

British-Irish Parliamentary Assembly

Committee B (European Affairs)

Report on Visa systems

Introduction

1. In October 2014, Committee B (European Affairs) of the British-Irish Parliamentary Assembly agreed to undertake an inquiry into the workings of different visa systems within the EU and in particular those that apply within the UK and the Republic of Ireland. Lord German and Aengus Ó Snodaigh TD were appointed as co-rapporteurs for the inquiry. Following the UK general election in May 2015 and the appointment of a new British delegation to the Assembly, Lord German stood down as a Member of the Assembly. Therefore, at its meeting on 15 November 2015 the Committee agreed that Baroness Harris should be appointed as the new British co-rapporteur for the inquiry, replacing Lord German.
2. In its November 2014 call for evidence, the Committee invited written evidence on the workings of the Schengen Area and Common Travel Area and the effect on the UK and Ireland of those systems. The Committee received written evidence from:
 - Department of Justice and Equality, Government of the Republic of Ireland
 - Home Office, UK Government
 - European Tourism Association
 - Law Centre (NI)
 - Northern Ireland Strategic Migration Partnership
3. To complement this written evidence the Committee held a number of meetings with relevant parties pursuant to the inquiry. The first of these was on 13 November 2014 with representatives of the European Commission in Brussels when the then Chair of the Committee, Mr. Robert Walter MP, and Lord German and Sean Conlan TD met with Monika Mosshammer, Deputy Head of Unit, Border management and Schengen governance/relations with Frontex, and Anne-Marie Soerensen, Policy Officer, Visa, Directorate-General for Home Affairs. The meeting covered the workings of the Schengen visas systems and the status of the UK and Ireland *vis-à-vis* that system.
4. At its meeting in Dublin on 22 February 2015 the Committee acknowledged that the impending general election in the UK would affect progress on the report until a new British delegation was appointed. No further work was therefore carried out on the inquiry until the appointment of the new British delegation in October 2015 and, at its meeting in Cheltenham on 15 November 2015 the Committee agreed that the two co-rapporteurs should be tasked with holding any further meetings they deemed necessary in order for the Committee to consider a final report at the 2016 Dublin plenary.
5. To complete the inquiry the co-rapporteurs conducted a further visit and held follow up meetings with the British and Irish governments earlier this year. They visited the ports of Fishguard and Rosslare (both of which are entry points to the UK and Ireland respectively) on 2 July 2016 to examine measures in place for border security and visa checking between the two countries. On 23 February 2016 Baroness Harris held a meeting with Nigel Farminer, Head of Border and Visa Policy, at the UK Home Office to receive an update on, and further explore, the written evidence to the inquiry received from the UK Government. Similarly, Aengus Ó Snodaigh TD held a meeting with

Michael Kirrane, Director General of the Irish Naturalisation and Immigration Service and Gerry McDonagh, Head of Visa Section from the Irish Government's Department of Justice on 2 June 2016.

6. These discussions with the UK and Irish governments also briefly touched on the implications of the then impending EU referendum in the UK on the Common Travel Area in particular. While it is inevitable that the UK's vote on 23 June 2016 will have an effect on visas policy and the operation of the Common Travel Area, the timing of this report, its original focus and the evidence received means that the Committee has not, at this juncture, made detailed conclusions or recommendations on relevant implications of the UK leaving the EU. Rather, the Committee intends to pursue these issues fully in its future inquiries. Notwithstanding the implications of the UK's vote to leave the EU on the Common Travel Area the Committee believes that all its recommendations in this report still merit detailed consideration by the UK and Irish governments.
7. The members of Committee B would like to thank all those who assisted and participated in the inquiry for their time and insight; the House of Commons Library for background advice and briefing on the workings of different visa systems; Lord German for his work as co-rapporteur prior to standing down from the British delegation to the Assembly; and the British and Irish Clerks to the Committee, Ed Beale and Kate Oliver, for their assistance in drafting the report.

The Common Travel Area

Background and origins¹

8. The Common Travel Area (CTA) arrangements cover the UK and the Republic of Ireland, together with the Crown Dependencies (Jersey, Guernsey and the Isle of Man). All nationals of these countries can travel freely within the CTA. Although there is no passport control for journeys started within the Area, nationals of other countries must have the relevant immigration permission. Therefore visitors to the UK and Ireland must obtain a visa unless they come from one of the visa exempt countries. While they are both members of the EU, they both have an opt-out from the Schengen border-free area (for more information see page 9 of this report) and maintain their own visa policy within a shared CTA. This means that while nationals from other EU member states and a range of other countries do not need a visa to enter the UK or Republic of Ireland, they will be required to show their passport or identity card upon entry even if travelling from another EU country.
9. The adoption of a CTA is linked to the establishment of the Irish Free State in 1922. The original CTA² remained in place until controls were reinstated at the outbreak of the

