



HM Government

# Review of the Balance of Competences between the United Kingdom and the European Union

## Voting, Consular and Statistics Report

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Voting, Consular and  
Statistics Report

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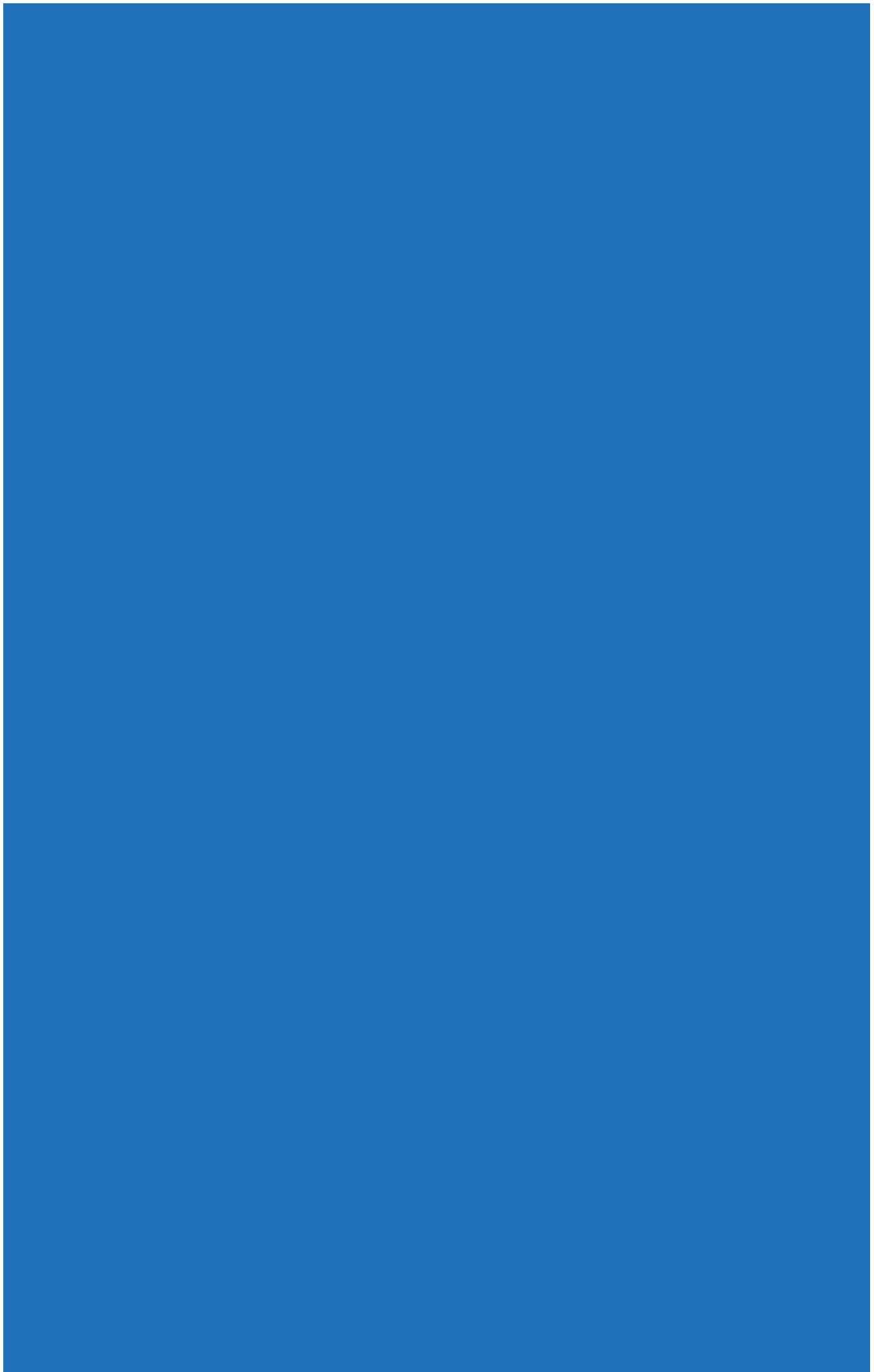
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# Introduction

This report examines the balance of competences between the European Union (EU) and the United Kingdom (UK) in the areas of Voting, Consular and Statistics, and is led by the Foreign and Commonwealth Office in conjunction with Cabinet Office and the National Statistician's Office. It is a reflection and analysis of the evidence submitted by experts, non-governmental organisations, businesspeople, Members of Parliament and other interested parties, either in writing or orally, as well as a literature review of relevant material. Where appropriate, the report sets out the current position agreed within the Coalition Government for handling this policy area in the EU. It does not predetermine or prejudge proposals that either Coalition party may make in the future for changes to the EU or about the appropriate balance of competences.

This report is one of 32 reports in the Balance of Competences Review. The Foreign Secretary launched the 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. It 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 has not been tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between 2012 and 2014. More information on the review can be found at [www.gov.uk/review-of-the-balance-of-competences](http://www.gov.uk/review-of-the-balance-of-competences).

The analysis in this report is based on evidence gathered following a call for evidence. It draws on written evidence submitted, notes of seminars or discussions held during the call for evidence period and existing material which has been brought to our attention by interested parties, such as past select committee reports or reports of the European Commission. A list of evidence submitted can be found in Annex A. A literature review of relevant material, as well as opinions received in the course of regular business from a range of organisations, people and countries, has also been drawn on.

For the purposes of this review, we are using a broad definition of competence as set out in the text box below.

## Definition of EU Competence

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.

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.

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.

## The Scope of this Report

This report 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 as they impact on the UK's national interest have been included in the overall Balance of Competences exercise.

There are no significant common threads linking the three sections, although the concept of EU Citizenship is covered in both the Voting and Consular sections. Background on EU Citizenship can be found in the Voting section. The report is therefore set out in three separate sections, each with an Executive Summary and Chapters covering the Development and Current State of Competence, Impact on the National Interest and Future Options and Challenges. Any linkages to other Balance of Competence Reports are signposted in the relevant sections.

# Section 1: Voting



# Section 1, Voting

## Executive Summary

Chapter One sets out the historical development and current state of the EU's competence in the field of voting. Over the years there have been changes in the EU's competence. Provision was made for the European Parliament to be elected by direct universal suffrage and the 1992 Maastricht Treaty established citizenship of what is now the European Union. The Maastricht Treaty provided that EU citizens had the right to vote and stand in European Parliamentary and municipal (local) elections anywhere in the EU and also gave EU citizens the right to petition the European Parliament and complain to the European Ombudsman. The rights of EU citizens are examined in Chapter One. A Council Decision in 2002 provided that the European Parliament had to be elected on the basis of proportional representation.

Member States have competence in how they administer their elections, as long as their Members of the European Parliament are directly elected every five years by a free and secret ballot run on a proportional representation voting system. EU law stipulates that when it comes to voting and standing in European Parliamentary and municipal (local) elections, EU citizens who have exercised their free movement rights and moved to another Member State must be treated equally to the nationals of the Member State in which they reside.

Under EU law, the UK must exchange certain information with other Member States to prevent both double voting and people standing in more than one country in European Parliamentary elections (this is known as the Information Exchange). Under the Lisbon Treaty, the EU introduced further means of democratic engagement, including European Citizens' Initiatives (ECIs). ECIs provide a mechanism for EU citizens to bring forward proposals to make or change EU law.

The EU has no competence when it comes to national elections, although the European Commission has called for Member States to consider amending their franchise for national elections, in order that EU citizens who have exercised their citizenship right of free movement are not disenfranchised.

Chapter Two considers the evidence received under the following headings:

- The Conduct of European Parliamentary Elections;
- The Information Exchange;
- The Voting Franchise (Who Can Vote); and
- Wider Democratic Engagement.

Overall, the evidence received suggested that the current balance of competences is not in need of significant change, and, where the balance has been questioned, concerns have centred predominantly on how competence has been used at either an EU or UK level.

The evidence revealed reservations regarding the Information Exchange mechanism and whether the current system was fit for purpose. Concerns were also raised in relation to the UK's 15 year time limit on overseas voting rights and whether this interfered with the principle of free movement. Views were mixed on this, although there was general agreement that it was right for competence in this area to remain under the control of national governments.

Mechanisms for the direct engagement of citizens with EU policy and law making were broadly welcomed. However, respondents did identify some problems with the operation of the ECI as a tool for citizen engagement. Respondents also felt that more needed to be done to inform UK citizens about the EU political process.

Chapter Three considers the future options and challenges under five headings:

- Improving the Administration of Elections;
- Proposal for a Common Voting Day;
- Maintaining Competence for the Franchise;
- Increasing Citizen Engagement; and
- Alternative Models for the European Parliament.

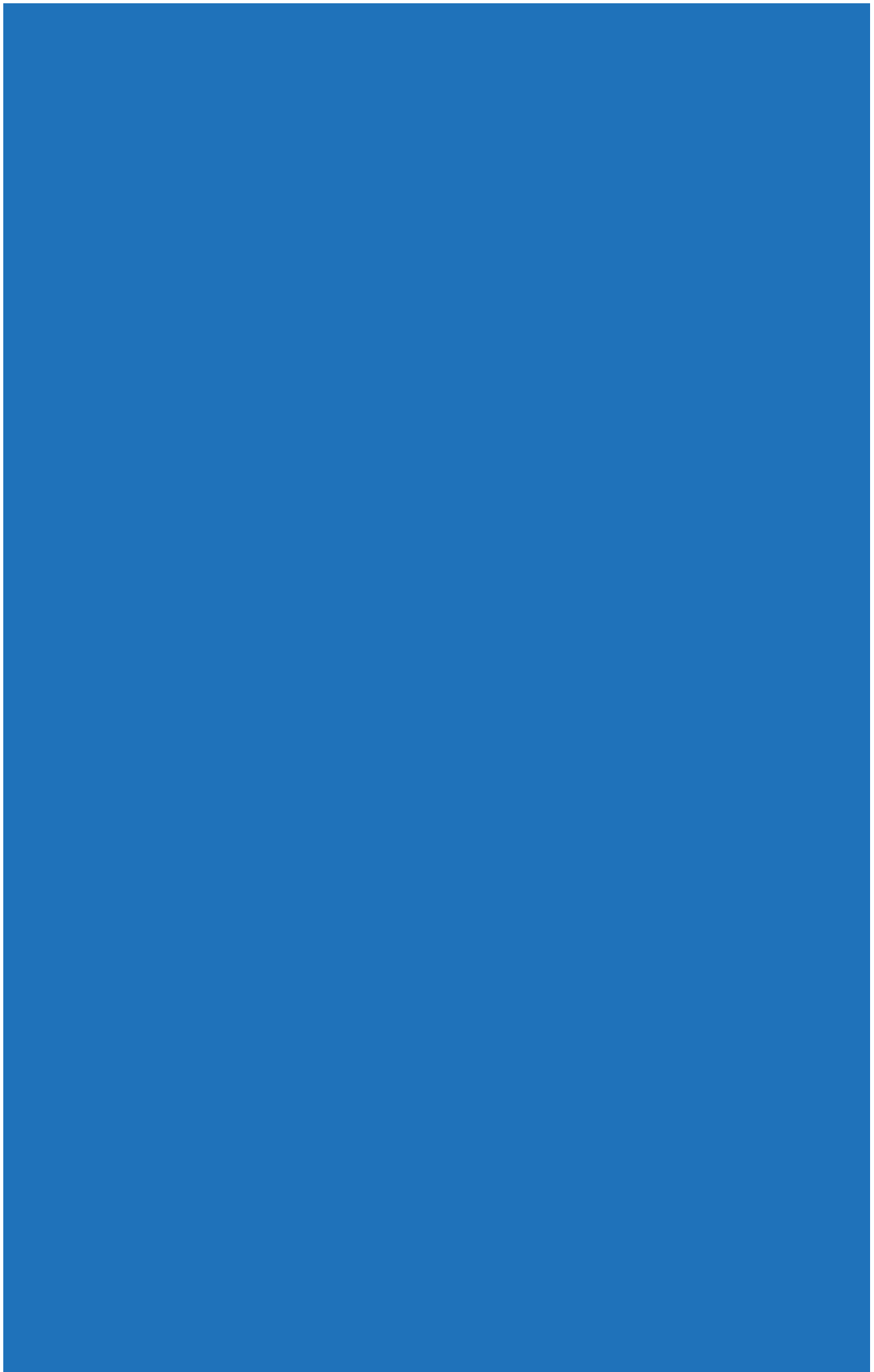
Under the first heading, some called for greater compatibility between Member States on the administration of elections, although it was recognised that all Member States would need to be in agreement on this for it to happen. Respondents were also in favour of a review of the Information Exchange mechanism.

Under the second heading, views were mixed as to whether a common voting day for European Parliamentary elections would benefit the UK. The key challenge under the third heading was considered to be ensuring that the EU's ability to influence national governments' policy on franchise (where it felt Treaty principles were being restricted) did not lessen national competence on the franchise.

Under the fourth heading, respondents wished to see the European Commission use its triennial review of the ECI to strengthen the ability of EU citizens to directly influence European policy and law-making. It was also felt that UK citizens could benefit from greater awareness of the EU political process. Some respondents also suggested changes to the current systems which they believed would make the EU more accountable and which could improve levels of citizen engagement. Some felt that a move to an open list electoral system for UK European Parliamentary elections would be of benefit in engaging UK citizens. Other respondents also advocated a greater role for national parliaments in EU decision making, although views were mixed on this point.

Suggestions for alternative models for the European Parliament are considered under the fifth heading. Whilst this issue was not directly referred to in the evidence received, some do support such a move. However, opinions are mixed and this idea would also encounter a number of practical difficulties.

In summary, the evidence submitted suggested that, whilst there were some areas where existing mechanisms could be improved to benefit UK citizens, the balance of competences between the EU and Member States was not in need of significant reform. Instead, the EU and Member States should focus on increasing compatibility between the differing electoral administration processes for the European Parliamentary elections, and increasing citizens' awareness of EU institutions and the political process.



# Section 1, Voting

## Chapter 1: Development and Current State of Competence

- 1.1 The European Parliament first met on 10 September 1952 as the ‘Common Assembly’ of the European Coal and Steel Community. When the Assembly was first established, it was made up of representatives from each of the Member States’ parliaments.<sup>1</sup>
- 1.2 In 1957, the EU’s competence was extended when one of the founding Treaties of what is now the EU, the Treaty establishing the European Atomic Energy Community, provided that representatives of the European Parliament were to be elected by direct universal suffrage.<sup>2</sup> To give effect to that provision, in 1976 (by which time the UK had joined the EU), the Council agreed the 1976 Act.<sup>3</sup> It provided that elections to the European Parliament would take place every five years within the same four day period (Thursday to Sunday) in all Member States and that no one could vote more than once in the same European elections.<sup>4</sup>
- 1.3 In 2002, the 1976 Act was amended by Council Decision 2002/772/EC (the 2002 Decision).<sup>5</sup> The 2002 Decision meant that the European Parliament had to be elected on the basis of proportional representation and that membership of the European

<sup>1</sup> Treaty Establishing the European Coal and Steel Community Apr. 18, 1951, 261 U.N.T.S. 140, art. 21.

<sup>2</sup> Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 167, art. 108(3) (hereinafter Euratom Treaty).

<sup>3</sup> The 1976 Act of the Council of the EU concerning the election of the representatives of the Assembly by direct universal suffrage annexed to Council Decision No. 76/787/ECSC, EEC, Euratom, 1976 O.J. L 278/1 (hereinafter the 1976 Act).

<sup>4</sup> The 1976 Act, arts. 3, 10, 9, 8.

<sup>5</sup> Council Decision 2002/772/EC, Euratom, 2002 O.J. L 283/1 (hereinafter the 2002 Decision). The legal basis for this Decision is the Consolidated Version of the Treaty Establishing the European Community art. 190(4), 2006 O.J. C 321 E/37, at 132 (hereinafter EC Treaty) and the Euratom Treaty, *supra* note 2, art. 108(3) and (4). Under the Consolidated Version of the Treaty on the Functioning of the European Union art. 288, 2008 O.J. C 115/47, at 171 (hereinafter TFEU) the UK has to comply with Decisions in their entirety. The 1976 Act has also been amended by the Treaty of Accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, 1979, O.J. L 291/9, the Treaty of Accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community, 1985, O.J. L 302/9, Council Decision No. 93/81/Euratom, ECSC, EEC, 1993 O.J. L 33/ 15 and the Treaty of Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, 1994, O.J. C 241/7. These amendments have not substantially changed the provisions of the 1976 Act.

Parliament was not compatible with membership of a national parliament.<sup>6</sup> Otherwise, the administration of European Parliamentary elections within each Member State was for their national authorities to decide upon.<sup>7</sup>

- 1.4 Amendments relating to voting were contained in the 1992 Maastricht Treaty. The Maastricht Treaty established citizenship of what is now the European Union by providing that every national of a Member State was a citizen of the EU.<sup>8</sup> The provisions on citizenship came into force in 1993. The Maastricht Treaty gave EU citizens certain rights, including the right to vote and stand in European Parliament and municipal (local) elections anywhere in the EU under the same conditions as nationals of the Member State where the elections were taking place.<sup>9</sup> The Maastricht Treaty also gave EU citizens the right to petition the European Parliament and complain to the European Ombudsman.<sup>10</sup> The theme of EU citizenship is evident throughout this Report and links the ‘Voting’ and ‘Consular’ sections.
- 1.5 Following the Lisbon Treaty in 2007, the founding treaties (as they related to voting), have been replaced by the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).<sup>11</sup> Within this Report, unless otherwise stated, references to Treaty Articles are references to the TEU and the TFEU.<sup>12</sup>

<sup>6</sup> At the time, the UK had two Members of Parliament and three members of the House of Lords who were also MEPs. Therefore, the UK Government negotiated a derogation from this provision of the 2002 Decision in order that members of the House of Lords and the House of Commons could have a dual mandate until the 2009 European Parliamentary elections (see Article 7(2) of the 1976 Act (as amended)).

<sup>7</sup> The 1976 Act (as amended by the 2002 Decision), art. 7.

<sup>8</sup> Treaty on European Union (Maastricht text), July 29, 1992, art. G(C), 1992 O.J. C 191/1, at 7.

<sup>9</sup> *Idem*.

<sup>10</sup> *Idem*. The Ombudsman’s status and duties were confirmed in a Decision of the European Parliament of 27 October 1999 (1999/780/EC, ECSC, Euratom), as amended by further Decisions of the European Parliament of 14 March 2002 (2002/262/EC, ECSC, Euratom) and 18 June 2008 (2008/587/EC, Euratom).

<sup>11</sup> Consolidated Version of the Treaty on European Union, 2010 O.J. C 83/01 (hereinafter TEU post-Lisbon) and TFEU, *supra* note 5, 2008 O.J. C 115.

<sup>12</sup> The main TEU post-Lisbon, *supra* note 11, 2010 O.J. C 83/01, and TFEU, *supra* note 5, 2008 O.J. C 115, articles relating to voting and democratic engagement are: TEU post-Lisbon, art. 14, at 22 (the European Parliament); TFEU, arts. 20 and 22, at 56 and 57 (the right of EU citizens to vote and stand at European and municipal elections); TFEU arts. 24, 227 and 228 at 58 and 150 (the right to petition the European Parliament and complain to the European Ombudsman); TEU post-Lisbon art. 11, at 21 (the European Citizens’ Initiative).

## EU Citizenship Rights

Replicating the rights contained in the Maastricht Treaty, Article 9 TEU and Article 20(1) TFEU provide that every national of a Member State shall have citizenship of the Union, in addition to their national citizenship. EU citizens are granted certain rights under the TEU and TFEU. These rights include the right not to be discriminated against on the grounds of nationality (Article 18 TFEU), the right to move to and reside in any other Member State (Articles 20(2) (a) and 21 TFEU) and the right to another Member State's diplomatic and consular protection when outside the EU (Article 20(2)(c) and 23 TFEU). Subject to certain restrictions, EU citizens also have the right to work, trade and provide services across the EU (Part 3 of TFEU).

In the field of voting and democratic engagement, EU citizens have the following specific rights:

- The right to vote and stand as a candidate in elections to the European Parliament and municipal (local) elections in their Member State of residence, under the same conditions as nationals of that State (Articles 20(2)(b) and 22 TFEU);
- The right to petition the European Parliament, complain to the European Ombudsman, and address the institutions and advisory bodies of the Union in any of the Treaty languages and receive a reply in the same language (Articles 20(2)(d) and 24 TFEU); and
- The right to take part in a European Citizens' Initiative (Article 11(4) TEU and Article 24 TFEU).

## European Citizenship Reports

Article 25 TFEU provides that:

'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'.

The Commission has so far published two EU Citizenship Reports (in 2010 and 2013). The reports are adopted solely by the European Commission and are not binding on Member States.

## European Parliamentary Elections

- 1.6 The European Parliament acts as co-legislature along with the Council in respect of the majority of EU laws. This legislative process is referred to in the Treaties as the ordinary legislative procedure and applies to most policy areas, for example economic governance, immigration, energy, transport, the environment and consumer protection.<sup>13</sup> The ordinary legislative procedure involves the European Commission submitting a proposal which must be agreed to by the European Parliament (either by a simple or absolute majority) and the Council (by a qualified majority of at least 15 Member States or unanimity) if it is to become law. When voting on a proposal, Members of the European Parliament (MEPs), although not obliged to, commonly vote in the same way as their political grouping.<sup>14</sup> The European Parliament can request the European Commission to submit a proposal for a

<sup>13</sup> TFEU, *supra* note 5, art. 294, 2008 O.J. C 115, at 173, defines the ordinary legislative procedure.

<sup>14</sup> Currently, MEPs sit in the following political groups: Group of the European People's Party (Christian Democrats), Group of the Progressive Alliance of Socialists and Democrats in the European Parliament, Group of the Alliance of Liberals and Democrats for Europe, European Conservatives and Reformists Group, Confederation of the European United Left – Nordic Green Left, Group of the Greens/European Free Alliance and the Europe of Freedom and Direct Democracy Group.

new law, although the Commission is not obliged to do so unless it relates to the European Ombudsman or the composition of the European Parliament.

- 1.7 For a minority of policy areas, including the composition of the European Parliament and the right of EU citizens to vote and stand at EU and municipal (local) elections, rather than the ordinary legislative procedure, a special legislative procedure must be followed for EU laws to be made or changed. Under special legislative procedures, whilst the European Parliament is associated with the procedure (by means of consultation or approval), the Council is, in practice, the sole legislature.<sup>15</sup>
- 1.8 Today, under Article 14(3) TEU and Articles 1(1), 1(3) and 5(1) of the 1976 Act (as amended), MEPs continue to be directly elected every five years by universal suffrage and by a free and secret ballot. UK Parliamentary elections take place every five years under the Fixed-term Parliaments Act 2011 whilst most local elections in England and Wales take place every four years under the Local Government Act 1972. These elections are conducted in the same way as UK European Parliamentary elections, although the first past the post voting system is used instead.<sup>16</sup> For more information on the different types of voting systems used for UK elections see the text box on the following page.

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<sup>15</sup> Unlike the ordinary legislative procedure, TFEU, supra note 5, 2008 O.J. C 115 does not give a precise description of the special legislative procedure. Instead, the rules of the special legislative procedure are defined on an ad hoc basis by the articles of TEU post-Lisbon, supra note 11, O.J. C 83, and TFEU, that provide for their implementation.

<sup>16</sup> In some shire (two tier) areas local elections take place every year in England and Wales. This is because, in a significant proportion of district councils, Members are elected for four-year terms by thirds (an election is held in each of three years and at each election a third of Members are elected) and in the fallow year elections are held to the county council. In all metropolitan areas local authority elections are held by thirds.



## Voting Systems used for UK Elections

### First Past the Post

**Used for UK Parliamentary elections and local elections in England and Wales.**

Under first past the post, the UK or local authority is divided into single-member electoral areas (constituencies or wards). Electors vote for their preferred candidate(s) (standing individually or as a member of a political party) and the candidate(s) with the most votes is elected. Voters can cast as many votes as there are available seats (for example, if a ward elects three councillors, each voter will have three votes).

### Closed List Proportional Representation

**Used for European Parliamentary elections in Great Britain.**

For more information on this voting system, see the text box detailing the use of proportional representation at European Parliamentary elections.

### Supplementary Vote (SV)

**Used to elect the Mayor of London, elected Mayors in England and Wales and Police and Crime Commissioners in England and Wales.**

Under SV, there are two columns on the ballot paper, one for the voter's first choice candidate and one for the voter's second choice candidate. Voters mark a choice in each column (although they are not required to make a second choice if they do not wish to). The ballot papers are counted and if one candidate has over 50% of the first preference votes then they are elected. If no candidate has over 50% of the first preference votes then the two candidates with the highest number of votes are retained and the other candidates are eliminated. The second preferences on the ballot papers of the eliminated candidates are then counted and any votes for the two remaining candidates are redistributed. The candidate with the highest number of votes after this process is elected.

### Single Transferable Vote (STV)

**Used for European Parliamentary elections in Northern Ireland, elections to the Northern Ireland Assembly and local elections in Northern Ireland and Scotland.**

For more information on this voting system, see the text box detailing the use of proportional representation at European Parliamentary elections.

### Additional Member System (AMS)

**Used to elect the Scottish Parliament, the National Assembly for Wales and the London Assembly.**

Under AMS voters are given two votes: one for an individual candidate and one for a political party. Individual candidates are elected to single-member constituencies. In addition to this, the votes for political parties are counted and additional members are allocated proportionally for the larger electoral region.

- 1.9 The EU can add to or change the rules relating to the conduct of elections of MEPs by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. Under Article 223(1) TFEU, a special legislative procedure would apply involving the European Parliament making a proposal which the Council, with the consent of the majority of MEPs, would have to agree upon unanimously. Before new rules came into force, each Member State would then have to approve them, taking into account their constitutional arrangements. In the UK this would require Parliament to pass new laws.<sup>17</sup>
- 1.10 In 2002, the UK Parliament passed the European Parliamentary Elections Act 2002, which provided for the number of UK MEPs (73) and for 12 electoral regions (Scotland, Wales and Northern Ireland each being a separate electoral region), with each region having a minimum of three seats.<sup>18</sup>
- 1.11 It remains for Member States to decide procedures to administer their European Parliamentary elections, in line with relevant EU laws. In the UK, the Cabinet Office is the Government Department responsible for electoral policy. Ministers appoint eleven independent Regional Returning Officers (RROs), one for each of the nine voting regions in England, and one each for Scotland and Wales, with the Chief Electoral Officer for Northern Ireland automatically being the RRO for Northern Ireland. Each RRO is responsible for overseeing and co-ordinating the running of the polls in their respective region. Local Returning Officers are responsible for administering the polls at a local authority level. Legislation provides for the conduct of the polls and the independent Electoral Commission provides non-statutory guidance to assist RROs in their roles.

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

- 1.12 The Lisbon Treaty provided that, at the May 2014 European Parliamentary elections, the total number of MEPs should be reduced from 766 to 751 (including the President of the European Parliament). The UK's number of seats has remained the same (at 73), thus slightly increasing its proportion of seats.
- 1.13 There is a minimum allocation of 6 MEPs per Member State, and a maximum 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 EU citizens.

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<sup>17</sup> If the conduct of European Parliamentary elections in the UK was to be changed, the European Parliamentary Elections Act 2002 would have to be amended.

<sup>18</sup> The European Parliamentary Elections Act 2002 which has been amended by another Act of the UK Parliament, the European Union Act 2011.

**Figure 1: The Current Allocation of MEPs to Member States**

Germany	96		Czech Republic	21		Ireland	11
France	74		Portugal	21		Croatia	11
United Kingdom	73		Hungary	21		Lithuania	11
Italy	73		Sweden	20		Slovenia	8
Spain	54		Austria	18		Latvia	6
Poland	51		Bulgaria	17		Estonia	6
Romania	32		Denmark	13		Cyprus	6
Netherlands	26		Finland	13		Luxembourg	6
Greece	21		Slovakia	13		Malta	6

## Standing as a Candidate at European Parliamentary Elections in the UK

- 1.14 UK, Commonwealth and EU citizens who reside in the UK (and Gibraltar) are entitled to stand as candidates seeking to represent the UK as an MEP. Candidates can stand for a political party or individually. These rights are reciprocal and, therefore, UK citizens resident in other Member States are eligible to stand in that Member State's European Parliamentary and municipal (local) elections. For example, in March 2014, the French edition of English language newspaper *The Local* cited French Ministry of the Interior figures indicating that 1,525 UK citizens were to stand as candidates in that month's French municipal elections.<sup>19</sup>
- 1.15 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 on submission of their nomination as a candidate in the UK. However, in 2013, following the procedure laid down in Article 22(2) TFEU, amendments were made to Council Directive 93/109/EC which meant that national governments were now obliged to request this information from the EU citizen's Member State of nationality.<sup>20</sup> This simplified procedure first applied in the European Parliamentary elections in May 2014 and was intended to remove a perceived barrier to EU citizens standing for election in Member States where they resided but were not nationals.

## Voting at European Parliamentary Elections in the UK

- 1.16 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. In 1999, the UK introduced a proportional voting system for European Parliamentary elections under

<sup>19</sup> The Local, *Thousands of Expats go up for Election in France* (2014). Available at: <http://www.thelocal.fr/20140318/hundreds-of-brits-stand-for-election-in-france>, accessed on 24 November 2014.

<sup>20</sup> Council Directive 2013/1/EU amending Directive 93/109/EC as regards detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 2012. The 2013 Directive provides that candidates no longer have to provide proof that they have not been deprived of their electoral rights in their Member State of nationality. Instead, they will have to make a formal declaration to that effect, to be verified by the electoral authorities in the Member State in which they reside.

the European Parliamentary Elections Act 1999.<sup>21</sup> The 1999 Act provided that a closed regional party list was used for the first time in the June 1999 European elections in England, Scotland and Wales.

- 1.17 The 1997 Treaty establishing the European Community introduced the possibility of a uniform electoral procedure or an electoral procedure based on common principles being introduced for European Parliamentary elections.<sup>22</sup> This was done with a view to enhancing the democratic legitimacy of the European Parliament and the feeling for electors of being a citizen of the European Union. However, it was not until 2002 that Council Decision 2002/772/EC introduced such principles by stipulating that a proportional voting system (using either the list or the single transferable vote systems) must be used for European Parliamentary elections. This decision also permitted Member States to establish constituencies for elections to the European Parliament, or to subdivide their electoral area in an alternative manner, as long as this did not affect the proportional nature of the voting system.<sup>23</sup>
- 1.18 The EU does not determine the means by which voters cast their votes in different Member States. 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. In some circumstances, electors may also appoint a proxy to vote on their behalf. In Northern Ireland, voters must provide evidence to explain why they cannot vote in person in order to obtain a postal or proxy vote on a temporary or standing basis.
- 1.19 EU citizens can choose whether to vote in their Member State of citizenship or of residence. EU Council Directive 93/109/EC requires Member States to share information on their relevant nationals entered on electoral registers or standing for election in other Member States.<sup>24</sup> Member States must then take appropriate measures to ensure that their nationals do not vote more than once or stand in more than one electoral region or constituency in the same European Parliamentary elections. For example, France would be required to provide the UK with information on UK citizens residing in France who had completed the relevant declaration opting to vote or stand for election in France, and vice versa. This is called the Information Exchange. The UK Parliament applies additional integrity measures to European Parliamentary elections (as well as other elections in the UK), including the checking of postal voters' dates of birth and signatures, and there are a number of offences in place to safeguard the integrity of the electoral system. Individuals found guilty of electoral fraud face a custodial sentence and/or a fine. In addition, in June 2014, the UK Government introduced measures to strengthen the electoral system in England and Wales through the introduction of Individual Electoral Registration (IER). Under IER, electors are required to register individually, and the details of electors applying to go onto the electoral register will be checked against other data to ensure their validity. IER has been used in Northern Ireland since 2002 and was introduced in Scotland in September 2014.

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<sup>21</sup> The European Parliamentary Elections Act 1999 has since been replaced by the European Parliamentary Elections Act 2002.

<sup>22</sup> EC Treaty, *supra* note 5, art. 190(4), 2006 O.J. C 321 E/37.

<sup>23</sup> The 1976 Act (as amended by the 2002 Decision) art. 2.

<sup>24</sup> Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 1993 was amended by Council Directive 2013/1/EU amending Directive 93/109/EC as regards detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 2012.

## Proportional Representation at 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, closed list proportional representation is used. Electors cast a single vote for a party or an individual independent candidate and 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 listed in their party list which is shown on the ballot paper. The party determines the list order before the election.
- In Northern Ireland, the single transferable vote (STV) system is used. Electors rank the candidates by order of preference (marking '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 until the quota is met and the seat filled. This process is repeated until all the seats have been filled.

The STV system has been used in European Parliamentary elections in Northern Ireland since 1979. There is a long record of the STV system being used in Northern Ireland (it has been in use in Northern Ireland Assembly and local government elections since 1973). This system helps to ensure cross-community representation.

Closed list systems are used in European Parliamentary elections in a number of other Member States, including France, Germany and Spain. Another form of proportional representation which is compatible with EU law is the open party list system. Under this system, votes are cast for individual candidates (or the voter may have a choice between individual candidates and a party). This system is used in other Member States but it is not in use at statutory elections in the UK.

## Proposal for a Common Voting Day at European Parliamentary Elections

1.20 Voting at European Parliamentary elections takes place over a four-day period (Thursday-Sunday) across the EU; each Member State may choose on which of those days to hold its poll.<sup>25</sup> This period encompasses the various days traditionally used for elections by Member States. European Parliamentary elections in the UK have always been held on a Thursday, which is the day traditionally used for voting at local and UK Parliamentary elections, and is in many cases the day named in statute.<sup>26</sup>

<sup>25</sup> 1976 Act (as amended by the 2002 Decision) art. 10. The period in which the elections are held is determined by EU law (The 1976 Act (as amended by the 2002 Decision) art. 11); this 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>26</sup> Under section 37 of the Representation of the People Act 1983 local elections take place on the first Thursday in May, whilst under the Fixed-term Parliaments Act 2011 UK Parliamentary elections must now take place on the first Thursday in May every five years.

1.21 In March 2013, the European Commission published a non-legally binding Communication and Recommendation which proposed a common voting day for European Parliamentary elections, with polling stations closing at the same time in all Member States.<sup>27</sup> The Communication contended that the current arrangements entrenched the perception that European Parliamentary elections were primarily national elections, and argued that 'a European voting day with polling stations closing at the same time would better reflect common participation by citizens across the Union'.<sup>28</sup>

**Figure 2: Voting Day used by Member States at European Parliamentary Elections**

Thursday	Friday	Saturday	Sunday	
Netherlands	Czech Republic		Austria	Hungary
United Kingdom	Ireland	Latvia	Belgium	Italy
		Malta	Bulgaria	Lithuania
		Slovakia	Croatia	Luxembourg
			Cyprus	Poland
			Denmark	Portugal
			Estonia	Romania
			Finland	Slovenia
			France	Spain
			Germany	Sweden
			Greece	

## Timing of the Publication of the Results of European Parliamentary Elections

1.22 The 1976 Act was amended in 2002, so that Member States did not 'officially make public' voting results until after the close of polling in the Member State where polls closed latest.<sup>29</sup> This was designed to avoid the possibility of declared results affecting voting intentions in other Member States where voting had not yet finished. At the 2009 European Parliamentary elections, there were a number of reported difficulties in implementing this provision, including the public counting process in the Netherlands, publication of exit polls in Latvia, and immediate posting of poll results in Germany.<sup>30</sup>

<sup>27</sup> Commission Communication COM(2013) 126 final on preparing for the 2014 European elections: further enhancing their democratic and efficient conduct, 2013; and Commission Recommendation C(2013) 1303 final on enhancing the democratic and efficient conduct of the elections to the European Parliament, 2013.

