



The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from December 2008 to April 2009.

## HOME AFFAIRS (SUB-COMMITTEE F)

### CONTENTS

AREA OF FREEDOM, SECURITY AND JUSTICE FOR BELARUS, MOLDOVA AND UKRAINE (5593/09) .....	2
ASYLUM: JURISDICTION TO DETERMINE ASYLUM CLAIMS (DUBLIN II) AND EURODAC: FINGERPRINT DATABASE FOR DUBLIN II (16929/08, 16934/08) .....	2
ASYLUM: MINIMUM STANDARDS FOR RECEPTION OF ASYLUM SEEKERS (15802/07 16913/08) .	6
ASYLUM: OPT IN DECISIONS ON RECEPTION DIRECTIVE, DUBLIN II AND EURODAC (16913/08, 16929/08, 16934/08).....	9
ASYLUM SUPPORT OFFICE (6700/09) .....	13
BLUE CARD: ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONALS FOR THE PURPOSES OF HIGHLY QUALIFIED EMPLOYMENT (14490/07, 13748/08) .....	14
CRITICAL INFRASTRUCTURE WARNING AND INFORMATION NETWORK (CIWIN) (15041/08) .....	15
DRUGS ACTION PLAN (13407/08) .....	16
ENLARGEMENT OF THE EU: TRANSITIONAL ARRANGEMENTS SET OUT IN THE 2003 AND 2005 ACCESSION TREATY (16162/08) .....	18
FREEDOM OF MOVEMENT (5553/09).....	18
G6 INTERIOR MINSTERS MEETINGS, BERLIN .....	19
IMMIGRATION AND ASYLUM PACT (12626/08).....	20
JHA COUNCIL REPORT, APRIL 2009.....	21
LONG-TERM RESIDENTS DIRECTIVE (10515/07) .....	22
MIGRATION: STRENGTHENING THE GLOBAL APPROACH (14003/08).....	23
PAKISTAN: READMISSION AGREEMENT (7510/09).....	24
PASSENGER NAME RECORD (PNR): EU-AUSTRALIA AGREEMENT .....	24
PASSENGER NAME RECORD (PNR): FRAMEWORK DECISION (16457/09) .....	28
PASSPORTS AND TRAVEL DOCUMENTS ISSUED BY MEMBER STATES: STANDARDS FOR SECURITY FEATURES AND BIOMETRICS (14217/07).....	28
PROCEEDS OF CRIME (16123/08).....	29
READMISSION AGREEMENTS (ECRA) (13019/05, 13246/06).....	29
REFUGEE FUND (6702/09).....	30

SCHENGEN AQUIS (7348/09, 7349/09) .....	31
SINGLE PERMIT FOR THIRD COUNTRY NATIONALS TO RESIDE AND WORK IN THE TERRITORY OF A MEMBER STATE AND ON A COMMON SET OF RIGHTS (14491/07) .....	31
TERRORISM AND CROSS BORDER CRIME: AGREEMENT BETWEEN THE EUROPEAN UNION AND ICELAND AND NORWAY (16433/08) .....	32
VISAS: COMMON CONSULAR INSTRUCTIONS ON VISAS FOR DIPLOMATIC AND CONSULAR POSTS IN RELATION TO THE INTRODUCTION OF BIOMETRICS (10023/06) .....	32
VISAS FOR DIPLOMATIC AND CONSULAR POSTS: PROVISIONS ON ORGANISATION OF RECEPTION AND PROCESSING OF VISA APPLICATIONS (5090/09) .....	33

## AREA OF FREEDOM, SECURITY AND JUSTICE FOR BELARUS, MOLDOVA AND UKRAINE (5593/09)

### **Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I am writing to let you know our intentions regarding discussion and possible agreement of the Council Document 5593/09 – Special Report 09/2008 on The Effectiveness of EU Support in the Area of Freedom, Security and Justice for Belarus, Moldova and Ukraine.

It was deposited on 26 January 2009, allowing the official scrutiny process to begin. However, it has come to our attention that this report is moving swiftly through the council process and may be tabled at an EU Council next week.

Following the enlargements of the EU in 2004 and 2007, the EU became a direct neighbour of Belarus, Moldova and Ukraine. The Commission made £150m (2000-2005) of EU funds available to these countries to improve their capacity in the areas of: border control; migration/asylum management; fight against organised crime; and judiciary and good governance. During November 2006 to July 2007 an EU Court of Auditors team examined 40 contracts with a total EU funding of £90m. The purpose was to determine the success of EU projects, establish reasons for possible under-performance and to see to what lessons were learnt and taken forward.

The auditor's report concluded that the projects had achieved varying levels of success. It makes recommendations to assist the Commission in increasing the effectiveness of the assistance given to Belarus, Moldova and Ukraine in the field of freedom, security and justice. The Commission has welcomed the generally positive conclusions of the reports findings, particularly in Border Management and has made recommendations based on these.

I appreciate that the Committee may have wished to have the opportunity to give their views on it before its agreement and apologise for the delay. However it is not a legislative text and has no direct implications for UK. The EM will be with you as quickly as possible today.

*4 February 2009*

## ASYLUM: JURISDICTION TO DETERMINE ASYLUM CLAIMS (DUBLIN II) AND EURODAC: FINGERPRINT DATABASE FOR DUBLIN II (16929/08, 16934/08)

### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this document (16929/08) at a meeting on 25 February 2009.

The Committee wrote to you on 22 January 2009 with regard to the question of the opt in to the new asylum proposals. We note what you say in your letter (undated) received on 5 February 2009, but we still await notification of your decision on whether or not to opt in. Meanwhile the Committee has now undertaken full scrutiny of the proposal.

The Committee considers the proposed amendments to the Dublin arrangements to be generally positive. We particularly welcome the provisions which seek to improve the treatment of children and other vulnerable categories. With regard to the safeguards against detention, we reiterate the

view expressed with regard to the new proposal for a Reception Conditions Directive, that we would welcome a robust system of judicial oversight of administrative detention.

We note your concern with regard to the proposal to extend the mandatory provisions on responsibility beyond the nuclear family to include dependent relatives. Given the availability of modern technologies, including DNA testing, we are not persuaded by your assertion that it is often difficult to establish whether alleged family members are related as claimed. We would welcome more information on this point.

Finally, the Committee notes your reservation about the provisions on temporary suspension of transfers. You mention that there is a provision to this effect in the EC Treaty (Article 64(2), replicated in Article 78(3) of the Lisbon Treaty) which has never been used. The provisions in the proposed Regulation are however more extensive and detailed and empower the Commission to instigate a process to suspend transfers, with the Council only able to overturn the Commission's decision by qualified majority. The provisions also directly link suspension of transfer with the use of the European Refugee Fund for the Member State whose reception system is under pressure or in difficulty, which would lead to a degree of financial burden sharing which you seem to support. We would be grateful if you could explain to us the reasons for your concern about these provisions and let us know what support there is amongst other Member States for them.

The Committee will continue to keep the document under scrutiny.

*26 February 2009*

#### **Letter from the Chairman to Phil Woolas MP**

Sub-Committee F of the Select Committee on the European Union considered this document (16934/08) at a meeting on 25 February 2009.

The Committee wrote to you on 22 January 2009 with regard to the question of the opt in to the new asylum proposals. We note what you say in your letter (undated) received on 5 February 2009, but we still await notification of your decision on whether or not to opt in. Meanwhile the Committee has now undertaken full scrutiny of the proposal.

The Committee welcomes this proposal. It considers the amendments to be desirable and likely to improve the effectiveness of Eurodac. We note, however, your reservations about the reduced storage period for data relating to third country nationals apprehended in connection with an irregular border crossing. Like you, we would support the retention of the two-year storage period if it is ascertained that hits beyond the one year period are a common occurrence.

The only change which we consider to have significant implications, financially and from the point of view of data protection, is the proposal to establish a Management Authority which would also be in charge of Eurodac, as well as SIS II and VIS, once these are operational. We would be grateful if you could keep us informed of the details of the proposed arrangements once these are available.

The Committee will continue to keep the document under scrutiny.

*26 February 2009*

#### **Letter from Phil Woolas MP to the Chairman**

Thank you for your letters of 26 February. You considered the proposed amendments to the Dublin arrangements to be generally positive and continued to keep document 16929/08 under scrutiny. You welcomed the proposal on Eurodac and continued to keep document 16934/08 under scrutiny.

On 6 March I wrote to you to let you know the Government's decision regarding the application of its opt-in as provided for by Article 3 of the Protocol on the Position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community. The Government has chosen to opt-in to the Dublin and Eurodac proposals.

Regarding Dublin, we agree with the Committee that there should be a robust system of judicial oversight of administrative detention, but believe that our law already provides appropriate safeguards, in particular by giving detainees the right to apply for bail and the opportunity to challenge the lawfulness of their detention through the processes of judicial review and habeas corpus. We are therefore not convinced that the additional safeguards proposed by the Commission are necessary, or (as stated in our original Explanatory Memorandum) that in their current form they would enhance the operation of the Dublin System. It is clear from early discussions at the Council Working Group that many Member States have similar reservations about this article as drafted.

We have made our reservations about the extended definition of the family known at the Council Working Group, reservations that are also shared by others. We do not agree with the proposal that a state should be responsible for an asylum applicant because that person has a relative in that state who is not part of the nuclear family. We do not allow non-nuclear relatives to come to the United Kingdom under our Refugee Family Reunion policy and it would be inconsistent to support a more generous policy for asylum seekers whose claims to be in need of international protection have not been examined.

We recognise that DNA testing is available and it has been used in some cases under the current Regulation, but we remain of the view that the more widely a criterion is drawn the harder it is to prevent abuse. Experience has shown that the process of DNA testing itself can be lengthy and this works against the swift application of the Regulation to determine responsibility. Furthermore the reliability of DNA testing reduces as the immediacy of the relationship reduces, for example paternity testing has a reliability of approximately 99.9% for proof of relationship whereas in testing for first cousins the reliability can decrease to around 80%. We believe it is important to have workable provisions within the Regulation.

On the issue of the suspension of transfers we noted the reference within the provision to the use of the European Refugee Fund (ERF) leading to a degree of financial burden sharing. We believe that Member States facing particular pressures should be offered support, including financial support, to improve infrastructures and build capacity, but we see a clear distinction between financial burden-sharing through the use of the ERF and suspension. We are concerned that the suspension clause would not result in burden sharing but in increased financial burdens overall and burden shifting by requiring some Member States to re-examine claims that had already been decided in the state to which returns were suspended.

We also fear that suspension of the Dublin system would actually increase the flow of irregular migrants to the countries in question because migrants (and those facilitating their journeys) would know that they could move on from those countries to their preferred destination in the EU, without fear of being returned under Dublin.

On the positions of other Member States towards the suspension clause, more than half have already expressed reservations about the proposal in one form or another at the Council Working Group. Reasons for the reservations include: the fundamental principle of suspension itself, including the practical effect on pull factors towards the state "benefiting" from the suspension; doubts about the compatibility of the provision with the Treaties, as the question of compatibility with EU law within the provision is for the European Court of Justice to determine; concerns about the legal basis for the inclusion of the provision within the Regulation; questions as to whether any suspension should be as a result of the Council acting on a proposal by the Commission (and not as proposed in the text); and questions on the role, if any, of the European Parliament in any suspension process.

Finally, regarding your remarks about the common occurrence of Eurodac hits beyond a one year period, I attach for your information a copy of the Asylum and Immigration Tribunal case of [RZ \[2008\] UKAIT 00007](#) which provides evidence of this. We have made our reservations about the reduced storage period known at the Council Working Group, with support from other Member States. There is, however, support from some Member States for the Commission's proposal to reduce the storage period. The European Data Protection Supervisor also supports the Commission's proposal on the basis that it mirrors the period of responsibility for cases falling under the Dublin Regulation and is therefore proportionate.

18 March 2009

#### **Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 18 March 2009. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 1 April 2009. We are also grateful for your letter of 6 March 2009 informing us about your decision to opt in to these proposals. As you will be aware, the Parliamentary Under Secretary of State, Meg Hillier, came to give evidence to us particularly on the question of the UK's legal position when it chooses not to opt-in to EU amending legislation. The evidence, along with a brief report explaining the technical issues involved, has now been published (*The United Kingdom opt-in: problems with amendment and codification*, 7th Report of Session 2008-2009, HL Paper 55), and I wrote to you on 23 March to send you a copy and seek the Government's response to it.

The legal issues we highlight in our report do not concern these proposals, given that the Government has opted in to them, but we also draw attention to the extent to which the recast Dublin Regulation and the Asylum Reception Directive are linked, not least by the numerous cross-references, and repeat our question as to whether the decision to opt in to one and not to the other

is likely to cause difficulties. We would welcome information as to how you are going to address this problem in negotiations.

We note your reservations about the new detention provisions in the Dublin Regulation. You submit that the various domestic safeguards in place are sufficient. We would like to understand the domestic implications of the more robust system of judicial oversight of detention proposed by the Commission (and supported by the European Parliament) and would welcome information on the number of Dublin removals from the UK, the main nationalities of Dublin transferees, the number of those detained before transferral, the length of detention, the number of bail applications and judicial reviews of detention and challenges to the transfer decision, all for the most recent years for which figures are available.

