



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 May to November 2009.

HOME AFFAIRS (SUB-COMMITTEE F)

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AREA OF FREEDOM, SECURITY AND JUSTICE (11060/09)

Letter from the Chairman to the Rt Hon Alan Johnson MP, Secretary of State, Home Office

Sub-Committee F of the Select Committee on the European Union considered this Communication at a meeting on 15 July 2009. The Committee is grateful to you for your comprehensive Explanatory Memorandum setting out your views on the Commission's proposals for the next multi-annual programme in the area of justice and home affairs (the Stockholm Programme). We would welcome the opportunity to hear in more detail the Government's thinking on the home affairs aspects of the Stockholm Programme, and would like to invite you to give oral evidence to us after the summer recess. Our first meeting will be on Wednesday 14 October. Our Clerk will be in touch with your Private Office to see if that date is convenient for you.

In the meantime, the Committee has decided to keep this document under scrutiny.

16 July 2009

ASYLUM: APPLICATION BY A THIRD-COUNTRY NATIONAL OR STATELESS PERSON FOR INTERNATIONAL PROTECTION (DUBLIN II) (16929/09)

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

Thank you for your letter of 13 July 2009 (see ASYLUM: JURISDICTION TO DETERMINE ASYLUM CLAIMS (DUBLIN II) AND EURODAC: FINGERPRINT DATABASE FOR DUBLIN II). Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 14 October 2009. In your letter you said that the aim was to achieve a common position at the JHA Council on 21 September. We have seen the Home Secretary's letter of 1 October reporting on the Council, but it does not mention whether a common position was agreed, and if so, what it is. We would be glad to be informed about this.

At the same meeting the Committee considered your letter of 10 September 2009 in reply to my letter of 15 July on the Government response to the report *The United Kingdom Opt-in: problems with amendment and codification*, since that letter also addresses issues on the Dublin Regulation. In our report we had referred to the problems caused by having, in a measure which will apply to the UK, cross-references to the Reception Directive which the UK has not opted in to. You say that you regard these cross-references as "unacceptable", and that you believe safeguards for applicants subject to the Dublin Regulation should be contained in the Dublin instrument itself. This seems to us to be unrealistic. We believe other Member States may take the view (a) that there is no reason to repeat at length in a Regulation provisions that already appear in another instrument, and (b) that in any case provisions in a Directive, which leave it to the Member States to decide how to achieve the minimum standards, cannot be inserted into a directly applicable Regulation which leaves the Member States no such choice. We therefore think it may be sensible to look for other ways to pursue the Government's reservations.

You say that the issue has yet to be raised in negotiations. We look forward to hearing how the negotiations progress. Meanwhile we will keep the document under scrutiny.

15 October 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 15 October 2009.

No common position has been agreed on this proposal as there are a number of issues still under discussion at Asylum Working Group level.

We note your views about cross-references in the Dublin Regulation and the possible views of other Member States that might favour this approach. The UK is not the only state affected by the cross-references issue, as this applies equally to Ireland. In addition there are other states, which are associated with the Dublin system by separate Agreements with the Community, but which are not bound by any of the minimum standards directives forming the Common European Asylum System. Although the Associated States do not have voting rights on this instrument the Agreements can be suspended or terminated in the event of dispute, which would not be in the best interests of the effective operation of the Dublin system. We believe the risk of such an event should be reduced by the removal of the cross-references.

We will keep you informed as the negotiations progress.

29 October 2009

ASYLUM: EVIDENCE SESSION FOLLOW-UP

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

On 14 October 2009 I appeared before the Lords European Union Committee and undertook to respond in writing to two questions that were raised during the session.

The first question was “Can the UK Border Agency provide statistics on the number of people who have gained asylum in other EU Member States now living in the UK?”

Unfortunately we do not have enough statistical information to give a definitive answer to this question. If an individual is granted asylum in another Member State, that does not automatically entitle them to the same free movement rights as a citizen of that Member State. However, if an individual is granted asylum in an EU Member State and following that qualifies for and takes up citizenship of that EU state, they will be entitled to benefit from EEA Free Movement rights. If that person subsequently comes to the UK they would do so as an EEA national and therefore we would not necessarily be aware of any previous grant of asylum.

Additionally, anecdotally we know that some people granted asylum in one Member State do go on to claim again elsewhere. The UK Border Agency identified 46 asylum seekers between March 2008 and August 2009 as having been granted asylum in Italy. The fingerprints of asylum seekers are deleted from the Eurodac database once an individual is granted asylum. The European Commission’s 2007 evaluation of the Dublin System [COM (2007) 299 final, SEC (2007) 742] indicated that approximately 2.4% of individuals whose fingerprints were checked on Eurodac had been “blocked”, suggesting that they had probably been granted asylum elsewhere in the EU, but had moved on. The “unblocking” of the fingerprints of recognised refugees from Eurodac, as proposed by the Commission, will enable us to get a better idea of the scale and scope of this abuse, and to formulate policies to tackle it.

The second question was raised by Lord Avebury; who asked why it will take until 2015 to develop the European Commission’s proposal for an electronic system for recording entry to and exit from Member States’ territory.

The Commission’s proposal is for the creation of an electronic entry/exit system that will register electronically the dates of entry and exit of all third country nationals admitted for a short stay through the EU’s external borders. Details would be kept of the entry, the date that entitlement to remain finishes (including details of any extensions and the reason for this) and the date of exit of third country nationals.

The proposal is still in an early stage of development and the Commission is currently considering the technical detail of how the system might operate in practice, and in particular how it will interrelate with the Visa Information System (VIS). It has therefore been proposed that the Visa Information System is completely and successfully rolled-out before the considerable work of developing the system takes place. The current date of implementation for VIS is autumn 2010. Consequently, this means that the timetable for the entry/exit system places it as being operational by 2015.

As the electronic entry/exit system is a Schengen-building measure, the UK will not participate in the proposal. We have signalled our willingness to work with the Commission to offer our expertise and explore synergies with our own e-Borders project.

I hope that you have found this response helpful and informative.

20 October 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

Thank you for your letter of 21 April 2009¹. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 13 May 2009.

¹ [Correspondence with Ministers, May to November 2008](#)

We are grateful for the statistical information on the working of the Dublin arrangements in the UK. We consider the average 70-day detention period before a person is transferred under the Dublin arrangements to be significant. What is the reason for this long period of detention? How does it square with the information you provide on the 3-day notice of removal during which applicants are detained, which suggests a 3-day detention period for Dublin transferees? We also note the high number of judicial review applications against removal. How many of these were granted permission to proceed with their applications and how many were successful in their application?

We are aware that the European Parliament put a report on this dossier to the vote at first reading in the last plenary session on 5-7 May. While retaining the level of procedural guarantees proposed by the Commission (i.e. with regard to remedies against transfer and against detention), the European Parliament has introduced some controversial amendments which call for the enactment of binding measures establishing additional mechanisms for burden sharing of refugees, including a resettlement scheme. We would be grateful if you could give us your and the other Member States' views on the report adopted by the European Parliament, as well as an indication of how you believe any significant differences between the Council and the European Parliament on this dossier are likely to be reconciled.

The Committee will continue to keep both documents under scrutiny.

18 May 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 18 May 2009 in which you advised that the Committee continues to keep the above documents under scrutiny.

You express concern about the average 70-day detention period before a person is transferred under the Dublin arrangements, and ask how it can be reconciled with the information we previously provided about the three day period prior to removal during which individuals are detained.

It is important to distinguish here between those individuals who are only detained for the three day period prior to removal and those who are detained before then because they pose a higher risk of absconding.

The average 70 day detention period applies to the latter group. It is true that average detention periods for this group rose significantly in 2008. This is largely because of an increase in the number of judicial review challenges brought against Dublin transfers, which have lengthened the transfer process. The average period of detention in 2006 and 2007 was 30 days.

In 2008, 252 applications for judicial review were lodged against removal under the Dublin Regulation and so far in 2009 there have been 242 applications. The main reason for this comparatively high number has been specific issues relating to Greece and Italy which have accounted for a total of 207 cases (Greece) and 182 (Italy) to date. Permission has been granted in 31 cases since 1 January 2008, about 20 of which are Greek cases. However, the substantive hearings have been stayed pending judgment in the lead case of Nasser, which was handed down on 7 May 2009. The Lords found in favour of the Government and invitations to withdraw the judicial review applications are now being sent to the applicants in all outstanding Greek cases. Permission has not been granted in any Italian case but the permission hearing in the two lead cases is to be heard, after a number of adjournments, on 11 June 2009.

As you are aware, the European Parliament voted on both the Dublin and Eurodac dossiers during its plenary session on 5-7 May. It proposed a number of amendments to the Dublin instrument which will make the system work more efficiently and which the Government can therefore support. These include:

- Restrictions on the circumstances in which married minors should be considered to remain members of their parents' families (European Parliament amendments 10-12)
- Removal of the absolute ban on transferring unaccompanied minors under Dublin (amendment 20),
- Deletion of the requirement that the risk of absconding be "significant" before a subject can be detained (amendment 30).

However, we cannot support the amendment you refer to (amendment 39) that calls for the introduction of a scheme to reallocate the beneficiaries of international protection between Member States.

We consider this text to be inappropriate in an instrument whose role is simply to determine responsibility for the determination of asylum claims. Although we support the use of practical cooperation measures, such as the secondment of experts, to support Member States that are under particular pressures, we believe that the mandatory reallocation of refugees would simply encourage more irregular migrants to travel to the countries under pressure, in hope of being able to move on elsewhere in the EU.

The Council's Asylum Working Group has discussed the Parliament's report. There was some very limited support expressed for the spirit of amendment 39, if not the actual text itself. The European Commission and several Member States, however, rejected the amendment on the basis of concerns about the legal basis for including it in a proposed Regulation determining responsibility for examining an application for international protection

It was clear from the discussions at the Council Working Group that there are significant differences between the views of Member States and those expressed by the European Parliament on key areas of the dossier, such as the proposals on detention. In other areas, such as the amendments on data protection, the positions of the Parliament and Council are more closely aligned.

If differences remain, then the procedures set out in the Treaties will need to be followed, leading eventually to a possible trilogue between the Commission, Council and Parliament. However, these cannot begin until the Council has agreed a Common Position on the instrument, and we do not yet know when that it likely to happen.

The European Parliament's Report on the EURODAC proposal has also been considered by the Council Working Group. Although some of the European Parliament's proposals address areas of concern to Member States, such as the time limit for the taking and transmission of fingerprints, Member States could not give their full support for the amendments as proposed. There are, however, some areas where the amendments mirror the direction of discussion in the Working Group, such as the amendments concerning the rights of the data subject in Article 23.

Again, any differences between the Parliament and Council will need to be resolved in accordance with the provisions of the Treaties after the Council has adopted a Common Position, but as with the Dublin proposal we do not yet know when that will take place.

2 June 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letter of 2 June 2009. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 24 June 2009. We are grateful for the additional information you provide in respect of detention periods for Dublin transferees and judicial reviews of removals from the UK under the Dublin arrangements. We remain concerned by the large number of people who are detained under these arrangements and the considerable time they spend in detention awaiting transfer. We believe the detention proposals in the recast Regulation would improve the situation considerably and look forward to information on how the substantial differences with the European Parliament on the detention proposals, as well as on other provisions of the dossier, are going to be handled.

The Committee has decided to clear document 16934/08 from scrutiny but will retain document 16929/08 under scrutiny pending further progress reports on negotiations.

25 June 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 25 June 2009 in which you advised that the Committee has cleared document 16934/08 from scrutiny but continues to keep 16929/08 under scrutiny pending further progress reports on negotiations.

You asked for information on how the substantial differences with the European Parliament on the detention proposals and other provisions of the dossier are going to be handled. The previous European Parliament had voted on its position but we are awaiting the first plenary of the new Parliament in mid-July. After that we will know whether the European Parliament will retain or re-open its position.

We continue to work towards a Common Position in Council, but one has not yet been agreed. One Council has an agreed position the Presidency will enter into formal codecision discussions with the Parliament.

13 July 2009

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

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

Thank you for your letter of 21 April 2009². Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 13 May 2009.

We are grateful to you for providing figures for bail applications to the Asylum and Immigration Tribunal in 2008. We regret, however, that it is not possible to ascertain how many were made by asylum seekers. Also, in the absence of figures on the numbers of asylum seekers who were detained in 2008 and on the duration of detention it is impossible to be reassured that detention is not unduly prolonged and that access to legal advice to challenge detention decisions is adequate. We would therefore welcome data which allow such an assessment to be made.

