



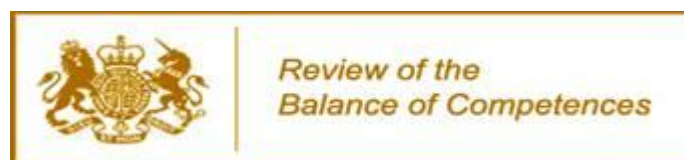
Home Office

# Review of the Balance of Competences

## Asylum and Immigration

Call for evidence

May 2013



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

## Asylum and Immigration

Opens: 16 May 2013

Closes: 5 August 2013

## INTRODUCTION

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.
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 the UK 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. The Home Office is leading this report on asylum and immigration. The Home Office is also conducting a separate balance of competences report on the Free Movement of Persons. However, the present report looks specifically at the immigration and asylum competences that affect nationals from outside the EU/EEA, those not exercising EU/EEA rights and the control of the UK's borders.

## WHAT IS COMPETENCE?

4. 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.

5. 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.
6. 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.

## CALL FOR EVIDENCE

This public call for evidence sets out the scope of the review of the balance of competences in the area of asylum and immigration. We request input from anyone with relevant knowledge, expertise or experience. This is your opportunity to express your views.

Please send your evidence to [Asylum&ImmigrationBoC@homeoffice.gsi.gov.uk](mailto:Asylum&ImmigrationBoC@homeoffice.gsi.gov.uk) by **midday 5 August 2013**.

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 at the end of each section.

## POLICY CONTEXT

7. This review looks at the asylum and immigration competences that affect nationals from outside the EU/EEA and the control of the UK's borders. The Home Office is conducting a separate balance of competences report in parallel on the Free Movement of Persons which considers EU nationals and their families who have free movement from within the EU to the UK.
8. The EU's competence in immigration and asylum issues has increased markedly over the last 15 years and has developed into a comprehensive work programme. First and foremost in that programme is the border free 'Schengen zone', in which there is check-free travel across many EU (and non-EU) states, backed by common visa systems. The 'Schengen Zone' derives from the 'Schengen Acquis', a term used to describe a set of agreements between European states beginning with (and building upon) the 1985 Schengen Agreement. The principal aim of these agreements was to limit (and ultimately to abolish) checks at the internal borders between the participating States. The Schengen Acquis was initially separate from the EU. However, it was incorporated into EU Law in 1997, under the Treaty of Amsterdam. This had the effect of enlarging the EU's competence into the areas that had previously been governed by the Schengen Acquis.
9. The UK wishes to maintain its own border checks, and its own visa system. To that end, it negotiated a special status in relation to the Schengen Acquis. It was agreed that the UK would not be automatically bound by EU measures deriving from the Acquis. However, it was entitled to request to 'take part' in those provisions in which it wished to participate. In 2000, the UK decided to participate in *some* elements of the Acquis (briefly, those elements concerning police and judicial co-operation). These elements will be explored in the fourth semester (Spring-Autumn 2014) report on police and criminal justice cooperation. However, the UK chose *not* to participate in those elements of the Acquis concerning visas and border control. This means that we do not participate in many of the different EU laws governing the Schengen zone.

### The Schengen Acquis

- The Schengen acquis includes a set of agreements which underpins the EU's common visa policy and borderless Schengen area.
- The UK has chosen not to participate in the border control elements of the Schengen Acquis and has its own visa policy and border controls.
- There is practical co-operation between Member States on Schengen issues and the UK participates in regular EU discussions on the management of the Schengen area and how it impacts on Member States.
- The UK has joined some elements of the Schengen acquis in regards to policing and judicial cooperation.

10. In addition, the EU has set out a wider range of policies and laws on asylum and immigration. The UK has also retained a special status in relation to this programme. Again, this means that the UK is not automatically bound by EU legislation falling within these areas, unless she exercises her right to 'opt-in' to the measure (that is, gives notice of her wish to participate in it). For this reason, the UK participates in some areas of EU asylum and immigration work and not others. This call for evidence (and the Legal Annex) sets out some of these distinctions in more detail.

11. For this call for evidence, we have divided the EU's programme on immigration and asylum into 3 areas – the UK border including visas; asylum; and legal migration which also includes a section on EU-UK co-operation. We have divided the call for evidence into these 3 sections for convenience and because, as detailed above, the UK's participation operates differently in each area.

