



HM Government

# Review of the Balance of Competences between the United Kingdom and the European Union Asylum & non-EU Migration

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Asylum & non-EU Migration

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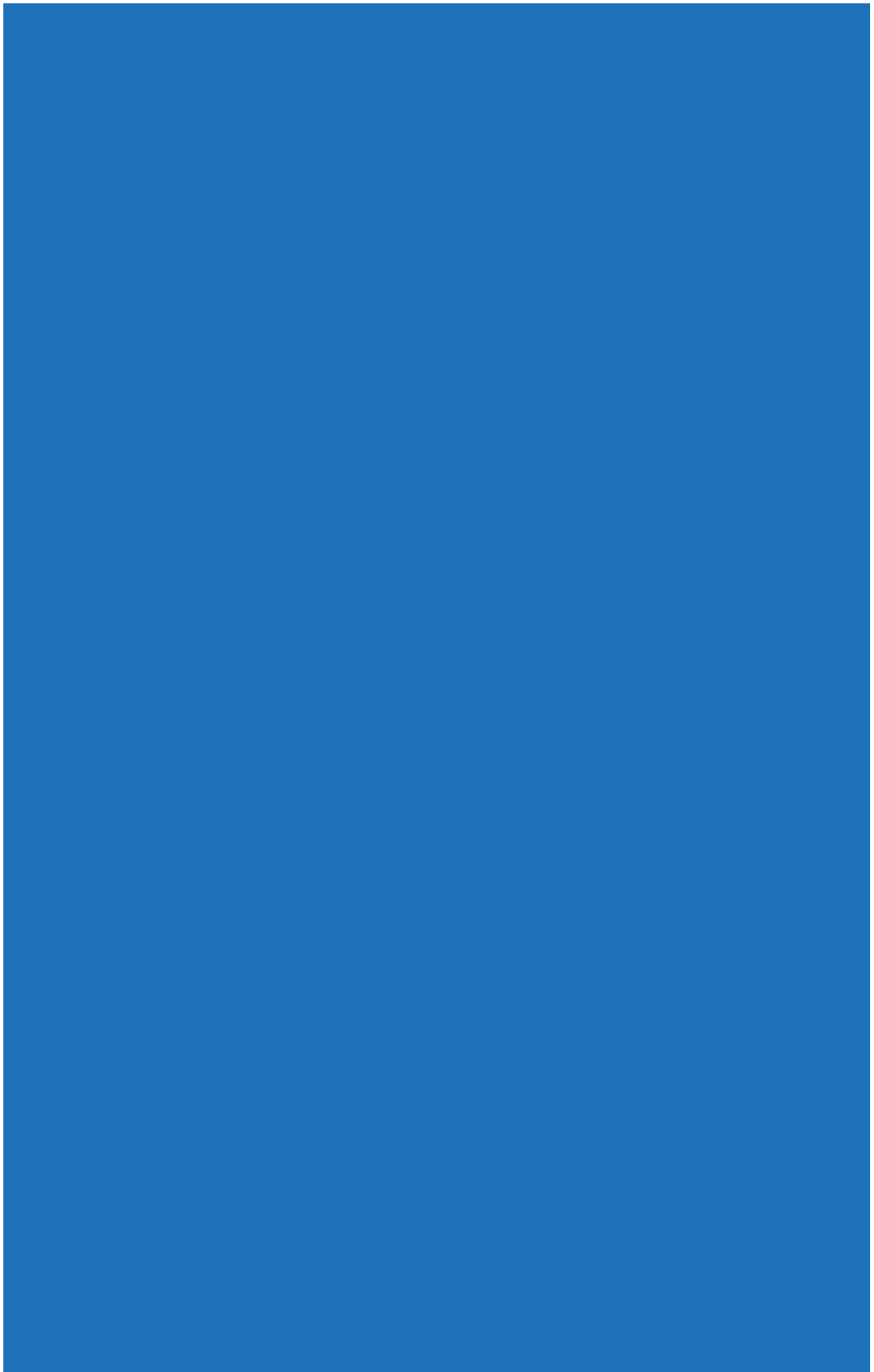
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# Executive Summary

This report examines the balance of competences between the European Union (EU) and the United Kingdom (UK) in the area of asylum and non-EU migration, and is led by the Home Office. It is a reflection and analysis of the evidence submitted by experts, non-governmental organisations, business people, Members of Parliament and other interested parties, either in writing or orally, as well as a literature review of relevant material. Where appropriate, the report sets out the current Government position for handling this policy area in the EU. It does not predetermine or prejudge proposals that either Coalition party may make in the future for changes to the EU or about the appropriate balance of competences.

Chapter One sets out the historical development of EU competence in the area of asylum and non-EU migration since the Maastricht Treaty extended the EU's legal competence into these areas for the first time. It describes the current balance of competence between the UK and the EU on the three key areas covered in the report: borders and visas; asylum; and legal migration from third countries. While the EU's programme of work on asylum and immigration matters has developed significantly since the Maastricht Treaty, the balance of competence on asylum and non-EU migration issues remains predominantly with the UK. This is particularly true for borders and visa policy where the UK has not opted into the border and visa elements of the Schengen acquis, and legal migration policy where the UK's exercise of the Opt-In Protocol has resulted in the UK currently participating in very few EU legal migration measures. On asylum, the current balance of competence picture is more complex with the UK being bound by the first round of Common European Asylum System (CEAS) measures but not opting into all of the recast CEAS measures.

Chapter Two explores in detail whether the current balance of competence on border and visa issues is in the UK national interest. It looks successively at:

- The benefits and costs of the UK maintaining an independent border and visa system outside of the EU's Schengen free movement zone. One benefit is perceived to be control of immigration to prevent illegal immigrants from entering the UK. Another is to help ensure national security, preventing organised crime and terrorism. The costs appear to fall upon travel and port operators and the tourism industry who state that the inconvenience in both time and costs can prevent individuals from applying to enter the UK for business and/or tourist purposes. The report also summarises the options for greater practical cooperation between the UK and the EU on border issues through agencies such as the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) and the development of the European Border Surveillance System (EUROSUR).

- The issues involved in pan-EU data sharing arrangements. While the UK has participated in the Advanced Passenger Information Directive and led efforts to expand this Directive to cover intra-EU data, the UK is blocked from accessing the Visa Information System (VIS) and elements of the Schengen Information System (SIS).<sup>1</sup>

Chapter Three considers whether the current balance of competence between the UK and the EU on asylum is appropriate. It notes that:

- There are a number of EU measures on asylum that the UK has chosen to adopt and these form a key part of the UK's policy on asylum seekers. However, the majority of these measures have recently been revised or recast. The UK Government considered each recast measure on its individual merits and decided to opt into the Eurodac and Dublin Regulations, which are concerned with identifying which EU Member State is responsible for considering an asylum claim, but not the recast Directives on Reception Conditions, Qualification for International Protection, or Asylum Procedures;<sup>2 3 4</sup>
- Many respondents argued that adopting the recast EU Asylum Directives would have imposed unacceptable restrictions on the UK asylum system. They argued that not opting into the recast directives has helped the UK's interests by reducing unfounded asylum intake in comparison with other Member States, and that opting in was unnecessary because UK standards on asylum are much higher than many Member States who are signed up to the EU Asylum Directives;
- Some third sector and campaigning organisations argued that a true CEAS would raise standards and help to ensure the fair treatment of asylum seekers and refugees across Europe and that the UK has an important role to play in such a system by sharing best practice and driving up standards; and
- There was a regular theme amongst those who submitted evidence that practical cooperation on asylum issues between Member States has been a success and may offer an alternative to further EU legislation on asylum. Respondents highlighted the good work being done by the European Asylum Support Office (EASO) and with Regional Protection Plans (RPPs) as examples of practical cooperation between Member States succeeding.

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<sup>1</sup> Directive 2004/82/EC of the Council of the European Union on the obligation of carriers to communicate passenger data, 2004.

<sup>2</sup> Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), 2013.

<sup>3</sup> Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 2011.

<sup>4</sup> Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast), 2013.

Chapter Four details whether the UK's decision to retain control over legal non-EU migration policy has been in the national interest.

- There are a number of EU measures on legal migration issues that the UK Government has considered but decided not to opt into. Instead, arrangements for the admission of non-European Economic Area (EEA) workers, students, and family members are governed by UK domestic law and its Immigration Rules. The debate here is about whether the UK should continue not to opt into these measures and continue to control the level of non-EU immigration to the UK, or whether common EU labour market policies are more important to enable the Single Market to operate effectively.
- Legal migration is where there was the greatest consensus that retaining national control has worked in the UK's interest by providing the UK with the flexibility to adjust legal migration policy to meet the demands of the UK economy. From the business community in particular, there was a clear argument that it does not matter which set of rules, UK or EU, they have to work to, as long as the rules are simple, clear, applied effectively, and allow the UK to get the necessary skilled people into the country.
- As with asylum, many who submitted evidence or attended a stakeholder event argued for the benefits of greater practical cooperation between the UK and the EU on legal migration, over further legislative changes. Returns and the EU's Global Approach to Migration and Mobility (GAMM) were highlighted as areas where practical cooperation could bring benefits for all concerned, especially as respondents concurred that the Returns Directive, which the UK has not opted into, has not been a success.<sup>5</sup>

Finally, Chapter Five looks at the future challenges for the UK and how its choices about the current balance of competence on asylum and non-EU migration will be tested by a range of measures being introduced by both the EU and the UK Government. In particular:

- Border and Visa Policy – the EU is facing similar border challenges to the UK but on a larger scale. The EU intends to introduce as part of its borders package of measures to improve checks at the EU external frontier, whilst facilitating the movement of legitimate travellers. The UK Government has also committed to introduce exit checks by 2015 and is working closely with port operators on the range of options for delivering this commitment;
- Passenger Data – the EU is facing the challenge of regulating the collection and processing of passenger data. The European Commission has commissioned a draft Passenger Name Record (PNR) Directive which the UK would particularly welcome;
- Visas – the current direction in the Schengen area is towards a greater relaxation of visa rules and there will be challenges to ensure that abuse is combated. Improvements to the Schengen visa system and greater cooperation between the Schengen area and the Common Travel Area (CTA) will help to address border vulnerabilities;
- Asylum – the EU will continue to face significant challenges with ongoing crises and conflict in the Middle East and sub-Saharan Africa adding to the pressure. The EU focus is expected to be on ensuring full implementation by Member States of the new CEAS legislation (insofar as it applies to them). There will also be a renewed focus on practical cooperation initiatives that will build the capability of all Member States' asylum systems. The objective is to ensure that all asylum claims are dealt with in the

<sup>5</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, 2008.

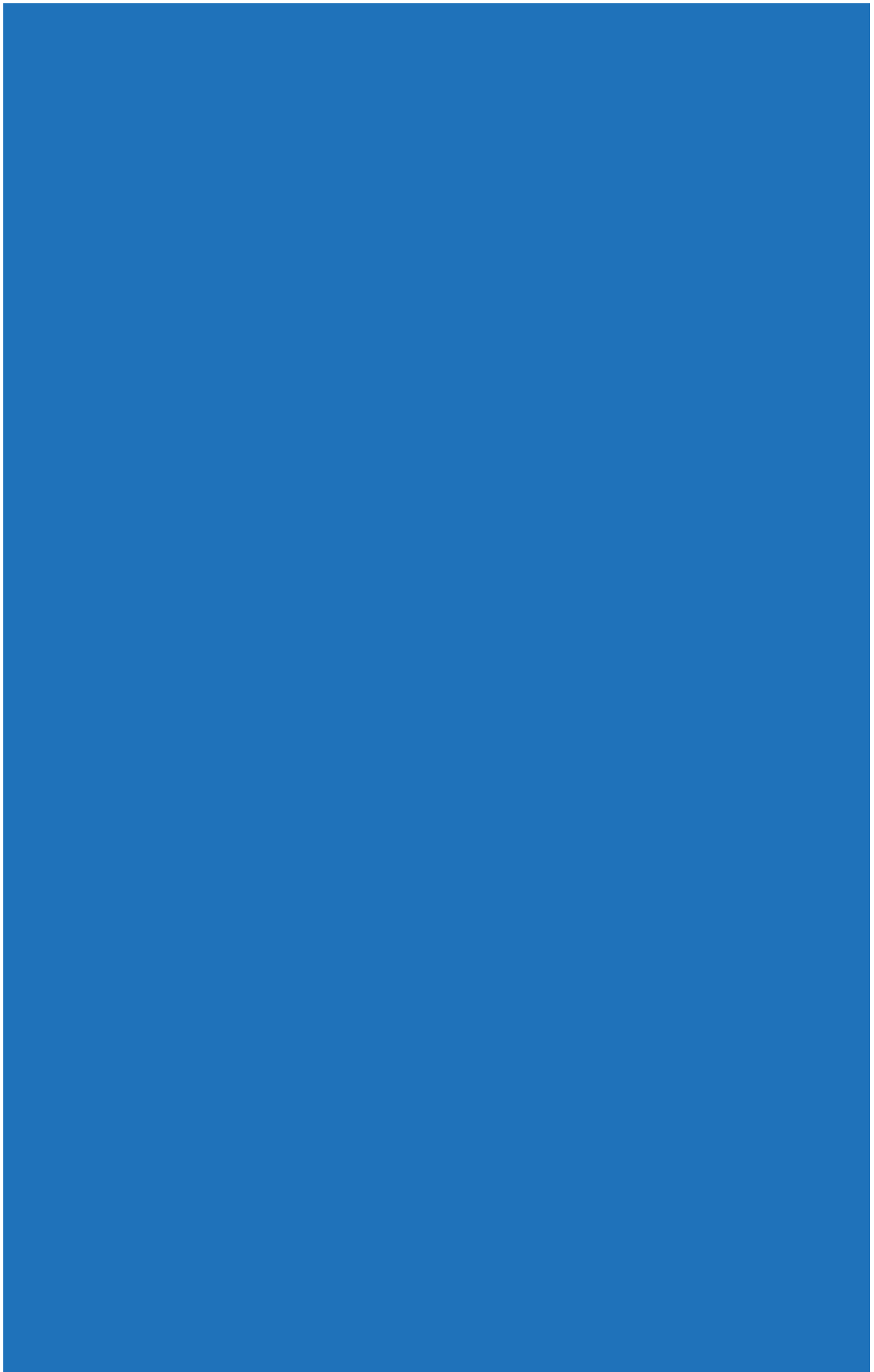


appropriate Member State in line with international and European standards and also that there is an effective system for returning people who make unfounded claims;

- Legal Migration – the European Commission is likely to look to further expand the current legislation and third country partnerships on legal migration to address labour market shortages and ensure global competitiveness. The UK will need to consider whether there are greater advantages from cooperation with Member States or from retaining an independent legal migration policy. The UK will also want to ensure that in supporting the EU's trade liberalisation agenda, Mode 4 commitments do not undermine its ability to manage labour migration on its own assessment of national economic need;
- Returns and Readmissions – the EU and the UK will look to continue to ensure cooperation for the implementation of enhanced returns arrangements with third countries; and
- GAMM – the EU is continuing to place increasing emphasis on the GAMM as a means of supporting the EU's Growth Agenda. The challenge will be to ensure that the original aims are not lost and that significant progress is made on securing cooperation on illegal before any concessions on legal migration are made;

## Definitions of Migrant Groups

1. **Legal Immigrant:** an individual, who is not an EU/EEA citizen, and has entered the UK legally for the purposes of working or studying or as a recognised family member of a legal immigrant.
2. **Illegal Immigrant:** an individual who has entered or remained in the UK unlawfully.
3. **Asylum Seeker:** under the Immigration Rules (327), an asylum applicant is a person who either; (a) makes a request to be recognised as a refugee under the Geneva Convention on the basis that it would be contrary to the United Kingdom's obligations under the Geneva Convention for them to be removed from or required to leave the United Kingdom, or (b) otherwise makes a request for international protection.
4. **Refugee:** defined by the 1951 United Nations Convention relating to the Status of Refugees and 1967 Protocol (the Refugee Convention), as being a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of their nationality. The individual is unable or, owing to such a fear, is unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence, is unable, or owing to such fear is unwilling to return to it. Recognition of refugee status by the UK is a pre-requisite to the grant of asylum in the country.



# Introduction

This report is part of a Coalition commitment to review the balance of competences between the UK and the EU. The Review will provide an analysis of what membership of the EU means for the UK national interest and deepen public and Parliamentary understanding of our relationship with the EU. It seeks to provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. We have not been asked to produce specific recommendations or look at alternative models for the UK's overall relationship with the EU.

This report is one of 32 analysing specific areas of EU competence. The reports are divided into four semesters and will be published on a rolling basis until the end of 2014. All reports will be based on evidence gathered during a twelve-week period. More information can be found on the Review at [www.gov.uk/review-of-the-balance-of-competences](http://www.gov.uk/review-of-the-balance-of-competences).

For the purposes of this Review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK.

## Asylum and non-EU migration Report

The present report looks specifically at the immigration and asylum competences that affect nationals from outside the EU, those not exercising EU/EEA rights and the control of the UK's borders. The Home Office is also conducting a separate balance of competences report on the Free Movement of Persons which will be published in due course.

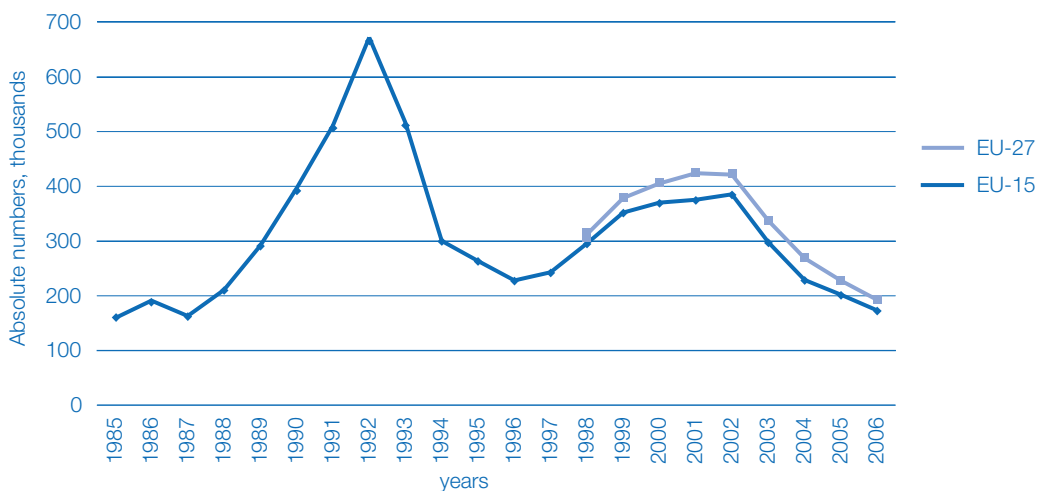
The analysis in this report is based on evidence gathered during the call for evidence period. It draws on written evidence submitted, notes of seminars or discussions held, and existing material which has been brought to our attention by interested parties such as past select committee reports or reports of the European Commission. A list of evidence submitted can be found in Annex A. A literature review of relevant material, as well as opinions received in the course of regular business from a range of organisations, members of the public and countries, has also been drawn on and can be found in Annex B.

As with the call for evidence document, we have divided the EU's programme on non-EU migration and asylum into three areas: the UK border including visas; asylum; and legal migration. The report will be divided into these three sections for ease of reading and because, as will be detailed, the UK's participation with the EU operates differently in each of these areas.

