



## Asylum & Non-EU Migration Balance of Competence Report – Evidence

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### **Submission 1**

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<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

In my view the disadvantages outweigh the advantages. It increases the cost of border control because there have to be two controls at EU/UK borders. If the UK were part of the Schengen Protocol costs could be saved and used more effectively, maybe on issues like people trafficking.

The message that the opt-out sends is that the UK does not trust other EU Member States to control borders effectively. That is not a helpful message. By being part of the protocol, the UK could have more input into sharing best practice and ensuring that common standards are adopted across all EU borders.

It is, in other words, not just about cost savings but also about effectiveness and solidarity with other EU Member States who might benefit from UK participation.

2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

As far as I understand it, a UK (or other Member State) opt out has no impact on EU competences as such; it only has impact on EU competences in relation to the particular policy area subject to the opt-out and only in the Member State concerned.

So, essentially, the EU continues to make decisions, which in one way or another impact the UK but the UK has no say in the matter. In my view, that is not in the interest of the UK as a full member of the EU. It's always better to have a say than not to have one.

The question regarding the 'national interest' is impossible to answer as there is no clear definition or even common understanding of the term 'national interest'; my view is that being part of the EU is in our best interest; but I know that many would not agree with me.

3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

The challenges are clear: there is a serious problem of people trafficking and a kind of slave trade which is significantly helped by the difficulties people face in obtaining access to legal immigration. People trafficking and slave trade cannot be in the national interest of any country that is democratic and based on the rule of law.

The question is: how do we deal with this? The general response is to batten down the hatches. But this just makes it a bigger problem. The greater the barriers to legal immigration the higher the price that can be extracted from people who try to get round the barriers; that makes people trafficking more attractive because more money can be made. Hence, it's more of a problem.

The answer would be to have more liberal immigration policies, coupled with policies that will support a just global economy, which will reduce the incentives for migration.

4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?

N/A

5. Are there any other general points you wish to make which are not captured above?

Some of the questions are reminiscent of A-level essays rather than short questions for short answers. The reference to 'the national interest' without defining at least what you mean by this, imports an undertone of the sort of answer you are seeking or expecting.

I welcome a society that is diverse in all sorts of ways. We should celebrate that. I think it is a pity that as a result of the ill-judged rhetoric of a vocal minority (UKIP and co) this government has allowed itself to be painted into this corner of having to weigh up the national interest against cooperation across the European Union.

There is a lot wrong with the EU, no doubt; there is also a lot wrong with most national governments - ours included. But we won't improve things by harking back to some island mentality in the midst of ever-growing globalisation of everything. Globalisation may not be to our taste - and in some areas it has had serious detrimental effects on the lives of many - mainly in developing countries; but it is a fact that can't be rolled back.

## The EU and Asylum

6. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?

Clearly, by having common rules across all Member States, the implementation of these rules is simpler and more straightforward and should also assist asylum seekers in understanding the system. Whether that is born out by reality is another issue.

One of the disadvantages is that a common system and common rules can lead to a race to the bottom (i.e. the lowest standards are applied so that all can agree) and that is a negative aspect of such a system. Refugees are people who need our help; to deny them this is wrong.

I am proud to live in a country that protects refugees; but much more needs to be done to protect people who have fled war, torture and persecution. The UK should lead from the front and be part of a common system.

7. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?

See my response to Q 2 above.

8. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?

So long as there is war, famine, torture, and oppression anywhere in the world there will be refugees. The only answer to this problem is to solve these underlying issues in a peaceful way. This won't be done overnight; so the UK and other EU Member States will continue to find themselves in a position where refugees will continue to come and will need protection.

Climate change may well make this worse.

We should ensure that we have the systems in place to ensure that we can help people who need our help. All people are created equal and are entitled to the same human rights; if we believe (and I do) that no one should be tortured than that must include all people in all countries.

9. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

Again, without a definition of national interest, this question can't be answered properly. However, and given that refugees are people who need and deserve and have a right to assistance, then I think questions of national interest - almost irrespective of how they are defined - have no place in this discussion.

10. Are there any other general points you wish to make which are not captured above?

I think refugees should be treated well; they should be given a place of safety; financial, social and psychological support; a warm welcome, and time to put their lives together again. Only if that is the basis on which we deal with this policy area - whether in the UK or at EU level - will we have any chance of getting it right.

## The EU and Legal Migration

11. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?

Given that I can see little difference in the general approach to migration between the UK and most other EU Member States, I don't see why the UK isn't willing to be part of the overall system.

One system would make it more transparent, easier to understand, and less likely to be circumvented; the UK being part of this would mean the UK would have as much influence as the other Member States on the rules.

The government is kidding itself and the electorate if it is saying that having a different set of rules ensures that there is somehow more control.

And in any event, I don't believe stricter controls are in our best interests.

12. If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?

See my response to Q 2 above

13. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?



The main challenge in my view is the media hype around migration; that's what needs to be addressed.

At the moment and at a time when public services are under pressure from an ideology and rhetoric which sees everything as inherently inefficient and bad if it is delivered in the public sector, there is a real problem with people feeling they aren't getting 'their fair share' of public services - such as housing and health care and education.

The media, and to a certain extent political parties in and out of government have decided (apparently) to take the option of blaming 'immigrants' for the pressure on public services. This is shameful and the government should do all it can to counter this - rather than to play into this narrow-minded and misguided ideology.

14. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

Unfortunately, the UK is not alone in being obsessed with 'keeping migrants out'. So in that sense it is hard to understand why the UK has to go it alone on some of the border and visa competences. Migration is normal in society; some people want to up sticks and go elsewhere to find a better life; Britain in particular should understand this, as that is what underpinned the Empire.

So it would be far better to have policies that welcome migration and migrants **and** policies that contribute to a fairer global economy; that way, people wouldn't come to Europe (and the UK as part of that) because they are escaping hunger and hardship but because they actually want to be here. I moved from Germany to the UK many years ago because I actively wanted to live in the UK; it wasn't an escape from anything. It is a far better basis than coming in desperation and illegally. But stopping illegal immigration could also be done by not making it illegal.

15. Are there any other general points you wish to make that are not captured here?

Migrants contribute significantly to the UK economy; some parts of our economy would fall apart if migrants weren't here to do the jobs.

Migrants do not make disproportionate demands on public services, so the government has, in my view, a responsibility to say so and to lead on this discussion at EU level.

There may be some degree of abuse (there have been stories about access to the NHS being sold abroad - see Panorama programme in Oct 2012) but the short answer is that by opening borders and being more welcoming - coupled with global economic justice policies adopted by the richer nations - we would actually stop the abuse and remove lucrative sources of income from criminals. That would be a goal worth working for and it could be done at EU level.

## **Submission 2**

<b>Name</b>	Alan Reid
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<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
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<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input checked="" type="checkbox"/> x	British citizen, retired in Belgium

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

### 5. Are there any other general points you wish to make which are not captured above?

The mentions of 'Border Checks' in this consultation, and in that on Free Movement, taken separately or together, are muddled and deficient. They do not provide a basis for comment above.

Inexplicably, there is more detail here on border checks on UK and other EU/EEA nationals than in the other consultation. Thus: *'Border Force Officers in exercising their Schedule 2 powers can examine EU/EEA nationals to establish their identity and nationality and their right to admission, as they can with all other entrants'*. The wrong impression is given that Officers can legally treat UK and other EU/EEA nationals on the same basis as other nationals (see below).

The juxtaposed UK immigration checks in France and Belgium are mentioned (but not the corresponding juxtaposed checks in the UK). In my limited experience, UK juxtaposed officers also conduct Eurostar ticket checks on UK and EU/EEA nationals, which are disproportionate and have no basis in EU law (i.e. they are only 'administrative' checks).

UK exit checks on British and non-British nationals are then mentioned. The wording gives the misleading impression that exit checks are the norm, and that it would be meaningful to establish whether an EU/EEA national had *entered* 'lawfully'.

It would have helped understanding if the Home Office, in both this consultation and the Free Movement consultation, had referred to the following article within the Free Movement Directive 2004/38:

*"Without prejudice to the provision on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport... no entry visa or equivalent formality may be imposed on Union citizens".*

In other words, for British and other EU/EEA nationals entering the UK, formalities such as stamping a passport, or questioning, are not allowed (except in delimited circumstances). Moreover, no mention is made of how, under the Directive, UK citizens can enter other Member States without their passport being stamped, or being questioned.

### **Submission 3**

**From:** [REDACTED]  
**Sent:** 23 July 2013 11:21  
**To:** Asylum&ImmigrationBoC  
**Subject:** FW: Submission to Balance of Competences

Please find links below to submissions on behalf of the Fresh Start Project (the files seem to be too large to send).

<http://www.eufreshstart.org/downloads/immigration-chapter.pdf>  
<http://www.eufreshstart.org/downloads/making-the-most-of-free-movement.pdf>  
<http://www.eufreshstart.org/downloads/appg-for-european-reform-report.pdf>  
<http://www.eufreshstart.org/downloads/manifestoforchange.pdf>

Please let me know if you would like further information.

With best wishes,  
[REDACTED]

## **Submission 4**



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**BY EMAIL ONLY:**

[Asylum&ImmigrationBoC@homeoffice.gsi.gov.uk](mailto:Asylum&ImmigrationBoC@homeoffice.gsi.gov.uk)

25 July 2013

Dear Sirs

### **BALANCE OF COMPETENCES REVIEW: ASYLUM AND IMMIGRATION**

The UK Chamber of Shipping, the trade association for the UK shipping industry, is pleased to respond to your call for evidence to your review of the Balance of Competences relating to Asylum and Immigration. Our membership comprises 140 companies, who operate a total of nearly 1,000 ships across all shipping sectors.

The UK Chamber of Shipping's interest lies in border controls undertaken in ports, which have an impact on the operation of shipping services. Ships are not affected by in-country processes related to asylum or the management of migration, and we therefore make no comment about them. This response is accordingly confined to your questions 1-5, relating to the EU and the UK border.

All ships trading to UK ports from overseas are liable to UK border controls in respect of their crew but such controls must be outside the scope of this review, since controls on ships' crew are derived from international Conventions adopted by UN bodies and are therefore not affected by the balance of competences between the UK and the EU.<sup>1</sup>

The balance of competences is relevant only in the context of border controls on ships' passengers, and this response accordingly relates only to ferry and cruise traffic. Approximately 17 million passengers travelled to/from the UK on ferry routes subject to immigration control in 2012 (with a further 2.7 million on ferries between the UK and the Republic of Ireland), and 1.6 million passengers passed through UK ports at the beginning and end of an international cruise.<sup>2</sup>

#### ***1. What are the advantages or disadvantages of the UK opting out of the***

<sup>1</sup> The FAL Convention, adopted by the International Maritime Organization in 1965, and Conventions No 108 and 185, adopted by the International Labour Organization in 1958 and 2003 respectively.

<sup>2</sup> Department for Transport Sea Passenger Statistics, published February 2013.

## ***border and visa aspects of the Schengen Protocol?***

A) Intra-EU travel (i.e. all international ferry services, and most cruises)

### **Advantages:**

a) None

### **Disadvantages:**

a) Hassle and delays for passengers

The direct consequence of the UK opt-out is that the UK is permitted to operate checkpoints at ports where passengers enter the UK from another EU country. At virtually all such places, the checkpoints fail to process ferry passengers in a timely manner, resulting in lengthy delays in slow-moving queues. Last summer (2012), delays of 84 minutes were recorded in Portsmouth, 90 minutes in North Shields, and 115 minutes in Hull. The Border Force's own statistics show that some passengers<sup>3</sup> spend longer queuing at the UK checkpoint in Calais than crossing the Channel. This is an inconvenient, stressful, and (especially during hot summer weather) unpleasant experience for the passengers concerned. A photograph of the queue of traffic held up at the Border Force checkpoint in Calais last Friday (19 July 2013) is at annex hereto: the line of coaches stretched back onto the motorway, representing a serious risk to the passengers; the further hazard of hot, bored and frustrated passengers getting out of their vehicles to cool off on the roadside is obvious.

At Calais and Dunkirk, where the UK border control is performed prior to embarkation for the UK, these delays can and do result in passengers missing the sailing on which they were booked. This, again, is inconvenient and stressful for the passengers, and it is particularly disruptive when they are travelling by coach and designated accommodation and onboard meals have been pre-booked for the group, as these cannot be readily provided on a subsequent sailing.

b) Dead costs for operators and passengers

The operation of border controls at UK ferry ports leads to expenditure by the operators of those ports in providing facilities (land, buildings, utilities, etc) for those controls. Their costs in doing so are recovered through their tariffs to ferry operators, which are then reflected in the ticket prices charged to passengers and freight customers. Ferry and cruise operators also face a number of additional direct costs as a consequence of the existence of border controls on their traffic, such as IT costs to share manifest data with the Border Force and costs associated with penalty regimes. Cruise operators incur direct costs (which have no basis in law but are imposed nonetheless by the Border Force) for Border Force attendance

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<sup>3</sup> Border Force Queue Management report (Regional 6-month Queue Performance Summary, July-Dec 2009), 6 January 2010.

at some ports where their ships call in order to land passengers for day visits or excursions.

None of these costs yield any benefit whatsoever to the passengers and freight customers who ultimately bear them. They are dead costs, which inflate the ticket price and/or preclude investment in superior facilities and services.

c) Wilful obstruction of the Single Market

The UK's protocol relating to border controls does not affect the right of EU nationals to enter the UK freely from another EU country; it merely allows the UK to check that a person *is* a national of an EU country and therefore that he has that right. For the first few years of the Single Market, the UK border control was performed in a manner that broadly achieved the effect of confirming nationality without obstructing the right of free movement.

In 2004, however, the nature of the border control was deliberately changed in order to make it more obstructive, making passengers arriving by coach from Poland and other Eastern European countries that had just joined the EU get off their vehicles and wait in long queues. The border control has been made wilfully more obstructive on a number of occasions since then, ostensibly on security grounds.

The European Commission stated in 1992 that if “member states are still able to check whether a person wishing to cross a border is a national of the member state and whether he or she constitutes a danger to public order, public security or public health, [the right of free movement] will be a dead letter”. The Home Office has achieved precisely that outcome.<sup>4</sup>

d) Suppression of the market

The wilful obstruction of free movement within the Single Market has coincided with a significant fall in the number of ferry passengers. Passenger numbers, which grew steadily in the early years of the Single Market, have declined by 25% since 2003 (the year before obstructive controls were put in place), and ferry passenger numbers in 2012 were at their lowest level since 1977.

There is clearly no basis to attribute this fall solely to the effect of UK border controls. Other factors – such as the opening of the Channel Tunnel, changes in the holiday market consequent on the growth of no-frills airlines, and the economic recession and devaluation of Sterling – are also relevant. However, there is strong anecdotal evidence that queues and hassle are an effective deterrent to discretionary travel, and it is obvious that money spent on supporting border controls has not been spent (as it could have been) on investing in facilities that deliver benefits to passengers or freight customers or on reducing the cost of travel.

*B) Sailings between the UK and non-EU ports*

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<sup>4</sup> Commission Communication on “Abolition of Border Controls”, SEC(92)877 final, dated 8 May 1992.

The only passenger sailings that fall into this category are the small number of long cruises, such as trans-Atlantic crossings, that sail directly between the UK and a very distant port without stopping in between. The UK opt-out from the border and visa aspects of the Schengen Protocol has had no discernible effect, advantageous or otherwise, on such sailings.

**2. *If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?***

If the UK had not opted out, the nature of border controls to be performed on passengers at UK ports would be determined through the usual European legislative process that already determines the nature of border controls to be performed on goods at UK ports. This would have been in the UK national interest for the following reasons:

- a) Border Controls would be determined by law, rather than by arbitrary decisions taken in secret by the Home Office as at present

All significant changes to UK border controls on ferry and cruise passengers during the last ten years have resulted from arbitrary administrative decisions taken by the Home Office, without the involvement of those affected (or reference to Parliament):

In May 2004, the Home Office suddenly decided to require all coach passengers to disembark from their vehicle and walk past the border control checkpoint as pedestrians – causing serious congestion at Calais (the UK's busiest coach checkpoint), which had been built in 2003 to accommodate the Home Office's long-standing previous policy of offloading only one coach in ten.

In November 2011, the Home Office again altered its coach controls overnight, abandoning the *SmartZone* processes, and requiring all coach passengers to be handled at foot passenger checkpoints – again causing serious congestion. Particular problems were caused at Portsmouth, where a new terminal had been built only months before (in full consultation with the Home Office) with a bespoke coach control building, which the Border Force then refused to use.

In September 2012, the Home Office suddenly began stopping all cruise passengers coming ashore on day calls at UK ports and inspecting their passports, where it had never done so previously – depriving passengers of time ashore, causing the curtailment of excursions which they had booked (and paid for), and reducing the benefits for local businesses from the influx of tourists into these ports.

All these changes were imposed without warning, nor was the change in practice formalised in any published notices. Local Border Force (and, previously, BIA) officers simply started acting in a fundamentally different manner in the ports concerned.

This would be inconceivable in an EU context, where all such changes would be



preceded by a transparent legislative process, in which their practicability and consequences would be carefully considered, with a clear outcome that would be duly recorded and published in the Official Journal. Once published, the Journal would provide certainty about the nature of the border controls – and would provide a basis for planning assumptions that ferry and cruise operators need to make when drawing up their sailing schedules, and that port operators need to make when designing or reconfiguring their terminals.

b) UK Border Controls would be subject to better day-to-day governance

At the moment, the nature and extent of the controls to which passengers are subject is set out in a document, the Border Force's "Operating Mandate", which is secret: it is not published, and the Border Force refuses to make it available on request. No notice is therefore provided to passengers about the border control processes which they must undergo on arrival in the UK, nor are they able to ascertain the details of those processes if they ask. Moreover, passengers who query the processes and indicate a disinclination to wait in a long queue at a checkpoint in a UK port have been threatened with arrest.

This practice – of refusing to publicise the obligations on passengers while at the same time threatening to arrest anyone who does not comply with them – offends against all notions of good governance. It is also illegal in an EU context, where it is settled law that *the principle of legal certainty requires that Community rules enable those concerned to know precisely the extent of the obligations which are imposed on them and that individuals must be able to ascertain unequivocally what their rights and obligations are and take steps accordingly.*<sup>5</sup>

If the UK had not opted out of the border and visa aspects of the Schengen Protocol, UK citizens and overseas visitors (arriving in the UK by ferry or cruise ship, or by other means) would have the benefit of this legal protection against such abuse of authority by officialdom. By the same token, ferry and cruise operators (and operators of the UK ports they serve) would be able to ascertain the precise extent of the derivative obligations on them to provide and fund facilities to support the border controls on their passengers.

The Home Office practice of demanding money from cruise lines' agents in order to attend the arrival of their vessels and examine their passengers' passports is similarly objectionable. There is no provision in UK law for such charges, nor any published tariff. Moreover, the demanding of money for the performance of a border formality at an internal EU frontier is expressly prohibited by the EU Treaty. The implied threat, which accompanies such demands for money, to obstruct the landing of passengers from the cruise ship if the money is not forthcoming, is abusive.

Again, if the UK had not opted out of the border and visa aspects of the Schengen Protocol, cruise operators would be protected against such abusive demands for money, and passengers would be protected from having to fund the payments through their cruise tickets.

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<sup>5</sup> For example, Case C-345/06, *Heinrich*, Judgment of 10 March 2009, paragraph 44.

c) Cost savings, through avoidance of wasted expenditure

The clarity of the nature and scope of UK border controls that would flow from their being defined precisely in law would ensure that money was not wasted (either by the Crown or by ferry, cruise, and port operators) on building infrastructure or IT systems that were either never used at all or were used for only a fraction of their intended lifespan.

Mention has already been made, in point (a) above, of the terminal infrastructure for coaches in Calais and Portsmouth that was rendered obsolete within months of being built by sudden fundamental changes in Border Force operating practices. It is worth noting that investment in such infrastructure is usually financed on the assumption that it will provide several years of use.

The most grievous example of waste that would have been avoided, however, is e-Borders. In 2008 the Home Office signed a contract, widely reported to be worth £1.2bn, for an IT system to process the passport data of all passengers and crew travelling to/from the UK, and then acknowledged two years later (when prompted by the European Commission) that the system could not be applied to travel between the UK and other EU countries. The Chamber of Shipping (and others) had alerted the Home Office in 2006 to the likelihood that its project contravened EU law on free movement within the Single Market, but officials asserted that it did not. Their groundless assertions could not have been put forward if the powers relating to UK's border controls had been based solely in EU law; and the vast sum of public money would not have been wasted on a project which could never have been realised.

A similar debacle appears to be in the making now, with exit checks. As your call for evidence notes (at paragraph 29), the Home Office intends to reinstate exit checks. In discussions, the Home Office has indicated that it intends to reinstate exit checks on all departures from the UK, including on departures to other EU countries and that its Protocol to the Treaty of Amsterdam allows this. The Protocol, however, refers only to controls on "persons seeking to enter the United Kingdom"; it does not provide for any controls on persons seeking to leave the United Kingdom, with the consequence that their right under the EU treaty to move freely applies in full. If public money (and ferry operators' time) is not to be wasted here too, the legal limitations on the scope of the project need to be acknowledged by the Home Office sooner rather than later.

d) Cost savings, through dismantling of routine formalities at internal frontiers

By far the greatest boost to the UK national interest from opting into the border and visa aspects of the Schengen Protocol would be the huge cost savings that would flow from the removal of checkpoints at internal frontiers between the UK and other EU countries, which include all international ferry routes. There would be an immediate financial saving for the Crown, and significant efficiencies both for ferry and cruise operators and for ports.

Checkpoints are an artificial choke on traffic, and their removal would enable the

port to handle a significantly greater throughput of vehicles. This, clearly, would facilitate the resurgence in freight traffic, which will be part of the wider economic recovery, and would thus contribute to the *Growth Agenda*. An increase in tourist traffic to the UK, particularly of high-value visitors from wealthy EU countries, would similarly provide a boost to economic growth; the checkpoints are a real obstacle to such traffic, and it is logical to expect their removal to stimulate it.

It is certain that welcoming cruise passengers ashore (as all other countries in Europe do) without subjecting them to a slow and disagreeable passport examination would make the UK a significantly more attractive option for day calls. UK ports and their hinterland economies would be able to compete for cruise ship calls on an equal footing with ports on the Continent, and the Government would send out a clear message that the UK was “open for business”.

The UK’s reputation as a business-friendly jurisdiction, and its appeal to inward investors, would also be enhanced by putting an end to the Crown’s discrimination in favour of one operator on the main Kent/France corridor. Removal of the checkpoints would nullify the preference currently given to the operator of the Channel Tunnel (where Border Force stops traffic once instead of twice on competing ferry routes, and where the target maximum queuing time is 8 minutes rather than 25 minutes at ferry ports), enabling ferry operators to compete for traffic on an equal footing and building confidence that the Crown will not seek to distort competition between businesses.

### **3. *What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?***

The greatest challenge is the conflict between the national imperative of fostering Economic Growth and the political expedient of imposing ever-more obstructive and oppressive border controls. Lorries entering the UK, which are the lifeblood of the UK’s trading economy, are subject to delays (with all their attendant cost and inefficiency), from which movements of goods between comparable EU countries are entirely free. Similarly, the UK is unable to compete for tourist traffic – cruise calls, visits by overseas tour groups, or independent tourism – on an equal footing with other countries in the EU that have comparable attractions; as anyone arriving in the UK faces extra cost and hassle which they simply do not face if they chose to spend their holidays elsewhere. The national interest requires a resolution to this conflict, but at the moment there is no prospect of one.

On a sector-specific level, the most significant strategic challenge in relation to ferry travel is the increasing focus on biometrics as an element of border controls. This is deeply problematic because all the technology that is currently in operation or being planned is predicated on processing passengers one-at-a-time and as pedestrians (standing at an automatic gate/barrier). This is incompatible with the reality of ferry travel where most passengers travel in groups and in vehicles: such as families in cars, or tour groups in coaches. Border control checkpoints need to be capable of handling groups of people without requiring them to get out of their vehicles – this is incompatible with a process that involves taking a biometric scan of every passenger individually and treating them as an independent traveller with no connection with the rest of the group.

It is of note that neither of these challenges is a matter of the balance of competences between the UK and the EU.

**4. *Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?***

Yes. The EU – and, specifically, the European Commission – could take infraction proceedings against the UK for failing to ensure fulfilment of its obligations arising out of the Treaty by failing to ensure the free movement of persons within the internal market. There are two obvious grounds for such action.

Firstly, the sole formality that the UK is permitted to carry out on an EU citizen seeking to enter the UK from another EU country is the verification of their right to enter, which is purely a matter of checking their nationality. The openly-publicised practice of performing a security check on all passengers as a preliminary to establishing their admissibility clearly exceeds the scope of this permission. It is also clearly in breach of the EU stipulation that such restrictions on free movement must be based exclusively on the personal conduct of the individual concerned, rather than being applied in a blanket manner to all passengers.<sup>6</sup> The Schengen Borders Code (which, while not itself binding in the UK, may be treated as helpful guidance on the meaning of other EU instruments that *are* binding) makes clear that such security screening is to be done “on a non-systematic basis”, and is distinct from checking that a passport is valid and has not been reported lost or stolen, etc.<sup>7</sup>

Secondly, it looks highly doubtful that a lengthy enforced delay at a checkpoint at an internal frontier is compatible with a right to move freely across that frontier. The EU has not adopted a benchmark for the length of delay that would be deemed compatible with a right of free movement, and it would appear likely that a reasonableness test would apply: whether the delay was proportionate to the (permitted) objective of the border control. Nonetheless, being held in a queue (under threat of arrest if you do not wait meekly in line) for the length of time that ferry and cruise passengers actually have to wait at the moment cannot be compatible, on any ordinary meaning of the concept, with a right to move freely across the internal frontier concerned.

Such infraction proceedings would serve the UK national interest by ensuring that, notwithstanding the UK’s opt-out from the border and visa aspects of the Schengen protocol, UK citizens and businesses could derive the full benefit from the Single Market to which they are entitled. Value to the UK would accrue through the boost to economic growth that would arise from more efficient freight flows and increased tourist travel, and from the enhancement of its reputation as a jurisdiction in which the law takes precedence over administrative malpractice.

**5. *Are there any other general points you wish to make which are not***

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<sup>6</sup> Directive 2004/38/EC, article 27.

<sup>7</sup> Regulation (EC) No562/2006, article 7.2.

### ***captured above?***

The manner in which the Home Office has called for evidence about UK border controls in the context of its review of competences in relation to Asylum and Immigration, rather than in the context of Free Movement of Persons within the Internal Market, is illustrative of the unsatisfactory governance that applies to UK border controls.

The overwhelming majority of individuals who pass through UK border controls are entirely unaffected by considerations relating to asylum or immigration, because they are EU nationals (and most of them are UK nationals). Non-EU nationals are reckoned to constitute approximately 1% of the passenger complement on a typical ferry sailing to the UK.

It is obvious that UK border control processes are formulated with reference to considerations of Asylum and Immigration – this call for evidence is symptomatic of that general approach. It is absurd that control processes for 99% of passengers are formulated in a context that is irrelevant to them. The practical consequence is that those 99% of passengers are caught in the web of delays, cost and inconvenience described above. They are effectively deprived of their right of free movement, and the UK is in breach of its duty under the EU Treaty to *take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties*.<sup>8</sup>

Commonsense dictates that control processes should be formulated with reference to considerations that are relevant. In context of all ferry and most cruise travel to and from the UK, this means that border processes should be formulated with reference to the passengers' right of free movement: with all putative controls being subjected to a test to ensure that they fulfil that right and, if they do not, that they are within the scope of permitted exceptions – which is primarily a test of proportionality. Currently, it is not apparent that such a test is even applied, let alone satisfied.

This is more a matter of good governance than of where competence lies, but it would be appropriate for your review to consider border controls on intra-EU travel in their proper context – so that any recommendations that may arise in relation to competence for border controls may be more likely to uphold rather than obstruct citizens' right to move freely within the EU and to support rather than stifle the *Growth Agenda* on which UK prosperity depends.

The UK Chamber of Shipping would be pleased to expand on any of these answers in discussions if you would find it helpful.

A copy of this letter goes to the Department for Transport, for their information.  
Yours faithfully,

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<sup>8</sup> Treaty of European Union, article 4.3.

*[Handwritten signature]*



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**Annex**

Queue of coaches held up at the UK Border Force checkpoint in Calais, Friday 19 July 2013



### **Submission 5**

<b>Name</b>	██████████
<b>Organisation/Company (if applicable)</b>	British Hospitality Association
<b>Job Title (if applicable)</b>	██████████
<b>Department (if applicable)</b>	
<b>Address</b>	Queens House, 55-56 Lincoln's Inn Fields, London WC2A 3BH
<b>Email</b>	████████████████████

<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	YES.
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

The most obvious disadvantage of the UK opting out from the border aspects of Schengen is the passport inspection queues and delays suffered by intra-EU visitors (and UK citizens) arriving in the UK.

On visas, see 2, below.

2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

As the national association for the hotel and restaurant industry, we share the concerns of the tourism sector at the impact of the requirement for visitors from countries such as China to have a Schengen visa and then a UK visa if they want to visit this country as well.

We will continue to press the Home Office to come up with practical means of creating a “one stop Schengen + UK shop” so that the requirements for such visitors can be simplified and the UK can claim a higher percentage of such visitors..

## The EU and Legal Migration

3. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?

We think it has been right for the UK to exercise its own rules in relation to legal migration from outside the EEA. Whether those rules are always in the national economic interest is a different matter.



## **Submission 6**

### **Balance of Competences Roundtable Event 24<sup>th</sup> June 2013 Business, Industry and Educational Representatives**

#### **HMG Attendees**

- Minister for Employment Mark Hoban
- Isobel Stephen (Director, DWP)
- Fiona Kilpatrick (DWP)
- Richard Given (DWP)
- Simon Peters (DWP)
- Ashleigh Gray (Home Office)
- Hazel Roberts (Home Office)
- Mark Lomas (Home Office)
- Rebecca Murphy (Home Office)
- Wendy Spinks (Highspeed1)
- George Anastasi (PCG)
- Naadiya Rawat (English UK)
- Rob Wall (Confederation of British Industry)
- Martin Carroll (BMA)
- Gareth Williams (Eurostar)
- Marcia Longdon (Ernst & Young)
- John Wastnage (British Chambers of Commerce)
- Marie-Madeleine Kanellopoulou (EU Representation to the UK)

#### **Delegates**

- Peter Lambert (BAE Systems)
- Anne-Marie Martin (COBCOE)
- Tobias Verlande (COBCOE DE)
- Jenna Quinn (RIBA)
- Margaret Burton (Deloitte)
- Jeremy Fern (City of London)
- Alaina MacDonald (Register Larkin for NASSCOM)
- Keith Sharp (TATA)

#### **Notes**

This meeting was held as part of the evidence gathering process for the Balance of Competence Review report on the Internal Market: Free Movement of Persons and Asylum and Immigration. They do not necessarily represent the views of the Government.

The meeting was held under Chatham House rules. The following points were made in the discussion:

#### **General Points**

- The view was expressed that there is an overall problem in the press around immigration – the current language used around this issue sends out a hostile message to potential students or entrepreneurs that they are not welcome in the UK.
- There is a lack of information from the government on the impact of certain decisions made on immigration and free movement, for example, transitional

arrangements vs. no transitional arrangements, impact of Schengen vs. no Schengen.

- Several contributors expressed the view that there is a public lack of understanding of the contributions made by migrants with shortage skills.
- The impact of individuals who come from the EU or outside of the EU can create employment or opportunities for others in the UK. It is not just the role of the individual that is relevant, but the 'economic footprint' they leave – for example, persons travelling to the UK for business will create business for taxis, hotels, catering services etc.

## **Free Movement of Persons**

### **Impact on the UK Economy**

- From an educational point of view, Free Movement of Persons (FMOP) was helpful because it meant that people from the EU who wished to attend a short course in the UK could do so without needing to apply for visas. This helps to recruit people onto short courses from within the EU.
- FMOP was considered positive for business, as it reduces the burden of applying for visas and/or work permits for EEA employees. This is of particular importance as work permit fees are high.
- Global businesses will always need to move people around. Loss of FMOP would have a hugely damaging impact on business.
- In terms of the domestic labour market, the UK or any other country cannot expect to have all necessary skills within the domestic labour market at any one time. However, while immigration is one tool in this area, this should also be addressed within the domestic market through education.
- The point was made that Free Trade Arrangements between EU and other countries/groups of countries are welcomed as they bring greater understanding between the blocs. Free Movement elements can be negotiated into such agreements. Changes need to be made in terms of, for example, US trade regulation. There is a feeling that a lot of the benefits of agreements with US fall on the US side, and that US regulations can cause problems with trade and movement of persons.

### **Impact on the UK Labour Market**

- FMOP was thought to be helpful for businesses in that it helps fill skills shortages. The Annual Survey of Skills showed that there is a shortage of high level skills, and businesses therefore need to be able to attract talent from within the EU and wider. One organisation engaged with members on this subject, one third of whom reported difficulty in recruiting scientific and technical experts.
- In terms of productivity, it is clear that having the appropriate skill levels in labour force impacts on productivity
- One organisation suggested that immigration of skilled workers has not solved the problem of the skills gap in the UK and cannot be relied upon in isolation. Organisations are doing a lot to address the skills gap, for example training in basic skills for graduates. UK education sector must also do more.
- One organisation welcomed the free movement of doctors in the EU/EEA, especially in regard to the rich exchange of skills. However, there are concerns that more could be done regarding safety, primarily with regard to language testing and sharing records of disciplinary action or malpractice. This could be achieved through a revised Mutual Recognition of Professional Qualifications (MRPQ) Directive.
- It was noted that concerns have also been raised regarding the minimum length of training – the UK offers 5 year training format and a failure to recognise this would cause problems for UK trained medical professionals. It is important that safeguards are put in place for patient safety.
- It was suggested that the rules around labour in some EU countries create difficulty in rationalising workforce or terms and conditions. For example, any changes affecting workers in Germany must go through the workers' council for that employer. The UK is more flexible in this area. This means that when multinational companies consider where to close a plant, branch or operation, the comparatively flexible UK may appear an easier option. There is also more of a culture of consultation in labour relations in some EU member states.

#### Experience of UK Nationals in other EU Member States

- It was reported that for overseas staff employed in the UK, there can be a problem in travelling to other EU member states for meetings or short term business trips due to the fact that the UK does not participate in Schengen. Similarly, if a meeting is held in the UK it can be difficult to arrange for

permission to enter for non-EEA overseas staff. If there could be an expedited visa process for short-term business travellers this would be helpful.

- Contractors have varying experiences in travelling to other Member States. Their experience and their ability to provide services depends on the structure and ability of Member States. Experiences will vary depending on sector and the Member State to which the contractor travels.

### Accession and Expansion

- Participants noted that transitional controls on workers from new member states give rise to challenges, such as long waits for work permits for Bulgarian and Romanian nationals. It was suggested that this causes bad feeling in new member states and is bad for cultural relations. The language of the discussion around accession countries, especially the EU2 states, means that Bulgarian and Romanian nationals often feel uncomfortable saying where they are from, and feel unjustly treated.
- Sensationalism around migration from Bulgaria and Romania poisons the debate.
- There are concerns that if no transitional arrangements were put in place for Croatian nationals, and if there was subsequently a lot of inward migration, that this would have a knock-on effect on the public debate and on government policy.
- It was argued that delays by Home Office in issuing work permits for EEA nationals subject to transitional arrangements has a serious impact and causes bad feeling amongst such nationals. Obtaining a permit may take up to 6 months.
- It was suggested that possible further expansion of the EU causes worry amongst citizens of Member States – the EU is now far larger than when the UK joined. Public debate on EU and Immigration is leading policy. Further expansion may lead to further public concern on the issues, and have a further knock-on impact on non-EU labour route. However, future enlargement of the EU was seen as inevitable.

### Asylum and Immigration

#### Borders & Visas:

- The group discussed the impact that the UK's non-participation in the border and visa aspects of Schengen can have on where non-EU nationals choose

to go for business and leisure. There is seen as three main impediments to people choosing to visit the UK:

- Delays / inefficiencies in the UK visa application process;
  - The inconvenience of having to apply for separate UK and Schengen visas; and
  - The language of the debate around immigration in the UK
- Several attendees highlighted in detail the issue that for non-EEA staff employed in the UK, there can be a problem in travelling to other EU member states for meetings or short term business trips due to the fact that the UK is not in Schengen and a separate Schengen visa has to be applied for. Similarly, if a meeting is held in the UK it can be difficult to arrange to arrange a UK visa for non-EEA staff working in the EU.
- Coordinated visa requirements with Schengen would help solve some of these issues e.g. the same form, same costs, etc. This would at least minimise the disruption caused by having to apply for 2 visas. Alternatively, an expedited visa process for short-term business travellers this would be helpful.
- Additionally, the UK's absence from the border and visa aspects of Schengen impacts on EU train operators. The requirements on them and information on who is allowed to travel where is often unclear. There is a need for good communication and clarity in this area for the rules to be enforced effectively.

#### 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. It is when the legal migration rules provide unnecessary barriers to UK businesses that issues arise.
- A constantly changing legal migration framework just leads to confusion for businesses. Clarity of rules and process is key, regardless of who makes the rules and processes.
- The question was raised as to why the UK had not signed up to the EU 'Blue Card' scheme. There are concerns that being outside of certain EU measures (i.e. Schengen, Blue Card) gives mixed messages regarding the globalisation of British businesses. There is a changing perception of the UK - it used to be

perceived as open for business, but is not as open any more, especially when compared to other EU countries.

- Some of the perceived benefits and flaws of the Blue Card Directive were discussed by attendees. Individual Member States are implementing the Directive in a variety of manners for example, and the result depending on how you view it is either welcome flexibility for Member States or a severe undermining of what was supposed to be a common immigration policy.
- The group discussed Intra-Company Transfers (ICTs). They welcomed that the UK has no set limits on ICTs, but thought that the more intense restrictions e.g. on cooling off periods, minimum salaries, etc, have been causing some difficulties.
- More broadly, it was suggested that free movement of persons within the EU has had an impact on non-EU legal migration into the UK. As the government cannot control EU migration, it has taken strict action on non-EU migration, particularly economic migration (Tier 2) and student routes (especially when students are coming for a short, non-degree level course). This is not in the interest of UK business.
- Attendees argued that the UK must continue to ensure that it can get and develop the right skilled individuals into the country as necessary, both for the long and short term.
- Many felt that the current language in the debate around immigration is causing offence in some countries, for example India. There is a feeling that Indian students in particular are not welcome in the UK and that the drop in net migration figures has largely been achieved by stopping Indian students from coming to the UK.
- Some attendees argued that it would be useful for headline net migration figures to be broken down into categories of migrants. The public generally don't acknowledge or appreciate the range of distinctions which the net migration statistics incorporate.

