



House of Commons
European Scrutiny Committee

Commission Communication: European Agenda on Migration and associated documents

Second Report of Session 2015–16

**Documents considered by the Committee on 21 July 2015,
including the following recommendations for debate:**

European Agenda on Migration

European Union military operation in the Southern Central
Mediterranean

Relocation of migrants in need of international protection



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Report, together with formal minutes

*Ordered by the House of Commons
to be printed 21 July 2015*

HC 342-ii

Published on 31 July 2015
by authority of the House of Commons
London: The Stationery Office Limited
£13.50

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

EC	(in " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	(in " <i>Legal base</i> ") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

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

Further information

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

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

Letters sent by Ministers to the Committee relating to European documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

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Contents

Report	<i>Page</i>
Meeting Summary	3
Documents for debate	
1 HO (36877) (36920) European Agenda on Migration	5
Annex — UK participation in EU measures referred to in the Communications	23
2 FCO (36874) (36938) European Union military operation in the Southern Central Mediterranean	25
3 HO (36901) Relocation of migrants in need of international protection	38
Documents not cleared	
4 HMT (36881) 2015 EU General Budget	47
5 HO (36904) Fingerprinting of migrants	51
6 HO (36923) Resettlement of refugees within the European Union	59
Formal minutes	66
Standing Order and membership	67

Meeting Summary

The migration crisis in the Mediterranean shows no sign of abating, despite a proliferation of initiatives in recent months to stem the flow of migrants across the Mediterranean Sea and prevent loss of life. By mid-June, the International Organisation for Migration (IOM) reported that over 1,800 migrants had lost their lives since the beginning of the year, far exceeding the deaths recorded in other regions of the world (see the IOM's Mediterranean Update (dated 17 June 2015), part of its 'Missing Migrants Project'). A number of Member States are facing unprecedented pressures at their external borders, with Italy and Greece bearing the brunt of recent arrivals across the Mediterranean, and Hungary coping with a large influx of migrants from the Western Balkans.

In April, a special meeting of EU Heads of State and Government stated that "our immediate priority is to prevent more people from dying at sea" and agreed a series of actions to strengthen the EU's presence at sea, combat people smugglers and traffickers, prevent illegal migration flows and strengthen solidarity and responsibility amongst EU Member States.

Since then, the Commission has published a Communication, *A European Agenda on Migration*, proposing immediate action to tackle the crisis in the Mediterranean, as well as a longer-term agenda for a "fair, robust and realistic" EU migration policy. The Communication is supplemented by:

- An Action Plan to tackle the smuggling of migrants.
- A proposal for an EU military operation in the Mediterranean to "disrupt the business model of human smuggling and trafficking networks".
- A proposal to establish a temporary, emergency relocation mechanism to distribute 40,000 migrants arriving in Italy and Greece, and who are in clear need of international protection, to other Member States;
- A proposal for an EU-wide resettlement scheme to provide resettlement opportunities within the EU for 20,000 individuals in third countries who are in need of international protection.
- A Commission document providing practical guidance to Member States on the fingerprinting of asylum seekers and irregular migrants.
- A proposal to increase EU funding for frontline Member States and for Frontex, Europol and the European Asylum Support Office.

Chapters reporting on all of these proposals and actions are included in this Report. We are recommending that the Commission Communication, *A European Agenda on Migration*, the accompanying Action Plan on migrant smuggling, and Council Decisions establishing an EU military operation in the Mediterranean are debated on the floor of the House.

The proposal for a Council Decision establishing a temporary relocation mechanism is subject to the UK's justice and home affairs opt-in, meaning that the UK will only be bound by it if the Government decides to opt in. Following heated discussions by EU leaders at the European Council meeting on 25 and 26 June, agreement was reached to implement the Commission's proposals on relocation and resettlement on a voluntary basis. A footnote to the Conclusions agreed by Heads of State and Government indicated that the UK would not take part in the relocation proposal.

We are critical of the fact that, by the simple device of a footnote, the Government appears to have pre-empted any view that Parliament may wish to express on a matter which has already attracted significant Parliamentary interest. The Government's apparent indifference to Parliamentary scrutiny of such an important opt-in decision only strengthens our conviction that further scrutiny is warranted. We therefore recommend that the Government's opt-in decision should be debated on the floor of the House as soon as the House returns from the summer recess in September.

We draw all of the documents contained in this Report to the attention of the Home Affairs Committee.

1 European Agenda on Migration

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; drawn to the attention of the Home Affairs Committee; for debate on the floor of the House
Document details	(a) Commission Communication: <i>A European Agenda on Migration</i> (b) Commission Communication: <i>EU Action Plan against migrant smuggling (2015–20)</i>
Legal base	(Both) —
Department	Home Office
Document numbers	(a) (36877); 8961/15; COM(15) 240 (b) (36920); 9345/15; COM(15) 285

Summary and Committee’s conclusions

1.1 By early May, according to figures published by the International Organisation for Migration, some 65,000 migrants had crossed the Mediterranean to reach Europe since the beginning of 2015. More than 1,800 perished at sea.¹ The first Commission Communication — document (a) — establishes *A European Agenda on Migration* to address the unprecedented scale of the deaths in the early months of 2015. It proposes immediate action to tackle the crisis in the Mediterranean and prevent further loss of life. It also sets out a longer term agenda for a “fair, robust and realistic” EU migration policy.

1.2 The second Commission Communication — document (b) — seeks to strengthen the EU’s response to the smuggling of migrants to the EU by means of an Action Plan setting out a range of measures to enhance cooperation between judicial and law enforcement authorities, improve the gathering and sharing of information, raise awareness of the risks associated with smuggling, and strengthen cooperation with third countries of origin and transit.² The Action Plan fleshes out a number of actions included in the *European Agenda on Migration* and in a further Commission Communication proposing *A European Agenda on Security*.³

1.3 The Minister for Immigration (James Brokenshire) broadly endorses the Commission’s proposals to improve management of the EU’s external borders, intensify cooperation with countries of origin and transit to address the root causes of migration, take further action against the criminal networks involved in the smuggling of migrants, and enhance EU

¹ IOM Mediterranean update, 11 May 2015.

² The Action Plan specifically addresses the smuggling of migrants. There is a separate EU strategy dealing with the eradication of human trafficking. Whilst the distinction between the two is often not clear-cut, an element of coercion and exploitation is necessary for human trafficking offences, whereas people smuggling is more likely to be based on some degree of voluntary cooperation.

³ (36829), 8293/15, COM(15) 185. See our First Report HC342-i (2015–16), chapter 6, (21 July 2015).

efforts to tackle illegal migration. He considers, however, that the Commission Communications “do not present the correct set of policies to address the problems that Europe is currently facing in the Mediterranean and from other migratory pressures”.⁴ In particular, he expresses the Government’s opposition to proposals for the mandatory relocation of a proportion of asylum seekers from Italy and Greece to other Member States, based on a distribution key reflecting each Member State’s reception and absorption capacity, as well as “EU quotas” for the resettlement of refugees from third countries.

1.4 The first Commission Communication — document (a) — establishing a *European Agenda on Migration* has attracted considerable political and media interest, not least because it proposes a new form of solidarity and burden sharing amongst Member States based on the mandatory relocation to other Member States of a proportion of migrants arriving in Italy and Greece who are in clear need of international protection and likely to qualify for refugee status. The Communication also calls for a voluntary, EU-wide resettlement scheme to ensure safe passage to the EU of vulnerable migrants whose need for international protection has already been established. The actions proposed in the Communication are intended not only to address the immediate crisis in the Mediterranean, but to serve as a “blueprint” for the EU’s response to similar migratory crises in the future.

1.5 The blueprint already appears to be fraying at the edges. Conclusions agreed by the European Council on 26 June reveal some sharp differences in the mandatory and legally binding approach to the relocation of asylum seekers proposed by the Commission and the voluntary approach advocated by EU leaders. Rather than a blueprint for future action, the Conclusions view relocation as a “temporary and exceptional” measure and suggest that there is little mileage in the Commission’s proposal for a permanent mechanism to be agreed later in the year.⁵

1.6 Information published by the UN’s Refugee Agency (UNHCR) illustrates the imbalance in efforts across the EU to respond to the migration crisis in the Mediterranean and elsewhere. The Government considers that the Commission has failed to present the correct set of policies to address the immediate crisis, but the Minister’s Explanatory Memorandum is disappointingly thin on substance, given the undoubted scale of the problem, and the detail contained in both Commission Communications.

1.7 We consider that Members across the House will wish to question the Government on its preferred policy approach to the crisis in the Mediterranean, the contribution made by the UK to existing EU efforts, and the way in which the commitment to “the principle of solidarity and fair sharing of responsibility” enshrined in the EU Treaties should be interpreted and applied.⁶ We therefore draw the Communications to the

⁴ See para 26 of the Minister’s Explanatory Memorandum.

⁵ See European Council Conclusions, 26 June 2015.

⁶ See Article 80 TFEU.

attention of the Home Affairs Committee and recommend that they should be debated on the floor of the House. As we are also recommending that the Government's decision whether or not to opt into a proposed Council Decision on the relocation of asylum seekers (see chapter 3 of this Report) should be debated on the floor of the House in September, we ask the Government to schedule the debate on these Communications at the earliest opportunity after the conference recess. If feasible, the debate should take place before Council Conclusions relating to the package of measures proposed by the Commission are agreed so that the UK contribution to their drafting may be informed by the views of the House.

1.8 Ahead of the debate, and in good time for us to inform the House, we ask the Minister to provide a full response to the following questions:

- Do the Frontex-coordinated Operations Triton and Poseidon have a search and rescue capacity equal to that of the now defunct *Mare Nostrum* operation in the Mediterranean?
- What contribution is the UK making to Operations Trident and Poseidon and on what terms? In particular, what obligations does the UK have towards migrants rescued by UK vessels and what action is the UK able to take against smugglers or traffickers apprehended at the same time?
- The Government believes that “any sustainable approach to search and rescue must involve the ‘decoupling’ from entry into the EU, except where there is a genuine case for asylum”. UNHCR data indicate that Syrians and Eritreans are the main nationalities arriving by sea in Italy. What is the Government's estimate of the proportion of migrants crossing the Mediterranean who are in clear need of protection?
- Does the Government agree with the Commission's analysis that the asylum system in the European Union is too fragmented and that the operation of the Dublin rules is perceived as being “fundamentally unfair”?⁷
- What support has the UK previously given to the relocation of asylum seekers from frontline Member States?
- Given the Government's reluctance to support either a mandatory or a voluntary relocation mechanism, how realistic is it to expect other Member States to implement voluntary burden-sharing on the scale envisaged by the Commission?
- In April, the European Council called on Member States to “reinforce internal solidarity and responsibility”. What other means (besides binding measures)

⁷ See p.12 of the first Commission Communication, document (a).

would the Government be willing to support to ensure greater fairness across Member States, or should this be left to each Member State to decide?

- What is the Government’s “blueprint” for handling the immediate crisis in the Mediterranean, and other similar crises in the future?

1.9 We note that the Communication keeps open the possibility of a wider review of the Dublin rules, in 2016, if the Commission’s efforts to secure a fairer distribution of asylum seekers do not succeed. We ask the Minister to explain what consequences such a review might have for UK participation in the Dublin system if the Commission were to propose changes to the current procedures for allocating responsibility for the examination of asylum applications which were less favourable to the UK.

1.10 We are disappointed that the Government has not consulted more widely on the content of the Communications, given the important role that local authorities, non-governmental organisations and other stakeholders play in addressing the practical consequences of asylum and migration policies. We are equally disappointed that the Minister’s Explanatory Memorandum provides no analysis of the fundamental rights impact of the Communications, and simply asserts that they do not raise “any particular issues under the EU Charter of Fundamental Rights”.⁸ This is an implausible assertion, given the nature and scope of some of the actions proposed, for example on the return of irregular migrants and on the identification, capture and destruction of vessels involved in people smuggling. We ask the Minister to provide a more informed analysis of the principal rights that are likely to be engaged by the actions proposed in the Communications.⁹

1.11 Finally, the timescale for agreeing Council Conclusions on the package of measures proposed by the Commission appears to be uncertain, not least because the Minister expects negotiations on the relocation and resettlement elements to be protracted. We consider it wholly inappropriate for the Conclusions to be agreed as an “A point” (without discussion) and urge the Government to resist this. The Conclusions are likely to contain elements relating to the areas of responsibility of both the Justice and Home Affairs Council and the Foreign Affairs Council and we expect both Councils to be actively involved in their elaboration and agreement. We ask the Minister to provide us with a copy of the final version of the Conclusions, accompanied by a letter explaining how they differ from the package of measures proposed by the Commission and the significance of any differences.

Full details of the documents: (a) Commission Communication: *A European Agenda on Migration*: (36877), 8961/15, COM(15) 240; (b) Commission Communication: *EU Action Plan against migrant smuggling* (2015-20): (36920), 9345/15, COM(15) 285.

⁸ See para 20 of the Minister’s Explanatory Memorandum.

⁹ Cabinet Office guidance on the scrutiny of EU documents makes clear that, where a Commission Communication may lead to legislation, the Government should draw attention to fundamental rights issues if they arise, although a detailed analysis is not required at this stage — see para 3.2.5(vi).

Background

1.12 According to the United Nations Refugee Agency (UNHCR), more than 218,000 refugees and migrants crossed the Mediterranean Sea in 2014, almost three times the number estimated to have fled to Europe during the “Arab Spring” in 2011. Nearly half were from Syria and Eritrea.¹⁰ More than 3,500 migrants were reported dead or missing, despite the creation in October 2013 of an EU “Task Force Mediterranean” to implement a series of actions to prevent further loss of life at sea.¹¹ The Italian-led *Mare Nostrum* search and rescue operation was phased out at the end of 2014, following agreement by EU Justice and Home Affairs Ministers that it risked encouraging more, rather than fewer, migrants to make the perilous sea crossing. It was replaced by Operation Triton, coordinated by the EU’s external borders agency Frontex, with a more limited focus on border control and surveillance within 30 miles of the Italian coast.

1.13 Operation Triton and the Task Force Mediterranean have failed to stem the flow of migrants across the Mediterranean Sea. The rising death toll in the early months of 2015, and the loss of an estimated 800 migrants during a single weekend in April, prompted the European Commission to issue a ten-point action plan to respond to the crisis in the Mediterranean.¹² It envisaged an immediate strengthening of Frontex operations, more systematic efforts to tackle people smuggling (including capturing and destroying vessels used by them), greater assistance for frontline states (notably Italy and Greece), the fingerprinting of all migrants, closer engagement with third countries of origin and transit, the rapid return of illegal immigrants, and a fairer sharing of responsibilities between Member States through mechanisms for the relocation and resettlement of asylum-seekers and refugees.

1.14 At an extraordinary meeting of the European Council on 23 April, EU Heads of State and Government agreed that “our immediate priority is to prevent more people from dying at sea”, adding:

“We have therefore decided to strengthen our presence at sea, to fight the traffickers, to prevent illegal migration flows and to reinforce internal solidarity and responsibility.”¹³

1.15 The European Council urged the EU to “mobilise all efforts at its disposal” and called for a tripling of funding for Frontex operations (Operation Triton in the central Mediterranean and Operation Poseidon in the eastern Mediterranean), an increase in their assets (based on Member State pledges), and greater capacity for search and rescue. It invited the EU High Representative for Foreign Affairs and Security Policy to begin preparations for a Common Security and Defence Policy (CSDP) naval operation to identify, capture and destroy vessels used for people smuggling and human trafficking. The European Council also proposed a series of actions externally to prevent illegal migration

¹⁰ See UNHCR Asylum Trends 2014.

¹¹ See (35625), 17398/13, summarised in the Reports listed at the end of this chapter.

¹² Ten-point action plan, agreed on 20 April 2015.

¹³ See the European Council Statement of 23 April 2015.

flows from third countries of origin and transit, and internally, through full and effective implementation of the EU's Common European Asylum System, increased human and financial resources for frontline Member States and voluntary relocation and resettlement schemes.

1.16 The European Council indicated that it would review progress at its meeting in June and, meanwhile, looked forward to the publication of the Commission Communication, *The European Agenda for Migration*, “in order to develop a more systemic and geographically comprehensive approach to migration”. As well as this Communication, the Commission has put forward a number of additional initiatives:

- an Action Plan to tackle the smuggling of migrants;
- a proposal for a Council Decision establishing a provisional relocation mechanism for 40,000 migrants arriving in Greece and Italy who are in clear need of international protection (to be followed by a permanent mechanism towards the end of 2015);
- a Commission Staff Working Document providing guidance on the fingerprinting of asylum seekers and irregular migrants;
- a Commission Recommendation proposing the voluntary resettlement of 20,000 refugees from outside the EU, based on a distribution key to ensure more equitable burden-sharing across all Member States;
- a proposal for a Council Decision establishing an EU military CSDP operation in the Mediterranean (EUNAVFOR Med) to “disrupt the business model” of people smugglers by identifying, seizing and destroying vessels used for people smuggling; and
- a proposal for a Draft Amending Budget (DAB) No.5 for the year 2015 to increase the EU contribution to Frontex, provide more EU funding for frontline Member States, and create additional posts in Frontex, Europol and the European Asylum Support Office.

1.17 The Action Plan is considered later in this chapter. The remaining proposals are the subject of separate chapters in this Report.

