



Department
for Business
Innovation & Skills

*Review of the
Balance of Competences*

**GOVERNMENT'S REVIEW OF THE
BALANCE OF COMPETENCES
BETWEEN THE UNITED KINGDOM
AND THE EUROPEAN UNION**

**Call for Evidence: Single
Market: Free Movement of
Services review**

OCTOBER 2013

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Call for Evidence

On the Government's Review of the Balance of Competences between the United Kingdom and the European Union

Single Market: Free Movement of Services

Opening date: 21st October 2013

Closing date: 13th January 2014

Introduction

1. The Foreign Secretary launched the Balance of Competences Review in Parliament on 12 July 2012. This takes forward the Coalition commitment to examine the balance of competences between the UK and the European Union. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It will not be tasked with producing specific recommendations, and will not prejudge future policy or look at alternative models for Britain's overall relationship with the EU. 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.
2. As the Foreign Secretary further announced in Parliament on 23 October 2012, the overall review will be broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by the Government, but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign governments, including our EU partners, and the EU institutions, are also invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it. Full details of the programme as a whole can be found at www.gov.uk/government/publications/review-of-the-balance-of-competences.

What is competence?

3. For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member States, without needing any further action by the EU institutions.

4. The EU's competences (i.e. its powers) are set out 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 competences conferred on it by the Treaties. Where the Treaties do not confer competences on the EU, they remain with the Member States.
5. There are different types of competence, notably those known as "exclusive", "shared" or "supporting" competence. Only the EU can act in areas where it has exclusive competence, such as the Customs Union and Common Commercial Policy. In those areas Member States may not act independently. In areas of shared competence, such as most of the Single Market, either the EU or the Member States may act, but once the EU has acted it "occupies the field" and Member States cannot act independently in those areas. This means that the border between EU and national competence can and does move, according to the extent of EU legislation. 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.
6. 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 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.

A brief history of the EU Treaties

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

Scope of this review

9. The Department for Business, Innovation & Skills (BIS) is leading the balance of competences review covering the freedom to provide services across the European Union.
10. Provision of services is technically complex and is different economically from the free movement of goods. Goods, once produced, can circulate in the EU without the producer and consumer being present at the same time. This is not normally true for services. Some services can be provided across borders (for example those provided electronically). But there are also many cases whether either the **recipient** moves to receive the service (e.g. tourism) or the **provider** moves to provide it, either temporarily or permanently. The latter case – where the provider moves permanently to provide the service - is known as the freedom of establishment. Generally, and also in this report, “free movement of services” refers both temporary movement to provide services as well as to freedom of establishment.
11. The Treaty structure reflects this complexity.
 - (i) **Freedom of establishment.** The provisions on freedom of establishment are in Articles 49-55 of the TFEU. This is the right for persons to establish themselves permanently in another Member State as self-employed and for companies to establish themselves as a branch or subsidiary.
 - (ii) **Freedom to provide services.** These provisions are set out in Articles 56-62 of the TFEU. They give nationals or firms of one Member State the right to provide services in another Member State, on a temporary (that is, non-established) cross-border basis.
12. A wide range of services is covered by rules set under these Treaty articles. Some services have specific sectoral EU legislation, e.g. network industries such as energy [see box 1 on page 11], telecommunications and broadcasting [box 2], transport [box 3], audiovisual, and postal services, financial services, and so on. Others are dealt with through horizontal legislation, mainly the Directive 2006/123/EC of the European Parliament and of the Council on Services in the Internal Market (“the Services Directive”).
13. These articles are also the legal base for legislation on:
 - (i) public and defence procurement;
 - (ii) company law;
 - (iii) mutual recognition of professional qualifications (MRPQ).

14. This review covers all these areas, and you are welcome to respond on any or all of these areas in your submission, with the exception of:

(i) Energy and transport services, which are dealt with by separate Balance of Competence reviews specifically covering those areas;

(ii) Financial services. The issues raised by financial services are very close to those covered by the Free Movement of Capital, so Financial Services are covered by the Single Market: Financial Services and the Free Movement of Capital review (led by HM Treasury).

