



**CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW  
OF THE BALANCE OF COMPETENCES BETWEEN THE  
UNITED KINGDOM AND THE EUROPEAN UNION**

**Semester 4**

**VOTING, CONSULAR, STATISTICS**

**Foreign and Commonwealth Office (with Cabinet Office and the National Statistician's Office)**

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## 1. Introduction

- 3.1 The Foreign Secretary launched the Balance of Competences Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It will not be tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.
- 3.2 The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by Government but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign governments, including our EU partners and the EU Institutions, are also being invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it.
- 3.3 This Review covers three separate topics; Voting, Consular and Statistics. The reason that these three topics are covered in a single report is simply that they are each relatively small areas of supporting competence, which do not naturally attach to any of the other reports, but must be covered for the sake of completeness of the overall review exercise. Common threads will be drawn out in the final report where these exist, but these areas will otherwise be considered separately. We welcome evidence which relates to any one of these areas. This review will also include evidence from a literature review of the existing evidence and opinions on competence issues in each area.

## 2. What is competence?

- 2.1 For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the member states without needing any further action by the EU institutions.
- 2.2 The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the member states.
- 2.3 There are different types of competence: exclusive, shared and supporting. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In areas of shared competence, such as the single market, environment and energy, either the EU or the member states may act, but the member states may be prevented from acting once the EU has done so. In areas of supporting competence, such as culture, tourism and education, both the EU and the member states may act, but action by the EU does not prevent the member states from taking action of their own.
- 2.4 The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and with the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the member states to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

### 3. How to respond to this Call for evidence

3.1 This public call for evidence sets out the scope of the review of the balance of competences in the three areas of voting rights, consular and statistics, as described in more detail below. We request input from anyone with relevant knowledge, expertise or experience. We would welcome contributions from individuals, companies, civil society organisations including think-tanks, and governments and governmental bodies. We welcome input from those within the UK or outside.

3.2 Please send your evidence to the relevant team below by 2 July 2014.

VOTING	CONSULAR	STATISTICS
By Email: <a href="mailto:BalanceofCompetences.voting@cabinet-office.gsi.gov.uk">BalanceofCompetences.voting@cabinet-office.gsi.gov.uk</a>	By Email: <a href="mailto:balanceofcompetences.consular@fco.gov.uk">balanceofcompetences.consular@fco.gov.uk</a>	By Email: <a href="mailto:balanceofcompetences@statistics.gsi.gov.uk">balanceofcompetences@statistics.gsi.gov.uk</a>
By Post: Balance of Competences Review C/o Matt Carey 4 <sup>th</sup> Floor Orange Zone <b>Cabinet Office</b> 1 Horse Guards Road London SW1A 2HQ	By Post: Balance of Competences Review Consular Directorate Room WH4.2 <b>Foreign and Commonwealth Office</b> King Charles Street London SW1A 2AH	By Post: Balance of Competences Review International Relations National Statistician's Office <b>UK Statistics Authority</b> Statistics House Cardiff Road Newport NP10 8XG

3.3 Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise. We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that, even if you ask us to keep your contribution confidential, we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it included. Please base your response on answers to the questions set out below:

- For Voting Rights Review: Section 1; questions at page 20.
- For Consular Review: Section 2; questions at page 25.
- For Statistics Review: Section 3; questions at page 30.

3.4 We will be hosting a series of events to proactively seek evidence and to give further information on the Review. To register your interest in these events or if you have any other questions relating to one of the issues in this Review, please contact the individual teams at:

- For Voting Rights Review: [BalanceofCompetences.voting@cabinet-office.gsi.gov.uk](mailto:BalanceofCompetences.voting@cabinet-office.gsi.gov.uk)
- For Consular Review: [balanceofcompetences.consular@fco.gov.uk](mailto:balanceofcompetences.consular@fco.gov.uk)
- For Statistics Review: [balanceofcompetences@statistics.gsi.gov.uk](mailto:balanceofcompetences@statistics.gsi.gov.uk)

## SECTION 1 – VOTING

### Introduction

4.1 This section of the review will cover EU competence, and the exercise of it, in the field of voting.

4.2 The EU Treaties give the EU a number of competences which relate to voting and democratic engagement. Whilst the core principles of democratic participation and European representative democracy (expressed in the Treaties) have remained constant, more recently the EU has focused on the way Member State citizens engage with European democracy. This has involved efforts to remove perceived and actual barriers to participation in elections, through laws to ease the process for candidates and to enable Member State citizens to exercise voting rights. Secondly, there have been measures to enable Member State citizens to engage more directly with the work of the EU institutions and monitor EU policy making. This section explores these themes in the context of three broad sets of policy issues:

- European Parliamentary elections
- The franchise (who can vote)
- Wider forms of democratic engagement

### A. European Parliamentary elections

4.3 A European Parliament first met on 10 September 1952 as the ‘Common Assembly’ of the European Coal and Steel Community. The first direct election of European Parliament members happened in 1979.<sup>1</sup> Members of the European Parliament (MEPs) are directly elected every five years by universal suffrage and by a free and secret ballot run on a proportional representation voting system.<sup>2</sup> The European Parliament acts as co-legislature along with the Council in respect of the majority of EU laws. Most legislative proposals are initiated by the European Commission. Although the European Parliament can request the European Commission to submit a proposal for a new law, the Commission is not obliged to make a proposal (unless it relates to the European Ombudsman or the composition of the European Parliament).

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<sup>1</sup> Article 14 TEU provides that the representatives of the European Parliament are to be elected by universal suffrage. To give effect to the predecessor of Article 14 TEU (Article 108 Euratom), the Council of Ministers agreed the 1976 Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (the 1976 Act). Articles 9 and 20(1) TEU establish citizenship of the Union and provide that every national of a Member State shall be a citizen of the Union, in addition to being a citizen of their Member State. Articles 10(1-3) TEU, provide for the functioning of the Union to be founded on representative democracy, that EU citizens will be directly represented in the European Parliament and that every EU citizen shall have the right to participate in the democratic life of the Union.

<sup>2</sup> Article 14(3) TEU.

4.4 Member States decide procedures to administer European parliamentary elections at the national level, in line with relevant EU laws. In the UK, the Cabinet Office is the UK Government Department responsible for electoral policy. Ministers appoint eleven independent Regional Returning Officers (RROs), one for each of the 9 voting regions in England, as well as Scotland and Wales. The Chief Electoral Officer in Northern Ireland is the RRO for Northern Ireland. RROs are responsible for overseeing and co-ordinating the running of elections in their region. Local Returning Officers are responsible for administering the polls locally. Legislation sets out how polls are to be conducted and Regional and Local Returning Officers are guided in fulfilling their duties by non-statutory guidance produced by the independent Electoral Commission. The Electoral Commission is also responsible for maintaining and publishing the registers of political parties in Great Britain and Northern Ireland, and regulating and enforcing the rules around party funding.

4.5 The 1976 Act concerning elections to the European Parliament expressly applied to the United Kingdom only, not Gibraltar. Following the *Matthews* case,<sup>3</sup> the UK has enfranchised citizens of Gibraltar for the purposes of the European Parliamentary elections. This means that a citizen of Gibraltar is allowed to stand as a candidate in European Parliamentary elections held in the UK, and registered voters in Gibraltar are eligible to vote at European Parliamentary elections in the 'combined region' of the South West of England and Gibraltar. In 2004, Spain filed a case with the European Court of Justice against the United Kingdom on the grounds that the legislation adopted by the United Kingdom to create the combined region and to enfranchise non-British Commonwealth citizens in Gibraltar was incompatible with European Community law. The Court held that Spain's claims were unfounded.

### Costs of European Parliamentary elections

4.6 The UK Government (via Cabinet Office) funds Regional and Local Returning Officers to fulfil their statutory duties. Parliament approves the maximum amount each Returning Officer may claim. The Northern Ireland Office is responsible for funding European Parliamentary elections in Northern Ireland, where the cost of running the poll is paid to the Chief Electoral Officer.

