



House of Commons

European Scrutiny Committee

EU Asylum Report: opt-in decisions

Twentieth Report of Session 2016–17

Documents considered by the Committee on 23 November 2016, including the following recommendations for debate:

Revision of EU rules on who qualifies for international protection

Establishing a common EU asylum procedure

Revision of EU rules on reception conditions for asylum seekers

Establishing an EU framework for the resettlement of individuals in need of international protection

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 23 November 2016*

HC 71-xviii

Published on 30 November 2016
by authority of the House of Commons

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website:
<http://europeanmemoranda.cabinetoffice.gov.uk/>.

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1 Revision of EU rules on who qualifies for international protection

Committee's assessment	Legally and Politically important
Committee's decision	Not cleared from scrutiny; further information requested, opt-in decision recommended for debate on the floor of the House together with Council document 11317/16 , a proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU, Council document 11318/16 , a proposal for a Directive laying down standards for the reception of applicants for international protection (recast) and Council document 11313/16 , a proposal for a Regulation establishing a Union Resettlement Framework (decision reported 14 September 2016); drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation on standards for determining who qualifies for international protection, a uniform status for refugees or individuals eligible for subsidiary protection, and the content of the protection granted
Legal base	Articles 78(2)(a) and (b) and 79(2)(a) TFEU; ordinary legislative procedure; QMV
Department	Home Office
Document Numbers	(37967), 11316/16 + ADD 1, COM(16) 466

Summary and Committee's conclusions

1.1 The proposed Regulation forms part of a wider package of asylum reforms which is intended to establish “an effective and protective” asylum system “based on harmonised rules and mutual trust between Member States”. This proposal concerns the criteria applied by Member States to determine whether a third country (non-EU) national qualifies for international protection. The Commission believes that “applicants for international protection must have the same chance of obtaining the same form of protection, or having their claim rejected, irrespective of where they apply for asylum in the Union”.¹ It anticipates that the changes it is proposing will produce greater convergence in asylum recognition rates across the EU by requiring Member States to apply fully harmonised criteria when examining an application for international protection and take into account country of origin information produced by the proposed EU Agency for Asylum. The proposal would also harmonise the rights accorded to beneficiaries of international protection, require more frequent “status reviews”, and include stricter rules to discourage

1 See the Commission's [fact sheet](#) on its latest reform proposals.

secondary movements between Member States.² The proposed Regulation is subject to the UK's Title V (justice and home affairs) opt-in, meaning that it will only bind the UK if the Government decides to opt in.

1.2 The Commission's asylum reform package has been presented in two phases. The first phase concerns proposals to amend the Dublin rules (which allocate responsibility for examining applications for international protection made within the EU) and the Eurodac asylum database, and to transform the European Asylum Support Office into the EU Agency for Asylum. An opt-in debate on these proposals took place on 15 November.³ The House subsequently endorsed the Government's motion recommending that the UK opt into the proposed Eurodac Regulation but *not* opt into the proposed Dublin Regulation and the proposed EU Asylum Agency Regulation.

1.3 We recommended a separate opt-in debate on the second phase of asylum reforms which concerns changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined, as well as a proposal for a structured EU resettlement framework which is intended to reduce the flow of irregular migrants by providing safe and legal pathways to the EU for third country nationals who are in need of international protection. We suggested that the opt-in debate should consider the merits of the Commission's reform package, the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, and the wider implications for the UK once it has left the EU. We asked the Immigration Minister (Mr Robert Goodwill) to:

- expand on his view that the Commission's reform objectives, notably discouraging 'asylum shopping' and secondary movements between Member States, could equally be achieved by Member States acting unilaterally;
- flesh out his reasons for believing that the Commission's choice of a directly applicable Regulation raises "profound implications for national sovereignty";
- indicate whether there are any elements of the reform package which the Government would wish to replicate in its own domestic asylum laws or practices once the UK has left the EU;
- explain what impact differential asylum rules in the EU and the UK might be expected to have on the UK asylum system post-Brexit; and
- report back to us on other Member States' initial reactions to the Commission's reform package and on any progress made in negotiations.

1.4 It has taken the Minister more than a month to inform us of the Government's decision not to opt into the proposed EU Asylum Agency, one of the proposals forming part of the Commission's first phase of asylum reforms. Even if we were to accept that "timetabling" made it impossible for the Government to schedule an opt-in debate before the three month opt-in deadline expired on 30 September, the delay in notifying us of the Government's decision is inexcusable. In her Written Statement of 12 October concerning the agenda for the first formal Justice and Home Affairs Council under the Slovakian Presidency, the Home Secretary made a passing reference

2 See the Commission's [infographic](#) on the changes proposed.

3 See Hansard [European Union Agency for Asylum](#) 15 November 2016.

to the Government's opt-in decision.⁴ We do not consider that this in any way fulfils the commitment made by the former Minister for Europe (Mr David Lidington) to “make a written statement to Parliament on each opt-in decision to ensure that Parliament is fully informed of the Government's decision and of the reasons why it believes its decision is in the national interest”. Nor does the lack of information “significantly strengthen Parliament's oversight of EU justice and home affairs matters” or “make the Government more accountable for the decisions it makes in the EU”.⁵ We ask the Minister for a specific assurance that the Government intends to respect the commitments made by the former Minister for Europe on enhancing Parliamentary scrutiny and for a detailed explanation of its failure to do so in this case. In particular, we wish him to explain why his Department did not make a Written Statement on the Government's opt-in decision or write to us sooner setting out the Government's reasons for its decision not to opt in.

