

The Balance of Competences Review in the United Kingdom, 2012-2014

Background

Against a backdrop of continuing and often intense political debate in the United Kingdom about its relationship with the rest of the European Union (EU), the [Coalition Agreement](#) of May 2010, underpinning the 2010-2015 Conservative–Liberal Democrat government, stated that the new administration would ‘examine the balance of the EU’s existing competences’, in the context of an overall government commitment to ‘ensure that there is no further transfer of sovereignty or powers’ to the EU during that five-year parliamentary term. This process was taken forward in a formal ‘Review of the Balance of Competences between the UK and the EU’, which was launched in July 2012 and concluded in December 2014.

The UK government’s official communication to the House of Commons and House of Lords to launch the Balance of Competences Review ([Command Paper 8415](#)) used a broad definition of EU competence, covering ‘everything deriving from EU law that affects what happens in the UK’. The review was to seek to examine all the areas where the Treaties gave the EU competence to act (see box below), and to audit what the EU did and how this affected the UK. The whole process would be ‘comprehensive, well-informed and analytical’, gathering evidence to help inform public debate. Whilst the review would be government-led, it would also involve outside experts, organisations and individuals who wished to feed in their views on the issues covered.

The competences of the European Union

The Treaty of Lisbon amended the Treaty on European Union and [clarified the division of competences](#) between the EU and Member States, introducing a precise classification of such competences for the first time. The Treaty sets out three main types of EU competence:

Exclusive competence (Article 3 TFEU): The EU alone is able to legislate and adopt binding acts in these fields. The Member States’ role is therefore limited to applying these acts, unless the Union authorises them to adopt certain acts themselves;

Shared competence (Article 4 TFEU): The EU and Member States are authorised to adopt binding acts in these fields. However, Member States may exercise their competence only in so far as the EU has not exercised, or has decided not to exercise, its own competence;

Supporting competence (Article 6 TFEU): The EU can only intervene to support, coordinate or complement the action of Member States.

Individual UK government departments were tasked to lead the examination of competences falling within their own areas of responsibility, with the overall review being managed jointly by the [Foreign and Commonwealth Office](#) (FCO) and [Cabinet Office](#). It was made clear from the outset that the review would not look to produce specific recommendations, prejudice future policy, or consider alternative models for

the UK's overall relationship with the EU. Rather, the purpose would be to enhance understanding of the current relationship and hence to provide a basis on which to develop future UK policy towards the EU. The question of whether and how to draw together the various strands of analysis under the review was to be left until a later stage.

Conduct of the review

The Balance of Competences Review was divided into a number of individual reports covering specific areas of policy. These were conducted and published in tranches over four semesters. Work on each report began with a call for evidence, issued by the responsible government department, which set out the scope of the particular report and sought input from relevant stakeholders. Various 'engagement' events were held to encourage input and discussion and the reports also drew on existing literature.

Inputs to the reports came from a range of interested parties within and outside the UK, including both chambers of the UK Parliament and its committees, the devolved administrations in Scotland, Wales and Northern Ireland, and the EU institutions, as well as representative organisations, businesses, professional bodies, civil-society organisations, think-tanks, academia and members of the general public. Evidence was received from representatives of the European Commission in successive semesters, and individually from 43 Members of the European Parliament (MEPs). In total, some 2 300 pieces of written evidence were received.

The 32 reports within the UK Balance of Competences Review

- **Autumn 2012 to Summer 2013**

1) [The Single Market](#); 2) [Taxation](#); 3) [Animal Health and Welfare and Food Safety](#); 4) [Health](#); 5) [Development Cooperation and Humanitarian Aid](#); and 6) [Foreign Policy](#).

- **Spring 2013 to Winter 2013**

7) [Single Market: Free Movement of Goods](#); 8) [Asylum and non-EU Migration](#); 9) [Trade and Investment](#); 10) [Environment and Climate Change](#); 11) [Transport](#); 12) [Research and Development](#); 13) [Culture, Tourism and Sport](#); 14) [Civil Judicial Cooperation](#); and 15) [Single Market: Free Movement of Persons](#) (delayed and published with the third semester reports).