**Home Office and Department for Work and Pensions**

**Monday 24<sup>th</sup> June 2013**

## **Submission 7**

### **Balance of Competences Stakeholder Event Asylum & Immigration Event Note**

**26 June 2013, 10.00-12.00  
Ambassador's Residence, 17 Rue Ducale, 1000, Brussels**

#### **Attendees:**

<b>Name</b>	<b>Org.</b>	<b>Name</b>	<b>Org.</b>
Christophe Prince (Chair)	UKRep	Morten Jorgensen	Perm Rep - Denmark
Hazel Roberts	Home Office	Triin Saag	Asst. Graham Watson MEP
Mark Lomas	Home Office	Michel Stavaux	Euclid
Sam Hill	UKRep	Mara Dambour	European Policy Centre
Timothy Kirkhope	MEP	Howard Rosen	COBCOE
Alexander Sorel	Perm Rep - Netherlands	Elizabeth Collett	Migration Policy Institute
Shalina Daved	Asst. Sarah Ludford MEP	Sophie Bowler	Asst. Bill Newton-Dunn MEP
Rossi Mandzhukova	General Secretariat, DG		

#### **Introduction:**

1. Christophe Prince (CP) thanked everyone for attending and gave some background on the Balance of Competences Review and the event. CP summarised the current balance of competences between the EU and the UK on asylum and immigration issues, as detailed in the Call for Evidence document.
2. It was agreed that the event would run under modified Chatham House rules. An agreed note of the meeting, including attendees, would be used as evidence for the Asylum and Immigration Balance of Competences report, but contributions at the event would not be attributed.

#### **General Remarks:**

3. The group raised the issue of how important it is to understand the future of EU policy. If the trend is towards greater non-legislative practical cooperation on

policy areas such as asylum and migration, the balance of legal competences between the UK and the EU, and the UK's opt-in become less vital.

4. The UK is likely to be at a competitive advantage as the EU increases its use and reliance on biometrics. The use of biometrics is an area where the UK has been a market front-runner for some time.
5. The UK's opt-in was discussed. The point was raised that in the EU, the UK's credibility is damaged from its 'cherry-picking' approach, although it is widely accepted now that the UK will take a special position in regards to new legislation. The Balance of Competences Review is likely to have a strategic cost for the UK in Europe as well – such a large review isn't going to conclude that the current balance of competences works perfectly.

### **Borders and Visas:**

6. The advantages and disadvantages of the UK opting out of the border and visa aspects of the Schengen acquis were discussed in detail.
7. From a business perspective, it was thought that anything that makes investment in Britain more difficult is unwelcome. There is a view that it is an increasing disadvantage to Britain that third country nationals have to apply for a visa twice (once for Schengen, once for the UK) and that the consequence was that many, Chinese visitors for example, were opting for Schengen visas only. There was no evidence to hand to support this view. It was suggested that the more obstacles customers faced to get into the UK – be it visa requirements or border controls – the less attractive it makes the UK as an investment opportunity.
8. In other member states, the Schengen area is popular amongst the population; citizens are able to see the benefits for themselves when they go on holiday, etc. A distinction was drawn with Switzerland, who – although not an EU member state – are part of Schengen for example. From the perspective of these member states therefore, having to go through border controls in the UK can be quite frustrating. The absence of border controls can be particularly beneficial for small member states when borders are generally quite close.
9. The group discussed the emotional reassurance which independent border controls can provide. It is widely accepted that the UK public see border controls as very important, and the UK has always historically been a country of border control. Those member states without border control rely more heavily on internal policing and to make such a transition in the UK would represent a huge change. Precedence suggests that the British people won't accept carrying ID cards and see border controls as the lesser of two evils.
10. The policing of the external border of the Schengen zone is a key outstanding issue. The point was raised that if the external Schengen border controls are secure, there would be no need for independent border controls. A secure external Schengen border remains a work in progress however, although it is an



area where the UK could make a significant contribution if it wanted to get more involved.

### **Asylum:**

11. The group discussed the UK's involvement in a Common European Asylum System (CEAS), and in particular its decision to opt out of the recently recast asylum directives.
12. It was suggested that being bound by the first round of asylum directives but not the second round of directives could make life quite complicated for the UK, particularly as the rest of the EU moved gradually towards one asylum system / authority.
13. It was recognised that nothing prevents the UK from meeting the standards outlined in the second round of directives, despite not opting in. The UK would argue very strongly that it exceeds the standards. Being fully committed to a Common European Asylum System would give the UK a better chance however of leading the other member states by example on asylum issues.
14. The group discussed that practical cooperation, through agencies such as the European Asylum Support Office, rather than legislative instruments, may be a much smoother way of bringing member states closer together on asylum issues. If you are to have a common system, you need solidarity between all member states and this might be unrealistic.
15. The point was raised that one true common European asylum system may not necessarily be a good thing, particularly it doesn't take into account the sympathies, background, language and culture of those applying for asylum. Perhaps focus is better concentrated on practical cooperation measures to ensure the standard for dealing with asylum applications, and the quality of how asylum applicants are treated, is more consistent.

### **Returns:**

16. The group discussed the issue of returns. It was suggested that the issue of returns is both the last standing major problem in the field of asylum and migration and also the most difficult element of all that's so far been discussed.
17. Returns are particularly difficult, it was suggested, because third countries are often unwilling to take their responsibility. It is also a bureaucratic process that takes too long to progress. The Returns Directive has not been easy to implement and it has been very costly. The length of the process also often raises moral questions if someone who is due to be returned has become integrated into society over an extended period of time.

18. It was discussed whether, in the future, a CEAS should have joint processing of returns. A whole EU approach to negotiating returns agreements with third countries for example, should provide a benefit in the 'carrots' it can offer these third countries e.g. visa waivers, trade agreements, agricultural agreements, as well as the increased weight of sanctions it would be able to apply.
19. It was thought that the UK has an enormous amount to offer on the returns agenda, but it may not be in its interest to get too involved.

**Legal Migration:**

20. The group briefly discussed the issue of legal migration. Legal migration is particularly important for businesses being able to attract the best and the brightest to the UK.
21. It was suggested that whether legal migration rules are national or supranational is largely irrelevant – so long as the rules are clear, effective and allow the UK to get the people into the country it requires.

**Home Office**

## **Submission 8**

### **Balance of Competences Roundtable Event 3<sup>rd</sup> July 2013 Think Tanks and Academics**

#### **HMG Attendees**

- Minister for Immigration Mark Harper
- Philip Duffy (Director of IBPD, Home Office)
- Fiona Kilpatrick (DWP)
- Richard Given (DWP)
- Ashleigh Gray (Home Office)
- Hazel Roberts (Home Office)
- Mark Lomas (Home Office)
- Rebecca Murphy (Home Office)
- Joe Rifaat (Home Office)
- Prof. Ian Preston, University College London
- Hugo Brady, Centre for European Reform
- Dr. Scott Blinder, Migration Observatory
- David Goodhart, Demos
- Stephen Lee, Centre Forum
- Dr. Alan Manning, London School of Economics
- Tim Harrison, Migration Advisory Committee
- David Metcalfe, Migration Advisory Committee

#### **Delegates**

- Marie-Madeleine Kanellopoulou (EU Representation to the UK)
- Prof. Christian Dustmann, University College London
- Prof. John Salt, University College London
- Michael Keith, Centre on Migration Policy and Society (COMPAS)
- Alp Mehmet, Migration Watch
- Matthew Pollard, Migration Watch

#### **Note**

This meeting was held as part of the evidence gathering process for the Balance of Competence Review reports on the Internal Market: Free Movement of Persons and Asylum and Immigration. They do not necessarily represent the views of the Government.

The meeting was held under Chatham House rules.

The following points were made in the discussion:

- The Minister for Immigration welcomed delegates and provided a short introduction. He set out the scope and nature of the Reports and encouraged delegates to provide written submissions.

#### **Free Movement of Persons:**

- Contributors made the argument that debate shouldn't focus on whether free movement is 'good or bad', and that instead we need to focus on the current issues, e.g. levels of free movement to the UK, the need for public services to adjust to the demands of free movement.
- It was suggested that the European Court of Justice (CJEU) seem to be pulling back from the more aggressively integrationist approach they have taken in the past.
- It was argued that it is hard to measure the benefit of free movement to the resident population.

### The Labour Market

- The question was raised whether, within the context of free movement, employers should be able to give preference to UK citizens. It was argued that the free movement of persons ruled this out, but it was noted that this could lead to problematic perceptions, particularly regarding own citizens who have difficulty in the labour market. It was argued that if the government wanted to introduce a job guarantee to, for example, for the 16-25 age group in areas of high unemployment, they would not be able to do so. Some participants thought that most British people would find this ridiculous.
- There was a question about the economic argument for free movement within the internal market. The point was made that without free movement of workers the internal market will not work. It was considered to be essential for sectors such as manufacturing and financial services. For example, the German economy is more reliant on the manufacturing sector and the UK economy is more reliant on the financial services sector.
- It was stated that free movement doesn't work without an open labour market and that EU migrants are contributing more to the UK than they are taking out. Some groups suggested that Member States do have the ability to close the labour market in an emergency – and that the Government should explore this further.
- It is very clear that the debate about migration is a debate about labour markets – the difference between liberal and closed labour markets within the EU.
- It was argued that employers liked free movement in that it provides a flexible labour force. One participant suggest that in London and the South East of

England, four or five migrant workers sharing accommodation can 'out price' a worker who houses their family in the same accommodation, meaning that their living costs are lower, which impacts on the level of wage they require.

- Those in Britain who benefit from free movement are not the same people who face difficulties finding employment or housing shortages. One contributor argued that the point above cuts both ways, and could be an argument for greater labour market regulation as it demonstrates the disadvantage to workers with families who are already resident in the UK.

### Social Security Coordination

- It was stated that the 'export' of benefits under EU law is controversial, such as claiming child benefit for children not residing in the UK, It was pointed out that qualifying periods for benefits, or the lack of them, is a big issue in the public debate.
- There was a discussion on statistics concerning free movement and benefit abuse. It was argued that DWP should produce better statistics on the levels of abuse of benefits by persons exercising free movement rights. According to one delegate, the level of technical abuse is low, but the UK is a magnetic country due to the open labour market and accessibility of public services and benefits.
- Some contributors asserted that the Habitual Residence Test carried out by Job Centre Plus and local authorities can produce different results – the applicant can pass one and fail the other at the same time. On a similar point, some attendees thought that subsidising the wages of low-paid migrant workers through working tax credits, for which there is no residence test, increases the incentive to migrate.
- It was noted that conducting an accurate cost-benefit analysis of migration is not straightforward. Child benefit was raised as an example; migrants are generally educated when they arrive in the UK, so the UK has not had to bear the cost of educating that person. However, they may use the public education system if they have children. Fixed costs, such as the military, do not increase with inward migration to the UK, but migrants contribute to this cost through their taxes and thus reduce the overall burden on the native population.
- Some participants argued that EU migrants have always contributed more for tax, NI, etc. that they have taken out in the form of benefits and use of public services.

- There was a discussion on the free movement of workers. Delegates noted that the CJEU had clearly set out in its determinations that free movement is for citizens. This gives rise to complex issues around different social security systems. For example some member states' systems require a person to hold a job contract in order to access contributory benefits.

### Abuse of Free Movement

- The Surinder Singh judgment was raised as an example of a way in which the free movement of persons could undermine immigration control.
- Concerning abuse of free movement, it was suggested that if all EU countries agree on the need to tackle abuse, the solution could be 'more EU' – harmonised rules on social security, for example. EU ID cards would solve a lot of problems with regards to abuse but would be politically unpopular in the UK.
- One delegate noted a study that was being conducted into the benefit situation regarding EU nationals. There is currently an evidence gap on benefit fraud.
- It was pointed out that concerns about benefits were not just issues of fraud, but also a question of fairness. The design of the UK system makes it more of an issue here than in some other EU countries.
- The large number of additional immigration routes created by the CJEU created difficulties. The *Zambrano*, *Chen* and *Metock* cases were cited as examples. It was argued that the Metock judgement had opened the door to more bogus marriages, as there is no requirement to have resided in the EU previously, or to have had legal residence in the EU.

### Free Movement of Persons and Immigration

- The point was made that lurking above the free movement debate was a rise of BRIC countries (Brazil, Russia, India and China) and a rise in international migration. It was argued that the UK tends to look back when considering migration policy, not taking into account what is likely to happen in 10 years, for example with greater globalisation.
- We need to look at migration in 'streams', for example students, visitors, employment.

- One contributor stated that the government's stated aim to reduce inward migration is not possible with free movement
- There was a discussion on statistics and the numbers of EU nationals in the UK and UK nationals exercising free movement rights in other Member States. Some contributors referred to statistics which state that there are 407,000 British citizens working in other EU countries, and 1.4 million EU workers here. The statistics referred to also state that in total there are 2.3 million EU citizens here (taken from Eurostat and ONS data) and 930,000 UK citizens in total in other EU member states.
- One delegate suggested that as far as the UK is concerned, the key movement of EU nationals is from Ireland, due to the special relationship the UK has with Ireland. Irish nationals are entitled to reside in the UK under domestic law aside from their free movement rights.

#### Accession and Expansion

- It was argued that there was virtually no 'free movement' before 2004. However, the UK acquired a huge amount of free movement following the arrival of new countries with lower income levels, which led to mass immigration.
- One contributor made the comment that if the income disparities between the new and existing members states in 2004 did not exist we would have not had a problem, it would have been a small issue relative to the gain. There is a feeling that the balance of benefits is not right. A great achievement would be cementing democracy in new EU countries and improving living standards.
- Another contributor agreed that the wage disparity between EU countries is an issue, but asserted that there is also a disparity in benefits which are often not available or not easily accessible in other EU countries.

#### Future Options and Challenges

- One delegate argued that it would not be possible to open the Free Movement Directive, however the regulations around social security coordination may be a route to tackle abuse. Others argued that if the Free Movement Directive were to be amended it would need all 28 EU Member States to agree. A fundamental change to free movement would require going back to the Treaties.
- However, one delegate was clear that the discussion had not concluded that change is needed. It was important to look at the economic benefits of free

movement. The UK's open labour market puts it in a better position than other EU countries to attract skilled workers.

- It was argued that the prohibition against discrimination based on nationality in the Treaties was not absolute. Member States were in fact able to discriminate in certain circumstances, for example with regards voting in national elections.

## **Asylum and Immigration**

### **Opening Remarks**

- Philip Duffy gave some background on the current balance of competences between the UK and the EU on asylum and immigration issues, as detailed in the Call for Evidence.

### **Borders & Visas**

- The advantages and disadvantages of the UK opting out of the border and visa aspects of the Schengen acquis were discussed in detail.
- The group commented that the Schengen zone has undergone significant improvements in the last 2 years, and in particular noted that the Schengen border was becoming increasingly secure. While it was agreed that it was currently politically impossible for the UK to join Schengen, there exists the possibility of increasing cooperation with Schengen countries on border and visas issues (for example in data sharing).
- The issue of an emerging Chinese middle class was raised, and the expected rise in tourism to Europe that this is expected to generate. In order to take advantage of this rise, the UK may have to be increasingly flexible in regards to recognising Schengen visas. Similarly, businessmen want a visa system and border controls that are convenient and fast.
- The Home Office dedicates a lot of time and effort into protecting the border. The group discussed the cost to the UK of managing the border, and whether the current commitment to a highly visible, uniformed border represents value for money. If the UK were in the Schengen acquis, money spent on border controls could be reduced and an increasing amount in theory could be directed towards enforcement work. However, the UK would be required to contribute to the costs of managing the Schengen external border.
- 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.



## Asylum

- The group discussed the UK's involvement in a Common European Asylum System (CEAS). It was suggested that while those Member States bound by all the European directives on asylum have generally seen an increase in their asylum numbers in recent years, asylum continues to work better and better for the UK.
- By remaining a signatory to the Dublin Regulations, the UK is able to stay engaged and influential in the European asylum debate.
- It was also noted that most people who claim asylum are overstayers rather than clandestines.

## Legal Migration & Returns

- The EU's laws on labour migration for non-EEA nationals are relatively basic, covering mainly issues such as intra-company transfers and the Blue Card system. It is therefore difficult to make an effective comparison between the 2 legal migration systems.
- The key to a successful legal migration regime is flexibility. It was suggested that limiting of non-EEA migration to skilled workers was a sensible policy.
- Opting in to the Blue Card system would have minimal benefits for the UK. Countries are interpreting the system differently; it is unattractive to migrant workers, and very few cards have been issued.
- On returns, the group discussed the UK's decision not to sign up to the Returns Directive. This Directive has extended the rights of illegal migrants, so in this case the UK may have made the right decision in opting out.

**Home Office and Department for Work and Pensions**

**Wednesday 3<sup>rd</sup> July 2013**

## **Submission 9**

### **Balance of Competences Roundtable Event 8 July 2013 Migrants Rights, Legal and Voluntary Groups**

#### **HMG Attendees**

- Fiona Kilpatrick (DWP)
- Richard Given (DWP)
- Hazel Roberts (Home Office)
- Rebecca Murphy (Home Office)

#### **Delegates**

- Hugo Tristram (British Red Cross)

- David Rhys-Jones (Helen Bamber Foundation)
- Don Flynn (Migrants Rights Network)
- Deborah Rowan (Migrant Help)
- Dorothea Baltruks (Bail for Immigration Detainees)
- Mark Hilton (London First)
- Virag Martin (National Council for Voluntary Organisations)

This meeting was held as part of the evidence gathering process for the Balance of Competence Review reports on the Internal Market: Free Movement of Persons and Asylum and Immigration. They do not necessarily represent the views of the Government.

The meeting was held under Chatham House rules.

The following points were made in the discussion:

#### **Record of the discussion**

##### **Asylum and Immigration**

- One organisation gave the view that a common asylum framework can be good to help the UK meet its international obligations; it can raise standards, or conversely it can lower the level if the framework sets standards lower than that in the UK. Where it serves to raise standards this is clearly a good thing as far as the beneficiaries are concerned. However, the worry is whether it would work in this way.
- Another organisation stated that opt-ins, for example over reception conditions for asylum applicants, would be a positive step. There should be a limit to the use of detention and anything which improved the standards for 'fast track' would be welcomed.
- One contributor commented that a consideration of whether something is 'in the public interest' is a difficult question, as there will be differing opinions as to what

is in the public interest. The commenter felt that, in terms of the general public, it is possible that measures which would improve conditions for asylum seekers are not seen as 'being in the UK national interest'. However, the contributor took the view that measures which improve conditions for asylum seekers are in the public interest. This view was the consensus view of the attendees.

- Some contributors considered that in the past, the UK has benefitted from the shared experience of asylum in Europe. However, some thought this was beginning to unravel – for example, the situation for asylum in Greece. One contributor asked whether the Common Asylum Framework suitable for the current situation, or the near future, considering the likely higher movement of refugees.
- Some thought that If the UK had been more involved in the Common Asylum Framework the EU may have been better prepared for the future.
- One organisation state that in their view, there is increasingly 'beggar my neighbour' approach to co-operation. The collaborative process has come to a halt, and there is a mistrust in the Mediterranean countries..
- Some contributors raised concerns that there is an element of a 'race to the bottom' in terms of the conditions for asylum seekers. New EU countries are worried that if they make a high level of positive asylum decisions, or open their labour markets, they risk creating 'pull factors'.
- Regarding the Greek problem in dealing with asylum, some feel that they are not getting enough support for this. There is no movement within the CEAS to look at burden sharing.
- One contributor expressed the view that the UK needs to get to grips with the fact that Asylum is a Europe-wide issue. The fact that the UK is at the 'end' of the journey should not be relied upon, we should look at it as something we are all part of, and raise standards across the board so that people do not want to move within Europe to claim asylum.
- An example is Sangatte – the evening up of reception conditions means that migrants are now more likely to expect to be treated as well in France as in the UK. This could be the case for Greece in the future.
- With regards the Dublin Regulation – some contributors felt that the principle of determining the country responsible has broken down. The EU Commission consider that asylum seekers' interests should be taken into account, for example family reasons.

- One organisation gave the view that the Dublin Regulation runs counter to efforts to look after victims of trafficking, because it allows victims to be re-trafficked across the EU several times.
- Several contributors agreed that the rise of far right and anti-immigration sentiment tends to get wrapped up with asylum issues. When coupled with the general economic difficulties this leads to an increase in hostility towards migrant communities.
- This is common issue across the EU. It is difficult to know how best to address it. However, some organisations felt that to become stricter and more hostile may not be the best approach in dealing with this.
- On contributor state that the UK should take the moral highground regarding the right to international protection in the EU.
- The issue of detention – the UK has not agreed to set a time limit on immigration detention. Some contributors gave the view that this is not of benefit to the individual, and that UK's approach of opting out is concerning.

#### EU Funding

- Organisations advised that they do have access to EU funding. Partner agencies get a lot of support. For example, the 'Positive Images' project benefitted from EU funding.
- One organisation considered it unfortunate that the UK has placed the refugee fund with the Home Office. This prevents some organisations from accessing the funding as their constitution prevents them from taking government money (to avoid conflict of interest).

#### Visas and Schengen

- One contributor stated that the big issue in terms of non-participation in the Schengen visa system is the impact on non-EU tourists, for example Chinese and Nigerian tourists. It was stated that it is a barrier that people need a separate visa if they wish to visit the UK while they are in Europe. It impacts on the flow of tourists to the UK via Europe.
- Some organisations gave the view that the difficulty of getting into the EU as a result of Frontex means that migrants to the EU make dangerous crossings to reach the EU. It was thought that the UK's non-participation in Schengen creates another dangerous journey from the continent to the UK.

- One organisation advised of the need to assess what is the cost to the UK of maintaining separate controls at EU borders. This contributor gave the view that joining Schengen would avoid issues of queuing such as those seen at Heathrow.
- Several contributors advised that they would have confidence in the EU visa system. Contributors felt that the concern of politicians around these issues is of no practical value to UK citizens at all.
- It was also suggested that if the UK had taken a different approach and joined Schengen, UK Borders would not be so cluttered, travelling between UK and the rest of the EU would be the same as, for example, travelling between Spain and France.
- One contributor gave the view that Schengen doesn't seem to have caused significant problems for countries currently in the Schengen visa system.

#### Legal Migration

- Students are classed as 'migrants' for net migration purposes. Some contributors felt that students aren't migrants and should be treated as visitors. It was stated that the organisations recognise that immigration data is flawed.
- One contributor made the point that 'we don't have a good sense of who is coming and going', and stated that there needs to be a better understanding of migration flows, who is here etc, to better inform immigration policies.
- Several contributors agreed that a common EU system, measurement of immigration flows and data sharing would lead to improvements.
- Most of the attendees agreed that it would be useful to have a better sense of what would be required of the UK were we to opt in to legal migration measures. It was stated that the problem is that the UK doesn't ever enter into that debate, so the questions are not properly explored.
- An example is the worker's Directive – this does not seem to deal with numbers specifically, it is simply facilitating legal migration of non-EU workers.
- It was stated that progress in other EU states has also been slow. This is down to national governments determining what is in their national interest.

- One contributor asked what are the main blockages to the e-Borders system, whether is it an IT issue, or is it an issue of shared data? If it is data sharing, they felt that we should be positive on opting in as the use of E-Borders would address a lot of our concerns.

### Returns and Readmissions

- One contributor reported that in Morocco there is a high level of resentment towards what they see as 'bullying' from the EU, many feel that there is an assumption that people have entered the EU illegally via Morocco. The return of illegal migrants to Morocco is tied up with threats on economic ties, aid etc.
- Another contributor referred to the EU-funded returns project for refused asylum seekers, and stated that there is tension between the interests of the EU and the receiving countries. For example, the intention to build up services for returned asylum seekers in receiving countries was not always seen as a priority by services in the receiving country. The idea is to have a package for reintegration, but such returnees are often returning to countries with huge unemployment, and this can be very difficult for the receiving countries to accommodate.
- One contributor also made the point that mind concerns around human trafficking with regards to returns must be taken into consideration.

### Additional points

- One contributor raised the concern that human trafficking did not appear on the agenda for this event. The contributor acknowledged the explanation that human trafficking was due to be covered in the Police and Criminal Justice report by the Home Office in semester four of the review.
- The same contributor gave the view that human trafficking was a migrants' rights matter as much as a criminal justice matter, and expressed the concern that this important issue may be missed between the two reports.

## **Free Movement of Persons**

### Transitional arrangements

- One organisation pointed out that although they did not know whether the imposition of transitional arrangements on accession state nationals was correct, they did have a fund to help destitute migrants, for example those from A8 and A2 countries, who have difficulties in accessing support when subject to transitional arrangements.

- Often the problems faced by these migrants were that they had lost their jobs, were unable to find work or their arrangements had otherwise fallen through.
- Several contributors felt that there is often confusion around entitlements and access to support amongst EEA nationals from accession states. The simpler the rules and arrangements are for accession state nationals the better. Some contributors felt that the current Transitional provisions and arrangements for support are very confusing.
- The UK government's interpretation of the right to reside (residence test) is going through the courts – one organisation suggested that two thirds of EU nationals are currently refused access to benefits.
- One organisation suggested that transitional periods for accession state nationals create 'employment ghettos' – during the 7 year transition there are a lot of interest groups working with these migrants. Once this system is in place there are huge difficulties in breaking with that. This issue causes difficulty in terms of integration – this group of migrants tend to be limited to lower income jobs, ghettoised housing, not learning English as generally working with other accession state nationals etc. They are doing the jobs that no one else wants to do.
- It was asserted that employment ghettos have strong links to the exploitation of migrants. Wherever private sector agencies control access to the labour market there are problems in terms of social mobility and integration. This varies according to location, for example there are a lot of issues in Hull, where access to the labour market is controlled to a large extent by these agencies, as opposed to Bristol, where the labour market is more open.
- One contributor stated that as a result of the points made above, Bulgarian and Romanian nationals didn't have a choice in terms of employment – gangmasters and employment agencies put them where they want them, not where the migrants want to go.
- There are concerns in Bulgarian and Romanian organisations regarding the ability for nationals of these countries to move out of low paid, low skilled employment.
- It was suggested that the 1<sup>st</sup> January 2014 date for the lifting of transitional arrangements for Bulgarian and Romanian nationals coincides with the run in to an election – there is a risk of a negative tabloid campaign against Bulgarians and Romanians.

- It was also suggested that for Croatia, the small population and relatively prosperous economy may be the reason why there has not been a lot of negative publicity around Croatian accession – there may be an understanding that anyone making noise on the risk from Croatia would risk looking silly.

### Social Security

- In the discussion it was suggested that there is a gap produced by Free Movement. Individuals who are trafficked within the EU, and who are recognised as victims of trafficking, are not provided for in terms of access to support or benefits. Because such people are often traumatised by their experience they may not be able to work, and as no provisions are made for EU national victims of trafficking they are unable to access the necessary support.
- There has been an improvement in terms of recognition of EU/EEA nationals as potential victims of trafficking, but the problem is what one then does in terms of them staying in the UK because they are helping police with their investigation/prosecution, or are unable to return home for safety reasons, there is a gap in the support for these individuals unless they are able to work.

### Labour Market

- One organisation noted that they benefitted from free movement for their staff. There were an international movement and free movement was therefore hugely helpful. It was also helpful in terms of recruiting EU workers with varied language skills.
- Anecdotal evidence was noted that the cap on non-EU workers has led businesses to shift to EU rather than UK workers.
- Networking effect of free movement means that businesses become better equipped with native speakers of EU languages.
- The discussion noted that SMEs had been said to report that recruitment of 1 or 2 key workers with language skills or local knowledge can give a competitive advantage.
- The discussion noted a court case against Spain regarding the restricting of access to healthcare by EU nationals in Spain. Restrictions on free movement rights and the social security rights of EU nationals in other Member States work both ways.



- It was suggested that free movement from the UK to the EU is not as great as the reverse. Language skills make a difference as many EU citizens speak English, which makes it easier for them to come to the UK.

**Home Office and Department for Work and Pensions**  
**Monday 8<sup>th</sup> July 2013**

## **Submission 10**

### **Balance of Competences Asylum & Immigration and Free Movement of Persons Event Note**

**30 July 2013, 10.00-11.00**

#### **Attendees:**

<b>Name</b>	<b>Org.</b>	<b>Name</b>	<b>Org.</b>
Hazel Roberts	Home Office	Ashleigh Gray	Home Office
Simon Peters	DWP	Richard Given	DWP
Mark Lomas	Home Office	Richard Mennear	BP
Larry Stone	BT	Tim Reardon	UK Chamber of Shipping
Richard Ballantyne	British Ports Association	Stephen Longson	Research Council UK
Andre Levi	Cisco	Mike Spicer	British Chamber of Commerce
Stuart Smedley	British Influence	Nigel Lefton	City of London
Richard Christian	Dover Harbour Board	Ian Preston	UCL
Prof. Michael Dougan	Uni. Of Liverpool	Stephen Booth	Open Europe
Sara Zalin	Euclid	Magarida Vasconcelos	European Foundation

#### **Introduction:**

1. Hazel Roberts (HR) thanked everyone for attending and gave some background on the Balance of Competences Review and the event. HR summarised the current balance of competences between the EU and the UK on asylum and immigration issues, and gave an overview of the emerging themes from the evidence submitted to date.
2. It was agreed that the event would run under Chatham House rules. An agreed note of the meeting, including attendees, would be used as evidence for the

Asylum and Immigration Balance of Competences report, but contributions at the event would not be attributed.

### **Asylum & Immigration:**

3. The advantages and disadvantages of the UK opting out of the border and visa aspects of the Schengen acquis were discussed.
4. The group discussed the increasing need for the UK to align with the Schengen zone on short term visas. There is evidence that Chinese visitors are opting to travel to Schengen states instead of the UK because of the requirement to get a separate UK visa, as well as anecdotal evidence that big businesses are preferring to hold large training events in Europe rather than in the UK for the same reason.
5. The need for separate UK and Schengen visas limits scientific mobility within the EU. To support scientific mobility within the EU and to reinforce the European research policy to support non EU nationals it might help to align UK and Schengen short term visa rules or to introduce a simplified 'Scientific Criteria or visa route' within UK legal migration policy.
6. The inconvenience of applying for 2 visas will only increase as Schengen rolls out biometric requirements. The UK should be exploring the possibility of aligning biometric taking facilities with Schengen states. If the UK is to retain a separate visa system, it needs to be cheaper and more effective to continue to attract tourists.
7. By retaining its own border controls, the UK causes several issues at ports and for the freight, coach travel and cruise liner industries. Border checkpoints at ports are slow and impede the free movement of people and freight. For example, extra checks on cruise passengers introduced last year have already put 1 cruise liner off stopping in the UK. Cruise liners work to tight itineraries and delays caused by border checks are very damaging. Sea traffic and freight volumes to the UK are down since 2003. The UK should be looking at a risk based approach to border controls.
8. Additionally, a number of shipping companies now do crew relief in Europe because getting a UK visa staff members is too difficult.

**Home Office**

## **Submission 11**

### **HOME OFFICE REVIEW OF THE BALANCE OF COMPETENCES ASYLUM AND IMMIGRATION MIGRATION WATCH UK EVIDENCE**

#### **Asylum**

1. 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. Others which might well have impeded the operation of the British asylum system have not been opted-in to. The government are also right not to have opted-in to the recast Directives on Reception Conditions, Qualification and Asylum procedures for the reasons given in the call for evidence.
2. That is not to say that the present position is satisfactory. 60% of applicants are refused, after all appeals, while only half of those are removed. Backlogs have developed repeatedly, with many subsequently granted Indefinite Leave to Remain under some aspect of Human Rights legislation. Other asylum seekers who stay on illegally can also benefit from human rights claims.
3. The fact that asylum seekers queue up in Calais waiting for an opportunity to get themselves smuggled into the UK suggests that they regard their prospects in the UK more favourably than in the safe countries that they have already crossed. The statistics confirm this; they are about twice as likely to get asylum or some other form of protection in the UK as they would be in France or Belgium.

Table 1. Percentage of applications granted asylum and percentage granted any form of protection in Belgium, France and the UK, 2011 and 2012. Source: EUROSTAT. (Note: The second column includes all those granted asylum as well as individuals granted protection under human rights legislation.)

	Percentage Granted Refugee Status		Percentage Granted Protection*	
	2011	2012	2011	2012
<b>EU15</b>				
Belgium	14%	12%	18%	16%
France	11%	12%	14%	15%
<b>UK</b>	<b>23%</b>	<b>28%</b>	<b>35%</b>	<b>39%</b>

4. It follows that this weak and expensive system (which costs over £500 million a year) is in no position to handle a sudden influx arising, for example, from a crisis in some Middle Eastern country. The government should therefore 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 of prospect of eventual return. It is also right to facilitate in-country extensions for nationals of countries such as Syria so as

to avoid costly asylum claims

5. Judicial decisions have greatly widened the scope for asylum. For example, many Christians in Pakistan, Egypt and Iraq would have a strong claim to asylum if they were able to reach the UK. The same applies to those persecuted as a result of their sexual orientation in a wide range of countries, particularly given a recent court ruling that they should not be obliged to conceal their way of life in their home countries. However, for as long as the UK remains a member of the European Union, we will be tied in to the 1951 Convention by the terms of the Lisbon Treaty and any question of withdrawal remains a moot point.

## **Immigration**

6. The UK is already, with Holland, the most crowded mainland country in the European Union. We also have a relatively high birth rate (with a Total Fertility Rate of 1.84) which means that we have no need of any significant immigration to maintain our population.
7. Our age structure is, of course, growing older as elsewhere in the Western world but immigration is no answer to this unless allowed to continue indefinitely and at a growing pace. All serious studies have ruled out immigration for this purpose, pointing to the advantages of working longer as we live longer.<sup>1</sup>
8. Our birth rate puts us in a completely different category from countries such as Germany, Italy and Spain with birth rates around 1.3 and populations that would decline sharply without immigration.<sup>2</sup>
9. This may partly explain why there is no public support for, or even discussion of, the UK joining the Schengen area. The effect of that would be to open our borders to what would be almost certainly a substantial flow of illegal migrants. Such migrants compete with native workers, driving down wages and enabling dishonest employers to compete unfairly with employers who offer decent wages and conditions.
10. There are, however, a number of impacts arising from EU competence. The main one is the difficulty completing the e - borders system in the face of opposition from the European Commission who insist that there should not be the slightest diminution of free movement for EU citizens. Until e - borders is fully in place we will have no clear evidence that a person has left the UK.
11. The present arrangements also involve a number of loopholes in our immigration system;

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<sup>1</sup> Pensions Commission, Pensions: Challenges and Choices, The First Report of the Pensions Commission, 2004, URL: <http://image.guardian.co.uk/sys-files/Money/documents/2005/05/17/fullreport.pdf>

<sup>2</sup> Most recent EUROSTAT data shows that in 2011 Germany's fertility rate was 1.36, Italy's 1.4 and Spain's 1.36.

a) Non-EEA family permits

Some 20,000 were granted in 2012 with 5,000 applications rejected. This is a significant loophole which may expand. It enables EU citizens to bring a family member to Britain without any control by the UK immigration authorities.

b) Bogus Marriages

These are often conducted with EEA citizens in order to take advantage of the family permit loophole.

c) Mode 4

So far limited in extent but this route for foreign workers is negotiated under Free Trade Agreements and, as such, falls under EU competence. Again this means that the UK immigration authorities have no control over the number of third country employees posted to the UK.

d) The Services Directive

Similar considerations apply as set out in the call for evidence.

e) Special Arrangements for Turkey

These date back to 1973 and have not, so far, been substantially used but that situation could change.

12. A related aspect, covered in our evidence to the DWP/HO review, is the question of access to benefits.<sup>3</sup> In practice, most EU migrants from Eastern Europe can gain access to the UK benefit system almost on arrival. Furthermore, the tax credit system is heavily weighted in favour of the low paid. The overall effect is that a worker from Romania or Bulgaria can, even working at the minimum wage in Britain, earn between four and nine times as much as he or she would earn in their home country - after the difference in the cost of living has been taken into account.<sup>4</sup> This is clearly a massive pull factor which needs to be attended to if the government's immigration objective is to be achieved.

13. As regards the benefits from East European migration, a study by the NIESR found that the medium term contribution of A8 migration to the UK's GDP per head was expected to be "negligible".<sup>5</sup>

**31 July 2013**

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<sup>3</sup> Department of Work and Pensions, 'Nationality at point of National Insurance number registration of DWP benefit claimants', January 2012, URL:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/196677/nat\\_nino\\_regs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_regs.pdf)

<sup>4</sup> Migration Watch UK, Briefing Paper No 4.20, Incentives for Romanian and Bulgarian Migration to the UK, February 2013, URL: <http://www.migrationwatchuk.org/briefingPaper/document/290>

<sup>5</sup> National Institute of Economic and Social Research, 'Labour mobility within the EU – The impact of enlargement and the functioning of the transitional arrangements', Discussion paper 379, April 2011, URL: [http://niesr.ac.uk/sites/default/files/publications/270411\\_143310.pdf](http://niesr.ac.uk/sites/default/files/publications/270411_143310.pdf)

## **Submission 12**

### **Balance of Competences Asylum & Immigration and Free Movement of Persons Meeting Note**

**1 August 2013, 14.30-15.00**

#### **Attendees:**

<b>Name</b>	<b>Org.</b>	<b>Name</b>	<b>Org.</b>
Mark Lomas	Home Office	[REDACTED]	Intercontinental Hotel Group
[REDACTED]	Intercontinental Hotel Group	[REDACTED]	Intercontinental Hotel Group

#### **Introduction:**

1. Mark Lomas thanked the representatives from Intercontinental Hotel Group (IHG) for attending and for their interest in the Balance of Competences Review. The background of the Review was briefly summarised.

#### **Asylum & Immigration:**

2. IHG feel that it is an increasing disadvantage to Britain that third country nationals have to apply for a visa twice (once for Schengen, once for the UK) and that the consequence is that many Chinese, Russian and Indian visitors are opting for Schengen visas only. Recent evidence supports such a conclusion, with hotels in other capital cities doing better than those in the UK. There is a need therefore for increased cooperation with the Schengen states on short-term visas. IHG questioned whether the UK was as 'open for business' as possible.
3. UK immigration policy needs to be more reactive in addressing skills gaps. The number of chef vacancies, for example, in the hotels sector continues to grow and although chefs are included in the 'Shortage Occupation List', only highly skilled chefs are covered. However, it was recognised that given each member state would likely have a different list of shortage occupations, aligning with the EU in this area of legal migration policy probably was not an adequate solution.
4. Similarly, the UK needs specialist language skills in frontline services. The scarcity of frontline service staff with Mandarin or Arabic language skills, for example, is a significant off-putting factor (along with visa requirements) for those thinking of visiting the UK.
5. It was suggested that the UK changes to its Intra-Company Transfer route had made the route more restrictive.

### **Free Movement of Persons:**

6. IHG stressed the importance of a consistent application of free movement rights across Member States in regards to things like social security provisions, pensions, etc. Currently if you want to move senior staff around Europe, you have to put expensive mobility plans in place at a cost for the business. Increased consistency in application across Europe would improve such mobility. The Netherlands and Luxembourg both have good models, if a single model was to be enforced upon all member states.