On the issue of suspension of transfer, the Committee noted that the provision may amount to nothing much in practice given that, as the Commission makes clear in the Impact Assessment, overall the Dublin system has a redistributive impact and is not in itself a cause of particular pressure on national asylum systems. We do not fully understand, however, why you believe that there is a problem with the legal base or compatibility with the Treaties with this provision and would be grateful for clarification of this point.

The Committee will continue to keep both documents under scrutiny.

*1 April 2009*

### **Letter from Phil Woolas MP to the Chairman**

Thank you for your letter of 1 April 2009 in which you advised that the Committee continues to keep the above documents under scrutiny.

You refer to the questions raised by the Committee in the 7<sup>th</sup> Report of Session 2008-2009 HL Paper 55 "The United Kingdom opt-in: problems with amendment and codification". We are considering the Report carefully and will send a full reply within the two month deadline. We do, however, remain of the view that the UK can choose to opt into some, but not all, of the measures proposed as part of the second phase of the Common European Asylum Policy.

You asked for statistical information about the operation of the Dublin Regulation in the UK. The figures in this reply are based on management information data that is not quality assured under National Statistics protocols and therefore as they do not constitute part of National Statistics they should be treated as provisional.

In 2008 approximately 1220 applicants were removed from the UK under the Dublin Regulation. The top ten nationalities removed during 2008 were nationals of (in descending order, numerically) Eritrea, Afghanistan, Iran, Iraq, China, India, Sudan, Sri Lanka and Vietnam.

The UK Border Agency is unable to provide statistics on the number of applicants detained before transfer to other Member States under the Regulation. It is, however, the UK Border Agency's general policy that Dublin transferees are given three working days notice of removal unless there are exceptional circumstances. Applicants are normally detained during the three days notice period and so the UK Border Agency estimates that 95% of all people being removed under Dublin are detained beforehand. Based on the figures for removals above, this approximates to around 1150 persons detained in 2008 and 1100 in 2007.

Unfortunately, we are unable to provide statistics for the average length of detention in 2007. However, the UK Border Agency's information for the period between 1 April 2008 and 31 March 2009 shows the average time in detention before removal for a person transferred from the UK under the Dublin Regulation is approximately 70 nights.

The UK Border Agency is unable to provide information on the number of bail applications lodged in cases involving detention and the application of the Dublin Regulation as this information cannot be isolated for retrieval from the Casework Information Database.

The number of applications for judicial review against removal under the Dublin Regulation totalled 103 in 2007 and 252 in 2008. Some of these included a challenge to the detention of the applicant.

My reply of 18 March 2009 detained positions voiced at the Council Working Group about suspension of transfers. These concerns have been raised by other Member States, and I apologise if my letter gave the impression that the UK was raising them.

The positions taken by other Member States included doubts about the compatibility of the provisions with the Treaties. It has been argued that it may not be lawful to include provisions in Articles 31(2) and 31(3) of this instrument allowing the Commission to determine that a Member State is in breach

of the Reception Conditions Directive and therefore suspend Dublin transfers to it. This is because the question of compliance with EU law is for the European Court of Justice to determine.

We understand the argument around legal basis to be that provisional measures to be adopted to assist Member States being confronted with an emergency situation are governed by Article 64(2) of the Treaty establishing the European Community (TEC) and not Article 63(1) TEC, which is the legal basis for the Dublin Regulation.

We are opposed on policy grounds to the suspension proposals, for reasons which I have explained to the Committee previously. We had not previously considered that there might be a problem with the legal basis, but will reflect on these arguments and let the Committee have our views once we have done so.

21 April 2009

## ASYLUM: MINIMUM STANDARDS FOR RECEPTION OF ASYLUM SEEKERS (15802/07 16913/08)

### **Letter from Phil Woolas MP, Minister of State, Home Office, to the Chairman**

On the 10 January 2008<sup>1</sup> Lord Grenfell wrote to Meg Hillier clearing the above Report from scrutiny. He also asked to receive copies of correspondence with the Commission raising the Government's concerns about inaccuracies in the Report. I am sorry for the delay in sending this update.

We have put our concerns to the Commission in meetings at official level and we have discussed how misunderstandings could have arisen. The Commission's position is that they have noted our concerns but will not issue a corrigendum at this stage, as they do not perceive any substantial implementation problems in the UK (if they did, they would start infraction proceedings against the UK). We are also aware from discussions that other Member States have had similar concerns about the accuracy of the information in the Report.

January 2009

### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 25 February 2009.

The Committee wrote to you on 22 January 2009 with regard to the question of the opt in to the new asylum proposals. We note what you say in your letter (undated) received on 5 February 2009, but we still await notification of your decision on whether or not to opt in. Meanwhile the Committee has now undertaken full scrutiny of the proposal.

The Committee welcomes efforts at ensuring greater clarity of the provisions on reception conditions, which will allow more effective monitoring of compliance of Member States' reception systems with the agreed standards. We therefore consider it a positive development that a definition of 'adequate standard of living' has been included in the new text and believe that parity with mainstream welfare provisions granted to nationals, which is generally recognised as the minimum required to maintain an acceptable standard of living, will provide a clear benchmark.

You say that support levels in the UK are already sufficient to meet the essential living needs of asylum seekers. We are not sure that this is the case. We are aware that the level of financial support paid to adults is set at 70 per cent of income support level. The 30 per cent discount is said to approximate to the value of furnished accommodation, rent, and utility payments paid by the State on behalf of the asylum seeker. In a debate which concerned the Asylum Support (Amendment) (No.2) Regulations 2004, Lord Avebury challenged this. On his calculations, based on Government statistics, the value of the accommodation, furnishings and utility bills came to 23 per cent and were, therefore, 7 per cent short of income support levels (*Hansard* 29 June 2004: Col 216). Could you let us know whether the Government has reflected on the issue raised by Lord Avebury and what its conclusions were?

The Committee also welcomes efforts at regulating detention practices under this Directive, given the wide use of detention in the area of asylum and the need to ensure that practices are in line with fundamental principles of EC law and international human rights obligations. There are currently major concerns about detention of asylum seekers in the EU both with regard to the generalised practice of detention and the conditions in detention facilities. As recently as 5 February 2009, the

---

<sup>1</sup> Correspondence Not Yet Printed

European Parliament adopted, by a large majority, an own initiative report criticising the “*intolerable conditions*” suffered by migrants in detention centres throughout the EU. The report takes stock of visits carried out to several detention centres in the EU by the European Parliament Civil Liberties Committee (LIBE). It denounces overcrowding, poor hygiene standards, lack of medical care and legal aid and the “*prison conditions*” in which asylum seekers were being held, although they had committed no crimes.

As you will be aware, the Committee looked at the UK’s immigration detention practice during its inquiry into the first draft of the proposed Returns Directive and was particularly concerned with the failure to provide a robust system of judicial oversight of immigration detention, highlighting that a person convicted of a criminal offence loses his or her liberty only if the court so orders, and that depriving people who have committed no criminal offence of their liberty by administrative decision cannot be right without strict judicial oversight (see *Illegal Migrants: proposals for a common EU returns policy*, 32nd Report of Session 2005-06, HL Paper 166, para.100). We therefore welcome the introduction of specific safeguards which require detention to be necessary, decided on a case-by-case basis and ordered by a judge or otherwise reviewed by the courts within 72 hours.

We consider the proposed amendments to the asylum reception regime broadly positive and a significant step in raising and harmonising standards EU-wide. You will agree that widely varying reception conditions and recognition rates in Member States undermine on grounds of principle and fairness other common initiatives in the asylum field which the Government favour, such as the arrangements under the Dublin Regulation. We await your decision on whether the Government proposes to opt in to this Directive, and expect to receive it in time for us to consider it before the expiry of the three month period. Should you come to a decision not to opt in, we would be grateful if you could explain to us the implications of this, both financially and with regard to the UK’s broader relationship with the EU and its Member States. The legal implications we have discussed with your colleague Meg Hillier who came with officials to give evidence to us on this point yesterday.

The Committee will continue to keep the document under scrutiny.

26 February 2009

#### **Letter from Phil Woolas MP to the Chairman**

Thank you for your letter of 26 February. I apologise for the delay in replying.

On 6 March I wrote to you to let you know the Government’s decision regarding the application of its opt-in as provided for by Article 3 of the Protocol on the Position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community. The Government has chosen to not opt-in to the Reception Conditions proposal.

The UK supports the principle of shared minimum standards for the treatment of asylum seekers, both for humanitarian reasons and to reduce the incentive for secondary movements within the EU.

However, we believe many of the proposals contained in the draft Directive to be unduly onerous, and are concerned that they would affect our ability both to make fast and fair decisions on asylum claims, and to tackle abuse of the system.

In your letter, you refer to Lord Avebury’s speech from 2004 in which he argued that the total value of the support package we provide to asylum seekers was 7% below the income support level. We nevertheless believe that the support we provide remains of a sufficient level to meet essential living needs. Support levels are reviewed annually. New legislation under the Simplification Bill, planned for Autumn 2009, gives us opportunity to streamline and reform the support system to ensure those seeking asylum are effectively and comprehensively supported during the determination of their claim; that the system for achieving this is as simple and efficient as possible; and that it works towards the return of those who have no protection needs and who have no right to be in the United Kingdom. The consultation will seek a range of views on how to improve the way that we provide asylum support to asylum seekers and other categories of claimants.

In your letter you refer to the European Parliament Civil Liberties Committee (LIBE) report that was adopted by the European Parliament on the 5 February 2009 which criticized the “*intolerable conditions*” suffered by migrants in detention centres. Though the UK was one of the countries the Committee visited, our detention centres were not singled out for any criticism. Nor were the conditions of detention in the UK an area of concern for the Committee when they reviewed our detention practice as part of the scrutiny process for the Returns Directive which you refer to in your letter.

During scrutiny of the Returns Directive the Committee was concerned about the lack of judicial oversight of immigration detention. I refer you to the Government’s response (Government Response to Illegal Migrants Report,). In particular to paragraphs 41-45 which deal with the issue. We

see no need to depart from the view we expressed then that the decision to detain should not be subject to judicial authorisation.

The Detained Fast Track System (DFT) is a vital deterrent to the making of unfounded asylum claims, but at the same time provides fast and fair decisions for those who are subject to it. Nearly 7% of cases per year go through this system, of which about 95% are found to be groundless, and about 75% of those are removed from the country within 6 months.

Current detention powers, which do not require automatic judicial authorisation, are fully in line with Article 5 of the Human Rights Act. Individuals can apply for bail to an Immigration Judge.

We agree that the current variation in reception conditions and recognition rates across the EU is undesirable. However, we believe that it is better dealt with through practical cooperation between Member States, for example by sharing best practice, supporting training and building capacity in those States with weaker systems, than by further legislation.

*31 March 2009*

#### **Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 31 March 2009. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 1 April 2009. We are also grateful for your letter of 6 March 2009 informing us about your decision not to opt in to this proposal.

We note your continued reservation about judicial oversight of administrative detention and take your point that detained asylum seekers can challenge the detention decision by applying for bail. However, the exercise of this right requires the provision of effective legal services to foreign nationals, who cannot be expected to understand the law and the procedure. As you will be aware, this is an aspect of the UK immigration detention practice that has repeatedly been found wanting by HM Chief Inspector of Prisons in her unannounced inspections of various Immigration Removal Centres. We are also concerned that the lack of automatic or ex officio review of detention may lead in many instances to detention being unduly prolonged and that the snapshot statistical data on detained asylum seekers provides no information about average and maximum duration of detention. We would be grateful if you could let us know how many asylum seekers amongst those detained apply for and are granted bail, for the most recent years for which figures are available.

Your concern about the Directive's requirement for asylum support to be equivalent to income support granted to nationals seems to us to indicate that the Government has moved away from what was the previously stated objective to put asylum seekers on broadly the same footing as if they were on income support. You say that the Government provision remains at a sufficient level to provide adequate living standards. Could you let us know on what basis you make this assessment, given that income support is generally recognised as the minimum required to maintain an acceptable standard of living, and asylum seekers' circumstances and needs are such that they often face exceptional pressures and lack other informal kinds of support?

We understand that despite having not opted in to the proposal you are fully engaged in negotiations with a view to opting in after adoption, if your concerns have been met. We would welcome regular progress reports on negotiations, as well as information on the issues we have raised above.

The Committee will continue to keep the document under scrutiny.

*1 April 2009*

#### **Letter from Phil Woolas MP to the Chairman**

Thank you for your letter of 1 April 2009.

We note your concerns regarding detention. We remain of the view that the detention processes in the UK do have sufficient safeguards.

All individuals are given information on their rights to apply for bail at the point of initial detention and information on how to do so is available at all immigration removal centres, including the bail handbook produced by Bail for Immigration Detainees.