We are aware that the European Parliament put a report on this dossier to the vote at first reading in the last plenary session on 5-7 May. Its report broadly approves the Commission's proposal, including the regime for judicial control of detention and the principle that detention of asylum seekers should be exceptional. We would welcome information on how negotiations progress in Council and when a common position is to be expected, as well as information on informal trilogues for agreement with the European Parliament on a joint text. In the meantime, the Committee will continue to keep the document under scrutiny.

18 May 2009

Letter Phil Woolas MP to the Chairman

Thank you for your letter of the 18 May 2009.

I am sorry that my letter of 21 April did not reassure you that detention of asylum seekers is not unduly prolonged and that access to legal advice to challenge detention is adequate.

Though unable, for the reasons stated in my earlier letter, to provide the bail figures you request I am able to provide figures in the table below for the number of people detained who have sought asylum at some stage and the length of their detention.

PERSONS LEAVING DETENTION, HELD SOLELY UNDER IMMIGRATION ACT POWERS IN THE UK BORDER AGENCY ESTATE IN 2008, BY LENGTH OF DETENTION (1)(2)(3)(4)

<i>Length of detention</i>	<i>Total leaving detention</i>	<i>Number of persons</i>	
		<i>Of whom:</i>	
		<i>Asylum departures</i>	<i>Non-asylum departures</i>
7 days or less	12,575	4,395	8,180
8 days to less than 1 month	6,110	4,275	1,835
1 month to less than 2 months	3,085	2,445	640
2 months to less than 4 months	1,865	1,520	350
4 months to less than 6 months	715	555	160
6 months or more	890	620	270
Total departures	25,240	13,805	11,435

1. Figures rounded to the nearest 5, may not sum to the totals shown because of independent rounding.
2. Relates to last period of detention within the UK Border Agency estate. If the detainee has moved to a police cell or Prison Service establishment during their period of detention within the UK Border Agency estate the length of detention relates solely to the last period of time spent within the UK Border Agency estate.

² [Correspondence with Ministers, May to November 2008](#)

3. These figures are based on management information and are not subject to the detailed checks that apply for National Statistics. They are provisional and may be subject to change.
4. 2 months is defined as 61 days; 4 months is defined as 122 days; 6 months is defined as 182 days.

The Legal Services Commission has provided information on the provision of legal aid to persons subject to the Detained Fast Track, and to other individuals held in Immigration Removal Centres. I am enclosing their letter with this reply. We believe this to demonstrate that asylum seekers in detention in the UK have adequate access to effective legal services.

You have asked for an update on the negotiations in the Council. We are still some way off from reaching agreement and, despite the incoming Swedish Presidency's commitment to work hard on the dossier over the summer, still think it is unlikely to be adopted within the timetable suggested by the Czech Presidency at the start of the Council working groups. We cannot at this stage give an estimate of when the Council is likely to arrive at a Common Position, or when any formal or informal dialogues with the European Parliament are likely to take place. We will, however, provide this information as soon as we can.

As you note, the European Parliament voted on the dossier during its plenary session on 5-7 May. We welcome the Parliament's proposed removal of the link of support levels to those of nationals as set out in their adopted texts of the 7 May. The Czech Presidency has suggested that the provisions concerning detention should be moved to the forthcoming Procedures Directive. We are of course opposed to the specific proposals on detention that the Commission have brought forward, and their relocation to the Procedures Directive would not affect this. However, in general we consider detention to be better regulated in an instrument governing procedures than in one on reception conditions, so we see some merit in the Presidency's suggestion.

Unfortunately at this stage the proposals to allow access to the labour market after six months remains. There is considerable support among other Member States for our view that there is no need to make additional provision for asylum seekers' access to the labour market, over and above that which appears in the existing Reception Conditions Directive (Directive 2003/9/EC).

2 June 2009

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

Thank you for your letter of 2 June 2009. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 24 June 2009. We are grateful to you for providing additional information with regard to the detention of asylum seekers and access to legal services. This information, in our view, shows that detention of asylum seekers is in a significant minority of cases unduly prolonged and provides no conclusive evidence that legal services provision is effective in practice. We are concerned to learn from your update on negotiations that there is a possibility that the detention provisions in the Directive might not be retained and would like to be kept up-to-date on developments. In the meantime, the Committee decided that it will continue to keep this document under scrutiny.

25 June 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 25 June 2009. I am writing to provide the update on negotiations that you requested.

Progress in the Asylum Working Group on this instrument has been relatively slow, with divergent opinions on many of the main issues between Member States on the one hand and the Commission and Parliament on the other. Detention and access to the labour market are next due for discussion at the Asylum Working Group on 30 September – 1 October under the Swedish Presidency. It is too early for us to be able to predict when the instrument might be adopted.

I am sorry that you do not consider the information provided in my letter of 2 June 2009 to be sufficient to alleviate your concerns over detention and access to legal assistance for those in detention. Although your letter did not ask any specific questions on those points, I will try and address your concerns here.

You consider that the information I provided shows that 'detention of asylum seekers is in a significant minority of cases unduly prolonged and provides no conclusive evidence that legal services provision is effective in practice'. The figures and information from the Legal Services Commission when read together show that less than 3% of asylum detainees are held for over 6 months. The fact

that someone is detained for over 6 months does not in my opinion mean that there is a lack of access to legal services.

The suggestion made by the Czech Presidency that the provisions concerning detention should be moved to the forthcoming revised Procedures Directive has not been taken forward. The Commission considered this during an Asylum Working Group and though acknowledging that parts of the detention provisions were more suitable for the Procedures Directive, equally parts were better suited to the Reception Conditions Directive. They decided that given the stage of negotiations detention provisions will remain in the Reception Conditions Directive.

10 September 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letter of 10 September 2009. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 14 October 2009. We take note that progress on this instrument has been very slow and have no further points to raise with the current text. The Committee has, therefore, decided to clear this document from scrutiny. We assume that a significantly altered text might emerge as the Council seeks to agree a Common Position and look forward to examining a new draft once it is deposited with an explanatory memorandum submitted in the usual way.

With your letter of 2 June 2009 you helpfully provided figures for the numbers of asylum-seekers detained, and the length of detention. We would be grateful in due course to have updated figures. Figures relating to the detention of children would be of particular interest to us.

15 October 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 15 October 2009 clearing the above document from scrutiny.

An explanatory memorandum will be submitted if the text is significantly altered. I will also be seeking the Committees' view when reviewing our opt-in decision.

I shall also provide both Committees with updated statistics on detention. In your letter you request figures relating to the detention of children. The Government's policy is not to detain unaccompanied asylum seeking children other than in two, very limited circumstances: first, and most exceptionally, whilst alternative arrangements are made for their care and normally then just overnight; second, to facilitate supervised escort of an unaccompanied child, who is being removed from the UK, from his/her normal place of residence to the port where removal will take place. Detention of families with children is most often used, only where necessary, in order to effect their removal and usually takes place just a few days before removal. We consider it generally better for children to remain with their parents/guardians when in this situation.

29 October 2009

ASYLUM SUPPORT OFFICE (6700/09, 6702/09)

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

Thank you for your letter of 21 April 2009³. Sub-Committee F of the Select Committee on the European Union considered this proposal again at a meeting on 13 May 2009.

We note your views on the Executive Committee but remain concerned that the Office should be effective and properly accountable in an area as sensitive as this. We are pleased to see that under Article 23(3) of the proposed Regulation "Management Board members shall be appointed on the basis of their experience and high degree of expertise in the field of asylum." There is, however, no equivalent provision with regard to the Executive Director. Will you secure an amendment which ensures that the person holding the post meets the highest standards in terms of independence and competence in the field? We also believe that accountability could be improved by making it mandatory for the Executive Director to appear, if so requested, before the European Parliament or its Committees. This is already the case for the Fundamental Rights Agency and the Committee suggested similarly improving accountability of FRONTEX in its report on the External Border Agency

³ [Correspondence with Ministers, May to November 2008](#)

(9th Report of Session 2007-08, HL Paper 60, see recommendation at paragraph 199). Will you put forward an amendment to this effect?

The Committee is aware that this dossier too was put to the vote at first reading by the European Parliament in the last plenary session on 5-7 May 2009. We note particularly the European Parliament's suggestion that the Office be given a mandatory resettlement function with regard to its involvement in the relocation of refugees. We would welcome your and the other Member States' views on this and more generally a progress report on negotiations in Council. We also await information on whether the Government will opt in to this Regulation. In the meantime, the Committee will continue to keep the document under scrutiny.

18 May 2009

Letter from Phil Woolas MP to the Chairman

I am writing to inform you of the Government's decision on whether to opt-in to the above 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.

As I explained in my Explanatory Memorandum of 17 March, we believe that the European Asylum Support Office has the potential to enhance practical cooperation between Member States on asylum and to streamline the management of the cooperation projects that already exist. We strongly support such cooperation, because we see it as the best way of delivering genuine improvements to Member States' asylum systems, and so creating a fast and fair asylum system across the EU which provides protection who need it and removes those who do not.

For these reasons, the Government has decided to take part in the Support Office proposal. We believe that this is in the UK's interests, and we will seek to address our initial concerns about the proposed size, cost and powers of the agency (as set out in my initial Explanatory Memorandum) during negotiations on the instrument. I will keep you informed of our progress.

We believe that the proposal on the European Refugee Fund will make a significant contribution to meeting the start up costs of the Support Office. As I explained in the Explanatory Memorandum on the latter, we consider it very important that it be funded by the reprioritisation of resources from elsewhere in the Community Budget. We welcome the European Refugee Fund proposal as a step in that direction, and so have decided to participate in it.

For the reasons set out above, the Government's decision to opt into both instruments has today been formally communicated to the Council Presidency.

18 May 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of the 18 May 2009.

On the same day I wrote to inform both you and the Chairman of the House of Commons European Scrutiny Committee of our decision to opt in to the proposal to establish a European Asylum Support Office and amendments to Decision 573/2007/EC, establishing the European Refugee Fund, for the period 2008 to 2013 in order to fund the Support Office.

I strongly agree with the Committee that the Office should be efficient and properly accountable and that the appointment of an effective Executive Director is key to this. We believe that that the appointment should be made on the grounds of documented administrative and management skills, as well as relevant asylum experience. This is important because, although asylum experience is a key consideration, we also need someone who will be capable of running an agency effectively. This was the approach taken for the appointment of the Director of FRONTEX. The European Parliament also recognised the need for specific qualities and has adopted texts which propose to amend Article 28 to take this into account.

While we acknowledge the need for the Director to act independently in the public interest once appointed, we have concerns that a requirement that s/he be an independent person on appointment (i.e. not a Government official) could exclude a large number of candidates who might have the necessary experience and ability.

We note with interest your suggestion that, like the FRONTEX Director, the Director of the Support Office should have to give evidence before the Parliament if requested. We will consider taking this forward in the negotiations, but will need to be sure that the Parliament would not be able to use this

process to extract commitments and set priorities for the Director and the Support Office itself, thereby usurping the role of the Management Board.

You ask for our view on the European Parliament's proposal for mandatory relocation of persons granted international protection from one Member State to another. We recognise the good intentions behind this amendment but cannot support it because it will simply increase migration flows to the Member States under pressure, by allowing migrants to use them as a "stepping stone" to their preferred destinations in the EU. It also goes far beyond the 'voluntary relocation' agreed in the European Pact on Immigration and Asylum and is therefore likely to be unacceptable to other Member States.

We are, of course, familiar with the pressures faced by Southern Mediterranean countries, having faced our own escalation in intake in 2002 (when we received 103,100 applications). We need to look at how we can help our southern partners in other ways, for example by giving speedier access to community funds, deployment of the proposed asylum support teams, assistance with interpretation and the verification of documents, developing effective methods of ensuring the return of those whose claims are unfounded and working more closely with source or transit countries outside the EU to reduce flows.

Negotiations on the proposals are continuing to make progress. Some Member States, particularly Sweden, have argued that the proposal is focussed too tightly on helping Member States that are facing particular pressures on their asylum systems, and that it should be more closely involved in helping with the day to day problems that Member States face in operating their asylum systems. Others, such as the Netherlands, are concerned about the proposed Asylum Support Teams (Chapter 3 of the proposal), and wish to make participation in them by Member States voluntary.

We see some merit in the Swedish observations, but nevertheless consider help to Member States under pressure to be a key role of the Support Office. We see the creation of Asylum Support Teams, consisting of caseworkers and other officials from other Member States, as a key way of providing that help, and are concerned that they could be seen as less effective if Member States could simply opt out of contributing to them.

We continue to express our concerns about the proposed size and cost of the agency, and have received support from other Member States, particularly Germany and Austria, for this. Encouragingly, the European Parliament has added recitals to the instrument emphasising the need for an agreement by the Budgetary Authority for the funding of the office, and for proper financial control of its operation (see Amendments 5 and 8 as passed by the Parliament).