4.7 The overall cost of running the most recent 2009 European Parliamentary elections was £99.3 million in respect of England, Scotland and Wales (£61.2 million for the conduct of the elections, and £38.1 million for posting communications from candidates to electors at public expense). The estimated cost of the 2014 European Parliamentary elections is £119.1 million, based on the 2009 expenditure adjusted for population increases and inflation.

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<sup>3</sup> *Matthews vs UK*; ECtHR application no. 24833/94.



## Turnout at European Parliamentary elections

4.8 Turnout of UK voters at European Parliamentary elections has stayed fairly constant, with an average of 33.6% of eligible voters taking part in elections over the period of 1979-2009.<sup>4</sup> This can be compared to a decline in turnout across EU Member States in the European elections, from a high of nearly 62% in 1979, to the 2009 low of 43%.

**Table 1: voter turnout (percentage) for EU Member States (1979-2009)**<sup>5</sup>

Member States	1979	1984	1989	1994	1999	2004	2009
Belgium	91.36	92.09	90.73	90.66	91.05	90.81	90.39
Denmark	47.82	52.38	46.17	52.92	50.46	47.89	59.54
Germany	65.73	56.76	62.28	60.02	45.19	43	43.3
Ireland	63.61	47.56	68.28	43.98	50.21	58.58	58.64
France	60.71	56.72	48.8	52.71	46.76	42.76	40.63
Italy	85.65	82.47	81.07	73.6	69.76	71.72	65.05
Luxembourg	88.91	88.79	87.39	88.55	87.27	91.35	90.75
Netherlands	58.12	50.88	47.48	35.69	30.02	39.26	36.75
<b>United Kingdom</b>	<b>32.35</b>	<b>32.57</b>	<b>36.37</b>	<b>36.43</b>	<b>24</b>	<b>38.52</b>	<b>34.7</b>
Greece		80.59	80.03	73.18	70.25	63.22	52.61
Spain			54.71	59.14	63.05	45.14	44.9
Portugal			51.1	35.54	39.93	38.6	36.78
Sweden					38.84	37.85	45.53
Austria					49.4	42.43	45.97
Finland					30.14	39.43	40.3
Czech Republic						28.3	28.2
Estonia						26.83	43.9
Cyprus						72.5	59.4
Lithuania						48.38	20.98
Latvia						41.34	53.7
Hungary						38.5	36.31
Malta						82.39	78.79
Poland						20.87	24.53
Slovenia						28.35	28.33
Slovakia						16.97	19.64
Bulgaria							38.99
Romania							27.67
<b>Average EU turnout</b>	<b>61.99</b>	<b>58.98</b>	<b>58.41</b>	<b>56.67</b>	<b>49.51</b>	<b>45.47</b>	<b>43</b>

4.9 The consistency of UK turnout at European Parliamentary elections compares to a trend of slightly decreasing yet significantly higher overall turnout at UK Parliamentary general elections over the same period. The average general election turnout over the same period was 69.9%.

<sup>4</sup> The UK Government has the power to move the date of the scheduled local elections so they coincide with the European Parliamentary elections. One factor in recent decisions to exercise this power is the perceived benefit to voter turnout at both sets of polls (with lower turnout in election years such as 1999 where this did not happen).

<sup>5</sup> <http://www.europarl.europa.eu/aboutparliament/en/000cdcd9d4/Turnout-%281979-2009%29.html>

**Table 2: percentage of registered voters who voted at UK General elections (1979-2010) excluding votes deliberately or accidentally spoiled<sup>6</sup>**

Year	UK	England	Wales	Scotland	N. Ireland
2010	65.1	65.5	64.7	63.8	57.6
2005	61.4	61.3	62.6	60.8	62.9
2001	59.4	59.2	61.6	58.2	68
1997	71.4	71.4	73.5	71.3	67.1
1992	77.7	78	79.7	75.5	69.8
1987	75.3	75.4	78.9	75.1	67
1983	72.7	72.5	76.1	72.7	72.9
1979	76	75.9	79.4	76.8	67.7

### Allocation of Members of the European Parliament to EU Member States

4.10 The total number of MEPs is 750, plus the President of the European Parliament. There is a minimum threshold of 6 Members per Member State, and a maximum threshold of 96. Seats are distributed among Member States within those limits on the basis of ‘degressive proportionality’. This is the principle that the distribution of seats should, in so far as is possible, reflect the range of populations of Member States, with larger Member States having more MEPs, but those MEPs in turn representing larger numbers of citizens. There are currently 766 MEPs, and after the 2014 European Parliamentary elections this number will be reduced to 750, plus the President, in line with the Lisbon Treaty. The UK’s number of MEPs remains the same at 73, thus increasing its proportion of seats.

4.11 The UK Government is content with the current distribution of MEPs, but believes that a fairer system which better reflects the principle of degressive proportionality and limits the comparative over-representation of citizens of smaller Member States compared to those of the larger ones could be found in the longer term. This could require changes to the minimum and maximum of MEPs, or the cap on the total number of MEPs, in the Treaties. The European Parliament has committed to review the current arrangements within the first half of the next European Parliamentary term (2014-19),<sup>7</sup> with the aim of devising a more degressively proportional formula for the European Council to consider and agree upon, in good time before the 2019 European Parliamentary elections.

### Standing as a candidate at European Parliamentary elections in the UK

4.12 UK, Commonwealth and EU citizens who reside in the UK (and Gibraltar) are entitled to stand as candidates to represent the UK as an MEP. Every candidate standing for election must declare to the relevant RRO that he or she is not disqualified from standing for election and, where standing for a political party, provide the name of the party. Political parties must supply a party nomination form and a list of candidates.

<sup>6</sup> House of Commons Research Papers 01/37, 01/54, 05/33 & 10/36.

<sup>7</sup> (34936) EUCO110/13 Draft European Council Decision establishing the composition of the European Parliament

4.13 At previous European Parliamentary elections, an EU citizen (who was not a UK, Irish or Commonwealth citizen) had to provide certification from their Member State of nationality that they were not disqualified from standing in European Parliamentary elections in that Member State when submitting their nomination as a candidate in the UK. Under the recent Directive 2013/1/EU, national governments will instead be obliged to request this information from other Member States. This is intended to remove a perceived barrier to EU citizens standing for election in Member States where they reside but are not nationals.

### **Voting at European Parliamentary elections in the UK**

4.14 The EU does not determine the method Member States offer voters to cast their votes. In most of the UK, both at European Parliamentary and other elections, voters can choose to vote in person at a polling station on polling day or in advance by casting a postal ballot; or, in some circumstances, by appointing a proxy to vote on their behalf. In Northern Ireland, voters must provide evidence to explain why they cannot vote in person to obtain a postal or proxy vote on a temporary or standing basis.

4.15 EU law requires Member States to adopt a proportional voting system for elections to the European Parliament,<sup>8</sup> but may choose whether to implement a 'list' system or the single transferable vote (see the box below). Member States have freedom over the procedures used provided they do not affect the proportional nature of the system.<sup>9</sup> The electoral procedure itself is largely governed by national provisions provided they comply with the 1976 Act and do not affect the essentially proportional nature of the voting system.<sup>10</sup> The European Parliamentary Elections Act 1999 provided for a closed list system to be used for European Parliamentary elections in England, Wales and Scotland. From 1979 to 1994, MEPs in Great Britain were elected under the first past the post system, with single member constituencies. In Northern Ireland, the single transferable vote (STV) system has been in use at Northern Ireland Assembly and local government elections since 1973, as well as in European Parliamentary elections.

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<sup>8</sup> See Council Decision 2002/772/EC amending the 1976 Act. However, a proportional voting system had been introduced in the UK before this under the European Parliamentary Elections Act 1999 (since replaced by, the European Parliamentary Elections Act 2002).

