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European Union Committee

25th Report of Session 2008–09

The Stockholm Programme: home affairs

Report with Evidence

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Oral Evidence

Mr Phil Woolas, Minister of State, Home Office; Ms Emma Gibbons, International Directorate, Home Office; Ms Emma Haddad, International Policy Directorate, UK Border Agency, and Mr Kevin Fraser, Head of EU and International Data Protection Policy, Ministry of Justice

Oral Evidence, 14 October 2009

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References in the text of the Report are as follows:

(Q) refers to a question in oral evidence

The Stockholm Programme: home affairs

Introduction

1. The Treaty of Amsterdam provided that, in order to establish progressively an area of freedom, security and justice (FSJ), the Council should within five years adopt measures on the free movement of persons, together with related measures on external border controls, asylum and immigration. These first pillar measures were contained in Title IV of the Treaty establishing the European Community (TEC), and were subject to the Protocol on the position of the United Kingdom and Ireland.¹ They therefore applied—and still apply—to the United Kingdom only if the Government notify the President of the Council within three months of a proposal being put forward that the United Kingdom wishes to take part in the measure. This is the United Kingdom opt-in.
2. The Treaty of Amsterdam also provided, by amendment of the Treaty on European Union (TEU), for common action by the Member States in the fields of police and judicial cooperation in criminal matters. This is the third pillar. Measures on these topics require unanimity, and the opt-in does not apply.
3. The European Council met at Tampere in Finland on 15–16 October 1999 and adopted the first five-year programme on justice and home affairs for the years 2000 to 2004 inclusive. In June 2004 the Commission published a Communication setting out its views on the future of EU action in the field of FSJ for the following five years. After discussion in the European Parliament and in Justice and Home Affairs (JHA) Councils, a new five-year programme was adopted by the European Council on 4–5 November 2004—the Hague Programme.²
4. Five years later, the same process is being repeated. On 10 June 2009 the Commission published a Communication to the European Parliament and the Council entitled “An area of freedom, security and justice serving the citizen”. This was considered at an informal JHA Council on 16–17 July 2009. The Swedish Presidency has prepared a draft of a new five-year programme—the Stockholm Programme—based on the Commission Communication, and this is likely to be approved by the Justice and Home Affairs Council on 30 November, and adopted by the European Council on 10–11 December 2009. This programme will then form the agenda for EU justice and home affairs legislation from 2010 to the end of 2014.
5. In this brief inquiry, conducted by Sub-Committee F,³ we have looked only at the home affairs content of that Communication.⁴

¹ The Treaty of Amsterdam entered into force on 1 May 1999. Article 12 of the Treaty provided for the renumbering of Titles and Articles, and it is this revised numbering which we use.

² The Hague Programme was the subject of a report by this Committee entitled *The Hague Programme: a five year agenda for EU justice and home affairs* (10th Report, Session 2004–05, HL Paper 84). The inquiry was conducted jointly by Sub-Committees E (Law and Institutions) and F (Home Affairs).

³ The members of the Sub-Committee are listed in Appendix 1.

6. With the entry into force of the Treaty of Lisbon all third pillar matters will, instead of requiring unanimity among the Member States, be adopted by qualified majority voting in the Council and codecision with the European Parliament. Virtually all initiatives under the Stockholm Programme will then apply to the United Kingdom only if the Government opt in.⁵

The Future Group

7. In January 2007, less than half way through the Hague Programme, the German Minister of the Interior, Dr Wolfgang Schäuble, and the then Commissioner for Justice, Freedom and Security, Franco Frattini, suggested the formation of an informal High Level Advisory Group on the Future of European Home Affairs Policy. “The purpose of the Group was to draft a political report with recommendations that will serve as a source of ideas for the European Commission and the Member States in preparing a new programme for the design of European Union policies in the area of home affairs after 2010. It especially examined areas where more cooperation is needed at European level, because there is an added value compared to national action, and areas where, for the period of 2009–2014, European action is considered less urgent for the time being.”⁶
8. The group, which called itself the Future Group, consisted of the Commissioner for Justice, Freedom and Security (first Franco Frattini, then Jacques Barrot) and the interior ministers of Germany and the five subsequent Presidencies: Portugal, Slovenia, France, the Czech Republic and Sweden.⁷ Its report was considered at the JHA Council on 5–6 June 2008. In a written statement the Secretary of State for Justice reported that “Member States also congratulated the Presidency on the work of the Interior Future Group, considering ideas for inclusion in the new JHA work programme when the current programme expires at the end of 2009. Migration was stressed by many as the top priority for future work in JHA”.⁸
9. **Given the importance of the work of this group, and its influence on the preparation of the programme, it is unfortunate that its work was conducted without any sort of public consultation or involvement,⁹ and that the report it produced in June 2008 received scarcely any publicity, and indeed is barely accessible to the public.¹⁰**

⁴ No similar inquiry has been conducted by Sub-Committee E into the matters within their remit, but the House of Commons Justice Committee is conducting an inquiry into those matters.

⁵ We discuss this important change more fully in Chapter 6 of our report *The Treaty of Lisbon: an impact assessment* (10th Report, Session 2007–08, HL Paper 62). The Commission Communication makes no reference at all to the Treaty of Lisbon. The Presidency draft of 16 October 2009 contains references to the Treaty, but none to the special position of the United Kingdom.

⁶ Future Group report, Chapter 1, paragraph 10.

⁷ In addition Baroness Scotland of Asthal, the Attorney-General, attended as an observer on behalf of the common law countries, and there were observers from the three forthcoming Presidencies (Spain, Belgium and Hungary), the European Parliament and the Council Secretariat.

⁸ House of Lords Official Report, 17 June 2008, col. WS 71.

⁹ For other criticisms of a similar lack of public consultation in EU home affairs, see our reports *Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm* (40th Report, Session 2005–06, HL Paper 221) and *Prüm: an effective weapon against terrorism and crime?* (18th Report, Session 2006–07, HL Paper 90).

¹⁰ A summary of the report can be found on the website of the German Federal Ministry of the Interior http://www.bmi.bund.de/cae/servlet/contentblob/128608/publicationFile/8341/European_home_Affairs_executive_summary_en.pdf, but the full report is easily accessible only on the website of Statewatch: <http://www.statewatch.org/news/2008/jul/eu-futures-jha-report.pdf>.

The Stockholm Programme: a brief outline of home affairs

10. One intention of those instrumental in setting up the Future Group was to make sure that, in the field of home affairs, action on immigration and asylum remained at the top of the agenda. In this they succeeded. More than half of the initiatives suggested by the Commission are in the field of justice rather than home affairs, and hence outside the scope of this inquiry. But within the field of home affairs the greatest emphasis is placed on immigration and asylum matters, as appears from the Annex to the Commission Communication set out in Box 1.

BOX 1

Commission Communication: priority issues

Promoting a more integrated society: a Europe that displays responsibility and solidarity in immigration and asylum matters

The EU needs to promote a dynamic and fair immigration policy.

It must fully exploit and develop the global approach with a view to concerted management of migration in partnership with non-member countries. Migration issues are an integral part of EU external policy.

The EU should promote the positive effects of migration for the development of the countries of origin.

The Union needs a common framework for a flexible admission system for migrants that will enable it to adapt to increased mobility and the needs of national labour markets.

To maximise the positive effects of legal immigration for the benefit of all, the EU must adopt an immigration code and common rules in order to effectively manage family reunification and support the Member States' integration efforts through a joint coordination mechanism.

Better controls on illegal immigration are an essential counterpart to the development of a common policy on legal immigration. The EU must combat illegal employment and pursue an effective policy on removal and return, making full use of existing instruments. The EU must promote voluntary return and pay particular attention to unaccompanied minors. It must become a true common area offering protection and solidarity with a single asylum procedure and a uniform international protection status.

It should provide for a true sharing of the responsibility for hosting and integrating refugees, including the setting-up of a voluntary mechanism for redistribution between Member States and common processing of asylum applications. Strict controls and a proper application of the *acquis* that would ensure the credibility of the common European asylum system and inspire trust among the Member States are needed. In the longer term, the principle of mutual recognition of all decisions granting protection status would facilitate transfers of protection.

The EU must step up operational cooperation by giving the Asylum Support Office the means to do its job.

An asylum policy based on solidarity with non-member countries faced with major inflows of refugees should be pursued. The EU should extend regional protection programmes and step up resettlement efforts.

11. Other areas of home affairs where the Commission would like to see progress made over the next five years are:
- data protection;
 - the fight against organised crime, including improvement of methods for seizing the proceeds of crime;¹¹
 - strengthening civil protection and critical infrastructure protection;¹²
 - the fight against terrorism, including a strategy for dealing with CBRN attacks (chemical, biological, radiological and nuclear).

The evidence of the minister

12. We reproduce in Appendix 2 the relevant parts of the Government's Explanatory Memorandum on the Commission Communication, signed by the Home Secretary, the Rt Hon Alan Johnson MP, who welcomed the Communication, and was broadly supportive of the Commission proposals. Phil Woolas MP, a Minister of State at the Home Office and the Minister for Immigration, supplemented the views set out in the Memorandum when he gave oral evidence to us on 14 October 2009. We are grateful to him and to his officials for their assistance. A transcript of their evidence is annexed to this report. We comment here on a few of the more important points they made.