## Historical Background

The end of the Cold War and the fall of the Berlin wall in 1989 saw a relaxation of border controls in eastern Europe. This signalled a dramatic change in immigration, particularly in asylum numbers in Europe, leading to a peak of 670,000 asylum seekers in 1992. After another spike in 2001, numbers fell to below 200,000 in 2006 but have seen a sharp increase since 2011, fuelled by crises in the Middle East, rising to over 300,000 and still on a steep upward trend. It was this increase in immigration in the 1990s that led to the development of the EU's Asylum and Immigration Programme. The United Nations High Commissioner for Refugees (UNHCR) predict that conflicts and instability in regions such as the Middle East, Afghanistan and central Africa will continue to drive this trend upwards in the immediate future.<sup>1</sup>

### New Asylum Applications, EU-27, EU-15, 1985-2006 in Absolute Numbers (Thousands).<sup>2</sup>

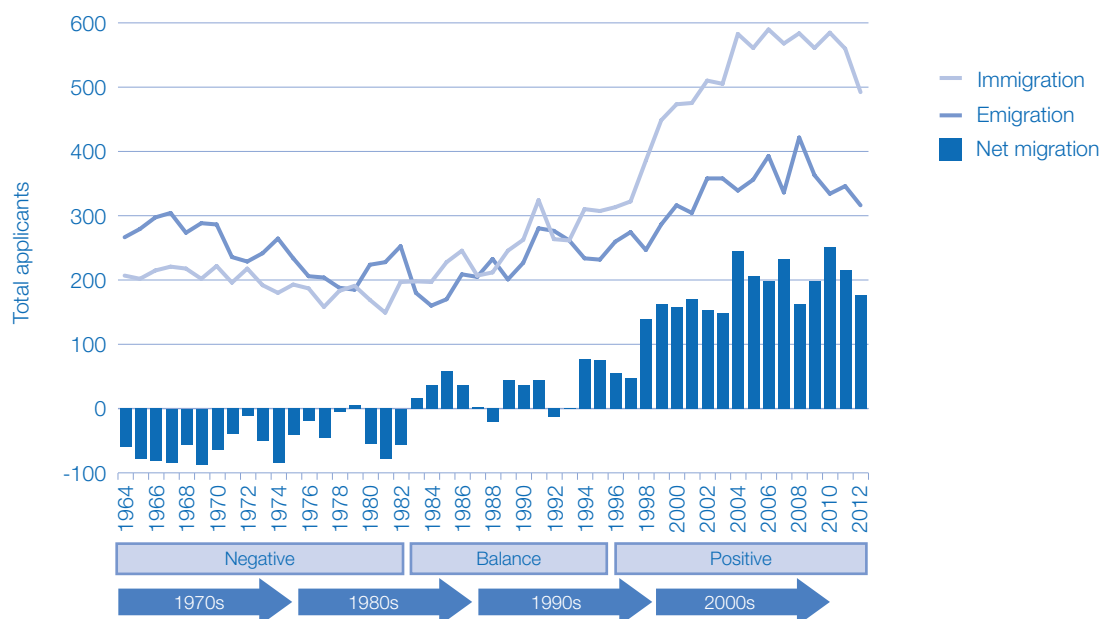


The UK has a proud history of welcoming other cultures to the country. After the Second World War, there was significant immigration from Commonwealth countries and many migrants came to take up unskilled vacancies. During the 1970s there was a period of negative net migration where there were more people emigrating from the UK than new immigrants arriving. Then until the late 1990s, net migration was either negative or in balance. Elsewhere in Europe the end of the Cold War saw southern central and eastern European countries becoming new countries of migration. However net migration increased dramatically in the early 2000s due partly to the relaxation of the EU's transition provisions which had limited access to EU labour markets for nationals from new Member States in Eastern Europe for a limited period. The current Government is committed to reducing net migration to the tens of thousands each year, from its peak in 2010, while continuing to attract the brightest and best to the UK. For the last few decades the proportion of migrants coming from outside the EU has been consistently greater than those coming from within the EU. In this context, the UK Government has been keen to retain migration. Emigration numbers from the UK are at their lowest since 2001. The graph below sets out the levels of net migration since the 1970s.

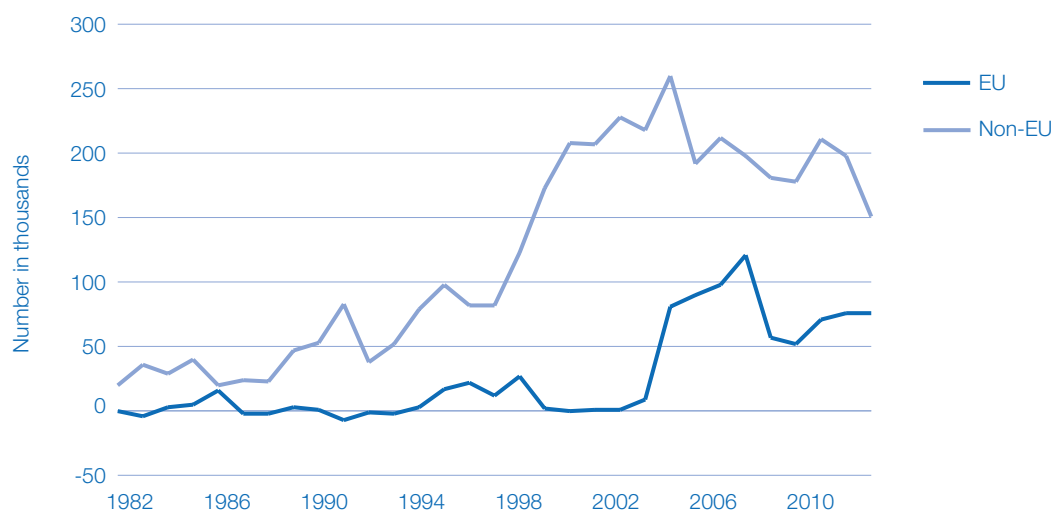
<sup>1</sup> Piotr Juchno, EUROSTAT, *Statistics in Focus: Asylum Applications in The European Union, Issue 110/2007*, (2007). Available at: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-07-110/EN/KS-SF-07-110-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-07-110/EN/KS-SF-07-110-EN.PDF), accessed on 3 February 2014.

<sup>2</sup> Idem.

### Net Migration Figures – Data Provided by the Office of National Statistics (ONS)<sup>3</sup>



### Long-Term International Migration Into and Out of the United Kingdom, 1982 to 2012 – Data provided by the ONS<sup>4</sup>



Another key milestone in the development of the EU's migration policy was the development of the Schengen acquis. This is the term used to describe a set of agreements including and deriving from the Schengen Agreement 1985. The aim of these agreements was to remove passport and immigration controls on Europe's internal borders and to enable people and goods to move freely across the landlocked borders on the main European continent. The Schengen acquis was brought into EU law by the Treaty of Amsterdam. However, the UK and Ireland are not automatically bound by measures taken under the acquis.

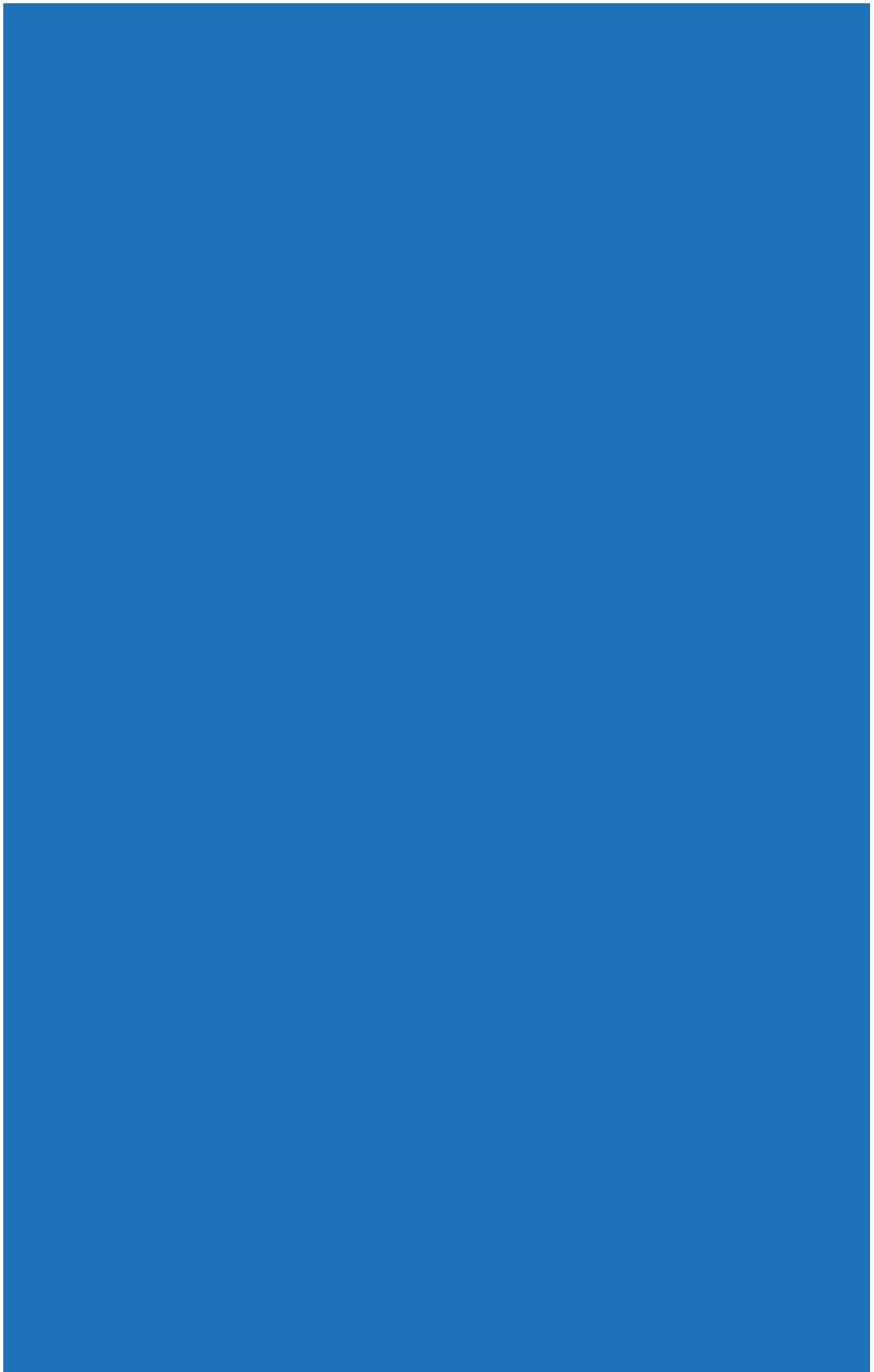
The UK's view was that as an island, with mainly sea borders, frontier controls remain a better and less intrusive way to prevent illegal immigration than other measures, such as introducing an identity card system.

<sup>3</sup> The data used in this graph has been drawn from the long-term international migrations statistics, published by ONS. These can be found at [www.ons.gov.uk](http://www.ons.gov.uk).

<sup>4</sup> The data used in this graph has been drawn from the long-term international migrations statistics, published by ONS. These can be found at [www.ons.gov.uk](http://www.ons.gov.uk).

## The Opt-In

The UK has retained a special status in relation to the EU's Asylum and Immigration Programme. This means that the UK is not automatically bound by EU legislation falling within these areas, unless it exercises its right to opt-in to the measure, that is, gives notice of a wish to participate in it. For this reason, the UK participates in some areas of EU asylum and immigration work and not others.



# Chapter 1:

## Development and Current Balance of Competence

This Chapter looks at the existing EU competence to make rules in the area of asylum and non-EU migration, and consider briefly how that competence has developed.

### The Historical Development of EU Competence

- 1.1 The EU's power in immigration and asylum issues has increased over the last 15 years. Until the 1990s, asylum and immigration matters fell largely outside the competence of the EU. However, the Maastricht Treaty extended the EU's powers in these areas for the first time. A new 'third pillar' entitled 'Justice and Home Affairs' established a legally recognisable structure for inter-governmental cooperation on a number of matters, including asylum and migration of non-EU nationals.<sup>1</sup> These provisions were based on the principle that for the purposes of achieving the objectives of the EU, in particular the free movement of persons, asylum and immigration policy is a matter of common interest for the Member States.
- 1.2 Under the Treaty of Amsterdam (1999) certain policies in relation to the free movement of persons (including asylum, immigration and external border control) were transferred from the third pillar to the first pillar; this being the legal structure for handling economic, social and environmental policies. This was included in a new Title IV 'visas, asylum, immigration and other policies related to the free movement of persons' under the Treaty. The UK and Ireland secured a special status in relation to this new title by virtue of three Protocols which added some additional provisions to the Treaty: the so-called 'Opt In Protocol' which exempted the UK from provisions made under Title IV, unless the UK decides to 'opt in' to a particular measure taken (see explanatory box on page 13); the Schengen Protocol (see paragraph 4); and the Frontiers Protocol which safeguards the right of the UK to exercise checks on persons seeking to enter the UK.
- 1.3 The Treaty of Amsterdam therefore allowed the EU to adopt certain measures in relation to asylum, immigration and external border controls. With respect to asylum, six legislative measures were adopted between 1999 and 2005. These six measures were: the Dublin II Regulation EC No. 343/2003; the Eurodac Regulation EC No 2725/2000; the Temporary Protection Directive 2001/55/EC; the Reception Conditions Directive 2003/9/EC; the Qualification Directive 2004/83/EC; and the Asylum Procedures Directive

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<sup>1</sup> Between 1992 and 2009, the EU legally comprised three pillars. This structure was introduced with the Treaty of Maastricht and was eventually abandoned on 1 December 2009 upon the entry into force of the Treaty of Lisbon, when the EU obtained a consolidated legal personality.



2005/85/EC.<sup>2 3 4 5 6 7</sup> Commonly known as the ‘first phase’ of the CEAS, these measures imposed significantly more detailed obligations on Member States than the old third pillar provisions, establishing minimum standards across the Member States on the qualification for refugee status, the reception of asylum seekers, and the procedures for granting or withdrawing refugee status and updating the Dublin and Eurodac instruments that established the mechanism for determining the Member State responsible for an asylum application. The UK opted into these measures.

- 1.4 The Treaty of Amsterdam also incorporated into EU law the original Schengen Protocol or Schengen acquis (comprising the 1985 Schengen Agreement and other instruments including the Schengen Convention). The aim of the acquis was to abolish checks at the internal borders between the participating Member States, whilst establishing flanking measures that harmonise visa, border and internal controls through data exchange and peer evaluation. Under Article 4 of the Schengen Protocol, the UK was entitled to request to take part in some or all of the provisions of the acquis. Broadly, the UK opted in to those areas of the acquis that concern police and judicial cooperation. The UK has not opted in to areas concerning visas and border control, with successive governments believing that the UK’s national interest was best served by having an independent border and visa policy.
- 1.5 The 2009 Treaty on the Functioning of the European Union (TFEU) saw further changes to the scope for EU action allowing the development of common EU policies on asylum and on the immigration of third country nationals generally rather than merely minimum standards. It constituted a significant widening of the EU’s competences in this area. The Lisbon Treaty collapsed the pillar structure and moved Title IV into a new Title V: the ‘Area of Freedom, Security and Justice’ of the TFEU. ‘Policies on Border Checks, Asylum and Immigration’ was incorporated as Chapter two of this new Title V, retaining the Opt In Protocol. This is an area of shared competence between the EU and its Member States.
- 1.6 Political guidance on how the EU’s competence provided by the Treaties should be exercised was given by the European Council in a series of five year work programmes agreed in Tampere (1999), The Hague (2004), and most recently in Stockholm (2010). Each of these had a significant section on asylum with the last envisaging the establishment of the second phase of the CEAS by the end of 2012.

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<sup>2</sup> Council Regulation 343/2003/EC establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 2003.

<sup>3</sup> Council Regulation 2725/2000/EC concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention, 2000.

<sup>4</sup> Directive 2001/55/EC of the Council of the European Union on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 2001.

<sup>5</sup> Directive 2003/9/EC of the Council of the European Union laying down minimum standards for the reception of asylum seekers, 2003.

<sup>6</sup> Directive 2004/83/EC of the Council of the European Union on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 2004.

<sup>7</sup> Directive 2005/85/EC of the Council of the European Union on minimum standards on procedures in Member States for granting and withdrawing refugee status, 2005.

- 1.7 As part of this second phase, the Commission brought forward proposals to amend the Directives on Reception Conditions, Asylum Procedures and Qualification, which would have – in the view of the UK Government – significantly weakened our asylum system, slowing decision making and encouraging unfounded asylum claims (see paragraph 78). The UK has not opted into these recast directives. Where the UK has not opted into recast Directives, it remains bound by the original minimum standards Directives. The UK has however opted into the recasts of the Dublin II Regulation and the Eurodac Regulation, as well as the Regulation establishing the EASO, an EU Agency that promotes practical cooperation on asylum, contributes to the implementation of the CEAS and supports Member States that are subject to particular pressures on their asylum systems.<sup>8</sup>

## The Current Balance of Competence

- 1.8 The current situation on asylum and non-EU migration issues from beyond the EU is that the balance of competence currently lies predominantly with the UK.

### The UK Border

- 1.9 The main part of the EU's general competence in relation to border control is derived from the Schengen acquis. Under the acquis, a number of schemes have been implemented in order to limit internal border controls in the Schengen zone whilst simultaneously attempting at least to strengthen external border controls, in relation to the entry of third country nationals.
- 1.10 However, as paragraph 1.4 outlined, while the UK participates in many of the elements of the Schengen acquis relating to cross-border police and judicial cooperation, it does not generally participate in those elements relating to border controls and visas.
- 1.11 The UK does however participate in some smaller Schengen measures relating to border control, including:
- The Advance Passenger Information (API) Directive which aims to improve border controls and combat illegal immigration by establishing requirements for the transmission of passenger data by carriers to competent national authorities on flights into the EU from third countries;<sup>9</sup>
  - Carrier's Liability, whereby participating states are required to ensure that under their national law: (i) where a third country national is refused entry into the Schengen area, the carrier that brought them assumes responsibility for them and returns them or transports them onwards; (ii) carriers are required to ensure that a third country national arriving by air or sea into the Schengen area has the documents required for entry into the relevant country;
  - Regulations establishing a uniform format for residence permits for third country nationals throughout the EU and for short term visas for third country nationals visiting Member States.<sup>10 11</sup>

<sup>8</sup> Regulation 439/2010/EU of the European Parliament and of the Council establishing a European Asylum Support Office, 2010.

<sup>9</sup> Directive 2004/82/EC of the Council of the European Union on the obligation of carriers to communicate passenger data, 2004.

<sup>10</sup> Council Regulation 1030/2002/EC laying down a uniform format for residence permits for third-country nationals, 2002.

<sup>11</sup> Council Regulation 333/2002/EC on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form, 2002.

1.12 Finally, the UK, whilst not a full participant, has arrangements for participation in FRONTEX. FRONTEX is a European Agency that coordinates the Member States' actions in operating 'an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.' The UK wanted to participate in Frontex. However, in Case C-77/05 the European Court of Justice (ECJ) ruled that it was not permitted to do so, as the relevant legislation derives from the 'external borders' element of the Schengen acquis, in which the UK has chosen not to participate.<sup>12</sup> Also, subject to approval of the draft by the European Parliament and Council, the UK will be able to cooperate in a limited way with EUROSUR – which will provide the Schengen States with a common surveillance and response framework to assist in countering cross-border crime and unauthorised border crossings.

## Asylum

1.13 As previously outlined in paragraphs 3 and 7, the UK is bound by the first phase of EU measures in regards to asylum but has not participated in the recent recasts of the minimum standards measures. These – in the view of the Government – would have weakened the UK asylum system, introduced delays to decision making and increased unfounded asylum claims. Where the UK has not opted into the recast Directives, it remains bound by the original minimum standards Directives. However, the UK has opted into the recasts of the Dublin II Regulation and the Eurodac Regulation<sup>13</sup> which makes up what is commonly known as 'The Dublin System'.<sup>14</sup>

1.14 The Dublin Regulation establishes the criteria and a mechanism for determining the Member State responsible for examining an application for asylum lodged in one of the Member States, building on the principles of the earlier Convention signed in Dublin in 1990 (the Dublin Convention). Taken together, the Dublin and Eurodac Regulations prevent Member States from abdicating responsibility for asylum seekers (refugees in orbit) and prevent the consideration of multiple applications from asylum seekers by different Member States ('asylum shopping'). The Eurodac Regulation supports the operation of the Dublin Regulation by providing evidence to identify asylum seekers and defined categories of illegal migrant, through the storage and comparison of fingerprints in a central database.