<sup>9</sup> Article 8 of the 1976 Act as amended by Decision 2002/772/ EC

<sup>10</sup> Article 7 of the 1976 Act as amended by Decision 2002/772/ EC

## Proportional representation at (UK) European Parliamentary elections

The two voting systems in use at European Parliamentary elections in the UK operate as follows:

- In England, Scotland, Wales and Gibraltar, electors cast a single vote for a party or an individual independent candidate under the 'closed' list system. Seats in each region are allocated to parties/independent candidates in proportion to the number of votes they receive using a formula. There is no minimum number or percentage of votes that a party/candidate must achieve in order to win a seat in a region. Seats are assigned to party candidates according to the order in which the candidates are displayed on the ballot paper – the position on the party list. The party determines the order pre-election.
- In Northern Ireland, the single transferable vote (STV) system is used. Electors rank the candidates by order of preference – putting '1' next to their first choice candidate, '2' next to their second choice, and so on. Electors can rank as few or as many candidates as they wish. First preferences are counted first, and any candidate who reaches a set quota is elected. Any votes received over the quota are not needed by the elected candidate and so are transferred to the second preference on each ballot paper. The value of transferred votes is based on a formula. If not enough candidates have then reached the quota, the candidate with the lowest number of votes is eliminated and all of their votes are passed to the next preference on the ballot papers. This process is repeated until all the seats have been filled.

Another form of proportional representation which is compatible with EU law is the open party list system. Under this, votes are cast for individual candidates (or the voter may have a choice between individual candidates and a party). This is not in use at statutory elections in the UK.

## Electoral integrity measures

4.16 EU citizens can choose whether to vote in their Member State of citizenship or of residence.

EU Council Directive 93/109/EC<sup>11</sup> requires Member States to share information on their nationals entered on electoral registers in other Member States to prevent double voting. Member States must then take appropriate measures to ensure that their nationals do not vote more than once at the European Parliamentary elections. For example, France would be required to provide the UK with information on British citizens residing in France who had completed the relevant declaration opting to vote in France, and vice versa. The UK Parliament applies additional integrity measures to European Parliamentary elections (as well as other polls in the UK) including the checking of postal voters' dates of birth and signatures against records, and there are a number of offences in place to safeguard the integrity of the electoral system, and individuals found guilty of electoral fraud face a custodial sentence and/or a fine. In addition, the UK Government is introducing measures to strengthen the electoral system through the introduction of Individual Electoral Registration (IER). Under IER people will be required to register individually, and the details of people applying to go onto the electoral register will be checked against other data to ensure their validity.

<sup>11</sup> As amended by Directive 2013/1/EC

## Proposal for a common voting day at European Parliamentary elections

4.17 Traditionally, voting at European Parliamentary elections takes place over a four-day period (Thursday-Sunday) across Europe; Member States choose which day to hold the poll. In recent years, European Parliamentary elections in the UK have been held on a Thursday, which is the weekday used for voting at ordinary local and UK Parliamentary general elections in the UK, and is in many cases required in statute<sup>12</sup>. In March 2013, the European Commission proposed a common voting day for European Parliamentary elections, suggesting it would better reflect common participation by citizens across the EU, and should be part of the representative democracy on which the EU is founded.<sup>13</sup> This recommendation is not legally binding and the UK Government is not considering such a move, which would be out of step with voters' expectations and would result in an inconsistency with the voting day in other polls. Sunday is the day of polling in many EU Member States at European Parliamentary elections.

## Timing of the publication of the results of European Parliamentary elections

4.18 The 1976 Act requires Member States not to 'officially make public' the results of their counting of the votes until after the close of polling in the last Member State. This is designed to avoid the possibility of results declared in some Member States affecting voters' voting intentions in other Member States where voting has not yet finished. At the 2009 elections, there were a number of difficulties in effectively implementing this requirement, including the public counting process in the Netherlands, publication of exit polls in Latvia, and immediate posting of poll results in Germany.<sup>14</sup> These issues seemed to have stemmed from differences in interpretation of what 'officially make public' meant. The Council adopted an amendment to the 1976 Act,<sup>15</sup> which means Member States will only be allowed to announce the results of their polls when polling has closed in all Member States.

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<sup>12</sup> The period in which the elections are held is determined by EU law (the 1976 Act, see footnote 1) which provides that the date can be moved up to two months before or one month after the period fixed for voting, if all Member States agree, and after consulting the European Parliament.

<sup>13</sup> See Commission recommendation of 12/03/2013

[http://ec.europa.eu/justice/citizen/document/files/c\\_2013\\_1303\\_en.pdf](http://ec.europa.eu/justice/citizen/document/files/c_2013_1303_en.pdf)

<sup>14</sup> [http://aceproject.org/ero-en/regions/europe/EU/european-parliament-expert-group-report-elections/at\\_download/file](http://aceproject.org/ero-en/regions/europe/EU/european-parliament-expert-group-report-elections/at_download/file)

<sup>15</sup> Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002D0772:en:NOT>

## B. The voting franchise

### The franchise, competence, and registration of electors

4.19 EU citizenship gives every Member State citizen the right to vote for and stand as a candidate in municipal (local) and European Parliamentary elections in whichever Member State that citizen resides, under the same conditions as nationals of that Member State,<sup>16</sup> with four general limitations:

- a) You may not vote or stand as a candidate in more than one Member State in the same European Parliamentary elections.
- b) You may not stand in a European Parliamentary election if you have been deprived of that right under the laws of your home Member State or Member State of residence.
- c) Member States may decide not to allow EU citizens, who have been deprived of the right to vote in European Parliamentary elections in their home Member State, to vote in their European Parliamentary elections.
- d) EU Member States may require an additional period of residence for participating in European Parliamentary elections if more than 20% of the eligible voting population are non-nationals. (The UK does not impose such a requirement.)

4.20 The 1976 Act as amended contains four limitations to the right to vote and stand as a candidate in municipal (local) elections:

- a) A Member State may stipulate that the office of elected head, deputy head or member of the executive body of a basic local government unit can only be held by its own nationals.
- b) A Member State may decide that only locally elected representatives who are nationals of that Member State can make decisions on who can vote in the elected assembly or on the election of members to that assembly.
- c) A Member State may stipulate that if, due to a Court ruling, an EU citizen has been deprived of his right to stand as a candidate in local elections in his home Member State, then he will also be deprived of standing in the Member State of residence.
- d) A Member State may require an additional period of residence for participating in local elections if more than 20% of the eligible voting population are non-nationals. The UK does not impose such a requirement.

4.21 UK legislation<sup>17</sup> provides that UK, Commonwealth and EU citizens who reside in the UK are eligible to vote in local and European Parliamentary elections as long as, on the date of the election, they are registered to vote in the UK, at least 18 years old, and are not subject to any disqualifications from voting. In addition, EU citizens who are not UK citizens are required

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<sup>16</sup> This right originates from Article 20(2)(b) of the Treaty for the European Union (TFEU). Article 22 (1&2) TFEU provides the legal base for the adoption of the detailed arrangements for the exercise of this right.

<sup>17</sup> The European Parliamentary Elections Act 2002 and the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (SI 2001/1184).

to have completed a declaration confirming their citizenship when they intend to vote in the European Parliamentary elections in the UK so their home Member State can be notified.<sup>18</sup>

4.22 The franchise for the Devolved Administrations is the same as that for local elections. Therefore an EU citizen who can vote in a local election in Scotland, Wales or Northern Ireland would also be entitled to vote in an election for the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly respectively. Similarly, the franchise for Police and Crime Commissioners (PCC) elections, mayoral elections and some referendums (depending on the rules of the referendum) is the same as that for local elections. This gives EU citizens rights additional to those provided for in the EU Treaties.