### **UK Migration Context**

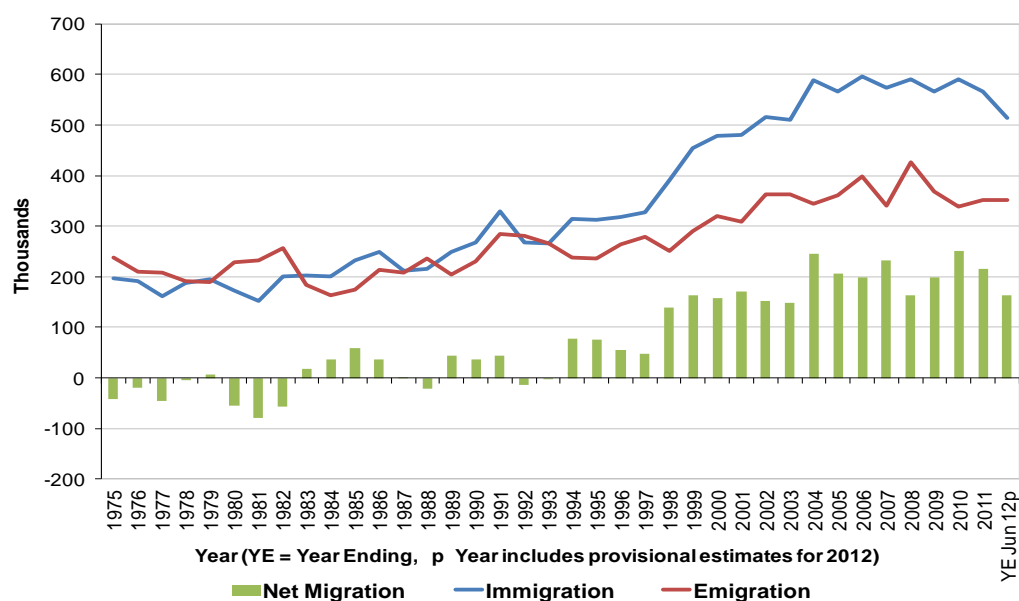
12. During the last 15 years the UK has seen the following migration trends:

- Peaks and troughs in the number of asylum applications in the UK; reaching 103,080 in 2002; but decreasing to 20,230 by September 2012.
- A significant rise in net migration beginning in 1998 and boosted further by the removal of controls on new EU members in 2004 (see graphs below). Over the decade 2001-2010 the number of immigrants from outside the EU was more than double that from EU countries: between 2001 and 2010, non-EU migrants represented 58.8% of the total inflow, compared to 24.6% who came from the EU (the remaining 16.6% being UK citizens).<sup>1</sup>
- Net migration has fallen by almost a third since 2010 from 235,000 for the year to June 2010, to 163,000 in the year to June 2012. The skill level required for work in the UK has been increased and rules around the student sector and family migrants have been tightened.

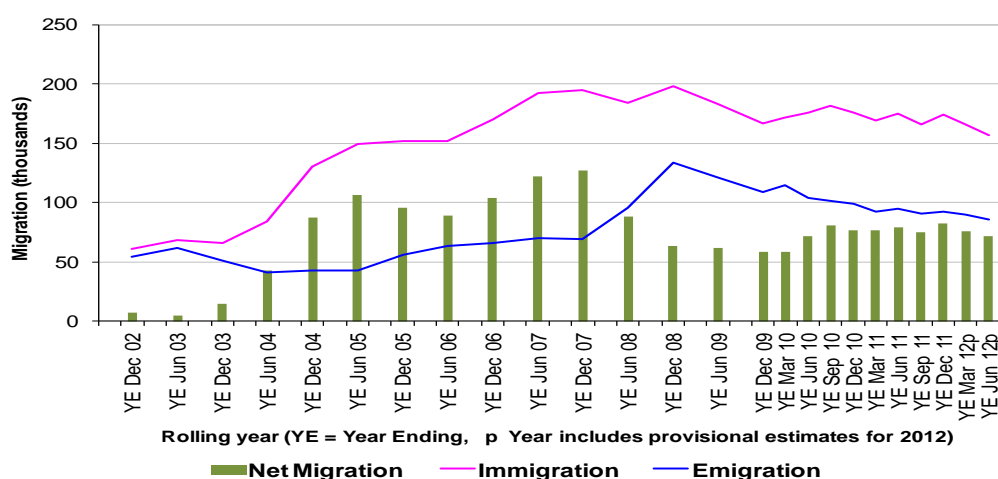
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<sup>1</sup> Source: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcM%3A77-280889>