Asylum trends in the EU

1.18 Data published by the UNHCR on asylum trends in 2014 illustrate the scale of the challenge facing the EU and the unequal impact on EU Member States. The UNHCR estimates that 570,820 applications for asylum were submitted in EU Member States in 2014. Germany and Sweden accounted for 30 and 13 per cent of asylum claims in the EU, respectively, with Germany ranking as the largest single recipient of new asylum claims

amongst the UNHCR's group of 44 industrialised countries.¹⁴ On average, every fifth application in these countries was received by Germany. In 2014 alone, 173,100 new asylum applications were registered in Germany — a nine-fold increase within a seven-year period — with Syria the main country of origin.¹⁵ Sweden was the second largest recipient of Syrian asylum-seekers in Europe in 2014 and ranked fourth overall.¹⁶ Italy recorded its highest number of new asylum applications in 2014 (63,700) and was the fifth largest receiving country amongst the industrialised countries. Of those arriving by sea in Italy, Syrians and Eritreans were the top nationalities but only a small number of them (500 and 480, respectively) applied for asylum in Italy. France ranked as the sixth largest recipient of asylum-seekers in 2014, followed by Hungary (seventh), the UK (eighth) and Austria and the Netherlands (ninth and tenth).

1.19 An analysis based on the number of asylum-seekers received by each country relative to the size of the national population reveals a different picture. Within the EU, during the period 2010–14, Sweden received the highest number of asylum-seekers (24.4 applicants per 1,000 inhabitants), followed by Malta (17.5 per 1,000), Luxembourg (12.6 per 1,000), Austria (10.4 per 1,000), Cyprus (8.4 per 1,000) and Belgium (8.3 per 1,000). By comparison, Germany and the UK received 5.3 and 2.2 asylum applications per 1,000 inhabitants, respectively.

UK participation in EU migration laws and policies

1.20 The UK maintains its own border controls and is not part of the Schengen free movement area. Under arrangements in force since 1999, the UK does not participate in (and is not bound by) EU visa, asylum and migration laws unless it decides, on a case-by-case basis, to opt into individual measures. The right to opt in — referred to as the “UK’s Title V opt-in” as these policy areas are grouped together in Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU) — is enshrined in a Protocol to the EU Treaties.¹⁷ Even where the UK has chosen to participate in a particular EU measure, the UK retains the right not to opt into a subsequent amending measure. In such cases, the UK is bound only by the earlier un-amended measure, unless its continuing participation in that measure would make it inoperable for the remaining Member States. If the Council determines that a measure would be inoperable, the UK must relinquish its right to participate and would be ejected from it.

1.21 Despite the patchwork nature of UK participation in EU asylum and migration laws, no circumstances have yet arisen in which the UK has been ejected from a measure in

¹⁴ The list of 44 industrialised countries includes 38 European countries plus Canada, the US, Australia, New Zealand, Japan and the Republic of Korea. The top ten receiving countries in 2014 were as follows: Germany, USA, Turkey, Sweden, Italy, France, Hungary, the UK, Austria and the Netherlands.

¹⁵ Syria was the main country of origin of asylum-seekers in Germany in 2014, with 39,300 applicants, followed by Serbia and Kosovo (21,100), Eritrea (13,200), Afghanistan (9,100) and Albania (7,900).

¹⁶ 30,300 Syrians sought international protection in Sweden in 2014.

¹⁷ See Protocol No. 21 on the Position of the UK and Ireland in respect of the Area of Freedom, Security and Justice. Different arrangements apply for EU measures which build on the Schengen *acquis*. These are set out in a separate Protocol on the Schengen *acquis* integrated into the framework of the EU. The UK is not entitled to participate in measures which build on the Schengen *acquis* relating to visas and border controls. For other Schengen-building measures, the UK has a right to opt out.

which it has chosen to participate. This could change if the Commission considers that the Dublin rules (determining which Member State is responsible for examining an asylum application) need to be amended when they are reviewed in 2016 — a possibility foreseen in the first Commission Communication, document (a). The current rules are broadly favourable to the UK. Whilst the UK could not be compelled to participate in any revision resulting in less favourable rules, it might run the risk of being ejected from the Dublin system as a whole if it failed to take part.

1.22 A list of the main EU measures referred to in both of the Commission Communications, indicating whether or not the UK participates in them, is set out in an Annex to this chapter.

Document (a) — Commission Communication: *A European Agenda on Migration*¹⁸

1.23 The Commission Communication begins with an acknowledgment of failure. It describes the EU’s response to the crisis in the Mediterranean as “immediate but insufficient”:

“Emergency measures have been necessary because the collective European policy on the matter has fallen short. While most Europeans have responded to the plight of the migrants, the reality is that across Europe, there are serious doubts about whether our migration policy is equal to the pressure of thousands of migrants, the need to integrate migrants in our societies, or to the economic demands of a Europe in demographic decline.”¹⁹

1.24 The Commission asserts that “no Member State can effectively address migration alone” and calls for “a new, more European approach” based on “a set of core measures and a consistent and clear common policy” which uses all of the tools and policies at the disposal of the EU.

1.25 The *European Agenda on Migration* (“the Agenda”) first sets out a series of actions to respond to the crisis in the Mediterranean, adding that these should serve as “the blueprint” for future crises affecting the EU’s external borders. It then seeks to address “the structural limitations of EU migration policy” by proposing “four pillars” to manage migration more effectively. The Agenda concludes with some reflections on longer-term objectives for an effective and sustainable EU migration policy.

Immediate action to respond to the crisis in the Mediterranean

1.26 The action proposed builds on the statement issued by the European Council after its extraordinary meeting on 23 April, but sets out more precise commitments on the relocation of migrants once they have reached the EU (with a view to relieving the pressure

¹⁸ The Communication is accompanied by a Glossary which explains the terms used and contains useful facts and figures.

¹⁹ See p.2 of the Commission Communication.

on frontline Member States and achieving a more equal distribution across the EU) and on the resettlement within the EU of refugees from a third (non-EU) country. The Commission's proposals on resettlement are intended to meet the UNHCR's target for 20,000 resettlement places across the EU per year by 2020, ensure a more equitable contribution by Member States to global resettlement efforts, and remove the most vulnerable individuals from criminal networks of people smugglers and traffickers by providing safe passage to the EU. The main actions envisaged in the Agenda include:

- a tripling of funding for Operations Triton and Poseidon (both coordinated by Frontex), accompanied by an expansion in their search and rescue capabilities and in the geographical scope of their operations;
- a possible CSDP naval operation to identify, capture and destroy vessels used for people smuggling²⁰;
- stronger inter-agency cooperation (notably between Frontex and Europol) to target people smugglers;
- a proposal to establish a provisional mechanism for the fair distribution between Member States of individuals in clear need of international protection, based on Article 78(3) TFEU;²¹
- a further proposal, by the end of 2015, to establish a permanent, mandatory relocation mechanism for individuals in clear need of international protection which would automatically be triggered in the event of a “mass influx”;
- additional funding (€50 million in 2015-16) for the resettlement of 20,000 refugees in the EU, based on a distribution key that takes account of each Member State's GDP, population size, unemployment rate, and number of asylum seekers and resettled refugees — the proposed EU resettlement scheme will initially take the form of a non-binding Recommendation but will, “if necessary”, be replaced by binding and mandatory legislation after 2016;
- closer cooperation with third countries to tackle migration “upstream” and to promote political stability, including additional funding (€30 million for 2015-16) for Regional Development and Protection Programmes²² in North Africa, the Horn of Africa and the Middle East and the establishment (by the end of 2015) of a

²⁰ The Foreign Affairs Council on 18 May agreed to establish an EU military mission — EUNAVFOR — based in Rome and under Italian command to “break the business model of smugglers and traffickers of people in the Mediterranean”. The mission will be carried out in “sequential phases”, starting with immediate surveillance of human smuggling and trafficking networks in the Southern and Central Mediterranean. The Council agreed to launch the first phase on 22 June. A UN Security Council Resolution will be required to proceed to the subsequent phases (search and seizure of vessels and other assets). Further details are in the Council press release and in chapter 2 of this Report.

²¹ Article 78(3) TFEU provides: “In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned”. The measures are agreed by a qualified majority, after consulting the European Parliament, and are subject to the UK's Title V opt-in, meaning that the UK will only be bound by them if it decides to opt in.

²² These are intended to support long-term capacity-building to enable the countries or regions concerned to provide effective protection.

pilot multi-purpose centre in Niger to provide a source of reliable information on migration, as well as local protection and resettlement opportunities for those in need; and

- additional funding for frontline EU Member States (up to €60 million) as well as operational support through the creation of “Hotspots” bringing together staff from different EU agencies, notably Frontex, Europol and the European Asylum Support Office, to assist with the processing of asylum claims, the removal of illegal migrants, and the dismantling of smuggling and trafficking networks.

The “four pillars” of EU migration policy

1.27 The second part of the Agenda identifies a range of actions under “four pillars” which are intended to establish the structure for a “fair, robust and realistic” EU migration policy.

Reducing incentives for illegal migration

1.28 The actions proposed under this pillar seek to address the root causes of migration, strengthen cooperation in tackling people smuggling and human trafficking, and ensure that there is “clarity and predictability in return policies” for those migrants who are not entitled to stay in the EU. Key actions include:

- “an active and engaged EU external policy”, making migration a core task for EU delegations in third countries and ensuring the effective use of EU external cooperation and development assistance to prevent and mitigate the causes of migration, notably, civil war, persecution, poverty, insecurity, inequality, unemployment and climate change;
- the publication of an Action Plan (document (b), described below) to strengthen cooperation in combating criminal networks of people smugglers;
- better enforcement or, in some cases, further strengthening of existing EU laws to tackle the smuggling of migrants and the employment of third country nationals who have no right to stay in the EU; and
- the implementation of a more effective policy on return by seeking to conclude readmission agreements with the main countries of origin of illegal migrants, publishing a Return Handbook to support Member States’ application of a 2008 Directive on returns, and proposing legislative changes to enable Frontex to initiate (rather than, as now, simply coordinate) returns.

Border management

1.29 The Commission’s focus under this pillar is to improve operational cooperation at the EU’s external land and sea borders, as well as consistency in the application of EU border control rules, and to strengthen the capacity of third countries to improve the management of their borders. Specific actions proposed include:

- stronger coordination at EU level of coast guard functions;
- consolidation of EU rules on border controls in a “Union standard for border management” in 2016; and
- publication of a revised “Smart borders” initiative establishing an Entry/Exit System and a Registered Traveller Programme early in 2016.

A common asylum policy

1.30 This pillar of the Agenda focuses on Member States’ implementation of the Common European Asylum System, encompassing rules on asylum procedures, qualification as a refugee, and reception conditions, as well as rules determining which Member State is responsible for an asylum application (the so-called “Dublin system”) and establishing a fingerprint database (Eurodac).²³ The EU legal framework on asylum has been achieved in two phases. The UK participated fully in the first phase of EU measures, and continues to play a full part in the Dublin system and in Eurodac, but is not bound by further changes to EU asylum rules agreed as part of the second phase.

1.31 Despite a relatively high degree of harmonisation at EU level, the Commission suggests that the asylum system remains fragmented and has resulted in a “lack of mutual trust” between Member States which fuels public perceptions that the current system is “fundamentally unfair.” It considers that the Dublin system “is not working as it should”, with five Member States dealing with 72% of asylum applications made across the EU in 2014. It therefore advocates further development of existing rules and proposes the following action:

- systematic monitoring and evaluation of Member States’ application of existing EU asylum rules to ensure consistency and foster mutual trust, supported by guidance to improve standards on asylum procedures and reception conditions;
- enhanced practical cooperation through the European Asylum Support Office and the creation of a new network of reception authorities with a view to pooling reception places in times of emergency;
- developing guidelines to help Member States tackle abuses of the asylum system;
- proposing changes to the Asylum Procedures Directive to expedite the processing of asylum claims by applicants from third countries designated as safe countries of origin;
- establishing through the European Asylum Support Office a dedicated network of national “Dublin” units to help Member States apply the Dublin rules;

²³ See Article 78 TFEU which provides the legal base for a common EU policy on asylum, subsidiary protection and temporary protection.

- guidance to facilitate the systematic fingerprinting of migrants;²⁴ and
- further consideration of the possible inclusion of additional biometric identifiers within the Eurodac system.

1.32 In addition, the Commission notes that it will be undertaking an evaluation of the Dublin system in 2016 and will consider whether further changes are needed to achieve a fairer distribution of asylum-seekers in Europe, in light of experience gained from implementing the relocation and resettlement mechanisms proposed as part of the EU response to the crisis in the Mediterranean.

A new policy on legal migration

1.33 In its analysis accompanying the fourth pillar of the Agenda, the Commission describes the long-term economic and demographic challenges facing the EU. Whilst recognising that “the case for legal migration will always be difficult at a time of high unemployment and social change”, the Commission views it as “an important way to enhance the sustainability of our welfare system and to ensure sustainable growth of the EU economy”.²⁵ Moreover, establishing “legal pathways” to enter the EU, the Commission suggests, will help to reduce the push factors which make migrants vulnerable to criminal networks on their way to Europe and to exploitation once they have arrived.

1.34 Although Member States have exclusive competence to determine how many third country (non-EU) nationals they will admit, the Agenda identifies a specific role for the EU in strengthening the legal framework for the admission of certain categories, notably highly-skilled third country nationals, researchers and students. In addition to undertaking an evaluation and assessment (“fitness check”) of existing EU rules on legal migration, the Agenda proposes the following actions:

- the immediate launch of a public consultation on the “Blue Card” Directive for highly qualified third country nationals to make it a more effective tool for attracting talent to the EU;
- possible action to clarify rules on the provision of services within the EU by third country nationals;
- the creation of a “platform for dialogue” on economic migration involving social partners (business and trade unions); and
- changes to the EU Visa Code to make it more flexible.

1.35 As well as making the case for well-managed economic migration to the EU, the Commission also underlines the potential development benefits for countries of origin. It says it will:

²⁴ See chapter 5 of this Report.

²⁵ See p.14 of the Commission Communication.

- support the inclusion of migration-related targets in the UN’s Sustainable Development Goals and the mainstreaming of migration within development policy;
- provide at least €30 million to support capacity building in countries of origin to manage labour migration more effectively and to encourage regional labour mobility schemes; and
- facilitate systems for cheap, fast and safe transfers of remittances to countries of origin.

Longer-term objectives

1.36 The Commission identifies three areas — asylum, border management and legal migration — in which it sees a need for further cooperation at EU level. It intends to launch a “broad debate” on the future development of the Common European Asylum System, with a view to establishing a common Asylum Code, mutual recognition of asylum decisions within the EU and, in the longer term, a single decision-making process to ensure equal treatment of asylum-seekers across the EU.

1.37 The Commission will also explore the possibility of establishing a European System of Border Guards and a European Coast Guard (or the pooling of coast guard functions), reflecting its view that management of the EU’s external borders is a shared responsibility. Finally, on legal migration, the Commission contemplates the creation of an “EU-wide pool” of qualified migrants which would be accessible to employers in all Member States, although selection and admission would continue to be determined at national law and reflect each Member State’s actual labour market needs.

Document (b) — Commission Communication: *Action Plan against migrant smuggling (2015–20)*

1.38 The Action Plan fleshes out a number of the actions included in the Commission Communications, *A European Agenda on Migration* and *A European Agenda on Security* to counter and prevent migrant smuggling and to disrupt the often highly profitable business model of the criminal networks involved. The aim is to transform migrant smuggling networks from “low risk, high return” operations to “high risk, low return” ones, whilst also ensuring that the human rights of migrants are protected.²⁶ The Action Plan covers “all phases and types of migrant smuggling and all migratory routes”.²⁷ It is intended to complement broader efforts at EU level to address the root causes of irregular migration through closer cooperation with countries of origin and transit, to implement an effective return policy, and to reduce the demand for the services of smugglers by providing more safe and legal routes to migrate to the EU.

²⁶ See p.1 of the Action Plan.

²⁷ See p.2 of the Action Plan.

1.39 The Action Plan proposes actions in four areas: police and judicial cooperation, better information gathering and sharing, prevention of smuggling coupled with assistance to vulnerable migrants, and stronger cooperation with third countries.

Police and judicial cooperation

1.40 The Commission highlights the importance of strengthening capacities to investigate and prosecute migrant smuggling networks through a multi-agency approach involving national law enforcement and judicial authorities, supported by EU agencies. Many of the actions proposed also feature in the *European Agenda on Migration*. They include:

- strengthening existing EU laws and sanctions to tackle migrant smuggling, whilst ensuring that those providing humanitarian assistance are not penalised;
- identifying, capturing and disposing of vessels — the actions proposed will complement the planned CSDP naval mission by: establishing a set of risk criteria for identifying suspicious vessels likely to be used in the Mediterranean; ensuring systematic monitoring through Eurosur and other agencies; and providing financial and technical support for Member States to tow boats “used or intended to be used by smugglers” to land for scrapping ;
- depriving people smugglers of their profits through proactive financial investigations to seize and recover criminal assets and to tackle money laundering through enhanced cooperation with Financial Intelligence Units, National Asset Recovery Offices and financial institutions;
- establishing a single point of contact on migrant smuggling in each Member State, as well as a Contact Group of EU agencies, to strengthen operational cooperation, coordination and the sharing of information;
- developing the capacity of EU agencies, notably Eurojust, Europol, CEPOL and the European Judicial Training Network, to tackle migrant smuggling (including through the use of Joint Investigation Teams) and to identify training needs, with the EU’s Fundamental Rights Agency responsible for developing “the fundamental rights dimension” (focussing on the protection of smuggled migrants);
- creating a Eurojust thematic group on migrant smuggling to strengthen cooperation with national prosecutors and improve mutual legal assistance; and
- using the EU Policy Cycle for organised and serious crime to step up action against migrant smuggling through closer cooperation on document fraud, sham marriages and other forms of abuse of legal entry and residence procedures.