A five-year programme

13. In his opening remarks the minister said: "We like the idea that there is a five-year programme, we think it makes for good sense ... from the United Kingdom's view in particular because it enables us to say to our colleagues, 'Can we please put into practice and make work what we have already agreed before we start to do other things that may be a bit ambitious or we may not have to do at this stage?' To have that five-year programme is good. I think the Swedish Presidency is doing a superb job in directing that. We think that the proposals emerging from the Commission are moving in our direction in that they are increasingly of a pragmatic nature to help us particularly assist in tackling organised crime and terrorism which, as you know, is our first priority, but also managing asylum and migration and how we can do that in the context of the free movement from which our country benefits" (Q 4).
14. **We agree that a five-year programme is valuable in focusing the direction of future work on EU home affairs. We hope to see early action on the proposals from the Commission.**

Opt-ins

15. As we have said, once the Treaty of Lisbon comes into force virtually all legislation in justice and home affairs will be subject to the United Kingdom opt-in. We asked the minister whether he had made preparations for the more complex negotiating process that would exist when the Treaty entered into force, to which he replied: "The British Government is not working on

¹¹ We have made recommendations on confiscation of the proceeds of crime in Chapter 3 of our recent report *Money Laundering and the financing of terrorism*, 19th Report, Session 2008–09, HL Paper 132.

¹² See our report *Civil Protection and Crisis Management in the European Union*, 6th Report, Session 2008–09, HL Paper 43.

the assumption that it will come into force, we are working on the assumption that it may come into force ...” (Q 8). If this is indeed the Government’s position, we believe ministers would do well to plan their future negotiating strategies now. They should also bear in mind the more stringent conditions of Parliamentary scrutiny to which they are committed.¹³

Immigration and asylum

16. The Communication states: “The EU has made great progress towards creating a common European asylum regime ... The legislative proposals of the second phase of harmonisation need to be adopted quickly with the aim of establishing a single asylum procedure and a uniform international protection status no later than 2012.”¹⁴ We asked the minister whether he thought this was a realistic timetable. He was cautious, but thought it was achievable (Q 17).
17. The Commission refers to expanding the European Asylum Support Office (EASO) after 2013, following an evaluation. The minister pointed out that, although the argument for a pragmatic, operational office rather than a policy office had been won, the office had yet to be set up; there was as yet no headquarters and no director (Q 21). He agreed that the United Kingdom country of origin information system could usefully be incorporated in the EASO (Q 24).
18. The Commission states that “an effective policy on removal and return in accordance with the law and with human dignity has to be formulated.”¹⁵ Given that the Member States (though not the United Kingdom) have after three years of intermittent negotiation agreed a Directive on returns policy which will come into force in December 2010, this suggests that in the view of the Commission—a view which we would share¹⁶—the Directive will either not be effective, or is not in accordance with human dignity: perhaps both. The minister explained to us, as Home Office ministers have done previously, that the Government’s policy was that those with no legal right to be in this country should if possible return to their country of origin voluntarily, but that return would if necessary be enforced (Q 25). We hope that if there are new initiatives on returns under the Stockholm Programme the Government will consider afresh whether the United Kingdom should take part in them.
19. The minister told us: “Our goal in the Stockholm Programme is that we would like to see commitments to protect those who need asylum and to deter those who do not, and to cut the illegal immigration at source through practical cooperation with third countries” (Q 34). We put to him the specific case of transit through Libya. The goal, he said, was “to close the route so the problem goes away”.

¹³ See our report *Enhanced scrutiny of EU legislation with a United Kingdom opt-in*, 2nd Report, Session 2008–09, HL Paper 25.

¹⁴ Paragraph 5.2.1.

¹⁵ Paragraph 5.1.4.

¹⁶ We reported on the first draft of the proposed Directive in our report *Illegal Migrants: proposals for a common EU returns policy*, 32nd Report, Session 2005–06, HL Paper 166. The United Kingdom did not opt in. The final (and very different) text was not received from the Home Office in time for it to be considered by this Committee before it was adopted.

Data protection

20. On 10 July 2009 the European Data Protection Supervisor (EDPS) issued a lengthy formal Opinion assessing the Commission Communication. While much of it was positive, he took the view that there was a need for reflection to “take into account the costs for privacy and the effectiveness for law enforcement, in the first place when new instruments are proposed and discussed, but also after those instruments are implemented, by means of periodic reviews. Such reflection is also essential before a new multi-annual programme is to set out main initiatives for the near future.”¹⁷ The minister said that he agreed with this, adding: “We have also said that before any other new initiatives the European Union should analyse the future need by identifying the key information requirements alongside the competent authorities; how they should be delivered; how we can move towards more inter-operability; and from January 2010 what the impacts on people’s privacy should be and how we could assess that” (Q 41). But, he added, there had as yet been no assessment of the additional advantages to be derived from a comprehensive data protection scheme after the entry into force of the Treaty of Lisbon (Q 45).

Conclusion

21. We make this report to the House for information. We hope that, in their response, the Government will give us their views on the Programme as finally adopted. This may then be an appropriate topic for debate.

¹⁷ http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2009/09-07-10_Stockholm_programme_EN.pdf, paragraph 20.

APPENDIX 1: SUB-COMMITTEE F (HOME AFFAIRS)

The members of the Sub-Committee which conducted this inquiry were:

Lord Avebury
Lord Dear
Baroness Garden of Frognal
Lord Hannay of Chiswick
Lord Harrison
Baroness Henig
Lord Hodgson of Astley Abbotts
Lord Jopling (Chairman)
Lord Marlesford
Lord Mawson
Lord Richard

Declarations of Interests:

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

Interests declared by Members relevant to the inquiry:

Lord Hannay of Chiswick
Member, Advisory Board, Centre for European Reform

APPENDIX 2: EXPLANATORY MEMORANDUM

Explanatory Memorandum on the Communication from the Commission to the European Parliament and the Council—An area of freedom, security and justice serving the citizen

Submitted by the Home Office on 30 June 2009

Subject matter

1. The current five-year work programme for the European Union in the Justice and Home Affairs area, known as the Hague Programme, comes to an end in 2010. This Communication sets out what the Commission considers to be the priorities for Justice and Home Affairs for the next five years, as a contribution to further discussion within the Council, led by the Presidency.
2. They identify the four key priority themes against which all future EU JHA work, including any specific proposals, should be gauged. These are:
3. **Promoting citizens' rights—a Europe of rights:** The Commission envisages a single area in which fundamental rights are protected, and in which respect for the human person and human dignity, and for the other rights reflected in the Charter of Fundamental Rights, is a core value. The citizen's privacy must be preserved beyond national borders, especially by protecting personal data; allowance must be made for the special needs of vulnerable people; and citizens must be able to exercise their specific rights to the full, such as the right to vote and the right to consular protection.
4. **Making life easier—a Europe of justice:** The achievement of a European area of justice must be consolidated. Priority should be given to mechanisms that facilitate people's access to the courts, so that they can enforce their rights throughout the Union. Where contracts and commerce are concerned, this should give those involved in economic life the tools they need to take full advantage of the opportunities offered by the single market. Cooperation between legal professionals should also be improved, and resources should be mobilised to put an end to barriers to the recognition of legal acts in other Member States.
5. **Protecting citizens—a Europe that protects:** A domestic security strategy should be developed in order to further improve security in the Union and thus to protect the life and safety of European citizens. The strategy should be aimed at strengthening cooperation in police matters and law enforcement and making entry to Europe more secure. Tougher, more coordinated action is needed particularly to combat organised crime and terrorism.
6. **Promoting a more integrated society for the citizen—A Europe of solidarity:** Consolidating and putting into practice a policy on immigration and asylum that guarantees solidarity between Member States and partnership with non-Union countries. The policy should offer legal immigrants a clear and uniform status. A closer match should be developed between immigration and the needs of the European labour market, along with targeted integration and education policies. The practical use of the tools available to combat illegal immigration should be improved. The Union should also move towards a common asylum system and insist on burden-sharing and solidarity between Member States in this area.

7. The Communication also carries examples of priority measures or specific innovations which can deliver these policy themes as tangible and visible benefits to citizens. These are:

- Introduce a comprehensive scheme to ensure better data protection in the European Union;
- Completely abolish intermediate procedures (exequatur) for enforcing civil and family court decisions issued in another Member State;
- Extend the principle of mutual recognition in criminal matters, particularly to other types of judgment such as those imposing disqualifications;
- Set up an exchange programme for police officers and improve the scheme that already exists for the judiciary and judicial staff (Erasmus programme for the police and the judiciary);
- Strengthen procedural guarantees in criminal cases;
- Develop a domestic security strategy for the European Union;
- Create an information system architecture that will help to improve the exchange of information between European police forces;
- Improve the evaluation of European judicial policies and support the efforts of the Member States to improve the quality of their judicial systems;
- Ensure a flexible immigration policy that is in line with the needs of the job market whilst at the same time support the integration of immigrants and tackle illegal immigration;
- Enhance solidarity between Member States for hosting refugees and asylum-seekers; and
- Increase the research effort in the area of security technologies.

[Paragraphs 8–18 deal with technical scrutiny issues]

Policy Implications

19. The Government welcomes the Commission Communication and fully supports the continuation of the Justice and Home Affairs work programme for another five years. Further advances in practical co-operation between law enforcement, courts and immigration services have the potential to make an even greater impact, by making a real difference to people's lives and delivering tangible benefits to citizens.

20. There is much we can support in the substance of the Communication, in particular measures proposed to enhance child protection, ensure a strategic approach to how we use data, better enforcement of judicial decisions across borders, the facilitation of legitimate travel and clamping down on illegal immigration, and enhanced co-operation on counter-terrorism. It is disappointing, however, that there is not a separate section on external relations. The Government believes that work on JHA matters in external relations should be conducted in a more coherent and strategic way to get maximum value. We will try to ensure that the final text, to be agreed in December, includes ambitious language on external relations.

21. In its introduction the Communication sets out the tools the Commission believes are needed to implement successfully the next work programme. The Government supports the focus here on implementation and evaluation of agreed measures. It is important that we understand the impact of EU legislation before pursuing further activity. We would also like to improve further the analysis provided by the Commission before new legislative and non-legislative proposals are presented. There should, over the course of the next five years, be an emphasis on practical action and legislative proposals should only be brought forward where there is a and realistic chance of agreement and where they will add value.