## Long-term international migration estimates of all nationalities, 1975-2012<sup>2</sup>



## Long-term international migration estimates of EU citizens (excluding British) 2002 to 2012<sup>3</sup>



13. In addressing these trends, the UK has chosen to be bound by approximately one third of all the EU measures in this area, participating in fewer measures as the EU's ambition has increased, whilst continuing to be involved in practical co-operation initiatives (such as the EU Migration Network and the Migratory Pressures Roadmap). The choice of measures has reflected the UK's evolving priorities in this field. The UK has also been allocated approximately £240million (€288m) per annum from the current EU Migration Funds to support national work on returning migrants to their home countries, supporting refugees and integration.

<sup>2</sup> Source: [http://www.ons.gov.uk/ons/dcp171778\\_300382.pdf](http://www.ons.gov.uk/ons/dcp171778_300382.pdf)

<sup>3</sup> Source: [http://www.ons.gov.uk/ons/dcp171778\\_300382.pdf](http://www.ons.gov.uk/ons/dcp171778_300382.pdf)

## THE EU AND THE UK BORDER

14. The balance of competences around the EU and the border presents a mixed picture. The UK does not participate in many elements of the “Schengen Acquis”, specifically those that relate to borders and visas. Instead we have our own regulations and procedures for controlling our borders and for developing our own visa policy and operations. We also have a Protocol to the Treaties which reserves our right to retain our border controls (Protocol 20). However there remain some aspects of border work in which the EU competences do have an impact.

### Visas

15. Membership of the EU means that the UK is bound by the Free Movement Directive, which enables EU citizens and their families to move and reside freely within the territory of the EU. EU nationals do not therefore require a visa to come to the UK, just as UK nationals do not need a visa to travel to other EU Member States. There is a separate Call for Evidence currently being undertaken on the Free Movement of Persons report which can be found on the Home Office website.

16. The UK retains control over immigration and visa requirements on non-EEA nationals (“third country nationals”) coming to the UK. In doing so, the UK’s visa policy takes full account of issues such as migration flows and any potential crime risks and potential risks to national security. However, holders of UK visas cannot travel to other Schengen states without a separate Schengen visa (and vice versa).

17. The UK is not automatically bound by EU legislation relating to visas for third country nationals. However, the UK is bound by the Regulation EC/1683/95 which sets out a uniform format for short term visa vignettes (as this measure pre-dates the Amsterdam Protocols). The UK has also chosen to opt in to other measures: for example Regulation EC/1030/2002 which establishes a uniform format for residence permits for third country nationals.

18. The UK’s non-participation in the border and visa elements of the Schengen Acquis limits our access to some information sharing and databases. For example, it means that the UK is unable to access data shared by the Schengen States through the EU’s Visa Information System (VIS). VIS is a database containing information on applications for EU visas with the intention of combating fraud and abuse.

19. In addition, the UK has its own policy on Direct Airside Transit Visas (DATVs), which are imposed on specific nationalities when transiting the UK en route to another destination.

20. While not bound by EU legislation relating to visas for third country nationals, the UK does continue to take a keen interest in the development of EU visa policy and readily shares information on visa policy matters with our European



counterparts. The UK is represented at EU Council Working Groups where information is shared and exchanged and visa policy is developed.

### **Border Checks**

21. The UK also retains its right to secure its own borders and to carry out border controls at its frontier. This function is carried out by Border Force, which exercises its powers primarily under Schedule 2 to the Immigration Act 1971.
22. While the Free Movement Directive allows citizens of the European Union and their family members to move and reside freely within the territory of the Member States, Border Force Officers in exercising their Schedule 2 powers can examine EU/EEA nationals to establish their identity and nationality and their right to admission, as they can with all other entrants.
23. Border Force Officers stationed in France and Belgium conduct immigration checks on passengers travelling on certain cross-Channel routes. These take place before boarding the train or ferry. Border Force officers may also examine those leaving the UK to determine whether they are British and, if not, to establish their identity, whether they entered the UK lawfully, whether they complied with any conditions of stay and whether there is any restriction on their return to the UK. Further checks may follow including applications made for asylum and extensions of stay, in-country enforcement and compliance checks and targeted, intelligence-led exit checks on departure.
24. The UK's border control systems will be affected by the EU Directive on International Rail Passenger Liberalisation and the Regulation on Rail Passengers' Rights and Regulations (deriving in particular from Directive 2007/58/EC, now consolidated in Directive 2012/34/EU). This legislation establishes the framework for increasingly extensive international cross border rail links, allowing all railway undertakings with a European licence to run passenger services between EU Member States, and will be covered by the Transport Semester 2 Balance of Competences Report. Please e-mail [Balanceofcompetences@dft.gsi.gov.uk](mailto:Balanceofcompetences@dft.gsi.gov.uk) if you have any comments on this Directive.