1.5 We are still unclear whether the Government considers that further EU action is necessary to achieve a higher degree of consistency in applying the current criteria for determining who qualifies for international protection. The Minister calls for “greater efforts” by the Commission to ensure that Member States comply with the existing EU Qualification Directive, even though the Commission has already taken enforcement action against a number of Member States.⁶ Does he believe that more vigorous enforcement by the Commission and more constructive engagement by Member States are more likely to reduce fragmentation and ensure greater consistency in decision making at national level than the latest reforms proposed by the Commission?

1.6 The Minister does not address the general question we raised about the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, given the emphasis placed by the Commission on their interdependence. Nor does he address the wider implications of the reform package for future cooperation with EU partners on asylum and migration once the UK has left the EU. Does he consider that the Commission's reform package, if agreed, would lead to a greater or lesser degree of convergence in the asylum rules applied by the EU and the UK following the UK's withdrawal, and what assessment has he made of the impact that differential asylum rules in the EU and the UK might have on the UK asylum system?

1.7 We remind the Minister that we expect the opt-in debate we have recommended on the Commission's second phase of asylum reforms to be scheduled ahead of the earliest opt-in deadline—1 December 2016. Meanwhile, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

Proposal for a Regulation 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

4 See the [Written Ministerial Statement](#) of 12 October 2016.

5 See the Minister's [Written Ministerial Statement](#) of 20 January 2011.

6 See the Commission's [press release](#) issued on 23 September 2015.

protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents: (37967), [11316/16](#) + [ADD 1](#), COM (16) 466.

Background

1.8 Our Twelfth Report (agreed on 14 September) describes the UK's patchwork participation in EU asylum measures, the main elements of the existing EU Qualification Directive, the changes proposed by the Commission and the Government's view.

The Minister's letter of 8 November 2016

1.9 The Minister explains that the Government is continuing to consider the proposed Regulation. He undertakes to provide "further detailed analysis" of the changes that would be needed to bring UK law into line with common EU standards and their overall impact on international protection standards in the EU if the Government decides to recommend opting in. He notes that we have requested an opt-in debate on the second phase of asylum reform proposals but makes no commitment at this stage, commenting that the Government will consider our recommendation "in the normal course of business". He expects the opt-in debate we have recommended on the first phase of asylum reform proposals to be scheduled "for early November", but adds:

"Due to timetabling, we have unfortunately been unable to schedule a debate before the opt-in deadline on the EU Agency for Asylum. However, I can update the Committee that on 30 September, the Government took the decision we would not opt in to the EU Agency for Asylum. Formal confirmation of this decision will be communicated to the Committee shortly."

1.10 The Minister makes clear that the Government's handling of opt-in decisions arising before the UK's formal withdrawal from the EU remains unchanged:

"The UK retains the same rights and obligations in relation to the EU as before the Referendum. Protocol No. 21 to the EU Treaties on the UK's JHA opt-in continues to apply. The UK therefore needs to continue to take opt-in decisions, and will do so on a case-by-case basis, putting the national interest at the heart of the decision making process. Existing procedures for Parliamentary scrutiny of JHA opt-in decisions will continue to apply."

1.11 Commenting on the justification for EU action as a means of ensuring greater convergence in decision making across the EU, the Minister observes:

"It is clear that the UK and other Member States are keen to ensure greater consistency in order to address the wider implications of pull factors."

He considers that the Commission "has a role to play", but says that Member States also have a responsibility "to engage constructively on the issue, ensuring that unilateral action brings consistency".

1.12 Turning to the implications of the proposed Regulation for sovereignty, we asked the Minister to clarify whether his concern stemmed solely from the choice of legal instrument or from particular provisions contained in it which present a particular threat to national sovereignty. He replies:

“The Government considers that the choice of a Regulation in itself has some implications for sovereignty given the measure would be directly applicable and there would be resulting limitations in the UK deciding how to run its national asylum system. There are elements in the proposal, such as the obligation to take into account country of origin guidance provided by the EU Agency for Asylum, which the UK has clear views on given we maintain our own UK country guidance.”

1.13 We also asked the Minister how it would be feasible for the Commission to secure reforms which avoided the fragmentation in national asylum systems resulting from existing EU Directives without having recourse to a directly applicable Regulation. He comments:

“The Government considers greater efforts are needed from the Commission in order to ensure Member State compliance with the Directives. The existing institutions and fora within the EU, such as the European Asylum Support Office (or EU Agency for Asylum in future), could play a role in identifying and analysing areas of greatest divergence and presenting these for constructive discussion with Member States.”