Despite the progress that has been made, we are some way from reaching agreement in Council, or between the Council and the Parliament. Despite the incoming Swedish Presidency's commitment to work hard on the dossier over the summer, we still think it unlikely that the instrument will be adopted within the timetable suggested by the Presidency. Though the Parliament has approved without amendment the proposals amending the ERF, as it is inextricably linked to the Support Office, we do not expect it to be adopted until the latter is. We consider there to be too much at stake for the ambitious timetable that has been set and believe that more should be done to ensure that we get this right.

2 June 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letter of 18 May 2009 in which you inform us that the Government has decided to opt in to the proposed Regulation and to the Decision amending the European Refugee Fund. We are also grateful to you for addressing our views on the Asylum Support Office in your letter of 2 June 2009. Sub-Committee F of the Select Committee on the European Union considered your letters at a meeting on 24 June 2009.

We are encouraged to see that the Government is at one with us on the need to ensure that the European Asylum Support Office is effective and properly accountable, and is taking on board our views as to how the Regulation could be improved in this respect. The appointment of a competent Executive Officer and his or her answerability to the European Parliament is key to this, and we are therefore glad that you will consider taking this forward in the negotiations. We would however like to press the point on the requirement of independence and believe that the method of selection is particularly relevant to this. Under the current proposal (Article 28), the Executive Director would be appointed by the Management Board from a list of candidates proposed by the Commission. We believe that candidates should be drawn from the widest possible field, and that this will only be achieved if the shortlist is drawn up on the basis of an open and fair competition. We would welcome your views on this.

We are grateful to you for informing us of the state of play of negotiations in the Council and would like to receive further updates once negotiations resume under the Swedish Presidency. In the meantime the Committee will continue to keep the document under scrutiny.

25 June 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of the 25 June 2009.

It is very encouraging to find ourselves in agreement with your Committee on important issues. We will, as stated in our reply on 2 June, continue to press for the Executive Director to be accountable to the European Parliament provided we can ensure that the Parliament will not be able to use this process to extract commitments and set priorities for the Director and the Support Office itself, thereby usurping the role of the Management Board.

We also agree that candidates for the role of Executive Director should be drawn from the widest possible field using a process where there is an open and fair competition which is then followed by a fair, impartial and evidence-based short-listing process. You will be aware that a precedent has already been set which allowed the Commission to compile a shortlist of candidates for the appointment of the Executive Director for FRONTEX (Article 26(1) of Council Regulation (EC) No 2007/2004). Despite this precedent, we would rather that the task of short listing is done by the Management Board in order to ensure the EASO is Member State led. We will also continue to press for fair and open competition, supporting proposed amendments from the European Parliament which called for the Director to *“be appointed on the basis of his or her personal merits, experience in the field of asylum and administrative and management skills.”*

One of the Presidency conclusions of the European Council meeting 18-19 June 2009 was to urge the Council and the European Parliament to *“reach agreement allowing the rapid establishment of the European Asylum Support Office.”*

The Swedish Presidency intends to give the Support Office a high priority with a view to adoption of the proposal this year, in line with the European Pact on Immigration and Asylum which called for the establishment of a support office by 2009. The next round of discussions are scheduled for 10 July and another possibly on 27 July. We believe that they are aiming to agree a Council Common Position at the JHA Council in September, with negotiations with the Parliament; possibly leading to a dialogue, following shortly afterwards.

13 July 2009

Letter from Phil Woolas MP to the Chairman

Further to my letter of the 13 July, I am writing to give your Committee a further update as to the progress of negotiations of the above document which you have retained under scrutiny.

Under the Czech Presidency of the EU an ambitious timetable was established for the progress of this dossier in order to meet the commitment made by the Council, in the European Pact on Immigration and Asylum, to establish a Support Office in 2009. This was reinforced by Conclusions of the European Council at the end of June 2009, which called for agreement on the establishment of the Office to be reached as soon as possible. The swift establishment of the Office is also a priority for the European Parliament.

Negotiations on the proposal have progressed rapidly and the Swedish Presidency may be aiming to reach broad agreement in Council during September. We expect the instrument will then be put to the Justice and Home Affairs Council in October with a view to adopting a Common Position.

We are making good progress in negotiating a text which resolves our concerns on country of origin information, our voting rights and ensuring a fair and open competition for the appointment of the Executive Director. However, it is possible that we will be less successful in limiting the role of the Commission over the short listing of the Executive Director, primarily due to the role already being included in the Frontex Regulation. Negotiations on this point continue, however.

As I said in my letter of 2 June, our concerns surrounding posts of the Office have been recognised by the European Parliament, which has proposed to add into the recitals the need for an agreement by the Budgetary Authority for the funding of the Office and for proper financial control of its operations.

Given that the Committee and the Government are so closely aligned on the proposal, I hope that this letter will provide you with information your Committee needs to clear the document from scrutiny. I would be grateful if you could consider doing this in time for the October Council.

10 September 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letters of 13 July and 10 September 2009 in which you update us on negotiations on this proposal. Sub-Committee F of the Select Committee on the European Union considered your letters at a meeting on 14 October 2009.

The Committee takes note of the fact that the Council is seeking to adopt a Common Position on the proposal at the JHA meeting on 23 October 2009. We believe that our concerns have been broadly addressed and are happy to clear this document from scrutiny.

In our view the United Kingdom Country of Origin Information Service is the best in Europe, and we hope that you will promote its use by the Asylum Support Office once it is set up.

15 October 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 15 October 2009 clearing the above document from scrutiny. I will continue to update your Committee on the progress of the negotiations.

Thank you for your praise of our Country of Origin Information Service. We are also very proud of this service and agree that it is the best in Europe. We will seek to promote this service once the European Asylum Support Office is set up.

29 October 2009

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

I am writing to your Committee to notify you of the outcome of negotiations on the European Asylum Support Office (EASO) and of the UK's decision to lend our support to Malta's bid to host the EASO.

The Swedish Presidency has reached an in principle political agreement between the Council and the European Parliament on the Regulation establishing the EASO. Formal adoption will follow once lawyer linguists have translated the text into all the EU's official languages. We expect this to happen in the New Year.

The text that has been agreed meets the UK's aims of promoting practical cooperation while minimising the risk of the EASO developing decision making functions in areas that we believe are best left to Member States. We have also secured wording setting out the qualifications to be expected of the Executive Director, and specifying that the post be filled through open and fair competition, as requested by your Committee.

We are continuing to work towards ensuring that funding for the office is by way of reprioritisation and not by an increase in the Community budget. To this end we intend to table a Minutes Statement upon adoption of the instrument calling upon the Budget Authority to ensure that the Agency is financed with resources reallocated from other Community Projects.

During negotiations two other issues gave cause for concern, namely the European Parliament's position that the Support Office instrument should not prevent intra-EU relocation of beneficiaries of international protection being put on a mandatory (rather than voluntary basis) in future and that the Parliament should have a right of veto over the appointment of the Executive Director for the Agency. We have secured a compromise text stating that intra-EU relocation will happen "only on an agreed basis" and that the Parliament will have the opportunity to hear from and express an opinion on the preferred candidate for Executive Director but will not have a right of veto.

The Swedish Presidency invited Member States to lodge bids to host the European Asylum Support Office by 20 October 2009. Three countries made bids: Bulgaria, Cyprus and Malta. The UK has agreed to support Malta, not only because they mounted the most sustained and credible campaign to host but also as part of our desire to ensure a sustainable and long term approach to illegal migration into the EU, particularly through the Mediterranean. In return we have asked for Maltese support for the UK's bid to co-host the Galileo Security Monitoring Centre.

The UK is committed to working with our EU partners on a broad and holistic approach to illegal migration, part of which will include positioning the new European Asylum Support Office to work comprehensively on asylum issues.

The UK is also committed to assisting Malta in the particular challenges it faces. As part of the wider EU effort, we have agreed to take 10 refugees from Malta because of the exceptional pressures there, its size and its position on the front line of illegal immigration routes into Southern Europe. We have made clear that this is only one part of the picture. In our view the EU's approach on this issue should encompass a broad range of measures, including practical support for Member States experiencing particular pressures to build their capacity to process asylum claims and return those who do not need protection, as well as measures to strengthen Frontex and close working with source and transit countries. We are also working with Malta to put in place a specific package of assistance with a focus on helping them to increase their returns programme to key source countries, and helping them establish a scheme for offering assisted voluntary returns.

23 November 2009

CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR SAFETY (11480/09)

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

Sub-Committee F of the Select Committee on the European Union considered this Communication at a meeting on 4 November 2009. We would like to thank you for the very full and informative EM. Because the Communication does not contain any proposals for legislation we are clearing it from scrutiny.

We would however like to stress the importance we attach to all EU initiatives on CBRN security – and indeed other forms of security – being conducted in conjunction with NATO. In our report *Civil Protection and Crisis Management in the European Union* (6th Report, Session 2008-09, HL Paper 43), published in March, we were strongly critical of the inadequate communication and cooperation between the Commission Management Information Centre (MIC) and the NATO Euro-Atlantic Disaster Response and Coordination Centre (EADRCC). We also thought there was inadequate linkage between the Situation Centres of NATO and of the EU. Now we find that this Commission Communication contains not a single reference to NATO. We are glad to see in your EM acknowledgement of the importance of not duplicating NATO action, in particular when staging CBRN training exercises. We hope that, in taking part in the many initiatives which constitute this Action Plan, you will press the importance of cooperation rather than duplication. But we also hope that, as recommended in our report, the United Kingdom will play a full part in CBRN exercises, whether they are promoted by the EU, by NATO, or by a single State or group of States.

As you say in the EM, the Plan comprises a total of 133 “actions”. However the Commission does not seem to put them in any order of priority. We would be glad to have your views on which are the most important and urgent, and how it is intended to monitor progress.

Paragraph 55 of the EM refers to the sum of “100 million Euro [£878,300]” (sic). We understand that the correct figure is 100 million Euro, and hence £87,830,000.

6 November 2009

Letter from the Lord West of Spithead to the Chairman

Thank you for your letter of 6 November on the EU CBRN Action Plan and associated Explanatory Memorandum. I am grateful to you for your considered response. You raise some important issues which I am pleased to address.

The UK has continually underlined the need for the Action Plan to complement not duplicate the work of other international agencies such as the IAEA and NATO. This has been accepted by the Commission and the latest draft of the paper which will go to the EU Council for approval contains a specific reference to this: 'In order to avoid duplication, any new EU measures in this field should be coherent with and based on the existing national and international regulations and draw upon existing work in other relevant international organisations'. Home Office officials will continue to work with the Commission and other Member States to ensure that this remains a priority. I am sure that there is scope for closer co-operation between the EU and NATO on CBRN security. UK officials will continue to engage with the Commission on possibilities for enhancing this – including through participation in exercises.

On the point about prioritisation itself, there have been discussions within the EU CBRN Experts' Group to establish which of the actions in the plan ought to be addressed as matter of priority – these are to be flagged as key actions in the final version of the Action Plan.

I hope that this additional information is reassuring.

23 November 2009

CITIZENS' RIGHT TO RESIDE AND MOVE FREELY WITHIN MEMBER STATE TERRITORY (11815/09)

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 communication at a meeting on 28 October 2009. The Committee is very grateful to you for your comprehensive explanatory memorandum. It has decided to clear this document from scrutiny.

29 October 2009

CRIME PREVENTION NETWORK (EUCPN) (11421/09)

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, together with your EM of 15 July 2009, at a meeting on 14 October 2009, and cleared it from scrutiny.

The draft Decision says only that the Chair is to be appointed from within the body of national representatives, but does not say how the choice is to be made, or for how long the post is to be held. We strongly support the Government's view that there should be an open competition to identify the best candidate, and appoint him or her for 2 years. You will recall that in our report on Europol, published last November, we recommended that this procedure should be adopted for the chairmanship of the Europol Management Board, and the Government was sympathetic to this view. In that case an amendment to the legislation would have been necessary, which you did not think was feasible at that time. In the case of this Decision, these are matters to be decided independently of the legislation. We hope that the Government will continue to press this view. As we said in the context of Europol, the nationality of the person best qualified for the chairmanship has no logical connection with the identity of the Member State holding the Presidency. The benefits of having a chair of the Board – and hence of the Executive Committee – for a longer period of time clearly outweigh any Presidency considerations.

15 October 2009

EMPLOYERS OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS (10770/08)

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

I write to thank you for your previous correspondence advising you had cleared the EU Directive for sanctions against employers of illegal migrants, Document 30399, from scrutiny. I would now like to invite you to make any additional comments the Committee might have on this matter to enable us to reach a final, collective view within Government on the issue of UK participation in the Directive.