¹ This section draws on commentary in B Ryan, '[The Common Travel Area between Britain and Ireland](#)' (2001) 64 (6) *Modern Law Review*

² B Ryan, '[The Common Travel Area between Britain and Ireland](#)' (2001) 64 (6) *Modern Law Review*, p. 856, notes that "When the Home Office was faced with the imminent establishment of the Free State, its view was that it 'would not propose to require under the Aliens Order a passport system between this country and Ireland, and could not make any use of such a requirement if they were asked to impose it'. The status quo

Second World War. Although some restrictions were relaxed after the end of the war, British immigration controls (including checks on persons travelling between Northern Ireland and Great Britain) remained in place until the Irish government agreed to follow immigration policies and systems of immigration control similar to the UK's, in 1952. As previously, the 1952 CTA arrangements were based on an administrative agreement between the two states, and details were not made public.

10. In terms of immigration controls the CTA is a free movement zone, which means that a person who has been allowed to enter one part of the CTA will not normally require permission to enter another part of it while that permission is extant (provided they do not leave the CTA).³ Routine immigration checks are not made on passengers who travel within the CTA, and they are not required to carry a passport or national identity document for immigration purposes.
11. However, although the CTA ostensibly provides for passport-free travel between Ireland and the UK for Irish and British citizens, the CTA's provisions for passport-free travel between Ireland and the UK for those citizens have been described as "rights which must be foregone in order to be enjoyed".⁴ This is because in practice, in the absence of national identity cards, many British and Irish citizens do carry their passports when travelling within the CTA, in order to demonstrate their nationality and because they may require photographic ID for other purposes (e.g. due to carrier's requirements or due to the nature of immigration checks performed by CTA states). This is in line with travel advice issued by the Foreign and Commonwealth Office and the Irish Department of Foreign Affairs and Trade.⁵
12. Nor does the existence of the CTA mean that there is mutual recognition of visas issued to non-EEA nationals. A person who had obtained a visitor visa for Ireland cannot use it to enter the UK and (in most cases) vice versa. Instead, they have to apply separately for a visa (depending on whether their country is on each country's respective visa national list).

Evidence received

13. The evidence received from the Law Centre (NI) highlighted a lack of awareness among the public about the CTA and immigration requirements:

The concept of the CTA is not well understood outside of specialist immigration fields. Callers to our advice line are often surprised to hear that, while the CTA is a "free movement zone" for CTA and EEA nationals, it is not so for other nationals. This lack of awareness can result in people committing an offence by crossing the land border. In some cases, this can lead to detention and removal. Clearly, this brings with it a high human cost as well as the economic cost of immigration enforcement.

depended however upon Free State agreement to continue to participate in the British system of immigration control, (...)."

³ However, there are exceptions to this principle - for example, a visa national will need to have a visa if they enter the UK from another part of the CTA.

⁴ Migration Policy in Ireland blog, '[The Common Travel Area between Ireland and the UK](#)', 5 June 2012

⁵ Gov.uk/Foreign travel advice/[Ireland](#); Department of Foreign Affairs and Trade, Travel Advice [Great Britain](#)

Information about the CTA and immigration requirements is not readily available for passengers purchasing train or coach tickets between both jurisdictions. Therefore, a person could easily board a day-return train at Belfast Central Station or Dublin Connolly without knowing that they need to have their paperwork in place. Pending any development on a mutually recognised visa system, we recommend a targeted public information campaign at the point of the ticket sales as well as a link between the respective Home Office and INIS webpages on travel to the other jurisdiction so that passengers can more easily understand the requirements of travel across the CTA.

14. The Law Centre (NI) also noted particular problems for refugees, and the lack of relevant guidance:

The Home Office's asylum policy and guidance on Transfer of Refugee Status was withdrawn for review in February 2013. Two years later there is still no replacement policy. The Home Office has stated that the UK will consider applications for transfer of refugee status within the framework of the European Agreement on the Transfer of Responsibility for Refugees (1980), while simultaneously stating that this Agreement does not form part of UK domestic law. We would ask the Committee to note the lack of guidance, which compounds difficulties for refugees wishing to travel – and then settle – within the Common Travel Area.

15. In its evidence to the Committee, the UK Government acknowledged that the CTA was somewhat complicated particularly in regard to its operation with Ireland (this was less so the case with the Crown Dependencies where wider visa policy was more closely aligned). However, the wider immigration system in the UK had been greatly simplified in recent years (there were now broadly five main administrative routes into the UK, where previously there had been over 80).⁶ The Irish Government indicated that it would be willing to consider how information about the CTA might be better publicised, acknowledging that information about it was often included in wider immigration information. In particular there might be merit in an information note focusing specifically on CTA requirements.⁷ Similarly, it was the UK Government's aim to simplify the CTA rules and make it more comprehensible to the public – steps to this end would be taken once work on improving the CTA partners' border security had been completed.⁸ However, during their visit to Fishguard and Rosslare the co-rapporteurs found it reassuring that officials on the ground in both the UK and Ireland noted little evidence of travellers indicating a lack of understanding of CTA and other visa and immigration rules.

