is nothing in the proposal that says that if those 10 men were not charged or those 10 men were not convicted, that that data has to be erased. That to me is utterly wrong. I am all in favour of circulating to find out if anybody in these men's circles has anything to do and to follow it up because you want to stop an outrage, but if in fact you release the men and you review it afterwards and you realise it was not true, or like the recent information—we do not know the full story yet—it was the wrong information, then that data, unless there is an exceptionally good reason, should be erased, all data inside Europe. In the United States they now have one list of people to check, the passenger name record, for example, and there are about 130,000 people, terrorist organisations or whatever, but the trouble with the European Union is that every Member State has its own watch list, and this is a problem because it means that these people, if they were on this list, could be on the Austrian and German watch list. Where is the control over this? Where is the control over the 5,346 names supplied to the Greek Government by MI6 in July last year? Where did they come from? What happened when 1,100 men were taken in and questioned? Six were removed for immigration reasons but not a single terrorist was found. Where did those names come from? Was there another 5,000 names because they were all basically agreed that the Pakistani community was only 25,000 strong? What was the length of the list given to Germany and France and are the names of those people being kept on record by Greece? This is the problem. It is not the problem that we do not all want to tackle terrorism, we are agreed on that, the problem is the control and the use of that information when the person is shown not to have been involved, because otherwise you are ending up in a nightmare society.

**Q73 Viscount Ullswater:** Thank you. You have answered probably most of my question, but I might just repeat it. The European Data Protection Supervisor said that it was not enough for each Member State to have its own data protection legislation, the legislation must be harmonised throughout the EU before data could be exchanged. You have already said that you would agree with that and you have previously given examples of why you thought it ought to be done, but could I suggest that when we look at all the available material that is now being discussed for data protection and the framework agreement, some things are probably useful to discuss as source documents, for instance the Prüm Convention which, in Article VII, has a long, long list of opportunities for people to access

their own information and to change it. In that last example that you gave if somebody feels that their name has been passed from agency to agency and from country to country they should be able to look at that and see what is being held on them. Would you agree that that is a way forward?

*Mr Bunyan:* It is. You have asked a number of related questions and that is fine, but if we take the example of the 5,346 Pakistani people in Greece, only 1100 of those were actually brought in for questioning; that means that some 4,000 odd do not even know they were on a list, so there is one difficulty, you have to know that you were on the list to ask the question. We do not have a very good record, for example, in this country, if you look at the appeals made to our Security Service Tribunal and our Telecommunications Tribunal; not a single complaint has ever been upheld and on telecommunications that is since 1985, to get information out or find out what is going on. In this country, therefore, we do not have a good record for finding out. One of the problems is that if an individual knows they are under surveillance it is one thing. You usually know it because you get arrested and brought in for questioning, and then post hoc you can say what are you holding on me, can you take me off the list? Of course, there are many cases where you do not know you have been under surveillance, you are just on a watch list, and this is a problem. You may have read an article last week about a case in the European Court of Human Rights, the case of four people resident in Sweden and one resident in Denmark, where the court was coming down very, very firmly on a great stack of records of political activity being held by SAPO the Swedish security service on people, going back 20 or 30 years, and the court came down very firmly in terms of the right to keep that, the right of that person to see it and correct it. It is a decision that maybe we need to look at in more detail, because it does establish certain rights of people to see what is being held by the security services, not about an immediate terrorist threat, but is being held on record about their political or trade union activity over a number of years and their employment record. There are a number of issues here, and I notice that Mr Hustinx, in his report on this, does say that where data has not been obtained from the subject or has been obtained without their knowledge, information shall be provided to them no later than the time when the data was first disclosed. I agree with that, but that is not what Article 20 of the draft says. This says if you suspect they have information on it, then you have got certain rights, but if you do not know there is no obligation to tell you that we investigated you, we passed this information all around Europe and perhaps the United States where it was further

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processed, but you have no right to know who has collected information on you, who it has been passed to, what it says, is it accurate. Asylum seekers, of course, come under the current data protection 1995 directive, but how many asylum seekers, most of whom are out of the country if they have been rejected and have cause to complain, ever use data protection to find out? They do not know. There is a real problem here when you look at this data protection proposal; it is all about the security of the information being held, control over the transfer within the European Union, but it is about the self-regulation of state officials and state agencies between themselves. What I do not see here are equal rights for the individual to know what information has been gathered on them when it is disclosed to somebody else or passed the point where it was part of an investigation. With this information floating around, there is a real danger. In 2003 the Council looked at EU databases to determine the number of access points there were to the Schengen Information System—I am not sure I have the figure right, but it was very close to this—and the figure that was produced in the Council report, it even had exclamation marks after it, was that there were at least 123,000 access points in the European Union to the system. That becomes worrying, because at least under the Schengen Information System you had a system whereby if the immigration authorities input information only the immigration authorities had the right of access to it; now of course they are talking about everybody—immigration, customs, police, security services—having the right to this information, so the number of access points to this data is going to increase exponentially. The worrying thing is how are you going to control it because with even the best of systems you are going to have leaks if you do not have proper controls. I am concerned; I do not think we know exactly how many people are going to have access. The United States could not tell us how many agencies are going to have access to data on passenger name lists because they do not know how many agencies do have access to it, or they could not give us a figure. I start to get worried if governments do not even know, so it is the scale of this thing which is concerning. The fundamental thing is that we cannot just have self-regulation of how data is passed from agency to agency, there has to be a right of an individual, providing it does not interfere with an ongoing criminal investigation, to know what is being held and the right to correct that information.

**Q74 Earl of Listowel:** The Budapest Declaration, following the G6, of the European Data Protection authorities states that existing legal instruments applicable in the EU on data protection are indeed

too general to provide effective data protection in the field of law enforcement. You have given two examples so far but can you give further examples or amplify the ones you have given on cases that you are aware of where these protections have already been shown to be insufficient?

*Mr Bunyan:* I should say that we are not into collecting cases but one can give some examples. There is the classic case of the two Welsh football fans, the Boare brothers, going back some way and there are also related cases—I have met the people—in which people were arrested in Gothenburg in 2001, people arrested in Genoa in 2001, people were arrested in Davos. These are cases from Italy, Sweden and Finland where people who were arrested but not charged with anything have established that their names were on a Schengen watch list. We had the famous case of the Greenpeace activist, Stephanie Mills, who tried to come into Belgium and then was refused access to the Schengen area because of a French objection over the *Rainbow Warrior*. There are other worrying examples and it is certainly an area where, although we have not seen the report, the data protection communities themselves were concerned about keeping the names of protesters on watch lists so they could just be stopped at the border. There have been worrying examples in Denmark in the last year where they were asked to check on information passed outside Denmark under the SIRENE system—in other words was the information accurate under the SIS? There was a worrying number of cases when they looked back on them where they found the information was inaccurate, in some cases up to five or 10 per cent was inaccurate—the address had not been changed, the person had died, all kinds of things had happened. It is on our website and I thought it was a great example where a small country with a small number of exchanges showed a worrying level of inaccuracy in the data actually being held, especially if we can access data automatically as it were, without it being checked. Somebody wants this piece of information; we had better check its accuracy before we pass it over. This study shows that in fact in Denmark in a small number of cases there was an unacceptable degree of inaccuracy in the data being held, and this was even without the individuals themselves being consulted about whether the data was accurate, it was clearly inaccurate. Of course, you can get things that are disproportionate; another thing that we did was to show people who were excluded from the European Union because they had been rejected, and this is used by some countries to a high degree and some countries to a low degree, so you can get Italy putting 180,000 and another country ten. Then we have the case still to be resolved—I expect it will be resolved now, and Switzerland was the worst offender, we suspect because of Davos—of putting