22. The Government welcomes the Commission's focus on "constructing a Europe of the Citizen" as the central theme of the programme and supports the continued emphasis on the importance of protecting fundamental rights. The Government supports the strong emphasis on promotion of citizens' rights, including through EU accession to the European Convention on Human Rights if the Lisbon Treaty comes into effect and Protocol 14 to the European Convention on Human Rights is ratified. An ambitious strategy is foreseen on the rights of the child, with reinforced work on protection of vulnerable people. The Communication also proposes measures to encourage participation in European Elections 2014 – including the idea of aligning all European Parliament election days across the EU to one week around 9th May (Europe Day). The Government would want to retain flexibility in the date for holding elections to align with the electoral traditions and practical considerations in Member States.

23. The Government welcomes the continued development of consular co-operation between Member States and shares the view of the Commission that the entitlement of unrepresented EU citizens in third countries to consular assistance from other Member States' missions should be effectively communicated. However, the Government does not agree that this entitlement is correctly described as a "fundamental right". Nor do we agree that its application is neglected. The Commission describe three "key strands of reform" to strengthen co-operation in this area. The Government sees this not as a question of reform but as a case for further development, in the light of experience, of existing systems and practices. Further development of the lead State system is being taken forward by Member States. As regards the other two issues listed, the Government believes that a pragmatic approach on the basis of a commitment to co-operation and mutual support may be most effective at this stage.

[Paragraphs 24–25 deal with issues of civil justice]

26. The Government has serious reservations on the statement in the Communication calling for a certain level of alignment in Member States' laws and regulations without some reservation to ensure that this remains within competence, is necessary and appropriate and respects traditions in areas such as prosecutorial and judicial discretion, particularly in relation to criminal sanctions. The Government recognises that there may be benefit in the closer alignment of substantive law in relation to some serious crimes, generally of a cross-border nature, but we will want to consider any such proposals very carefully, with a particular focus on subsidiarity considerations. The Government supports efforts to ensure that certain, essential elements are covered but does not support common definitions of actual offences or a move away from the principle of mutual recognition.

[Paragraphs 27–33 deal with issues of civil justice]

34. The Commission proposes a European policy on the fight against organised crime. Five key areas of organised crime will be targeted: human trafficking, sexual exploitation of children, cybercrime, financial crime and drug trafficking. On customs, the Communication proposes the introduction of a model centre of police and customs co-operation.

35. The Government supports the idea of an EU-wide policy on the fight against serious organised crime, and recommends the creation of a new EU serious and organised crime strategy that deals with the issue holistically. We would welcome a more coherent approach to EU action in this area, taking into account organised crime, border management and counter terrorism. The new strategy should bring together the work of EU bodies connected to combating serious crime (e.g. Europol, Eurojust) and systems designed to support Member States in pursuing investigations into serious and organised crime (e.g. the Schengen Information System and PRÜM). The strategy would reflect the priorities of the Council (e.g. drugs, people trafficking) and include a focus on EU border countries.

36. The inclusion of financial crime as one of the five key areas of organised crime to be targeted is also welcomed, and the Government will seek to ensure that this and the work on mutual recognition embraces all forms of confiscation (including Non-Conviction Based Confiscation) and improved international co-operation in the confiscation field.

37. It is essential that any activity to tackle the sexual exploitation of children should be delivered within a child protection context, with the identification, location and safeguarding of child victims as a key priority. Such activity should not be skewed by perceptions of the perpetrators, as much of this offending is not carried out by criminals who fit within the traditional view of organised crime, but by individuals or collections of individuals who have deviant sexual interest in children.

38. The Commission underlines the importance of continued efforts on counter-terrorism and highlights counter radicalisation and recruitment, terrorist use of the internet and terrorist financing as their top three priorities. Work with stakeholders is emphasised, including with civil society, the private sector and non-profit organisations. The UK has led the way in pushing for counter-radicalisation, including working with communities, to be at the heart of EU action on counter-terrorism, so welcomes its inclusion in the programme. The focus should remain on practical co-operation and sharing of best practice, rather than new legislation. There is merit in continued EU level action on countering terrorist use of the internet, to which the UK has made a significant contribution. We would encourage the Commission to consider how best to implement the findings from the existing work, which is due to be released in September 2009, before embarking on any new initiatives. Whilst we support the Commission's aims in this field we believe the language used in this Communication is too strong. The Government supports continued co-operation to tackle terrorist financing, but would need more information on any recommendations on transparency / responsibility of charitable organisations before taking a firm view on this specific proposal.

39. The Government does not support the statement that “in criminal matters such as terrorism, organised crime and attacks on the Unions' financial interests, only action at European level can deliver effective results.” Action at EU level has a role to play and can serve to multiply Member States efforts, but in particular in

relation to counter-terrorism the weight of operational CT work is carried out bilaterally or multilaterally on informal channels.

40. The Government supports implementation of the European Programme for Critical Infrastructure Protection (EPCIP), and agrees with the Commission that the Information Communications and Technology sector should be the next sector to be considered for inclusion within the EPCIP Directive. However, the EU should not make any firm commitments on extension of the Directive to other infrastructure sectors until the benefits gained by implementation in the transport and energy sectors have been properly considered / assessed.

41. The Government welcomes the Chemical, Biological, Radiological and Nuclear (CBRN) element of the Communication. We accept the need to reduce the availability of CBRN materials and the need for engagement with the private sector. The Government supports implementation of the EU Action Plan on Explosives, but has reservations about the proposal for a legislative framework to address the dangers associated with precursors. The EU should not pre-empt the outcome of an ongoing Impact Assessment on potential legislative and non-legislative restrictions on chemical precursors to explosives.

42. The Government welcomes the proposal in the Communication for a European Information model founded on the strengthening of the capacity for strategic analysis and the improvement of the collection and processing of operational data, while complying with the data protection principles. The UK has led the way in pressing the European Union to evaluate existing information exchange agreements and designing an information exchange and data protection strategy to steer the direction of future proposals.

43. Information exchange is not an end in itself but a means of working towards providing greater public goods—in combating crime, in facilitating legitimate travel, in doing business abroad, and in managing identity. But it is important to strike the correct balance between private and public interests. Effective data protection must be prerequisite for information sharing, along with transparency about the collection, retention, and use of personal information.

44. The Government supports proposals to strengthen judicial co-operation and in particular the priority to be given to work to improve the exchange of criminal records to protect the public. This may not be easy as most Member States take a relatively narrow view on the use to which such information can be put, arguing that it should be limited to active criminal investigations and prosecutions. However the Government believes that information about convicted offenders should be used to prevent re-offending. To that end the Government welcomes Commission proposals for better child protection arrangements and increasing co-operation between law enforcement and the private sector to tackle online child abuse.

45. The Commission emphasises the effective application of citizens' rights to free movement is a priority. As well as obligations on Member States to transpose the rules correctly, that also means responsibilities for those who benefit from free movement rights. The Commission will issue guidelines to help Member States fight abuse of this right. The Government supports the forthcoming guidelines which we expect to be issued in July as well as the Commission's emphasis on individual responsibilities going with the right to free movement. The UK has led the way in pushing for guidelines to include criminality issues, in particular low level persistent offending.

46. Further to the guidelines the UK would like to see wider debate on the rights and responsibilities of EEA nationals as part of the Stockholm Programme, including the following areas of concern: examining options surrounding identity management to help prevent fraudulent claims for benefits and other forms of deception; working to understand EEA migration flows and improving the accuracy of projections; enhancing exchange of criminal record information between Member States and better managing the transitional impacts of future enlargement.

47. The Commission proposes that the EU work further towards a genuinely common immigration and asylum system, founded on solidarity between Member States and partnership with third countries. These priorities should, in the Commission's view, be as set out in the Migration Pact. The Government agrees that the Stockholm Programme should reflect the priorities set out in the Migration Pact. The Commission emphasises support for Member States most exposed to migration pressures and there will be an evaluation to ensure that internal financial support meets Member States' needs and is responsive to new migratory patterns.

48. The Commission calls for migration to form an integral part of the Union's external activities and asks for cooperation with third countries to be increased through the Global Approach to Migration and by making full use of migration profiles, circular migration, cooperation platforms and a reinforced role for Mobility Partnerships. The Government welcomes further discussion on the balance between migration and development, as well as the Commission's emphasis on voluntary return and reintegration, and on practical cooperation with third countries to tackle illegal immigration and people trafficking.

49. The Commission proposes that a Migration Observatory should be created, to enhance analysis and understanding of migratory flows; and an Immigration Code which will provide a single clear status for legal migrants in the EU, moving towards the rights enjoyed by European citizens. The Commission also wishes to propose revised common rules on family reunification.

50. The Government welcomes the Communication's acknowledgement that any common framework should be consistent with Member States' powers to determine the numbers of those admitted for employment purposes: as the House of Lords Select Committee's 14th report of Session 2005–06 concluded, there is no case for the micro-management of admission for employment at EU level.¹⁸ Furthermore, the Government considers that proposals for the mutual recognition of work permits issued by other Member States and for a common policy on the status of migrant workers who lose their jobs must be consistent with the UK's ability to determine who is admitted to, and who may remain on, its territory. The UK will argue that the Stockholm Programme should reflect the approach to legal migration set out in the Migration Pact, in particular focusing on labour market needs and reception capacities of the Member States, rather than seeking to create new routes for legal migration.

51. Mutual recognition of returns decisions will be considered after an evaluation of the Returns Directive and the use of Assisted Voluntary Returns will be prioritised. The UK has not opted into the Returns Directive but has opted in to the Mutual Recognition Directive. The Commission will also examine a common approach for individuals who cannot be returned.

¹⁸ *Economic Migration to the EU* (14th Report, Session 2005–06, HL Paper 58), paragraphs 79–82.

52. International protection is highlighted, in particular for migrant children, victims of trafficking or unaccompanied children. There will be an Action Plan on unaccompanied minors. This is consistent with our overall policy direction on this issue, in which we are building relationships with EU partners and proposing joint work.