- **Autumn 2013 to Summer 2014**

16) [Single Market: Free Movement of Services](#); 17) [Single Market: Financial Services and the Free Movement of Capital](#); 18) [EU Budget](#); 19) [Cohesion Policy](#); 20) [Social and Employment Policy](#); 21) [Agriculture](#); 22) [Fisheries](#); 23) [Competition and Consumer Policy](#); 24) [Energy](#); and 25) [Fundamental Rights](#).

- **Spring 2014 to Autumn 2014**

26) [Economic and Monetary Policy](#); 27) [Police and Criminal Justice](#); 28) [Information Rights](#); 29) [Education, Vocational Training and Youth](#); 30) [Enlargement](#); 31) [Voting, Consular and Statistics](#); and 32) [Subsidiarity and Proportionality](#).

In all, 32 reports were produced over the course of the Review (see box above with links to the text of each one). More details, including the evidence submitted for each report, can be accessed [here](#). The reports covered many areas of EU policy, including notably the single market (with five reports in all including separate ones on free movement of goods, people, services and capital) and subsidiarity and proportionality. The evidence submitted was published alongside each of the completed reports, at the end of each semester. Each individual report followed essentially the same structure, which included a short executive summary and typically chapters covering: the development of the EU competence; the current state of the competence; the impact on the UK

national interest; and future options and challenges. The annexes included a list of evidence received, engagement events held, and other sources (notably existing literature) used.

Principal findings of the review

The Balance of Competences Review was formally completed with the publication of the final series of reports on 18 December 2014. A [written Ministerial statement](#) to the UK Parliament noted: 'The Review provides the most extensive analysis of EU membership ever undertaken by any Member State and draws upon nearly 2 300 pieces of evidence to consider the impact that EU action has on the UK national interest and future challenges that may arise. In doing so, it provides an important contribution to the ongoing debate on EU reform and will be a valuable aid for future policy-makers, as well as a resource to enable people to judge for themselves how current arrangements are working.' A representative sample of the **individual reports** is summarised below.

- One key area covered in the review was the single market, which was the subject not only of the first report, '**The Single Market**', but of four subsequent individual reports, covering the free movement of goods, people, services and capital. This first report, which took an overview, noted that the single market was deeply integrated, but not complete, and that 'Much further liberalisation remains possible and many barriers, both formal and informal, still remain.' The debate on different approaches to market integration – notably harmonisation and mutual recognition – was covered. The report noted that most studies suggest that both UK and overall EU GDP are higher thanks to the existence of the single market. Business respondents valued the access the single market brings, recognising (albeit with varied views) that this must bring a regulatory burden. The single market was considered inevitably to generate consequences in some flanking policy areas, whether competition policy or the environment. Respondents felt that the implementation and enforcement of legislation across the EU was variable and that this could present barriers to accessing the single market in practice.
- The '**Single Market: Free Movement of Goods**' report noted that most respondents 'supported the current balance of competence on the free movement of goods'. They felt that the advantages of EU action outweighed the costs, given their expectation that, without the single market, similar regulations would in any case be required, but without the advantages of a single regulatory framework. For the future, achieving greater consistency through a greater focus on implementation and enforcement, rather than further harmonisation, was the preferred approach. A minority view – coming mostly from think-tanks and lobby groups, rather than individual businesses – was that the single market in goods was no longer very relevant to the UK, given the importance of global markets.
- The '**Single Market: Free Movement of Persons**' report was the only report to be delayed. [Press reports](#) at the time suggested that there had been a dispute within the government. When the report was eventually published in July 2014 (alongside the third semester reports), it noted 'considerable differences in opinion on this topic'. Some respondents saw free movement of persons as broadly positive and a key part of the single market, whilst others highlighted pressure on public services, housing and employment. The report covered the impact on the UK labour market of the sharp increase in EU migration in recent years. Overall the effects 'are viewed as largely positive, providing a wide range of skilled labour and opportunities for UK

workers, and their employers, in other Member States.’ However, in the case of low-skilled migrants, some argued that ‘gains for employers are offset by negative impacts on the lowest paid workers’. Regarding EU rules on the coordination of social security, some felt these were necessary to support labour mobility, including for UK citizens in other Member States, and that the net fiscal impact was positive. However, other respondents felt that, in combination with the UK’s welfare system, including in-work benefits, this ‘could act as an undue pull factor for EU migrants’ to the UK. On public services and housing, the evidence suggested that EU migration, similarly to migration from elsewhere, had increased demand for primary school places and housing, for example.