### **Passenger Data**

25. A key enabler for the UK's immigration and border security operation is the collection and use of passenger data to enable us to conduct checks on passengers in advance of their arrival at the border. The UK has opted to participate in key EU legislation on the issue, including Council Directive 2004/82/EC (which establishes requirements for the transmission of passenger data by certain carriers) and Directive 2001/51/EC (which sets obligations and imposes penalties on carriers of third country nationals who are refused entry into the Member States).
26. EC 300/2008 (on the common rules in the field of aviation security), together with its supporting and implementing instruments, establishes common rules to protect civil aviation against acts of unlawful interference. The Department for Transport (DfT) is the lead Department for the package of EU legislation on

aviation security, but the package includes some requirements relating to potentially disruptive passengers (e.g. persons being removed or deported from the UK) which are a Home Office responsibility.

### **External Schengen Borders**

27. Once again, the UK does not participate in all measures relating to the external “Schengen” borders. Frontex is a European Agency established in 2004 to improve the security of the external borders of the Schengen area. It has established working arrangements with neighbouring third countries and other agencies to facilitate co-operation and risk analysis in order to combat illegal migration and cross border crime. Frontex will also form the hub of the EUROSUR network to be established in October 2013. This is a technology-based system for pre-border surveillance of the external Schengen borders, incorporating a network of communication centres for the exchange of information on border security threats between the Schengen States, Frontex and neighbouring third countries. The network will work to improve the surveillance of the external land and sea borders, the information sharing environment and the response capacities of the Member States.
28. Although the UK is not a participant in the Frontex Regulation (because it builds on that part of Schengen in which we do not participate), officials from the UK are able to participate as special advisors in operational activities subject to agreement on a case-by-case by the Frontex Management Board.

#### **Frontex**

In 2012 the UK committed to a number of Frontex activities including;

- **Joint operations with an EU- wide approach** such as Poseidon Land which targeted illegal migration on the Turkish/Greek Border
- **Pilot Projects** - including **Vega**; the development of a handbook on best practice for the detection and interception of facilitators using airports for human smuggling and trafficking
- **Research and Development activities** on Automated Border Controls and Passenger facilitation Advanced Passenger Information

29. The EU published its Smart Borders measures in February 2013 including proposals for an Entry/Exit System to improve the management of the external Schengen borders and the fight against illegal migration in the Schengen area. The System will enable the identification of those who have overstayed in the Schengen area and enable Member States to take appropriate action. Data generated by the System on travel flows in general and overstayers in particular would be used primarily to evaluate EU visa requirements. The UK would not be a participant in Smart Borders (because it builds on that part of Schengen in

which we do not participate), although it is UK policy to put in place our exit checks again, using our e-borders system.