16. **The Committee believes that once the implications of the recent vote by the UK to leave the EU on the CTA have become more apparent, there may be merit in both the UK and Irish governments considering steps to enhance the understanding and awareness of the CTA among people travelling to, and within it. Consideration should**

⁶ Co-rapporteur meeting with UK Government of 22 February 2016.

⁷ Co-rapporteur meeting with Irish Government of 2 June 2016.

⁸ Co-rapporteur meeting with UK Government of 22 February 2016.

be given to both simplifying the rules related to the Area and improving public guidance on those rules for tourists, business travellers, economic migrants and refugees alike.

17. On security, the UK Government's evidence noted that while it was committed to maintaining the CTA, this should not be at the "expense of a secure border".⁹ It was important that the UK had confidence that other CTA partners' borders were secure and to this end the UK Government was actively working with other CTA partners to ensure their borders were secure, and offering assistance to improve that security where appropriate.¹⁰ For its part, the Irish Government said that it was in ongoing discussions with the UK on the security of borders and the CTA which it was committed to enhancing.¹¹ In particular officials from the immigration services of both countries met on a fortnightly basis to share information on CTA issues and abuses identified. There was also other regular contact through the UK Home Office's liaison officers at the Garda National Immigration Bureau (GNIB) in Dublin and between immigration officers at Dublin Airport, Dublin Sea Port and the Immigration Unit based in Dundalk.¹²
18. The Irish Government also noted the success of Operation Gull, a joint operation between the GNIB and the UK Visas and Immigration service that had been in operation since 2003 when it was established to detect and combat immigration abuses. It was noted that these operations had resulted in a significant number of detections of persons seeking to enter the UK and Ireland who were not entitled to, either related to illegal migration or human trafficking and exploitation.¹³ Some legal concerns about the legislative basis and workings of Operation Gull were expressed to the Committee in the evidence from the Law Centre (NI).¹⁴ Although these legal issues go beyond the intended scope of the Committee's inquiry, we draw the concerns highlighted by the Law Centre (NI) about Operation Gull to the attention of both the UK and Irish governments.
19. During the co-rapporteurs' visit to the ports of Rosslare and Fishguard on 2 July 2016, they heard how the British and Irish governments were looking to cooperate on improving border security, in particular to minimise illegal migration to the UK via Ireland and vice versa. In particular it was encouraging that there were well established relationships and systems in place for intelligence and information sharing between officials at entry and exit points. Irish officials at the port of Rosslare noted that this was also the case with French officials at Cherbourg. There was also good evidence of steps to harmonise the systems underpinning checks and for the sharing of information, with Irish officials noting that they would be introducing improvements related to the collection of biometric data over the next 12 months.

⁹ Written evidence from the UK Government.

¹⁰ Co-rapporteur meeting with UK Government of 22 February 2016.

¹¹ Co-rapporteur meeting with Irish Government of 2 June 2016.

¹² Supplementary evidence following co-rapporteur meeting with Irish Government of 2 June 2016.

¹³ Supplementary evidence following co-rapporteur meeting with Irish Government of 2 June 2016.

¹⁴ Written evidence from the Law Centre (NI).

20. It was noted during the visit that there was a trade-off between ensuring the CTA is able to operate efficiently, checking non-CTA passengers, and security of borders. However, the co-rapporteurs were told by the Irish officials they met that there were robust security checks in place to enable them to distinguish whether travellers were CTA citizens, people from other EU/EEA countries, people requiring a visa or people looking to travel illegally. The co-rapporteurs had heard some anecdotal evidence that the CTA was seen as vulnerable to exploitation by those wishing to enter the UK illegally by travelling via Ireland, for example via the Cherbourg-Rosslare crossing, and then on to either Fishguard or Pembroke Dock, or by travelling by land across the border with Northern Ireland. However, the officials we met at Rosslare were very clear that there was no evidence of the Rosslare crossing to the UK being used in such a way.
21. **It is welcome that the governments within the CTA are actively working together to ensure the security and integrity of borders and of the CTA, and the Committee recommends that such cooperation is stepped up in order to maintain mutual border security and the effectiveness of the CTA. Officials in both the UK and Ireland had a reassuring pragmatic and thorough approach to border checks. However, there may be merit in considering the level of resources allocated to smaller entry and exit points to ensure the right balance is struck between security, checking of all passengers to identify people travelling illegally (as distinct from CTA, EU/EEA and visa holding citizens) and the efficient operation of the CTA.**