Improved gathering and sharing of information

1.41 The Action Plan seeks to improve the gathering and sharing of information on the way in which criminal networks operate, the routes they use, financial transfers, and links with other crimes, notably human trafficking. Specific actions proposed include:

- deploying European migration liaison officers in key EU Delegations overseas, coupled with an evaluation and possible revision of existing EU legislation on Immigration Liaison Officers to enhance their ability to obtain and share information;
- strengthening Europol’s Joint Operational Team MARE²⁸ to make it the EU’s information hub for cases of migrant smuggling by sea;
- stepping up cooperation in key African countries to improve the exchange of police information and analysis on migrant smuggling;²⁹
- enhancing the monitoring of “pre-frontier” areas, making full use of Frontex, Eurosur and EU IT systems such as the Schengen Information System and the Visa Information System;
- developing procedures for gathering information on migrant smuggling as part of the asylum determination process or following the apprehension of irregular migrants;
- strengthening cooperation between EU agencies and networks and Interpol to exchange information on fraudulent identity and travel documents;
- increasing Europol support for the detection and removal of internet content used by smugglers; and
- extending Eurostat’s regular collection of crime statistics to include data on migrant smuggling.

Preventing smuggling and providing support for vulnerable migrants

1.42 The Action Plan proposes a range of actions to raise awareness of the risks associated with smuggling and irregular migration, including developing “counter-narratives” to explain the dangers to which migrants are frequently exposed. As well as promoting information and prevention campaigns in countries of origin and transit, the Commission proposes:

- a possible revision of existing EU legislation on victims of human trafficking and people smuggling with a view to strengthening assistance and protection for vulnerable migrants;
- establishing partnerships with business operators in the most at risk sectors, such as transport, to improve security measures and prevent migrant smuggling — the Commission says it will develop a handbook by 2017 and consider producing guidelines on migrant smuggling for border authorities and consular services;

²⁸ Launched in March, the purpose of *JOT Mare* is to tackle the organised criminal gangs who are facilitating the journeys of migrants across the Mediterranean.

²⁹ The Commission cites as an example the Africa Frontex Intelligence Community (AFIC).

- improving the effectiveness of EU return procedures for migrants who have no right to stay in the EU legally, including by strengthening the role of Frontex in coordinating returns and exploring the possibility of using the Schengen Information System to enforce return decisions and EU-wide re-entry bans;
- opening negotiations for readmission agreements with the main countries of origin of irregular migrants; and
- taking stronger enforcement action against those employing irregular migrants, based on numerical targets for inspections to be carried out in economic sectors most exposed to illegal employment.³⁰

Strengthening cooperation with third countries

1.43 The Action Plan sets out the ways in which the EU can strengthen cooperation with third countries along smuggling routes. The Commission proposes to:

- launch or enhance bilateral and regional cooperation frameworks, with a specific focus on practical measures to address the smuggling of migrants;
- encourage accession to the UN Convention on Transnational Organised Crime and the UN Protocol on Smuggling of Migrants by Land, Sea and Air;
- increase financial and technical assistance to improve law enforcement capabilities, information exchange and border management, develop strategies to tackle migrant smuggling and corruption, and strengthen existing CSDP operations in Niger and Mali;
- establish EU cooperation platforms on migrant smuggling involving a wide range of stakeholders in priority third countries of origin and transit; and
- ensure optimal use of resources through joint or coordinated planning of actions.

The Minister's Explanatory Memorandum of 5 June 2015

1.44 The Minister for Immigration (James Brokenshire), expresses the Government's desire to prevent further loss of life at sea, adding:

“We have committed significant UK support to the current joint efforts in the Mediterranean. However, it is also our view that any sustainable approach to search and rescue must involve their ‘decoupling’ from entry into the EU, except where there is a genuine case for asylum. It is therefore the Government's view that the Communications' current proposals do not present the correct set of policies to

³⁰ The Commission cites as examples construction, agriculture and horticulture, domestic work, catering and hospitality.

address the problems that Europe is currently facing in the Mediterranean and from other migratory pressures.”³¹

1.45 The Minister notes that the European Council Statement agreed on 23 April made clear that relocation and resettlement should be based on voluntary action, not mandatory instruments. He continues:

“The Government does not support the Commission’s proposals for a mandatory burden sharing (relocation) instrument (preceded by a new emergency mechanism and ‘distribution key’). These proposals contravene the position agreed by April’s emergency European Council. These proposals are also unlikely to prove effective. It is the Government’s intention to support efforts to press the Commission to reconsider its mandatory proposals (and to encourage a return to the voluntary measures foreseen by the European Council).

“The Government is also concerned about the Commission’s proposals on an EU resettlement scheme (including ‘distribution criteria,’ and backed by the threat of a mandatory resettlement scheme if Member States do not meet EU expectations on numbers). The Government does not oppose resettlement in principle, but we believe such schemes are best decided at national level and we therefore oppose a mandatory EU quota.

“The Home Secretary has publicly stated that the Government ‘will resist calls for the mandatory relocation or resettlement of migrants across Europe’.”³²

1.46 The Minister expresses support for, and continuing UK engagement in, EU efforts to improve returns, take action against people smugglers and tackle human trafficking, highlighting the UK’s leading role in the “Khartoum Process” to combat people smuggling and human trafficking in the Horn of Africa. He nevertheless calls for greater ambition in the Commission’s proposals on illegal immigration as well as greater momentum for EU work on organised immigration crime. Priority areas of action include:

- Europol-led efforts to tackle organised crime;
- the proposed CSDP naval operation in the Mediterranean to target people smugglers; and
- ‘up-stream’ work to enhance regional protection in North and East Africa and to tackle the root causes of migrant journeys.

1.47 The Government does not support the Commission’s proposals to develop ‘other legal avenues’ to facilitate the lawful entry of migrants to the EU. The Minister explains:

“We think it falls to individual Member States to determine their own legal migration policies, and the UK has existing policies in place to strike the right balance between

³¹ See para 26 of the Minister’s Explanatory Memorandum.

³² See paras 27-29 of the Minister’s Explanatory Memorandum.

facilitating the entry of skilled workers where there is a clear economic need and wider immigration control objectives.”³³

1.48 He notes the Commission’s decision to launch a public consultation on the EU ‘Blue Card’ Directive, adding:

“The UK has not opted into the existing Directive and, insofar as a review of the Directive is likely to point towards reducing Member States’ scope to operate parallel national schemes for highly qualified migrants and further augment provision for the intra-EU movement of third country workers admitted to the EU under the Directive, it is unlikely that the UK would choose to participate in proposals for a revised Directive.”³⁴

1.49 The Minister notes that Frontex has published a revised Operational Plan which extends the geographical area of Operation Triton to match that covered by the earlier Italian-led *Mare Nostrum* search and rescue operation. He observes:

“The Government recognises the key role that Frontex plays in coordinating operational border support to Member States under pressure and helping to save the lives of migrants at sea. The Government welcomes the proposals to strengthen Frontex’s role within its existing remit.”³⁵

1.50 Although the UK does not participate in the border control elements of the Schengen *acquis*, the Minister broadly welcomes proposals to improve the efficiency and effectiveness of the EU’s external border, establish a “Union standard” for managing Schengen borders, and ensure adequate capability as well as consistency at the EU’s external borders through the development of the “Smart Borders” initiative. By contrast, the UK participates fully in EU initiatives with third countries of origin and transit. The Minister underlines the importance of bolstering African partners’ efforts to address the causes of illegal migration, combat smugglers and traffickers, and strengthen border management, and highlights UK support for the development of Regional Development and Protection Programmes and the Khartoum Process. He notes the Commission’s proposal to establish a ‘multi-purpose centre’ in Niger and says the Government awaits further details.

1.51 The Minister welcomes efforts to provide support to frontline Member States at the external border, where migrants arrive, adding:

“It is proposals in this area, rather than intra-EU relocation, through which ‘solidarity’ is best demonstrated. In particular, the Government welcomes proposals for concrete support to ensure the identification, registration and fingerprinting of all

³³ See para 32 of the Minister’s Explanatory Memorandum.

³⁴ See para 33 of the Minister’s Explanatory Memorandum.

³⁵ See para 34 of the Minister’s Explanatory Memorandum.

illegal migrants reaching the EU's external borders, as well as the prompt return of those not genuinely in need of protection.”³⁶

1.52 Turning to the Commission's longer-term objectives for EU asylum and migration policy, the Minister observes:

“While the Government is broadly supportive of measures which strengthen the security of the external border, we will follow closely any such proposals to assess their merits and ensure that they respect Member States' competence.”³⁷

1.53 The Minister provides no detailed comment on the actions proposed in the second Commission Communication, *EU Action Plan against migrant smuggling (2015-20)*, other than to express support for the strategic priorities set out in the document and the Government's intention to be closely involved in their implementation. He describes the priorities as “high level” but “in line with work already being taken forward in this area” and consistent with the commitments agreed at the extraordinary meeting of the European Council in April.

1.54 The Minister does, however, voice concerns about the Commission's proposal to extend the scope of a 2004 Directive to provide for the possibility of a residence permit being issued not only to victims of human trafficking, but also to particularly vulnerable groups of smuggled migrants. He explains:

“The UK is not party to this Directive and retains control over its own admissions policy. However, we do not consider that the EU should link entitlements for smuggling victims (who have voluntarily attempted illegal entry) with entitlements for victims of trafficking, who have been subject to serious exploitation. This could further serve to incentivise illegal entry to the EU.”³⁸

1.55 Finally, the Minister suggests that the Commission's timetable for agreeing Council Conclusions by the summer endorsing the *European Agenda on Migration* is likely to be “ambitious”. He does not expect the Justice and Home Affairs (JHA) Council on 15-16 June or the European Council on 25-26 June to do so, adding that the “Conclusions may instead be sent through a different Council as an A Point (i.e. without discussion)”.³⁹ The Minister suggests that “Member States may not wish to endorse the Agenda without resolving the resettlement and relocation proposals” and anticipates that “negotiations on the relocation proposals in particular are likely to extend into the autumn given a number of Member States' concerns over the criteria regarding beneficiaries and the distribution key”.⁴⁰ He notes that the European Parliament will also have to be consulted. The Minister undertakes to keep us informed as negotiations progress.

³⁶ See para 37 of the Minister's Explanatory Memorandum.

³⁷ See para 38 of the Minister's Explanatory Memorandum.

³⁸ See para 41 of the Minister's Explanatory Memorandum.

³⁹ See para 45 of the Minister's Explanatory Memorandum.

⁴⁰ *Ibid.*

Previous Committee Reports

None, but the following Reports on the Task Force Mediterranean are relevant: (35625), 17398/13 Fourth Report HC 219-iv (2014–15), chapter 12 (25 June 2014); First Report HC 219-i (2014–15), chapter 16 (4 June 2014); Forty-first Report HC 83-xxxviii (2013–14), chapter 10 (19 March 2014); Thirty-seventh Report HC 83-xxxiv (2013–14), chapter 13 (26 February 2014); Thirty-fourth Report HC 83-xxxi (2013–14), chapter 7 (5 February 2014).

Annex — UK participation in EU measures referred to in the Communications

EU measure	UK participation
EU Agencies: <ul style="list-style-type: none"> ➤ Europol, Eurojust, European Asylum Support Office ➤ Frontex 	In Out, but able to participate in operational actions on a case-by-case basis
Funding: <ul style="list-style-type: none"> ➤ EU Asylum, Migration and Integration Fund (€3.1 billion for 2014-20) ➤ European Social Fund (integration measures) 	In In
Migration dialogue with third countries: <ul style="list-style-type: none"> ➤ Examples: Rabat Process, Khartoum Process, Budapest Process, Prague Process, EU-Africa Migration and Mobility Dialogue ➤ Mobility Partnerships 	In Participation on a case-by-case basis
Immigration Liaison Officers' Network: <ul style="list-style-type: none"> ➤ Regulation 377/2004 	In
People smuggling: <ul style="list-style-type: none"> ➤ Framework Decision 2002/946/JHA ➤ Directive 2002/90/EC 	Out (with effect from 01/12/2014) In
Human trafficking: <ul style="list-style-type: none"> ➤ Directive 2011/36/EU ➤ Directive 2004/81/EC 	In Out
Employer sanctions: <ul style="list-style-type: none"> ➤ Directive 2009/52/EC 	Out
Returns: <ul style="list-style-type: none"> ➤ Directive 2008/115/EC 	Out
Readmission agreements currently in force: <ul style="list-style-type: none"> ➤ Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, fYROM, Bosnia & Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Turkey ➤ Armenia, Azerbaijan, Cape Verde 	In Out
Border surveillance: <ul style="list-style-type: none"> ➤ Eurosur Regulation 1052/2013 	Out, but there is some scope to enter into cooperation agreements with neighbouring Member States ⁴¹
IT systems:	

⁴¹ The possibility to conclude cooperation agreements is subject to the outcome of legal proceedings brought by Spain in the Court of Justice (pending Case C-88/14).

<ul style="list-style-type: none"> ➤ Schengen Information System (SIS) ➤ Eurodac (fingerprint database) ➤ Visa Information System (VIS) 	Partially in ⁴² In Out
<p>“Smart Borders”:</p> <ul style="list-style-type: none"> ➤ Proposals for an EU Entry/Exit System and a Registered Traveller Programme 	Out
<p>Common European Asylum System:</p> <ul style="list-style-type: none"> ➤ Phase one Directives on Asylum Procedures (2005/85/EC), Reception Conditions (2003/9/EC), and Qualification as a refugee (2004/83/EC) ➤ Phase two Directives on Asylum Procedures (2013/32/EU), Reception Conditions (2013/33/EU), and Qualification as a refugee (2011/51/EU and 2011/95/EU) ➤ Dublin Regulation 604/2013 ➤ Eurodac Regulation 603/2013 	In Out In In
<p>Legal migration:</p> <ul style="list-style-type: none"> ➤ Directive 2004/114/EC on students ➤ Directive 2005/71/EC on researchers ➤ Proposal for a Directive on students and researchers ➤ “Blue Card” Directive 2009/50/EC on highly qualified third country workers 	Out Out Out Out
<p>Visa policy:</p> <ul style="list-style-type: none"> ➤ EU Visa Code (Regulation 810/2009) ➤ EU Visa Regulation 539/2001, as amended 	Out Out

2 European Union military operation in the Southern Central Mediterranean

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; drawn to the attention of the Home Affairs and Foreign Affairs Committees; for debate on the floor of the House with the Commission Communication on <i>the European Agenda on Migration</i>
Document details	(a) Council Decision on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR Med) (b) Council Decision to launch EUNAVFOR Med
Legal base	Article 42(4) and Article 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document numbers	(36874), —; (36938), —

⁴² The UK participates in those parts of the SIS relating to cross-border police and criminal law cooperation, but is excluded from the border control elements.

Summary and Committee's conclusions

2.1 These draft Council Decisions propose to establish and launch an EU military Common Security and Defence Policy CSDP operation in the Mediterranean, to be called EUNAVFOR Med.

2.2 Its objectives are described by the Minister for Europe (Mr David Lidington) as:

“to capture and destroy smugglers’ vessels before they can be used for human trafficking in response to the recent dramatic loss of life that has occurred in the Mediterranean off the coast of Libya.”

2.3 The full background is set out below. In essence (as described by the Minister):

- on 20 April 2015, the Foreign Affairs Council first considered the drastic loss of life in the Mediterranean and welcomed a ten point plan by the Commission as a basis of future work;
- this included possible CSDP options, drawing on experience and lessons learned from the counter piracy operation Atalanta;
- on 23 April an Extraordinary European Council met to consider future actions and agreed a number of actions, including:
 - “disrupt trafficking networks, bring the perpetrators to justice and seize their assets, through swift action by Member State authorities in co-operation with EUROPOL, FRONTEX, the European Asylum Support Office (EASO) and EUROJUST, as well as through increased intelligence and police-cooperation with third countries;
 - “undertake systematic efforts to identify, capture and destroy vessels before they are used by traffickers;
 - “at the same time, the High Representative is invited to immediately begin preparations for a possible CSDP operation to this effect.”
- on 18 May, Foreign and Defence Ministers agreed to establish the operation, appointing an Italian Operational Commander and Headquarters;
- Foreign Affairs Ministers also agreed the Crisis Management Concept (CMC), which presented options for a possible CSDP mission to “disrupt the business model of the smugglers, achieved by undertaking systematic efforts to identify, seize/capture and destroy vessels and assets before they are used by smugglers”.

2.4 The operation has four phases:

- i) a deployment and assessment phase;
- ii) an operational/seizure (of smuggled vessels) phase;
- iii) an operational/disruption phase; and

iv) a mission withdrawal and completion plans.

