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European Union Committee

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Rt Hon Caroline Nokes MP  
Minister of State for Immigration  
Home Office  
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20 February 2019

### **Future UK-EU cooperation on asylum**

Dear Minister,

On 6 February 2019 the House of Lords EU Home Affairs Sub-Committee held an evidence session on the UK's future cooperation with the EU on asylum. The Committee heard from Ms Rosella Pagliuchi-Lor, UNHCR's representative to the UK, and Dr Natascha Zaun, Assistant Professor in Migration Studies at the European Institute, London School of Economics.

A full transcript, to which the quotations and question numbers in this letter refer, is available at our website, <https://www.parliament.uk/euhome-affairs-subcommittee>.

We look forward to discussing with you the UK's future cooperation with the EU on asylum on 13 March. In the meantime, given how close we are to exit day, we felt it necessary to write.

Our letter outlines the key issues discussed in the public evidence session. We would be grateful for your response to our conclusions and questions within 10 working days.

#### **Dublin Regulation**

##### *Dublin III*

The purpose of the Dublin III Regulation is to ensure that asylum seekers have the right to make a claim for asylum in the EU, have their claim processed and for it to be properly adjudicated. As such, Dublin III determines that the Member State in which a person first claims asylum is responsible for processing that claim. To support this objective, Member States can request to return an asylum seeker to the first EU country in which they sought asylum. We note that the UK has opted-in to this Regulation. However, once the UK leaves the EU, this legal framework will cease to apply and the UK will not be able to transfer asylum seekers to the EU without a new agreement.

The witnesses explained that, under Dublin III, the UK's geographical location has worked to its advantage, as the UK is an unlikely first point of entry to the EU. As a result, the number of asylum applications in the UK is relatively low compared to other large Member States.

For example, in 2017 the UK received 33,500 new applications for asylum, whilst France received 93,000, Italy received 127,000, and Germany received 198,000 (Q2).

Ms Pagliuchi-Lor said the number of people actually transferred under the Dublin III Regulation was very low. The total number of transfer requests to the UK in 2017 was 2,137 but only 461 people were actually transferred. The number of requests for transfer out of the UK to another EU country was 5,712, with 314 people actually transferred (Q5).

*Dublin IV*

The Dublin Regulation was not designed to deal with large influxes of asylum seekers to countries on the borders of the EU. As such, the EU is seeking to reform the system through the proposed Dublin IV Regulation. The proposed reform would include a mandatory relocation mechanism to distribute asylum seekers fairly across Member States. We note that the Government has said it will not opt-in to the proposed Regulation.

Dr Zaun thought it was unlikely that a mandatory relocation would be agreed, and instead some sort of voluntary relocation programme may be negotiated. She also thought the UK might be expected to take part in a voluntary relocation scheme as part of a future framework with the EU (Q3).

*Future cooperation*

We asked the witnesses what kind of future cooperation the UK should seek to achieve with the EU. Ms Pagliuchi-Lor told us that UNHCR would like to see an arrangement that continued to take into account the current Dublin framework (Q3). She also said:

“Whether you are inside or outside the European Union, the reality is that you will remain part of the broader geographical area and, therefore, will be very much impacted by the regional flows that we see across the continent. I think you will need to continue to be part of some kind of cooperation agreement. Both the European Union and the UK have taken on obligations as regards the importance of the 1951 Geneva Convention and human rights law....

... the UK has opted out of certain components of the Common European Asylum System, but, broadly speaking, you have very comparable standards, both procedurally and substantively. I see no reason why all of that should not be brought to bear in a new framework, if that is required by the conditions of your leaving the European Union, that can build on existing content.”

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| <ol style="list-style-type: none"><li>1. What is the Government’s view on the success, or otherwise, of the Dublin Regulation?</li><li>2. Will the Government seek to continue to participate in the Dublin Regulation after the UK leaves the EU? If so, what does the Government envisage such participation would look like?</li><li>3. Would the Government participate in a voluntary relocation programme for asylum seekers who had made their claim in the EU?</li></ol> |
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We asked the witnesses what kind of future cooperation the UK was likely to achieve with the EU. Dr Zaun pointed to the Norwegian relationship with Dublin as a model for future cooperation (Q3). In additional information provided to the Committee, Dr Zaun explained:

“Norway is part of Dublin III, without participating in the directives that aim to harmonise asylum policies across the EU. This is closest to the current approach of the UK which has only participated in the first phase of the policy harmonisation and then no longer opted in to the directives, but which participates in Dublin III. The key difference is that the UK, as a Member State, was so far able to influence both policy outputs on the directives as well as Dublin III in the Council. Norway does not have this right, as it is not an EU member. Norway and the EU have adopted an international agreement after the EU had adopted Dublin III which allows Norway to participate in the Dublin Regulation.”

4. Does the Government consider Norway’s participation in Dublin III to be a good model for the UK’s future cooperation with the EU on asylum matters? Please explain your reasoning.

We asked the witnesses whether minimum standards for protection, assistance and future alignment in qualification for international protection would be important factors in negotiating a new framework between the UK and the EU. Dr Zaun told us (Q4):

“It will certainly be something that other member states observe. They will see whether the situation is changing a lot in the UK, especially because common or shared rights or standards are important for Dublin returns. I assume that the UK will look at what is going on in the EU and, perhaps, align its standards with the EU’s, to make sure that it is not standing out as very liberal. That is what happens a lot in the EU and other member states.”