### **Submission 13**

<b>Name</b>	<div></div>
<b>Organisation/Company (if applicable)</b>	Anonymous
<b>Job Title (if applicable)</b>	<div></div>
<b>Department (if applicable)</b>	<div></div>
<b>Address</b>	<div></div>
<b>Email</b>	<div></div>

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input checked="" type="checkbox"/>	Airline

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

16. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

The main disadvantage to the UK not participating in the border and visa aspects of the Schengen protocol is this results in 2 separate visa regimes; one for the UK and one for most of the rest of mainland Europe.

Potential visitors to the UK and the rest Europe are required to apply for 2 visas. Our customers and trade partners tell us that this is time consuming and expensive. There is evidence that a visitor seeking to maximise their European experience is likely to opt for a Schengen visa only, as this allows them to visit multiple countries. The UK visa only allows the holder entry to the UK and this reduces the number of visitors to this country.

A UK visa is also required by many passengers who are in transit through the UK to destinations in Europe, Africa, South America and Asia and the Far East, even though they remain airside. However many European hubs do not have this same requirement. This means that the UK is missing out on transfer passengers and the resultant export revenue that such business generates.

17. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

If the UK was participating in the border and visa aspects of the Schengen protocol the UK authorities would be party to the Schengen Information System and the Visa Information System. They would have more information regarding an individual's travel history when that individual applied for a visa and when they entered Schengen. This means that a more informed decision could be made regarding that person's acceptability for travel to the UK (and the rest of Schengen). This may improve the security of the UK (and external Schengen) border.

If flights from Schengen countries to the UK were considered domestic, this would ease congestion at the UK Border, allowing current resources to be focussed on non-Schengen arrivals.

18. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

Changes in world politics always present immigration challenges. Visa regimes need to react quickly to this. Authorities can be quick to impose a visa requirement, but not so quick to remove one. Visa regulations should be under constant review.

Electronic visas are becoming more common-place. This should be considered by the UK (and the rest of Europe). However, automation at the border and in travel documents is more advanced in some European countries than in others.

19. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?

There should be greater alignment of the UK and Schengen visas in terms of a single application form, co-located biometric capture and information sharing. In theory, this should reduce costs and speed up the visa application process. In turn, this would strengthen both the UK border and the external Schengen borders

The aim should be for mutually compatible systems in the future and for more co-operation with close trading partners in developing "Trusted Traveller" schemes.

20. Are there any other general points you wish to make which are not captured above?

No Comment

**Review of the Balance of Competences**  
**Asylum and Immigration & Free Movement of Persons**  
**PCG Response**

July 2013

**1. Introduction**

- 1.1. This document outlines PCG's views on the Home Office Review of the Balance of Competences between the UK and the European Union, with respect to the issues of asylum, immigration and the free movement of persons.
- 1.2. PCG is the association that represents the estimated 1.6 million freelancers in the UK, including contractors and consultants. PCG's 21,000 members are largely highly skilled specialists, supplying their expertise on a flexible basis to a variety of businesses- from large companies to SMEs.
- 1.3. Freelancers use a variety of legal forms. 96% of PCG's members work through their own limited companies- "limited company contractors". PCG also represents sole traders and freelancers who operate in partnerships or via "umbrella" structures. It therefore represents the very smallest enterprises in the UK.
- 1.4. These "nano-businesses" provide IT, engineering, project management, marketing and other functions in sectors including financial services, telecoms, oil and gas and defence.
- 1.5. Many of PCG's members work in other EU countries for short periods of time. As such, PCG supports co-operation between EU members to enable freelance businesses to operate across the EU.
- 1.6. PCG members also have serious concerns over the abuse and misuse of intra-company transfer permits, which allow offshore outsourcing companies to provide large numbers of low cost IT workers to third parties. This distorts the market for contractors, and can create undercutting. PCG believes that EU and international agreements limit the ability of the UK to effectively tackle abuse in this area.
- 1.7. PCG has come to its view by consulting a number of sources including:
  - specialist expertise from its own staff;

- published and unpublished survey data of its membership;
- engagement with key stakeholders through an extensive meetings and consultation programme;
- PCG's own online forums, a key method of communicating with PCG's members.

## **2. Summary of PCG's Position**

### ***Balance of Competences***

- PCG believes the UK should continue to co-operate at EU level on issues such as the free movement of labour. It is important that dialogue occurs to ensure that freelancers are not prevented from working within other EU member states.
- However, the UK must retain a significant degree of control over its asylum and immigration policies. International agreements have limited the UK's ability to address the issue of ICT abuse.

### ***Free Movement of Persons***

- Ultimately, freelancers benefit from the free movement of labour between EU countries. In 2012, 15% of PCG members worked outside of the UK, with the majority working within the EU
- However, 'Gold plating' of EU policy can also mean that the UK's labour market is more exposed than its European counterparts to competition. This means there is no 'level playing field' for UK businesses.
- Greater clarity is needed over how and when UK freelancers can work within the EU. Many work through their own limited companies and they can encounter significant regulatory and administrative burden when working abroad.

### ***Intra-Company Transfers***

- PCG has serious concerns over the abuse and misuse of "intra-company transfer" (ICT) permits. These permits are intended to allow multinational companies to transfer senior or specialist staff, or staff that require training, between different locations.
- We believe ICTs are instead used by large offshore outsourcing firms to transfer large numbers of low-cost workers from outside of the European Economic Area (EEA) to the UK, for supply to third parties.
- Strict rules to prevent undercutting, such as the minimum salaries that each

migrant must earn, can be abused with tax free allowances.

- The UK is severely limited in its ability to tackle this abuse. This is because it is party to a number of international and EU level agreements (such as the EU-India Free Trade Agreement) which restrict the steps it can take with regards to ICTs.

### **3. Free Movement of Persons**

#### ***Background***

- The UK is unique within Europe in having an extremely flexible labour market with a large, established freelance workforce of 1.6 million people. Freelance workers are those that work for themselves in higher professional and technical occupations – they are a subset of the wider self-employed population. PCG's own members work in sectors such as IT, finance, engineering and the creative sectors.
- The UK's flexible labour market and its freelance workforce have a unique competitive advantage within the Europe Union. Businesses within the EU often need highly skilled services, such as interim management, on a flexible basis. This is especially popular in the Netherlands and Germany. Of the 15% of PCG members who have worked abroad in 2012, 19% worked in the Netherlands, 16% in Germany and 13% in France.
- The UK has a high number of independent professionals (I-pros: another definition of freelancer) as a proportion of its self-employed workforce as compared to other European countries. However, competition from Europe is increasing – 8.5 million work in this way across Europe. In the last ten years for which figures are available, this represents a growth of 82%.

#### ***Lack of clarity***

- The growth in independent professionals and freelancing in the European Union is down to the liberalisation of previously much more restrictive labour markets. However difficulties remain for UK Freelancers who wish to work in other EU member states.
- Many freelancers choose to work through their own limited companies. This creates difficulties when working across borders. For example, it is often unclear whether an individual can continue to work through their own limited company for an extended period of time when working within the EU.
- PCG believes greater cooperation is needed between the UK and EU to ensure

that UK freelancers do not face unnecessary administrative or financial barriers to working in other EU member states.

- The EU is currently consulting on plans to introduce “Single Member Limited Liability Companies” which may go some way to improving this process. However it is of critical importance that any measures introduced at EU level to tackle this issue do not affect those freelancers who choose to work in the UK alone, by changing the existing legal structures that exist for freelance workers in the UK.
- Dialogue must continue with other EU member states to ensure the free movement of persons within the EU is not hindered by restrictive labour market policies.

#### **4. Immigration and Asylum**

##### ***Intra-Company Transfers***

- PCG’s primary concern with respect to asylum and immigration policy concerns the abuse of “intra-company transfer” work permits. These permits are intended to allow multinational companies to transfer senior or specialist staff, or staff that require training, between different locations.
- We believe ICTs are instead used by large offshore outsourcing firms to transfer large numbers of low-cost workers from outside of the European Economic Area (EEA) to the UK, for supply to third parties. This allows the end users of this labour to bypass the Resident Labour Market Test, the immigration “cap” and various other immigration rules.
- Strict rules to prevent undercutting, such as the minimum salaries that each migrant must earn (the “going rate” for the role they are fulfilling) can be abused. The minimum salary thresholds can be met by paying ICT workers in part with tax free allowances.
- This abuse is damaging and distorts the market. UK freelancers are unable to compete with low cost IT workers paid below the minimum salary thresholds (which are set at the 25th percentile of typical pay). ICT workers can pay less tax than UK workers, can cost less for the end user, and are usually supplied in large numbers to end users.
- Skills are being lost as IT becomes a less appealing career prospect for graduates, who find that salaries and contract rates are under increasing pressure.

### ***The UK, EU and ICTs***

- The UK is severely limited in the steps it can take to tackle this abuse. This is because it is party to a number of international and EU level agreements (such as the General Agreement on Trade in Services 'Mode 4') which restrict the amount of policy it can make in this area.
- In particular, at EU level, the implementation of the planned EU-India Free Trade Agreement could lead to further relaxation of the rules surrounding ICT permits.
- For example the 'Mode 4' concession goes against the Government's policies to limit non-EU economic migration. The EU India Free Trade Agreement could thus undermine UK policy and ultimately leave room for abuse of ICT permits.
- The majority of ICT Certificates of Sponsorship are issued to large Indian offshore outsourcing companies. Given the UK's established IT sector and historical ties to India, it is likely that it will be disproportionately affected by the EU India Free Trade Agreement.
- ICT workers can earn salaries close to the minimum wage once allowances are discounted. This means there is scope for the abuse of low paid workers to occur.

### ***The Future***

- The UK must retain a significant degree of control over its asylum and immigration policy, especially with regard to the policies surrounding intra-company transfer work permits.
- PCG believes serious consideration should be given to how international agreements are implemented. We support international business practice through the correct use of ICTs, but abuse of the permits by large offshore outsourcing companies must be prevented.
- We believe closer ties with the EU on immigration policy could create challenges in this regard, and any policy decisions should bear this impact in mind. We acknowledge that balancing the need for international trade with the need to prevent abuse is a complex and challenging task. However, it is an achievable and essential aim to ensure the continued success of the UK's 1.6 million freelance workers.

### **Contact:**



[REDACTED]  
[REDACTED]

PCG

**T:** [REDACTED]

**E:** [REDACTED]

**W:** [www.pcg.org.uk](http://www.pcg.org.uk)

## **Submission 15**

### **General**

BT is committed to a European Single Market based on principles of openness, fair competition, a level playing-field, and encouragement of innovation. The UK has been a leading force in shaping the EU on these policy lines and should continue to engage fully in their support.

We do not take a formal position on the optimal Institutional arrangements, and are opposed to a number of EU legislative proposals. We believe however that the current '*acquis*', and the role played by the Commission in its enforcement, are vitally important for UK (as well as other EU) companies, and for the ICT sector. We would be concerned if the benefits - particularly in terms of market access and competitiveness, and valuable EU level action on trade and competition policy, and the single market - were to be jeopardised by a re-negotiation of competences where this substantially risked unravelling the existing balance.

There are number of areas of EU policy-making that give cause for concern. We believe these are probably best tackled by more effective and consistent enforcement of existing rules, and a more selective and evidence-based approach to any new legislation rather than a radical change to existing Institutional or Treaty relationships. The areas of pensions and some employment legislation may however be best dealt with as national competencies constitutionally.

### **Policy considerations**

- EU proposals for new legislation, for example in **Pensions (IORPS/Solvency II)**, and social affairs can carry serious risks to competitiveness and innovation. Employment-related legislation, such as pensions, working time and agency measures, is an area where national competence tends to be more appropriate. A submission to the EC's Green Paper on Long Term Investing Green Paper – Annex A - sets out as an example our very strong concerns – shared by UK, German, Dutch, Irish and Belgian industry – on ill thought out EC policy proposals on Solvency II quantitative norms for insurance being applied to the pensions sector, thankfully currently in abeyance;
- We do however think that there are areas where – with forensic focus – additional EU level action can be valuable in the area of free movement of people and migration. The **Intra-Corporate Transferees (ICT) proposed Directive** is a case in point – see notes below;
- On **visa policy generally**, whilst this may be outside any narrow scope of the Review, we believe it is urgent for the UK Authorities to set out a clear and progressive policy, and attendant processes, in a global context for business and student visas in particular, not least in relation to welcoming students and professionals with high technology skills from outside the EU;

- **Better coordination:** a continuing strategic review of the overlaps and interdependencies between EC directorates and between EU institutions, with Member State input, may also help to drive efficiencies in policy making and to avoid ‘a thousand flowers blooming’ through the EC right of initiative particularly at a time of economic difficulty where focus on the ‘vital few’ is needed. Similarly, improving impact assessments per initiative should also seek to address the cumulative impact of a measure taken with the effect of other measures in hand or in place.

### **Proposed ICT Directive**

The proposed ICT directive – now some three years under debate since introduction - is a welcome pro-competitiveness initiative which addresses a number of issues which act to impede economic growth in Europe. Key benefits are that it will:

- facilitate the entry into the EU of skilled and highly skilled employees for temporary periods of time;
- reduce existing barriers to the intra-EU mobility of qualified ICTs within the EU;
- enhance the competitiveness of enterprises in the EU by assisting their access to the most qualified and competent workers;
- reduce compliance costs through the convergence of member state procedures and information requirements for processing visa applications for intra-corporate transferees. This should help reduce national compliance and processing burdens;
- enhance the attractiveness of the UK and other EU states for FDI given greater ease in intra-EU transfers of key personnel;
- accelerate procedures to ensure timely and consistent decision making with respect to pending visa applications.

**BT**

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## **Annex A - EC Green Paper on long-term financing of the European Economy**

### **British Telecommunications plc (“BT”) response**

#### **About BT**

BT is one of the world’s leading communications services companies, serving the needs of customers in the UK and in more than 170 countries worldwide. Our main activities are

the provision of fixed-line services, broadband, mobile and TV products and services as well as networked IT services.

In the UK we are a leading communications services provider, selling products and services to consumers, small and medium sized enterprises and the public sector. We also sell wholesale products and services to communications providers in the UK and around the world. Globally, we supply managed networked IT services to multinational corporations, domestic businesses and national and local government organisations.

## Introduction

BT welcomes the opportunity to contribute to the Green Paper on long-term financing. In our response we have predominantly focused on the questions we consider relevant in relation to Institutions for Occupational Retirement Provision (IORPs) and the role they can, in the right regulatory environment, play in providing finance for long-term investments.

BT is the sponsor of the BT Pension Scheme, which is the UK's largest corporate pension scheme. At 31 March 2013 the Scheme held assets of over £41 billion and was responsible for around 320,000 beneficiaries under a defined benefit structure. This includes around 45,000 employees earning defined benefit pensions.

The key points that we make in our response are:

- Pension schemes have liabilities that stretch out over a long time horizon, and are a key potential provider of long-term financing. Pension liabilities are paid out over long periods, typically over 50 years. Their relatively low need for liquidity means that they are uniquely placed to make long term investments and have the ability to invest counter-cyclically, thereby reducing systemic risk.
- Excessive EU level pension scheme regulation could severely hinder the ability for pension schemes and companies to invest for the long-term, such as in infrastructure. Ahead of the upcoming review of the IORP Directive, the Commission stated that it considered introducing Solvency II style quantitative measures for IORPs<sup>9</sup>. This approach would severely impact the real economy and EU growth prospects. It would divert funds away from corporate investment and discourage IORPs to invest in longer term asset classes, such as infrastructure. Indeed, the impact would be to substantially enlarge the 'long-term investment' gap which this present consultation seeks to remedy. Reducing investment in innovation and infrastructure in turn would undermine the wider growth prospects, and threaten the ability of EU companies to compete technologically with challengers from emerging markets and the US.

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<sup>9</sup> The Commission clarified on 23 May 2013 that it had postponed proposals covering quantitative elements of IORPS for the time being, pending further work on the impact of such measures, concentrating meanwhile on governance and transparency elements.

- The consequences of regulating pension schemes further need to be well understood and a much clearer analysis undertaken of how these would interact with the Commission's wider objectives – in particular, encouraging investment in new technology, growth and employment in the EU, and hence in competitiveness. There is a need for a co-ordinated and consistent approach to policy-making across the board.

## **Answers to questions in the Green Paper**

### **1) Do you agree with the analysis set out above regarding the supply and characteristics of long term financing?**

We have no particular comments on the analysis provided. However it is worth stressing the key role that IORPs can play in providing longer term financing. The amount of assets held by IORPs is significant and there is well in excess of £1 trillion in the UK alone (Source: UK Pension Protection Fund).

IORPs have liabilities to pay cashflows over long periods of time and aim to invest in a way that enables them to meet these payments. For the BT Pension Scheme, cashflows with a present value of c£40bn are expected to be paid out over more than 80 years. This allows scope for investment in illiquid, longer term investments including infrastructure funds and projects as long as the regulatory framework supports this.

### **6) To what extent and how can institutional investors play a greater role in the changing landscape of long-term financing?**

IORPs are already subject to EU rules (IORP Directive) as well as to national legislation. By definition IORPs have long-term liabilities and the ability to invest for the long-term. To avoid unduly restricting this ability, the right regulatory framework needs to be in place. Low Government bond yields highlight the opportunity for greater investment in longer-term asset classes, where greater risk-adjusted returns can be achieved.

In the UK, a greater industry focus on mark-to-market measures for pension scheme funding and a regulatory emphasis on measuring liabilities with respect to Government bond yields have contributed to increased holdings by pension schemes in Government bonds and other low risk assets to reduce volatility. This has already led to a reduction of the funds available for longer-term investment.

Mercer's 2013 Asset Allocation Survey covering European funds highlights this trend. For example, in the UK the proportion of total assets held in equity investment has reduced from 68% in 2003 to 39% in 2013. There are a number of reasons for this decline, with the Mercer report citing regulation and accounting practices as key factors.

The current regulatory context appears to be pushing further towards mark-to-market measures, as illustrated by the Commission's consideration of a Solvency II like approach to the regulation of IORPs and to present such proposals in the coming years. If this approach is pursued, it will exacerbate the current trend of pension scheme assets

moving towards lower risk investments such as Government bonds in order to reduce volatility on this measure.

In order to allow pension funds to flow into long-term investments, the regulatory regime needs to accommodate such investments, and avoid the mistake of confusing risk avoidance in the short term with the long-term ability of schemes to meet their members' expectations on retirement. In the UK, the current trend is moving away from long-term investments and quantitative proposals based on Solvency II would substantially worsen the current position.

**7) How can prudential objectives and the desire to support long-term financing best be balanced in the design and implementation of the respective prudential rules for insurers, reinsurers and pension funds, such as IORPs?**

The European Commission's White Paper on pensions discusses providing adequate, safe and sustainable pensions. Pension provision clearly needs to strike a balance between these three factors.

In the UK, IORPs are required to be funded prudently, are supported by sponsors and the schemes' assets are held separately from the corporate. In cases where an employer is no longer able to support the scheme and there are insufficient funds to provide full benefits, an industry-wide pension protection fund provides a minimum level of benefits to members. This gives a very high degree of security to scheme members' benefits and has proved a robust regime throughout the recent economic crisis. The UK pension regulatory system also has strong governance and transparency requirements.

Moving to a Solvency II style approach for funding pensions could potentially increase the security of some scheme members' benefits through the use of excessively prudent funding measures that are expected to be sufficient to withstand, say, a 1 in 200 year event. These considerations on the safety of pensions need to be balanced against both sustainability and adequacy, as additional safety would come at a very high cost, as highlighted below:

- Additional investment in bonds – the Oxford Economics study “The economic impact for the EU of a Solvency II inspired funding regime for pension funds” published in December 2012 calculated that UK pension fund investment in UK equities alone would reduce by €127bn by 2020 from applying Solvency II style regulations to pension schemes.
- Less ability to invest in long term infrastructure opportunities – similarly to the above point, there would be a reduction in investment available for infrastructure investment that would have consequent negative macro-economic impacts and risks to policy objectives that require such investment (e.g. in renewable energy).
- Counter cyclicity – the sustainability of the overall financial system would be worsened due to IORPs investing more in line with banks and insurers. This will remove the systemic benefits from pension schemes being able to take a long term view and invest counter-cyclically.

- Extra costs on business – a Solvency II type approach is expected to create additional costs for business that would divert funds away from creating jobs and investment in the EU. EIOPA's impact study highlighted that the costs of this type of regime could run into multiple €100bns.
- Lower pensions for individuals – there will be less adequate pensions provision overall, as benefits are scaled back due to their increased costs.

Commissioner Barnier recently announced that, for the time being, EIOPA will continue its investigations into quantitative requirements for IORPs and further work on the development of Solvency II like measures. While we welcome the decision to take a more prudent strategy, we remain greatly concerned by the prospects of quantitative EU level rules even at a later date. In particular we would wish to underline that any undertaking to introduce quantitative rules for pension schemes needs to be re-examined in the context of wider EU objectives on economic growth, long-term financing and providing adequate, safe and sustainable pensions.

**10) Are there any cumulative impacts of current and planned prudential reforms on the level and cyclicity of aggregate long-term investment and how significant are they? How could any impact be best addressed?**

In Question 7, we comment on the potential detrimental impacts of Solvency II style regulation for IORPS. We also believe that new regulations in relation to derivatives clearing (EMIR), despite the pension scheme exemption, will force pension schemes and other long term investors to reduce the amounts they invest in the real economy to enable the significant holdings of cash needed to facilitate the provision of cash margining to derivative counterparties and clearing exchanges.

We also have a wider concern on the increasing cost for corporate issuers of hedging public bond issues using interest rate derivatives. The introduction of increased capital requirements under Basel III for banks is feeding directly through to increased costs of hedging foreign currency debt for BT as we cannot source sufficient debt from the domestic sterling market at an attractive price. This means that we are obliged to source debt from EUR and USD markets and hedge the currency exposure using derivatives.

**20) To what extent do you consider that the use of fair value accounting principles has led to short-termism in investor behaviour? What alternatives or other ways to compensate for such effects could be suggested?**

In our response to this question, we consider the impact of accounting standards on behaviour in relation to pension schemes.

It is a widely held view that fair value accounting for pensions has been a contributing factor to pension schemes shifting assets away from longer term investments – as noted, for example, in Leeds University's paper on Accounting for Pensions published in September 2011.

In our experience, investors' primary concern is around the cash commitments being paid to pension schemes rather than arbitrary accounting figures that are not representative of the long-term position.

Whilst we believe fair value accounting has led to short-termism, we think that pension scheme regulation provides the biggest danger to encouraging short-termism.

As long-term investors, pension funds have limited liquidity needs and are able and willing to hold illiquid assets, provided that the prevailing regulation allows them to do so. We welcomed the recent announcement from Commissioner Barnier to abstain from introducing Solvency-II like quantitative requirements in the upcoming review of the IORP Directive, but we emphasise that also in the mid or longer term such a Pillar 1 approach is not an avenue for appropriate IORP regulation.

One of the many drawbacks of a Solvency II style approach is the focus on a mark-to-market valuation of the assets and liabilities of pension schemes, with additional capital being required if "higher risk" more volatile assets are held, with expected consequences if there is underfunding. This type of regime would encourage a material shift of pension fund assets towards lower risk assets such as bonds and away from longer term investments like infrastructure or equities. By lowering expected investment returns, this approach also risks undermining the ability of schemes to meet their liabilities and the ability of sponsors to meet higher capital requirements. See our comments under question 7 for the potential financial impacts of this.

This illustrates the importance that regulation, particularly regulation that is heavily reliant on mark-to-market measures, can have in relation to long-term investment. We believe the wider consequences of any new EU regulation on pensions and linkages between this and the objectives of this Green Paper need to be fully taken into account in any future considerations on quantitative requirements for IORPs.

**British Telecommunications plc**  
**25 June 2013**



## **Submission 16**

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### **TUC submission to Home Office Balance of Competences review August 2013**

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## **TUC Submission to Home Office Balance of Competences Review on Asylum and Immigration**

### **Introduction**

The Trades Union Congress (TUC) has 54 affiliated unions, representing almost six million members, who work in a wide variety of sectors and occupations. The TUC welcomes the opportunity to respond to the Home Office's Call for evidence on the Asylum and Immigration competences.

The TUC has had a long history of opposition to racism and xenophobia, and has consistently highlighted and campaigned against discrimination against black and minority ethnic workers in the British labour market. The TUC believes that a managed migration system, as well as meeting economic and labour market needs, should ensure equal rights for people at work whether they are indigenous or migrant workers.<sup>1</sup>

The TUC feels the UK should 'opt-in' to existing European legislation on Immigration and Asylum as well as supporting further legislation to allow migrant workers to contribute better to the economy with decent working and living standards. Immigration is a global phenomenon that affects all European member states. It is thus more effective for migration flows to be managed through EU legislation rather than member states creating patch-work laws to deal with the issue. It also undermines the common approach required of member states and the scope for involvement by social partners in the process.

In this submission, the TUC will argue that the decision of the UK Government to opt out of key EU Directives on Immigration and asylum has negatively impacted the economy, society and workers' rights.

The Call to Evidence document repeatedly makes reference to 'national interest'. In its submission to this Call for Evidence, the TUC interprets 'national interest' as the protection of rights, safety and quality of life of those working and living in the UK. From this perspective our concern with borders and visas is their ability to reduce the rights of those in the workforce and increase the vulnerability of those who move into the UK for work, study or family reasons.

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<sup>1</sup> See TUC response to the Home Office consultation document 'Selective admission: Making migration work for Britain': <http://www.tuc.org.uk/international/tuc-11199-f0.cfm>

The submission will consider in turn the questions in the Call to Evidence document on which we have particular concerns.

**Call for Evidence: Questions**

- 1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?**
- 2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?**

As argued above the UK's opt-out of Schengen indicates a failure to coordinate with EU policy. In the TUC's previous submission to BIS' Call to Evidence on the EU Internal Market<sup>10</sup> it was noted that, while the Schengen Protocol only tangentially impact on the European labour market, it does negatively impact on visitors' ability to enter the country which has been widely reported to have cost the country in lost revenue.<sup>11</sup>

- 3. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?**
- 4. If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?**
- 5. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?**
- 6. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?**

The TUC considers the UK's opt out of the recast Reception Conditions Directive (sometimes also known as the 'Long-term Residents Directive') and Qualification Directive as a serious breach of its commitments to international labour standards in particular ILO Convention 143 on Migrant Workers (Supplementary Provision).

The UK's opt out of the recast Qualification Directive on the right to family reunification by third country nationals contravenes Art 12 of the Convention which asserts the right to family life for migrant workers.<sup>12</sup>

The UK's opt out of the Reception Conditions Directive - which allows those who have been residing legally in an EU member state for 5 years to gain access to work and study opportunities and core social security provision as well as being able to move to other member states – also contravenes the right of migrants to equality of social security in

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<sup>10</sup> <http://www.tuc.org.uk/international/tuc-21938-f0.cfm>

<sup>11</sup> <http://www.guardian.co.uk/commentisfree/2012/aug/18/britain-needs-china-tourists>

<sup>12</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C143](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C143)

ILO Convention 143 (Art 10). Failing to provide basic support to migrant workers is not only a denial of their rights but also limits their ability to participate in society. The House of Lords European Union Committee cited this as a key reason why the UK should opt-in to the Reception Conditions Directive, stating that ‘assimilating the position of long-term third country nationals’ rights to that of migrant citizens of the Union, including by enabling participation in the political life of the country, is not only a matter of improving their living and working conditions: it is also a matter of fostering their harmonious integration into society’ (2005).

Adding restrictions to the conditions under which migrants can remain in the country will additionally serve to discourage migrant workers who have valuable skills to contribute to the UK economy.

- 7. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?**
- 8. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?**
- 9. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?**
- 10. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?**

The TUC regard the UK’s failure to opt-in to proposals to recast the EU Asylum Reception Conditions (2003/9/EC) and Procedures (2005/85/EC) Directives as undermining the functioning of the Common European Asylum System (CEAS) and the rights of asylum seekers to participate in society. The Court of Justice stated the United Kingdom cannot take advantage of a system to examine asylum applications in the EU without accepted the main principles under which such examination will occur.

The Home Office states in this Call for Evidence document that the UK has not opted into Asylum Procedures Directive due to the fact it “would diminish the UK’s ability to prevent abuse.”<sup>13</sup> Yet the UK receives below the average number of applications for asylum of EU countries, and indeed only a third of the number applying to Germany, indicating that its response is disproportionate and out of step with its regional and political neighbours.<sup>14</sup>

The proposed recast Directive on Asylum Reception Conditions grants the right to work for asylum seekers after six months which the TUC regards as an essential step to ensuring asylum seekers have a means to support themselves and are not forced to depend on state benefits that are set so low as to virtually guarantee a miserable quality

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<sup>13</sup> See point 39, p.14: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/199891/asylum-immigration-call-for-evidence.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/199891/asylum-immigration-call-for-evidence.pdf) ).

<sup>14</sup> [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_asyappctza&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en)

of life. *Still Human Still Here* reported this year to the Home Affairs Select Committee that 90% of asylum seekers survived on only one meal a day and 28% were homeless.<sup>15</sup> Failing to allow asylum seekers to work, forces them either to face the indignity of such destitution or work in informal employment where exploitation and abuse is rife.<sup>16</sup>

The TUC is concerned that current EU Immigration measures do not contain adequate protection for the labour market for workers entering the EU labour market under Mode IV provisions. Unlike the other Tiers of entry to the UK labour market through the Points Based System, entry via Mode IV routes is not required to pass the Resident Labour Market Test. There is thus a threat of undercutting of the resident workforce posed by labour migration of this kind.

The TUC is particularly concerned that this threat will increase in the future if the EU-India Free Trade Agreement is concluded on its current terms. This FTA proposes to bring a significant number of workers to the EU under Mode 4 arrangements, and the majority to the IT sector in Britain.

A significant number of Indian workers have already migrated to work in the IT sector under Intra-Company Transfer (ICT) provisions – the Migration Advisory Committee reports that over half of all short term ICTs were in the technology and communication sector.<sup>17</sup> The EU-India deal could result in undercutting of wages in this sector and undermine collective agreements.

Furthermore, the availability of workers from overseas may serve as a disincentive for Governments to train resident workers to take up jobs in the IT sector.

In 2011 TUC Congress passed a Motion opposing the Agreement in part due to the Mode IV arrangements in the deal. The TUC is concerned that there has been no impact assessment to make sure there is not undercutting or unemployment of those already in the resident labour market. The UK Government and the Commission have confirmed that there will be a clause in the FTA which will state:

“All requirements of the law and regulations of the EU Party regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements even if not listed below.”

However, as with the EU Posted Workers Directive, the problem in the UK is that these commitments by the Commission provide very little guarantee of rates of pay under UK employment law, other than requirements to observe the National Minimum Wage. The TUC believes there must be measures in Mode IV arrangements to make sure workers receive at least an equivalent reward package to those already undertaking the same work, as is the case with ICTs.<sup>18</sup>

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<sup>15</sup> <http://stillhumanstillhere.files.wordpress.com/2013/04/home-affairs-select-committee-evidence-from-shsh-20-april-2012.pdf>

<sup>16</sup> See <http://stillhumanstillhere.wordpress.com/resources/>

<sup>17</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/limit-tier2-settle/tier2-limit-report?view=Binary>

<sup>18</sup> <http://www.tuc.org.uk/extras/WTOguide.pdf>

Furthermore, safeguard mechanisms should be built into Trade Agreements to allow member states the right to close off entry to Mode IV workers into a particular sector where pre-determined distortions, such as unemployment, occur in the local labour market.<sup>19</sup>

The TUC believes Mode IV provisions in EU trade agreements must be agreed with the trade unions concerned and ensure the observance of core labour standards and national labour law (incorporating and going beyond those standards) in the country where the service is delivered.

Workers should be covered by existing collective agreements in the host country and have access to social security and insurance schemes on the same basis as local workers.

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<sup>19</sup> <http://www.tuc.org.uk/international/tuc-21293-f0.cfm>

**Submission 17**

<b>Name</b>	
<b>Organisation/Company (if applicable)</b>	Virgin Atlantic Airways
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	
<b>Email</b>	

<b>Organisation Type (if applicable)</b>	<b>Please mark / give details as appropriate</b>	
<b>NGO/Civil Society</b>		
<b>Public Sector</b>		
<b>Retail Sector</b>		
<b>European bodies/institutions</b>		
<b>Business/Industry/Trade Bodies</b>	X	UK airline
<b>Other (please give details)</b>		

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

The advantage is that the UK will have direct control over who crosses the UK border and can choose to impose/relax visa requirements as circumstances dictate.

The main disadvantage is that overseas nationals planning a business or leisure trip to Europe are likely to choose mainland Europe because one Schengen visa opens up access to several countries rather than just one if they opt for a UK visa.

The UK being outside of the Schengen protocol may jeopardise business or travel investment opportunities as a Schengen visa may be seen as better value for money.

Travel within the Schengen area has less touch points for travellers with no need for border control checks; this may be seen as preferable by time-conscious persons.

2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

It may have brought economic advantages to the UK due to the potential for increased number of visitors and investment.

However, the strength of the UK border would, as a result, change to become only as strong as the lowest common denominator amongst the Schengen nations. This may or may not be considered acceptable by the UK Government.

3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

A constant challenge is balancing the security aspect against the need to facilitate and encourage travel across the UK border for those who are making legitimate journeys and will add value to the UK. This main point will always be valid, but world events may tip the scales at some time in the future, and whilst the security of the national border is paramount we must not become 'Fortress Britain.'

As the EU develops process changes for Schengen border controls, such as Smart Borders, or other entry/exit check protocols, 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 who carry them. Virgin Atlantic does not operate any flights from/into the Schengen area, but for carriers who do, and who operate services from the Schengen area into the UK, this is especially pertinent.

4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?

The UK must remain a competitive option for travellers.

It is important to encourage direct visitors, possibly by offering a lower-cost option to purchase a UK visa when also purchasing a Schengen visa to make the UK a cost-effective travel option in conjunction with mainland Europe. Equally, it is important to encourage those who are choosing to transit the UK en route from, for example, India to the US. This transit traffic does not just benefit British businesses such as Virgin Atlantic who will carry these passengers into and out of the UK, there is also a base value apportioned to each transit traveller which can be measured in terms of the financial contribution they make to the UK economy. We do not want to lose out on that contribution and see travellers make their journeys via European or Middle Eastern countries.

5. Are there any other general points you wish to make which are not captured above?

Virgin Atlantic understands and supports the UK's desire for passenger data in advance of arrival at the UK border. There is an undoubted security benefit, both to the national border and to our aircraft, passengers and crew.

Virgin Atlantic does not currently operate any intra EU flights but encourages the UK to find resolution to the European Commission's restriction on data provision for EU citizens and their families making such a journey. The present position puts an unfair onus on carriers who operate these flights as well as bringing a security risk.



**Submission 18**

<b>Name</b>	Liberal Democrats Home Affairs, Justice and Equalities Parliamentary Party Committee
<b>Organisation/Company (if applicable)</b>	
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	Julian Huppert MP House of Commons Westminster SW1A 0AA
<b>Email</b>	<div></div>

<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input checked="" type="checkbox"/>	Parliamentary Party Committee

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## **Asylum and Immigration**

### **Introduction**

1. The Liberal Democrats Home Affairs, Justice and Equalities Parliamentary Party Committee is the primary forum for MPs, Peers and Liberal Democrat stakeholders involved in Home Affairs, Justice and Equalities issues to exchange information and ideas. The views expressed here are those of individual members and the committee as a collective, but are not necessarily formal Liberal Democrat policy. We have decided to respond to the general principles and questions raised in the call for evidence rather than each question individually. Any oversight reflects only our decision to structure our response under main headlines rather than responding to each question separately.
2. The Liberal Democrat Home Affairs, Justice and Equalities Parliamentary Party Committee has previously submitted an opinion on issues related to the Schengen acquis and now we do so on the matter of asylum and immigration, the focus of marked national sensitivities and much media and public interest, much of it controversial.
3. Decisions on volumes of immigration must be made at national level, although there is scope for some EU alignment of procedures and definitions in regard to labour migration to reflect the connection with EU responsibilities in regard to the single market and external relations. Successive UK governments have largely chosen to reject a Common European Migration Policy and to stand aside from EU legal measures on labour migration, but Liberal Democrats would encourage a careful policy-driven case-by-case assessment of each proposal rather than any automatic rejection, since some EU coordination could be of value to UK employers, such as common portals.

### **A Common European Asylum System**

4. The case for a Common European Asylum System is strong both to respond to protection needs for fair and dignified treatment and to discourage forum shopping. Liberal Democrats believe that in the quest for an asylum policy that marries concern for human rights and civil liberties with the requirement for effective management, the EU has a strong role to play.
5. Asylum flows are variable and unevenly distributed across the EU. They have, for example, varied from a peak of 425 000 applications for EU-27 States in 2001 down to under 200 000 in 2006. In 2012, there were over 330 000. Without a coordinated response, refugees who have been subject to a great ordeal in their home countries and often on their journey to safe havens would be subject to further suffering if countries of first entry to were incapable of responding

6. The Common European Asylum System, recently the subject of final agreement, comprises a number of elements. The Dublin and Eurodac Regulations ensure the proper allocation of responsibility between Member States, while the European Asylum Support Office and EU financial support enable countries like Malta and Greece to strengthen their systems and manage their refugee populations adequately. The UK rightly takes part in all these measures.
7. The Eurodac Regulation, managing an EU asylum fingerprint database, is particularly useful to the UK. When someone applies for asylum in the UK, their fingerprints are transmitted to the Eurodac central system to see if they have previously applied for asylum elsewhere in the EU. If so, with limited exceptions, they are likely to be transferred back to that country under the terms of the Dublin Regulation. 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. Immigration Minister Mark Harper MP recently noted the “essential” role Eurodac has to play in tackling abuse of our asylum system.

### **The Receptions Conditions Directive**

8. The UK does not participate in 3 further EU Directives: on Reception Conditions, Procedures and Qualifications which have recently been updated. Liberal Democrats believe that serious further consideration should be given to whether future opt-ins to these could be valuable, in order to strengthen EU coordination to prevent deflection of claims and unevenness of assessments.
9. In particular, we are strongly opposed to the routine holding of asylum seekers in detention. Such detention is not only in contravention of our European and international human rights obligations, but also costly. Liberal Democrats deplore the fact that thousands of asylum seekers are held in UK immigration detention centres each year. Most people are held in detention for over two months and under the Detained Fast Track (DFT), asylum seekers are detained for the duration of their application and appeal which can drag on for months if not years. In 2011, of 19,865 main applicants for asylum, 10.7% (2,118) applicants were detained under DFT; in 2010, this proportion was 14.4%. In 2010 the cost for one individual for one night was £120.00, a costly exercise for the government. We believe that the minimum standards in the recently agreed new Reception Conditions and Procedures Directives would be helpful in avoiding the human rights and financial costs of routine
10. The Reception Conditions Directive also provides that asylum seekers should be permitted to look for employment after six months if they are still waiting for a decision in their case. We strongly favour this, as demonstrated by the Private

Members Bill put forward by Liberal Democrat Lord Roger Roberts which would bring UK law in line with the EU directive in that respect. It would lighten the burden on the public purse while enabling asylum seekers to use and develop their skills, retain their dignity, support themselves and pay tax. While cash support is available to asylum seekers in the UK, it is currently set at £36.62 per person, per week: £5.23 a day for food, personal necessities and clothing. The UNHCR recently commented that: “By making it difficult for people who have fled persecution to work, governments deprive communities of motivated workers, make asylum seekers vulnerable to exploitation as cheap labour and make the integration process more difficult in the long run.”