2.5 The Minister says:

- the Governments’ overall approach is “to encourage the EU to develop a broad strategy for tackling illegal migration, which includes a focus on upstream options in source and transit countries”;
- within this, “a CSDP operation can offer an immediate short term contribution to providing an effective deterrent”;
- the Government will “continue to work closely to ensure the CSDP operation is fully integrated in the broader EU strategy”;
- the CSDP operation has been “sensibly designed in a phased manner, beginning with assessment and information sharing on smuggling networks”;
- all phases have been “designed to meet international legal and humanitarian obligations; and will be carried out in consultation with the Libyan authorities”;
- the Government “has been clear throughout the entire planning process that close monitoring of progress and assessment of impact on disruption of smuggling networks is crucial to the success of the operation”;
- the Political and Security Committee⁴³ will therefore need to give its authorisation to move between the phases;
- for the operation to act as an effective deterrent and avoid only being called in to rescue migrants at sea, it needs to be able to “conduct activity, ‘in the high seas in the Southern Central Mediterranean and, subject to an authorisation by the UN Security Council or consent by the coastal State concerned, the territorial or internal waters, territory or airspace of that State’. This is part of a phased approach and underpins the need for Libyan consent where we have been working with the EEAS. We are clear that the later phases of the operation would need a UN Security Council Resolution, with which Libyan consent would assist. Any operation would have limited effect in disrupting the business model of the smugglers without all of these options”;
- the Government was clear that it would agree to launch the operation only if “clear procedures for handling migrants and smugglers were in place, in the same manner as Op TRITON”;
- the Government has insisted on regular reviews on the effectiveness of this operation in the disruption of smuggling networks; and
- renewal after the 12 month mandate would require consensus among the EU Member States.

⁴³ Political and Security Committee (PSC).

2.6 Many questions arise. As far as EUNAVFOR Med is concerned, an analysis by the Royal United Services Institute, *Five Reasons Why Militarising the EU Migration Plan Will Not Work*, though carried out in mid-May, remains apposite. Its main points are:

- unlike piracy, migration does not pose the sort of threat envisaged in chapter 7 of the UN Charter, and that there is thus a difficulty in finding an appropriate legal base;
- successful anti-illegal migration operations in the Caribbean and Australasia are based on repatriation, which is not envisaged in the EU plan;
- the EU plan addresses symptoms, not causes;
- there is no internationally-recognised and domestically-accepted government in Libya;
- carrying out EUNAVFOR Med properly in such a large search area would require Member State governments to prioritise this above other national security issues and allocate scarce military resources accordingly.

2.7 Its conclusion is thus:

“There does not appear to be sufficient political appetite for this, indeed comments by Mogherini⁴⁴ herself indicate that there would be no repatriation of anyone who did not want to return. The political will just does not exist in Europe; neither can the hurdles be overcome easily. The outcome looks likely to be more of a Mare Nostrum plus (an expanded search and rescue operation), than a larger Operation Triton (migration interdiction). And that is not a long-term solution.”⁴⁵

2.8 In the first chapter of this Report, we deal with the Commission’s overarching Communication, *A European Agenda on Migration*, which includes proposals to tackle the migration crisis in the Mediterranean. Here (as there) we recommend that these Council Decisions are debated on the floor of the House.

2.9 That debate notwithstanding, we would like the Minister to write to the Committee in six months’ time with his assessment of the effectiveness of this operation in the disruption of smuggling networks. At that time, we would like him to bring the Committee up to date on the overall context, including the political situation in Libya and EU efforts to deal with the migration crisis, and the Government’s view on the right way forward at that juncture.

2.10 We also note that the Minister suggests that the mission is underadequate political control by virtue of the PSC’s involvement before there can be any move from one stage

⁴⁴ EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini).

⁴⁵ See *Five Reasons Why Militarising the EU Migration Plan Will Not Work*. Also see *The Times* report of 23 June 2015 at the end of this chapter.

of the mission to the next. But Common Foreign and Security Policy (CFSP) control requires proper parliamentary scrutiny, especially of such a highly controversial operation. We therefore ask the Minister to write to the Committee before any such move is proposed for discussion in the PSC.

2.11 In the meantime, both Council Decisions remain under scrutiny.

Full details of the documents: Council Decision on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR Med): (36874), —; (b) Council Decision launching the European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED): (36938), —.

Background

2.12 On the 20 April 2015, a joint EU Foreign and Home Affairs Council discussed migration issues, following recent events in the Mediterranean. The EU High Representative for Foreign Affairs and Security Policy (Federica Mogherini) said after that meeting:

“Today, we gave a strong EU reaction to the tragedies we have seen in the last few days. We need to act fast and act together.”

2.13 Ministers agreed to reinforce the fight against trafficking of human beings, to strengthen EU action to save lives at sea as well as enhance support for countries on the front line, by sharing the resettlement of refugees. Ministers said that, in addition:

“diplomatic action will be undertaken to do more to resolve the root causes of migration, including conflicts, poverty and human rights violations.”

2.14 Rihards Kozlovskis, Latvia’s Minister for Interior, commented:

“As the Presidency we are committed to facilitate the implementation of both the measures identified today and the upcoming European Agenda on Migration.”

2.15 The joint meeting agreed that work would be taken forward along three strands:

“— the fight against organised crime networks and human traffickers. Several options were discussed, including stepping up work on the routes of travel used by migrants and enhanced police cooperation on counter-measures against smugglers;

“— more efficient efforts to save lives at sea by reinforcing Frontex activities, in particular the Triton and Poseidon operations in the Mediterranean. For this, further funds for Frontex, more assets for both operations as well as an enlargement of their operational area will be needed. A sustainable and more long-term approach should be taken to search and rescue obligations;

“— a fairer sharing of responsibilities regarding resettlement and relocation projects. The Commission announced that it would launch an initiative for an EU-wide

voluntary pilot project on resettlement offering a number of places to persons in need of protection.”⁴⁶

2.16 The meeting also approved a ten point plan of the immediate actions presented by Migration, Home Affairs and Citizenship Commissioner Avramopoulos to be taken in response to the crisis situation in the Mediterranean, viz:

- Reinforce the Joint Operations in the Mediterranean, namely Triton and Poseidon,⁴⁷ by increasing the financial resources and the number of assets. We will also extend their operational area, allowing us to intervene further, within the mandate of Frontex;
- A systematic effort to capture and destroy vessels used by the smugglers. The positive results obtained with the Atalanta operation⁴⁸ should inspire us to similar operations against smugglers in the Mediterranean;
- EUROPOL,⁴⁹ FRONTEX,⁵⁰ EASO⁵¹ and EUROJUST⁵² will meet regularly and work closely to gather information on smugglers’ *modus operandi*, to trace their funds and to assist in their investigation;
- EASO to deploy teams in Italy and Greece for joint processing of asylum applications;
- Member States to ensure fingerprinting of all migrants;
- Consider options for an emergency relocation mechanism;
- A EU wide voluntary pilot project on resettlement, offering a number of places to persons in need of protection;
- Establish a new return programme for rapid return of irregular migrants coordinated by Frontex from frontline Member States;
- Engagement with countries surrounding Libya through a joined effort between the Commission and the EEAS; initiatives in Niger have to be stepped up.

⁴⁶ See Foreign Affairs Council meeting dated 20/04/15.

⁴⁷ Frontex is currently coordinating two joint operations in the Mediterranean, namely ‘Triton’ hosted by Italy, and ‘Poseidon Sea’ hosted by Greece. See the presentation by Laurent Muschel, Director Migration and Protection European Commission DG Migration and Home Affairs, at the IMO on 4 March 2015, for further background.

⁴⁸ As a result of Somali-based piracy and armed robbery at sea off the Horn of Africa and in the Western Indian Ocean, and as part of its Comprehensive Approach to Somalia, the EU launched the EU Naval Force ATALANTA (EU NAVFOR) in December 2008 within the framework of the European Common Security and Defence Policy (CSDP) and in accordance with relevant UN Security Council Resolutions (UNSCR) and International Law. See <http://eunavfor.eu/> for full background.

⁴⁹ The European Union’s law enforcement agency.

⁵⁰ The European Borders Agency.

⁵¹ The European Asylum Office.

⁵² Composed of national prosecutors, magistrates, or police officers of equivalent competence, seconded from each Member State.

- Deploy Immigration Liaison Officers (ILO) in key third countries, to gather intelligence on migratory flows and strengthen the role of the EU Delegations.

2.17 High Representative/Vice-President Mogherini and Commissioner Avramopoulos jointly stated:

“We need to show that same collective European sense of urgency we have consistently shown in reacting in times of crisis. The dire situation in the Mediterranean is not a new nor a passing reality. That is why the Commission will come forward with a comprehensive European Agenda on Migration in May to address the structural problems. The 10 actions we have agreed upon today are the direct, substantial measures we will take to make an immediate difference. All of these actions require our common effort, the European institutions and the 28 Member States. We will convey these proposals to the European Council which will meet on Thursday in an extraordinary session to address the situation in the Mediterranean. This is what Europe taking responsibility is — all of us working together.”⁵³

2.18 On 23 April 2015, the European Council discussed what could be done to alleviate migratory pressures in the Mediterranean and agreed four priority areas for action:

“Fighting traffickers

“EU leaders have asked Federica Mogherini, the EU High Representative to propose actions allowing to capture and destroy the smuggler’s vessels before they can be used.

“The High Representative is invited to start the preparations for a **possible CSDP operation**, in accordance with international law.

“Other agreed measures include a step up in the co-operation against smuggling networks with the help of Europol, and the deployment of immigration officers to third countries.

“Strengthening our presence at sea

“The European Council agreed to triple the resources available to Triton, the EU border mission in the Central Mediterranean, and to enhance its operational capability.

“Concrete support to the mission was also announced with the supply of additional vessels, aircrafts and experts by member states.

⁵³ See press release.

“Preventing illegal migration flows

“The EU wants to limit the inflow and tackle the cause of illegal migration. The cooperation with the countries of origin and transit should be reinforced, especially the countries around Libya.

“EU leaders also agreed to implement a new return programme for the rapid return of irregular migrants.

“Reinforcing internal solidarity and responsibility

“The EU will offer more protection to refugees from conflict regions and set up a first voluntary pilot project on resettlement across the EU, offering places to persons qualifying for protection.”⁵⁴

2.19 In his Explanatory Memorandum of 15 May 2015, the Minister for Europe describes the actions agreed at the meeting thus:

- “disrupt trafficking networks, bring the perpetrators to justice and seize their assets, through swift action by Member State authorities in co-operation with EUROPOL, FRONTEX, the European Asylum Support Office (EASO) and EUROJUST, as well as through increased intelligence and police-cooperation with third countries;
- “undertake systematic efforts to identify, capture and destroy vessels before they are used by traffickers;
- “at the same time, the High Representative is invited to immediately begin preparations for a possible CSDP operation to this effect.”

2.20 The Minister explains that:

- a draft Crisis Management Concept (CMC) was issued on 30 April 2015, which presented options for a possible CSDP mission to “disrupt the business model of the smugglers, achieved by undertaking systematic efforts to identify, seize/capture and destroy vessels and assets before they are used by smugglers”;
- the CMC details the proposed operation, which would be conducted in four phases, consisting of:
 - “1) a deployment and assessment phase; 2) an operational/seizure (of smuggled vessels) phase; 3) an operational/disruption phase; 4) a mission withdrawal and completion plans”;
- the CMC notes the need for a UN Security Council Resolution (UNSCR) and consent from the Libyan authorities to launch the operation;

⁵⁴ See <http://www.consilium.europa.eu/en/meetings/european-council/2015/04/23/> for full information, including a detailed Background Note.

- High Representative Mogherini is leading the outreach with the Libyans and is coordinating with UN Special Representative Bernardino León;
- the Prime Minister offered to lead efforts in the UN in order to provide the necessary legal basis.

The first draft Council Decision

2.21 The preamble notes that:

- this CSDP operation will be conducted in accordance with international law, in particular with the relevant provisions of the United Nations Convention on the Law of the Sea (UNCLOS); the Protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the United Nations Convention against Transnational Organised Crime; the International Convention for the Safety of Life at Sea (SOLAS); the International Convention on Maritime Search and Rescue (SAR); and the Convention on the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) and mentions in parenthesis “[the 1951 Convention on the Status of Refugees and human rights law]. [,which include the obligation to assist persons in distress and to deliver survivors to a place of safety];
- UNCLOS allows warships to board and search ships without nationality on the high seas and the Protocol against the Smuggling of Migrants permits a State Party interdicting a ship suspected of smuggling migrants, where there is flag State authorisation to board and search the vessel or where the ship is without nationality, to take appropriate measures against vessels, persons and cargo if evidence is found on board of migrant smuggling, in accordance with relevant domestic and international law;
- measures may also be taken in the territorial or internal waters, territory or airspace of a State against vessels suspected of involvement in human smuggling or trafficking, with the consent of that State or pursuant to a UN Security Council resolution;
- a State which has within its jurisdiction persons whom it suspects of smuggling or trafficking humans may take appropriate measures against such persons with a view to their possible arrest and prosecution, in accordance with international law and its domestic law;
- also in parenthesis that “[Any personal data collected by units and assets participating in EUNAVFOR MED must be processed in accordance with applicable rules of domestic law and the EU Charter of Fundamental Rights.];
- the Political and Security Committee should exercise, under the responsibility of the Council and of the High Representative, political control over the Union crisis management operation, provide it with strategic direction and take the relevant decisions in accordance with the third paragraph of Article 38 EU.

The Government's view

2.22 In his Explanatory Memorandum of 15 May 2015, the Minister comments as follows:

“Our overall approach is to encourage the EU to develop a broad strategy for tackling illegal migration, which includes a focus on upstream options in source and transit countries. Within this, a CSDP operation can offer an immediate short term contribution to providing an effective deterrent.

“We will continue to work closely to ensure the CSDP operation is fully integrated in the broader EU strategy.

“The CSDP operation has been sensibly designed in a phased manner, beginning with assessment and information sharing on smuggling networks. All phases of the operation have been designed to meet international legal and humanitarian obligations; and will be carried out in consultation with the Libyans.

“The UK has been clear during the planning process that close monitoring of progress and assessment of impact on disruption of smuggling networks is vital. We have therefore insisted that the Political and Security Committee (PSC) should give its authorisation to move between the phases. The UK will contribute to planning by drawing on the UK expertise developed through planning at Northwood for operation Atalanta and ensure the military planners can draw on expertise from e.g. border control and customs in order to increase understanding of how to disrupt the business model.

“We believe that in order for the operation to act as an effective deterrent and avoid only being called in to rescue migrants at sea, it needs to be able to conduct activity, “in the high seas in the Southern Central Mediterranean and, subject to an authorisation by the UN Security Council or consent by the coastal State concerned, the territorial or internal waters, territory or airspace of that State”. This is part of a phased approach and subject to Libyan consent. Any operation would have limited effect in disrupting the business model of the smugglers without all of these options. Both the draft UNSCR and the CMC allow for this, subject to consent from the Libyan authorities.

“We have made clear that we will not be in a position to launch the operation in June unless the following conditions are met:

“Clear procedures for handling migrants and smugglers. Ideally, this would be in the same manner as Op TRITON.

“Clear authorisation under a UNSCR for phases 2 onwards.

“The duration of the mandate is 12 months. We have insisted on regular reviews on the effectiveness of this operation in the disruption of smuggling networks. Renewal after the 12 month mandate would require consensus at 28.”

2.23 With regard to the *Financial Implications*, the Minister says:

“Through the ATHENA mechanism, the UK would expect to pay a 15.66% share of common costs.”⁵⁵

2.24 Concerning the *Timetable*, the Minister says;

“The aim is for the approval of the CMC and adoption of the Council Decision to establish the mission at the 18 May 2015 Foreign Affairs Council with a further Council Decision to launch the mission being potentially adopted at the 22 June 2015 Foreign Affairs Council (a further Explanatory Memorandum will be submitted ahead of that decision).”

2.25 On 18 May, *The Times* reported on what it styled:

“A draft EU military plan [that] describes limited ground operations to destroy traffickers’ fuel dumps and embarkation facilities in Libya, stating that ‘a presence ashore might be envisaged if agreement was reached with relevant authorities’. It adds that ‘action taken ashore could be undertaken in a hostile environment’.”

2.26 The report continues thus:

“The proposal also outlines high-seas boat seizures requiring aircraft and amphibious ships, in the face of a ‘robust threat’ from coastal artillery batteries set up by the militias now at large in the lawless country. Boarding ships to arrest traffickers, in the presence of migrants, would involve ‘a high risk of collateral damage including the loss of life’.

“One of Britain’s key roles will be intelligence-gathering, with Royal Air Force or Royal Navy drones helping to build up a picture of the people smugglers as part of any offensive to confront them. Traffickers often load migrants on to boats they have acquired only hours earlier from fishermen, while also burying inflatable dinghies in the sand until the moment they need them, making the vessels difficult to track.”

2.27 On 19 May, after the Council meeting, *The Times* reported thus:

— “Philip Hammond, the foreign secretary, said: ‘We have agreed to all stages of the operation, but what we will need to do before we put that into effect is to secure a legal basis, which needs to be a UN security council resolution at the behest of the Libyans’;

⁵⁵ Athena is the mechanism that handles the financing of common costs relating to EU military operations under the EU’s common security and defence policy (CSDP). It operates on behalf of the 27 EU member states who contribute to the financing of EU military operations (Denmark has opted out of CSDP on military matters). Athena was set up by the Council of the European Union on 1 March 2004. Five active EU military operations currently benefit from Athena financing: EUFOR ALTHEA (Kosovo); EUNAVFOR ATALANTA (anti-piracy); EUTM SOMALIA; EUTM MALI; and EUFOR RCA. Athena manages the financing of common costs for these operations, such as transport, infrastructure and medical services, as well as the nation borne costs, which include lodging, fuel, and similar costs linked to national contingents. Athena is managed by an administrator and under the authority of a Special Committee made up of representatives from the member states contributing to the financing of each operation. See <http://www.consilium.europa.eu/en/policies/athena/> for full information.