#### **Call for Evidence: Questions**

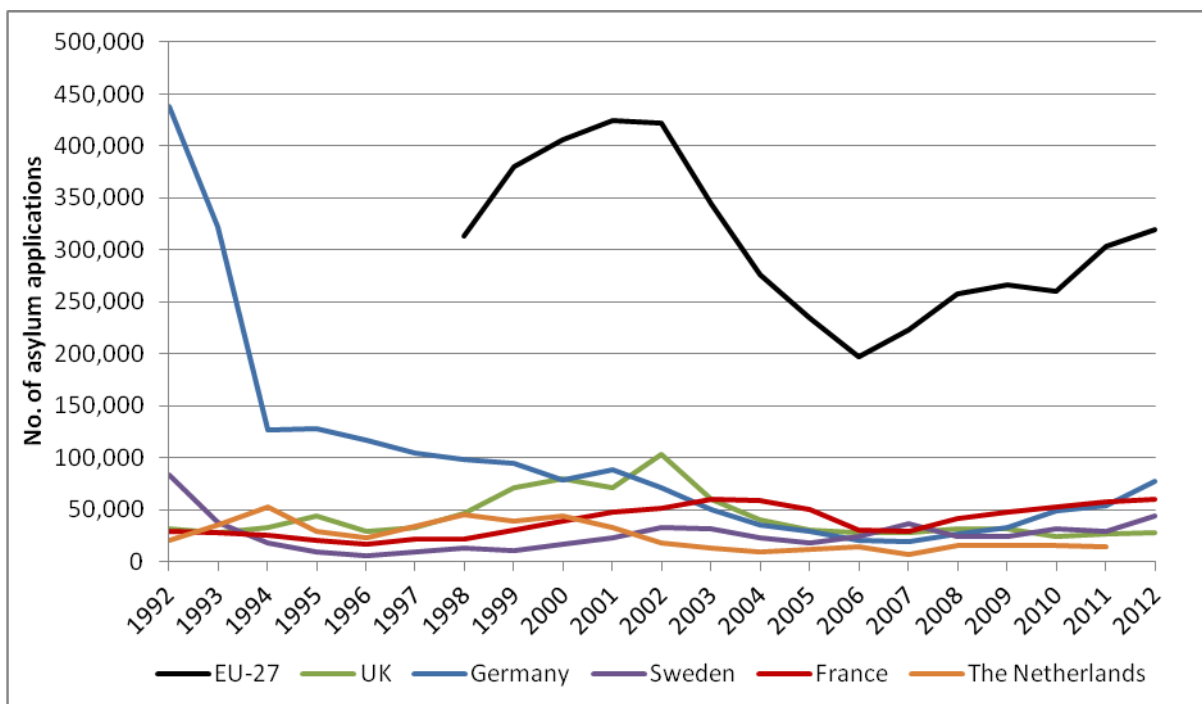
1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?
2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?
3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?
4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?
5. Are there any other general points you wish to make which are not captured above?

## THE EU AND ASYLUM

30. There are a number of EU measures on asylum that the UK has chosen to adopt and these form a key part of the UK's policy on asylum seekers. Europe, including the UK, has a long-standing tradition of providing protection to those who need it. This commitment was formalised by the signature of the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.

31. The graph below shows the fluctuation in the number of asylum applications both in the EU and in the UK since the 1990s. The statistics are taken from the European Commission Eurostat website.

[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Asylum\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics).



### The Common European Asylum System

32. At a meeting in Tampere in 1999, the European Council for the first time envisaged a Common European Asylum System (CEAS). It was anticipated that in the longer term, this would lead to: “a common asylum procedure and a uniform status for those granted asylum, valid throughout the Union.”

33. The first phase of the CEAS comprised six existing legislative instruments on asylum, adopted between 2001 and 2005. These are the Asylum Procedures Directive, the Qualification Directive, the Reception Conditions Directive, the Temporary Protection Directive, the Dublin Regulation and the EURODAC Regulation. The UK opted-in to all six.

34. The Dublin II Regulation and the EURODAC Regulation make up what is commonly known as ‘The Dublin System’. The Dublin Regulation established a

mechanism for determining the Member State responsible for assessing an application for asylum (both in order to prevent Member States from abdicating responsibility for asylum seekers and to prevent the lodging of multiple applications by asylum seekers in different Member States). The EURODAC Regulation provides for the identification of asylum seekers (and defined categories of illegal migrant) by way of a centralised fingerprint database.

### **The Dublin System**

The Dublin System consists of the Dublin and EURODAC Regulations. These legal instruments enable the UK to decide whether another Member State is responsible for determining an application for asylum. Member States can search the EURODAC fingerprint database to see if an applicant has been fingerprinted in another EU Member State. If a confirmed match (“hit”) is received, this may trigger a request to that Member State to accept responsibility for the asylum applicant. The purpose of this system is to deter secondary movements within the EU and to reduce the scope for abuse of Member States’ asylum systems. Since 2004, the UK has transferred over 12,000 asylum seekers to other EU Member State identified as responsible for determining their applications for asylum.