1.14 The Minister tells us that discussions are continuing within Council working parties on the first phase of asylum reform proposals and reports “divergent views” on the Dublin and EU Asylum Agency proposals. By contrast, Member States are “broadly aligned” on the Eurodac proposal, welcoming changes which will improve the management of illegal migration and support returns. He expects the Eurodac proposal to have a smoother passage than the others, but notes that there are unresolved issues concerning the use of Eurodac data for law enforcement purposes. Comprehensive discussions on the second phase of asylum reform proposals are due to begin later this month. The Minister reports that a number of Member States share the UK’s concerns, particularly with regard to the choice of a Regulation as the instrument for implementing most of the proposed reforms.

Previous Committee Reports

Twelfth Report HC 71-x (2016–17), [chapter 1](#) (14 September 2016).

2 Establishing a common EU asylum procedure

Committee's assessment	Legally and Politically important
Committee's decision	Not cleared from scrutiny; further information requested; opt-in decision recommended for debate on the floor of the House together with Council document 11316/16 , a proposal for a Regulation on standards for determining who qualifies for international protection, a uniform status for refugees or individuals eligible for subsidiary protection, and the content of the protection granted, Council document 11318/16 , a proposal for a Directive laying down standards for the reception of applicants for international protection (recast) and Council document 11313/16 , a proposal for a Regulation establishing a Union Resettlement Framework (decision reported 14 September 2016); drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU
Legal base	Article 78(2)(d) TFEU; ordinary legislative procedure; QMV
Department	Home Office
Document Numbers	(37968), 11317/16 + ADDs 1–2, COM(16) 467

Summary and Committee's conclusions

2.1 The proposed Regulation forms part of a wider package of asylum reforms which is intended to establish “an effective and protective” asylum system “based on harmonised rules and mutual trust between Member States”. Its purpose is to harmonise asylum procedures throughout the EU by means of a directly applicable Regulation. The Commission believes that the current procedures, set out in the 2013 Asylum Procedures Directive, are too complex, too lengthy, and leave too much discretion in the hands of Member States, resulting in different treatment and outcomes depending on the Member State in which an application for international protection is submitted. It suggests that the absence of fully harmonised asylum procedures across the EU creates “pull factors” which draw individuals to Member States with the most favourable asylum recognition rates and reception conditions, contributes to “secondary movements and asylum shopping”, and results in an uneven distribution of asylum seekers and sharing of responsibility amongst Member States.⁷ The proposed Regulation is subject to the UK's Title V (justice and home affairs) opt-in, meaning that it will only bind the UK if the Government decides to opt in.

2.2 As explained in the previous chapter, the Commission's asylum reform package has been presented in two phases. This proposal forms part of the second phase of asylum reforms which concern changes to substantive EU asylum laws determining who qualifies

⁷ See p.2 of the Commission's explanatory memorandum accompanying the proposed Regulation.

for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined, as well as a proposal for a structured EU resettlement framework which is intended to reduce the flow of irregular migrants by providing safe and legal pathways to the EU for third country nationals who are in need of international protection. In September, we agreed to recommend an opt-in debate on these proposals and made clear that the debate should consider the merits of the Commission's reform package, the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, and the wider implications for the UK once it has left the EU. We asked the Immigration Minister (Mr Robert Goodwill) to:

- assess the strength of the argument put forward by the Commission to justify EU action and come to a clear conclusion on the relative benefits of regulating at EU or national level;
- flesh out his reasons for believing that the Commission's choice of a directly applicable Regulation would have "a profound impact on national sovereignty";
- explain whether the Government considers Turkey to be a "safe country of origin", meaning that applications for international protection made by Turkish nationals must be rejected as "manifestly unfounded" unless the applicant is able to demonstrate that the country is unsafe in his or her individual circumstances;
- indicate whether there were any elements of the reform package which the Government would wish to replicate in its own domestic asylum laws or practices once the UK has left the EU;
- explain what impact differential rules on asylum procedures in the EU and the UK might be expected to have on the UK asylum system post-Brexit; and
- report back to us on other Member States' initial reactions to the Commission's reform package and on any progress made in negotiations.

2.3 The Minister reiterates his preference (reported in the previous chapter) for "constructive discussion" amongst Member States and "greater efforts" on the part of the Commission to ensure that EU asylum laws are applied consistently throughout the EU. We are unclear whether this means that the Government opposes further harmonisation of asylum procedures at EU level on the grounds that greater convergence in asylum procedures and recognition rates, and a reduction in secondary movements and "asylum shopping", can be sufficiently achieved by Member States acting individually. We trust that the Minister will clarify the Government's position during the opt-in debate we have recommended on this and other proposals forming part of the Commission's second phase of asylum reforms.

2.4 We reiterate the request made in the previous chapter for the Minister to address the broader questions we have raised about the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, given the emphasis placed by the Commission on their interdependence, as well as the wider implications of the reform package for future cooperation with EU partners on asylum and migration once the UK has left the EU.

2.5 Pending the opt-in debate and further details of the Government’s opt-in decision, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

Proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU: (37968), [11317/16](#) + ADDs 1–2, COM(16) 467.

Background

2.6 Our Twelfth Report (agreed on 14 September) describes the UK’s patchwork participation in EU asylum measures, the main changes proposed by the Commission to existing EU asylum procedures and the Government’s view.