- “Britain will play a leading role in the EU military force, with HMS *Bulwark* on standby to switch from rescue to armed operations against people smugglers;
- “During talks in Brussels, Jens Stoltenberg, Nato’s secretary-general, told the EU to be on the alert for terrorists hidden among the migrants;
- ““One of the problems is that there might be foreign fighters, there might be terrorists, also trying to hide, to blend in, among the migrants’, he said. ‘We have to respond to this turmoil, to these threats’.
- “Military planners have warned that the collapse of the Libyan state and the rise of Islamist militias controlling its military installations will pose a threat to the Royal Navy and other European naval forces.
- ““The existence of heavy military armaments and military-capable militias present a robust threat to EU ships and aircraft’, a confidential planning document said. ‘The terrorist presence in the region also constitutes a security threat’.
- “Mr Hammond said that no British or EU military personnel would go ‘anywhere near a situation until they have a proper picture on the ground’.
- “Russia has said that it will veto any UN resolution supporting such operations unless the EU secures the support of the Libyan authorities. This is a major difficulty as the country has two competing administrations: the internationally recognised government fled to Tubruk after Islamist militia seized Tripoli last year.”

The second draft Council Decision

2.28 This Council Decision deals with the launch of EUNAVFOR Med.

The Government’s view

2.29 In his further Explanatory Memorandum of 19 June 2015, the Minister for Europe says:

“Our overall approach is to encourage the EU to develop a broad strategy for tackling illegal migration, which includes a focus on upstream options in source and transit countries. Within this, a CSDP operation can offer an immediate short term contribution to providing an effective deterrent.

“We will continue to work closely to ensure the CSDP operation is fully integrated in the broader EU strategy.

“The CSDP operation has been sensibly designed in a phased manner, beginning with assessment and information sharing on smuggling networks. All phases of the operation have been designed to meet international legal and humanitarian obligations; and will be carried out in consultation with the Libyan authorities. The UK has been clear throughout the entire planning process that close monitoring of

progress and assessment of impact on disruption of smuggling networks is crucial to the success of the operation. We have therefore agreed that the Political and Security Committee needs to give its authorisation to move between the phases.

“We believe that in order for the operation to act as an effective deterrent and avoid only being called in to rescue migrants at sea, it needs to be able to conduct activity, “in the high seas in the Southern Central Mediterranean and, subject to an authorisation by the UN Security Council or consent by the coastal State concerned, the territorial or internal waters, territory or airspace of that State”. This is part of a phased approach and underpins the need for Libyan consent where we have been working with the EEAS. We are clear that the later phases of the operation would need a UN Security Council Resolution, with which Libyan consent would assist. Any operation would have limited effect in disrupting the business model of the smugglers without all of these options.

“We were clear that we would only agree to launch the operation if clear procedures for handling migrants and smugglers were in place. Member States agreed that this will be in the same manner as Op TRITON.

“The duration of the mandate is 12 months. We have insisted on regular reviews on the effectiveness of this operation in the disruption of smuggling networks. Renewal after the 12 month mandate would require consensus among the EU Member States.”

2.30 In a separate letter of the same date, the Minister says that the draft Council Decision to launch the operation was received by his officials on 16 June, and will be adopted at the Foreign Affairs Council on 22 June 2015:

“The Committee will be aware of the need to implement the extraordinary European Council’s commitment promptly. As your Committee is yet to reconvene, I regret that I find myself in the position of having to agree the adoption of this Council document before your Committee will have an opportunity to scrutinise it”.

2.31 On 22 June, the Council issued the following statement:

“Today, the Council launched the EU naval operation against human smugglers and traffickers in the Mediterranean called “EUNAVFOR Med”. Its mission is to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers.

“EU High Representative for Foreign Affairs and Security Policy Federica Mogherini said:

‘EU has never taken the issue of migration as seriously as we are doing now. With this operation, we are targeting the business model of those who benefit from the misery of migrants. But it’s only a part of a broader strategy including the cooperation with our partners in Africa, particularly in the Sahel region, and the work with the International Organization for Migration and the UNHCR. As EU,

we are determined to contribute to save lives, dismantle the networks of the smugglers of human beings and address the root causes of migration’.”

2.32 “EUNAVOR Med will be conducted in sequential phases, in full compliance with international law, including humanitarian and refugee law and human rights. The first phase focuses on **surveillance and assessment of human smuggling and trafficking networks** in the Southern Central Mediterranean.

“It is planned that the second stage of the operation provides for the search and, if necessary, seizure of suspicious vessels. A third phase would allow the disposal of vessels and related assets, preferably before use, and to apprehend traffickers and smugglers.

“The Council will assess when to move beyond this first step, taking into account a UN mandate and the consent of the coastal states concerned, and subsequent phases will be conducted accordingly.

“The Operation Headquarter of EUNAVFOR Med is in Rome. Rear Admiral Enrico Credendino has been appointed Operation Commander and will be assisted at sea by Force Commander Rear Admiral Andrea Gueglio. The common costs of the operation are estimated at €11.82 million for a two months start-up phase and the initial mandate of 12 months.

“EUNAVFOR Med, established on 18 May 2015, is one element of the broader **EU comprehensive approach to migration** which aims to respond to the immediate need to save lives and address emergency situations, tackle the root causes of irregular migration and fight traffickers.”

2.33 On 23 June, *The Times* reported that the Royal Navy’s flagship, *HMS Bulwark*, is to be replaced by *HMS Enterprise*, a survey ship, as part of a fleet led by the Italian carrier *Cavour* and including two submarines, three surveillance aircraft, two drones and two helicopters. Five British officials will be at the Rome HQ running the operation. A Downing Street spokeswoman is quoted as saying that GCHQ will be working as part of this operation, “building a better picture of the smuggling and trafficking gangs”, and that officers from the National Crime Agency would join an “intelligence fusion cell” in Sicily. “British defence sources” are reported as having said that:

“the *Enterprise*’s radars and ability to sail in shallow waters would make it ideal to build up intelligence about traffickers — which will be its first task while talks about securing a UN mandate for military action in Libyan territory is “secured”.

2.34 “Planners in Brussels” are also said to have

“discussed destroying fuel dumps in Libya and mounting commando raids to sink boats before they can be loaded with migrants, but Federica Mogherini, the EU foreign policy chief, said military intervention would occur in a later stage of the mission.”

2.35 The report notes that:

“Even if a deal is reached, planners may struggle to identify and capture the wooden boats, which are used by fishermen until they are loaded with migrants”.

Previous Committee Reports

None.

3 Relocation of migrants in need of international protection

Committee’s assessment	Legally and politically important
Committee’s decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee; opt-in decision recommended for debate on the floor of the House (to take place immediately after the summer recess); also relevant to the debate on the Commission Communication, <i>A European Agenda on Migration</i> , recommended on 21 July 2015
Document details	Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece
Legal base	Article 78(3) TFEU; QMV; EP consultation
Department	Home Office
Document numbers	(36901), 9355/15 + ADD 1, COM(15) 286

Summary and Committee’s conclusions

3.1 In its Communication, *A European Agenda on Migration*, the Commission set out a series of measures to help frontline Member States cope with the migration crisis in the Mediterranean and relieve the pressure on their asylum systems. The measures envisaged are intended to implement the principle of solidarity and fair sharing of responsibility which, according to the EU Treaties, governs EU action in the field of asylum and immigration.⁵⁶

3.2 The Commission’s proposal for a Council Decision would establish a provisional mechanism for the relocation of individuals in clear need of international protection —

⁵⁶ See Article 80 TFEU.

expected to be predominantly nationals of Eritrea and Syria — who have arrived in Italy and Greece since 15 April 2015 and sought protection there. It provides for the relocation of 40,000 individuals (24,000 from Italy, 16,000 from Greece) over a two-year period to other EU Member States, based on a distribution key which takes account of the reception and absorption capacity of each Member State. Receiving Member States would be entitled to €6,000 for each relocated individual. The Commission expects to propose a permanent relocation mechanism later in the year, which would take immediate effect in the event of a future mass influx of third country migrants.

3.3 The Minister for Immigration (James Brokenshire) says that the Government shares the Commission's desire to prevent further loss of life at sea and to develop an effective and sustainable response to current migratory pressures in the Mediterranean, adding that there is much in the Commission's Communication, *A European Agenda on Migration* which the Government supports. He explains that the Home Secretary has already made clear that the UK intends to resist any proposals for the mandatory relocation or resettlement of migrants across the EU and that the Government will oppose "mandatory quotas". The proposed Council Decision is subject to the UK's Title V (justice and home affairs) opt-in. The Minister says he is "minded not to opt in" and sets out the factors which the Government will take into account in reaching a final opt-in decision.

3.4 EU leaders discussed the migration crisis at the European Council on 25/26 June. They agreed that there should be "temporary and exceptional relocation" of 40,000 migrants in clear need of international protection from Italy and Greece to other Member States over the next two years, but on a purely voluntary basis. Member States are expected to agree, by consensus by the end of July, how the 40,000 migrants will be distributed between them. A footnote states, "The UK will not participate".

3.5 In light of the Conclusions agreed by EU Heads of State and Government on 26 June, it is not clear whether the proposed Council Decision will be amended to establish a voluntary relocation mechanism or withdrawn and replaced by a fresh proposal. In either case, the Government will be required formally to decide whether or not the UK should participate. We deprecate the fact that, by the simple device of a footnote, the Government appears to have pre-empted any view that this House might have wished to express on UK participation in the proposed relocation mechanism.

3.6 It is evident that the Government's opt-in decision — had it been debated in the House before the summer recess — would have attracted "particularly strong Parliamentary interest" and fulfils the requirements set out in the Minister for Europe's Written Ministerial Statement to the House of 20 January 2011 for a debate on the floor of the House. The Government's apparent indifference to Parliamentary scrutiny of its opt-in decision in this case should not pass unchallenged and strengthens our conviction that such scrutiny is imperative. Although the deadline for notifying the Council Presidency of the UK's opt-in decision expires on 27 August, we urge the Government to ensure that time is made available for an opt-in floor debate when the House returns in September, so that the House has an opportunity to express its view on the Government's reasons for not opting into the relocation proposal and on the

Government's apparent disregard for commitments made previously to Parliament on scrutiny of opt-in decisions.

3.7 We expect the Minister to inform us, before the debate takes place, of the progress made in securing voluntary commitments to relocate 40,000 migrants from Italy and Greece. We ask him to explain what contribution the UK intends to make to ease the burden on frontline Member States. We also ask him to provide an assessment of the viability and effectiveness of voluntary measures in ensuring a sustainable response to the migration crisis in the Mediterranean.

3.8 We look forward to hearing whether an amended or fresh proposal establishing a voluntary relocation mechanism will be based on Article 78(3) TFEU and how the requirement (set out in the European Council Conclusions) for "consensus" in determining the distribution of migrants between Member States can be reconciled with the decision-making procedures provided for in that Article.

3.9 In his analysis of the impact of the proposed Council Decision on rights protected by the EU Charter of Fundamental Rights, the Minister suggests that Article 21 of the Charter may "arguably be engaged" as the proposal could result in a more favourable outcome for certain nationalities than would be the case in the absence of a relocation mechanism.⁵⁷ We ask the Minister whether it is the Government's view that the proposed Council Decision is incompatible with Article 21 of the Charter and whether this incompatibility would provide sufficient grounds to challenge the validity of the proposal, if adopted.

3.10 Finally, we note that the European Council Conclusions make no reference to the Commission's intention (described in its *European Agenda on Migration*) to propose a permanent relocation mechanism later in the year. We ask the Minister whether this element of the Commission's Agenda has been definitively abandoned and, if so, what implications this will have for the EU's handling of future crises at its external borders.

3.11 Pending further information from the Minister, the proposed Council Decision remains under scrutiny. We draw our observations to the attention of the Home Affairs Committee, along with the other measures described in this Report. We ask the Minister to provide regular updates on the process for agreeing the proposed Council Decision, in light of the European Council Conclusions, and on the progress of negotiations.

Full details of the documents: Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece: (36901), 9355/15 + ADD 1, COM(15) 286.

⁵⁷ Article 21(2) of the EU Charter of Fundamental Rights states: "Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited".

Background

3.12 Shocked by the rising death toll in the Mediterranean in the early months of 2015, the European Council issued a Statement on 23 April setting out a series of commitments to prevent further loss of life at sea and tackle the root causes of the human emergency confronting the EU. Recognising the need to strengthen internal solidarity and responsibility, EU leaders called for an increase in emergency aid to frontline Member States and consideration of the “options for organising emergency relocation between all Member States on a voluntary basis”. They invited the Commission to “develop a more systemic and geographically comprehensive approach to migration”.⁵⁸

3.13 The Commission Communication, *A European Agenda on Migration*, published shortly afterwards envisages two forms of EU action to give effect to the principle of solidarity and fair sharing of responsibility which is enshrined in Article 80 of the Treaty on the Functioning of the European Union (TFEU). The first, reflected in its current proposal for a Council Decision, would establish a mechanism for the relocation of individuals arriving in the EU who are in clear need of international protection, but whose applications for asylum have not yet been examined by an EU Member State. Under the so-called “Dublin system”, the EU has established criteria for determining which Member State is responsible for examining an application for asylum. In most cases, the responsible Member State will be the one in which a third country national has first entered the EU, placing a heavy burden on a small number of frontline Member States.⁵⁹ The temporary relocation mechanism proposed by the Commission is intended to relieve the pressure on the asylum systems of these frontline Member States by transferring responsibility for examining a proportion of pending asylum applications to other Member States. It applies *after* a sudden inflow of third country migrants has been established and so, arguably, does little to prevent or deter perilous sea crossings which have exacted an unprecedented number of deaths in the early months of 2015.

3.14 The second action proposed by the Commission, considered in chapter 6 of this Report, is intended to reduce reliance on criminal networks of people smugglers and human traffickers by providing for the resettlement within the EU of individuals whose need for international protection has already been established. Resettlement would similarly be based on a distribution key to ensure more equitable burden sharing across all Member States but, unlike the Commission’s proposals on relocation, would initially be taken forward on a voluntary basis, with binding legislative action held in reserve if Member States fail to meet the target of resettling collectively 20,000 refugees by the end of 2016.

3.15 Accompanying these proposals is a further Commission Communication setting out an Action Plan to tackle the smuggling of migrants. Further details can be found in chapter 1 of this Report. The Commission has also published new guidance on the fingerprinting

⁵⁸ European Council Statement of 23 April 2015.

⁵⁹ See Article 13 of the Dublin Regulation. Dublin transfers to Greece are currently suspended because of systemic deficiencies in its asylum system, following a ruling of the European Court of Human Rights in *M.S.S. vs. Belgium and Greece* and of the Court of Justice of the European Union in *N.S. v. UK*.

of asylum seekers and irregular migrants, covered in chapter 5 of this Report, and has announced a public consultation on the future of the “Blue Card” Directive with a view to improving opportunities for legal migration to the EU of highly skilled third country nationals — the UK does not participate in this Directive.

The Commission’s proposal for a Council Decision

3.16 The proposed Council Decision fulfils a commitment in the Commission’s *European Agenda on Migration* to bring forward a legislative proposal based on Article 78(3) TFEU to ensure a fair and balanced participation of all Member States in addressing the migration crisis in the Mediterranean.⁶⁰ This Treaty Article provides:

“In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.”

3.17 The Commission proposal is the first to be put forward on this legal base. Whilst the Commission’s primary objective is to relieve pressure on the frontline Member States — Italy and Greece — it also expects the proposal to serve as a “blueprint” for the EU’s response to future crises at its external borders. The Commission recognises that the provisional measures provided for in Article 78(3) TFEU are “exceptional in nature” and should only apply above a certain threshold of urgency and severity. Only Italy and Greece exceed this threshold, based on Frontex data illustrating the scale of migratory pressures in both countries in 2014 and the early months of 2015⁶¹. These external pressures are compounded by “structural shortcomings” in the asylum systems of both countries which make their situation unique. Both have experienced “similar peaks in the numbers of irregular arrivals with a high proportion of persons in clear need of international protection, coupled with a serious vulnerability in their asylum systems”.⁶² The Commission nevertheless leaves open the possibility that similar measures may be applied to other Member States, notably Malta, if confronted with a sudden inflow of migrants.⁶³

3.18 The Commission explains that the measures envisaged in the Council Decision would involve a temporary and partial derogation from elements of the Dublin system which establish criteria for determining the Member State responsible for examining an application for international protection. The Member State of relocation would assume responsibility for examining the asylum application. As the measures are provisional, they would only apply for a period of two years from the date on which the Council Decision is adopted (although they would take effect sooner, from 15 April 2015). During this period,

⁶⁰ See p.4 of the Commission Communication, *A European Agenda on Migration*.

⁶¹ According to Frontex data for 2014, more than 75% of irregular border crossings into the EU came via the Central and Eastern Mediterranean route and a high proportion of those detected in Italy and Greece were from Syria and Eritrea — see p. 3 of the Commission’s explanatory memorandum accompanying the proposed Council Decision.