4.23 The electoral register is maintained locally by Electoral Registration Officers, who are under a duty to place eligible electors on the register. Available data on electoral registration indicates that (non-UK) EU citizens residing in England and Wales made up around 2.9% of the registered electorate for local government elections (i.e. those individuals eligible to vote in local government elections) in 2011, and 3.1% of the electorate in 2012.<sup>19</sup>

### **Ineligibility of EU citizens to vote in UK Parliamentary elections**

4.24 In the European Citizenship Report 2013, the European Commission noted that some EU citizens who have exercised their right to free movement do not have voting rights in the national elections of any Member State, and recommended Member States might consider enfranchisement in national Parliamentary elections in order to enhance political participation. The European Commission has since repeated its commitment to this recommendation.<sup>20</sup>

4.25 The EU has no competence over the franchise for Member States' national elections, and in the UK, EU citizens who are not also UK, Republic of Ireland or Commonwealth citizens are not entitled to vote at UK Parliamentary general elections. No Member State grants non-national EU citizens the right to vote in national elections.

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<sup>18</sup> This declaration is provided for under Directive 93/109/EC (as amended by Directive 2013/1/EC) which makes provision for arrangements for the exercise of the right to vote and stand in European Parliamentary and local government elections respectively. British, Irish, Maltese or Cypriot citizens are not required to make such a declaration. As Commonwealth citizens, Maltese and Cypriot citizens are exempt from this requirement, whilst Irish citizens are exempt as a result of reciprocal arrangements with the UK.

<sup>19</sup> Figures accurate to 1 decimal place. Data from ONS <http://www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/published-ad-hoc-data/pop/february-2014/european-union-citizens-2001-2012.xls> and <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-284413>

<sup>20</sup> See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2014) 33 and Commission Recommendation of 12.3.2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament, C(2013) 1303 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0033:FIN:EN:PDF>

## Disqualifications from voting: prisoners

4.26 Examples of those disqualified from voting under UK law include individuals who have been convicted of electoral fraud, and sentenced prisoners. There have been two sources of legal challenge to the UK's ban on prisoners voting.

4.27 Firstly, the European Court of Human Rights (ECtHR) in 2005, ruled that the UK's blanket ban on prisoner voting was in breach of Article 3 Protocol 1 of the European Convention on Human Rights (ECHR).<sup>21</sup> A Joint Committee of the UK Parliament recently completed pre-legislative scrutiny of the draft Voting Eligibility (Prisoners) Bill, which was published in November 2012. It recommended that the Government bring forward a Bill at the start of the 2014-2015 session to enfranchise prisoners serving less than 12 months and prisoners in the last 6 months before their scheduled release date. The Government is considering these recommendations. Around 2,000 UK prisoner voting rights cases are awaiting consideration by the ECtHR.

4.28 Secondly, a number of prisoners have challenged the ban under EU law. Two cases were brought before the UK Supreme Court last year in relation to the elections to the European Parliament, local government and Scottish Parliament, relying on the Treaty on the Functioning of the European Union (TFEU) and rights reflected in the Charter of Fundamental Rights. In October 2013 the UK Supreme Court rejected the claim that the blanket ban on prisoners voting was incompatible with EU law on the grounds that there was no individual right to vote protected in EU law (i.e. there was no parallel in EU law to the rights found in the Strasbourg case-law).<sup>22</sup>

## Disqualifications from voting: long-term overseas residents

4.29 UK citizens living overseas are entitled to register to vote in UK Parliamentary and European Parliamentary elections (but not local elections) in the UK, provided they were previously registered in the UK within the past 15 years (or were resident in the UK within the past 15 years and were too young to register at the time).<sup>23</sup> The UK Parliament decided to impose a time limit on the eligibility of overseas electors to vote in UK elections as it was thought that generally over time their connection with the UK is likely to diminish. Five other Member States have national legislation meaning that their overseas citizens will eventually lose their right to vote in national elections. For example, Danish citizens are allowed to remain on the electoral roll if they register their intention to return to Denmark within two years, and in Ireland, Irish citizens are allowed to remain on the electoral roll only if they register their intention to return within 18 months.

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<sup>21</sup> To see this judgment in full go to <http://www.bailii.org/eu/cases/ECHR/2005/681.html>

<sup>22</sup> R (on the application of Chester) –v- Secretary of State for Justice [2013] UKSC 63

<sup>23</sup> These provisions are set out in the Representation of People Act 1985 which provided for the first time for British citizens resident overseas to be able to register to vote in general and European Parliamentary elections in the UK. Under the Act, any such citizen is entitled to apply to the Electoral Registration Officer (ERO) for the area in which he or she was most recently registered in the UK in order to be placed on the 'overseas electors' list.



4.30 In January 2014, the European Commission made a non-binding recommendation that whilst Member States are competent to determine the franchise for national elections, they should allow their citizens who have moved to other Member States to retain indefinitely the right to vote in national elections.<sup>24</sup> The UK Government will keep the 15 year time limit under consideration, but is not minded at present to change the law. It successfully defended an action brought by a UK citizen living in Italy for over 15 years in the ECtHR who ruled that there had been no violation of Article 3 of Protocol 1 by the UK and that the UK had legitimately confined the parliamentary franchise to those citizens who had a close connection to the UK and who would therefore be most directly affected by its laws.<sup>25</sup>

## C. Wider forms of democratic engagement

### EU Citizenship Reports

4.31 In 2010 and 2013 the European Commission published its first triennial EU Citizenship Report, in which it announced actions designed to ensure that EU Member State citizens could enjoy their rights in their daily lives, without being confronted with unnecessary obstacles.<sup>26</sup> These Reports are adopted solely by the European Commission, and are not legally binding on Member States.

4.32 The 2013 Report states the European Commission's belief that bolstering EU Member State citizens' full participation in the democratic life of the EU is the essence of EU citizenship, and that mobilising citizens, reinforcing the dialogue with civil society and fostering media freedom and pluralism are central to an informed political debate in a democratic process.

4.33 The European Commission made the following commitments in the Report: to promote EU Member State citizens' awareness of their EU citizenship rights, especially their electoral rights, by launching a handbook presenting those EU rights; to propose constructive ways to enable EU Member State citizens living in another country to fully participate in the democratic life of the EU by maintaining their right to vote in national elections in their home Member State; and to explore ways of strengthening and developing the European public space, to end the current fragmentation of public opinion along national borders.

### The European Citizens' Initiative

4.34 The European Citizens' Initiative (ECI) was introduced under the Lisbon Treaty to '*reinforce the democratic fabric of the European Union*' and adopted via qualified majority on 16 February 2011.<sup>27</sup> It has applied since 1 April 2012. It allows EU citizens to bring forward

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<sup>24</sup> Commission Recommendation of 29.01.14: Addressing the consequences of disenfranchisement of Union citizens exercising their rights to free movement. [http://ec.europa.eu/justice/citizen/files/c\\_2014\\_391\\_en.pdf](http://ec.europa.eu/justice/citizen/files/c_2014_391_en.pdf)

<sup>25</sup> *Shindler –v- UK* (7 May 2013, Application no. 19840/09)

<sup>26</sup> These Reports are provided for under Article 25, TFEU – "*The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this Part. This report shall take account of the development of the Union.*"

<sup>27</sup> This is provided for by Articles 11(4) TEU. Further, Article 11(1) TEU provides that the EU institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly

proposals to change or make European law, in areas in which the EU can legislate. To set up an Initiative:

- A 'Citizens' Committee' must be set up with EU citizens from at least seven different Member States. It organises and collects signatures.
- Signatories must be EU citizens who are old enough to vote in European Parliamentary elections (18 in every Member State, bar Austria, where it is 16).
- When 1 million signatures are collected, Member States must verify signatures from their residents.
- 1 million citizens from at least seven Member States can invite the European Commission to propose legislation on a matter which they consider necessary to implement properly the EU Treaties.<sup>28</sup>

4.35 Between April 2012 and February 2013, the European Commission received 27 requests to register proposed citizens' initiatives, in areas from unconditional basic income and high-quality education for all to media pluralism and voting rights. The Cabinet Office has responsibility for the implementation and ongoing management of the ECI in the UK, including verification of UK residents' signatures.