Following our previous correspondence on this Directive, you will recall that the Government originally decided not to opt-into the EU Directive providing for criminal sanctions against employers of illegally staying third country nationals but that we undertook to review the decision post-adoption.

On 25 May the previously agreed Council Document 10770/2008 was adopted as the EU Directive providing for criminal sanctions against employers of illegally staying third country nationals. Therefore, we have been reviewing that text against our original concerns. Although the Government does not think the adopted text goes far enough to address our earlier concerns, and fully expects to maintain the position that the UK should not opt-in, we would welcome your views before reaching a final decision.

I look forward to receiving any views as soon as possible and attach the adopted EU Directive for your convenience.

13 October 2009

EURODAC: COMPARISON OF FINGERPRINTS (13263/09, 13322/09)

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 documents at a meeting on 28 October 2009. They were very grateful for your full explanatory memorandum.

The draft Decision raises a number of important issues, but before turning to them we have a point to raise on the amended proposal for a Regulation establishing EURODAC. As you say, we cleared the December 2008 proposal (Document 16934/08) from scrutiny on 25 June 2009. The draft issued by the Commission is entitled "Amended draft", and paragraph 2 of the Commission's explanatory memorandum begins: "The current proposal amends the December 2008 proposal"; and it is indeed drafted as an amendment of the 2008 proposal. Our view is that this is not a fresh proposal, that the United Kingdom has already opted in to it, and that the question of a fresh opt-in does not arise – let alone the possibility of not opting in.

However we note from paragraph 25 of the EM that you take the opposite view, and are considering whether the factors that led you to opt in to the earlier proposal continue to apply. If this is a valid question, we hope that there is no doubt that the Government will again opt in, since membership of EURODAC is an integral part of the Dublin system. We would like to hear in due course whether the Presidency (or the Council officials) thought that an opt-in was required.

These are technical issues. The proposal for a Decision to allow law enforcement authorities access to the EURODAC database in our view raises fundamental issues about using information collected for one purpose for a wholly different purpose.

You may be aware that when the ministers of the interior of the G6 met at Heiligendamm in March 2006 and committed themselves to introducing police access to EURODAC we were critical of this: see our report *Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm* (40th report, Session 2005-06, HL Paper 221), paragraphs 19-25. The form in which the Data Protection Framework Decision has now been adopted does little to allay our fears.

You will by now have seen the Opinion of the European Data Protection Supervisor on this proposal, though you might not have done on 7 October when you signed the EM. We would be glad to have your views on the concerns he raises, which we to a large extent share. We particularly agree with the EDPS that it is inapposite to put forward a proposal for a Decision which must be adopted by unanimity so shortly before the likely entry into force of the Treaty of Lisbon. We believe his suggestion, that it would be preferable first to bring into force and then to evaluate the other instruments which allow the authorities of one Member State to consult the databases of other Member States for law enforcement purposes, has considerable force.

As recital (6) of the draft Decision itself states, entirely frankly, "access to EURODAC for the purposes of preventing, detecting or investigating terrorist offences and other serious criminal offences constitutes a change of the original purpose of EURODAC, which interferes with the right to respect the private life of individuals whose personal data are processed in EURODAC.". The recital adds that any such interference must be in accordance with the law, and you seem from paragraph 19 of the EM to believe that there is no conflict here with ECHR Article 8. The EDPS takes the opposite view, and we would be glad to have your comments on his reasoning.

Meanwhile we will be holding both these documents under scrutiny.

29 October 2009

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

Thank you for your letter of 29 October 2009 to Phil Woolas concerning the above.

You asked whether the Presidency or Council officials had views on whether or not the United Kingdom's opt-in Protocol applied to the current proposal given that there had been an earlier recast of the EURODAC Regulation in December 2008. The Presidency has not expressed an opinion on this matter. However, when document 13263/09 was introduced at the meeting of the Council Working Group on Asylum the Commission made it clear that in their view the recast proposal triggered the UK's opt-in Protocol and that consequently a new decision on whether or not to opt-in would be required. The representative of the Council Legal Service agreed with this view.

You refer in your letter to the views of the European Data Protection Supervisor on law enforcement access to EURODAC and in particular that he believes this proposal conflicts with Article 8 of the European Convention on Human Rights (ECHR). I believe that while there may be an interference

with Article 8(1) of the ECHR, this is justified under Article 8(2) because safeguards are already built into the Decision and, once the proposal is adopted, the UK would be obliged to implement these safeguards. Any interference will therefore be in accordance with the law and proportionate to the legitimate aim of preventing, detecting and investigating terrorist and other serious offences. Furthermore the Data Protection Framework Decision, which must be implemented by November 2010, will provide a minimum standard of data protection for the cross-border exchange of personal data in the field of police and judicial co-operation.

Finally, I note your point on the timing of this proposal in relation to the Lisbon Treaty. My understanding is that when the Treaty comes into force the proposal will need to be re-issued.

25 November 2009

FREEDOM, SECURITY AND JUSTICE: MANAGEMENT OF LARGE-SCALE IT SYSTEMS (11709/09, 11722/09, 11726/09)

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 at a meeting on 15 July 2009 the proposal for establishing an agency to manage Eurodac, the Schengen Information System (SIS II), and the Visa Information System (VIS). We are grateful to you and your officials for having prepared an explanatory memorandum in time for that meeting.

The Committee considered only the question of the United Kingdom opting in to the Regulation, given that a decision on this will need to be taken during the summer recess. The merits of the proposals will be considered when Parliament resumes. Accordingly both documents are being kept under scrutiny, as is the Commission Communication (COM(2009)292), document 17709/09, whose number is mentioned on the EM, though its title is not.

You state in paragraph 20 of the EM that you are considering your opt-in position. We understand that at this stage it is too early for you to reach a final decision on whether or not to opt in. You state however that you wish to ensure that the UK has sufficient representation in the agency, that decisions regarding the management of SIS II and Eurodac are consistent with our existing participation, and that you wish to maintain the ability to influence future IT developments. Since the UK will have no representation at all if it does not opt in, we assume that you will ultimately do so. We would be grateful if you would write to inform us of your decision as soon as you have made it.

We wish however at this stage to record our view that recital (25) of the proposed Regulation is entirely misconceived. We believe that it mis-states the legal position of the United Kingdom and, if allowed to stand, may adversely affect the participation of the UK in the operation of the agency.

The recital purports to exclude application of the Regulation to the UK "insofar as it relates to SIS II and VIS" on the grounds that, to this extent, the Regulation is a Schengen-building measure. It is of course true that the SIS II Regulation and the VIS Regulation and Decision do not apply to the UK. They are measures building on a part of the Schengen acquis in which the UK does not participate and, subject in the case of the VIS Decision to the proceedings in the European Court of Justice, cannot apply to the UK.

However it seems to us entirely false to extrapolate from this the proposition that the Regulation setting up the agency is itself a Schengen-building measure which can apply to the UK only to a limited extent, particularly as the agency has tasks attributed to it which go much wider than the Schengen acquis. It seems to us that the Commission is confusing access to the information in a database with operational management of IT systems.

It would, on the other hand, be appropriate for a Regulation applying equally to all the Member States (other than Denmark) to contain provisions giving different Member States different rights and obligations. This, as your EM points out, is the case with the current draft of Articles 11(3) and 13(3). We do not at this stage comment on the merits of those provisions.

We hope that, if you agree with these views, you will put them to the Commission. You may also wish to consider whether, when the United Kingdom does opt in (assuming it does), it might be worth stating that the United Kingdom is opting in to the Regulation in its entirety, and not just to the limited extent envisaged by recital (25).

Our criticisms of this recital apply equally, *mutatis mutandis*, to recital (8) of the Decision, but there of course the question of opting in does not arise.

I am also writing to Vice-President Barrot to make these criticisms of the Commission proposals. I enclose a copy of my letter to him.

20 July 2009

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 20 July 2009 concerning the Commission's proposal for the establishment of an IT agency to manage Eurodac, the Schengen Information System (SIS II) and the Visa Information System (VIS). I would also like to thank you for sending the letter to Vice-President Barrot explaining to him the concerns that you have regarding the Commission proposals.

This letter serves to inform you of the decision that was taken in regards to whether the UK should exercise its right to opt-in to the proposed Regulation. I regret not informing you of our decision at an earlier date.

In September 2009 I wrote to the Foreign Secretary recommending that the UK opts into the Regulation. This opt-in would be partial; applying only to those systems in which we currently participate, plus all possible future IT systems in which we will want to participate.

There were a number of key considerations that informed the decision to partially opt-in. As you mentioned in your letter, if the UK did not opt into the measure, we would have no representation in the Agency and would not be able to participate in the negotiations over its creation. Given that we already participate in Eurodac, are scheduled to connect to SIS II, and have launched an ECJ challenge to the Commission decision preventing us gaining access to the law enforcement aspects of VIS, not opting into the Regulation would marginalise our ability to influence the management of these systems in which we participate. The Agency would also have a role in developing any new IT systems, which may include systems in which the UK would want to eventually participate and where for example we might want to take part in pilot projects to influence their development. Our non-participation in the Agency would exclude us from such a role.

In my letter to the Foreign Secretary I also recommended that if we opted into the Regulation, we should aim to seek changes in key aspects of the proposed text. In particular, the current text on voting rights within the management board is unacceptable to the UK as we would not be able to vote on all the IT systems in which we participate if we opt into them post-adoption. We are supported in this amendment by other Member States, and have made a statement to the Swedish Presidency setting out our proposed amendment to the text of the proposal.

After receiving comments and clearance from the NSID(EU) committee, the UK Permanent Representative to the EU wrote on 23 September to Carl Bildt, President of the Council of the European Union, to communicate the UK's formal notification that it wishes to take part in the adoption and application of the Regulation. We have yet to hear a response from the Presidency or the European Commission but on the basis of prior discussions with the Commission, we are confident that they both agree we are entitled to opt into the Regulation irrespective of the current draft text of recital 25.

30 September 2009

Letter from the Chairman to Phil Woolas MP

Sub-Committee F of the Select Committee on the European Union considered these documents at meetings on 14 and 28 October 2009, together with your reply of 7 October 2009 to my letter of 20 July 2009.

In your letter you said that you had written to the Foreign secretary recommending that the UK should opt in to the Regulation, but that "this opt in would be only partial, applying only to those systems in which we currently participate, plus all future IT systems in which we will want to participate". You will be aware from my earlier letter that in our view it is unnecessary for the United Kingdom to say it will opt in only partially, since this is not in our view a Schengen-building measure at all; we reiterate that a measure dealing with the operational management of IT systems does not in our view itself become a Schengen-building measure simply because some of the databases which are managed are created by Schengen-building measures. We explained that we felt the Commission were confusing access to the information in a database with the operational management of IT systems. We believe that the Government too has fallen into this trap.

There is a more fundamental reason why in our view the Government not only should not opt in only partially, but could not do so. Article 3 of the Protocol on the position of the United Kingdom and Ireland states that the UK may notify the Council "within three months after a proposal or initiative has been presented ... that it wishes to take part in the adoption or application of any such proposed measure ...". There is no suggestion that it is open to the UK to opt in to a proposal to a limited extent or for a limited purpose; nor is there any suggestion that it is open to the Council (or the

Commission in drafting a proposal) to suggest that the UK, if it opts in, should be permitted to do so only to a limited extent or for a limited purpose, or to qualify the acceptance of an opt-in in such a way. We do not think this is a necessary consequence of Article 7 of the Protocol, which states that Article 3 is without prejudice to the Protocol integrating the Schengen *acquis*.

There is also a practical reason why we believe our view must be correct. We see nothing unlawful in a provision which suggests, as Article 11(3) of the proposal does, that the UK member of the management board of the agency cannot be elected as chairman because the UK does not “participate fully in the adoption of the legal instruments governing all the systems managed by the agency”; though we share your view that it is unacceptable and should be amended. But what are we to make of a provision like Article 13(3) which provides that “Each member appointed by a Member State which participates in the adoption of any legal instrument governing an IT system managed by the Agency may vote on a question which concerns that IT system.”? Most decisions will, we imagine, concern all the IT systems. Is a contentious vote on something which affects all the IT systems to go one way in relation to EURODAC because the UK’s vote is counted, and the other way in relation to VIS because the UK’s vote is ignored? Article 13(4), which provides: “In case of disagreement among members over whether or not a specific IT system is affected by a vote, members shall decide by a two-thirds majority, that it is not affected”, is plainly designed to limit the voting rights of the United Kingdom. In its current form it is unintelligible; we would be glad to know whether in your view this or any similar provision could be workable.