<sup>28</sup> Commission Communication COM(2013) 126 final on preparing for the 2014 European elections: further enhancing their democratic and efficient conduct, 2013.

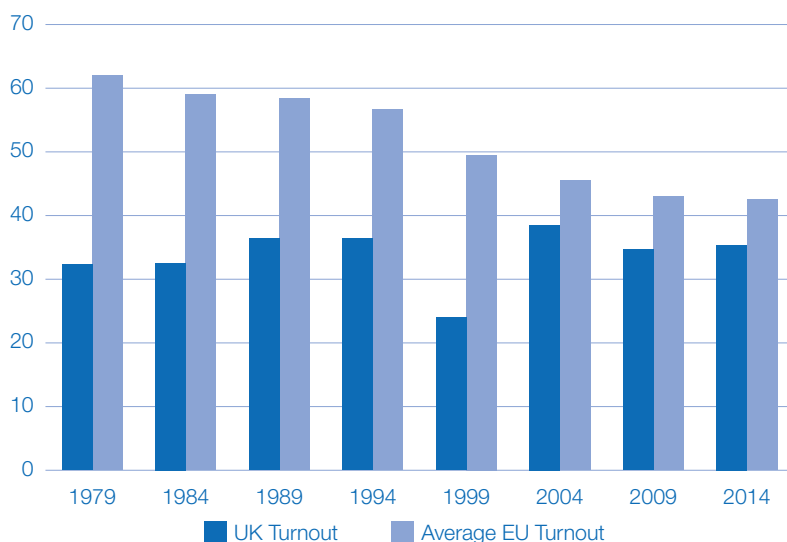
<sup>29</sup> The 1976 Act (as amended by the 2002 Decision) art. 10(2).

<sup>30</sup> Organisation for Security and Co-operation in Europe (Office for Democratic Institutions and Human Rights), *Elections to the European Parliament 4-7 June 2009: OSCE/ODIHR Expert Group Report*. Available at: [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), accessed on 5 November 2014.

## Engagement with European Parliamentary Elections

1.23 Turnout at European Parliamentary elections in the UK has been consistently lower than the average turnout across Member States. Average turnout in European Parliamentary elections across the EU has also steadily decreased since the first elections in 1979.

**Figure 3: Turnout at European Parliamentary Elections (%)**



European Parliament, Results of the 2014 European Elections (2014). Available at: Source:

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

[http://www.europarl.org.uk/en/your\\_meps/european\\_elections/results.html](http://www.europarl.org.uk/en/your_meps/european_elections/results.html)

<http://www.europarl.europa.eu/elections2014-results/en/election-results-2014.html>, accessed on 22 November 2014.

## The Voting Franchise (Who Can Vote)

1.24 The franchise for elections and decisions on who can vote and stand for election is for each Member State to decide upon, as long as (in line with their citizenship rights as previously discussed) all EU citizens resident in a Member State can vote and stand for election in that Member State's European Parliamentary and municipal (local) elections under the same conditions as nationals of that Member State.<sup>31</sup> Council Directives 93/109/EC and 94/80/EC set out EU citizens' right to vote in and stand in European Parliamentary and municipal (local) elections in a Member State where they are resident but not a national.<sup>32</sup>

<sup>31</sup> As discussed, this right originates from TFEU, supra note 5, art. 20(2)(b), 2008 O.J. C 115, at 56. TFEU art. 22(1&2), at 57, provides the legal base for the adoption of the detailed arrangements for the exercise of this right.

<sup>32</sup> Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 1993 (as amended by Council Directive 2013/1/EU amending Directive 93/109/EC as regards detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 2012); Council Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, 1994.

## Council Directive 93/109/EC

This Directive sets out four general limitations to EU citizens voting in European Parliamentary elections in a Member State where they are resident but not a national:

- a) Citizens may not vote or stand as a candidate in more than one Member State in the same European Parliamentary elections;
- b) Citizens may not stand in a European Parliamentary election if they have been deprived of that right under the laws or their 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 the European Parliamentary elections where they reside. The UK does not impose such a requirement; and
- d) 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).

## Council Directive 94/80/EC

This Directive sets out 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. The UK does not impose such a requirement;
- 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. (The UK does not impose such a requirement);
- 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. (The UK does not impose such a requirement); and
- 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).

1.25 UK legislation provides that UK, Republic of Ireland, qualifying Commonwealth and EU citizens who reside in the UK are eligible to vote in municipal (local) and European Parliamentary elections as long as, on the date of the election, they are registered to vote in the UK, are at least 18 years old, and are not subject to any disqualifications from voting.<sup>33</sup> EU citizens who are not UK or Commonwealth citizens are required to have completed a declaration confirming their citizenship when they intend to vote in the European Parliamentary elections in the UK so that their home Member State can be

<sup>33</sup> The European Parliamentary Elections Act 2002, the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (SI 2001/1184) and section 2(1) of the Representation of the People Act 1983. Under the European Parliament (Representation) Act 2003, registered voters in Gibraltar are able to vote in the combined electoral region of South West England.



notified.<sup>34</sup> Again, these rights are reciprocal and UK citizens residing in other Member States are eligible to vote in that Member State's European Parliamentary and municipal (local) elections.

- 1.26 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.<sup>35</sup> Similarly, the franchise for Police and Crime Commissioners (PCC) elections, mayoral elections, London Assembly elections and the election of the London Mayor, and some referendums (depending on the rules of the referendum) is the same as that for local elections and, therefore, EU citizens can also vote in them.<sup>36</sup> This gives EU citizens resident in the UK rights additional to those provided for in the EU Treaties.
- 1.27 The 1976 Act concerning elections to the European Parliament expressly applied to the United Kingdom only, not Gibraltar. Following a human rights challenge in the European Court of Human Rights (ECtHR), concerning Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR) (right to free elections), the UK has enfranchised citizens of Gibraltar for the purposes of the European Parliamentary elections.<sup>37</sup> 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 South West England, which includes Gibraltar. In 2004, in a very rare example of one Member State bringing an action directly against another in the European Court of Justice (ECJ), Spain filed a case against the United Kingdom on the grounds that the legislation adopted by the United Kingdom to create the combined South West England region and to enfranchise non-UK Commonwealth citizens in Gibraltar was incompatible with EU law. The Court held that Spain's claims were unfounded.<sup>38</sup>

## Voting in National Elections

- 1.28 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 qualifying Commonwealth citizens are not entitled to vote at UK Parliamentary elections. These provisions are the result of the UK's historical relationships with Commonwealth countries and the Republic of Ireland and are provided for in the Representation of the People Act

<sup>34</sup> This declaration is provided for under Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 1993 (as amended by Council Directive 2013/1/EU amending Directive 93/109/EC as regards detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 2012). UK, 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>35</sup> Section 11(1) of the Scotland Act 1998; Section 12(1) of the Government of Wales Act 2006; the Northern Ireland Assembly (Elections) Order 2001 (as amended).

<sup>36</sup> Section 52(1)(a) of the Police Reform and Social Responsibility Act 2011; Local Government Act 2000; Greater London Authority Act 1999. Examples of referendums which EU citizens have been eligible to vote in are: the Greater London Authority referendum in 1998, the Welsh Devolution referendum in 2011 and the referendum on Scottish independence in September 2014.

<sup>37</sup> *Matthews v United Kingdom*, App. No. 24833/94, [1999] 28 EHRR 361. The European Parliament (Representation) Act 2003 enfranchised citizens of Gibraltar for European Parliamentary elections.

<sup>38</sup> *Spain v United Kingdom*, Case C-145/04, [2006].

1983.<sup>39</sup> A qualifying Commonwealth citizen is any citizen of a Commonwealth country who does not require permission or has been granted permission under the Immigration Act 1971 to enter or remain in the UK. The UK has a reciprocal arrangement with the Republic of Ireland regarding voting rights. No other Member State allows EU citizens who are not also national citizens to vote in their national elections.

- 1.29 In the European Citizenship Report 2013, the European Commission put forward twelve actions to ‘further remove obstacles standing in the way of citizens’ enjoyment of their EU rights’. One area of the 2013 Report focussed on ‘enhancing citizens’ electoral rights and promoting their full participation in the democratic life of the EU’. Here, the Commission made suggestions concerning what they assessed to be the disenfranchisement of EU citizens who have exercised their right to free movement. The Commission suggested it would examine ways to enable EU citizens who have exercised their right to free movement to participate in national elections in their country of residence (see text box on EU Citizenship Report 2013).<sup>40</sup>
- 1.30 The European Commission has subsequently expanded on this point. Whilst the Commission has acknowledged that it is for Member States to decide upon the franchise for its national elections, it suggested in a recent Communication that, under Article 25 TFEU, the EU might be able to legislate to prevent EU citizens who have exercised their free movement rights from being discriminated against in national elections.<sup>41</sup> The Communication stated:

The national legislations on the composition of the electorate for national elections are disparate. As, currently, no Member State has a general policy granting other Member States’ nationals residing on its territory the right to vote in national elections, disenfranchised EU citizens are usually left without the right to vote in national elections in any of the Member States. However, since the Union has not yet made use of the possibility under Article 25 TFEU to compliment the list of rights enjoyed by the citizens of the Union, EU law cannot guarantee to an EU citizen that a transfer of his/her residence to another Member State will be completely neutral as regards his/her right to vote in national elections.<sup>42</sup>

Article 25(2) provides for a special legislative procedure which means that any legislative proposal would have to be consented to by the European Parliament and agreed unanimously by all Member States. Member States would also have to adopt any provisions before they became law.

## Disqualifications from Voting: Long-Term Overseas Residents

- 1.31 Certain categories of UK citizens who live abroad are entitled to vote in all UK elections, such as members of the armed forces, employees of Her Majesty’s Government and the British Council (including their spouses or civil partners).<sup>43</sup> Otherwise, 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

<sup>39</sup> Section 1(1) of the Representation of the People Act 1983.

<sup>40</sup> Commission Report COM(2013) 269 final, *EU Citizenship Report 2013. EU citizens: Your Rights, Your Future* (2013).

<sup>41</sup> Under TFEU, *supra* note 5, art 25(2), 2008 O.J. C 115, at 58, the Council, acting unanimously, after obtaining the consent of the European Parliament, can adopt provisions to strengthen or add to the rights that EU citizens enjoy under TFEU, art 20(2), at 56.

<sup>42</sup> Commission Communication COM(2014) 33 final on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, 2014.

<sup>43</sup> The Representation of the People Act 1983, section 14.

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>44</sup>

- 1.32 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 was likely to diminish. Initially, the Representation of the People Act 1985 made provision for UK citizens who were resident overseas to remain on the electoral register for a five year period.<sup>45</sup> In a speech to the House of Commons the then Home Secretary argued that:

I accept the argument that there must come a point, although it will vary from person to person, at which a person's links are likely to have been attenuated substantially to the extent that it is unreasonable for that person to expect to enjoy the franchise. It is not right that the extension of the franchise should be indefinite.<sup>46</sup>

This five year period was subsequently amended to 20 years by the Representation of the People Act 1989 and to the current 15 years by the Political Parties, Elections and Referendums Act 2000.<sup>47</sup>

- 1.33 Four other Member States have comparable national legislation.<sup>48</sup> For example, Danish citizens are allowed to remain on the electoral roll only if they register their intention to return to Denmark within two years and citizens of the Republic of Ireland are allowed to remain on the electoral roll only if they register their intention to return within 18 months.
- 1.34 In the EU Citizenship Report 2013, the European Commission committed to propose constructive ways to enable EU citizens living in another Member State to maintain their right to vote in national elections in their country of origin (see text box on the EU Citizenship Report 2013).<sup>49</sup> In January 2014, the European Commission published a Communication and Recommendation to give effect to this commitment.<sup>50</sup> The Commission made a 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. Both the Communication and Recommendation were non-binding on Member States.
- 1.35 The UK Government successfully defended an action brought under the ECHR by a UK citizen living in Italy for over 15 years. In that case, the ECtHR ruled that there had been no violation of Article 3 of Protocol No.1 of the ECHR (right to free elections) by the UK and that the UK had legitimately confined the national parliamentary franchise to those citizens who had a close connection to the UK and who would therefore be most directly

<sup>44</sup> These provisions are set out in the Representation of People Act 1985 (as amended) and the European Parliamentary Elections Act 2002. The 1985 Act provided for the first time for UK citizens resident overseas to be able to register to vote in UK Parliamentary general elections. UK citizens are 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.

<sup>45</sup> Sections 1 and 3 of The Representation of the People Act 1985.

<sup>46</sup> Hansard, *House of Commons Debate on the Representation of the People Bill*, 29 January 1985 c217.

<sup>47</sup> The Representation of the People Act 1989, section 1; and the Political Parties, Elections and Referendums Act 2000, section 141.

<sup>48</sup> Cyprus, Denmark, Republic of Ireland and Malta.

<sup>49</sup> Commission Report COM(2013) 269 final, *EU Citizenship Report 2013. EU citizens: Your Rights, Your Future* (2013).

<sup>50</sup> Commission Communication COM(2014) 33 final on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, 2014; and Commission Recommendation C(2014) 391 final on addressing the consequences of disenfranchisement of EU citizens exercising their rights to free movement, 2014.

affected by its laws.<sup>51</sup> The Court of Appeal of England and Wales has also held that the 15 year time limit did not breach EU laws on free movement, as it serves the legitimate and proportionate objective of testing the strength of British citizens' links with the UK to ensure that only those maintaining close links remain eligible to vote.<sup>52</sup>

## EU Citizenship Report 2013

The European Commission made the following commitments in the 2013 Report:

'The Commission will:

- Promote EU Member State citizens' awareness of their EU citizenship rights, and in particular their electoral rights, by launching on Europe day in May 2014 a handbook presenting those EU rights in clear and simple language.
- Propose constructive ways to enable EU 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 country of origin.
- Explore in 2013 ways of strengthening and developing the European public space, to end the fragmentation of public opinion along national borders.'

On national disenfranchisement policies:

'National disenfranchisement policies, where they exist, are commonly justified by the fact that, after a certain period of time spent abroad, the link with the society of origin is weakened. This argument should be re-assessed in the light of socio-economic and technological realities, the fact that people can move around more easily, and increasing social and cultural interpenetration within the EU. Residing in another EU country no longer requires a definitive severing of ties with the country of origin [...] EU citizens should now be able to decide for themselves if they want to continue to participate in the political life of their country of nationality or invest in the political life of their host society.'

On the right to vote in national elections in their Member State of residence:

'EU citizenship involves the rights of EU citizens to vote and stand as candidates in local and European elections in the host country under the same conditions as nationals. These rights were meant to give concrete effect to the principle of non-discrimination between nationals and non-nationals and enable EU citizens to integrate better and take part in democratic life in their host country. However, they leave uncovered the most important levels of political participation [...] In the context of the broader reflections on the shape of the future of the European Union, the Commission will examine ways to enable EU citizens to participate in national and regional elections in their country of residence.'

## Disqualifications from Voting: Prisoners

1.36 Under UK law, individuals who have been convicted of electoral fraud and sentenced prisoners are disqualified from voting. There have been two sources of legal challenge to the UK's ban on prisoners voting; firstly challenges under Article 3 of Protocol No. 1 (right to free elections) of the ECHR and secondly challenges on the grounds of an alleged breach of EU law.

<sup>51</sup> *Shindler v the UK*, App. No. 19840/09, [2013].

<sup>52</sup> *Regina (Preston) v Wandsworth London Borough Council and another* [2012] EWCA Civ 1378.

## The European Court of Justice and the European Court of Human Rights

The European Court of Justice and the European Court of Human Rights are both international courts but they are not formally connected to each other. They each rule on separate areas of international law - EU law and the Convention on Human Rights respectively.

### The European Court of Justice (ECJ)

The ECJ was established in 1952 under the Treaty establishing the European Coal and Steel Community. It is the highest court in the European Union and is based in Luxembourg.

The ECJ interprets EU law, including the rights of EU citizens under TEU and TFEU, to make sure it is applied in the same way across all EU Member States. The ECJ also settles legal disputes between Member States and between Member States and the EU institutions. Individuals can also bring cases before the ECJ in certain circumstances.

It is for Member States' national courts to ensure that EU citizens can exercise their rights under EU law within that Member State. However, where a national court is unsure of a point of law or where an individual feels their rights have been infringed by an EU institution, a case can be brought to the ECJ. If a Member State does not comply with an ECJ judgment against them then they can be fined.

An ECJ judgment creates a precedent in EU law for other courts to follow. However, an ECJ judgment does not create a precedent for cases taken to the European Court of Human Rights.

### The European Court of Human Rights (ECtHR)

The European Convention on Human Rights (ECHR) was adopted by the Council of Europe, of which the UK is a member, in 1950. There are currently 47 member states of the Council of Europe and they are all signed up to the ECHR. The Council of Europe is not connected to the EU institutions and is based in Strasbourg. Only 28 of the member states of the Council of Europe are EU Member States.

The ECHR guarantees rights to individuals. The ECHR guarantees a right to freedom of expression and a right to freedom of thought, conscience and religion. Over the years, the ECHR rights have been added to by various Protocols. Article 3 of Protocol No. 1 provides for the right to free elections.

The ECHR established the ECtHR which, like the Council of Europe, is not connected to the EU institutions and is based in Strasbourg. Any individual can bring complaints against the UK Government in the ECtHR for an alleged violation of a right under the ECHR. The Committee of Ministers (the Council of Europe's decision making body) monitors the execution of the ECtHR's judgments.

An ECtHR judgment creates a precedent in human rights law for other courts to follow. However, an ECtHR judgment does not create a precedent for cases taken to the ECJ.

## ECHR Challenges

- 1.37 In the 2005 case of *Hirst (No.2) v the United Kingdom*, the Grand Chamber of the ECtHR ruled that the UK's blanket ban on prisoner voting was in breach of Article 3 of Protocol No. 1 ECHR.<sup>53</sup> The decision in *Hirst (No.2)* was followed by the ECtHR in the 2010 case of *Greens and M.T v the United Kingdom* and the 2012 case of *Scoppola (No.3) v Italy*.<sup>54</sup> Following on from these judgments, a Joint Committee of the UK Parliament completed pre-legislative scrutiny of the draft Voting Eligibility (Prisoners) Bill, which was published in November 2012.<sup>55</sup> The Joint Committee recommended that the UK Government bring forward a Bill to enfranchise prisoners serving 12 months or less and prisoners in the last six months before their scheduled release date. The Committee of Ministers (the Council of Europe's decision-making body) agreed, in their meeting on 23-25 September 2014, that their next discussion of the UK's implementation of prisoner voting rights should take place in September 2015.
- 1.38 There are over 1,000 similar UK prisoner voting rights cases awaiting consideration by the ECtHR. On 12 August 2014, the ECtHR passed judgment on the first batch of ten of these cases, which related to prisoners unable to vote in the 2009 European Parliamentary elections.<sup>56</sup> The ECtHR held there was a violation of Article 3 Protocol No. 1 to the ECHR in each of the ten cases, but did not award any damages or costs.<sup>57</sup> On 22 September 2014, the remaining 1,015 cases were communicated to the UK. These cases relate to prisoners unable to vote in one or more of the 2009 European Parliamentary elections, the 2010 UK Parliamentary elections and the 2011 elections to the Scottish Parliament, the Welsh Assembly or the Northern Irish Assembly.

## Challenges under EU Law

- 1.39 A number of prisoners have challenged the ban directly under EU law. Two cases were brought before the UK Supreme Court last year in relation to elections to the European Parliament, local government and the Scottish Parliament, relying on Articles 20 and 22 TFEU (right to vote in European and municipal elections) and rights reflected in the Charter of Fundamental Rights. In October 2013 the UK Supreme Court held that EU law did not apply to this case. This was because EU law does not grant a right to vote (as Article 3 of Protocol No.1 ECHR does), but rather prohibits EU citizens from being discriminated on the grounds of nationality and the prisoners in this case were not being discriminated against on those grounds.<sup>58</sup>

<sup>53</sup> *Hirst (No.2) v United Kingdom*, App. No. 74025/01, [2005].

<sup>54</sup> *Greens and M.T. v United Kingdom*, App. Nos. 60041/08 and 60054/08, [2010]; *Scoppola (No.3) v Italy*, App. No. 126/05, [2012].

<sup>55</sup> Voting Eligibility (Prisoners) Draft Bill, 2012.

<sup>56</sup> *Firth and Others v. The United Kingdom*, App. Nos. 47784/09 [2014], 47806/09, [2014], 47812/09, [2014], 47818/09, [2014], 47829/09, [2014], 49001/09, [2014], 49007/09, [2014], 49018/09, [2014], 49033/09[2014], and 49036/09, [2014].

<sup>57</sup> The ECtHR held unanimously that the finding of a violation constituted in itself sufficient just satisfaction (for example; compensation) for any non-financial loss. See p5 of the judgement.

<sup>58</sup> *R (on the application of Chester) v. Secretary of State for Justice* [2013] UKSC 63.

## Wider Forms of Democratic Engagement

### The European Citizens' Initiative

1.40 The European Citizens' Initiative (ECI) was introduced under the Lisbon Treaty to 'reinforce the democratic fabric of the European Union'.<sup>59</sup> It has applied since 1 April 2012. It allows EU citizens to bring forward proposals to change or make European law, in areas in which the EU can legislate, with the following criteria:

- A 'Citizens' Committee' must be set up with EU citizens from at least seven different Member States;
- Signatories must be EU citizens who are old enough to vote in European Parliamentary elections (18 years of age in every Member State, bar Austria, where it is 16 years of age); and
- 1 million signatures must be collected and verified by Member States within 12 months in order to present the ECI to the Commission.<sup>60</sup>

### Successful European Citizens' Initiatives

Only two ECIs have reached the required signature threshold:

#### **'Water and sanitation are a human right! Water is a public good, not a commodity!'**

This ECI invited the European Commission to 'propose legislation implementing the human right to water and sanitation, as recognised by the United Nations, and promoting the provision of water and sanitation as essential public services for all'. The Commission published its response in March 2014. No legislative proposals were put forward by the Commission, but it did promise to take a number of other steps in areas 'of direct relevance to the initiative and its goals'. 7,104 UK citizens submitted statements of support to this ECI.

#### **'One of Us'**

The 'One of Us' ECI proposed that the EU should establish a ban on the financing of activities which presupposed the destruction of human embryos. The Commission published its response in May 2014 and concluded that 'EU primary legislation explicitly enshrines human dignity, the right to life, and the right to the integrity of the person. The EU Financial Regulation states that all EU expenditure should comply with EU primary legislation. Therefore the Commission does not see a need to propose changes to the Financial Regulation'. 26, 298 UK citizens submitted statements of support to this ECI.

<sup>59</sup> The ECI is provided for by TEU post-Lisbon, supra note 11, art. 11(4), 2010 O.J. C 83, at 21. TEU post-Lisbon art. 11(1), at 21, provides that the EU institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action. TEU post-Lisbon art. 11(2), at 21, states that the EU institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

<sup>60</sup> Regulation 211/2011/EU on the citizens' initiative, 2011 (as implemented by Regulation 1179/2011/EU laying down technical specifications for online collection systems pursuant to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizen's initiative, 2011 and amended by Commission Delegated Regulation 531/2014 amending Annex I of Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative, 2014). This Regulation sets out the information required and procedures to be followed in order to submit an ECI to the European Commission as well as technical specifications for the online collection of signatures. There is no UK legislation on the subject matter of the ECI. Regulations have 'direct effect' and, therefore, all UK nationals and EU citizens residing in the UK can automatically take part in the ECI by virtue of these Regulations.

## The Right to Petition the European Parliament

1.41 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>61</sup> Individuals may submit a petition using an online form or they may send their petition by post. The European Parliament's Committee on Petitions consider petitions in line with the Parliament's Rules of Procedure.<sup>62</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. 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. In 2012, the total number of registered petitions was 1,986, 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 Single Market.<sup>63</sup>

### Case Study – Petition to the European Parliament

#### Report on the crisis of the Equitable Life Assurance Society

In 1994, the Equitable Life Assurance Society announced plans to cut the size of final bonuses paid to its 90,000 'guaranteed annuity rate' policyholders, following financial difficulties. The Equitable Members Action Group (comprised of affected policyholders), as well as other affected individuals, submitted petitions to the European Parliament on this issue. The petitions raised concerns regarding the then UK Government's regulation of the Equitable Life Assurances Society and, on 18 January 2006, the European Parliament announced an investigation focussing on whether the UK Government failed in its regulatory duty.

The introduction to the report read:

'The concerns which led to the setting up of the committee had previously been raised via several petitions to the European Parliament. These petitions formed the basis and starting point of the inquiry and have helped focus its direction. It therefore was crucial to acknowledge and maintain input from the petitioners and invite them to the committee's meetings in order to set the scene. The central role of these particular petitions also reflects the general importance of Parliament's Petitions Committee in monitoring the application of Community law.'

Report on the crisis of the Equitable Life Assurance Society (4 June 2007)

<sup>61</sup> TFEU, *supra* note 5, arts. 20(2)(d), 24 and 227, 2008 O.J. C 115, at 57, 58 and 150.

<sup>62</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 (July 2014), specifically Rules 215 to 217. Rule 216 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>63</sup> Committee on Petitions of the European Parliament, *2012 Annual Report* (2012).



## The Right to Complain to the European Ombudsman

- 1.42 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 ECJ acting in its judicial role.<sup>64</sup> The European Ombudsman is also not empowered to deal with complaints filed against national institutions or Member States themselves. Again, there is no UK legislation on this matter because EU citizens can rely on the Treaty provisions directly, without the need for national legislation.
- 1.43 The Ombudsman received 2,442 cases in 2012 and 2,510 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.<sup>65</sup>

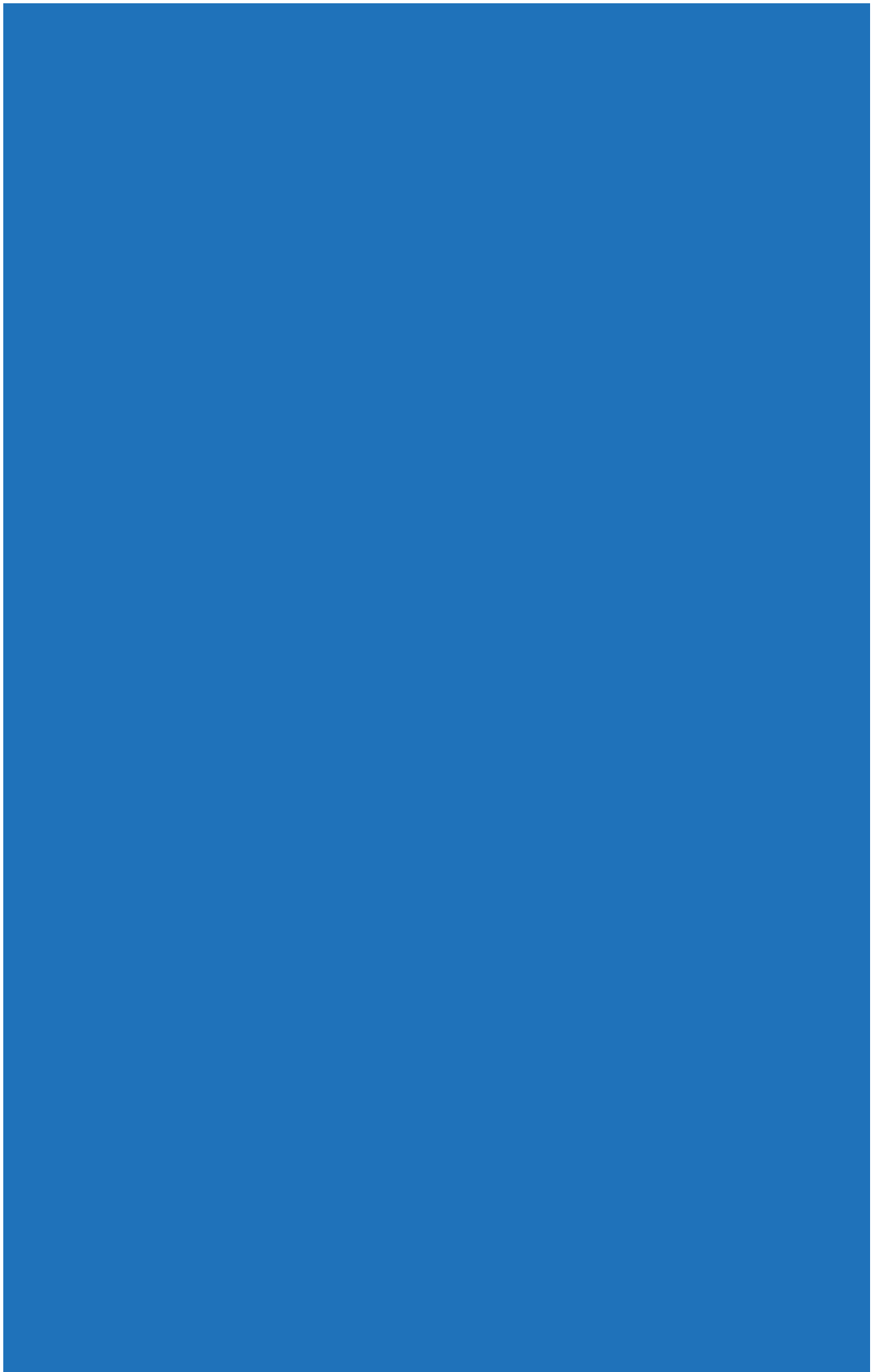
### Case Study – Complaint to the European Ombudsman

#### Ombudsman Case 1688/2013/JN

Summary of the decision (as published on the Ombudsman website): 'The case concerned the repeated rejection of the complainant's applications for the position of election observer in the context of EU Election Observation Missions. The Ombudsman inquired into the issue and found that the Commission had breached its duty to state the reasons for its decision. She however did not find any evidence that the complainant had been treated unfairly or discriminated against. The Ombudsman made four further remarks aimed at improving certain aspects of the procedure for selecting election observers. They focus on increasing transparency in the selection process and strengthening safeguards against arbitrary decisions.' (Opened 27/09/2013, decision 20/08/2014)

<sup>64</sup> TFEU, supra note 5, arts. 20(2)(d), 24 and 228, 2008 O.J. C 115, at 57, 58 and 150.

<sup>65</sup> European Ombudsman, *Annual Report 2012* (2012) p7 and p18.



# Section 1, Voting

## Chapter 2: Impact on the UK National Interest

- 2.1 This chapter summarises the evidence received on the impact of the EU's competence in the field of voting, and the exercise of it, on the UK. The evidence is considered according to principal themes that emerged from the responses, and can be divided into four broad sets of policy issues:
- The Conduct of European Parliamentary Elections;
  - The Information Exchange;
  - The Voting Franchise (Who Can Vote); and
  - Wider Democratic Engagement.
- 2.2 The majority of respondents felt that the division of responsibilities in the field of voting for European Parliamentary elections between the EU and Member States was not in need of significant change. However, the evidence revealed that there were strong reservations regarding the current requirements for the prevention of double voting at European Parliamentary elections. Concerns centred on the Information Exchange and whether the current system was fit for purpose. Evidence also strongly focused on the time limit placed on the voting rights of overseas UK citizens and whether this interfered with the fundamental right of 'free movement'. In addition, concerns were raised about the engagement of UK citizens and their ability to directly influence policy and law making at an EU level. However, most respondents felt that these were issues that could be resolved through existing channels, rather than extending or altering the competence between the UK and the EU.

### The Conduct of European Parliamentary Elections

#### The Administration of European Parliament Elections

- 2.3 Whilst the EU lays down certain requirements on European Parliamentary elections, competence for their administration rests with Member States. The majority of respondents felt that the balance of competences was set at the right level, with the Electoral Reform Society stating that 'broadly the division of responsibilities as they stand appear to be working well'.<sup>1</sup>
- 2.4 Respondents also suggested how competence in this area might be exercised in the future. This is considered in Chapter Three.

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<sup>1</sup> Electoral Reform Society, *submission of evidence*.

## Distribution of MEPs

- 2.5 A few respondents queried the way in which the numbers of MEPs were distributed across Member States, under the principle of degressive proportionality. New Europeans focused on the over-representation of citizens from smaller Member States, stating that ‘it takes ten times as many voters to elect a single MEP in France, the United Kingdom, Germany, Italy and Poland as it does in Luxembourg and Malta’.<sup>2</sup>
- 2.6 Professor Iain McLean and doctoral student Richard Johnson from the University of Oxford also highlighted that the term ‘degressive proportionality’ had never had a clear definition or justification. They felt that, whilst ‘the current location of the competence between EU and national governments [in this area] is satisfactory’, the current system was ‘objectionable, because it is arbitrary’.<sup>3</sup>
- 2.7 The UK Government is content with the current distribution of MEPs between Member States, but believes that a fairer system which better reflects the principle of degressive proportionality and limits the over-representation of citizens of smaller Member States compared to those of the larger Member States could be found in the longer term.

## Voting Systems

- 2.8 At the time of the introduction of the European Parliamentary Elections Act 1999, there was considerable debate in the UK Parliament on the issue of moving from the previous, constituency-based, first past the post system, to the closed list system in use for UK European Parliamentary elections today. The majority of this debate focused on the planned move to a closed rather than open list system of proportional representation.

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<sup>2</sup> New Europeans, *submission of evidence*.

<sup>3</sup> University of Oxford, *submission of evidence*.

## The European Parliamentary Elections Act 1999

The European Parliamentary Elections Bill was put forward by the then UK Government. It provided for a proportional representation system for elections to the European Parliament in the UK. The Government argued for a closed list system of proportional representation. On the second reading of the Bill in November 1997 the then Home Secretary argued:

'The electoral regions will be very large, and individual candidates are unlikely to be known by more than a small [...] fraction of the electorate. Voters cannot, therefore, be expected to make an informed choice between individual candidates from the same party. If the electorate were required to rank candidates of the same party, such choices could be arbitrary. I also fear that it could disadvantage women and ethnic minority candidates [...] The system that is set out in the Bill has the great virtue of simplicity.'

The Bill passed the Commons in 1998, but the Conservative Party in both the House of Commons and the House of Lords argued for an open list system. There was also opposition to the move away from the first past the post system. In a House of Commons debate the then Shadow Home Secretary stated that:

'There is one simple clear issue in the debate – the difference between a closed list, whereby the public vote for a party and not a candidate, and the open list, whereby the public can choose a named candidate to represent them. If that is the only choice that we have in the debate – and it is – I have no hesitation in opting for the open list.'

I make it clear that the Opposition do not support proportional representation or the regional list. We prefer and would support the first past the post system.'

Following considerable debate and after the House of Commons had disagreed with Lords amendments four times, the Government reintroduced the Bill in the following session and it passed under the Parliament Acts, receiving Royal Assent in 1999.