The importance of services

15. Services account for over 70% of the economic activity in the EU, ranging from almost 87% in Luxembourg to close to 52% in Romania. The UK figure was close to 79% in 2012.¹

16. The UK has had a continuous trade surplus in services with the EU since 2005, growing strongly until 2011 before falling back slightly in 2012.² The UK exported €85.6 billion (around 5% of GDP) of services to the EU27 in 2012, and imported €71.3 billion (approximately 4.2% of GDP), giving an overall trade surplus in services of €14.3 billion.³

17. Intra-EU trade in services amounted to close to €792 billion of intra-EU trade in 2012 (approximately 28% of total intra-EU trade). The UK's share is around 11% of intra-EU services exports and 9% of intra-EU services imports in 2012.⁴

¹ Eurostat – *nama_nace10_c*; All figures are for 2012

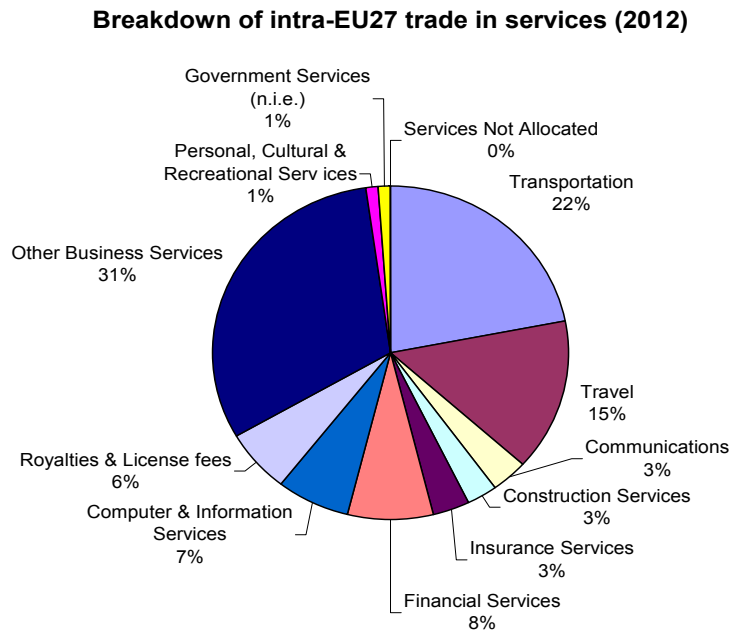
² ONS, 2013, Pink Book – Part 3: Geographical Breakdown

³ Eurostat - *bop_its_det*

⁴ *Ibid.*

18. Chart 1 shows the market share of intra-EU trade in services by sector.

Chart 1

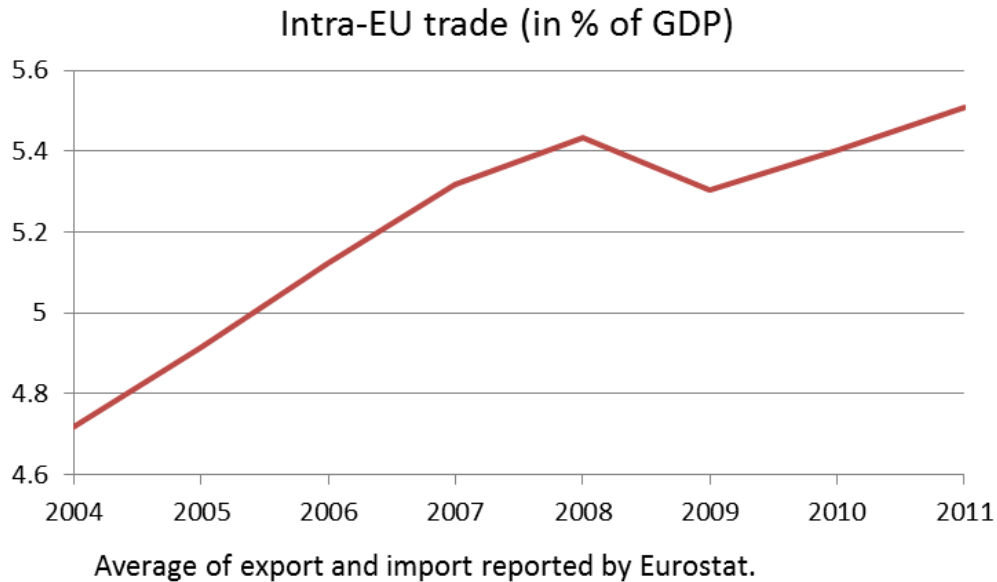


Source: Eurostat [bop_its_det]

19. The size of the services sector in Europe has expanded consistently over the post-war period. Trade in services within the Single Market has developed significantly as a result. However, the Single Market in services is less mature than the Single Market in goods: many non-tariff barriers still exist and levels of integration seem to be generally lower.