## **The EU in the World**

11. We also believe that it is in the UK's national interest to work at an EU level to deal with asylum issues beyond EU borders. The UK does this, for instance, through participation in EU readmission agreements with third countries. The European Union and its member states are among the largest contributors to the Syria Regional Response Plan equipping countries geographically close to Syria to deal with the flow of refugees across their borders. This pooling of resources and unified response acts as a power-multiplier and can seek solutions before they reach our shores, often the best solution for everyone involved.
12. Regardless of whether or not the UK decides to join the Schengen area in the future, we must continue to engage with Frontex and European Border Management more widely. The partnership academy based in the UK, for example, which facilitates cooperation and aims to instil a set of shared values and practices helps raise the level of border-guardianship across the EU which can only be beneficial to Britain. Again, by strengthening their ability to control and monitor their external borders we protect ourselves.
13. We firmly believe that the UK should play a more prominent role with regard to European Asylum and Immigration policy. A lack of interaction and involvement can only lead to decisions which do not reflect the UK's interest and are detrimental to Britain's security.
14. A change in attitude at home is thoroughly needed to allow this to happen. The confusion between asylum seekers and economic immigrants is something which in which the media is complicit. For this reason our submission chose to look at the issue of asylum only in this submission. For our opinions on immigration please see our submission to the call for evidence on the topic of freedom of movement.
15. Future policy should be pragmatic and reflect Britain's leading role on the global stage in protecting the vulnerable and persecuted. A coordinated and harmonised response should therefore always be explored and used when possible to

maximise the effect of aid and asylum. Britain may be an island but we cannot and will not be isolated from external tremors and so must consequently be pro-active and open in our response.

**Asylum and Migration – Home Office Review of the Balance of Competences  
between the UK and the EU – COSLA Response**

**Introduction**

1. The Convention of Scottish Local Authorities (COSLA) is the national and international voice of the 32 Scottish Local Authorities. Given the role of Scottish councils in delivering services for and supporting the integration of migrants in Scotland, we welcome the opportunity to provide a local government perspective to this helpful and thorough review by the UK Government on the distribution of powers between the UK and the EU.

**General Principles**

2. COSLA is a keen advocate of the principle of subsidiarity and the position that European Union (EU) legislation should fully respect the local competences and autonomy of councils in organising and providing local services. We have also recently agreed a *Vision* for Scottish local government which aims to: empower local democracy; foster local integration rather than the centralisation of decision making and services; focus on better outcomes rather than inputs; and put local democracy at the heart of improvement and accountability. It is in this context, and the wider context of our call for constitutional protection for local government in Scotland, that we respond to this consultation on the balance of competences between the UK and the EU.
3. We recognise that Title V of the Treaty on the Functioning of the European Union (TFEU) (specifically Chapter 1, Article 67 and Chapter 2, Articles 77-79) defines shared competence between the UK and the EU on asylum and immigration, notwithstanding the UK 'opt-outs' of certain aspects. Whilst COSLA understands that asylum and immigration matters are inherently international and that decisions in this regard involve national and supranational governance, we wish to emphasise that decisions made at the EU and the UK levels have an impact on local government and the services they deliver. It is important therefore that the interests of local government are reflected in these decision making processes. This is particularly crucial around planning services for migrant populations and how best to target resources and initiatives to integrate migrants into local communities.

**Migration to Scotland**

4. Despite migration being a 'reserved' policy area, successive Scottish Governments have encouraged migration to Scotland, recognising it as a vital means of tackling the country's demographic problems, as well as a means of delivering economic growth. This contrasts with the approach of the current Westminster Government which has introduced various policies in order to bring migration levels down in the UK as a whole. Scotland continues to wish to position itself as an open, welcoming place to live, work, study and do

business.

5. Scotland has historically been a country of net out-migration. However, this pattern has been reversed in recent years and since 2002 the country has consistently experienced net in-migration; in 2010-11 the net migration gain was 27,000, the highest since these estimates started in 1951.<sup>1</sup> Whilst the numbers of people emigrating out of Scotland has decreased and the birth rate has increased, the biggest determinant of this net migration trend is migration into Scotland; around half of which is from overseas - 42,300 in 2011 (the remainder being from rest of UK).<sup>2</sup> This demonstrates the vital role of migration in delivering the increases in population that Scotland requires for economic growth. There are no definitive figures for third country migration to Scotland but we do know that non EU migration represents the majority of migration at the UK level (58% of total inflow from 2001-2010).<sup>3</sup>

### **Impact of Migration on Local Government in Scotland**

6. While COSLA views migration as having broadly positive impacts on Scotland's communities, we also recognise the importance of local decision making in addressing these impacts. For instance, the high inward migration flows experienced in some urban areas will be quite different to those faced in more rural communities. That is not to say that rural impacts are any less significant but that it is local government and its partners who are best placed to understand and act upon them. It is only through ensuring local actors set priorities to meet the distinctive needs of their populations that we ensure local accountability and the best outcomes for migrants and the communities in which they live. Such local decision making is at the heart of democracy and is a perfect illustration of the importance of the principles of subsidiarity and proportionality that are fundamental to the functioning of the EU.
7. Research by the National Institute of Economic and Social Research (NIESR) in December 2011 sought to quantify the impact of migration on the consumption of education and children's services and the consumption of health services, social care and social services; services which are devolved to the local or regional level in the UK. With regard to migrants who come to the UK under the Points Based System it concluded that the cost to public services was small both relative to the total cost of these services and to the share of these groups in the population as a whole. The report also highlighted that third country nationals in particular tend to be in higher income groups so are likely to pay relatively high rates of tax and contribute to the economy.

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<sup>1</sup> National Records Scotland (July 2012). High Level Summary of Statistics: Population and Migration. [Online] (URL: <http://www.gro-scotland.gov.uk/files2/stats/high-level-summary/j11198/j1119806.htm>). (Accessed 29 July 2013).

<sup>2</sup> National Records Scotland (24 July 2012). In, out and net migration between administrative areas and overseas, 2006/07 to latest. [Online] (URL: <http://www.gro-scotland.gov.uk/files2/stats/migration/overseas-mig-flows-adminareas-2006-latest.pdf>)

<sup>3</sup> Office National Statistics (November 2012). Long Term International Migration, 1991-2011: Reference Tables. [Online] (URL: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-280889>).

8. COSLA agrees with this report that: *“Substantial reductions in net migration of these groups is therefore likely to have, overall, a negative impact on the public finances (and hence, indirectly, on public services).”*<sup>4</sup>
9. That said, there are costs of migration that are of particular concern to local authorities. For instance, while we obviously support the principles of humanitarian protection enshrined in both UK and EU legislation, we are concerned that the burden of supporting asylum seekers often falls upon local authorities, without the requisite funding to support this work. We are also concerned that the introduction of the current COMPASS contracts for the provision of asylum accommodation and associated services will exacerbate this situation as a result of the significant reduction in the level of resources provided to deliver these services. Similarly, we continue to have concerns about the costs falling upon councils in relation to migrants, including refused asylum seekers, who have No Recourse to Public Funds (NRPF). A considerable burden is placed on councils in relation to NRPF cases, while any decision making in this regard remains outwith their control. As an NRPF Network report explained in March 2011, *“Waiting for decisions on immigration applications costs local authorities a minimum of £46.5m per year, funds which are not reimbursed and which they must find within existing budgets. In the broader context of central government cuts to local authority budgets, such a shortfall becomes particularly acute. The strain is felt by some local authorities more than others, with a significant number of authorities spending over £1m per year on NRPF cases.”*<sup>5</sup> Given that further budget cuts have taken place since this report was written, this issue is of increasing concern to COSLA.
10. Finally, COSLA would like to make specific comment on paragraph 58 of the call for evidence paper, to support the thrust of UK negotiations to establish a single fund for the next round of EU migration funding. We furthermore highlight the important role of local government in the disbursement of these funds. We believe that nuances of delivery of services in Scotland would be better accommodated by a single fund that should allow for flexibility in local priority setting on how best to integrate migrants into local communities. For example, the current European Integration Fund asks for projects that target third country nationals when school policy in Scotland is aimed at the mainstreaming of minority groups into classrooms meaning the disjunction of third country migrants from other migrants/pupils can be both impracticable and undesirable.

## Conclusion

11. While not wishing to comment directly on the current balance of competences

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<sup>4</sup> George, A., Meadows, P., Metcalf, H. & Rolfe, H. (2011). Impact of Migration on the Consumption of Education and Children's Services and the Consumption of Health Services, Social Care and Social Services, NIESR, pp. 8-9. [Online] (URL: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/27-analysis-migration/02-research-projects/impact-of-migration?view=Binary>)

<sup>5</sup> The NRPF Network, (March 2011). Social Services Support to People with No Recourse to Public Funds: A National Picture, pp. 19. [Online] (URL: [http://www.nrpfnetwork.org.uk/policy/Documents/NRPF\\_national\\_picture\\_final.pdf](http://www.nrpfnetwork.org.uk/policy/Documents/NRPF_national_picture_final.pdf)).



between the UK and the EU, COSLA would wish to emphasise the importance of continued dialogue between local government, the UK Government and European counterparts to ensure that the principle of partnership is respected and that UK and EU legislation enhance the ability of local communities to take their own decisions on matters of local competence in a fair, open, inclusive yet autonomous way. We would also wish to highlight the current pressures faced by local authorities in the light of the global financial crisis and the austerity cuts that have been introduced as a result, and emphasise that any changes in competence must not place any additional unfunded burden on local government.

**COSLA Strategic Migration Partnership  
August 2013**

**For more information please contact** [REDACTED]

**Telephone:** [REDACTED]

**Submission 20**

**Russell Group response to the Government Review of the Balance of Competences between the UK and EU: Asylum and Immigration**

**Introduction**

- 1.1 The purpose of The Russell Group is to provide strategic direction, policy development and communications for 24 major research-intensive universities in the UK; we aim to ensure that policy development in a wide range of issues relating to higher education is underpinned by a robust evidence base and a commitment to civic responsibility, improving life chances, raising aspirations and contributing to economic prosperity and innovation.
- 1.2 We welcome the opportunity to comment on the balance of competences between the UK and the EU in relation to asylum and immigration, and in particular, the impact of the UK's decision to opt out of the border and visa aspects of the Schengen Protocol.
- 1.3 We are also providing a response to the Free Movement of Persons consultation particularly focusing on the impact of 'shared' competence on the free movement of persons and the coordination of social security schemes between Member States. It may be useful for the Home Office to read the responses in tandem.

**The impact of the UK's decision to opt out of the border and visa aspects of the Schengen Protocol (Questions 1 and 2)**

- 1.4 The fact that the UK has chosen not to participate in the border control elements of the Schengen Acquis, meaning that it is not part of the EU's common visa policy and borderless area, makes the UK less competitive than countries which have chosen to opt in.
- 1.5 There are widespread impacts for the UK economy, particularly in relation to tourism. Tourists from non-EU countries wishing to visit both the UK and territories within the Schengen area must apply and pay for two separate visas. Tourists may choose only to visit either the UK, or territories within the Schengen area, rather than both due to the attendant time and expense of the visa requirements, meaning that the UK is potentially losing out.
- 1.6 The UK's higher education sector is particularly affected as international staff and students from non-EU countries must also apply and pay for separate visas to the UK and territories in the Schengen area. It is reasonable to assume that there may be some international non-EU nationality students who 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.

- 1.7 Furthermore, international staff and students who have chosen to come to the UK will be restricted from travelling to territories within the Schengen area in order to undertake international research collaborations or to attend conferences in order to increase their knowledge, as they will need to apply for a separate visa. International collaboration is particularly important for the UK's higher education sector and wider knowledge economy as accessing leading-edge expertise from abroad provides mutual opportunities for acquiring new perspectives, and areas of weakness in existing research capacity can be strengthened.
- 1.8 The strength of the UK higher education sector internationally lies in its quality and diversity, including the ability to attract the most talented international staff and students. Higher education is one of this country's most successful export industries – and is estimated to contribute more than £7.9 billion a year in overseas earnings, with international higher education students contributing at least £7 billion per annum to the UK economy through tuition fees and living expenditure alone.
- 1.9 International students are even more important to Russell Group universities as a proportion of total student numbers and income than other UK higher education institutions. Although Russell Group universities have a 23% share of the total number of students in the UK, they have a 36% share of the total number of non-EU students, and a 39% share of non-EU post-graduate students.<sup>20</sup> International students at Russell Group universities contribute at least £2.8 billion to the UK economy per annum.<sup>21</sup>
- 1.10 Therefore, we would welcome moves to harmonise the UK visa system with the Schengen Protocol, making it easier for those who have a legitimate reason for wishing to visit the UK and territories within the Schengen area, especially in relation to international staff and students at UK universities.

**August 2013**

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<sup>20</sup> Higher Education Statistics Agency data 2011/12

<sup>21</sup> Figures for 2011/12, using multipliers from UniversitiesUK report on the economic impact of universities (2009).

**GOVERNMENT REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION: ASYLUM AND IMMIGRATION**

**RESEARCH COUNCILS UK (RCUK) RESPONSE**

The Research Councils UK has submitted a detailed response to the review on the Free Movement of Persons and we would ask that this document is reviewed alongside this submission.

Following the meeting held at the Foreign and Commonwealth Office on Tuesday 30 July 2013 we would like to submit the following evidence in response to the call for evidence for Asylum and Immigration.

**Introduction**

1. Research Councils UK (RCUK) is a strategic partnership of the UK's seven Research Councils who annually invest around £3 billion in research. We support excellent research, as judged by peer review, which has an impact on the growth, prosperity and wellbeing of the UK. To maintain the UK's global research position we offer a diverse range of funding opportunities, foster international collaborations and provide access to the best facilities and infrastructure around the world. We also support the training and career development of researchers and work with them to inspire young people and engage the wider public with research. To maximise the impact of research on economic growth and societal wellbeing we work in partnership with other research funders including the Technology Strategy Board, the UK Higher Education Funding Councils, business, government, and charitable organisations. Further details are available at [www.rcuk.ac.uk](http://www.rcuk.ac.uk).
2. This evidence is submitted by RCUK and represents its independent views. The submission is made on behalf of the following Councils:
  - Arts and Humanities Research Council (AHRC)
  - Biotechnology and Biological Sciences Research Council (BBSRC)
  - Engineering and Physical Sciences Research Council (EPSRC)
  - Economic and Social Research Council (ESRC)
  - Medical Research Council (MRC)
  - Natural Environment Research Council (NERC)
  - Science and Technology Facilities Council (STFC)

**Background**

1. Currently the UK short term visitor visas routes support the majority of our

international mobility for non EU residents into the UK, however gaps do exist particularly in the academic, business and scientific definitions which adds pressures and in some cases can restrict entry.

2. The mobility of Non EU nationals working within European States supports the success and delivery of European initiatives. For example cutting edge science involving the UK includes;
  - CERN, the world's leading laboratory for particle physics.
  - The Isaac Newton Group of Telescopes within the Canary Islands, undertaking world-class astronomical research.
  - The European Synchrotron Radiation Facility (ESRF) where UK scientists currently receive approximately 18% of the available beam time.
3. Currently the restrictions placed on a Non EU national collaborating in Europe under the Schengen visa adds a requirement to obtain an additional visa for the UK which can be seen as a detractor. For example when the UK is supporting knowledge transfer or acting as a host facility.

**Case Study STFC:** The ISIS Neutron Source is one of the UK's world-leading scientific research centres allowing access to scientists to world leading research facilities, enabling cutting edge research to take place.<sup>1</sup> The NMI3 project is supported by the European Commission through the 7th Framework Programme and it is part of the Research Infrastructures action of the Capacities Programme.

The Central Laser Facility (CLF) is a partnership between its staff and the large number of members of UK and European universities who use the specialised laser equipment provided to carry out a broad range of experiments in physics, chemistry and biology.<sup>2</sup> In addition the CLF is specifically involved in the European Funded I3 integrate infrastructure project LASER LAB and The ELI (Extreme Light source Infrastructure) programme.<sup>3</sup>

Non-EU nationals who are resident in the EU and are eligible for EU science funding, who then have trouble obtaining the necessary UK visas to gain access to STFC facilities on EU funded experiments. While dealing with enquiries from these Academics about UK visa requirements is time consuming, if people have problems getting or are unable to get visas it puts EU funding in jeopardy.

Delays in processing of additional visa to enter the UK and complex requirements sends a negative message to the international scientific community (both within and outside Europe) potentially compromising long term international investment into our facilities and restricting developments and research collaborations which could benefit the UK.

<sup>1</sup> <http://www.stfc.ac.uk/1650.aspx> and <http://www.isis.stfc.ac.uk/>

<sup>2</sup> <http://www.stfc.ac.uk/585.aspx> and <http://www.clf.rl.ac.uk/Default.aspx>

<sup>3</sup> <http://www.clf.stfc.ac.uk/New+Initiatives/International+Projects/12281.aspx>

4. We would ask the review to consider the principles applied to EU mobility linked to short term visits. We would highlight inter-governmental organisation funded by public research<sup>4</sup> where visa exemption<sup>5</sup> is granted. We would not expect that the same principles are applied however we would ask this is noted in any review.
5. As part of this review a suggestion which might help would be if the current UK short term visa routes are reviewed or aligned with the current Schengen Visa rules in order to provide consistency when multiple visas are required for short term visit alongside consideration of scientific mobility.
6. Currently the terminology of the wording in the Academic Visa route, make a clear distinction between 'academic institutes' and 'private research company'. The difficulty is the interpretation of what falls within the academic world. To clearly be able to define this we would support Government funded Research Institutes, and research charities who are conducting academic work or supporting knowledge transfer programmes in these scenarios a scientific definition included within the business route would support this.
7. To support scientific mobility within the EU and to reinforce the European research policy to support Non EU nationals a simplified 'Scientific Criteria or visa route' would support this.
8. European fellowships enable RCUK to engage with individuals who have been awarded prestigious research grants, such as the Marie Curie Actions and EMBO Fellowship, all of which promote international exchange and contribute to the growth of the UK economy by the individual choosing to invest their fellowship funding into the UK. The Points Based route under Tier 2 has been very supportive and has acknowledged the benefits these fellowships bring to the UK and is reflected in revised Home Office policy guidance. In cases when a requirement to collaborate on a short term basis with UK counterparts, and in particular where the non- EU national has a Schengen visa researchers can struggle to obtain visas.
9. In addition the potential introduction by Schengen of Biometric Centres consideration of alignment of UK centre across the world would help. In particular for China this might continue to be a detractor where we are currently seeing an increase of traffic to German and French institutes.

**RCUK, August 2013**

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<sup>4</sup> [http://www.embl.de/aboutus/general\\_information/index.html/](http://www.embl.de/aboutus/general_information/index.html/)

<sup>5</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/exm/> reference to list of international organisations whose employees qualify for exempt entry clearance

**Submission 22**

<b>Name</b>	██████████
<b>Organisation/Company (if applicable)</b>	British Ports Association
<b>Job Title (if applicable)</b>	██████████
<b>Department (if applicable)</b>	
<b>Address</b>	██████████
<b>Email</b>	██████████████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input checked="" type="checkbox"/>	Trade association for UK ports
<b>Other (please give details)</b>	<input type="checkbox"/>	

## The EU and the UK Border

### 1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

We welcome the opportunity to participate in the Review. The British Ports Association (BPA) represents the main sea passenger ports in the UK, many of which are the location for immigration and indeed other border controls. The purpose of ports is to get passengers through controls as quickly and as efficiently as possible, so that the level of disruption is as minimal as possible. Although we appreciate this is no doubt the Home Office's view as well, current UK Government policy are designed in a way that creates significant delays for freight drivers, tourists and other passengers. This makes the UK significantly less attractive for traders than EU partners and competitors who are all signed up to Schengen. One of the key features of the creation of the Single Market was to remove the internal barriers between member states. Schengen is one of the key tools for this and could easily be embraced by the UK. In answer to the question therefore we see significant disadvantages in our opting out of the border and visa aspects of the Schengen protocol.

Unlike airports, many of the passengers at ferry ports are freight drivers on intra EU journeys. Almost all of these drivers are EU citizens and low risk legitimate travellers. Delays to freight increases logistics costs and has a negative impact on the economy, also makes the UK less attractive to business. The same can be said for tourists in cars and particularly coaches.

As well as ferry ports, the other main area of concern for the maritime sector is in relation to the cruise industry. In 2012 the UK Border Force (UKBF) strategy on the inspection of cruise passenger passports changed. There is now a requirement for 100 per cent passport checks for passengers. Currently crossing officers join sufficiently sized cruise ships at their previous port of call, while for smaller ships officers carry out checks at the UK point of entry. This is very inconvenient for cruise itineraries and cruise lines are having to meet the cost of additional UKBF officers attending at the port or on board. Cruise passengers are low risk travellers and our EU neighbours do not operate such obstructive borders policies. The result of this is that cruise lines are now considering limiting UK calls from their itineraries which threatens port incomes and valuable UK tourist spend.

### 2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?



To consider this fully understanding of the logistics sector and the UK imports and exports must be spelt out:

95 per cent of UK imports and exports enter and leave through our seaports. Because the UK is an island with a smaller market population than mainland Europe, many shippers find it more cost effective to import and export from the main European 'superports' such as Rotterdam and Antwerp. Much of this UK-bound cargo, including a large proportion of the containerised freight heading for our shores is driven by road on lorries which use via the UK's main continental facing ferry ports to enter the country. This means that any immigration/border control at a ferry port has an impact upon freight which does not exist on cross board routes between Schengen participants. Delays in logistics and transport, result in costs and inefficiencies, which means that the UK's current borders policies make trade costlier and more inefficient in Britain than they are in continental Europe.

The benefits on the UK's participation in Schengen would be for transport carriers, logistics operators, ports, tourists and those who rely on transport such as energy providers, manufacturers, retailers and therefore the wider UK economy. This would be particularly easy to arrange at UK ferry ports as all their traffic is intra EU. It should again be highlighted that the cost and delay generated by our immigration controls is something not shared by the majority of other EU member states.

It could also be suggested that if the UK was in Schengen the UK Border Force's resources could be freed up and directed towards other areas of work for the Home Office, such as on immigration, visa and asylum casework.

**3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?**

In the recent past, the checks on EU passengers have only increased, the decision taken in 2004 to carry out 100% scanning of passports for all passengers replaced a more workable risk-based approach. This decision was taken without notice and has been the driver for immigration policy ever since. It is the physical process of having to check all passports, notwithstanding some small changes that have been piloted to procedures for families over the past year, which creates delay and frustration both for port operators, the carriers and the general public. UK border polices also tend focused on aviation controls which are designed for foot passengers, are 'suspicion-based' and do not embrace the legal agreements of the Common Market. To sign up to Schengen therefore would be extremely attractive to passenger ports, logistics operators and, we understand, UK industry.

**4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?**

Schengen is extremely attractive although one positive measure the UK Government could undertake is to revert to a risk-based approach to border controls and not require the 100 scanning of passports of those travelling to the UK.

5. Are there any other general points you wish to make which are not captured above?

Another result of the UK Government's borders policy outlined above has been a genuine search for ways to bring about faster passenger flows largely based on the e-borders initiative. The first time e-borders was mentioned to us was in 2000 and progress since then has been, at the very least, intermittent. We agree that the way forward is probably based on an IT system of some kind with advanced passenger information so that passengers of interest can be identified and taken offline without disruption to others. We also know that some progress has been made over the past year in discussions with some of the carriers, introducing individual schemes that can take advantage of some of the benefits of e-borders. Bearing in mind the majority of continental sea passengers come through a handful of ports, we believe that systems could be developed to reduce the burdens that the current border controls represent to trade.

**Submission 23**

<b>Name</b>	
<b>Organisation/Company (if applicable)</b>	United Nations High Commissioner for Refugees
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	UNHCR Strand Bridge House 138-142 Strand London WC2R 1HH
<b>Email</b>	

<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input checked="" type="checkbox"/>	UN Agency

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and Asylum

1. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?

The overarching rationale of European Union Asylum legislation is to enhance all Member States' obligation to provide effective and timely international protection to persons of concern. The Amsterdam Treaty and the Treaty on the Functioning of the European Union state that all measures on asylum must be in accordance with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and other relevant treaties. The Reception Conditions, Asylum Procedures and Qualifications Directives, and Dublin II and Eurodac Regulations) composing the EU asylum *acquis* set minimum standards in conformity with international law by which all MS must abide. This body of legislation seeks to ensure greater consistency and better quality of asylum decision-making. Harmonisation of MS asylum legislation and practices furthermore 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 MS cannot transfer asylum-seekers to a MS which has deficiencies in its asylum procedure and reception conditions. The CEAS and its improved implementation will ensure equivalency of protection standards across the EU and that the premises of the Dublin regulation are in place.

2. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?

Protocol No 21 in respect to the Area of Freedom, Security and Justice has allowed the UK to opt in the EU asylum *acquis* and it has largely benefited from the implementation of its provisions. The UK has chosen not to opt in to the recast of the asylum legislation with the exception of Dublin II and Eurodac. The recast proposals were justified on the basis that despite the existence of common minimum standards, asylum applications from persons of the same nationality had divergent outcomes between Member States thus undermining the rights of people needing protection, and encouraging onward movement within the EU. Moreover, support for the return of persons whose applications have been rejected, or transfers under the Dublin II Regulation, can only be built if there is confidence in the correctness and fairness of each Member State's asylum decisions. The recast provisions, by closing gaps and reducing divergent interpretations, could lead to the timely identification and recognition of persons of concern and thus more efficient asylum systems. The UK's decision to opt in to the Dublin and Eurodac Regulations, but not the Directives, may lead to difficulties in interpretation and difficulties in transfer of persons.

**Pb for future directives with UK opt out?**

3. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?

With the adoption of recast asylum legislation, the EU has taken an important step towards achieving a CEAS. While positive changes are welcomed, on-going engagement and efforts will be needed to ensure effective implementation of the new legal standards in practice. The UK's engagement in future discussions would lead to higher standards of quality and efficiency in the EU. The Syrian refugee crisis, with its unbearable humanitarian consequences and protection challenges, is an opportunity for EU Member States to share this burden while demonstrating that the CEAS can provide consistent, quality protection to refugees coming to Europe. EU MS have received a substantial number of asylum applications, while the vast majority of refugees remain lodged within the borders of Syria's neighbours. The EU and its MS have provided generous financial support to humanitarian and development actors; this is undermined however, by the number of protection gaps including the backlog of Syrian asylum claims which have reached more than 25% of the overall number of pending cases, raising concern that some MS may be unable or unwilling to prioritise or decide these swiftly, leading to an unfortunate situation of divergent approaches to asylum claim determination. Discussion and evaluation of progress among Member States, as well as attention to inconsistencies and gaps, are important to ensure that the system can deliver on its protection objectives.

4. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

N/A

5. Are there any other general points you wish to make which are not captured above?

UNHCR recorded 15.4 million refugees globally, as well as 937,000 asylum-seekers and 28.8 million people forced to flee within the borders of their own countries. The global increase in forced displacement in 2012 is also reflected in the 27 Member States of the European Union. However, nowhere does the impact of conflict and flight strike harder than in developing countries, which host over 80 % of the world's refugees at the end of 2012, compared to 70 % ten years ago. Solidarity between States underpins the international refugee protection system. Solidarity among Member States is also required by Article 80 of the Treaty on the Functioning of the EU, and reflected in the Union's efforts to create a fully-functioning CEAS. The central purpose of solidarity from UNHCR's perspective, apart from benefiting States, is to achieve better protection for individuals forced to flee. The UK and the EU are encouraged to further their long-standing efforts and commitment to protection of refugees also further their efforts on solidarity in the form of increased support to resettlement needs.

Integration support is an important aspect of providing a durable solution for refugees. The benefits of successful integration both for the individual beneficiary of protection and the host societies are evident and reflected in integration policies in many Member States.

**HOME OFFICE REVIEW OF THE BALANCE OF COMPETENCES,  
CALL FOR EVIDENCE: ASYLUM AND IMMIGRATION (MAY 2013)**

Liverpool European Law Unit, University of Liverpool  
Lead Contributors: Dr Eleanor Drywood (Lecturer) and Harriet Gray (PhD Student)

5 August 2013

**Preliminary remarks: The national interest, the EU and asylum**

1. Our evidence begins with some preliminary notes on the term “national interest” and its meaning within the context of UK asylum law, and more particularly the country’s participation in a Common European Asylum System (CEAS).
2. There is a fundamental difference between the legal framework applying to asylum, on the one hand, and broader immigration policies, on the other. The genesis of the UK’s obligations in relation to asylum-seekers and refugees is the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol (the Geneva Convention); a document whose roots lie in the atrocities of the Second World War, and which represents a collective agreement amongst signatory states to offer protection to individuals fleeing persecution in their country of origin. This is a humanitarian obligation derived from international law; its parameters should, therefore, not be dictated by economic evaluations in the way that is often seen in relation to wider immigration policy.
3. This is not, however, to ignore the current financial situation facing the UK. Rather, we would point out that the economic impact of the UK’s commitments in the asylum arena are not as significant as is often suggested. The number of asylum applications submitted in the UK has remained steady at around 20 000 per year for the past decade (Home Office, 2013). This is not an especially high level in terms of the UK’s total population, in 2011 around 0.41 asylum applications were made per 1 000 inhabitants; neither do asylum-seekers make up a large proportion of the UK’s total immigrant population, accounting for 7% of net migration to the UK in 2011 (Blinder, 2013: 2). Furthermore, the reality of the cost of asylum-seekers to the national economy does not perhaps justify the reputation it currently has as a political hot potato. For example, a 2007 study found EU-wide total asylum related costs across the Member States in a one year period were less than what UK citizens spent on pets and pet food in the same timeframe (European Parliament, 2010: 17).
4. We would therefore challenge suggestions that the “national interest”, in this context, should be viewed primarily as a question of *financial* interest. Rather, upholding the UK’s proud tradition as a safe haven for those fleeing persecution, and doing so in a manner that allows the full integration of refugees into UK society, should be a priority. Therefore, we would argue that a system (be it at national or EU level) which facilitates full respect of the UK’s obligations under

the Geneva Convention, and international law more broadly, is in the “national interest”, and therefore the context in which the issues raised in the questions below should be measured.

**Question 6: What are the advantages and disadvantages of participating in a Common European Asylum System for the UK?**

5. It is our belief that there are significant advantages to the UK of participating in the CEAS and that, broadly speaking, these can be addressed as three main points:
- Regional collective approaches to asylum systems have the **potential to raise levels of refugee protection** which, as is pointed out above, is in the national interest.
  - The very **essence of refugee protection is a collective approach from states**. Capitalising upon the existing legislative and political forum for cooperation provided by the UK's membership of the European Union is a fair and efficient way in which to achieve this.
  - There is limited evidence to suggest that high standards of refugee protection are a significant factor in an applicant's choice of host country, **undermining any argument that the national interest is served by offering harsh standards** in an effort to deter asylum-seekers.

**Better protection standards**

6. The established potential of collective standards to raise the level of refugee protection offered within a regional context can be seen in a number of areas, including outside the EU. For example, in Africa and Central America the adoption of shared definitions of “refugee” (something that in the EU is covered by the refugee qualification Directive and a number of recent decisions of the Court) has led to a better situation for applicants, and allowed states to adopt provisions that are responsive to the regional context.<sup>1</sup>
7. One of the principal reasons that a shared approach can raise standards is 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 within a given region. As such, full and comprehensive refugee protection, and therefore compliance with the Geneva Convention, is best served by a regional approach in which all states agree a set of standards.
8. There is further incentive for the UK to work with the rest of the EU to establish agreed levels of protection in the wake of the *NS* and *MSS* decisions. These judgments have led to the suspension of Dublin removals to Greece because of the unacceptably low level of refugee protection offered by that state. It should further be noted that a case is currently before the UK Supreme Court which will consider whether similar action should be taken in relation to Italy (*R (on the application of EM (Eritrea) v SSHD*, UKSC 2012/0272)). Under these

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<sup>1</sup> See the extended refugee definitions found in Article 1(2) Organization for African Unity's Convention Governing the Specific Aspects of Refugee problems in Africa 1969 and Article 3 Cartagena Declaration 1984



circumstances, then, it is clear that each individual Member State has a strong interest in ensuring that no other country's protection standards fall below an agreed level, as this places any sort of cooperation in jeopardy.

#### Collective approaches are at the core of refugee law

9. The idea that groups of countries work collaboratively to provide appropriate levels of protection to asylum-seekers is at the heart of refugee law. The principle that a state will, under certain circumstances, offer humanitarian protection to a foreign national relies upon a spirit of supranationalism on the part of receiving countries, and necessarily requires the crossing of borders. As such refugee protection is an issue that instinctively lends itself to a spirit of solidarity. It is, therefore, not surprising that examples of this are seen in a number of regional contexts. For example, the US and Canada agreed a Dublin-style arrangement in 2002, allocating responsibility for asylum applications lodged at their shared border to the state of previous presence. This agreement was adopted on the basis of solidarity and in recognition of the important role of this principle in refugee protection.
10. Indeed, the very same principle – that of solidarity – now lies at the heart of the CEAS. Most significantly, it enjoys Treaty status post-Lisbon, with Article 80 Treaty on the Functioning of the European Union (TFEU) stating that provisions on the CEAS “shall be governed by the principle of solidarity and fair sharing of responsibility”. Equally, it has been emphasised repeatedly in legislative texts including recently in the Preamble to the recast Dublin Regulation (Recitals 7, 8, 21, 22, 25).
11. Furthermore, the essence of EU activity in areas of shared competence (such as asylum, under Article 78 TFEU) is that “the proposed action cannot be sufficiently achieved by the Member States...but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level” (Article 5 TEU). As such, by its very definition legislative activity in relation to the CEAS will only happen where there is some positive benefit to a combined, EU level approach. Of course, the essentially cross-border nature of asylum will often easily satisfy this test – asylum-seekers, by their very nature, must cross at least one external EU border and some will travel between states. It is, therefore, a shared issue and one that can benefit from a combined supra-national response.
12. Intra-EU solidarity allows the UK to offer, and also to receive, support from other Member States. A practical example of this is, as the context setting document acknowledges, is the European Asylum Support Office (EASO). The EASO offers an opportunity for practical solidarity through sharing country of origin information, logistical support and best practice. The UK benefits from the ability to partake in this sharing, and also from the strengthening role the EASO plays towards the functioning of the Dublin system.

#### Limited evidence that adopting harsh standards reduces the asylum burden

13. An argument is often posited that non-participation in aspects of the CEAS would allow the UK to adopt harsher standards than elsewhere in Europe, thus creating

a disincentive for asylum-seekers to lodge their claims here. There is, however, very limited evidence that the (actual or perceived) level of generosity of states towards asylum-seekers has any bearing on decisions they make in relation to where to lodge their claim.

14. The results of a quantitative analysis, undertaken by Eiko Thieleman (2004: 62) of the London School of Economics, demonstrate that enacting policies of deterrence has low correlation with the relative asylum burdens experienced by EU Member States. Equally then, implementation of higher protection standards under a CEAS will not increase the relative asylum burden on the UK.
15. The study continues to demonstrate that 'structural determinants', such as economic, historical, political and geographic factors have a much greater impact on a country's relative asylum burden. The factors most closely correlated were the GDP per capita and the numbers of foreign-born population. The prevalence of these factors in the UK will not be altered by its participation or non-participation within a CEAS, thus any potential fears that participation may increase the UK's share of responsibility for refugee protection is unfounded.
16. In summary, participating in the CEAS offers advantages to the UK by offering increased protection standards and further solidarity between the UK and other EU Member States. Further, any potential concerns that participation in a common system that promotes high standards of protection will significantly increase the burden on the UK are unfounded.

**Question 7: If the UK had used its opt-in differently in the area of asylum what implications would this have had for the EU competences? Would this have been in the UK national interest?**

17. We argue that the UK's decision not to participate in the recast asylum reception, refugee qualification and asylum procedures Directive may not be in the national interest. First, this is because we believe that participation in the CEAS is beneficial to the national interest for the reasons outlined in response to Question 6. 'Cherry-picking' instruments in the way that the UK has done quite clearly undermines the principle of solidarity at the heart of the CEAS and risks undermining the benefits that this approach brings. We would, further, highlight additional reasons for questioning whether the UK's decision to opt-out of some second phase instruments is in fact in the national interest.
18. First, the second phase of the CEAS represents the steps taken by the EU to facilitate better compliance by Member States with the Geneva Convention and other international obligations. By choosing not to participate in these instruments the UK has placed itself in a position whereby it may lag behind the rest of Europe in this regard. Furthermore, there are examples in the context setting document of provisions that would allow more inclusivity and participation in society by refugees, consistent with the spirit of the Geneva Convention, provisions that the UK has intentionally side-stepped through its opt-outs. For example, participation of asylum-seekers in the labour market is not as problematic as is often presented. We would reiterate, first of all, that we are not talking about large numbers of individuals, certainly not of the scale to 'flood' the

job market. Second, allowing asylum-seekers to be economically active brings with it clear benefits through the payment of taxes by individuals, and reducing the need for the state to provide support. Third, asylum-seekers are often professionally trained individuals with a great deal to offer the UK in terms of skills. Finally, there is very little evidence that the ability to participate in the job market is a 'pull' factor for asylum-seekers when deciding where to lodge their claims. With all these points considered there seems to be little gained – and much lost – by denying asylum-seekers access to the labour market out of line with the rest of Europe. The link between reducing the level of rights and entitlements offered to asylum-seekers and the protection of the national interest is therefore disputed. Instead we would point to the benefits to the UK of supporting the efforts of the EU legislature to ensure full and inclusive application of the Geneva Convention and other international instruments through the CEAS.

19. As well as ensuring full compliance with the Geneva Convention, the recast directives also seek to redress some of the deficiencies identified in the functioning of the first phase of the CEAS (as outlined in the Commission's 2008 green paper on the future of the CEAS). It would not seem to serve the UK national interest to continue to apply a system with acknowledged shortcomings.

**Question 8: What future challenges do you think the UK will face in terms of asylum and what impact might this have on the national interest?**

20. A major challenge faced by the UK is the aftermath of the *NS* decision in light of the continued economic difficulties faced by certain countries. The UK should be aware some of the Member States who are currently experiencing severe financial difficulty, threatening public spending in a significant way, are also major asylum receiving countries. It is, therefore, possible that Dublin removals to countries other than Greece will also be suspended (see para. 8 in relation to Italy) which will mean the UK must process applications that would otherwise be dealt with by another Member State. We would emphasise again, then, the importance of shared standards across Europe, and working with other countries to ensure that their refugee protection regimes comply with international obligations to avoid future *NS*-type situations.