53. On asylum, the EU will continue work to deliver a common asylum status and procedure by 2012. An extension of the European Asylum Support Office's tasks will be considered in 2013. The Commission envisages the development of mutual recognition of asylum decisions. It calls for enhanced solidarity between Member States – including voluntary and coordinated relocation of refugees within the EU. Permanent reception and transit centres within certain Member States are also proposed. The EU will work with third countries to build capacity for protection outside its borders. As well as calling for greater use of resettlement to provide durable solutions for refugees, the Commission proposes new procedures for protected entry and 'humanitarian visas'.

54. The Government supports the Commission's proposal to ensure stronger application of the existing asylum *acquis* by Member States. We also agree that the EU should consider extending regional protection programmes in partnership with the United Nations High Commission for Refugees, so that refugees can be better protected in their regions of origin.

55. We have reservations about the proposal to expand the role of the European Asylum Support Office in 2013. We support the *creation* of such an Office, as envisaged in the Commission's proposal of 18 February 2009, in order to promote practical cooperation between Member States. The review envisaged by the Commission seems to be prejudged in favour of an expansion of the Office's role when no case for that has been made. We remain firmly opposed to giving the Support Office decision making powers.

56. We also have serious reservations about the mutual recognition of decisions to grant protection, as we believe that refugees should seek and obtain asylum in the first EU country that they reach, rather than being free to move on to another Member State after having their claims accepted by one.

57. Finally on the asylum proposals, we have concerns about the concept of issuing humanitarian visas at an EU level, as this could affect our ability to maintain control of our borders

58. The Commission is working on an integrated border system allowing a through flow of people into the European Union, whilst ensuring the security of its territory in the fight against illegal migration. The Visa Information System will become fully operational and a registration system facilitating entry/exit at the external border, together with a frequent traveller scheme, will be established and common consular co-operation programmes in third countries to accompany the roll-out of centres will be established.

59. The Government supports the development of integrated border management. The UK has led the way in integrating customs detection and immigration officers at the border into a unified Border Force staffed by multi-skilled officers. The Government welcomes a role for Frontex in promoting collaborative working between the European borderguard and customs authorities. The Government believes however, that should the coordination role for Frontex at the external borders of the EU be extended to the customs function as well as the borderguard function—the 'one stop shop', it will be important to ensure that the UK retains full control over customs matters which fall under national competence.

60. The Government will seek to ensure that we will work with the Commission on their entry/exit proposals as far as possible under current arrangements. We will explore the extent to which we are able to develop synergies with the proposals to ensure the greatest benefit and security for the travelling public.

61. The Government agrees that the operational capabilities of Frontex should be strengthened and looks forward to receiving the Commission proposal to introduce further legislation to amend the Frontex Regulation early next year. The Government would like to see Frontex's mandate extended to include the ability to process personal information gathered from joint operations for dissemination to Europol as this would allow more effective action against cross border crime.

62. The Government supports the Agency's role in the development of the European Border Surveillance System (Eurosur). We believe that increased border surveillance can benefit the security of the citizens of Europe by helping to counter terrorism, trafficking in persons, human smuggling and other cross border crime. Eurosur will also contribute to search and rescue operations, the identification of persons in need of international protection and the detection of illegal immigration.

63. The Commission proposes that common application centres for Schengen visas and consular services will be established in third countries. The conclusion of visa facilitation agreements will also be pursued. The UK does not participate in EU common visa policies and issuing of Schengen visas, and the UK is not bound by the visa facilitation agreements signed by the EU. However the Government welcomes moves by the EU to raise the standards of visa-issuing, including the assessment of individual risk. The usefulness of new visa facilitation agreements should be assessed before promoting their conclusion.

64. The Commission calls on Member States to unite in their efforts to fully integrate vulnerable groups, in particular the Roma, into society and emphasises that the European Union should fully implement existing legislation in the fight against discrimination. The Government agrees and welcomes the assistance provided by the EU's Integration Fund.

65. We also need to lobby on some of the more difficult ideas from the Commission (such as the expansion of the Support Office) to influence the final text.

Regulatory Impact Assessment

66. An Impact Assessment is not required on this Communication itself although IA's may be required on legislative proposals arising as a result of this Communication will need to be considered separately.

Financial Implications

67. None for this Communication itself although individual legislative proposals arising as a result of this Communication will need to be considered separately.

Consultation

68. Due to the wide ranging nature of this Communication, the Government position has been prepared in consultation across Whitehall, associated agencies, the devolved administrations and relevant stakeholders.

Timetable

69. There will be a first discussion on content of the Communication by Directors at the Article 36 Committee and the Strategic Committee on Immigration, Asylum and Frontiers at the start of July, and then by Ministers at the informal meeting of JHA Ministers in Stockholm on 16–17 July 2009. Negotiations on detail of the work programme, which will take the form of European Council Conclusions, will then continue in the autumn, to be agreed at the November JHA Council and then the December European Council. The Spanish Presidency is then expected to translate the programme into a more detailed Action Plan in early 2010.

Minutes of Evidence

TAKEN BEFORE THE EU COMMITTEE

WEDNESDAY 14 OCTOBER 2009

Present	Avebury, L. Dear, L. Garden of Frognal, B. Hannay of Chiswick, L. Harrison, L.	Henig, B. Hodgson of Astley Abbots, L. Jopling, L. (Chairman) Marlesford, L.
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Examination of Witnesses

Witnesses: MR PHIL WOOLAS, a Member of the House of Commons, Minister of State, Home Office, Ms EMMA GIBBONS, International Directorate, Home Office, Ms EMMA HADDAD, International Policy Directorate, UK Border Agency, and MR KEVIN FRASER, Head of EU and International Data Protection Policy, Ministry of Justice, examined.

Q1 Chairman: Minister, thank you very much for coming this morning to talk to us about the Stockholm Programme. I think we would otherwise have had Meg Hillier here, but she is in happy motherhood as I understand it and you have been looking after her responsibilities. We are particularly grateful for that. If I may say to you, we are extremely happy with the way that you have responded and dealt with this Committee, unlike your predecessor who I have to say irritated us beyond bounds. I will not enlarge on that except to say that to take over a year, in spite of continuous reminders, to reply to Lord Grenfell's letters was disgraceful. You have been a breath of fresh air, thank you very much indeed.

Mr Woolas: Thank you.

Q2 Chairman: I think we have not been told the names and positions of your officials. When you address us I would be grateful if you could begin by introducing them. I hope that if you wish to ask them to comment on your replies that you will not hesitate to bring them in because the Committee would appreciate that. Perhaps now I can ask you to make an opening statement if that is what you wish. If you do not particularly want to, that is fine. If you could introduce your officials that would be especially helpful.

Q3 Mr Woolas: My Lord Chairman, thank you very much indeed for your kind remarks and also for inviting my team and myself this morning. I am very grateful for what you have said. I think this area of work is extremely important for our country and proper scrutiny of it is vital in my view. The column inches that it attracts are disproportionate to its importance, but maybe that will change over the months and years. Having said thank you, can I also

say I am very conscious that you have significant experience of the ways of the European Union and I find it a very interesting but very intricate area of policy and cannot wait until Meg returns from her maternity leave as she is very well-equipped to deal with these matters. She seems to be able to charm the Europeans better than I can. I will leave you to judge why that might be. Shall I introduce the team?

Q4 Chairman: Please.

Mr Woolas: Emma Gibbons, on my left, is from the International Directorate of the Home Office. Emma Haddad, on my right, is from the International Policy Directorate of the UK Border Agency, which as you know is an agency of the Home Office. We all join up and say the same things but it is a separate agency. We are joined by Kevin Fraser, who is from the Ministry of Justice, the European Union and International Data Protection Policy Unit. I know you have got a particular interest in and questions on that area of work, so we thought that would be helpful. Thank you also for the opportunity to briefly say a few opening remarks. I know that sometimes committees do not want that, but I am grateful because I can just make a few statements to put things into context. We like the idea that there is a five-year programme, we think it makes for good sense, the Stockholm Programme building on the Hague Programme. It makes good sense from the United Kingdom's view in particular because it enables us to say to our colleagues, "Can we please put into practice and make work what we have already agreed before we start to do other things that may be a bit ambitious or we may not have to do at this stage?" To have that five-year programme is good. I think the Swedish Presidency is doing a superb job in directing that. We think that the proposals emerging from the Commission are moving in our direction in that they

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are increasingly of a pragmatic nature to help us particularly assist in tackling organised crime and terrorism which, as you know, is our first priority, but also managing asylum and migration and how we can do that in the context of the free movement from which our country benefits. I mentioned the Hague Programme and we think that the European Arrest Warrant has been a very good example of how that co-operation is of practical benefit to our people. The increased flow of information on people's previous criminal convictions is part of that and helpful. Thirdly, and particularly in my portfolio, there are the Dublin arrangements whereby we can return people to the first country within the European Union. When I took over the portfolio a year ago this week I was shocked to find that some seventeen per cent of asylum applications within the European Union were duplicate applications, in other words the same made applications in two or more countries, which is something that Dublin is addressing. As I understand it the purpose of this morning, and tell me if I am wrong, is to give an opportunity to update on where we think we are at with the Work Programme. The Commission presented its Communication to us in June and the consultation following the Communication was discussed at the Justice and Home Affairs Informal Council in July, which was in Stockholm. I remember it well: I had never been before, I was there for 24 hours and then came back. Since then we have been intensively lobbying our colleagues but there have been no formal negotiations. The Swedish Presidency is expected to circulate a draft Council conclusion on 21 October which we will of course send to the Committee as soon as we get that. Then the negotiations will take place at COREPER ahead of agreement at the Justice and Home Affairs Council on 30 November which is in Brussels in the expectation that there will be a final adoption by Heads of Government at the European Council on 10 December. That is the timetable and, therefore, the timing of the session this morning is very fortuitous. I hope that is helpful.