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EU citizens onto the SIS to be put under surveillance, which of course is utterly against EU law. That I think has been recognised now and will be resolved in the discussions. The real problem, as I say, is if you do not know, but when you are stopped at a border and somebody looks up a list then you know, but you do not know sometimes where it is from. The Boare brothers had the extraordinary case where they knew they were on the Belgian list and it turned out that they were on the NCIS as it was then here. They were on the Belgian list and Belgium refused to remove them, so the Commission had to intervene, and then they discovered they were on a Foreign Office list of football hooligans which was held in Belgium, so they had to follow a whole track of where the information had passed to get themselves removed from each list, which took them two or three years.

**Earl of Listowel:** That is helpful, thank you.

**Chairman:** Lord Dubs, you may feel that the next question has been answered.

**Q75 Lord Dubs:** If I may just ask a bit of it, the issue of biometrics on ID cards is a very contentious one, as we saw when the Identity Cards Bill was passing through Parliament here. On the other hand, if you take the European situation that we have been talking about you have the Heiligendamm Conclusions, you have the JHA Council and the G6 ministers all supporting the idea of biometric data on identity cards. The thing I am interested in is what involvement should there be by national Parliaments in such decisions because we have not talked about that, we have talked about the European situation.

*Mr Bunyan:* One has to put this in context. The idea of there being biometrics on EU identity cards was a proposal by this Government at the start of its Presidency, which one might think was a slight coincidence given the problems it was having here getting through the ID Cards Bill with biometrics on it; in other words, they were saying we are doing it, we think everybody in Europe should do it. I am sorry to say this, but this was the timing, it was dated in June of last year just before they came into the Presidency. It has of course run into trouble because there are objections to this, some because they do remember Article 18.3 of the Nice Treaty which said that this kind of thing could not be decided at EU level and partly because they said this is a national decision and not a European decision. At the moment the proposal is actually on hold, although there is a nice little note in one of the minutes I saw recently: "As it is on hold the UK has offered to keep a record of what each country is doing in order to help the proposal at national level," but the proposal does not look like it is a runner at the moment. That does give a problem and the problem is that of course within the Schengen area the ID card is used to travel around, the passport is something which we use.

**Q76 Lord Dubs:** The only issue that I was actually concerned about was the part that the national Parliament should play in this decision-making process, I do appreciate the other points, but I think you said the answer is yes.

*Mr Bunyan:* I think the answer is yes. The direction that some Member States seem to be taking is that if there is going to be a decision on it, it should be taken at national level and should not be decided at EU level. Obviously, that is right, that is absolutely right.

**Q77 Lord Marlesford:** This is really a co-ordination question: do you think the police should have access to information on Eurodac and VIS given that they have made an input to both data banks, one being responsible for visa information and the other being responsible for asylum decisions?

*Mr Bunyan:* I have thought about this and they are different. Eurodac and VIS have different bases; Eurodac is there for the collection of fingerprints from asylum applicants, it comes through the Immigration Service which collects them and then puts them on Eurodac. The people who run Eurodac up until now have always been very proud that they are running a very efficient system, in other words they have always been very proud that the data is being properly stored, is only accessible for the purpose for which it was collected, ie in relation to judging whether people have a right to asylum, and I am not at all sure that they are very happy at the moment that the Eurodac system which they wrote the proposal for, set up and run is now to be, under the principle of availability, available for all purposes. In that case it is collected by the Immigration Service; it does not come from the police. The Visa Information System is slightly more complex because, obviously, that data is collected in the third country the person who applies for the visa might have been, fingerprints will be taken at that point and put on a central database and before the visa is issued, two things theoretically will happen. They will be checked with the police and security services within the European Union and also with the police and security services in the country of origin to say can they come in or can they not come in—we are talking about watch lists in a sense. It is therefore a little more complicated, I do not think you should put the two in the same bracket and all the same questions arise over the control of that data and who should have access for what purpose. We could all agree that we want to exclude terrorists and really heavy, mafia-organised criminals, but are we actually saying that if a person has committed a minor crime in the third country that should also be grounds for saying they should not get a visa? In other words, we have got to have some standards here about how you apply that and that would, in terms, define who should have access to it and for what purpose. If

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somebody has got a spent sentence 10 years ago, should that be grounds for saying they could not visit the European Union, and I think we have to have some standards there so that we are being very strict and very narrow and say that of course if people are going to come and endanger the lives and the well-being of people in the European Union they should not be allowed to come in, but 99.9 per cent of people should be allowed to come in.

**Q78 Lord Marlesford:** My Lord Chairman, may I ask a question which deeply concerns me which has been referred to, and that is that all of what we have been talking about—data protection and availability of data for fighting crime, terrorism and all the rest of it—is based on assuming some homogeneity between member countries. Some of us believe, and I believe, that there is a huge difference in the integrity of the judicial systems of certain countries and the sort of use or misuse which might be made for their own data records. I am very worried at the idea of this universal, pan-EU use being allowed because I just worry that it could be subject to abuse at a later point.

**Mr Bunyan:** I do not feel competent to answer a question about the difference or the reliability or the corruption or whatever of other judicial authorities. Earlier I signalled that the real problem is how you control access when you have 150,000 or 200,000 access points when you have collected all the fingerprints of everybody in the European Union, when you have collected all the data on their telephone communications and when, under the EU Passenger Name Record (PNR) you collect the data of all their movements and you have this mountain of information. I am very concerned that you cannot control the use of that properly, but of course it goes

back to what standards you set for who should have access to it for what purpose. We must remember that not even Europol is not exempt—a little while ago an official in Europol was discovered to have been taking out files and passing over information to organised criminal groups, so even in the most perfect organisation there have been exceptions, worrying exceptions. There are exceptions in relation to organised crime and terrorism, therefore, but there are the more general questions which are not just going to affect the organised criminals and the terrorists but are going to affect all of us if we do not watch out and set limits on how this information is gathered and who should have access to it. The real question again is if you collect the information for one purpose under data protection you should not be using it for another purpose, but that principle seems to have disappeared and having collected it for one purpose you should not only not use it for another purpose, you should not pass it on to a third party, whether in the European Union or outside, to be reprocessed and added to for yet another purpose. It seems that the principle of data protection is really suffering at the hands of the principle of availability and I do not personally think they can be reconciled, not the way they are currently being discussed.