**Question 9: Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?**

21. The EU has competence to adopt measures by the ordinary legislative procedure to achieve a common European asylum policy including, adopting a uniform asylum status, common procedures for granting this status, criteria for determining the Member State responsible for status determination and standards of reception conditions (Article 78 TFEU). Rather than suggesting that the EU could exercise its competence differently, we would argue that the UK national interest will be better served by full participation in the CEAS for the reasons outlined above.

22. The role of the EU, however, should be to identify best practice from across the Member States and to promote this to achieve high common standards of protection. An example of this is the new requirement of a personal interview under the recast Procedures Directive (Article 14). This instructs that applicants for international protection are to receive a personal interview before a decision is made by the determining authority (Article 14(1)), but states only that Member States may record the interview with a transcript or “a thorough and factual report” (Article 17(1)). Current practice in the UK provides that there is a full record of every interview, whether this is a written transcript or an audio recording, ensuring a more accurate record, offering greater procedural fairness.

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## **Submission 25**



Balance of Competence Review  
UK Government

5 August 2013

Dear Sir

### **Balance of Competences Review**

Thank you for giving Eurostar the opportunity to contribute to the Balance of Competences Review. Eurostar is the leading transport operator between UK and the near-continent, carrying nearly 10 Million passengers each year. We provide more than three-quarters of the market to and from Paris and Brussels. With more than a quarter of passengers connecting, we also serve across destinations, France and Belgium, and into Germany, Holland and Switzerland. As such, we are therefore experiencing on a day-to-day basis the potential and difficulties of cross-border high speed rail.

As well as the important business travel market to Paris and Brussels, Eurostar plays an economically vital role supporting the French community in London. It is estimated that between 300,000 and 400,000 French citizens live and work in London; they are, as a population, young skilled and economically active. The community also generates a secondary market of "Visiting Friends and Relatives" who also contribute to the UK economy. This is just one aspect of the openness, tolerance and ease of access which makes London a World City and which in turn enables the UK to exert a level of European and global influence beyond that which simple statistics would suggest.

However, Eurostar's fastest growing market is non-EU. This accounts for over 1 million passengers per annum and is growing rapidly. Whilst a large proportion of this is Anglophone – such as US and Australian visitors – we also see travel from the Far East, including Japan and Korea.

Really, whilst the economic impacts are, of course, at the centre of policy considerations, it would be wrong to ignore the social and cultural value of travel also. Building the sense of integration which comes from having two European capitals as close by train to the centre of London as Manchester and enabling those experiences – the art tour, the lunch in Paris, the West End show, the family holiday – which enrich lives. Over half of our passengers have not used the service before and are experiencing this for the first time.

Against this background, the nature of the UK's relationship with Europe – be it the policies and resources it applies to immigration or its involvement in EU rail liberalisation discussions – is an essential factor.

As regards migration, Member States across Europe face similar pressures and challenges; they also compete to attract the same markets. Eurostar exists to facilitate travel. Put simply, the more integrated the approach the UK adopts, the easier this becomes. Ideally, Eurostar would welcome the UK joining Schengen. However, even short of this, we would still argue the case for greater integration and commonality of processes.

As regards rail liberalisation, our past 20 years of operation point to the fact that, although still a few percentage points of European rail traffic, there is strong potential for growth in cross border passenger rail. Without any collaboration between national authorities, existing legacy systems and entrenched national differences are likely to subsist, holding back existing and future investment in rail travel, while the UK might be missing out on a possibility to export its know-how and experience.

## **A) MIGRATION ISSUES**

Eurostar would highlight three areas where it believes the Government should consider carefully its approach when it comes to migration:

### **Do we welcome trade and travel?**

The language of the debate is important, whether for business or for leisure. Government therefore needs to think carefully about how it frames the debate. The very strong perception is that debate is dominated by the risks of uncontrolled immigration – security, crime and social pressure. The risk is that this creates an image of the UK characterised by suspicion and a lack of welcome. This will affect both propensity to travel - and propensity to travel to the UK, rather than other EU destinations.

### **Does the UK work in a complementary way with other Member States?**

It is notable that the strongest markets among Eurostar's Rest of the World travellers are from those Anglophone countries where passengers often have a positive reason to base their travel around the UK. The market is much less strong where the decision as to whether or not to include the UK has a greater degree of optionality. 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 a single visa for the whole of Schengen that is simpler, cheaper and more available, there is less incentive to undergo the additional cost and hassle of getting a separate UK visa. This is not just a leisure issue; it also affects where overseas travellers decide to do business.

Eurostar therefore believes that the UK should seek to integrate its visa processes and data sharing with Schengen states – perhaps in the form of a "UK also" extension to the Schengen visa. It would be entirely possible for the UK to continue to make separate decisions as to whether or not to grant the UK

extension, but to do so on the basis of common data and a one-stop-shop for applicants.

This issue of integration is evident at stations also. Passengers are checked twice by the authorities (once Schengen Exit, once UK Border) for essentially the same purpose of establishing identity. (Indeed, there are actually checked a third time for Eurostar's own check-in). Even without granting the same rights to travel as exist within Schengen, there must be the opportunity to share data and processes.

If decisions to opt out of EU competences are taken on a blanket basis, there is a risk that the UK simply invents a separate set of parallel systems which are both costly and fail to secure the support of other Member States from which we as carriers must operate. In practice the effectiveness of any regime depends to a significant extent on cooperation and goodwill of other Member States.

### **Has the UK the right policies and the right resources to deliver them?**

The nature of Border Controls – and the level of resources available to deliver them – are the biggest single operational challenge for Eurostar. "Right time" departures outbound from London averaged 91.5% in 2012. In the same year the figures from Paris and Brussels were 87.9% and 84.5% respectively. Whilst there are a range of factors involved in these measures, the time taken by UK inbound controls is a significant one. Such impacts matter, commercially and economically. The UK opened the high speed rail link to the Channel Tunnel in two phases: each reduced journey time by 20 minutes and each saw an uplift in passengers by between 10%-15%; the total public investment was over £6bn. Consistent delays have the same elasticity effect but in terms of reducing passenger numbers and the assisted economic activity.

In this context the potential pressure on Border Force resources arising out of the recent Spending Review is of particular concern. Eurostar believes that Border Force and Home Office officials work positively with our company in a spirit of open engagement to maximise the efficiency and effectiveness of their officers. They take time to understand our business and the pressures we face and seek to be flexible in the deployment of their resources to help us meet these challenges. As a business we respect their professionalism. However, the future is one where such resources are unlikely to grow (and may even be cut). At the same time, the trend of market growth and escalating policy requirements as to the extent and nature of checks will only add to the pressure on a system that is already stretched.

This is not entirely about staffing levels. There are issues of space and there may be technological approaches which help. But fundamentally, if resources are fixed and the economic activity supported by a growing market is deemed to be important, then policy must be open to review. At the very least, the costs and benefits of the economic/policy trade should be clearly measured and articulated, assessing the value of relative levels of security as with any other factor.

In this context, Eurostar would strongly support a move to greater risk-based controls for immigration and security- as has long been the trend for customs and goods

## **B) RAIL LIBERALISATION**

Again, Eurostar wishes to highlight two areas where it **believes** the UK should consider its approach.

### **Is the UK making the most of its considerable experience in rail liberalisation?**

In the context of rail as in other policy areas, the UK has led the way for the rest of European countries when it comes to liberalisation. Through trial and error, it has put in place some of the most robust procedures needed to accompany the development of its industry, which the European Commission has been closely looking the Commission's views on rail liberalisation also tend to use the UK case as an example of what not to do, usually misusing existing evidence in the process.

For instance, the ORR is to date one of the best equipped and most respected regulators, with a strong influence in the fledgling network of European regulatory bodies, and in drafting some of the more technical implementing measures, drawing on its own rich experience. Similarly, some of the financial products used by rolling stock leasing companies to provide train sets to their customers can only be found in the UK.

If well managed, further liberalisation on the continent could provide huge business opportunities for British operators, manufacturers and consultants, which could be exporting their know-how and expand their businesses. Nascent EU-level coordination bodies (on regulators or infrastructure managers), although sometimes imperfectly designed, would also be likely to be disproportionately influenced by the UK experience given the wealth of experience acquired.

### **Does the UK gain from not engaging in rail standardisation discussions?**

While some EU harmonisation has in rare cases resulted in a lowering of previously higher British standards, in the vast majority of cases, there is a strong benefit to common EU standards, which allow manufacturers to achieve economies of scale and lower their costs. Although the UK will in the foreseeable future keep some of its distinctive specificities (loading gauges, etc...), there are no grounds to believe that new common standards on, say, interoperability or signalling would not benefit the industry as a whole.

In Eurostar's case, the opening of HS1- all built to TSI specifications - has allowed the company to buy the proven and tested Siemens Velaro platform, therefore lowering costs of procuring the train, and avoiding some of the complex tailoring to the specific national environments and standards. This is also likely to significantly increase reliability.



Subsidiarity concerns do remain of course, but there is a strong case to be made for strong UK engagement in cross-border issues, in which operators suffer disproportionately from varying national standards, thereby losing market share to the highly standardised and globalised aviation sector.

Once again, Eurostar is grateful for the opportunity to contribute to the review and looks forward to engaging in its outcomes.

[REDACTED]



## Scottish Refugee Council **Consultation Response**

Asylum & Immigration Balance of Competences Review  
Response Submitted by the Scottish Refugee Council

***August 2013***

### ***Introduction***

Scottish Refugee Council welcomes the opportunity to respond to this review. As a refugee-assisting organisation our submission focuses on the aspect of the review relating specifically to asylum (the EU and Asylum).

We are concerned that though the consultation seeks objective evidence from experts and organisations, this evidence is to be assessed in relation to the very subjective concept of 'national interest.' No definition is given in the consultation documents to what is meant by the term national interest which appears in the questions posed. Our view is that the creation of fair and just asylum systems across EU member states which afford comparable protection to people fleeing persecution and allow them to rebuild their lives and contribute to their new communities is in the national interest of the UK.

As such, we do not feel able to respond to these questions; rather our responses is in the form of some general comments and is based on Scottish Refugee Council's principles for fair and humane refugee policy.

### ***General comments***

1. Our principles for fair and humane refugee policy are based on Scottish Refugee Council's extensive experience in providing services to refugees in Scotland for more than 25 years and advocating for refugee rights in Scotland, in the UK and Europe. They are consistent with the Refugee Convention and human rights instruments and principles. These are set out in full at the end of this response. In relation to the principle of intra-EU solidarity and responsibility sharing we contend that there should be:
  - increased participation in the relocation of refugees from other EU countries;
  - efforts to improve the treatment of people seeking asylum and refugees across the EU; and
  - a long-term future for refugees should be offered through resettlement.
3. In light of the debate on the referendum on the future of Scotland we published a report<sup>1</sup> assessing how our principles for a fair and humane asylum system were being implemented in policy under the current UK constitutional settlement as well as policy options for implementation in an independent Scotland or if increased competences were to come to Scotland. Under the current constitutional settlement in relation to the EU and asylum, we recommended that the UK Government should reappraise its position on not seeking to improve EU-wide asylum standards by opting out of most of the legislative instruments of the second stage of the CEAS. Also that it should increase the number of resettlement places, currently 750 per year.
4. In light of our principles, Scottish Refugee Council was disappointed that the UK Government chose to exercise its opt-out of most of the second stage instruments of the Common European Asylum System (CEAS) (Procedures Directive, Reception Conditions Directive and Qualification Directive). The 'restrictions' that the consultation document argues that would have been placed on the UK Government are in our opinion necessary steps towards a more fair and human asylum system in the UK regardless of where competence lies to develop policy in these areas. For example, allowing asylum seekers access to the labour market after six months (Reception Conditions Directive); or the extension of the definition of family members to take into account the range of situations in which a child can be dependent and to uphold the best interest of the child (Qualification Directive);<sup>2</sup> or limitations on the arbitrary use of the Detained Fast Track procedure in the UK (Procedures Directive).
5. The advantages of the Common European Asylum System for Member States are clearly set out by the European Commission: *"Asylum flows are not constant, nor are they evenly distributed across the EU."* And *"Asylum must not be a*

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<sup>1</sup> Shisheva, M., Christie, G., Mulvey, G. (2013) *Improving the Lives of Refugees in Scotland After the Referendum: An Appraisal of the Options*, Scottish Refugee Council

<sup>2</sup> See for example, Scottish Refugee Council policy briefing (2011) *Refugee Family Reunion and Unaccompanied Minors*, [Available at: [http://www.scottishrefugeecouncil.org.uk/assets/0000/5194/Appendix\\_1\\_-\\_Refugee\\_Family\\_Reunion\\_and\\_Unaccompanied\\_Minors\\_-\\_June\\_2012\\_.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/5194/Appendix_1_-_Refugee_Family_Reunion_and_Unaccompanied_Minors_-_June_2012_.pdf)] which argues the failure of UK policy to meet the rights of the child in relation to child refugees and the right to family reunion.

*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.”*<sup>3</sup>

6. We are disappointed that neither the consultation document, nor Ministerial statements on the issue, fail to acknowledge or refer to the primary goal of the second stage of the CEAS which is to *raise* standards across the EU from the minimum standards of the first stage. The impact for the UK in opting out of the second stage of the CEAS directives is that it potentially leaves itself open to legal challenges in Strasbourg as it in effect is knowingly implementing standards provisions which fall below the standards considered necessary by the European Union. Whilst there are concerns over implementation on the ground of first-stage Directives in various member states and the final agreed text of the recast directives, it is disappointing and short-sighted that the UK Government does not share the aspiration and principle that minimum standards need to be raised.
6. If member states on the borders of the EU territory do not improve standards and are not adequately supported then this could potentially lead to further challenges similar to that in *MSS v Belgium and Greece*. This would have a subsequent impact on the UK's ability to return asylum claimants under the Dublin system. In this regard, we support increased practical co-operation amongst Member States of the EU and are fully supportive of the development of the European Asylum Support Office (EASO) and of the increased role of the UK Government within it, for example its involvement in relation to the Greek Action Plan.
7. Far from being a marginalised actor under the dictat of a supranationalist power as much of the political discourse surrounding this review would suggest, the UK Government in relation to asylum at an EU level has been at the centre of decision-making. The UK Government has 'uploaded' and 'downloaded' policies which have reflected domestically-defined preferences to maintain the status quo or strengthen reforms. This is evidenced broadly by the fact that little if no changes were necessary to comply with the various directives as stated in the legal annex (see paras 40; 44; 49)<sup>4</sup>. For example, the UK Government forcefully secured a late addition to the drafting of the Reception Conditions (Article 16 (2)) to allow a member state to withdraw material support if the applicant does not claim as soon as reasonably practicable.<sup>5</sup>
8. The *acquis* of the CEAS also provides a template for new EU member states. For example, if the people of Scotland choose to vote for independence in 2014 and Scotland remains or becomes a member state of the European Union, then the *acquis* of the Common European Asylum System will provide a legislative framework in which to develop its asylum procedure and systems. It would

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<sup>3</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm)

<sup>4</sup> See for example: Shisheva, Mariya (2013) *The Impact of European Union Asylum Policy on Domestic Asylum Policy in Germany and Britain: 1990-2007*. PhD thesis, University of Trento

<sup>5</sup> HoC, 28 October 2002 (c628W)

obviously be in the best interests of the UK that minimum and comparable standards exist in a neighbouring member state sharing a land border.

9. It is not mentioned in the legal annex, but the Charter of Fundamental Rights contains a number of provisions relevant for the protection of refugees. In addition to the prohibition of *refoulement*, it states that the right to asylum should be guaranteed in accordance with the Refugee Convention and EU law. The charter is binding on all EU institutions and on EU Member States when implementing EU law.

Contact:

[REDACTED]

**Scottish Refugee Council**

[REDACTED]

## **Submission 27**



**Joint response of Universities UK and the UK Higher Education International Unit to the UK Government Review of the Balance of Competences between the United Kingdom and the European Union – Research and Development  
August 2013**

### **Contact:**



### **Universities UK**

Universities UK (UUK) is the representative organisation for the UK's universities. Together with Higher Education Wales and Universities Scotland, its mission is to be the definitive voice for all universities in the UK, providing high quality leadership and support to its members to promote a successful and diverse higher education sector.

[www.universitiesuk.ac.uk](http://www.universitiesuk.ac.uk)

### **UK Higher Education International Unit**

The UK Higher Education International Unit (IU) represents all UK higher education institutions internationally and delivers a number of programmes and initiatives to support the development and sustainability of the UK HE sector's influence and competitiveness in a global environment. It supports the sector's engagement in European Union and Bologna Process policy debates.

The IU is funded by the Higher Education Funding Council for England, Higher Education Funding Council for Wales, Scottish Funding Council, Department for Employment and Learning (Northern Ireland), GuildHE, Universities UK, the Higher Education Academy and the Quality Assurance Agency for Higher Education. It is located at Universities UK.

**TO NOTE – THE EVIDENCE PUBLISHED BELOW IS AN EXTRACT RELEVANT TO ASYLUM & IMMIGRATION. FOR THE FULL UUK SUBMISSION, PLEASE SEE THE EVIDENCE FOR THE RESEARCH AND DEVELOPMENT BALANCE OF COMPETENCE REPORT**

**Internal market: Free movement of persons and Asylum and immigration**

1. Both the Internal market: Free movement of persons and asylum and immigration reviews of the balances of competences are concerned with the ability to enter the UK as a non-UK citizen. The former looks at EU citizens and their ability to exercise free movement rights under the TFEU while the latter reviews non-EU citizens. As the UK research and HE base is dependent on the free circulation of talent both from within and outside the EU, the following comments apply to both reviews.
2. The mobility of researchers and students is of unequivocal importance for the UK research sector as the free movement of talent is fundamental to excellent research. The EU's competence to create free movement rights within the EU and remove barriers to mobility<sup>1</sup> has been extremely beneficial to the UK research sector in terms of attracting talent as well as offering UK nationals the opportunity to study and work abroad. This is a field where the EU's competence to create an overarching framework is beneficial as the multilateral coordination of free movement across European borders would be much more difficult and unfeasible.
3. One example of how the UK HE sector benefits is the range of EU mobility programmes. In the researcher one Marie Curie Actions, the UK is the top host country for mobile researchers: 3,604 researchers have come to the UK under FP7 so far.<sup>2</sup> Correspondingly, 780 British researchers have been funded to work abroad and the EU budget allocated so far to British institutes is €790.3 million.<sup>3</sup> For student mobility, the Erasmus programme is of similar importance to the sector.
4. The strength of the UK sector means that the UK is a more attractive destination country than an active sending country within the EU. This is a huge competitive advantage for the UK as it has the means to attract the world-leading individuals into its academia and research. It is of fundamental importance that these researchers are able to enter the UK easily, regardless of whether they are EU or non-EU nationals.
5. The EU's competence in the field of immigration does not directly impact on the

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<sup>1</sup> Article 20 (ex Article 17 TEC) and 21 (ex Article 18 TEC) TFEU

<sup>2</sup> European Commission, *FP7 People Marie Curie Factsheet*, June 2013, [http://ec.europa.eu/research/mariecurieactions/documents/funded-projects/statistics/eu-countries/marie-curie-actions-country-fiche-uk\\_en.pdf](http://ec.europa.eu/research/mariecurieactions/documents/funded-projects/statistics/eu-countries/marie-curie-actions-country-fiche-uk_en.pdf)

<sup>3</sup> Ibid.

UK given its opt-out of the border and visa aspects of the Schengen Acquis.<sup>4</sup> The main advantage of the Schengen Acquis is that it has created an area of free movement for non-EU nationals once they have obtained a Schengen visa. In discussing the advantages or disadvantages of the UK opt-out, it is therefore worth pointing out that an excellent non-EU researcher employed by a German university could be more easily enticed away by a French or Norwegian university than by a UK one as coming to the UK would entail a new laborious visa application. The same applies to student mobility.

6. The freedom of movement in the Schengen Area is enhanced by the EU Blue Card Scheme which aims at making Europe a more attractive destination for highly- skilled and educated persons from outside the European Union by guaranteeing working and salary conditions equal to nationals, entitlement to a series of socio-economic rights and a permanent residence perspective. All Member States, except the United Kingdom, Denmark and Ireland, participate in the scheme. This might disadvantage the UK in the long-term.
7. We would also wish to highlight that the EU's common visa policy is more welcoming towards third country students than the UK's current approach.

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<sup>4</sup> Article 4 of Protocol (No 19) on the Schengen Acquis integrated into the framework of the European Union (OJ C 83, 30 March 2010, p. 290)



## **Submission 28**



5 August 2013

Home Office  
Direct Communications Unit  
2 Marsham Street  
London  
SW1P 4DF

### **Response from HS1 Ltd to the Review of the Balance of EU Competences: Asylum and Immigration and Free Movement of Persons.**

HS1 is the 109 kilometre high speed rail line connecting London's St Pancras International station to high-speed commuter services throughout Kent, and international passenger destinations in Europe such as Paris and Brussels via the Channel Tunnel.

HS1 Ltd holds a concession through to 31 December 2040 to operate, maintain and renew the railway including St Pancras International and three other stations along the route - Stratford International, Ebbsfleet International and Ashford International. HS1 is a modern, high performance, high-speed passenger rail line and is the UK's only high speed railway. It forms the UK section of the Paris-Brussels-Koln-Amsterdam-London"(PBKAL") trans-European transport network priority project.

HS1 Ltd was concessioned in November 2010. It is now wholly owned by a consortium comprising two major global infrastructure investors- Borealis Infrastructure and Ontario Teachers' Pension Plan.

International passenger services on HS1 are currently operated by Eurostar International Limited ("Eurostar"), predominantly servicing Paris and Brussels out of St Pancras International station. HS1 operates at world class levels of reliability, with a Moving Annual Average of less than 8 seconds delay per train from Infrastructure incidents. In addition the services have benefited from very high levels of punctuality, with Eurostar achieving over 90% punctuality (within 15 minutes of scheduled arrival times), which is significantly better than the average punctuality of airlines, estimated at approximately 81% on competing routes. International high-speed rail is a growth market across Europe, overtaking air travel on a number of major international routes, with demand stimulated by journey time improvements and increasing challenges to the air market such as environmental considerations and airport congestion. Eurostar estimate that they have an 80% market share of point to point travel between London and Paris / Brussels.

However to ensure continued growth all aspects of travel need to be smooth and efficient. This cannot be said for the borders and security arrangements required

at present across the EU. These are complex and time consuming.

Eurostar has been working on plans to serve 10 new cities in Europe over the next ten years. This summer it has trialled services to the south of France for example but is now being forced to make substantial capital investments in Lille station to allow for borders clearance for those services to be re-introduced on a full scale basis from 2015.

The arrangements governing train passengers in the EU are complex and depend in part on national regulations and in part on EU wide arrangements – as a single example, different member states take different views about who is responsible for checking passports on departure from the Schengen area.

In addition the physical and technical constraints on passport checking on arrival in St Pancras are significant – there up to 750 people on each Eurostar train arriving and platforms are not segregated between arrivals and departures.

As well as being a constraint on Eurostar's development these issues also constrain new prospective operators – the complexity and lack of transparency in these areas, mean that it can be almost impossible for them to understand the implications for their business models.

To illustrate how negative this is for development of new services, attached is a redacted letter from Deutsche Bahn to HS1 which sets out clearly that the borders and security arrangements are one of the barriers to entry.

In summary then the implications of the current arrangements are that:

- 1) Customers considering travel to the EU and the UK are dissuaded – the two visa system increases costs and complexity therefore tourism growth is likely to be restricted. In addition the extra time that the borders checks take on some services are significant – it can take up to an hour to clear a single train for example which adds 50% to a journey time from Paris or Belgium and would add 20% to the journey time from Frankfurt. Longer overall journey times make rail less competitive with air. Given the constraints on our London and the South East airport capacity this has even greater consequences for future travel across Europe; and
- 2) Train operators plans are complex, costly or even impossible to realise- in particular lack of clarity over processes and lack of agreement between member states about processes both increase development costs and, in some cases, may prevent business case approval.

Options we have considered which might help overcome these issues are:

- 1) For the UK to :
  - a. Introduce a new streamlined visa application process
  - b. Develop new technology to improve speed of passport checking – in particular we envisage checking on trains as they travel through the Channel Tunnel as being the approach most likely to facilitate the development of the rail market and to meet the requirements of all

member states

- c. Request improved consistency in application of the Schengen area. This could happen in parallel with the development of new technology – neither is expected to be a swift solution but both would be beneficial.

2) For the EU to ensure improved consistency in application in the Schengen area.

Together with London First and the Home Office we are undertaking our own review of the current arrangements across a range of member states. We hope that this will allow:

- 1) improved communication to prospective operators, and
- 2) work with other member states to remove barriers one by one

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## Annex A



DB Fernverkehr AG • Stephensonstraße 1 • 60326 Frankfurt am Main

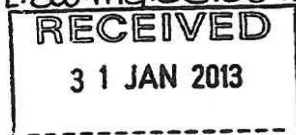
High Speed

HS1 Limited  
73 Collier Street  
London  
N1 9BE

Großbritannien

Stephensonstraße 1  
60326 Frankfurt am Main  
www.deutschebahn.com

L.Ow.MG.00188.10.HS1



Your ref. P.FVI

January 22, 2013

Dear Nicola,

As a follow-up to your discussions with Wolfgang Merz and Steffen Geers and further to our phone conversation, I would like to update you on the current status of the London ICE project. As you know we were obliged to postpone the introduction of direct train services from Germany to the UK via the Channel Tunnel and are currently facing various challenges that make the start of the ICE London impossible or highly risky. Specifically these are as follows:

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Requirements for check in procedures and safety.

Currently a security check-in for all passengers travelling towards the Channel Tunnel is required which would result in important and cost intensive reconstruction work in German stations to establish security zones.

6. Border control

The process currently required with the exit and passport control of all passengers in Lille is a potential show-stopper for the project. Only the passport control upon arrival or departure in London or on the train would be a feasible solution for DB. Furthermore, for technical and data protection reasons the obligation to deliver all passenger data to UK border force prior to arrival is not currently possible.

Due to the above mentioned difficulties we are currently not in the position to communicate a concrete starting date of the services. Given the various technical and commercial uncertainties, we have temporarily reduced the number of staff working on the project. Nevertheless, DB still aims to introduce direct high speed train services from mainland Europe to London once the technical and strategic obstacles have been removed. Thus the London ICE remains on DB's strategic map.

If you need any further information please do not hesitate to either contact [name redacted] of Arriva in London or our project directors [name redacted] & [name redacted] in Frankfurt.

Best Regards

[Name redacted]

## **Submission 29**

(To note - Submitted to Free Movement of Persons Balance of Competence Report)



### **Review of the Balance of Competences between the UK and the EU: Internal European Market Synoptic Review**

#### **British Chambers of Commerce response**

The British Chambers of Commerce (BCC) sits at the heart of a powerful network of 53 Accredited Chambers of Commerce across the UK, representing thousands of businesses of all sizes and within all sectors.

#### **Introduction**

The BCC welcomes the opportunity to respond to the Balance of Competences Review's call for evidence on the Internal Market: Free Movement of Persons. However, we are concerned that the unnecessarily complex questions included in the call for evidence could be preventing some key stakeholders from engaging in this process. We hope that this is taken into consideration for the remaining semesters.

The safeguarding of the interests of UK businesses is critical to the debate on the future of Britain's relationship with the EU. The BCC are leading the EU debate within the business community as the organisation that delivers both extensive trade support to British firms as well as representing the interests of British business.

This call for evidence rightly distinguishes between i) asylum and global immigration and ii) free movement of nationals of EU member states. This response therefore avoids any discussion of immigration and instead focuses on the costs and benefits of freedom of movement as a treaty right and the balance of competences between the UK and the EU.

#### **The UK Benefits from European Mobility**

Businesses value access to a flexible labour market and the free movement of persons across different parts of the EU adds to the flexibility of the UK's labour market, and the availability of skilled labour. The UK economy benefits from Europeans of other nationalities who come to the UK to work or study, as well as from those British workers who gain language skills, social connections and knowledge of another market during a period of work in another EEA State. The Government should invest more resources in promoting mobility among British workers and students, and in attracting and retaining more EU workers and students to the UK.

Our 2011 Labour Force Survey asked 1419 respondents who employed migrant workers why they do so. 36.2% cited a shortage of UK candidates with the necessary skills, 35.6% had failed to find UK workers with the right experience, and 32.1% had recruited them for their work ethic. Just 3.5% cited lower wage costs. London Chamber of Commerce and Industry interviewed members about EU migration and repeatedly heard evidence of businesses that found the right skills and

attitude in workers from other European countries that they struggled to find in British candidates.<sup>1</sup> One employer explained “we tend to fast-track applicants from Eastern Europe because they tend to have a different attitude and outlook, which is they want to work and they want to get results.” Even in 2011 when high unemployment meant that employers should have found it easy to fill job vacancies, 45.4% of the 5919 members we surveyed reported that they found it quite or very difficult to recruit the ‘right’ staff.<sup>2</sup>

### **Inward Investment**

The UK remains the preferred location of European headquarters among multinational companies trading in the EU<sup>3</sup> (UKTI, May 2013), and continues to attract more Foreign Direct Investment than any other EU Member State. These successes are, in large part, dependent on access to the European Single Market, and the Freedom of Movement that underpins it.

### **The Single Market**

The Internal Market provides our members with access to new markets, lower travelling costs and a wider pool of labour and suppliers which in many instances have also led to lower costs. The European economy is increasingly interconnected with firms able to expand their operations to other member states and benefit from competition between suppliers. The resulting European supply chains are largely dependent on the freedom of workers, suppliers and buyers to move around the Union at will. Likewise UK suppliers benefit from the ability to compete for contracts in other European countries. Their success is predicated on their ability to service clients and on their clients’ ability to visit their operations in the UK. The benefits of mobility will become even more important if and when the single market is made to work as well for services as for goods.

### **Demographic Challenges**

The Office for Budget Responsibility has recently highlighted the role that immigration, including EU migration, can play in promoting economic growth and helping to pay for the costs associated with reductions in the ratio between workers and social security claimants, particularly those claiming pensions. The retirement of the baby boomer generation is also predicted to create large skills gaps, which will need to be filled through better training of UK workers and by attracting skilled workers from other countries.

### **Public services**

Employers rely on well-functioning public services as part of the UK’s vital infrastructure. Although we do not have any evidence of public services put under pressure as a result of EU migration to the UK, employers providing health and social care services have benefited from access to a larger pool of skilled workers. This has been particularly important due to this Government’s attempts to reduce net migration to the UK down to the tens of thousands, which has resulted in these sectors losing access to sources of labour from non-EU countries.

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<sup>1</sup> Help or hindrance? The value of EU membership to London business, April 2013 (pp 21-24)

<http://www.londonchamber.co.uk/docimages/11263.pdf>

<sup>2</sup> BCC Labour survey 2011

<sup>3</sup> The UK – A World of Advantages, UKTI, May 2013

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/204004/UK\\_European\\_Headquarters\\_Brochure.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204004/UK_European_Headquarters_Brochure.pdf)

There is some evidence that migrants live in more densely populated homes than is typical for UK residents, both due to larger family sizes and workers sharing bedrooms. This suggests that EU migration helps address the demographic challenges outlined above and contributes to taxation and demand in the economy while reducing the pressure on housing.

### **Social Security**

Where there is evidence of people in the UK claiming benefits for which they are not entitled the Government should act, regardless of their nationality. In particular, the Department for Work and Pensions is right to support those who are claiming sickness benefits to move back into work if they are able, and to ensure that those claiming Job Seekers Allowance are doing everything they can to find work. We support the Government's cap on benefits and the move to Universal Credit, which will increase the incentive for most people to find more work. We also support the Government's drive to formalise the requirement for those with poor English language skills to attend classes. This must be accompanied by an increase to the budget for the English for Speakers of Other Languages (Esol) programme.

Social security coordination at a European level makes it easier for employers to recruit workers from other countries and ensures that their staff benefit from protection based on contributions made in previous jobs. It also supports British workers considering work opportunities in other Member States. These important advantages must be balanced against any cost derived from benefits tourism. In particular, some members have expressed a need for greater coordination relating to occupational pensions and the portability of private pensions, which can be a barrier to non-British workers accepting a job offer in the UK.

We are not aware of evidence showing the extent to which the rules on social security coordination have a disproportionate effect on the UK benefits system. If this evidence were to become available, and showed that the costs outweighed the benefits, we would support a renegotiation in this area. Without this evidence, or if the evidence shows the benefits of coordination to outweigh the costs, we would not support renegotiation in this area.

The EU free movement directive, enacting the treaty right, in principle provides adequate safeguards to the UK government in screening for access to assistance or benefits. The EU rules are complex and definitions are not always congruent with national definitions determining eligibility. This complexity combined with the role of the European Court as final arbiter illustrate that the balance of competences is tilted firmly in favour of the EU in a policy area which is linked to the core national competency for economic redistribution and thus inherently controversial. However, it is fundamentally sound that the EU should be the guarantor of the right to free movement across EU borders. This also helps UK migrants when they seek work and settle in other EU countries.

### **Transitional Controls and Future Enlargement**

Inflows from other Member States boost UK output growth and are positive for the UK economy as a whole since the new arrivals are usually of working age and have little or no need of UK public services such as expensive healthcare or pensions, nor have most used the UK education system.

There is a first mover advantage for countries that do not apply the full transitional controls that persists even after the period in which other countries are applying controls. The creation of social support networks among newly settled communities from a particular country will continue to benefit the host country in seeking to attract skilled workers of that nationality. A decision not to apply transitional controls is also likely to generate goodwill that can be used to foster trade with a new Member State. Decisions about whether to apply transitional controls for any future enlargement of the Union should be made on a case-by-case basis.

One possible safeguard which the UK could propose to the EU might be an 'anti-surge' clause to curb or mitigate the negative effect on UK public services of any disproportionate and sudden influx on EU migrants. Such a surge is unlikely in the future since no further group enlargements are planned (and assuming Turkey does not accede). However, a formal, legal safeguard clause of this kind might serve to reassure the UK public.

### **Government Estimates of Expected Inflows**

The public has lost faith in the Government's ability to publish reliable estimates of likely inflows following a new accession and the end of any transitional controls. Future EU enlargements are unlikely to be anything like the 'big-bang' of 2004, but public support will nonetheless depend on their belief that the Government has calculated the effect on the UK of a new country joining the EU. For upcoming enlargements (and especially if one day Turkey were to accede) it is crucial that government makes cautious and considered estimates of likely inflows. If it does not, public trust will be lost and the issue will become a major controversy again. For businesses willing to employ EU migrants, this will in turn create unwarranted negative associations.

### **Britain's Opt-out of Schengen**

Britain's opt-out from Schengen should be a part of the Free Movement of Persons element of the Review of Balance of Competences. This section covers some elements of non-EU visitor and immigration policy, but also highlights problems affecting free movement of goods and people. Given the ease with which visas can be obtained for countries within the Schengen Area, Britain's opt-out from Schengen is likely to have had a broadly negative impact on UK businesses and for goods and workers at UK border crossings. This must be balanced against the benefit for the UK of being able to set our own visa rules to reflect changing demands for labour and our ability to maintain control of our borders.

We have heard anecdotal evidence of UK border staff being deliberately obstructive at Schengen-UK borders, causing severe choking and delays. This anecdotal evidence suggests a need for a proper study of the ease of travel between Schengen countries and the UK, and whether this is affecting UK businesses that rely on travel or trade with Schengen countries.

Businesses and investors visiting UK firms have to pay more than they would to visit a country in the Schengen Area. A current example of this impact is the negative impact on the attractiveness of the UK for commerce and trade with growing and dynamic countries like China. Chinese visitors are also put off by the indignity and hassle of visiting, as part of their visa application, a biometrics centre, which may



require considerable travel from their home town. This inconvenience will be exacerbated when Schengen introduces a similar biometrics process unless the UK and Schengen can find a way to share facilities or biometric data, so that visitors wanting to visit the UK as part of a European trip do not have to travel to two differently located centres. In particular we are concerned about the effect on business travellers and investors, and on students and tourists, many of whom have, or will in the future have, responsibility for investment and purchasing decisions.

**The BCC would be keen to engage further as this review progresses. The BCC will continue to poll our members on issues relevant to this review and we will communicate our findings as soon as they are available.**

For more information please contact:

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## **Submission 30**



### **EU Balance of Competences:**

#### **PART ONE: SUBMISSION BY MRN ON ASYLUM AND IMMIGRATION**

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Migrants' Rights Network (MRN) was founded in 2006 with the mission of improving cooperation between organisations in the UK working to support the rights of migrants. It advocates a rights-based approach to immigration policy which would allow people newly arriving to quickly and effectively establish their position in relation to the labour market and business activities, access to public services and benefits, the establishment of family life, protection from discrimination, route to obtaining citizenship, and in all other matters that will aid their integration into life in the country.

We are critical of many aspects of law and policy in the UK in respect of all these matters. Our sharpest complaint arises from the sheer instability of a immigration regulation in recent years, with policy being made on the basis of poor evidence and producing tensions and conflicts across a range of overlapping concerns which have strained the capacity of the administrative structure to breaking point. The constantly poor evaluation of the work of the authorities intended by Parliament to administer immigration policy by the Home Affairs Select Committee, and the recent decision of the Home Secretary to scrap the UK Border Agency functioning as an executive body together provide clear examples of the chronic failings of the system. Stakeholder criticism of immigration policy, extending across business, higher education, tourism and recreation, and the scientific and arts community has become more intense in recent years as government measures cut across vital interests. Migrants themselves, confronting administrative ineptitude and impossibly dense and constantly changing regulation are increasingly obliged to protect their own legitimate interests by ad hoc means, which is now the main factor driving movement into irregular immigration status across the country. Finally, we see that in reaction to this often chaotic scene the law courts are frequently called upon to determine issues which ought to have been settled by better regulation and proper regard for basic rights.

It is from the standpoint of wanting to see a resolution of the current predicament which immigration law and policy is currently in that we approach this exercise in evaluating the balance of competencies between the EU and UK government institutions on matters concerning asylum, immigration and rights of freedom of movement. In doing so we express no opinions of the bigger issue of whether the UK should remain within or move out of the EU itself. On this point we limit ourselves to saying that, since so much of the chaotic state of immigration policy is driven by

purely indigenous factors, the outcome of further withdrawal from EU competence in this area will not in itself bring about any improvement in the situation.

Having set out these comments to foreground our views, we now turn to the questions put in the balance of competence review.

## **THE EU AND THE UK BORDER**

### **1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?**

In respect of the good administration of immigration law and policy in the UK, opting out of the Schengen Protocol has brought no advantages whatsoever. The chaotic state of immigration management in this country, referred to above, has all its roots in poor policy advanced without any regard for a base in factual evidence. The opt-out has allowed the UK to maintain the full range of powers to check the status of all persons arriving at a port of entry and to apply the full rigour of the law to those subject to immigration control. The justification for this would be the orderly management of people moving into the country according to a set of principles which were warranted in the special circumstances of the UK in relation to the rest of the EU. However, we are of the view that the gains for orderly management from remaining outside of Schengen are negligible.