The current competence in services

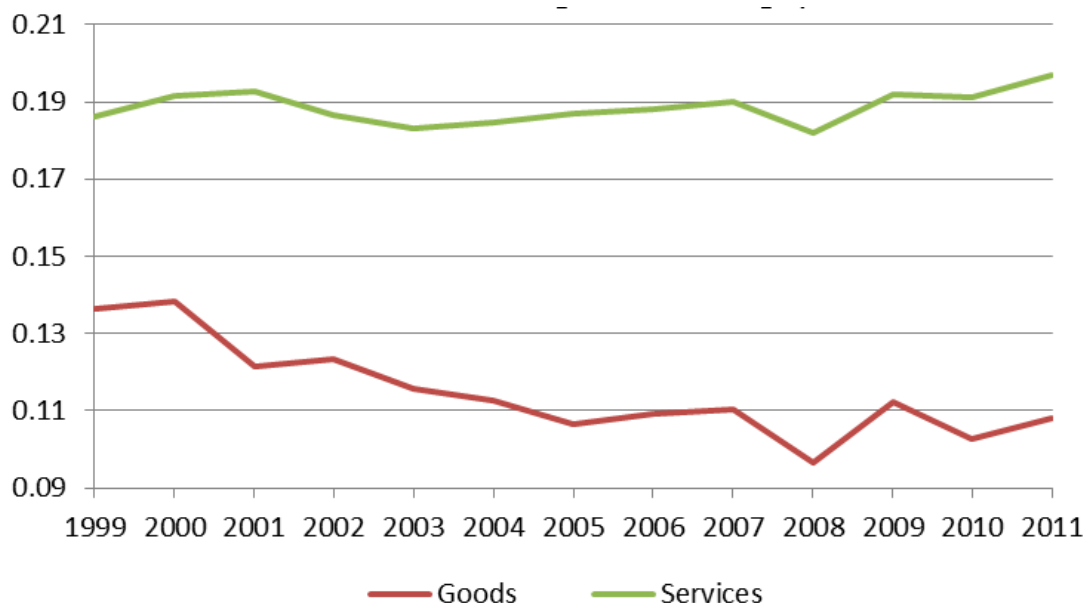
20. Chart 2 below provides an indication of the measure of the integration in the market for services within the Single Market. The chart shows that while trade in services has developed substantially over the period. However, the level of integration in the Single Market for services continues to be significantly lower than for goods.

Chart 2

Source: Single Market Integration Report, 2013

21. Looking at the difference in prices in services between Member States over time can also provide an indication of how well integration is progressing. Chart 3 below shows that there has been little convergence in prices for Single Market for services suggesting that there is still some way to go to reach full integration. In comparison, the increasing price convergence seen for goods (demonstrated by the downward trend shown in Chart 3 below), suggests that greater progress towards integration towards a Single Market for goods has been achieved. The latest Single Market Integration Report⁵ suggests that while the differences in the levels of price dispersion between goods and services are to a large extent natural (for example, from lower transportability and the heterogeneity of services), the differences in the trends may point to an insufficient level of competition in the latter.

⁵ European Commission (September 2013)

Chart 3 – Dispersion of prices across EU Member States

Source: Single Market Integration Report, 2013; Note: Coefficient of variation (standard deviation/mean GDP weighted average)

22. Among the reasons for this relatively limited integration in the services area are:

- (i) the fact that in general services are much more complex and difficult to define than goods, which has made jurisprudence and legislation harder to use effectively to open the market;
- (ii) the major Services Directive allows Member States to maintain certain types of non-discriminatory restriction on freedom to provide services temporarily as long as these can be objectively justified on the grounds of necessity (the reason for having the restriction) and proportionality (whether the restriction is the minimum intervention required to meet the policy goal of the restriction.) These are intended to be difficult tests to meet, but because Member States decide themselves on whether they are met, they have been applied flexibly and inconsistently, impeding integration of the market.

23. The UK's major priorities for services remain the full and effective transposition of relevant Directives, in particular the Services Directive, and effective, proactive enforcement by the Commission.

The development of competence relating to services and the Services Directive

24. The detail of the development of the Single Market can be found in Chapters 1 and 2 of the earlier Balance of Competences report on the Single Market at

<https://www.gov.uk/review-of-the-balance-of-competences>. Freedom for the provision of services was part of the original conception of the Single Market right from the first Treaty of Rome, and, although jurisprudence and legislation progressed more slowly in this area than in others, a series of court judgements made clear that the same Single Market principles applied to services as to goods.

25. Much of this jurisprudence was codified in the Services Directive. This is a comprehensive Directive covering a wide range of services in different sectors (e.g. IT, construction, food and drink, hospitality and retail) though many important areas are exempt (notably financial services, telecoms, energy, healthcare, gambling, audiovisual: a full list is at Annex B). The Directive also specifically provides that it cannot affect labour law and social security provisions in the Member States.
26. The aim of the Services Directive is to make it easier for service providers to operate across borders, both temporarily and on an established basis. The original draft had, at its core, a 'Country of Origin Principle' which meant that Member States should allow any person or company registered in one Member State to provide services or establish itself in another whilst remaining regulated only by the laws applicable in its home state. However, the breadth of the Services Directive's scope, and its lack of positive regulation to balance out the deregulation implied by the Country of Origin principle led some Member States to fear that it could produce unfair competition or a 'race to the bottom'. The final Directive took a very different approach, by requiring the removal of national regulations that formed a barrier to the provision of services, unless they could be justified as 'necessary' according to certain express criteria. These criteria are much narrower for "temporary" cross-border service providers than for established ones, so that the treatment of the former is closer to the Country of Origin principle. The Services Directive therefore followed a less controversial 'liberalising' rather than 'mutual recognition' approach to integration. As a result, while the final Directive contains a number of absolute prohibitions, it also leaves Member States with considerable flexibility in respect of the degree of further liberalisation they take.
27. Central to the effective implementation of the Services Directive is the ability for Member States to justify regulations on the grounds of proportionality and necessity. As noted above, some consider that this has limited integration of the Single Market in services because differing national rules remain in place, particularly as regards established providers. The latest Single Market Integration Report⁶ stated that the Services Directive contains some key obligations with which almost half of Member States still do not comply, and that "some of them still have restrictions based on the nationality or the residence of the service provider", which is expressly prohibited under the Directive. It also noted that in several Member States there is uncertainty