- 2.9 Respondents expressed mixed views regarding the EU requirement for MEPs to be elected in accordance with the principle of proportional representation. One reason given for this was the potentially weaker electoral connection between MEPs and the electorate. Some attendees at a stakeholder event held in Brussels to discuss the issues in this report felt that the move from first past the post to proportional representation had weakened this link because voters did not select an individual to represent them directly. It was also noted that, given these arrangements and although MEPs do receive a significant amount of casework, electors were more likely to contact MPs in the first instance.<sup>4</sup>
- 2.10 In contrast, the Electoral Reform Society stated that 'it is correct that the EU only allows countries to use a proportional system [...] additionally, it is correct that an institution such as the European Parliament, which runs on consensus and scrutiny, should reflect the broad swathe of the British public'.<sup>5</sup> The Scottish Government was also of the view that the requirement that all Member States adopted a system of proportional representation was reasonable. They felt that whilst it was sometimes suggested that first past the post systems created a closer link between candidates and the electorate, equally there was strong support for a proportional system which ensured that voters were more likely to see a candidate from their selected party elected.<sup>6</sup>

<sup>4</sup> *Record of 29 April 2014 stakeholder event (Proportional Representation, Brussels).*

<sup>5</sup> Electoral Reform Society, *submission of evidence*.

<sup>6</sup> Scottish Government, *submission of evidence*.

- 2.11 The majority of respondents did, however, criticise the closed list system used in England, Scotland and Wales. A few attendees at the stakeholder event in Brussels saw the closed system as an advantage because ‘it gives voters some certainty as to the candidates most likely to represent them on behalf of a party, if that party was elected’.<sup>7</sup> However, the general opinion across respondents was that the closed list system failed to ‘engage voters to the same extent as an open list system’.<sup>8</sup> As the Electoral Reform Society highlighted, ‘polls suggest only around 7-10% of the public can name their MEP’.<sup>9</sup> For this reason, some attendees at a stakeholder event held in London expressed a preference for the Single Transferable Vote (STV) system used in Northern Ireland, or for further research to be undertaken in this area.<sup>10</sup> The Chief Electoral Officer for Northern Ireland noted in his evidence that ‘there are no real concerns about the lack of constituency links with regard to [their] MEPs’ in Northern Ireland.<sup>11</sup>
- 2.12 The majority of respondents considered that to introduce open list systems (used elsewhere in Europe) for UK European Parliamentary elections would be a positive development; for example, the Electoral Reform Society felt that such a move to an open list system would be a ‘vast improvement’.<sup>12</sup> This argument is reinforced in an article published in 2009 by academics Professor Simon Hix and Dr Sara Hagemann, which found that in those countries using open list systems electors were 20% more likely to be contacted by candidates or parties than in those states which used closed list systems. Electors were also 15% more likely to say that they felt informed about elections and 10% more likely to turnout.<sup>13</sup> However in the main it was felt that a change to the current balance of competences was not necessarily the most effective way to achieve stronger links between individual candidates and electors.

### Timing of Elections

- 2.13 In recent years the UK has chosen to combine local elections with UK European Parliamentary elections. An advantage noted by respondents was that combining polls with local elections could help to generate increased turnout at European elections.<sup>14</sup> In those election years where combination has not happened, such as in 1999, the UK has seen lower turnout. Attendees at the Brussels event also noted that several Member States similarly chose to combine municipal (local) polls with European Parliamentary elections, and it was felt that Member States should not lose this ability.<sup>15</sup> Attendees also noted that the introduction of the Fixed-term Parliaments Act 2011 had created a clear demarcation between the European Parliamentary and UK Parliamentary elections in the UK, as (in the absence of an extraordinary UK Parliamentary election) these elections were now on cycles that did not meet. It was felt that there were benefits in keeping the European and UK Parliamentary elections separate.<sup>16</sup>

<sup>7</sup> *Record of 29 April 2014 stakeholder event* (Closed List System, Brussels).

<sup>8</sup> *Record of 29 April 2014 stakeholder event* (Closed List System, Brussels). Similar views were raised in the 23 June stakeholder event, London; King’s College London, *submission of evidence*; and Electoral Reform Society, *submission of evidence*.

<sup>9</sup> Electoral Reform Society, *submission of evidence*.

<sup>10</sup> *Record of 23 June 2014 stakeholder event* (Group Two – Discussion One – Electoral Systems and Electoral Regions, London).

<sup>11</sup> Chief Electoral Officer for the Electoral Office for Northern Ireland, *submission of evidence*.

<sup>12</sup> Electoral Reform Society, *submission of evidence*.

<sup>13</sup> Professor Simon Hix and Dr Sara Hagemann, ‘Could changing the electoral rules fix European Parliament elections?’, *Politique Européenne*, No 28 (2009).

<sup>14</sup> *Record of 29 April 2014 stakeholder event* (Local Elections, Brussels) and *Record of 23 June 2014 stakeholder event* (Group One – Discussion One – Voter Engagement and European Parliamentary Elections, London).

<sup>15</sup> *Record of 29 April 2014 stakeholder event* (Local Elections, Brussels).

<sup>16</sup> *Idem*.

2.14 However, some attendees at the London stakeholder event felt that combining these elections could take ‘the focus away from European issues’.<sup>17</sup> The Scottish Government suggested this could ‘lead to confusion for voters, and even undermine the importance of the individual elections taking place’. It was for this reason that they said they discontinued the practice of combining elections to the Scottish Government with local government elections.<sup>18</sup> Attendees at the Brussels stakeholder event also felt that combining European Parliamentary and local elections in the UK presented political parties and candidates with challenges, as they must explain to voters which issues apply to which polls.<sup>19</sup> In addition, the Chief Electoral Officer for Northern Ireland highlighted issues when combining polls which both use the STV system. His view was that ‘electors can [sometimes] become confused and think that both ballots refer to the same election’, and he pointed to the fact that, during the 2014 elections, approximately 10,000 ballots were spoilt or left incomplete in Northern Ireland.<sup>20</sup>

## Publication of Results

2.15 Concerns were also raised about the timing for publication of election results. EU law prohibits Member States from announcing the results until polling has closed in all Member States. In the UK, the count is planned to finish when polling closes in the Member State with the latest close of poll. The Association of Electoral Administrators recognised ‘that the decision as to the time for closing the poll is a matter for individual States. However, ‘late’ decisions [by Member States] can cause difficulties and additional costs in other States and particularly in the UK which is generally one hour behind the rest of Europe’.<sup>21</sup> This view was also shared by other electoral administrators.<sup>22</sup>

2.16 The European Commission’s proposal for a common voting day for European Parliamentary elections is dealt with in Chapter Three of this section of the report.

## The Information Exchange

2.17 As set out in Chapter One, EU law requires Member States to obtain and share information about other Member States’ nationals who are voting, or standing as a candidate, in their European Parliamentary elections. The intention of the measure is to prevent double voting and those disqualified from standing in one Member State from standing as a candidate in another.<sup>23</sup> There was a strong consensus amongst respondents that, whilst the central principle of preventing double voting was worthwhile, the current process does not work effectively. Many were doubtful of its benefit for the UK and other Member States and of the ability of the system to prevent double voting in practice.<sup>24</sup>

<sup>17</sup> *Record of 23 June 2014 stakeholder event* (Group One – Discussion One – Voter Engagement and European Parliamentary Elections, London).

<sup>18</sup> Scottish Government, *submission of evidence*.

<sup>19</sup> *Record of 29 April 2014 stakeholder event* (Local Elections, Brussels).

<sup>20</sup> Chief Electoral Officer for the Electoral Office for Northern Ireland, *submission of evidence*.

<sup>21</sup> Association of Electoral Administrators, *submission of evidence*.

<sup>22</sup> Regional Returning Officer for the South West Region, *submission of evidence*; Senior Electoral Administrators, Birmingham City Council, *submission of evidence*.

<sup>23</sup> Council Directive 93/109/EC laying down detailed arrangement for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 2013, as amended by Council Directive 2013/1/EU amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, 2012.

<sup>24</sup> Summary of comments from 54 Electoral Registration Officers on the Information Exchange (available in published evidence); *Record of 29 April 2014 stakeholder event* (The Information Exchange, Brussels); and Association of Electoral Administrators, *submission of evidence*.

## Information Collected on Electors and Deadlines

- 2.18 One of the main issues raised by attendees at both the Brussels and London stakeholder events was the lack of consistency in the information collected on electors for the purpose of electoral registration in each Member State.<sup>25</sup> Member States use a range of different information for this purpose; for example, some use national ID cards and/or passport numbers rather than basing electoral registration on name and address details as the UK does. This inconsistency contributes to the lack of usable data received by the UK. Of the data received centrally by the UK, only 1% of that data could be forwarded on to Electoral Registration Officers (EROs) to check against their records (due to the lack of an address with which to identify which ERO it should be sent to). Halarose (a supplier of election management software) also suggested that the ‘outbound data flow [from the UK to other Member States] had almost as little effect’.<sup>26</sup>
- 2.19 A number of EROs suggested that this issue was due to the information required on the declaration form, which did not meet all Member States’ needs.<sup>27</sup> The Principal Elections Officer at Southampton City Council highlighted that the declaration requires only details of an individual’s ‘name, address, nationality and the locality or constituency in Europe [in which] they were last registered’. He stated that this was ‘clearly not enough information to identify a person accurately in order to prevent them voting within another European country’.<sup>28</sup>
- 2.20 Many EROs noted that there were varying amounts of information entered by electors on their declaration forms, with some finding that EU citizens from other Member States either did not complete the sections containing the information required by EU law, or did not know where (or if) they were previously registered in their home Member State.<sup>29</sup> Linked to this was the concern that EU citizens from other Member States did not fully understand what was required of them. New Europeans suggested that ‘the registration process in the UK for EU citizens ahead of the recent European elections had been... both overly complex and confusing’.<sup>30</sup>
- 2.21 The Chief Executive of Manchester City Council highlighted that the decision to send out a declaration form to each registered EU citizen ‘is a matter for each ERO and there is no legal requirement to do so’.<sup>31</sup> However, Electoral Commission guidance states that the form should be sent out by all EROs. The UK Government is not aware of any EROs who did not send the required form out prior to the May 2014 European Parliamentary elections. One ERO explained that despite completing both an initial and reminder mail-out, they received only 1,604 forms out of the 5,313 issued.<sup>32</sup>
- 2.22 EROs were also concerned about the differing deadlines for sending data to each Member State. Many agreed that ‘the varying dates and deadlines were very confusing’

<sup>25</sup> *Record of 29 April 2014 stakeholder event* (The Information Exchange, Brussels) and *Record of 23 June 2014 stakeholder event* (Group One – Discussion One – Information Exchange, London).

<sup>26</sup> Halarose, *submission of evidence*.

<sup>27</sup> Summary of comments from 54 Electoral Registration Officers on the Information Exchange (available in published evidence).

<sup>28</sup> Principal Elections Officer, Southampton City Council, *submission of evidence*.

<sup>29</sup> Summary of comments from 54 Electoral Registration Officers on the Information Exchange (available in published evidence).

<sup>30</sup> New Europeans, *submission of evidence*.

<sup>31</sup> Chief Executive, Manchester City Council, *submission of evidence*.

<sup>32</sup> Summary of comments from 54 Electoral Registration Officers on the Information Exchange (available in published evidence).



and that it would be more helpful ‘to have a single cut off point for the supply of data’.<sup>33</sup> EROs stated that they received a number of forms from citizens after the registration deadlines set by other Member States. Many therefore questioned how worthwhile the exchange of information was, with one asserting that:

The whole process is currently unquantifiable and therefore it is difficult to say whether it is of benefit to the EU citizens in the UK.<sup>34</sup>

- 2.23 There were some reported problems of EU citizens not being able to vote in the May 2014 UK European Parliamentary elections. These appear to result from some EU citizens not completing and returning the required declaration form in time for the May 2014 polls. The UK Government is working with the European Commission to establish the exact reasons for this and what steps could be taken to prevent it happening in future. The UK Electoral Commission has said that it will work with the UK Government, EROs and organisations representing citizens of other EU Member States in the UK to identify what can be done to simplify the system and remove unnecessary administrative barriers to participation. The Electoral Commission will make any recommendations to the UK Government in sufficient time for changes to be introduced ahead of the 2019 European Parliamentary elections.<sup>35</sup>

### The Verification of Candidates from Other Member States

- 2.24 The process undertaken by national governments to verify whether a candidate from another Member State had been disqualified from standing was seen by attendees at the Brussels stakeholder event to have worked well.<sup>36</sup> It was also thought by the Chief Executive of Manchester City Council and attendees at the Brussels stakeholder event to have been of benefit to both political parties and individual candidates wishing to stand in another Member State.<sup>37</sup> The Chief Executive of Manchester City Council said that accreditation for candidates was received in a ‘timely fashion’; however, he did suggest the requirement placed an additional burden on other EU nationals wishing to stand in the UK (no such requirement applies to UK nationals standing in the UK).<sup>38</sup> In addition, senior electoral administrators at Birmingham City Council were concerned that the process ‘cannot fully prevent an ineligible candidate from appearing on the ballot paper’, but could see no alternative to the way in which the UK had implemented the directive.<sup>39</sup>
- 2.25 Christopher Chantrey of the British Community Committee of France felt that UK candidates or parties wishing to stand in other Member States ‘faced linguistic and other difficulties’, making it harder for such candidates to be adopted by their host country and become elected.<sup>40</sup> He and others (including New Europeans and a number of members of the public) were therefore of the view that there should be a separate constituency for ‘Britons Abroad’, in which citizens resident elsewhere in the EU should be able to stand.<sup>41</sup>

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<sup>33</sup> Idem.

<sup>34</sup> Idem.

<sup>35</sup> The Electoral Commission, *The European Parliamentary elections and the local government elections in England and Northern Ireland May 2014. Report on the administration of the 22 May 2014 elections* (July 2014).

<sup>36</sup> *Record of 29 April 2014 stakeholder event* (The Information Exchange, Brussels).

<sup>37</sup> *Record of 29 April 2014 stakeholder event* (The Information Exchange, Brussels) and Chief Executive, Manchester City Council, *submission of evidence*.

<sup>38</sup> Chief Executive, Manchester City Council, *submission of evidence*.

<sup>39</sup> Senior Electoral Administrators, Birmingham City Council, *submission of evidence*.

<sup>40</sup> Christopher Chantrey, British Community Committee of France, *submission of evidence*.

<sup>41</sup> New Europeans, *submission of evidence*; Anthony Lea, *submission of evidence*; Brian Cave, *submission of evidence*; Melvyn Anthony, *submission of evidence*; Graham Richards, *submission of evidence*; and Dr Michael Blackmore, *submission of evidence*.

2.26 Overall, respondents tended to feel that the issues surrounding the Information Exchange did not necessarily require a change to the competence in this area. Rather, it was seen to be a case of revising the existing mechanism in order that it worked effectively.

## The Voting Franchise (Who Can Vote)

2.27 As set out in Chapter One, the European Commission has made suggestions concerning the franchise for Member States' national elections, on the basis of EU citizenship rights. Whilst some respondents raised concerns regarding the UK Government's policies in this area, there was general agreement amongst respondents that it was right for the competence for the national franchise to remain at a national level.

### Time Limit on Overseas Voting Rights

2.28 Many overseas respondents, and New Europeans, raised concerns regarding the UK's time limit on voting rights for those UK citizens residing overseas for more than 15 years.<sup>42</sup> In particular, some overseas respondents felt that the UK's time limit was inconsistent with the spirit of Article 4.1 of the EU Council Directive 93/109/EC, which confers on EU citizens the right to choose to vote in European Parliamentary elections in either their Member State of citizenship or residence.<sup>43</sup> However, comments were primarily a commentary on the policy itself, with most respondents agreeing that competence for determining the national franchise should remain with Member States.

2.29 As outlined in Chapter One, the European Commission's (non-binding) Recommendation of 29 January 2014 suggested that time-limiting voting rights could be interpreted as an impediment to the right to free movement within the EU. The recommendation stated that:

*The current situation may be perceived as out of keeping with the founding premise of Union citizenship, namely that it is additional to national citizenship and is designed to give additional rights to Union citizens, whereas in this case the exercise of free movement may lead to losing a right of political participation.*<sup>44</sup>

2.30 Christopher Chantrey of the British Community Committee of France felt that it was appropriate for the European Commission to try to influence Member States where practices under national competence appeared to be out of line with EU policy.<sup>45</sup> However, overall there was little desire for a change to the current division of competence, and other respondents considered that the franchise should remain a matter for Member States. For example, this view was shared by attendees at both the Brussels and London stakeholder events.<sup>46</sup> The UK Government has stated that it would keep the 15 year time limit under consideration, but that it was not minded to change the law at the present time.

<sup>42</sup> Christopher Chantrey, British Community Committee of France, *submission of evidence*; Lynn Atterbury, *submission of evidence*; Anthony Lea, *submission of evidence*; Brian Cave, *submission of evidence*, Melvyn Anthony, *submission of evidence*, Dr Michael Blackmore, *submission of evidence*; Richard Smith (Campaign Coordinator, Labour International), *submission of evidence*; Graham Richards, *submission of evidence*; Nicholas Kent Newman, *submission of evidence*; David Forsyth, *submission of evidence*; Lizzie Gill, *submission of evidence*; Ironside, Julian JNA, *submission of evidence*; Jane Golding, *submission of evidence*; New Europeans, *submission of evidence*.

<sup>43</sup> Anthony Lea, *submission of evidence*; Brian Cave, *submission of evidence*, Melvyn Anthony, *submission of evidence*, Dr Michael Blackmore, *submission of evidence*; Graham Richards, *submission of evidence*; Nicholas Kent Newman, *submission of evidence*; a member of the public who wished to remain anonymous, *submission of evidence*.

<sup>44</sup> Commission Recommendation C(2014) 391 final on addressing the consequences of disenfranchisement of EU citizens exercising their rights to free movement, 2014.

<sup>45</sup> Christopher Chantrey, British Community Committee of France, *submission of evidence*.

<sup>46</sup> *Record of 29 April 2014 stakeholder event* (15 Year Rule, Brussels); *Record of 23 June 2014 stakeholder event* (Group One – Discussion One – The Franchise, London).

## Voting in National Elections

- 2.31 Some respondents questioned whether other EU nationals resident in the UK should be able to vote in UK national elections, and vice versa. This follows the (non-binding) Communication of the European Commission that Member States could consider enfranchising those EU citizens, who have chosen to exercise their right to free movement, to be eligible to vote in their national Parliamentary elections.<sup>47</sup>
- 2.32 Some, including one UK citizen resident in France, felt that introducing such a measure across Member States could be of benefit to some UK citizens living overseas, who are paying taxes in the Member States in which they reside. This respondent said that, whilst the current arrangements allow for voting in local and European elections, they did not allow for voting in national elections, despite the majority of influence over taxpayers' money being held at a national government level.<sup>48</sup>
- 2.33 Others, including another UK citizen resident in France, highlighted the 'Let Me Vote' ECI.<sup>49</sup> This ECI aimed to give EU citizens residing in another Member State the right to vote in all political elections in their country of residence (on the same conditions as the nationals of that State). Although unsuccessful, an objective of this initiative was to contribute to remedying the loss of rights presently experienced by EU citizens who are long term residents of other Member States (such as UK citizens).<sup>50</sup>
- 2.34 New Europeans expressed a view that extending voting rights to other EU citizens residing in the UK would address the discrepancy where Irish and Maltese and Cypriot citizens (as Commonwealth nationals) can vote in UK national elections, whilst other EU citizens cannot. They also emphasised that some EU Member States outlawed dual citizenship, leading to varying degrees of difficulty for citizens to acquire UK nationality and take part in national elections. However, this view was more to do with ensuring 'a degree of commonality' was reached at an EU level over national citizenship rights.<sup>51</sup>
- 2.35 Other participants at the London stakeholder event were, however, of the view that the right to vote at municipal elections struck the correct balance, as identification with local politics is more likely to be closely linked to residency, whereas national politics is more likely to be linked to national identity.<sup>52</sup> No other Member State allows non-nationals to vote in its national elections. In addition, as noted in Chapter One, the UK also goes beyond the minimum required by EU law in terms of the 'local' elections in which it permits EU citizens to participate.
- 2.36 The UK Government's view is that citizenship of the country of residence is the normal prerequisite for the right to vote at Parliamentary elections in most democracies and, on those occasions when it has considered this issue, the UK Parliament has taken the view that the existing rights of groups which have entitlement to vote should not be disturbed.

<sup>47</sup> Commission Communication COM(2014) 33 final on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, 2014.

<sup>48</sup> David Forsyth, *submission of evidence*.

<sup>49</sup> Anthony Lea, *submission of evidence*. This ECI closed on 28 January 2014 after failing to reach the one million signature threshold in the specified one-year time period.

<sup>50</sup> European Commission, *The European Citizens' Initiative Official Register*. Available at: <http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/details/2013/000003/en>, accessed on 24 November 2014. The main objectives of the 'Let me vote' initiative are stated on the initiative's page on the European Citizens' Initiative official register website.

<sup>51</sup> New Europeans, *submission of evidence*.

<sup>52</sup> *Record of 23 June 2014 stakeholder event* (Group 2 – Discussion One – Residence Requirements, London).

2.37 The Chief Executive of Manchester City Council noted that ‘the [UK] Government does not propose to change the law to permit EU citizens to vote in UK Parliamentary elections [...] Quite clearly, this is a matter for the UK Parliament’.<sup>53</sup> In line with this, respondents felt that overall it was important that questions over the franchise for national elections remained within the remit of national governments, and that any questions of change should be addressed through multilateral communication between Member States rather than a change to the Treaties.

### Prisoner Voting Rights

2.38 Limited evidence was received from respondents on the disqualification of prisoners from voting in European Parliamentary elections. However, James Organ of the Liverpool European Law Unit highlighted that successful challenges to the UK ban on prisoners voting had so far only been based on the ECHR. In contrast, those cases that had attempted to challenge the ban in relation to European Parliamentary elections had been unable to successfully apply EU law.<sup>54</sup>

2.39 As noted in the Liverpool European Law Unit’s evidence to the Fundamental Rights report, the right to vote in municipal (local) and European Parliamentary elections boils down to a right to non-discrimination/equal treatment for non-national EU citizens. Accordingly, under EU law, if national prisoners do not have the right to vote then nor should EU citizen prisoners who are not nationals. The Liverpool European Law Unit did, however, acknowledge that if the right to vote in such elections were extended to national prisoners, EU law would require the same rights to be extended to non-national EU citizens.<sup>55</sup>

## Wider Democratic Engagement

### European Citizens’ Initiative

2.40 Respondents predominantly saw the introduction of the ECI as a positive move in terms of enabling EU citizens to engage, but felt that the process had yet to prove itself to be an effective or proportionate mechanism. For example, the Electoral Reform Society stated that the ECI had so far ‘failed to live up to its name’.<sup>56</sup> New Europeans similarly stated that ‘the procedure is not working within the spirit intended by Article 11 TEU [which established the ECI]’.<sup>57</sup> Christian Concern also suggested that the ECI had fallen short of its potential, and questioned how far the EU was willing to open up to direct democratic influence.<sup>58</sup>

2.41 Key concerns centred on the length and bureaucracy of the process. The Electoral Reform Society highlighted that the process can take up to 21 months,<sup>59</sup> whilst attendees at the Brussels stakeholder event felt the mechanism was unduly burdensome and costly for EU citizens and Member States.<sup>60</sup> Respondents emphasised a number of administrative problems which hindered the ECI process from functioning as efficiently as it could. These predominantly centred on the technical operation of the system, the signature thresholds, and discrepancies between Member States in terms of determining and verifying the eligibility of signatories.

<sup>53</sup> Chief Executive, Manchester City Council, *submission of evidence*.

<sup>54</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>55</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>56</sup> Electoral Reform Society, *submission of evidence*.

<sup>57</sup> New Europeans, *submission of evidence*.

<sup>58</sup> Christian Concern, *submission of evidence*.

<sup>59</sup> Electoral Reform Society, *submission of evidence*.

<sup>60</sup> *Record of 29 April 2014 stakeholder event* (European Citizens’ Initiative, Brussels).

- 2.42 For example, Christian Concern (which was involved in the delivery of the ‘One of Us’ ECI) argued that ‘the additional hurdles unnecessarily created by the technical implementation of the ECI mechanism significantly increase the investment required and call into question whether it is justified’. Christian Concern also highlighted that the infrastructure and execution of the ECI mechanism hindered its operating effectiveness and created an unnecessary hurdle. Amongst many examples, they cited difficulties and delays with the online collection system, contradictory requirements for data preservation, and the design of the online and paper forms, which they felt were not designed with the citizen in mind.<sup>61</sup>
- 2.43 A number of respondents also felt that the current level of signatures required was set too high.<sup>62</sup> Professor Christoph Meyer and Dr Edoardo Bressanelli of King’s College London stated that the implementation of the ECI mechanism was ‘logistically complex as it requires one million signatures, collected in at least a quarter of the Member States’.<sup>63</sup> This was a view shared by New Europeans and the Electoral Reform Society.<sup>64</sup>
- 2.44 James Organ felt that discrepancies in terms of the verification procedures used across Member States complicated the administration of ECIs for those organising them (some Member States require that all statements of support for an ECI proposal are verified, whereas others, such as the UK, carry out a sample check in order to verify validity).<sup>65</sup> New Europeans referred to it as ‘inconsistent if not arbitrary across Member States’.<sup>66</sup>
- 2.45 Others highlighted that the inconsistency of eligibility requirements in each Member State added to the complexity of communicating the initiative and collecting the correct information.<sup>67</sup> In the UK, eligibility is based on residence, whereas in other Member States it is based on nationality and can require the provision of a variety of different forms of personal identification. James Organ of the Liverpool European Law Unit highlighted that one of the impacts of this has been to exclude certain groups of citizens from supporting an ECI.<sup>68</sup>
- 2.46 Whilst many respondents felt that this was not an issue of competence (and that it was right for competence for the verification of signatures and eligibility requirements to remain at a national level with Member States), Christian Concern felt that, in the interests of uniformity and efficiency for campaigners, competence should be extended to the EU for the specification of information required from the citizen, the mechanism for adding support and the process of verification (especially in the area of cross-boundary verification).<sup>69</sup> However, James Organ was of the view that administrative and democratic issues, resulting from inconsistency between Member States, should be addressed through the development of closer cooperation between Member States, as well as attempts by Member States to overcome a reluctance to depart from their traditional approaches to electoral processes.<sup>70</sup>

<sup>61</sup> Christian Concern, *submission of evidence*.

<sup>62</sup> A citizen’s initiative has to be backed by at least one million EU citizens, coming from at least 7 out of the 28 Member States. A minimum number of signatories are required from each of those 7 Member States.

<sup>63</sup> King’s College London, *submission of evidence*.

<sup>64</sup> New Europeans, *submission of evidence*; and Electoral Reform Society, *submission of evidence*. Attendees at the 23 June 2014 stakeholder event, London, also supported this view.

<sup>65</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>66</sup> New Europeans, *submission of evidence*.

<sup>67</sup> Christian Concern, *submission of evidence*; and Liverpool European Law Unit, *submission of evidence*.

<sup>68</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>69</sup> Christian Concern, *submission of evidence*.

<sup>70</sup> Liverpool European Law Unit, *submission of evidence*.

- 2.47 Some also questioned the role of the European Commission in the ECI process. For example, James Organ felt that the European Commission's role in the registration process for ECIs had 'excessively limited its democratic potential'.<sup>71</sup> It was also thought that the European Commission's ability to effectively veto ECIs which have successfully obtained the required number of signatories was a further hurdle faced by those using the process. Under EU law, the European Commission is only obliged to consider proposing a legal act in response to a successful ECI.<sup>72</sup> Christian Concern suggested that this added another level of uncertainty to the ECI process, 'making it harder to motivate would-be supporters [...] and reducing the willingness of campaigners to commit the significant resources'.<sup>73</sup> James Organ agreed with this point; he stated that 'the democratic potential of the ECI to influence the EU agenda is also limited because the Commission is only obliged to consider proposing a legal act in response to a successful ECI'.<sup>74</sup>
- 2.48 Overall it was felt that limitations on the potential of the ECI to influence EU policy were not related to the current division of competences between the EU and Member States, but more a question of legal interpretation by the European Commission and whether it could take steps to be more flexible in its administration and approval of ECIs.

## Petitioning the European Parliament

- 2.49 In contrast to the ECI, petitioning the European Parliament was seen by respondents as a real means by which EU citizens could influence EU policy. The majority of overseas respondents saw petitions as a good thing. Nicholas Newman of the Association of the Rights of Britons Abroad even commented that petitions were the only way to be heard in practice.<sup>75</sup>
- 2.50 Professor Christoph Meyer and Dr Edoardo Bressanelli of King's College London saw petitions as a useful mechanism through which MEPs and the European Commission could understand what the key issues were for EU citizens, and felt that they could act as a 'reality check for MEPs'.<sup>76</sup> Overall, respondents felt that petitions should remain as they were.

## European Ombudsman

- 2.51 Respondents similarly felt the current balance of competences between the European Ombudsman and the national ombudsmen in Member States worked well, and were broadly content with the long-established procedures for complaining to the European Ombudsman. Both the Parliamentary and Health Service Ombudsman and the Ombudsman Association stated that there was a clear distinction between the different jurisdictions and that they were not aware of any imbalance of competences, conflicts or gaps that needed to be addressed.<sup>77</sup> The Parliamentary and Health Service Ombudsman, in particular, felt that the scrutiny the European Ombudsman provides was an essential element of an open and transparent EU, and that its role could be beneficial to Member States in holding EU Institutions to account. The Parliamentary and Health Service Ombudsman stated:

<sup>71</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>72</sup> Regulation 211/2011/EU on the citizens' initiative, 2011, art. 10.

<sup>73</sup> Christian Concern, *submission of evidence*.

<sup>74</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>75</sup> Nicholas Newman, Association of the Rights of Britons Abroad, *submission of evidence*.

<sup>76</sup> King's College London, *submission of evidence*.

<sup>77</sup> Parliamentary and Health Service Ombudsman, *submission of evidence*; and the Ombudsman Association, *submission of evidence*.

The European Ombudsman can act as a safeguard, holding European Institutions to account, strengthening openness and transparency, and driving improvements in European administration.<sup>78</sup>

## Awareness of EU Processes

- 2.52 There was a broad consensus amongst respondents that the UK electorate was not sufficiently engaged with the EU democratic process. Professor Christoph Meyer and Dr Edoardo Bressanelli of King's College London emphasised that opinion polls generally showed that UK citizens were less well informed about EU matters than citizens of other Member States.<sup>79</sup> This view was echoed by attendees at the London stakeholder event, who generally felt that the UK electorate did not have a clear view on the relationship between UK political parties and European party groups, which they thought put UK electors at a disadvantage in contrast to other EU citizens.<sup>80</sup>
- 2.53 The Audit of Political Engagement 2014 Report highlighted the lack of engagement of UK citizens with European democracy. The Report found that 77% of those surveyed in one particular study agreed that 'I know less about the issues in a European Parliament election than in a general election' and 71% agreed that 'I understand more about how general elections work than elections to the European Parliament'.<sup>81</sup>
- 2.54 A number of respondents also raised concerns around the low awareness amongst UK citizens about EU mechanisms, such as the European Parliament petitions process and the procedures for complaining to the European Ombudsman. New Europeans, in particular, suggested that the absence of UK legislation on these procedures correlated with the low take-up of these rights by UK citizens.<sup>82</sup> Recent data (presented in the graph below) has shown that UK citizens are not making use of these rights as extensively as nationals of other Member States.<sup>83</sup>

<sup>78</sup> Parliamentary and Health Service Ombudsman, *submission of evidence*.

<sup>79</sup> King's College London, *submission of evidence*.

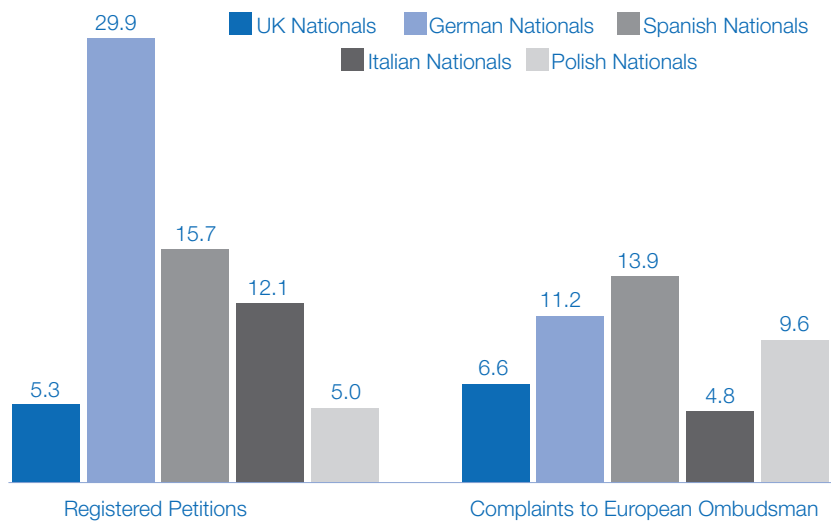
<sup>80</sup> *Record of 23 June 2014 stakeholder event* (Group One – Voter Engagement and European Parliamentary Elections, London).

<sup>81</sup> Hansard Society, *Audit of Political Engagement 11: The 2014 Report with a Focus on the Accountability and Conduct of MPs* (2014), p44.

<sup>82</sup> New Europeans, *submission of evidence*.

<sup>83</sup> European Ombudsman, *Annual Report 2012* (2012) p20 and Committee on Petitions of the European Parliament, *2012 Annual Report* (2012), p36.