The British Irish Visa Scheme

22. In October 2014, the UK and Irish governments signed a memorandum of understanding paving the way for mutually recognised visas allowing visitors from China and India to travel to Britain and Ireland on a single visa. The scheme allows for a visitor from these countries to either Ireland or the UK to only require one visa (either an Irish or UK one depending on the first country of landing). Under the scheme business visitors and tourists from China and India can now travel freely within the CTA using either an Irish or UK visa.
23. The evidence from the UK Government noted that “An integral part of this scheme is the use of biometrics. On 6 October 2014 the Home Secretary and Ireland’s Justice and Equality Minister signed a Memorandum of Understanding on the sharing of immigration data and there is ongoing work to expand the range of data shared on visa applicants, decisions at the border and Immigration Enforcement activity between the two countries.”¹⁵ The Irish Government’s evidence highlighted the introduction of the collection of biometrics as part of the Irish visa application process and the introduction of systems “to facilitate the automated and seamless sharing and cross-checking of information” and enhance decision making processes in both countries.¹⁶
24. The Scheme had widely been seen as successful since its introduction. The evidence from the Northern Ireland Strategic Migration Partnership welcomed such mutual

¹⁵ Written evidence from the UK Government.

¹⁶ Written evidence from the Irish Government.

recognition of visas and believed that increasing the accessibility of Northern Ireland for visitors to the Republic of Ireland was particularly important to the Northern Ireland economy. It therefore called for an extension of the scheme to other countries.¹⁷

25. The Irish Government highlighted the benefits of the scheme in terms of streamlining front-end processes for the issuing of visas. Prior to the launch of the Scheme Ireland had only two offices in China, but now co-located with the UK at 13 offices. Similarly, in India there are now 12 locations for Indian citizens to apply for a visa to Ireland where previously there had been only one. The Irish Government stated that some of the increase in visitor numbers to Ireland from these countries could be attributed to the fact that it was now geographically easier to access visa services.¹⁸ Furthermore it believed that increases in the number of people visiting due to the scheme had helped “to make a significant and lasting contribution to the economic prosperity of both countries including Northern Ireland” and that it was confident that any further expansion of the scheme could only increase visitor numbers further. In particular it highlighted the tourism benefits of the scheme for the whole island of Ireland and the promotion of all-Ireland tourism by Tourism Ireland.¹⁹
26. The UK Government indicated that there was currently little quantitative information on the effect that the Scheme had had on tourism and business from China and India, although it acknowledged that the Irish Government and Tourism and Enterprise Ireland had provided positive feedback in terms of an increase in tourism numbers. Most notably the Irish Government’s evidence noted that:

... for Irish short stay visas i.e. tourists and business visa - in the first nine months of 2015, compared to the same period in 2014 - the numbers of visas issued is up nearly 38% in China and 33% in India. In that regard in the order of 13,000 Irish BIVS visas with entitlement to travel with the CTA under the scheme have been issued by Ireland. Because of the difference in scale the numbers issued by the UK immigration authorities are many times this figure. Obviously, the benefits from a tourism and business perspective are clear and this of course is a very welcome and positive development.
27. Updated data provided to the Committee by the Irish Government in June indicates that Ireland has now issued 21,500 visas under the scheme, while the UK has issued around a million.²⁰ The Irish Government went on to state that “The intention now is to agree with the United Kingdom on its extension and roll out very quickly to other locations worldwide following the formal evaluation of the scheme being completed and agreed.”²¹
28. Similarly, the UK Government indicated it was its intention as well to expand the scheme in the future. However, this would be targeted at specific countries as the scheme would not be universally suitable and, before any expansion, the planned

¹⁷ Written evidence from the Northern Ireland Strategic Migration Partnership.

¹⁸ Co-rapporteur meeting with Irish Government of 2 June 2016.

¹⁹ Written evidence from the Irish Government.

²⁰ Co-rapporteur meeting with Irish Government of 2 June 2016.

²¹ Written evidence from the Irish Government.

formal evaluation of the existing scheme needed to be completed. The UK Government also expected the Irish Government to complete work on improving border security before expansion.²² On security, the Irish Government's evidence stated that the Scheme had significantly enhanced the wider security of the CTA as its implementation included agreement between Ireland and the UK to greatly enhanced sharing of information and background checks between the two countries as part of the visa decision making process.²³

29. **The Committee believes that the introduction of the British Irish Visa Scheme has been a positive development, in particular regarding the promotion of tourism. It therefore encourages the governments of the UK and Ireland to complete the formal evaluation of the Scheme as soon as possible so steps can be taken towards its further expansion.**
30. **Whist acknowledging that such a scheme may not be universally appropriate, the Committee recommends that the Scheme is expanded to other suitable countries. As noted above, this will not only benefit tourism and the economies of the UK and Ireland, but also mutual border security through the enhanced sharing of information, collection of biometric data and background checks which in turn have benefits to the wider security of the CTA.**