### European Citizens' Initiative – Right 2 Water campaign

This Initiative proposed EU legislation to implement the human right to water and sanitation across the EU, as recognised by the UN, by EU institutions and by Member States. It was supported by the European Federation of Public Service Unions (EPSU) which represents 275 trade unions and over 8 million workers in all kinds of public services in Europe. Other European or international organisations that support the Initiative include the European Anti Poverty Network (EAPN), European Public Health Alliance (EPHA), European Environmental Bureau (EEB), Women in Europe for a Common Future (WECF), and Public Services International. The total support and funding was €140,000.

A Citizens' Committee consisting of members from at least 7 EU Member States was formed to coordinate this Initiative, as is the requirement under the ECI. This Initiative achieved 1.66 million valid signatures, following verification by 27 Member States in December 2013, with 7,104 from the UK. In January 2014 the Citizens Committee presented their wish list to the European Commission. Following a public hearing the European Commission responded to the Initiative on 19<sup>th</sup> March: [http://ec.europa.eu/transparency/com\\_r2w\\_en.pdf](http://ec.europa.eu/transparency/com_r2w_en.pdf)

Sources: European Commission official website on ECI <http://ec.europa.eu/citizens-initiative/public/welcome>; and Right 2 Water official website <http://www.right2water.eu/>

exchange their views on all areas of Union action. Article 11(2) TEU states that the EU institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. There is no UK legislation on the subject matter of the ECI. Regulations have "direct effect" and, therefore, all UK nationals and EU Member State citizens residing in the UK can automatically take part in the ECI by virtue of these Regulations.

<sup>28</sup> Articles 11(4) and Article 24 TFEU. Regulation (EU) 211/2011 (as implemented by Regulation (EU) 1179/2011) sets out the information required and procedures to be followed in order to submit an ECI to the EC as well as technical specifications for the online collection of signatures.

## The right to petition the European Parliament

4.36 Any EU citizen, any person who resides in a Member State and any legal person whose registered office is in a Member State has the right to petition the European Parliament on any matter which comes within the EU's field of competence and affects them directly.<sup>29</sup> The European Parliament's Committee on Petitions consider petitions in line with the Parliament's Rules of Procedure.<sup>30</sup> If an individual feels that their petition has not been dealt with fairly within these Rules of Procedure, they can address complaints to the European Ombudsman (see below from 4.39). There is no UK legislation on petitioning the European Parliament because EU citizens can rely on the Treaty provisions directly, without the need for national legislation.

4.37 In 2012, 1964 petitions were submitted, and those deemed admissible were either referred to an institution or body or closed with a direct reply to the petitioner. As in previous years, the most common subject matters for petitions in 2012 were fundamental rights/justice, the environment and the internal market.

## The right to complain to the European Ombudsman

4.38 EU citizens have the right to complain to the European Ombudsman about maladministration in the activities of the EU institutions, bodies, offices and agencies, with the exception of the Court of Justice acting in its judicial role.<sup>31</sup> The European Ombudsman is also not empowered to deal with complaints filed against national institutions or Member States themselves.<sup>32</sup> There is no UK legislation on this matter because EU citizens can rely on the Treaty provisions directly, without the need for national legislation.

4.39 The Ombudsman received 2,442 cases in 2012 and 2510 cases in 2011, of which it found 740 and 698 respectively were within its mandate. In 82% of the cases closed in 2011, the EU Institutions complied with the Ombudsman's suggestions. The most common focus of enquiries is lack of transparency in the EU administration. Cases on the role of the Commission as guardian of the EU Treaties were the next most common.

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<sup>29</sup> The right of EU citizens to petition the European Parliament was first introduced at Article 8(d) TEC (consolidated version 1992) and then at Article 194 TEC (consolidated version 2002). This right is now found at Articles 20(2)(d) and 227 TFEU.

<sup>30</sup> The procedure for dealing with a petition to the European Parliament, post submission, is dealt with by the European Parliament's Rules of Procedure, specifically Articles 201, 202 and 203 therein. Article 202 details the process for examination of petitions, and the role of the European Parliament's Committees in this regard. The European Parliament is responsible for devising and adopting its own Rules of Procedure, acting by a majority of its members.

<sup>31</sup> The right of EU citizens to apply to the Ombudsman was first introduced at Article 8(d) TEC (consolidated version 1992) and then at Article 195 TEC (consolidated version 2002). This right is now found at Article 20(2)(d) TFEU. The Ombudsman's website is at: <http://www.ombudsman.europa.eu/en/home.faces>

<sup>32</sup> See COM(2013) 270 at [http://ec.europa.eu/justice/citizen/files/com\\_2013\\_270\\_en.pdf](http://ec.europa.eu/justice/citizen/files/com_2013_270_en.pdf)

## Voting Call for Evidence Questions

These questions are designed to help frame your response and are not exhaustive. Please respond to these questions by 2 July 2014 to the postal address set out in Section 3 above or by emailing: [BalanceofCompetences.voting@cabinet-office.gov.uk](mailto:BalanceofCompetences.voting@cabinet-office.gov.uk). The same addresses should be used for any published material that may supplement your response and for any related questions.

Please feel free to comment on matters related to voting – such as the franchise and voter registration – when responding to the following questions.

- What are the benefits and drawbacks to the UK of the current division of responsibility between the EU and Member States at European Parliamentary elections? You may wish to comment on matters including: the franchise (at European Parliamentary, local and national elections); the administration of elections; electoral integrity; and costs.
- What challenges do candidates and parties wishing to stand for election at European Parliamentary elections face, and are they appropriate?
- What are the impacts of European initiatives to engage citizens in policy making and democracy? What has worked well and/or what has not worked so well? You may wish to give examples.
- Are there any future opportunities or challenges for the UK which result from EU-wide democratic engagement initiatives other than voting at elections? If so, how can opportunities be capitalised on, or challenges met? You may wish to comment on petitions.
- Are there any general points you would like to make which are not captured by the above?

## SECTION 2 – CONSULAR

### Policy Context

#### Member State and EU competence

5.1 The provision of consular assistance is primarily a Member State competence. There is no power in the EU Treaties to determine exactly which services must be provided or to what standard any particular service must be provided. However, over time, EU treaties have introduced a limited role for the EU to support Member States and co-ordinate Member State consular actions.

#### Development of the EU's role

5.2 In 1992, unrepresented EU citizens were given the right to seek consular protection from another EU Member State and the EU was given a limited role in supporting Member States in consular coordination and cooperation. This limited EU competence was introduced under the citizenship heading of the Maastricht Treaty, which provided that:

*“every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Before 31 December 1993, Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.”<sup>33</sup>*

5.3 This led to EU legislation<sup>34</sup> which provided that Member States should assist unrepresented EU citizens in the same way as they would assist their own nationals. Further EU legislation<sup>35</sup> established a common form emergency travel document (including rules governing the issue of, and security measures relating to, the document).

5.4 The Lisbon Treaty (Article 20(2)(c) and 23 TFEU) strengthened the Maastricht provisions, giving additional powers to the Council to adopt laws establishing coordination and cooperation measures necessary to facilitate consular protection. Directives under Article 23 are adopted by Qualified Majority Voting, after consulting with the European Parliament. These provisions aim to ensure equal treatment for EU citizens, on the principle of non-discrimination – ie that Member States must treat unrepresented EU citizens in the same way as they would treat their own nationals when it comes to consular matters.

