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Our Ref

Your Ref

Date

12 January 2012

Mme Francoise le Bail
DG Justice
European Commission
B-1049 Brussels
Belgium

Dear Mme Le Bail,

I am writing following discussions in the Free Movement Expert group between Home Office policy officials and officials from DG Justice on the UK's implementation of Directive 2004/38/EC (the "Directive").

I wanted to update you firstly on changes in responsibility within the Home Office for free movement policy and casework following a restructuring exercise last summer. The free movement policy team now sits within the Home Office International Directorate, which I head, while delivery of European casework remains the responsibility of the UK Border Agency under its new Chief Executive Rob Whiteman.

Following recent discussions, during meetings of the Free Movement Expert group, we are considering possible reforms to the UK's arrangements for issuing documentation under the Directive to EEA nationals and their family members as detailed below. These discussions have been helpful in indicating the Commission's preliminary view that the change in policy which we have in mind may be compatible with the Directive. I would therefore welcome your written advice on these proposals.

Collecting biometrics from family members of EEA nationals:

We are grateful for the Commission's attention to concerns we have raised regarding the wide variance in format and security provisions seen in some residence cards issued by Member States. We support the Commission's position on encouraging Member States to issue residence cards to family members under the Directive using the uniform format of residence permit issued to third country nationals (governed by Regulation (EC) No 1030/2002 as amended by Regulation (EC) No 380/2008). We consider that this would limit the scope for such documents to be easily forged, building on the political declaration that Member States signed on 10 March 2008 to encourage the use of this format of document (recorded in the minutes of the Council regarding amendments made to Regulation (EC) 1030/2002 reference 1302/07). We will continue to work closely with the Commission and other Member States through the Article 6 Committee and the Free

Movement Expert group, to drive forward work to improve the security standards of residence cards.

To assist the UK's development of these proposals, we would be grateful if the Commission could provide written advice on whether they consider that Member States can require family members of EEA nationals to provide their biometric data under Article 10 of the Directive for the purposes of issuing them with a residence card (potentially in the format of a uniform biometric residence permit). There may be circumstances in which an individual is physically unable to provide their biometrics, but in cases where a person refuses to give their biometrics as part of the residence card application, in the Commission's view, would it be permissible for Member States to refuse to issue the document?

Charging for residence documentation:

The UK is also exploring the possibility of charging for documentation issued to EEA nationals and their family members under the Directive. Currently, the UK Border Agency issues all such documentation free of charge, creating significant financial pressures at a time when budgets are being reduced.

Article 25(2) of the Directive makes clear that Member States shall issue the documents mentioned in paragraph 1 (registration certificates, residence cards, certificates of application and documents certifying permanent residence) "*free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents*". Although the UK does not issue identity cards to UK citizens, we do not consider that point alone prevents us from charging for documentation under the Directive, and we are considering whether any other documents issued to UK citizens (e.g. UK passports) may be considered "similar documents" for the purposes of Article 25(2) of the Directive.

I would be grateful for the Commission's view on what criteria ought to be applied when determining if a national document is similar to documentation issued under the Directive for the purposes of Article 25(2). In particular, we would be grateful to know whether the UK passport is such a similar document, meaning that the UK could charge for residence documentation under the Directive in line with the standard fee for a UK adult passport.

As these questions have already been raised with colleagues in DG Justice, I would be grateful for a response at your earliest convenience.

I am copying this letter for information to Mr Stefano Manservigi in DG HOME.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Storr', with a stylized flourish at the end.

Peter Storr
International Director