Irish Short stay visa waiver programme and mutual recognition of visas

31. As noted above, the existence of the CTA does not mean that there is mutual recognition of visas issued to non-EEA nationals (except as it applies to India and China through the British Irish Visa Scheme). A person who has obtained a visitor visa for Ireland cannot use it to enter the UK (unless they are from China or India). Instead, they have to apply separately for a visa.
32. In July 2011, in a bid to boost tourism to Ireland, the Irish Government launched a visa waiver programme for short-term visitors from certain non-EEA countries who already had permission to visit or live in the UK.²⁴ It meant that they were no longer required to apply for separate visas in order to visit Ireland from the UK. The pilot has since been extended to October 2016.²⁵ The UK has not adopted a similar visa waiver programme for travellers with permission to enter or live in Ireland.
33. The evidence from the Irish Government noted that the scheme had been extremely successful with a 68% increase in visits from the countries covered by it from 2010 to 2013.²⁶ Given its success there were plans to extend the scheme past its current expiry date of October 2016.²⁷

²² Co-rapporteur meeting with UK Government of 22 February 2016.

²³ Written evidence from the Irish Government.

²⁴ 18 countries are included in the scheme and are listed here:

<http://www.inis.gov.ie/en/INIS/Pages/Irish+Short+Stay+Visa+Waiver+Programme>

²⁵ Irish Naturalisation and Immigration Service, *press release*, '[Tourist and other short-stay visitor numbers set to rise](#)', 14 November 2013

²⁶ Written evidence from the Irish Government.

²⁷ Co-rapporteur meeting with Irish Government of 2 June 2016.

34. The evidence from the Law Centre (NI) called for full mutual recognition of visas to facilitate the effective operation of the CTA, based on the success of the Irish Short stay visa waiver programme and the British Irish Visa Scheme:

Our understanding is that the current visa system is unduly cumbersome and difficult for individuals to understand, resulting in some unwittingly falling foul of the rules. For this reason, the Law Centre supports a mutually recognised visa system that would provide a more transparent and comprehensible arrangement for travel within the CTA.²⁸

35. However, the UK Government indicated to us that it did not feel in a position to reciprocate the Irish short stay waiver programme due to differences in the data collected for visa applications, in particular related to biometrics. To this end, it was noted that the UK facilitated the collection of biometrics for Irish visa applicants from India and China as part of the British Irish Visa Scheme, as well as in Pakistan, in particular through the sharing of commercial partners in these countries in who collect this information. Nevertheless, due to differences in collection of biometric data related to visas between the two countries, it would be difficult to move towards full mutual recognition of visa systems between the UK and Ireland and it was likely that any further mutual recognition of visas would be on a country-by-country basis.²⁹

36. **The Committee welcomes the positive effect the Irish short stay visa waiver programme has had on tourism to Ireland. It therefore recommends that the programme, which is currently due to run to October 2016, should be further extended and consideration should also be given to its permanence. The Committee therefore welcomes the Irish Government’s indication to us that such an extension is planned and calls for it to confirm arrangement for that extension as soon as possible in order to ensure certainty for people with UK visas planning to travel to Ireland after October.**

37. **The Committee acknowledges that differences in the collection of biometric data mean that reciprocation of such mutual recognition by the UK Government is unlikely in the near future. However, the Committee believes that the further roll-out of the British Irish Visa System, which has included shared collection of biometric data, can act as a proxy for the targeted mutual recognition of visas by the governments of the UK and Ireland.**

The Schengen Area

38. The Schengen Area is the area comprising 26 European countries that have abolished passport and any other types of border control at their common borders.³⁰ Neither the

²⁸ Written evidence from the Law Centre (NI).

²⁹ Co-rapporteur meeting with UK Government of 22 February 2016.

A fuller summary of the Schengen system, and how it relates to the UK and Republic of Ireland, is provided in a House of Lords Library note published in March 2016 and available at:

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2016-0013#fullreport>

UK nor Ireland are members of this area. It mostly functions as a single country for international travel purposes, with a common visa policy. Countries in the Schengen Area have eliminated internal border controls with the other Schengen members, and strengthened external border controls with non-Schengen states. 22 of the 28 EU member states participate in Schengen. All four EFTA member states – Iceland, Lichtenstein, Norway and Switzerland – have signed the Schengen Agreement.

The UK and Schengen

39. Upon its establishment in the 1990s the UK chose not to join the Schengen Area, since it wished to maintain its own border immigration controls.³¹ Successive UK governments have maintained this view.³² The UK Government's evidence noted:

The UK has therefore chosen not to participate in the elements of the Schengen Acquis concerning visas and border control. Instead we have our own legislation and procedures for controlling our borders and for developing our own visa policy and operations. We have a Protocol to the Treaties which reserves our right to exercise our own border controls (Protocol 20). This means that we do not participate in almost all of the different EU laws governing the Schengen area which concern immigration.