**Chairman:** Thank you very much indeed, you have been very robust in the way you have answered our questions and you have given us a lot to think about. If anything occurs to you in the next 10 days that is burning you and you think you should have told us, do please let us have it. As I said earlier, we will show you a transcript of the morning's proceedings and you can make any alterations that you feel necessary. Thank you very much again for your help this morning.

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WEDNESDAY 28 JUNE 2006

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Present	Avebury, L Dubs, L Henig, B Listowel, E	Marlesford, L Ullswater, V Wright of Richmond, L (Chairman)
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**Examination of Witnesses**

Witnesses: JOAN RYAN, a Member of the House of Commons, Parliamentary Under-Secretary of State, Home Office and MR PETER STORR, Director, International Directorate, Home Office, examined

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**Q79 Chairman:** Minister, thank you very much for coming. As you know, this is part of an inquiry into the Heiligendamm meeting and I am very grateful to you for bringing Peter Storr with you; I hope you will feel free whenever you want to ask him to take our questions, if that is what you want to do. We are particularly glad to welcome you; as you know, the Home Secretary was rather reluctant to give evidence until after the next G6 meeting, but that would not have suited our timetable at all, so it is very good to have you here, and I hope you have had time to master some of the answers to the questions. The meeting is on the record and is being broadcast on the web. You will be, in due course, sent a transcript to check or have checked if you want. I wonder if we could start with the first question on the hymn sheet, which is that we understand that the G6 meetings (previously called G5 meetings before Poland joined) were an initiative of the British and French Governments. How much significance or importance does the British Government attach to the G6 meetings or meetings of this sort? Can you give us any examples of current EU policy that originated in a meeting of either the G6 or the G5? Perhaps I could couple that with the second question which is could you tell us a little about the process by which G6 ministers reach conclusions; are these adopted by unanimity or by any other method?

*Joan Ryan:* Thank you, My Lord Chairman, and thank you for welcoming me to this Committee. I am very pleased to be here and I will endeavour to do my very best to answer your questions with some clarity.

**Q80 Chairman:** Can I just interrupt you to say that the acoustics in this room are terrible; please can I ask you and everybody else wishing to speak to speak up?

*Joan Ryan:* Can I just reiterate that the Home Secretary sends his apologies and is very keen to meet with the Committee when he has participated in a G6 meeting; however, I am very pleased to be here. The significance of G6 is where we started, it was previously G5 and now with Poland joining it becomes the G6. It is a group that, from the Government's point of view, is a very welcome opportunity to meet with a smaller number of our European Union partners to have informal

discussions, but they do not have decision-making authority and therefore allow the sort of openness and flexibility where members of the G6 can exchange views and form opinions and receive expert advice where they feel they need it, and to pursue issues of common interest. We see it as an important way of relating to the five other members of the G6 and an important way of expressing and developing our own views. However, it is informal, it is entirely on the basis of co-operation and, as I have said, it does not have a decision-making ability in relation to the rest of the EU or in relation to individual Member States.

**Q81 Chairman:** Do you think that reflects the view of the other members of the G6, because the German statement that came out of the meeting rather implied that you had taken decisions and it was up to others to join in them if they wanted. I do not know if you want Peter Storr to comment on that.

*Joan Ryan:* I will ask Peter to come in in a moment, but what I would say is that G6 can take a view on behalf of itself but it cannot take a decision that is in any way binding on the European Union. It is able to take a view where all six members agree, and if it reaches a conclusion we would expect it to make that conclusion clear to us in public, which has been its practice, that its conclusions are made public. You asked about unanimity, and what happens with the G6 is that where they have agreement then they will have a conclusion, but I do not think it has this formal notion that perhaps decision-making at the EU has where unanimity or not is reached and then there is an outcome because it is much more informal than that. Peter, do you want to comment?

*Mr Storr:* If I may just make a couple of points, the first point I would want to make is that the G6 deals with quite a few issues other than what is on the future agenda of JHA councils or European Union issues that might be coming up in the future. It involves discussions between ministers about things like better co-operation between law enforcement authorities, whether that is at the level of all six Member States or two or three within the G6 grouping; better co-operation between immigration authorities, so the point is that it is not

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just or maybe not even primarily a meeting shaped around the EU agenda, it is more shaped around a bilateral co-operation agenda than it is an EU agenda.

**Q82 Viscount Ullswater:** I was interested in what you said that the conclusions should be made public because that would indicate to me that perhaps the Home Office should publish the conclusions or even at least a press notice, but I note from the written evidence we had from the Home Office that the conclusions were not published and therefore no press notice was issued. I query the amount of openness that there is about reaching these conclusions in these small groups.

*Joan Ryan:* After the last meeting the normal practice was followed and the conclusions were published. It was the German Presidency and they published the conclusions as is the norm, so there was no deviation from the normal practice. It would be a matter for the country in the chair so to speak to publish the conclusions, they did so and they are available.

**Q83 Lord Marlesford:** If I may ask a supplementary really following up on the law and order point. I really would like to get a better feel for the mechanics of these things; the G6 meetings do not necessarily cover Home Office affairs, they presumably do not necessarily, as you said, cover just EU affairs. Can you give us some feel as to how many G6 meetings there are in a year and how many are on Home Office things, and also are these ministerial meetings of the G6 normally preceded by a meeting of the same countries at official level?

*Joan Ryan:* Yes, they are normally preceded by a meeting of officials which would be to facilitate the point at which the ministers come together so that the meeting has a start place and some direction. They would happen usually about every six months.

**Q84 Lord Marlesford:** When you say they happen every six months that is two a year, but would those necessarily be concerned with Home Office matters or might they have an agenda which was wider than that?

*Joan Ryan:* My understanding is that it is to do with issues for ministers of the interior so it is home affairs.

**Q85 Lord Marlesford:** Are you saying that the G6 countries only meet, as it were, as a ministerial meeting of interior ministers and not, for example, in other areas of government?

*Joan Ryan:* Yes.

**Q86 Lord Marlesford:** Really?

*Joan Ryan:* Yes.

**Q87 Lord Marlesford:** When were these initiated?

*Joan Ryan:* It was the UK and France and it was when David Blunkett was Home Secretary and Mr Sarkozy, so France and the UK in 2003 decided that this would be a useful initiative and then other countries decided that they too would be interested in that initiative. Initially, therefore, it was the five countries—France, UK, Italy, Spain and Germany—and then in 2005 Poland joined. It is entirely a matter of their choice that they come together in that way and it is entirely about home affairs issues.

**Q88 Lord Avebury:** You said it was important that the conclusions be made public and then in answer to another question you said that the Germans had released a statement. Where does the ordinary citizen in the non-host G6 countries find out about these meetings; does he have to look on a German website, does he have to read German?