35. The Dublin System provides that asylum applicants who have previously entered unlawfully, claimed asylum or been issued with a visa or residence permit in another participating Member State, or have family or humanitarian connections with that State, may be transferred to that State, which will then be responsible for the assessment of the merits of the asylum claim.
36. Perhaps the most significant cases under the Dublin II Regulation are the decisions of the European Court of Justice in *NS v Secretary of State for the Home Department C-411/10 & C-493/10* and that of the European Court of Human Rights in *MSS v Belgium [2011] ECHR 108*. Both cases concerned the return of asylum seekers from Member States to Greece under Dublin II. The Courts confirmed that there is a presumption that Member States are safe countries who will not breach the human rights of an asylum seeker. However, the Courts concluded that the procedures for processing and resolving claims, and the reception conditions for asylum seekers in Greece were such that to return asylum seekers there would risk breaching their human rights. For this reason, the UK does not currently return asylum seekers to Greece under Dublin II.
37. The other Directives listed establish requirements in relation to the processing of asylum claims by Member States, and the treatment of (and necessary provision for) those seeking international protection. The UK is required to ensure that her asylum system is able to meet the standards set out in these instruments.
38. The Commission has now brought forward proposals to repeal the Dublin and EURODAC Regulations and the Directives on Reception Conditions, Asylum Procedures and Qualification, and replace them with new measures.

39. The UK has opted in to the revised Dublin and EURODAC Regulations, but not into the recast Directives. This was because the proposed Directives were thought to impose additional restrictions on the UK's asylum system. In particular:

- The proposed recast Reception Conditions Directive would require wider access to the labour market for asylum seekers, limitations on the use of detention powers and that asylum seekers should receive benefits at the same levels as nationals of the Member State dealing with their claims.
- Some of the proposals in the recast Qualification Directive would require the UK to accept a broader definition of family members for family reunification purposes and would make it harder for the UK to argue that an asylum seeker would be adequately protected against persecution in their country of origin, which goes beyond the requirements of the Refugee Convention and European Convention on Human Rights.
- The proposed new Asylum Procedures Directive could impact on the way current asylum processes are carried out. It was thought that the restrictions imposed on the use of accelerated procedures would diminish the UK's ability to prevent abuse and improve efficiency.

40. Where the UK has not opted into recast Directives, it is still bound by the original Directives.

41. The UK has also opted in to the Regulation setting up European Asylum Support Office (EASO), an EU Agency that promotes practical cooperation on asylum, contributes to the implementation of the Common European Asylum System and supports Member States that are subject to particular pressures on their asylum systems. The Agency is based in Valetta, Malta and became operational on 1 February 2011. The UK sits on its management board.

#### **Intra – EU Solidarity in the field of asylum**

42. The EU has also gone to some lengths to strengthen practical cooperation between Member States in the field of asylum and migration. This can be translated in to some of the following measures:

- The sharing of best practice and information;
- The deployment of Member States' asylum experts to another EU Member State in order to help build capacity and strengthen asylum systems;
- Training and technical assistance across the Member States, and;
- Relocation of beneficiaries of international protection within the EU.

43. Solidarity (promoting a balance of effort between Member States) has been recognised as an essential component of the Common European Asylum

System. Working together with other EU Member States in this way enables the UK to build capability and deter abuse of her asylum systems.

44. In June 2009, the Commission proposed an EU-wide pilot, the EUREMA (EU Relocation Malta Project), co-financed by the European Refugee Fund. The project finished in summer 2011, having resettled 227 beneficiaries of international protection from Malta to six other Member States. In May 2011, the second phase of the project was launched at the initiative of the Commission with 356 places pledged. The UK participated in Phase I only and relocated 10 refugees from Malta to the UK in 2011.

### **Resettlement and Regional Protection Programmes**

45. The EU shares responsibility for managing refugees with non-EU countries. The EU co-operates with non-EU countries in order to improve the management of refugee flows and enhance protection capacities in the regions from which many refugees originate. To deepen and embed this cooperation, the European Commission undertook to develop EU Regional Protection Programmes and Resettlement schemes.
46. The EU-wide resettlement scheme allows EU Member States, on a voluntary basis, to find durable solutions for refugees in third countries. Resettlement has been receiving significant financial support under the European Refugee Fund (ERF III) since 2008. There are at present ten EU Member States which participate annually in resettlement (Sweden, Denmark, Finland, the Netherlands, the United Kingdom, Ireland, Portugal, France, Romania and the Czech Republic). Some other Member States have provided resettlement on an ad-hoc basis, and generally on a limited scale, notably for individual emergency cases submitted by the United Nations High Commissioner for Refugees (UNHCR).
47. In 2012, following the humanitarian crisis in Syria, the European Commission, with the support of the Council of Ministers, has begun to map out and plan for a Regional Protection Programme for Syrian refugees in conjunction with the UNHCR to enhance the capacities of the relevant authorities and organisations with a view to meeting the longer term challenges they will face and providing durable solutions to the plight of those who have been forced to leave Syria. The UK supports the creation of such an RPP.