Q5 Chairman: Thank you, that is very helpful indeed. I wonder if I could begin by asking if you could give us a broader view of your attitude and the Government's attitude to the Commission's proposals for the five-year programme. I wonder if you could give us some indication of the mood within the Council. Sometimes it is quite difficult to get from ministers an assessment of what the views of colleagues are. You referred to my previous experience and I remember quite well that parliamentarians are very keen to know how the Council is stacking up. It would be helpful if you could give us an indication of the attitudes there. You have talked to us about the timetable, for which we

thank you, but if you could deal with those two points it would be very helpful.

Mr Woolas: Perhaps I could ask Emma and Emma to comment on that as well. I think what is unknown is the behaviour and reaction to the new European Parliament, because we have had the European elections, and the co-decision making. We have not yet got a feel, if I can put it that way, for what the new Parliament is going to be like and how that will reflect on Member States' attitudes. We have got the rapporteurs in place in the three areas and I have met with one of them. That is the unknown. Whether or not that will have a knock-on effect in the Council, I suspect it will but, being very open with you, I do not think we know yet what it means. The general attitude, and I think the Swedes have been extremely helpful in this regard, and the general move is towards what I suppose commentators would say is a more Anglo-Saxon way of doing things in that it is increasingly more pragmatic. If one looks at an area such as the measures to enhance child protection, this is a policy area that I do not have a problem explaining to my constituents why we are doing it; it just makes self-evident sense. On the use of data, my Lord Chairman, and Kevin is our expert on this, the idea is that we need to share data in order to protect our citizens but we also want guarantees that privacy is being protected properly, there has been a tension between those two, particularly with the Parliament and perhaps the ministers who are more on the brief of security. We think we are squaring that circle and the attitude across the Council is moving in that direction. This is the balance that we are trying to get in our own country between being able to ensure that we do have the sharing of data where it enhances protection but at the same time having that privacy. We think that is working well. The co-operation on counter-terrorism is not my area so I can only feed back what colleagues say. There is a greater acceptance that there is a pragmatic approach on that. Notwithstanding that ourselves and Ireland are not in the Schengen Agreement, and one does see different policy outcomes from the Schengen countries and the non-Schengen countries, if you dig underneath that there is a growing acceptance of our point of view which is that the pull factor on asylum is something that has to be addressed. That is moving in the right direction. There are some policy areas that, frankly, we disagree with and say so forcefully, particularly the idea some have that we should all of us mutually recognise an asylum grant decision. I do not think that would be acceptable to us, to Parliament or to the public, so we still have strong discussions on that. Dublin, however, is entrenched now and that is good. We think that there is too much inward looking stuff and not enough outward looking stuff, although the EU Migration Pact,

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which the French Presidency developed, is welcomed by us and looks towards the relationships with European Union Member States and overseas. Practical stuff, like sharing consulate services in some cases, but also looking at the situation in the country of origin and particularly in Africa, Western Africa and Eastern Africa, a recognition increasingly that you cannot solve the problems of Africa by the migration policies in the European Union, that may be a truism but it takes time to get that point of view across. The tide is with our general approach. There are a few rocky obstacles, particularly on the proposal by some for the mutual recognition of asylum grants, but I think we can report progress on good practice, notwithstanding my caveat that we do not yet know what the chemistry, if I can use that word, of the new Parliament will be. That is very anecdotal, I do not know if that is helpful.

Chairman: Yes. Let us enlarge on the European Parliament.

Q6 Baroness Henig: You have touched on this already and in effect I think what you have said is you think it is too early to tell whether there are likely to be significant differences of view on the programme between the Council and the European Parliament. Perhaps I can ask to what extent the European Parliament is already involved in the discussions. Did you say the rapporteurs had already been involved?

Mr Woolas: We have got the three rapporteurs in place for the justice, for the civil liberties and AFCO, which is constitutional affairs, and the Parliament attended the informal JHA Council in Stockholm and that was seen to be very helpful. My guess is that it will be better because the composition of the committees now reflects the political spectrum of the Parliament whereas before the committees were made up of people who had an interest in that area and, just as we know from our own Parliament, that can sometimes give a different flavour. I am choosing my words very carefully for obvious reasons. In that regard I think we will get good discussions. What we do not know, of course, is what the general attitude of the Parliament will be. We know the results of the election but there are a lot of new faces in place. We have got the three in and I will not attempt to pronounce them all, although Emma knows all of these people and she will help you. As I mentioned, the Chair of the Civil Liberties Committee, Fernando Lopez Aguilar, who himself was a minister in the Spanish Government and has got that experience in this area, attended Stockholm and I was quite pleased that he was bringing that practical point of view, which is not to disparage the points of view of previous spokespeople. I think that is encouraging.

Q7 Baroness Henig: It is early days really is what you are saying.

Mr Woolas: Yes.

Q8 Lord Hannay of Chiswick: Presumably, Minister, on this point, there will be a pretty big shift if and when Lisbon enters into force because a large amount of the subsidiary legislation under the Stockholm Programme will come forward under provisions which will shift their decision making and will bring in co-decision. I wonder whether you have made any preparations for handling the much more complex negotiating process that will exist if and when that Treaty does enter into force?

Mr Woolas: The British Government is not working on the assumption that it will come into force, we are working on the assumption that it may come into force, so we have preparations for both of those outcomes. I think there is an institutional assumption that it will come into force and as ministers we are trying to ensure that we take a proper cautious view because these policy areas, as you recognise, are critical to our country's security. The United Kingdom is in a good position whatever the outcome is. Because we have taken a cautious approach to opting in and not opting in in some of the critical areas I am not fearful that we could be bound by things that could happen under Lisbon because of majority voting and co-decision making. We have yet to take a formal decision on some of the Directives, the procedures and qualifications we have not made a decision on and reception we have not opted into. It is difficult sometimes to remember what is public and what is not because it is a process that has evolved. Because of those decisions and because we are outside Schengen I am not personally fearful of Lisbon. Can it bring us advantages? It can, but it could bring us some disadvantages as well in these areas. This is a very important area. In my experience our officials, and I am not just saying this because it is an easy thing to say, are the best in Europe and their influence comes from their expertise as well as the fact that we are a major player and I hope we maintain that from here on ever after because it is absolutely critical to our country's security.

Chairman: You mentioned the issue of opting in and opting out. This is nothing to do with this particular inquiry but I make the point that we have made certain representations about the problem of opting in and opting out and I am not going to go into them now, but you have replied to that and we are not entirely happy with your reply. I give a warning that Lord Roper will be writing to you again because we do believe we have raised important points of law and we hope we shall get a fuller answer from you. I am not going to ask you to respond, I am just saying that.

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Q9 Lord Avebury: Could I ask a question about your assertion that we would not opt into mutual recognition of asylum grants. Is this not really a pointless withdrawal from mutual recognition because in the end everybody gets citizenship and in our system somebody who applies for asylum is here for a few years and then becomes eligible to apply for citizenship, and I assume the same is true in every other European country, so by failing to recognise asylum grants that are given in other countries in Europe you are only putting off the day when there will be free movement in any case by those former asylum seekers having gained their citizenship of Czechoslovakia or wherever.

Mr Woolas: The reason why I am smiling, my Lord, is that I asked the very same question of the officials when they put this point of view to me and I was fearful that we would spend a lot of time doing something that would not be of any effect in the long run anyway. There is the point that not all asylum grants carry citizenship, the possibility of refugee status for, say, five years is there. There is the second point that the freedom of movement and Treaty rights have to be respected. If one were to say that granting citizenship through refugee application automatically gave right to citizenship rights in every Member State one would be going further than a citizen of the European Union because a citizen of the European Union can only exercise Treaty rights. That is the point for us. The danger of it, because what you say is right generally and in the long-term, is we fear that for those countries that know that the citizens would quickly move on, what you may call transit countries, that would increase the problem because of the pull factor and the United Kingdom, perhaps Sweden, Germany, France and Austria, would then not just be taking our fair share but the overall cake would be bigger. I recognise that this is a balance. It is not something that we are hostile to because we do not trust other countries as such, but that is our rationale. I acknowledge that it is a balanced judgment.

Q10 Lord Avebury: I am wondering whether you could let the Committee have some figures on the numbers of people who having gained asylum in other European countries then apply to come and live in Britain because that would test the hypothesis, would it not, that there would be a pull factor if you line them up to the mutual recognition of asylum, that it might increase the flow of people coming from third countries, if you know that already once people have gained settlement in other countries they immediately apply to come to the UK under Treaty rights.

Mr Woolas: I do not know whether we would have easy access to figures. Certainly we will reply as soon as we can with whatever information we have got. It would be very interesting to know. It would tell us half of the picture. It would tell us what the current situation is. What it would not tell us would be what the pull factor would be because by definition one does not know. We have done some very good work analysing the routes of the pull factor of Diaspora or of language and how does it work in France. France, for example, has more asylum claims than the United Kingdom does, not that one would know that from general comment but it does, yet you have had the problem at Calais. This is because of the nature of the routes and where the country of origin is from: would it be Algeria to France or whatever. Our fear is that one would create superhighways if you have the granting of mutual recognition because one would be able to arrive in Greece, for example, be granted asylum and be a British subject immediately. The reason why I am hesitating is I am not sure that we would necessarily know if somebody arrived on our shores with a French passport, say, or a French document that they had previously been given grant; we would have to ask them. Certainly it would be very useful to know and if I am wrong we would have to re-examine the policy, would we not.

Q11 Lord Marlesford: Just to follow up on that, if I may, Minister. Which countries other than the UK are opposing the mutual recognition of asylum rights?

Mr Woolas: Could I ask Emma to answer on this one?

Ms Haddad: There is generally a northern/southern divide. It does not work absolutely precisely but generally countries with the same views as us would include Germany, Austria, Denmark and the Netherlands. The Netherlands see it as if you are going to have a Common European Asylum System as an end goal you will automatically end up with mutual recognition of asylum decisions, so they see it as something to attain, that we can aspire to, but do not agree with it now, it is something you would get automatically at the end. Generally with our views are Germany, Austria and Denmark and Ireland as the closest ones.