We are satisfied that detainees have adequate access to effective legal services, including through the advice surgeries that have been set up at removal centres. Advice beyond that which is provided at these surgeries is available subject to the individual's case satisfying the Community Legal Service (CLS) means and sufficient benefits criteria for public funding, as with any other CLS funded case.

We do not accept that the absence of automatic or ex officio judicial review is likely to lead to detention being unduly prolonged. The principle that detention must last for no longer than is

reasonably necessary and must not be unduly prolonged is well understood by UKBA caseworkers. There are robust systems in place within UKBA to ensure that detention is subject to frequent and regular review at progressively more senior levels. Individuals are released from detention where it is clear that removal from the UK is no longer a realistic prospect within a reasonable period of time.

Asylum and Immigration Tribunal Service (AIT) figures show that from 1 January 2008 to 31 December 2008 10,382 applications for bail were made, of which 1868 were granted. Unfortunately the AIT database cannot distinguish between bail applications made by asylum seekers from those made by other types of applicants. To do this would require checks on individual bail applications.

We continue to meet the essential living needs of asylum seekers and since 2008 have based annual rises in asylum support on the consumer price index. As part of the asylum support system, we provide those requiring support with accommodation, inclusive of all utilities and housing costs such as council tax. All accommodation is furnished and equipped with a range of cooking equipment and kitchen utensils, including plates and cutlery. We are confident that our total package remains broadly equivalent to DWP benefits.

However, we believe that an equivalency requirement in EU law would represent excessive regulation of an area which should be left to Member States' discretion. In our view, the EU should restrict itself to setting minimum standards in this area, and the existing minimum requirement that support levels guarantee the applicant's subsistence and health does this job adequately.

Negotiations have started on these proposals. The views of many other Member States have been similar to those of the UK on issues such as detention, support levels, access to labour market, extending the definition of 'family member' and the removal of Member States ability to withdraw support under certain circumstances such as non compliance. We will update the Committee on the progress of these negotiations.

*21 April 2009*

#### ASYLUM: OPT IN DECISIONS ON RECEPTION DIRECTIVE, DUBLIN II AND EURODAC (16913/08, 16929/08, 16934/08)

##### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered these documents at a meeting on 21 January 2009.

Full scrutiny of these proposals has been deferred, so that the documents are being kept under scrutiny. At this meeting consideration was confined to the question whether the United Kingdom should opt in to these proposals, given that a decision has to be made within three months of the proposals being presented to the Council.

You will be aware that the Home Secretary wrote to me on 20 January giving an undertaking on behalf of the Government that there would be an enhanced scrutiny procedure for legislation requiring a decision by the United Kingdom on whether or not to opt in. I shall be replying to her about this.

The Committee were most grateful for the EMs having been prepared by your officials within a very short time of the documents being deposited, and having been passed to the Clerk in draft so that he and his colleagues could begin consideration of them.

The Committee appreciated that the Government would not yet have reached a decision on whether or not to opt in, and might not do so until towards the end of the three-month period. They were nevertheless disappointed that the EMs did not give fuller indications of the matters influencing the Government, and its current thinking. The questions listed in the EMs as matters to which the Government will have particular regard in reaching a decision are ones which it would inevitably have to consider, and do not carry the matter much further forward. We hope that in the case of future proposals requiring a decision on opting in it will be possible to give a much fuller and clearer indication of the Government's current thinking. This would not of course in any way be binding on the Government if further consultation should lead to a change of view.

In the case of the three proposals under scrutiny there is one important matter which has not been mentioned in the EMs as one which might influence the Government, but which in our view is vitally important and possibly even decisive: what the consequences would be if the UK did not opt in. There are currently three legislative measures which the UK has opted in to and which apply in the UK as they do in other Member States. The three proposals make major amendments to these measures. Once they are agreed (not necessarily in their present form), the current legislation will be

replaced by new legislation. However if the UK does not opt in, we do not see how it would be possible for the current legislation to continue to apply in the UK unamended, and the new legislation to apply in other Member States. To give only one example, there has to be a single uniform set of rules under the Dublin system determining which State has jurisdiction to hear an asylum application; there cannot be two sets of rules running in parallel. We would be glad to know if you agree with our assessment; and if not, how in the case of each of the three measures you think the legislation would operate.

We appreciate that the proposals in fact operate by repealing and replacing the legislation now in force, rather than simply amending it. The three provisions repealing the legislation are of course in each case in the new proposal. In each case, if the UK does not opt in to a proposal, the repealing provision will not apply to the UK. It therefore seems to us at least arguable that the legislation now in force would continue to apply to the UK, but not to other Member States. We would be glad to have your views on this.

We would be grateful to be informed of any developments in the Government's thinking as to whether or not it should opt in. It may be that the Government has already decided to opt in to one or more of the proposals. We would still be grateful for your views on whether it will ever be possible for the UK not to opt in to proposals for amendment of legislation which already applies to the UK, since this is a matter which is likely to arise in the case of future legislation recasting the Qualification and Procedures Directives.

The Protocol on the position of the United Kingdom and Ireland currently does not have a provision dealing with this. As you know, the Treaty of Lisbon will add to the Protocol a provision allowing the Council to disapply unamended legislation, and to visit the financial consequences on the UK. We would be grateful for your views on whether such a provision would be implied in the existing Protocol by the Court of Justice.

Over half of the three-month period for opting in has now expired. We would be grateful for a reply to this letter as soon as possible so that the matter can again be considered by the Committee well before the end of the three month period. It may be that the Committee would want to invite you to give oral evidence on this issue.

*22 January 2009*

#### **Letter from Phil Woolas MP to the Chairman**

Thank you for your letter of 22 January setting out the conclusions of your Committee's meeting on the previous day.

I am sorry that the Committee was disappointed that the Explanatory Memoranda (EMs) that I submitted on the proposals did not, in its view, give a fuller indication of the matters that would influence the Government's opt in decision, and of our current thinking.

You will be aware that an opt in decision needs to be taken after wide consultation across Government on the implications of the proposals, so I am not in a position to announce in this letter what it will be. However, I can now give you a little more information about our thinking.

In considering the opt ins, it is best to look at the draft Eurodac and Dublin Regulations as essentially two elements of a single package, as the former is explicitly intended to support the latter. The existing Dublin and Eurodac Regulations allow the UK to return a significant number of individuals to the Member State that is responsible for examining their claims and so are of great benefit to us.

As the EM makes clear, there are many features of the draft new Dublin Regulation that we support but there are others (e.g. on detention) that will, in our view, make the system less effective. If we did not opt in to these draft Regulations, our view is that the existing ones would cease to apply to the UK when the new ones were adopted. We would therefore no longer take part in the Dublin and Eurodac arrangements at all. Given the benefits we have obtained from taking part in these instruments, this would be a major step, and we would have to consider the implications very carefully before not opting in.

The draft Reception Conditions Directive raises different issues. We support the concept of minimum standards across the EU but do not gain the same direct and measurable benefit from our participation in the existing Directive as we do from the Dublin and Eurodac arrangements. There are many proposals in the draft Directive that, for the reasons set out in the EM, are of concern. In deciding whether to opt in, we therefore need to make a realistic assessment of our chances of amending these during negotiations. Given the very significant distance between the position the Directive takes on issues such as employment, and the Government's own policies, we need to decide whether we wish to opt in and risk being bound by a possibly unfavourable outcome to the negotiations.

I would stress that these views are provisional and may change if further consideration leads us to a different position.

I will now turn to the consequences of not opting in to the proposals.

That the draft instruments repeal and replace the existing measures rather than amending them is an important distinction. The Government takes the view that if we did not opt in to one or more of these proposals, the measure in question would, when brought into force, still repeal the existing measure for the UK as well as for all other Member States. This is because the repealed measure would no longer form part of EU law, and the Protocol on the position of the UK and Ireland should not be interpreted as preserving as EU law on something which, on a normal reading, no longer formed part of it.

This was the position when Council Regulation 574/99/EC establishing a Common Visa List was repealed and replaced by Council Regulation 539/2001. The UK was bound by Council Regulation 574/99/EC but did not opt-in to Regulation 539/2001, with the result that the UK is bound by neither instrument.

We therefore do not believe that the existing measures would continue to apply to the UK unamended, as suggested in your letter.

The position would be different if these proposals were "amending" and not "repeal and replace" measures. Our view is that the Opt-in Protocol applies to all Title IV measures, amendments as well as repeals and replacements. If the UK does not opt-in to an amending measure the existing measure will continue to apply to the UK without the amendment. It is this scenario that the Lisbon Treaty would seek to address in introducing a mechanism allowing the Council to decide to eject the UK from the existing measure where our non participation in the amendment rendered the amended measure inoperable for other Member States, that is, where there could not be two sets of rules running in parallel. We do not consider that the European Court of Justice would imply the Lisbon ejection mechanism into the existing Protocol. This scenario can be addressed under the current treaty arrangements by using repeal and replacements where appropriate rather than amendments.

*5 February 2009*

**Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I am grateful for the opportunity to give evidence to Sub-Committee F this week on the recent Commission proposals on Eurodac/Dublin and Asylum Reception Conditions. At the meeting, I said I would write and explain the differences between the provisions that the existing Reception Conditions Directive makes on detention, and those in the Directive proposed by the Commission.

Detention is covered in Article 7(3) of the existing Directive, which allows Member States to detain "When it proves necessary, for example for legal reasons or reasons of public order". This imposes relatively light restrictions on Member States. Detention, provided it is necessary, is governed by domestic law and by Member States' international obligations (in particular, Article 5 of the European Convention on Human Rights). This seems appropriate to us.

The proposed replacement Directive would impose much more stringent restrictions. In particular:

- Article 9(2) would require detention to be authorised by a judge, or at least confirmed by one within 72 hours. That would be very difficult to operate in our system, under which detention is an administrative decision but the detainee has the right to apply to an independent judicial body (the Asylum and Immigration Tribunal) for bail.
- Article 9(3) would require the detainee to be informed of the maximum duration of detention. We agree that no-one should be detained for longer than strictly necessary, and that detention should not be prolonged unduly, but have always considered that a formal, arbitrary time limit would encourage detainees to "spin their cases out" until that limit had been reached.
- Article 10(1) would require asylum detainees to be held separately from immigration detainees who had not claimed asylum. We consider this to be an unnecessary provision, and one that could create heightened security risks if it required us to concentrate other non-asylum detainees, for example ex-Foreign National Prisoners, in specific detention centres. It would also hinder the effective management of our detention estate for no obvious good purpose.

We are not convinced that the Commission's proposals are necessary and are concerned that they would place excessive restrictions on Member States' right to detain asylum seekers where this is necessary. In particular, we believe that they would make it very difficult to operate our Detained Fast Track system, which provides fast and fair decisions for about 7% of asylum seekers whose cases can be resolved quickly, while being fully compatible with Article 5 of the ECHR.

I would also like to use this letter to reply to Lord Avebury's question about the number of asylum seekers subject to the fast track who are granted bail. I can assure the Committee that everyone who is subject to the fast track has the right to apply for bail to the Asylum and Immigration Tribunal, on the same basis as any other detainee. They are informed of this right, and provided with application forms, when they enter the fast track.

Finally, I think it would help if I clarified a point about the UK's ability to opt into some, but not all, of the proposed measures. As I said to the Committee, we see no problem in principle in the idea of the UK opting in to measures replacing the Eurodac and Dublin directives, but not into something replacing the Reception Conditions directive. Our doing so would put us in a similar position to that of Ireland under the present arrangements: Ireland does not take part in the existing Reception Conditions Directive but does participate in the EU's other asylum measures, including both Dublin and Eurodac. Similarly, Norway and Iceland take also part in Dublin and Eurodac through separate arrangements, but not in the Minimum Standards Directives (including Reception Conditions).

*25 February 2009*

### **Letter from Phil Woolas MP to the Chairman**

Following the evidence Session in Sub-Committee F on 25 February I am writing to let you know the Government's decision regarding the application of its opt-in to these instruments, as provided for by Article 3 of the Protocol on the Position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community.

The Government has written today to the President of the Council notifying its intention to participate in the Dublin and Eurodac proposals. The Government choose not to opt-in to the Asylum Reception Conditions Directive. In line with the new enhanced package for scrutiny of such proposals, the Government's notification was made after the 8 week period reserved to the Committee to submit its views.

As the Committee knows, the UK has strongly supported the Common European Asylum System (CEAS) since its launch. We believe it is very important to create a genuinely common European system in which asylum seekers can have their claims fairly and swiftly examined wherever they arrive and have no need to move to another Member State to obtain protection.

However, we also believe that the system should be robust against abuse, so that unfounded claims are quickly refused, and those making them removed. This will ensure that Member States can focus resources on protecting those who genuinely need protection, and will maintain the vital distinction between asylum and immigration.

One particular form of abuse with which we are confronted is the problem of multiple asylum claims by persons moving between States. We know from the recently published Eurodac Annual Report (document 5780/09) that this continues to be a problem. The Dublin system, backed up by the Eurodac fingerprint database, plays a vital role in combating this abuse and this is why we have chosen to opt-in to the proposals on Dublin (document 16929/08) and Eurodac (document 16934/08).