Ms Pagliuchi-Lor added (Q4):

“At UNHCR, we are very interested in ensuring that alignment and harmonisation do not happen at the lowest common denominator. We would like to see a set of shared principles that truly embody the spirit and the letter of the 1951 convention, the human rights treaty, not a race to the bottom. That would be a betrayal of our common heritage on human rights and asylum.”

5. We agree with UNHCR and urge the Government to ensure that standards for protection and assistance are not diminished after the UK leaves the EU. We also urge the Government to ensure that future alignment with the EU on the qualification for international protection does not result in narrower criteria for people to be recognised as needing international protection.

### *Family unification*

The Dublin III Regulation puts the reunification of family members residing in more than one Member State as the foremost criterion that should be considered when determining the Member State responsible for processing an application for asylum. Under the Regulation, family members are defined as a spouse, or the minor children of a parent. For unaccompanied children, the list of people they can be reunited with broadens to include siblings, aunts, uncles, and grandparents. The Immigration White Paper indicates that the Government will seek an agreement on facilitating the reunion of family groups with the EU, or with individual Member States, but provides no further detail.

Ms Pagliuchi-Lor raised concerns that the White Paper maintained the Government’s position that children should not be able to sponsor their parents (Q8). UNHCR had not found hard evidence that children are sent ahead on dangerous journeys to establish an asylum claim that will allow the family to follow. Dr Zaun told us that the Court of Justice of the European Union recently established that in the EU parents should be allowed to join their children.<sup>1</sup> Dr Zaun felt the EU was “more liberal” on parents joining their children and “might expect the UK to become more liberal as well” (Q8).

6. Following the recent CJEU judgment in the case of A and S v The Netherlands, what consideration has the Government given to the possibility that the EU might expect the UK to allow parents to join children in a future asylum framework?

## **EURODAC**

EURODAC is a fingerprint database of asylum seekers that was established to support the Dublin Regulation, however, its purpose has since expanded into law enforcement. The Regulation allows law enforcement to request access to fingerprint data to obtain further information on persons suspected of terrorism or serious crime. We note that the Government has opted-in to the latest Regulation on EURODAC.

Access to EURODAC is currently only available to EU Member States and the four non-EU Schengen-associated countries: Iceland, Norway, Liechtenstein and Switzerland. However, those four countries can currently only use the database for asylum purposes. In 2014 these countries confirmed their interest in entering into negotiations with the EU to apply the law enforcement provisions of the Regulations via a Protocol of the international agreements.<sup>2</sup> Council Decisions to approve these agreements are pending.

Dr Zaun assumed the UK’s future participation in EURODAC would presuppose an agreement on the Dublin Regulation or something similar (Q10).

7. Noting that currently only Member States and non-EU Schengen-associated countries have access to EURODAC, would the UK, when it becomes a non-EU non-Schengen-associated country, face barriers to accessing EURODAC? If so, what would these be?
8. If Iceland, Norway, Liechtenstein and Switzerland are granted access to EURODAC for law enforcement purposes, would this set a precedent for the UK to negotiate the same access after it leaves the EU?
9. Are there any legal barriers or precedents in the EU that might prevent the UK retaining access to EURODAC after it leaves the EU – either for asylum or law enforcement purposes, or both – if the UK does not participate in the Dublin Regulation?

## **‘No deal’ scenario**

Dr Zaun told us one danger of a ‘no deal’ Brexit was that asylum seekers with pending applications to be transferred under the Dublin III Regulation could find themselves in limbo.

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<sup>1</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-04/cp180040en.pdf>

<sup>2</sup> We note Denmark is also listed on the proposed Council Decisions to grant access for law enforcement purposes.

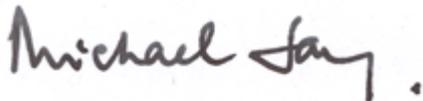
Without the Dublin Regulation, the mechanism for family reunion would disappear. Dr Zaun suggested that in a 'no deal' Brexit the most feasible option to avoid this risk would be to extend the current arrangements (Q8).

Dr Zaun also said that in a 'no deal' Brexit the UK would have to rely on the goodwill of France and Belgium to prevent asylum seekers attempting to enter the UK through an irregular movement, that is, not through official channels (Q5).

10. We note that the Political Declaration setting out the future relationship between the UK and EU makes no mention of asylum cooperation. There has also been no indication from the UK or EU on what plans are being made for asylum cooperation to continue in a 'no deal' Brexit scenario. We are deeply concerned with how a 'no deal' Brexit may impact separated families and encourage the Government to begin negotiations with the EU on this matter urgently.
11. What actions has the Government taken to ensure families awaiting Dublin transfer decisions are not stuck in limbo in a 'no deal' scenario?
12. Has the Government engaged in bilateral discussions with its neighbours (particularly Belgium and France) on border management in a 'no deal' Brexit as it relates to the irregular movement of asylum seekers?

I am copying this letter to Sir William Cash MP, Chair of the Commons European Scrutiny Committee; Jessica Mulley, Clerk to the Commons European Scrutiny Committee; Arnold Ridout, Legal Adviser to the Commons European Scrutiny Committee; Les Saunders, Department for Exiting the EU; and Alex Bernal, Home Office.

Yours sincerely,



Lord Jay of Ewelme  
Chairman of the EU Home Affairs Sub-Committee