Q12 Lord Marlesford: When a country has given an asylum grant to someone long before the citizenship thing arises, what rights does that person have, if any, to travel to another EU country?

Mr Woolas: The answer to the question is that if they are granted citizenship as a result of asylum as opposed to temporary refuge they would then have Treaty rights to access other European Union countries.

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Q13 Lord Marlesford: Are you saying that the grant of asylum rights in any particular country until it develops into citizenship means that person has no greater right to travel to any other EU country?

Mr Woolas: The problem we have with the proposal is that the mutual granting would give citizenship rights to somebody who had claimed asylum in Greece, say, and been given asylum. At that point they would have citizenship rights in every European Member State. The ordinary citizens of Greece, although the Free Movement Directive provides rights, still have obligations, rights and responsibilities in other Member States, such as working, residence and so on.

Q14 Lord Marlesford: This is a very big question and I do not understand why anybody should be in favour of mutual recognition of asylum rights.

Mr Woolas: Because they want to get them from their country to ours. I will pick a hypothetical example. Let us say there is a small island in the Mediterranean that is a Member State of the European Union, five letters and it might begin with 'M'. They want to get people through and our problem with that is if you get people through you get more arriving, so exactly the point we have been trying to make in our policy over Calais. We call it "pushing the chain", how do you push a chain. It is very difficult to push the route back. The mutual grant would simply create a transit country for which the northern countries would be the destinations and, therefore, there would be a bigger issue for us to handle which is why Lord Avebury's question was a very important question.

Q15 Baroness Garden of Frognal: Minister, I think you have broadly answered the question I was going to ask in response to Lord Avebury, which is the focus on "a Europe of the citizen" and how this would work in a field like Justice and Home Affairs, including policy areas such as migration particularly affecting non-EU citizens. I do not know if there is anything further you would like to say on that. I do note from the Communication that there was an estimate in 2006 of 18.5 million non-EU nationals registered in the Union. I wonder if you have any further comments on how you see this particular aspect of the Communication.

Mr Woolas: The Communication has this section in it and it has still got to be fleshed out. The section entitled "Promoting Citizens' Rights" covers free movement, which I suppose is a given in the European Union, living together in an area that respects diversity and protects the most vulnerable, protection of personal data and privacy, participation in the democratic life of the Union, entitlement to protection for EU citizens in non-Member countries and strengthening civil protection.

The section entitled "Promoting a more integrated society, a Europe that displays responsibility and solidarity in immigration and asylum matters"—their title not mine, my Lord—covers the bulk of migration policy including the global approach, asylum, legal migration, controlling illegal migration and solidarity within the European Union with third countries. You might ask what does all that mean and the answer is we do not know yet. On the idea of rights and responsibilities for EU citizens and those of third country migrants within the EU, there is a clear distinction in the Commission's statement between those two groups and that is important and we support that.

Q16 Baroness Garden of Frognal: It was particularly the non-EU migrants that I was referring to in the question.

Ms Haddad: Similarly with UK policy a third country migrant could come here and then earn the right to citizenship which we see as the distinction and the right distinction that the Commission has made in the Communication that you have to earn that right and integrate into the Member State.

Q17 Lord Avebury: Minister, you talked about the progress that has been made in implementing many of the objectives in the five-year programme, but would you agree that there is an absence of political will to press ahead with legislation on asylum in particular and, therefore, do you consider that 2012 is a realistic target for the completion of the Common European Asylum System?

Mr Woolas: It is achievable. I am not a betting man. I think my point earlier about the European Parliament will be important and that is the caution I would bring again. In our view, the proposals that we have got have not got an adequate review of existing legislation. There is this danger that in the desire to move forward the Commission makes proposals and some Member State proposals move ahead before we have embedded what we have already agreed. Sometimes that can be seen as foot dragging but we think it is sensible. There is not a consensus at the moment about what the problems are and what needs to be done about them. To say we can achieve all of that by 2012 one would have to be cautious. Having said that, people on this Committee have got more experience than I of how these things can reach a consensus if the political will is there and that tends to snowball sometimes in European Affairs. 50/50 I think, my Lord.

Q18 Lord Avebury: Is it possible for you to identify what the main problems are that have not yet been resolved? Could you sum them up?

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Ms Haddad: If you look at Reception Conditions proposals that we did not opt into—we had the opt-in right—most Member States had similar problems to us and did not have a choice not to opt-in and it granted wider access to the labour market while someone's asylum claim was being processed and limitations on detention of asylum seekers. That is just one example. The point many of us were trying to make in the EU committees was if the Commission looked more at Member State experience of these issues since the first phase of the Common European Asylum System and looked at what is working and what is not working and learnt from Member State experience and at whether the proposals had been properly implemented across the EU rather than bringing out new proposals with new legislation where people are going to have an awful lot of problems with the proposals as tabled then we would be able to achieve 2012 much quicker if we had decent proposals that a lot of people could live with straight away on the table. It is learning from the experience and making sure things have been properly implemented.

Q19 Lord Avebury: Are there difficulties with proposals on detention and particularly detention of children? I know you have been involved in this issue which has come to the fore because of criticisms of the way in which the detention of children causes psychological and physical harm and you gave a fairly robust defence of the Government's policy on this on a television programme I was watching the other day. Is detention of children an area of policy on which there is likely to be European agreement that would cut across things that we would prefer to do under our own system of control of immigration?

Mr Woolas: The way in which the question of detention is framed in that debate is not particularly focused on children, although I can see obviously it would be included, it is more the general point. The dividing line within the Member States is between those of us who say without policies such as detention—I will answer questions on children separately if you want me to—there would be more hardship and more suffering because there would be greater movement, greater numbers paying people traffickers, and so on, and if one is to have a managed migration system one does need to be able to use detention. Clearly on the area of children, or under-19s, we have just put upon ourselves, with your support, the duty of welfare. I would prefer to do it that way than allow an agreement to opt-in, to be able to change our policy in a way that not only we would find operationally difficult but would not carry parliamentary or public consent. The answer to your question is I think it could do that but it is not the detention of children that is the main focus.

Q20 Lord Avebury: Is there not a requirement that would have to feed into the process of agreement at European level in that we have signed up to the Convention on the Rights of the Child, and so must all of them presumably, and, therefore, as you say the direction in which we have gone is to place a duty to safeguard the welfare of children? Would that not become part of any European formula for dealing with detention?

Mr Woolas: The question of children and their place within it will be in the Stockholm Programme and I suspect that the debate will be as you have just reflected, but it is too early to answer that definitively.

Q21 Lord Avebury: In the Commission's proposals for this Programme they call for the rapid expansion of the European Asylum Support Office after 2013. Could you tell us where you see the EASO going and what do you think its role should be in the future?

Mr Woolas: We think that the argument that the Asylum Support Office should be a practical office and not a policy office has now been established. We think that argument has held the day. The Office is not established as yet, of course. The proposed functions that it has, for example, are a common training curriculum and exchange of information on asylum seekers' countries of origin. The question of country of origin is extremely important, of course, because we discover that many claimants who say they are from one country are not, in fact, from that country and how one determines that is something that we could benefit from co-operation on without duplicating all of that. Co-ordinating help for Member States that are under particular pressure, the southern countries do have a reasonable point when they say they need help and we have to recognise that. The Communication of the Stockholm Programme from the Commission proposes that there will be an evaluation and then in 2013 the tasks of the Office may be expanded to take into account any progress. We do not see that as a policy role, we see that as a pragmatic role. It is yet to be established. We have not got a headquarters and we have not got a head appointed yet. Personally, I think it will bring a lot of commonsense to the proceedings.

Q22 Lord Avebury: You have mentioned the country of origin information system. Would you agree that we have made tremendous progress in the last few years in elaborating our country of origin information system and in updating it at regular intervals?

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Mr Woolas: We have.

Q23 Lord Avebury: If we have to have a model that could be adopted by the rest of Europe, is there any way in which that could be incorporated in the EASO?

Mr Woolas: Yes. I am assured the answer is yes. I would say yes anyway because it makes sense to do so, does it not. We have made significant progress and learnt some pretty harsh lessons in this area. I will give you just one example, if I may. We sent a plane recently to Kosovo with 100 people on it and the plane went on to Tirana. Ninety of the Kosovans turned out to be Albanians and went on to Tirana. We have this significant problem, which is why we have had to impose a visa regime on South Africa because we found that people who were not from Zimbabwe but from South Africa were claiming to be Zimbabweans. We have just launched a pilot project which I think will be extremely helpful using DNA as part of the way of assessing area of origin. It is not reliable in and of itself, somebody's DNA stays with them when they move, but it is of assistance along with other measures that we take. The other area where we are improving is in establishing age. We had one 17 year old who turned out to be 31 quite recently. I cannot get away with that! I do not want to sound as though all of these programmes are harsh, our policy objective is to be able to help the genuine refugees and asylum seekers and we are very proud of our record on the United Nations.

Q24 Lord Avebury: The point is that these technologies are being developed here ahead of probably the rest of Europe and we could save a lot of money collectively if we could integrate them into the EASO and not have separate national enterprises, for example designing DNA systems or country of origin information systems. That could all be done on a European scale, could it not?

Mr Woolas: Yes, it could.

Ms Haddad: By way of example, we have recently sent people to Malta to show them how we do language and age analysis and left them with the technology to do a certain number themselves, which they have been delighted with and it has taken off. We are very much trying to show examples of what the Asylum Support Office could do based on our good practice.

Q25 Lord Harrison: Minister, three related questions. The Commission flags up the need for a common approach for individuals who cannot be removed. What are your views on that? Secondly, is the Spanish Presidency likely to formulate a detailed plan to tackle that problem in the 2010 Action Plan? Thirdly, should not the vulnerability to exploitation

of undocumented migrants be at the very heart of the EU's social protection strategy?