The Minister’s letter of 8 November 2016

2.7 The Minister explains that the Government is continuing to consider the proposed Regulation and undertakes to provide “further detailed analysis” if it recommends opting in. He notes that we have recommended an opt-in debate on the second phase of asylum reform proposals but makes no commitment at this stage, commenting that the Government will consider our recommendation “in the normal course of business”.

2.8 In our earlier Report, we asked the Minister whether the objectives he supports—a clear obligation on individuals applying for international protection to cooperate with national authorities, accompanied by procedural sanctions to discourage “abusive behaviour” and unauthorised secondary movements between Member States—could be sufficiently achieved by Member States acting alone, without further EU intervention. He responds:

“Member States have a responsibility to engage constructively on the issue, ensuring that unilateral action brings consistency. Furthermore, we recognise there is a role for the Commission to play in ensuring greater consistency but we remain cautious of the need for a directly applicable Regulation.”

2.9 We noted the Minister’s concern that the choice of a directly applicable Regulation, rather than a standard-setting Directive which has to be implemented in national law, would “reduce the ability of Member States to set their own procedural standards and so has a more profound impact on national sovereignty”.⁸ We asked him to clarify whether his concern stemmed solely from the choice of legal instrument or from particular provisions contained in it which present a particular threat to national sovereignty. He replies:

“The Government considers that the choice of a Regulation in itself has some implications for sovereignty given the measure would be directly applicable and there would be resulting limitations in the UK deciding how to run its national asylum system. There are elements in the proposal, such

8 See para 13 of the Minister’s Explanatory Memorandum.

as the safe countries of origin provisions, which the UK has clear views on given our reasons for not opting in to the previous proposal on this (due to maintaining a national list of safe countries of origin) remain valid.”

2.10 We also asked the Minister how it would be feasible for the Commission to secure reforms which avoided the fragmentation in national asylum systems resulting from existing EU Directives without having recourse to a directly applicable Regulation. He comments:

“The Government considers greater efforts are needed from the Commission in order to ensure Member State compliance with the Directives. The existing institutions and fora within the EU, such as the European Asylum Support Office (the EU Agency for Asylum in future), could play a role in identifying and analysing areas of greatest divergence and presenting these for constructive discussion with Member States.”

2.11 Responding to our request for details of the Government’s position on the proposed designation of Turkey as “a safe country of origin”, the Minister observes:

“The Government has no immediate plans to seek to include Turkey in the UK national list of safe countries of origin; however the country situation remains under constant review, particularly in light of the attempted coup earlier this year.”

2.12 The Minister tells us that discussions are continuing within Council working parties on the first phase of asylum reform proposals and reports “divergent views” on the Dublin and EU Asylum Agency proposals. By contrast, Member States are “broadly aligned” on the Eurodac proposal, welcoming changes which will improve the management of illegal migration and support returns. He expects the Eurodac proposal to have a smoother passage than the others, but notes that there are unresolved issues concerning the use of Eurodac data for law enforcement purposes. Comprehensive discussions on the second phase of asylum reform proposals are due to begin later this month. The Minister reports that a number of Member States share the UK’s concerns, particularly with regard to the choice of a Regulation as the instrument for implementing most of the proposed reforms.

Previous Committee Reports

Twelfth Report HC 71-x (2016–17), [chapter 2](#) (14 September 2016).

3 Revision of EU rules on reception conditions for asylum seekers

Committee's assessment	Legally and Politically important
Committee's decision	Not cleared from scrutiny; further information requested; opt-in decision recommended for debate on the floor of the House together with Council document 11316/16 , a proposal for a Regulation on standards for determining who qualifies for international protection, a uniform status for refugees or individuals eligible for subsidiary protection, and the content of the protection granted, Council document 11317/16 , a proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU and Council document 11313/16 , a proposal for a Regulation establishing a Union Resettlement Framework (decision reported 14 September 2016); drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Directive laying down standards for the reception of applicants for international protection (recast)
Legal base	Article 78(2)(f) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(37969), 11318/16, COM(16) 465

Summary and Committee's conclusions

3.1 The proposed Directive forms part of a wider package of asylum reforms which is intended to establish “an effective and protective” asylum system “based on harmonised rules and mutual trust between Member States”. Its purpose is twofold: to ensure that all Member States provide “sufficient and decent reception conditions” while an application for international protection is being examined, and to reduce “wide divergences” in the reception conditions currently provided by Member States. The Commission believes that these differences may create “pull factors”, drawing applicants to Member States offering more generous conditions and making it harder to ensure a more equitable distribution of asylum seekers amongst Member States. The proposal takes the form of a Directive rather than a Regulation as the Commission recognises that full harmonisation is neither feasible nor desirable given the “significant differences in Member States’ social and economic conditions”.⁹ The proposed Directive is subject to the UK’s Title V (justice and home affairs) opt-in, meaning that it will only bind the UK if the Government decides to opt in.