The Reception Conditions proposal (document 16913/08) is intended to lay down minimum standards for the treatment of asylum seekers before a decision is made on their claims. We fully support this principle and have implemented our obligations under the existing Reception Conditions Directive.

However, we do not believe that minimum standards should be set at a level that creates a pull factor for unfounded claims. Only a minority of the asylum claims that we receive in the UK are found to be well founded, even though our decision making process benefits from UNHCR's invaluable input through the Quality Initiative. The making of unfounded claims is an abuse of the asylum system and wastes resources that would be better spent on protecting genuine refugees.

The further additional rights that the draft Directive would grant asylum seekers – particularly on employment and material support – would in our view encourage unfounded claims because people will be more likely to come to the EU and claim asylum in order to benefit from these rights, and not because they need protection.

The proposed restrictions on detention will also make it harder for Member States to operate processes such as our own Detained Fast Track, which we regard as important because it provides

fast and fair decisions for the asylum seekers who are subject to it and acts as a deterrent to unfounded claims.

Therefore, it is our view that, taken as a whole, the proposals in the draft Reception Conditions Directive would have the effect of encouraging, rather than combating, abuse of the system and thus making it harder to protect those who genuinely need our help. We could not accept that and for this reason have decided not to opt-in to this proposal.

We will remain actively involved in the negotiations on all the new proposals, with a view to seeking to participate in Asylum Reception Conditions after adoption if our concerns about it are addressed. However, at this stage we do not want to take the step of opting into a proposal that is so far, in many respects, from our views of future European co-operation on asylum.

*6 March 2009*

## ASYLUM SUPPORT OFFICE (6700/09)

### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this proposal at a meeting on 1 April 2009.

The Committee welcomes in principle the establishment of an Office to improve practical cooperation between Member States on matters concerning asylum. We believe that its added value lies particularly in the provision of a central country of origin information service to which the UK is particularly well-equipped to contribute, having a thorough, well-referenced and regularly updated service already in existence. The gathering of country of origin information, and creation of a common format for it and a portal from which Member States' asylum authorities can obtain that information will go some way to improving the coherence and quality of asylum decisions across the EU.

We share, however, your concern that the Office is as cost-effective and light on its feet as possible. While we would have welcomed a proposal for a single Management Board which did not provide for representation for all Member States, we recognise that the split between a Management Board, which meets infrequently, and a smaller Executive Committee, meeting more frequently and taking the main decisions, could be a step in the right direction. We hope that the Government will press for this in negotiations. We are concerned, moreover, that the Office should be not only effective but also properly accountable. What is the thinking on the mechanism for scrutiny and supervision of its activities, and what benchmarks will be set against which its performance will be assessed?

We understand that a substantial amount of practical cooperation between Member States already takes place and has led, for instance, to the adoption of a common approach on country of origin information and the establishment of a common European Asylum Curriculum. What are the current structures under which these cooperation measures have been undertaken, and why were they thought to be inadequate to be built and improved upon?

We would be grateful if you could inform us as soon as possible whether the Government decides to opt in to this proposal and would welcome further progress reports on negotiations.

The Committee has decided to keep the document under scrutiny.

*1 April 2009*

### **Letter from Phil Woolas MP to the Chairman**

Thank you for your letter of 1 April 2009.

I am pleased that the Committee acknowledges the good work done by our Country of Origin Information Service. All the UK's country of origin information (COI) is published and already widely used by other countries. We also played a key role in developing EU common guidelines for the production of COI material and all our material meets these standards. So I agree with you that we are well equipped to contribute to a centrally coordinated COI resource.

I am also pleased to see that the Committee shares the Government's desire that the Office be as cost effective and light on its feet as possible. So far as the management of the Office is concerned, we believe this aim would be best achieved by making the Executive Director responsible for the day to day management of the office, with the role of the Management Board, on which all Member States will be represented, being to plan and monitor the work of the Office. A separate Executive Committee, as proposed by the Commission, seems to us to be an unnecessary layer of bureaucracy, so we would prefer to remove that entirely.

We do agree that the office should be not only effective but accountable. The Management Board will scrutinise and supervise the Office internally with the European Parliament, the Council, the Commission, and the Ombudsman maintaining an external overview. Filing of annual reports and designing work programmes will help ensure the Office makes good use of its resources. An independent external evaluation of the Office after three years (Article 45) is another safeguard. Given this level of scrutiny we consider there to be adequate safeguards in place to monitor the work of the office.

The Committee observes correctly that a substantial amount of practical cooperation on asylum already takes place between Member States, particularly on a common approach to country of origin information and on the creation of a European Asylum Curriculum (EAC). The UK has been an active supporter of this work but we believe that value could be added to it through active management by the Support Office.

Cooperation on country of origin information is currently led by the EURASIL network of asylum practitioners. The network structure of EURASIL, though helpful in collating information and exchanging views, is not constituted or resourced to lead on the practical development of a central information resource for use by all Member States. To date there has been much discussion about the creation of a COI portal but progress has been slow. The Office seeks to take this forward on a formal basis with funding for technology and staff in order to ensure its continued management and development. We believe that this approach is more likely to deliver results.

The current EAC project is designed to enhance the capacity and quality of European asylum processes by providing common vocational training, mostly via e-learning, for case owners and their equivalents across the EU. The project is currently run by the General Directors of Immigration Service (GDISC) network.

The Office will take over the running and future development of the EAC. The political will needed to support the current project is not always forthcoming and not all Member States take part in it (for example, Malta and Greece do not, and Italy has only just joined). The Office seeks to put this project on a more formal basis and we believe that this will give it added impetus and ensure that more Member States benefit from it.

We will, of course, inform the Committee as soon as we have decided whether to opt into the proposal. We have not yet taken this decision. The deadline for the UK to opt in to the proposal is 18 May 2009.

Negotiations have started on these proposals. The views of many other Member States have been similar to those of the UK, and we are optimistic about securing the clarifications to Articles 4(d) and 12(2) of the proposal that I indicated in the Explanatory Memorandum that we would be seeking. Initial discussions show that the majority of Member States consider that the Support Office should be funded from the Community budget and there should be no need for 'voluntary' contributions from Member States. We are working with other like minded Member States to ensure that costs are met by reprioritising from existing budgets rather than from an increase in the overall Community budget.

*21 April 2009*

## **BLUE CARD: ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONALS FOR THE PURPOSES OF HIGHLY QUALIFIED EMPLOYMENT (14490/07, 13748/08)**

### **Letter from Phil Woolas MP, Minister of State, Home Office, to the Chairman**

Lord Grenfell wrote to me on 13 November 2008<sup>2</sup> confirming that documents 14490/07 and 13748/08 concerning the above Directive were cleared from scrutiny.

He asked for my comments on the provisions of the Directive concerning the minimum salary requirements for highly qualified migrants under the Directive. As you note, the original proposal was that applications under the Directive might be approved where the vacancy filled by the worker attracted a salary at least three times the minimum monthly wage set by national law. This was subsequently changed to a minimum requirement that the salary be at least 1.5 times the average monthly wage, or 1.2 times the average monthly wage in case of occupations considered to be in particular need of third country workers.

He asked why these changes were made. The proposal to base the multiplier on average wages rather than the statutory minimum wage appears to have been brought forward because some Member

---

<sup>2</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

States do not operate a national minimum wage. During negotiations alternative proposals were that the test might have reference to the income level at which workers are entitled to social assistance or to wage rates set by collective agreements. In the event, basing the multiplier on average wages was settled upon as being a more universally applicable test.

He also asked which occupations the lower multiplier provided for in Article 5(4) would be applied to. If the UK was to opt into the instrument, the relevant occupations would be those included on the Shortage Occupation List for Tier 2 of the Points Based System, which was drawn up on the advice of the Migration Advisory Committee. The list was published on 11 November and can be accessed via the following link:

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/shortageoccupationlist/>.

8 December 2008

#### **Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 8 December 2008. Sub-Committee F of the European Union Select Committee considered your reply at a meeting on 14 January 2009. We are grateful for the information you provide. The Committee has no further points to raise with regard to the proposal.

15 January 2009

#### **CRITICAL INFRASTRUCTURE WARNING AND INFORMATION NETWORK (CIWIN) (15041/08)**

##### **Letter from Admiral the Lord West of Spithead, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I am writing to supplement the Explanatory Memorandum that you have received concerning the European Union Commission's proposal for a Critical Infrastructure Warning and Information Network (CIWIN).

The Commission's proposal (15041/08) dated 28 October proposes a system with two distinct functions: an information sharing network and a Rapid Alert System (RAS). This is the paper that will be debated at the European Parliament, and is therefore the one on which we have based the EM.

However, following discussion of the Commission's original paper at a meeting of the ProCiv and EPCIP working group on 11 November 2008, the Commission is considering revising the content of its original proposal in response to the comments of a number of Member States, including the UK. The revised proposal would no longer include a RAS function, making CIWIN a purely information sharing tool.

This would constitute a major departure from the initial proposal and address many of the UK's concerns about the Commission's original vision for CIWIN, which is why I have brought this development to your attention at such an early juncture. The UK would be more confident about supporting the revised proposal for implementing CIWIN as a purely information sharing tool between participating Member States.

The revised proposal will be discussed at the next ProCiv and EPCIP working group meeting on 1 December 2008, which should provide greater clarity about the detailed arrangements for CIWIN.

I hope that this additional background information is useful.

2 December 2008

##### **Letter from Admiral the Lord West of Spithead to Chairman**

I am writing further to the Explanatory Memorandum dated 2 December concerning the European Union Commission's proposal for a Critical Infrastructure Warning and Information Network (CIWIN).

The Commission's proposal (15041/08, ADD 1 and ADD 2) dated 28 October proposes a system with two distinct functions: an information sharing network and a Rapid Alert System (RAS). This is the paper that will be debated at the European Parliament, and is therefore the one on which we have based the Explanatory Memorandum.

In my supplementary letter to you of 2 December, I drew attention to a revised proposal in a non-paper from the Commission that significantly changes their initial proposal, and addresses many of the UK's concerns about the Commission's original vision for CIWIN. The revised proposal now no longer includes a RAS function, making CIWIN a purely information sharing tool for participating Member States. This development would appear to make superfluous any substantial debate on the now redundant proposals for a Rapid Alert System.

The revised proposal was briefly discussed at the European Union Council Working Group for Civil Protection (ProCiv) meeting on 1 December 2008, with Member States welcoming the new proposal. Detailed discussion on these new proposals was not possible as many Member States had not had the time to re-assess their positions. Detailed negotiations on the new proposal for CIWIN will therefore be undertaken at ProCiv during the Czech Republic's Presidency, and are unlikely to be complete until summer 2009.

I hope that this additional background information is useful.

*15 December 2008*

### **Letter from the Chairman to the Lord West of Spithead**

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 14 January 2009. With it they considered your letters of 2 and 15 December explaining the negotiations in the working party, and the revised text contained in Non-Paper DS 1129/08, for all of which they were very grateful.

You will know from previous correspondence between Lord Grenfell and Tony McNulty MP (and his predecessors Hazel Blears MP and Caroline Flint MP) that this Committee has, on grounds of practicality, security and subsidiarity, always supported the Government in opposing the over-involvement of the EU in the protection of national critical infrastructure, which is primarily a matter for the Member State concerned and any other Member State or States which happen to be involved in a particular case. We are therefore glad to see that the Government has been successful in early negotiations in removing from the original Commission proposal the suggestion that CIWIN should include a Rapid Alert System.

We are also relieved to see that the Government intends to participate in the remaining information system only if it is satisfied with the security aspects, and we hope that it will if necessary decline to participate at all, as it now clearly has the right to do.

We are clearing the document from scrutiny. We are however concerned that there is no document with the revised proposal which can be deposited. We would be glad if you would keep us informed of any developments in the negotiations.

*15 January 2009*

## **DRUGS ACTION PLAN (13407/08)**

### **Letter from Alan Campbell MP, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I am grateful to the Committee for clearing the draft EU drugs action plan 2009-12 from scrutiny. The plan was adopted by the General Affairs and External Relations Council on 8 December and I attach a copy.

The Committee was concerned that the action plan did not contain evidence of positive new thinking, and asked to be kept informed of developments. The final plan does not differ significantly from the version that the committee saw, and I am writing to explain why.

It is important to bear in mind that the action plan, like its predecessor, has its base in the EU drugs strategy 2005-2012. So it was not within the remit of those drafting the action plan to depart fundamentally from, or to base it on principles significantly different from, that strategy.

The plan is not intended to be an EU policy separate from those of Member States to deal with the drugs problem. Competence for anti-drug policies lies with Member States, not with the Union. Rather it is intended as a resource to support what Member States do.

It seeks to do this first by encouraging Member States to pursue policies and strategies that have proven worth; and second, by encouraging EU action in areas where the size and resources of the EU enable it to add value to what Member States do - for example, through the co-ordination of

operational policing and policing methods, through the co-ordination of research effort, and through the combined political and financial weight that the EU collectively can bring to bear.