*Joan Ryan:* I might ask Peter to come in on that in a moment, but I was going to suggest to the Committee that we could offer to publish our own G6 conclusions after our October meeting on the Home Office website, if that might be a useful thing to do.

**Q89 Lord Avebury:** Then the same thing goes the other way about, does it not? How do the Poles know about it?

*Joan Ryan:* They have their own websites and each ministerial department in each country can make a decision, if they want to, that they will publish these minutes.

**Q90 Lord Avebury:** You do not think that it would be a good idea, for example, for the G6, since they are having these meetings at regular intervals, to have their own website, so that it could appear in every language of the G6?

*Joan Ryan:* These are informal meetings and the use of them is that they are—

**Q91 Lord Avebury:** It was you who said the public are entitled to know about them.

*Joan Ryan:* It is possible for them to know about them because the conclusions are published, but as to what language they are in and how accessible they are, perhaps Peter could help us there. I am not entirely sure how accessible they are.

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**Q92 Chairman:** Minister, I ought to let you know that I think it was entirely through the agency of Statewatch that we actually learned what the conclusions of the meeting were. They put that on the record.

*Joan Ryan:* The fact that you have come across them by accident does not mean that they are being in some way secreted away. It is important that they are not in some way being withheld from people or hidden away, but because it is an informal group and it does not have a decision-making ability, it is important, just like bilaterals and multilaterals that ministers can meet and talk to each other and develop their thinking, without it being constrained by a formal decision-making process. It is important that they have that opportunity, and that is why, with no decision-making ability, the G6 is not therefore accountable to a scrutiny committee in this way. Obviously, anything with a decision-making ability is and should be, but there is a need for both opportunities for ministers to develop relationships that lead to a better understanding and exploration of common positions in an informal way, but also we have the formal decision-making process.

**Q93 Baroness Henig:** I hear exactly what you are saying, and the issue that was put to us three weeks ago was the issue of accountability, that the public has a right for these meetings to be accountable. Therefore, the question I wanted to put perhaps to the director was ought not the Home Office really to think in terms of a communication strategy around these meetings? In other words, what is he trying to achieve with them and what should the communication strategy be to bridge that gap, because there are people out there who feel that this is actually lacking in accountability. There is a perception that that needs addressing; how would you answer that?

*Joan Ryan:* What I have just said really, that I do not think there is an accountability issue, but that is not to say either that there is any attempt to prevent anybody knowing what the conclusions are. It is an informal grouping and there are many others, this is not unusual, there are many others that the UK is not a part of, and if any other Member State was interested in the conclusions, or felt that it was leading to an issue that would affect them, or was concerned in any way and wanted to participate, there would be no attempt by the G6 to exclude them, they would be invited to have discussions. It is an entirely open and fluid arrangement.

**Q94 Lord Avebury:** How on earth can they make representations if they do not know what your agenda is?

*Joan Ryan:* They do know the conclusions, you will find—

**Q95 Lord Avebury:** They know the conclusions but they do not know beforehand and it will be too late, once you have reached a conclusion, for another Member State who is not in the G6 to start objecting because you have already made the decision.

*Joan Ryan:* We could be making the mistake of thinking that a conclusion by this group is in some way binding or a decision; it is not. When the conclusion is published you will find that other home affairs interior ministers from other Member States know very well that these conclusions are there and will, I am sure, be interested and will and do make representations. It is a conclusion therefore and not a decision, and it is a very open process. There are other groups that I know your Lordships are aware of such as Benelux, the Salzburg group, and one that has recently formed that Baroness Ashton talked about, the Common Law Club, which we are a member of. So it is not at all unusual for these groups to exist and they are running alongside all the normal multilateral and bilateral talks that we would have, that ministers would have, that are not subject to the kind of accountability procedures that the committee is talking about.

**Chairman:** Minister, I should make it clear that it is not any part of our agenda to criticise the formation of small groups; they are becoming increasingly common in the European Union and in fact before your arrival Lord Marlesford was telling us that at the European Select Committee, which is considering the question of enlargement, the point was made last night—do you want to add to this, Lord Marlesford?—that with enlargement and further enlargement there is likely to be even more of these small groups. We are not criticising the formation of small groups, what we want to scrutinise is exactly what happened at this small group. Perhaps we should move on to Baroness Henig's other question.

**Q96 Baroness Henig:** I am not objecting; I think that the way that Europe is going it is likely to get more and more of these things, but I do think the Home Office needs to think about, in terms of a communication strategy, what needs to be communicated to whom and where, that was really what I was trying to raise with my question. I will go on to the other one which is linked, because the conclusions of the Heiligendamm meeting state that other Member States would be fully informed, and in fact you just said this, that other States could see the things that had been reached and could join at that point. How do you meet the criticism that the way the G6 operates actually rides roughshod over the interests of the smaller or medium-sized Member States and the issue is really then what opportunities do these Member States have to differ if they do not like what has been decided? What is the process by

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which they are then drawn into G6 proposals and can join in these wider policy developments?

*Joan Ryan:* First of all, I do not think there would be any desire or wish amongst the G6 to ride roughshod over small Member States, that is certainly not the purpose of the G6, which is entirely to exchange views, develop views and share information and find consent just amongst themselves, so to create a lack of consensus or a problem for other Member States would be very much against the grain of the whole initiative. If work or initiatives that originate in the G6 evolve into EU policy, then EU Member States will have exactly the same level of participation as the G6 States.

**Q97 *Baroness Henig:*** Is that realistic? If the six largest States come together and they all actually agree on something, and they say we have agreed on this, this and this, what leverage then have the other States to come and try and change them?

*Joan Ryan:* It would then have to go through the normal decision-making process if that was going to happen, and this would be no different than EU Member States meeting in bilaterals or multilaterals, this is how ministers meet and how they decide the agenda that they wish to take forward. It has no greater significance than that, we would say.

**Q98 *Baroness Henig:*** But it is not, is it, if six get together that is a bit different from a bilateral relationship, that is quite a significant number of States getting together to discuss a set of proposals or an agenda.

*Joan Ryan:* I accept that there are six members who wish to talk to each other in that group of six, but I would say that it was a strength rather than it being entirely bilaterals or multilaterals to have the six in an on-going situation where they can talk informally. It has proven to be a strength with some of the issues that they have been able to discuss and bring forward, especially in relation to law enforcement which has such an international flavour to it now and a need for international and certainly European-wide measures in terms of organised crime. It is a strength, but if any smaller State had a particular interest they would not be excluded; I do not think a G6 member would exclude a smaller State from participation and, of course, they do have bilaterals and multilaterals with smaller States. The G6 members talk with smaller States and the smaller States have some of their own organisations as well and there are regional groupings. Although this is six members coming together, we could be in danger of elevating it to a kind of decision-making level of influence that might be beyond what it is because it has to have agreement amongst itself, and then any decision it wished to make would be subject to all the normal

EU decision-making processes which are established for inclusion as opposed to exclusion.