⁶² See p.3 of the Commission’s explanatory memorandum accompanying the proposal.

⁶³ See Article 9 of the proposed Council Decision.

Italy and Greece would each be required to produce and implement a “roadmap” demonstrating how they will improve the capacity, quality and efficiency of their asylum systems, failing which the Commission may decide to suspend the Council Decision.⁶⁴

3.19 The following paragraphs describe the main elements of the proposed Council Decision.

Scope

3.20 Relocation would only apply to third country nationals arriving in Italy or Greece since 15 April 2015 who have submitted an application for international protection and whose countries of origin generate a high level of recognised refugees. The Commission proposes a 75% or higher recognition rate, based on “the latest available EU-wide average Eurostat data” on first instance decisions following an application for asylum.⁶⁵ This threshold is intended to limit relocation to those “who appear *prima facie* to be in clear need of international protection”. Eurostat data for 2014 indicate that only nationals of Eritrea and Syria currently meet the 75% or above threshold for recognition as refugees.⁶⁶

Distribution key

3.21 The Commission proposes that 24,000 eligible applicants for international protection should be relocated from Italy, and 16,000 from Greece on the basis of a distribution key set out in Annexes 1 and 2 to the Council Decision. Four criteria of variable weighting are used to determine the distribution key and allocation per Member State:

- the size of the population (given a 40% weighting to reflect the absorption capacity of each Member State);
- total GDP (also given a 40% weighting to reflect the wealth of each Member State and its capacity to absorb and integrate refugees);
- the average number of spontaneous asylum applications and number of resettled refugees per 1 million inhabitants over the period 2010-14 (given a 10% weighting to reflect the effort made by each Member State); and
- the unemployment rate (also given a 10% weighting to reflect the capacity to integrate refugees).⁶⁷

3.22 Applying this distribution key to Member States, Cyprus would receive the lowest proportion of relocated asylum seekers (0.43% or 173 individuals) and Germany the highest (21.91% or 8,763 individuals). The Commission explains that the total of 40,000 individuals to be relocated from Italy and Greece corresponds to approximately 40% of those entering both countries irregularly in 2014 who were in clear need of international

⁶⁴ See Article 8 of the proposed Council Decision.

⁶⁵ See Article 3 of the proposed Council Decision.

⁶⁶ See recitals (8) and (18) of the proposed Council Decision.

⁶⁷ See ADD 1 which contains the Annexes to the proposed Council Decision.

protection, adding that the proposed distribution “constitutes fair burden sharing” across the EU.⁶⁸ The Annexes do not include an allocation for the UK or Ireland — neither Member State will be bound by the Decision unless they choose to opt in — or for Denmark which has a general opt-out of EU asylum and immigration measures.

Procedures governing relocation

3.23 The Commission proposes that each Member State should appoint a national contact point to liaise with authorities in Italy and Greece and with the European Asylum Support Office (EASO) and may also send their own liaison officers to Italy and Greece. At regular intervals, authorities in Italy and Greece would identify individual applicants to be relocated to other Member States, giving priority to the most vulnerable.⁶⁹ Member States would be expected to indicate how many of those identified they would be able to receive immediately, following which Italy and Greece would formally notify individuals of the Member State to which they will be relocated. Member States are entitled to refuse to relocate an individual on grounds of “national security or public order concerns”.⁷⁰ All steps in the relocation procedure should be completed within one month.

Rights and obligations of individuals subject to relocation

3.24 The proposal makes clear that “the best interests of the child shall be a primary consideration” and that family members should be relocated in the same Member State. Individuals eligible for relocation must be informed at the outset of the procedures governing relocation and be notified in writing of the Member State of relocation. Once relocated, there is no right to move freely between Member States. There is no provision expressly allowing eligible individuals to be consulted on, or express a preference for, the Member State to which they are to be relocated, nor is there provision for appeal against the relocation decision.

Operational support for Italy and Greece

3.25 Member States are required to increase their operational support for Italy and Greece, with a particular focus on providing the necessary expertise to assist with the screening of third country nationals on arrival (including identification, fingerprinting and registration of asylum applications), the initial processing of applications, and wider support for the relocation process.⁷¹

⁶⁸ See p.5 of the Commission’s explanatory memorandum accompanying the proposal.

⁶⁹ The most vulnerable may include minors, disabled or elderly people, pregnant women, single parents with minor children, victims of human trafficking, individuals with serious illnesses or mental disorders, victims of torture, rape or other serious forms of psychological, physical or sexual violence, including female genital mutilation. See Article 21 of the Reception Conditions Directive (2013/33/EU), OJ No. L 180, 29.06.2013.

⁷⁰ See Article 5(5) of the proposed Council Decision.

⁷¹ See Article 7 of the proposed Council Decision.

Financial support for Member States of relocation

3.26 Member States would receive a lump sum of €6,000 from the EU's Asylum, Migration and Integration Fund for each individual relocated to their territory. The total cost to the EU budget, if all Member States accept the allocation of relocated individuals proposed by the Commission, is €240 million over two years.

Subsidiarity and proportionality

3.27 The Commission suggests that EU action is “essential” to relieve the strain on asylum systems and resources in Italy and Greece and to address the risk presented by “secondary movements” from these countries to other Member States, adding that “actions of individual Member States cannot satisfactorily reply to the common challenges all Member States are confronted with in this area”.⁷² The Commission notes that the financial and operational support already provided to Italy and Greece has not been sufficient and that the scale of relocation proposed “does not go beyond what is necessary to achieve the objective of addressing the situation effectively”:

“Based on the statistical data in 2014 and the first four months of 2015, the number of persons to be relocated represents 12% in respect of Italy and 19% in respect of Greece out of the total number of irregular border crossings in Italy and Greece respectively.”⁷³

3.28 Support for Italy and Greece is linked to wider improvements to the asylum and migration systems in both countries, which will be based on regular monitoring of their roadmaps.

The Government's Explanatory Memorandum of 9 June 2015

3.29 The Minister explains that there is much in the Commission's *European Agenda on Migration* which the Government welcomes, highlighting the UK's support for:

- the deployment of vessels in the Mediterranean;
- Europol's Joint Operational Team MARE⁷⁴;
- EU Regional Development and Protection Programmes; and
- the “Khartoum Process” which seeks to tackle people smuggling and human trafficking in countries of origin and transit in the Horn of Africa.

3.30 The Government shares the Commission's desire to prevent further loss of life at sea and to put in place an effective and sustainable response to current migratory pressures. He continues:

⁷² See p.8 of the Commission's explanatory memorandum accompanying the proposal.

⁷³ See p.8 of the Commission's explanatory memorandum accompanying the proposal.

⁷⁴ Launched in March, the purpose of *JOT Mare* is to tackle the organised criminal gangs who are facilitating the journeys of migrants across the Mediterranean.

“The UK [...] has a strong record of showing solidarity by supporting Member States under pressure from migration flows, both bi-laterally and under the co-ordination of EU Agencies such as the European Asylum Support Office (EASO). Over the last three years the UK has deployed Home Office officials to every major EASO asylum capacity building operation, in countries such as Greece, Italy, Bulgaria and Cyprus, contributing more resource than any other Member State.”⁷⁵

3.31 The Minister makes clear, however, that the Government does not support the Commission’s proposal for “mandatory quotas”, recalling the Home Secretary’s statement that the UK would “resist calls for mandatory relocation or settlement of migrants across Europe”.⁷⁶ He adds:

“The relocation proposal is unlikely to prove effective in stopping dangerous journeys across the Mediterranean and could even act as a pull factor and encourage further illegal migration to the EU.”⁷⁷

3.32 The Minister notes that the proposal contravenes the position agreed at the emergency European Council meeting in April which stated explicitly that relocation and resettlement should be based on voluntary action, not mandatory instruments. He continues:

“The Government is of the view that mandatory relocation fundamentally changes the EU approach to asylum, reducing national control of immigration and undermining the long-standing principles that each Member State should be responsible for developing sufficient asylum and migration management capacity to deal with pressures on it. The Government stands ready to provide practical support and expertise to assist frontline Member States implement effective systems.”⁷⁸

3.33 The Government will therefore press the Commission to reconsider the mandatory nature of its proposal and encourage a voluntary approach.

3.34 The Minister notes that proposed Council Decision is subject to the UK’s Title V (justice and home affairs) opt-in, adding that the UK has until 27 August 2015 to notify the Presidency of the Council of its opt-in decision. The eight week period for Parliamentary scrutiny of the Government’s opt-in decision expires on 28 July.⁷⁹ He explains that all Title V opt-in decisions are taken “on a case-by-case basis, putting the national interest at the heart of the decision making process”.⁸⁰ The Minister continues:

⁷⁵ See para 15 of the Minister’s Explanatory Memorandum.

⁷⁶ See para 16 of the Minister’s Explanatory Memorandum.

⁷⁷ See para 16 of the Minister’s Explanatory Memorandum.

⁷⁸ See para 18 of the Minister’s Explanatory Memorandum.

⁷⁹ The eight week period stems from an undertaking given on behalf of the Government by Baroness Ashton in 2008 to take account of any opinions expressed by the European Scrutiny Committee or the EU Committee in the House of Lords on whether or not the UK should opt into an individual EU justice and home affairs measure. Successive Governments have re-affirmed this undertaking to Parliament.

⁸⁰ See para 13 of the Minister’s Explanatory Memorandum.

“As the Government does not support mandatory relocation and has concerns over the principle and potential unintended consequences of any form of relocation of asylum cases within the EU, I am minded not to opt in to this proposal.”⁸¹

3.35 He sets out the factors which the Government will take into account in reaching its final opt-in decision:

- whether the Commission and Council intend to amend the proposal so it is in line with the statement of the April European Council, which supported a voluntary relocation scheme;
- how best to implement an effective and sustainable response to the situation in the Mediterranean; and
- the extent to which the UK can contribute to an effective response to migratory pressures on some Member States, without opting into the proposal.

3.36 Whilst opposing the principle of mandatory relocation, the Government accepts that the proposed Council Decision concerns an area of policy in which the EU may legitimately act and raises no subsidiarity concerns. The Minister indicates that the costs of UK participation could be substantial — in the region of £9 million to process asylum claims and provide support for the asylum seekers concerned — but notes that these would be partially off-set by a lump sum payment of €6,000 from the EU’s Asylum, Migration and Integration Fund for each relocated asylum seeker. For asylum seekers acquiring refugee status, there could be subsequent costs arising from their entitlement to “mainstream benefits”.⁸²

3.37 The Minister sets out the rights contained in the EU’s Charter of Fundamental Rights which may be affected by the proposed Council Decision, notably the right to asylum (Article 18), protection against expulsion to a State in which the individual concerned might face death, torture or inhuman or degrading treatment (Article 4), and protection of human dignity (Article 1). In addition, the Minister highlights Article 21 of the EU Charter which prohibits discrimination on any ground, including race, colour, ethnic or social origin and (for matters within the scope of the EU Treaties) nationality. He continues:

“The Article would arguably be engaged by the Decision, as the relocation agreement will apply only to asylum seekers of those nationalities which have an EU level recognition rate of over 75%. On the basis of the Council’s figures, this would appear to apply the Decision only to Syrian and Eritrean nationals.

“This would mean any asylum seeker who was not Syrian or Eritrean would remain in Italy and Greece, to have their claims determined there. Given the emphasis in the Decision on the reception and processing conditions in those countries, and the finding of the European Court of Human Rights in *M.S.S. v Belgium* that asylum

⁸¹ See para 13 of the Minister’s Explanatory Memorandum.

⁸² See para 21 of the Minister’s Explanatory Memorandum.

seekers in Greece face a real risk of inhuman or degrading treatment, this would inevitably be less favourable for those individuals.”⁸³

3.38 The Minister anticipates that negotiations on the proposed Council Decision will extend into the autumn as a number of Member States have raised concerns about the criteria for selecting beneficiaries and for determining the distribution key. He undertakes to keep us informed of negotiations.

Previous Committee Reports

None.

4 2015 EU General Budget

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Draft Amending Budget for the 2015 EU General Budget, related to migratory pressures
Legal base	Article 314 TFEU and 106a, EURATOM Treaty; co-decision; QMV
Department	HM Treasury
Document numbers	(36881), 9000/15, COM(15) 241

Summary and Committee’s conclusions

4.1 On 23 April the European Council committed to increase the EU’s measures in response to the situation in the Mediterranean. In order to fund these measures in 2015 the Commission has identified commitment and payment appropriations to be redeployed in the 2015 EU General Budget.

4.2 However, although it has identified sufficient payment appropriations to cover the perceived needs, it has not done the same for commitment appropriations. Consequently it proposes this Draft Amending Budget for 2015 for additional commitment appropriations of €75.8 million (£55.1 million), out of the €89 million (£64.7 million) required.

4.3 The Government, noting the Prime Minister’s personal commitment to the European Council’s objectives, told us that it fully supports the principle and objectives of the Draft Amending Budget; that its view is that the Commission should always look first to reallocate funds from within existing agreed budgets to meet emerging in-year pressures,

⁸³ See para 9(vi) of the Minister’s Explanatory Memorandum.

rather than coming to Member States to request additional money; and the funding of the required payment appropriations described in the Commission's presentation of the proposal is in line with this view.

4.4 The Government also told us that, at the request of the Commission, discussion of the proposal was expedited, that it was considered and adopted at the ECOFIN Council of 19 June and that the UK supported that adoption. The Government acknowledged that this was a breach of the Scrutiny Reserve Resolution, but justified it to us, in the light of the UK interest in not attempting to postpone adoption, in order to allow scrutiny.

4.5 This Draft Amending Budget is seemingly unobjectionable. However, we note that the Government refers only to the funding of the required payment appropriations being in line with its approach to funding of emerging in-year pressures. We ask the Government whether it considers that the Commission has exhausted the potential for redeployment of commitment appropriations.

4.6 We note elsewhere in this Report that the Commission has proposed EU-wide schemes for the relocation to other Member States of 40,000 migrants arriving in Italy and Greece who are in clear need of international protection and the resettlement within the EU of 20,000 refugees from third countries. The Government has made clear that it opposes "EU quotas" for relocation and resettlement and expects negotiations on both schemes to be protracted. We ask the Government whether the increased funding provided for in this Draft Amending Budget is intended to be used to support EU relocation and resettlement schemes and, if so, whether it is appropriate to agree to an increased budget for these purposes before the scope and viability of the schemes have been agreed.

4.7 We accept the Government's explanation for the scrutiny override. But we nevertheless wish answers to the questions posed above. So, pending a reply, the document remains under scrutiny.

Full details of the documents: Draft amending budget No. 5 to the general budget 2015: Responding to migratory pressures: 36881, 9000/15, COM(15) 241.

Background

4.8 During the course of a financial year the Commission presents to the Budgetary Authority (the Council and the European Parliament) Draft Amending Budgets (DABs) proposing increases or reductions for revenue and expenditure in the current EU General Budget. There are about ten DABs each year.

4.9 On 23 April the European Council committed, in response to the situation in the Mediterranean, to "Strengthening our [EU] presence at sea ... Fighting traffickers in

accordance with international law ... Preventing illegal migration flows ... Reinforcing internal solidarity and responsibility”.⁸⁴

The document

4.10 In response to the European Council commitment, the Commission proposes additional appropriations in 2015 for the FRONTEX agency, the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF), as follows:

- FRONTEX — €26.8 million (£19.5 million) in commitment and payment appropriations, with the aim of tripling funding for the Joint Operations Triton and Poseidon, which would primarily fund increased aerial and maritime surveillance and an increased number of vessels and aircrafts;
- measures to support frontline Member States — €57 million (£41.4 million) in commitment appropriations and €45.7 million (£33.2 million) in payment appropriations for the AMIF, in order to double the emergency assistance to support frontline Member States in receiving migrants, to implement an EU-wide resettlement scheme and to reinforce the Regional Development and Protection Programmes for North Africa and the Horn of Africa;
- ISF — €5 million (£3.6 million) in commitment appropriations and €4 million (£2.9 million) in payment appropriations, to reinforce surveillance activities conducted under Triton and Poseidon operations; and
- additional expenditure to increase staffing levels, with €739,000 (£537,000) to fund additional posts in FRONTEX (16 posts), Europol (three) and the European Asylum Support Office (four).

4.11 The total required to cover these measures is €89 million (£64.7 million) in commitment appropriations and €76.6 million (£55.7 million) in payment appropriations. €13.2 million (£9.6 million) in commitment appropriations and €7 million (£5.1 million) in payment appropriations are to be redeployed from recovered funds in relation to the closure of old files under the External Borders Fund. The remaining payment appropriations, of €69.7 million (£50.1 million), are to be redeployed from the Galileo project (the second part of the EU’s Global Navigation Satellite System) — the Commission notes that due to delays in the programme relating to the third batch of satellites, payments initially foreseen for 2015 will now not be required until the second quarter of 2016.

4.12 The Commission presents DAB No 5/2015 in order to cover the remaining commitment appropriations, of €75.8 million (£55.1 million), which would be additional to the commitment appropriations agreed for 2015 in the adopted budget.

⁸⁴ See Statement of 23 April 2015.