3.2 As explained in the first chapter of this Report, the Commission’s asylum reform package has been presented in two phases. This proposal forms part of the second phase of asylum reforms which concern changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims

9 See p.6 of the Commission’s explanatory memorandum accompanying the proposed recast Directive.

and how asylum seekers are to be treated while their claims are being examined, as well as a proposal for a structured EU resettlement framework which is intended to reduce the flow of irregular migrants by providing safe and legal pathways to the EU for third country nationals who are in need of international protection. In September, we agreed to recommend an opt-in debate on these proposals and made clear that it should consider the merits of the Commission's reform package, the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, and the wider implications for the UK once it has left the EU. We asked the Immigration Minister (Mr Robert Goodwill) to:

- assess the strength of the argument put forward by the Commission to justify EU action and come to a clear conclusion on the relative benefits of regulating at EU or national level;
- comment on the feasibility of drawing a meaningful distinction between an “adequate” and a “dignified” standard of living, as envisaged in the proposed Directive, and whether such a distinction is made in the UK's domestic asylum laws;
- indicate whether the degree of oversight of national asylum systems envisaged for the proposed EU Asylum Agency is appropriate and necessary to secure effective convergence in the provision of reception conditions by Member States;
- identify any elements of the Commission's reform package which the Government might wish to replicate in its own domestic asylum laws or practices once the UK has left the EU;
- explain what impact differential rules on reception conditions in the EU and the UK might be expected to have on the UK asylum system post-Brexit; and
- report back to us on other Member States' initial reactions to the Commission's reform package and on any progress made in negotiations.

3.3 As our earlier chapters indicate, we are no further forward in understanding whether or not the Government considers that there is a justified case for further harmonisation at EU level, or whether greater convergence could be sufficiently achieved through a combination of “constructive engagement” by Member States and more vigorous enforcement of existing asylum rules by the Commission. We ask the Minister to clarify the Government's position during the opt-in debate we have recommended on this and other proposals forming part of the Commission's second phase of asylum reforms.

3.4 We also ask the Minister to address the broader questions we have raised about the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, given the emphasis placed by the Commission on their interdependence, as well as the wider implications of the reform package for future cooperation with EU partners on asylum and migration once the UK has left the EU.

3.5 Pending the opt-in debate and further details of the Government's opt-in decision, the proposed Directive remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

Proposal for a Directive laying down standards for the reception of applicants for international protection (recast): (37969), [11318/16](#), COM(16) 465.

Background

3.6 Our Twelfth Report (agreed on 14 September) describes the UK's patchwork participation in EU asylum measures, the main changes proposed by the Commission to the existing EU Reception Conditions Directive and the Government's view.

The Minister's letter of 8 November 2016

3.7 The Minister explains that the Government is continuing to consider the proposed Directive and undertakes to provide "further detailed analysis" of the changes that would be needed to bring UK law into line with common EU standards, as well as an assessment of their overall impact on international protection standards in the EU, if the Government recommends opting in. He notes that we have recommended an opt-in debate on the second phase of asylum reform proposals but makes no commitment at this stage, commenting that the Government will consider our recommendation "in the normal course of business".

3.8 In our earlier Report, we asked the Minister to explain whether and how unilateral national action rather than greater harmonisation at EU level would produce the degree of convergence in reception conditions needed to prevent secondary movements on the scale witnessed in the EU in recent months. He responds:

"Member States have a responsibility to engage constructively on the issue, ensuring that unilateral action brings consistency. Furthermore, we recognise there is a role for the Commission to play in ensuring greater consistency but we remain cautious of the need for a directly applicable Regulation as the instrument."

3.9 We noted that provisions of the proposed Directive on material reception conditions continue to draw a distinction between a level of support ensuring "an adequate standard of living" and more limited support (imposed as a sanction for non-compliance with the conditions set out in the proposal) ensuring "a dignified standard of living". We asked the Minister whether he believed that a meaningful distinction could be drawn between an "adequate" and a "dignified" standard of living and whether such a distinction is made in the UK's domestic asylum laws. He replies:

"I agree that it would be difficult to make a meaningful distinction between the two types of support. In domestic legislation (Part 6 of the Immigration and Asylum Act 1999) the test is to provide 'adequate' accommodation and other support to cover the person's 'essential living needs' (in practice met through providing a weekly cash payment of £36.95 per person). The support can be suspended or discontinued as a sanction if there is a breach of the conditions attached to it, but there is no separate form of support provided according to a different legal standard in the circumstances."

3.10 Turning to the role envisaged for the proposed new EU Asylum Agency (EUAA) in promoting “a uniform implementation of reception standards”, the Minister comments:

“The European Asylum Support Office (EASO) was established to strengthen practical cooperation on asylum matters amongst Member States and to coordinate the provision of operational support to Member States. The Government position is that the Commission could have played a role in ensuring greater convergence in reception conditions without the need for a new instrument. From a UK perspective, we have concerns with the proposed extension of the mandate of the EUAA with regard to monitoring and evaluation of national asylum systems; we have always been clear that decisions on Member States’ national asylum systems are a sovereign matter. I believe there is an argument that EUAA resources would be better spent in a supportive rather than evaluative role, however I note that there is also some value in greater oversight of certain Member State systems where improvements are needed.”