Mr Woolas: Our policy is based on the preference that people who have no legal right in our country should go voluntarily. As you will know, we do have the assisted voluntary return package that provides reintegration. We have to get over the point that if somebody is returned to their country of origin they have a new life. A lot of the resistance we have to voluntary return is the belief by the individual concerned that there is no future for them in their country of origin. Our experience and the experience of the IOM is that is not the case. That is where our policy starts. However, to maintain the integrity of our system we do, as you know, adopt a policy that if an individual has no legal basis to stay then we will enforce their return. We remain committed to co-operating with EU Member States on work in this area. We have not seen any plans from the Spanish Presidency as yet but we certainly would welcome them so that we could make progress on measures that will facilitate the returns process. We are also very keen to continue practical co-operation with our EU partners on returns. One key area in this is to prevent the exploitation of vulnerable illegal migrants and we do that by targeting those who organise and facilitate their journey to the UK, ie the people traffickers. One of the advantages of the establishment of the UK Border Agency as a single force with overseas postings is that we are now working with the Serious Organised Crime Agency and other security forces in European countries to break those trafficking facilitators. Programmes to increase the capacity of countries which are hosting large numbers of refugees within the source region are also being put into place and to broaden the base of EU Member States' resettlement efforts. We are the leader, I think, on the Gateway Programme within the European Union and have resettled more than 2,100 refugees since the start of the programme in 2004. Indeed, this afternoon I am meeting the United Nations to discuss what more we can do and we would much prefer to do that. The background to that is the people we help through Gateway are the refugees who really need help, people who have been living in camps, people who are destitute, and we can provide programmes that establish them a life and I think the British public are generous in their welcome of such people. Often, and one has got to be very careful in one's language, of course, the people trafficked are the ones with resources, they are the ones who can afford the 5,000-10,000 quid to get here. There is this dichotomy. The better we can manage the asylum and migration system the more we can do

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with Gateway and we have got an opportunity of doing that with the Stockholm Programme, I think.

Q26 Lord Hodgson of Astley Abbotts: Minister, I would like to stay with the solidarity issue as regards immigration and asylum. I understand the Government is concerned that this solidarity principle should not mean physical burden sharing. You referred earlier, and indeed your colleague from the Border Agency did, to this small Mediterranean island Member State. We had a Major Mallia giving evidence to us on our Frontex inquiry and I think he said that the equivalent weight or ratio for the UK would be 1.8 million refugees a year. My question is when you say, as you did before to Lord Avebury, that there is a recognisable point here and we need to help, what sort of physical burden sharing do we do to help Major Mallia?

Mr Woolas: We protect the European Union frontier. We have had success in stopping boat people who have faced the most terrible conditions and, as we know, people have died. The numbers coming have dropped dramatically. The big picture is that we have the route leaving Europe, the route from Western Africa, for example, to Canaries and that was closed, but not completely, and that resulted in people trafficking routes through the Sahara, through Libya into the Med. We are working on those at the moment. The answer to your question is we see the practical steps on the frontier and Frontex is absolutely mission-critical to this. I think the Home Secretary wrote to Lord Roper on 17 September on this. Practical help: Emma Haddad has just mentioned language analysis tests, document procurement. We have influence with other countries that can help document procurement processes that perhaps some of the smaller and less powerful countries do not have. We have removal flights that is another area where we are increasingly working together. Maritime border security, we want Frontex to be able to lease equipment on this area. Then we have developed the assistance voluntary return programmes that we can also do with these countries. When we talk about the practical support it is that sort of thing. This idea of what we call exporting the border is what we are doing. Again, I think the debate needs to recognise that the most vulnerable people are the ones in the camps in Darfur, for example, not the ones who have got through the desert, through Libya and in a boat. They are vulnerable when they are in the boat but these are pretty resourceful people paying significant amounts of money to some pretty evil people who are doing all sorts of horrible things and I am determined that we should stop them.

Q27 Lord Hodgson of Astley Abbotts: Could I ask just one follow-up which is slightly off piste and if it is too far off piste I apologise. You have used phrases about superhighways and pushing the chain, which I think are very graphic, but when you talk to people here about the superhighway one of the reasons you often come across that creates the superhighway here is our readiness—perhaps too great a readiness—to issue National Insurance numbers. There have been a number of comments about this in the past. Could you update us on where we are on that now?

Mr Woolas: We have a policy document called *Enforcing the Deal* which looks at a number of policy measures, including issuing driving licences, issuing National Insurance numbers. Our goal is to dovetail the issuing of National Insurance numbers, for example, with legal status. You can have National Insurance numbers that are time-limited and, of course, an illegal overstayer as opposed to an asylum seeker could get a National Insurance number that is not time-limited; similarly with driving licences. Our strategy in what we call *Enforcing the Deal* is to do exactly that and I have had good help with publicising this issue recently.

Q28 Lord Hannay of Chiswick: Minister, listening to what you said about Frontex and its value to all of us cast a slightly odd light on the anomalous semi-detached position we have with regard to Frontex.

Mr Woolas: Yes, to be very honest with you. We think that the Frontex organisation sees the United Kingdom as a leader and as a supporter. The recognition by other states of the fact that we are non-Schengen is a reality which is bedding down and as that beds down our co-operation with Frontex gets better.

Ms Haddad: Can I add one point of information you might find interesting. The Commission will bring forward an amendment to the Frontex regulation next year under the Spanish Presidency, we believe, and we have already tested the water with various Member States and the incoming Presidency in particular that we would very much like to see, for example, our experts that we send to take part in the joint operations under Frontex, who are currently treated differently from the so-called “guest officers” that come from Schengen Member States, and that means our officers do not have the legal protections afforded to the other officers from Member States, treated in the same way. We are trying to make our participation in Frontex on an equal footing in terms of our joint operations work.

Lord Hannay of Chiswick: Let us hope that the British Government in office at that stage takes the same view.

Chairman: I think you have been reading our report!

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Q29 Lord Avebury: I want to pick up on what you said about exporting our borders. What is the European Union's attitude to sending people back to countries like Libya where human rights are not respected and the decision to return them to countries where they may be at risk is not governed by UNHCR principles? We have this steady stream of Africans coming through Libya, not just to Malta but to other islands in the Mediterranean, and in your view is it satisfactory for the European Union to send people back to a regime like that where they are very likely to be returned ultimately to countries which have persecuted and in some cases imprisoned them for long periods?

Mr Woolas: I think this is one of the most difficult areas in public policy and certainly the most difficult area I have faced in eight years as a minister. The accusation that we are hiding behind the European Convention on Human Rights by exporting the border was the subject of a very in-depth *Panorama* investigation quite recently. Our attitude is this: we have to solve the root of the problem and that means development policy is required to better dovetail with migration policy. That was the point I made at the beginning. The people who are routing through, in this case, Libya starting from Somalia, Darfur, and the people who I want to help the most are the people in Somalia and Darfur. The people who are stuck in Libya will contain probably some genuine refugees, they will also probably contain some economic migrants and they will certainly contain controllers who are exploiting them. If we can close the route we will help more people in the long run than we would if we did not do what we are doing, and that is the calculation that we have to make, and it is a very difficult calculation, but it is why we think the emphasis on the United Nations High Commissioner route, the Gateway, is the right thing to do. In other words, if we can close the route in Libya by doing what we are doing, along with other colleagues in other countries, there will be less suffering than there would otherwise be and there will be greater consensus amongst the public that we should help the Gateway programme people. I think that is a policy that we could share across the debate, but I recognise that it is a very difficult area of policy.

Q30 Lord Marlesford: Really following that up, as I understand it, and I may be wrong on this and you can correct me, what has happened is that the route from Libya has been closed by Libya effectively from about May and what Libya now does, as I understand it, is that they collect up people who have entered their country illegally and put them into camps for a while where I suppose they are not very comfortable, and they then put them back over the border. If Libya were to cease to do that it is very hard

to imagine that Libya would not in fact then go back to allowing them to get into boats off the Libyan coast and going on to Malta and Italy and other places, so to what extent is it desirable from the EU point of view to end the system which Libya as a sovereign state has decided to try to deal with the people who come into Libya as opposed to as a result of pressure from the EU allowing them to go into the EU?

Mr Woolas: The choice that the transit countries outside the European Union face is either to be a transit country, in which case the problem for them and for us would get worse. I would argue also that the possibilities of stabilisation and development in the country of origin would diminish as well and that is an important point that is missed out of the debate. The other choice is they can do what they are doing and the experience is that when you do that you close the route. If you look at the routes from Nigeria through to Western Africa and the Canaries, the most appalling exploitation was going on because that route was open. When it was effectively closed (and I am not claiming it is 100 per cent closed) by ourselves and the French, the Nigerians and others, those routes dried up to the benefit of all of us. That was difficult but I think that is the case with Libya, that we have to recognise that the European Convention on Human Rights applies in Europe. I would imagine there are people who would like it to apply everywhere, but the fact of the matter is that the root cause of the problem is what is happening in Darfur, Somalia and other dysfunctional states, and we do not help that by opening up transit routes through the Mediterranean and Malta.

Q31 Lord Marlesford: So you support what Libya has done?

Mr Woolas: The Libyans and the Italians have made an arrangement that will be beneficial to the people of this country in the medium and long term.

Q32 Lord Dear: Minister, I see that you wrote on 6 August to Lord Roper and advocated in that letter more co-operation on returns. We would like to know is there any likelihood, in your view, of sustainability in the returns process if the root causes of migration are not addressed? Also we would like to know whether there should not be a reflection in the programme that more needs to be done to ensure sustainability of returns?