5.5 The right to consular protection on the same basis as nationals was then enshrined in Article 46 of the Charter of Fundamental Rights:

*“every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.”*

<sup>33</sup> Article 20, Treaty on the European Community (TEC)

<sup>34</sup> Council Decision 95/553/EC, made under Article 20 TEC.

<sup>35</sup> Council Decision 96/409/CFSP.

5.6 The most recent EU treaty provides for a degree of EU co-ordination internationally with regards to some aspects of consular work. Article 35 TEU provides that:

*“The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments. They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 23 of that Treaty”.*

5.7 The European External Action Service (EEAS)<sup>36</sup> has a supporting role in the provision of consular services under its founding 2010 Council Decision which provides that:

*“The Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis”.*

This confirms the supporting nature of the EEAS’ role. In addition, the EEAS has made it clear that it does not currently seek a role in the provision of consular assistance to EU citizens. The EEAS Review of 2013 stated that: *“this is an area for which the Service has very limited resources in headquarters (concentrating on co-ordinating crisis response) and no resources or expertise in delegations”.*

## UK approach to consular services

5.8 The Foreign and Commonwealth Office (FCO) promotes UK interests overseas, supporting UK citizens and businesses around the globe. One of the FCO’s three Foreign Policy Priorities is “supporting British nationals around the world through modern and efficient consular services”.

**At home, the first duty of the Government is the safety and security of British nationals. Abroad, it is the first duty of the Foreign Office, and consular work is one aspect of how we keep Britons safe.**

(William Hague, Foreign Secretary. Looking after our own: strengthening Britain's consular diplomacy; April 2012)

5.9 Around 56.5 million overseas trips are made by British nationals each year and around 6 million British nationals live and work abroad. In 2013 the Consular Service received 150,000 face-to-face consular enquiries and helped in over 95,000 cases. In the space of a year, approximately 5,500 Britons get arrested, and at any one time more than 3,250 British nationals are in prison around the world. The FCO supports those British nationals through our network of approximately 650 staff working in 220 Posts around the world and 210 staff in London. We also have a network of 230 Honorary Consuls who provide support in places we are not otherwise represented.

<sup>36</sup> Established in 2010 by Council Decision 2010/427/EU and officially launched in January 2011.

5.10 The key services range from general advice and routine assistance (such as replacement of lost passports) to help in sensitive or complex cases and assistance during a crisis.

5.11 In 2012-13, our network cost £87.2 million to run. This money does not come from taxation: around 2/3 of it is from the 'passport premium', which is a portion of the fee for every UK passport (around £15 for a standard adult passport). The rest is from services we charge for (emergency travel documents; documentary services etc).

### Consular cooperation between the UK and others

5.12 The UK government has a wide network of overseas posts in 170 countries. It also has consular partnerships to ensure British citizens have immediate access to assistance in countries where the UK is not represented. The UK's consular partnerships include EU Member States and others such as the US, Australia, Canada and New Zealand. For example, British nationals were flown out of the region affected by Hurricane Haiyan on US military flights. In a crisis in the Pacific, we would rely on assistance from Australia and New Zealand, which have stronger representation in the region.

### Crisis preparedness & response

5.13 During crises, the UK works with other EU Member States, the EEAS and other partners to provide assistance. The EEAS has played a supporting role in facilitating the sharing of information during a crisis. The EEAS Consular Crisis Management Division manages a secure website allowing Member States to share information about potential crises and during crises. It provides a shared source of information on Member States' travel advice and consular contacts, as well as providing a message board for Member States to update each other on a situation and any action taken.

5.14 In recent crisis operations, Member States through their Embassies have worked together and with other partners to help EU citizens. For example, during the events in Libya in 2011 and South Sudan in 2013, EU nationals were assisted by us and UK nationals were helped by other Member States. British nationals were provided consular assistance by French authorities during the recent period of instability in Central African Republic, Mali and Cote d'Ivoire.

#### **Case study**

As the conflict in the Central African Republic worsened in 2013, commercial flights became erratic. Some members of the small British community decided they wished to leave and were helped by the British Honorary Consul. One British family was also given refuge in a safe compound protected by the French military in central Bangui for a protracted period. The French Embassy provided assistance to the family and French troops later accompanied those family members who decided to travel to the airport, enabling them to travel safely.

## **Unrepresented citizens**

5.15 Consular cooperation amongst Member States also takes place in non-crisis situations. Not all Member States are represented in all countries around the world. Consular websites (EEAS and Member States) direct EU citizens to a Member State that is represented in-country. The number of requests for consular assistance (whether for standard services or during a crisis) made by EU citizens at our overseas Embassies or Consulates is minimal. Because of the small numbers involved, the UK does not keep records of the number of EU nationals it has assisted with consular issues.

5.16 The UK takes seriously its responsibilities to provide consular assistance to unrepresented EU citizens and we do so in crises and non crisis situations. For instance, in 2013 our Consulate in Goa helped two Latvian citizens who had lost their passports by issuing them with emergency travel documents (ETDs). Other recent requests for standard consular assistance from unrepresented EU nationals include issuing ETDs to Lithuanian and Portuguese nationals in Kenya, helping Polish nationals arrested in the Solomon Islands and issuing ETDs to Polish nationals in Laos.

5.17 Similarly, British nationals are able to call upon EU Member States as well as non-EU consular partners, in countries where the UK is not represented. For example, in 2012, the French military assisted British nationals in Mali and the German authorities helped British nationals in Tajikistan.

## **Current debate about the role of the EU in consular services**

5.18 In late 2011, the European Commission produced a proposal for a Council Directive on consular protection for citizens of the Union abroad. The draft Council Directive is still being negotiated. It aims to clarify the Treaty provisions on assisting unrepresented EU nationals in third countries.

## **Future role of the EEAS in providing consular services**

5.19 A number of Member States support an expanded role for the EU or EEAS in consular matters. Some of the smaller Member States see advantage in the EU or EEAS providing assistance to their own nationals because they do not have the reach or capacity to do so everywhere. Other Member States think the present pragmatic arrangements for cooperation between Member States work well and do not require further legislation.

5.20 The future role of the EU, or EEAS, in the provision of consular services for EU citizens is the subject of debate. Member States want and expect different things from support for consular assistance. Standards and types of consular services are not harmonised across Member States, nor is the provision of consular service written in to all Member States' national legislation. The EEAS has made it clear that it lacks the capacity, training and expertise to take on a full consular role in the immediate future. There are many questions for the future: should the EEAS prioritise a greater focus on consular work? Can we increase consular cooperation without the need for increased legislation? Should we maintain the status quo? Can we move towards greater crisis cooperation? Is the future one EU Delegation office in each third country



providing all consular services? This Review is an opportunity to provide evidence on the advantages or disadvantages of the current system and of how it might change.

5.21 This review will not cover the standards or quality of the UK's provision of consular assistance to its citizens.

## Consular Call for Evidence Questions

These questions are designed to help frame your response and are not exhaustive. Please respond to these questions by 2 July 2014 to the postal address set out in Section 3 above by emailing: [balanceofcompetences.consular@fco.gov.uk](mailto:balanceofcompetences.consular@fco.gov.uk). The same addresses should be used for any published material that may supplement your response and for any related questions.

These questions are designed to help frame your response and are not exhaustive. You should feel free to only answer the questions that are relevant to you. In responding, it would be helpful if you could indicate whether you are responding as an individual, a business, a trade union, local authority, a civil society organisation, research institution or other grouping.

- What are the advantages and disadvantages of the current system for providing mutual support between Member States in consular assistance?
- How might the UK and its citizens benefit or be disadvantaged if the EU were to take on a greater role in consular work?
- How would either greater or lesser sharing of Member States' consular resources impact on the delivery of consular services to UK Nationals?
- What would be the advantages or disadvantages of formalising cooperation in this area through further legislation?
- What future challenges or opportunities might we face in the area of consular competence and what impact might these have on the national interest?
- What would be the advantages or disadvantages of different provisions for consular work during a crisis?