**Figure 4: Percentage of Petitions to the European Parliament and Complaints to the European Ombudsman by Nationality**



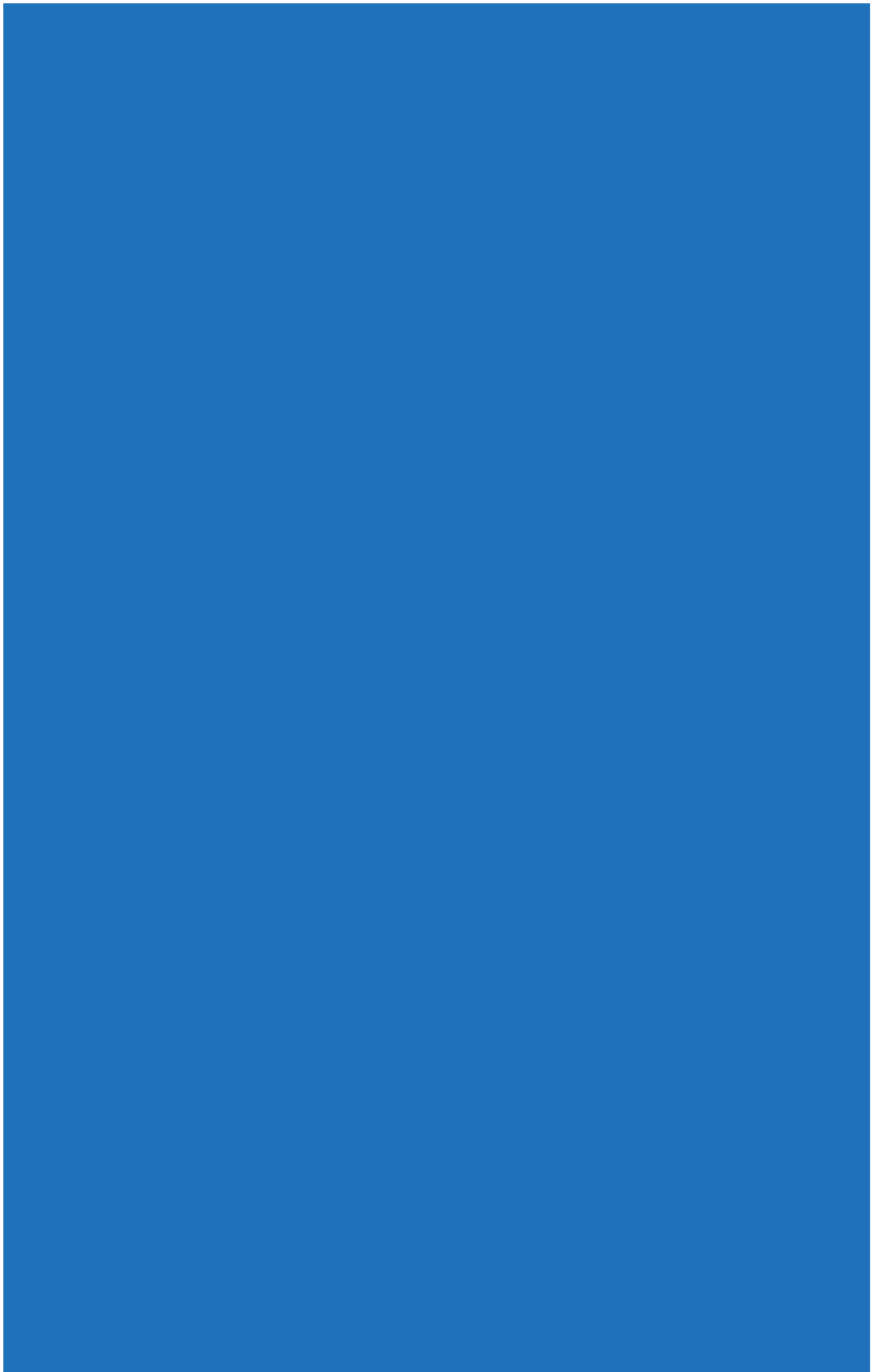
Source: European Ombudsman, Annual Report 2012 (2012).  
Committee on Petitions to the European Parliament, 2012 Annual Report (2012).

- 2.55 Consequently, it was felt that more needed to be done to bring these rights to the attention of UK citizens. However, this was generally seen to be a question of how adequately EU citizens are educated on the EU political process and institutions, rather than where competence currently lies in relation to the mechanisms themselves. For example, New Europeans felt ‘broadly content with the long-established procedures for petitioning the European Parliament and for complaining to the European Ombudsman’, although they urged the UK Government to do more to bring these rights to greater public attention.<sup>84</sup>
- 2.56 It was felt by some of the stakeholders present at the London event (from both groups) that it would be beneficial for there to be more clearly defined roles between the EU and the UK on informing voters about what they were voting for, and how EU institutions functioned.<sup>85</sup>

<sup>84</sup> New Europeans, *submission of evidence*.

<sup>85</sup> *Record of 23 June 2014 stakeholder event* (Group One – Discussion Two – Accountability; and Group Two – Discussion Two – Education, London).





# Section 1, Voting

## Chapter 3: Future Options and Challenges

3.1 Future options and challenges are considered under five main headings:

- Improving the Administration of Elections;
- Proposal for a Common Voting Day;
- Maintaining Competence for the Franchise;
- Increasing Citizen Engagement; and
- Alternative Models for the European Parliament.

### Improving the Administration of Elections

3.2 Many respondents felt that the current division of responsibilities between Member States and the EU was at broadly the right level in relation to the administration of elections. For example, both the Association of Electoral Administrators and the Electoral Reform Society noted that generally the current balance of competences was at the right level.<sup>1</sup>

3.3 In considering how competence might be exercised in future, there was some feeling across respondents that attempts could be made to better synchronise differing Member State electoral systems for the purpose of European Parliamentary elections. For example, some attendees at the London stakeholder event suggested that more power could be extended to the EU to allow it to establish centrally the basic rules for European Parliamentary elections, thus providing uniformity in electoral administration and greater clarity to the electoral process.<sup>2</sup>

3.4 However, it was noted by other respondents at the London event that it would not be appropriate for the EU's competence to be expanded in relation to the administration of elections. They felt that the current division of competences allowed issues to be dealt with quickly in the UK courts, and changes to be made without having to involve the EU (a move which could complicate and therefore lengthen the process of achieving any necessary change).<sup>3</sup>

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<sup>1</sup> Association of Electoral Administrators, *submission of evidence*; and Electoral Reform Society, *submission of evidence*.

<sup>2</sup> *Record of 23 June 2014 stakeholder event* (Group Two – Discussion One – Competence over the Administration of Elections, London).

<sup>3</sup> *Idem*.

- 3.5 If changes were to be made to the current division of responsibilities, difficulties may arise where multiple Member State' traditions come into play, and there would need to be an equal appetite for change across all Member States.
- 3.6 One particular area which respondents felt would benefit from being reviewed at both an EU and Member State level was that of the Information Exchange mechanism. Whilst upholding an important point of principle, all respondents who commented on the Information Exchange mechanism found the current arrangements to be seriously flawed.
- 3.7 Some respondents felt that the existing mechanism should be removed completely, and responsibility for preventing double voting should revert back to Member States through the application of appropriate sanctions.<sup>4</sup> These respondents generally took the view that the benefits that would be realised in terms of administration and ease for the elector would outweigh the minimal risk of double voting occurring.
- 3.8 Others called for a more robust, streamlined and user-friendly system. For example, New Europeans took the view that increased benefits would be realised for the EU citizen if the requirement to complete a separate declaration ahead of a European Parliamentary election was removed.<sup>5</sup> New Europeans also suggested that a more user-friendly approach to protecting electoral integrity would be for EU citizens residing in other Member States to complete a declaration when they cast their vote, confirming that they have not and will not vote anywhere else.<sup>6</sup> Electoral Administrators, on the other hand, proposed that the declaration should continue to take place at the point of registration.<sup>7</sup>
- 3.9 Electoral Administrators felt it was particularly important that issues resulting from differing electoral processes should be addressed. A particular concern was the inconsistent information collected on EU citizens by each Member State. Many felt the current declaration forms did not capture sufficient information to identify electors. In addition, all Electoral Administrators recommended that a set deadline be introduced for exchanging data between Member States, and similarly for there to be a set deadline for EU citizens to choose which Member State they wish to vote in. It was felt that such steps would limit the confusion experienced by electors, but would also ensure Member States did not receive data after the point at which it became redundant.<sup>8</sup>
- 3.10 Overall, the resounding recommendation from the majority of respondents was for the EU and Member States to evaluate whether the current regime remains appropriate and proportionate to its aim. Central to any such review was felt to be the need for Member States to balance the importance of preventing double voting with the potential impacts on EU citizens, such as disenfranchisement.
- 3.11 There are already steps being taken in this area. Following the reports of a number of EU citizens finding themselves unable to vote in the 2014 UK European Parliamentary elections, the UK Government is, as stated, working with the European Commission to establish the exact reasons for this and what steps could be taken to prevent it happening in future. However, if changes are to be made to the operation of the Information Exchange, it will require the agreement of all Member States.

<sup>4</sup> Regional Returning Officer for the South West Region, *submission of evidence*; Chief Executive, Manchester City Council, *submission of evidence*; Halarose, *submission of evidence*; Association of Electoral Administrators, *submission of evidence*.

<sup>5</sup> New Europeans, *submission of evidence*.

<sup>6</sup> *Idem*.

<sup>7</sup> A summary of comments from 54 Electoral Registration Officers on the Information Exchange (available in published evidence).

<sup>8</sup> *Idem*.

## Proposal for a Common Voting Day

3.12 As set out in Chapter One, the European Commission has suggested a common voting day for European Parliamentary elections. Views amongst respondents were mixed as to whether this would benefit the UK. James Organ from the Liverpool European Law Unit stated that if the European Parliamentary elections were viewed as a single election across a wide geographical area, then a common voting day could ‘reduce the possibility of voters being influenced by the voting patterns in other areas’.<sup>9</sup> This view was shared by attendees of our stakeholder event in Brussels.<sup>10</sup> Mr Organ also felt that having a common voting day could ‘enhance the status of European elections and possibly lead to an increase in citizen deliberation and turnout’, but acknowledged that:

*Without a strong democratic basis for change, the decision to move to a common day for voting is likely to depend on whether the UK and other Member State governments want to maintain their electoral traditions and the impact on electoral administration.*<sup>11</sup>

3.13 Others raised concerns about moving to a common voting day. Some suggested that moving to a Saturday or Sunday could present issues for religious reasons.<sup>12</sup> The Chief Electoral Officer for Northern Ireland highlighted that if the election were held on a Sunday, ‘turnout [in Northern Ireland] would inevitably decline and the result of the election would be skewed’.<sup>13</sup>

3.14 Others, including the Association of Electoral Administrators, said there could be increased costs for the UK if the poll at the European Parliamentary election was not combined with polls at other elections.<sup>14</sup> Senior Electoral Administrators at Birmingham City Council also suggested that holding European and local elections on different days could present recruitment issues for Local Returning Officers.<sup>15</sup>

3.15 Overall, whilst some thought there could be merit in Member States looking at whether a common voting day could be agreed, respondents felt it was right that the competence for determining the day of the election should remain with Member States. Should the EU wish to move to a common voting day, it would have to follow a special legislative procedure under Article 223(1) TFEU. This would involve the Council (with the consent of the majority of MEPs) unanimously agreeing upon a legislative proposal which had been drawn up by the European Parliament. This proposal would then have to be approved by each Member State before it came into force.

3.16 The UK Government has made clear that it does not support the European Commission’s recommendation proposing a common voting day for European Parliamentary elections. An Explanatory Memorandum submitted by the Foreign and Commonwealth Office in April 2013 stated that:

<sup>9</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>10</sup> *Record of the 29 April 2014 stakeholder event (Common Voting Day, Brussels)*.

<sup>11</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>12</sup> *Record of the 29 April 2014 stakeholder event (Common Voting Day, Brussels)*; and Chief Electoral Officer for the Electoral Office for Northern Ireland, *submission of evidence*.

<sup>13</sup> Chief Electoral Officer for the Electoral Office for Northern Ireland, *submission of evidence*.

<sup>14</sup> Association of Electoral Administrators, *submission of evidence*; and Senior Electoral Administrators, Birmingham City Council, *submission of evidence*.

<sup>15</sup> Senior Electoral Administrators, Birmingham City Council, *submission of evidence*.

The UK will not be changing the day of the week on which it holds elections [...] We do not believe that the Commission's stated aim of increasing turnout in European Parliament elections would be served [...] and could instead have the opposite impact.<sup>16</sup>

## Maintaining Competence for the Franchise

- 3.17 Chapter One sets out the context of the franchise for Member States' national elections. The European Commission has suggested that Member States consider enfranchising all resident EU citizens for their national elections and allow citizens who have exercised their right to free movement to maintain their right to vote in national elections in their home Member State indefinitely.<sup>17</sup> The Commission also noted that, whilst it is for Member States to decide upon the franchise for their national elections, the EU could possibly use Article 25 TFEU to complement the rights enjoyed by EU citizens.<sup>18</sup> If the EU were to seek to legislate in this area (a special legislative procedure would apply and all Member States would have to approve the provisions), the franchise for UK Parliamentary elections could potentially be opened up to UK citizens who have lived in another Member State for more than 15 years as well as all EU citizens resident in the UK.
- 3.18 Some respondents felt it right for the European Commission to seek to influence Member States where it felt national policy might interfere with the principles conferred by the Treaties (for example, the principle of free movement). However, many other respondents were clear that this competence should go no further, and some raised concerns about the potential challenges and impact that Member States could face if the EU's influence in this arena were extended too far. For example, attendees at the London stakeholder event felt that 'the more the EU seeks to influence the franchise at a local level, the more likely it is that local variations which have particular historical basis will come into question'.<sup>19</sup>
- 3.19 Throughout the evidence, it was considered important that national governments retain control over their electoral traditions, and that where such traditions come into conflict with the position of the European Commission it should be for Member States to resolve through multilateral agreement.
- 3.20 The UK Government has agreed in the context of the Coalition Agreement that the obligations under the ECHR will continue to be enshrined in UK law. While the Coalition parties have expressed views on policy directions they may wish to consider in the future, the Coalition Agreement makes it clear there will be no major changes to the human rights framework, which can have an impact on voting rights, before the next UK Parliamentary election in May 2015.

## Increasing Citizen Engagement

### i) Direct Engagement

- 3.21 Respondents broadly concurred that it was important for systems to be in place to allow EU citizens to engage directly with the EU institutions, and that it was appropriate for competence for these mechanisms to remain at an EU level. However, many respondents

<sup>16</sup> Foreign and Commonwealth Office, *Explanatory Memorandum on European Union Documents Submitted on 17/04/2013* (2013).

<sup>17</sup> Commission Communication COM(2014) 33 final on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, 2014; Commission Report COM(2013) 269 final, *EU Citizenship Report 2013. EU citizens: Your Rights, Your Future* (2013); and Commission Recommendation C(2014) 391 final on addressing the consequences of disenfranchisement of EU citizens exercising their rights to free movement, 2014. Communication COM(2013) 33 and Recommendation C(2014) 391 are non-binding on Member States.

<sup>18</sup> Commission Communication COM(2014) 33 final on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, 2014.

<sup>19</sup> *Record of 23 June 2014 stakeholder event* (Group one – Discussion One – The Franchise, London).

- raised concerns about the current operation of the ECI mechanism and consequently felt that a key challenge for the EU and Member States would be increasing the accessibility of the ECI for EU citizens, and developing procedures which would allow the ECI to reach its full potential as a useful tool for democratic engagement.
- 3.22 There were contrasting views between respondents on how this could be best accomplished. Christian Concern suggested that it would be beneficial to extend the European Union ‘competence for the specification of information required in verification, the mechanism for adding support and the process of verifying’. They felt that this would resolve a number of the Member State discrepancies, limiting the complexity that organisers of ECIs experience when collecting and verifying information from citizens in different Member States.<sup>20</sup>
- 3.23 However, James Organ of the Liverpool European Law Unit took the view that the ‘resolution of the administrative and democratic issues resulting from inconsistency lies in developing closer cooperation between the Member States and overcoming the reluctance to depart from the traditional approach to electoral processes in any given state’.<sup>21</sup>
- 3.24 A few respondents questioned the current role the European Commission played in the approval of ECIs. It was felt by some that the European Commission’s current power to veto successful ECIs was detrimental to the principle of ‘direct democracy’. Christian Concern, in particular, felt that citizens would benefit from ‘the role of the Commission [being] restricted to framing appropriate legislative proposals for consideration by the European Parliament’, with an additional role ‘providing the Parliament with transparent and objective information on the pros and cons of such legislation’.<sup>22</sup> Christian Concern recommended that there should be a ‘reform of the relative roles of the different organs of the Union’ and that ‘the role of first judgment on political merits of legislative proposals [...] [should] lie entirely with the European Parliament’.<sup>23</sup>
- 3.25 Similarly, attendees at the London stakeholder event suggested that more flexibility was required on the part of the European Commission.<sup>24</sup> James Organ stated that one of the main limitations to the ECI’s ability to influence EU policy was ‘one of legal interpretation by the Commission and political will to strengthen the role that the ECI gives to EU citizens’.<sup>25</sup>
- 3.26 In November 2014, the European Parliament’s Committee on Constitutional Affairs (AFCO) held a workshop entitled ‘Challenges in constitutional affairs in the new term: taking stock and looking forward’, which included an examination of the challenges of running an ECI and recommendations as to how the process could be improved.<sup>26</sup> It was noted by a few respondents that the European Commission was due to commence its three yearly review of the ECI, required under EU law.<sup>27</sup> Respondents felt this would present a useful opportunity

<sup>20</sup> Christian Concern, *submission of evidence*.

<sup>21</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>22</sup> Christian Concern, *submission of evidence*.

<sup>23</sup> *Idem*.

<sup>24</sup> *Record of 23 June 2014 stakeholder event* (Group One – Discussion Two – European Citizens’ Initiative, London).

<sup>25</sup> Liverpool European Law Unit, *submission of evidence*.

<sup>26</sup> European Parliament Constitutional Affairs Committee (AFCO), *Workshop: ‘Challenges in constitutional affairs in the new term: taking stock and looking forward’* (6 November 2014). Available at: <http://www.europarl.europa.eu/committees/en/afco/events.html#menuzone>, accessed on 24 November 2014.

<sup>27</sup> Regulation 211/2011/EU on the citizens’ initiative, 2011, art. 10. The review is due to be presented to the European Parliament and the Council by 1 April 2015.

through which the EU and Member States could look to strengthen the extent to which ordinary EU citizens are able to have a voice in directly influencing EU policy and law making.

3.27 The UK Government is clear that the ability for citizens to hold to account the institutions that govern them is vital for democracy to function effectively. At the EU level, the Government believes national parliaments are a vital part of ensuring that accountability. This is because voters understand more clearly how they can influence their national parliaments. For example, voters can influence the decisions made by the UK Parliament through the ballot box, by attending constituency surgeries and by writing to their MP. These readily understood democratic levers are why the UK Government believes that involving national parliaments more in EU decision making is likely to make a more effective contribution to ensuring democratic accountability at an EU level than other initiatives would. For that reason, the UK Government will continue to focus its efforts on strengthening the role of national parliaments in EU decision making. The role of national parliaments in EU decision-making is considered further later in this chapter.

## ii) Citizen Awareness and Education

3.28 A repeated concern raised by respondents was that UK citizens often have little knowledge of what being an EU citizen entails and are considerably less informed and more undecided on issues relating to the EU than citizens from other Member States.

3.29 There were a range of views on how best this issue could be addressed. Professor Christopher Meyer and Dr Edoardo Bressanelli of King's College London recommended 'investment in citizenship education at all levels which includes basic information about the EU and how to influence it'. They felt that this would allow public information campaigns about opportunities, such as the ECI, to fall on more fertile ground.<sup>28</sup> In contrast, some attendees at the London stakeholder event felt the key to voter education would be 'to have more concerted efforts at an EU level to explain what the institutions do'.<sup>29</sup>

3.30 Others felt that there was much more that UK political parties could be doing to encourage electors to engage with EU issues. Professor Hermann Schmitt of the University of Manchester highlighted that political parties were 'an essential link between citizens and policy making' and stated that 'there are just no other instruments available than general elections to effectively involve more than 300 million adult citizens in the political process'.<sup>30</sup>

3.31 The Human Rights Consortium Scotland noted the 'extensive competence of the UK to put in place democratic engagement schemes at a national level', and called for this power to be developed further so that the 'UK takes the initiative and enables people [to] know more about "Europe" and understand its impact on people's daily lives'.<sup>31</sup>

3.32 However, with the European Commission having committed in its 2013 Citizenship Report 'to raise awareness about EU citizenship and the concrete rights it confers to all EU citizens, in particular their electoral rights, and about the possibilities to participate in the decision making', some felt it might pose a challenge in terms of where competence for EU citizen education should lie.<sup>32</sup>

<sup>28</sup> King's College London, *submission of evidence*.

<sup>29</sup> *Record of 23 June 2014 stakeholder event* (Group Two, Discussion Two - European Citizens' Initiative, London).

<sup>30</sup> University of Manchester, *submission of evidence*.

<sup>31</sup> Human Rights Consortium Scotland, *submission of evidence*.

<sup>32</sup> Commission Report COM(2013) 269 final, *EU Citizenship Report 2013; 'EU citizens: Your Rights, Your Future'* (2013).

3.33 The UK Government already works to promote democratic engagement, particularly amongst under-registered groups. However, a general view amongst respondents was that it could be beneficial to consider the current division of competence between Member States and the EU in specific relation to EU citizenship engagement. Many felt it would be useful for more clearly defined roles to be established in relation to informing voters on what they were voting for and/or engaging with, and how the EU institutions functioned.

### iii) Engagement and Democratic Accountability

3.34 The accountability of EU institutions can be linked to the engagement of citizens with EU democracy. Respondents suggested potential changes to the current systems which they believed would make the EU more accountable and which could improve levels of citizen engagement.

### The Electoral System

3.35 On the voting system used for UK European Parliamentary elections, many respondents highlighted concerns with the closed list system currently in place. Some felt that a move to an open list system might be of benefit in better engaging UK citizens. As highlighted by the Electoral Reform Society, ‘the introduction of an open list [...] system would change the nature of European Parliamentary elections. Parties would need to promote individual candidates in order to garner votes, giving voters a clearer idea of who their representatives are and [in the process] informing them [...] driving up interest and turnout’.<sup>33</sup>

3.36 In addition, respondents commented on the stipulation that MEPs must be elected on the basis of proportional representation (either using a list system or the single transferable vote system). As discussed in Chapter Two, whilst some respondents felt that this weakened the electoral link between UK electors and their MEPs, others were of the view that the EU was right to require Member States to adopt a system of proportional representation for European Parliamentary elections. Treaty changes, which would require the unanimous agreement of all Member States, would be needed to change the voting system for European Parliamentary elections (for example, to return to the first past the post system which existed in the UK until the 1999 European Parliamentary elections).<sup>34</sup>

### Representation of Member States in the European Parliament

3.37 With regards to the question of whether UK citizens are adequately represented in the European Parliament, the European Parliament has committed to undertaking a review during the first half of the current European Parliamentary term (2014-2019), with the aim of devising a more degressively proportional formula for the European Council to consider and agree upon before the 2019 European Parliamentary elections.<sup>35</sup>

### Democratic Deficit and the Role of National Parliaments

3.38 In an article published through the London School of Economics European Politics and Policy academic blog (LSE EUROPP), Anand Menon of King’s College London argued that ‘when it comes to ensuring the democratic legitimacy of the European Union, the

<sup>33</sup> Electoral Reform Society, *submission of evidence*.

<sup>34</sup> TEU post-Lisbon, *supra* note 11, art 48, 2010 O.J. C 83 at 41.

<sup>35</sup> House of Commons European Scrutiny Committee, *Documents considered by the Committee on 19 June 2013* (HC 2013-14, 83vi) p71.



European Parliament is simply not fit for purpose'. In his view, 'the only alternative is to link the EU more closely with national political processes [...] [since they] [...] engage citizens in debates over partisan politics to a far greater extent'.<sup>36</sup>

3.39 Some respondents also noted this point. For example, the Electoral Reform Society felt that 'empowering national parliaments would help to reduce some of the democratic deficit between citizens and the EU', and proposed that 'national parliaments should have increased powers to block EU legislation and the power to initiate as well'.<sup>37</sup> In addition, some attendees at the London stakeholder event proposed that a mechanism should be put in place to allow each Member State to have a say over the issues that the European Parliament discussed on a certain day.<sup>38</sup>

3.40 However, other respondents felt that national influence was already exerted through the Council and the European Council. Profesor Christoph Meyer and Dr Edoardo Bressanelli highlighted that:

European citizens are directly represented in the European Parliament (the supranational channel) and Member States are represented in the European Council and the Council of Ministers, which are in turn accountable to national parliaments and citizens (intergovernmental channel).<sup>39</sup>

3.41 Article 12 TEU recognises the right of national parliaments to be involved in the EU legislative process. Their participation mainly takes two forms; a right to information and a right to opposition. The Treaty of Lisbon also introduced a Protocol on the Role of National Parliaments. This enshrined EU commitments on the provision of documentation to national parliaments; the right to submit a reasoned opinion on conformity with subsidiarity; an eight-week period for national parliaments to scrutinise proposals before consideration by the Council; and to better inter-parliamentary cooperation between national parliaments and the European Parliament.

3.42 The House of Lords European Union Select Committee recently concluded that 'the effective involvement of national parliaments is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union'.<sup>40</sup> The UK Government supports an enhanced role in EU decision making for national parliaments. The UK Government's response to the Select Committee's report stated that:

This report adds credible and reasoned weight to national parliaments' calls for a greater role in the functioning of the EU. The real source of democratic legitimacy in the EU lies with national parliaments and national governments. The Government is clear that people in Europe identify with their national parliaments more than EU institutions. People understand how to make their voice heard through national parliaments. And those parliaments are closer to, and better understand, the concerns of citizens.<sup>41</sup>

<sup>36</sup> Professor Anand Menon, 'The European Union Must Have a Closer Link to National Politics if it is to Retain its Legitimacy', *LSE EUROPP Blog* (June 2014). Available at: <http://blogs.lse.ac.uk/europpblog/2014/06/19/the-european-parliament-must-have-a-closer-link-to-national-politics-if-it-is-to-retain-its-legitimacy/>, accessed on 24 November 2014.

<sup>37</sup> Electoral Reform Society, *submission of evidence*.

<sup>38</sup> *Record of 23 June 2014 stakeholder event* (Group 2 , Discussion Two – European Citizens' Initiative, London).

<sup>39</sup> King's College London, *submission of evidence*.

<sup>40</sup> House of Lords European Union Committee, *The Role of National Parliaments in the European Union* (HL 2013-14, 151) p5-6.

<sup>41</sup> Government Response to the House of Lords European Union Committee Report (HL 2013-14, 151), 'The Role of National Parliaments in the European Union' (2014).

The UK Government's view on the involvement of national parliaments was also made clear in the Prime Minister's speech at Bloomberg in January 2013.<sup>42</sup>

- 3.43 This issue is discussed further in the Balance of Competences Report on Subsidiarity and Proportionality.

## Alternative Models for the European Parliament

- 3.44 The evidence directly received from respondents did not refer to the issue of alternative models for the European Parliament. However, some suggestions for alternative models have been made in other forums.

### Indirectly Elected European Parliament

- 3.45 One alternative suggestion is for a return to an indirectly elected European Parliament made up of delegated national representatives (as was the case before the first direct elections to the European Parliament in 1979).
- 3.46 The main argument put forward by proponents of such a move is that it would increase the democratic legitimacy of the European Parliament. In an essay published by the pro-reform think tank, Centre for European Reform, in 2010, Anand Menon and John Peet summarised their view of the European Parliament as 'a crucial problem that has undermined, and continues to undermine, the legitimacy of the EU'. They felt that 'after direct elections [to the European Parliament] were introduced in 1979... [the] organic link with national parliaments was weakened and, when dual mandates (allowing MEPs simultaneously to serve as MPs in their own country) were scrapped, later broken altogether'.<sup>43</sup>
- 3.47 This view was also expressed in an article published through the LSE EUROPP blog by Dr Herman Lelieveldt of Utrecht University. He argued that, of the reasons that make reintroducing a 'dual mandate' beneficial, 'first and foremost' is that it would 'give the European Parliament back its legitimacy'.<sup>44</sup> Similarly, in an article also published through the LSE EUROPP blog, Sir Robert Cooper (a UK diplomat and current Special Advisor at the European Commission) argued for a 'return to a system in which the European Parliament is composed of members nominated by national parliaments'. He suggested a mixture of MPs and other full-time delegates could be nominated as delegates and felt that 'if this worked, Europe would be better connected to the people and to national politics'.<sup>45</sup>
- 3.48 This opinion is also shared by some politicians. For example, in 2012, former Home Secretary and Secretary of State for Foreign and Commonwealth Affairs, the Rt Hon Jack Straw MP, argued at an Institute for Public Policy Research seminar that the European Parliament should be replaced by an assembly of delegated national representatives

<sup>42</sup> Prime Minister (Rt Hon David Cameron MP) speech at Bloomberg's City of London offices, January 2013. Available at: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>, accessed on 8 December 2014.

<sup>43</sup> Anand Menon and John Peet, 'Beyond the European Parliament: Rethinking the EU's Democratic Legitimacy', Centre for European Reform Essays (2010).

<sup>44</sup> Dr Herman Lelieveldt, 'The European Parliament Should Return to a 'Dual Mandate' System which uses National Politicians as Representatives Instead of Directly Elected MEPs', *LSE EUROPP Blog* (June 2014). Available at: <http://blogs.lse.ac.uk/europpblog/2014/06/16/the-european-parliament-should-return-to-a-dual-mandate-system-which-uses-national-politicians-as-representatives-instead-of-directly-elected-meps/>, accessed on 24 November 2014.

<sup>45</sup> Sir Robert Cooper, 'The European Union Does Not Have a Democratic Deficit – It Has a Democratic Surplus', *LSE EUROPP Blog* (June 2014). Available at: <http://blogs.lse.ac.uk/europpblog/2014/06/11/the-european-union-does-not-have-a-democratic-deficit-it-has-a-democratic-surplus/>, accessed on 24 November 2014.

chosen by national parliaments.<sup>46</sup> Correspondingly, in an article written for the *Daily Telegraph* in April 2014, London Mayor Boris Johnson argued that instead of elections to a European Parliament, the UK should ‘appoint the British delegation of 73 MEPs from our [...] stock of parliamentarians’.<sup>47</sup>

- 3.49 However, others are opposed to such a move. In response to the comments made by the Rt Hon Jack Straw MP (outlined above), Professor Simon Hix of the London School of Economics argued that ‘the European Parliament is still a very new institution in politico-constitutional terms, and it takes time to create a strong connection between European voters and MEPs’. Professor Hix argued that the previous, indirectly elected, European Parliament was ineffectual, and that the European Parliament currently did a ‘pretty good job of holding the governments in Council and the Commission to account, and acting as a break on policy-making and legislation’.<sup>48</sup>
- 3.50 Evidence suggests that a move such as this could also encounter practical difficulties, including in relation to MPs covering such a large additional workload. As Professor Hix stated, ‘national MPs are far too busy doing national politics to want to spend much time doing EU politics as well [...] This was a major problem before 1979 [...] it would be much more of a problem now because of the expanded policy agenda of the EU, the extensive legislative powers that the European Parliament now has, and the expansion of EU’s single market and political institutions to cover 27 countries and 500 million citizens’.<sup>49</sup> In addition, a change such as this would involve a number of changes to existing Treaties, requiring the unanimous agreement of all Member States.<sup>50</sup>

### The Establishment of a Second Chamber

- 3.51 Another suggestion, which would also enhance the role of national parliaments in the EU decision-making process, is the formation of a second chamber for the European Parliament, comprised of delegates from each Member State parliament. In a similar fashion to the suggestion for an indirectly elected European Parliament, some see this as a means to increase the democratic legitimacy of the European Union.
- 3.52 However, evidence highlights that this suggestion could also encounter practical issues. For example, in evidence given to the House of Commons European Scrutiny Committee, the Minister for Europe, the Rt Hon David Lidington MP, argued that ‘knowing the constituency workloads of Members of the House of Commons, it is difficult to see how in practice that [second chamber] would work’.<sup>51</sup> Dr Richard Corbett MEP highlighted a different concern in his evidence to the House of Lords European Union Committee. He stated that:

<sup>46</sup> The Guardian, *European Parliament Should be Abolished, says Jack Straw* (21 February 2012). Available at: <http://www.theguardian.com/world/2012/feb/21/european-parliament-abolish-jack-straw>, accessed on 24 November 2014.

<sup>47</sup> The Telegraph, *There’s a Simple Solution to this Euro-Elections Sham* (27 April 2014). Available at: <http://www.telegraph.co.uk/news/politics/10791873/Theres-a-simple-solution-to-this-Euro-elections-sham.html>, accessed on 24 November 2014.

<sup>48</sup> Professor Simon Hix, ‘Why the European Parliament Should Not be Abolished’, *LSE EUROPP Blog* (March 2012). Available at: <http://blogs.lse.ac.uk/euoppblog/2012/03/05/why-european-parliament-not-abolished/>, accessed on 24 November 2014.

<sup>49</sup> *Idem*.

<sup>50</sup> TEU post-Lisbon, *supra* note 11, art. 48, 2010 O.J. C 83 at 41.

<sup>51</sup> House of Commons European Scrutiny Committee, *Reforming the European Scrutiny System in the House of Commons* (HC 2013-14, 109-II), evidence.

Above all, there is perhaps a very practical problem. It would be a bit like the pre-1979 European Parliament. One day there would be no German member there because of an important vote in Bundestag; the next day, there would be no British member there because of an important debate in the House of Commons; the next day, there would be no French member there for another reason. The majorities would be haphazard – they would not work very well – and the members of course would be doing it only on a part-time basis because their main focus would be their work in their national parliament, and rightly so.<sup>52</sup>

## Summary of Options and Challenges

- 3.53 In relation to the administration of European Parliamentary elections, there was general agreement among respondents that it would benefit the UK, other Member States and EU citizens generally if the Information Exchange designed to prevent double voting were to be reviewed.
- 3.54 The European Commission's proposal for a common voting day for European Parliamentary elections has also been considered. Overall, it was felt by respondents that competence for determining the day of election should remain with Member States.
- 3.55 With regards to the franchise, the main challenge seen by respondents was to ensure the current level of competence remained, with concerns about the 15 time limit on overseas voting rights generally felt to be a matter for the UK Government to consider.
- 3.56 With respect to citizenship engagement, respondents were of the view that it was important for there to be mechanisms in place to allow EU citizens to engage directly with the European Parliament. It was noted that the European Commission's first triennial review of the ECI (due to be presented to the European Parliament and Council by 1 April 2015) would offer a useful opportunity through which to strengthen the voice of UK and EU citizens in the democratic process.
- 3.57 Linked to the issue of engagement, there was a general accord amongst respondents that UK citizens would benefit from greater awareness of the EU electoral process and the EU institutions. Suggestions were made on how this could be achieved, including:
- Increased investment in EU citizenship education;
  - More concerted efforts at an EU level to explain what the EU institutions do; and
  - For UK political parties to play a greater role in the engagement of UK citizens on EU issues.
- 3.58 There was also an overall sense from respondents that the UK could benefit from there being clearer and more defined roles between the EU and Member States on citizenship engagement.
- 3.59 Respondents also suggested potential changes to current systems which could make the EU more accountable and therefore improve levels of engagement, including changes to the electoral system used to elect MEPs in the UK and a greater role for national parliaments in EU decision making.
- 3.60 Overall, with regard to the future landscape on voting matters, the evidence suggested that the focus for the EU and UK was likely to centre on the compatibility of processes around differing electoral registration systems and the need to increase citizen awareness, rather than making any significant changes to the current balance of competences.

<sup>52</sup> House of Lords European Union Committee, *The Role of National Parliaments*.

# Section 2: Consular

## Section 2, Consular Executive Summary

Chapter One details the historic development and current state of the EU's limited competence in consular services, which now relates to the coordination of efforts between Member States and the requirement that, in consular matters, Member States must treat unrepresented EU citizens in the same way as they would treat their own nationals. The chapter defines the consular services covered in this competence which range from general advice and routine help, such as an emergency travel document following the loss of a passport, to help in sensitive or complex cases, such as for victims of serious crime, and assistance during a crisis.

The chapter explains that the provision of consular assistance is primarily a Member State competence and that there is nothing in the EU Treaties on which services, if any, must be provided or in what way or to what standard any particular service must be provided.

Chapter Two covers the impact on the UK national interest of the current arrangement and gives examples of where British nationals have received consular assistance from other EU Member States, including in Libya, South Sudan and the Central African Republic.

Some respondents expressed the view that the current arrangements benefited the UK as they provided a back-up in the few places where there was no UK representation. The broad consensus from the evidence received was that the competence was set at the right level but some expressed concerns that the needs of British nationals could become compromised if unrepresented EU nationals also had to be assisted, especially when resources were limited. Some also thought that the arrangement could be used as an excuse to reduce UK representation.