The effect of maintaining checks at the UK borders does mean that records can be kept of people arriving and the authorities retain the capacity to refuse entry to third country nationals travelling from other EU states if their presence is felt to be undesirable within the Schengen system. According to the Migration Observatory, around 16,000 people are refused entry and removed on detection at a UK port, though it appears not to be known how many of these were arriving from other EU countries.<sup>1</sup> The effect of ending checks at the UK's frontiers with EU states would probably encourage some third country nationals currently living in other states to make the journey and a proportion of these might well be considered unwelcome by the authorities. Welcome or not, the point relevant to this discussion is the impact that such arrivals would have and whether this could be assessed as so negative as to justify the maintenance of controls.

Our concern about the rights people have on arrival at a border, and what is known about the way in which the power to interrogate and challenge is often used in an arbitrary manner inclines us to favour border management systems which operate with the presumption that individuals have a right to cross. The Schengen system more closely embodies this principle and that registers as another point in its favour from our standpoint.

We would argue that the retention of powers to prevent the entry of people considered undesirable by the authorities has to be weighed against the disadvantages of maintaining controls. In one area at least, the chilling effect on tourism, this appears to be considerable. The example of Chinese tourists alone has attracted a very high level of criticism because of the role the UK visa system plays in

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<sup>1</sup> <http://www.migrationobservatory.ox.ac.uk/briefings/deportations-removals-and-voluntary-departures-uk>

discouraging this group of nationals in including the UK in European itineraries that take in several other EU countries. It is likely that the current necessity to obtain a separate visa which would allow visitors to Europe to include the UK in their plans acts has a very large deterrent effect on what would otherwise be a very lucrative branch of tourism, generating revenue that has the potential to rise into millions of pounds.

In our view the value of retaining controls at the UK frontiers with other EU states is unproven whilst a great deal more is known about the costs. For this reason we would favour consideration being given to Schengen membership.

**2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?**

From the standpoint of immigration policy it would have meant that third country nationals travelling directly from another member state would be exempt from routine controls and entitled to enter the UK for the balance of a period that, did not exceed three months. The EU institutions would acquire the authority to monitor the procedures in place at UK ports to ensure that these conditions were observed.

Whether or not this would have proven to be in the national interest depends on the likelihood that it would have produced a more effective system for managing immigration. Our view is that the system that the UK currently operates outside the purvey of the Schengen Protocol is not proving conspicuously successful and it is therefore plausible to suggest that the national interest would have been better served by being a part of the European system rather than remaining on the outside.

**3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?**

The current mix of EU and UK sovereign policy which the UK has secured for itself through the exercise of its various opt-ins and opt-outs has arguably proven durable in the period since 2002, when pressure on the external borders was reduced by the ending the last major conflicts that had accompanied the breakup of Yugoslavia. Since that date border policy has enjoyed a period of stability which has largely come about from the success of the EU in obtaining cooperation from countries in the adjacent regions.

This stability is not likely to be assured on a permanent basis. Civil upheaval in the Eastern Mediterranean has the potential to pile up pressure, firstly on Turkey and then, in the event that governments in Ankara become disaffected with their relationship with the EU, directly on external borders of the Union. It is quite possible that similar scenarios with develop in North Africa with countries of the Maghreb also being less reliable as partners in holding back immigration pressures.

The limited achievements within the EU of achieving solidarity pacts with member states experiencing heightened border pressures could well mean a breakdown of their capacity to hold recently arrived migrant and refugee communities on their

territory and consequently a return to the situation which prevailed fifteen years ago of unregulated large scale secondary movements across the EU. This will increase pressure at the UK border, but leave us without the assurance of cooperation across the EU region on burden sharing measures which would allow this pressure to be contained. We would expect that the result would be a sharp increase in refugee arrivals in the UK, producing a further crisis in public confidence that the system was under control.

If it was acting rationally the UK government would be aware that the current period of relative stability ought to be used to secure deepened cooperation across Europe, providing better burden sharing support and mechanisms to release the pressure that the EU states at the border will be coming under. We think it likely that any action taken by the UK government to alter the balance of competence between the national and EU authorities will be read as an attack on the level of cooperation which is needed and a steady worsening of the situation with regard to control at borders.

**4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?**

Yes, but it would require a change of approach to the way in which the UK discusses these issues with its EU partners. This is widely seen across Europe as being a relationship in which the UK expects the EU to order its affairs in ways which secure British interests whilst walking away from important discussions which deal with the interests of its partners. A greater willingness to contribute to the effective management of migration across the whole of the EU region would, in our view, help secure better outcomes on issues which particularly affect the UK.

**5. Are there any other general points you wish to make which are not captured above?**

We have not further points to make on the issue of the EU and the UK border.

## **THE EU AND ASYLUM**

**6. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?**

The main advantage relates to the fact that application of refugee law is an obligation common to all EU states involving identical standards with regard to definitions and the provision of protection. The CEAS potentially provides a framework for ensuring that the application of these standards is genuinely uniform across all the jurisdictions. With this in place the system of refugee protection in any one country will acquire greater legitimacy in terms of the fairness and objectivity of its protection measures.

The CEAS also provides an important means to protect both states and refugee communities against secondary movements induced by standards of protection in one country falling below the common benchmarks agreed by others. It also holds

out the hope that there will be burden-sharing between states, preventing EU countries adjacent to troubled countries meeting a higher cost of refugee protection simply because of their geographical location.

We believe that the UK will benefit from this system being securely in place and providing a secure foundation of all other measures which are needed to ensure that the obligation to provide protection to refugees is in place across all the countries in its neighbourhood.

**7. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?**

If the UK had opted out of more of the CEAS measures we presume that the competence of bodies like the Commission and the European Parliament to maintain oversight and express a view on refugee procedures in this country would have been more dilute.

However, the fact that the basic refugee legal instruments, namely the Geneva Convention and the European Convention on Human Rights form part of the *acquis* of common EU law means that EU competence would be asserted through the role of the European Court of Justice and the European Court on Human Rights. It would be regrettable if this was the sole means to ensure the application of common standards however, given issues of the length of time taken to hear cases and the political controversy that arises when judgements go against governments.

**8. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?**

In terms of future challenges we feel that the European region is very vulnerable to new crisis brought about by social upheaval in adjacent regions in the Middle East and the Maghreb which will generate pressures at least comparable to those experienced during the break-up of Yugoslavia in the 1990s. Any reduction in the capacity of the EU to support cooperation between member states arising from rebalancing competence in favour of national governments might well leave the region exposed and poorly equipped to handle large-scale refugee crises in the future.

**9. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?**

Our view is that participation in the CEAS has already optimised the benefits of cooperation with the EU for British interests. The further strengthening of these benefits suggest deepening this process of cooperation.

**10. Are there any other general points you wish to make which are not captured above?**

We have no further points to make on EU asylum policy.

## THE EU AND LEGAL MIGRATION

### **11. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?**

The Legal Migration directive is an attempt on the part of the Commission to build on what it presumes is a consensus about the value of certain types of migration which is assumed are not contentious, namely highly skilled workers, seasonal workers, inter-corporate transfers and remunerated trainees. It lays down the principle that in cases there should be a requirement for a work contract in all these instances and that admission should be on the basis of an economic needs test. Aside from these matters the directive also points to the need for integration programmes and cooperation with countries of origin as components of a Legal Migration policy.

We see these as fairly modest proposals which point policy in this area in what might prove to be a useful direction. It is intended to serve as a framework for the development of policies which will be substantively informed by national experiences. This ought to provide the UK government with the assurance that legitimate British interests will be safeguarded.

The advantage of agreement on this measure is that it would strengthen cooperation between EU countries around sets of policies which would benefit from being considered in a regional light. If progress could be made in this direction then one would hope that the EU and its member states would acquire confidence to tackle what is currently the more contentious issue of migration of workers for the purpose of low skilled employment.

The disadvantage of not building cooperation in this area is that states will continue to manage migration on the basis of their perceptions of their separate national interests. 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.

Returns and admissions policies and directives present a different set of issues. The greater progress the EU has made in this area shows that the member states find it easier to reach agreement on what are essentially enforcement measures than they do on the fundamental principles of good migration management. It should be clear that, in the absence of positive policies supporting the efficient management of migration, then there is likely to be a greater need for coercive measures of enforcement in order to force some order into an otherwise under-achieving system. In our view much of what the EU has achieved in the area of returns and admission is essentially palliative, aimed at patching up a chronically poor system which constantly generates new arrays of problems for which states have no proper solutions.

Our conclusion on this point is that the UK and the EU would be better served by more progress in the way of positive framework agreements along the lines of the

Legal Migrations directive and less emphasis on the types of enforcement measures represented by the returns and admissions policies.

**12. If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?**

If the UK had acknowledged its interest in seeing greater progress being made towards framework policies to support the better management of migration then it is possible the EU would be further down the line in solving what are currently intractable problems across the region. The CEAS provides a modest example of what progress might have been made, even though this area also urgently needs a new phase of development to tackle the problems looming on the EU's southern borders.

We regret to say that the UK has provided an example of the country least willing to support cooperation and progress in the areas most vital to progress and therefore has to shoulder a large share of the responsibility for the long-drawn out impasse of immigration policy across Europe at the present time.

**13. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?**

As might be surmised from our comments above, we feel that the future challenges concern the development of policies for a region which plays a vital part in running a global economy which drives immigration across the world. For a long time Europe has been on a path of development which is underpinned by the movement of people, capital goods and services across borders and it is clear that this will remain the case for some time into the future. Indeed, in addition to the normal considerations of running market-based economies there is now the additional consideration of demographic change, with a marked change in the ratio of economically active to inactive people which is going to grow more severe over the next decades.

Well administered immigration policies are urgently needed in the European region which has the support and consent of the mass of citizens. Yet we currently have to live with policies which are clearly inadequate and which serve to stoke up contention and anxiety amongst the population. It seems to us that Europe has a critical role to play in addressing these issues and it would be helpful if national governments acknowledged this fact. Gaining this recognition from national governments is probably the key challenge of this period of time.

**14. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?**

Yes. However, such is the extent of the deep crisis within the EU and its member states in this area of policy that the initiative would have to come from one, or better more than one, national government showing sufficient leadership to lead the region in a different direction. As things stand at present it is clear that the UK government



will not play this role. It appears to have chosen the opposite path of attempting to lead a group of countries in deeper challenges to the hope of a regional approach to migration management. We do not think it likely that this will serve the national interest in the long run.

**15. Are there any other general points you wish to make that are not captured here?**

We have not further points to make on this section

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**Submission 31**

<b>Name</b>	██████████
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<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input checked="" type="checkbox"/>	Trade Association
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

21. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

The main disadvantage of the UK not participating in the border and visa aspects of the Schengen Protocol is that two separate visa regimes exist for potential visitors to the both the UK and Europe – one for the UK and one for most of the of mainland Europe. The Schengen visa may be seen to offer better value for money, allowing travel to more countries. This jeopardises inward investment and tourism to the UK. Travel within the Schengen area does not involve border control checks and this will be seen as a positive benefit by some.

A visa is required for many passengers who transit through the UK, even while remaining airside. Many European countries do not have this requirement.

The advantage is that the UK retains national control over which non-EU nationals cross the UK border and can choose to adjust visa requirements as necessary.

22. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

It may have brought economic advantages to the UK due to greater visitor numbers, tourism and investment. If the UK was participating in the Protocol, UK authorities would have access to the associated information systems – which would allow a more informed decision about a person's acceptability for travel to the UK and rest of Schengen. This may result in improved security of the UK (and external Schengen) border. If flights from Schengen countries to the UK were considered as domestic, this would help ease congestion at the UK border, allowing resources to be focused on non-Schengen arrivals.

However, the strength of the UK border, would as a result, only be as strong as the 'weakest link' amongst the Schengen nations. This may or may not be considered acceptable by the UK Government and public.

23. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

The key challenge will be balancing security against the need to facilitate and encourage travel across the UK border for those who are making legitimate journeys.

Any entry/exit controls imposed on the UK border should not cause additional burden to travellers or the airlines that carry them. This is especially pertinent for carriers who operate services from the Schengen area into the UK.

Changes in world politics always present immigration challenges. Visa regimes need to react quickly to this. Authorities can be quick to impose a visa requirement but not so quickly to remove one. Visas regulations should be under constant review.

Electronic visas are becoming more commonplace. This should be considered by the UK (and rest of the EU). However, automation at the border and in travel documents is more advanced in some European countries than others.

24. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?

The UK must remain a competitive option for travellers.

There should be greater alignment of the UK and Schengen visas in terms of cost to the applicant, a single application form, co-located bio-metric capture and information sharing. In theory, this should reduce administration costs and speed up the visa application process.

The aim should be for mutually competitive systems in the future and for more co-operation with close trading partners in developing 'Trusted Traveller' schemes.

As well as encouraging direct visitors, it is important to encourage those who choose to transit the UK but who require visas when other EU states do not impose this requirement – a point made in the answer to Question 1.

25. Are there any other general points you wish to make which are not captured above?

We appreciate and support the UK's desire for passenger data in advance of arrival at the UK border, There is an undoubted security benefits for the UK and to our members.

We urge the UK to find a resolution to the EC's restriction on data provision for EU citizens making intra EU flights.

## **Submission 32**

### **Home Office Review of the Balance of Competences – Asylum and Immigration Call for Evidence May 2013**

#### **1. General**

1.11 This response is made by Penningtons Solicitors LLP on behalf of Tech London Advocates at the invitation of Mark Lomas. We limited our research to section 3 of the Call for Evidence: The EU and Legal Migration.

1.12 We invited all Tech London Advocates to indicate their views, but had a limited response. We believe that this is for two main reasons: first, the questions assume a level of knowledge of immigration law and EU law and an appreciation of how EU competences operate, which the majority of Advocates do not have; secondly, given the timeframe involved, we sent the questions by email and had no opportunity to speak directly to the Advocates. If time had allowed, we might have been able to meet with some of the Advocates to discuss the issues directly. We will be pursuing further evidence from the Advocates over the autumn and we would be willing to share that evidence to the extent that it is pertinent to the issues raised in the Call for Evidence.

1.13 Nevertheless, we did have replies from four Advocates.

1.14 The responses fell into three distinct categories:

(a) An international business with operations throughout Europe

This business provides an on-line jobs platform and promotes working opportunities for young people. The freedom for these people to move across borders to work is a fundamental part of this company's business and growth strategy.

We have also incorporated learning from one of Penningtons' technology sector clients, a global software company, as that company's experience is relevant to the Call for Evidence.

(b) Tech companies based in the UK

We had a response from a non-executive director of a number of tech companies. These companies are seeking to expand in Europe, but see culture and language as greater barriers than immigration. A further tech company also responded. This company has not been able to retain non-EU employees who "genuinely gave them a competitive edge". Their loss "left real holes in the business".

(c) The entrepreneur

This reply was from a Canadian national who has two businesses in Europe and wishes to grow them.

- 1.15 We rephrased the questions so that they were less technical, and asked further background questions, in particular whether the companies were looking to expand into Europe. Some of the comments set out below, therefore, may not address the questions in their entirety.

### **Questions**

- 1.16 What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?

(a) The international business

The international business commented that the ability for non-EU nationals to work for the business throughout Europe “would considerably improve the opportunity that we could offer directly via our jobs platform, the talent programmes we could create with multiple organisations across several continents, and the diversity of experience and talent that we could promote”. One of the stumbling blocks in their growth plans is “the imbalance between the UK and the rest of Europe regarding working visas”.

This company felt that the inability to move across borders easily “may also mean that companies (particularly small ones) are not getting access to the most appropriate talent in the EU”.

The global software company’s perspective is that their inability to move third-country national employees throughout Europe once a UK visa has been obtained represents a significant obstacle to growth in Europe for that company. These individuals are urgently required in the UK and, as such, emphasis has been placed on obtaining UK visas for them. Given the timing considerations, this company has told us that it effectively had to choose between meeting the needs of clients in the UK or meeting clients in Europe.

(b) The tech companies

The comment made here is that the issue for these companies is not EU migration. Their problem is that it is so hard to employ Americans. For many tech businesses “US skills or US markets are the priority”. The issue is getting non-EU nationals (Americans, Indians) to work in the UK in the first place: enabling them to work throughout Europe is of lesser concern. “The front door is closed”.

(c) The entrepreneur

This respondent wanted the ability to move easily throughout Europe.

- 1.17 If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?

(a) The international business

The international business commented as follows:

“The major disadvantage of opting-in will be a likely increase in the number of people coming to the UK to seek opportunity, which is an issue the UK already struggles with. Additional disadvantages would be: an increase in the number of unemployed; a rise in population; a further strain on social security; more competition for already disproportionately competitive jobs; and issues around wage expectations, as immigrants of considerably less affluent countries arrive”.

“The major advantage of opting-in will be a larger, more diverse and easier to navigate talent pool for businesses in the UK. If there are proper services available that could deal with the management of a larger and more diverse talent pool [.....], this will be of considerable advantage to the 99.9% of UK businesses that are SME”.

(b) The tech companies

The view put forward on behalf of the tech companies is that it is more beneficial to the UK economy to keep control of migration in the UK. Americans and other non-Europeans have the specialist skills needed for the tech companies. If that necessitates more restraint on free migration from the EU “so be it”. “The present clamp-down on immigration has improperly targeted the skilled innovation workers that the UK and smaller tech businesses need most”.

- 1.18 What future challenges do you see in the field of legal migration and what impact might this have on the national interest?

None of the replies specifically addressed this point.

- 1.19 Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

None of the replies specifically addressed this point.

- 1.20 Are there any other general points you wish to make that are not captured here?

(a) The international business

There were no further points to make here.

(b) The tech companies

The comment made on the tech companies’ behalf was that restricting non-EU migration has been the easy option for the UK to use to clamp down on immigration. “To promote innovation in the tech world, we need to encourage English-speaking engineers with the right skills to come here (as they still tend to be at the forefront of technology venture commerce); and find ways to

access the world's biggest English speaking markets like the US, India, Australia, Canada, S Africa, that should be easiest to access, but aren't because of immigration restrictions".



## **Submission 33**

### **UK Review of the balance of competences**

#### **III) Asylum and Immigration**

##### **1. Overview of Asylum and Immigration Policy**

- 4th Annual Report on Immigration and Asylum (2013)  
[http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/docs/4th\\_annual\\_report\\_on\\_immigration\\_and\\_asylum\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/docs/4th_annual_report_on_immigration_and_asylum_en.pdf)
- Commission staff working document accompanying the 4th Annual Report on Immigration and Asylum (2013) [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/docs/4th\\_annual\\_report\\_on\\_immigration\\_and\\_asylum\\_SWD\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/docs/4th_annual_report_on_immigration_and_asylum_SWD_en.pdf)
- Biannual report on the functioning of the Schengen area 1 November 2012 - 30 April 2013 (2013) [http://ec.europa.eu/dgs/home-affairs/doc\\_centre/borders/docs/third\\_biannual\\_report\\_on\\_the\\_functioning\\_of\\_the\\_schengen\\_area\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/doc_centre/borders/docs/third_biannual_report_on_the_functioning_of_the_schengen_area_en.pdf)
- Communication on migration (2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0248:FIN:EN:PDF>
- Communication on the Global approach to migration and mobility (2011) [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/1\\_en\\_act\\_part1\\_v9\\_com2011-743\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/1_en_act_part1_v9_com2011-743_en.pdf)
- Communication on Smart borders - options and the way ahead (2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0680:FIN:EN:PDF>
- Communication on Schengen governance - strengthening the area without internal border control (2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0561:FIN:EN:PDF>

##### **2. Recent proposals, Directives, Regulations, and Recommendations, including their impact assessments**

###### ***2.1 Immigration***

- Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (2013)  
[http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/study-or-training/docs/students\\_and\\_researchers\\_proposal\\_com\\_2013\\_151\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/study-or-training/docs/students_and_researchers_proposal_com_2013_151_en.pdf)

- IA - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013SC0077:EN:NOT>
- Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (2010) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0379:FIN:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2010/sec\\_2010\\_0887\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/sec_2010_0887_en.pdf)
- Proposal for a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (2010) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0378:FIN:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2010/sec\\_2010\\_0884\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/sec_2010_0884_en.pdf)
- Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2007/sec\\_2007\\_1393\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2007/sec_2007_1393_en.pdf)
- Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (2009) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2007/sec\\_2007\\_0603\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2007/sec_2007_0603_en.pdf)
- Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (2009) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2007/sec\\_2007\\_1403\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2007/sec_2007_1403_en.pdf)

- Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (2008) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2005/sec\\_2005\\_1057\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2005/sec_2005_1057_en.pdf)
- Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF>
- Directive on the right to family reunification (2003) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>
- Directive concerning the status of third-country nationals who are long-term residents (2003) (amended by a Directive 2011/51/EU of 11 May 2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF>
- Council Directive on defining the facilitation of unauthorised entry, transit and residence (2002) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:328:0017:0018:EN:PDF>
- Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (2002) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0946:EN:NOT>

## **2.2 Asylum**

- Regulation on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 (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 (2013) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2008/sec\\_2008\\_2981\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2008/sec_2008_2981_en.pdf)

- Regulation 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 (2013) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2008/sec\\_2008\\_2962\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2008/sec_2008_2962_en.pdf)
- Directive laying down standards for the reception of applicants for international protection (2013) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2008/sec\\_2008\\_2944\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2008/sec_2008_2944_en.pdf)
- Directive on common procedures for granting and withdrawing international protection (2013) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0060:0095:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2009/sec\\_2009\\_1376\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2009/sec_2009_1376_en.pdf)
- Directive 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 (2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>
- IA - [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2009/sec\\_2009\\_1373\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2009/sec_2009_1373_en.pdf)
- Directive amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection (2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:132:0001:0004:EN:PDF>
- Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2005) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>
- Council Regulation 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) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>

- Directive laying down minimum standards for the reception of asylum seekers (2003) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>
- Directive 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) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>
- Council Regulation concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention (2000) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:316:0001:0010:EN:PDF>

### **2.3 Schengen, Borders & Visa**

- Proposal for a Regulation establishing a Registered Traveller Programme (2013) [http://ec.europa.eu/dgs/home-affairs/doc\\_centre/borders/docs/1\\_en\\_act\\_part1\\_v14.pdf](http://ec.europa.eu/dgs/home-affairs/doc_centre/borders/docs/1_en_act_part1_v14.pdf)
- IA <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0050:FIN:EN:PDF>
- Proposal for a Regulation establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union (2013) [http://ec.europa.eu/dgs/home-affairs/doc\\_centre/borders/docs/1\\_en\\_act\\_part1\\_v12.pdf](http://ec.europa.eu/dgs/home-affairs/doc_centre/borders/docs/1_en_act_part1_v12.pdf)
- IA - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0047:FIN:EN:PDF>
- Proposal for a Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement (2012) [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/review\\_of\\_visa\\_regulation\\_539\\_2001\\_com\\_2012\\_650\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/review_of_visa_regulation_539_2001_com_2012_650_en.pdf)
- Proposal for a Regulation Establishing the European Border Surveillance System (EUROSUR) (2011) [http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/eurosur\\_final\\_en.pdf#zoom=100](http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/eurosur_final_en.pdf#zoom=100)
- IA - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1536:FIN:EN:PDF>

- Proposal for a Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (2011) [http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/559\\_en\\_en.pdf#zoom=100](http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/559_en_en.pdf#zoom=100)
- Proposal for a Regulation amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances (2011) [http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/560\\_en\\_en.pdf#zoom=100](http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/560_en_en.pdf#zoom=100)
- Decision on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (2011) [http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/listoftraveldocnov2011\\_en.pdf#zoom=100](http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/listoftraveldocnov2011_en.pdf#zoom=100)
- Council Decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (2010) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:111:0020:0026:EN:PDF>
- Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States (2009) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:142:0001:0004:EN:PDF>
- Regulation establishing a Community Code on Visas (2009) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF>
- Regulation concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (2008) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0060:0081:EN:PDF>
- Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (2006) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0001:0022:EN:PDF>
- Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (2006) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF>

- Commission Decision (2005/687/EC) of 29 September 2005 on the format for the report on the activities of immigration liaison officers networks and on the situation in the host country in matters relating to illegal immigration (2005) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:264:0008:0015:EN:PDF>
- Council Regulation No 377/2004/EC of 19 February 2004 on the creation of an immigration liaison officers network (2004) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:064:0001:0004:EN:PDF>
- Council Directive (2004/82/EC) of 29 April 2004 on the obligation of carriers to communicate passenger data (2004) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0024:0027:EN:PDF>
- Council Directive (2001/51/EC) of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (2001) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:187:0045:0046:EN:PDF>
- Council Regulations on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (2012) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:359:0032:0044:EN:PDF>
- Council Decision on the establishment, operation and use of the second generation Schengen Information System (SIS II) (2007) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:205:0063:0063:EN:PDF>
- Regulation on the establishment, operation and use of the second generation Schengen Information System (SIS II) (2006) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:381:0004:0023:EN:PDF>
- Regulation regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (2006) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:381:0001:0001:EN:PDF>
- Council Recommendation of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0026:0028:EN:PDF>
- Recommendation of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research (2005) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0023:0025:EN:PDF>



### 3. Policy documents and Reports

#### 3.1 Immigration

- 3<sup>rd</sup> Annual Report on Immigration and Asylum (2011) [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/pdf/general/com\\_2012\\_250\\_final\\_1\\_en\\_act\\_part1\\_v5.pdf#zoom=100](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/pdf/general/com_2012_250_final_1_en_act_part1_v5.pdf#zoom=100)
- Commission Staff Working Document accompanying 3<sup>rd</sup> Annual Report on Immigration and Asylum [http://ec.europa.eu/home-affairs/doc\\_centre/immigration/docs/SWD%202012%20139%20final%201\\_EN\\_autre\\_document\\_travail\\_service\\_part1\\_v3.pdf](http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/SWD%202012%20139%20final%201_EN_autre_document_travail_service_part1_v3.pdf)
- 2<sup>nd</sup> Annual Report on Immigration and Asylum (2010) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0291:FIN:EN:PDF>
- Commission Staff Working Paper accompanying 2nd Annual Report on Immigration and Asylum <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:0620:FIN:EN:PDF>
- 1<sup>st</sup> Annual Report on Immigration and Asylum (2009) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0214:FIN:EN:PDF>
- Commission Report on the application of Directive 2004/114/EC on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (2011) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0587:FIN:EN:PDF>
- Commission Report on the application of Directive 2005/71/EC on a specific procedure for admitting third country nationals for the purposes of scientific research (2011) [http://ec.europa.eu/euraxess/pdf/1\\_EN\\_ACT\\_part1\\_v6\[1\].pdf](http://ec.europa.eu/euraxess/pdf/1_EN_ACT_part1_v6[1].pdf)
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  - Communication on the Implementation and development of the common visa policy to spur growth in the EU (2012) [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/communication\\_on\\_visa\\_policy\\_to\\_spur\\_growth\\_com\\_2012\\_649\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/communication_on_visa_policy_to_spur_growth_com_2012_649_en.pdf)
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## **Submission 34**

(To note - Submitted to Culture, Tourism and Sport Balance of Competence Report)

### **Contribution to the Balance of Competences Review on Tourism**

**Phil Bennion MEP**

**Liberal Democrats' spokesperson on transport in the European Parliament**

Tourism significantly contributes to economic growth. This sector is the UK's **5th largest industry**, accounting for **9% of the country's GDP**, employing 2.6 million people and supporting over 200,000 small and medium sized enterprises (SMEs).<sup>1</sup> However, its proportion of the overall economy is **not expected to grow** above 9% by 2020<sup>2</sup>. The main setback lies in the incremental **decline in the UK market share of international tourism, down from 6.5% in 1980 to 3.8% in 2005**.<sup>3</sup> While inbound tourism is forecast to be one of the best performing sectors with above average growth over the next decade, the **UK does not seem fully equipped to withstand competition from emerging markets**. Destinations in developing countries are becoming increasingly accessible and more attractive. In the mean time, the UK has been **downgraded to 11th position in the competitiveness ranking**.<sup>4</sup>

To strengthen its position, the UK must undertake significant efforts on the world stage, many of them **national initiatives**. These include improvements to the speed of **visa** processing and issuance, and **investment in infrastructure** such as transport in order to encourage mobility. However, as the UK is not a member of the Schengen area, the potential for tackling some of these challenges are limited. Indeed, the UK **is often excluded from a European tour** due to the **logistical difficulties of obtaining a British visa** (i.e. extra cost, mandatory visit to a visa office in person, application forms only available in English). Combined with the high fares, poor high speed network and lack of capacity of our transport infrastructure, it makes the UK tourism industry internationally **uncompetitive**.

Tourism is the **forgotten industry** in the UK discourse on EU affairs. Instead of losing millions of visitors each year due to **logistical issues**, the **significant multiplier effect** of coordinated EU visa and transport policies on UK tourism industry and other parts of the British economy should be recognised.

**Free movement of persons** within the EU also plays a major role in encouraging European tourists to come to the UK. European countries constitute 8 out of the top 10 number of visitors to the UK. Reconsidering our relationship with the EU leaves us in the uncertainty of what rules will be in place for visas and free movement for EU tourists.

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<sup>1</sup> <http://www.visitbritain.org/insightsandstatistics/visitoreconomyfacts/>

<sup>2</sup> Deloitte & Oxford Economics, The Economic Contribution of the Visitor Economy: UK and the nations, June 2010

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<sup>4</sup> Deloitte, 2010

Tourism at EU level also means **advantages and rights** for British people travelling within the EU (e.g. air passenger rights, European Emergency number, insurance...). In 2010, over [24 million](#) Brits travelled abroad, mostly for holiday. Thousands of British people have holiday homes in France, Spain, Italy and Greece. These advantages and rights are guaranteed by our EU membership.

In addition, **coordination endeavours at EU level** can help the UK fulfil its ambitions, though limited to **non-legislative activities such as marketing and information-sharing**. Joint actions are conducive to enhancing **Europe's external projection and internal cohesiveness**. These are necessary to increase inbound tourism to the UK from within and outside the EU.

## 1. Added value to UK tourism of EU external tourism policy

### 1.1 Promoting Europe as a brand in emerging markets

70% of global economic growth will come from **emerging countries** between 2013 and 2025.<sup>5</sup> Since this will drive **tourism demand**, the UK should **prioritise inbound tourism from non-EU countries**. For the moment, it only represents one-third of the sector's revenues.

In this regard, **marketing Europe as one destination encompassing highly diverse countries** would generate a new competitive model. Such a branding programme could **harness both Europe's similarities and differences**. Selling Europe as a unified product could increase the attractiveness of EU destinations to international tourists whilst recognising Europe's diversity could allow the product to be **easily tailored to each market**.

We believe that these promotional efforts would further **enhance UK competitiveness in this sector**. **Fast connections** are already in place with Western Europe, which explains why France and Germany already account for more than one-in-four visits to the UK. The same countries also display outstanding national branding. The UK is 4th behind France and Germany in the 2012 Anholt GfK ranking.<sup>6</sup> Building upon these **synergies**, EU marketing would most likely benefit our country that would be seen as an **essential feature of a journey to Europe**.

As illustrated by the **one-stop-shop website visiteurope.com** and the umbrella **campaign entitled 'Europe - Whenever you're ready'**<sup>7</sup>, the Member States already started acting together. They should now step up their efforts to foster the desired image of Europe.

### 1.2 Speaking with one voice within international organisations

There is **no explicit competence** for the EU in external tourism policy, except where

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<sup>5</sup> [http://ec.europa.eu/enterprise/sectors/tourism/files/studies/competitiveness/executive\\_summary\\_en.pdf](http://ec.europa.eu/enterprise/sectors/tourism/files/studies/competitiveness/executive_summary_en.pdf)

<sup>6</sup> <http://www.brandingplaces.com/2012/11/01/2012-anholt-gfk-roper-nation-brands-index-vs-futurebrands-country-brand-index/>

<sup>7</sup> <http://www.visiteurope.com/home.aspx>

the conclusion of an agreement is necessary to achieve objectives set in the Treaties.<sup>8</sup> Yet granting a **mandate to the European Commission** on some international matters would be beneficial to Member States. For instance, it would give greater strength **in negotiations at the World Tourism Organisation regarding the European citizens' rights when travelling outside the EU.**

## 2. Added value to UK tourism of EU internal tourism policy

### 2.1 Ensuring high-quality services through European labelling

Different Member States use different **evaluation methodologies to assess the quality of tourism services.** There are currently 30 schemes of varying scope, criteria and governance.<sup>9</sup> Such fragmentation is an impediment to cross-border tourism, which reduces confidence in European products. Therefore an **integrated approach based on consistent quality criteria** should be preferred to individual initiatives. It is justified by the need to fight against the misbehaviour of certain operators in some Member States that negatively impacts the region as a whole.

Against this backdrop, we welcome the European Commission's initiative to put forward the first legislative proposal on tourism to create a voluntary **European Tourism Label for Quality.**<sup>10</sup> This regulation should develop a **level playing field for providing high-quality tourism services throughout Europe,** thereby increasing the competitiveness of the European tourism sector vis-à-vis third countries' destinations and the UK prospects for **growth in intra-regional tourism.** It will also **facilitate the promotion of the European Brand.** The **proportionality of the measure** is guaranteed by the **flexibility of the label,** which is to remain **voluntary.**

### 2.2. Disseminating best-practises and knowledge-based support for businesses

UK policy-makers and entrepreneurs should be informed by the **latest and best information available.** **Improvements in market intelligence and in both the availability and use of statistical databases** enhance the quality of the decisions made by policy-makers and business-leaders. In this regard, **coordination** at EU level appears as the most **cost-efficient solution to bring all sources of knowledge together.** Research on relevant trends across Europe and identification of best practises can be better conducted at aggregate EU level.

For instance, the **EU Consumer Markets scoreboard** highlights the consumers' views on the tourism market.<sup>11</sup> It assists UK businesses in adapting to changes in customer behaviours. And the **Virtual Tourism Observatory** that is being set up will soon facilitate the acquisition and sharing of insights on tourism.<sup>12</sup> The platform will include a collection of best practices that are to serve as a **toolbox for future**

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<sup>8</sup> Article 216 TFEU

<sup>9</sup> Centre for European Policy Studies, Estimated impacts of possible options and legal instruments of the umbrella European Tourism Label for Quality Schemes, September 2012

<sup>10</sup> [http://ec.europa.eu/governance/impact/planned\\_ia/docs/2012\\_entr\\_020\\_european\\_tourism\\_label\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/2012_entr_020_european_tourism_label_en.pdf)

<sup>11</sup> [http://ec.europa.eu/consumers/consumer\\_research/index\\_en.htm](http://ec.europa.eu/consumers/consumer_research/index_en.htm)

<sup>12</sup> [http://ec.europa.eu/enterprise/sectors/tourism/vto/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/tourism/vto/index_en.htm)

**UK policy initiatives.** In the long-run, the EU Institutions envisage the creation of a **centre of excellence** with the view to guaranteeing the highest quality of data. Only evidence-based policies can provide a suitable response to ongoing changes affecting the tourism sector. Of course, **decision-making remains entirely national** and the UK authorities will be able to use statistical evidence the way they want.

### 3. Illustrations

#### 3.1 What the EU is doing well:

##### Cultural and Heritage Tourism

Revenues from Heritage Tourism amount £12.4 billion a year to the UK. This sub-sector is a good example of how EU initiatives can complement national policies. **EU marketing raises consciousness about shared European cultural heritage** and **EU funding** (e.g. restoration of the Acropolis in 1993 in Athens) allows the monuments to be restored and the landscapes to be preserved. As a result UK inbound tourism has increased, from both within and outside the EU. In addition to its **productive effect**, Heritage Tourism brings European citizens together, **strengthens their sense of belonging to the same community** and **showcases European culture** to the outer regions. Several European initiatives illustrate how **transnational cooperation can increase tourism traffic to the UK**. For example, the European Commission has linked several regions via **trans-European routes** featuring similar historical (e.g. European cycling route 'Iron Curtain Trail'), cultural, environmental (i.e. protected natural sites), wellbeing (e.g. European Thermal Route), gastronomic, agricultural and industrial characteristics. These **transnational thematic products** have a **pan-European dimension** and can contribute to the **diversification of our tourism supply**. They have stimulated a new market for cross-border guide books and tour operators' packages. That is why more funds should be allocated to tourism, and in particular a funding stream for industrial and heritage tourism. Out of the €6bn devoted to the sector for the period 2007-2013, the UK only received 2% of tourism funds -€121 million - that only represents 0.5% of the already small EU seven-year budget.<sup>13</sup>

##### Improving and protecting consumer rights for both British travelling abroad and tourists coming to the UK

In the debate on tourism, consumers should not be forgotten. EU legislation is giving our consumers a better deal when travelling abroad. EU action has drastically improved consumers rights through the roaming regulation which contains safeguards for consumers in form of decreasing price caps; Liberal Democrats are now pushing for zero roaming charges. The Air passengers rights legislation gives rights to passengers in terms of compensation for delayed, cancelled or re-routed flights. EU citizens also have rights when travelling by bus; coach; ship and train across the EU. Other advantages for EU tourists to name a few are the European emergency number 112, the European Health Insurance Card, insurance and the Euro.

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<sup>13</sup> [http://ec.europa.eu/regional\\_policy/thefunds/funding/index\\_en.cfm](http://ec.europa.eu/regional_policy/thefunds/funding/index_en.cfm)



### 3.2 Where the EU should do more: improving the convenience of travelling to the UK

The UK tourism industry suffers from several **regulatory impediments to the free movement of persons and transport**. Visa restrictions, the subsequent waiting times at ports and airports and the lack of interconnectivity between different modes of transport hamper the development of UK tourism industry. **As long as the situation persists, the UK will fail to reap the benefits of the newly-advertised European brand and the European label for Tourism quality.**

Visa regulations matter. It is estimated that **4 million people a year give up their plans to travel to the UK** due to the length and complexity of our country's visa application process.<sup>14</sup> Arrangements have to be put in place to improve the speed of visa processing and issuance, in particular with the Schengen countries. It should include the streamlining of supporting documents required for visa applications, better online communication in all languages and reduced cost. Every year, **thousands of UK tourists enjoy the freedom of movement within Schengen borders**. In return, **the British Isles' isolation from the continent should be avoided by all means.**

Liberal Democrats believe that the UK Border Agency should, without compromising the high standard of pre-entry checks, create a streamlined, fast-track process for those applicants that have already been issued a Schengen visa.

To ensure non discrimination, **European citizens should also be granted, made aware of and able to exercise their rights as easily as within their own country (e.g. car rental, overseas properties, etc).**<sup>15</sup>

In this regard, the recent proposal put forward by the European Commission to amend the 1990 **Package Travel Directive** goes in the right direction. By extending existing protection to customers of customised packages, it will minimise the obstacles to intra-EU tourism.