In the other direction, there were estimated to be between 1.4 and 2.2 million British citizens in other EU Member States. The advantages of free movement to these citizens was noted in some of the evidence, together with the gains to be had from more consistent implementation and enforcement of free-movement rules, such as on mutual recognition of professional qualifications.

- The **‘Single Market: Free Movement of Services’** report noted general support from respondents for the current balance of competences, with some calls for greater integration in the single market for services (notably by better implementation of the Services Directive and the completion of the digital single market). As with the ‘Free Movement of Goods’ report, ‘the majority of respondents felt that ... the advantages of EU action outweighed the disadvantages for service providers’, and that ‘any national legislation on services would not have been that dissimilar from the current EU regime.’ For consumers, the limited evidence submitted suggested they had gained from increased competition and choice in service provision. Gains had also been made from more competitive public procurement, even if processes could be made less burdensome.
- The **‘Single Market: Financial Services and the Free Movement of Capital’** report noted that the current balance of competences was ‘broadly appropriate, but is often undermined by poor policy-making.’ Greater consideration should be given to respecting the principles of proportionality and subsidiarity, notably in the retail sector. Concerns were raised about the volume and pace of EU legislation in recent years, with the quality of advance consultation, impact assessment and drafting of detailed rules criticised. Nonetheless, the report acknowledged that the single market brought significant benefits to the UK financial services industry and for consumers. The increasingly global nature of financial services was noted. This and the financial crisis, was felt to have led to a shift from market opening to a focus on financial stability, consumer protection and reducing the scope for regulatory and supervisory arbitrage. Respondents stressed the importance of the EU facilitating access for financial services firms between EU and non-EU markets. Developments in the euro area (notably the Banking Union), whilst generally thought necessary by respondents, raised concerns about UK interests being protected.
- Another key area was covered by the last report, **‘Subsidiarity and Proportionality’**, which was cross-cutting in nature and hence drew together some themes arising in several other reports, as the UK Minister of State for Europe, David Lidington, noted in [oral evidence](#) to the House of Lords’ EU Select Committee on 10 March 2015. This report noted that respondents in general supported the principles of subsidiarity and proportionality, but felt they were not always properly respected in practice.

The report also noted a recent review conducted by the Dutch government, entitled [‘European where necessary, national where possible’](#). Some respondents ‘cited cases where ... they felt EU proposals or laws would have been better at the national or local level, or which had disproportionate costs to the expected benefits’, whilst other evidence supported EU-level action as necessary and proportional. Another theme was around the role of national parliaments, with their ability to give reasoned opinions on EU legislative proposals welcomed and suggestions that they be allowed formally to object to proposals on grounds of proportionality, as well as subsidiarity. The tension was noted between enhancing democratic legitimacy through taking decisions close to citizens, and the need for efficiency, where harmonised measures at EU (or global) level may be optimal.

- The **‘Economic and Monetary Policy’** report noted the UK’s opt-out from the euro and that the UK retains national competence in the field of monetary policy. Taking account of this, the balance of competences was thought to be ‘mainly consistent with the UK’s national interest’. Concerns centred on protecting the integrity of the single market and ensuring policies worked for all Member States, including those outside the euro area. It was noted that, provided that UK interests were respected, it was in the UK’s interest to see further integration in the euro area to help promote financial stability and improved economic performance in its major trading partners.
- The **‘Asylum and non-EU Migration’** report noted that ‘the balance of competence on asylum and non-EU migration issues remains predominantly with the UK’, in large part due to the ability to decide on whether or not to opt in to EU decisions, even if the picture was complex, particularly for asylum. One common theme from respondents was to highlight the success of practical cooperation between Member States on asylum, which may offer an alternative to new legislation. According to the report, the area with greatest consensus from respondents was on legal migration, where retaining national control was considered to have been helpful. Business respondents typically felt that it was not who set the rules that mattered most, but rather that the rules be clear, simple and effective in allowing it to recruit skilled workers.
- The **‘Trade and Investment’** report noted that the ‘evidence received from stakeholders generally suggested that the balance of competences in this area allows the UK to achieve results that are in the national interest’, although a small number of respondents were critical. The nub of the issue was whether – as many respondents considered – the increased influence from the EU negotiating as a bloc outweighed the inherent compromises it entailed. The links between the Common Commercial Policy (CCP) and the UK’s position in the single market was noted.
- The **‘Competition and Consumer Policy’** report noted a strong consensus that competition, state aid and consumer protection policies were inextricably linked with a well-functioning single market. The report considered the EU competition regime ‘vital to the realisation of the Single Market, to making markets work well and to minimising the burden on business’, and that the system appears to meet that challenge. State aid controls at EU level were also strongly supported to ensure a level playing field, though with some criticism regarding how they work in practice, including the increasing number of measures falling within the scope of state aid and the time taken to resolve approval requests. On balance, an EU-driven consumer policy was considered a benefit thanks mostly to its role in making the