### **Call for Evidence: Questions**

6. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?
7. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?
8. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?
9. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?
10. Are there any other general points you wish to make which are not captured above?

## THE EU AND LEGAL MIGRATION

48. This section deals with EU policies and laws relating to the admission of non-EEA nationals into the UK. The EU's objective for legal migration has been to develop immigration policies which support individual countries' economies and societies. There are a number of EU measures on legal migration issues that the UK Government has considered but decided to opt out of. Instead, arrangements for the admission of non-EEA workers, students, and family members are governed by UK domestic law and the immigration rules. (As set out previously, EEA nationals are able to travel and work freely throughout the EU under EU free movement provisions. These provisions will be covered in the Free Movement of Persons Report).
49. The EU measures that the UK has chosen not to adopt include instruments aimed at harmonising, or establishing common rules in relation to the entry, stay and treatment of certain categories of third country national, including:
- Workers;
  - Students and researchers;
  - Families, including spouses, underage children, unmarried partners, adult dependant children or dependant older relatives; and
  - Those who have resided in a Member State long term i.e. at least 5 years legal residence.
- A fuller list of such measures is included in the legal Annex.
50. Historically the UK has not opted into such measures on the basis that successive Governments wished to:
- Retain flexibility to adjust immigration policy in response to changing circumstances in the UK;
  - Retain the extent to which checks can be imposed on the admission to the UK of third country nationals resident in another Member State; and
  - Apply their own conditions/restrictions to third country nationals resident in the UK, including in relation to their entitlements to social security and assistance.

### **EU Competences which indirectly impact on UK Immigration Policy**

51. There are a number of other EU programmes and legislative provisions on legal migration of non-EEA nationals which *indirectly* impact on the UK's immigration policy insofar as they set limits upon the UK's competence to restrict third country nationals from studying and working in the UK.
52. One of the most significant of these is the EU –Turkey Association Agreement (or 'Ankara Agreement') in relation to Turkish nationals. The UK became bound by this Agreement upon its entry into the European Community in 1973. The effect of the Agreement is, broadly, that certain categories of Turkish nationals (including 'self establishers', service providers and workers) are not subject to the same immigration restrictions as other third country nationals (although they may remain subject to those restrictions that were in place when the Agreement was signed). They may also be able to access more favourable social security



benefits in the Member States than nationals of other non-EU countries. The legal annex provides a more detailed explanation.

53. Other such provisions are considered more fully in other Calls for Evidence (the Home Office has contributed appropriately). For example:

- 1) The EU Erasmus Programme is a student exchange Programme which enables more than 230,000 students from across Europe to study in another Programme country each year. The Programme will be included in the Education EU Balance of Competences review, commissioned by the Department for Education which is due to report in Semester 4 (Spring - Autumn 2014).
- 2) The Services Directive and derivative EU caselaw limits the constraints that the UK is able to place on EU service providers operating within the UK in relation to the recruitment of third country workers. This includes a range of EC directed visa types including Van der Elst visas (a visa available to non-EEA citizens working for European companies that allows them to work for that company in another EEA member state, subject to meeting certain eligibility conditions). This operates in parallel with the UK's broader provisions for Intra Company Transfers and business visitors. This will be addressed in the Call for Evidence for the report on Internal Market: Services, which is being taken forward by BIS and will be commissioned in Semester 3 (Autumn 2013 – Summer 2014)
- 2) Mode 4 - The EU's competence to negotiate Free Trade Agreements, including the Mode 4 provisions of such agreements which establish obligations in respect of the admission of third country employees of overseas businesses in the context of the supply of services and inward investment, will be included in the Semester 2 Trade and Investment report led by BIS. Please send any comments to [balanceofcompetences@bis.gsi.gov.uk](mailto:balanceofcompetences@bis.gsi.gov.uk)

#### **UK - EU Co-operation on Immigration (Beyond EU Competences)**

54. Although the UK has decided not to opt into EU measures and policies on legal migration for non-EEA nationals, there are a number of non legal initiatives on migration issues in which the UK participates and works closely with the EU. In 2008 the EU adopted the "European Pact on Immigration and Asylum" which set out the strategic priorities for EU cooperation in this area. These priorities were taken into account in the Stockholm Programme (2010), which set a 5 year plan for the EU in the area of Justice and Home Affairs. Progress in implementing the Pact and related elements of the Stockholm Programme are reviewed periodically by the European Council. The following are examples of UK-EU cooperation on immigration issues that do not derive from any specific EU legal competence.