1.15 An evaluation report prepared by the European Commission on the Dublin System found that the Regulations were generally applied in a satisfactory manner, and provide a workable system for determining responsibility for the examination of asylum applications. Nevertheless, the Commission recast the Dublin and Eurodac Regulations to smooth out any remaining issues regarding practical application and the effectiveness of the system.

1.16 The UK has also opted in to the Regulation establishing the EASO (EASO Regulation 439/2010), as detailed in paragraph 1.17.

<sup>12</sup> *United Kingdom v Council*, Case C-77/05 [2007] E.C.R judgment.

<sup>13</sup> Regulation 603/2013/EU of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation 604/2013/EU establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation 1077/2011/EU establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

<sup>14</sup> Council Regulation 343/2003/EC establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 2003.

## Legal & Illegal Migration

- 1.17 The UK has chosen over the years to be bound by approximately one third of all the EU legislative measures aimed at harmonising migration policy across Member States, participating in fewer measures as the EU's ambition has increased, whilst continuing to be involved in practical cooperation initiatives (see below). The choice of measures has reflected the UK's evolving priorities in this field.
- 1.18 Instead, arrangements for the admission of non-EEA workers, students, and family members are governed by UK domestic law and immigration rules. The UK Government believes that this gives the UK the flexibility to change policy to meet the needs of the UK economy and respond to potential pressures. For example, the current UK rules on intra-company transferees allow those earning over £40,600 to stay for five years and very senior staff to stay for up to nine years. Had the proposed Intra-Corporate Transfer Directive been in force and had the UK opted in to it, this would not be possible because the Directive as currently drafted specifies a maximum length of stay of three years. Similarly, had the UK opted in to the Blue Card Directive on highly qualified workers, the UK would have been obliged, for the purposes of granting settlement to highly qualified workers, to aggregate periods spent in other Member States as a highly qualified worker under the terms of the Directive with periods spent in the UK for the same purpose. The effect of this would have been that the UK might have been required to grant settlement to such a worker after only two years residence in the UK rather than the five years required of a worker under the UK's national arrangements.<sup>15</sup>
- 1.19 Additionally, while the UK works closely with EU partners in the return and reintegration of illegal migrants, which includes steps such as shared charter flights, the UK has not opted into the Returns Directive on provisions for the return of illegal migrants. The UK does however participate in a number of EU Readmission Agreements (EURAs) with third countries. On Readmission Agreements, working as a bloc with other Member States rather than independently has often resulted in a better deal for the UK, with Member States acting as a bloc able to wield greater leverage against third countries than when acting individually.<sup>16</sup>
- 1.20 The EU has established a number of funds to ensure the fair sharing of responsibility between Member States for the financial burdens arising from management of the EU's external borders, and from the implementation of common asylum and immigration policies. At present the UK participates in three of the four SOLIDFunds: the European Refugee Fund, the European Return Fund and the European Fund for the Integration of Third Country Nationals. The UK is excluded from the fourth fund called the External Border Fund as it builds on the part of the Schengen Acquis in which we do not participate. The UK has been allocated approximately £240million from the current funds and has used this to co-finance activities such as returns programmes, resettlement projects and community integration projects through a number of initiatives across Whitehall and with national and local NGOs.

<sup>15</sup> Directive 2009/50/EC of the Council of the European Union on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, 2009.

<sup>16</sup> Directive 2008/115/EC of European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, 2008.

## Practical Cooperation

- 1.21 Although successive UK Governments have decided that an independent policy on non-EEA migration would work in the best interests of the country, there are a number of non-legal initiatives on migration issues in which the UK participates and works closely with the EU. Through practical cooperation, EU Member States share information, data and expertise as well as providing training opportunities. The UK also participates in meetings and conversations on EU migration issues where the UK has its own independent policy, but benefits from being able to share knowledge and views. Most of this practical cooperation is guided by a series of Council Conclusions, the most important of which are on the GAMM, the Migratory Pressures Roadmap, and the European Migration Network (EMN). The UK Government's approach is based on the belief that cooperation remains the best route to fill any capability gaps across the asylum and immigration agenda.
- 1.22 The EU's GAMM is the overarching framework for EU external migration policy, and is intended by the European Commission to provide a strategic policy framework for the EU's relations on migration with all countries outside the EU. It is organised around four principal areas of cooperation with third countries: (i) better organising legal migration and fostering mobility; (ii) combating illegal migration and eradicating human trafficking; (iii) maximising the development impact of migration; and (iv) promoting international protection and enhancing the external dimension of asylum. The GAMM is non-binding on Member States, and participation in the various initiatives under the GAMM remains voluntary. The UK is participating in a number of initiatives under the GAMM, aimed at fostering dialogue and practical cooperation between particular third countries or regional groupings and EU and Member States. These initiatives include the Silk Routes Partnership, focussed on building joint work with countries including Afghanistan, Pakistan and Iraq; and the Dialogue on Migration, Mobility and Security with the countries of the southern Mediterranean.
- 1.23 The EU's Migratory Pressures Roadmap is a Member State-led framework for responding to current and likely future pressures. It sets out a coordinated approach to practical action to address these pressures, focusing on priority areas such as upstream work with third countries; enhanced external border management; tackling abuse of legal migration; and enhanced migration management, including returns. The Roadmap is fundamentally non-binding, but the UK works with EU partners under several of its priority areas, including combating the abuse of free movement by third country nationals, and supporting Greece's efforts to build its migration and asylum system and reduce illegal immigration across the EU's external border. Organised immigration crime is responsible for a significant amount of the illegal migration into the UK. The UK tackles this criminality primarily through co-operation with other EU and non-EU states individually or in groups, as well as through formal EU cooperation, including under the EU Policy Cycle for organised and serious international crime.
- 1.24 The EMN provides information on migration policy in the European Union in order to support the development of policy. EMN objectives are delivered through a multi-level network co-ordinated by the European Commission with the support of a designated EMN National Contact Point (EMN NCPs) in each Member State. Each NCP is supported by a domestic network of national migration and asylum experts to build links between policy makers and external research partners. The UK EMN NCP, located within Home Office Science: Migration and Border Analysis, is funded by the European Commission to deliver UK national reports on topics relevant to policymakers at national and EU levels, to meet both long-term and short-term needs.

## Other EU Policies on Migration

- 1.25 There are also a number of other EU programmes and legislative provisions on legal migration of non-EEA nationals which indirectly affect the UK's immigration policy insofar as they set limits upon the UK's competence to restrict third country nationals from studying and working in the UK. One of the most significant of these is the EU –Turkey Association Agreement (or 'Ankara Agreement') by which the UK became bound upon its entry into the European Community in 1973. Whilst the agreement does not prevent the UK applying immigration controls to Turkish nationals, it does nevertheless constrain the UK's freedom to adjust the requirements to be met by Turkish nationals coming to the UK to establish a business, and confers certain entitlements upon Turkish workers once they have been admitted to the UK's labour market.
- 1.26 The EU Erasmus Programme; the Services Directive, and Mode 4 Provisions are being covered in the Balance of Competences reports on education, Single Market: services, and trade and investment respectively. The UK Government continues to believe that limiting the immigration consequences of these EU initiatives is vital – setting clear negotiation objectives for work that affects the UK.<sup>17</sup>

## The Common Travel Area (CTA)

- 1.27 The CTA predates and has no legal basis in the European Schengen Area.
- 1.28 The CTA came into being in the 1920s, based on the principle that free movement for nationals of the UK, Ireland and the Crown Dependencies would deliver important economic and social benefits. The CTA comprises the United Kingdom, Ireland and the Crown dependencies (the Channel Islands and the Isle of Man). In essence, it is a free movement zone, based on the principle that once a person has been granted leave to enter one part of the CTA, they will not normally require leave to enter another part of it whilst that leave is extant and provided they do not leave the CTA.

## The Crown Dependencies

Some aspects of EU law apply to the Crown Dependencies: the Isle of Man and the Bailiwicks of Guernsey and Jersey, as set out in Protocol 3 to the UK's Treaty of Accession to the European Communities.

Protocol 3 also requires equal treatment of all EU nationals. However EU nationals are not subject to immigration control by virtue of certain provisions of the Immigration Act 1971, as extended to Jersey, Guernsey and the Isle of Man. Controls in respect of employment are dealt with differently by each jurisdiction in accordance with the above requirement to treat all EU nationals equally.

The Crown Dependencies are part of the CTA with the UK and Ireland. This provides for passport-free travel and simplified entry procedures. It does not derive from EU law but predates it and hence is not linked to Protocol 3. The CTA is defined in section 1(3) of the UK Immigration Act 1971. Like the UK and Ireland, the Crown Dependencies are outside the visa/check-free Schengen area and so operate border controls for flights or ships arrivals from countries other than the UK or Ireland.

Evidence above provided by the Crown Dependencies.

<sup>17</sup> Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market, 2006.

## Gibraltar

The UK is responsible for Gibraltar within the EU as a territory ‘for whose external relations a Member State is responsible’ (Article 355(3) TFEU). In practice, this means Gibraltar is a part of the EU by virtue of the UK’s membership, according to the provisions of the UK’s 1973 Act of Accession.

Although it is part of the EU, Gibraltar is outside the customs union and VAT area and is exempted from the Common Agricultural Policy. As a separate jurisdiction to the UK, Gibraltar’s Government and Parliament are responsible for the transposition of EU law into local law. Gibraltar is not part of the CTA with the UK and Ireland.

Gibraltar does not form part of the Schengen Area in relation to immigration and border control, thus Spain’s border with Gibraltar is considered an external border of the Schengen area.

## Summary

- 1.29 As the above Chapter outlines, the balance of competence on asylum and immigration issues currently lies mainly with the UK, particularly on borders and legal migration.
- 1.30 The UK’s general preference recently has been for practical cooperation between Member States on migration issues rather than further European legislation.
- 1.31 Alongside that outlined above, the UK is also a signatory to the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. The 1951 Convention relating to the Status of Refugees defines who is a refugee, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. The 1967 Protocol broadened the applicability of this Convention and removed the geographical and time limits that form part of the original Convention.
- 1.32 A detailed legal summary of the current balance of competence between the UK and the EU on asylum and immigration issues, including a list of those directives which the UK has chosen not to opt into, can be found in Annexes C and D.





## Chapter 2:

# Impact on the National Interest – Borders and Visas

This Chapter looks at the impact of EU competence in the area of borders and visas on the UK national interest, and in particular the advantages and disadvantages to the UK of opting out of the border and visa elements of the Schengen acquis.

### Introduction

- 2.1 As discussed, the EU has continued to acquire greater control of asylum and immigration over the last 15 years. Central to this is the Schengen zone, in which there is check-free travel across many EU (and non-EU) states, backed by common visa systems.
- 2.2 The UK and Ireland decided to maintain their own independent border checks and visa system, believing that the benefits to national security and of controlling immigration exceed the costs of this stance. For these reasons, the UK negotiated a special status in relation to the Schengen acquis. It was agreed that the UK would not be automatically bound by EU measures deriving from the acquis. The UK chose not to participate in those elements of Schengen concerning visas and border control. This means that the UK is not restricted by many of the different EU laws governing the Schengen zone.

### The Schengen Acquis

- The Schengen acquis includes a set of agreements which underpin the EU's common visa policy and borderless Schengen area.
- The UK has chosen not to participate in the border control elements of the Schengen Acquis and has its own visa policy and border controls.
- There is practical cooperation between Member States on Schengen issues and the UK participates in regular EU discussions on the management of the Schengen area and how it affects Member States.

- 2.3 There is an inherent challenge in border policy between maintaining security and immigration controls whilst also making travel across the border for legitimate travellers work efficiently.

### Maintaining the Border

- 2.4 The UK retains the right to secure its own borders and to carry out border controls at its frontier. It is able to do so because of the UK's decision not to opt into the border elements of the Schengen acquis.

- 2.5 Evidence arguing in favour of the UK maintaining its own independent border controls pointed to a number of key issues and themes:
- The need to protect the UK against illegal migration given the ineffectiveness of the Schengen zone's current external border controls;
  - The role the UK border plays in preventing organised crime and terrorism, not just illegal immigration;
  - The importance the public places on maintaining a strong, visible border; and
  - Britain's clear geographically defined borders;
- 2.6 Independent UK border controls provide a layer of protection against illegal migration, especially given concerns (noted by the British Air Transport Association and Centre for European Reform in their evidence) in regards to the security of the external Schengen border.<sup>1</sup> The policing of the external border of the Schengen zone was a key outstanding issue raised during stakeholder events held during the call for evidence period. The point was made at the Brussels based event on the 26 June 2013 for European partners and industry associates that a secure external Schengen border remains a work in progress.<sup>2</sup>
- 2.7 As is noted in the House of Lords EU Select Committee Report on *The EU's Global Approach to Migration and Mobility*, this was particularly true for the Greek-Turkish border, where until recently it was thought around 90% of unauthorised border crossings into the EU took place.<sup>3</sup> It should be noted that some work has since been done to secure this although in 2013 there were additional pressures from illegal migration at the EU's external land borders to the Bulgarian-Turkish land border. As action has been taken to make illegal crossing of land borders more difficult, migration pressures have increased on maritime routes into the EU. The increasing facilitation of illegal migration across the Mediterranean has been highlighted by the tragic drowning of more than 360 migrants off the Italian island of Lampedusa on 3 October 2013. While there remain concerns about the security of the external Schengen borders therefore, independent UK border controls provide additional protection against illegal migration. It is also the case that the UK's island status means that movements into and out of the country are generally channelled through a significantly smaller number of ports of entry and that illegal entry outside of those ports is more difficult than for those countries with land borders.

[The strength of the UK border would only be as strong as the 'weakest link' among the Schengen states.](#)

British Air Transport Association

- 2.8 The UK border also plays a critical role beyond its immigration purposes. It is a key barrier against organised crime and international terrorism. For example the existing capability provided by the Border Systems Programme is by far the most comprehensive in the EU and one of the most advanced systems in the world. In the year April 2012 to March 2013, the Border Systems Programme screened 135 million passengers and crew, issuing over 60,000 alerts and over 2880 arrests, including for murder, rape and kidnap.<sup>4</sup> It is the Government view that a benefit of independent UK border controls is therefore improved national security.

<sup>1</sup> British Air Transport Association, and Centre for European Reform, *submissions of evidence*.

<sup>2</sup> *Record of 26 June stakeholder event*.

<sup>3</sup> House of Lords European Union Select Committee, *The EU's Global Approach to Migration and Mobility Report*, (2012).

<sup>4</sup> This includes passengers travelling from the EU.

Border work is increasingly driven by the need to tackle criminality and terrorism rather than just manage immigration. A significant proportion of immigration work is done away from the border, and therefore in considering the value of the UK retaining its own border controls, it is important to remember the functions it performs beyond immigration work.<sup>5</sup>

- 2.9 Those representatives who attended the Brussels stakeholder event on 26 June 2013 also discussed the reassurance which independent UK border controls can provide to the public.<sup>6</sup> It was argued by some that the UK public see border controls as vital. Britain, with its clear geographically defined borders, has for many years been a country with border control. Migration Watch argued in their evidence that there is no public appetite for joining the border free Schengen zone and some of the academic representatives at the stakeholder event on 3 July suggested that the UK joining the Schengen zone was politically impossible.<sup>7</sup>

There is no public support for, or even discussion of, the UK joining the Schengen area. The effect of that would almost certainly be a substantial flow of illegal migrants.

Migration Watch UK

- 2.10 Public opinion polling broadly supports Migration Watch's assertion, showing that eight in ten British adults support the Government's pledge to reduce net migration.<sup>8</sup> The need for a strong UK border plays a role in addressing the public's concerns. Those Member States who are in Schengen have also recognised that there can be problems with open borders and have agreed new rules which place greater emphasis on Member States' ability to introduce border controls temporarily where there is a serious threat to public policy or internal security.
- 2.11 Set against this, respondents from the transport industry outlined how the UK might benefit from participating in a border-free Schengen zone. The UK Chamber of Shipping, amongst others, emphasised the costs savings that could be generated from the removal of UK border checkpoints; controlling the border currently costs the UK approximately £550 million per year in direct costs. It was acknowledged however, at the stakeholder event of the 3 July 2013, that if the UK joined the border elements of the Schengen zone, the UK would have to make an additional contribution to protect the external Schengen border.<sup>9</sup>

Huge cost savings would flow from the removal of checkpoints at internal frontiers [...] There would be an immediate financial saving for the Crown, and significant efficiencies for ferry and cruise operators and for ports.

UK Chamber of Shipping

- 2.12 Beyond possible cost savings, respondents from the transport industry (the UK Chamber of Shipping, the British Ports Association, Eurostar, High Speed 1 and the British Air Transport Association) explained in their written submissions what UK border controls means for their individual sector.<sup>10</sup> They highlighted the importance of a smooth experience for passengers and pointed to the delays caused for ferry passengers, freight drivers and coach trips by checkpoints if they fail to process passengers in a timely manner.

<sup>5</sup> Record of 3 July stakeholder event.

<sup>6</sup> Record of 26 July stakeholder event.

<sup>7</sup> Migration Watch, *submission of evidence*.

<sup>8</sup> More information is available at: [cdn.yougov.com/cumulus\\_uploads/document/ikv2kvmtq8/YG-Archive-Times-results-02013-UKIP.pdf](http://cdn.yougov.com/cumulus_uploads/document/ikv2kvmtq8/YG-Archive-Times-results-02013-UKIP.pdf).

<sup>9</sup> Record of 3 July stakeholder event.

<sup>10</sup> This includes: UK Chamber of Shipping; the British Ports Association; Eurostar; High Speed 1; and British Air Transport Association, *submissions of evidence*.

They argue that there is anecdotal evidence that queues at the border are a deterrent to discretionary travel. Passenger numbers of ferries, for example, have declined by 25% since 2003 (the year before juxtaposed controls were put in place), although this could also be a consequence of numerous other factors such as the rise of low cost airlines.<sup>11</sup>

It is important that UK authorities are mindful that entry/exit checks imposed separately on the UK border should not cause additional burden to travellers or the airlines that carry them.

Virgin Atlantic

- 2.13 An attendee at the stakeholder event on 26 June for European partners suggested that amongst the population of Member States, the Schengen area is popular. EU nationals are able to see the benefits for themselves when they travel throughout Europe and therefore having to go through border controls in the UK can be surprising. The distinction was drawn between the UK and Switzerland, which – although not an EU Member State – is part of Schengen.

## Gibraltar

- In relation to border checks, Her Majesty's Government of Gibraltar would fully embrace Gibraltar's participation in the border elements of the Schengen Acquis in so far as it concerns the creation of a borderless area. They therefore support the UK joining the border-free elements of the Schengen zone.
- For Gibraltar, any disadvantages of the UK not opting in to the border aspects of the Schengen Protocol are outweighed by the advantage of securing a better flow of persons at the Gibraltar and Spain border.<sup>12</sup>

## Practical Cooperation – Borders

- 2.14 As detailed above, the evidence highlights that there are significant security benefits to the UK's decision not to opt into the border elements of the Schengen acquis. The economic costs are outweighed by the UK's desire to be able to respond flexibly to migration and security challenges. Eurostar suggest that an alternative option to the UK joining the border-free Schengen zone might be for the UK to explore the options for greater practical cooperation and process alignment with the EU on border issues, and on visas as discussed in the following section.<sup>13</sup>
- 2.15 The Liberal Democrats Home Affairs, Justice and Equalities Parliamentary Party Committee commented on this theme of greater practical cooperation, stressing the importance of continued engagement with FRONTEX and European Border Management more widely. They stated that by strengthening the EU's ability to control and monitor their external borders, we protect ourselves. Additionally, in their report *The EU's Global Approach to Migration and Mobility*, the House of Lords EU Select Committee explain that they strongly support the Government's efforts to play an active role in the work of FRONTEX (and the development of EUROSUR) and believe that it is in the UK's national interest that these operations are efficient, effective and well resourced.<sup>14</sup>

<sup>11</sup> UK Chamber of Shipping, *submission of evidence*.