**Q99 *Chairman:*** To go back to Lord Avebury's point, it is a little difficult for the other States to know what the G6 are actually going to discuss.

*Joan Ryan:* Yes, but they would not necessarily know what was going to be discussed in a bilateral or a multilateral because these are informal groupings, and it is an opportunity for these States to explore together areas of common interest in relation to what can be sensitive matters. As I say, they cannot take that any further with it going through the whole of the EU way of making decisions, which would include all other States, and there is nothing to stop any other group of States forming a grouping and it may be one that we might want to join.

**Q100 *Chairman:*** If you would not mind, I wonder whether I could ask Peter Storr, are you aware of any questions from other Member States to us about what went on at the meeting? Have you ever detected any interest on the part of other Member States?

*Mr Storr:* There is a fair amount of interest on the part of one or two other Member States and it is fair to say that one or two of them are looking at the G6 to see what it is that it is doing, but equally we would say to those Member States that we do not, for example, see the agenda for the Benelux meetings or the Baltic Sea taskforce or the Nordic Co-operation Group in advance of meetings, nor indeed do we see their conclusions. For our part we accept that as being a reflection of the fact that those groupings are informal get-togethers, quite different in character from the formal meetings of the European Union. Perhaps I could just expand on that by saying that I do think that the point that was referred to earlier about the effect of enlargement on the way in which the EU does business, not only around the negotiating table but in the margins of the meetings is a very valid point. Enlargement has changed the dynamics of negotiation and the dynamics of consultation, so you do find countries getting together, either in groupings or consulting bilaterally or in groups before meetings. For example, during our presidency, far more so than in previous UK presidencies, we visited other countries, big and small, we covered practically every country in the European Union to explain what we were trying to do. We consulted with the European Parliament on a basis that probably we would not have done in a Europe of 12 or 15, simply because that process of consultation is an extremely important way of introducing what you want to achieve during your presidency early, and influencing and persuading in advance of the meetings. Groupings like the ones that we are talking about perhaps have to be seen in that context.

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**Q101 Viscount Ullswater:** Minister, perhaps I could get down to one specific point, which was that in the conclusions the ministers decided that police access to Eurodac was important. I would like to ask you whether there were some pressing reasons why they felt that police access to Eurodac was important and what would be the legal basis under EU law for access to Eurodac. If there is none—which I suggest indeed there is not currently—would there be a proposal coming forward to the Commission for a change in EU law in order to make it possible for the law enforcement agencies to have access to Eurodac?

*Joan Ryan:* The Eurodac database is essentially a database around immigration and asylum issues and therefore sits within the first pillar, whereas law enforcement issues, joint home affairs issues as well, sit within the third pillar. You are absolutely right that at the present time the Eurodac database is not accessible for law enforcement issues; however, we do think that information held on that database would be very useful for law enforcement issues and we know that organised crime issues and various law enforcement issues may well benefit in terms of our ability to bring people to justice and protect our population, if the police had such access. However, to have that access we need the Data Protection Framework Decision to allow issues that come under pillar three, i.e. law enforcement, to access the database that is related to issues that are dealt with under pillar one.

**Q102 Lord Dubs:** Still with Eurodac, how would the 10-year maximum conservation period of personal data in Eurodac be complied with if the police were also to have access to this data?

*Joan Ryan:* That is an important question in terms of data protection and as the Data Protection Framework Decision is being formulated that would have to include consideration of how that compliance is achieved, because under Eurodac as you state there is the ten-year maximum conservation period of personal data and there might be a situation where the police have accessed the information, and whilst they have got the information and are seeking to prosecute or whatever the ten-year period could come to an end; nobody would then think it was sensible that if that would provide evidence for a prosecution it would have to be destroyed. All these things would therefore have to be considered so that such information was usable and the decision as to whether such information could continue beyond that ten-year life span in certain circumstances would have to be something that is considered within that Data Protection Framework Decision. It is a very important point within that.

**Q103 Lord Dubs:** We are concerned that information collected for one purpose is then used for another without any explicit purpose for making that open,

transparent and agreed. If we take this within the UK itself, what are the conditions under which any authority can have access to fingerprint or biometric data of another authority and are such data held centrally?

*Joan Ryan:* The fingerprints are held centrally on IDENT1<sup>1</sup> and DNA profiles are held centrally in the DNA database. Individual police forces can access the fingerprint database through their own terminals but in terms of the DNA database they have to access it through the DNA database custodian, there is not automatic access in that sense. They can access fingerprints, IDENT1, in that sense.

**Q104 Lord Dubs:** That is the police; are there any other bodies within the UK that can access this data or are you simply saying it is only the police?

*Joan Ryan:* Thinking about IDENT1 and fingerprints, if there was a request from abroad for instance, that would be channelled through Interpol. Access is sometimes the wrong word, other bodies who may have a purpose for accessing a database can apply to do so, but obviously that would be subject to the Data Protection Act which would apply, plus the regulations around any particular database that are in force. However, access implies somehow that somebody could access and browse through the information, but there is no unfettered access in that way.

**Q105 Lord Marlesford:** Can you describe a little bit of the way in which you are going to seek full and effective access to the Visa Information System? How is it actually going to work, what exactly do you want to know and who will have access?

*Joan Ryan:* We do not have any access to the Visa Information System because we are not a Schengen state. It would potentially be very useful to have access, but we do not actually have that access. We are seeking access to SIS II, the Schengen Information System 2, and we have negotiated that. We are not connected at the moment, we will be connected, I hope, in 2009 and that will give us an ability to share information around law enforcement issues through the Schengen Information System, but we do not have access to the Visa Information System and will not have.

**Q106 Chairman:** It was one of the conclusions of the meeting, was it not?

*Joan Ryan:* We would like access, yes.

**Q107 Chairman:** “Authorities responsible for internal security of participating states must have full and effective access.”

*Joan Ryan:* Yes, and we would very much like that to take place.

<sup>1</sup> UK Police Fingerprint Database.

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**Q108 Lord Marlesford:** Who is objecting to you having access, which countries are objecting?

*Mr Storr:* As far as the Visa Information System is concerned the opinion of the Council Legal Service is that that is a Schengen building measure and by virtue of that legal opinion, as the United Kingdom is not a full member of Schengen the opinion as it stands at the moment has the effect of denying access of the UK to the Visa Information System. As a principle reflected in the G6 conclusions we take the view that it would be a desirable thing for law enforcement authorities generally throughout Europe to have access to this system, because of the benefits which access to that information would have in tackling organised crime, including organised crime of a trans-national nature.

**Q109 Lord Marlesford:** What needs to be done to get the access and what is the timescale to do it?

*Joan Ryan:* In order to have access obviously there are discussions that we will continue to take forward and we would need to change the opinion of the Council Legal Service and convince all of the Member States who are part of that Schengen agreement that we should have that access. The other option is to join Schengen, so there are a number of ways in which we could take it forward but we are not proposing to join Schengen at this stage.