3.11 The Minister tells us that discussions are continuing within Council working parties on the first phase of asylum reform proposals and reports “divergent views” on the Dublin and EU Asylum Agency proposals. By contrast, Member States are “broadly aligned” on the Eurodac proposal, welcoming changes which will improve the management of illegal migration and support returns. He expects the Eurodac proposal to have a smoother passage than the others, but notes that there are unresolved issues concerning the use of Eurodac data for law enforcement purposes. Comprehensive discussions on the second phase of asylum reform proposals are due to begin later this month. The Minister reports that a number of Member States share the UK’s concerns, particularly with regard to the choice of a Regulation as the instrument for implementing the bulk of the proposed reforms.

Previous Committee Reports

Twelfth Report HC 71-x (2016–17), [chapter 3](#) (14 September 2016).

4 Establishing an EU framework for the resettlement of individuals in need of international protection

Committee's assessment	Legally and Politically important
Committee's decision	Not cleared from scrutiny; further information requested; opt-in decision recommended for debate on the floor of the House together with Council document 11316/16 , a proposal for a Regulation on standards for determining who qualifies for international protection, a uniform status for refugees or individuals eligible for subsidiary protection, and the content of the protection granted, Council document 11317/16 , a proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU and Council document 11318/16 , a proposal for a Directive laying down standards for the reception of applicants for international protection (recast) (decision reported 14 September 2016); drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation establishing a Union Resettlement Framework
Legal base	Article 78(2)(d) and (g) TFEU; ordinary legislative procedure; QMV
Department	Home Office
Document Numbers	(37966), 11313/16, COM(16) 468

Summary and Committee's conclusions

4.1 Since the beginning of 2016, more than 4,000 individuals have lost their lives crossing the Mediterranean to Europe.¹⁰ Resettlement is intended to provide individuals who are fleeing persecution or armed conflict with a safe and legal means of entry to a country of refuge, without the need to resort to treacherous journeys over land and sea. Resettlement also cuts off at source the people smuggling networks which exploit the vulnerability of migrants, mitigates the risk of large-scale and spontaneous (unplanned) inflows of irregular migrants, and helps to alleviate the pressure on countries and regions hosting a disproportionate number of displaced individuals.

4.2 The proposed Regulation would establish a new EU framework for resettlement which, the Commission believes, will contribute to a gradual “scaling up” of Member States’ collective resettlement efforts, enable the EU to contribute more effectively to global resettlement initiatives by making a single, EU-wide resettlement pledge, and “discourage

10 See the latest [Missing Migrants update](#) produced by the International Organisation for Migration.

irregular and dangerous journeys and save lives” by offering “alternative legal pathways”.¹¹ The proposal is subject to the UK’s Title V (justice and home affairs) opt-in, meaning that it will only bind the UK if the Government decides to opt in.

4.3 As explained in the first chapter of this Report, the proposed Regulation forms part of a wider package of asylum reforms which has been presented in two phases. This proposal forms part of the second phase of asylum reforms which also includes changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined. In September, we agreed to recommend an opt-in debate on the second phase of asylum reform proposals and made clear that it should consider the merits of the Commission’s reform package, the legal, practical and political feasibility of opting into some, but not all, of the reform proposals, and the wider implications for the UK once it has left the EU. We asked the Immigration Minister (Mr Robert Goodwill) to:

- clarify the Government’s position on the EU’s competence to act on resettlement;
- provide his assessment of the justification advanced by the Commission for EU action on resettlement;
- indicate whether the Commission’s choice of a directly applicable Regulation raises sovereignty concerns;
- explain why he draws a distinction between internal and external displacement as a factor in determining eligibility for resettlement;
- explain why he considers that the proposed Regulation would establish a “mandatory redistributive mechanism” despite wording suggesting that Member States would be able to determine individually the scale of the contribution they wish to make;
- provide further information on the financial implications for the UK if it were to lose EU funding for resettlement;
- indicate whether there are any elements of the reform package which the Government would wish to replicate in its own domestic asylum laws or practices once the UK has left the EU;
- explain what impact differential rules on resettlement procedures in the EU and the UK might be expected to have on the UK asylum system post-Brexit; and
- report back to us on other Member States’ initial reactions to the Commission’s reform package and on any progress made in negotiations.

4.4 We also invited the Minister to respond to concerns raised with us by the International Rescue Committee, a non-governmental organisation that provides humanitarian aid to refugees and assists with resettlement.

4.5 We do not find the Minister’s analysis of the EU’s competence to act on resettlement, set out in paragraph 4.13 below, compelling. We note that the Government does not intend to challenge the validity of the Regulation (if adopted) in the Court of Justice.

11 See p.5 of the Commission’s explanatory memorandum accompanying the proposed Regulation.

4.6 The Minister tells us that the objectives which the EU resettlement framework is intended to achieve “*can equally be achieved* through close cooperation between international partners operating national resettlement schemes” (our emphasis). It follows that the Government does not accept that EU action is justified on subsidiarity grounds since the EU is only entitled to act “if and in so far as the objectives of the proposed action cannot be sufficiently achieved by Member States”.¹² We ask the Minister to explain why this important clarification of the Government’s position was not set out in his initial Explanatory Memorandum.

4.7 The Minister now appears to accept that the proposed Regulation would not introduce “mandatory redistributive mechanisms” but presents it, instead, as a future possibility which the Government would oppose.