You ended your letter by saying: “... the UK Permanent Representative to the EU wrote on 23 September to Carl Bildt, President of the Council of the European Union, to communicate the UK’s formal notification that it wishes to take part in the adoption and application of the Regulation.” It is not clear to us whether the UK’s formal notification said only this, or whether it attempted to qualify the UK’s opt-in by saying it was only for a limited purpose. We would be glad if you would elucidate this. If there was a qualification, we would like to know how it was worded.

You added: “We have yet to hear a response from the Presidency or the European Commission but on the basis of prior discussions with the Commission, we are confident that they both agree we are entitled to opt into the Regulation irrespective of the current draft text of recital 25.” If and when you do receive a response from the Presidency or the Commission, we would be glad to know what it says.

Finally, since the decision on whether or not to opt in is solely for the Government, we think it would be appropriate for the Government to make plain to the Commission that it is improper for proposals for legislation to include a provision attempting to anticipate that decision. An explanation by the Commission in its memorandum of what the consequences will be if the United Kingdom does or does not opt in is permissible and may even be helpful, but it is not for the Commission to attempt to pre-empt the Government’s decision.

On the substance of the proposal, it is clear from paragraph 24 of the EM that you have a number of reservations, and are awaiting further developments. We would be glad to hear about these in due course. You mention that you wish to study in more detail the arrangements for financing. We too are interested in these, in particular whether the creation of a single agency is likely to result in a saving as compared with three separate agencies.

We are keeping all these three documents under scrutiny.

29 October 2009

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

Thank you for your letter of 29 October in which you ask the Government to address a number of issues arising from the proposed Regulation and Council Decision on the establishment of an EU IT Agency and from our previous correspondence with you on this matter. We apologise for the delay in responding to you.

As you identify, this proposal gives rise to quite complex legal issues for the UK. As such, we sought legal advice on our position vis-a-vis the opt-in before coming to a decision. I note your views on this, but the advice we received suggested that it should be possible to opt-in to a Regulation partially and that this was the appropriate step to take in these circumstances. As you have also identified, this was also the view of the Commission.

In our letter to the President of the Council of the European Union on the opt-in we stated that the UK wishes to take part in the adoption and application of this proposal. We did not seek in this letter to qualify the level of our participation in the instruments, but based on previous discussions with the Commission, our expectation is that this will apply only to the extent to which we participate in the

various IT systems that the new Agency will be responsible for managing. We have still not received a response from the Presidency or Commission to this letter.

On the issue of voting rights for the Agency's Management board, I do not share your view that most decisions being considered by the board will concern all the IT systems. The proposed Agency will take over the operational management of several large, but distinct, IT systems. I anticipate that, as such, most of the decisions the board is required to make will relate to each system as a distinct entity. Notwithstanding this, we are seeking amendments to the current text in the Regulation on voting rights to enable us to vote on issues relating to all current and future IT systems in which we participate, regardless of whether we opt-in to them pre or post adoption.

I note your point that the Commission should not attempt to pre-empt a UK opt-in decision. However, I think that in this instance the Commission was trying to establish that they believed, albeit mistakenly, that the UK could not opt-in to this measure, rather than anticipate what our decision would be.

I will, of course, keep you updated on relevant developments during the course of negotiations on this proposal.

18 November 2009

G6 INTERIOR MINISTERS MEETINGS, BERLIN

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

I am writing in response to your letter dated 23 April 2009⁴, responding to my written ministerial statement (WMS) regarding the G6 meeting in Berlin. I am pleased that the Committee continues to take an interest in the G6. Since receiving your letter, my officials have been in touch with the Committee Clerk by telephone to update them on the recent history of the G6.

For various reasons, no G6 meeting was held in 2008 during the French or the Spanish presidencies, although G6 Ministers met at the invitation of Germany within the context of a counter terrorism symposium in Bonn in September (also reported by WMS). The Germans took over the presidency of the Group in January and quickly organised the meeting in Berlin, on which I reported back to you in March, with the intention of reinvigorating its work. It was agreed that this would be achieved through a return to a focus on informal discussions around key issues of concern to those attending and by disposing with formal announcements.

I am sorry that my officials did not contact you in advance of this meeting, but given the length of time that had elapsed since the last event, and the inevitable staff changes during this period, the informal undertaking to contact you was missed. The UK will be taking over the presidency of the G6 group from July this year, and I am pleased to inform you that we will be hosting a G6 meeting in the Birmingham area on 8 October. The venue, format and duration of the meeting are yet to be finalised, however my officials have confirmed to your Clerk that they will provide the Committee with a telephone update on our planning a fortnight before the meeting. It will, of course, also be reported to Parliament in the usual way.

11 May 2009

Letter from the Chairman to the Rt Hon Jacqui Smith MP

Thank you for your letter of 11 May 2009 which Sub-Committee F of the House of Lords Select Committee on the European Union considered at a meeting on 3 June.

We are grateful for your information about the meeting which the United Kingdom will be hosting on 8 October 2009, and note that your officials will be informing our Clerk of the planning of the meeting. We are particularly glad that, even though no formal conclusions will be issued after the meeting, you will be reporting the outcome of the meeting to the House by means of a Written Ministerial Statement.

4 June 2009

⁴ [Correspondence with Ministers, May to November 2008](#)

IMMIGRATION AND ASYLUM PACT (12626/08)

Letter from the Chairman to Bill Rammell MP, Minister for State, Foreign and Commonwealth Office

Thank you for your letter of 28 April 2009⁵. Sub-Committee F of the Select Committee on the European Union considered this letter at a meeting on 3 June 2009. We are grateful for the information you provide on the current counter-piracy operations which are taking place off the coast of Somalia. As you will know, the defence and foreign affairs aspects of EU counter-piracy have been further pursued by Sub-Committee C, to which Rear-Admiral Philip Jones and Lord Malloch-Brown have given evidence. Other aspects of these matters are relevant to the inquiry on Anti-Money Laundering and the Countering of Terrorist Financing which Sub-Committee F is currently conducting and will be addressed in the Committee's report, which I expect to be published towards the end of July.

4 June 2009

IMMIGRATION LIAISON OFFICERS' NETWORK (11966/09, 16075/09)

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

I am writing to inform you of the Government's decision on whether to opt in to the above proposal, 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 proposal is in part a measure building upon the Schengen acquis, where the UK's participation is governed by the Schengen Protocol, and in part a non-Schengen related immigration measure, where the UK's participation is governed by the Title IV Protocol. To the extent that the measure is subject to the Title IV Protocol the issue of opt-in arises.

As I explained in my Explanatory Memorandum of 1st September 2009, we believe that the proposal is in line with UK policy:

- i. to cooperate in all areas of Justice and Home Affairs where there is no conflict with our frontier controls;
- ii. to strengthen the operational role of Frontex; and
- iii. to work in partnership with EU and other international partners wherever possible to maximise capability to address the global risks from illegal migration.

For these reasons, the Government has decided to opt in to the measure to the extent that it is subject to the Title IV Protocol and that decision has been formally communicated to the Council Presidency.

7 October 2009

Letter from the Chairman to Phil Woolas MP

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 28 October 2009. We are grateful for your Explanatory Memorandum, and for your further letter of 7 October explaining that the United Kingdom had opted in to the proposal. In our view the proposal raises no particular issues and we have cleared the document from scrutiny.

29 October 2009

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

Thank you for your letter of 29 October in which you raise questions about the application of the Protocol on the position of the UK and Ireland and the Protocol on the role of national Parliaments to this Council Decision.

If the proposed Council Decision were to be adopted before the UK had exercised its right to opt-in under Article 3 of the Protocol on the position of the UK and Ireland it would only be open to us thereafter to apply to participate using the process in Article 4 of the Protocol which, as the

⁵ [Correspondence with Ministers, May to November 2008](#)

Committee rightly notes, does not confer a right to participation. We are however seeking to avoid that situation. To this end, we have secured the agreement of the Presidency that handling of the negotiations on the Council Decision and its subsequent adoption must respect the terms of the Protocol in allowing us a 3 month period in which to decide whether we wish to opt-in. This would in turn allow the Committee the 8 weeks scrutiny on the application of the opt-in in line with the undertaking cited in your letter.

You ask why a Council Decision is needed to create this Committee when no such measure was required for the current Article 36 Committee. Whilst it is not the only method available for establishing COSI, and we discussed alternatives with the Presidency, we do believe that a Council Decision is an appropriate legal vehicle and it is the one the Presidency has chosen. It will offer legal clarity about the role and composition of the Committee, building on the broad mandate created in Article 71 TFEU.

Finally, the Committee raises the related issue of the 8 week period permitted to national Parliaments to consider certain legislative acts under the new Protocol on the role of national Parliaments. Given this Government has welcomed the Protocol's aim of encouraging the involvement of national Parliaments in the development of EU legislation, we would have concerns if the commitments it provides were not being respected. However, as you rightly note, the Council Decision does not fall within the definition of a legislative act, as set out in Article 4 of the Protocol.

18 November 2009

Letter from Meg Hillier MP to the Chairman

I am writing to update the Committee on recent developments regarding the legal base for, and proposed handling of, the Council Decision to establish the Committee on Internal Security which is created by the Lisbon Treaty.

In correspondence with you we explained that the Presidency had proposed a Council Decision based on Article 71 of the Treaty on the Functioning of the European Union. Our position was that whilst this was not the only way to proceed it was an appropriate legal vehicle. In the view of the fact that Article 71 was cited as the legal base we also concluded that it was prudent to exercise the Protocol on the position of the UK and Ireland (the opt-in Protocol) to ensure the possibility of our participation.

Late last week we learnt that the Presidency has now changed its approach and taken the view that the Committee is established by Article 71 TFEU and that consequently all that is now required is a procedural decision under Article 240(3) TFEU. Whilst different from their original proposal, we consider this to be an acceptable approach. I attach that text for your information.

Our view is that a Council Decision based on Article 240 TFEU would not trigger our opt-in. In any case we were planning to opt-in to the Council Decision on COSI, not least following the letter we received from your Committee which stressed the importance of UK participation in COSI.

I am also aware that the European Union Committee had a concern that Article 2 of the Protocol on the position of the UK and Ireland would exclude the UK from the Committee without a measure pursuant to Article 71 TFEU into which we could opt-in. However, we believe that Article 71 is by its nature (an Article setting up a Committee in Council) not a measure that could be "binding upon or applicable in" the UK and therefore Article 2 of the Opt in Protocol does not apply to such a measure. We believe that this legal base will allow for UK participation in COSI.

I am sorry that this change in the Presidency's approach has been sprung on us so close to the coming into force of the Lisbon Treaty. Even though the opt-in is no longer an issue for the Committee to consider, I regard it as important that you should have an opportunity to consider the text. We remain in discussion with the Presidency regarding the handling of this measure and have stressed the fact that we must be given sufficient time to consult parliament. They have recognised this in a footnote to the current text.

We have let the Committee have an unnumbered Explanatory Memoranda on this proposal on an informal basis. We shall send the formal EM as soon as the Lisbon Treaty comes into force. The Presidency will be looking for swift adoption so that COSI can start work. The handling of this has not been ideal but we hope that the Committee will nonetheless be able to give its clearance to that as soon as possible.

24 November 2009

INDEX OF THIRD COUNTRY NATIONALS CONVICTED IN THE EUROPEAN UNION (11453/06)

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

When Meg Hillier wrote to Lord Grenfell on 4 April 2008⁶ she said that she would update the Committee when the situation on the Commission Document on the feasibility of an index of third country nationals convicted in the European Union changed.

There is still no formal legislative proposal from the Commission and we still do not expect one to be issued in 2009. Nevertheless there have been recent developments in that the Commission issued a document on 2 April 2009 informing Member States that UNISYS has been invited, using a JLS framework contract to conduct a study over a one year period into the feasibility of establishing an index. The Commission asked each Member States to nominate a Single Point of Contact (SPOC) who would liaise with UNISYS.

The study will look at three options.

- a. An index restricted to alphanumeric information,
- b. An index including alphanumeric and biometric data (or giving access to biometric data). This would have two options
 - biometric information on all convicted third country nationals or
 - biometric data on all third country nationals convicted of certain specific offences (according to availability and the legislative situation at national level.
- c. Evolution from an index including only alphanumeric data to an index also including biometric data.

Whilst progress has been significantly slower than we had been given to understand in March 2008 it is good news that the feasibility study will now be taking place. As indicated in Meg Hillier's letter of 4 April 2008 the United Kingdom continues to favour the option that includes full biometric information.