Mr Woolas: Again that is a very difficult area of policy. The evidence is that returns packages are extremely effective in slowing down the flow. Because of the global world in which we live and modern communications, word of mouth is global and it is immediate. For example, we were given evidence of a welfare centre in Stirling that was providing

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translation into Eritrean. Within 24 hours a route had opened through Moscow to Stirling; not to England or the UK but to Stirling. That is how quick it can be. If news goes back to the country of origin that the countries in the West will return then the routes slow down and it is more difficult for the people traffickers to get money off people because they will say, "Why should I give you £5,000 given there is a flight just come from Heathrow?" We also take this very seriously and we see the voluntary return route and the enforced return route as part of the integrated development package. We have to address the root cause of the problem, as your question rightfully implies. We would prefer, as I said at the beginning of the session, that that should be voluntary but this is part of the policy that we have. Is it sustainable? One has to take a judgment and the courts take judgments on whether or not we can and should return to countries, or more often to parts of countries, given the large geographical distances that there are, and we believe that the United Kingdom's record, certainly under the inspection of the United Nations, is a good one in that regard but we do have that goal of having sustainable returns, as you suggest.

Q33 Lord Dear: Realistically could we do more?

Mr Woolas: We will be able to do more. We have increasing co-operation because of the changes that your Lordships have agreed to for example in the BCI Bill which received Royal Assent in the summer. We are optimistic of joint returns with France, for example, as we try to close the route through Calais. We have the foreign national ID card of course which is helping and the border control which is helping. This is not meant to sound draconian or authoritarian. We believe that managing migration and the asylum system is the right thing to do and that will involve more returns.

Q34 Lord Dear: Could I focus in on Libya and ask a question about fundamental rights and guarantees. We all know that there is a current controversy concerning the return of illegal migrants to Libya. I think we all know that the UN High Commissioner for Refugees has declared Libya unsafe, so the question flows logically whether there should not be a commitment in the programme that co-operation with third countries on migration management needs to respect fundamental rights and guarantee the safety of individuals perhaps to a higher level than it had done before? Should there not be an emphasis on that is really the nub of the question?

Mr Woolas: Our goal in the Stockholm Programme is that we would like to see commitments to protect those who need asylum and to deter those who do not and to cut the illegal immigration at source through practical co-operation with third countries. Respect

for fundamental rights and the safety of individuals were enshrined, as we know, in the 1951 Convention and the European Convention, and the UK and all the EU parties are signed up to both, and they underpin European Union action in this area, and the Stockholm Programme will reflect that. We do not see the need for extra or different commitments in the Stockholm Programme because the obligations are set out in the two Treaties. To answer your question specifically, because Libya is a key transit country, it is important that we tackle this issue through co-operation and through what we would call capacity building in Libya. For example, we have invested some money into a project based in Libya led by the International Organisation for Migration which helps voluntary return and reintegration of migrants in their home countries, so we are not approaching it in the sense that because Libya is not a signatory to the Convention that we would treat them the same as we would other European countries, but clearly we do have obligations, and I think the Italians and the Italian NGOs who lead on this are aware of that as well. In doing the right thing our goal is to close the route so the problem goes away.

Q35 Lord Dear: Which is the point you made two questions ago.

Mr Woolas: It is that balance that is just so difficult.

Q36 Baroness Garden of Frognal: Minister, if I can take you on to data exchange and protection. You have already referred to the tensions in data sharing and collection between security and privacy, but in your explanatory memorandum you welcome the Commission proposal for a European information model which will improve strategic analysis and the collection and processing of data. I wonder if you could say what this model will consist of and what data protection elements will be built into it?

Mr Woolas: Thank you. The principles very briefly first: purpose; proportionality; legitimacy of processing; limits on storage time; security and confidentiality; respect for the rights of the individual; and controlled by an independent body. That is how we think we can square the circle of the need to protect our citizens and their privacy. Proposals might include legislative or non-legislative initiatives obviously, the development of new technologies, the introduction of a European certification scheme, information campaigns and the development and promotion of international standards for personal data protection because we are quite good at this, although it does not always look like that! We believe that effective data protection is a prerequisite for information sharing so that we can do both. We can guarantee our citizens' privacy and proportionality and we can provide them

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with protection. We think that the Commission's model reflects these principles and the European Union information management strategy therefore that they are putting forward is something that we generally welcome. I do not know if that answers your question.

Q37 Baroness Garden of Frognal: How will this differ from the existing models because obviously there are already in operation models within the EU for data?
Mr Woolas: Could I ask Kevin to flesh this out for us.

Q38 Chairman: Of course. You have been admirably silent.

Mr Fraser: The European information model, which is described in the Commission's communication, is very much in line with the Swedish Presidency's proposal for a European information management strategy, and something that the UK has been pushing for is to try and get an overarching statement that sets out the views about how information exchange and data protection should be carried out. It is less of a "what" and more of a "how". So it does not actually say that the leap forward is one to legislation but rather calls for a number of different things that say: what we need to do is share data sensibly across the police, customs, immigration and judicial authorities so that actually we can fight people who are involved in terrorism and serious and organised crime while at the same time protecting individuals' personal data. So that is what the strategy says and that is essentially complemented in the European information model. The information model is not calling for new legislation at this stage.

Q39 Lord Avebury: Could I just ask you about paragraph 4.2.3.2 on information systems and particularly the timetable for this because it says that an electronic system for recording entry to and exit from Member States' territory will be established and that the agency tasked with developing these systems would come into operation in 2015. Is that not rather a long way ahead and if the technology is there now why must it take us another five year even to begin to develop this system? Is it not much more urgent than that?

Mr Woolas: It sounds like it is from what you have said! The development of the systems "will be finalised to make these systems fully operational". That sounds to me like tautology; I think I should write to you.

Lord Avebury: Thank you.

Q40 Chairman: That is very helpful. As soon as possible if you will.

Mr Woolas: It is a very important point, is it not?

Q41 Lord Marlesford: The European Data Protection Supervisor, in his opinion on the Commission proposals, calls for a reflection on the costs for privacy and the effectiveness for law enforcement before new initiatives are adopted. Do you agree?

Mr Woolas: Yes, we think there is much to gain. If I could give some meat to that answer. We have called for by December 2010 a review of data protection provisions applying to the visa information system, the Schengen information system, and the Prüm Council Decision, which was on DNA, so that we can identify where there is duplication, the point that was being made before. We have further work on the review of the 1995 Data Protection Directive and by December 2012 publication of a report which would identify duplication and information gaps and review the operation and implementation of the Data Protection Framework Decision. We have also said that before any other new initiatives the European Union should analyse the future need by identifying the key information requirements of the competent authorities; how they should be delivered; how we can move towards more inter-operability; and from January 2010 what the impacts on people's privacy should be and how we could assess that; so that an assessment should be attached to any individual information exchange and initiative, and also the review of the existing instruments, so that we can demonstrate that we are taking seriously the need to provide for privacy protection. Alongside that the transparency and up the rate of public awareness of what is held. We think that is a good thing that helps to get away from the secrecy culture that perhaps exists in parts of Europe and no doubt in parts of our country.

Q42 Lord Hannay of Chiswick: Does the fact that the European Data Protection Supervisor had to draw the Commission's attention to this, and what you yourself have just said about the need for much more elaborate and detailed impact assessments, not throw a rather negative light on the way the Commission is currently operating, which it says is to provide impact assessments on all its legislative proposals? That presumably means that the impact assessments currently are not adequate.

Mr Woolas: Again my attitude is that it shows that we have got to get right what we are already doing before we go further. I am slightly more optimistic on the Commission's intent than the question might imply but the proof of the pudding is in the eating, is it not? So we will have to see.

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Q43 Lord Hannay of Chiswick: Surely also the Commission can say 100 times before breakfast that it will provide full impact assessments with every proposal and then the said impact assessments could in fact be rather inadequate, as they have tended to be over a long period of years coming out of Brussels because they are very reluctant to undertake the very heavy burden that is needed to provide a really detailed impact assessment? My question really is (which I think your answer really answered, thank you very much) do they not need to get better at it and do we not need to keep pursuing them on it and do we not need better impact assessments?

Ms Gibbons: This is not a point specific to the data protection proposals.

Q44 Lord Hannay of Chiswick: Absolutely not.

Ms Gibbons: This would apply across the justice and home affairs agenda. I think we would agree with you. One of the things we have been calling for in the Stockholm Programme across all new proposals is both an effective evaluation mechanism and the application of better regulation principles, including the production of adequate impact assessments. I think experience has been hit and miss. Sometimes we get very good assessments, sometimes not so good, and yes keeping pressure up on that point is one of our priorities going forward into the new work programme. We certainly welcome the call here for those impact assessments in this area but it is something we are pushing across the whole of the programme for the future.

Chairman: Lord Hannay, would you like to come on to Lisbon?

Q45 Lord Hannay of Chiswick: Do the additional advantages that are provided in the Lisbon Treaty with regard to a comprehensive data protection

scheme apply to all processing activities in the JHA? Have we worked out how much benefit that will provide?

Mr Woolas: There has not been such an assessment. The assessment of what a comprehensive data protection scheme would look like has not been done. We believe that we need first of all to understand what is working and what is not working. We want to see existing instruments like those dealing with the Schengen Information System implemented. We supported the adoption of the Data Protection Framework Decision in November 2008 and that will ensure that appropriate standards of data protection are in place when data is exchanged between Member States in the field of police and judicial co-operation. Once implemented in 2010 it will enhance data protection and improve information exchange between law enforcement authorities, and we need to review its operation before we jump to the conclusion that new legislation is needed. Separately the European Commission is seeking views, I understand, on the new challenges for personal data protection in order to maintain an effective legal framework to protect individuals' data. We are pushing that the EU should clearly state the principles underpinning the cross-border use of personal information, and I refer to our principles earlier on, so the short answer to your question is no, it has not. Good point!

Chairman: I think that brings us to the end of our session, Minister. We are very grateful to you. As you realise, this is a very short inquiry and you have been extremely helpful. We shall wish to report briefly to the House in the near future on these issues. Thank you for coming. Thank you to your officials. They all managed to get a bit of speech during the course of the session. We are grateful to you all but particularly to you, Minister, for being so forthcoming. Thank you very much.

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