<sup>12</sup> Government of Gibraltar, *submission of evidence*.

<sup>13</sup> Eurostar, *submission of evidence*.

<sup>14</sup> House of Lords European Union Select Committee, *The EU's Global Approach to Migration and Mobility*.

2.16 Through FRONTEX, and despite not being a part of the Schengen border-free zone, the UK is able to play a role in managing the external borders – land and sea – of Schengen, feed into best practice, and help tackle irregular migration into the EU through joint land, sea and air operations.

We must continue to engage with FRONTEX and European Border Management more widely [...] By strengthening their ability to control and monitor their external borders we protect ourselves.

Liberal Democrats Home Affairs Justice and Equalities Parliamentary Party Committee

## Case Study – FRONTEX

In 2013 Border Force committed to participate in a number of activities including joint operations at the EU's external air, land and sea borders; return charter operations; training development and delivery; research and development; intelligence and risk analysis and the posting of a seconded national expert to the Frontex Returns Sector for two years.

### Joint operations with UK participation:

#### Land

*Poseidon Land* targets irregular migrants on the Greece/Turkey and Bulgaria/Turkey land borders.

#### Air

*Focal Points Air* targets the routes used for illegal migration into the EU by air using flexible deployments to match changes in migration flows.

#### Sea

- *Poseidon Sea* targets irregular migration by sea from Turkey to Greece.
- *Indalo* targets irregular migration by sea between Algeria/Morocco and Spain.
- *Hermes* targets irregular migration in the Central Mediterranean area (Libya and Tunisia) towards Italy.
- Operation Aeneas – targets illegal migrants from Turkey, Albania and Egypt to the South East coast of Italy.

## Visas

2.17 The pros and cons of the UK's decision to retain control over visa requirements on non-EEA nationals coming to the UK by not participating in the visa elements of the Schengen acquis were outlined in the evidence that was received.

2.18 In the Government's view, the main benefit of retaining an independent UK visa system is that the UK's visa policy can take account of issues such as migration flows and any potential crime risks and national security risks. This argument was reiterated in some of the evidence received. Hugo Brady, from the Centre for European Reform, acknowledged in his evidence that the advantage of the UK having direct control over visa policy is that it can impose or relax visa requirements as circumstances dictate. Evidence provided by the Office of the Justice Minister in Northern Ireland reiterated the argument.

The main advantage to the UK of opting out of the border and visa aspects of the Schengen Protocol is that the country maintains independent control over its own borders. The UK may issue or refuse to whoever it wishes and this includes the use of visa bans, etc, as occasional tools of foreign policy. Britain is not restricted in its response to fluctuating public attitudes regarding immigration by an irreversible commitment to a common EU border, immigration & visa regime.

Hugo Brady, Centre for European Reform

The UK can develop and set tailored and appropriate visa policy – in terms of controlling and preventing potential crime risks.

Department of Justice, Northern Ireland

- 2.19 In their evidence, the Confederation of British Industry (CBI) – a business membership organisation – understood the Government’s decision to not opt into the visa elements of Schengen and recognised the Government’s desire to manage migration flows and any potential crime and national security risks. The Government of Gibraltar highlighted the same point in their evidence.

The CBI believes that the immigration system should strike a balance between understanding the clear economic need for access to skilled workers and supporting labour mobility on one hand and dealing with the social impacts of immigration and crime and security issues linked to illegal immigration on the other. The CBI supports managed migration – and the decision that the UK will not join Schengen for these reasons. Given domestic political concern around managing immigration flows, businesses accept the UK decision to secure its own borders and manage its own migration system.

The CBI

In relation to visas, the main advantage of the UK opting out of the Schengen Protocol is clearly the retention of control over immigration and visa requirements on non-EEA nationals. In doing so, the UK/Gibraltar are free to develop their own visa policy and operations which can take full account of issues such as migration flows, any potential crime risk and potential risks to national security.

Government of Gibraltar

- 2.20 The Scottish Government also expressed their support for the UK retaining its independent visa system. They stressed that opting out of the border and visa aspects of the Schengen Protocol protects the integrity of the UK and Ireland CTA. Given practical considerations of geographical and working arrangements, they argued, it is in the national interests of Scotland, Ireland and the rest of the UK to remain in the CTA.

It is the Scottish Government’s position that it is in the best interests of Scotland and the UK to opt out of the Schengen Protocol and continue the operation of the Common Travel Area.

Scottish Government

- 2.21 It should be noted that the Scottish Government’s stated intention to retain the pound and join the CTA is at odds with the EU’s rules for new members, and is not in the Scottish Government’s gift. This is discussed in more detail in the paper on EU and International Issues prepared as part of the UK Government’s Scotland Analysis Programme.<sup>15</sup>

<sup>15</sup> More information is available at: [www.gov.uk/government/collections/scotland-analysis](http://www.gov.uk/government/collections/scotland-analysis).

- 2.22 By maintaining an independent UK visa system, non-EU nationals who hold a UK visa cannot use it to travel to Schengen states without a separate Schengen visa, and vice versa. Written evidence received from some tourism related respondents (organisations such as Intercontinental Hotel Group, British Hospitality Association, Visit Britain, Eurostar), and the university and scientific communities (Russell Group, Universities UK (UUK), Research Council UK (RCUK)) argued for, if not a single short-term visa regime for the UK and the Schengen zone, then greater alignment of visa application processes and biometric enrolment facilities.
- 2.23 The main issue raised – largely by transport and tourism firms – was that the need for many non-EU nationals to apply separately for UK and Schengen visas can sometimes be time consuming and more expensive. The consequence of this, it was argued, is that some individuals decide just to visit (for pleasure, or study, or business) the Schengen states instead and tour operators drop the UK from travel packages. In Switzerland for example, the need to avoid a second visa requirement for visitors on a wider EU trip was one of the main arguments for joining Schengen.<sup>16</sup>

Britain only partially participates in Schengen. This means that consumers must apply for 2 visas if they wish to visit Britain and other EU countries [...] This acts as a disincentive to include the UK in European packages as it adds an extra level of complexity for tour operators.

Visit Britain

- 2.24 In particular, the need to capitalise on the growing Chinese visitor market was raised by the tourism and hospitality industry (such as the Intercontinental Hotel Group, British Hospitality Association and Eurostar) in their evidence, and this is something the Home Office are actively addressing.

Much attention has been drawn to the disparity between the number of Chinese tourists visiting Paris compared to London but this illustrates a general problem; if a visitor can get one visa for the whole of Schengen that is simpler, cheaper and more available, there is less incentive to undergo the additional cost [...] of getting a separate UK visa.

Eurostar

- 2.25 China remains a priority market for the UK, and the Government is keen to support both tourists and business people travelling to the UK. In the year to September 2013, for example, there was an increase of 7% in UK visas issued to Chinese nationals, and according to Visit Britain's monthly inbound update, 22% more Chinese visitors came to the UK between August 2012 and July 2013 compared to the same period the year before.<sup>17</sup> The Home Office emphasises that the visa system in China continues to provide an excellent service in terms of processing time (in 2012, 99% of business visit visas were decided in 15 days), convenience and value for money, and while the UK continues to try and improve its visa service, it is unwilling to compromise the security of the border.
- 2.26 In early 2013 for example, the Home Office launched a passport pass-back service which allowed applicants to take their passport away from the Visa Application Centre so that they could apply for a Schengen visa at the same time.

<sup>16</sup> Michael Emerson, 'Britain, Ireland and Schengen: Time for a Smarter Bargain on Visas', *CEPS Policy Brief*, 249, August 2011.

<sup>17</sup> More information is available at: [www.visitbritain.org/Images/July%202013%20IPS%20Memo%20with%20charts\\_tcm29-38547.pdf](http://www.visitbritain.org/Images/July%202013%20IPS%20Memo%20with%20charts_tcm29-38547.pdf).

2.27 The British Hospitality Association issued a press release on the 15 October 2013, welcoming recent announcements that visa applications for Chinese visitors entering the UK will be simplified. They outlined that this will have a significant impact on growing tourism and jobs in the UK.<sup>18</sup>

[It's great news for the UK economy and our tourism industry that the Government has finally taken the step to streamline the visa application process for a wider group of Chinese tourists.](#)

British Hospitality Association

2.28 The list of countries from which the UK and Schengen require a visa has some notable differences. Currently, a number of South American countries, Bolivia, Colombia and Ecuador, and West Balkan States do not need to apply for a Schengen visa but require a UK visa. Opting into the visa elements of the Schengen zone would potentially see visa restrictions on these nationalities entering removed. As Michael Emerson noted in his article 'agreement over how to harmonise the list would likely be politically difficult'. He does suggest a way around this problem – a mutual recognition agreement with the caveat that those from a visa exempt country of one party (the UK or Schengen) [...] would still have to get a visa to travel to the other.<sup>19</sup> Essentially the mutual recognition of visas would only apply to those countries on both visa exemption lists.

2.29 The British Chambers of Commerce (BCC) raised issues that a separate UK visa requirement can cause from a business perspective.<sup>20</sup> Home Office programmes such as the *Select* business scheme in China, where key businesses looking to invest in the UK can provide reduced documentation for an application and arrange a face to face meeting with an official to ensure all their needs are met are helping to address business needs.

2.30 The Russell Group, UUK and RCUK highlighted in their evidence to the Review the issues that separate UK and Schengen short-term visa systems have on the higher education and research sectors. They argue that this limits student and staff mobility for further study and research, and restricts research developments and collaborations with EU colleagues.<sup>21</sup>

[International staff and students from non-EU countries must also apply and pay for separate visas to the UK and Schengen area. Some non-EU students choose to study in the Schengen area rather than in the UK as they, and any friends and family visiting them, will be able to visit a greater number of countries during their studies without the need for a separate visa.](#)

Russell Group

2.31 Greater alignment of processes with the Schengen zone on visas is seen by many who responded as the best way of maintaining UK sovereignty and increasing the benefits of legitimate travel and trade. This is something that the Government is exploring where possible while recognising the paramount importance of national security.

[There should be greater alignment of the UK and Schengen visas in terms of cost to the applicant, a single application form, co-located biometric capture and information sharing.](#)

British Air Transport Association

<sup>18</sup> British Hospitality Association, BHA Welcomes Government Announcement to Simplify Visa Applications for Chinese Tourists (2013). This is available at: [www.bha.org.uk/bha\\_news/bha-welcomes-government-announcement-to-simplify-visa-applications-for-chinese-tourists/](http://www.bha.org.uk/bha_news/bha-welcomes-government-announcement-to-simplify-visa-applications-for-chinese-tourists/).

<sup>19</sup> Michael Emerson, *Britain, Ireland and Schengen*.

<sup>20</sup> British Chambers of Commerce, *submission of evidence*.

<sup>21</sup> The Russell Group, UUK and RCUK, *submission of evidence*.

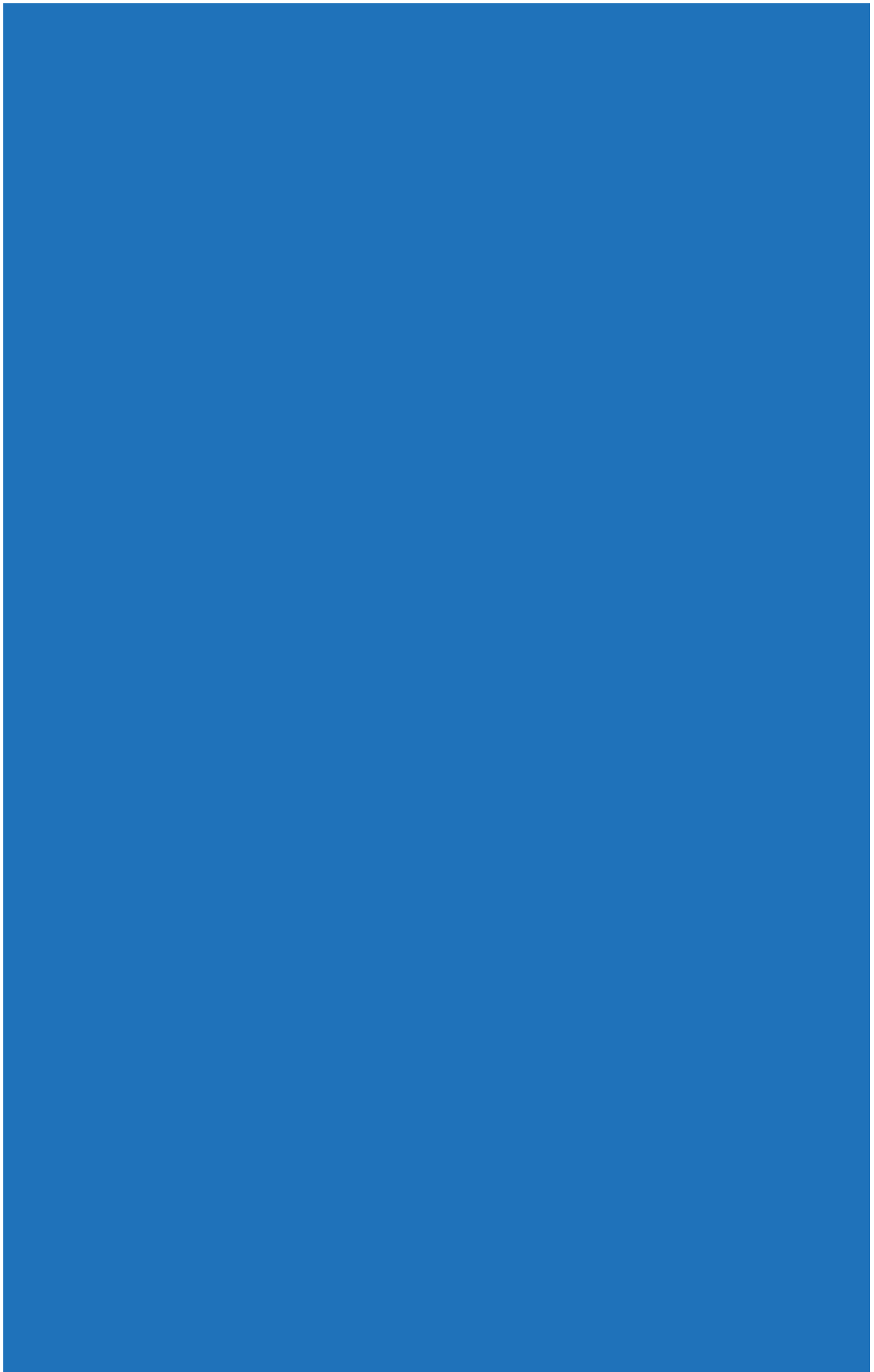


## Passenger Data

- 2.32 The UK has opted into one Schengen measure relating to passenger data – the API Directive – which enables the UK to conduct checks on passengers in advance of their arrival at the border. The UK uses API data to monitor arrivals into and departures from the UK and intercept selected passengers where necessary. While the current API Directive allows the UK to collect non-EEA API data, there is currently no provision within EU law to allow the UK to uniformly collect intra-EU API data. Numerous carriers in their evidence have urged the UK to seek a resolution to the European Commission’s concern about providing data for EU citizens making intra-EU flights. Negotiations around a proposed PNR Directive, driven by the UK, have included the provision for intra-EU data sharing.
- 2.33 The UK has limited access to parts of the SIS and VIS as it is not in the border and visa elements of the Schengen zone. SIS is used by police, border guards, customs, visa and judicial authorities throughout the Schengen Area. It holds information and alerts on missing persons, on persons involved in serious crime, persons without rights of entry or stay in the EU, and information on stolen or lost property for example banknotes, firearms and identity documents. The UK is in the process of connecting to the second generation of SIS (known as SIS II) and will have access insofar as it relates to police and judicial cooperation, but not insofar as it relates to borders and immigration. VIS is a database containing information on applications for EU visas with the intention of combating fraud and abuse.
- 2.34 As detailed below, some respondents such as the British Air Transport Association and Department of Justice in Northern Ireland highlighted the advantages to the UK if they were allowed full access to SIS II and VIS.

If the UK was participating in the Schengen Protocol, UK authorities would have access to the associated information systems, which would allow for a more informed decision about a person’s acceptability for travel to the UK and the rest of Schengen.

British Air Transport Association



# Chapter 3:

## Impact on the National Interest – Asylum Policy

In this Chapter we look at the impact of EU competence in the area of asylum on the UK national interest, and in particular whether it is thought to be in the interests of the UK to remain fully committed to a CEAS.

### Introduction

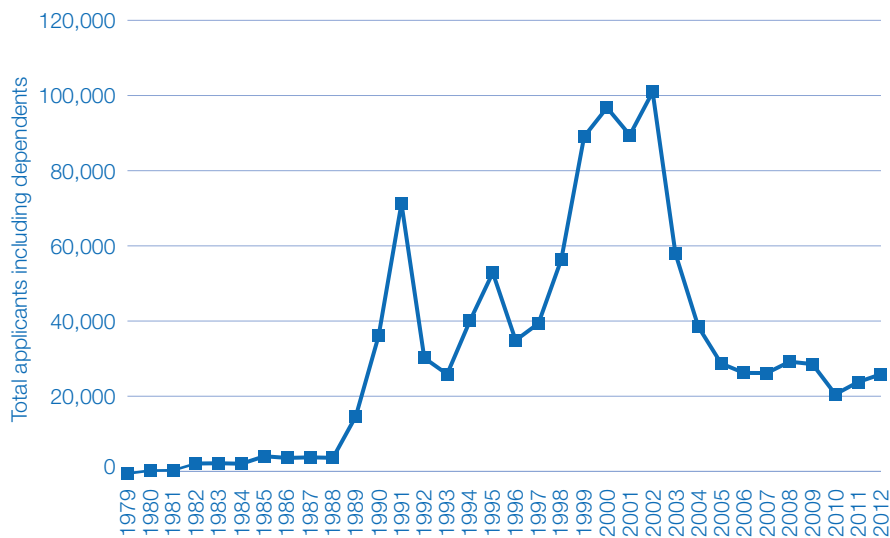
- 3.1 Asylum applications in the Member States that make up the EU have fluctuated in response to regional and global events, such as conflicts in the former Yugoslavia, Iraq and Afghanistan and reflecting the chaos caused by failed states such as Somalia. But it is the end of the Cold War and the relaxation of border controls in eastern Europe which signalled the real change in asylum numbers from across the EU, leading to a peak of 670,000 in 1992. After another spike in 2001 numbers fell to below 200,000 in 2006 but have seen a sharp increase since 2011, fuelled by crises in the Middle East, rising to over 330,000 in 2012 and still on a steep upward trend, likely to exceed 400,000 in 2013. The UNHCR predict that conflicts and instability in regions such as the Middle East, Afghanistan and central Africa will continue to drive this trend upwards in the immediate future. While the impacts on individual Member States has varied widely.<sup>1</sup>
- 3.2 The most recent immigration statistics identified that in the year ending September 2013, the largest number of applicants for asylum in the UK were nationals of Pakistan, followed by Iran and Sri Lanka. This is in stark contrast to France where the largest number of applicants was nationals from Kosovo, Bangladesh and Russia. These differences occur for a range of reasons such as geography, the strength of historical and cultural ties with source countries and national policies towards migrants, the challenges posed by the nature and scale of this migration are ones that are broadly shared across the EU. While the impact on individual Member States caused by asylum seekers has varied widely, all have been affected. They therefore share a common interest in ensuring that asylum flows are properly managed and that those in genuine need of protection are given it without undue delay but also that those who do not need protection are swiftly refused asylum and returned to their own countries.
- 3.3 In order to understand the UK's current approach to asylum, it must be seen within this context and the particular nature of the UK's own asylum experience over recent decades. In the early 1990s and again in the late 1990s and early 2000s asylum intake to the UK

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<sup>1</sup> UK data for 2007 and 2008 from Home Office immigration Statistics released, 28 Feb 2012. More information available at: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q4-2012/>. All remaining figures can be found on the Eurostat website at: [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database).

rose to unprecedented levels – for a time being the highest in Europe (peaking at over 100,000 applications in 2002 – see Chart below).