#### EU Global Approach to Migration and Mobility

55. The EU's Global Approach to Migration and Mobility (GAMM) is the overarching framework for EU external migration policy, and is intended to provide a

consistent, systematic and strategic policy framework for the EU's relations on migration with all countries outside the EU. The GAMM is embedded in the EU's wider policy frameworks on foreign policy and development cooperation, and aligned with the EU's internal migration policy priorities. It is organised around four principal areas of cooperation with third countries: (i) better organising legal migration and fostering well-managed mobility; (ii) preventing and combating illegal migration and eradicating trafficking in human beings; (iii) maximising the development impact of migration; and (iv) promoting international protection and enhancing the external dimension of asylum.

56. The GAMM is non-binding on Member States, and participation in the various initiatives under the GAMM remains voluntary. The UK continues to work under the GAMM where it is seen to be in the national interest to work jointly with EU partners, and where such participation is in line with the UK's own migration policy.

#### EU Migration Funding

57. The EU has established a number of funds to ensure the fair sharing of responsibility between Member States for the financial burdens arising from management of the Union's external borders, and from the implementation of common asylum and immigration policies. At present the UK participates in three of the four "SOLID" Funds established as part of the General Programme on "Solidarity and Management of Migration Flows". The three Funds are: the European Refugee Fund, the European Return Fund and the European Fund for the Integration of Third Country Nationals. The UK is excluded from the fourth fund called the External Border Fund (as it builds on that part of the Schengen Acquis in which we do not participate). The UK has been allocated approximately £240million (€288m) from the current funds.

58. This programme of funding will come to an end in 2013. Negotiations are currently underway in relation to a Regulation establishing a single fund ("The Asylum and Migration Fund"), merging together the provisions of the existing three Funds. The UK has opted into this Regulation.

59. The UK has utilised the SOLID Funds to co-finance activities such as returns programmes, resettlement projects and community integration projects through a number of initiatives across Whitehall and with national and local NGOs, Local Authorities and International NGOs. These Funds are a key instrument for solidarity and practical cooperation. Schemes funded have included ESOL provision for refugees.

#### EU Migration Network

60. The European Migration Network (EMN) provides reliable and comparable information on migration policy in the European Union in order to support the development of policy. EMN objectives are delivered through a multi-level network co-ordinated by the European Commission with the support of a designated EMN national contact point (NCP). Each NCP is supported by a domestic network of national and asylum experts to build links between policy makers and external research partners.

### Migratory Pressures Roadmap

61. Beyond legislative measures, the UK participates in a number of practical initiatives undertaken by the EU and Member States to better manage the migratory pressures faced across the EU (including by the UK), and to combat and prevent illegal immigration.
62. The EU's 'Migratory Pressures roadmap' (more formally 'EU Action on Migratory Pressures: A Strategic Response') is a Member State-led framework for a coherent response to current and likely future pressures. It sets out a coordinated approach to practical action to address these pressures, focussing on six priority areas: (i) work 'upstream' with third countries; (ii) enhanced external border management; (iii) addressing the weakness of the Greek-Turkish border; (iv) tackling abuse of legal migration; (v) tackling fraud and abuse of free movement; and (vi) enhanced migration management, including returns.
63. The 'Roadmap' is fundamentally non-binding, and in line with UK's general preference for practical cooperation rather than further legislation to address persisting migratory pressures on EU Member States.
64. The UK works closely with EU partners in the return and reintegration of illegal migrants. This includes steps such as shared charter flights. The UK has not opted into the Directive on provisions for the return of illegal migrants. However the UK and the EU do co-operate in relation to some of these issues. In addition we participate in a number of EU Readmission Agreements (EURAs) with third countries. This is set out in more detail in the Legal Annex.

### **Call for Evidence: Questions**

11. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?
12. If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?
13. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?
14. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?
15. Are there any other general points you wish to make that are not captured here?