The plan offers support for incremental development of work against drug misuse and trafficking, rather than radical solutions. If effective radical solutions were to emerge from the combined effort that the plan supports, that would be a bonus. But, meanwhile, the Government's view is that the supportive role envisaged for the plan is appropriate, and the actions it proposes will be of significant help. The challenge will lie in delivering on it and we will be working hard with other Member States and the Commission to that end.

*19 December 2008*

#### **Letter from the Chairman to Alan Campbell MP**

Thank you for your letter of 19 December 2008 addressed to Lord Grenfell, in reply to his letter of 31 October 2008. Sub-Committee F of the Select Committee on the European Union considered your letter at a meeting on 28 January 2009. Your letter was for some reason not received in this office until 13 January 2009, and does not appear to have been emailed to the Clerk on the date of signature, as is the usual practice.

In his letter of 31 October Lord Grenfell pointed out that your EM was signed on 13 October, the day the Working Group met to discuss further changes to the draft Action Plan. He said that the Committee were looking forward to hearing the outcome of those discussions, and to seeing the final draft before it was adopted by the Council. Regrettably, the Committee were not informed of the outcome of those discussions, nor did you send them a copy of the final draft before it was adopted by the Council, as they had requested. We would like to know the explanation for this.

We accept that it was not possible for the Action Plan to depart fundamentally from the 2005-2012 drugs strategy, nor did we expect it to; it was not the ends that concerned us, so much as whether they would be achieved by the actions proposed. However having now seen the Action Plan in the form in which it was adopted we agree that it does not differ significantly from the version we saw. The challenge, as you say, will lie in delivering what the Action Plan proposes.

*29 January 2009*

#### **Letter from Alan Campbell MP to the Chairman**

Thank you for your letter of 29 January in response to mine of 19 December to Lord Grenfell on the EU drugs action plan. I am sorry it has taken me a little longer to reply than I would have wished.

That the Committee did not get a copy of the final draft of the action plan before it was adopted by the Council was in part through a misunderstanding, and in part through oversight by my officials. Lord Grenfell's letter made no mention of the Council working group's discussions on 13 October and discussion on the action plan were set to (and did) continue beyond then. My officials interpreted Lord Grenfell's words, "We look forward to seeing the outcome of those discussions..." as meaning the totality of discussions – and these did not end until the meeting of the working group on 13 November. There would have been time to show the document to the Committee between that date and I am sorry that we failed to do so. But of course, the Committee had cleared the document from scrutiny by then, and the UK had accordingly lifted its scrutiny reserve. So it would not have been possible to achieve further changes to the plan.

My letter of 19 December did describe the outcome of the totality of the negotiations, and it also sought to explain why the Government did not agree with the proposal that the Commission should embark on radical new thinking. Perhaps I should add to that explanation that Lord Grenfell's letter had not indicated in any concrete terms what direction the Committee thought such radical new thinking should take. The draft of the Plan that the Committee saw was the product of a long process of drafting and approval in the Commission, which process included consultation with stakeholders. The UK Government also offered views, which were taken on board. After the Commission had submitted the draft to the Council, discussions took place between drugs officials from all member States in the Council working group at a two day session in September (and were set to continue in October and November). In those discussions, the UK had been pressing to get the Plan agreed and adopted, so that implementation could begin. Against that background, it would have been inappropriate to ask for the Plan to be fundamentally rethought and we did not see a need to do so.

*9 March 2009*

### **Letter from the Chairman to Alan Campbell MP**

Thank you for your letter of 9 March 2009 which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 18 March 2009.

I am grateful for your apology. I would not want you to think that, because a Committee clears a document from scrutiny, it ceases to have any interest in it. In the case of an important document like the Drugs Action Plan the Committee were naturally keen to see it in its final form, and would have preferred to do so before it was adopted rather than after, even though as you say there was no realistic prospect of it being further amended once the negotiations in the working group were concluded.

*23 March 2009*

### **ENLARGEMENT OF THE EU: TRANSITIONAL ARRANGEMENTS SET OUT IN THE 2003 AND 2005 ACCESSION TREATY (16162/08)**

#### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 25 February 2009. We are grateful to you for explaining to us fully your position with regard to the restrictions that you will continue to apply to workers from Romania and Bulgaria, including the adjustments that you intend to make.

The Committee has decided to clear this document from scrutiny.

*26 February 2009*

### **FREEDOM OF MOVEMENT (5553/09)**

#### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this report at a meeting on 4 March 2009.

The Committee considers that there is a legitimate scope for disagreement on the provisions you refer to in your Explanatory Memorandum as they are open to different readings. We would be grateful if you could keep us informed about your dialogue with the Commission and other steps that are likely to be taken to ensure uniformity of interpretation throughout all Member States.

We would also welcome information on the steps the Government has taken to comply with the European Court of Justice judgment in *Metock* (Case C-127/08), in particular with regard to making the necessary amendments to the Immigration (European Economic Area) Regulations 2006. The Committee would also be interested to know if compliance with the *Metock* judgment will have any bearing on the "relevant family association" requirement in clause 38 of the Borders, Citizenship and Immigration Bill.

In paragraph 7 of the EM you state that the Commission reports that it has set up a group of experts to clarify issues of interpretation of the Directive. Could you let us know who these experts are, how often the group is meeting and what the timeframe is for the group to report on the issues identified?

The Committee has decided to clear this document from scrutiny but would welcome information on the issues raised above.

*5 March 2009*

#### **Letter from Phil Woolas MP**

Thank you for your letter of 5 March 2009. You asked for clarification on a number of points, which I have addressed below.

The Commission has said it will discuss the issues raised in its report bilaterally with Member States and we look forward to those discussions. It will clearly take time for the Commission to meet all Member States and no timetable has yet been set for the UK. We hope that differing interpretations on certain sections of the Directive can be clarified at that meeting.

The experts group is comprised of representatives from the Departments within Member States responsible for implementing the Directive. It is organised by the Commission on an ad hoc basis and

has met three times since September. These discussions are an opportunity to feed in Member States' experience and concerns to the Commission, who will be publishing interpretive guidelines later this year (by June at the latest).

As requested by the November Justice and Home Affairs (JHA) Council and discussed again at the February JHA Council, the guidelines will address measures to prevent abuse and misuse of free movement rights. We are keen that the guidelines reflect that, as well as having free movement rights, individuals also have responsibilities to abide by the laws of the Member State in which they live. We look forward to guidelines on the consequences when these responsibilities are not met, including expulsion for serious crimes and when low-level persistent crimes have a serious impact. Other areas the guidelines will look at include the problems caused by false marriages.

The Government remains very concerned about the potential implications of the *Metock* judgment. Guidance on the application of the Immigration (EEA) Regulations 2006 has been updated in line with the judgment, such that decisions taken on applications from family members of EEA nationals comply. We are also awaiting the publication of the Commission's guidelines on interpretation of some issues covered by the Free Movement Directive. In the meantime, we will continue to take a robust approach to abuse of marriage and family reunification issues by EEA nationals, as well as to abuse of other areas of free movement.

Clause 38 of the Borders, Citizenship and Immigration bill is concerned with how individuals may apply to naturalise as a British citizen under section 6(2) of the British Nationality Act 1981 where they also have a 'relevant family association' with a person who is already a British citizen or permanent resident. It is not affected by how a third country national acquires free movement rights by virtue of their relationship to an EEA national exercising a Treaty right in the UK. The *Metock* judgment does not therefore impact on the drafting of Clause 38.

19 March 2009

#### **Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 19 March 2009. Sub-Committee F of the Select Committee on the European Union considered this letter at a meeting on 22 April 2009. We are grateful to you for providing the information requested and look forward to receiving a copy of the interpretative guidelines the Commission will soon be publishing. With regard to your concerns about the potential implications of the *Metock* judgment, we would welcome it if you could keep us informed about how they are going to be addressed in the guidelines. The Committee has no further points to raise with regard to this report.

23 April 2009

#### **G6 INTERIOR MINISTERS MEETINGS, BERLIN**

##### **Letter from the Chairman to the Rt Hon Jacqui Smith MP, Home Secretary, Home Office**

On 1 and 22 April 2009 Sub-Committee F of the House of Lords Select Committee on the European Union considered the written statement (not printed) you made on 24 March 2009 about the meeting of the G6 Interior Ministers in Berlin on 15 March 2009. Lord West of Spithead repeated your statement in the House of Lords.

The Committee has always taken an interest in these meetings, and published a report on the meeting in Heiligendamm in March 2006 (*Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm*, 40th Report, Session 2005-06, HL Paper 221). A main criticism was the secrecy surrounding these meetings. In evidence to the Committee on 28 June 2006, and in the Government's response to the report, Joan Ryan MP, then the Parliamentary Under-Secretary of State at the Home Office, undertook that the conclusions of all future G6 Meetings would be published. This undertaking was repeated in the House by Baroness Scotland of Asthal on 26 October 2006, when she said that G6 meetings were an opportunity to discuss matters of mutual interest "openly and transparently". This was a point to which we returned in our report on the next G6 meeting: *After Heiligendamm: doors ajar at Stratford-upon-Avon* (5th Report, Session 2006-07, HL Paper 32, paragraphs 5-9). But it was not until the G6 met in Sopot in October 2007 that the conclusions were at last the subject of a written statement.

We are grateful for your written statement about the Berlin meeting, though disappointed that your officials did not inform us in advance that it was going to take place, as they had been requested.

We note from your statement that “Ministers agreed to dissolve the former G6 working group structures and return the format to high-level political discussions. No formal conclusions would be issued after meetings.” We accept that it is entirely for Ministers to decide if they wish to change the form of the meetings. However in view of our continuing interest in these meetings we regard it as most important that you should keep us informed about the outcome of the next meeting in this country, and of subsequent meetings.

23 April 2009

## IMMIGRATION AND ASYLUM PACT (12626/08)

### **Letter from Phil Woolas MP, Minister of State, Home Office, to the Chairman**

Thank you for your letter of 13 November 2008<sup>3</sup> about the European Pact on Immigration and Asylum.

You have requested I clarify the reference in the Migration Pact to changing the legal framework and treaty bases in certain areas.

The proposals on asylum in Chapter IV of the Migration Pact reflect the Commissions' Communication of 17 June 2008 ('Policy Plan on Asylum – An integrated approach to protection across the EU'). The Communication states that implementing the Policy Plan may be completed under two different legal frameworks - the existing EC treaty provisions following changes made by the Treaties of Amsterdam and Nice and future EC Treaty provisions, following the amendments made by the Lisbon Treaty.

The Lisbon Treaty would substantially re-write the immigration and asylum Articles in the EC Treaty. However, as stated in the House of Lords EU Committee's report on the Lisbon Treaty these changes would in many cases appear to reflect existing practice. It is likely that any actions, including proposed legislation, put forward as part of the implementation of the Migration Pact could be made under either legal framework.

You have also raised the issue of the growing problem of piracy; I have passed this information onto the FCO who will be writing to you separately with a full response.

2 December 2008

### **Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 2 December 2008 and for clarifying the reference in the Pact to changing the legal framework. Sub-Committee F of the European Union Select Committee considered your letter at a meeting on 14 January 2009. We have no further issues to raise with you with regard to this dossier, but we look forward to hearing from the FCO on the subject of piracy.

15 January 2009

### **Letter from Bill Rammell MP, Minister of State, Foreign and Commonwealth Office, to the Chairman**

I am writing in response to Lord Grenfell's letter of 9 October 2008 and subsequent correspondence from Phil Woolas of 2 December 2008<sup>4</sup>. Lord Grenfell asked about the implications for EU immigration and asylum policy of the growing problem of piracy in the Mediterranean and elsewhere, particularly in relation to the right of those involved to apply for asylum.

The UK has taken a leading role in the international response to tackle piracy off the coast of Somalia. We provide the Operation Commander and the Operation HQ at Northwood for the European Union's Counter Piracy mission – Operation ATALANTA – that was launched by Foreign Ministers on 8 December 2008. The key objectives of ATALANTA are to protect World Food Programme vessels bringing aid to Somalia, and to deter, disrupt and suppress piracy in order to protect vulnerable shipping in the region. The UK has also taken a leading role in studying the need for regional capacity building measures that seek to address the root causes of piracy in a more sustainable way.

The Combined Maritime Force is a 23 nation Coalition established in 2001 to contribute towards Operation Enduring Freedom. The focus of the CMF is to provide maritime security in what is a vital

---

<sup>3</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

artery of world trade including the main shipping routes to/from the UK. The Royal Navy provides frigates to the CMF conducting maritime security operations in the region. As part of this, HMS PORTLAND is conducting counter piracy missions on a case by case basis.

In addition to supporting military operations on piracy this year, the UK is providing £30m of humanitarian and development assistance to the region. We are encouraging the European Commission and other partners to increase targeted support for governance/economic development, in particular in coastal areas.

In answer to Lord Grenfell's specific question, in the event of a Royal Navy – or other EU Member State – operation to combat piracy Naval forces may detain pirates for the purposes of handing them over to a State for prosecution. In terms of asylum, detainees would be unable to claim asylum at sea since a warship does not count as a port of entry to the UK or any other State.