### Asylum Application Numbers to the UK, 1979 – 2011<sup>2</sup>



- 3.4 The experience had consequences for the UK Government well beyond the sphere of humanitarian migration, shaping the national debate on immigration as a whole.
- 3.5 Since the 1990s a number of events have added to EU pressures from asylum seekers. The end of the Cold War, increasing affordability and availability of air travel and various global crises have all contributed to this. In the last decade, successive UK Governments have worked hard to put the asylum system on a more sustainable footing and have taken radical action to address any issues. This has meant putting in place a system that balances ability to process cases efficiently with a high quality determination process: quickly identifying those who need the UK's protection and providing it, whilst also deterring unfounded claims and ensuring there are consequences for those who do make unfounded claims.
- 3.6 Innovative new policy approaches have been implemented to tackle the issues, often in collaboration with other Member States, such as: exporting the borders by putting juxtaposed controls in place in France and Belgium and new visa controls overseas; identifying unfounded claims and reducing in-country rights of appeals; and focused, short-term use of detention to resolve less complex cases quickly.
- 3.7 Alongside internal UK reforms of the asylum system, there were a number of EU measures on asylum that the UK chose to adopt and these form a key part of the UK's policy on asylum seekers. Out of the areas covered in this report, asylum is the area where the EU has the most impact.
- 3.8 At a meeting in Tampere in 1999, the European Council for the first time envisaged a CEAS. It was anticipated that in the longer term, this would lead to a common asylum procedure and a uniform status for those granted asylum, valid throughout the EU.
- 3.9 The first phase of the CEAS comprised six existing legislative instruments on asylum, adopted between 2001 and 2005. As detailed in Chapter one, these are the Asylum Procedures Directive, the Qualification Directive, the Reception Conditions Directive, the

<sup>2</sup> Home office, Immigration Statistics (July – September 2013), available at: <https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2013/immigration-statistics-july-to-september-2013>.

Temporary Protection Directive, the Dublin Regulation and the Eurodac Regulation. The UK opted in to all six, with the then government arguing that this package would spread the asylum burden across other Member States and release pressure on the UK – thereby supporting our national interest.

- 3.10 Recently, the European Commission decided to recast these Regulations and Directives. While opting in to the recast Dublin and Eurodac regulations, the UK's decision not to opt into the new Asylum Procedures, Qualification and Reception Conditions Directives, while still being bound by the initial Directives was the key discussion point of most of the evidence we received on asylum.

## CEAS

- 3.11 In its written response to the House of Lords Debate on the GAMM report, the Government outlined clearly that its reason for not opting into the recast minimum standard Asylum Directives – which constituted the 'second phase' of the CEAS – was that it was believed that they would impose additional restrictions on the UK asylum system that would have a negative impact on the UK's ability to operate its own asylum system.<sup>3</sup>
- 3.12 The UK Government felt that the proposed recast Reception Conditions Directive 2013/33/EU would require wider access to the labour market for asylum seekers and place unreasonable limitations on the use of detention powers. The package would demand that an asylum seeker should receive benefits at the same levels as nationals of the Member State dealing with their claims, despite pressures on the government finances. Proposals in the recast Qualification Directive would, in the Government's view, require the UK to accept a broader definition of family members for family reunification purposes and would make it harder for the UK to argue that an asylum seeker would be adequately protected against persecution in their country of origin (beyond the requirements of the European Convention on Human Rights). The proposed new Asylum Procedures Directive was thought by the Government to impose restrictions on the use of accelerated procedures that would diminish the UK's ability to prevent abuse and improve efficiency. The UK Government was unwilling to accept these changes.
- 3.13 Migration Watch UK, in their written evidence, supported the current balance of competence on asylum.

HMG's approach to EU policy has been well judged. The UK has opted-in only to those relatively few Directives that will bring benefit.

Migration Watch

- 3.14 One attendee at the Brussels event for European based stakeholders such as think tanks, business groups and MEPs highlighted that despite opting out of the recast Asylum Directives, nothing prevents the UK from meeting the minimum standards outlined in the second round of Directives. Some argue that the UK's standards for asylum seekers are significantly higher than many of the nations signed up to the recast Directives, and that, beyond the Dublin System, opting into more on asylum adds little benefit to the UK interest.
- 3.15 In their evidence, Migration Watch pointed to statistics indicating that asylum seekers are twice as likely to be granted refugee status in the UK as they would be in France or Belgium. However, while the data implies that this may be correct, the data does not take

<sup>3</sup> Home Office, *Commitment to Write: Debate on the Report of the European Union Committee on the EU's Global Approach to Migration and Mobility* (2012).

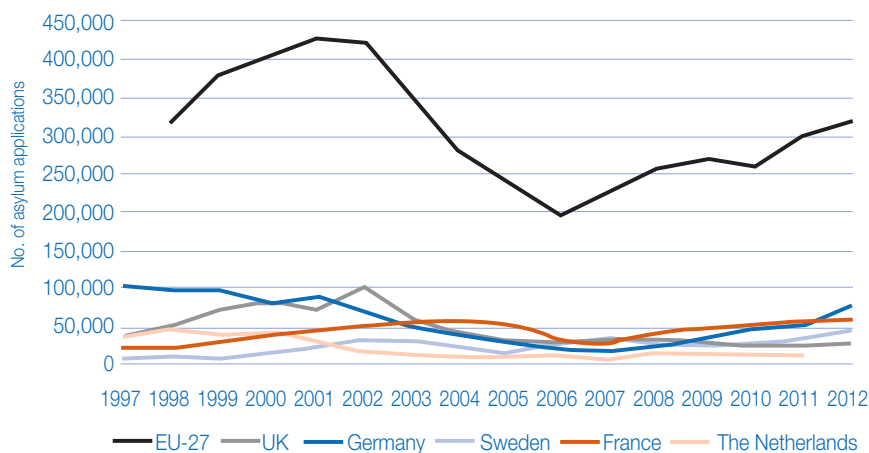
into account the wide variation between Member States in terms of the national origin of asylum applicants, or the existence of other protection based grants of leave other than refugee status which Member States grant to asylum seekers – in particular subsidiary protection (or ‘humanitarian protection’) – which is granted more rarely in the UK than other Member States. These caveats reduce the value of any comparison of raw grant rates.<sup>4 5 6</sup>

- 3.16 Some attendees at the think tank and academic stakeholder event on 3 July 2013 discussed that those Member States bound by all the European directives on asylum have generally seen an increase in the number of unfounded asylum claims in recent years, while UK applications have generally been falling, Germany, France and Sweden accounted for nearly 55% of all EU asylum applications in 2012, while the UK saw around 9% of applications.<sup>7 8</sup> This, as has already been touched upon, has not been as a result of UK standards for asylum casework being reduced. In their evidence, the Centre for European Reform state that it is in Britain’s interest to have an ‘absorption ring’ between it and the rest of the Eurasian landmass.<sup>9</sup>

In 2011, the UK received 0.41 asylum applications per 1000 inhabitants compared to 0.56 across EU-27 countries.

Migration Observatory

**Chart 2- Long-Term Asylum Application Numbers to EU Member States, 1997–2012<sup>10</sup>**



<sup>4</sup> Eurostat, Asylum Applications and First Instance Decisions on Asylum Applications: 2012 (2013). This is available at: [epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF)

<sup>5</sup> [epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF), accessed on 3 February 2014.

<sup>6</sup> When someone claims asylum there are two main grant outcomes: refugee status or subsidiary protection. An asylum applicant receives the former when they meet the term of the Refugee Convention, the latter when removal would otherwise result in mistreatment or serious harm. The thresholds for both are similar, and in the UK asylum applicants get the same outcome under both: five years limited leave. As in practice there is no difference, the UK normally count both together as a grant. However, almost all UK ‘grants’ are refugee status, whereas other countries (including Belgium and France) make more use of ‘subsidiary protection’. As such, if you only compare by grants of refugee status, it looks like the UK have a higher comparative grant rate.

<sup>7</sup> Home Office, Immigration Statistics, July to September 2013 (2013), available at: [www.gov.uk/government/publications/immigration-statistics-july-to-september-2013/immigration-statistics-july-to-september-2013](http://www.gov.uk/government/publications/immigration-statistics-july-to-september-2013/immigration-statistics-july-to-september-2013), accessed on 3 February 2014.

<sup>8</sup> *Record of 3 July stakeholder event.*

<sup>9</sup> Hugo Brady, Centre for European Reform, *submission of evidence.*

<sup>10</sup> UK data for 2007 and 2008 from Home Office Immigration Statistics release published 28 February 2012. More information available at: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q4-2012/>. All remaining figures can be found on the Eurostat website at [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database).

- 3.17 The UK has opted into the revised Dublin and Eurodac regulations and this was a decision supported in the evidence we received on the issue. For example, in their evidence, the Liberal Democrat Home Affairs, Justice and Equalities Parliamentary Party Committee explain that the Eurodac Regulation, managing an EU asylum fingerprint database, is particularly useful to the UK.

Over 12,000 asylum seekers have been removed from the UK using this system since 2004. This has meant significant savings in relation to the costs of processing and supporting those cases.

Liberal Democrats Home Affairs Justice and Equalities Parliamentary Party Committee

- 3.18 Additionally, the UK remains strongly committed to the benefits of practical cooperation with Member States on asylum issues (see from paragraph 86 below). Following input from the UK, the EU is now giving more attention to the abuse of the asylum system than it had done previously.
- 3.19 However, six stakeholders provided evidence in favour of EU action on asylum – arguing that the UK should consider that more fully committing to the principle of a CEAS as a collective approach to asylum seekers has the potential to raise levels of refugee protection across the EU.

Asylum flows are not constant, nor are they evenly distributed across the EU [...] Asylum must not be a lottery. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar.

European Commission (quoted by Scottish Refugee Council)

- 3.20 However, there was evidence to suggest that a fully harmonised EU asylum system would not necessarily be equitable. Whilst procedure, treatment and rights during consideration, and qualification criteria are all important, ease of access to the territory, cultural and linguistic ties, and economic opportunities would continue to lead to significant disparities in asylum applications between Member States. On this theme, an attendee at the Brussels stakeholder event argued that an asylum system based around the Dublin System, which fails to take into account the factors outlined above, such as the language and culture of those applying for asylum, is not necessarily the system for which we should be aiming. Instead it may be preferable to help refugees in neighbouring countries and focus on taking an active part in practical cooperation measures across the EU on asylum.

The point was raised that one true common European asylum system may not necessarily be a good thing, particularly if it doesn't take into account the sympathies, background, language and culture of those applying for asylum.

European Representatives Brussels Event – 26 June

- 3.21 One of the issues raised by respondents on the UK being committed to the revised Dublin Regulations but not the recast Asylum Directives was the possible confusion this may cause. The UNHCR and an individual who submitted evidence on the topic explained that this situation may lead to difficulties in interpretation and in the transfer of persons via Dublin.

By having common rules across all Member States, the implementation of these rules is more straightforward and assists asylum seekers in understanding the system.

Martina Weitsch

3.22 The Dublin System rests on the idea that treatment of asylum seekers is a set standard across the EU. In their evidence, the UNHCR suggest that if some Member States sit outside certain asylum measures, there is an increased chance of a variation in standard and the Dublin System being potentially undermined. However, the UK maintains high standards on asylum which already match the best in Europe. As the Centre for European Reform outlined, the new asylum legislation was chiefly aimed at those countries which did not respect the first set of directives. A two-tier EU asylum system could actually therefore bring all Member States closer towards a common set of asylum standards.<sup>11</sup>

[Harmonisation of Member State asylum legislation and practices allows for the correct functioning of the Dublin System which rests on the premise that asylum seekers are able to enjoy equivalent levels of procedural and substantive protection in all Member States. Recent court decisions have confirmed that Member States cannot transfer asylum seekers to a Member State which has deficiencies in its asylum procedure and reception conditions.](#)

The UNHCR

3.23 The court decisions that the UNHCR reference above are *NS v Secretary of State for the Home Department and MSS v Belgium*.<sup>12</sup> These concern the return of asylum seekers from Member States to Greece under the Dublin System. The Courts concluded that the procedures for processing and resolving claims and the reception conditions for asylum seekers in Greece were such that to return asylum seekers there would risk breaching their human rights. The Scottish Refugee Council argued in their evidence that these court cases provide another reason why the UK should commit to a legally embedded CEAS.<sup>13</sup> They suggest it is in the UK's national interest to work with other Member States to ensure that no other country's level of protection for asylum seekers falls below an agreed standard, otherwise the UK may be one of those required to carry an additional burden. The case study on Practical Cooperation in Greece (on page 51) is an example of this. However, it is worth noting that the European courts have made plain that only 'systemic' deficiencies in a country's asylum procedure or reception conditions, of a nature and extent sufficient to constitute a breach of Article 3 of the ECHR, would suffice to prevent return.

[A shared approach can raise standards in that it prevents a 'rush to the bottom' effect whereby Member States offer progressively lower standards for fear of being the stand out attractive destination.](#)

Liverpool European Law Unit

3.24 The Liverpool European Law Unit highlighted that the recast directives seek to redress some of the deficiencies identified in the functioning of the first phase of the CEAS. They argue it is counterintuitive to continue to apply a system with acknowledged shortcomings.<sup>14</sup>

<sup>11</sup> Hugo Brady, Centre for European Reform, *submission of evidence*.

<sup>12</sup> *NS v Secretary of State for the Home Department*, Cases C-411/10 & C-493/10 and *MSS v Belgium* [2011] ECHR 108.

<sup>13</sup> Scottish Refugee Council, *submission of evidence*.

<sup>14</sup> Dr Eleanor Drywood and Harriet Gray, Liverpool European Law Unit, *submission of evidence*.



## Practical Cooperation

- 3.25 From the evidence we received there was a strong argument outlining the ongoing importance of focusing on practical cooperation measures in relation to asylum. Respondents highlighted in particular the importance of the work of the EASO and of Resettlement and Regional Protection Plans. The Government is an advocate of practical cooperation with the EU.<sup>15</sup>
- 3.26 The EU shares responsibility for managing refugees with non-EU countries and in order to improve the management of refugee flows and enhance protection capacities in the regions from which many refugees originate, the European Commission undertook to develop EU Regional Protection Programmes (RPPs) and Resettlement schemes.
- 3.27 The EU-wide resettlement scheme allows EU Member States, on a voluntary basis, to find durable solutions for refugees in third countries. Resettlement has been receiving significant financial support under the European Refugee Fund (ERF III) since 2008. There are at present ten Member States which participate annually in resettlement, one of which is the UK. As Migration Watch touch upon below, such schemes are thought to help prevent a sudden influx of asylum claims into the EU system that might arise from a crisis in a third country.

The government should continue to support EU efforts to encourage Regional Protection Programmes which are intended to allow refugees to remain close to their home country and thus, in practice, to have a much better prospect of eventual return.

Migration Watch

- 3.28 In 2012, following the humanitarian crisis in Syria, the European Commission, with the support of the Council of Ministers, began to map out and plan for a RPP for Syrian refugees in conjunction with the UNHCR. This was intended to enhance the capacities of the relevant authorities and organisations with a view to meeting the longer term challenges they will face and providing durable solutions to the plight of those who have been forced to leave Syria. The UK Government supports the creation of such an RPP and the evidence we have seen, such as that provided by Migration Watch and the Liberal Democrats Home Affairs, Justice and Equalities Parliamentary Party Committee, backed this stance.<sup>16</sup>

We acknowledge the potential of RPPs to facilitate the GAMM's work in building capacity in countries of origin and transit. We particularly welcome the recent establishment of a RPP for Syria.

House of Lords EU Select Committee Report on the Global Approach to Migration and Mobility

<sup>15</sup> Home Office, *Commitment to Write*.

<sup>16</sup> Migration Watch UK, *submission of evidence*.

3.29 Similarly, the establishment of the EASO was supported in the evidence – by the Liberal Democrats Home Affairs, Justice and Equalities Parliamentary Party Committee, Scottish Refugee Council and Liverpool European Law Unit – as a mechanism for EU wide cooperation on asylum issues. The EASO, rather than additional legislation, is thought by some to be the preferable method of moving towards a Common European Asylum System, as achieving solidarity between all member states might be unrealistic.

[The group discussed that practical cooperation through agencies such as the European Asylum Support Office \(EASO\), rather than legislative instruments, may be a much smoother way of bringing Member States closer together on an issue.](#)

European Representatives Brussels Event – 26 June

[We support practical cooperation amongst Member States of the EU and are fully supportive of the development of the EASO.](#)

Scottish Refugee Council

## Case Study – Practical Cooperation in Greece

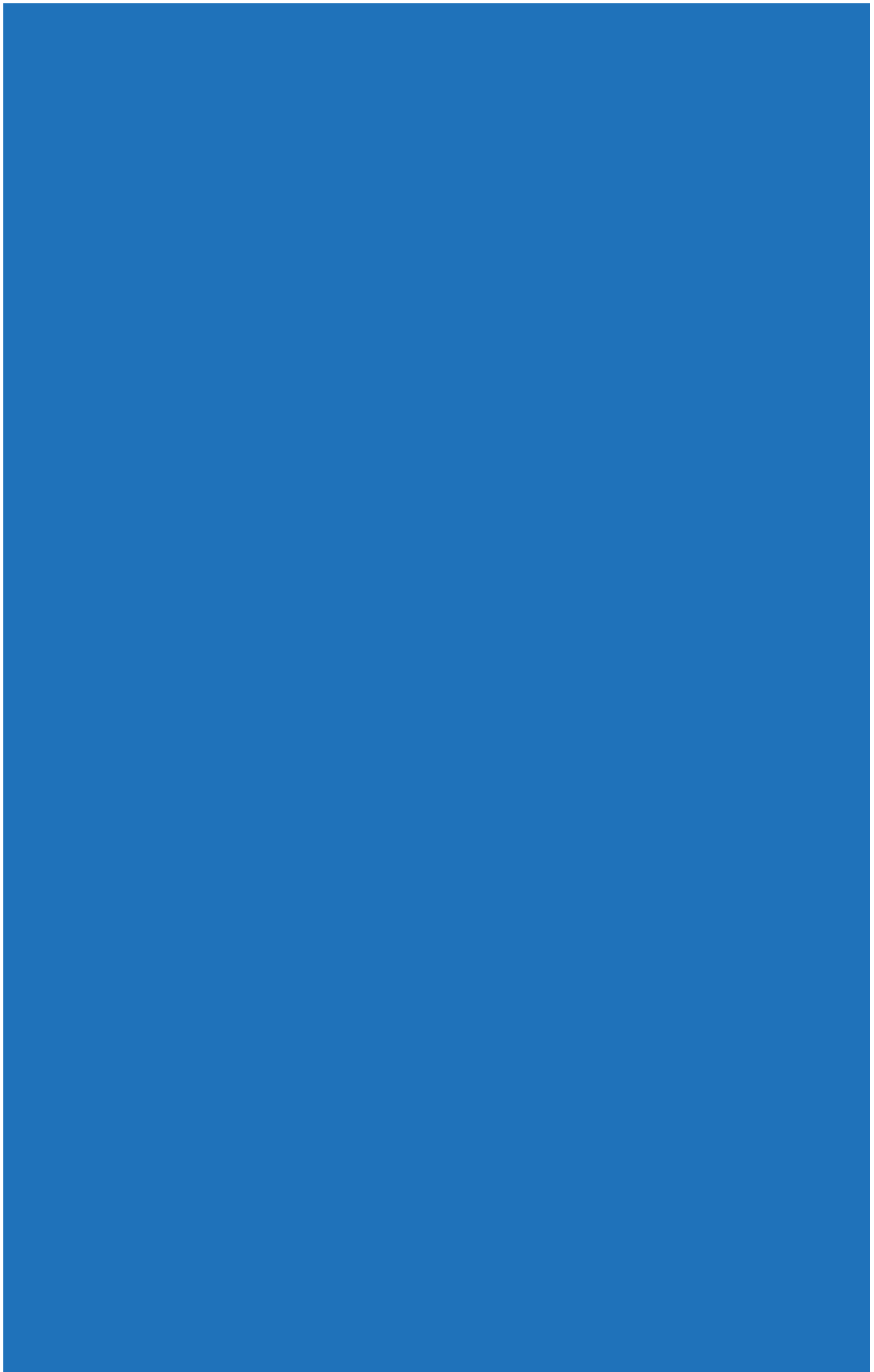
In early 2011, Greece made a request to EASO for asylum support following a major influx of illegal migrants via the Greek land border with Turkey which subsequently impacted on the management of their asylum systems.