## SECTION 3 – STATISTICS

### Policy Landscape

6.1 EU competence in the field of statistics is intended to ensure that policy-making at the EU level is guided by accurate evidence. It also provides the general public with information on the impacts of these policies within different Member States and across the EU as a whole. Required by EU law, the development, production and dissemination of statistics directly and indirectly affect a range of stakeholders in each Member State, including academia, businesses, the general public, government and a number of key domestic and international institutions.

6.2 Article 338 of the Treaty on the Functioning of the European Union (TFEU), provides for EU competence in the field of statistics:

*“1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Union.*

*2. The production of Union statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.”*

6.3 This gives the European Commission a basis to:

- Adopt statistical policies and programmes of statistical work;
- Propose legislation for adoption by European Parliament (EP) and Member State governments meeting in the Council;
- Make arrangements for managing shared competence;
- Seek assistance from experts;
- Appoint staff and spend budgets.

6.4 Regulation (EC) 223/2009, commonly referred to as **the European statistical law or Regulation 223**, sets out the framework legislation for the European Statistical System (ESS), which comprises Eurostat and the producers of official statistics in all Member States.

6.5 Eurostat is the EU’s statistical office situated in Luxembourg. Its task is to provide the EU with statistics at European level that enable comparisons between countries and regions. Regulation 223 gives Eurostat the power to:

- Propose statistical laws;
- Compile and publish European statistics;
- Establish European Commission policy for statistics;
- Chair meetings of Expert, Advisory and Working Groups;

6.6 Eurostat, as part of the European Commission:

- has the sole right to propose new EU statistical law; and
- has the duty to ensure Member States' compliance with the Treaties.

6.7 Eurostat also ensures that European statistics are produced according to established rules and principles<sup>37</sup>. It therefore has responsibility, in partnership with Member States, for deciding on processes, statistics methods, standards and procedures, and on the content and timing of statistics releases.

6.8 Regulation 223 also includes detailed provisions relating to the production of European statistics, their dissemination, and the practice of statistical confidentiality.

6.9 More generally, Eurostat is part of a global statistical system that includes the United Nations, the Organisation for Economic Cooperation and Development, the International Monetary Fund, the International Labour Organisation and other supra-national bodies. Both Eurostat and the UK work together with these organisations to develop and promote relevant statistical policies especially in relation to producing comparable statistics.

### Statistical actors and governance

6.10 The ESS Committee (ESSC), which was established by Regulation 223, is the high level statistical policy making forum and law-maker<sup>38</sup> in the EU. It is composed of representatives of the National Statistical Institutes (NSIs) who are national statistics specialists, and is chaired by the Commission (Eurostat).

6.11 Article 2 of Regulation 223 outlines statistical principles that underpin the production of European statistics. These are derived in the main from the Fundamental Principles of Official Statistics first passed by the United Nations Statistical Commission in 1994 and are drawn into a greater level of detail in the European Statistics Code of Practice. Within the UK, these are embedded in our national Code of Practice for Official Statistics, adopted by the UK Statistics Authority in January 2009.

6.12 In terms of statistical governance, the ESS gives responsibility for coordinating all national level activities on development, production and dissemination of European statistics to the head of the relevant National Statistical Institute (NSI), which, in the UK's case, is its National Statistician.

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<sup>37</sup> See Article 6 in Annex B

<sup>38</sup> Article 7 in Annex B .

### **Producing comparable statistics**

The main role of Eurostat is to publish statistics at the European level which are compiled from national data supplied by Member States. These data are produced using a common approach agreed between Eurostat and Member States.

Eurostat does not collect data. This is done in Member States by their National Statistical Institutes and other statistical authorities. These national agencies verify and analyse national data and send this information to Eurostat. Eurostat is the only provider of official statistics at European level and it aims to produce information that is harmonised across the EU.

For instance, to have an accurate picture of EU unemployment, it is important that unemployment in Finland or Portugal is measured in the same way as in the UK or Germany. So Eurostat works with Member States to define common methodology on unemployment and asks Member States to include appropriate questions when gathering national data. These data are then sent to Eurostat so that it can publish EU-wide unemployment data, which can then be used to compare unemployment rates between countries.

### **UK context**

6.13 The UK Statistics Authority is an independent body operating at arm's length from government as a non-ministerial department, directly accountable to Parliament. It was established on 1 April 2008 by the Statistics and Registration Service Act 2007, with the statutory objective to promote and safeguard the production and publication of official statistics that serve the public good. It is also required to promote and safeguard the quality and comprehensiveness of official statistics, and ensure good practice in relation to official statistics. The UK Statistics Authority has two main functions:

- oversight of the Office for National Statistics (ONS) - its executive office
- independent scrutiny (monitoring and assessment) of all official statistics produced in the UK.

6.14 ONS and 26 UK Government Departments are between them responsible for meeting the requirements of 48 active EU statistics regulations. The Office for National Statistics has a legal responsibility to coordinate the supply of all UK data to the European Commission – Eurostat – which then publishes them.

### **Global statistical requirements**

Eurostat requirements for statistical production often implement global statistical requirements.

For example, the European System of Accounts is derived from the UN System of National Accounts. The two Systems of Accounts are fully consistent with one another. However, implementation in the EU is accompanied by a need for a greater level of granularity.

If there were no relevant EU standards, the UK would still be expected to comply with UN standards in order to maintain globally comparable statistics.

As such, in this example, although though meeting the EU standards is mandatory, the work required largely reflects activity the UK would in any case undertake.

## Future challenges

6.15 There are a number of future challenges for European statistics. For example, the increasing demand for statistical information will have to be met within tighter budgets or a change in priorities.

### Data Collection from business

There can be tensions between EU and national requirements in relation to the collection of data from businesses. For example, EU Regulations require Member States to collect annual statistics about the value and volume of goods produced and sold for certain industrial sectors, with 90% coverage of the industries to be achieved. The PRODCOM (PRODUcts of the European COMMunity) list identifies these products and provides the framework for the collection of the statistics.

The European Commission and national governments use these data to monitor industry and markets and to develop their corresponding policies. PRODCOM also allows international comparisons between all Member States and other countries, and can help businesses to evaluate markets and opportunities.

PRODCOM is the only output that provides UK manufacturers' sales information at the detailed product level. However, this leads to high respondent burden, with the annual compliance estimated to be over £2 million.

The Office for National Statistics' Annual Business Survey (ABS) collects total turnover and other variables similar to those collected by PRODCOM. However, it is at the less detailed industry level, and not specific to the product classification, but the business' industrial classification. The ABS could collect data on behalf of PRODCOM though there are some notable differences e.g. different year-ends, timeliness for submission to Eurostat, and the resulting quality of product coverage.

## Statistics Call for Evidence

The key objective of this review is to collect evidence about the impact of the EU's statistical competence. In order to do so, we want to hear views about the advantages and disadvantages of the current balance of competences and to gather examples of statistical activities that have helped or hindered national interests. This review will also include evidence from a literature review of the existing opinions on the value of the EU statistics competence.

Submissions may be on any or all areas of statistical activity. Evidence that refers to a specific or technical statistical issue, for instance in relation to a particular policy area, is welcome.

These questions are designed to help frame your response and are not exhaustive. Please respond to these questions by 2 July 2014 to the postal address set out in 3.2 above or by emailing: [balanceofcompetences@statistics.gsi.gov.uk](mailto:balanceofcompetences@statistics.gsi.gov.uk). The same addresses should be used for any published material that may supplement your response and for any related questions.

### Current

- What is the overall impact of EU competence on national statistical interests of UK stakeholders?
- What are the advantages or disadvantages of the balance between EU competence and national interests?
- Where have European statistical activities helped or hindered national interests? You may wish to give examples in your response.