The Government's view

4.13 In his Explanatory Memorandum of 29 May 2015 the Financial Secretary to the Treasury (Mr David Gauke) said that:

- the Government fully supports the principle and objectives of DAB No 5/2015, which seeks to bolster funding available to manage migration and refugee flows in the Southern Mediterranean in the light of recent events;
- the Prime Minister expressed personal commitment to these objectives at the European Council on migration on 23 April;
- the Government's view is that the Commission should always look first to reallocate funds from within existing agreed budgets to meet emerging in-year pressures, rather than coming to Member States to request additional money; and
- the funding of the required payment appropriations described in the Commission's presentation of the DAB is in line with this view.

The Minister's letters of 29 May and 24 June 2015

4.14 Reminding us of the Government's support for the principle and objectives of this DAB and the Prime Minister's personal commitment to the European Council objectives, the Minister first told us that:

- the Commission has proposed expediting the timetable for consideration of the DAB due to the urgency of the situation;
- COREPER voted on 27 May to expedite the timetable for the proposal; and
- It was now expected to be considered at COREPER on 17 June and at the ECOFIN Council on 19 June.

4.15 In his second letter the Minister told us that the DAB was adopted at the ECOFIN Council on 19 June and that, in line with the Prime Minister's previous commitment to this proposal, the Government supported its adoption. Recognising that, regrettably, this constitutes a scrutiny override, the Minister:

- notes that the timing of the proposal did not give us the opportunity to scrutinise;
- says that given the exceptional and urgent nature of this DAB, it would not have been appropriate to push for delay, nor abstain on scrutiny grounds;
- recalls his previous explanations for the Government's support for the proposal; and
- asserts that given these exceptional circumstances, it was right and in the UK's interests, to support this proposal at this time.

Previous Committee Reports

None.

5 Fingerprinting of migrants

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested; relevant to the debate on the Commission Communication, <i>A European Agenda on Migration</i> , recommended on 21 July 2015
Document details	Commission Staff Working Document on <i>implementation of the Eurodac Regulation as regards the obligation to take fingerprints</i>
Legal base	—
Department	Home Office
Document numbers	(36904), 9346/15, SWD(15) 150

Summary and Committee’s conclusions

5.1 The Commission’s Communication, *A European Agenda on Migration*, reminds Member States of the importance of fingerprinting all migrants who have applied for asylum in the EU or who have been apprehended in connection with an irregular border crossing. Fingerprinting of these categories of third country migrants is one of the principal means of establishing their identity, particularly if they have arrived with incomplete, false, or no, identity papers, and is a requirement under EU law. The fingerprints are sent to a central EU database — Eurodac — to assist in the application of the Dublin rules which establish criteria for determining the Member State responsible for examining an asylum application.

5.2 The Commission Staff Working Document fulfils the commitment in the *European Agenda on Migration* to provide “guidance to facilitate systematic fingerprinting, in full respect of fundamental rights, backed up by practical cooperation and exchange of best practices”.⁸⁵ It draws on information provided by national contact points in response to an inquiry by the European Migration Network — a network of experts on asylum and migration — concerning national laws and practices on the use of force or coercion in taking fingerprints and the penalties (including detention) available for those who refuse to cooperate.⁸⁶

⁸⁵ See p.13 of the Commission Communication, *A European Agenda on Migration*.

⁸⁶ Information leaflet on the European Migration Network.

5.3 The Minister for Immigration (James Brokenshire) welcomes the guidance contained in the Commission Staff Working Document as a basis “for further debate” and underlines the need for all Member States to fulfil their fingerprinting obligations under the Eurodac Regulation.

5.4 The focus of this Commission Staff Working Document is the treatment of migrants arriving by sea in Italy and Greece who travel on to other Member States with a view to remaining there illegally or submitting a claim for asylum. The Commission asserts that the refusal of certain third country nationals, notably from Eritrea and Syria, to cooperate when asked to provide fingerprints has impeded the correct application of the Dublin rules and, as a consequence, “a large number of asylum applications” appear to have been submitted in the wrong Member State.

5.5 No assessment is given of the scale of the problem. The only source of evidence referred to in the Commission Staff Working Document is the inquiry concluded by the European Migration Network in September 2014. A significant proportion of the responses to the inquiry indicate that lack of cooperation in providing fingerprints is rare: Member States variously describe the phenomenon as “exceptional”, “not significant”, “not common” or experienced only in “isolated” cases. Even where the use of force or coercion is allowed, a number of Member States suggest that its use is theoretical, since “it is almost impossible to take fingerprints by using force”, or unnecessary as the individuals concerned “as a rule do cooperate”. We ask the Minister whether the failure to cooperate in being fingerprinted is a recent phenomenon and, as such, is not reflected in the responses to the European Migration Network inquiry.

5.6 We accept that some Member States may well be failing to fulfil their obligations to fingerprint third country migrants and asylum seekers at their first point of arrival in the EU. We ask the Minister whether these shortcomings are more likely to stem from a lack of capacity to manage large influxes rather than an inability to use force or coercion. Does he consider that the Commission’s proposal, in its *European Agenda on Migration*, to create “Hotspots” to ensure that there are adequate staffing levels and resources to manage migratory flows within the frontline Member States, rather than the publication of guidance culminating in the use of coercion “as a last resort”, is a more productive way forward?

5.7 We note that the Commission Staff Working Document does not define what is meant by the term “coercion”, and how it differs from the use of force. Without further clarification, we question whether, as a matter of principle, the use of coercion to compel the fingerprinting of minors, pregnant women or other vulnerable individuals can ever be justified as a reasonable and proportionate means of securing cooperation. It is both striking and troubling that the guidance does not make explicit reference to the age threshold in the Eurodac Regulation which limits the fingerprinting obligation to those aged at least 14 years.

5.8 In light of our observations, we ask the Minister to:

- provide an estimate of the proportion of migrants arriving by sea in Italy and Greek who have refused to cooperate with the fingerprinting process, and how many of these have moved on to other Member States;
- explain what he understands “coercion” to mean in the context of the Commission’s guidance;
- indicate whether guidance on the use of coercion, as a last resort, constitutes an appropriate and proportionate response to the failure by some Member States to fulfil their fingerprinting obligations under the Eurodac Regulation; and
- tell us whether, in his view, the possible interference with private and family life alluded to in his Explanatory Memorandum is justified.

5.9 Given, also, the importance which the Minister attaches to ensuring the proper functioning of the Dublin system and compliance with Eurodac requirements, we ask him whether the Government has approached the Commission with a view to bringing targeted enforcement action against those Member States that are falling short.

5.10 Pending the Minister’s reply, the Commission Staff Working Document remains under scrutiny.

Full details of the documents: Commission Staff Working Document on *implementation of the Eurodac Regulation as regards the obligation to take fingerprints*: (36904), 9346/15, SWD(15) 150.

Background

5.11 The Eurodac Regulation, adopted in 2000, establishes a central EU database for the comparison of fingerprint data sent by Member States for two categories of third country nationals: applicants for asylum and individuals apprehended in connection with an irregular crossing of the EU’s external land, sea or air borders. Member States are under a legal obligation to fingerprint both categories of third country nationals, provided they are at least 14 years of age, and to transmit the data to the Eurodac database. They may also send fingerprint data for a third category, third country nationals who are found to be “illegally present” within the territory of a Member State, but are not legally bound to do so.⁸⁷ A new Eurodac Regulation will take effect on 20 July 2015, but the substance of the obligations relating to fingerprinting remains unchanged. Under both Regulations, Member States are responsible for establishing the procedures for taking fingerprints, but these must comply with human rights law, notably the European Convention on Human Rights, the UN Convention on the Rights of the Child and the EU Charter of Fundamental Rights.⁸⁸

⁸⁷ See Articles 4, 8 and 11 of Regulation (EC) No. 2725/2000, OJ No. L 316, 15.12.2000.

⁸⁸ See Article 3(5) of Regulation (EU) No 603/2013, OJ No. L 180, 29.06.2013.

5.12 The purpose of the Eurodac fingerprint comparison is to determine the Member State responsible for examining an asylum application under the Dublin Regulation, particularly in cases where a third country national has entered the EU through one Member State and claimed asylum in another, or has submitted multiple claims for asylum in different Member States.⁸⁹ The UK participates fully in the Eurodac and Dublin Regulations.

5.13 In October 2014, the Justice and Home Affairs Council agreed Conclusions setting out a strategic approach and operational priorities for the better management of migratory flows to the EU.⁹⁰ These highlighted “the large secondary movements within the EU” and the use of smuggling networks to circumvent the Eurodac requirements for fingerprinting migrants. Member States were urged to ensure “systematic identification, registration and fingerprinting” by:

- ensuring that fingerprints are taken on land, immediately upon apprehension in connection with an irregular border crossing;
- taking restrictive measures to prevent migrants who refuse fingerprinting from absconding; and
- informing migrants of their rights and obligations and the consequences of non-compliance with rules on identification.

5.14 The Commission Staff Working Document seeks to flesh out these elements of the Council Conclusions with a view to developing “a coherent common approach” to fingerprinting. It is one of five measures put forward by the Commission since the publication of its Communication, *A European Agenda on Migration*. The others, considered elsewhere in this Report, are:

- an Action Plan to tackle the smuggling of migrants;
- a proposal for a Council Decision establishing a provisional mechanism for the relocation of 40,000 individuals who have arrived in Italy and Greece since 15 April 2015, and are in clear need of international protection, to other Member States for the purpose of examining their applications for asylum;
- a Commission Recommendation proposing the voluntary resettlement of 20,000 refugees from outside the EU, based on a distribution key to ensure more equitable burden-sharing across all Member States;
- a proposal for a Council Decision establishing an EU military operation in the Mediterranean (EUNAVFOR Med) to “disrupt the business model” of people smugglers; and
- a proposal for a Draft Amending Budget (DAB) No.5 for the year 2015 to increase the resources available to tackle the migration crisis in the Mediterranean.

⁸⁹ Regulation (EU) No. 604/2013, OJ No. L 180, 29.06.2013.

⁹⁰ Council Conclusions of 10 October 2014.

5.15 The Commission has also announced a public consultation on the future of the EU’s “Blue Card” Directive with a view to improving opportunities for legal migration to the EU of highly qualified third country nationals — the UK does not participate in this Directive.

The Commission Staff Working Document

5.16 The Commission Staff Working Document is intended to provide guidance for Member States to facilitate the systematic fingerprinting required by the Eurodac Regulation in a manner which fully respects fundamental rights and the right to data protection. The Commission suggests that guidance is needed for two reasons:

- there is increasing evidence that asylum seekers and irregular migrants from certain countries of origin (Eritrea and Syria are specifically mentioned) have been refusing to cooperate in being fingerprinted; and
- “a large number of asylum applications appear then to be made in Member States in circumstances where it was thought likely that the applicant had entered the EU via another Member State (often after being rescued at sea) and after having been in contact with the authorities of that Member State”.⁹¹

5.17 The guidance draws on Member State responses to an inquiry carried out by the European Migration Network in summer 2014 which sought to establish whether national laws or practices allowed or required the use of force or coercion to take fingerprints and whether those who refused to be fingerprinted could be detained.⁹² The results of the inquiry reveal that there are significant divergences in the laws and practices of Member States. According to the Commission:

“Some Member States permit the use of detention for the purpose of ensuring that migrants are fingerprinted, some permit the use of a proportionate degree of coercion for this purpose, while others neither use detention or coercion.”⁹³

5.18 Despite these divergences, the Commission seeks to identify “possible best practices” for Member States to follow in ensuring systematic fingerprinting and suggests that these may form the basis for “a coherent common approach”.⁹⁴ The Commission Staff Working Document starts from the premise that “all reasonable and proportionate steps should be taken to compel [...] cooperation”⁹⁵ if a third country national subject to the requirements of the Eurodac Regulation refuses to cooperate voluntarily in providing fingerprints. Member States are invited to consider the following approach:

- Informing the individual concerned that fingerprinting is an obligation under EU law and that it is in his or her interests to cooperate “fully and immediately”.

⁹¹ See p.2 of the Commission Staff Working Document.

⁹² European Migration Network inquiry: Ad hoc Query on Eurodac fingerprinting.

⁹³ See p.2 of the Commission Staff Working Document.

⁹⁴ See p.3 of the Commission Staff Working Document.

⁹⁵ See p.3 of the Commission Staff Working Document.

- In cases where a third country national has not applied for asylum, explaining that he or she can be considered an irregular migrant and may be detained in accordance with the EU's Return Directive if no other less coercive alternatives to detention can be applied effectively.⁹⁶ The rationale, according to the Commission, is that “it is not normally possible to conclude whether there is a realistic prospect of his/her return being carried out” if the individual concerned fails to cooperate in the initial identification process (including fingerprinting).
- In cases where a third country national has applied for asylum, considering whether detention may be necessary “in order to determine or verify his or her identity or nationality”, in accordance with EU asylum law.
- Explaining that a failure to cooperate may lead to a claim for asylum being dealt with by means of an accelerated and/or border procedure, with the risk that the claim may be considered to be “manifestly unfounded” and that the individual concerned may, as a result, lose the right to remain within the EU pending the outcome of an appeal, be removed and made subject to a five-year EU-wide re-entry ban.⁹⁷
- Ensuring that detention is “for as short a time as possible and necessary”, in accordance with EU law.
- Whether or not detention is considered appropriate, ensuring that the individual concerned is made aware of his or her rights as an irregular migrant or asylum seeker and has access to information about the Dublin system (including, for example, rules on family reunification) and to counselling.
- In the event that counselling fails to secure cooperation, considering the use of coercion “as a last resort”, having first informed the individual concerned that coercion may be used to take his or her fingerprints — in such cases, the Commission suggests that “officials trained in the proportionate use of coercion may apply the minimum level of coercion required, while ensuring respect for the dignity and physical integrity of the data subject”. Officials should demonstrate that “there was no other practicable alternative measure to using reasonable coercion”, based on a case-by-case assessment of the “specific circumstances and vulnerabilities” of each individual, and keep an audit trail to record any use of coercion. The Commission adds that “Member States may consider that it is never appropriate to use coercion to compel the fingerprinting of certain vulnerable persons, such as minors or pregnant women”.

⁹⁶ The Return Directive, Directive 2008/115/EC, OJ No. L 348, 24.12.2008. Article 15 of the Directive sets out the circumstances in which a third country national may be kept in detention prior to removal. The Directive does not apply to the UK.

⁹⁷ See the recast Asylum Procedures Directive, Directive 2013/32/EU, OJ No. L 180, 29.06.2015. Under Article 31(8)(i), Member States may choose to subject an asylum claim to an accelerated procedure or to undertake the examination of the claim at the border or in a transit zone if the applicant has refused to have his or her fingerprints taken.

- Avoiding, where possible, fingerprinting more than once (for example, for transmission to Eurodac and for storage in national automated fingerprint identification systems).
- Considering the use of detention for individuals whose fingertips are damaged or otherwise unsuitable for taking fingerprints (for example, where glue has been applied) and where there is “a reasonable prospect that within a short period of time” it will be possible to take the fingerprints.
- Releasing individuals from detention once their fingerprints have been taken, unless there are other grounds for detention under EU laws on asylum or the return of illegal migrants.

5.19 Although no further details are provided in the Commission Staff Working Document, the Commission says that it will also explore whether more biometric identifiers can be used through the Eurodac system to assist with identification.⁹⁸

The Government’s Explanatory Memorandum of 11 June 2015

5.20 The Minister agrees with the Commission’s analysis that “groups of irregular migrants and asylum seekers from certain countries of origin, notably Eritrea and Syria, have refused to cooperate in being fingerprinted by Member State authorities” and welcomes the guidance produced by the Commission which will be “for further debate”.⁹⁹ He continues:

“We fully agree with the Commission in emphasising the need for Member States to fulfil their obligations under the Eurodac Regulation to take and transmit the fingerprints of asylum applicants (applicants for international protection) and migrants apprehended in connection with the irregular crossing of the external border by land, sea or air. Member States must respect their obligations and also work together to tackle attempts by others to thwart the correct application of fingerprinting laws. We must construct an environment which challenges the narrative put forward by smugglers that migrants should not cooperate with fingerprinting procedures when they arrive in the European Union. This behaviour has serious consequences for the functioning of the Dublin Regulation system as it allows secondary movements to go unchecked, which is unacceptable.

“We agree that in order to challenge the ‘non-cooperation’ narrative the provision of information to migrants about their rights and responsibilities is important. Migrants must also understand that their non-compliance with the process of identification and fingerprinting obligations will have consequences for the way in which their case is handled; such as the possibility of any asylum claim being considered in an accelerated procedure and/or the use of detention or coercion to obtain fingerprints. In our own experience the appropriate use of detention — as

⁹⁸ The Commission’s *European Agenda on Migration* indicates that this might include facial recognition techniques through digital photographs.

⁹⁹ See para 10 of the Minister’s Explanatory Memorandum.

described in the document (but in our case in accordance with national practice as the UK is not bound by the Return Directive 2008/115/EC) — can have the effect of bringing behavioural change.

“Not capturing fingerprint data and transmitting it to Eurodac undermines the Dublin system. Given the large number of migrants arriving by sea, many of whom have refused to cooperate with the fingerprinting process, it is likely that a large amount of fingerprint data has not been transmitted to Eurodac. This means there will be increasing gaps in the database. Anomalies and gaps in the data stored in Eurodac will have a negative impact on Dublin Regulation operations at a practical level and will make it more difficult to determine the State responsible for assessing an asylum claim. It will also impact on the accuracy of the data used by the Commission when producing its evaluation Report on the application of the Dublin Regulation in 2016. This is regrettable, but further underlines the importance of this document as a basis for discussions to improve compliance with the Eurodac Regulation.”¹⁰⁰

5.21 The Minister notes that the collection of fingerprint data under the Eurodac Regulation “may engage Article 8 of the European Convention on Human Rights (ECHR)”, concerning respect for private and family life, but provides no further details.