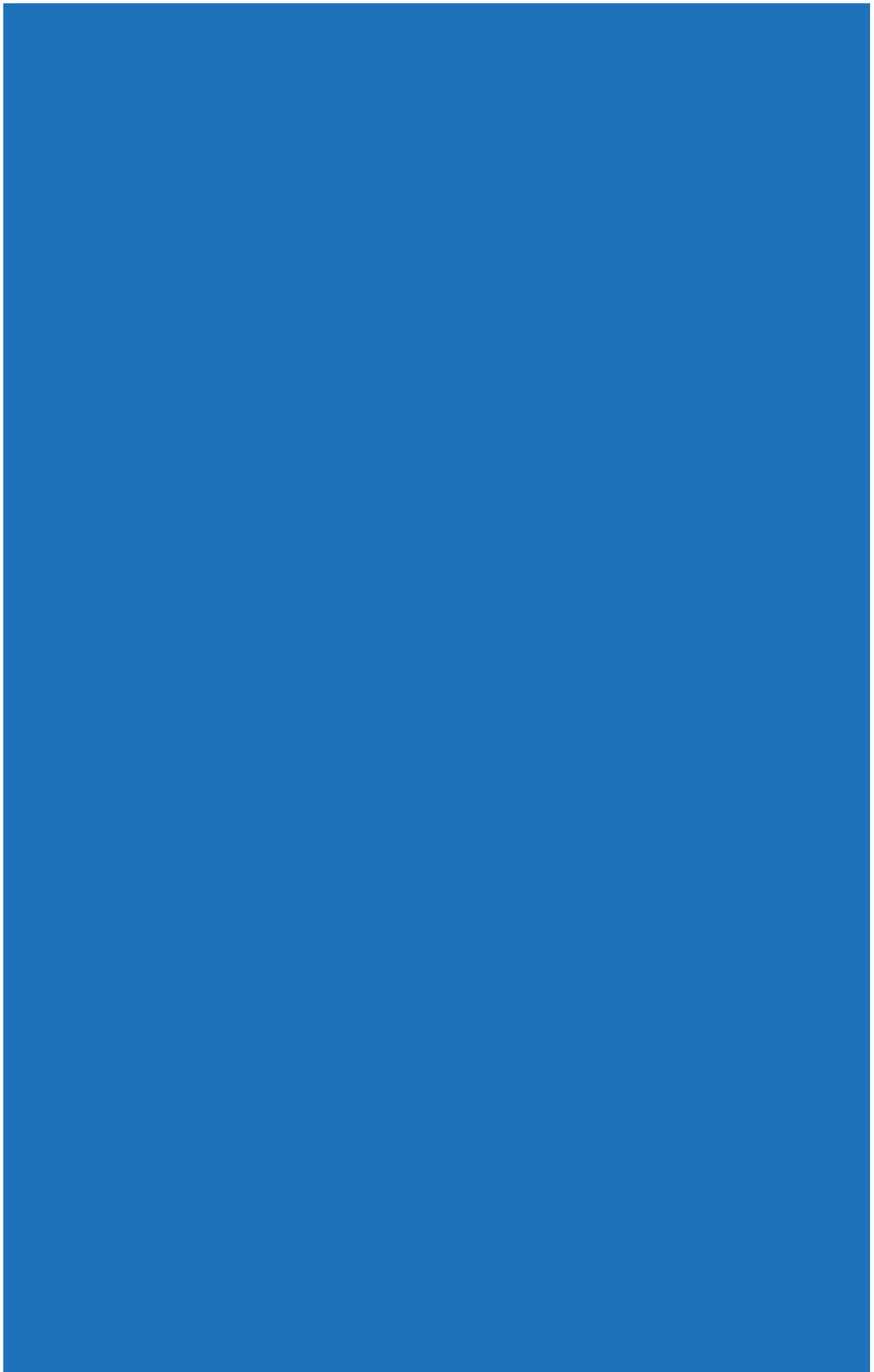
Chapter Three covers future options and challenges and looks at proposals for changes in the way that consular services are provided within the EU. Some proposals date back to 2006, but are still part of the current debate.

The proposals focus on sharing the demand across the available resources. The proposals are grouped and considered under three headings:

- Proposals for EU regulation and legislation;
- Proposals for common or shared consulates and co-location; and
- Proposals for co-operation during crises.

Some proposals seek to create a role for EU institutions including a central regulating role. The UK Government is concerned that this could create a right to consular assistance, contrary to Member States' current practice and the Treaty on European Union (TEU), and could limit Member States' flexibility to respond and move resources to where they are most needed.

Evidence received from the British public showed that the primary concern centred on the quality of services and that they hold the British Government accountable when they perceive that quality standards have not been met. Organisations that work with British nationals overseas thought it important to retain flexibility to prioritise and target resources to ensure the most effective response.





## Section 2, Consular

# Chapter 1: Development and Current State of Competence

### Introduction

- 1.1 Consular services have a history as long as international relations themselves. Their basis has always been bilateral, between one country and another. They are governed by the Vienna Convention on Consular Relations, the Optional Protocol concerning Acquisition of Nationality and the Optional Protocol concerning the Compulsory Settlement of Disputes (the VCCR), which came into force in 1967. The VCCR has been ratified by 177 countries.<sup>1</sup>
- 1.2 Article 5 of the VCCR sets out the services or activities that are consular functions.<sup>2</sup> This includes many activities, from furthering economic and trade relations to helping individuals with official documentation. The usual definition of consular services is the assistance given to people who are in difficulty when they are visiting or resident overseas. The assistance ranges from issuing emergency travel documents to providing help in grave or complex situations, such as help to the victims of serious crimes and visiting those arrested or in prison overseas. It includes working with people affected by a crisis.

### Member State and EU Competence

- 1.3 The provision of consular assistance is primarily a Member State competence. There is no power in the EU Treaties to determine which services, if any, must be provided or in what way 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 and coordinate Member States' consular actions.

### Development of the EU's Role

- 1.4 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>3</sup>

<sup>1</sup> UN, *Treaty Collection* (2014).

<sup>2</sup> Set out in detail in Appendix 1.

<sup>3</sup> Treaty on the European Community (TEC), art. 20.

- 1.5 This led to the EU Council Decision which provided that Member States should assist unrepresented EU citizens in the same way as they would assist their own nationals.<sup>4</sup> Further EU legislation established a common form emergency travel document, as well as rules governing the issue of, and security measures relating to, the document.<sup>5</sup> The recitals of the Council decisions also refer to citizenship and solidarity.<sup>6</sup>
- 1.6 The competence given to the EU in Article 23 of the Treaty on the Functioning of the European Union (TFEU) does not cover the full breadth of consular functions, such as trade promotion, but relates to the services to individuals or groups of individuals.<sup>7</sup>
- 1.7 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 (QMV), after consulting the European Parliament. These provisions aim to ensure equal treatment for EU citizens, on the principle of non-discrimination – that is that Member States must treat unrepresented EU citizens in third countries in the same way as they would treat their own nationals when it comes to consular matters.
- 1.8 The entitlement to seek consular protection on the same basis as nationals was set out in Article 46 of the Charter of Fundamental Rights of the EU:

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>8</sup>

- 1.9 The Lisbon 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 State 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’.<sup>9</sup>

<sup>4</sup> Council Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995, made under art. 20 TEC.

<sup>5</sup> Council Decision 96/409/CFSP of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996.

<sup>6</sup> ‘...common protection arrangements will strengthen the identity of the Union as perceived in third countries; Bearing in mind that the introduction of common protection arrangements for citizens of the Union in third countries will also strengthen the idea of European solidarity as perceived by the citizens in question’. Council Decision 96/409/CFSP of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996.

<sup>7</sup> CARE, *Consular and Diplomatic Protection: Legal Framework in the EU Member States* (2010), p29.

<sup>8</sup> Charter of Fundamental Rights of the EU (2010/C 83/02).

<sup>9</sup> Consolidated Version of the Treaty On European Union (2008/C 115/01).

Article 35 was made under Common Foreign and Security Policy (CFSP), which means decisions under this article require unanimity amongst the Member States in the EU Council.

- 1.10 The European External Action Service (EEAS) 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.<sup>10</sup>

- 1.11 This confirms the supporting nature of the EEAS' role. 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'.<sup>11</sup>

- 1.12 There are also provisions under the Civil Protection Mechanism Article 16(7) to use that instrument in support of the provision of consular assistance:

The Union Mechanism may also be used to provide civil protection support to consular assistance to the citizens of the Union in disasters in third countries if requested by the consular authorities of the Member State concerned.<sup>12</sup>

## Links to the Concept of EU Citizenship

- 1.13 Developing a right to consular protection, with standard service levels, has been included in the concept of European Citizenship (see text box in the voting section of this report). The European Commission's proposals have sought to re-enforce consular protection as part of the concept of an EU citizenship identity. This has also been supported by members of the European Parliament. Martine Roure MEP, speaking on behalf of the Party of European Socialists (PES) in a European Parliamentary debate, said:

'the right to consular and diplomatic protection is one of the pillars of European citizenship [...] Article 20 of the Treaty. It is very clear. Every citizen has the right to consular protection. It is not an option, it is a right'.<sup>13</sup>

- 1.14 However this view does not reflect the terms of the TEU nor EU Member State practice. The EU Commission is seeking not only to extend its competence, but also extend the concept of citizenship to include defined levels of consular assistance. Only eight Member States consider consular protection a fundamental right given to their citizens. The CARE report groups Member States into five categories of arrangements. However none define the levels of consular assistance that will be provided in particular circumstances.

<sup>10</sup> Established in Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (EEAS) and officially launched in January 2011. Article 5 (10) of Council Decision 2010/427/EU

<sup>11</sup> European External Action Service, *EEAS Review 2013* (2013).

<sup>12</sup> Council Decision 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism Art 16(7)

<sup>13</sup> European Parliament, *Debates of the European Parliament* (2009).

## The Right to Consular Protection in Member States

- i. Countries having a constitutional provision that is widely accepted as providing a fundamental right\* to consular protection: Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Portugal and Romania.
- ii. Countries having a legislative provision that is interpreted as providing a right to consular protection: Denmark, Finland, Greece, Slovakia and Slovenia.
- iii. Countries with no specific legislative provision. Consular protection granted as a right based on the interpretation of specific national legislation as a whole and the relevant case law: Italy and Sweden.
- iv. Countries with no specific domestic provision that can be interpreted as conferring a right to consular protection to their citizens: Germany, Greece\*, Czech Republic, France, Luxembourg and Spain.
- v. No statutory right to consular protection, rather consular protection is given as a matter of policy: Austria, Belgium, Cyprus, Ireland, Malta, The Netherlands and the United Kingdom.

*Care, Consular and Diplomatic Protection: Legal Framework in the EU Member States* (2010) p608 NB: the Care Project did not include Croatia in its study.

\* A fundamental right is one specifically identified in a country's constitution

\* Greece is mentioned twice because of the discretion left to the State as to whether to provide consular assistance

1.15 These differences led Alexandr Vondra, then Deputy Prime Minister for European Affairs of the Czech Republic, the President-in-Office of the Council, to say:

The rules on cooperation in this area also reflect the fact that consular assistance and protection are viewed differently in different Member States. Some, for example, consider it to be a fundamental right of all citizens. Others consider it to be a service provided by the state. That is why the Treaty refers to consular protection as an “entitlement” and not a “right”.<sup>14</sup>

‘The right is one of non-discrimination, which re-enforces the primacy of Member State. None of the Treaty provisions confer the right to consular protection from an EU country that does not internally confer a right to consular protection on its citizens’.<sup>15</sup>

1.16 In November 2006, the European Commission issued a Green Paper on Diplomatic and Consular Protection of EU citizens in third countries.<sup>16</sup> This European Commission initiative sought to:

- give citizens more comprehensive information on their consular rights;
- examine the scope of the protection that citizens should be offered;

<sup>14</sup> European Parliament, *Debates of the European Parliament* (2009). Available at: [http://www.careproject.eu/database/upload/EUParliamentdebate/EUParliamentdebate\\_en\\_Text.pdf](http://www.careproject.eu/database/upload/EUParliamentdebate/EUParliamentdebate_en_Text.pdf), accessed on 25 November 2014.

<sup>15</sup> CARE, *Consular and Diplomatic Protection: Legal Framework in the EU Member States* (2010), p610.

<sup>16</sup> European Commission Green Paper, COM(2006) 712 final – Official Journal C 30 of 10.02.07, 28 November 2006.

- initiate a debate on the resources required by the Union, including to set up ‘common offices’ to perform consular functions, such as issuing visas or legalising documents; and
- develop links with third-country authorities.<sup>17</sup>

- 1.17 These proposals were included in ‘Effective consular protection in third countries: the contribution of the European Union: an Action Plan 2007-2009’.<sup>18</sup> This proposed a series of initiatives. Some were not considered controversial, such as providing information to the public on their entitlement under Article 20. Others involved EU institutions assuming roles beyond the terms of the TEU, such as to ‘set up a common office in a third country as a pilot project in cooperation with Member States’ and ‘consider the possibility for the Union to exercise protection through the Commission delegations in cases falling under Community competence’. These aspects of the action plan were not taken forward because of a lack of agreement from Member States.
- 1.18 In March 2011 the European Commission published a ‘State of Play and Way Forward on Consular Protection’.<sup>19</sup> This was followed in December 2011 by the publication of a draft Directive on consular protection for citizens of the EU abroad.<sup>20</sup> This legislative proposal outlined the cooperation and coordination measures deemed necessary to facilitate consular protection for the benefit of the citizen and the consular authorities. This was supported by the European Parliament on 25 October 2012 with 596 votes in favour.<sup>21</sup> The draft directive is still under discussion by Member States.

## EU Competence in Documentary Services

- 1.19 In 2013 the European Commission issued draft regulations relating to the acceptance of public documentation across EU Member States.<sup>22</sup> These include: removing any requirement to legalise certain public documents originating in Member States: lifting red tape relating to certification of copies and translations of public documents; and introducing EU multilingual standard forms for birth, death, marriage, registered partnership and legal status and representation of a company or other undertaking. However the regulations do not relate to documentation outside the EU, so are narrower in scope than consular services.

This report does not therefore further consider documentary or notarial services. Nor does it include visa services, which some Member States, but not the UK, consider a consular function.

<sup>17</sup> European Commission Green Paper on diplomatic and consular protection of Union citizens in third countries, November 2006

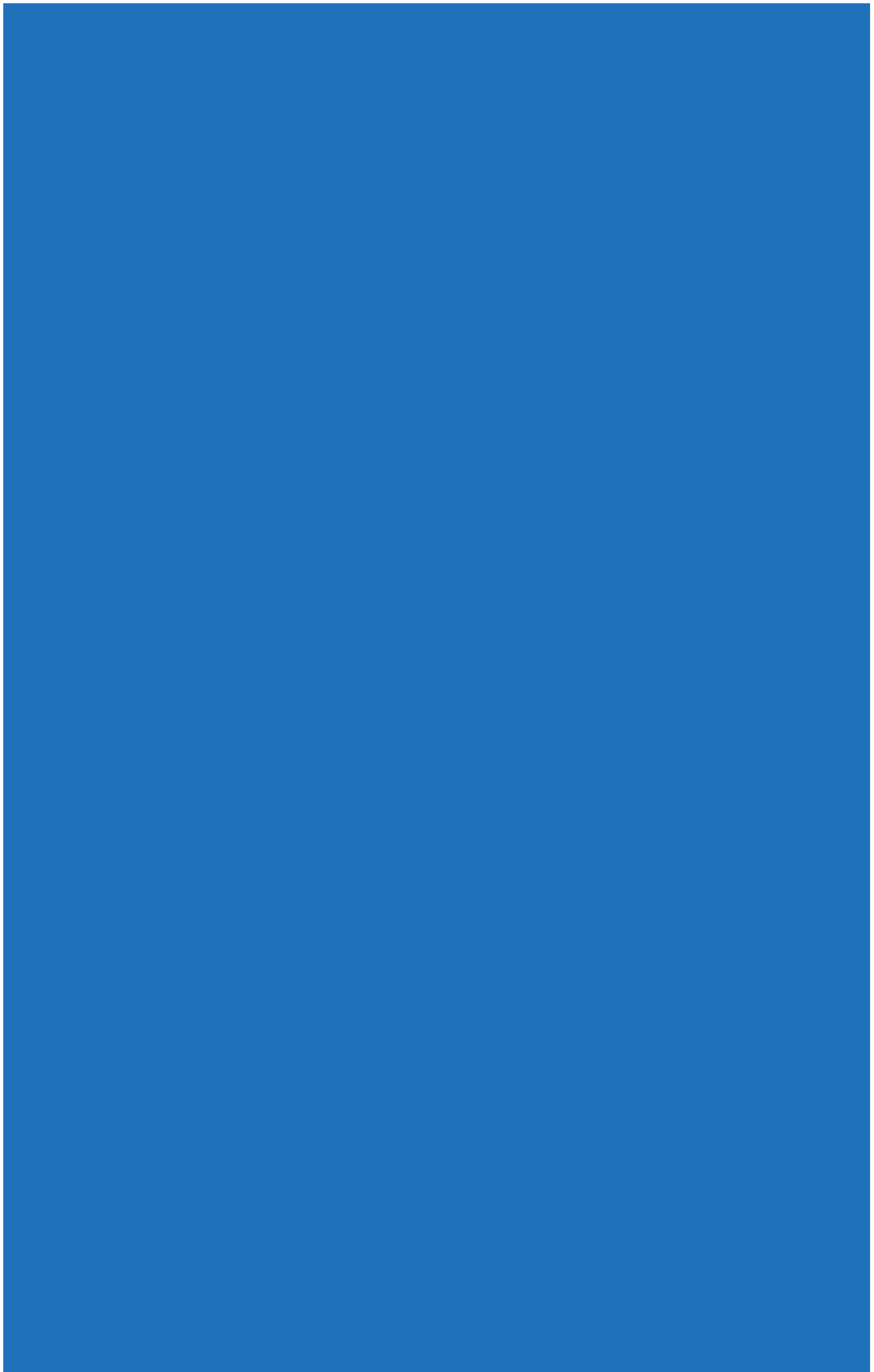
<sup>18</sup> Commission Communication to the Council and the European Parliament, *Effective consular protection in third countries: the contribution of the EU - Action Plan 2007-2009*, COM (2007) 767, December 2007

<sup>19</sup> Commission Communication to the Council and the European Parliament, *Consular protection for EU citizens in third countries: State of play and way forward*, COM(2011) 149 (2011)

<sup>20</sup> Commission proposal for a draft Directive, *Consular protection for citizens of the Union Abroad*, COM(2011) 881, December 2011

<sup>21</sup> *European Parliament, European Parliament Debate, 25 October 2012* (2012). Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20121025+ITEM-014-06+DOC+XML+V0//EN&language=EN>, accessed on 25 November 2014.

<sup>22</sup> Regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012, COM (2013) 228, 2013.



## Section 2, Consular

# Chapter 2: Impact on the UK National Interest

2.1 This chapter will consider the impact of the EU's limited competence in consular services on the UK national interest. Most respondents spoke of their experience of the UK providing consular services, as only one had any direct experience of other Member States providing consular assistance outside of crises.

### UK Consular Services

- 2.2 The FCO promotes UK interests overseas, supporting UK citizens and businesses around the globe, including through providing modern and efficient consular services.
- 2.3 Around 56.5 million overseas trips are made by British nationals each year and over 5 million British nationals live and work abroad. In 2013 the FCO received 150,000 consular enquiries and helped in over 95,000 cases. In the space of a year, approximately 5,500 British nationals are arrested, and at any one time more than 3,250 British nationals are in prison around the world.
- 2.4 The FCO takes a twofold approach to consular assistance: providing advice on how to stay safe and healthy when abroad and providing assistance if things go wrong. The key consular 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.
- 2.5 The FCO provides British nationals with consular assistance through a network of approximately 650 staff working in 220 posts around the world and 210 staff in London, backed up by the 24/7 Global Response Centre. This ensures British citizens can access consular assistance when needed wherever they are in the world. Over 80% of consular cases are resolved in the first instance over the telephone.<sup>1</sup>
- 2.6 In 2012-13, the UK Consular network cost £87.2 million to run. This money does not come from taxation; around two thirds 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 charged for, such as emergency travel documents and notarial services.

### The Entitlement of Unrepresented EU Citizens to Seek Consular Assistance from Another Member State

2.7 In cases where a British national is in a country where the UK does not have representation, and the issue cannot be resolved remotely, they can seek assistance from the embassy of another EU Member State. In some countries where there is no UK

<sup>1</sup> FCO, *Consular strategy 2013-2016: 1 Year Update* (2014).

representation, the UK has put in place local arrangements with other Commonwealth countries to provide urgent consular assistance to British nationals, for example with the New Zealand Embassy in Timor-Leste. There are only three countries in the world without an EU or Commonwealth country embassy: Palau; São Tomé and Príncipe; and Tuvalu.<sup>2</sup> Excluding crises, the total number of British citizens who have received consular assistance from other EU Member States is too few to have been recorded.

## Consular Cooperation Overseas

With consular representation in over 180 countries, British nationals are rarely in a country without a British diplomatic mission. However in practice there is much day to day cooperation with other nations, beyond providing assistance to unrepresented EU nationals, from which British nationals benefit.

Other EU Member States might have a larger presence in or stronger historic ties with some countries. In such cases British consular staff may work with colleagues from other EU Member States to assist British nationals. For example, in 2012, when unrest broke out in the Gorno-Badakhshan autonomous region of Tajikistan, the British Embassy team worked with the larger German Embassy team to bring a mixed nationality group, which included several British nationals, to safety.

Vietnam has long been a popular tourist destination for Australian nationals. As the number of British nationals visiting Vietnam has grown, the Australian Embassy there has shared advice and contacts to help the British Embassy better provide consular assistance to British nationals.

- 2.8 In 2010 UK Posts overseas provided consular assistance to around 300 nationals of other EU Member States, some 1.5% of the total UK consular caseload.<sup>3</sup> The majority of these cases were applicants for emergency travel documentation. These people would be charged standard consular fees, which are levied for documentary or notarial services or out of hours call outs, as if they were UK nationals. Recovery from their country of nationality of any costs incurred not covered by the fees is not usually sought, as the expense of doing so is likely to exceed the amount involved. Most EU Member States follow this practice.
- 2.9 EU Member States have differently sized diplomatic networks. France and Germany have similarly sized networks to the UK, with 276 and 227 diplomatic posts respectively, whereas other Member States have smaller networks, for example the Slovak Republic has 73 diplomatic posts and Lithuania and Slovenia have fewer than 50 apiece.<sup>4</sup>
- 2.10 Because of this disparity in size of diplomatic networks, it is likely that the number of EU nationals assisted by the UK overseas is higher than the number of British nationals assisted by other Member States. However no comparisons have been carried out. A comparison of numbers assisted would also be simplistic. It is more costly to provide assistance in the countries where British nationals have received consular assistance

<sup>2</sup> HC Deb Tuesday 12 July 2011, column 11.

<sup>3</sup> HC Deb Tuesday 12 July 2011, column 10.

<sup>4</sup> France Diplomatie, *The French Ministry of Foreign Affairs: Facts and Figures* (2014). Available at: <http://www.diplomatie.gouv.fr/en/the-ministry-of-foreign-affairs-158/article/the-ministry-all-the-figures-17578>, last accessed on 25/11/2014; Federal Foreign Office, *German Missions Abroad* (2014). Available at: [http://www.auswaertiges-amt.de/EN/AAmt/Auslandsvertretungen/Uebersicht\\_node.html](http://www.auswaertiges-amt.de/EN/AAmt/Auslandsvertretungen/Uebersicht_node.html), last accessed on 25/11/2014; Republic of Slovenia: Ministry of Foreign Affairs, *Representations Abroad* (2014). Accessed at: [http://www.mzz.gov.si/en/representations\\_abroad/](http://www.mzz.gov.si/en/representations_abroad/), last accessed on 25/11/2014. Ministry of Foreign Affairs of the Republic of Lithuania, *Contacts* (2014). Accessed at: <http://www.urm.lt/default/en/embasycontacts>, last accessed on 25 November 2014.



from other EU Member States, such as from the French in the Central African Republic and Chad, than it is, for example, to issue an emergency travel document to another EU national in Fiji.

## Consular Assistance in Crises

- 2.11 In crises many more British nationals have received consular assistance from other EU Member States. In 2014 French, Greek and Maltese evacuations from Libya carried 42 British nationals. In South Sudan in 2013, 33 EU nationals were evacuated by the UK and a number of UK nationals were helped by other Member States. British nationals were provided consular assistance by French authorities during the recent periods of instability in Central African Republic, Mali and Cote d'Ivoire.
- 2.12 The EU's co-ordination role during crises was seen in the Libya crisis of 2011. The response was led by Member States, working with other countries including the US, Canada and Australia. The EU's monitoring and information centre helped to coordinate the evacuation operations from Libya, which reduced duplication of effort and ensured better use of resources.<sup>5</sup>

### Case Study: Crisis in the Central African Republic

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.

## Respondents' Views on the Current Arrangements

- 2.13 Most respondents, both members of the public and NGOs, considered that the current arrangements were beneficial to UK nationals, as they provided a back-up when the UK was not present. The British Community Committee of France said that they believed 'that the interests of the British people are best served by continuation of the present arrangements'.<sup>6</sup> This view was supported by evidence from individuals; one said that 'for EU citizens, gaps in provision of consular services are covered'.<sup>7</sup>
- 2.14 The Scottish Government said that it also 'completely agrees with the provisions in the EU Treaties... [it] also agrees that the EU should have competence to adopt legislative measures to ensure the proper coordination and cooperation of this protection'.<sup>8</sup>
- 2.15 As part of the evidence-gathering for this report, an opinion poll was conducted to seek the public's views on the questions asked in the Call for Evidence.<sup>9</sup> The questions in the poll are at Appendix Two. This showed general support for the current allocation of competence. The existing EU agreement for the provision of consular services is well regarded, with over half (57%) of respondents rating it as positive. Almost a third (31%) of respondents had no view either way, with only 5% viewing the existing agreement

<sup>5</sup> HC Deb Tuesday 12 July 2011, column 8.

<sup>6</sup> C. Chantry, British Community Committee of France, *submission of evidence* p1.

<sup>7</sup> Arblaster, *submission of evidence* p1.

<sup>8</sup> Scottish Government, *submission of evidence* p2.

<sup>9</sup> The Consular Opinion Poll and Management Summary was conducted on behalf of the FCO by TNS Global, 6 More London Place, London SE1 2QY

negatively. The strongest evidence of satisfaction comes from those who have, or another member of the immediate family has, previously contacted consular services. Amongst this group, 72% rated the current agreement as positive.<sup>10</sup> Most said that it provided 'comfort' or 'peace of mind'.

- 2.16 Fair Trials International gave evidence to show how the current arrangements benefit long term consular cases on which they are working where 'the FCO has had to depend on the consular services of countries like France and the Netherlands to reach British citizens in countries where the UK either does not have diplomatic presence (such as in Chad), or in places where British consular officials have determined that they cannot visit citizens for security reasons (such as in Venezuela)'.<sup>11</sup>
- 2.17 Prisoners Abroad also supported the current arrangements, noting that working with EU partners can also make lobbying more powerful, as 28 countries acting in unison can be more effective at lobbying than a single country acting alone.<sup>12</sup> EU Member States have carried out démarches (a petition or protest presented through diplomatic channels) about the lack of consular notification and prison conditions in certain countries.
- 2.18 Association of British Travel Agents (ABTA) members were also supportive of the current arrangements.<sup>13</sup> They have experience of working closely with the FCO's consular teams as a package holiday provider responsible for the safe departure and return of passengers, as well as their health and safety whilst on holiday.<sup>14</sup>
- 2.19 However some evidence received was not supportive of the current arrangements. Concerns have been expressed that the ability to approach other Member States might be used to justify a reduction in UK representation. British MEP John Buffon (UKIP) said, in a debate in the European Parliament, that he was:
- [Against making it compulsory to give consular aid to non-UK EU citizens where this decision has not been reached in a bilateral agreement between the UK and a third country. The proposal that diplomatic and consular services of all EU Member States must give any EU citizen seeking help abroad the same protection that they give their own nationals paves the way for closing British embassies abroad and undermining the British presence internationally.](#)<sup>15</sup>
- 2.20 Some members of the public who commented on Facebook and in the opinion poll said that they were against the current arrangements. The main reason given was a preference for access to a British Embassy. Others said that they were against being in the EU, could not see how the arrangements would work or had concerns that seeking assistance from another Member State would be hindered by language barriers.

<sup>10</sup> FCO Consular opinion poll, see appendix.

<sup>11</sup> Fair Trials International, *submission of evidence*.

<sup>12</sup> Prisoners Abroad, *submission of evidence* p1.

<sup>13</sup> ABTA, *Evidence to the Foreign Affairs Committee inquiry on the Arab Spring* (2012).

<sup>14</sup> Under the EU Package Travel Directive, the proper execution of the contract between the package provider and the consumer includes the safe departure and return of a passenger, as well as their health and safety while in destination. Travel providers that have sold holiday arrangements that are not packages are not bound to the same obligations as those providing package holidays. The Package Travel Directive is considered in the report *Balances of Competences Review: Competition and Consumer Policy*.

<sup>15</sup> European Parliament, *Parliament Debate, 25 Oct 2012* (2012). Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=%2f%2fEP%2f%2fTEXT%2bCRE%2b20121025%2bITEM-015%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>, last accessed on 24 October 2014.

2.21 Some members of the public disliked the principle of non-discrimination, whereby a citizen of another Member State must be treated 'on the same conditions as nationals of that State', which means that the same criteria for prioritisation must be applied to unrepresented EU Nationals'.<sup>16</sup> FCO guidance says that:

We offer help which is appropriate to the individual circumstances of each case. Our staff overseas will make an assessment of your vulnerability and the needs you have, based on who you are, where you are, and the situation you are facing. They will aim to offer assistance which helps meet these needs.<sup>17</sup>

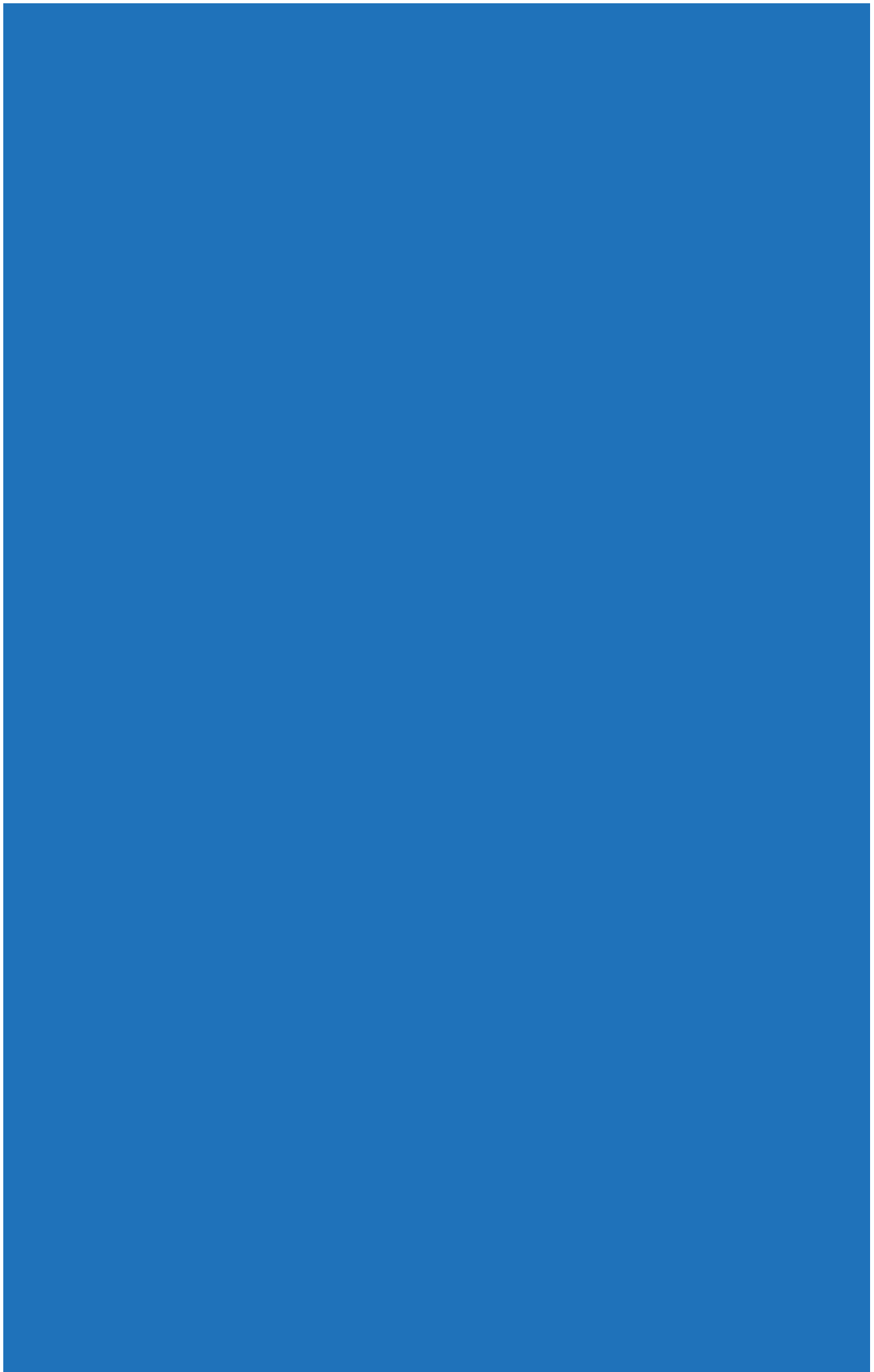
These respondents thought this could mean that consular assistance for UK nationals could be reduced if UK staff were busy assisting non-UK nationals who had been assessed as in greater need.<sup>18</sup> Some also thought the arrangements allowed other Member States to ensure their citizens received consular assistance without having to pay part or all of the cost.

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<sup>16</sup> Article 23, TFEU.

<sup>17</sup> FCO, *Support for British Nationals Abroad: A Guide* (2011).

<sup>18</sup> Evidence received from members of the public on Facebook, see appendix.



## Section 2, Consular

# Chapter 3: Future Options and Challenges

- 3.1 This chapter examines proposals for changes in the way that consular services are provided by EU Member States. Some proposals date back to 2006, but they remain part of the current debate.
- 3.2 These proposals reflect the challenge of providing consular services to nationals of EU Member States within an environment of increasing demand and constrained resources. There are two themes in the proposals: those that suggest that Member States should pass part or the entire role of providing consular services to EU institutions and those that suggest Member States should work closer together and provide more consular services to each other's nationals.

