



## UK Representation to the EU Brussels

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Dear Members of the European Parliament,

### **The Justice and Home Affairs (JHA) Council, 13 and 14 December 2011**

I am writing to inform you about the JHA Council, which is due to be held on the 13 and 14 December in Brussels. The Home Secretary (Theresa May MP), the Secretary of State for Justice (Kenneth Clarke MP) and the Scottish Solicitor General (Lesley Thomson) will attend on behalf of the United Kingdom. As the provisional agenda stands, the following items will be discussed.

The Council will begin in Mixed Committee with Norway, Iceland, Liechtenstein and Switzerland (non-EU Schengen States). There will be an update, supported by a written report, on the Commission-led project to implement the central element of the second generation Schengen Information System (SIS II); the UK will continue to reiterate its support for the continuation of the current SIS II project.

There will also be a state of play on certain issues regarding the draft Regulation amending Council Regulation (EC) No 539/2001 which lists the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. The UK is not bound by this Regulation as we do not participate in the border and visa provisions of Schengen.

The Presidency will invite an exchange of views by Member States on the EU response to increased migration pressures. This item builds on discussions at the last two Councils; it will include combating illegal migration in the context of migration flows from the Southeast (including across the Greek-Turkish border) and the Southern Mediterranean. The UK supports increased efforts to combat illegal flows across the external border and within the EU, including closer cooperation between Frontex, the European Asylum Support Office and Europol. We believe this should be linked to further work 'upstream' in countries of origin and transit, using the tools of the EU's Global Approach to Migration, as well as joint efforts to combat the abuse of free movement by illegal migrants.

Over lunch the Presidency will seek a steer from Ministers on the key issues blocking negotiations on changing Schengen Governance arrangements, namely the choice of legal base for the Schengen evaluation mechanism and the role the Commission should play in taking decisions to reintroduce border controls.

There will be a presentation by the Commission and first exchange of views on proposals for new JHA funding programmes under the Multiannual Financial Framework 2014 - 2020. The package includes a Communication and proposals for four Regulations establishing a new Internal Security Fund and the Asylum Migration Fund. Whilst the Government welcomes the flexibility and potential efficiency from merging the six existing funding programmes into two programmes, we are concerned about the size of the overall budget proposed by the Commission. We will consider our participation under the JHA opt-in arrangements.

The Presidency will seek support for its proposal on a process for early warning, preparedness and management of asylum crises. Instead of a clause allowing transfers under the Dublin Regulation to be suspended, the proposal would envisage a provision in the Dublin Regulation requiring Member States to provide data about their asylum system to the European Asylum Support Office (EASO) and for action plans to be drawn up if it appears that their systems may be facing difficulties. The

Government can support this in principle provided the action plans are drawn up by the Member States themselves acting through EASO, and not by the Commission.

The Commission will then present its proposals on the Global Approach to Migration and Mobility. The current Global Approach provides the overarching framework for much of the EU's work with third country partners on migration. The UK welcomes the Commission's proposals for a renewed Global Approach, which should provide additional opportunities to work in conjunction with EU and international partners on migration, including combating illegal immigration. While we welcome a more comprehensive Global Approach, it is essential that it remains non-binding, and allows Member States to decide on participation on various initiatives on a case-by-case basis. The Government will continue to ensure that any participation is compatible with the UK's immigration policy.

The Council will be presented with a package of Counter Terrorism (CT) items covering the EU Action Plan on combating terrorism, the EU CT strategy and the report on the implementation of the strategy on terrorist financing. The UK welcomes the work that is being done at an EU level to mitigate the terrorist threat in particular the work around data sharing and aligning internal and external CT activities. It will be important moving forward that the Member States stay focused on the implementation of the Chemical, Biological, Radiological and Nuclear (CBRN) and Air Cargo security action plans.

The Presidency are seeking adoption of the Council Decision on signature of the EU–US Passenger Name Records (PNR) Agreement, which was published on 24 November. The Agreement will provide an unequivocal basis in EU law for the transfer of PNR data by EU-based carriers to the US Department of Homeland Security. The Government supports this proposal and has agreed to waive our Treaty rights to three months consideration of opt in so that the Council can proceed without us. However, the text remains subject to parliamentary scrutiny in the UK and we have therefore not exercised our opt-in in order to give the Committees an opportunity to consider the Agreement.

There will be a discussion on cross-border itinerant criminality. The issue of 'mobile itinerant organised crime groups' was identified as one of the 8 EU crime priorities for 2012-13 and is being addressed as one of eight projects under the EU Policy Cycle (on tackling organised crime), being overseen by the Standing Committee on operational cooperation on internal security (COSI). The UK has decided not to participate in this project at this time as the UK does not focus on itinerant criminals as a distinct group.

The Justice day will begin with the Presidency seeking to obtain general agreement on the provisions of the proposed Regulation on Succession and Wills with the exception of the recitals and certain questions related to the clawback of lifetime gifts. The UK has not opted in to this proposal but continues to believe that it would be in everyone's interest if the UK (and Ireland) were able to participate.

The Presidency will also be looking to reach agreement on certain elements of the proposal to modify the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I). The Regulation lays down rules governing the jurisdiction of courts and the recognition and enforcement of cross-border judgments in civil and commercial matters in the Member States. The Government opted-in to the proposal in March.

Next there will be a state of play report on the Regulation on a European Common Sales Law. This proposal was presented at the October JHA Council where the Commission confirmed it would offer an alternative contract law regime that would form part of the law of each Member State but would not harmonise national contract law systems. The UK has yet to reach a final position on the proposal and will be conducting a consultation of UK interests. For now, we remain to be persuaded of the need for this Regulation.

The Council will discuss the European Investigation Order (EIO). The EIO is a draft Directive aimed at streamlining the process of mutual legal assistance between participating EU countries. The UK has opted in. The Presidency will be seeking to reach a general approach (agreement) on the EIO. A partial general approach to Articles 1-18 was achieved at the June JHA Council. We are considering our position in relation to the current text.

There will then be a debate on the draft Directive on establishing minimum standards on the rights, support and protection of victims of crime. The UK has opted in. The Presidency will be looking to agree a general approach and we are looking to clear the proposal from scrutiny ahead of the JHA Council.

The Presidency will then provide another update on the draft Directive on the Right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. This is the third proposal on the EU's criminal procedural rights Roadmap which sets minimum standards for the rights of the defence. While we support the general principle of safeguarding criminal procedural rights throughout the EU, and the basic rights set out in this Directive, the UK has not opted in as we believe there is a fundamental imbalance in the proposal, as currently drafted, between the rights of the defendant and the wider public interest in effective investigations and prosecutions.

Next the Commission will present proposals for two new funding programmes in the area of Justice, Rights and Citizenship for the period 2014-2020. These are to replace the existing funding programmes in the current Fundamental Rights and Justice framework. The overall objectives of the proposed Justice programme are to promote judicial cooperation in civil and criminal matters, facilitate access to justice and to prevent and reduce drug supply and demand, while the objective of the Rights and Citizenship Programme is to contribute to the creation of an area where the rights set out in the Treaty on the Functioning of the European Union, and in the Charter of Fundamental Rights are promoted and protected.

Finally the Presidency will be providing a state of play update to Council on the negotiations on EU accession to ECHR. The negotiating mandate was agreed at the JHA Council in June 2010, and a draft version of an Accession Agreement was produced by experts in June 2011. This is now subject to further consideration within the EU.

Yours Sincerely,

Christophe Prince  
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