single market work effectively. However, concerns were raised about EU legislation here being insufficiently thought through at the outset, and whether it is ultimately properly implemented.

- The **‘Social and Employment Policy’** report noted that this field ‘is one of the most controversial areas of EU competence’ in the UK, with respondents’ views highly fragmented. Whilst some felt the EU should not have any competence in this field at all, a more common view (notably amongst business groups) was that EU competence was justified in so far as it supported the single market and a level playing field for competition, though potential costs and burdens for business remained a concern. The countervailing view (notably among trade unions) was that EU competence in social and employment policy was important in and of itself, citing the role the EU had played in ‘maintaining employment, protecting working people from exploitation, combating discrimination and social exclusion, and promoting high-trust, high-skilled workplaces.’

Reactions to the review

UK government

In a [press release](#) published by the FCO alongside the final seven reports in December 2014, the British Foreign Secretary, Philip Hammond, said: ‘Many themes that have emerged [from the review] chime with priorities that the UK and European partners have pressed the Commission to pursue. In particular, they underline the need for the EU to focus on those areas where it genuinely adds value, alongside pursuing an ambitious reform agenda for the benefit of all 28 Member States.’ Whilst Hammond noted that the UK had often been successful in shaping the EU agenda, and that benefits accrued to the UK from certain EU policies and programmes – such as the wider research funding opportunities for UK universities – he noted that a number of themes recurred across the review, such as the need for greater respect for subsidiarity, for less and better regulation, for effective protection for the interests of non-euro area member states as the euro area deepens, and for greater democratic accountability on the part of the EU institutions. These concerns corresponded to government policy.

Beyond this response, however, the UK government decided not to present an overarching analysis of the 32 reports, as it had implied it might do. In [oral evidence](#) to the House of Lords EU Select Committee on 10 March 2015, the Minister of State for Europe, David Lidington, said ‘we took the view ... that the 32 reports stood on their own merit’ and that a formal summary risked omitting important aspects and evidence and hence that points could be taken out of context.

On 11 March 2015, there was a [short debate](#) in the **House of Lords** on the Balance of Competences Review and how the information and analysis gleaned from it would be used. Closing the debate for the then government, Lord (William) Wallace of Saltaire (Liberal Democrat), noted that ‘it was no secret that the two [coalition] parties disagreed and had different approaches to Europe. This [review] was set up as a means to find some common ground in the detailed evidence as to what stakeholders thought. We agreed that we would not produce policy recommendations at the end...’

UK Parliament

Both the House of Commons’ European Scrutiny Committee and the House of Lords’ European Union Committee submitted evidence to the review – for instance, flagging relevant existing reports by these committees. The House of Lords’ committee also

submitted [letters](#) during each semester. They also decided to undertake a short [report](#) on the review once it had concluded. This was published on 25 March 2015 and noted that ‘...for the most part, the individual reports within the Review give a fair and neutral assessment of the balance of competences...’ However, it expressed disappointment that justice and home affairs (JHA) measures subject to the [UK’s block opt-out decision](#) (the Lisbon Treaty provided for the UK Government to decide – by December 2014, and therefore concurrently with the review – whether to continue to be bound by the approximately 130 police and criminal justice measures adopted before December 2009, or opt out of them all) were not considered, despite evidence having been received on this controversial issue. The committee also raised concerns about what it saw as a lack of balance in the three reports on free movement of persons, animal health and fisheries, where it felt ‘undue weight’ was given to ‘evidence reflecting the Government’s position’. The committee also felt that by not including a final, cross-cutting report, the government had gone back on the spirit of the original Command Paper, compounded by a lack of effort to publicise the outcome of the exercise.