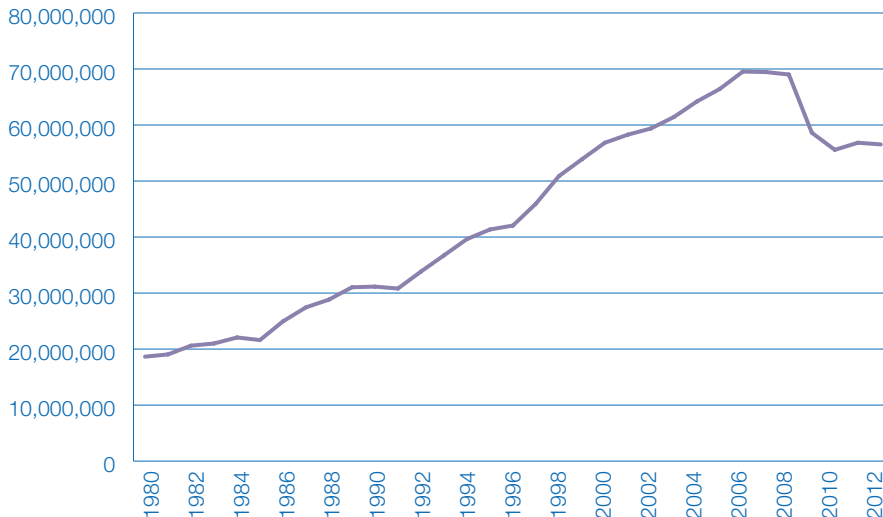
### Drivers for Change in Consular Services

- 3.3 Consular work is 'a very personal business'.<sup>1</sup> Shifts in behaviours, practices and attitudes influence the need for consular services and the way in which they are delivered, as do global events.
- 3.4 Travel overseas by British nationals has grown in popularity. Figure 1 shows that over the period 1980-2013 the number of visits overseas by British nationals has increased by 234%.<sup>2</sup>

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<sup>1</sup> Rt Hon William Hague MP, *Looking After Our Own: Strengthening Britain's Consular Diplomacy* (2012). Accessed at: <https://www.gov.uk/government/speeches/looking-after-our-own-strengthening-britains-consular-diplomacy--2>, last accessed on 25 November 2014.

<sup>2</sup> Office of National Statistics, *Overseas Travel and Tourism, Provisional Results* (2014).

**Figure 1: Number of Visits Overseas by British Nationals (1980-2012)**

Commenting on changing British travel habits, an article in the Daily Telegraph said that:

In the past three decades there has been something akin to a revolution in the way we travel. We leave these shores more frequently than ever, and are prepared to go to much further flung destinations. And it chimes with a growing desire of many to have more authentic experiences when abroad. “The idea 30 years ago that you might go to India for a summer holiday – or go to the Arctic at all – was almost inconceivable,” said Sue Okwell, a spokesperson for the AITO group of tour operators<sup>3</sup>

- 3.5 Similarly British nationals now live overseas in increasing numbers, with a 27.4% increase between 1990 and 2013. The locations where British nationals now live has also changed, with the numbers living in Europe almost doubling to nearly equal the number in North America and Oceania.

**Figure 2: Numbers of British Nationals living overseas (1990-2013)**

	1990	2000	2010	2013	% increase (decrease)
<b>World</b>	4,063,671	3,918,047	4,826,530	5,178,027	27.4%
<b>Africa</b>	268,771	168,563	305,948	349,774	30.1%
<b>Asia</b>	180,379	227,568	301,743	329,024	82.4%
<b>Europe</b>	753,131	808,645	1,309,469	1,409,108	87.1%
<b>Latin America &amp; the Caribbean</b>	35,431	38,713	55,602	59,178	67%
<b>N. America</b>	1,432,852	1,334,992	1,384,073	1,437,337	(-1%)
<b>Oceania</b>	1,393,107	1,339,596	1,469,695	1,593,606	14.4%

Source UN Department of Economic and Social Affairs Population Division

<http://esa.un.org/unmigration/TIMSA2013/migrantstocks2013.htm?mtotals>, accessed 27 November 2014

- 3.6 Changes in British nationals’ travel patterns are factored into decisions about the FCO’s network. The local infrastructure and capacity of the host nation’s services also influence the way consular assistance can be provided. The former UK Foreign Secretary said that ‘we will always ensure that our diplomatic network is configured in the best way to support British nationals [...] We have opened or are opening new British Embassies in

<sup>3</sup> Daily Telegraph, *The changing nature of Britons abroad* (2013). Available at: <http://www.telegraph.co.uk/travel/travelnews/10289376/The-changing-nature-of-Britons-abroad.html>, accessed 27 November 2014.

South Sudan, Madagascar, Kyrgyzstan, Cote D'Ivoire, Liberia, El Salvador and as security improves, in Somalia; we have opened two new consulates in Canada and Brazil and plan to open six more in the emerging economies. In Europe, changing customer demands and the opportunities of new technology mean we no longer need large established consulate offices in, for example, Florence and Venice, where the bulk of routine consular services are being delivered by consular hubs in Rome and Milan; or Funchal and Lille, where routine calls are now centralised'.<sup>4</sup>

3.7 Additional drivers for change come from the following factors:

- institutional developments within the EU (the creation of the EEAS) and EU enlargement;
- financial constraints; and
- changes in the broader political or security environment.

3.8 Porzio says the nationals of all Member States are travelling more frequently, to new destinations. He goes on to say that while the expansion of the EU has increased the numbers of EU nationals travelling, many of the new Member States do not have large consular networks.<sup>5</sup>

## Equipping Consular Services to Meet Change

3.9 Proposals have been developed to alleviate the pressures on Member States' consular services. These include:

- Regulation: to address the failure of the current arrangement to meet the needs of the European travelling public and promote better cooperation between Member States;
- Formal burden sharing proposals;
- Utilising the resources of EU institutions; and
- Cooperation in crises.

3.10 When considering and making proposals commentators vary as to the weight they attach to the context within which consular services are delivered. Some do not consider it at all. Okano-Heijmans commented in her paper that this context was important in order to assess the impact of proposals on the national interest, as changes in consular services were part of the 'evolving relationship between the State and its citizens'.<sup>6</sup>

## Public Expectation

3.11 Consular cases often attract media attention and the quality of the response may impact on the reputation of the FCO, or UK Government more widely. Okano-Heijmans commented that public expectation was rising, which increased the challenge for governments. 'Assertive citizens nowadays demand high quality and quantity of services and – when necessary – find their way to the media or parliamentarians to make their voices heard by Government'.<sup>7</sup>

<sup>4</sup> Rt Hon William Hague MP, *Speech: Looking After Our Own: Strengthening Britain's Consular Diplomacy* (4 April 2012).

<sup>5</sup> G Porzio, *Consular Assistance and Protection: An EU Perspective* p97.

<sup>6</sup> M (Okano-Heijmans, *Change in Consular Assistance and the Emergence of Consular Diplomacy* 2010) - 'Developments in contemporary consular affairs need to be understood in the framework of discussion about the evolving relationship between the state and its citizens, and of changes in the foreign ministry and diplomacy... What has changed is the character of the citizen in distress and the environment in which consular services are delivered'.

<sup>7</sup> M Okano Heijmans, 'Consular Affairs and Diplomacy' in *The Oxford Handbook of Modern Diplomacy* (2013).

- 3.12 The opinion poll showed that those consulted were not strongly opposed to the EU having a role in the provision of consular services, with 44% of those surveyed favouring a suggested new arrangement for EU Member States to jointly provide consular assistance, or for EU institutions to provide consular assistance.<sup>8</sup> Just under a third (32%) saw this as satisfactory, with 15% seeing this as a negative step. This is in line with research carried out by the EU in 2006.<sup>9</sup>
- 3.13 The poll went on to ask which best described their views, that consular services were of a high quality, were delivered in a cost effective and efficient manner or that they were delivered by the British Government. 58% of people favoured one of the first two statements, whilst 18% favoured the third.
- 3.14 Recent cases show that the public does not mind if the assistance is provided by others, but that they expect that the Government will use its influence on those who are best placed to respond to ensure that they do. Following the disappearance of the ‘Cheeki Rafiki’, the US Coastguard suspended searching before the fate of the yacht was known. Supporters petitioned both the US Coastguard and the Foreign Secretary to request that the US Coastguard re-start the search.<sup>10</sup> The mother of a Briton missing in Malaysia wrote to the UK Prime Minister asking that he put pressure on the Malaysian Government to help find her son.<sup>11</sup>
- 3.15 Taxpayers have a direct interest in the model of consular service provision adopted. Consular work in the UK is primarily funded through a premium on each passport issued.<sup>12</sup> Additional costs, such as unforeseen costs in a crisis, are met from other Government funds.

## Proposed Regulation: The Council Directive on Consular Protection for Citizens of the Union Abroad

- 3.16 The European Commission has not proposed to assume responsibility at the EU level for the delivery of consular services, but it has proposed legislation. In 2011, at its own initiative, the European Commission produced a Proposal for a Council Directive on consular protection for citizens of the Union abroad that seeks to ‘lay down the cooperation and coordination measures necessary to facilitate consular protection for unrepresented EU citizens’, as ‘consular protection is an integral part of the Union’s policy on citizens’ rights’.<sup>13</sup> It aims to achieve this through clarification in four areas:
- i) Personal scope: clarification of the scope of beneficiaries, in particular the definition of unrepresented;
  - ii) Access to consular protection and cooperation/coordination: which Member State has to assist an unrepresented EU citizen, including clarification on local burden sharing and coordination and cooperation between the assisting embassy or consulate and the Member State of origin;

<sup>8</sup> FCO, *FCO Consular Opinion Poll*, Appendix B.

<sup>9</sup> Mattias Sundholm, *Making the Case for Europe? An Exploratory Study of EU Consular Crisis Management Cooperation as a Means of EU Public Diplomacy* (2009) p44.

<sup>10</sup> Change.org, *Petition to Restart the Search for the Missing ‘Cheeki Rafiki’ Crew Members* (2014).

<sup>11</sup> Gareth Huntley’s Mother Asks PM David Cameron For Help’, BBC News, 31 May 2014 <http://www.bbc.co.uk/news/uk-england-27650359> accessed on 24 October 2014.

<sup>12</sup> Rt Hon William Hague MP, *Looking After Our Own: Strengthening Britain’s Consular Diplomacy*.

<sup>13</sup> Proposal for a Council Directive on Consular Protection for Citizens of the Union Abroad: Explanatory Memo 1.2.



- iii) Local coordination: liaison between the consular authorities of Member States present in a given third country; and
  - iv) Assistance in crisis situations/financial reimbursement: to clarify who should assist unrepresented EU citizens in crisis situations and arrangements for financial reimbursement related to that assistance.
- 3.17 There was evidence to support measures to clarify the terms in Article 23. The Scottish Government said that ‘there is some requirement to define (‘unrepresented person’) so as to ensure clarity and a consistency of approach by all of the Member States [...] Greater clarity of what the right to consular protection entails is also necessary’.<sup>14</sup>
- 3.18 The UK Government has not supported the draft Directive because it considers that it is unnecessary (in that the problem can be resolved through existing frameworks of cooperation) and because the draft Directive seeks to legislate in areas beyond the competence provided by the TEU.<sup>15</sup>
- 3.19 The EU Commission produced figures of an unmet need for consular assistance. It estimated that the number of ‘unrepresented’ EU citizens travelling abroad annually to be at least 7 million, with a further 2 million EU expatriates living in a third country where their Member State is not represented. Based on these figures the EU Commission estimated that there were around 37,000 cases of unrepresented citizens requiring consular assistance each year.<sup>16</sup> However, evidence does not support the European Commission’s inference of market failure. For the CARE Report, Member States reported assisting less than 500 nationals of other EU Member States during 2007-9.<sup>17</sup> Whilst a Eurobarometer poll of 2006 showed only 23% of respondents were aware of the entitlement under Article 23 there is no evidence of widespread dissatisfaction with the arrangements that Member States had put in place to assist their nationals in non-crisis situations.<sup>18</sup>
- 3.20 Furthermore the draft Directive seeks to give EU institutions oversight in the way in which consular services are delivered, which is beyond the provisions of Article 23 of the TEU. Member States would have to prioritise the delivery of services according to the terms of the Directive. This would remove the ability of Member States to innovate and adapt in the way consular services are delivered, or to change services in light of customer feedback or policy priorities.
- 3.21 For example the draft Directive says that a national is ‘unrepresented’ if they have ‘no accessible embassy or consulate established on a permanent basis in that country’. It defines ‘accessible’, in Article 3(2), as being a place to which EU nationals, on the same day, can safely travel and return to their place of departure, via commonly used means of transport.
- 3.22 The UK Government considers this definition of ‘unrepresented’ does not have precedent in other legislation. Under the Vienna Convention on Diplomatic Relations a country does not have to have a resident Ambassador or diplomatic mission to have diplomatic relations with another country and a non-resident Ambassador has equal status with a resident Ambassador.<sup>19</sup> So a national of a country with an Ambassador accredited to a country is represented in that country.

<sup>14</sup> Scottish Government, *submission of evidence* p3.

<sup>15</sup> HC Deb, *Tuesday 12 July 2011*, column 11.

<sup>16</sup> Commission Communication and Impact Assessment, *Effective consular protection in third countries*.

<sup>17</sup> Care, *Consular and Diplomatic Protection: Legal Framework in the EU Member States* (2010) p596.

<sup>18</sup> Commission Communication, *Effective Consular Protection in Third Countries*.

<sup>19</sup> United Nations Vienna Convention on Diplomatic Relations, 1961.

- 3.23 Evidence shows that the UK public does not seem to consider a physical presence of a diplomatic post in a country is necessary to access consular assistance. The 2005 National Audit Office report on Consular Services said that the UK was at the ‘forefront of innovative developments in service delivery in some areas’.<sup>20</sup> These developments reflect preferences in UK society, for example 70% of UK nationals polled said that they would first contact an embassy or consulate by phone or online, which correlates with 89.84% internet usage in the UK, some 30% higher than in some Member States.<sup>21</sup> The FCO’s contact centres, which handle over 30,000 calls from customers each month, are able to resolve around 80% of inquiries immediately replacing the need for any journey to an embassy or consulate.<sup>22</sup> Some other Member States also have 24/7 contact arrangements in place for their nationals who require consular assistance.
- 3.24 Within the EU there are some common forms of assistance; there are also areas of divergence. Member State Governments have not previously sought to harmonise or standardise assistance offered, nor have any called for this to happen.
- 3.25 The House of Commons European Scrutiny Committee said in 2012 of the draft Directive:

[Despite the proposals’ modest appearance, the Commission seems determined on a path that is likely to lead to increasing pressure for a right to common consular protection for all Member State’ citizens in third countries and for EU delegations to take a leading role in ensuring its provision.](#)<sup>23</sup>

## Burden Sharing in Practice: Co-location

- 3.26 In her evidence, Professor Patrizia Vigni comments that for countries with a larger consular network, such as the UK, a reduction in the number of consular officers and offices abroad will save the public money.<sup>24</sup>
- 3.27 The UK already co-locates with like-minded countries where this would promote co-operation and deliver savings. The UK is now temporarily or permanently co-located with partners in the following locations:

<sup>20</sup> National Audit Office, *The Foreign and Commonwealth Office: Consular Services to British Nationals* (2005).

<sup>21</sup> International Telecommunication Union (ITU), *World Telecommunication/ICT Indicators Database* (2014).

<sup>22</sup> FCO, *Consular strategy 2013-2016: 1 year update* (2014).

<sup>23</sup> HC Deb, Tuesday 12 July 2011 , VOLUME NUMBER column 4.

<sup>24</sup> Professor Patrizia Vigni, *Submission of Evidence* p1.

**Figure 3: Locations where FCO is currently co-located**

Location	Co-location partner	Platform	Dates of co-location
Afghanistan, Kabul	New Zealand	UK Platform	Since 2010
Armenia, Yerevan	Sweden	UK Platform	Since January 2014
Barbados, Bridgetown	New Zealand	UK Platform	Since March 2014
Botswana, Gaborone	Germany	UK Platform	Since September 2014
Finland, Helsinki	Norway	UK Platform	Since November 2013
Haiti, Port-au-prince	Canada	Canadian Platform	Since June 2013
Iraq, Baghdad	Canada	UK Platform	Since December 2004
Iraq, Baghdad	EEAS	UK Platform	Since September 2006
Mauritania, Nouakchott	EEAS	EEAS Platform	Since February 2010
Mexico, Monterrey	Canada	Canadian Platform	Since September 2014
Moldova, Chisinau	The Netherlands	UK Platform	Since May 2004
Niger, Niamey	France	French Platform	Since 2004
North Korea, Pyongyang	Germany	German Platform	Since June 2001
Trinidad and Tobago, Port of Spain	Germany	UK Platform	Since November 2012

Additionally the UK and another country (or countries) rent the same building with a common landlord in more than 10 additional locations. Arrangements to co-locate are being actively pursued in an additional 20 locations. These would not involve shared diplomatic or consular functions, but might include common office services, such as reception or security arrangements. The UK Government considers it questionable whether further influence needs to be brought to bear to promote the idea.

3.28 The Government is also developing more innovative solutions, such as the global contact centres and digitisation of documentary services, to meet the demand for consular assistance beyond just common or shared offices.

### Proposals for Burden Sharing: 'A Consulate of Europe'

3.29 The concept of 'European Consulates' was set out by the EU Commissioner Michel Barnier in his report 'For a European Civil Protection Force: Europe Aid' published in May 2006.<sup>25</sup> He proposed the:

- pooling of consular resources;
- creation of consular flying squads;
- setting-up of 'European Consulates' on an experimental basis in four geographical areas; and
- establishment of a European Consular code.

<sup>25</sup> Michel Barnier, *For a European Civil Protection Force: Europe Aid* (2006) p24.

- 3.30 There is support for this concept from most academics working in this field. It is seen as increasing capacity within the EU and reducing costs. Common standards are seen as necessary, but the implications are not considered. Merheim-Eyre supported a variation of this idea, with common offices, staffed by Member States, acting as agents of the other Member States and delivering services agreed by Member States.<sup>26</sup> In his evidence to the House of Lords European Union Sub Committee on External Affairs, David Spence suggested a role for the EEAS in this model.<sup>27</sup>
- 3.31 In June 2006 the European Commission said that it would consider how to further develop the ideas of creating 'Euro-Consulates' to share common consular functions and of establishing a European consular code.<sup>28</sup> The rationale for this proposal came from the inclusion of consular rights in a concept of European citizenship, rather than the Treaties.<sup>29</sup> The details of what that European consular code would involve were not developed.
- 3.32 The Commission produced less ambitious ideas in their November 2006 Green Paper. This proposed the creation of common offices to enable a fair division of tasks between Member States to assist unrepresented EU nationals. The common offices could be based on a system of deputising between Member States, although the Commission envisaged, in the longer term, that they would, for example, issue visas or legalise documents.<sup>30</sup>
- 3.33 This formalised system of cooperation would potentially involve EU institutions assuming a competence for consular matters beyond Article 23 of the TEU. The UK Government considers it questionable whether there would be operational benefits, as pooling resources could limit Member States' ability to decide on the location and level of consular resources.
- 3.34 A 'Consulate of Europe' would also represent a shift from an EU nationals' entitlement to approach another Member State to seek consular assistance to a system where those present in a country have their consular resources structured so as to provide for all EU nationals. Kristine Kruma commented in her book that 'this would not only facilitate the "visibility" of EU citizenship for citizens of Member States but would also assist the EU in elaborating its international standing vis-à-vis third States'.<sup>31</sup>
- 3.35 No hard evidence has been produced of operational benefits. The 'waiting room and counter' model of service delivery involves inherent overheads. The costs of staff training and a system of potential oversight and cost recovery need to be evaluated. The development of a common consular code has not been explored in detail.
- 3.36 Travel industry representatives were not in favour of either EU institutions or other Member States acting in consular matters on the UK's behalf. They commented that their staff were often the first point of contact if something went wrong and their reputation was tarnished when a consular service failed to meet the traveller's expectations. In their business they also had experience of problems that arose when the performance of agents failed to

<sup>26</sup> Merheim-Eyre, I *Submission of Evidence* p1.

<sup>27</sup> David Spence, London School and Economics and Political Science, *Evidence to the House of Lords European Union Sub Committee on External Affairs report on the European External Action Services* (2013) p468.

<sup>28</sup> Commission Communication to the Council and the European Parliament, *Implementing The Hague Programme: the way forward*, COM(2006) 331, June 2006.

<sup>29</sup> Ibid 2.1. Fundamental rights and citizenship: Fundamental rights are at the core of the Union's values. The Commission will focus its action on the respect and promotion of fundamental rights for all people and to develop the concept of EU citizenship. Citizenship of the Union entails a number of crucial rights, including free movement within the Union and diplomatic and consular protection.

<sup>30</sup> European Commission Green Paper, COM(2006) 712, November 2006.

<sup>31</sup> Kristine Kruma, *EU Citizenship, Nationality and Migrant Status: An Ongoing Challenge* (2013) p172.

meet customer expectations. They suggested such a system would need to be governed by carefully prepared service level agreements.<sup>32</sup> NGOs who offer specialist support to particular consular cases were concerned that the quality of service might also suffer.<sup>33</sup> Bartholomew, an FCO volunteer warden in the Philippines, commented that:

UK citizens would probably be greatly disadvantaged as the consular systems in place for UK citizens are robust and proven and many EU countries have very limited consular services as their citizens do not travel as widely or as often as UK citizens. Again, funding would come into play, and EU consular services could well be prioritized on funding levels. On another level, response times would be MUCH [sic] slower as an integrated EU Consular Service centre would spend a much longer period of time establishing identity, level of service for the specific country, understanding the issue and how it relates to the country in question and so on. It is far better for UK citizens to have a consular service which has specific responses under a known set of criteria within the purview of the FCO.<sup>34</sup>

## A Role for the EEAS?

3.37 Raik commented in her paper that ‘in the debate, consular protection has often been presented as an important instrument for bringing the EEAS closer to the public’.<sup>35</sup> However, she added that when considering Member States’ views to burden sharing and a potential role for the EEAS, the rationale for burden-sharing proposals ‘is not principled support for deeper integration, but sheer budgetary pressures’.<sup>36</sup>

3.38 The creation of the EEAS was seen by some Member States as an opportunity for an increased EU role in consular services. With 141 EU Delegations across the world it has a network larger than that of most other Member States. In giving evidence to the House of Lords review of the EEAS, the Ambassadors to the UK of Slovenia, Lithuania and the Slovak Republic spoke in favour of a role for the EEAS in consular services. The Lithuanian Ambassador said:

I would not say that we are actively moving towards that direction [seeking to move consular work to the EEAS]. We will be supporting it, if there is a trend [...] If it is in the European Union, we are contributing to the European Union and we get something [...] We are all contributing. We pay. We provide EEAS with our diplomats and our budgets – so please give something back. That something back would be concrete cases of taking care of our nationals.<sup>37</sup>

None of the Ambassadors spoke in favour of EU institutions setting common standards or levels of service for consular assistance.

The House of Lords Committee suggested that ‘the review should seriously consider the possibility of the EEAS operating in this area for States which wish to delegate some consular functions to the EEAS. However, those Member States which wish to be assisted in this way should meet the costs individually or collectively of setting up and operating the service’.<sup>38</sup>

<sup>32</sup> Record of 11 June 2014 ABTA round table p1.

<sup>33</sup> ReUnite, *submissions of evidence* Q3.

<sup>34</sup> Bartholomew, *submission of evidence* p1.

<sup>35</sup> K. Raik, *Serving the Citizens? Consular Role of the EEAS Grows in Small Steps*, European Policy Centre (2013) p2.

<sup>36</sup> *Ibid* p3.

<sup>37</sup> HE Mrs Asta Skaisgiryte Liauškiene, *Evidence to the House of Lords European Union Sub Committee on External Affairs report on the European External Action Services* (2013), p405.

<sup>38</sup> House of Lords European Union Sub Committee on External Affairs, *Report on the European External Action Services* (2013).

3.39 Baroness Ashton, the EU High Representative, wrote in her 2011 *'Report by the High Representative to the European Parliament, the Council and the Commission'* that:

Some Member States have expressed a strong interest in seeing EU delegations develop capacity for consular support for EU citizens who find themselves in difficulty in third countries. On the other hand, a number of Member States are clearly opposed to the EU taking on a greater role in this area, which they see as a national competence. The key point is that it is difficult to see how this objective could reasonably be achieved “on a resource neutral basis” as required by the EEAS decision. It would certainly not be responsible to raise citizens’ expectations about the services to be provided by EU delegations, beyond their capacity to deliver in such a sensitive area. And the existing expertise within the EEAS in this area is extremely limited. However, over the past year we have also seen that the EU Delegations can play an important role in the coordination of evacuations of citizens and that pragmatic solutions can be found on the ground.<sup>39</sup>

3.40 The House of Commons European Scrutiny Committee expressed concern over ‘the Commission’s lack of expertise in providing consular assistance, over the idea of the Commission becoming involved in consular service delivery (for example, the provision of training for consular staff). Also over the resource implications, the possible duplication of existing structures and/or the creation of an unsustainable financial burden’.<sup>40</sup>

3.41 Raik commented that ‘the price-tag of building up and running the consular capabilities of the EEAS needs to be defined and compared to the alternative of relying on national services. Services provided by the EEAS cannot be cost-free, but they can be cost-effective’.<sup>41</sup> No work has been published on the likely costs of staffing or equipping the EEAS to undertake consular work, nor of any potential costs from adapting their current overseas estate to handle the delivery of public services.

## Crisis Response

3.42 Merheim Eyre commented in his submission of evidence that the media interest in consular work was even greater during crises and governments’ responses were subject to careful scrutiny.<sup>42</sup> Okano-Heijmans stated that ‘a distinctly political logic seems to apply to consular affairs: the bigger the crisis, the bigger the exception’.<sup>43</sup> Porzio commented that the ‘tsunami (2004) and Lebanese crises (2006) made it obvious that even the best, widest and most resourceful consular services could not cope on their own’.<sup>44</sup> It has been suggested that greater European co-operation and use of EU mechanisms will help Governments respond to these challenges and enable them to better help their citizens.<sup>45</sup>

<sup>39</sup> Catherine Ashton, *Report by the High Representative to the European Parliament, the Council and the Commission* (2011).

<sup>40</sup> House of Commons European Scrutiny Committee, *54th Report: Chapter 7: Diplomatic and consular protection of Union citizens in third countries* (2012) number para 7.5 These concerns were expressed in the Government’s response to the public consultation that the Green Paper launched, which was annexed to the previous Committee’s report of 28 March 2007. See headnote: (28304) 6192/07: HC 41-xvi (2006-07), chapter 2 (28 March 2007).

<sup>41</sup> K., Raik, *Serving the Citizens? Consular Role of the EEAS Grows in Small Steps* (2013) p3.

<sup>42</sup> I. Merheim-Eyre, *submission of evidence* p.3.

<sup>43</sup> M. Okano-Heijmans, *Consular Affairs and Diplomacy* (2013) p7.

<sup>44</sup> Porzio, G *Consular Assistance and Protection: An EU Perspective*(2008) p94.

<sup>45</sup> I. Merheim-Eyre *submission of evidence* p.8, 9.

3.43 The current arrangements work, and the UK Government is doubtful what more could be usefully done to promote European co-operation. Okano-Heijmans commented that 'larger Member States are wary that institutionalised co-operation goes at the expense of speed and visibility of consular service, thereby increasing the risk of criticism from domestic constituencies'.<sup>46</sup> She highlighted the criticism meted out to her Government by the Swedish public following the 2004 Tsunami, during which consular officials were criticised for adhering too strictly to the Swedish consular legislation. This frustration was still strongly felt a year after the crisis.<sup>47</sup>

3.44 The former UK Foreign Secretary said of the lessons learned from the response to the Arab Spring:

The main practical lesson was even more redundancy. If you've got a plane going to rescue people, you need another one that is on standby. Or another two. If you think you're going to need two, you perhaps need four. These are always difficult decisions because the more planes you have the more expensive it is. You need more redundancy, more capacity to deal with these events.<sup>48</sup>

## Summary

3.45 The growth of demands on consular services and the downward pressure on public finances are very likely to continue. People will continue to travel overseas, and to more diverse destinations. People will continue to live and work overseas. Expectations are unlikely to decrease. Burden sharing is therefore seen by respondents as an option for meeting these demands.

3.46 In order to address these challenges governments will need to develop new strategies that reflect the evolving balance of national interests, including the interests of individual citizens. Some will propose solutions that involve an increased role for the EU institutions.

3.47 The British Government pursues solutions based on the needs of users of consular services. The Minister for Europe has commented:

The Government's view is that we should look to develop best practice in a way that suits the mutual interests of Member States, rather than to look for some kind of harmonisation of consular arrangements, which we believe to be both outwith the scope of the competences laid down in the treaties and would miss the point of developing our working methods along the lines of what works in practice.<sup>49</sup>

3.48 This approach was supported by evidence from those who have direct experience of the delivery of consular services. They welcomed the additional protection provided both by means of formal and informal collaboration. However they also expressed concerns that closer collaboration of this kind should not prevent governments having the flexibility to improve the quality and quantity of assistance they provide to their own nationals.

<sup>46</sup> M. Okano-Heijmans, *Consular Affairs and Diplomacy* (2013) p7.

<sup>47</sup> Lars Bevanger, *Sweden Bitter Over Tsunami Loss*, BBC News (2005).

<sup>48</sup> Julian Borger, *Foreign Office opens crisis centre for overseas rescues after Libya fiasco*, *The Guardian* (2012), available at <http://www.theguardian.com/politics/2012/oct/18/foreign-office-crisis-centre-rescues>, accessed 27 November 2014.

<sup>49</sup> Hansard, European Committee B, Consular Protection, *Tuesday 12 July 2011* <http://www.publications.parliament.uk/pa/cm201012/cmgeneral/euro/110712/110712s01.htm>, column 8.

# Section 3: Statistics



## Section 3, Statistics

### Executive Summary

Chapter One sets out the historical development of EU activity in the field of official statistics and the legal framework that currently underpins EU activities in this field. The Chapter sets out the origins of the competence from the 1951 Treaty of Paris which included objectives which presupposed the availability of statistics, through to the explosion in demand for statistical information in the 1980s and 1990s and a more formalised structure for EU statistics in the Treaty on European Union (TEU). It describes the European Commission's powers in relation to compiling and publishing statistics, explains how European statistics are defined and how the system is governed. It explains how the shared competence is implemented in the UK, through the UK Statistics Authority, the Office for National Statistics, UK Government Departments and the Devolved Administrations. The Chapter explains the tasks of Eurostat, which provides the EU with statistics at European level. It also sets the EU Statistical System within the context of the global statistical system.

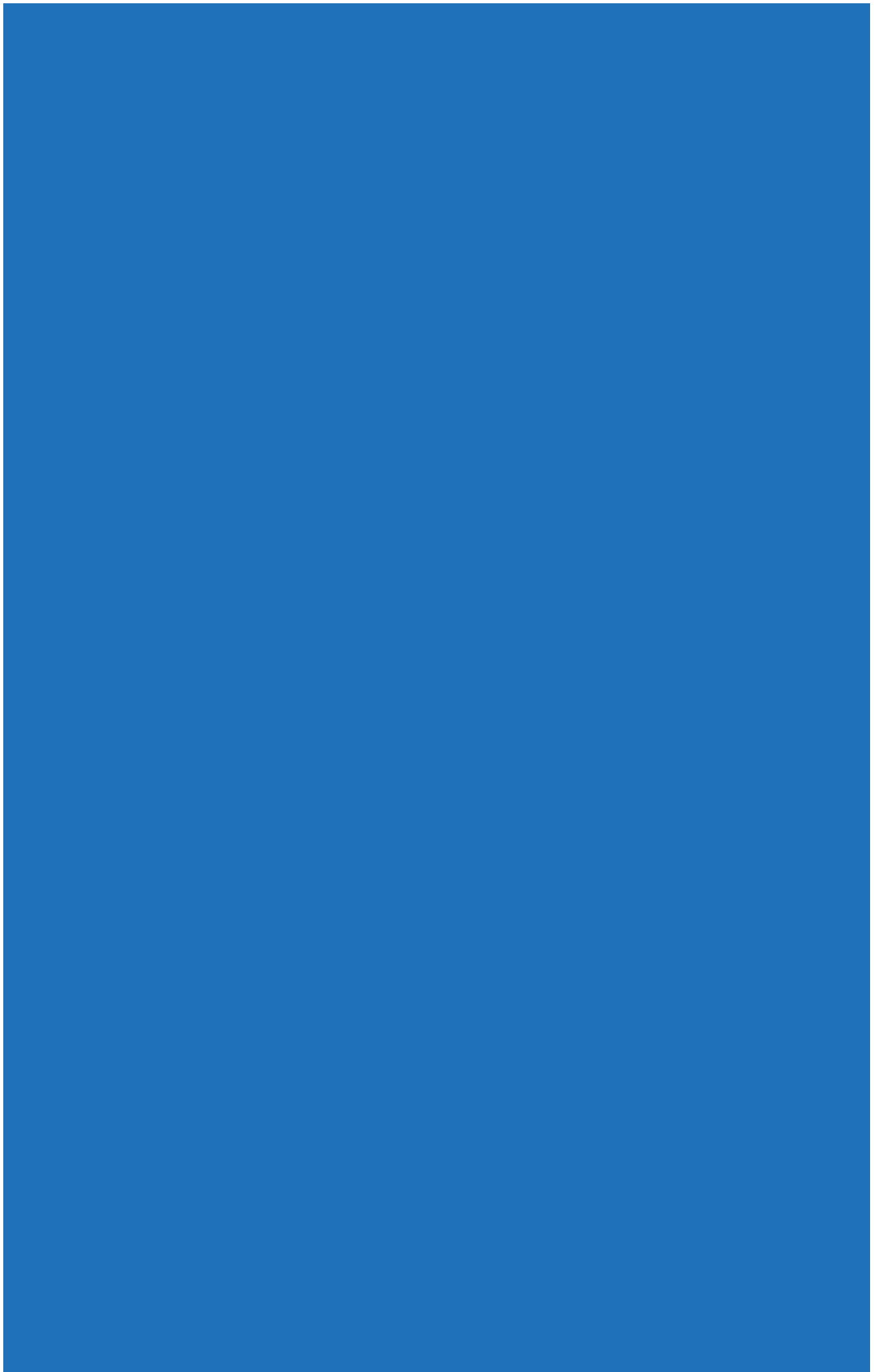
Chapter Two considers the impact on the UK's national interest of EU activity in the field of official statistics. To assess the impact it is necessary to understand what statistics would have been produced without EU competence. All respondents highlighted this as a significant challenge and recognised that many of the same statistics would be produced with or without EU activity. Respondents highlighted the importance of comparable statistics across the EU and the role of the EU competence in achieving both comparability and statistics that are of consistent quality. Comparable statistics are an important basis on which to take decisions and monitor policies.

Evidence in this Chapter shows that EU statistical regulation can lead to reduced costs through efficiencies of scale, whilst also playing a role in avoiding financial fraud. Two respondents highlighted that the statistical regulations have also led to increased costs, either directly because extra data collections have been required, or indirectly through bureaucracy that arises from collective responsibility. Evidence submitted to this review and previous Balance of Competences Reports has discussed the burden that statistical data collections place on respondents – often businesses. In common with the challenge of assessing the impact the competence has on UK interests, it is difficult to establish how much of this burden would have arisen regardless of EU competence. However, the evidence points to concerns about burden, particularly in relation to data collection on the trade in goods which is already the focus of efforts within the EU to reduce the burden imposed.

Chapter Three considers the future options and challenges in relation to EU statistics and the interaction with UK national policy. The central challenge is to meet the need for comparable statistics across the EU, without imposing undue burden. The evidence received suggests that not all data collected under EU competence is used sufficiently. Any increase in data requirements would be a significant concern if implemented without recognising and being sensitive to different priorities in Member States. This chapter summarises the three main proposed pieces of legislation affecting statistics including:

- a proposal for the reform of Regulation 223/2009, the framework for the statistical system within the EU;
- a Framework Regulation for the Integration of Business Statistics which will impact key outputs such as the national accounts; and
- an Integrated System of Social Statistics.