### Conclusion

The potential of the EU in this area, in particular through common branding when marketing Europe to emerging markets, should not be underestimated. The EU plays a **crucial role to correct market failures and foster cooperation between national authorities**. It is appropriately tasked with:

- 1) providing **European public goods**: Culture Heritage;
- 2) reducing **information asymmetries**: European Labelling;
- 3) reaching **economies of scale**: European Brand
- 4) Guaranteeing **consumers rights**

EU action in this field is justified because these **flaws cannot be adequately addressed by Members States**, which have an interest in competing against each other. Instead, coordinated action at EU level addresses the transnational nature of

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<sup>14</sup> [http://ec.europa.eu/enterprise/sectors/tourism/files/forum\\_2012/7\\_etoa\\_tom\\_jenkins\\_en.pdf](http://ec.europa.eu/enterprise/sectors/tourism/files/forum_2012/7_etoa_tom_jenkins_en.pdf)

<sup>15</sup> [http://ec.europa.eu/consumers/ecc/consumer\\_topics/car\\_rental\\_en.htm](http://ec.europa.eu/consumers/ecc/consumer_topics/car_rental_en.htm)



the problems at stake. As a result, it boosts the attractiveness of UK territory and stimulates both intra- and extra-European flows to the UK.

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## **Submission 35**

(To note - Submitted to Culture, Tourism and Sport Balance of Competence Report)

### **VisitBritain & VisitEngland Joint Response** **EU Balance of Competences Review**

August 2013



**TO NOTE – THE EVIDENCE PUBLISHED BELOW IS THE EXTRACT RELEVANT TO ASYLUM & IMMIGRATION. FOR THE FULL SUBMISSION, PLEASE SEE THE EVIDENCE FOR THE CULTURE, TOURISM AND SPORT BALANCE OF COMPETENCE REPORT**

#### **Summary of Key Points**

- 1.** Tourism is a complex industry and a number of EU competencies impact the industry. VisitEngland and VisitBritain question whether the EU undertakes sufficient research on the impact of new cross-cutting competencies on the visitor economy before their introduction.
- 2.** Geo-political factors such as being an island and not sharing common borders sets Britain and England apart from other EU member states. These mean that we do not benefit from current EU tourism action to the same extent as most of our competitors.
- 3.** The UK tourism industry does benefit from EU funding and this is best directed through the EU.
- 4.** Excess regulation can act as a barrier to growth and there needs to be a better balance between providing consumer protection and the economic impact competencies present businesses. The EU needs to commit more time and resource into investigating the impacts of competencies. The EU should be looking to impose less legislative burden because it stifles economic growth.
- 5.** Tourism is a fiercely competitive industry and EU member states compete for inbound visitors. EU- cooperation initiatives in tourism must recognise this.
- 6.** This is not to say that there is no scope for co-operation. Making access to Britain alongside other European countries as straightforward and affordable as possible

is important. There is also scope for co-operating with non-EU states, as long as this activity is mutually beneficial.

## **Context**

### ***About VisitBritain & VisitEngland***

VisitBritain is the national tourism agency. It is a non-departmental public body, funded by the Department for Culture, Media and Sport (DCMS), responsible for promoting Britain worldwide and developing its visitor economy. Its mission is to grow the value of inbound tourism to Britain, working with a wide range of partners in both the UK and overseas. Through its global reach, it aims to increase visitor spend to all parts of Britain and improve Britain's ranking in the eyes of international travellers. VisitBritain also has a statutory duty to advise Government on matters affecting tourism in Great Britain.

VisitEngland is the national tourist board for England. It is also a non-departmental public body funded by DCMS and is responsible for marketing England to domestic and established overseas markets and for improving England's tourism product. Its role is to grow the value of tourism by working in partnership with the industry to deliver inspirational marketing campaigns and to provide advocacy for the industry and our visitors. VisitEngland has a statutory duty to advise Government on matters affecting tourism in England

Both organisations work closely together to deliver their remits, particularly internationally in order to minimise duplication and maximise value or money.

### ***Tourism in Britain and in England***

Tourism is a major part of the UK economy. It contributes £115 billion to UK GDP, and provides employment for 2.6 million people – around 9% on both measures. One in twelve jobs in the UK is currently either directly or indirectly supported by tourism. 44% of people employed in tourism are under 30, compared with an average for the wider economy of 24%.

Tourism is an industry at which Britain competes well internationally – we rate seventh in the world for visitor numbers and visitors spend. Last year the 31.1 million visitors who came to Britain spent £18.6 billion – 4% more than in 2011. By 2020 the UK could attract 40 million overseas visitors a year – earning £31.5 billion annually (in real terms).

Tourism is a key driver of the economy in England and is worth £97bn to the national economy and supports 2.2 million jobs. Although the industry is dominated by larger corporations, 80% of tourism businesses are SMEs. There are over 200,000 VAT registered businesses in England which fall within the tourism sector. There are over 32,000 serviced accommodation businesses providing 1.37 million bed spaces and over 34,000 non- serviced accommodation businesses providing 1.36 million bed spaces. Average room occupancy is 66%.

There are between 5-6,000 visitor attractions in England. England has a well-established attractions sector with some of the most popular visitor attractions in the

world. It has a wide mix of national and local museums and galleries, historic houses and palaces, gardens, piers, theme parks, safari parks and numerous other types of attraction that support anything from industrial heritage to sport to fashion.

England has relatively high visitor satisfaction indices with 86% of domestic visitors saying that the destination they visited was either excellent or very good.

## Response to Questions

### *What areas of EU competence or activity impact on your sector and how?*

Tourism is a complex industry and a number of European Union (EU) competencies impact the sector.

It was not until 2009 that the Treaty of Lisbon conferred on the EU a specific supporting competence on Tourism. The treaty gave the EU the power to carry out actions to support, co-ordinate or supplement the actions of the member states in tourism:

- 1. The Union shall complement the action of the member states in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector. To that end, Union action shall be aimed at: **(a) encouraging the creation of a favourable environment for the development of undertakings in this sector; (b) promoting cooperation between the member states, particularly by the exchange of good practice.***
- 2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish specific measures to complement actions within the member states to achieve the objectives referred to in this article, excluding any harmonisation of the laws and regulations of the member states.*

Article 176 B, Treaty of Lisbon

As outlined herein, Britain and England benefits less from these two competencies than most other EU states.

For all the recent developments and initiatives such as the virtual tourism observatory, the EU's specific tourism competence arguably has limited impact. Whilst programmes such as Leonardo have helped with the sharing of best practice, this has had limited scope for most destinations. Far more important have been other legislation and initiatives in other policy areas that touch on tourism, including free movement, immigration, internal market and transport.

The EU has a shared competence in relation to transport and harmonised laws affecting, for example, air travel. Aviation is an essential enabler for inbound tourism in Britain. 73% of overseas visitors arrive by air and they account for 84% of all inbound visitor spending.

Another example is the long recognised right of EU citizens to travel to other EU countries as tourists. This has now been enshrined in the Free Movement Directive

as an unrestricted right for all EU citizens to enter and stay in another EU Member State for up to 3 months.

While not intended specifically for the tourism sector a number of social and employment provisions, such as the Working Time Directive, impact businesses and those employed in the tourism sector.

VisitEngland and VisitBritain question whether the EU undertakes sufficient research on the impact of new cross-cutting competencies such as these on the visitor economy before their introduction.

### ***How could the EU co-ordinate its activity in these areas of competence to greater effect?***

The EU needs to commit more time and resource into investigating the impacts of competencies, particularly the economic impacts for businesses. It also needs to give more lead in time for consultation and debate.

There is very little new funding offered and most competencies impose a cost on businesses- this needs to be managed carefully to ensure that visitors do not lose out in the long run because businesses can no longer support the visitor experience.

### ***How does competition for tourists across Member States impact on the effectiveness of EU action in this area?***

Tourism is a fiercely competitive industry. Other countries have recognised tourism's potential to deliver growth and jobs in a tough economic environment. Competitors are moving fast, addressing policy issues as well as investing in marketing campaigns. Turespaña for example have developed a major four year 'Comprehensive National Tourism Plan' in conjunction with the Spanish government, which they describe as a 'roadmap for improving the competitiveness of the tourism sector'.

The EU member states are in direct competition with each other for inbound visitors. As the UNWTO league tables for international tourism below show, France, Spain, Italy and Germany are Britain's key competitors:

2012 Rank	Destination	Arrivals (m)
1	France	83.0
2	USA	65.0
3	China	57.7
4	Spain	57.7
5	Italy	46.4
6	Turkey	35.7
7	Germany	30.4
8	UK	29.3

2012 Rank	Destination	Receipts (US \$ bn)
1	USA	128.6
2	Spain	55.9
3	France	53.7
4	China	50.0
5	Italy	41.2
6	Macao	38.5
7	Germany	38.1
8	UK	36.4

EU-cooperation initiatives in tourism must recognise this competition.

This is not to say that there is no scope for co-operation. Figures from the ONS

show that 19% of visitors to Britain come as part of a multi-country trip. For some key long-haul markets, such as the China and Australia, Britain is an attractive destination to include as part of a multi-country European itinerary, a fact that underscores the importance of making access to Britain alongside other European countries as straightforward and affordable as possible.

### ***What evidence is there that EU action in the areas of Culture, Tourism and/or Sport benefits or disadvantages the UK?***

A number of geo-political factors make Britain and England different from other EU states. These mean that we do not benefit from current EU tourism action to the same extent as our competitors, nor would we benefit from any considerable increase of EU action:

- Britain only partially participates in Schengen. This means that consumers must apply for two visas if they wish to visit Britain and other EU countries which is onerous and more costly. This also acts as a disincentive to include the UK in European packages as it adds an extra level of complexity for tour operators. Closer alignment with Schengen could help growth from new growth markets in Asia such as China where multi-country EU trips are popular. Britain's position outside Schengen however can also provide Britain with a competitive advantage: it means that Britain can reform its visa regime more quickly and design a service that is significantly better than that of its European rivals.
- Being separated from the European landmass means that visitors are less likely to cross our border as part of a European-wide promotional initiatives (such as following a pilgrimage trail or as the result of some other project that promoted commonality).
- 'England' has a strong nation brand and individual identity. Robust evaluation has shown that the cross- government GREAT campaign has been successful in building Britain's image overseas and that the tourism marketing is increasing intention to visit. Whilst common European branding or marketing might be appealing to accession countries or the smaller states of Europe, we would likely gain minimal benefit.
- In terms of tourism development, many states in Europe are still expanding their product offer. England and the other nations of the UK have a well-developed product and less need to do so. Unlike some European states in some cases, like maritime coasts, we are not looking to create a new built environment but to protect it from development.

### ***Deregulation***

Many industry stakeholders question whether EU initiatives actually help the industry or hinder it due to the level of regulations imposed. Balancing the need to provide consumer protection with the costs to business so that they can continue to trade profitably is essential. EU regulation has been cited as being obstructive to business growth in a number of areas including:

- Employment legislation (e.g. working time, posted works, agency workers, data protection, European
- Union Business Transfers Directive);
- Financial legislation (e.g. procurement and the OJEU process, tax and reporting compliances);
- Food and drinks sector;
- Hotel immigration records;
- Planning permission;
- Trading standards;
- Energy efficiency stipulations.

The EU Package Travel Directive and Tour Operators Margin Scheme (TOMS) have attracted particular criticism from industry who have argued that they are out of date and make EU member countries less competitive in the global marketplace:

- TOMS is not applied uniformly in all member states of the European Union. It also puts EU operators who operate internationally at a competitive disadvantage.
- Many argue that the EU Package Travel Directive prevents the development of an integrated market for travel services within the EU. There are a number of problems with the directive, foremost of which is that it does not cover consumers based in one country purchasing from suppliers based outside the jurisdiction of the EU. The development of the internet and the emergence of low-cost air carriers have revolutionised the way in which people organise their holidays and has also meant that a growing number of travellers are not protected by the directive. The EU is currently reviewing its legislation on package holidays.

### **Further Information:**

Thank you for taking our comments into consideration.

For further information please contact [REDACTED] (VisitBritain)  
[REDACTED] and [REDACTED] (VisitEngland) [REDACTED]

## **Submission 36**

(To note - Submitted to Culture, Tourism and Sport Balance of Competence Report)



### **Response to 2013 DCMS Review of Balance of Competences between UK and EU regarding Culture, Tourism and Sport**

#### **Introduction**

ETOA welcomes the opportunity to contribute to this review. We represent 650 businesses and other organisations based throughout the EU and elsewhere. Our purpose is to influence policy affecting the tourism that takes place in Europe. To this end we engage with industry, EU bodies, national and local governments and NGOs.

We group our policy work into four parts:

1. Regulation and taxation
2. Operational Delivery
3. Market Development
4. Barriers and Borders

#### **Key issues for EU tourism**

Europe is the world's primary tourism destination but this status is not assured. EU competence in tourism is thus welcome since many issues are international in scope. Member States' national tourism organisations' (NTO) efforts are, understandably, largely directed towards marketing individual countries and their constituent cities and regions. We believe that Europe's tourism should operate as more a competitive and integrated market than is the case now. We therefore support EU competence in matters affecting tourism. The main obstacles are:

1. Taxation
2. Visa policy
3. Package travel regulation
4. Protectionist practices in tourism services in evidence in some Member States
5. Quality of tourism infrastructure and foreign language services.

The rest of this paper follows the review's questions. We would welcome any opportunity to discuss these matters more fully. Please contact [tfairhurst@etoa.org](mailto:tfairhurst@etoa.org).

#### **Tourism Questions**

**Is there added value to UK tourism in EU activity to co-operate with non-EU countries' tourism sectors?**

Potentially, yes.



1. Through the activities of the European Commission (EC).
2. Through the activities of the European Travel Commission (ETC).<sup>1</sup>

In 2011 the EC sought to develop links with non-EU national tourism organisations and thereby catalyse private sector activity through the 'Low Season Tourism Initiative' intended to increase tourism volume between South America and Europe by at least 50k. Aside from the challenges of determining which tourists are travelling to Europe that would not have done so but for this initiative, it is too early to say what the benefit has been.<sup>2</sup> Many organisations are participating and we wish the initiative well, but the critical factor will be changing market behaviour in the private sector. Industry needs to evolve product that suits emerging markets such as Brazil, while retaining its focus on traditionally vital markets such as the USA and Japan. The private sector needs to see the benefit, or incentive, arising from any publicly funded scheme and respond with market-led initiatives. If the EU can broker or catalyse better relations with the private sectors in non-EU origin and EU destination markets then new products and business processes adapted to those markets will evolve. This would benefit UK tourism.

The ETC carries out or otherwise makes available valuable research and seeks to promote Europe as a destination worldwide through events and partnerships.

### **How does competition for tourists across Member States impact on the effectiveness of EU action in this area?**

**Promotion.** To the extent that the EU can catalyse interest in 'brand Europe', this is welcome. 'Europe' is seen as a destination, and there is no reason why it should not have a voice alongside national voices. The EU's activities related to tourism does not, in our view, prejudice the efforts of NTOs.

In a way, it does not matter which country visitors pick for their first visit to Europe; we just want them to come. Once people have enjoyed one trip to Europe there is a greater chance of them coming back and making positive recommendations. Many long-haul visitors travel to more than one EU country on any given trip; many explore different countries on subsequent trips.

The idea that there is a genuine competition between countries seems questionable to us. Italy and Ireland are not comparable; they have different climates, cultures, food, landscape and language. It is not like choosing between different supermarkets or cars.

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<sup>1</sup> ETC website: <http://www.etc-corporate.org> Note that the UK, in the form of Visit Britain (VB), is not currently a member (nor are the NTOs of France and the Netherlands), though UK tourism still stands to benefit from any success ETC may have in promoting Europe. Whilst it is not our place to comment on spending decisions of individual NTOs, it gives pause for thought that the ETC, as a body brought about by the EU, is not fully representative or at least does not enjoy the endorsement and participation of all EU countries' NTOs. If the decision not to participate arose from an analysis of individual countries' return on investment in ETC membership, that emphasises the need on the part of both NTOs and ETC to demonstrate a return on their activities. The difficulty is always to tell how much business arises through specific publicly funded marketing efforts, and what would have happened anyway. VB has a commercial arm that sells to worldwide audiences via <http://www.visitbritainshop.com/>; ETC does not.

<sup>2</sup> Details on the 50k initiative at <http://ec.europa.eu/enterprise/sectors/tourism/50k/>

**Tax.** There certainly are variations in competitive (dis)advantage that are within EU and/or national (or regional) control. Croatia, for example, has just lost a competitive advantage on joining the EU since any EU operator must now add VAT to the gross margin of a package holiday to Croatia sold to an EU citizen. The UK imposes heavier flight-related taxes and visa fees than other countries. Italy has witnessed startling increases in costs related to coach transport and overnight bed taxes. VAT regimes vary enormously both in rate and application.

**Visas.** The EU is able to act on behalf of the 26 members of the Schengen area. Since the UK does not participate in the Schengen area it has lost out on business from markets whose citizens require visas in two respects. First, the UK has been dropped from many multi-country itineraries; anecdotally, some operators said they dropped 80% of multi-country inventory incorporating UK + Schengen countries following the implementation of the Schengen agreement. Second, the UK's visa cost is relatively high compared to a Schengen visa. Visit Britain's data on the UK balance of payment deficit for tourism makes thought-provoking reading in this respect.<sup>3</sup> The divergence of spend at home versus abroad grows sharply from 1997/98, a two year lag after the Schengen area came into existence thus consistent with the relatively long planning cycle for long-haul tourism. The narrowing of the gap 2009-2011 may be attributable to more UK citizens choosing to holiday at home rather than more international visitors. In short, the impact of any competition there may be between the relative appeal of the UK and other EU countries pales into insignificance when compared with the relative appeal of the 26 countries available on a Schengen visa versus 1 for UK (and an easier process for obtaining an Irish visa if UK visa already granted). We believe there are discussions to evolve back-office visa collaboration with Schengen countries; this is welcome.

## **General Questions**

### **What evidence is there that EU action in the areas of Culture, Tourism and/or Sport benefits or disadvantages the UK?**

**Visas.** The EC, as the body responsible for the Schengen visa code and its implementation, is in a position to consolidate the Schengen area's competitive advantage, even if that is not the intention. DG Home can, for example, conduct bilateral discussion with Russia about visa relaxation. The UK has not been part of these discussions and is at a competitive disadvantage thereby.

**Borders and Welcome.** It may well be possible for the EU to encourage an area-wide effort to improve the quality of welcome and service visitors receive, from their first contact with a consulate, to arrival at an airport and beyond. An EU-wide foreign visitor survey would assist. ETOA has conducted research in origin markets via the industry. Our belief is that the EU loses business through insufficient attention given to the way visitors (and on occasion their accompanying tour guides) are treated by officialdom throughout the area. There is a clear need for more competence in key languages such as Portuguese and Japanese. There can be an unhappy

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<sup>3</sup> See UK's Tourism Balance of Payments spreadsheet available via <http://www.visitbritain.org/insightsandstatistics/inboundvisitorstatistics/trends/longtermrends.aspx>

relationship between the citizens of a city that thrives on tourism and the tourists themselves; there is much scope for mutual benefit but it needs intelligent consultation, planning and execution.

**Promotion.** The European Commission has initiated various projects to promote interest in lesser-known destinations, encourage off-season travel; these are strategically sensible objectives recognising that we need to work out how best to use our tourism capacity. The trick is to influence market behaviour, and any analysis of these initiatives' success ought to be evidence led.<sup>4</sup> Notable in the EC's work is the recognition that European tourism product may often have a multi-country dimension; there has been much work on 'cultural routes' and regional tourism, e.g. connecting countries through which the Danube flows. The UK stands to gain from a wider acceptance among industry and potential tourists that lesser known destinations are worth exploring: London currently enjoys a disproportionate amount of the UK's international visitor spend. Similarly, it would benefit from more off-season travel, whether through phased school holidays within the EU or otherwise.

**Visas.** We re-emphasise the concern about visas in connection with promoting Europe or individual members states as a destination. The problem is not whether Europe is interesting or appealing, nor even whether it is affordable (though there are concerns on that score), but whether alternative destinations that do not require visas are equally appealing. They are, and are often easier to deal with from the point of view of entry.

Our belief is that more national and EU government effort should be directed at improving visa processes and reforming regulation, not subsidising marketing efforts, or providing (often very expensive) opportunities to network in long-haul origin markets which in practice are financially out of reach of the many SMEs that make up much of the industry.<sup>5</sup> Once again, the utility of such events run by both EU and NTOs is affected by prevailing visa requirements. There is not much point in spending a lot of money marketing in China or India if outbound agents and companies in both countries have tired of navigating the visa processes for UK or Schengen and cheerfully recommend other destinations to improve their chances of securing a sale that leads to travel, thus generating income. The UK is home to some very enterprising and skilled inbound operators with extensive networks in origin markets whose citizens need visas to visit the UK; we would urge government to listen to their concerns and would be pleased to help convene such a meeting.

**Do you think the EU should do more, or less in relation to Culture, Tourism and Sport, and why?**

As regards tourism there are various valuable contributions.

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<sup>4</sup> For details on Tourism Unit's projects see left menu bar on [http://ec.europa.eu/enterprise/sectors/tourism/background/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/tourism/background/index_en.htm)

<sup>5</sup> Declaration of interest: we run trade networking events in Europe and are keenly aware of the market. We enjoy a positive relationship with VB with whom we collaborate on producing and marketing a trade event in London every March, and support their efforts in hosting international buyers on various itineraries throughout Britain.

1. **Tax and regulation.** There is near infinite scope to improve the competitiveness and efficiency of EU tourism through EU regulatory reform. The obstacles are significant: some measures will require unanimity. The main issues are the Tour Operators Margin Scheme (TOMS); VAT; Package Travel; Working Time.
2. **Data.** Tourism is beset by poor data quality. The divergence between various methods of counting leisure visitors is well known.
3. **Standards.** We respectfully suggest that the current trend towards the standardisation of services may be misguided. The EU could take a lead in preventing voluntary standards becoming the basis for legislation. This would have no impact on necessary minimum standards for health and safety and consumer financial protection.
4. **Collective response.** If and when unfortunate circumstances arise, be they bird 'flu, perceived terrorism risk or otherwise, the EU in collaboration with destination markets and its counterparts across the world can play a role in ensuring accurate information reaches origin markets in a credible way. Long-haul tourism is notoriously fickle; it takes very little to discourage it.

**What are the benefits or disadvantages of directing funding through the EU rather than national arrangements?**

Beyond the UK's overall contribution to the EU we are unaware of any funding to a European body concerned with tourism. In general, we think there would be benefit to member states being much more collaborative in their marketing efforts; present arrangements were not designed to support this.

**Have you noticed any change in EU activity or emphasis since the 2009 Treaty of Lisbon and is this welcome?**

The Tourism Unit in DG Enterprise has grown in size and has been charged with implementing various initiatives. There has been very welcome inter-service discussion on matters affecting tourism, such as visa policy.

**What other areas of EU competence or activity impact on your sector and how?**

1. Taxation (TOMS and VAT)
2. Package Travel
3. Freedom to provide services
4. Working Time
5. Consumer protection

**What international bodies or arrangements are important to your sector beyond the EU?**

1. Warsaw Convention 1929, as amended (an international agreement related to air travel and compensation.)
2. Standards bodies: the processes by which standards are developed and how they are used; scope for them becoming a reference point for regulation and what implications that has.

3. Other private sector tourism associations in origin markets such as BRAZTOA, JATA, PATA, USTOA.
4. Various other trade bodies such as IRU (International Road Users Association), CLIA (Cruises).
5. Bilateral relations with officials in key non-EU markets such as Russia.
6. NGOs such as OSCE, UNWTO and WTTC.

### **How could the EU co-ordinate its activity in the areas of competence to greater effect?**

More inter-service collaboration, and more prominence given to tourism given the size of its significance to the EU economy. In 2012 contributed 9.3% of total GDP and provides 8.7% of jobs.<sup>6</sup> We believe it can struggle for attention due to its very fragmented and diverse composition. It includes a very large number of SMEs from individual B&Bs and Gîtes; small hotels and niche attractions; tour guides to owner-driver coach services. At the other end of the spectrum are global hotel chains and wholesale tour operators. Their needs and scope for action differ. A large tour operator can move offshore to avoid a tax regime; a B&B cannot. Tourism is affected by a diverse group of DGs (and UK government departments at a national level).

1. DG Justice: package travel.
2. DG Health and Consumers (Sanco): consumer rights; health and safety; working time.
3. DG Enterprise and Industry: the Tourism Unit; standardisation.
4. DG Internal Market: professional qualifications: freedom to provide services; competition.
5. DG Home Affairs: visa policy.
6. DG Taxation and Customs Union: TOMS, VAT framework agreements.
7. DG Mobility and Transport: regulation related to driving.

### **Appendices**

ETOA policy summaries on Taxation, visa policy and package travel regulation to be added if felt necessary.

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<sup>6</sup> Source: page 1 of WTTC 2013 report [http://www.wttc.org/site\\_media/uploads/downloads/world2013\\_1.pdf](http://www.wttc.org/site_media/uploads/downloads/world2013_1.pdf)

## **Submission 37**

(To note - Submitted to Transport Balance of Competence Report)



**Submission by the Chartered Institute of Logistics and Transport in the UK**

**to the**

**Department for Transport call for evidence:**

**EU balance of competences review**

**TO NOTE – THE EVIDENCE PUBLISHED BELOW IS THE EXTRACT RELEVANT TO ASYLUM & IMMIGRATION. FOR THE FULL SUBMISSION, PLEASE SEE THE EVIDENCE FOR THE TRANSPORT BALANCE OF COMPETENCE REPORT**

1. The Chartered Institute of Logistics and Transport in the UK (“CILT(UK)”) is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration. We have no political affiliations and do not support any particular vested interests. Our principal concerns are that transport policies and procedures should be effective and efficient and based, as far as possible, on objective analysis of the issues and practical experience and that good practice should be widely disseminated and adopted. The Institute has specialist forums, a nationwide structure of locally based groups and a Public Policies Committee which considers the broad canvass of transport policy. This submission draws on contributions from all these sources.

**Question 3: To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

2. The successful creation of an internal transport market, despite limitations in some sectors (as described in response to Q2), has contributed significantly to the functioning of the EU internal market as a whole.
3. The EU has made great strides overall in minimising restrictions on the transport of commodities and the movement of people across borders, so reducing the cost of freight transport on UK business, enabling quicker transport of goods, and facilitating more efficient movement of skilled labour.

4. Efficient border controls are a significant element of a successfully functioning internal market (their impact and application in the EU is subject of a complementary competence review being undertaken by HMRC). Freight operators have worked to minimise the impacts of the specific border controls that apply in the UK on the efficiency of their business. However, the fact that the UK lies outside the Schengen Area has deterred a significant number of visitors, who would be required to obtain a separate visa, to the detriment of the UK economy.

Submitted by:

[REDACTED]

The Chartered Institute of Logistics and Transport

[REDACTED]

August 2013

## **Submission 38**

(To note - Submitted to Transport Balance of Competence Report)

**Brussels & Europe Liberal Democrats**

[www.uklibdems.eu](http://www.uklibdems.eu)

### **BRUSSELS AND EUROPE LIBERAL DEMOCRATS SUBMISSION Balance of Competences Review**

#### **Transport**

<https://www.gov.uk/government/consultations/eu-balance-of-competences-review-transport-call-for-evidence>

for submission to: [balanceofcompetences@dft.gsi.gov.uk](mailto:balanceofcompetences@dft.gsi.gov.uk)

**TO NOTE – THE EVIDENCE PUBLISHED BELOW IS THE EXTRACT RELEVANT TO ASYLUM & IMMIGRATION. FOR THE FULL SUBMISSION, PLEASE SEE THE EVIDENCE FOR THE TRANSPORT BALANCE OF COMPETENCE REPORT**

- 2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

This depends where you live, but generally speaking the success of the internal transport market mirrors the single market itself with most countries cooperating closely while others - such as the UK - retaining some opt-outs. In countries that belong to both Schengen and the eurozone, for example, transport drivers and operators are free to move around without border controls while having the considerable advantage of trading in a single currency. UK drivers and hauliers do not benefit from this level of liberalisation and must deal with both national border checks to get in and out of the Schengen area as well as fluctuations in currency conversion rates. The UK should reconsider as a minimum its opt-out of the Schengen area so it can take greater advantage of the opportunities of the single market it itself helped create.

In other areas, UK citizens benefit from harmonised rules such as minimum road safety standards. Road deaths in the EU have been cut by 50% since 1992. Fatalities fell by 9% in 2012 – meaning 3,000 less deaths.



### **Submission 39**

(To note - Submitted to Transport Balance of Competence Report)

BOC Aviation workshop  
18/06/2013

**TO NOTE – THE EVIDENCE PUBLISHED BELOW IS THE EXTRACT RELEVANT TO ASYLUM & IMMIGRATION. FOR THE FULL SUBMISSION, PLEASE SEE THE EVIDENCE FOR THE TRANSPORT BALANCE OF COMPETENCE REPORT**

#### UK approach

- One stakeholder highlighted that often UK policy issues, such as capacity, got in the way of EU action. Recipients expressed concern that the UK's refusal to join Schengen had a negative economic and social impact on the UK. In particular, the increased bureaucracy and visa costs made it more difficult to attract non UK airlines to add new routes in the UK.

**Submission 40**

<b>Name</b>	██████████
<b>Organisation/Company (if applicable)</b>	CBI
<b>Job Title (if applicable)</b>	Not applicable
<b>Department (if applicable)</b>	Employment and Skills
<b>Address</b>	██████████
<b>Email</b>	████████████████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input checked="" type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

The UK is not part of the Schengen area and has consistently opted-out of EU directives on immigration (with the exception of some elements concerning police and judicial co-operation). 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.

2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

Removal of the UK opt-outs to give the EU competence in this area would clearly restrict the ability for the UK to carry out border checks to establish the identity and nationality of admitted persons.

For business, the main issue of importance on this subject is that the UK needs to be – and be seen to be – a welcoming hub for global trade. For the UK to attract business, investment and visitors it is vital that we make it as easy as possible for people to travel to the UK. Modern, open and competitive economies like the UK require a much higher level of labour mobility than was the case in the past, because it is important to the business strategy of more companies now than it was previously, particularly with regard to ensuring access to and from high-growth markets outside the EU. Facilitating labour mobility is essential for both goods and services exporters from the UK and importers to the UK (according to WTO data, the UK is the world's second largest exporter of commercial services after the US).

The CBI notes that opting in to the border and visa aspects of the Schengen protocol can offer a competitive advantage to those countries which are part of the area by allowing access to several European countries as part of a single trip under a single visa. For example, the UK Chinese Visa Alliance analysis shows that only around 7%, or 200,000, of Chinese visitors to Europe choose to get the two visas required to visit the UK as well the 26 countries covered by the Schengen Agreement, capping our potential spend by these travellers at 1.3% of the total global Chinese visitor spend. There are clear opportunities for the Government to unlock some new growth and investment with further practical measures to smooth visa application processes.

For UK trade, growth and jobs not to suffer from the additional requirements for a UK visa, it is vital that our border and visa processes perform well and are simple for visitors to use, including co-operation with countries in the Schengen zone on a case-by-case basis. Improved immigration and visa services, as well as continued co-operation with the EU to securely manage the EEA's external borders are in the interests of UK business and should be priorities for the Government.

3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

Future challenges in the field of borders and visas need to be seen against the context of a much wider challenge to secure long-term growth and increase the global competitiveness of the UK economy. The UK needs to renew its role as a trading nation and pursue opportunities in high-growth, emerging markets and as such, visa policy and related issues such as EU FTA negotiations on trade in services must be developed and adapted to recognise the importance of UK trade.

On the specific challenge of illegal immigration, it is in the UK's interests to ensure that the EEA's external borders are rigorously controlled while ensuring that border procedures are as efficient as possible.

4. Could action be taken in a different way i.e. could the EU use its existing

competence on borders and visa matters differently which would deliver more in the UK national interest?
N/A
5. Are there any other general points you wish to make which are not captured above?
N/A

### The EU and Legal Migration

6. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?
<p>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 the entry, stay and treatment of third country non-EEA nationals.</p>
7. If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?
<p>If the UK opted in to EU measures on legal migration, the UK would lose flexibility on migration policy and would have to adopt EU rules relating to the entry, stay and treatment of certain categories of third country nationals, reducing flexibility for the UK to design and implement its own immigration policies.</p> <p>It should be noted that there are a number of EU competences that do indirectly affect UK immigration policy, such as Mode 4 provisions in international trade agreements and provisions in the Services Directive on third country workers. These examples demonstrate that when EU legislation is developed that has an indirect effect on UK immigration policy, it is important for the UK to engage with the EU to ensure that the UK's interests and objectives to be a global hub for trade and investment are fully taken into account.</p>
8. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?

The UK faces shared challenges with other EU Member States when it comes to legal migration, and as with visa practices and border enforcement, 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 notes that under current EU migration funding programmes running from 2008 to 2013, which are designed to share between all Member States the financial burdens that arise from the management of the EU's external borders and from the implementation of common asylum and immigration policies, the UK has been allocated £240 million which has contributed to Government activities such as returns programmes, resettlement projects and community integration projects, with flexibility for the UK to implement funds according to strategic UK priorities.

9. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

N/A

10. Are there any other general points you wish to make that are not captured here?

N/A

**Submission 41**

<b>Name</b>	Hugo Brady
<b>Organisation/Company (if applicable)</b>	Centre for European Reform
<b>Job Title (if applicable)</b>	Senior research fellow and Brussels representative
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<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input checked="" type="checkbox"/>	Independent think-tank

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to.

## The EU and the UK Border

### 1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

Britain should never definitively rule out joining the Schengen area. The ambiguity over this question strengthens the country's hand in key migration-related negotiations in Brussels and therefore its influence over the immigration policies of more or less the entire continent. And, although unforeseeable now, actually joining Schengen might well one day be in the country's national interests. For example, the EU is likely, in the medium term, to achieve a satisfactorily secure external border with a working entry/exit system and well developed technological and security procedures and international tourism is likely to be of increased economic importance to Britain in the years ahead. The two tests set out for membership by the former Home Secretary, Charles Clarke, still seem useful. These were that the UK would only consider joining the area if it secures its external border and if Britain were to introduce a system of ID cards. The current UK administration could add to these tests but should not abandon them.

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 visas 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 and visa regime (although it is arguable that full access to these policy tools has done little to mitigate popular ire over migration flows anyway.) The disadvantages are a lack of, or diminished, access to certain useful parts of the Schengen infrastructure, a circumscription of UK influence over EU policies in this area, and the negative economic consequences of remaining aloof from the single visa policy operated by the other European countries. The latter may become particularly serious over time in the wake of a rising Asian middle class seeking to engage in mass tourism to Western countries but unwilling to apply to separate visas in order to visit both Britain and Ireland and the continental countries simultaneously.

Britain has at times brilliantly negotiated its way to enjoying some aspects of the passport-free zone (such as its participation in cross-border surveillance operations with Schengen countries and its right to access the Schengen information system) and partial participation in Frontex, the EU's common border agency. Equally, the UK has also been denied certain benefits of the system, such as access to so-called Article 96 data (information on people refused entry at the common Schengen border who might well see the UK as their next destination), voting rights on the board of Frontex, and much real influence over the EU's visa liberalisation programme with third countries as well as access to the Visa Information System. The latter is set to become one of the largest biometric databases in the world as it is rolled out around the world over the next decade.



2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

Had the UK participated in the Schengen project from its first conception in the mid-1980s, the impact on free movement and borderless travel within the Union would have been enormous. More than likely, the Common Travel Area with Ireland would have been incorporated into the Union, just as the Nordic Passport Union was by the end of the 1990s. As with the Nordic Passport Union (which includes two non-EU countries), some special border arrangements would have been put in place for the UK and Ireland to recognise their unique status as Schengen's first island nations. If it highly unlikely that both counties would consent to join the passport-free zone without this. A second key development from Britain's participation would have been that policy-makers would not differentiate between the 'free movement of people' (free circulation of EU citizens throughout the Union without the need for work or residence permits) and passport-free travel a la the Schengen area in quite the same way as they do today. It is likely that this would have accelerated the development of a common immigration policy and internal security arrangements for the EU as a whole, and, more gradually, a common approach for legal migration from abroad.

At the time, Britain considered the creation of a borderless Europe to be a premature move and certainly not one that could be sold to UK voters. However, the Schengen area has since proved remarkably stable and the Schengen Convention is probably the single most effective treaty the EU has ever concluded and one which has largely stood the test of time. But had the UK been more directly engaged, it is likely that the development of Schengen would have been on the whole slower (given the difficulties of marrying the very different border control traditions of Britain and the continental countries) and more politically contentious as the UK would probably not have agreed to extend EU visa liberalisation to some of the countries that enjoy it today. However, certain areas of EU policy – such as those affecting internal security – might have been better developed as the UK would have pressed for the establishment of a robust security architecture for the passport-free zone unlike the skeleton model for co-operation which exists currently. It is difficult to say definitively that the UK's national interests would have been harmed by being a full Schengen participant. (Just as we cannot really say whether Schengen membership has harmed or benefited the national interests of France or Germany. Intra-EU migration is not really a contentious subject in either country nor has the passport-free zone been evidenced to make any continental country more vulnerable than before.) Furthermore, many later 'go-it-alone' projects that the UK felt sure would transform its ability to control its own borders (such as e-borders) have not been the game-changers that had once been hoped for.

But it would have been more likely that Britain itself would have operated transitional labour restrictions with the countries that joined the EU in 2004, as did almost all the continental countries. The UK and Ireland would also have had a much deeper, off-the-shelf framework for co-operation on issues like border rules and visas than currently exists. (It is interesting that both have now declared their intention to the one they have just recently agreed to turn into a mini-Schengen between themselves). And EU visa policy towards the Balkans would probably have been less generous since Britain continues to operate visa restrictions with some countries in south-eastern Europe which enjoy visa free access to Schengen. That would have had an impact on political stability in south-eastern Europe since visa liberalisation has given credibility to responsible centrist politicians when they argue that full membership of the EU is in prospect if the path of reform is maintained.

3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

For the Schengen area, the main challenge is to secure its eastern land, and southern maritime borders, and to ensure that Schengen countries can continue to exercise influence over the border and visa regimes of those countries to which they have granted visa free access. After a slow start on the former and several serious challenges – such as the reality of a very serious vulnerability on the Greek-Turkish border – there have been a fair number of very promising developments. Large scale Schengen IT projects, such as the Visa Information System and the second generation of the Schengen Information System, are now coming online. The EU seems to have learned the lessons from the delays that have hounded these two projects to record much better progress on the (admittedly more straightforward) EUROSUR initiative. The Schengen countries have recently reformed their system for monitoring standards at the external borders, agreed on a new set of binding refugee procedures and cajoled the Greek government into undertaking large-scale reform of its entire immigration system. Finally, Serbia moved rapidly to assuage the concerns of Germany and other countries over an increase in asylum applications following visa liberalisation, with the Serbian president even going so far as to offer to cover the costs of any increased burden on negatively affected Schengen states. This shows that the conditionality which has done so much to drive border and immigration-control reforms in the Balkans still exists and can be leveraged effectively. In short, the Schengen area looks far better equipped to face the future than one might have assumed in April 2011 when France sporadically re-introduced controls with Italy following the Arab Spring.