In the Mediterranean region, the UK is committed to tackling illegal seaborne migration through working with EU Member States and third country partners.

28 April 2009

## JHA COUNCIL REPORT, APRIL 2009

### **Letter from Vernon Coaker MP, Minister of State, Home Office, to the Chairman**

I am writing to you about the JHA Council on 6 April 2008<sup>5</sup> and apologise for the delay in providing this information to you.

The Council was held in Luxembourg. My honourable friend the Minister of State for Borders and Immigration Phil Woolas, my noble friend, the Parliamentary under Secretary of State for Justice Lord Bach, Fergus Ewing, Scottish Minister for Community Safety and I represented the UK.

The Council reached a general approach on legislation concerning the prevention and settlement of conflicts of jurisdiction. This is a measure aimed at avoiding situations where a defendant is facing criminal proceedings in two or more Member States for the same facts. The UK supported the general approach, subject to a Parliamentary scrutiny reservation.

The Commission presented its proposal on combating sexual exploitation of children and child pornography and appealed to the Council to adopt it by the end of the year. They noted that increased freedom to travel and technological developments increased the threat to children and that the current legislative framework was insufficient. A number of Member States, including the UK, intervened to support the aims of the proposal.

On human trafficking, the Commission introduced its proposal, which was based on, but more ambitious than the Council of Europe Convention. It included a wider definition of trafficking than in the current instrument to cover trafficking for removal of organs and more stringent sanctions for this offence.

The Presidency welcomed the proposal and confirmed that it would take forward negotiations as a priority.

The Presidency presented the conclusions of the conference in Prague about the protection of vulnerable victims. The conclusions were welcomed by the Commission and adopted without discussion.

Under any other business, Justice Ministers discussed their responses to the economic downturn. This was a UK initiative. Lord Bach informed the Council that, in the UK, the Ministry of Justice was at the front line of providing practical legal help and support to individuals, families and businesses affected by the economic downturn. Among other things it was facilitating the resolution of debt related disputes both at court and beforehand. The UK had strategies in place to address increasing levels of debt, funding specialist social welfare law advice and introducing a range of pre-action protocols to ensure that every effort was made by the parties to resolve disputes prior to court. The Presidency promised to return to this topic at the JHA Council in June.

The Commission provided information on the funds available for European e-justice work. It confirmed that e-justice was a priority for both the civil and criminal justice funding programmes and that when these programmes were reviewed it would consider whether any additional funding should be made available. The Presidency reminded all Member States of the conference on cross border succession and wills in Prague on 20 to 21 April.

---

<sup>5</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

There was also an update from Member States in relation to ratification of the EU-US Extradition and Mutual Legal Assistance (MLA) Agreements. The Presidency hoped the instruments of ratification could be exchanged at the EU-US summit in June.

During the Interior Ministers lunch, the Council discussed the appointment of the new Europol Director, after which the Council unanimously appointed the UK candidate, Rob Wainwright, the new director of Europol.

During the Mixed Committee with Norway, Switzerland, Iceland and Lichtenstein, Ministers were given an update regarding the implementation of the second generation of the Schengen Information System (SIS II) in light of the Council Conclusions adopted at the February Council which identified the need to resolve problems in the central system. The Presidency confirmed that a report would be presented to enable Ministers to make an informed decision on the way ahead at the June Council. The Council adopted Conclusions on the development of the SIRENE Bureaux. These are not relevant to the UK since they concern arrangements for the operation of the current Schengen Information System, to which the UK is not a party.

The Presidency congratulated Switzerland on the successful completion of its air borders evaluation allowing it to lift checks on persons at its air borders on 29 March 2009.

The Presidency presented to the Mixed Committee the current state of play on the implementation of the Regulation establishing the Visa Information System (VIS). The UK does not participate in that Regulation.

Lastly under any other business in the Mixed Committee the Presidency noted that following a visit by the Commission and Presidency to the US, the US had asked EU Member States officially for the first time for assistance in the closure of Guantanamo. The Mixed Committee in future would deal with this issue, because of the possible impact on the Schengen area. The Presidency was now ready to prepare a co-ordinated approach by EU Member States. The issue would be taken forward by Coreper, and would be reconsidered at the June Council to see if more specific conclusions could be reached.

Returning to the main Council agenda, the Presidency sought political agreement on the Directive for a single application procedure for third-country nationals. However, Member States remained divided on whether to include all legally resident third country nationals in the scope of rights of this proposal or just those admitted under the Single Application Procedure for which the Directive provided. The UK does not participate in this proposal.

The Council also discussed whether to start a Europol-Russia cooperation agreement. There were differing opinions on how to proceed and the Presidency did not reach a formal conclusion. They proposed instead that the issue should be placed on the agenda of the forthcoming Russia -EU Troika meeting in Kaliningrad. In the meantime they would try further to reconcile Member States' positions.

Under AOB, Greece informed the Council that the Third Global Forum for Migration and Development will take place on 4-5 November in Athens.

The next JHA Council will take place on the 4-5 June in Luxembourg.

*28 April 2009*

## LONG-TERM RESIDENTS DIRECTIVE (10515/07)

### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Thank you for your letter of 26 November 2008<sup>6</sup>. Sub-Committee F of the European Union Select Committee considered it at a meeting on 25 February 2009. As you mention in your letter, the dossier was on the agenda of the Justice and Home Affairs Council of 27 and 28 November 2008, and we awaited the outcome of the discussions before giving this matter further consideration. We note from the post-Council statement that Member States were unable to reach a compromise on the proposal. We understand that, despite the UK's decision not to opt in, you are following the discussions, and would be grateful if you could let us know whether there is any prospect of this proposal being agreed during this or the next Presidency, or indeed at all.

The Committee has decided to clear this document from scrutiny.

*26 February 2009*

---

<sup>6</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

### **Letter from Phil Woolas MP to the Chairman**

Thank you for your letter of 26 February that cleared document 10515/07 from scrutiny and asked whether there is any prospect of this dossier being agreed during this or the next Presidency or indeed at all.

As noted previously this proposal has been difficult to negotiate, with Member States strongly divided between two opposing camps: those who want the same qualifying conditions for long term residence to apply to both refugees and beneficiaries of subsidiary protection and those who want to exclude or impose tougher conditions for beneficiaries of subsidiary protection. The Czech Presidency has advised us that it has no intention of discussing this dossier under its Presidency and we have no information to suggest that a future Presidency will be keen to take it up, but cannot of course rule this out.

*18 March 2009*

### **Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 18 March 2009. Sub-Committee F of the European Union Select Committee considered it at a meeting on 1 April 2009. We understand that this dossier is dormant for the time being and would welcome further information if and when negotiations will be resumed.

*1 April 2009*

## **MIGRATION: STRENGTHENING THE GLOBAL APPROACH (14003/08)**

### **Letter from Phil Woolas MP, Minister of State, Home Office, to the Chairman**

Thank you for your letter of 17 November 2008<sup>7</sup> following the Explanatory Memorandum on the Global Approach to Migration. You asked a number of questions which I will answer as follows.

1. WHY MALI HAS BEEN SINGLED OUT FOR THE SETTING UP OF A MIGRATION INFORMATION AND MANAGEMENT CENTRE AS OPPOSED TO MORE POPULOUS NEIGHBOURING COUNTRIES.

The EU Commission has advised us that the project was undertaken at the request of the Government of Mali. It is intended as a pilot project. If it is shown to be successful it may be extended to other countries, including countries larger in terms of population.

2. WHAT THIS MEANS IN TERMS OF MANPOWER AND COST

The EU Commission has informed us that the Mali centre is funded from a regional line in the framework of the 9th European Development Fund (EDF). Under EDF 9, 10 million euros (7.9 million pounds) were allocated for this purpose, including the operational costs of managing the Mali centre. In the framework for EDF 10 (2008-13) a further 5 million euros (3.9 million pounds) have been set aside in order to strengthen the capacity of the Malian authorities responsible for migration.

3. WHY MOLDOVA AND CAPE VERDE WERE SINGLED OUT FOR MOBILITY PARTNERSHIPS

EU Commission Ambassadors in third countries regularly hold dialogue with countries which includes migration issues. The EU Commission has previously advised us that Moldova, Cape Verde, Georgia and Senegal (the four countries in which partnerships are either in place or under development) wrote to the Commission in Brussels asking to be considered for a Mobility Partnership, after which the Commission and Presidencies took note and introduced the issue into the High Level Working Group on Migration before agreeing to commence partnerships as part of EU Council Conclusions on migration in 2007 and 2008.

4. WHICH COUNTRIES PARTICIPATE IN THE EU-AFRICA PARTNERSHIP ON MIGRATION, MOBILITY AND EMPLOYMENT AND WHERE AND WHEN MEETINGS OF THE PARTNERSHIP HAVE TAKEN PLACE

The MME partnership is chaired by Spain, and all EU Member States are invited to attend. EU Member States have met three times, on the 25 April 2008, 10 June 2008 and 9 October 2008 to co-ordinate the EU position. The first Joint Expert Group meeting – bringing EU and African Union experts together for the first time, took place on 26 November 2008.

---

<sup>7</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

5. ESTIMATED COST OF THESE INITIATIVES AND THEIR IMPACT ON IMMIGRATION PATTERNS FROM THE REGION

Most immigration in Africa is intra-regional and HMG does not formally monitor these flows. Because of the limited time that the Mali centre has been open, it is too soon to tell what impact the Mali centre has had on the flows of migrants either to or from Mali or more widely. Mobility partnerships have so far included some limited visa facilitation into the EU borderless Schengen area. This has no direct effect on the UK which retains its own Visa and Points Based System for control of legal migration.

6. CONTRIBUTION MADE BY THIS COMMUNICATION TO DISCUSSIONS IN THE JHA COUNCIL IN DECEMBER

Draft EU Council Conclusions on the Global Approach to Migration are currently being discussed by the Presidency with the Council and these are expected to be discussed by JHA Ministers on either the 27 or 28 November before being formally adopted at the December General Affairs and External Relations Council on 8 - 9 December. Initial official level negotiations were conducted in the High Level Working Group for Migration on the 11 and 12 November. The Communication was part of the background to those discussions.

*1 December 2008*

**Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 1 December 2008. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 17 December 2008. They were very grateful for the clear responses their questions. Could you, however, clarify what the costs you mention in point 2 of your letter represent in terms of manpower?

The Committee would also welcome more information about the use of funds from the 9th European Development Fund (EDF) for initiatives under the Global Approach, such as for the Migration Centre in Mali. We would be grateful if you could let us know under what programmes of the EDF this money is allocated.

Finally, we would be grateful if you could let us know whether information is available on the duration of the pilot project in Mali and when an evaluation is likely to take place before the project is extended to other countries.

*17 December 2008*

**PAKISTAN: READMISSION AGREEMENT (7510/09)**

**Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered these proposals at a meeting on 22 April 2009.

You will be aware that we have had previous correspondence with Meg Hillier about the negotiation of this agreement with Pakistan. We are grateful to her and to your officials for their help over this. We clear both proposals from scrutiny – as indeed Lord Grenfell made clear would be the case in his letter to Meg Hillier of 1 May 2008, since it seems to us that there is no significant difference between this agreement and other readmission agreements we have seen.

*23 April 2009*

**PASSENGER NAME RECORD (PNR): EU-AUSTRALIA AGREEMENT**

**Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I am writing in response to a letter from Lord Grenfell dated 26 November 2008<sup>8</sup> regarding the deposit of the Passenger Name Records (PNR) Agreement between the European Union and Australia for scrutiny by the Select Committee on the European Union.

---

<sup>8</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

In his letter Lord Grenfell specifically addresses the situation when negotiations on draft agreements proceed on a confidential basis leaving only a short period of time to deposit the text before the intended date of signature. The letter referred to the recent PNR Agreement between the EU and Australia, where no draft of the agreement was deposited for scrutiny by the Select Committee before it was signed. Lord Grenfell inquired about the possibility of restricted negotiating mandates and restricted draft texts being shared with the Select Committee at an early stage in order to allow sufficient time for scrutiny.

Firstly, may I take this opportunity to assure you that it is the intention of the UK Border Agency to be as open as possible with the Committees when negotiating external agreements and to provide as much information as possible to assist with the scrutiny of these agreements. However, I am sure that you will also appreciate that the UK Border Agency must respect the confidential nature of these agreements.

We will, however, undertake to write to the Committees following the Council at which a classified negotiating mandate has been agreed. We would aim to let you know in general terms what is being negotiated, as well as other points of interest that we can share with you, for example the likely timescale for the negotiations. We would also aim where possible to keep the committees up to date with developments, particularly when the negotiations are expected to take some time; again any such update would be in general terms given the confidentiality of the negotiations.