**Q110 Lord Marlesford:** Schengen 2 presumably, when it takes over from the current Schengen, could provide for that access, am I correct?

*Mr Storr:* To answer that question I would say that we will join Schengen 2 on the basis of having access only to those bits of the Schengen Information System which relate to law enforcement issues, not to the full Schengen Information System, because to join on that basis is consistent with the Government's overall policy towards Schengen, which is not one of full membership because of the implications that full membership would have for control of borders.

**Q111 Chairman:** It would not give us access to either visa information or asylum information?

*Mr Storr:* The situation at present, as I understand it, is that the Council Legal Service has opined on the Visa Information System that it is Schengen information, and therefore the UK and Ireland, because of the nature of their relationship to Schengen, are not permitted to participate in the Visa Information System.

**Q112 Chairman:** This would in a sense be a self-denying ordinance, would it? Are you saying that the British Government does not want to have Schengen information on the visa system or the asylum system?

*Joan Ryan:* No, we would very much like to have that; however, we are not going to become a full Schengen state because of the implications in terms of border controls, for instance.

**Q113 Lord Marlesford:** I totally understand that, but that is not really the point, if I may say so. The new revision of Schengen which is being called Schengen 2, that seems the obvious moment to make available to countries which do not wish to be full members of Schengen this information. What is the problem in achieving that objective?

*Joan Ryan:* We want to achieve that objective, I do not think we have a difficulty with that.

**Q114 Lord Marlesford:** Are you trying to achieve that?

*Joan Ryan:* We certainly are putting forward our view, as we noted in the conclusions, that we would like access to the Visa Information System.

**Q115 Lord Marlesford:** To get back to my question, which countries are objecting?

*Mr Storr:* May I just say that the revision of the Schengen Information System is, by nature, a technological update and that technological update is still governed by the same rules that apply to the Schengen Information System 1, so I do not think there is a case of the UK Government, or indeed the Irish Government, being able to say to the European Commission or the European Union as a whole, now that you are updating the system can we join, but we are not going to be full members of Schengen. They would see that as somebody being outside the club and trying to change the rules, so I do not think there is a realistic prospect of joining the Schengen Information System 2 on a different basis than we would have joined Schengen Information System 1 had there been a possibility to do,

**Chairman:** This is a general subject to which this Committee will want to return in a subsequent inquiry, but I think we ought to get back to Heiligendamm.

**Q116 Lord Avebury:** I do not fully understand that reply because if you have got the unanimous support of the G6 what you are implying is that somebody, not a G6 member, would object to a change in the rules that would allow us access to this information while not becoming full members of the Schengen system. Within your knowledge are there other Member States amongst the non-G6 who would formally object to such a change in the rules of the Schengen system?

*Joan Ryan:* I do not think that is where we are in the discussions. The situation is that other Member States can understand our desire to participate and have access to the Visa Information System, but if the

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view is that this is a Schengen building measure we are excluded from that. Where we are is that others understand our desire to participate in the VIS and we are in an on-going discussion situation, as opposed to having some kind of stand-off with any particular other Member States. Obviously, Member States who are full Schengen States have regard to what the Council Legal Services says about Schengen building measures, and they would no doubt prefer that we would sign up to the whole Schengen State agreement. I do not think there is a secret that some countries feel that more strongly than others, but I do not think it would be fair to say this State or that State, it is not a completely polarised position. It is more fluid and it is open to discussion and it is evident that the G6 is very helpful and important in us being able to put our case on issues like this that clearly are very significant in terms of movement of people, law enforcement issues and protection issues, and argue our case. We will continue to do that and, hopefully, reach a situation where there is very strong support and we can perhaps also persuade the Council Legal Services of our view of that.

**Q117 Lord Marlesford:** It is really on the Data Protection Framework Decision; do you still believe that to be important in terms of covering the availability of data faster for law enforcement purposes?

*Joan Ryan:* You will obviously be aware from previous evidence that this is not something that the Home Office leads on, but yes it is a very important issue and we have very good national legislation in terms of data protection and we would be supportive of an overarching data protection strategy for European Union members; we feel that that would be a good thing, it would be advantageous, it would offer protection across the European Union for individuals, would offer common standards, it would enhance the position in a general sense and it is something where we already have a very high standard of protection and it would not in any way be problematic for us.

**Q118 Chairman:** Minister, I do not suppose I need to quote this to you, but it is one paragraph of the Heiligendamm conclusions: “The ministers underscored that the rapid implementation of the availability principle must not depend on the adoption of a framework decision on data protection in the third pillar.” That is actually very remarkably different from what Mr Goggins told us in January, and I just wondered how this change came about?

*Joan Ryan:* I can give you the view that I think is very much the Home Office view, the Department of Constitutional Affairs view and the Government view, and fortunately all three are in agreement. Both the principle of availability and the Data Protection

Framework Decision are priorities as far as we and the Government are concerned; we wish to see both move forward quickly. In terms of the principle of availability, that obviously is a Home Office lead and is directly about law enforcement, and if we or another Member State had information that would assist an investigation or prosecution in another Member State we firmly believe that that information should be able to be made available in the interests of justice and being able to deal with more important issues effectively and quickly. If that were to move ahead quickly, or if the Data Protection Framework Decision was going at a very, very slow pace, and was therefore going to prove quite a hold-up for the principle of availability and, therefore, current law issues as I have mentioned, we would not want to have the principle of availability issue slowed down, for obvious reasons—I think we probably all agree that justice and bringing people to justice is very important in terms of the protection that affords our community, so we would not want to see that slowed in any way. That is why that statement was made; what we have said is, should the principle of availability move forward at a faster pace we would want to have within that interim data protection regulations that would, once the Data Protection Framework Decision was completed, then come under that umbrella. That is the way in which we view it, it is not that in some ways we do not think the Data Protection Framework Decision is as important or that they are inter-connected—one would be an overarching strategy within which the other would operate. We think both of those things, but we do not want one to slow down the other and for criminals or others to get away with it.

**Q119 Chairman:** This may be a question for the DCA rather than the Home Office but is the British Government doing anything so far as you know to speed up the data protection decision?

*Joan Ryan:* The fact that it was an issue for the G6 is quite important, it is an issue which we know that Finland, which is in the chair next, is very keen to press ahead with and we are strongly supporting their wish to press ahead.

*Mr Storr:* From my own and my colleagues’ consultations with the DCA at officials level, they are doing quite a lot of lobbying in the margins of the EU negotiations to put forward the UK’s view to try to seek ways through any obstacles to reaching a conclusion, with a view to reaching a conclusion as quickly as possible.

**Chairman:** Thank you very much. Earl of Listowel.

**Q120 Earl of Listowel:** Thank you, My Lord Chairman. Minister, it was helpful to hear how closely the DCA, your department and the other departments involved are working in this area; could

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you clarify a little bit further that process? Baroness Ashton, in her evidence to us, told us that the Home Secretary's brief at Heiligendamm included, as you say, the DCA's views on data protection which is their responsibility. Was the decision not to proceed with the two framework decisions together consistent with the DCA briefing prior to the meeting?