4.8 We note the substantial funding available from the EU to support the UK’s national resettlement schemes. We ask the Minister to explain what will happen to the £28.8 million allocated for resettlement from the UK’s share of the EU Asylum, Migration and Integration Fund if the UK does not opt into the proposed Regulation. Will there be a cut in funding to the UK or will the proportion available for resettlement beyond 2016 have to be reallocated to other objectives supported by the Fund?

4.9 We are dismayed by the Minister’s unwillingness to engage with the concerns raised by the International Rescue Committee (“the IRC”), a key stakeholder in discussions on the EU’s future framework for resettlement. It is deeply disappointing that the Minister does not recognise the contribution that stakeholder submissions can make in informing the scrutiny process and ensuring that important matters of principle, policy or law are properly identified and responded to by the Government.¹³ The IRC suggests a number of amendments to the proposed Regulation. We ask the Minister to comment on the following:

- the removal of provisions which make resettlement from a third (non-EU) country conditional on cooperation in other areas of policy;
- the mandatory participation of the UN Refugee Agency, the International Organisation for Migration and civil society organisations in the High Level Resettlement Committee;
- the involvement of the European Parliament in agreeing the annual Union resettlement plan;
- the conferral of permanent legal status for resettled refugees;
- the deployment of EU teams to third countries to assist with the processing of applications for resettlement;
- the provision of mandatory pre-departure and pre-arrival cultural orientation programmes for resettled refugees; and
- the option for a Member State to agree to resettle an individual refused by another Member State.

12 See Article 5(3) of the Treaty on European Union which defines the principle of subsidiarity.

13 Our Standing Order requires us to report our opinion on the legal and political importance of each document we examine and, where appropriate, to report on any matters of principle, policy or law which may be affected.

4.10 The IRC calls for the EU to resettle “a minimum of 108,000 refugees a year over five years”. Does the Minister agree that this figure represents “the EU’s fair and achievable share” of its global responsibility towards refugees? If the UK does not opt into the proposed Regulation, the IRC suggests that the Government should expand its existing national resettlement programmes with a view to resettling “15,608 refugees a year over five years”—a figure equating to “24 refugees per year per parliamentary constituency”. What is the Government’s view? We would also welcome further information on the Government’s position on humanitarian visas and on private sponsorship schemes.

4.11 Pending the opt-in debate and the further information we have requested, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

Proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No. 516/2014: (37966), [11313/16](#), COM(16) 468.

Background

4.12 Our Twelfth Report (agreed on 14 September) describes the UK’s patchwork participation in EU asylum measures, the main elements of the EU resettlement framework proposed by the Commission and the Government’s view.

The Minister’s letter of 9 November 2016

4.13 In our earlier Report we noted that the Minister’s predecessor (James Brokenshire) had told us in February that “there is no competence in the Treaties for the EU to act on resettlement and that this should be left to Member States”.¹⁴ By contrast, the Minister’s own Explanatory Memorandum on the proposed Regulation stated that “there is no *explicit* competence under the EU Treaties for the EU to act on resettlement” (our emphasis), leaving open the possibility that there may be an *implied* competence to act based on the powers given to the EU to develop a common policy on asylum, subsidiary and temporary protection. We asked the Minister whether the Government accepted that the EU had the necessary competence to act and, if the EU lacked competence, whether the Government would wish to challenge the validity of the Regulation (if adopted) in the Court of Justice, or whether it would be sufficient for the UK not to opt in. The Minister replies:

“The Commission argues that there is a legal basis for this legislative procedure relating to Article 78 (2) of the TFEU based on points (d) (common procedures), and (g) (partnership and cooperation with third countries). We consider that point 78(2)(d) (common procedures) refers to procedures which Member States may put in place for the granting of status, such as those set out in the Procedures Directive or Qualification Directive, rather than resettlement. We consider that point 78(2)(g)(partnership and cooperation with third countries) constitutes cooperation with third

14 See para 13 of the [Explanatory Memorandum](#) of 1 February 2016 submitted by the then Immigration Minister (James Brokenshire).

countries on upstream intervention methods to help control EU migration; for example the discussions over an upstream processing centre in Niger, rather than resettlement. The Government does not intend to challenge the validity of the Regulation in the European Court of Justice (ECJ), but we will take this issue into account when considering our opt-in decision.”

4.14 We asked the Minister to consider whether the objectives of the proposed EU resettlement framework—reducing divergences in national resettlement practices and procedures, increasing the EU’s influence in policy dialogues with third countries, and alleviating the pressure on countries hosting a disproportionate number of displaced individuals—could be sufficiently achieved by Member States themselves or warranted action at EU level. We also sought his view on the Commission’s assertion that the adoption of an EU resettlement framework would help to “scale up” Member States’ collective resettlement efforts and strengthen the EU’s contribution to global resettlement initiatives. He comments:

“The Government is of the view that resettlement schemes operated at a national level are preferable as they allow for greater control and flexibility over both the source countries to be resettled from and the resettlement process. We are of the view that the stated reasons for action at an EU-level, such as alleviating pressures on countries hosting a disproportionate number of displaced individuals, gaining influence in policy dialogues with third countries, and improving the resettlement process, can equally be achieved through close cooperation between international partners operating national resettlement schemes. National schemes also allow resettlement efforts to be aligned with the domestic and international priorities of individual Member States.”