The United Kingdom has nominated Det Supt Gary Linton of the ACPO Criminal Records Office as our SPOC. Gary is content to be nominated. He is also fully aware of the territorial dimension to criminal records and fingerprints in the UK as well as the issues around data ownership (each Chief Constable) and data processing (by the National Policing Improvement Agency, the Scottish Police Services Authority or the Police Service of Northern Ireland). He will ensure that UNISYS are able to speak to all parties, including central government.

I will keep the Scrutiny Committees informed of any further substantive developments in this area, including on the outcome of the feasibility study and any legislative proposal in due course.

1 June 2009

INTERNAL SECURITY

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 at a meeting on 28 October 2009 the draft text of the proposal which might be made when the Treaty of Lisbon comes into force for a Decision under TFEU Article 71 setting up the Committee envisaged by that Article. We are grateful for early sight of this text.

You will be aware that this Committee is concerned about a number of factors relating to the United Kingdom opt-in. This draft proposal raises further issues. The first is that the drafting of the Protocol on the position of the United Kingdom and Ireland assumes that there will be not less than 3 months for the UK to decide whether or not to opt in to a proposal. In the case of most proposals for substantive measures this raises no problems. However you point out that the Presidency may table texts such as these for adoption within a few weeks of entry into force of the Treaty of Lisbon. The UK might still be considering whether or not to opt in when the other Member States adopt a proposal. This may not be likely in the case of this particular proposal, but your EM suggests that this may be only one of a number of such proposals. We would be glad to know whether, if a measure is

⁶ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 229

adopted by the other Member States during the course of the 3-month period for opting in but without the UK having opted in, it is in your view still open to the UK to opt in under Article 3 of the Protocol, or whether the only remaining option is to apply to opt in under Article 4, with the cumbersome procedure that this entails and no guarantee that the application will succeed.

The other issue relates to the undertaking given to this Committee and the Commons European Scrutiny Committee by the then Leader of the House, on behalf of the Government, on 8 June 2008. As you will know, this includes the following commitment:

“As a general rule, except where an earlier opt-in decision is necessary, not to override the scrutiny process, by making any formal notification to the Council of a decision to opt-in within the first 8 weeks following publication of a proposal. Where the Government considers an early opt-in to be essential, it will explain its reasons to the Committee as soon as is possible. The Government will continue to keep the Committees fully informed as negotiations develop.”

It follows from this that the Government will not opt in to a proposal less than 8 weeks after the beginning of the 3 month period for opting in “except where an earlier opt-in decision is necessary”. Your EM makes no reference to this. Are we to assume that this is a case where in your view the exception applies?

Another matter not mentioned in your EM is why a Decision should be thought necessary to set up this Committee (COSI) under TFEU Article 71, while no such Decision was necessary to set up the predecessor Committee under TEU Article 36 (CATS). We note that TEU Article 36 is in a part of the TEU (Title VI) which applies to the UK, whereas TFEU Article 71 is in a part of TFEU (Title V of Part Three) which does not. Since the Protocol does not allow the UK to opt in to Title V itself, but only in to measures made under Title V, it seems to us that if there were no Decision for the UK to opt in to, we would be left out of an important and influential Committee. We would however be glad to know whether this accords with your reasoning, or if not, why you believe that a Decision is necessary.

There is a further issue, not connected with the UK opt-in, to which the Timetable section of the EM makes no reference. Article 4 of the Protocol to the Lisbon Treaty on the Role of National Parliaments in the European Union requires a minimum period of 8 weeks between a draft legislative act being made available to national Parliaments and its being placed on the agenda of a Council for adoption. There is an exception for cases of urgency, which can hardly be thought to apply. It is also arguable that this Decision does not strictly fall within the definition of “draft legislative act” in Article 2. We would be glad to have your views on this.

We are not in a position to clear this document from scrutiny since it does not yet constitute a formal legislative proposal. However we appreciate that there may be only a short time between the proposal being tabled and its being adopted, and we are prepared to let you treat as cleared any proposal not significantly different from the one we have seen, so long as it is the Government’s intention to opt in to it.

29 October 2009

Letter from the Chairman to Phil Woolas MP

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 28 October 2009. We are grateful for your Explanatory Memorandum, and for your further letter of 7 October explaining that the United Kingdom had opted in to the proposal. In our view the proposal raises no particular issues and we have cleared the document from scrutiny.

29 October 2009

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office and Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

On 22 October 2009 Phil Woolas wrote to your Committee concerning the future five-year work programme in the field of Justice and Home Affairs (frequently referred to as the “Stockholm Programme”). As you are aware, section 4.2.2. (Managing the flow of information) of the programme calls for the Council to:

“implement an EU Information Management Strategy. Development must be coherent with the priorities set for the area of freedom, security and justice and the internal security strategy, supporting the business vision for law enforcement and judicial cooperation.”

The EU Information Management Strategy was mentioned by Phil Woolas at a recent Lords European Union Committee hearing (14 October) and by Lord Bach before the Justice Select Committee (3 November). I would like to take this opportunity to provide further information on this strategy and to inform you of the progress of its negotiations, which are currently underway in the Council.

The strategy would create a coherent set of over-arching principles which should guide all future information exchange at both the national and cross-border level. It is founded upon an extended version of the principle of availability which is based on the following premise: a law enforcement officer in one Member State who needs information from another state in order to perform his duties should be able to obtain this information from the other state, and the law enforcement agency of that state should make the information available for the stated purpose.

Other important principles of the strategy include requirement (information exchange should be based on identifiable needs), rationalisation (existing instruments should be used before embarking on new initiatives), interoperability and professionalisation (IT systems should be business-driven and cost effective).

The protection of personal data will remain a crucial aspect of all future information exchange. According to the strategy, data protection will be strengthened through better-targeted data collection, organisationally and technically comprehensive data security regimes, and the establishment of systematic evaluation and monitoring mechanisms.

The strategy does not, however, attempt to identify new potential information systems or areas where information exchange could be extended. It does not force Member States to alter their existing national systems and will remain an instrument to be used for guidance purposes. It has a long term focus and is not intended to be immutable. Instead, it shall be further developed and updated to reflect the JHA vision of the day (for example, as stated by the Stockholm Programme).

1. The current proposed strategy is split into the following focus areas:
2. Needs, requirements and added value are assessed as a precondition for development.
3. Development follows agreed law enforcement workflows and criminal intelligence models.
4. Development supports both data protection requirements and business operational needs.
5. Interoperability and co-ordination are ensured both within business processes and technical solutions.
6. Re-utilisation is the rule: do not re-invent the wheel.
7. Member States are involved from the very start of the process.
8. There is a clear responsibility for each part of the process, ensuring competence, quality and efficiency.
9. Multidisciplinary coordination is ensured within the JHA area.

The UK led the way in pressing for an information management strategy. As a result, the current version reflects to a considerable degree the Government's view on how future European information exchange should be managed. The Government agrees that Member States should have a greater involvement in the process, reutilisation should be encouraged to reduce costs and complexity, and greater attention should be paid to data protection. The strategy should also ensure new systems are based on need and requirement.

Amongst the Member States at official level, there is broad agreement on the substance of the strategy. We are all of the opinion that European data-sharing systems need to meet defined needs and be supported by strong data protection. However, discussions continue on the scope of the Strategy and the extent to which the information management strategy will apply.

The Government is of the opinion that this strategy should be wide-ranging, extending beyond the sphere of pure policing and judicial cooperation. Interoperability and coordination of systems are key areas for the strategy, and it would therefore make little sense for it to apply to only a minimum number of systems and spheres. We have therefore argued for a wide remit, proposing that the strategy should be applied to not only police and judicial cooperation, but also border control (including immigration and customs). There is much support for this position from other Member States. Agreement, however, has not been reached due a small number of delegations arguing for a narrower scope. We expect this issue to go to senior officials and to Ministers at the November JHA Council for a decision and hope that the Presidency will be able to present the strategy in conclusions language at the JHA Council.

24 November 2009

Letter from Alan Johnson, Home Secretary, to the Chairman

I am writing to update you on the forthcoming Justice and Home Affairs (JHA) Council to be held in Brussels on 21 September 2009. I will attend on behalf of the United Kingdom.

The Council, beginning in Mixed Committee, with Norway, Switzerland, Iceland and Liechtenstein, will hear the Presidency present an update on 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.

Following Mixed Committee, the Commission will present their Communication on the establishment of a voluntary joint EU Resettlement Programme which the UK welcomes and broadly supports. The UK recognises resettlement as a key element in protecting the world's most vulnerable and we will restate our belief that this should sit alongside programmes such as UNHCR-run schemes and build on Regional Protection Programmes to increase the capacity of countries hosting large numbers of refugees within source regions.

The Council will then exchange initial views on a Decision on accompanying changes to the European Refugee Fund to enable the establishment of an EU scheme. The UK welcomes the move to make financial assistance more broadly available.

Over lunch there will be discussions with the UN High Commissioner for Refugees, focusing primarily on the external aspects of asylum – resettlement and regional protection programmes, and on visa reciprocity. The UK is not directly involved in matters of the EU common visa policy. The UK maintains an interest in all visa issues notably for full reciprocity for third country nationals. The UK believes that the EU should continue to utilise the expertise of the UNHCR to ensure effective resettlement of refugees from outside the EU.

The Commission will present a report on the follow-up to the European Council Conclusions of 18-19 June 2009 focusing on illegal migration in the Mediterranean. The UK is committed to the principle of solidarity in combating illegal immigration, but will continue to push the need for the EU to deal with the causes of the problem and not just its consequences. The UK will steer away from reliance on physical burden sharing proposals by the Commission.

The Presidency will invite the Council to discuss the role and development of Frontex in this region. The UK will encourage other Member States to support our view that solidarity for southern states under pressure should take the form of expertise and resource exchange (particularly on returns), co-operation with third countries and expanding the operational remit of Frontex in the Mediterranean region rather than intra EU-relocation of refugees or asylum seekers.

The Council will discuss key issues around the challenges facing the EU in relation to unaccompanied minors, and on how to take forward co-operative working supported by a common approach to tackle this issue. The UK supports prioritisation of this issue at EU level and will seek to ensure the focus is on fundamental preventative measures which will produce long-term benefits, and on ways to achieve effective safe returns of unaccompanied minors.

The Presidency will invite the Council to further discuss the Commission Communication on guidance for better transposition and application of the Free Movement Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The UK welcomes the measures on criminality but will press for further action to tackle abuse of free movement rights.

The Presidency may seek political agreement on the Directive for a single application procedure for third-country nationals. The proposed Directive comprises of two parts: the first would prescribe a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State; the second would prescribe a common set of rights for third-country workers legally residing in a Member State. The UK has not opted into the Directive.

The Council will discuss asylum in the European Union. The UK will press the Commission again to postpone its planned amendments to the Qualification and Procedures Directives until a full evaluation of the existing Directives has taken place and Member States have been consulted properly.

17 September 2009

Letter from Alan Johnson MP to the Chairman

I am writing to update you on the Justice and Home Affairs Council which took place in Brussels on 21 September. I attended this Council, on behalf of the Home Office, which focused on migration and asylum issues.

During the Mixed Committee, with Norway, Switzerland, Iceland and Liechtenstein, the Commission reported that a new timetable for implementation of the Regulation establishing the Visa Information System (VIS) would be put to the Friends of the VIS meeting in October as a consequence of ongoing delays. The UK does not participate in the VIS.

Following the Mixed Committee, the Commission introduced its proposals on the establishment of a voluntary joint EU Refugee Resettlement Programme which would include the establishment of annual EU priorities; financial assistance of 4,000 euros from the European Refugee Fund (ERF) for each resettled refugee; and pooled operational resource and expertise (through the European Asylum Support Office). The UK welcomed the Commission's proposals to increase resettlement opportunities across the EU, seeing it as a key tool in protecting the most vulnerable. The UK noted that over 2,100 refugees have been resettled to the UK since 2004 through its domestic Gateway Protection Programme. By expanding and strengthening Regional Protection Programmes and combining Member States' efforts on resettlement, the EU will be able to reduce the need for refugees to undertake dangerous journeys to Europe to find safety and increase refugee protection for the most vulnerable worldwide.

The Council then had a political discussion on asylum, during which the UK urged the Commission to review implementation of the existing Asylum Directives first and postpone new rules on Procedures and Qualification. The UK argued that the EU should take practical action to address the gaps in the current system, and that in this regard we should get the European Asylum Support Office (EASO) up and running as quickly as possible. The Commission said it intended to propose measures to clarify, simplify and shorten the asylum procedure. These changes would help justify refusals, tackle abuse and enable swifter returns. The Commission reiterated its undertaking to deliver the commitments made in the Hague Programme and the European Migration Pact, and the need for the EU to meet the European Council deadline of 2012 for the establishment of a Common European Asylum System.