### Future

- What are the future challenges and issues for UK statistics that may result **from** EU competence in statistics?

## Annex A: Links with other Balance of Competences reports

The review may overlap with a number of other Balance of Competences reviews. These are all available at: <http://www.gov.uk/review-of-the-balance-of-competences>.

- ***Semester 4 – Subsidiarity and Proportionality Review***

This review deals with the key principles of subsidiarity and proportionality respectively (Articles 5(3) and (4) of the Treaty on European Union (TEU)). Subsidiarity means that in areas which do not fall within its exclusive competence, the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States. Proportionality means that EU action shall not exceed what is necessary to achieve the objectives of the Treaties. This review's call for evidence is open at the same time as this Voting, Consular and Statistics review.

Contact: [BalanceofCompetencesSubsidiarity@fco.gsi.gov.uk](mailto:BalanceofCompetencesSubsidiarity@fco.gsi.gov.uk)

- ***Semester 3 – Fundamental Rights Review***

This review deals with those fundamental rights which relate to voting and democratic engagement (such as the right to vote at European Parliamentary and municipal elections), and the right to consular protection. The Fundamental Rights Review does not look at individual rights, rather focuses on the EU's overarching competence on fundamental rights and their impact on EU citizens. This review's call for evidence has now closed.

Contact: [fundamentalrightsBOC@justice.gsi.gov.uk](mailto:fundamentalrightsBOC@justice.gsi.gov.uk)

- ***Semester 3 – Social and Employment Review***

The Voting strand of this review touches upon Article 9 TEU which establishes the principles of EU Member State citizenship. Article 9 also establishes the principle of equality, which is covered by the Social and Employment Review insofar as it relates to employment law. This review's call for evidence has now closed.

Contact: [balanceofcompetences@bis.gsi.gov.uk](mailto:balanceofcompetences@bis.gsi.gov.uk)

- ***Semester 2 – Free Movement of Persons Review***

The Voting strand of this review refers to the right to the freedom of movement only insofar as that right is reflected in the right of EU Member State citizens to vote at European Parliamentary and municipal elections either in their home Member State or their host Member State, where these differ. A full exploration of this topic is being conducted by the Free Movement of Persons Review. This review's call for evidence has now closed.

Contact: [FreeMovementofPersonsBoC@homeoffice.gsi.gov.uk](mailto:FreeMovementofPersonsBoC@homeoffice.gsi.gov.uk)

- **Semester 2 – Asylum and Non-EU Migration Review**

This review will not cover visa or migration issues which were covered in Semester 2. The report is available at: <https://www.gov.uk/government/consultations/asylum-and-non-eu-migration-review-of-the-balance-of-competences>

- **Semester 1 – Foreign Policy Review**

A European Civil Protection Mechanism was first established in 2001 to improve EU cooperation in preventing, preparing for and responding to disasters. The Treaty of Lisbon provided a specific legal base for EU action and a new Union Civil Protection Mechanism was recently established<sup>39</sup> with the aim of protecting people, the environment and property against all natural and man-made disasters occurring inside or outside the EU. The Decision expressly allows the Mechanism to be used to support consular assistance to Union citizens who are affected by disasters occurring in non-EU countries<sup>40</sup>. The Foreign Policy report covers civil protection and can be found at <https://www.gov.uk/government/consultations/foreign-policy-report-review-of-the-balance-of-competences>.

- **Other reports**

As statistics is a cross-cutting area of competence, relevant evidence may be found in reports published in different semesters.

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<sup>39</sup> Decision no. 1313/2013/EU

<sup>40</sup> Article 16(7) of 1313/2013/EU



## Annex B: Relevant EU Legislation on Statistics

**Selected Articles, Regulation (EC) 223/2009 (available in full at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:087:0164:0173:en:PDF>)**

### *Article 5 – National statistical institutes and other national authorities*

- 1 The national statistical authority designated by each Member State as the body having the responsibility for coordinating all activities at national level for the development, production and dissemination of European statistics (the NSI) shall act as the contact point for the Commission (Eurostat) on statistical matters. The Member States shall take the necessary measures to ensure the application of this provision.
- 2 The Commission (Eurostat) shall maintain and publish on its website a list of NSIs and other national authorities responsible for the development, production and dissemination of European statistics as designated by Member States.
- 3 The NSIs and the other national authorities included in the list referred to in paragraph 2 of this Article may receive grants without a call for proposals, in accordance with Article 168(1) (d) of Regulation (EC, Euratom) No 2342/2002.

### *Article 6 – Commission (Eurostat)*

- 1 The Community statistical authority, as designated by the Commission to develop, produce and disseminate European statistics, shall be referred to as ‘the Commission (Eurostat)’ in this Regulation.
- 2 At Community level, the Commission (Eurostat) shall ensure the production of European statistics according to established rules and statistical principles. In this respect, it shall have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases.
- 3 Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks (ESCB) and the European Central Bank, the Commission (Eurostat) shall coordinate the statistical activities of the institutions and bodies of the Community, in particular with a view to ensuring consistency and quality of the data and minimising reporting burden. To that end, the Commission (Eurostat) may invite any institution or body of the Community to consult or cooperate with it for the purpose of developing methods and systems for statistical purposes in their respective field of competence. Any of those institutions or bodies which propose to produce statistics shall consult the Commission (Eurostat) and take into account any recommendation that it may make to this effect.

#### *Article 7 – European Statistical System Committee*

- 1 The European Statistical System Committee (ESS Committee) is hereby established. It shall provide professional guidance to the ESS for developing, producing and disseminating European statistics in line with the statistical principles set out in Article 2(1).
- 2 The ESS Committee shall be composed of the representatives of the NSIs who are national specialists for statistics. It shall be chaired by the Commission (Eurostat).
- 3 The ESS Committee shall adopt its rules of procedure, which shall reflect its tasks.
- 4 The ESS Committee shall be consulted by the Commission in regard to:
  - (a) the measures which the Commission intends to take for the development, production and dissemination of European statistics, their justification on a cost-effectiveness basis, the means and timetables for achieving them, the response burden on survey respondents;
  - (b) proposed developments and priorities in the European statistical programme;
  - (c) initiatives to bring into practice the reprioritisation and reduction of the response burden;
  - (d) issues concerning statistical confidentiality;
  - (e) the further development of the Code of Practice; and
  - (f) any other question, in particular issues of methodology, arising from the establishment or implementation of statistical programmes that are raised by its Chair, either on its own initiative or at the request of a Member State.

## Annex C: A brief history of the EU Treaties

The Treaty on the European Economic Community (EEC) was signed in Rome on 25 March 1957 – along with the Treaty establishing the European Atomic Energy Community (Euratom) – and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 there has been a series of treaties extending the objectives of what is now the European Union beyond the economic sphere. The amending treaties (with the dates on which they came into force) are: the Single European Act (1 July 1987), which provided for the completion of the single market by 1992; the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.

Following these changes, there are now two main treaties which together set out the competences of the European Union:

- The Treaty on European Union (TEU);
- The Treaty on the Functioning of the European Union (TFEU).

### The EU legislative process

EU legal acts such as Regulations and Directives are generally adopted by what, after the Lisbon Treaty, is known as the ‘ordinary legislative procedure’ (formerly known as the ‘co-decision procedure’). In most cases, only the European Commission can propose a new legal act. But it cannot become law unless it is jointly adopted by the Council (which is composed of ministers from each Member State) and the European Parliament. Under this procedure, the Council acts on the basis of qualified majority voting, where only a specified majority of votes is required and the share of votes of each Member State reflects its population size. The Treaties also set out a small number of cases where EU legal acts are adopted under different procedures (referred to as ‘special legislative procedures’). For example, acts in some areas, such as foreign and defence policy, can only be adopted if the Council acts unanimously, so the act will not be adopted if a minister from any one Member State vetoes it.