4.15 The Minister says that the Commission’s choice of a directly applicable Regulation to implement the proposed EU resettlement framework is a matter of concern:

“A Regulation, by its nature, restricts flexibility and has implications for national sovereignty in this policy area. We therefore anticipate that the negotiations in Council will be complex, as some Member States seek to maintain their sovereignty in this policy area.”

4.16 We asked the Minister to explain why he considered it necessary to draw a distinction between internal and external displacement, given that the purpose of resettlement—to discourage dangerous and illegal journeys—would apply equally to both categories. He replies:

“Although the causes of internal displacement are often similar to those of international displacement, an individual does not qualify as a refugee if they have not crossed an international border. Currently, internally-displaced persons are not eligible for third country resettlement under the UNHCR’s auspices. This is relevant in terms of the extent to which the Commission proposes to rely on UNHCR for referrals under the scheme, and more broadly the viability of establishing resettlement operations to third countries for individuals within their own country.”

4.17 We questioned whether the Minister was correct in suggesting that the proposed Regulation would establish “mandatory redistributive mechanisms” similar to those already in place for the relocation of asylum seekers within the EU.¹⁵ He comments:

“The proposal states that the total number of people to be resettled in a given year and the countries to be resettled from will be decided by the Council and set out in annual Union resettlement plans. We welcome the fact that Member States will be involved in deciding the numbers to be resettled, but it is not clear whether Member States will retain full control over how many people are to be resettled to their country in a given year. We therefore restate our opposition to mandatory redistributive mechanisms, should this be proposed in future as a way to meet the targets set in the annual Union resettlement plan.”

4.18 We noted that the proposed Regulation would cut off EU funding for resettlement based on purely national schemes. We asked the Minister to quantify the potential loss based on the proportion of existing UK resettlement activity which depends on EU funding. He replies:

“The UK received a total of £18.5 million for the calendar years 2014 and 2015 from the EU budget as a result of pledging to resettle refugees as part of our resettlement schemes. In addition, the UK has allocated a further £28.8 million of funding for resettlement activities from the UK main allocation for the Asylum Migration and Integration Fund (AMIF) for the financial year 2014/15 through to 2018/19. The total spent on resettlement schemes in financial years 2014/15 and 2015/16 was £9 million and £24 million respectively. This includes the Gateway, Mandate and the Syrian VPR scheme. As you’ll be aware, our commitment on resettlement increased significantly in October 2015 with the announcement of an expansion of the Syrian VPR to resettle 20,000 individuals over the course of the Parliament. No EU funding has been put towards the Syrian VPR since its expansion. The acceptance of pledges of additional resettlement places for the periods 2016–2017 and 2018–2020 have been put on hold by the EU pending proposed changes to resettlement activity across the EU.”

4.19 The Minister sets out the main concerns raised by Member States during initial discussions on the proposed Regulation within the Asylum Working Party at the end of September:

- whether participation in the scheme would be voluntary—several Member States consider that it should be;
- the legal base; and
- the inclusion of internally displaced people.

4.20 Finally, the Minister indicates that “the Government does not routinely comment on third party reports as part of the scrutiny process” and refrains from addressing any of the concerns raised with us by the International Rescue Committee.

15 See para 21 of the Minister’s Explanatory Memorandum.

Previous Committee Reports

Twelfth Report HC 71-x (2016–17), [chapter 4](#) (14 September 2016).

Formal Minutes

Wednesday 23 November 2016

Members present:

Sir William Cash, in the Chair

Peter Grant

Mr Andrew Turner

Kate Green

David Warburton

Michael Tomlinson

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 4.20 read and agreed to.

Resolved, That the Report be the Twentieth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 7 December at 1.45pm.]

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)
[Geraint Davies MP](#) (*Labour/Cooperative, Swansea West*)
[Steve Double MP](#) (*Conservative, St Austell and Newquay*)
[Richard Drax MP](#) (*Conservative, South Dorset*)
[Peter Grant MP](#) (*Scottish National Party, Glenrothes*)
[Kate Green MP](#) (*Labour, Stretford and Urmston*)
[Kate Hoey MP](#) (*Labour, Vauxhall*)
[Calum Kerr MP](#) (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*)
[Stephen Kinnock MP](#) (*Labour, Aberavon*)
[Craig Mackinlay MP](#) (*Conservative, South Thanet*)
[Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)
[Graham Stringer MP](#) (*Labour, Blackley and Broughton*)
[Michael Tomlinson MP](#) (*Conservative, Mid Dorset and North Poole*)
[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)
[David Warburton MP](#) (*Conservative, Somerset and Frome*)
[Mike Wood MP](#) (*Conservative, Dudley South*)

The following members were also members of the Committee during the parliament:

Nia Griffith MP (*Labour, Llanelli*), Rt Hon Damian Green MP (*Conservative, Ashford*),
 Kelvin Hopkins MP (*Labour, Luton North*), Alec Shelbrooke MP (*Conservative, Elmet and Rothwell*),
 Kelly Tolhurst MP (*Conservative, Rochester and Strood*), Heather Wheeler MP (*Conservative, South Derbyshire*)