The EU responded to this call by deploying a team of EU Member State experts to Greece to devise an operating plan which would help implement the Greek Action Plan on Managed Migration and Asylum Reform. Member States, including the UK, deployed their own asylum experts via EASO to Greece to assist with training staff in the asylum procedure, management of asylum systems, assisting with the backlog of cases and the development of reception systems and facilities.

The European Refugee Fund was also used to support Greece in these challenges and €9.8 million (approximately £8.5m) was released for emergency needs. The package focused on increasing accommodation capacity, including the provision of basic services for asylum seekers, setting up mobile medical units, and institutional support to process asylum claims.

Greece is continuing to build capacity with the support of the EU and there is still much work to be done. However a coordinated EU response has given access not just to funding but to valuable tools and expertise that Greece is using to build a more refined and robust system that can cope with these pressures. The new Greek asylum system is due to be fully operational by the end of 2014. As a result of EU intervention the external Greek border is already more secure, reducing the flow of illegal migration into the EU.

The UK continues to be engaged in efforts to support implementation of the Greek Action Plan and we have deployed over 12 UK experts to Greece to assist with asylum reforms, including the long-term deployment of a UK EU funding expert. In addition to the assistance we have provided via the EASO, the UK continues to support Greece on a bilateral basis. The UK has agreed a £2million extension of a UK funded Assisted Voluntary Return (AVR) project in Greece and has also separately contributed to another AVR project for unaccompanied minors in Greece alongside the Netherlands and Sweden.



# Chapter 4:

## Impact on the National Interest – Legal Migration from Third Countries

This chapter looks at the impact of EU competence in the area of non-EU legal migration on the UK national interest, and in particular the advantages and the disadvantages of the UK's decision to opt out of the majority of EU legal migration measures.

### Introduction

- 4.1 The EU's programme on legal migration remains relatively limited in its range. The programme relates to non-EU/EEA nationals only as EU/EAA nationals are entitled to move freely across the internal borders of the EU. A separate Balance of Competences report on the Free Movement of Persons will be published at a later date. There are a number of EU measures on legal migration issues that the UK Government has considered but decided not to opt into (see paragraphs 17-20). Instead, arrangements for the admission of non-EEA workers, students, and family members are governed by UK domestic law and immigration rules.
- 4.2 The UK Government believes that this gives the UK the freedom to adjust legal migration policy to meet the demands of the UK economy and the wider UK national interest – for example, the UK maintains its own shortage occupation list and minimum salary and income requirements – tailoring them to fit specific needs based on expert independent economic advice from the Migration Advisory Committee.
- 4.3 The EU measures that the UK has chosen not to adopt include instruments aimed at establishing common rules for a range of non-EEA migrants, including: workers; students and researchers; families (including spouses, underage children, unmarried partners, adult dependent children or dependent older relatives); and those who have resided in a Member State long term, that is at least five years legal residence.
- 4.4 While there were specific arguments for opting into certain EU legal migration Directives, the general theme in the evidence was that the UK Government is right to want to retain control over legal migration and that the UK should opt in only where a directive is likely to have clear benefits to the UK.

## Legal Migration

- 4.5 Historically the UK has not opted into such measures on the basis that successive Governments wished to:
- Retain flexibility to adjust immigration policy in response to changing circumstances in the UK;
  - Retain the ability to impose checks on the admission to the UK of third country nationals resident in another Member State; and
  - Apply their own conditions/restrictions to third country nationals resident in the UK, including in relation to their entitlements to social security and assistance.

- 4.6 While seeing advantages in the UK's participation in individual EU migration measures where these are consistent with Government policy, the House of Lords EU Select Committee Report on the Global Approach to Migration and Mobility supported the UK's desire to retain flexibility in this area.

[Member States should continue to have the right to choose the number of migrants from third countries they wish to admit to their labour markets, depending on their needs. We consider any transfer of responsibility to the EU in the management of legal migration would be undesirable.](#)

House of Lords EU Select Committee Report on the Global Approach to Migration and Mobility

- 4.7 Similarly, the CBI reflected in their evidence on the decision of the UK not to cede national control over legal migration policy to the EU.

[As long as the UK wishes to retain flexibility to manage its own immigration policies in response to domestic circumstances and labour market conditions, it is logical why the Government would continue to choose not to opt into instruments aimed at creating common rules relating to entry, stay and treatment of third country nationals.](#)

The CBI

- 4.8 The existence of very different labour market needs across Member States is one of the main reasons cited for why maintaining national competence over legal migration measures is so crucial. As the Minister for Immigration Mark Harper MP outlined in his evidence to the EU Select Committee Report on the Global Approach to Migration and Mobility, identification of skills shortages and selection of migrant workers is best achieved at the national level by bodies such as the Migration Advisory Committee and by employers themselves. The House of Lords EU Select Committee doubted whether it would be possible for the EU to accurately predict labour demand or skills shortages in the future.<sup>1</sup>

[Several of our witnesses expressed reservations about the feasibility and desirability of a more harmonised approach to labour migration in the EU. Most thought that viable labour migration policies must reflect the very different labour market needs of Member States.](#)

House of Lords EU Select Committee Report on the Global Approach to Migration and Mobility

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<sup>1</sup> House of Lords European Union Select Committee, *The EU's Global Approach to Migration and Mobility*.

## Gibraltar

Her Majesty's Government of Gibraltar explained in their evidence that it is to the advantage of the UK and Gibraltar to retain the ability to respond flexibly, promptly and with a targeted approach to their specific economic cycles and labour market needs, which are unlikely to coincide across the EU.

Individual Member States are better placed to make national assessments of economic needs and thus encourage or discourage economic migration on the basis of those assessments.<sup>2</sup>

- 4.9 The Scottish Government agreed with the argument that the UK should retain national control over legal migration policy in their evidence. They argued that by not opting into EU competences around legal migration, returns, and admissions, the UK has the opportunity to act in a way that takes into account the best interests of the CTA members.
- 4.10 Furthermore, the key message received from businesses, particularly at the event on 24 June 2013 for business and industry representatives, was that clarity around the rules and processes is paramount, and more important than whether the UK or the EU is responsible for forming legal migration policy.<sup>3</sup> As long as the rules are clear and easy to understand, the processes work quickly and effectively, and the UK is able to attract the individuals with the necessary skills into the UK labour market, they were happy for the balance of competence to remain with the UK on legal migration.

Many attendees felt that the UK did not necessarily lose out by not following the same legal migration rules as the EU. Ultimately it does not matter which set of rules businesses have to work to, as long as the rules are simple, clear, are applied effectively, and allow UK industry to get the necessary skilled people in to the country.

Business & Industry Stakeholder Event – 24 June

- 4.11 In her article 'Understanding the Diversity of EU Migration Policy in Practice' Lucie Cerna argued that the reality of EU legal migration Directives is that they tend to be implemented differently across Member States anyway, with Member States unwilling to fully give up their competence on legal migration issues.<sup>4</sup> These Directives apply to non-EU nationals. The example of the Blue Card Directive is appropriate here, with an attendee at the event of 24 June highlighting the lack of consistency in how Member States have chosen to implement this policy. The absence of a common approach to implementation suggests that even those Member States signed up the EU legal migration Directives continue to essentially make and implement legal migration policy in their national interest.

The Blue Card example indicates that Member States have not given up their competence on labour migration as they retain the right to set admission criteria and conditions.

Policy Studies Journal

- 4.12 A small number of respondents suggested that common EU labour market policies are important for the Single Market to operate effectively.

<sup>2</sup> Government of Gibraltar, *submission of evidence*.

<sup>3</sup> *Record of 24 June stakeholder event*.

<sup>4</sup> Lucie Cerna, 'Understanding the Diversity of EU Migration Policy in Practice', *Policy Studies Journal*, 33, Ed.3 (2013).

4.13 The Migrants' Rights Network outlined in their evidence that in a Single Market in which workers, students and families move around freely, particularly in an increasingly globalised world, it follows that migration policy should be taken out of the hands of national governments.

[National management of migration has not been a conspicuous success until now, and the pressures of living in an increasingly globalised world suggest that it will be more difficult for individual countries to achieve efficient regulatory systems by acting on their own in the future.](#)

Migrants Rights Network

4.14 British Telecom (BT), the Trades Union Congress (TUC), UUK and an attendee at the business stakeholder event emphasised the benefits of particular EU directives on legal migration. UUK, for example, highlighted the possible benefits of the EU Blue Card scheme. BT argued in their evidence that the proposed EU Intra Corporate Transfer Directive would help facilitate the entry into the EU of skilled and highly skilled employees for temporary periods of time. However, the Professional Contractors Group (PCG) suggested that the UK must retain a significant degree of control over its asylum and immigration policy in this area, if it is to prevent the use of Intra Company Transfer (ICT) permits to transfer large numbers of low cost workers from outside the EU.

[The proposed ICT Directive – now some 3 years under debate – is a welcome pro-competitiveness initiative which addresses a number of issues which act to impede economic growth in Europe...and will reduce existing barriers to the intra EU mobility of qualified ICTs within the EU.](#)

BT

4.15 In their response to the EU Select Committee Report on the GAMM, the UK Government explained that the decision not to opt into the EU Family Reunification Directive was made in order to retain the ability to set our own family migration policy and in the context of potential abuse of the family reunification, in particular by third country nationals.<sup>5</sup> The TUC and the House of Lords EU Select Committee argued however that a situation that admits spouses and children more readily to one Member State than another is problematic.<sup>6</sup> The Government of Gibraltar shared these concerns in their evidence.

## [Illegal Immigration \(Including Returns & Readmissions\)](#)

4.16 The UK works closely with EU partners in the return and reintegration of illegal migrants. This includes steps such as shared charter flights. The UK Government believes that practical cooperation of this sort improves the management of migration and saves money. However, the UK has not opted into the Directive on provisions for the return of illegal migrants.

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<sup>5</sup> Home Office, *Commitment to Write*.

<sup>6</sup> House of Lords European Union Select Committee, *The EU's Global Approach to Migration and Mobility*.

- 4.17 At the Brussels based stakeholder event on 26 June 2013, it was noted that the returns issue is the most difficult facing the EU on immigration and asylum, because third countries are often unwilling to take responsibility for their nationals, and that the UK had probably been wise not to opt into the Returns Directive as the result is a process that is overly bureaucratic.<sup>7</sup> Hugo Brady, in his evidence for the Centre for European Reform, supports such a conclusion.

The Returns Directive has not been easy to implement and it has been very costly.

European Stakeholder Event – Brussels – 26 June

The Returns Directive appears to have become a channel for undocumented migrants to resist their deportation on procedural grounds... Hence the UK was probably wise to remain aloof from such rules.

Hugo Brady, Centre for European Reform

- 4.18 The UK and the EU do however cooperate in relation to some of these issues. The EU has competence to conclude agreements with third countries providing for the readmission of third-country nationals who do not, or no longer, have a lawful basis of residence in a Member State. The principle underpinning such agreements is that countries should take back their own nationals, and the EU can wield more power when negotiating these agreements as a bloc rather than as individual Member States. Readmission Agreements are subject to the UK's opt-in, and the UK considers participation in Readmission Agreements (EURAs) on a case by case basis. The UK participates in EURAs with Albania, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Georgia, Hong Kong, Macau, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, and Ukraine.
- 4.19 In 2012 the UK returned over 3,000 people to countries with whom it has Readmission Agreements and the Government are committed to opting into those EURAs which it deems would be of some value to the UK. The House of Lords EU Select Committee has recommended that the Government opt in to all EU Readmission Agreements.<sup>8</sup>

## Practical Cooperation

- 4.20 As on borders and visas, and asylum issues, there is evidence to suggest that continued practical cooperation between the UK and the EU on legal migration issues, through mechanisms such as the GAMM and the 'SOLID Funds' would be preferable to further legislation.

As it is not possible to achieve a single approach across all 27 Member States, the focus should instead be on cooperation on a regional basis.

Hugo Brady – House of Lords EU Select Committee

There is a logical rationale as to why the UK should continue to work with the EU on non-legal initiatives in the field of legal migration, such as practical initiatives by the EU and Member States regarding specific migration issues such as combating illegal immigration.

The CBI

<sup>7</sup> Record of 26 June stakeholder event.

<sup>8</sup> House of Lords European Union Select Committee, *The EU's Global Approach to Migration and Mobility Report*.



4.21 On 18 December 2012, the House of Lords European Union Committee published its report on the ‘EU’s Global Approach to Migration and Mobility.’ For their report, the Committee took evidence from a wide range of stakeholders, many of whom have subsequently contributed directly to this review. The arguments for and against the UK’s continued engagement in the GAMM are outlined in detail in that report and the UK Government and European Commission’s response to the report. All three have been used as evidence for this report. The Committee broadly conclude that the GAMM is a useful framework for the EU to approach the external dimension of migration, although they suggest it would be improved by narrowing its approach and focusing on a smaller number of key objectives and instruments.

*While we believe that the control of immigration from third countries should be, as it is now, the responsibility of individual Member States, we consider that a coordinated approach by the EU and its Member States to deal with the external dimension of migration is not only desirable but imperative. The GAMM appears to provide a good framework for this.*

House of Lords EU Select Committee Report on the Global Approach to Migration and Mobility

4.22 Although we did not receive any evidence directly referring to the UK’s participation in three of the four ‘SOLID Funds’, the below case study provides an example of how the UK has used funding from the European Return Fund to assist its Assisted Voluntary Returns Programme.<sup>9</sup>

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<sup>9</sup> *The Voluntary Assisted Return and Reintegration Programme(VARRP) 2008: a process and impact assessment* Kesia Reeve, David Robinson and Nadia Bashir (The Centre for Regional Economic and Social Research, Sheffield Hallam University), Emily Eisenstein (UK Border Agency). This is available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116049/horr41-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116049/horr41-report.pdf).

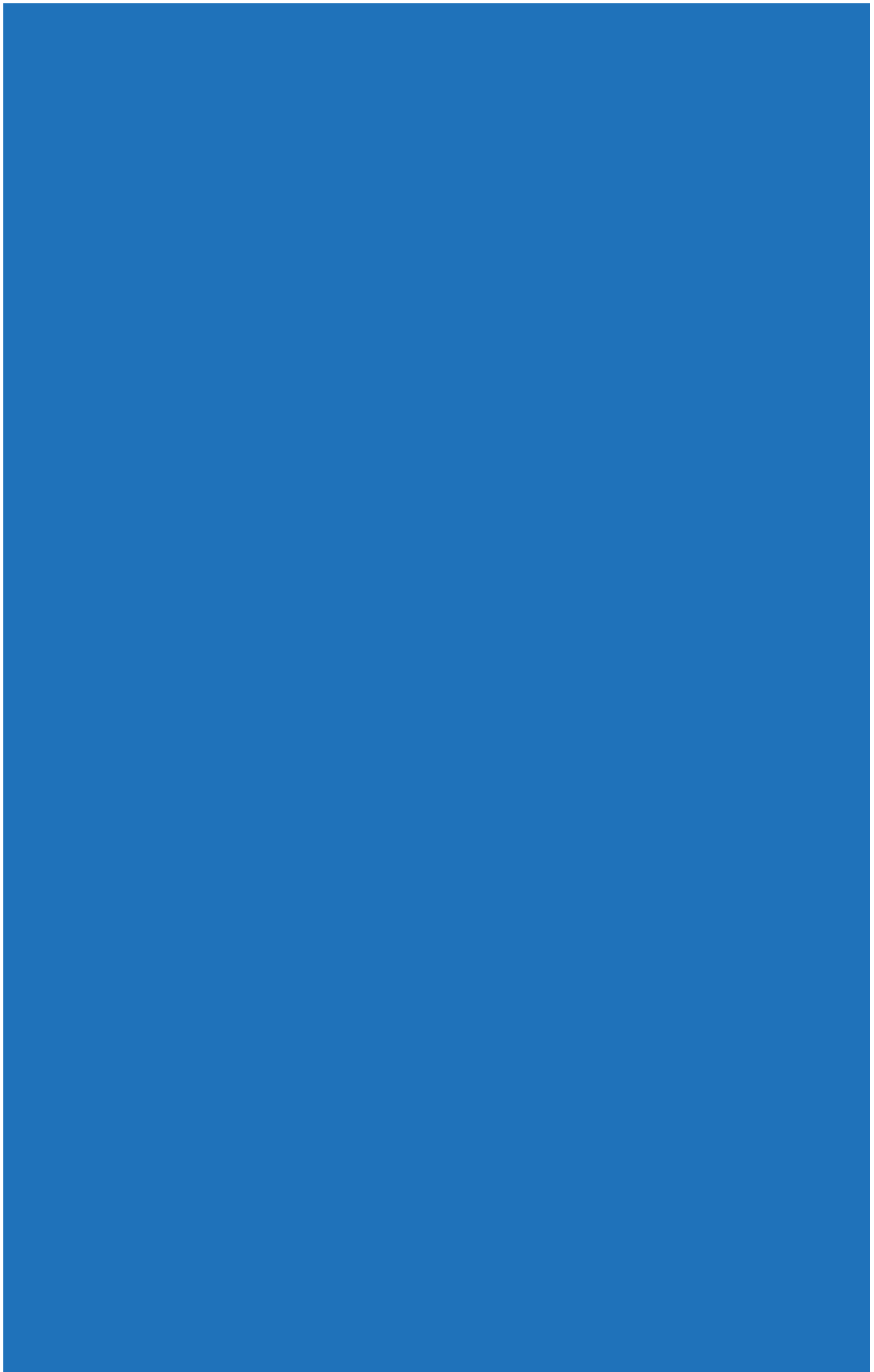
## Case Study – Assisted Voluntary Returns (AVR) and the European Return Fund (RF)

The UK's AVR programme receives funding from the European RF annually. It aims to provide migrants who do not have the right to remain in the UK with a dignified and sustainable method of returning home. The overall AVR programme comprises three schemes: the Voluntary Assisted Return and Reintegration Programme (VARRP) is aimed at migrants who are seeking asylum, which was funded in the 2008- 2010 funding years. The Assisted Voluntary Return for Irregular Migrants (AVRIM) is aimed at non-asylum irregular migrants and funded in the 2009-2010 funding years; and Assisted Voluntary Return for Families with Children (AVRFC), introduced and funded in the 2010 funding period.

The AVR programme received €15,544,587.67 over the three funding years 2008-10. This money supported delivery of the UKBA strategic objective of removing migrants without legal basis for remaining in the UK. During the 2008 to 2010 programme period, the AVR project was delivered by the International Organization for Migration (IOM) and co-funded by UKBA.

The RF was estimated to cover around 40% of the cost of AVR delivery. Over the 2008 to 2010 funding period the AVR project delivered 10,658 returns in total and delivered reintegration assistance in return countries to 6,993 people, in over 80 countries. VARRP has consistently accounted for at least one-fifth of asylum case returns. Independent evaluation by the UK National Audit Office (2009), indicated that AVR provided a cost-effective alternative to enforced removal.