The Chapter summarises that the balance of the evidence received indicates that the current competence results in a broadly acceptable trade-off for UK interests, with some improvements called for in relation to the prioritisation of EU requirements.



## Section 3, Statistics

# Chapter 1: Development and Current State of Competence

### Introduction

- 1.1 Every day across the world, high quality official statistical information plays a critical role in helping governments, business, the public and others to make better decisions. It is impossible to access the media without seeing references to statistical information about the economy, population, health, education, crime or the environment.
- 1.2 The UK is an active partner in a global statistical system that includes the United Nations, the Organisation for Economic Cooperation and Development, the International Monetary Fund, the International Labour Organisation, the European Union and other supra-national bodies in the development of international standards and the harmonisation of official statistics. Being such a partner brings costs and benefits to the UK and more widely. It is important to recognise that the global economy and wider society require information for decision making and that collecting, analysing and disseminating this information is sometimes a burden for the UK and more widely but is necessary as a counter to fraud. However, the UK has a good track record in helping to shape global and EU standards that are often the same.
- 1.3 It is in the UK's interests that the data collected and statistics produced by other states are reliable and accurate. If the UK was not a member of the EU it would continue to have the accompanying burdens as wider factors such as globalisation and society are key drivers for the collection of data and production of statistics.

### Overview

- 1.4 EU competence in the field of statistics is intended to ensure that policy-making at the EU level is underpinned 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.

### Competence of the European Union

- 1.5 Competence for European statistics is referenced in the EU Treaties. These provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competence conferred on it by the Treaties. Where the Treaties do not confer competence on the EU, they remain with the Member States.

1.6 The EU and Member States have shared competence in the field of statistics as set out in Article 338 of the Treaty on the Functioning of the European Union (TFEU)<sup>1</sup>:

‘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.’

1.7 This gives the European Commission a basis to:

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

1.8 There are other areas of EU competence such as macro-economic policy, Single Market, regional funding and agriculture which impact on the statistics competence. This report will cover the EU competence in statistics in general but will reference other Balance of Competences Reports where appropriate.

## Development of Competence

1.9 The origins of the competence are laid out in the 1951 Treaty of Paris<sup>2</sup> which includes objectives which presupposed the availability of statistics. The statistical service came into being at the end of 1952. For almost half a century this service was responsible for the development of the European statistical programme and its relations with the National Statistical Institutes (NSIs) of Member States.

1.10 The explosion in demand for statistical information in the 1980s and 1990s and, in particular, its increasing use for monitoring Community policies called for a more formalised structure for Community statistics. The new TEU was signed in June 1997 in Amsterdam. That Treaty was a major step forward for statistics which were given a separate article and also featured on the list of policies which would be subject to a co-decision by the European Parliament.

1.11 After several years of negotiations, the Council adopted on 17 February 1997 a regulation ((EC) No 322/97) on Community statistics<sup>3</sup>. This legal text codified the existing working arrangements for the European Statistical System and represented a milestone in the

<sup>1</sup> The Treaty on the Functioning of the European Union came into force on December 1, 2009 following the ratification of the Treaty of Lisbon, which made amendments to the Treaty on European Union and the Treaty establishing the European Community.

<sup>2</sup> This treaty establishing the European Coal and Steel Community was signed in Paris in 1951 and brought France, Germany, Italy and the Benelux countries together in a Community with the aim of organising free movement of coal and steel and free access to sources of production.

<sup>3</sup> Regulation 322/97/EC of the European Council on Community Statistics, 1997.

recognition of European statistics. This regulation and EC No. 1101/2008<sup>4</sup> dealing with the transmission of information to Eurostat were both repealed in 2009 in tandem with the coming into force of EU Regulation No. 223/2009.<sup>5</sup>

## European Statistical Law

- 1.12 Regulation (EC) 223/2009,<sup>6</sup> commonly referred to as the European statistical law or Regulation 223, sets out the framework legislation for the European Statistical System (ESS). It defines European Statistics as those statistics necessary for the functioning of the Union and the ESS as the partnership comprising Eurostat and the nominated producers of European statistics in all Member States. Regulation 223 also includes detailed provisions relating to the production of European statistics, their dissemination, and the practice of statistical confidentiality. All other legislation under which European statistics are produced must be compatible with Regulation 223.
- 1.13 Eurostat is part of the European Commission and the EU's statistical office whose task is to provide the EU with statistics at European level that enable comparisons between countries and regions. It has the duty to ensure Member States' compliance with the Treaties.
- 1.14 Regulation 223 gives Eurostat the power to:
- Propose statistical laws;
  - Compile and publish European statistics;
  - Establish European Commission policy for statistics; and
  - Chair meetings of Expert, Advisory and Working Groups.
- 1.15 The main role of Eurostat is to publish official statistics at the European level which are compiled from national data supplied by Member States. Eurostat also ensures that European statistics are produced and harmonised according to established rules and principles. 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.

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<sup>4</sup> Regulation 1101/2008 /EC of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, 2008.

<sup>5</sup> Regulation 223/2009/EC of the European Parliament and of the Council on European statistics, 2009 and repealing Regulation 1101/2008/EC of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (2008), Regulation 322/97/EC of the European Council on Community Statistics, 1997 and Decision 89/382/EEC of the European Council on the establishing a Committee on the Statistical Programmes of the European Communities 1989.

<sup>6</sup> Idem.

## Eurostat – Producing Comparable Statistics for the EU

Eurostat is the statistical office of the European Union. Its task is to provide the European Union with statistics at European level that enable comparisons between countries and regions. It employs over 800 staff. The UK sometimes second civil servants to Eurostat.

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.

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 data 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.

## Statistical Actors and Governance

- 1.16 The European Statistical System Committee (ESSC), established by Regulation 223, is the high level statistical policy making forum and law-maker 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). The National Statistical Institutes of four countries in the European Free Trade Association (EFTA) – Iceland, Liechtenstein, Norway and Switzerland – also participate at ESSC as observers.
- 1.17 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<sup>7</sup> and are drawn into a greater level of detail in the European Statistics Code of Practice.<sup>8</sup> Within the UK, these are embedded in our national Code of Practice for Official Statistics, adopted by the UK Statistics Authority in January 2009.<sup>9</sup> The UK is helping the ESS to develop systems to provide additional quality assurance of European statistics produced by Member States, including compliance with the European Code.
- 1.18 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).

<sup>7</sup> The Conference of European Statisticians developed and adopted the Fundamental Principles of Official Statistics in 1991 (CES/702), which were subsequently adopted in 1992 at the ministerial level by Give in Full (ECE) as decision C(47). Statisticians in other parts of the world soon realised that the principles were of much wider, global significance. Following an international consultation process, a milestone in the history of international statistics was reached when the United Nations Statistical Commission at its Special Session of 11-15 April 1994 adopted the very same set of principles – with a revised preamble – as the United Nations Fundamental Principles of Official Statistics (1994).

<sup>8</sup> The European Statistics Code of Practice was adopted by the Statistical Programme Committee on 24 February 2005 and was revised by the European Statistical System Committee in September 2011. It sets out 15 key principles for the production and dissemination of European official statistics and the institutional environment under which national and Community statistical authorities operate.

<sup>9</sup> The Statistics and Registration Service Act 2007 requires the UK Statistics Authority to prepare, adopt and publish a Code of Practice for Statistics. Version 1.0 of the Code was published in January 2009.

## Implementing the Competence in the UK

- 1.19 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,<sup>10</sup> 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. Its main functions are the oversight of the Office for National Statistics (ONS) – its executive office and the independent scrutiny (monitoring and assessment) of all official statistics produced in the UK.
- 1.20 ONS, 26 UK Government Departments and the Devolved Administrations are between them responsible for meeting the requirements of 48 active EU statistics regulations. ONS has a legal responsibility to coordinate the supply of all UK data to the European Commission – Eurostat – which then publishes them. For these purposes, ONS is reliant on the cooperation of other UK Government Departments and the Devolved Administrations with whom it has built strong links and effective mechanisms of coordination.

### National Interests, Eurostat Requirements and 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 detail.

Without relevant EU standards, the UK would still be expected to comply with UN standards in order to maintain globally comparable statistics. This example illustrates that, although meeting the EU standards is mandatory, the work required largely reflects activity the UK would in any case undertake.

- 1.21 The competence allows the ESS to work on a range of issues of mutual interest outside the legal context, such as technical collaboration and other aspects of mutual support between Member States and Eurostat. Moreover, the existence of a European Statistics Code of Practice (ESCOP), which is consistent with the UK's own Code of Practice, and the 'European Statistics Law' (Regulation 223/2009), which is broadly consistent with the Statistics and Registration Service Act 2007,<sup>11</sup> are key tools to improve trustworthiness of official statistics.
- 1.22 The UK, other Member States and Eurostat work together with international organisations to develop and promote relevant statistical policies especially in relation to producing comparable statistics. The UK's official statistics community is active in promoting best practice and shaping common standards in order to achieve the right balance between burdens and producing useful information.

<sup>10</sup> Statistics and Registration Service Act 2007, chapter 18.

<sup>11</sup> Statistics and Registration Service Act 2007, chapter 18.



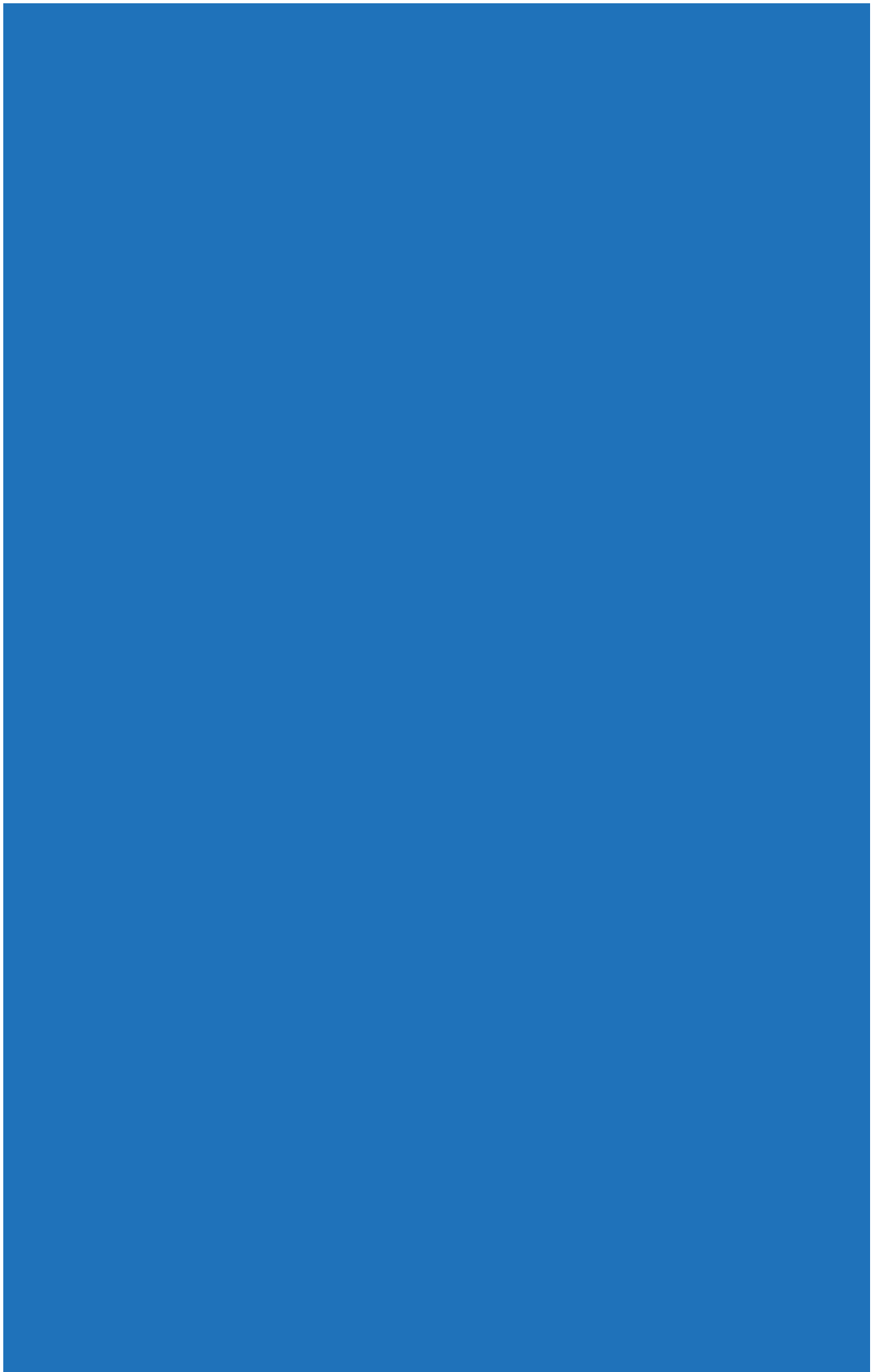
## European Statistical Service Vision 2020

The ESS has a crucial role in providing high quality, independent information to everyone across Europe for decision-making purposes, research and debate. To continue to do this, it must adapt to, and take advantage of, changing global and technological environment while dealing with limitations on available resources.

The ESS Vision 2020 was agreed by ESSC in May 2014 and is a guiding framework for the development of the ESS during the years up to 2020. It is an important step towards ensuring the production of independent and modern European statistics that respond to user needs and quality expectations as much as possible within the limits of available resources. The Vision has five priority areas:

1. satisfying users
2. improving the quality of statistics
3. exploiting new data sources
4. ensuring efficient and robust production processes
5. improving dissemination and communication.

Work is underway among Member States on drawing up an implementation plan. For example, the UK is leading a task force on governance, which has been looking at how to ensure appropriate oversight of developments, including the use of Project and Programme Management skills.



## Section 3, Statistics

### Chapter 2: Impact on the UK National Interest

- 2.1 The UK Government invests approximately £250m in the field of statistics every year and a further £500m was invested in the 2011 National Censuses in England, Wales, Scotland and Northern Ireland. Approximately 6,500 people work in the Government Statistical Service, producing over 1,700 Official Statistics releases and providing other analysis and statistical support.
- 2.2 Official statistics are a fundamental tool for making informed decisions internationally, nationally and locally. They are used by many sectors of society (UK Government, EU institutions, businesses, academia and the electorate) to make or inform decisions that impact on the well-being of UK citizens. International comparability of official statistics, adherence to international standards, and international coordination of official statistics production are all embedded within the UK's own Code of Practice for Official Statistics.
- 2.3 The Office for National Statistics is the main producer of Official Statistics in the UK. Approximately 50% of the outputs ONS produces cover EU Regulations. This means that these outputs should, assuming compliance with the relevant regulation across all ESS members, meet international standards of quality and be comparable with all ESS member states (EU Member States plus the four EEA/ EFTA countries). EU statistical regulations are linked to many areas of EU competence and thus relate to many areas of EU policy-making such as macro-economic, Single Market, regional funding and agriculture.
- 2.4 These regulations also support fundamental principles in the functioning of the EU, such as the calculation of Qualified Majority Voting (QMV) voting rights according to national population counts. QMV is a system of voting in the EU where votes of Member States are weighted. With effect from 1 November 2014 there is a double majority system in place meaning decisions must be approved both by a certain number of Member States, as well as by a certain number of Member State votes weighted by population. In the absence of consensus, QMV is sometimes used to make decisions in the European Council depending on the relevant Treaty provision. EU 1260/2013 is the statistical regulation under which Member States provide population data for these purposes.

## National Accounts

National Accounts play an important role in the governance process of the European Union. Gross National Income (GNI) plays a key role in the calculation of the EU budget, and, in addition, regional GNI is used to distribute funds between the regions of Europe. Ratios of public deficit and debt are used to determine European fiscal policies. Quarterly growth rates of GNI influence the monetary policy of the Eurozone. These examples illustrate the importance of comparable and high quality National Accounts across EU Member States. The Balance of Competences Report on the EU Budget covers the EU Budget issue in more detail.

- 2.5 European Statistics can have wider impacts in determining how the EU operates according to the roles assigned to, and uses of, those statistics within other rules and processes agreed by Member States. In the case of GNI statistics, as with other areas of statistics, revisions and improvements, which are expected of any statistical system, may have wider implications. The following case study on GNI and the EU budget is an example of this and also shows how the competence means that all statistical regulations are developed to ensure consistency for all statistics used for some of the most important policy-making decisions at the EU and national level. The UK is excluded from statistical regulations which relate to areas of competence that do not have direct effect in the UK, such as those related to Eurozone issues.

### Case Study: Gross National Income and the EU Budget

Member States make contributions to the EU Budget according to the system of Own Resources. Governed by Regulation (EC, Euratom) 1150/2000, the system of Own Resources is based on Traditional Own Resources (TOR) (customs duties on imports from outside the EU and sugar levies), Value Added Tax (VAT) based contributions and Gross National Income (GNI) based contributions.

Under the existing Own Resources system, the calculation of GNI is determined by the European System of Accounts 1995 (ESA95) framework. The use of a consistent approach between Member States ensures the comparability and harmonisation of statistics within the European Union.

All Member States make revisions to their GNI data. The revisions represent the effect of new data and improvements in methodology that are now possible, but which were not available previously.

Each year there are adjustments to Member States' contributions as a result of revisions to Value Added Tax (VAT) and Gross National Income (GNI). These adjustments vary from year to year.

In 2014, the UK's Office of National Statistics accordingly submitted revised data to Eurostat in September 2014. Other Member States' National Statistical Institutes similarly submitted revisions. For the UK, these revisions include for example, a new and improved measurement of the non-profit sector, and of the output of the financial sector within a wider range of other improvements.

In 2014, the scale of these revisions was unprecedented. Therefore, on 7 November 2014, the Council invited the Commission to propose a revision to the regulation on Own Resources allowing Member States concerned to defer the required payment over a reasonable period of time, without incurring any interest. It was also agreed that a full rebate would apply to the UK payment and it would be paid at the same time as any money owed. Therefore, the UK's payments, as a result of these revisions, have been halved from £1.7 billion to about £850 million.

## Assessing the Impact of EU Competence

2.6 The competence in relation to statistics places a requirement on Member States to collect statistics as set out in EU Regulations. However, to assess the impact this has on the UK, it is necessary to understand what proportion of these statistics the UK would have produced anyway, and in a manner that was reliably comparable to other EU Member States and our trading partners in the EEA/EFTA region. It is important to bear in mind that the position for particular statistical domains will differ. For example, for agriculture there is an overlap on core topics but differences on coverage of surveys, questions asked, frequency of surveys etc. which may impose additional costs on the UK.

2.7 All respondents to the Call for Evidence referred to the challenge of assessing this. Three respondents (Statistics Denmark, Scottish Government and Welsh Government) indicated that most of the statistics required by the EU would be collected by Member States even in the absence of this requirement, which makes it difficult to separate out the effect of the competence on the UK. This view was also stated in a 2006 report by the former Statistics Commission:

The statistical demands of the EU on Member States are substantial but often overlap with the requirements of UK users. In practice therefore it is often, though not always, the case that similar statistical work would be undertaken with or without the EU requirement.<sup>1</sup>

2.8 In its response, the Welsh Government said:

The majority of statistics for Wales produced due to EU regulation are provided by the Office for National Statistics, who have responsibility for the provision of economic, population and vital statistics for England and Wales. We understand from ONS that this represents a large proportion of their workload. Many of our surveys, data collections and statistical outputs are independent of any EU requirement and it could be argued would be carried out with or without any EU involvement.<sup>2</sup>

2.9 Therefore it is not straightforward to establish the extent to which this workload would exist without EU regulations.

2.10 In its contribution to the first semester Balance of Competences Report on Health, the Health and Social Care Information Centre (HSCIC) commented that:

We contribute to Eurostat, OECD and WHO statistics, coordinating returns across all 4 UK countries. As with other Member States we provide whatever data that is sufficiently close to the definition (i.e. “best fit” data), for descriptive or comparative purposes. So far this has not necessitated any new data collection or production of new statistics.<sup>3</sup>

2.11 Sharon Bowles, former MEP for the South East of England, commented that:

As one of the more sophisticated providers of statistics the impact should not be great as the UK would also comply with international standards and, one would hope, not at a minimalist level for a major trading nation.<sup>4</sup>

<sup>1</sup> Statistics Commission *Impact of EU Demands on the UK Statistical System* (2006).

<sup>2</sup> Welsh Government, *submission of evidence*.

<sup>3</sup> Health and Social Care Information Centre, evidence in response to the *Review of the Balance of Competences between the United Kingdom and the European Union: Health* (2013).

<sup>4</sup> Sharon Bowles, *submission of evidence*.

## Comparability and Quality

2.12 Statistics Denmark state in their evidence that: ‘From the Danish perspective, the biggest advantage of EU-cooperation is comparability of statistics. In addition, EU-cooperation has a big impact on common quality standards.’<sup>5</sup> Comparability was mentioned by all those who responded to the Call for Evidence. In its response, the Scottish Government commented that comparability ‘is so valued that it also includes EEA and EFTA countries’.<sup>6</sup> Comparability is not limited to the statistics outputs themselves, but includes the methods used to produce those outputs and the common quality standards applied, as described by Statistics Denmark:

‘Those (standards) are ensured by international controlling mechanisms which according to our opinion enhance the credibility of European statistics. The use of peer reviews is a good example of setting common quality standards. Self-assessments can indicate areas for improvement in the Member States, but it is peer visits that really verify the quality of statistical production and professional independence in the Member States.’<sup>7</sup>

2.13 Comparable statistics are an important basis on which to take decisions and monitor the impact of policies – for the UK Government, local government, and also at an EU level. Sharon Bowles commented:

Statistics, through the link to the economic data and the ability for the Commission to monitor debt and deficit, is a matter of common concern both between Member States and for the wider public [...] the wider interests and interdependence of economies and knowing that there are quality statistics over the whole of the EU must surely outweigh any inconveniences.<sup>8</sup>

2.14 The importance of comparable statistics can be seen in many diverse topics that draw upon comparability of statistics across the EU. For example, the benefit of comparable statistics was directly cited by the British Dental Association (BDA) in its evidence to the Balance of Competences Report on Health:

The BDA supports the common framework (Regulation 1338/2008) for the systematic production of Community statistics on public health and health and safety at work. It is beneficial to have a harmonised and common data set, containing information required for EU action in the field of public health, for supporting national strategies for the development of high-quality, universally accessible and sustainable health care as well as for EU action in the field of health and safety at work.<sup>9</sup>

<sup>5</sup> Statistics Denmark, *submission of evidence*.

<sup>6</sup> Scottish Government, *submission of evidence*.

<sup>7</sup> Statistics Denmark, *submission of evidence*.

<sup>8</sup> Sharon Bowles, *submission of evidence*.

<sup>9</sup> British Dental Association, *Evidence in Response to the Review of the Balance of Competences between the United Kingdom and the European Union: Health* (2013).

## Benefits of EU statistics – Energy Statistics

One benefit of European statistics is the use of common definitions which make direct comparisons between countries possible. This is widely used in the analysis of energy where, for example, the Department of Energy and Climate Change:

- republishes data on electricity and gas prices to show how they compare across the EU; and,
- monitors the development of renewable energies across the EU in order to understand how the UK compares to other countries.

2.15 The importance of comparable statistics can also be seen in references to the need for *greater* comparability. For example, in its response to the Balance of Competences Report on Animal Health and Welfare and Food Safety (first semester of the Review), the National Farmers Union reported:

One of the current weaknesses across the EU (when discussing animal health and welfare) is the lack of mutually recognised data across all the Member States relating to animal health, animal welfare and the responsible use of veterinary medicine. The EU should look to enable and encourage systems across its Member States, which support harmonised data collection in these areas.<sup>10</sup>

2.16 The House of Lords European Committee Report, *Counting the Cost of Food Waste*, highlighted the lack of comparable statistics across the EU as an area of concern:

In order to boost data availability across the EU, the current Member State reporting requirements must be reformed, so that food waste can be more reliably identified. This requires action on the part of Eurostat and Member States in order to reform some of the existing reporting categories that currently conceal food waste estimates.<sup>11</sup>

2.17 The second semester Balance of Competences Report on Environment and Climate Change also highlighted the importance of comparable data, drawing on evidence submitted by the Chartered Institution of Wastes Management regarding: ‘a need for consistent interpretations, definitions, data standards and reporting to allow fair comparison in performance between Member States.’<sup>12</sup>

2.18 In its 2006 report, the Statistics Commission<sup>13</sup> pointed out that:

The evolution of UK statistical systems to keep up with changing needs at national level can be hampered by the rigid legal framework for EU requirements. However this rigidity has some benefits too; it can help to ensure the consistency of time series, for example, as well as international comparability.

<sup>10</sup> National Farmers Union, *Evidence in response to the Review of the Balance of Competences between the United Kingdom and the European Union: Animal Health and Welfare and Food Safety* (2013).

<sup>11</sup> House of Lords European Union Committee, *Counting the Cost of Food Waste: EU Food Waste Prevention* (HL 2013-14, 10). This makes a number of recommendations in support of the Committee’s view that immediate action is needed in Europe to reduce food waste.

<sup>12</sup> Chartered Institute of Waste Management, *Evidence in response to the Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change* (2013).

<sup>13</sup> The Statistics Commission was a non-departmental public body established in 2000 by the UK Government to oversee the work of the Office for National Statistics. It was abolished in 2008 following the creation of the UK Statistics Authority.

- 2.19 Sharon Bowles highlighted the importance of strong statistical regulation in preventing statistical fraud, and so limiting exposure to wider economic problems. She stated:

The issue of statistics being fraudulent is very serious in the context of the stability and growth pact and debt and deficit levels. It was generally the received wisdom that statistics for Greece were being manipulated but the Commission claimed they did not have the powers or information to be able to confirm that or take action [...] There have been significant attempts, with success, to upgrade statistics.<sup>14</sup>

### Case Study: Importance of Role of Official Statistics – Greece

In 2004 it became clear that the Greek Government's debt and deficit statistics, provided to Eurostat by its statistical office, and on the basis of which Greece had been allowed to adopt the Euro had been inaccurate. The Council (of Economic and Finance Ministers of the EU Member States) invited the Commission to prepare a proposal to develop minimum European standards for the production of European Statistics.

In May 2005 the Commission published its "Communication (to the European Parliament and to the Council) on the independence, integrity and accountability of the national and Community statistical authorities". This Communication recommended the text of the European Statistics Code of Practice (ESCOP) that had been formally adopted earlier that year.

ESCOP had a dual purpose. On the one hand, it was intended to improve trust and confidence in statistical authorities by proposing certain institutional and organisational arrangements and, on the other, to reinforce the quality of the statistics they produce and disseminate, by promoting the coherent application of best international statistical principles, methods and practices by all producers of official statistics in Europe.

The Communication also presented proposals related to the monitoring of the implementation of the Code and considerations about the usefulness of an effective external advisory body for the European Statistical System which led to the establishment of the European Statistics Governance Advisory Board.

### Costs/Resources

- 2.20 A number of respondents highlighted the cost and resource requirements of implementing EU measures. Specifically, Statistics Denmark identified the lower development costs for Member States, when EU work is co-ordinated to address an issue, for example to develop a new set of statistics. It stated:

The EU co-operation can help Member States to develop statistics that they otherwise would not have produced nationally, and where there is an interest in producing such statistics. In the Danish case statistics on Global Value Chains is a good example here.<sup>15</sup>

- 2.21 However, the Welsh Government highlighted two examples where the obligation to provide statistics to Eurostat resulted in increased costs:

For health statistics, the questions contained in the mandatory European Health Information Survey (EHIS) in 2014, although similar, were not the same as those in pre-existing national health surveys. As a result the EHIS had to be commissioned and carried out as a separate survey by the four UK countries, which entailed associated additional cost to Welsh Government (£35,000) and management time.<sup>16</sup>

<sup>14</sup> Sharon Bowles, *submission of evidence*.

<sup>15</sup> Statistics Denmark, *submission of evidence*.

<sup>16</sup> Welsh Government, *submission of evidence*.



EU regulations will oblige the UK to produce a health accounts return under the 2011 System of Health Accounts in 2016 [...] there will have to be research, data collection and additional analysis to meet the remaining requirements. The major share of this work will fall to ONS, but the devolved administrations and the NHS will have to carry out the detailed work of mapping local sources of data to the SHA 2011 categories. Some grant assistance from the EU will be available, but there will inevitably be a call on the capacity of experts from Welsh Government and NHS Wales and this will incur an opportunity cost as it will impact on the time available for work on local priorities.<sup>17</sup>

2.22 The Welsh Government also highlighted that the ONS had ceased production of some statistics because it had had to focus its resources on meeting EU requirements. ONS had decided to cease the publication of some statistics not required under EU regulations but which the Welsh Government said had been useful (though it did not specify which statistics). However, the UK Government's view is that it is not straightforward to determine whether the absence of EU Regulations would have resulted in a different outcome: reflecting the discussion above, it is possible that the same statistics would have been ONS' priority in either scenario.

2.23 Statistics Denmark also commented on costs and illustrated that these costs can arise in different ways: through bureaucracy; arising from collective responsibility, in that if one Member State fails, the resulting steps that are taken to make sure that the failure does not happen again are likely to affect all Member States; or through the EU demanding specific methods be used to produce statistics. For example, Statistics Denmark commented:

The choice of statistical methods can also be a challenge for some Member States. This can be illustrated by the recently adopted regulation on demography, where Denmark, while having extensive registers about the population, is also obliged to produce demography statistics by using other statistical methods.<sup>18</sup>

2.24 In its response to the first semester Balance of Competences Report on Health, HSCIC commented that it currently meets EU requirements through existing data, but if there were any increase in the requirements that necessitated new data collection this would potentially have a "huge impact" on NHS resources.<sup>19</sup>

2.25 In June 2014, the EEA/EFTA countries agreed to follow the European Statistical Programme 2013 –17, which commits them to compliance with statistical regulations and, importantly, to making a significant contribution to the EU budget required for implementation.<sup>20</sup>

## Respondent Burden

2.26 Information from statistical surveys is fundamental to good government, to the delivery of public services and to decision-making in all sectors of society. However, governments must do all they can to minimise the financial burden placed on respondents to surveys whether they are businesses, households, other institutions or individuals. It is fundamental that this burden is proportionate to the needs of users and is not excessive for respondents. Measuring this burden aims to help users and respondents judge the effectiveness of government efforts to minimise the costs of complying with government surveys, while maintaining a system of reliable and accurate statistics.

<sup>17</sup> Welsh Government, *submission of evidence*.

<sup>18</sup> Statistics Denmark, *submission of evidence*.

<sup>19</sup> Health and Social Care Information Centre, *Evidence in Response to the Review of the Balance of Competences between the United Kingdom and the European Union: Health* (2013).

<sup>20</sup> Regulation (EU) 99/2013 of the European Parliament and of the Council of 15 January 2013 on the European Statistical Programme 2013-17 (2013).

2.27 In its response, Statistics Denmark suggested that not all the data required by the EU is used appropriately or sufficiently to warrant the burden of its collection.<sup>21</sup> The 2006 Statistics Commission Report also commented that:

The process of prioritising, and reducing, EU demands is important in maintaining the flexibility and relevance of statistical outputs at both the EU and UK levels. We would like to see more evidence that the full range of costs and benefits are being taken into account in such prioritisation.<sup>22</sup>

### Case Study: Statistics on Land Use, Livestock and Farm Labour

The requirement that Eurostat places on Member States to collect statistics on land use, livestock and farm labour does not, in the UK Government's opinion, reflect any global statistical requirement and there is no clear national interest for the UK in collecting the data.

The EU required Farm Structure Survey is a full census in the base year (over 185,000 holdings) with large surveys (90,000 holdings) required in two other years spaced across the decade. Rather than a simple headcount, the EU requires information on the work on and off the holding over a year for each worker, to calculate the overall labour input. Farmers report that they find the labour questions intrusive and difficult to complete. Much of these data is not used within the UK and farming only accounts for approximately 1.5% of total UK employment.

The UK has joined a Eurostat task force to investigate agricultural statistics data requirements. The task force is considering the relative priority of data required by the EU and also exploring how a core, satellite and module survey structure could enable detailed data to still be collected, but from a much smaller sample than currently surveyed.

2.28 Measuring respondent burden in general is by no means an exact science and is still a subject of some research, so it is not surprising to find differing views on the topic. Nevertheless, it has been estimated that statistical activity incurs a respondent burden cost of £50m in 2012/13<sup>23</sup> in terms of the time taken by businesses and local authorities in responding to UK Government statistical surveys.

2.29 The reduction in burden on respondents is a fundamental objective of both the UK statistical system (see Principle 6 of the UK Code of Practice "Proportionate Burden") and the ESS (see Principle 9 of the EU Code of Practice "Non-Excessive Burden on Respondents"). This objective is built into relevant EU statistical regulations including the statutory European Statistical Programme 2013-17<sup>24</sup> which all regulatory developments in that period have to follow. However, where EU Regulations result in data collections that are additional, or more detailed than Member States might otherwise have undertaken, there is a potential related burden on those who must provide the data.

<sup>21</sup> Statistics Denmark, *submission of evidence*.

<sup>22</sup> Statistics Commission, *Impact of EU Demands on the UK Statistical System* (2006).

<sup>23</sup> Office for National Statistics, *2012/13 Annual Report on Government Statistical Surveys for Official Statistics of Businesses and Local Authorities* (2014).

<sup>24</sup> Regulation (EU) 99/2013 of the European Parliament and of the Council of 15 January 2013 on the European Statistical Programme 2013-17 (2013).

2.30 As stated previously, it is difficult to differentiate where this burden is due to EU competence because it is unclear what information might have been collected had there been no EU competence, but there is evidence of a respondent burden effect. For example, the Balance of Competences Report on Environment and Climate Change (second semester of the Review) observes that:

Participants at the nature and biodiversity workshop suggested that EU legislation is not flexible enough to fit SMEs [...] In addition, participants argued that the EU can add bureaucracy for SMEs who have to provide data, for example for carbon reporting.<sup>25</sup>

## 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.

2.31 Evidence also pointed to the respondent burden associated with Intrastat, the system used for collecting statistics on the trade in goods between EU Member States (the supply of services is excluded from Intrastat). In addition to goods that have been bought and sold, Intrastat also covers goods that have moved between EU countries for other reasons. Every VAT-registered business trading goods with another EU Member State is obliged to declare information about the value of Arrivals (purchases or imports) or Dispatches (sales or exports). Where those values exceed the annual thresholds, the business is obliged to declare other information such as the commodity code classification of the goods, the quantity of the goods, the type of transaction and the country to which the goods are being despatched or from which they have arrived.

<sup>25</sup> HMG, *Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change* (2013) para 2.44.