I have carefully noted Lord Grenfell's concerns regarding the scrutiny process of the EU - Australia PNR Agreement, and whilst my officials take the scrutiny process seriously, regrettably there have been occasions when this process cannot be completed prior to a vote. Understandably, whilst the texts of these agreements remain classified, it would not be normal practice to consult more widely. However once a proposal for a decision has been issued, we would be able to forward the Committees an unnumbered Explanatory Memorandum (EM) which would understandably be written in fairly general terms if the proposal was classified. Alternatively, if the proposal is not classified, a copy of the proposed agreement would be deposited in the normal way and a full EM provided on its content.

*9 December 2008*

### **Letter from the Chairman to Meg Hillier MP**

Thank you for your letter of 9 December 2008 which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 14 January 2009.

The Committee welcome your undertaking that as much information as possible should be supplied to them during the course of negotiations of agreements. They appreciate of course that the negotiations themselves, and the terms of the draft texts, will very often be confidential, and they would not expect these confidences to be broken; but it would be very helpful to be told, whether in a letter from you or in an unnumbered EM, when negotiations commence, in general terms how they are progressing, and when a text is agreed.

All this however overlooks the main point made by Lord Grenfell in his letter of 26 October 2008, which is that whether the negotiations are confidential or not, and however rapidly the parties wish to see a draft agreement signed and come into force, there can never be any justification for not depositing for scrutiny in the normal way the draft Decision approving the agreement on behalf of the EU, with the draft agreement annexed to that Decision.

This is not a technicality. In this case the Decision, once approved by the United Kingdom and other Member States and adopted in the Council, authorised the conclusion of an agreement which requires airlines flying passengers from the EU to Australia to pass to the Australian authorities detailed personal information about the passengers, some of it sensitive. We have made clear in the past that we do not question in principle the value of PNR data as a weapon in the fight against terrorism and serious crime, but we do require an opportunity, in the case of each draft agreement, to consider and comment on the safeguards surrounding the transfer of such data.

We appreciate that the parties (the EU and the third country) may often wish to see the draft agreement signed soon after the terms are agreed – perhaps only a few weeks after, perhaps even less. If the scrutiny process has not by then been completed, Ministers will have to consider, as they do in the case of any other Council legislation, whether to place a reserve pending the conclusion of parliamentary scrutiny, or whether they think the matter is of such urgency that scrutiny should be overridden, and an explanation of the reasons for this given subsequently.

As Lord Grenfell pointed out, in the case of the agreement with Canada nearly four months elapsed between the deposit of the Commission draft of the Council Decision and the adoption of the Decision and signature of the agreement. We do not suggest that as long a period as this is necessary;

the draft was cleared from scrutiny within five weeks of being deposited. We should however like to know, in the case of the Australian Decision, the date of the Commission proposal for the Decision which was adopted by the Council on 30 June 2008, and why it was thought that it need not be deposited for scrutiny.

You say at the end of your letter that "if the proposal is not classified, a copy of the proposed agreement would be deposited in the normal way and a full EM provided on its content". What we seek is your assurance that in every case, as soon as the terms of the draft agreement cease to be classified, the draft Council Decision with the agreement annexed will be deposited for scrutiny in the usual way.

*15 January 2009*

#### **Letter from Meg Hillier MP to the Chairman**

I entirely accept the Committee's assertion that the Council Decision authorising signature of this Agreement should have been deposited for scrutiny and apologise that it was not sent to the Committee. We subsequently provided information to the Committee on the dossier. I understand that policy officials believed there was an exemption from putting this document forward for scrutiny. It is clear that this position was incorrect and I assure you that my officials and I are making every effort to ensure that this does not happen again.

As the Committee acknowledges, we do not deposit any negotiating mandates related to potential third country agreements because to do so would undermine the EU's ability to negotiate effectively with the third country. But as the Committee also recognises, as soon as the negotiation is complete and the Council is presented with a draft Council Decision authorising signature of the annexed agreement, we do accept that there is an obligation to deposit the text in the usual way, with an accompanying EM.

The initial document was Restricted and not declassified until 27 May 2008, becoming fully depositable on 10 June. The Agreement was discussed at JHA Council on 30 June 2008.

In light of this, the Committee may be interested to know that the Council is in the process of developing a negotiating mandate for the Presidency to pursue a third country Agreement between the EU and Japan on mutual legal assistance in criminal matters. This work remains at an early stage but we will keep the Committee informed of progress.

*29 January 2009*

#### **Letter from the Chairman to Meg Hillier MP**

Thank you for your further letter of 29 January 2009 which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 25 February.

The Committee are glad that you accept (as you did when we met on 27 January) that the draft Council Decision approving the draft PNR agreement with Australia and authorising its signature should have been deposited for scrutiny in the usual way.

We have accepted that you could not deposit the draft instrument while it was still classified. We are not sure why, if this document was declassified on 27 May 2008, it should not have become depositable at that date. Even if it became "fully" depositable only 2 weeks later, that still left 20 days before the adoption of the Decision. We believe that in that time you would have been able to let us have an EM which the Committee could have scrutinised. We are disappointed not to have had the opportunity to do so. The Decision and the agreement annexed to it might then have been cleared from scrutiny before adoption, thus avoiding an override. We look forward to this happening in the case of future agreements between the EU and third countries.

Thank you for informing us of the negotiations with Japan on mutual legal assistance in criminal matters. We look forward to hearing in due course how they progress.

*26 February 2009*

#### **Letter from Meg Hillier MP to the Chairman**

I am writing to respond to your letter dated 29 January concerning the use of Passenger Name Records (PNR) for law enforcement purposes (Document I6457/08). You will note that the recent

Explanatory Memorandum on Council document 5618/09 has provided more up to date detail on some of the issues that you raise in your letter. However, I will address some of the matters raised in your letter and hope this is useful for the Committee's deliberations.

I note that your letter comments on the purpose and scope of the draft Framework Decision, and its proposed flexibility to allow Member States to also process PNR data for 'complementary national choices'. As you will note from Council document 5618/09, this consideration has now been incorporated into Recital 7 and 7a of the draft Framework Decision. Recital 7 proposes that Member States may choose to include the collection of PNR data on intra-EU flights within their national PNR systems, and Recital 7a proposes that the Framework Decision will not derogate from Member States right to provide, under their domestic law, for a system of collection and handling of PNR data for other purposes or from other modes of transport than those specified in the Framework Decision.

This proposal will be discussed in the next round of negotiations, but at present we believe this amend merit to the draft Framework Decision is compatible with a legislative proposal designed for all Member States. Whilst the draft Framework Decision creates a harmonised approach between Member States for the processing of PNR data to combat the EU-wide issues of terrorism and serious crime, the draft Framework Decision also allows Member States the flexibility to process and collect PNR data for other national purposes, and does not oblige other Member States to process PNR data for purposes that could pose a lower risk to their national interests. The UK Government therefore believes that it is not only feasible but also practical for Member States to implement EU legislation which partly governs the processing of PNR data. I will keep you updated on this area as negotiations progress.

I also note your concern as to what provisions there would be in domestic law limiting the use to which PNR could be put, the persons and bodies to which it could be transmitted, and the period for which it could be retained, if negotiations were to result in the UK not being bound by EU restrictions. In response to this query, I would highlight that if the UK were not bound by EU restrictions when processing PNR data for purposes other than those specified in the purpose scope of the Framework Decision, then the processing of this data would be governed by the statutory scheme, including the Code of Practice, which applies to the management of all information shared by the UK's e-Borders Programme. This scheme would be amended to the extent necessary to give effect to any material obligations arising from the Framework Decision aside from the purpose restrictions.

I hope that this letter provides further clarification to your comments raised in your letter of 29/1/09. As ever, I will endeavour to keep you informed of developments in negotiations as they progress.

*17 February 2009*

#### **Letter from the Chairman to Meg Hillier MP**

Thank you for your letter of 17 February 2009 on the French Presidency Report on the PNR Framework Decision negotiations (document 16457/08). Sub-Committee F of the Select Committee on the European Union considered your letter at a meeting on 4 March 2009 at the same time as it considered the second draft of the Framework Decision, document 5618/09.

Nothing in this draft comes as a great surprise to us, since it had been foreshadowed in the report on the negotiations. We are however very pleased to read Article 2(h) which, as we had suggested in our report, defines "serious crime" by reference to the Council Framework Decision on the European Arrest Warrant.

We note recitals (7a) and (7) which, as you imply, allow the United Kingdom and any other Member States which so wish to retain their existing PNR systems, to expand them and to use data for other purposes, so long as in doing so they give effect to the far less onerous provisions of the Framework Decision.

One of the few respects in which the Framework Decision will impose a greater burden is the requirement of Article 5(1a) that within 6 years Member States must collect PNR data from all flights. You believe this is neither necessary nor proportionate, and intend to continue to argue against this. We support your view, but wonder whether you can be sure that, if they do not have to collect data from all flights, other Member States will necessarily target all those flights which the United Kingdom regards as posing a higher risk.

We clear the Presidency report (document 16457/08) from scrutiny, but are keeping the second draft of the Framework Decision (document 5618/09) under scrutiny. We are grateful for your undertaking to keep us informed of developments in the negotiations.

5 March 2009

## PASSENGER NAME RECORD (PNR): FRAMEWORK DECISION (16457/09)

### **Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 28 January 2009.

As you know, this Committee reported on the Commission draft of the Framework Decision in June last year (*The draft Passenger Name Record (PNR) Framework Decision*, 15th Report, Session 2007-08, HL Paper 106). Your written and oral evidence was very valuable to us. It was clear that one of your main aims was to ensure that whatever was agreed at EU level should not limit the United Kingdom in the forms of transport from which PNR data were derived, and the uses to which they would be put. This seems to be the effect of the “complementary national choices” set out on page 10 of the Presidency report.

We should be glad to know how these will work in practice. For example, in the purpose limitation – “prevention, detection, investigation, prosecution and punishment of terrorism, and a group of other serious offences” – the group of serious offences is now to be linked to the crimes defined by the European Arrest Warrant, as we recommended in paragraph 52 of our report. But it seems that the United Kingdom, and other Member States, will be bound by this limitation only if they so wish – perhaps not at all. How will this be feasible in legislation supposedly applicable in all the Member States? And what purpose will such a provision then serve?

If however the negotiations were to result in the United Kingdom not being bound by EU restrictions, what provisions would there be in domestic law limiting the uses to which PNR data can be put, the persons and bodies to which they can be transmitted, and the period for which they can be retained?

We are keeping the Presidency report (document 16457/08) under scrutiny in order to make clear our continuing interest in the topic. We look forward to seeing further drafts of the Framework Decision, and to receiving details of the progress of negotiations.

29 January 2009

## PASSPORTS AND TRAVEL DOCUMENTS ISSUED BY MEMBER STATES: STANDARDS FOR SECURITY FEATURES AND BIOMETRICS (14217/07)

### **Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I am writing in response to the concerns expressed in Lord Grenfell's letter of 26 November 2008<sup>9</sup> in his former position as Chairman of the Committee, on the above Regulation for which I provided a supplementary EM in my letter of 6 November 2008.

In his letter Lord Grenfell raised the lack of an explanation for the delay in receiving the supplementary EM. I am very sorry for the delay in providing the supplementary EM. This was due to an administrative oversight which has now been addressed.

Lord Grenfell's letter also stated that he did not consider that the supplementary EM provided an adequate Fundamental Rights Analysis and in particular how this measure met the requirements of necessity and proportionality. He was concerned that setting the age limit for the exemption at 6 would lead to the generalised fingerprinting of young children in the absence of persuasive evidence that the fingerprinting of children at such a young age could provide reliable identification.

Since receiving his letter, discussions have been taking place between the Council and European Parliament on the age at which fingerprints should be taken. It seems likely that this will now be set at 12 (unless national law permits fingerprints to be taken for those aged between 6 and 12). The proposal, if amended, will thus not require the generalized fingerprinting of young children, which should, I think, address the Committee's concerns. It would therefore be wrong at this stage to

---

<sup>9</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

review in any great detail the options for taking fingerprints from children aged between 6 and 12. The UK has yet to make a final decision on precisely how we will roll out passports containing fingerprint biometrics. We will continue to monitor developments in Europe as, whilst the UK is not bound by the Regulation, we will want to ensure that British passports meet similar levels of security. We will report back to the Committee in due course once a final decision is reached on the age.

*10 December 2008*

#### **Letter from the Chairman to Meg Hillier MP**

Thank you for your letter of 10 December 2008. Sub-Committee F of the House of Lords Select Committee on the European Union examined it at a meeting on 14 January 2009. We are grateful to you for informing us how negotiations between the Council and the European Parliament are developing. We look forward to hearing about the final consensus that will be reached on the age below which children will not have to give fingerprints for passports within the Union and would be interested to know on what basis this decision was arrived at.

The Committee has decided to keep the document under scrutiny pending a further progress report on negotiations.

*15 January 2009*

#### **PROCEEDS OF CRIME (16123/08)**

##### **Letter from the Chairman to Alan Campbell MP, Parliamentary Under Secretary of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 14 January 2009.