In the meantime, the UK must find a more constructive way to manage its relations with the area, particularly on visas. The trend is towards an ever increasing number of international arrivals worldwide, rising from 687 million in 2000 to 940 million in 2010, and to 983 million in 2011. With France, Spain, Italy and Germany all ranking above the UK as popular destinations, it is clear that there is massive potential for Britain's tourist business to receive carry-on trade from European tourism. Ireland clearly recognised the realpolitik of this in 2011 when it waived visa requirements for tourists already holding a British visa. See Michael Emerson's 2011 paper for the CER on why a similar system (with tweaks) could work for Britain viz the UK and the Schengen area. (Michael Emerson, 'Britain, Ireland and the Schengen area: Time for a smarter bargain on visas', CER 2011). Given that UK visas cost more than their Schengen equivalents – and deliver less to the international traveller in terms of mobility -- It is unlikely that Britain would emerge victorious from the coming competition for the tourist renminbi.

4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?

A more liberal interpretation of the Schengen acquis could result in the UK having access to Article 96 data. But what is really needed is a holistic new settlement between the Schengen and Common Travel Areas (CTA), ideally created in conjunction with the reforms currently under discussion between Britain and Ireland to adopt a common visa policy for the CTA (increased traffic through the Eurotunnel as a result of new services from Deutsche Bahn in 2014 poses a natural political 'hook' to do something like this). This could take the form of an international treaty or convention and be founded on a mutual recognition of visas between the two areas for certain countries/regions. Specifically, the treaty would allow for Britain and Ireland to join Frontex, the EU's border agency, the Visa Information System and data from the Schengen Information System on those persons refused entry at the Union's common border. In return, Britain and Ireland would offer up their own border data voluntarily as a *quid pro quo* and work more closely with Schengen countries on border procedures such as the stamping of passports and administration of visa policy, including in their consular missions abroad. This would primarily be aimed at facilitating the movement of tourists and business people between the two areas. Switzerland and (currently) Iceland are both thoroughly eurosceptic countries but have seen their way straight to Schengen membership nonetheless because it is in their economic interests. A more limited form of association that is nonetheless deeper than the status quo would be to the great advantage of the EU as a whole as well as in Britain's national interest.

5. Are there any other general points you wish to make which are not captured above?

Full Schengen membership would give the UK access to some impressive tools that would better help it to control its own borders, in certain respects. But Britain cannot access these because the obvious trade-off – abolishing passport checks with Schengen countries seems too great. It should also be noted that the inclusion of a clause in the Eurosur regulation allowing the UK and Ireland to exchange data with Schengen countries on border surveillance on a bilateral or multi-lateral basis is a very welcome development and further strengthens the case for deepening relations between the CTA and Schengen areas.

### **The EU and Asylum**

6. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?

A single free movement regime in the EU/EEA (as well as the existence of common travel areas) also implies establishment of single European policies on political asylum. Britain's anti-immigration lobby ignores the reality that developments in the EU migration field sometimes distinctly favour the UK but the EU's asylum system is one of these. It is in Britain's interest to have an 'absorption ring' between it and the rest of the Eurasian landmass where states apply the Geneva Convention to a high standards. Many of these are states which hitherto regarded refugee protection as the responsibility of rich Northern Europeans only. In 2012, for example, Romania's refugee claims jumped 166 per cent from the previous year. Why? Because Bucharest is now required by virtue of its EU membership, and subsequent legislation, to apply the Geneva Convention properly. This is a lot less likely to have happened otherwise.

Furthermore, it is unlikely that the UK could secure – under another international regime – the Dublin regulation's 'first-country-of-arrival' rule, which ensure southern member-states do their fair share on refugee protection. (Under the Dublin regulation, asylum seekers cannot lodge multiple applications across the EU: those who fail to apply for protection in their member-state of arrival should be returned there by other governments.) The deal helped to make the creation of the Schengen area politically possible. But it also put countries with sensitive land borders at a certain disadvantage, something the EU's Mediterranean states still rue since many asylum applicants preferred destination is the UK.

Access to and participation in Eurodac – the EU database underpinning the Common Asylum System – has allowed the UK to return roughly around 100 asylum applicants per month to other EU countries for almost a decade.

7. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?

It's too soon to tell. Prior to 2010-2013, the UK opted into most EU asylum measures. Since then – and the Commission's attempt to tighten up and revise the basic EU legislation establishing the common asylum area – Britain has been concerned that most of the new-look legislation follows too much of a 'rights-based' approach particularly on measures intended to give asylum seekers access to the job market. The UK feels the latter move further blurs the line between 'asylum seeker' and 'economic migrant' that is a particular malaise of the Europe's refugee protection regime. Although it remains in a revised Dublin and Eurodac regulations, the UK will not be a party to the stricter provisions of legislation on reception conditions, standards for assessing who qualifies as a refugee and what procedures should be followed when a claim is processed. Arguably, there will be a limited fall-out from the decision not to opt in to the second generation EU asylum legislation. One could posit that the legislation was chiefly aimed at those countries which did not respect the spirit of the first set of EU laws in this area (to which the UK will remain bound despite the opt out). The UK was not considered an offender in this respect and so the two-tier EU asylum system could actually bring all 28 EU countries closer towards a common set of asylum standards.

8. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?

Southern Mediterranean member-states such as Cyprus, Greece, Italy, Malta and Spain remain committed to re-visiting the basic settlement expressed by the Dublin convention (now an EU regulation). It is the stated policy of Greece and Italy to advance this agenda through their successive EU presidencies in 2014. Of course, there is the potential for the current conflict in Syria or a renewal of political upheaval in North Africa to severely test the basic assumptions of the common asylum system (which often seem paradoxical); however, the EU had withstood refugee crises far closer to home (the Balkans in the 1990s) when there were fewer and less sophisticated policy tools available (for example Eurodac and the EU's new asylum support office based in Malta, as well Frontex, the EU's border agency).

It remains in Britain's interest to be in the Dublin system and future jurisprudence of the ECJ may well end up defining its relationship to the rest of the common refugee system as regards qualifications, procedures and reception conditions. It remains in the shared national interests of every EU country for the system in Greece, where there are still some 50,000 asylum applications pending, to improve radically over the immediate short term. Otherwise, northern European countries will continue to receive large numbers of applications through the breach opened in the common asylum system by both the *MSS vs Belgium and Greece* and the *NS* jurisprudence handed down by the European Court of Human Rights in Strasbourg and the European Court of Justice in Luxembourg respectively. It should also be noted that EU's eastern regions and now Slovenia and Croatia are totally untested as regards a sudden surge in refugee numbers and remain a question mark over the efficacy of the system as a whole. Urging reform of varying national practices from within the EU system remains the UK's best chance of affecting the flow of refugees to it from the Eurasian landmass.

9. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

The Commission has been relatively shy of launching infringement proceedings on the basis of the first tranche of EU asylum legislation and perhaps if it had been less so, a second round of legislation might have been avoided. But – especially since the entry into force of the Lisbon treaty and the greater involvement of the ECJ in decisions of asylum tribunals – it is likely to be less shy in future, given the more precise nature of the new-look EU rules on asylum. Since the UK is not party to the latter, it has little to fear yet will probably reap, indirectly, the benefits of other countries being held to higher standards than they have been hitherto.

10. Are there any other general points you wish to make which are not captured above?

N/A
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## The EU and Legal Migration

11. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?
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The EU's legislative foot-print is relatively light in legal migration in any case so a cost-benefit analysis to the UK in this area is difficult. The UK has chosen not to opt in to common EU rules on seasonal workers and intra-corporate transferees. If such legislation proves effective in giving firms and workers increased certainty and mobility around the EU, this could in time negatively affect the British economy where such actors would be subject to a different set of rules. Again such a judgement is premature since the legislation in question has neither been agreed nor enforced. The EU's blue card scheme – which is based on voluntary usage of an EU procedure – appears to have a bit more successful than most analysts originally thought although by no means a game-changer on the European labour migration scene.

The returns directive appears to have become a channel for undocumented migrants to resist their deportation on procedural grounds (something which was not the intention of the original legislation). Hence the UK was probably wise to remain aloof from such rules.

12. If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?
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Given that patterns of international (non-European) migration to the UK are so different to those prevalent in the rest of Europe, there is no overwhelming case for the UK haven chosen to be a part of a single EU legal migration scheme (although this would have been stronger had it chosen to join Schengen).

Had the UK enthusiastically embraced the notion of a single European policy towards international labour, it is likely that its only ally would have been the European Commission: France and Germany, along with various other EU countries, have their own reasons for opposing this idea. In any case, the UK has invested much time and energy in developing its own points-based system although this also has not been without its teething problems.

13. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?
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Although there is a real case for the development of simpler, more accessible, more legally certain, uniform EU policies to govern non-European access to the labour market – particularly given the likelihood of a global competition with the US and BRIC countries for talent – the political outlook for the development of such policies at Union-level remains poor. It is likely that only demographics and a severe shortage of foreign labour in the coming years will change these political dynamics. And in any case the demographic picture for Britain looks very different to that of Germany in particular.

Hence there is no urgency for the UK to revise or assess its position in this matter neither is the political moment opportune.

14. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

N/A

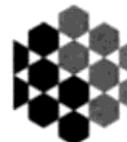
15. Are there any other general points you wish to make that are not captured here?

N/A



**Submission 42**

FROM THE OFFICE OF THE JUSTICE MINISTER



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➤ September 2013

*Dear Mark and Mark*

CALL FOR EVIDENCE FOR ASYLUM AND IMMIGRATION AND THE FREE  
MOVEMENT OF PERSONS

Please find my response to the recent call for evidence on Asylum and Immigration and Free Movement of Persons. I have no comment on the Free Movement of Persons, so have provided a response on Asylum and Immigration only.

**DAVID FORD MLA**  
Minister of Justice

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Organisation/Company (if applicable)	
Job Title (if applicable)	[REDACTED]
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Organisation Type (if applicable) <span style="float: right;"><i>Please mark /give details as appropriate</i></span>		
NGO/Civil Society	D	
Public Sector	x	Devolved administration: Northern Ireland Department
Retail Sector	D	
European bodies/institutions	D	
Business/Industry/Trade Bodies	D	
Other (please give details)	D	

## **The EU and the UK Border**

1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

We believe that there may be advantages to the UK opting out of the border and visa aspects of the Schengen Protocol in that the UK can develop and set tailored and appropriate visa policy – in terms of controlling and preventing potential crime risks (eg in respect of the operation of organised crime gangs and trafficking of human beings).

However, we note that non participation limits UK access to some information sharing and databases, particularly in respect of combating fraud and abuse. We consider that the UK is disadvantaged by not having access to this information and therefore more vulnerable to crime risks.

We consider that the Frontex Regulation may offer additional protections and security and note that the UK may be disadvantaged as it is not a full participant, although we note that the UK is committed to a number of Frontex activities.

2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

As noted above, whilst we recognise that the it may be in the UK national interest to develop its own visa policy, we consider that some of the consequences of opting out of these aspects of Schengen may not be in the national interest- for example, as noted, we believe that limiting access to the EU's Visa Information System and the UK's limited participation in Frontex may leave vulnerabilities in respect of crimes such as human trafficking.

3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

Tackling the trafficking of human beings across international borders is likely to continue to be an ongoing challenge. We consider that it can be tackled most effectively in cooperation with other Member States.

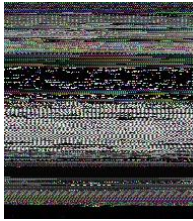
4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in

It might be helpful to explore how the UK might be granted greater access to the Visa Information System as well as what further scope there is for the UK to benefit from the additional protections offered by Frontex.

5. Are there any other general points you wish to make which are not captured above?

**No further observations to make.**

## **Submission 43**



**H.M. GOVERNMENT OF GIBRALTAR**  
EU AND INTERNATIONAL DEPARTMENT  
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Gibraltar

### **THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION: CALL FOR EVIDENCE ON ASYLUM AND IMMIGRATION**

**Evidence submitted by Her Majesty's Government of Gibraltar ("HMGGoG")**

#### **INTRODUCTORY COMMENTS.**

1. HMGGoG is grateful for the opportunity to submit evidence on the "*Review of the Balance of Competences Asylum and Immigration- Call for Evidence*" published by the Home Office in May 2013.
2. HMGGoG is conscious of the fact that the call for evidence seeks to analyse what the UK's membership of the EU means for the UK national interest. The Government is hereby invited to also take into account Gibraltar's interest in this exercise since the TFEU applies to Gibraltar by virtue of the fact that Gibraltar is a European territory for whose external relations a Member State (the United Kingdom) is responsible.
3. This need is particularly acute in respect of External Schengen Borders issues. The border between Gibraltar and Spain has been a particularly controversial one ever since Spain's accession to the European Community in 1986. At the time of submitting this evidence, there is very considerable tension between the UK, Gibraltar and Spanish Governments as a result of the latter's politically motivated and disproportionate checks carried out at that border, leading in some instances, to intolerable queues at the border of over 7 hours.
4. The situation has become so serious that the Prime Minister and the Foreign Secretary have taken up the issue directly with their Spanish counterparts and with the President of the European Commission.
5. HMGGoG has submitted evidence in the parallel Call for Evidence launched by the Home Office on the Free Movement of Persons. In order to avoid repetition, please refer to paras 4 to 16 of HMGGoG's submission in that Call for Evidence which are also relevant to the present one.

#### **THE EU AND THE UK BORDER.**

1. **What are the advantages or disadvantages of the UK opting out of the**

## **border and visa aspects of the Schengen Protocol?**

6. 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 coming to Gibraltar. 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.
  7. The disadvantages arise primarily in relation to access to information sharing mechanisms and databases. For instance, Gibraltar is unable to access data shared by the Schengen States through the EU's Visa Information System (VIS), a database containing information on applications for EU visas with the intention of combating fraud and abuse and to enhance security. Similarly, Gibraltar is unable to participate in the Schengen Information System (SIS) and the more advanced version of the system (SIS II), insofar as they relate to immigration.<sup>1</sup>
  8. In relation to **border checks**, HMGoG would fully embrace Gibraltar participation in the border elements of the Schengen Acquis, and indeed, the entire Schengen Acquis in so far as it concerns the creation of a borderless area.
  9. As explained in our separate submission on the Call for Evidence on the Free Movement of Persons, and to which reference is made, Spanish controls at the Gibraltar/Spain border are wholly disproportionate and politically motivated. Gibraltar's exclusion from the border elements of the Schengen Acquis is one excuse regularly invoked by Spain in order to justify those disproportionate and unlawful controls. This is a major issue for Gibraltar. As far as Gibraltar is concerned, therefore, any disadvantages of the UK opting out of the border aspects of the Schengen Protocol are outweighed by the advantage of securing a better flow of persons at the Gibraltar/Spain border which opting into the Protocol would bring about.
  10. At a considerably more subsidiary level, other disadvantages that ensue from the UK opting out of the border aspects of the Protocol concern the inability to participate in the EUROSUR network, a technology based system for pre-border surveillance of the external Schengen borders, incorporating a network of communication centres for the exchange of information on border security threats or in the Smart Borders Measures which include proposals for an Entry/Exit System to improve the management of the external Schengen borders and the fight against illegal migration in the Schengen area. Opting-in would make Gibraltar's borders, with the exception of the land border with Spain, part of the external borders of the Schengen area.
- 2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?**

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<sup>1</sup> The UK does participate in SIS and SIS II insofar as they relate to police and judicial cooperation only.

11. For the reasons set out in the reply to Q.1, the UK's decision not to opt out of the border aspects of the Schengen Protocol would certainly have been in Gibraltar's interest.

**3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?**

12. For Gibraltar, a future challenge will be to see the UK Government take a robust position against any attempts made by Spain to exclude Gibraltar from participation in a Schengen measure. For instance, the Frontex Regulation does not apply to Gibraltar, even if the UK had participated. Recital 28 of the Regulation states :

*"A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar".*

13. While Article 12(1) provides for the cooperation of the UK in Frontex Operations, Article 12(3) states :

*"The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which agreement is reached on the scope of the measures concerning the crossing by persons of the external borders of the Member States" .*

14. Such exclusions are highly prejudicial to Gibraltar and lend credence to Spain's unsustainable argument as to the extent of British Gibraltar territory.

**4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?**

15. No comment.

**5. Are there any other general points you wish to make which are not captured above?**

16. To the extent that competence on border controls has been transferred to the EU, it is of vital importance that the European Commission ensures that EU rules are respected in full by all. If the transfer of competence in such a sensitive area of policy is not accompanied by strict enforcement of the rules by the European Commission the validity of EU competence in this area is seriously undermined. The experience at the Gibraltar/Spain border is not a particularly positive one in this respect. Spanish practices at the Gibraltar/Spain border are intolerable and have been allowed to continue for an intolerably long time. The following is evidence of this proposition.

17. EU Regulation 562/2006 of 15 March 2006 establishes a Community Code on the rules governing the movement of persons across borders and is commonly known as the "Schengen Borders Code". It has a twofold objective. Firstly, it

provides for the absence of border controls of persons crossing the internal borders between the Member States and, secondly, it establishes rules governing border controls of persons crossing the external borders of the Member States.<sup>2</sup>

18. Since the Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part it does not apply to the United Kingdom or to Gibraltar.<sup>3</sup> However, it places obligations on Schengen States, such as Spain, on how to operate external borders. For the purposes of the Regulation, the Gibraltar/Spain border is an external border and it is those provisions of the Regulation that are therefore applicable.
19. The Regulation applies to any person crossing the external borders of Member States, without prejudice to the rights such persons enjoy under the Community right of free movement.<sup>4</sup>
20. The Recitals of the Regulation give a very clear indication on how Schengen States must conduct themselves when carrying out external border controls:

**Recital 7 :**

*“Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued”.*

**Recital 9 :**

*“Provision should be made for relaxing checks at external borders in the event of exceptional and unforeseeable circumstances in order to avoid excessive waiting time at borders crossing-points...”.*

**Recital 10 :**

*“In order to reduce the waiting times of persons enjoying the Community right of free movement, separate lanes, indicated by uniform signs in all Member States, should, where circumstances allow, be provided at border crossing points...”.*

**Recital 11:**

*“Member States should ensure that control procedures at external borders do not constitute a major barrier to trade and social and cultural interchange. To that end, they should deploy appropriate numbers of staff and resources”.*

21. Chapter II (Articles 6 to 14) of the Regulation is entitled “*Control of External*

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<sup>2</sup> Article 1 of the Regulation.

<sup>3</sup> Recital 27 of the Regulation.

<sup>4</sup> Article 3 of the Regulation.



*Borders and Refusal of Entry*". It provides, inter alia :

**Article 6 (1) :**

*"Border guards shall, in the performance of their duties, fully respect human dignity.*

*Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures".*

**Article 7 (2) :**

*"All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting.*

*The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the Community right of free movement.*

*However, on a non-systematic basis, when carrying out minimum checks on persons enjoying the Community right of free movement, border guards may consult national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.*

*The consequences of such consultations shall not jeopardise the right of entry of persons enjoying the Community right of free movement into the territory of the Member State concerned as laid down in Directive 2004/38/EC".*

**Article 7 (6) :**

*"Checks on a person enjoying the Community right on free movement shall be carried out in accordance with Directive 2004/38/EC".*

**Article 8 (1) :**

*"Border checks at external borders may be relaxed as a result of exceptional and unforeseen circumstances. Such exceptional and unforeseen circumstances shall be deemed to be those where unforeseeable events lead to traffic of such intensity that the waiting time at the border crossing point becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation".*

**Article 9 (1) :**

*“Member States shall provide separate lanes, in particular at air border crossing points in order to carry out checks on persons, in accordance with Article 7. Such lanes shall be differentiated by means of the signs bearing the indications set out in the Annex III.*

*Member States shall ensure that such lanes are clearly signposted, including where the rules relating to the use of the different lanes are waived as provided for in paragraph 4, in order to ensure optimal flow levels of persons crossing the border”.*

**Article 9 (2) (a) :**

“Persons enjoying the Community right of free movement are entitled to use the lanes indicated by the sign in part A of Annex III. They may also use the lanes indicated by the sign in part B of Annex III”.

**Article 14 :**

*“Member States shall deploy appropriate staff and resources in sufficient numbers to carry out border control at the external borders, in accordance with Articles 6 to 13, in such a way as to ensure an efficient, high and uniform level of control at their external borders”.*

22. In HMGoG’s opinion, and for reasons that will be apparent to anyone who has experienced Spanish tactics at the Gibraltar/Spain border, Spain acts in blatant breach of all of the afore-mentioned provisions of the Schengen Borders Code. It is incumbent on the European Commission to take action to ensure that the law is respected.

**THE EU AND ASYLUM.**

**6. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?**

23. The principal advantage of participating in the Common European Asylum System (“CEAS”) is to bring an end to so-called “asylum shopping”. It is in the UK’s and Gibraltar’s interests to use the EU as a medium for cooperation as this will ensure that all Member States apply the same rules thereby preventing potential abuse of the “asylum seeker” status.
24. Thus, the Dublin system enables the UK to decide whether another Member State is responsible for determining an application for asylum. Member States can search the EURODAC fingerprint database to see if an applicant has been fingerprinted in another Member State. The system deters secondary movements within the EU and reduces the scope for abuse of Member States’ asylum systems.
25. The UK has also opted into the Regulation setting up the European Asylum

Support Office, 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. This is a welcome move.

26. Perhaps the most significant disadvantage of the UK's participation in the CEAS is illustrated by the cases under the Dublin II Regulation, namely, the European Court's judgments in Cases C-411/10 & C-493/10, *NS v Secretary of State for the Home Department* and that of the European Court of Human Rights in *MSS v Belgium* [2011] ECHR 108. In these cases, the Courts adopted a very strict test for determining whether it would be safe to return asylum seekers to Greece without breaching their human rights.
- 7. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?**
27. Cooperation with Member States to control refugees and economic migrants is essential and in the national interest. However, if the UK had used its opt-in differently, for example by opting into the Recast Directives, it would mean further integration with the EU and the EU having more competence over domestic matters. This could also have significant administrative and financial burdens.
28. The recast Directives are thought to impose additional restrictions on the UK's asylum system. In particular:
  - the proposed recast Reception Conditions Directive would require wider access to the labour market, limitation on the use of detention powers and the grant of benefits to asylum seekers at the same level as nationals;
  - some of the proposals in the recast Qualification Directive would require the UK/Gibraltar to accept a broader definition of family members for family reunification purposes and would make it harder for the UK/Gibraltar to argue that an asylum seeker would be adequately protected against persecution in their country of origin;
  - the proposed new Asylum Procedures Directive could impact on the way the current processes are carried out. The restrictions imposed on the use of accelerated procedures would diminish the UK's/Gibraltar's ability to prevent abuse and improve efficiency.
29. It has been submitted that the UK's refusal to opt into the Recast Directives will make the UK, in some respects, inferior<sup>5</sup> to the framework applicable in the other Member States that have chosen to improve their standards through

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<sup>5</sup> House of Lords, EU Committee 7th Report Session 2008-2009 "*The United Kingdom opt-in: problems with amendment and codification*", Report with Evidence, 24th March 2009, HL Paper 55 Minutes of Evidence Q25 and Q6.

implementation of the recast Directives<sup>6</sup> - “while the rest of Europe increases its standards, the UK may inevitably be faced with the situation of having to raise its own standards in order to match those of Europe”.<sup>7</sup>

30. However, if the UK wishes to increase its standard to meet or exceed those of the EU in the future, it is free to do so on the UK's own terms and retaining competence. The UK will be able to tailor any measure it sees fit to the situation in the UK and importantly the legislation the UK implements will not be subject to CJEU jurisdiction.

**8. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?**

31. The migratory pressure on Europe's borders is growing. European policy-makers continue to be concerned about the numbers of asylum seekers arriving in Europe as the Commission Green Paper on the Future of the European Asylum System shows.<sup>8</sup> People will attempt to escape to countries which they see as offering a chance of a better life: “a combination of economic incompetence, uncertainty of property rights, corruption, internal conflicts, political anarchy and repressive regimes has created intolerable conditions for the local population. Conditions may also be intolerable in states where poverty is endemic, or in those which, though once prosperous, are now ravaged by war.”<sup>9</sup>
32. While the rest of Europe increases its standards, the UK/Gibraltar may inevitably be faced with political pressure to raise their own standards in order to match those of Europe. This may lead to increased social and financial burdens.
33. Further the UK's selective stance towards the CEAS may lead to its exclusion from key EU measures it wishes to engage in such as the rulings on the Frontex Regulation, biometric passports, access to data, and the VIS. The UK's selective stance may also jeopardise the efficiency and stability of the CEAS.<sup>10</sup> Moreover, the decision not to opt into the Recast Directives may also undermine its position when seeking to use the Dublin System.<sup>11</sup>

**9. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?**

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<sup>6</sup> Stefanelli, JN, ‘Whose rule of law? An analysis of the UK's decision not to opt in to the EU asylum procedures and reception conditions Directives’ (2011) ICLQ 1055

<sup>7</sup> *Ibid.* 1064

<sup>8</sup> Commission of the European Communities (CEC) (2007a) *Green paper on the Future Common Asylum System*, COM (2007) 301 final

<sup>9</sup> *Op cit.* n. 2 at para 11

<sup>10</sup> British Institute of International and Comparative Law ‘The EU Asylum Directives: Is opting in Necessary’ [http://www.biicl.org/binghamcentre/eu\\_asylum/](http://www.biicl.org/binghamcentre/eu_asylum/)

<sup>11</sup> Dr Costello, C “UK Migration Policy and EU Law”, 11 August 2011

<http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/UK%20Migration%20Policy%20and%20EU%20Law.pdf>; House of Lords, EU Committee 1st Report Session 2009-10 “Asylum directives: scrutiny of the opt-in decisions”, Report, 4th December 2009, HL Paper 6

34. It seems that in its efforts to enhance solidarity and equalise responsibilities across the Member States, existing EU burden sharing initiatives in this area have until recently largely relied on a one-dimensional burden sharing logic i.e. through binding rules.<sup>12</sup> EU policy harmonisation curtails Member States' ability to use national asylum policies to counterbalance their country's unique structural pull factors. Thus, policy harmonisation might undermine rather than facilitate efforts to achieve a more equitable responsibility sharing.<sup>13</sup>
35. The EU's non-legal approach in setting up the Intra-EU Solidarity information sharing mechanisms and the Resettlement and Regional Protection Programmes provides better outcomes for the UK/Gibraltar national interest. If it is to strengthen asylum protection, the EU needs to be actively aware of variations in Member States' preferences as to how to contribute in this area and needs to recognise the comparative advantages individual States possess with regard to making certain kinds of contributions and react accordingly.

**10. Are there any other general points you wish to make which are not captured above?**

36. The general points are captured above.

**THE EU AND LEGAL MIGRATION.**

**11. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?**

37. The EU's objective for legal migration has been to develop immigration policies which support individual countries' economies and societies. The UK has opted out from a number of EU measures on legal migration. Thus, arrangements for the admission of non-EEA workers, students and family members are governed by domestic law and the immigration rules. The points based system allows for targeted immigration in the sectors which will benefit from an influx of people without overstressing the economy.
38. The EU measures that the UK has chosen not to opt into include instruments aimed at harmonising or establishing common rules in relation to the entry, stay and treatment of certain categories of third country nationals including workers, students and researchers.
39. The UK has not opted into these measures on the basis that the UK, and similarly Gibraltar, is able to:
- retain flexibility to adjust immigration policy in response to changing circumstances in the UK;
  - retain the extent to which checks can be imposed on the admission to the

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<sup>12</sup> Thielemann, E "The Future of the Common European Asylum System: In Need of a More Comprehensive Burden-Sharing Approach" p.5 Migration studies Unit Working Papers No. 2008/03  
<http://www.lse.ac.uk/collections/MSU/working-papers.html>

<sup>13</sup> *Ibid.* p.10

- UK of third country nationals resident in another Member State; and
  - apply its own conditions/ restrictions to third country nationals resident in the UK, including in relation to their entitlement to social security and assistance.
40. Accordingly, it is to the UK's/Gibraltar's advantage to continue to retain the right to adjust immigration policies which reflect our economies and labour needs. Whilst migrant workers make a significant contribution to the economies of European countries, the regulation of economic migration, including admission controls and procedures, should remain a Member State competence.<sup>14</sup> 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.
41. A possible disadvantage is that the UK/Gibraltar may encounter problems vis-a-vis the Family Reunification Directive. The UK's and Gibraltar's opt out of this Directive means that there will be substantial variation between our rules on the admission of family migrants and those of the other Member States. Problems could arise where spouses and children are more readily admitted in one Member State than another, especially where EU rights to freedom of movement may be engaged.<sup>15</sup> Thus a more harmonised approach to family migration may be justified.
- 12. If the UK used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?**
42. Had the UK opted differently in the area of legal migration the EU would have competence to amend the measures establishing common rules in the area of legal migration of the UK and Gibraltar which would not reflect the very different labour markets, economic needs and welfare systems of two separate jurisdictions, let alone of all the individual Member States.
43. Whilst there is a role for the EU in setting out guiding principles, particularly providing protection for third country nationals, it is to the advantage of the UK/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. Any transfer of responsibility to the EU on the management of legal migration would be undesirable and also very difficult to achieve.<sup>16</sup> Any EU framework has to recognise the major differences between the welfare systems, labour markets and economic cycles of each Member State and seek to accommodate them.<sup>17</sup>
- 13. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?**

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<sup>14</sup> Economic Affairs Committee, *The Economic Impact of Immigration* (1st Report of Session 2007-08, HL Paper 82)

<sup>15</sup> *Ibid.* para 64

<sup>16</sup> House of Lords, EU Committee 8th Report "*The EU's Global Approach to Migration and Mobility*", 11th December 2012 paras 55 and 56

<sup>17</sup> *Ibid.* para 131

44. Migration remains essential to economic growth and competitiveness in a globalised economy. Despite the recession and high levels of unemployment in some Member States, Europe still faces sector-specific labour and skills shortages, and will increasingly need to compete with other emerging regions for the "best and brightest" workers.
45. As the EU Committee of the House of Lords has reported, the *"UK's approach to migration policy cannot and should not be formulated in a vacuum. Migration is a global phenomenon so the UK's policy needs to take proper account of the European and international policy frameworks in order to achieve a more effective approach"*.
46. Further, while a policy of non-participation may leave the UK/Gibraltar free to frame their own labour migration policy, this may also place the UK/Gibraltar at a competitive disadvantage in terms of attracting highly- skilled migrants.
- 14. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?**
47. There are a number of non-legal initiatives on migration issues in which the UK participates and works closely with the EU, namely:
- EU's Global Approach to Migration and Mobility (GAMM) – non-binding on Member States, participation in the various initiatives under GAMM remains voluntary. The UK continues to work under the GAMM where it is in the national interest to work with the EU and where such participation is in line with the UK's own migration policy;
  - EU Migration Funding - ensures fair sharing of responsibility between Member States for the financial burdens arising from implementation of common asylum and immigration policies;
  - EU Migration Network;
  - Migratory Pressures Roadmap – Member State led framework for a coherent response to current and likely future pressures.
48. Practical cooperation and non-legislative initiatives such as the above, rather than further legislation in this area, are desirable in addressing persisting migratory pressures on the EU. These provide better outcomes for the UK's/Gibraltar's national interest, as these initiatives allow for Member State specific targeted approaches to asylum and immigration, while still encouraging cooperation on the wider issues affecting all Member States.
- 15. Are there any other general points you wish to make that are not captured here?**
49. The general points are captured above.

**Her Majesty's Government of Gibraltar**



## **Responses to the Balance of Competences Review on the issues of Asylum and Immigration**

### **1. What are the advantages or disadvantages of participating in a Common European Asylum System?**

A single European asylum procedure is based on the fact that such a system better ensures the legal security of the asylum seekers since the claim is processed through a unique procedure and the person does not need to be aware of specific conditions of the different forms of protection. A one-stop shop procedure is also often more time-effective and offers the advantage of quickly settling the situation of the persons seeking asylum. In general, the provisions foreseen in the Geneva Convention would be strengthened. Any harmonised European asylum scheme has the obligation to safeguard the predominance of the Geneva Convention, which is the cornerstone of international refugee protection. In general, there is a need for enhanced intra-EU solidarity in the field of asylum that seeks to create an EU agenda for better responsibility sharing and more mutual trust.

### **2. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?**

The Geneva Convention and the European Convention on Human Rights form part of the *acquis* of common EU law which means that EU competence would in any case be asserted through the role of the European Court of Justice and the European Court on Human Rights. There is a systemic approach to the development of the CEAS in an increasingly integrated Area of Freedom, Security and Justice which means that the United Kingdom cannot 'pick and choose' the elements of EU asylum law to which it wishes to take part and opt in selectively without jeopardising the efficiency and stability of the Common European Asylum System. Thus, it seems that the legally preferable, administratively workable and legitimate way forward would be for the UK to opt-in to all CEAS measures.

### **3. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?**

Europe is confronted with strong migratory flows from its immediate neighbourhood. The developments in adjacent regions in the Middle East and the Maghreb as well as the current situation in Syria will generate pressures at least comparable to those experienced during the war in former Yugoslavia. As



long as the situation in the adjacent countries will not improve, the EU will face strong migratory pressures from this region. Thus, the EU needs to be prepared to handle these challenges in a sustainable manner. Any reduction in the capacity of the EU to support cooperation between member states arising from rebalancing competence in favour of national governments might well leave the region exposed and poorly equipped to handle large-scale refugee crises in the future.

**4. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for MS national interest?**

Participating in the CEAS shall lead to an optimal level of cooperation between the EU and MS. In order to strengthen this cooperation, a deepening of this process would be beneficial.

**5. Are there any other general points you wish to make which are not captured above?**

There are no further points to make.



## **Submission 45**

### **BALANCE OF COMPETENCES REVIEW SCOTTISH GOVERNMENT RESPONSE**

#### **ASYLUM AND IMMIGRATION**

1. The Scottish Government welcomes the opportunity to contribute to the call for evidence. We are aware that key Scottish stakeholders, including CoSLA have provided a response as part of this exercise. We ask that, where possible, any Scottish-specific issues raised by respondents are reflected in the final Free Movement of Persons and Asylum & Immigration reports.

#### **Schengen and Common Travel Area**

2. 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 ('CTA'). Indeed, the European Treaty of Amsterdam recognises the provisions of the CTA in order to distinguish it from the Schengen area.
3. Opting out of the border and visa aspects of the Schengen Protocol protects the integrity of the UK and Ireland social union. Given practical considerations of geographical and working arrangements, it is in the national interests of Scotland, Ireland and the rest of the UK to remain in the CTA. These arrangements are not only robust and help protect the security of the CTA, but also that of the Schengen area.

#### **EU and Asylum**

4. The Scottish Government view the advantages of participating in a Common European Asylum System as including increased information sharing, inclusion in the Dublin Convention, freedom of movement and increased rights for asylum seekers coming to the EU. Working within these common frameworks helps minimise multiple asylum claims and where these occur, means that asylum seekers can be effectively returned to the country of first application under the Dublin Convention.
5. The EU will face particular challenges in the future; in particular, with the on-going conflict in Syria as well as the Arab Spring, the EU may continue to see increased numbers of asylum seekers arriving in the EU. For Scotland's interests, Scotland welcomes the contribution that recognised refugees make to our economy and society.
6. The EU will inevitably face challenges as membership expands, and how these play out will depend on the new member states and their approach to asylum. It is impossible to predict what these might be, however we will need to consider wide and varied potential ramifications. A significant challenge would be if, for

example, new member states have an approach which would result in asylum seekers not being treated humanely.

### EU and Legal Migration

7. As a member of the CTA rather than Schengen, the UK and Scotland have slightly different needs regarding immigration. Not opting into EU competences around Legal Migration and returns and admissions gives the UK the opportunity to act in a way that takes into account the best interests of the CTA partners. Given the special nature of the UK's position within the CTA, it is in the UK and Scotland's interest to retain control of legal migration into the UK.

### Future developments

8. Future developments in IT and technology will require continuing cooperation between the CTA and EU partners to work together to develop systems and procedures to ensure the CTA's security and national interests. Ensuring that data protection principles in all member states are sufficient and robust, will allow the sharing of Passenger Name Record (PNR) within the EU and better connect the information required to combat the threat to terrorism and organised crime.
9. Improvements in technologies may make the detection of issues at the border, and the data contained at the border, vulnerable. There is an increasing threat of Serious Organised Crime along with human trafficking operating across borders and this will continue to pose a threat and a challenge.
10. Organised crime costs the UK between £20 billion and £40 billion a year [source: *Local to Global: Reducing the Risk from Organised Crime*, HM Government, 2011] and organised crime groups often operate across boundaries - both in terms of crime type and geography. Improvements in technology may make the operation of cross border crimes harder to detect with respect to visas when physically moving across borders, but also with respect to the types of crime which are committed.
11. The joining up and extension of electronic data sets, watch lists and alerts within the EU, as well as continued police and judicial co-operation (Schengen Information System II) will deliver better access to information and maintain/build interoperability across the border. It will also enable improved public and law enforcement officer protection, greater identity assurance at the border, reduced crime – particularly via the ability to screen for wanted criminals via border controls. We look forward to the evaluation process in Scotland and encourage pan-EU application with new member states.

## **Submission 46**

### **BALANCE OF COMPETENCES**

#### **MIGRATION**

##### **(ITALIAN INTERIOR MINISTRY'S CONTRIBUTION)**

As regards migration, all EU Member States are faced with similar challenges, therefore a good coordination on key migration issues among Member States is essential.

Several attempts have been made at EU level, in the past few years, to develop a global policy aimed at improving the efficiency of migration management policies, with full respect of national competences. The Commission has decided to introduce a common approach in relation to third-country nationals' entry procedures, by identifying common admission requirements for some key categories of migrant workers (i.e. highly qualified workers, temporary workers, researchers, students etc.). The most valuable benefit of a common approach is that all workers are admitted through common rules, thus preventing a greater number of migrant flows travelling to countries with easier-to-meet requirements. The idea of implementing a common system is also important with a view to diminish differences of treatment of third-nationals among Member States – an aspect that encourages secondary movements from one Member State to those Member States granting more benefits.

A common regulation also helps simplifying and harmonising EU citizens' movements within the EU and helps regulating third-country nationals' access to Member States. For example, the **EU Blue Card** granting more favourable conditions and a series of rights to highly qualified third-country nationals, as well as the possibility to move to another EU MS, can attract highly qualified workers from third countries with a view to enhance competitiveness of the host country.

The proposal for an **intra-corporate transfer of non-EU skilled workers directive** is also relevant. Companies outside the EU will have a common set of rules and requirements and EU companies will have better and faster access to global highly-skilled workers to meet their personnel needs. This will favour the EU economy and attract investments, thus encouraging the creation of new jobs.

Same advantages can be found in the recent proposal of a **directive for researchers and students** aimed at attracting a wider number of individuals belonging to this category through the introduction of common requirements and conditions by simplifying the entry procedure and encouraging intra-EU mobility.

The adoption of a Single Permit Directive is also beneficial to Member States. The Directive is applicable to non-EU nationals already legally residing or working in the EU, independently of their initial reason for entry. This directive has contributed to streamlining and harmonizing Member States' regulations leading to a consistent reduction of the administrative burden on employers and easier checks on work and residential permits.