The Council adopted Conclusions on the increasing trend of unaccompanied minors arriving in the EU who either claim asylum or engage in illegal employment. The Conclusions encourage Member States to work together to combat trafficking networks, promote economic development in countries of origin, improve reception facilities and facilitate return to families and guardians. The Presidency concluded that an EU Action Plan on Unaccompanied Minors would be presented by the Commission in early 2010.

During the working lunch Ministers held discussions with the UN High Commissioner for Refugees, Antonio Guterres, focusing on asylum resettlement and regional protection programmes. A separate discussion was also held on Canada's introduction of visas on Czech nationals as part of a general discussion on EU visa reciprocity.

The Presidency introduced a presentation by the Commission, following which the Council exchanged views on actions taken to implement the European Council Conclusions of 18 -19 June on illegal immigration in the Mediterranean and the strengthening of Frontex in this region. The Commission stated that proposals to strengthen the Frontex mandate would follow in 2010, while efforts to strengthen the joint management of migration flows with Libya and Turkey continued. The UK stated illegal immigration was a shared problem requiring a coordinated response based on responsibility and solidarity. It should not be separated from EU work on asylum, or external efforts under the Global Approach to Migration. Solidarity with those countries most affected should include help with processing claims, increasing returns and stemming the flows by working more closely with source and transit countries. We were not persuaded that intra-EU relocation of refugees from the southern Member States could be a sustainable, long-term solution to the pressures faced by those Member States. The Presidency concluded that getting these issues right in the Stockholm Programme was vital.

The Council agreed Conclusions on the Commission's guidelines on the application of the Free Movement Directive, which outlined that Member States should fully apply free movement rights, whilst making every effort to tackle abuse, fraud and criminality, with systematic trends of abuse being reported to the Commission. The Presidency recognised the risk of abuse and hoped Member States would work together at a technical level to tackle it.

1 October 2009

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

I am writing to update you on the JHA Informal Council which took place in Stockholm on 16 and 17 July.

The Council was held over two days focussing on the content of the next 5 year JHA work programme (the Stockholm Programme), which is due to be agreed in December. Discussions were centred on three themes, drawing on the Commission's Communication setting out its proposals for the new work programme: 'A Europe that protects'; 'A Europe in a globalised world based on responsibility and security' and 'Developing a Citizens Europe of law and justice'. I attended on behalf of the Home Office on 16 July, the Interior day, which focussed on the first two themes. Lord Bach attended on 17 July on behalf of the Ministry of Justice.

Opening the first session on "A Europe that Protects", which looked at internal security issues such as cooperation to tackle terrorism and organised crime, the Commission summarised the relevant parts of its Communication. Delegations welcomed the citizen-centric approach of the Communication, with some calling for the creation of an EU internal security strategy. Many also suggested the need for more police training. Delegations also drew links between internal security and border control arrangements, looking to strengthen the work of Frontex. There was strong support for an information management strategy, which was something the UK supported. The UK also argued that it was important to build on the work of the Organised Crime Threat Assessment (OCTA) prepared by Europol, to prioritise criminal asset recovery and EU counter terrorism efforts, and joined others in arguing that external relations work needed to be an integral part of all this work at EU level. The Commission saw Europol becoming the EU information centre and picked up the importance of tougher action on proceeds of crime. It also undertook to push on external funding in the next financial cycle, acknowledging the importance of an external relations strategy and better EU third country cooperation including on extradition. The Presidency concluded by highlighting asset confiscation, child protection, information exchange, an organised crime strategy and the need for more on external relations.

In the second session on asylum and migration: "A Europe in a globalised world based on responsibility and solidarity" the Commission opened by again summarising the relevant parts of their Communication. In reacting, almost all Member States referred to the Migration Pact. Several delegations also called for the rapid establishment of the European Asylum Support Office. Delegations acknowledged the need for more work on solidarity but had varying views on what that might entail; the UK agreed on the need to show solidarity across the EU but without creating pull factors. The UK, supported by several other delegations, also supported more work on returns. There were suggestions that migration issues needed to become more central in neighbourhood policy and in working with Africa, for improved cooperation with source and transit countries, and for regional cooperation. The UK thought the weight of the EU should be used to help countries of origin and noted the good work already being done by some other Member States in this area. Reiterating the message from session one, a large number of Member States, including the UK, called for a stronger Frontex. Several delegations also raised the issue of unaccompanied minors as a growing problem.

The Commission agreed that it was important to co-operate with countries of origin. It also wanted some joint assessments of labour needs. Before considering removal of migrants, the Commission suggested that it was necessary to look at entry arrangements and visa overstayers. They thought that a proper asylum policy didn't mean that pull factors would be created. The Presidency concluded that the Commission Communication was widely welcomed, noted the emphasis on the Migration Pact and the Global Approach and thought the external dimension needed to be expanded. Frontex should have a greater role and we should step up co-operation on returns and make it more effective. Practical co-operation had been emphasised alongside work on unaccompanied minors, whilst finance needed be user-friendly.

During the third session "Developing a Citizens' Europe of Law and Justice," the Commission summarised the relevant parts of their Communication, emphasising they wanted an area in which rights were protected, where the European Convention of Human Rights was completely implemented and in which discrimination was tackled and where mutual recognition remained the cornerstone of judicial cooperation.

The Presidency invited delegations to consider how mutual trust should be further developed in civil and criminal law over the next five years and what should be the vision in the long term. Lord Bach noted that, to function effectively, mutual recognition requires an element of trust in the operation of

one another's legal systems. In some cases that would require cooperation between practitioners and in some cases minimum standards.

Lord Bach also stated that in civil law, in principle we support the abolition of exequatur although we recognise that we need to think carefully about the implications in each area. Lord Bach emphasised the need for the Community to consider non-legislative options as these could provide effective results. He also suggested that more should be done to make it easier for citizens and businesses to enforce judgments in cross-border cases.

There was significant support from Justice Ministers on the need to develop the external relations aspects of Justice and Home Affairs.

The Presidency concluded that there was agreement that work in this area should be focused on citizens. Trust and mutual recognition could be obtained in a number of ways including through improved judicial training, the use of legal networks and procedural guarantees. They highlighted that there had also been calls to make more use of e-justice, to improve the rights of victims and witnesses and agreement about the importance of external relations.

6 August 2009

PASSENGER NAME RECORD (PNR) USE FOR LAW ENFORCEMENT (5618/1/09)

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 document at a meeting on 3 June 2009. With it they considered the Explanatory Memorandum signed by Shahid Malik on 12 May 2009. We understand that your officials have agreed that Document 5618/1/09 REV 1 is a new text of the Framework Decision, and as such will be deposited; and that a correction will be issued to the EM to make it clear that it relates to this document and not to the earlier draft. It will then of course not be supplementary to the earlier EM.

We are grateful to be informed of the detailed progress of these negotiations, as Meg Hillier had promised. We note in particular the amendment to the definition of "serious crime" in Article 2(j) – the former 2(h). Previously it referred only to the definition in the Framework Decision on the European Arrest Warrant. All of those crimes are serious, but not all are necessarily organised. The important point is that, as we recommended in our report last year on the draft Framework Decision, the definition should continue to refer to specific offences which have equivalents under the national laws of the Member States rather than (as previously) simply referring to "serious crime" and "organised crime". The draft now also refers to the definition of organised crime in the Framework Decision on the Fight against Organised Crime, which is not in terms of specific offences. We are content with the substance of this change, but we hope the Government will ensure that the working group will not revert to the general definitions in earlier drafts.

We are keeping this document (5618/1/09 REV 1) under scrutiny. We should make clear, since this does not appear from paragraph 3 of the EM, that we are continuing to hold the earlier draft 5618/09 under scrutiny.

4 June 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, together with your EM of 14 July 2009, at a meeting on 28 October 2009.

We are grateful to you and your officials for continuing to keep us informed about the progress of negotiations – though we note that in relation to some of the more important provisions there are still very significant differences of opinion between Member States. Your EM states that the negotiations will restart in December, but we understand that the Presidency has now postponed this until after the entry into force of the Treaty of Lisbon.

We are keeping this document, together with documents 5618/09 and 5618/1/09, under scrutiny.

29 October 2009

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

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

You wrote to Meg Hillier on 15 January 2009⁷ asking to be informed about the final consensus that was reached on the age below which children will not have to give fingerprints for passports within the European Union and on what basis this decision was reached. I am sorry not to have provided an earlier report of the outcome of this measure, but a final decision has now been reached and as you will know the United Kingdom was not participating in the proposal as it builds on part of Schengen in which we do not participate.

On 14 January the European Parliament adopted a legislative resolution amending the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2252/2004 (on standards for security features and biometrics in passports and travel documents issued by Member States). The General Affairs and External Relations Council on 27 April adopted the text at Annex I; we had expected this text to be adopted in June, but it was brought forward at short notice. Annex 2 is a full explanation of the changes, provided by the European Parliament: the amendments were the result of a compromise between the Parliament and Council and substantially follow the amendments made in committee.

The result is that, apart from a 4 year transitional period when any countries where national law allows it may collect fingerprints at an age between 6 and 12, the rule will be that children under the age of 12 will be exempt from a requirement to give fingerprints to obtain a passport within any of the EU Member States to which the EU Passport Regulation applies. The English text has now been published in the Official Journal (OJ L142, pages 1 to 4, of 6 June 2009 – see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:142:0001:0004:EN:PDF>).

As you know, the EU Passport Regulation does not apply to the United Kingdom, as it is builds on that part of Schengen in which the UK does not participate; we therefore had no formal influence to bring to bear on either the text or its adoption or the timing of its implementation.

The UK intends to match the standards of passports being introduced within the EU and therefore, in due course, will include fingerprints in British passports. We do not need to make any final decision until nearer the time of their introduction on the age at which fingerprint biometrics would be recorded. However, in the light of the EU decision, we will now plan on the basis that the United Kingdom would also exempt children under the age of 12 from giving fingerprints to obtain a passport

18 June 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letter of 18 June 2009 in which you inform us that this Regulation has now been adopted. Sub-Committee F of the Select Committee on the European Union considered your letter at a meeting on 1 July 2009. As you know the document had not yet cleared scrutiny as the Committee was awaiting information on the final consensus reached on the age limit for fingerprinting children. We are pleased with the final text adopted. Since no United Kingdom Minister agreed to the Regulation this will not formally constitute an override, but we would have been glad to be informed of the outcome of negotiations before the Regulation was adopted.

2 July 2009

PREVENTION OF NATURAL AND MANMADE DISASTERS (7075/1/09)

Letter from the Chairman to Tom Watson MP, Parliamentary Secretary, Cabinet Office

Sub-Committee F of the Select Committee on the European Union considered this document at a meeting on 13 May 2009 and cleared it from scrutiny.

You will remember having given evidence to our inquiry on the related topic of Civil Protection and Crisis Management. As you know, the report was published on 11 March, over two months ago. We are very much looking forward to receiving the Government's response to it.

18 May 2009

⁷ [Correspondence with Ministers, May to November 2008](#)

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

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

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

The United Kingdom has opted-in to all eleven ECRA's concluded to date. There remain seven open mandates, where negotiations are at various stages. These concern:

Cape Verde: A mandate for an ECRA with Cape Verde was adopted on 4 June 2009. Its terms are broadly similar to those of other ECRA with which you are already familiar.

Pakistan: The final text of the Pakistan ECRA has been adopted, and awaits signature. We are opted-in to the signature and conclusion of this agreement, and you have already received an Explanatory Memorandum (EM) outlining its main terms. I will update you on progress once this agreement is signed. In the event the signing takes place during the summer recess, I will send notification to the Parliamentary Clerks office to ensure we keep you informed of progress.

Georgia: As you are aware, the mandate with Georgia was adopted in November 2008, and negotiations are at an early stage.

China, Turkey, Morocco, Algeria: There has been little progress on these four mandates, and it is difficult to say when final agreements will be reached with these countries.

As you are aware these agreements are negotiated by the European Commission, acting on behalf of the Member States, with the third country concerned. While under negotiation their terms are confidential.

Should these open mandates result in an agreement, I will provide you with an EM once the terms of the ECRA have been published. In the meantime, my officials continue to monitor the progress of these ECRA, and whenever appropriate I will update you on any developments. I hope that you find this brief overview helpful.

17 July 2009

Letter from the Chairman to Phil Woolas MP

Sub-Committee F of the Select Committee on the European Union considered your letter of 17 July 2009 at a meeting on 14 October 2009. We are grateful to you and your officials for continuing to keep us informed about the progress of negotiations.

29 October 2009

REFUGEE FUND (6702/09)

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

I am writing to update you on the progress made to the amendments to Decision 573/2007/EC, establishing the European Refugee Fund (ERF).