The Scottish government

The Scottish government contributed to the Balance of Competences Review, against the backdrop of the Scottish independence referendum campaign which concluded in September 2014. In February 2014, it published ‘[Scotland’s Priorities for EU Reform](#)’, which set out its response to the first three semesters of the review. In August 2014, it then published ‘[Scotland’s Agenda for EU Reform](#)’, an annex to which included views on the remaining topics covered in the final semester of the review. The Scottish government considered that ‘the EU Treaties strike the right balance on the competences which have been conferred on the EU’ but that ‘the exercise of these competences can be vastly improved and that the vast array of EU regulation is now in need of substantial reform.’ It did not agree that the UK’s terms of EU membership should be renegotiated, considering the focus should be on regulatory reform, based on the principles of subsidiarity and proportionality.

Reaction among the public, media and think-tanks

Among the public at large, general interest in the review was limited, with it mainly engaging the attention of either strong advocates or strong opponents of Britain’s continued membership of the EU. The media reported claims that it was either an exercise in pro-EU ‘[whitewash](#)’ or conversely in ‘[covering-up pro-EU evidence](#)’, which was being deliberately ‘[buried](#)’. Some reference was made to the review in [wider political debates](#) on sensitive issues such as migration. However, rarely was the substance of the reports referred to in any detail in the media or elsewhere.

One Brussels-based think-tank, the [Centre for European Policy Studies](#) (CEPS), tracked the Balance of Competences Review in some detail, issuing a series of working papers ([Part I](#), [Part II](#) and [Part III](#)) on the evidence submitted to, and reports produced at the end of, the successive semesters of the review. Unlike the review itself, CEPS did consciously set out to reach conclusions, culminating in a [book](#) published in 2015. In essence, the CEPS view was that, based on the evidence produced, the balance of competences as set out in the Lisbon Treaty was broadly right. It noted that, as the majority of competences were shared, they could be adjusted over time as necessary.

Other points CEPS made were that the evidence showed that: the EU reform agenda covered nearly all areas and the EU had demonstrated the ability to evolve; a smarter regulatory approach had increasing priority in the EU; the burden of national regulation

to implement EU law was less than often claimed (citing a House of Commons Library study, '[How much legislation comes from Europe?](#)', from October 2010); the UK plays a major role in shaping the single market, a key UK priority, including enhancing EU policies in this field (services, financial markets, energy and climate change, and digital); the heavily criticised areas of fisheries and agriculture have now seen major reform; the UK's interests have been well served with Erasmus+ and success in winning EU research grants; the UK already has significant opt-outs on the euro area and associated economic coordination procedures, as well as from Schengen and in JHA; and unanimity requirements give the UK protection in areas of concern, such as Common Foreign and Security Policy and tax policy.

In a [blog post](#) in June 2015, the think-tank [Open Europe](#), based in London and Brussels, noted the review had 'passed largely under the radar' and that there were claims the reports had been buried. However, it concluded that 'In reality, the [review] was largely a non-event', noting that, due to its 'flawed' mandate, it did not reach any conclusions or make recommendations, but was merely descriptive, even where clear problems with the status quo were identified. Hence the review could not assess the costs and benefits to the UK of EU membership, nor question where powers should lie, since it was only mandated to look at micro-level issues.

Another critical view came from [Business for Britain](#) – representing those in British business who want to see fundamental changes to the terms of UK EU membership – who considered the reports lacked balance. [Commenting](#) in February 2014, they said: 'The reports claim to reflect different views, but in fact have very little to say, and while they do not come to explicit conclusions, it's clear that the intentions of the authors are to present a view which is broadly reflective of the current consensus...'

The [Senior European Experts](#) group – a body consisting largely of retired high-ranking British diplomats and civil servants – also published a short [report](#) in March 2015 on the review. This noted that 'The Government itself has published no summary of its findings, has given little publicity to the reports, and has avoided discussion of them in Parliament.' It felt the review showed no convincing case for transferring competences back from the EU to the UK in any of the policy areas considered.

Main references

[Review](#) of the Balance of Competences between the UK and the EU, Her Majesty's Government, Foreign and Commonwealth Office, December 2014.

[Report](#) by the House of Lords' European Union Committee on the Review of the Balance of Competences between the UK and the EU, March 2015.

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