In addition to providing a voluntary, dignified and supported option for return to migrants who no longer have the right to remain in the UK, the project delivers a return that is sustainable, responsibly paced and addresses the needs of vulnerable migrants. An independent qualitative evaluation of the 2008 AVR project in Pakistan highlighted the value that participants placed on the support they received. Returnees were very positive about the delivery and content of the reintegration assistance received and emphasised the help and advice provided by IOM caseworkers. Few had any resources in Pakistan, other than those provided by the businesses they had set up with the reintegration assistance, highlighting the importance of this assistance in settling returnees in a sustainable way. The research also suggested that VARRP led these participants to depart from the UK earlier than they might have done had it not been available.



# Chapter 5:

## Future Challenges

The UK's choices about the current balance of competence on asylum and non-EU migration will be tested in the coming months and years by a range of measures being introduced by both the EU and the UK Government, as set out below. The EU as a whole is facing the same border security challenges as the UK, albeit on a larger scale.

### Border & Visa Policy

#### Smart Borders Package

- 5.1 The EU intends to introduce a smart borders package of measures which are designed to improve checks at the EU external frontier whilst facilitating the movement of legitimate travellers. The package consists of a Registered Traveller Programme (RTP) and an Entry/Exit System (EES). However, Member States consideration of the 'smart borders' package of proposed measures is at an early stage and implementation remains some way off.
- 5.2 The RTP will allow frequent travellers from third countries to enter the EU using simplified border checks, subject to pre-screening and vetting. The EU estimates that five million regular business travellers, workers, students and third country nationals with close family ties to EU citizens or living in regions bordering the EU will make use of this new programme each year.
- 5.3 The EES will record the time and place of entry and exit of third country nationals travelling to the EU. The system will calculate the length of the authorised short stay electronically, and issue an alert to national authorities when there is no exit record by the expiry time, thus identifying overstayers.
- 5.4 The UK has experience in both of the above areas, including our use of API to monitor arrivals into and departures from the UK and intercept selected passengers where necessary, the use of electronic-gates at ports of entry to facilitate travel by EU nationals and potentially in the future also selected low-risk third country nationals.
- 5.5 The Government has also committed to introduce exit checks by 2015. The Home Office will continue to work with industry as its plans on exit checks develop. The Government wants to ensure that traffic at our ports and airports remain fluid and the Home Office is working closely with port operators on the range of options for delivering this commitment.

## Passenger Data

5.6 The EU is also facing the challenge of regulating the collection and processing of passenger data. The benefits of collecting such data (in terms of countering illegal immigration, crime and terrorism) in advance of travel are well known. Yet on intra-EEA routes, there have been challenges to the lawfulness of compelling carriers to provide API on passengers exercising free movement rights. As discussed in paragraph 64, the European Commission has proposed a draft PNR Directive, which would allow passenger information to be freely processed within the EU. The UK would particularly welcome such a Directive, which would clarify current uncertainty on the interpretation of both EU data protection and free movement legislation which undermines our own border security.

## Schengen Visa Liberalisation

5.7 The Schengen countries have in recent years agreed to lift the visa requirement on a number of third countries. Those decisions are of course not binding on the UK, although third countries that have benefited from such EU Visa Agreements often then expect the UK to agree to similar arrangements. More importantly, there is evidence that increased migration flows to and then within the EU do have an impact on the UK. Whilst some of the initial flows were regular and legal under the terms of the agreements, some people have abused the visa-free travel by overstaying the original permission, working illegally or by making unfounded asylum applications.

5.8 Perhaps the most significant wave of visa facilitation agreements focused on the Western Balkans during 2009-2010. Very soon after the agreements were concluded, Member States faced a sharp increase in unfounded asylum claims and other immigration abuses. Albania is a more recent example, where there was a sharp rise in asylum claims and an increase in detections at the border, either clandestine entries or attempts at illegal entry by use of false or forged documents, notably Italian and Greek national identity documents. The EU has not fully implemented a requirement for minimum security standards for EU identity documents.

5.9 As the current direction in the Schengen area is toward greater relaxation of visa rules, there will be challenges for Member States in ensuring that their social, economic and security objectives are dealt with. As a way of combating abuse arising from visa agreements, the underpinning regulation that confirms who does or does not require a visa to cross the EU external border contains a safeguard clause. When invoked, it could see the reintroduction of border controls and/or visa requirements, when one or more Schengen states is faced with an increase in unfounded asylum claims or other evidence of abuse.

## Improvements to the Schengen Visa System

5.10 As the Schengen area and other countries continue to improve their visa systems, there is the possibility of individuals being displaced from one area to another to avoid controls. The evidence to this report suggests there is support to enhance cooperation between the Schengen area and the CTA to improve visa decision-making through the sharing of data on visas issued and, vitally, refused with each other. The challenge is to find a way of doing this on terms acceptable to both, though there is a growing sense that closer alignment or data sharing opportunities would go some way towards addressing border vulnerabilities.

- 5.11 The Schengen area has a separate visa process to the UK's, with a different application and issuing system. Schengen visa applications increasingly need to be supported by biometrics as part of this process. The EU biometric visa roll out programme is continuing. It is very much in the UK's interests for it to be successful, irrespective of the outcome on data-sharing above.

## CTA

- 5.12 Although the UK is not part of the Schengen area it is part of a CTA which comprises the United Kingdom, Ireland and the Crown dependencies. The UK and Irish governments continue to work together on increased information sharing, closer alignment of visa regimes and an electronic border system to strengthen the borders of the CTA. In 2011, the Irish Government took the independent decision to introduce a visa waiver programme that allowed certain nationals to enter Ireland if they held a short term UK visa. It was hoped that this would help to increase tourist numbers to Ireland. Subject to appropriate safeguards, and to agreement between the UK and Irish governments, the UK is also working towards a pilot visa waiver reciprocation which would permit visitors from some destinations to enter the UK using an Irish visit visa, without the need for a separate UK visa.

## Asylum

- 5.13 The EU will continue to face significant asylum challenges. There is no reason to believe that pressure on Member States' asylum systems will diminish in the short to medium term, and given ongoing crises and conflict – in particular in the Middle East and sub-Saharan Africa – the pressure can be expected to grow.
- 5.14 Following the adoption of the second phase of the CEAS legislation, which was completed in June 2013, no new asylum legislation is expected in the near future. Rather, in the next period the EU's focus is expected to be twofold. Firstly, the proper implementation by Member States of the new and existing CEAS legislation that applies to them: a clear condition of EU Solidarity is for all Member States to invest in their own capability so that they can meet the obligations they have signed up to.
- 5.15 Secondly, there will be a renewed focus on practical cooperation initiatives that will build the capability of all Member States' asylum systems. The primary objective will be to ensure that all are equipped to handle the volume of asylum claims that they receive. Such an approach will help reinforce the 'Dublin system', which is designed to ensure that asylum claims will be examined properly in whichever Member State they are made and to prevent secondary movements or 'asylum shopping' within the EU.
- 5.16 The EASO, the main function of which is to support Member States in implementing the CEAS and in anticipating and responding to emerging asylum pressures, will play a key role in coordinating and delivering future practical cooperation. But for practical cooperation to be successful it will be necessary for Member States to commit resources to work through organisations such as EASO and FRONTEX and for those organisations to work effectively together to ensure that the EU's approach to border security, migration control and asylum is properly joined up and delivers value for money.

- 5.17 The issues of resettlement of refugees from outside the EU and relocation of refugees within the EU are likely to receive further attention but in both cases there is broad consensus that Member States' participation in such schemes should remain entirely voluntary. Options for the 'joint processing' of asylum claims are also likely to be explored in more detail in the next few years. The most likely outcome of this work would be the strengthening of arrangements for Member States to assist those Member States under particular pressure in considering asylum applications and preparing cases for decision, under the co-ordination of the EASO.
- 5.18 Practical cooperation is crucial to ensuring that all asylum claims are dealt with in line with international and EU standards, but is not the only objective: over the next period the EU is expected to focus more on also ensuring that there are consequences for making unfounded asylum applications by improving the effectiveness of returns of people who are found not to be in need of international protection. This reflects the EU's acknowledgments that while it is important to guarantee the rights of asylum seekers, there must also be real consequences for making unfounded claims and that an effective system of returns is essential for guaranteeing the integrity of the CEAS.

## Legal Migration

- 5.19 The European Commission has argued that Member States need a unified and more relaxed immigration system in order to remain attractive to high-skilled migrants relative to other regions. As such, it is likely to look to further expand current legislation and third country partnerships on legal migration to address labour market shortages and ensure global competitiveness. The UK will need to consider whether there are greater advantages from cooperation with Member States or from retaining an independent legal migration policy. Both the EU and the UK will need to balance the requirement for appropriate migration control whilst ensuring migration policies support and encourage growth.
- 5.20 EU decision-making will also continue to be relevant to UK migration policy in the context of trade liberalisation. The EU will continue to pursue the negotiation of ambitious trade and investment agreements between the EU and other countries, which will include commitments on the movement of personnel. The challenge for the UK will be to balance this trade liberalisation agenda, which the UK supports, with ensuring that Mode 4 commitments do not undermine its ability to manage labour migration on the basis of its own assessment of national economic need.

## Returns and Readmissions

- 5.21 The European Commission continues to seek enhanced returns arrangements with third countries, including via EURAs, which it is increasingly linking to Schengen visa negotiations. The challenge for the EU and the UK will be to continue to ensure cooperation for the implementation of these agreements.

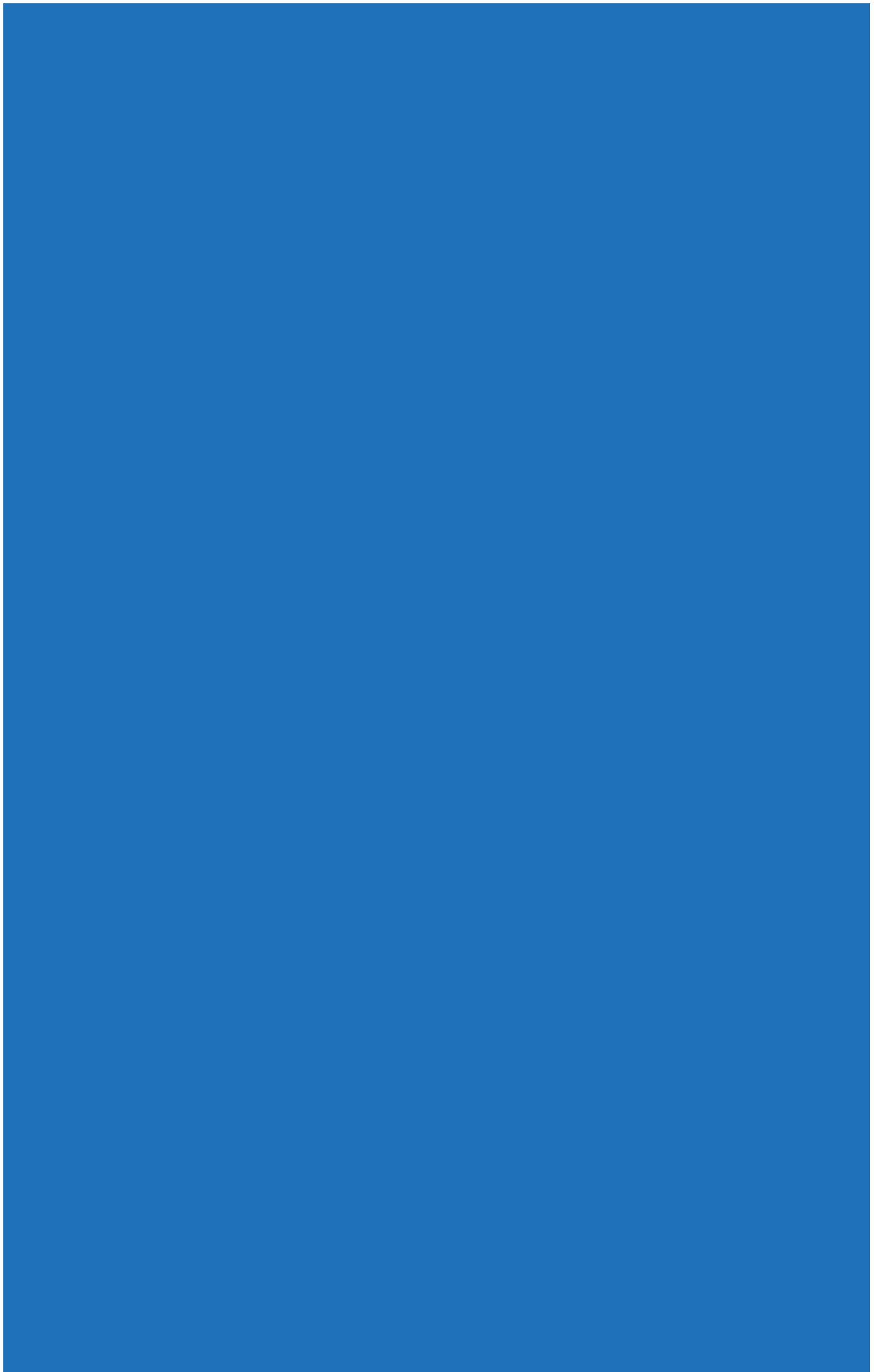
## GAMM

- 5.22 The EU is continuing to develop its external migration policy under the GAMM, and is placing increasing emphasis on the GAMM as a means of supporting the EU's Growth Agenda. This includes the development of further Mobility Partnerships, particularly in the Southern Neighbourhood, and the use of the new Common Agenda for Migration and Mobility (CAMM) instrument to enhance migration cooperation with other third countries.<sup>1</sup>

<sup>1</sup> 'Southern Neighbourhood' broadly means the countries of North Africa – in particular those with Mediterranean coastlines. The 'Neighbourhood' here is the EU's neighbourhood, as covered by the European Neighbourhood Policy.

5.23 The European Commission is increasingly emphasising the facilitation of short-term mobility and legal migration under the GAMM as a means of supporting growth, and as a lever for cooperation on combating illegal migration, as well as further developing cooperation in the areas of international protection and migration and development. It will be important in these discussions that the original aims of the GAMM are not lost and that significant progress is made on securing cooperation on illegal migration before any concessions on legal migration are made.





# Annex A:

## Submissions Received to the Call for Evidence

Alan Reid – member of the public

Anonymous – member of the public

BATA

British Chamber of Commerce

British Hospitality Association

British Ports Association

Brussels and Europe Liberal Democrats

BT

Chartered Institute of Logistics and Transport

Confederation of British Industry

CoSLA

Department for Transport Balance of Competences stakeholder event note 18 June 2013  
(Aviation)

Eleanor Drywood – School of Law & Social Justice, University of Liverpool

European Commission

European Tour Operators

Eurostar

Foreign and Commonwealth Office stakeholder event 30 July 2013

Fresh Start Project

Highspeed1

H.M. Government of Gibraltar

Home Office and DWP stakeholder event 24 June 2013 (Business and Industry)

Home Office and DWP stakeholder event 26 June 2013 (European Partners)

Home Office and DWP stakeholder event 3 July 2013 (Think Tanks and Academics)

Home Office and DWP stakeholder event 8 July 2013 (Third Sector Organisations)

Hugo Brady – Centre for European Studies

Intercontinental Hotel Group

Liberal Democrats Home Affairs, Justice and Equalities Parliamentary Party Committee

Martina Weitsch – member of the public

Migrants' Rights Network

Migration Watch UK

Office of the Justice Minister, Department of Justice, Northern Ireland

Phil Bennion MEP

Professional Contractors Group

Research Council UK

Russell Group

Scottish Government

Scottish Refugee Council

Tech London Advocates

TUC

UNHCR

Universities UK

UK Chamber of Shipping

Virgin Atlantic

Visit Britain

## Annex B: Existing Parliamentary Publications Used for Report

House of Lords EU Select Committee – The EU’s Global Approach to Migration and Mobility Report (18/12/12)

House of Lords EU Select Committee – Written evidence submitted to the House of Lords EU Select Committee on the EU’s Global Approach to Migration and Mobility Report (18/12/12)

Home Office – Home Office response to the Parliamentary debate on the EU’s Global Approach to Migration and Mobility Report (22/06/13)

European Commission – European Commission response to the EU’s Approach to Global Migration and Mobility Report (19/07/13)

Home Affairs Select Committee – Written Evidence: Asylum (09/07/13)

## Annex C:

# Legal Annex

1. Chapter two of Title V (Area of Freedom, Security and Justice) of the Treaty on the Functioning of the European Union (TFEU) is entitled 'Policies on Border Checks, Asylum and Immigration'.
2. Article 77 TFEU empowers the European Union to develop a policy to minimise internal border controls and introduce an 'integrated management system' for external borders. For these purposes, the European Parliament and the Council are empowered to develop measures on the common visa policy, checks on persons crossing external borders, conditions under which third country nationals have the freedom to travel within the Union, the gradual establishment of an integrated management system for external borders and the absence of any controls on persons crossing internal borders. If it is necessary for the Council to adopt measures on passports, identity cards or other documentation, it may do so acting unanimously after consultation with the European Parliament.
3. However, Protocol No. 20 to the treaties safeguards the right of the UK to exercise controls on persons crossing its borders (the Frontiers Protocol). It also allows other Member States to impose checks on persons travelling from the UK into their territories.
4. Article 78 TFEU empowers the Union to develop a common policy on asylum, subsidiary protection and temporary protection, with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. To that end, the European Parliament and the Council have adopted measures for a 'Common European Asylum System' (CEAS), including establishing uniformity of protection status, common procedures for the granting and withdrawing of such status, criteria and mechanisms for determining which Member State is responsible for considering an application for international protection, and standards concerning reception conditions for applicants.
5. Article 79 TFEU empowers the Union to develop a common immigration policy aimed at ensuring the efficient management of migration flows, the fair treatment of third-country nationals residing legally in Member States and the prevention of illegal immigration and trafficking in human beings. For those purposes the European Parliament and the Council have adopted measures relating to conditions of entry and residence, the rights of third-country nationals residing legally in Member States, combating illegal immigration and unauthorised residence including removal and repatriation, and combating people-trafficking. In particular:
  - Article 79(2)(b) TFEU enables the Union to enact measures in relation to social security rights for non-EU nationals resident in the EU;

- Article 79(3) enables the Union to conclude agreements with third countries for the readmission to their countries of origin of persons who do not fulfil the conditions for lawful presence in the territory of a Member State; and
  - Article 79(4) enables the European Parliament and the Council to establish measures to assist and support Member States in promoting the integration of third-country nationals residing legally in their territories.
6. In relation to all these areas, the EU and Member States share competence.
  7. These provisions are all contained within Title V of the TFEU. Protocol No 21 to the treaties (the so-called 'Opt-In Protocol') provides that the UK and Ireland have a special status in relation to such provisions. It enables the UK to choose whether or not it wishes to participate in measures proposed under this Title. If the UK 'opts in' to a measure, it is bound by it thereafter and cannot subsequently 'opt out'. If the UK does not 'opt in' within 3 months, it remains entitled to be party to negotiations on the matter. However, it has no vote and, as a result, its power to shape the proposal is likely to be significantly reduced. Thereafter, the UK may, at any stage after a measure has been adopted, indicate its wish to participate (albeit this is subject to Commission approval and conditions may be imposed upon participation).