Under the current system UK Ministers and the UK Parliament have complete control over changes to the visa regime. Changes to the Schengen short stay visa (including fee levels and application forms) are negotiated through EU institutions and involve all Member States. This is necessarily time-consuming and cannot be as responsive as the current UK system. This common approach also does not reflect the different migratory push and pull factors of individual member states, illustrated by the current refugee situation, which means that even within the EU some countries are seen as more attractive destinations than others.

If the UK were to join the Schengen area, we would lose control of the UK border as the border controls and checks between the UK and other Schengen states such as France, Belgium and the Netherlands would be removed. This would, for example, allow people to travel from Calais to Dover without any checks. The UK government believes that this would create significant risks to the country in terms of crime, national security and illegal migration and so the UK has no plans to join Schengen.³³

Ireland and Schengen

40. Similarly, Ireland does not participate in the Schengen arrangements related to visas and border control. The Irish Government's evidence states that:

The decision on participation in the Schengen arrangements was taken to maintain the Common Travel Area (CTA) with the United Kingdom which remains a priority for Ireland. The reality is that the CTA area could not continue to operate if Ireland were to remove border checks with the Schengen States generally while the United Kingdom did not do so.³⁴

41. If Ireland joined the Schengen Area without the UK, one commonly cited implication would be that border controls would have to be re-established between the Republic of Ireland and Northern Ireland. This influenced the Irish Government's original

³¹ [HC Deb 12 December 1996 c434](#)

³² [HL Deb 22 December 2010 cWA333-4](#)

³³ Written evidence from the UK Government.

³⁴ Written evidence from the Irish Government.

decision not to join the Schengen Area, since such controls were considered to be politically undesirable and not in the best interests of Irish citizens.³⁵

42. In recent years some commentators have questioned whether the arguments against Ireland joining the Schengen Area remain valid (arguing, for example, that developments such as the introduction of the e-Borders system, as then was, in the UK have already eroded the principles of the CTA).³⁶ Inevitably, the recent vote by the UK to leave the EU will bring such questions into view again. However, the Committee did not, in the course of this inquiry, take any evidence on whether Ireland may wish to join the Schengen Area in the event of the UK leaving the EU (a product of when the inquiry was originally launched and its terms of reference at that time). It is therefore not possible to draw any clear conclusions or recommendations on this issue at this juncture. However, this may be a question that is further explored during the course of any future inquiries by the Committee on the wider implications for British-Irish relations of the UK's vote to leave the EU.

Enhancing cooperation with Schengen countries

43. Evidence from the European Tourism Association (ETA) suggested that there were negative tourism effects of not being part of the Schengen Area for the UK and Ireland, citing (albeit limited) comparative data on trends in inbound visits to the UK and Ireland compared with Schengen countries and some other qualitative observations.³⁷ However, the ETA suggested that there was scope to mitigate any loss of tourism to Schengen countries and improve efficiency of the existing visas system while remaining outside Schengen through:³⁸

- a. eVisas, visa waiver and visa on arrival schemes.
- b. Process alignment including biometrics and shared consular facilities with Schengen.
- c. Reduction and convergence of documentary requirements with Schengen.
- d. Reduced visa price and promotion of multiple entry visas of longer duration.

44. As the European Commission told the Committee, both the UK and Ireland did participate in some limited elements of the Schengen Area related to criminal matters and police cooperation, for example the Schengen Information System which enables police forces across the EU to share data on law enforcement. The Commission considered this limited participation to be a “coherent policy” on the part of both countries within the context of the continued operation of the CTA. It also believed there may be scope for some further closer working between the Schengen Area and the UK and Ireland when it came to visas and border control, although the

³⁵ [Irish Dáil, Parliamentary Debates, vol 450, 14 March 1995, c1173](#) For related commentary see, for example, EuropeanVoice.com, ‘[MEP says Ireland should join Schengen](#)’, 29 November 2007

³⁶ *The Guardian* Comment is free, ‘[Jason Walsh: Could Ireland join Schengen?](#)’, 5 March 2009

³⁷ Written evidence from the European Tourism Association.

³⁸ *Ibid.* p2.

“practicalities were not simple”. In particular it noted that visas for Schengen countries and the UK and Ireland could possibly be issued in one combined process.³⁹

45. On whether the UK and Ireland could be more involved in some aspects of Schengen related to data sharing, the UK Government noted that a lot of data was already shared, just not on the same basis as between Schengen states. The UK Government supported measures to further secure the Schengen Area in the light of the recent refugee crisis but, for example, would not be formally part of the proposed European border guard although this was in particular seen as an opportunity by the Government to improved informal cooperation. The UK Government also believed the redrafting of the borders code was also a good opportunity to unify and improve practices.⁴⁰

46. Nevertheless, **the Committee notes that there would seem to be an apparent balance to be had between the security benefits of not being a member of Schengen and data sharing in particular.** For example a recent House of Commons Library briefing paper noted that:

[...] the UK [and Ireland] misses out on some opportunities to share data on people travelling within the EU, which might be useful for border security purposes, as a result of not participating in the border and visa aspects of the Schengen body of law. For example, the UK [and Ireland are] excluded from the EU’s Visa Information System, which is used by Member States and Europol to exchange information about visa applications in order to combat abuse and prevent crime [and, while the UK had] wanted to be more involved in Frontex [the EU’s agency for co-ordinating the management of the EU’s external borders] ... the European Court of Justice determined that the UK could not formally participate, because it had not opted into the underlying legislation.⁴¹

47. When questioned on better cooperation with other EU member states and the potential for shared visa centres outside of Schengen arrangements the UK Government said that this was technically very complicated and often limited by the approach taken by host countries alongside various political sensitivities. The UK Government had had some success with this with other individual member states (for example Belgium in China)⁴² related to the collection of biometric data and the use of shared partners in the source country when applying for visas. It was also noted that even though the UK and Ireland did not participate in immigration and border aspects of Schengen, they still actively participated in such discussions within the Council of the EU and influenced policy wherever possible.⁴³

³⁹ Co-rapporteur meeting with the European Commission of 13 November 2014.

⁴⁰ Co-rapporteur meeting with UK Government of 22 February 2016.

⁴¹ House of Commons Library Briefing Paper, [Exiting the EU: impact in key UK policy areas](#), February 2016, pp88-9

⁴² The UK works with Belgium to offer a streamlined visa process in China. Known as the UK-Belgium Visitor Service, it allows Chinese customers to submit visa applications for both countries during a single visit to a UK visa application centre (VAC). It has been available since 1 July 2015 at the UK Visa Application Centres in Shanghai, Beijing or Guangzhou.

⁴³ Co-rapporteur meeting with UK Government of 22 February 2016.

The Schengen area and the current refugee crisis

48. The UK Government's evidence noted that the current refugee crisis in Europe, as well as the increased terrorist threat, had dramatically changed the workings of the Schengen Area in recent months, and it now seemed inevitable that there would be changes made to the current system by Schengen member states. The recent installation of border controls within Schengen, for example between Denmark and Sweden, would previously have been inconceivable. It also indicated that migrant flows to the UK since the start of the crisis would have been far higher had the UK been a member of Schengen.⁴⁴ A recent Oral Ministerial Statement elaborated further on how the effect on the UK might have been different had the UK been a member of Schengen:⁴⁵

Britain is not part of the Schengen open border arrangements—and we are not going to be joining. We have our own border controls and they apply to everyone trying to enter our country, including EU citizens. So people cannot travel through Greece or Italy onward to continental Europe and into Britain and that will not change. But it is in our national interest to help our European partners to deal effectively with this enormous and destabilising challenge.

[...]

But let me also be clear what we are not doing. First, we are not giving visa-free access to Turks coming to the UK. Schengen countries are planning to give visa-free access to Turks but, because we are not part of Schengen, we are not bound by their decision. We have made our own decision, which is to maintain our own borders, and we will not be giving that visa-free access.

Secondly, visa-free access to Schengen countries will not mean a backdoor route to Britain. As the House knows, visa-free access means only the right to visit. It does not mean a right to work. It does not mean a right to settle. Just because, for instance, British citizens can enjoy visa-free travel for holidays in America, that does not mean that they can work, let alone settle, there. Nor will this give Turkish citizens those rights in the EU.

49. The Irish Government believed that issues related to Schengen were not of major relevance when it came to the refugee crisis, with migrant flows being influenced by economic and other factors unrelated to whether a country was a member of the Schengen area.⁴⁶

Conclusions

50. The Committee acknowledges that to date the interests of both the UK and Ireland in terms of border security, migration and, most importantly, the continued successful operation of the CTA may have been best served by not being members of the Schengen Area. Furthermore, the limited evidence received has not indicated a clear negative impact upon either country of not being a member of that Area, either in terms of tourism or on their respective economies.

⁴⁴ Co-rapporteur meeting with UK Government of 22 February 2016.

⁴⁵ HC Deb 21 March 2016 cc1244-46

⁴⁶ Co-rapporteur meeting with Irish Government of 2 June 2016.

51. **The Committee welcomes the informal cooperation of both governments with Schengen countries on the formation of borders and visas policy through the Council of the EU and more generally through the sharing of data and other relevant information. While the recent vote by the UK to leave the EU will inevitably affect the terms of its engagement through the Council of the EU, It is important that both governments continue to play an active part in Schengen and other visa and border related discussions and negotiations at the EU level in order to ensure the interests and views of both countries are reflected in future EU rules and cooperation related to borders and visas.**
52. **The Committee believes that examples of cooperation with other individual EU member states on the administration of visas and collection of biometric information, for example with Belgium in China, is welcome and can serve to enhance border security and promote tourism. Additional cooperation of this kind should therefore be actively explored by both governments.**