*Joan Ryan:* I do not think there is any difference between the DCA view and the Home Office view from my understanding of what has happened previously and where we are now. I say that from a position of six weeks in post, but that is my very clear understanding from all that I have read and the briefings I have had, that we are in agreement on these issues, on one of which as you say the DCA leads and on the other home affairs leads. We have the same approach on that and we have our officials meet regularly to discuss that and other issues of joint interest and common concern.

**Q121 Earl of Listowel:** Thank you. In his evidence to us Mr Hustinx, the European Data Protection Supervisor, said that it was not enough for each Member State to have its own data protection legislation—and you have said how very good in your view ours is, and that is recognised generally—the legislation must be harmonised through the European Union before data could be exchanged, and you have talked about an overarching strategy for the European Union. What he is saying is that it is more than a strategy, it actually needs to be legislation to assure us all of sharing this information confidently. Would you agree with his view of the matter?

*Joan Ryan:* The Data Protection Framework Decision as it comes forward would cover those points of both strategy and for more detail within that for the way in which Member States would operate together in relation to access to each other's data protection.

**Q122 Earl of Listowel:** He was just emphasising the need for them to be absolutely moving together at the same time, rather than for one to precede the other, but you have indicated the difficulties already in what you said about achieving that aim.

*Joan Ryan:* We hope that obviously that will move forward and, as I said, we will be giving very strong support to Finland in its attempt to move things forward. We do already exchange information, as I have said, through Europol and Interpol, but obviously there is scope for far more and as there are more of these databases and they are more comprehensive as technology moves on apace—there are more biometrics—the scope is greater. All these things mean that the Data Protection Framework Decision is very important and we would not disagree at all with what Mr Hustinx said about the need to be

certain that that protection is in place. The reason I have referred to our own legislation is because that demonstrates in practice the strength of our feelings.

**Q123 Lord Avebury:** You have already said in effect that if the Data Protection Framework Decision is not ready by the time you are set to implement the principle of availability, you will incorporate the necessary data protection provisions within the instrument regarding availability, so that means you do not agree with Mr Hustinx that the Data Protection Framework Decision has to be implemented in advance of any decisions on availability. The answer is you do not agree with that, and although you gave Lord Listowel a fairly comprehensive answer, you did not make that absolutely plain.

*Joan Ryan:* As I said, we would like both the principle of availability and the Data Protection Framework Decision, both are priorities as far as we are concerned.

**Q124 Lord Avebury:** But if you cannot get them both then you will have a fallback position of incorporating the equivalent data protection measures within the availability directive.

*Joan Ryan:* As an interim measure in the interests of prosecuting those engaged in criminal activities.

**Q125 Lord Avebury:** Even though that may get you into trouble because ultimately the Data Protection Framework Decision may be more comprehensive and may contain further measures and protections which are not in those that you have incorporated in the availability decision.

*Joan Ryan:* I understand the point but what I would say is more important for me and for the Government is that whilst the European Union works its way towards agreement, which I think it will, on the Data Protection Framework Decision, that should not be a means by which those engaged in criminal activity evade detection and prosecution, or the way in which that would offer also no comfort to the victims of such crime, and we are talking about some very serious crimes, not least human trafficking.

**Lord Avebury:** I am sure you will consider very carefully all the advice you have been given by the European Data Protection Supervisor before you decide to reject that particular piece of advice, but can I also ask you whether you have reflected on his comment that the reason why the Data Protection Framework Decision is moving along so slowly is because national delegations tend to come from law enforcement areas which largely prefer to ignore data protection. I am asking you from the hymn sheet whether you think that criticism is fair, but I would also like to ask you in addition to that what data

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protection experts you take with you to the discussions of the G6?

**Q126 Chairman:** Minister, it may be unfair of me as chairman to ask you to reply very briefly to this question, but I am afraid we are running up against time problems.

*Joan Ryan:* National delegations in the working group are mixed, some are from ministries for the interior and some are from ministries for justice, but all Member States are bound by the data protection directive and the European Convention on Human Rights, so no officials, including those from law enforcement areas, can ignore data protection at their own will. At the EU level negotiations necessarily take time, because we have different police and judicial organisational structures and different views within Member States. Inevitably, as with many things, when a large number of states are trying to work together, although that is laudable, it is difficult and will take time. Like ourselves there are national delegations who have got very good domestic legislation on data protection; I am not sure that I think there are those who wish to ignore data protection, there are some difficulties that are understandable in getting to the point where we can reach agreement, and it is not just people being a bit bloody-minded or not willing to sign up, it is to do with the differences perhaps in their own police and judicial structures as much as a difference in view.

**Q127 Chairman:** Minister, can I just put one very last question to you, and I am not sure that you have had notice of this, just to ask you about the Prüm Convention? I do not know whether either of you is ready to answer this, but we really wanted to know whether the Government has given any further thought to opening negotiations with the States party to the Prüm Convention about possible accession. The last statement of government policy on this was from Baroness Scotland on 14 March, but is anything changing?

*Joan Ryan:* It has not changed at present.

**Q128 Chairman:** It is an open question, is it?

*Joan Ryan:* The Home Secretary I am sure will consider it in due course.

**Q129 Chairman:** He has probably got rather a full in tray.

*Joan Ryan:* He too is newly in post, as I know you are aware, but nothing has changed at this point in time, no.

**Q130 Chairman:** Minister, thank you very much indeed for coming, and I would be grateful, please, if you would pass my thanks to the Home Secretary for allowing you or encouraging you to come. It has been a very interesting session and we wish you all the best.

*Joan Ryan:* Thank you very much.

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# Written Evidence

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## Memorandum by Justice

### INTRODUCTION

1. JUSTICE is an independent all-party law reform and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is the UK section of the International Commission of Jurists. JUSTICE has been strongly involved in monitoring the development of a European area of freedom, security and justice. It is part of a research network on the European Arrest Warrant, headed by the T.M.C. Asser Instituut in The Hague.

2. We are grateful for the opportunity to submit further comments on the conclusions of the meeting of the Interior Ministers of France, Germany, Italy, Poland, Spain and the UK at Heiligendamm on 22–23 March 2006. These comments will not explore in depth the Third and First Pillar instruments discussed or hinted at in the conclusions, but will rather address the relationship between the conclusions and the said instruments with a focus on police co-operation in criminal matters.

### KEY OBSERVATIONS

3. JUSTICE considers the Heiligendamm conclusions to add little in terms of specific measures to those measures and legal instruments adopted or currently negotiated in the Council of the European Union or agreed on by the signatories of the Prüm Convention.

4. We are concerned, however, that increased police co-operation in immigration, asylum and criminal matters between the G6 countries may lead to yet another set of rules and measures adding to the plethora of police co-operation and information exchange measures currently negotiated in the Council or adopted by a partly identical group of EU member states in the Prüm Convention.