## Border Controls

8. The main part of the EU's general competence in relation to border control is derived from the 'Schengen acquis'. This is the term used to describe a set of agreements between European states, including (and deriving from) the 1985 Schengen Agreement. The principal aim of these agreements was to limit (and ultimately to abolish) checks at the internal borders between the participating States. Under the acquis, a number of schemes have been implemented in order to limit internal border controls (for EU nationals) whilst simultaneously strengthening external border controls (in relation to the entry of third country nationals). However, while the UK participates in many of the elements of the Schengen acquis relating to cross-border police and judicial cooperation, it does not generally participate in those elements relating to border controls and immigration.
9. For this reason, the UK does not participate in the following EU border control schemes:
  - i. **The Schengen Borders Code** – Regulation (EC) No 562/2006 establishes rules governing the movement of persons across borders (including common external border checks and entry requirements).
  - ii. **The Visa Information System (VIS)** – Council Decision 2004/512/EC enables Schengen States to exchange visa data in order to facilitate controls and the issuing of visas, to combat abuse and to enhance security. Significantly, the UK is not able to participate in Decision 2008/633/JHA which enables Member States and Europol to consult the Visa Information System (VIS) in order to prevent crime. This may have an impact on border security;
  - iii. **The Schengen Information System (SIS)** – used by police, border guards, customs, visa and judicial authorities throughout the Schengen Area. It holds information and alerts on missing persons, on persons involved in serious crime, persons without rights of entry or stay in the EU, and information on stolen or lost property (for example banknotes, firearms and identity documents). Council Decision 2001/886/JHA and Council Regulation (EC) No 2424/2001 have initiated work on a new, more advanced version of the system ("SIS II"). The UK participates in SIS and SIS II insofar as they relate to police and judicial cooperation, but not insofar as they relate to borders and immigration;

10. The UK does participate fully in some Schengen measures relating to border control, and is therefore bound by them. These include:
  - i. **The Advance Passenger Information Directive:** Council Directive 2004/82/EC, which aims to improve border controls and combat illegal immigration by establishing requirements for the transmission of passenger data by carriers to competent national authorities on flights into the Schengen area from third countries.
  - ii. **Carrier's liability:** Under Article 26 of the Schengen Agreement, Schengen states are required to ensure that under their national law: (i) where a third country national is refused entry into the Schengen area, the carrier that brought them assumes responsibility for them and returns them/ transports them onwards; (ii) carriers are required to ensure that a third country national arriving by air or sea into the Schengen area has the documents required for entry into the relevant country. This requirement also applies to international carriers transporting groups overland by coach (excepting border traffic).
11. Finally, the UK, whilst not being a participant, is still capable of having limited involvement in certain other Schengen schemes, including:
  - i. **FRONTEX:** Commission Regulation (EC) No 2007/2004 established a European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX). The Agency ensures the coordination of Member States' actions in order to contribute to 'an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States'. The UK wanted to participate fully in this Regulation. However, in Case C-77/05 the European Court of Justice ruled that the UK was not allowed to take part in the adoption of the Regulation, as it constituted a development of the external borders part of the Schengen acquis into which the UK had chosen not to opt in. Accordingly, the UK is not bound by the terms of this Regulation (Case C-77/05). However, there is provision for its limited involvement: for example, it may provide operational cooperation to the participating Member States (Article 12) and exchange any information acquired with the same (Article 11).
  - ii. **EUROSUR** (European Border Surveillance System). The terms of this draft regulation, which is currently under discussion, will provide the Schengen States with a common framework to assist in countering cross-border crime and unauthorised border crossings, and in reducing the death tolls of migrants at sea. Although, again, the UK will not participate in this Regulation, it is anticipated that a degree of limited involvement will be permitted, in order to effect information exchange.

### Biometric Residence Permits

12. Regulation (EC) No 1030/2002 (as amended by Regulation (EC) No 380/2008) establishes a uniform format for residence permits for third country nationals throughout the EU. It provides that permits evidencing leave for a period of longer than six months must be in a discrete document containing the holder's fingerprints and a facial image. The UK has opted into this Regulation, and has implemented it through the UK Borders Act 2007 and the Immigration Biometric Registration Regulations 2008.
13. Regulation EC/1683/95 establishes a uniform format for short term visas for third country nationals visiting the Member States. The UK is bound by this Regulation (which pre-dates the Opt In Protocols and the Schengen Opt Out).

## Rail

14. More broadly, certain European transportation measures have an impact on border control. In particular, Directive 2007/58/EC initiated the relaxation of controls on international rail passenger services within the EU. This legislation establishes an economic framework for increasingly extensive cross border rail links, by allowing all railway undertakings with a European licence to run passenger services between EU member states. It will enable the development of international rail routes going significantly beyond those already in place. Such routes may, in due course, necessitate the formulation of alternative border control models.
15. The impact on the UK of these changes to international rail passenger services within the EU will be covered by the Semester 2 Balance of Competences Review on Transport. A particular area of concern is rail liberalisation insofar as the prospect of new high-speed intercity rail service from points of departure across the EU creates a significant challenge for both UK and Schengen border control authorities.

## Asylum

16. Between 1999 and 2005, several measures harmonising common minimum standards for asylum were adopted. These constituted ‘the first phase’ towards establishing the Common European Asylum System (CEAS). The six measures were the Dublin II Regulation, the EURODAC Regulation, the Temporary Protection Directive, the Reception Conditions Directive, the Qualification Directive and the Asylum Procedures Directive. The UK opted in to all of these Directives.

### The Dublin system: the Dublin II & Dublin III Regulations, and the Eurodac Regulations

17. Prior to the Treaty of Amsterdam, the UK entered into a number of agreements with other European countries that were not instruments of the European Community or the European Union. Perhaps the most significant of these was the Dublin Convention, which set out the criteria and mechanisms for establishing which state was responsible for examining an asylum claim brought by a third country national. Following the expansion of the EU’s competence into this area, the Dublin Convention was replaced by Regulation EC No 343/2003 (the “Dublin II” Regulation). Its operations were facilitated by the creation of the EURODAC fingerprint database, which was established by Regulation EC No 2725/2000 (the EURODAC Regulation).
18. The central principle of the Dublin System founded upon these Regulations is that an asylum application should be examined by a single Member State, identified by the criteria and principles set out in the Dublin II Regulation. The basic objectives of the Regulation are to prevent abuse of the asylum system (by way of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States – so-called ‘forum shopping’), and to enable the Member State responsible for examining an asylum claim to be identified as quickly as possible.
19. The Dublin System provides that asylum applicants who have previously claimed asylum or been issued with a visa or residence permit in another participating State, or have entered such a State illegally, or have family or humanitarian connections with such a State, may be transferred to that State, which will then be responsible for assessment of the merits of the asylum claim.



20. Council Regulation EC No 2725/2000 established the 'EURODAC' system: a biometric fingerprint database, which enables Member States to verify whether an asylum applicant or illegal entrant has previously entered or claimed asylum in another Member State. It aims to make it easier for Member States to determine responsibility for examining an asylum application.
21. The Evaluation Report prepared by the Commission on the Dublin System found that the Regulation is generally applied in a satisfactory manner, and provides a workable system for determining responsibility for the examination of asylum applications.<sup>1</sup> Nevertheless, the Commission brought forward a recast (amended) Dublin Regulation (known as 'Dublin III') in order to extend the scope of the Dublin Regulation to include subsidiary protection, to better specify the circumstances and procedures for applying both the sovereignty and humanitarian clauses and to clarify the applicability of the rules to unaccompanied minors. Dublin III (Regulation EU No 604/2013) came into force on 1 January 2014.
22. Similarly, the Commission proposed a recast EURODAC Regulation to more closely define deadlines for transmitting data to EURODAC, and to enhance provisions on data protection. The recast Regulation (EU No 603/13) also includes new provisions to permit national law enforcement authorities and EUROPOL to access the database in defined circumstances.
23. The UK opted into the proposals to recast both the Dublin and EURODAC Regulations, and is therefore bound by both instruments..
24. Perhaps the most significant cases on Dublin II are the decisions of the ECJ in *NS v Secretary of State for the Home Department C-411/10 & C-493/10* and that of the European Court of Human Rights in *MSS v Belgium [2011] ECHR 108*. Both cases concerned the return of asylum seekers from Member States to Greece under Dublin II. The Courts confirmed that there is a presumption that Member States are safe countries who will not breach the human rights of an asylum seeker (either by refoulement or other means). However, this presumption can be rebutted. The Courts concluded that there were 'systemic deficiencies' in the procedures for processing and resolving claims, and the reception conditions for asylum seekers in Greece, which gave rise to a 'real risk' that returnees would be subjected to inhuman or degrading treatment. In these circumstances, the Courts concluded that to return asylum seekers to Greece would breach their rights under the European Convention on Human Rights ("ECHR"). For this reason, the UK does not currently return asylum seekers to Greece under the Dublin Regulations.

### Reception Conditions Directive

25. The Reception Conditions Directive (Directive 2003/9/EC) establishes minimum standards for reception conditions for asylum seekers throughout the EU. It sets out the minimum rights of asylum seekers on arrival in a Member State, including rights of access to welfare, education, employment and services.
26. An evaluation report by the European Commission to the European Parliament and the Council found that the discretion allowed by the Directive undermined the objective of 'harmonising' (or creating a 'level playing field' in relation to) reception conditions.<sup>2</sup> To address this, the Directive has been recast in key particulars, including guaranteeing certain material reception conditions (Directive 2013/33/EU). The UK has not opted into the recast Directive and therefore will continue to remain bound by the original Reception Conditions Directive.

<sup>1</sup> Available at: [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0299:FIN:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0299:FIN:EN:HTML).

<sup>2</sup> Available at: [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0745:FIN:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0745:FIN:EN:HTML).

## Qualification Directive

27. The Qualification Directive (Directive 2004/83/EC) sets minimum standards for the consideration and granting of refugee or subsidiary protection status to third country nationals or stateless persons, and the content of the protection to be granted to them. The Directive also provides that persons who have committed certain crimes (including war crimes or crimes against humanity) may be refused refugee or subsidiary protection status; and that holders of status may lose it in certain circumstances (for example on voluntary return, or following change in conditions in the country of origin).
28. The Directive further obliges Member States to guarantee certain rights for persons qualifying for refugee or subsidiary protection status. These include rights of non-refoulement, to a residence permit (of specified length), to a travel document, to employment, to education, to medical care and to access to programmes facilitating integration into the host society.
29. The Commission reported to the European Parliament and the Council in June 2010 on the implementation of the Qualification Directive.<sup>3</sup> The report identified ambiguities in the Directive which led to widely divergent interpretations by Member States and, consequently, significant disparities in provision. In December 2011, a revised Qualification Directive was adopted (*Directive 2011/95/EC*). The UK has not opted into the re-cast Qualification Directive and remains bound by the original Directive.

## Asylum Procedures Directive

30. The Asylum Procedures Directive (2005/8/EC) establishes minimum procedures for the assessment of asylum claims. It seeks to establish basic safeguards for asylum applicants, whilst enabling EU States to preserve the particularities of their national procedures.
31. To this end, the Directive sets requirements in relation to the provision of information about procedures, opportunities for a personal interview, access to legal assistance and appeal rights. It establishes minimum requirements for the decision-making process. Finally, it defines common standards for the application of certain concepts and practices, including the ‘safe third country’ and ‘safe country of origin’ principles.
32. The Directive also makes specific provision for derogation from these procedures in certain circumstances – for example, at borders, or when an asylum application is deemed to be inadmissible because another Member State is responsible for examining it under the Dublin II Regulation.
33. The Commission’s Evaluation Report to the European Parliament and the Council in September 2010 considers that differences between asylum legislation and practices persist in spite of the implementation of the Directive.<sup>4</sup> As a result, an amended Directive (2013/32/EU) was brought forward by the Commission. The UK has not opted into the recast Directive and therefore will continue to be bound by the original Asylum Procedures Directive.

<sup>3</sup> Available at: [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0314:FIN:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0314:FIN:EN:HTML).

<sup>4</sup> Commission report to the European Parliament and the Council on the application of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, 2005.

## Immigration

### EU Migration Funding

34. The EU has established a programme of funding to ensure the fair sharing of responsibility between Member States for the financial burdens arising from management of the Union's external borders, and from the implementation of common asylum and immigration policies. Such funds are currently managed and allocated through the General Programme 'Solidarity and Management of Migration Flows'. This consists of four instruments: the External Borders Fund, the European Return Fund, the European Refugee Fund and the European Fund for the Integration of Third Country Nationals – together known as the SOLID funds. In the period 2007 – 13, the SOLID funds allocated almost 4 billion Euros among the Member States.
35. The External Borders Fund (established by Decision No 574/2007/EC) provides financial support to Member States to assist in responding to pressures on the external EU borders. The UK has not opted into this Directive, and so does not benefit from this Fund.
36. The Return Fund, established by Decision No 575/2007/EC, seeks to facilitate the return of third country nationals to their country of origin by providing practical and financial support for return and reintegration, and providing specific assistance to vulnerable returnees. The Fund also provides financial assistance in cases of forced return.
37. The Refugee Fund, established by Decision No 573/2007/EC seeks to support Member States in receiving refugees and displaced persons. It assists in the provision of access to consistent, fair and effective asylum procedures, and supports integration into the host society. It provides for emergency measures to address sudden influxes of displaced persons.
38. The Integration Fund, established by Council Decision 2007/435/EC supports initiatives facilitating the integration of non-EU migrants into European societies.
39. The SOLID Funds only have effect until 2013. The Commission proposal 'A budget for delivering the Europe 2020 Strategy' for the next Multi Annual Financial Framework, adopted on 29 June 2011, aims to simplify the structure of expenditure instruments in this area for the period 2014-2020. It is envisaged that the SOLID Funds (together with two other funds in the fields of 'home affairs') will be replaced by two programmes: the Asylum and Migration Fund and the Internal Security Fund. The former is intended to support the development of common policy on asylum and immigration and to enhance the effective management of migration flows throughout the Union. The latter is intended to support the implementation of an Internal Security Strategy and the EU approach to law enforcement cooperation, including the management of the Union's external borders.

### EU Readmissions Agreements

40. Under Article 79(3) TFEU the EU has competence to conclude agreements with third countries providing for the readmission of third-country nationals who do not, or no longer, have a lawful basis of residence in the Member States. The principle underpinning such agreements is that countries should take back their own nationals. Readmission Agreements are subject to the UK's 'opt-in'.
41. The UK participates in Readmission Agreements ('EURAs') with Albania, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Georgia, Hong Kong, Macau, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, and Ukraine. It has also opted in to the EURA with Turkey (which has not yet been concluded). The UK has not opted in to EURAs with Cape Verde and Armenia.

## Turkish Nationals

42. Turkish nationals retain a unique legal position in the UK. This derives from the Turkish European Communities Association Agreement ('the ECAA' or 'Ankara Agreement'), an agreement entered into between the Republic of Turkey and the Member States of the then European Economic Community in 1963. An 'Additional Protocol' to the ECAA was signed in 1970: this contains the so-called 'standstill clause' for self-establishers and service providers (in relation to which see further below). The UK became bound by this agreement when it entered the Community in 1973.
43. The ECAA creates certain obligations in respect of the entry and/or stay of Turkish nationals seeking to establish themselves in business in the UK, and (together with Association Council Decision 1/80) of Turkish workers' access to the labour market. Turkish citizens remain subject to UK immigration control, but the Agreement and Association Council Decision limit the restrictions which the UK is able to place on:
  - i. self-establishment or the provision of services by Turkish nationals in the UK; and,
  - ii. the conditions of access to employment applicable to Turkish workers and members of their families legally resident and employed in the UK.
44. In particular, the so-called 'standstill clauses' in the ECAA and Council Decision 1/80 mean that the relevant categories of Turkish national continue to benefit from the more generous immigration provisions in place in the UK in 1973, notwithstanding more restrictive provisions established subsequently.
45. The ECJ has jurisdiction to interpret provisions of the ECAA. In so doing, it looks to the future accession of Turkey as an underlying objective of the measures in question. It is therefore expansive in its view of entitlements under the ECAA.

## Directives in relation to which the UK has chosen not to Opt In

46. The EU has adopted or is considering a number of Directives on immigration matters which the UK has *not* opted into. These can be summarised as follows:
  - The Highly Qualified Persons Directive (Council Directive 2009/50/EC) which seeks to encourage the entry of highly qualified migrants into the EU. Among another other innovations, this Directive creates the EU Blue Card, a special residence and work permit facilitating access to the labour market and entitling holders to certain favourable socio-economic rights (including rights to social security);
  - The Single Permit Directive (Council Directive 2011/98/EU), creating rights (including rights to social security) for non-EU workers who are legally resident in the EU but have not yet obtained long term resident status;
  - The Family Reunification Directive (Directive 2003/86/EC), enabling family members of third-country nationals residing lawfully on the territory of the EU to join them in the Member State in which they are residing, and determining the conditions under which such reunification is granted;
  - Directive 2003/109/EC, concerning grants of status and rights to social security of non-EU nationals who are long term residents; and Council Directive 2004/114/EC, setting out common rules of admission for non-EU nationals to the EU for the purposes of (broadly) study;

- Council Directive 2005/71/EC, providing for a fast track procedure for the admission of non-EU nationals for the purposes of undertaking research (and conferring rights in relation to social security);
- The Returns Directive (Directive 2008/115/EC), seeking to establish fair and transparent procedures for granting status to, or returning, irregular migrants;
- Directive 2009/52/EC, targeting the employment of non-EU nationals illegally resident in the EU, in order to counteract illegal immigration;
- The proposed Directive for intra-corporate transfer of non-EU skilled workers (currently under discussion), designed to assist corporations to transfer their non-EU employees to branches and subsidiaries within the EU; and;
- The proposed Directive on seasonal employment (currently under discussion), designed to encourage the entry of non-EU workers in order to take up seasonal employment, and to ensure that such workers are not subject to exploitation and sub-standard working conditions.

## Summary

47. The UK has chosen to be bound by approximately one third of all the EU measures in this area, participating in fewer measures as the EU's reach has increased, whilst continuing to be involved in practical cooperation initiatives, such as the EU Migration Network and the Migratory Pressures Roadmap. The choice of measures has reflected the UK's evolving priorities in this field.

# Annex D:

## EU Asylum & Immigration Directives Summary

EU Measure	UK Opt-in
<b>Legal Migration</b>	
Family Reunification Directive 2003/86/EC	No
Long-Term Residents Directive 2003/109/EC	No
Students Directive 2004/114/EC	No
Researchers Directive 2005/71/EC	No
Blue Card Directive 2009/50/EC	No
Single Permit Directive 2011/98/EU	No
Intra-Corporate Transfers Directive	No
Seasonal Workers Directive	No
Regulation on the establishment of an evaluation and monitoring mechanism to verify application of the Schengen acquis	Yes
<b>Irregular Migration</b>	
Carriers Sanctions Directive 2004/82/EC	Yes
Returns Directive 2008/115/EC	No
Employer Sanctions Directive 2009/52/EC	No
Human Trafficking Directive 2011/36/EU	Yes
<b>Asylum</b>	
EURODAC Regulation (EC) No 2725/2000	Yes
Recast EURODAC Regulation	Yes
Dublin II (EC) No 343/2003	Yes
Recast Dublin III Regulation	Yes
Temporary Protection Directive 2001/55/EC	Yes
Reception Conditions Directive 2003/9/EC	Yes
Recast Reception Conditions Directive	No
Qualifications Directive 2004/83/EC	Yes
Recast Qualifications Directive	No
Asylum Procedures Directive 2005/85/EC	Yes
Recast Asylum Procedure Directive	No

EU Measure	UK Opt-in
<b>Agencies</b>	
Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)	No. Opt-in did not apply
Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice	Yes
European Asylum Support Office Regulation 439/2010	Yes
<b>Systems</b>	
Regulation (EC) No 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas	No. Opt-in did not apply.
Draft Regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR)	No. Opt-in did not apply
<b>Financial Instruments (for the next Multiannual Financial Framework for 2014 to 2020)</b>	
Asylum and Migration Fund Regulation	Yes
Internal Security Fund (police cooperation, preventing and combating crime, and crisis management) Regulation	Yes
Internal Security Fund (external borders and visa) Regulation	No. Opt-in did not apply
General provisions on the Asylum and Migration Fund and the Internal Security Fund (police cooperation, preventing and combating crime, and crisis management) Regulation	Yes
Draft Regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR)	No. Opt-in did not apply