The UK referendum on membership of the EU and operation of the CTA

53. Prior to the EU referendum in the UK on 23 June, in their follow-up discussions with both the UK and Irish governments the co-rapporteurs touched on the potential effect on the operation of the CTA in the event of the UK leaving the EU. Given that the UK has now voted to leave the EU, the following section summarises the content of these brief discussions. However, given the brevity of these discussions, and the fact that none of the wider evidence received concentrated on this issue (again, a product of when the inquiry was originally launched), the Committee is not currently in a position to draw clear conclusions or make recommendation on the implications for the CTA of the UK leaving the EU.
54. CTA arrangements between Ireland and the UK predate the UK's membership of the EU and are not dependent on it. The Area was created by the legislation of both of the countries concerned and, as a result, either country could choose to repeal relevant legislation or leave it in place. Although Irish nationals' special status as "non-aliens" in UK legislation might not be affected by a UK withdrawal from the EU, some commentators have suggested that the continued existence of the CTA might be jeopardised.
55. In particular, the continued existence of the CTA between the UK and Ireland may mean that the land border between the Republic of Ireland and Northern Ireland could potentially become a weak spot in the UK's ability to control EU/EEA immigration after exit from the EU. This is because EU free movement law would continue to apply in Ireland.⁴⁷ Some Irish commentators have warned that border and passport controls at the land border will be an inevitable consequence of the UK leaving the EU, and point to the potential practical and political difficulties that this might raise.⁴⁸

⁴⁷ House of Commons Library Briefing Paper, [Exiting the EU: impact in key UK policy areas](#), February 2016, p89

⁴⁸ Irish Times, 'Brexit' would see return of physical border between Republic and North', 25 March 2015; John Bruton, The Huffington Post, 'What to expect if the UK leaves the EU', 18 December 2012.

56. However, others including Open Europe, have argued that the CTA could remain:⁴⁹

The most important issue to address would be the arrangements for a new border. There is no reason why the UK and Ireland could not retain the Common Travel Area and so avoid the need to introduce passport controls, which would enable the continued free movement of people between the UK and Ireland. For example, the Schengen passport-free travel area currently straddles EU and non-EU members

57. The UK Government's evidence acknowledged that the effect of the UK leaving the EU on visas and borders policy and the CTA will be complicated. The Ireland-UK border could become a new external border of the EU, with a new external land border between the Republic of Ireland and Northern Ireland. The UK Government also indicated during the follow-up discussions on its evidence to the Committee that the main issue may be whether Ireland and other EU member states will allow the CTA to be maintained, and that Ireland might possibly have a choice of whether to join the Schengen Area or not. It could be that it was an EU decision on how to treat this new external border, and negotiations may have to take place between Ireland and the other EU member states. It was likely the UK's view on the land border would then depend on the outcome of any such negotiations.⁵⁰ The UK Government's evidence concluded that the UK leaving the EU could affect current arrangements that allow for the free movement of residents both within the island of Ireland (north-south) and across the British Isles (east-west).⁵¹

58. The Irish Government told us that a UK vote to leave the EU would not have an immediate effect on the CTA due to the two year negotiation period on withdrawal. Prior to the referendum, its position was that regardless of the outcome it wanted the CTA to continue in its current form and would continue to support its integrity and enhance its security.⁵² During their visit to Rosslare, after the result of the EU referendum was known, the co-rapporteurs heard Irish officials reiterate the importance of the CTA and their hope for its continued operation regardless of the referendum result.

59. The Committee welcomes the fact that, prior to the referendum on the UK's membership of the EU, both the UK and Irish governments had expressed a desire for the continuing operation of the CTA regardless of the outcome. It is also reassuring that this was reiterated by Irish officials whom the co-rapporteurs met in Rosslare after the result of the referendum was known. Although the Committee has only held brief discussions with both governments on this issue, given the economic benefits to both countries of the Area, its historical significance, and the fact its operation dates from before both countries' membership of the EU, the Committee believes there are likely to be strong arguments for its retention, although it seems inevitable that the form of the Area, and how it operates, will have to change given the UK leaving the EU will effectively create a new external land border of the EU.

⁴⁹ Open Europe, [How would Brexit impact Ireland?](#), April 2015

⁵⁰ Co-rapporteur meeting with UK Government of 22 February 2016.

⁵¹ Supplementary evidence following co-rapporteur meeting with UK Government of 22 February 2016.

⁵² Co-rapporteur meeting with Irish Government of 2 June 2016.

60. The extent of these changes will very much depend on the outcome of the ensuing negotiations, both between the UK and EU member states on the process for the UK leaving the EU, and between Ireland and other EU member states on the implications for EU borders and visas policy of the UK leaving the EU. However, as already noted, the Committee is not currently in a position to draw clear conclusions or make recommendation on the implications for the CTA of the UK leaving the EU. The Committee therefore hopes to explore this issue in more detail as part of any future inquiries it holds on the wider implications for British-Irish relations of the UK's vote to leave the EU.