You will be aware that the Committee is in the initial stages of an inquiry into EU and international cooperation to counter money laundering and the financing of terrorism. We are looking forward to receiving written evidence from the Home Office and other Government departments. Since a main purpose of money laundering is to protect the proceeds of crime from recovery and so ensure that crime *does* pay, this Communication is of some relevance to our inquiry. While we clear it from scrutiny, we intend to keep it under review as part of our inquiry. It may be that we shall have questions to raise on it when in due course we take oral evidence from ministers and officials.

*15 January 2009*

#### **READMISSION AGREEMENTS (ECRA) (13019/05, 13246/06)**

##### **Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I am writing to advise you on the progress of EC Readmission Agreement (ECRA) negotiations, and of some recent developments that you may wish to note.

In my letter of 7 October 2008, I informed your predecessor that there were five negotiating mandates for ECRA with third countries that were open at that time. On four of these there has been little progress, those with China, Turkey, Morocco and Algeria. I am unable to say at present when final agreements may be reached. These are still subject to negotiations between the European Commission, acting on behalf of Member States, and the third country concerned.

The mandate for the Pakistan ECRA is at an advanced stage and close to formal conclusion. We have received an initialled version of the ECRA text, and are awaiting a final disclosable version of the proposed agreement. We have received Ministerial clearance to opt-in, on the basis of the initialled text. Provided this does not differ significantly from the final version, the United Kingdom will formally opt-in to the signature and conclusion of this agreement. As soon as the publicly disclosable ECRA document becomes available we will forward an Explanatory Memorandum (EM) for your consideration.

In my letter of 7 October, I referred to the proposal for a mandate to negotiate an ECRA with Georgia. We opted-in to this mandate on 12 November 2008. Its terms are restricted by the EU. For this reason I am sure you will appreciate that we are unable to provide you with either the mandate or an EM at present. The mandate itself is broadly similar to that of the other eleven ECRA

negotiated to date, to which we have opted-in. Negotiations are at an early stage and we will keep you informed of any significant developments.

There is also a proposal for an ECRA negotiating mandate with Cape Verde. Ministers have yet to give their views regarding opting-in. I will write to you further, advising you of the opt-in decision on this agreement.

My officials will advise you of progress on all these ECRA matters whenever further developments make this appropriate. I hope that you find this update helpful.

On a related matter, the EU Directive on returns came into force on 13 January 2009. I would like to take this opportunity, to provide you with a copy of the final version of this Directive as published in the Official Journal of the EU on 24 December 2008, edition L 348 of 2008, and came into force 20 days later. While we are not opted-in, we will continue to monitor its progress, and will inform you of any developments where appropriate.

5 February 2009

#### **Letter from the Chairman to Meg Hillier MP**

Thank you for your letter of 5 February 2009 which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 25 February. We much appreciate being kept informed of the progress of negotiations on readmission agreements, and are most grateful to you and to your officials.

You mention that negotiations with Pakistan are close to conclusion. You say that, provided the final text of the agreement does not differ significantly from the current version, "the United Kingdom will formally opt in to the signature and conclusion of this agreement". We hope this means that you will be voting for adoption of the Decision even if it has not cleared scrutiny, rather against as you have done in the case of past such agreements. As you know, our position remains that, provided there is no significant difference between the agreement with Pakistan and previous readmission agreements we have seen, the United Kingdom should agree to the Decision even though this technically may constitute a breach of the scrutiny reserve.

Thank you too for pointing out that the Returns Directive has come into force. As you may know, the original proposal for a Directive made by the Commission in September 2005 was the subject of our report *Illegal Migrants: proposals for a common EU returns policy* (32nd report, session 2005-06, HL Paper 166), published in May 2006. The United Kingdom did not opt in then, but we have followed the negotiations on the Directive closely. We are grateful for your undertaking to keep us informed of developments.

26 February 2009

#### **REFUGEE FUND (6702/09)**

##### **Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this proposal at a meeting on 1 April 2009. We are grateful for your explanatory memorandum. As this dossier is linked to the one establishing the Asylum Support Office and information is awaited on the Government opt in decision with respect to both, the Committee has decided to keep the document under scrutiny too. In this case too we would be grateful if you could inform us as soon as possible whether the Government decides to opt in to this proposal.

The 2007 Decision establishing the European Refugee Fund is not being repealed and replaced, but simply amended. For the reasons given in our recent report *The United Kingdom opt-in: problems with amendment and codification* (7th Report, Session 2008-09, HL Paper 55), it seems to us that the United Kingdom, having opted in to the 2007 Decision, has no alternative but to opt in to the Decision amending it.

1 April 2009

**Letter from the Chairman to Phil Woolas MP, Minister of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered the proposals for a new Schengen evaluation mechanism at a meeting on 22 April 2009. We are grateful for your explanatory memorandum and share your view that these proposals will serve to ensure that the Schengen acquis is applied effectively and consistently. The Committee has decided to clear these documents from scrutiny.

*23 April 2009*

**SINGLE PERMIT FOR THIRD COUNTRY NATIONALS TO RESIDE AND WORK IN THE TERRITORY OF A MEMBER STATE AND ON A COMMON SET OF RIGHTS (14491/07)**

**Letter from Phil Woolas MP, Minister of State, Home Office, to the Chairman**

In your letter of 16 October 2008<sup>10</sup> you indicated that the European Union Select Committee intended to keep the above draft Directive under scrutiny but asked for an update on the progress of the measure.

The Presidency has indicated that this draft Directive may be put to the next meeting of the Justice and Home Affairs Council on 6 April for political agreement.

In my previous letter, I indicated that discussion on the Directive so far has focused on its scope. This has continued to be the case. The Council Legal Service has advised that the scope of the proposal exceeds its legal base (Article 63(3)(a) of the Treaty) because the rights set out in Article 12 of the draft Directive would accrue to those who had not yet acquired the single permit for which the draft Directive provides. The Presidency is currently seeking to resolve this and is seeking a steer from the Strategic Committee on Immigration, Frontiers and Asylum on whether Article 12 should be limited to those who hold a single permit issued in accordance with the draft Directive.

Even if this course is settled upon, it would not necessarily dispose of our concerns as to the scope of the draft Directive. As I advised in previous correspondence, the effect of the text as drafted is that those admitted for a purpose other than work but who are nevertheless allowed to work (which may include students and family members) would be entitled to a permit under the single application procedure and would therefore be within scope of Article 12.

The Social Questions Working Party has separately examined the provisions of Article 12 of the text. On the advice of that group, the text has been amended so that the requirement to afford those within scope of the measure equal treatment with nationals in respect of unemployment benefits applies only where the third country national has been in previous employment in the Member State in question. While this is an improvement, the position under UK immigration law is that third country nationals do not have access to unemployment benefit.

*26 March 2009*

**Letter from the Chairman to Phil Woolas MP**

Thank you for your letter of 26 March 2009 which Sub-Committee F of the European Union Select Committee considered at a meeting on 1 April 2009. We are grateful to you for your keeping us up to date with the progress of negotiations.

Your letter states that the Presidency has indicated that this draft Directive might be put on the agenda of the JHA Council on 6 April for political agreement. We do not see how agreement is possible while the Council Legal Service believes that the legal base is inadequate to support the extended scope of those benefiting from equal rights. However you indicate that the Presidency is attempting to resolve this issue. We are content to clear it from scrutiny. We would however be grateful if you could continue to keep us informed of further developments.

*1 April 2009*

---

<sup>10</sup> <http://www.parliament.uk/documents/upload/CWMSubFMay08Nov08.pdf>

TERRORISM AND CROSS BORDER CRIME: AGREEMENT BETWEEN THE EUROPEAN UNION AND ICELAND AND NORWAY (16433/08)

**Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office**

Sub-Committee F of the European Union Select Committee considered this document at a meeting on 25 February 2009.

As you know from previous correspondence, especially on the EU/Australia PNR Agreement, the Committee welcome an opportunity to scrutinise international agreements between the EU and third countries while they are in draft. Normally this will be when they are appended to a draft Decision. In this case the draft Agreement is annexed to a Note from the Presidency to the Article 36 Committee. We are glad to have seen the draft Agreement between the EU, Iceland and Norway extending to those two countries the provisions of the Prüm Decision and its Implementing Decision, and have no comments to make on it.

We are content to clear this document from scrutiny. However the document in question is not a draft Council Decision approving the draft Agreement and authorising its signature. It may be that this Decision (or possibly two separate Decisions) will not be available for deposit and scrutiny before the Council on 26/27 February. If that is the case, we are nevertheless content that you should agree to that Decision (or Decisions) on behalf of the United Kingdom.

*26 February 2009*

VISAS: COMMON CONSULAR INSTRUCTIONS ON VISAS FOR DIPLOMATIC AND CONSULAR POSTS IN RELATION TO THE INTRODUCTION OF BIOMETRICS (10023/06)

**Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman**

I would like to take this opportunity to update you on recent developments concerning the above named draft Regulation. The United Kingdom does not issue Schengen visas, and therefore will not be participating in the adoption and application of this proposal. Discussions at the EU level have proceeded at a slow pace with little headway being made on agreement of text; however, the French Presidency had suggested that a breakthrough appeared to have been made with the LIBE Committee on several key areas. Although final agreement of text is some way off, I believe a Ministerial letter informing you of those details is necessary. The initial dossier was last scrutinised under the EU reference 10023/06.

Because of our experience in this area, the UK has been consulted by both the Presidency and the Commission. We have taken a keen interest in the progress of these discussions not least because a number of the original proposals run counter to our current practice.

COREPER was invited to comment on the amendments, and the revised text follows:

1. EXTERNAL SERVICE PROVIDERS (ESPs) ("EXTERNALISATION" IN CASE OF DATA ENCRYPTION BAN), ESPs may be used where other solutions are not appropriate or practical. A high level of data protection must be in place. There was differing opinions among Member States on the level of involvement with ESPs: hierarchical approach (i.e. the fundamental principle on the basis of which the co-operation with the ESP is taken forward, for example, ESPs used as a last resort) versus flexible approach as to their involvement. It is now proposed that an appropriate legal framework for the use of an ESP should be introduced, taking into account in particular data protection issues. The current text supports the hierarchical approach that ESP's should be used as a last resort where for the Member State concerned, other forms of co-operation such as collocation and joint application centres are not appropriate.

The UK's position on the use of commercial partners (i.e. ESPs in the EU context) is that it has significantly increased accessibility for the applicant we currently operate 105 visa application centres in 47 countries. The introduction of outsourcing has allowed us to process an increase of 80% in visa applications over the last 5 years with an increase of only 20% in staff and allowed us to provide a higher level of security, particularly in high-risk posts.

2. AGE LIMITS FOR TAKING FINGERPRINTS FROM CHILDREN, fingerprints to be taken from visa applicants from the age of 12 years. Within 3 years, the Commission presents a feasibility study regarding the reliability of fingerprints of children from 6 to 12-years-of-age, to be accompanied, if

appropriate, by a legislative proposal to determine an age level lower than 12 years. It is proposed that the study would be conducted with the Joint Research Centre of the Commission, despite the EP calling for an independent study, but it is expected the EP will agree to this.

In November the Presidency believed that a break through had been achieved with the LISE Committee on the question of collection of fingerprints from minors from the age of 6 years. This position changed at a recent JHA Counsellors' meeting at which the age limit of 12 years was introduced.

The UK collects fingerprints from minors from 5-years-of-age.

3. LEVEL OF SERVICE FEE, the EP seems ready to accept the principle of extra fees charged by an ESP. Where an ESP is used, a service fee of up to 50% of the normal visa fee (which at present is €60 (approx. £47)) may be charged by the ESP.

The contract with our commercial partners provides us with a standard visa process across the network, including the provision of critical service levels and consistency in price to the applicant wherever they apply (as the commercial partner costs are included within the UK visa fee). The current short-term visa fee is £65.

4. USE OF HONORARY CONSULS, they may be authorised to perform some or all of the tasks referring to ESPs (i.e. providing general information on visa requirements and application forms; informing the applicant of required supporting documents on the basis of a checklist; collecting data and applications (including collection of biometric identifiers) and transmitting the application to the diplomatic mission or consular post; collecting the fee to be charged; managing the appointments for personal appearance at the diplomatic mission or consular post or at the external service provider and collecting the travel documents (including a refusal notification if applicable from the diplomatic mission or consular post and returning them to the applicant).

The Commission has suggested that if agreement on the text of the draft proposal is not reached by the end of December, implementation of the VIS roll-out envisaged as May 2009 - could be delayed by nine months.

The Presidency intends to provide revised text, based on the above amendments, for further discussion. I will provide the Select Committee with further updates on any substantive developments as they arise.

*9 December 2008*

## VISAS FOR DIPLOMATIC AND CONSULAR POSTS: PROVISIONS ON ORGANISATION OF RECEPTION AND PROCESSING OF VISA APPLICATIONS (5090/09)

### **Letter from Chairman to Meg Hillier, Parliamentary Under Secretary of State, Home Office**

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 25 February 2009 and cleared it from scrutiny.

I am grateful for your earlier letter of 9 December 2008 explaining the progress of the negotiations. This was of course superseded by the publication of the fresh draft of the Regulation, and by your EM which accompanied it.

*26 February 2009*