2.32 The Balance of Competences Report on the Single Market: Free Movement of Goods (second semester of the Review) discusses in some detail the burden associated with Intrastat:

The UK Chamber of Shipping, while generally content with the balance of competences and the state of the customs union, nevertheless made the point that some administrative burdens from customs requirements disproportionately affect the shipping industry and this implicitly has a disproportionate effect on the UK, as an island nation.<sup>26</sup>

2.33 The Federation of Small Businesses and the British International Freight Association made similar observations. However, the report goes on to note that ‘others argued that the administrative burdens are relatively light and that EU competence has in fact improved the bureaucratic process.’<sup>27</sup>

2.34 The European Commission Staff Working Document “Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook” (COM 2014 368) recognises that:

Intra-EU trade in goods statistics, besides enabling the EU institutions and national authorities to evaluate the growth of the Single Market and the integration of EU economies, provide EU businesses with essential information for their sales and marketing policies. However, the underlying statistical data collection system – Intrastat – is expensive. The currently available detailed information costs annually €334 million and imposes an administrative burden on enterprises evaluated at €317 million per year. This burden is very high even though the required information serves quite frequently also own needs of the businesses, for instance for detailed market research.<sup>28</sup>

2.35 In 2013, the Prime Minister’s Business-led Task Force on EU Regulation received evidence from the British Chambers of Commerce and a number of business organisations in other Member States. Apart from a call from the Austrian Federal Economic Chamber for steps on EU and national level to harmonise existing different classification codes for waste, including the revision of the European Waste Catalogue in an ‘SME friendly way’, Intrastat was the only area of EU statistical legislation that was reported as proving unacceptably burdensome for some businesses. Given the importance of trade statistics to public policy and businesses as a whole, it remains difficult to assess whether or not approximately equivalent burdens would be forthcoming under UK law without an EU Regulation in this area.

2.36 It is important to recognise that the current modernisation programme within the ESS (Vision 2020) recognises the need to reform Intrastat. This follows from the Council of Ministers (ECOFIN) Conclusions on Statistics in November 2011:

[..] the Council *calls upon [sic]* the European Statistical System to take the necessary steps in the area of international trade statistics to address current and future user needs and to take effective measures ensuring a substantial reduction of the response burden by redeveloping Intrastat [...] while maintaining a sound level of quality needed for, e.g. European System of Accounts purposes.<sup>29</sup>

<sup>26</sup> HMG, *Review of the Balance of Competences between the United Kingdom and the European Union: Single Market: Free Movement of Goods* (2013) ) para 3.68.

<sup>27</sup> HMG, *Review of the Balance of Competences: Single Market- Free Movement of Goods*, para 3.69.

<sup>28</sup> European Commission Staff Working Document, *Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook* (2014) (COM 2014 368) p38.

<sup>29</sup> Council of the European Union, Economic and Financial Affairs Committee, *Council Conclusions on EU Statistics, 3129<sup>th</sup> Economic and Financial Affairs Council Meeting, Brussels 30 November 2011* (2011).

2.37 The Free Movement of Goods Report both acknowledges the burden of the Intrastat return and that there are moves to try and simplify the processes and reduce burden. In Annex 2 the report says:

Whilst Governments and the European Union recognise the burden this requirement imposes on businesses, the data collected is a key component of National Accounts and Balance of Payments statistics. [...] The EU has decided that the burden on businesses of providing intra-EU trade data should be reduced by 50%. The UK and other Member States are working with the Commission to come up with a workable system that will reduce administrative burdens on EU businesses.<sup>30</sup>

2.38 Wider sharing of data, particularly administrative data, has the potential to address issues of respondent burden, but data sharing also presents significant legal, logistical and ethical questions. In its response, Statistics Denmark said:

The question of exchange of microdata and directly identifiable data is not yet fully answered. The Danish practice up to now does not presuppose the possibility of such an exchange [...] It is furthermore not clear how the new system of data exchange will influence the credibility of data confidentiality and also how far can we go in exchange of confidential data.<sup>31</sup>

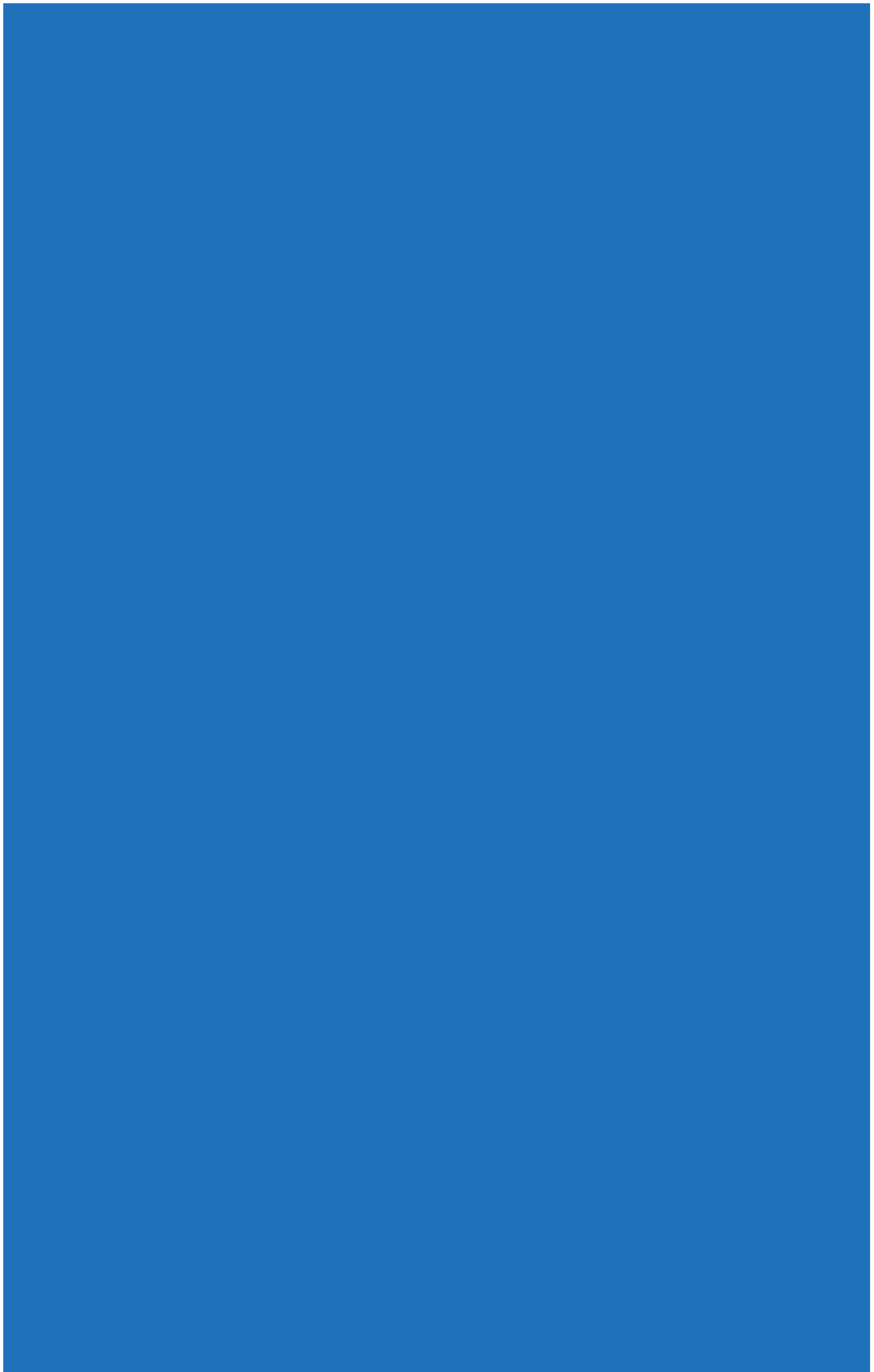
2.39 There is further discussion of how the EU affects the information rights of individuals, business and organisations, including issues around data protection and access to official information, in the Balance of Competences Report on Information Rights.<sup>32</sup>

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<sup>30</sup> HMG, *Review of the Balance of Competences: Single Market – Free Movement of Goods*, Appendix 2.

<sup>31</sup> Statistics Denmark, *submission of evidence*.

<sup>32</sup> HMG, *Review of the Balance of Competences between the United Kingdom and the European Union: Information Rights* (Published in parallel).



## Section 3, Statistics

### Chapter 3: Future Options and Challenges

- 3.1 The evidence received emphasises the importance of the competence in ensuring the comparability and quality of statistics across the EU, but that if this approach is too heavy-handed it results in burden on Member States and business. So while an increase in EU activity in relation to statistics might hope to drive forward greater comparability and quality in one statistical domain such as economic statistics, it may also lead to an unacceptable burden on resources with the result that the needs of UK users of another domain such as agricultural statistics may not be met. Conversely, if there was less EU activity in, for example, the population and demography domain, UK prioritisation of its statistics resources may better reflect the needs of some UK users whose interest was in internal migration – but others, whose focus was immigration or emigration, would likely be hampered by a lack of EU comparability. Indeed there may be associated costs in attempting to harmonise outputs across different UK nations, or more widely across EU Member States.
- 3.2 In weighing up the balance between comparability/ quality and burden, it is important to consider Statistics Denmark’s comment that not all the data collected under EU competence is used appropriately or sufficiently to warrant the burden of its collection.<sup>1</sup> If this is the case, there is a clear challenge for the future, to minimise any unnecessary burden. In its 2006 report, the Statistics Commission expressed a view that there should be greater transparency regarding the UK engagement with the EU on statistics and more opportunities for users to have influence.<sup>2</sup> One key way to address these issues of burden and use is to ensure that there is a clear user requirement for all data required by the EU, and that associated burdens/costs are proportionate to that requirement. Keeping those requirements under review should better ensure that there are opportunities to consider new ones. The evidence suggests that the need for a trade-off is well-established in law and principle within the ESS.
- 3.3 Three respondents – Statistics Denmark, the Scottish Government and the Welsh Government – questioned whether the ESS Vision for 2020 might lead to an increase in EU data requirements. This was seen as a real risk of conflict between national and EU interests. In its response, the Scottish Government spoke of the need to be: “sensitive to local circumstances”.<sup>3</sup> In its response to the Balance of Competences Report on Health, HSCIC indicated that any increase in data collection requirements would have a “huge impact” for NHS resources.<sup>4</sup>

<sup>1</sup> Statistics Denmark, *submission of evidence*.

<sup>2</sup> Statistics Commission, *Impact of EU Demands on the UK Statistical System* (2006).

<sup>3</sup> Scottish Government, *submission of evidence*.

<sup>4</sup> Health and Social Care Information Centre, *Evidence in Response to the Review of the Balance of Competences between the United Kingdom and the European Union: Health* (2013).

- 3.4 The greater use of administrative data across the EU was also seen as a risk in the same way, as there are very different cultural and trust issues in different countries, in relation to use and sharing of data. The central challenge is to design a system that ensures comparability of statistics while minimising unnecessary burden and respecting the different circumstances in each Member State in respect of the collection of data. There is further discussion of how the EU affects the information rights of individuals, business and organisations, including issues around data protection and access to official information, in the Balance of Competences Report on Information Rights.

## Major Proposed Pieces of EU Legislation

### Overview

- 3.5 There are a number of proposed pieces of EU legislation that underpin the ESS Vision 2020 which is set to be the main reference framework to guide strategic decisions at ESS level in the years to come. The implementation of the Vision will include a portfolio of programs, projects and other activities including new legislation that will together enable the accomplishment of the Vision goals. Some work has been done on an initial assessment of the impact of the proposed legislation on the UK though it is too early to evaluate the effect on the competence.

### Regulation 223/2009

- 3.6 The Commission put forward a proposal for reform of Regulation 223/2009, the framework for the statistical system within the EU, in 2012 which did not reach the statute book as negotiations between the Parliament and the Council were not concluded. It is expected that the Commission will present a new proposal to the Council before the end of 2014 though it is too early to say when the legislative process will be completed.
- 3.7 The intention of the revision was to make the governance of European statistics production more robust and in particular more independent from political pressures. The revised Regulation did not proceed because there was no agreement between the European Parliament and the Commission. One particular sticking point related to the European Parliament's demand for complete independence for the appointment, dismissal, and conduct of the Director General of Eurostat on all European statistics matters. It was the Commission's view that such provisions interfered with TFEU itself which, it believed, allowed Eurostat to organise itself as it saw fit.
- 3.8 The UK Government generally supported the reform of this Regulation. It welcomed the proposed changes that aimed to improve compliance with the European Statistics Code of Practice across Member States whilst simultaneously respecting the UK's constitutional settlement.

### Framework Regulation for the Integration of Business Statistics

- 3.9 Eurostat is developing a proposal for a new Framework Regulation Integrating Business Statistics (FRIBS). The Regulation will have implications for all UK business surveys. In addition, there will be changes to the Inter-departmental Business Register (IDBR), which may mean changes to other surveys which use it as a sampling frame. It will also lead to changes to the Extrastat and Intrastat surveys run by HMRC. These changes will impact key outputs, such as the National Accounts.



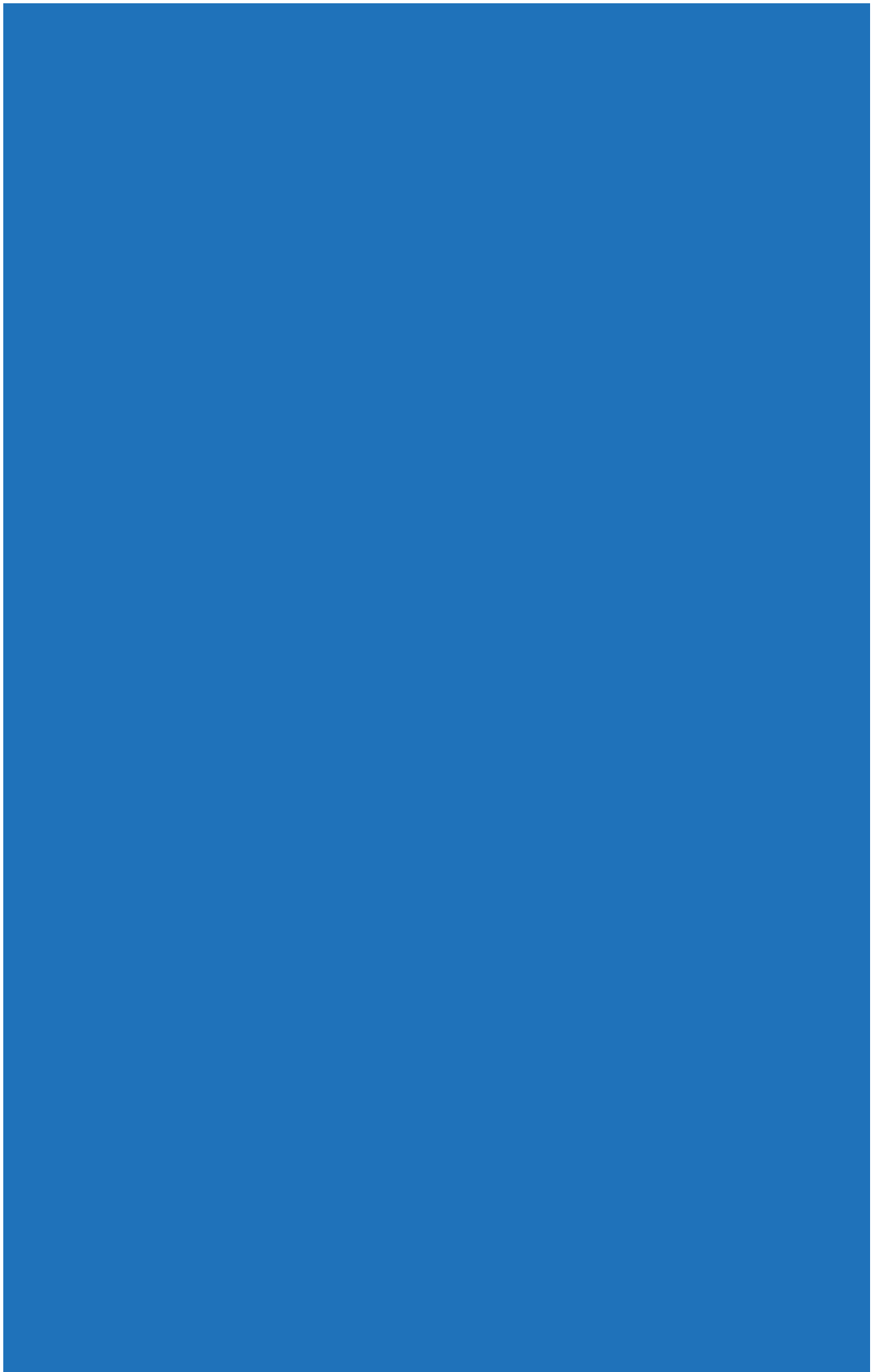
- 3.10 The aim is to finalise the technical discussions before the end of 2014, so that the Regulation can be brought to the ESSC in 2015, before it goes to the Commission for adoption. Lengthy discussions are expected at the Council and in the European Parliament so it is unlikely that the Regulation will be in place before 2018.

## Integrating European Social Statistics

- 3.11 A proposal is being developed by Eurostat to draw up a framework regulation for an integrated system of social surveys that would include data from the Labour Force Survey, the Instrument on EU Statistics on Income and Living Conditions, the European Health Interview Survey, the Household Budget Survey, the Adult Education Survey and a potential new time use survey.
- 3.12 The aim is to finalise technical discussions by the end of 2014 so that the Regulation can be brought to the ESSC in late 2015/early 2016 before it goes to the Commission for adoption. As with FRIBS, lengthy discussions are expected at the Council and in the European Parliament so it is unlikely that the Regulation will be in place before 2018.

## Summary

- 3.13 There is a clear trade-off between the substantial benefits of comparability and assured quality of UK and European statistics on the one hand, and potential burdens on UK respondents and costs to UK statistical producers on the other. Making judgements about the trade off is not straightforward as it would rely on the contents of the UK statistics work programme in the absence of the competence. However, there is evidence to suggest that the overlap is in any case substantial.
- 3.14 The balance of the evidence received indicates that the current competence results in a broadly acceptable trade-off for UK interests, with some particular improvements called for in relation to the prioritisation of EU requirements according to their costs and benefits, and the impact of the competence on the collection of trade statistics.



# Annex A: Submissions to the Call for Evidence

The following formal responses to the Call for Evidence were received:

## Voting Section

Anthony, Melvyn (Pensioners Debout)

Association of Electoral Administrators

Atterbury, Lyn (Pensioners Debout)

Bernstein, Sir Howard, Chief Executive, Manchester City Council and Regional Returning Officer for the North West Region

Birmingham City Council, Senior Electoral Administrators

Blackmore, Dr Michael

Casini, Dr Carlo

Cave, Brian (Pensioners Debout)

Chantrey, Christopher (British Community Committee of France)

Chase, Robert

Christian Concern

Electoral Reform Society

Forsyth, David

Gill, Lizzie

Golding, Jane

Halarose

Human Rights Consortium Scotland

Ironside, Julian JNA

King, Toby

Lea, Tony

McLean, Professor Iain and Johnson, Richard, University of Oxford

Meyer, Professor Christoph and Brassanelli, Dr Edoardo, King's College London

Morris, Paul, Regional Returning Officer for the South West Region

New Europeans

Newman, Nicholas (Association for the Rights of British Citizens Abroad)

Ombudsman Association

Organ, James, Liverpool University European Law Unit

Parliamentary and Health Service Ombudsman

Richards, Graham (Votes for Expat Brits)

Schmitt, Professor Herman, University of Manchester

Scottish Government

Shields, Graham, Chief Electoral Officer for Northern Ireland

Smith, Richard (Labour International)

Welsh Government

Southampton City Council

Summary of administrators' views of the Information Exchange (available in published evidence).

**In addition to the formal submissions to the Voting, Consular and Statistics Call for Evidence, the following responses to other reviews have been considered, as they provided evidence in scope of the Voting Call for Evidence:**

- Faculty of Advocates submission to the Fundamental Rights Balance of Competences Review;
- The London Criminal Courts Solicitors' Association (LCCSA) submission to the Fundamental Rights Balance of Competences Review;
- The Equality and Human Rights Commission submission to the Fundamental Rights Balance of Competences Review;
- Policy Exchange submission to the Fundamental Rights Balance of Competences Review;
- The Liverpool European Law Unit submission to the Fundamental Rights Balance of Competences Review;
- Brian Cave, Brian Edwards and further individuals (who did not provide permission to publish their names) submissions to the Fundamental Rights Balance of Competences Review.

## Consular Section

Amos, Frances

Anderson, Douglas

Arblaster, Dominic

Bartholomew, Roger

British Community Committee of France (BCC)

Crowe OBE, Pauline, Chief Executive, Prisoners Abroad

Dickinson, John

Fair Trials International

Holmes, Kevin S.

Hudson, David

Marshall, Sir Peter, Programme Coordinator at the Global Europe Centre, University of Kent

REUNITE

Scottish Government

Searle, Matt, Chief Executive, Lucie Blackman Trust - Missing Abroad

Snell, Chris

Stabler, Susan

Stiles, Dr. Neville

Trillo, Richard

Vigni, Patrizia, Assistant Professor in International Law, Department of Law, University of Siena, Italy

## Statistics Section

European Commission

Scottish Government

Sharon Bowles (former MEP)

Statistics Denmark

Welsh Government

In addition to the formal submissions to the Call for Evidence, the following responses to other reviews have been considered, as they provided evidence in scope of the Voting Call for Evidence:

Health and Social Care Information Centre submission to the Health Balance of Competences Report

British Dental Association submission to the Health Balance of Competences Report

National Farmers Union submission to the Animal Health and Wealth and Food Safety Balance of Competences Report

Chartered Institute of Waste Management submission to the Environment and Climate Change Balance of Competences Report

## Annex B: Engagement Events

To help inform the Voting section of the Voting, Consular and Statistic Report, two meetings were held with stakeholders to explore the issues raised in the Call for Evidence document.

### **29 April 2014 – Balance of Competences Voting Review Stakeholder Meeting, Brussels**

Scottish Government

London's European Office (represents the Mayor of London and the GLA to the EU institutions)

Secretariat, Committee on Legal Affairs DG Internal Policies, European Parliament

American Chamber of Commerce to the EU

Convention of Scottish Local Authorities

Philip Morris International

Office of Andrew Duff MEP

### **23 June 2014 – Balance of Competences Voting Review Round-table discussion, London**

Southampton City Council

Democracy Counts

City of London Remembrancer

Liverpool University European Law Unit

CORE (Comment of Reproductive Ethics)

Christian Concern

University of Aberdeen

Law Commission

Electoral Reform Society

4-5 Gray's Inn Square

Civitas

Economic and Social Research Council

University of Oxford

Policy Exchange

Policy Network

## Consular Section

### **11 June 2014 – Association of British Travel Agents Event**

On 11 June 2014 the Association of British Travel Agents (ABTA) hosted a discussion on the Review with their policy committee. Representatives of ABTA, Virgin, Thomas Cook, COSMOS and three other tour operators took part.

The Review team also discussed issues relating to the Review with Igor Merheim-Eyre, Dr Patrizia Vigni, Dr. Maaïke Okano-Heijmans, Sanderijn Duquet and Katrien Meuwissen.

A sub-page of the FCO's Facebook page was used to host a discussion on the Balance of Competences Consular Review during June 2014. Appendix 2 gives more information on the questions and responses in this consultation.

## Annex C: Other Sources Used for the Review

### Sources Referred to in this Report

#### Voting Section

##### Domestic Sources:

##### Legislation:

Representation of the People Act 1983

Representation of the People Act 1985

Representation of the People Act 1989

Scotland Act 1998

European Parliamentary Elections Act 1999

Greater London Authority Act 1999

Political Parties, Elections and Referendums Act 2000

Local Government Act 2000

European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (SI 2001/1184)

Northern Ireland Assembly (Elections) Order 2001

European Parliamentary Elections Act 2002

European Parliament (Representation) Act 2003

Government of Wales Act 2006

European Union Act 2011

Police Reform and Social Responsibility Act 2011

Voting Eligibility (Prisoners) Draft Bill



## Select Committee Reports and Evidence

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House of Commons European Scrutiny Committee, *Documents considered by the Committee on 10 July 2013* (HC 2013-14, 83ix)

House of Commons European Scrutiny Committee, *Reforming the European Scrutiny System in the House of Commons* (HC 2013-14, 109-II), evidence

House of Lords European Union Committee, *The Role of National Parliaments in the European Union* (HL 2013-14, 151)

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## Reports

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Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 167.

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Treaty on European Union (Maastricht text), July 29, 1992, art. G(C), 1992 O.J. C 191/1, at 7.

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Commission Communication COM(2014) 33 final on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, 2014.

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# Annex D: Glossary of Abbreviations and Acronym

## Voting Section

<b>ECI</b>	European Citizens' Initiative
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECJ</b>	European Court of Justice
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>MEP</b>	Member of the European Parliament
<b>RRO</b>	Regional Returning Officer
<b>ERO</b>	Electoral Registration Officer
<b>IER</b>	Individual Electoral Registration

## Consular Section

<b>ABTA</b>	Association of British Travel Agents
<b>AITO</b>	Association of Independent Tour Operators
<b>CARE</b>	Citizens Consular Assistance and Regulation in Europe
<b>EEAS</b>	European External Action Service
<b>NGO</b>	Non Governmental Organisation
<b>PTD</b>	Package Travel Directive
<b>TEC</b>	Treaty Establishing the European Community
<b>UKIP</b>	United Kingdom Independence Party
<b>VCCR</b>	Vienna Convention on Consular Relations

## Statistics Section

<b>ABS</b>	Annual Business Survey
<b>EHIS</b>	European Health Interview Survey
<b>EEA</b>	European Economic Area
<b>EFTA</b>	European Free Trade Association
<b>ESS</b>	European Statistical System

<b>ESSC</b>	European Statistical System Committee
<b>ESCOP</b>	European Statistics Code of Practice
<b>Extrastat</b>	System for collecting statistics on the trade of goods between member states and non-EU countries
<b>FRIBS</b>	Framework for the Integration of Business Statistics
<b>GDP</b>	Gross Domestic Product
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>HSCIC</b>	Health and Social Care Information Centre
<b>IDBR</b>	Inter Departmental Business Register
<b>Intrastat</b>	System for collecting statistics on the trade of goods between member states
<b>NSI</b>	National Statistical Institute
<b>ONS</b>	Office for National Statistics
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>PRODCOM</b>	Products of the European Community
<b>QMV</b>	Qualified Majority Voting
<b>SME</b>	Small and Medium sized Enterprises
<b>UN</b>	United Nations
<b>WHO</b>	World Health Organisation

# Appendix A: Vienna Convention on Consular Relations

## Article 5 - Consular functions

### **Consular functions consist in:**

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending States in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State

# Appendix B: Consular Opinion Poll and Facebook Consultation<sup>1</sup>

## Management Summary

Most respondents were content with the current arrangements for the provision of consular services, although there was room for improvement in the scores of this measure. Amongst the one in ten British Nationals who themselves, or whose immediate family member, had contacted consular services, scores were particularly high, with almost three quarters (72%) viewing the current arrangements as positive. This level of satisfaction was greater than the desire to move to a shared EU arrangement for the provision of consular services.

Whilst the difference was not great, drivers for the difference are protectionist, with an element of Euroscepticism. There was a feeling that the current system was working and that a move to a new system would create problems with language barriers, and that the same level of service provided by British consular services currently would not be met under a shared EU agreement for the provision of these services.

There was also a feeling amongst some that this would not be cost effective, which given the current climate of austerity measures and cost cutting for many, would be a barrier to acceptance of these new proposals amongst the electorate.

## Research Objectives

Research was required to understand the views of the travelling public about the current arrangement for delivering consular assistance amongst Member States in the EU. The views of those who had travelled abroad recently were sought, whether they had required consular assistance or not.

To gain a broader understanding of the views of the travelling public about how favourably they would view alternative ways in which consular services might be delivered within the EU, and their priorities in terms of who delivers these services.

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<sup>1</sup> Consular Opinion Poll and Management Summary conducted by TNS Global, 6 More London Place, London SE1 2QY.

## Filter Section

These two questions were used to identify appropriate respondents for the purposes of the research. After the two filter questions, a subsequent sample of 1,046 respondents was eligible to answer the questions on consular assistance.

**Q.1 Are you a British National? By this I mean, do you hold a British passport. Please include dual nationality.** *Base: 2,118 adults 16+ in GB*

In total 89% of the sample interviewed were British Nationals, with an almost even split by gender.

**Q.2 How many times, if at all, have you been abroad in the last three years? Please include all trips including those for business, pleasure or travelling to your country of origin. (This includes the Republic of Ireland, but not Northern Ireland).**

*Base: 1,896 British Nationals*

61% of British nationals had been abroad in the last three years, with 1.8 being the average number of trips taken.

## Consular Services Section

In total, from the initial sample of 2,118 adults 16+ in UK, 1,046 (49%) were eligible to answer the subsequent questions about consular services. These were British Nationals who had travelled abroad in the last three years. When discussing the results of this section, all references to sample or respondents are based on the 1,046 qualifying British Nationals who had travelled abroad in the last three years, unless stated.

**Q.3 Have you, or has anyone in your immediate family, ever used consular services provided by the FCO (Foreign and Commonwealth Office)/British Embassy?** *Base: 1,046 British Nationals who have travelled abroad in the last three years*

In total, nearly one in ten (9%) have used consular services; either themselves or another member of the family.

**Q.4 How would you rate this arrangement using a scale of 1-10, where 10 is very positive and 1 is not at all positive?** *Base: 1,046 British Nationals who have travelled abroad in the last three years*

Overall, the existing EU agreement for the provision of consular services is well regarded, with over half (57%) of respondents rating it as positive. Almost a third (31%) of respondents gave a non-directional response, indicating that they were satisfied, with only 5% viewing the existing agreement negatively.

The strongest evidence of satisfaction comes from those who have, or another member of the immediate family has, previously contacted consular services. Amongst this group, 72% rated the current agreement as positive.

### **Q.5 Why do you say that? Why else? What do you think about this arrangement?**

*Base: 1,046 British Nationals who have travelled abroad in the last three years*

*Base: 763 All who view the arrangement to ask for help from other EU country's embassy's as favourable*

*Base: 204 All who view the arrangement to ask for help from other EU country's embassy's as unfavourable*

More than two-quarters (43%) of those who viewed the existing agreement positively saw the agreement as comforting, giving them peace of mind if they were in trouble or needed help. This was highest amongst females (49%).

Almost two-fifths (17%) of those viewing the agreement positively said it was a, "good idea", with almost one in ten (9%) citing convenience.

Amongst those who viewed the agreement unfavourably, the top reason was preference for using a British Embassy (14%), with almost a tenth (8%) concerned that they would not receive a good/appropriate service.

**Q.6 How would you view these suggestions using a scale of 1 to 10, where 10 is very favourable and 1 is not at all favourable.** *Base: 1,046 British Nationals who have travelled abroad in the last three years*

Almost two quarters (44%) saw the suggested new arrangement for the EU to jointly provide consular assistance, or for the EU to provide consular assistance as being positive. Just under a third (32%) saw this as satisfactory, with 15% seeing this as being negative.

**Q.7 Why do you say that? INTERVIEWER NB: PLEASE PROBE FULLY: Why else? What do you think about this possible arrangement?**

*Base: 1,046 British Nationals who have travelled abroad in the last three years*

*Base: 632 All who view the proposal to provide joint EU consular assistance as favourable*

*Base: 315 All who view the proposal to provide joint EU consular assistance as favourable*

Of those who viewed the suggested agreement as favourable, almost a quarter (23%) saw it as comforting/giving them peace of mind. A fifth said it was a good idea, whilst other main mentions included convenience/ease of access (8%) and countries pulling together/helping each other (7%).

Of those who viewed the suggested agreement as being negative, the main reason was a preference for access to a British Embassy, with a quarter of respondents giving this reason. One in ten (12%) gave the reason that they were against being in the EU. Other mentions included it not being a good idea/don't see how it will work (8%) and concerns over language barriers (7%).

**Q.8 Which of these statements most accurately describes your views?** *Base: 1,046 British Nationals who have travelled abroad in the last three years*

Almost two-fifths (37%) cared most that consular services to British Nationals were of a high quality.

Just over a fifth (21%) thought that delivery of consular services in a cost effective and efficient manner best described their view.

Nearly one in five (18%) cared most that Consular Services were delivered by the British Government, with a quarter of 65+ year-olds selecting this statement.

14% believe that all of the above are equally important, and 10% did not have a view about the provision of consular services.

### **Sampling and Methodology**

The study was conducted using the nationally representative TNS Face to Face CAPI Omnibus. The research was carried out amongst a sample of 2,118 adults aged 16+ in the UK.

Interviews take place in home, and are led by an interviewer using a touch-screen tablet, to administer a centrally controlled, pre-programmed questionnaire. Quotas (by gender, working status and presence of children) are set during interviewing to ensure that the sample is representative, whilst any sample profile imbalances are corrected at the analysis stage through weighting.

TNS CAPI Omnibus uses a comprehensive address based system using the Postal Address File, cross referenced to the census data. For each wave of TNS CAPI Omnibus, 143 sample points are selected and, within the selected primary sampling points, a postcode sector is chosen. Postcode selection within primary sampling points alternates between A and B halves to reduce clustering effects. All interviews are conducted via the TNS field team and in accordance with strict quality control procedures.

Data is then weighted using a 41 cell matrix based on sex, age, working status, presence of children, social grade and standard region in order to ensure that the final data is representative of the UK. The matrix itself is based on a combination of Kantar Media Target Group Index and NRS profile data.

### **Facebook Consultation: Questions and Responses**

During June 2014 a sub-page of the FCO's Facebook page was used to host a discussion on the Balance of Competences Consular Review. The consultation page was viewed 872 times by 621 unique people.

The consultation was shared by 66 UK Diplomatic Missions on Facebook and Twitter, or in some cases both. It was shared 43 times on Facebook and there were 83 recorded tweets on the consultation. The Facebook accounts have an audience of approximately 300,000, and at the very most these tweets will have appeared in 979,240 accounts.



The Facebook posts were as follows:

**Post 1: Seeking help from a foreign embassy?**

*“At the moment, each country in the EU is responsible for providing consular assistance to their own citizens. But if there is no British Embassy in a country that you travel to, you are entitled to ask for help from the embassy of any other EU country. In the same way, citizens of other EU countries can ask for help from the British Embassy if they don’t have their own embassy in a country they travel to. What do you think the advantages and disadvantages are of this system?”*

This post appeared in 2,706 people’s Facebook news feeds. 15 comments from 13 different people (two people’s posts were off topic).

**Post 2: Should the EU do more or less:**

*“While there are currently no formal proposals, it has been suggested that this arrangement could be extended. EU countries could jointly provide consular assistance or the EU itself could provide consular assistance to all European citizens. If the EU were to take on a greater role in consular work, what do you think the advantages and disadvantages might be to the UK and its citizens generally?”*

This post appeared in 2,568 people’s Facebook news feeds. 24 comments from 15 different people (two people’s posts are related to consular services and were therefore off topic).

**Post 3: What about in a crisis situation:**

*“Have your say on consular services and the EU - what about in a crisis situation? A crisis is an exceptional incident that is affecting or might affect large numbers of British Nationals. Do you think there should be special considerations for an EU role in crisis situations?”*

*In the following types of crisis situations, the FCO might provide exceptional help and assistance to those affected.*

*An incident in which large numbers of British nationals may have been killed or injured, or which continues to pose a danger to British nationals. This includes terrorist attacks, major transport accidents, major pandemics and natural disasters such as earthquakes, hurricanes and tsunamis.*

*– Civil or political unrest which causes us to advise you to leave the country and which might eventually require the assisted departure or evacuation of British nationals.*

*– Events which – whilst not generally threatening lives – cause disruption and hardship to large numbers of British nationals. This includes incidents such as volcanic ash, the collapse of travel companies and major airport shutdowns.”*

This post appeared in 4,604 people’s Facebook news feeds. There were 35 comments from 18 different people (eight posts were off topic).