The European Parliament approved without amendment the proposals amending the ERF on 7 May 2009. There are no further developments expected with regards to the amendments to ERF.

The proposed amendments to ERF aim to transfer the majority of the Commission allocation of the fund in order to part finance the European Asylum Support Office (EASO). I attach the letter I wrote to you and the House of Lords European Union Committee on 2 June 2009, outlining the progress of negotiations for the establishment of the EASO. We consider it important that the EASO be funded by the reallocation of resources from other EU projects and not from an increase in the overall EU budget. This is just such a reallocation and so we support it in principle.

As it is linked to the EASO, we expect that both proposals will be adopted at the same time. The European Council Conclusions of 18 and 19 June 2009 called for a rapid establishment of the EASO. I also attach the letter I wrote to you on 13 July 2009, outlining that the Swedish Presidency intends to give the Support Office a high priority with a view to adoption of the proposal this year. This is in line with the European Pact on Immigration and Asylum which called for the establishment of a Support Office by 2009. We believe that the Swedish Presidency are aiming to agree a Council Common Position at the JHA Council in September, with negotiations with the Parliament, possibly leading to dialogue, following shortly afterwards.

21 July 2009

Letter from Phil Woolas MP to the Chairman

Further to my letter of 21 July, I am writing to provide a further update on the progress of negotiations of the above document, which you have retained under scrutiny.

This letter is closely related to my letter of 10 September regarding the Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office (Council Document 6700/09 +ADD 1, ADD 2). I apologise that this letter did not also reference 6702/09, given that the two proposals are intrinsically linked. This linkage arises because 6702/09 will reduce the overall financial envelope of the European Refugee Fund Phase III (ERF III) in line with the transference of certain tasks from ERF III Community Actions to the European Asylum Support Office established by 6700/09. The Swedish Presidency is aiming to adopt both proposals together at the Justice & Home Affairs Council of 23 October 2009, and I would therefore be grateful if this letter could be considered in conjunction with my letter of 10 September.

As my letter of 21 July made clear, we support the reallocation of resources between EU projects rather than increasing the EU budget overall. I would be grateful if you would consider clearing the Proposal to amend 573/2007/EC from scrutiny in time for the October Council meeting.

22 September 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letters of 7 July and 22 September 2009 which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 14 October 2009. We have no issues to raise with this document and have decided to clear it from scrutiny.

15 October 2009

Letter from Phil Woolas MP to the Chairman

Thank you for clearing document 6702/09, 'Proposal for a Decision of the European Parliament and the Council amending Decision 573/2007/EC establishing the European Refugee Fund for the period 2008-2013 by removing funding for certain community actions and altering the limit for funding such actions,' from scrutiny in time for the November Justice and Home Affairs Council meeting.

29 October 2009

RESETTLEMENT PROGRAMME (6702/09, 12986/09, 12985/09)

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 documents at a meeting on 4 November 2009.

You state in the EM that your initial view is that the United Kingdom should opt in to the proposed Decision. Given that this Decision will amend a measure which already applies to the United Kingdom, we do not see that the Government could do otherwise than opt in without again raising the difficulties which have arisen in the case of the Reception Conditions Directive. We would be glad to be informed of your final decision.

We note that participation in the resettlement programme would on the present proposal be voluntary. When you gave evidence to us on 14 October you referred to your reluctance to create an immigration superhighway – a reluctance we share. No doubt this would influence any decision on whether the United Kingdom should ultimately participate in the programme.

We would be glad to be informed in due course of developments in this proposal. Meanwhile we are keeping both documents under scrutiny.

6 November 2009

SCHENGEN INFORMATION SYSTEM: SECOND GENERATION (SIS) (9944/05, 5709/06,
5710/06)

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

I am writing to inform you of a revision in the timetable and costs for the UK's connection to the second generation of the Schengen Information System (SIS). SIS is a secure governmental data exchange system which allows border security and law enforcement agencies from across Europe to store and share individual alerts including those concerning lost / stolen property and passports, and wanted / missing persons. SIS II is an updated version of the original SIS with increased functionality.

An update has not previously been provided to Parliament because the costs could not be established with the necessary degree of certainty until the SIS II reworked outline business case (OBC) had been comprehensively reviewed and approved by Home Office (March 2008) and HM Treasury (August 2008) and final approval for a full business case given. (April 2009). In addition the Justice and Home Affairs Council were to consider and agree an approach with the Commission-led central SIS system, following technical difficulties with the project. This took place in June this year and a decision was taken to proceed with the current SIS II project.

The cost estimate for the national SIS II platform, with a fully funded full business case considered and approved internally by Home Office and externally by HM Treasury, is now £301 million.

The approved business costs cover development and operational management of the UK SIS II project over 10 years (as opposed to six years in the original case estimate) and implementation of an operational SIS II solution for the UK law enforcement community. The approved figure, based on full costs and using more prudent assumptions, has been scrutinised and challenged by Home Office and HMT, with OGC Gateway Review's providing further external scrutiny and assurance of the UK programme approach and proposed solution.

The revised and more comprehensive OBC (in March 2008) identified that the earlier estimate of £79 million did not take full costs into account. The two cost estimates are not directly comparable as certain hardware and software costs had not been included previously. Furthermore, the earlier figures did not take full account of inflation and a lower figure for 'optimism bias' than is best practice for this sort of project was used. The lower figure also profiled ongoing running costs over only six years, rather than ten. The full downstream costs for the mandatory operational SIRENE Bureau were not included as an assumption was made that these would be secured via existing Home Office funding routes.

Revised plans for implementation of the Central SIS II system, with two key milestone targets, were agreed at the JHA Council on 4 June 2009. This decision means that, according to the current timescales, the central system will not be operational until the fourth quarter of 2011. Since national connection is dependent on the readiness of the central system, the earliest the UK will now connect is December 2011.

The Commission, with the SIS II Task Force and a new Global Project Management Board, have been mandated in the JHA Council Conclusions to validate compliance with certain technical milestones; the first being considered in December this year (2009). Following any non-compliance, the JHA Council will invite the Commission to stop the current SIS II project and to continue with the SIS II development on the basis of a contingency technical solution, unless the Council decides otherwise by Qualified Majority Voting. This will take place within two months of the non-compliance and be considered by the JHA Council on the basis of comprehensive financial and contractual information. The first milestone validation will be Quarter 4 2009. There are currently no elements of nugatory spend for the UK, but EU delays could/may incur further costs if these cannot be absorbed in existing funding agreements or secured by savings from within the programme.

14 July 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

I was grateful for your letter of 1 April in which you cleared the above dossier from scrutiny. You asked to be kept informed of developments.

There has not been any progress towards agreement of the measure. It was discussed at the JHA Council on 6 April without agreement being reached. The chief bone of contention remains the scope of Article 12 of the text which provides for a common set of rights for third country workers. The point at issue is whether these rights should apply only to those issued with a residence permit under the single application procedure for which the first part of the text provides, or whether they should accrue to all third country workers legally present in the EU.

The Presidency brought forward a compromise under which the rights set out in Article 12 accrue only to holder of the single permit, but Article 13 would make separate provision for Member States to extend these rights to other third country nationals legally present on their territory and allowed to work. A number of Member States could not support this approach, either because it was considered to be too restrictive or not restrictive enough. There has been no further initiative to resolve the issue and it does not appear likely that the incoming Swedish presidency will give this dossier a high priority.

21 July 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letter of 21 July 2009. Sub-Committee F of the European Union Select Committee considered your letter at a meeting on 28 October 2009. We are grateful to you for keeping us updated on the progress (or lack of it).

29 October 2009

***STOCKHOLM PROGRAMME: UPDATE OF NEGOTIATIONS**

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

In advance of submitting the Government's response to the report of the Committee on the Stockholm Programme I wished to share with you the latest version of the Council Conclusions setting out the new JHA work programme, which we received on Monday 23 November. It is probable that this will be changed further after Ambassadors in COREPER meet on both Tuesday 24 and Thursday 26 November. Indeed, negotiations on the Programme are leading to new texts being issued on a near daily basis and we expect negotiations to continue at the JHA Council itself, with one day devoted to home affairs and one day to justice issues. It is also possible that the final version will not be agreed until the European Council on 10 December.

I will write to you after the Council also responding to the Committee's report on the Stockholm Programme.

24 November 2009

SWIFT AGREEMENT: US TERRORIST FINANCE TRACKING PROGRAM (SN 4903/09)

Letter from Sarah McCarthy-Fry MP, Exchequer Secretary, HM Treasury, to the Chairman

I am writing with regard to the Terrorist Finance Tracking Programme. The Programme is a valuable and important counter-terrorist tool; and this agreement is a necessary temporary step to enable it to continue operating in 2010. The Council Decision commits to negotiate a permanent agreement during 2010, which will involve co-decision by the European Parliament and scrutiny by national parliaments.

It is unfortunate that European negotiations have not yet concluded on the text of the EU-US agreement, and that it has therefore not been possible for Parliament to complete scrutiny of this Decision prior to adoption. Regrettably, therefore, and in view of the urgency of the need to give agreement to the Council Decision, the Government intends to support adoption of this Decision at the Justice and Home Affairs council on Monday 30 November; thus overriding scrutiny by your Committee. An explanatory memorandum on the final text will be provided to both Committees as soon as a Council Decision is agreed.

I will further write to the Lords and Commons scrutiny committees following adoption of the agreement.

26 November 2009

VISAS: COMMUNITY CODE ON VISAS

Letter from Phil Woolas MP, Minister 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. As it makes clear, this Regulation builds on part of the Schengen acquis in which the UK does not participate and therefore the United Kingdom 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, recent developments have resulted in a breakthrough with the LIBE Committee of the European Parliament (EP) in several key areas. Although final agreement of the text has yet to be given by the Council, I would like to update you on this progress. The initial dossier was last scrutinised under the EU reference 11752/06.

The amendments proposed by the Presidency were forwarded to the LIBE Committee for consideration. As a result of the first reading at the EP eighty-two amendments to the draft proposal were adopted. In accordance with the provisions of Article 251 (2) of the Treaty establishing the European Community and the joint declaration on practical arrangements for the co-decision procedure, several informal contacts took place between the Council, the EP and the Commission to reach agreement on the text of the dossier at first reading to avoid the need for a second reading and conciliation.

The dossier does not identify the eighty-two amendments in the form it was presented to the plenary session. Instead it sets out the text of the Commission's proposal as modified by the amendments. However, to assist the Scrutiny Committee the main issues that have been the focus of discussions and examples of several of the EP amendments have been identified below. These amendments are not substantive in nature.

The main issues that had been the focus of discussion were Articles 5 (competence of Member States for examining and deciding on a visa application), 8 (representation), 16 (visa fees) and 24 (issue of uniform visa) and agreement has been reached on these by the Presidency, the Rapporteur of the EP and the Commission. The remaining technical questions have since been resolved at meetings involving the EP and Commission. During these proceedings the substance of the draft Regulation amending the Common Consular Instructions – covered under dossier reference 5090/09, which passed scrutiny in the Lords on 25 February and in the Commons on 28 January – was integrated into the text of the draft proposal establishing a Community Code on Visas.

The EP textual have been made in recitals 31 and 34. Recital 31 concerns the position of Denmark, that is:

“(31) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of that Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law.”

Recital 34 concerns the position of Switzerland, that is:

“(34) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 4(1) of Council Decision 2004/860/EC on the signing on behalf of the European Union, and on the signing on behalf of the European Community, and on the provisional application of certain provisions of that Agreement.”

Of the remaining EP amendments these relate to the re-numbering of several Titles, Chapters, Articles, paragraphs and sub-paragraphs in the EP consolidated version of the dossier. Examples include:

- “Title III: Procedures and conditions for issuing visas”, this was formerly Title II in an earlier version.
- “Article 4: Authorities competent for taking part in the procedures related to applications”, this was formerly Article 3 in an earlier version. There are also amendments to the numbering of articles being referred to elsewhere in the consolidated version as a result of the re-numbering exercise carried out by the EP. Paragraph 2 of Article 4 makes a reference to Articles 35 and 36, but these were formerly referred to as Articles 32 and 33 in an earlier version. Further examples of this occur elsewhere in the consolidated version.
- Paragraph 5 in Article 4 is an example of paragraph re-numbering. In an earlier version that paragraph was referred to as paragraph 4. Further examples of this occur elsewhere in the consolidated version.
- “Chapter V: Modification of an issued visa” was formerly Chapter IV in an earlier version.

20 May 2009

Letter from the Chairman to Phil Woolas MP

Thank you for your letter of 20 May 2009. Sub-Committee F of the Select Committee on the European Union considered it at a meeting on 24 June 2009. We are grateful to you for providing us with an update on this dossier.

25 June 2009