5. Concrete proposals for measures to be taken by the G6 states under the heading of “Fighting terrorism” will entail an increase in data exchange between the G6 law enforcement authorities. JUSTICE is adamant that these measures have to comply with strict data protection standards.

6. JUSTICE is alarmed at the ministers’ statement that implementation of the information exchange under the principle of availability must not depend on the adoption of the proposed Third Pillar data protection Framework Decision. Adoption and implementation of data exchange measures at EU level presupposes the existence of an EU data protection instrument ensuring adequate standards for data protection in the course of information exchange under the Third Pillar.

### THE CONCLUSIONS—A CALL FOR EU ACTION

7. While the conclusions refer to “specific measures” having been agreed on by the G6 interior ministers, the document itself actually contains only very few proposals for concrete action meriting this term. Moreover, the largest part of the conclusions consist of ministers’ declarations of intent to press for the adoption of police co-operation and information exchange measures already discussed at EU level or agreed upon in the Prüm Convention.

8. The conclusions, appropriately, speak of the intention of the G6 “to provide an additional impetus to strengthening the area of freedom, security and justice”. In light of the apparent difficulties to reach agreement in the Council on the draft “Council Decision of 18 July 2005 on the improvement of police co-operation between the member states of the European Union, especially at the internal borders and amending the Convention implementing the Schengen Agreement” of 19 July 2005 (COM(2005) 317 final) and on the draft “Council Framework Decision on the exchange of information under the principle of availability” of 12 October 2005 (COM(2005) 490 final), the G6 ministers’ issuing of a rallying call to swiftly reach a consensus on the said instruments in the Council is hardly surprising.

9. In a similar vein, the G6 ministers urge all EU member states to adapt existing procedures for police co-operation and information exchange to the model provided in the Prüm Convention. The ministers in effect press for an integration of the Prüm measures into the Schengen *acquis* prior to the initial three year “trial period” envisaged by the signatories in Art 1(3) of the convention. In respect of information exchange

mechanisms, this convention, while more limited in scope, is not dissimilar from the provisions contained in the draft availability principle Framework Decision.

10. On the issue of access of law enforcement and other internal security agencies to the envisaged VIS database, the ministers in effect only reiterate calls for the adoption of the draft “Council Decision concerning access for consultation of the Visa Information Systems (VIS) by the authorities of member states responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences” of 24 November 2005 (COM(2005) 600 final).

11. The use of joint investigative teams, referred to in the G6 conclusions, is also not a novelty at EU level as it is provided for in Art 13 of the Convention on mutual assistance in criminal matters between the members of the European Union of 29 May 2000 (which came into force on 23 August 2005) and, albeit limited to cases of terrorism, in the “Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences”. A protocol to the Europol Convention introducing joint investigative teams is yet to enter into force. Other forms of operational police co-operation hinted at by the G6 ministers is contained in the aforementioned draft “Council Decision on the improvement of police cooperation between the member states of the European Union, especially at the internal borders and amending the Convention implementing the Schengen Agreement” of 19 July 2005 (COM(2005) 317 final), which is currently negotiated—apparently rather half-heartedly—in the Council. A greater role of Frontex, which the G6 ministers are advocating (eg by drawing up of joint situation reports with Europol), is already provided for in Arts 2, 3 and 13 of the Frontex Council Regulation (EC) 2007–04 of 26 October 2004.

#### ANOTHER SET OF LAW ENFORCEMENT AND SECURITY CO-OPERATION MEASURES?

12. As is readily apparent from the above comments, co-operation between law enforcement and internal security agencies in asylum, immigration and criminal matters is the subject of a plethora of Third and First Pillar instruments (already adopted or currently being negotiated), the Europol Convention and, applicable to its signatory member states, the Prüm Convention.

13. While some of these instruments contain largely similar provisions, particularly in the field of information exchange, they are likely to cause confusion and unnecessary overlaps. With two separate sets of police co-operation instruments in place (*viz* the Third Pillar instruments and the Prüm Convention), already leading to differences in the level and intensity of police co-operation between different groups of EU member states, adding yet a third category of measures agreed on by the G6 countries may have the effect of fragmentising further police co-operation at EU level.

#### PROPOSALS FOR FIGHTING TERRORISM

14. The most concrete proposals for measures the G6 member states intend to take are set out under the heading of “Fighting terrorism”. While these measures can, as such, be cautiously welcomed, they will entail considerable information exchange between the services and authorities involved. This is especially the case in the process of both the contemplated drawing up of joint analyses of internet use by terrorist organisations and the systematic exchange of information on people expelled by G6 countries for preaching racial or religious hatred. These measures would arguably fall within the scope of the Prüm Convention and both the draft enhanced police co-operation Council Decision and the availability principle Framework Decision, were they in force and applicable to all G6 countries.

15. Prior to the adoption and implementation of a Third Pillar data protection Framework Decision, however, it is not ensured that such measures will be subject to adequate data protection standards under national law. Nor will the data protection rules of the Prüm Convention (which would cover most of the information exchange envisaged in the conclusions) apply to the non-signatory G6 countries (Italy, Poland and the UK).

16. It is therefore essential that a strong Third Pillar data protection Framework Decision is adopted and implemented as a matter of urgency to guarantee adequate data protection standards.

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A CAUSE FOR CONCERN—DATA EXCHANGE WITHOUT EU DATA PROTECTION?

17. A cause for grave concern is the remark in the G6 conclusions—merely *en passant*—that “rapid implementation of the availability principle must not depend on the adoption of a Framework Decision on data protection in the Third Pillar”.

18. Doubtlessly, the European Commission considers the projects of the availability principle Framework Decision and a data protection Framework Decision to be inextricably linked. This is clear from the very wording of the availability Framework Decision, in particular from the manifold references to the data protection Framework Decision throughout the its provisions. Time and again, the European Data Protection Supervisor, Mr Peter Hustinx, has emphasised that there can be no enhanced data exchange mechanism between member states’ law enforcement agencies in the absence of an EU instrument laying down minimum data protection standards. In his most recent opinion of 28 February 2006 on the draft availability Framework Decision, he stated unequivocally that “[a]ny legal instrument implementing the principle of availability should not be adopted without the prior adoption of essential guarantees on data protection included in the proposal for a framework decision on the protection of personal data.”

19. This call has been repeated by the rapporteur of the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs in her draft report on the proposal for the proposed data protection Framework Decision of 6 March 2006, where Ms Roure described the adoption of the said Framework Decision as a *sine qua non* for establishing the availability principle.

20. JUSTICE wholeheartedly subscribes to this position and calls for an adoption and implementation of a data protection framework decision prior to the implementation of a availability Framework Decision. Both instruments can only sensibly be considered *in tandem*, as the width and breadth of the data access powers of member states’ law enforcement authorities must reflect the level of safeguards and data protection standards applicable to that information exchange.

*Maik Martin*

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