Previous Committee Reports

None.

¹⁰⁰ See paras 11-13 of the Minister’s Explanatory Memorandum.

6 Resettlement of refugees within the European Union

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee; relevant to the debate on the Commission Communication, <i>A European Agenda on Migration</i> , recommended on 21 July 2015
Document details	Commission Recommendation on a European resettlement scheme
Legal base	Article 292 TFEU
Department	Home Office
Document numbers	(36923), 9376/15 + ADD 1, C(15) 3560

Summary and Committee's conclusions

6.1 Prompted by the unprecedented loss of life in the Mediterranean during the early months of 2015, the European Council held a special meeting on 23 April 2015 which called on Member States to strengthen “internal solidarity and responsibility” by, amongst other things, establishing “a voluntary pilot project on resettlement across the EU, offering places to persons qualifying for protection”.¹⁰¹ Shortly afterwards, the Commission published its Communication, *A European Agenda on Migration*, proposing a series of measures to respond to the immediate crisis in the Mediterranean. The Commission indicated that it would adopt a Recommendation proposing an EU-wide resettlement scheme, supported by EU funding, to provide places for 20,000 individuals currently outside the EU who are in need of international protection. The Recommendation, adopted by the Commission on 8 June 2015, fulfils this commitment.

6.2 The Minister for Immigration (James Brokenshire) notes that the Recommendation is not legally binding on Member States “and cannot therefore impose mandatory quotas”. He raises no objection to resettlement as a matter of principle, and acknowledges the “significant imbalance” of effort across all Member States, but considers that resettlement schemes “are best decided at national level” and “sees little value in being bound by an EU quota”.

6.3 EU leaders discussed the migration crisis at the European Council meeting on 25/26 June. They agreed that all Member States should participate, “through multilateral and national schemes”, in the resettlement of 20,000 displaced persons in clear need of international protection. In his statement to the House following the European Council,

¹⁰¹ See the Council Statement.

the Prime Minister said that the UK would “enhance our plans to resettle the most vulnerable refugees from outside the EU, most notably from Syrian refugee camps”.¹⁰²

6.4 The instrument chosen by the Commission to implement an EU-wide resettlement scheme — a non-binding Recommendation based on Article 292 of the Treaty on the Functioning of the European Union (TFEU), which provides broad authority for the Commission to “adopt recommendations” on its own initiative — suggests a lack of confidence in its ability to secure Council approval for such a scheme, even on a voluntary basis. Whilst the European Council has endorsed the principle of resettlement, as well as the numerical target of resettling 20,000 displaced persons within the EU, it is as yet unclear whether this will be achieved by means of a comprehensive EU resettlement scheme, an accumulation of national offers of resettlement, or a combination of both.

6.5 We are surprised that the Minister raises no objection to the absence of a substantive legal base in Title V of Part Three of the TFEU concerning EU policies on asylum and the international protection needs of third country nationals. In our view, the omission of a Title V legal base obscures the source of the EU’s competence to act. Whilst we recognise that the Commission Recommendation cannot bind the UK (or any other Member State) and so has no immediate legal implications for the UK, we do not consider that the Minister adequately addresses the policy and financial implications. In particular, whilst expressing a preference for taking decisions at a national level, and rejecting any idea of a binding “EU quota”, the Minister raises no objection in principle to resettlement and does not clearly rule in or out UK participation in the scheme proposed by the Commission. Nor does he address the financial incentives which participation in an EU scheme would offer. We ask the Minister for an assessment of the potential benefits and disadvantages of action at EU or national level, and for a clearer indication of the factors which will determine whether or not the UK participates in a voluntary EU resettlement scheme.

6.6 We note that Conclusions agreed by the Justice and Home Affairs Council in October 2014 urged Member States to offer “a credible number of resettlement places, on a voluntary basis” and to make “a fair and balanced contribution”. The European Council similarly called on Member States in April this year to strengthen “internal solidarity and responsibility” by piloting an EU resettlement scheme and, in June, indicated that all Member States should participate in the resettlement of 20,000 displaced persons. Whilst the Prime Minister has made clear that the UK remains committed to these objectives, we ask the Minister whether he considers that national efforts alone can provide the scale necessary to meet current needs for international

¹⁰² HC Deb col. 1176 29 June 2015.

protection, given the marked reluctance in some Member States to support resettlement.¹⁰³

6.7 The Commission Recommendation envisages that the UK would resettle 2,309 vulnerable individuals in need of international protection over a two-year period. The Minister indicates that, under existing resettlement schemes, the UK is “running close to 1,000 cases a year”. In his Statement to the House, the Prime Minister said that the UK would “enhance” its plans to resettle the most vulnerable refugees from outside the EU. We ask the Minister to tell us how many refugees the UK proposes to resettle over the two-year period envisaged in the Commission Recommendation and whether it will do so on a purely national basis or as part of a wider and coordinated EU resettlement effort. We would also welcome the Minister’s views on the criteria proposed by the Commission as the basis for the distribution key annexed to the Recommendation, as well as his assessment of the prospects for achieving a resettlement figure of 20,000 across the EU as a whole by the end of 2016.

6.8 Finally, we note that the Commission’s Communication, *A European Agenda on Migration*, anticipates an evaluation and possible review of the Dublin rules (determining the Member State responsible for examining an asylum application) in 2016 which will “draw on the experience from the relocation and resettlement mechanisms” put forward by the Commission and “determine whether a revision of the legal parameters of Dublin will be needed to achieve a fairer distribution of asylum seekers in Europe”.¹⁰⁴ We ask the Minister for his assessment of the risk that a failure to implement in full the voluntary resettlement scheme proposed by the Commission in this Recommendation will increase the probability of a wide-ranging review of the Dublin rules in 2016 which may prove to be far less advantageous for the UK.

6.9 Pending the Minister’s reply, the Commission Recommendation remains under scrutiny. We draw it to the attention of the Home Affairs Committee.

Full details of the documents: Commission Recommendation of 08.06.2015 on a European resettlement scheme: (36923), 9376/15 + ADD 1, C(15) 3560.

Background

6.10 Despite the creation, in October 2013, of an EU “Task Force Mediterranean” to respond to the migration crisis in the Mediterranean, the EU has been unable to stem the flow of migrants risking their lives at sea to reach the shores of the EU. In October 2014, the Justice and Home Affairs Council agreed Conclusions establishing a strategic approach and operational priorities to guide the EU and Member States in managing migratory flows. In order to prevent hazardous sea crossings, the Conclusions proposed a series of

¹⁰³ Information provided by the Commission in its Questions and Answers on the *European Agenda on Migration* indicates that only 15 Member States have resettlement schemes, with a further three offering resettlement on an *ad hoc* basis. It describes current EU resettlement efforts as “a sum of all national actions”.

¹⁰⁴ See pp.13-14 of the Commission Communication.

actions, including the offer of “a credible number of resettlement places, on a voluntary basis”, working in partnership with United Nations Refugee Agency (UNHCR). The Justice and Home Affairs Council made clear that all Member States should contribute to this objective “in a fair and balanced manner”, drawing on financial support from the EU’s Asylum, Migration and Integration Fund.¹⁰⁵

6.11 The special European Council on 23 April 2015 reaffirmed the commitment to resettlement across the EU, based on a “voluntary pilot project [...] offering places to persons qualifying for protection”.¹⁰⁶

6.12 The Commission Recommendation is a first attempt to develop a voluntary EU-wide resettlement scheme. It forms part of a wider package of measures, covered elsewhere in this Report, which have been brought forward by the Commission to implement elements of its *European Agenda on Migration*. The measures include:

- an Action Plan to tackle the smuggling of migrants;
- a proposal for a Council Decision to establish a provisional mechanism for the relocation of individuals arriving in Italy and Greece who are in clear need of international protection (to be followed by a permanent mechanism later in 2015);
- a proposal for a Council Decision establishing an EU military CSDP operation in the Mediterranean (EUNAVFOR Med) to “disrupt the business model” of people smugglers;
- a Commission Staff Working Document providing guidance on the fingerprinting of asylum seekers and irregular migrants; and
- a proposal for a Draft Amending Budget (DAB) No. 5 for the year 2015 to increase the EU contribution to Frontex, provide more funding for frontline Member States and for the implementation of an EU-wide resettlement scheme, and create additional posts in Frontex, Europol and the European Asylum Support Office.

The Commission Recommendation

6.13 The Commission Recommendation, which is addressed to all EU Member States, seeks to implement the commitment made by the European Council in April 2015 to “set up a first voluntary pilot project on resettlement across the Union” and to meet the demands of the European Parliament (in a Resolution also agreed in April) for “safe and legal access to the Union asylum system” for those in need of international protection.¹⁰⁷ The Commission notes the “significant imbalance” in the efforts made by Member States to provide for resettlement at a time when the number of refugees, asylum seekers and internally displaced people has, for the first time since the Second World War, exceeded 50

¹⁰⁵ See the Conclusions of the Justice and Home Affairs Council agreed on 10 October 2014.

¹⁰⁶ See the Statement issued by the European Council.

¹⁰⁷ See recitals (1) and (2) of the Commission Recommendation, as well as the Statement of the European Council and the Resolution agreed by the European Parliament on 29 April 2015.

million.¹⁰⁸ It suggests that resettlement provides a means of ensuring safe passage to the EU, without resorting to criminal networks of people smugglers and traffickers involved in many of the perilous sea crossings in the Mediterranean.

6.14 The Commission Recommendation makes provision for the resettlement of 20,000 individuals, currently outside the EU, who are in clear need of international protection. Following a request by the UNHCR, the individuals concerned would be transferred to Member States within the EU on the basis of a distribution key annexed to the Recommendation. The objective of resettlement would be to provide protection against *refoulement* (return to a country where there is a risk of persecution) as well as the conferral of rights in the host Member State equivalent to those enjoyed by beneficiaries of international protection.

6.15 The Commission envisages that the proposed resettlement scheme would apply to all Member States, with a distribution key based on the following criteria:

- the size of the population (given a 40% weighting);
- total GDP (also given a 40% weighting);
- the average number of spontaneous asylum applications and of resettled refugees per 1 million inhabitants during the period 2010–14 (given a 10% weighting); and
- the unemployment rate (also given a 10% weighting).

6.16 These criteria are intended to take account of the reception capacity of each Member State, the ability to absorb and integrate refugees, and the contribution made in the recent past to global resettlement efforts and to the management of asylum claims. Based on these criteria, Germany would have the highest allocation of resettled refugees (3,086 — a 15.43% share), followed by France (2,375 — an 11.87% share), the UK (2,309 — an 11.54% share), Italy (1,989 — a 9.94% share) and Spain (1,549 — a 7.75% share). Amongst the newer EU Member States, Poland would have the highest share (4.81%, translating into 962 resettled refugees), followed by Romania (a 3.29% share, 657 refugees), the Czech Republic (a 2.63% share, 525 refugees), and Estonia (a 1.63% share, 326 refugees).

6.17 The Recommendation identifies North Africa, the Middle East and the Horn of Africa as the priority regions for resettlement and says that the resettlement scheme should be completed within two years. UNHCR would put forward individuals for resettlement, but each Member State would remain responsible for individual admission decisions, following medical and security checks, and for completing the formal procedures for conferring international protection. The Recommendation includes provision for the involvement of the European Asylum Support Office in implementing the scheme, particularly in Member States with little prior experience of resettlement, and in monitoring and reporting on how it has been implemented across the EU.

¹⁰⁸ See recitals (3) and (4) of the Commission Recommendation.

6.18 The Recommendation makes clear that resettled individuals who have been granted international protection by a Member State are subject to the same conditions and restrictions applicable to other legally resident third country nationals. This means that they do not have a right to move freely within the EU.

6.19 Member States would receive a financial allocation from the EU's Asylum, Migration and Integration Fund in proportion to the number of individuals they resettle.¹⁰⁹ The Commission indicates that "an extra €50 million" will be made available in 2015 and 2016 to implement the EU resettlement scheme.

6.20 The Commission Recommendation is based on the fourth sentence of Article 292 of the Treaty on the Functioning of the European Union (TFEU) which empowers the Commission to adopt recommendations. It does not cite a legal base in Title V of Part Three of the TFEU which sets out the areas in which the EU is competent to act in the "area of freedom, security and justice", including in the field of asylum and migration. Recommendations adopted by the EU institutions have no binding force in EU law.

The Minister's Explanatory Memorandum of 23 June 2015

6.21 The Minister notes that the resettlement proposal is in line with the voluntary approach advocated by the European Council in April. As it takes the form of a Recommendation, it is not legally binding on Member States (although it states that the scheme should cover all Member States), Member States "have discretion as to whether they will act upon it", and the proposal "cannot therefore impose mandatory quotas".¹¹⁰

6.22 The Minister reiterates the Government's position on the response to the migration crisis in the Mediterranean and describes the practical support provided by the UK bilaterally to other Member States and through the European Asylum Support Office, as well as support for EU efforts in third countries of origin and transit to tackle people smuggling and human trafficking.¹¹¹ He continues:

"The Government does not oppose resettlement in principle and believes that such schemes are an important part of a well-managed and effective asylum system. The UK operates three resettlement programmes in partnership with the United Nations High Commissioner for Refugees (UNHCR): Gateway; Mandate; and the Syrian Vulnerable Persons Relocation (VPR) scheme. Gateway is one of the oldest and largest resettlement programmes in the EU with over 6,000 cases resettled over 10 years, and the Syrian VPR scheme, launched in January 2014, is the first resettlement

¹⁰⁹ See Regulation (EU) No. 516/2014 establishing the Asylum, Migration and Integration Fund. Article 17 makes provision for a lump sum of either €6,000 or €10,000 for each resettled individual, but the Commission Recommendation suggests that this sum is likely to be adjusted in order to "optimise the use of the financial incentives" (see recital (14) of the Commission Recommendation).

¹¹⁰ See paras 4 and 11 of the Minister's Explanatory Memorandum.

¹¹¹ See chapter 3 of this Report on the proposed Council Decision for an emergency relocation mechanism.

programme run by the UK to target support for refugees specifically on the basis of their vulnerability.”¹¹²

6.23 The Minister acknowledges that there is “a significant imbalance between Member States’ commitment to resettlement”, adding:

“Currently, only fifteen operate such schemes, with the UK resettling one of the highest numbers of refugees in Europe, currently running close to 1,000 cases a year. The Government clearly supports targeted resettlement as part of a wider asylum management policy and is already playing a significant part in resettlement efforts.”¹¹³

6.24 He concludes, however, that “resettlement schemes are best decided at national level” and says that the Government “sees little value in being bound by an EU quota”.¹¹⁴

6.25 As the Recommendation has already been adopted by the Commission, the Minister notes:

“there will be no proposal for the Council to consider and the Council will play no part in adopting it. Therefore there is no opt-in decision to take.”¹¹⁵

6.26 He expects negotiations on the Commission’s proposals for relocation and resettlement schemes to extend into the autumn, “given a number of Member States’ concerns over the criteria regarding beneficiaries and the distribution key”, and undertakes to inform us of developments.¹¹⁶

Previous Committee Reports

None.

¹¹² See para 16 of the Minister’s Explanatory Memorandum.

¹¹³ See para 17 of the Minister’s Explanatory Memorandum.

¹¹⁴ *Ibid.*

¹¹⁵ See para 12 of the Minister’s Explanatory Memorandum. Under the UK’s Title V opt-in Protocol, the opt-in only applies to measures proposed for adoption by the Council.

¹¹⁶ See para 20 of the Minister’s Explanatory Memorandum.

Formal minutes

Tuesday 21 July 2015

Members present:

Sir William Cash, in the Chair

Geraint Davies

Richard Drax

Peter Grant

Nia Griffith

Kate Hoey

Kelvin Hopkins

Calum Kerr

Craig Mackinlay

Mr Jacob Rees-Mogg

Alec Shelbrooke

Graham Stringer

Kelly Tolhurst

Mr Andrew Turner

Heather Wheeler

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

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

Paragraphs 1.1 to 6.26 read and agreed to.

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

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

[Adjourned till Wednesday 9 September at 2.00pm.]

Standing Order and membership

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

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

The expression “European Union document” covers—

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

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

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

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)
 Geraint Davies MP (*Labour/Cooperative, Swansea West*)
 Richard Drax MP (*Conservative, South Dorset*)
 Peter Grant MP (*Scottish National Party, Glenrothes*)
 Damian Green MP (*Conservative, Ashford*)
 Nia Griffith MP (*Labour, Llanelli*)
 Kate Hoey MP (*Labour, Vauxhall*)
 Kelvin Hopkins MP (*Labour, Luton North*)
 Calum Kerr MP (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*)
 Craig Mackinley MP (*Conservative, South Thanet*)
 Mr Jacob Rees-Mogg MP (*Conservative, North East Somerset*)
 Alec Shelbrooke MP (*Conservative, Elmet and Rothwell*)
 Graham Stringer MP (*Labour, Blackley and Broughton*)
 Kelly Tolhurst MP (*Conservative, Rochester and Strood*)
 Mr Andrew Turner MP (*Conservative, Isle of Wight*)
 Heather Wheeler MP (*Conservative, South Derbyshire*)