⁶European Commission (September 2013)

over which rules apply to service providers wishing to provide cross-border services on a temporary basis as opposed to service providers wishing to establish themselves on a permanent basis.

We would welcome your views and any supporting evidence on the advantages and disadvantages of liberalisation of services provision and on the effectiveness of the Services Directive so far.

Other aspects of the freedom of services

28. Many areas of services liberalisation have been addressed through specific sectoral legislation. For example, the provision of energy services is governed by specific Directives, as are transport services and financial services. Sectoral legislation may vary significantly from sector to sector both in legislative approach and in the restrictions and requirements for cross-border service provision.

Box 1 - Energy

Energy market opening and integration, increased cross-border trade and stronger competition have been the subject of a series of legislative energy measures since the 1990s. Together with enforcement of competition and state aid rules, they have helped keep energy prices in check. However, not all Member States have fully implemented the legislation. This has led to price differentials, particularly in those markets where market opening is held back by continued government regulation of the final price to consumers. There is also a continuing challenge in ensuring that market signals are sufficient to bring forward the necessary investment to meet the demands of a low carbon future. The issue of competence in respect of the Single Market for energy is covered by the Energy review. The Call for Evidence for the Energy review is being published alongside this one, at <https://www.gov.uk/review-of-the-balance-of-competences>.

Box 2 – Telecommunications and broadcasting

Telecommunications and broadcasting are excluded from the Services Directive. These sectors are subject to their own sector-specific legislation adopted under the legislative provisions outlined in this note. In the telecoms field, a set of Directives adopted under the services chapter of the TFEU have created a harmonised regulatory regime. This is supplemented by specific legislation relating to various aspects of telecommunications such as mobile roaming prices, satellite services, regulation of the radio spectrum and e-commerce, overseen by national regulators who are required to co-operate with each other at the EU level. The Commission has recently proposed a third package of measures in the field of electronic communications.

The field of broadcasting is similarly regulated by sector specific legislation, most notably the Audio Media Services Directive which establishes a minimum standards regime for broadcast services and online services. The Directive also uses a clear “country of origin” principle, such that if a service is licensed in one Member State, it is entitled to broadcast in any other Member State.

Box 3 – Transport

The EU has very wide-ranging competence to legislate in the field of transport, constrained only by the principles of subsidiarity and proportionality, and has progressively exercised that competence to take action. EU transport policy is largely governed by Title VI TFEU (Articles 90 to 100) which establishes a Common Transport Policy (CTP). In the early years after the Treaty of Rome, Member States were unwilling to relinquish national control of the transport sector. But between 1985 and 1992 a wide range of measures, actions and initiatives were taken aimed at bringing about the Single Market for transport services, with the UK leading efforts to break down national barriers.

Although the EU aims to facilitate a fully integrated transport network across Europe, the effects and application of any EU action has typically been on a modal basis (aviation, maritime, rail and road). The EU has also exercised its competence since the Maastricht Treaty to emphasise the importance of other goals including respecting the environment and improvements in safety and has legislated in respect of certain themes which appear across all transport modes, notably safety, consumer protection, and common technical standards.

The issue of competence in respect of the Single Market for transport services is covered by the Transport review, which will be published in Winter 2013/14 at

<https://www.gov.uk/review-of-the-balance-of-competences>

29. The framework is also affected by EU legislation on Services of General Economic Interest (SGEI). These are, broadly speaking, services above and beyond what a commercial provider would provide, often as a result of obligations imposed by government. They are often directly supported by government financially and as a result need to be consistent with the EU's state aid framework (see the parallel review on Competition and Consumer Policy for further discussion of this). Member States have a wide discretion to define a SGEI, but this is subject to review and correction by the Commission and ultimately the European Court of Justice. Typical examples of SGEIs in the UK would include rural bus services, social housing, and the maintenance of the Post Office network.
30. Since the 1980s ever greater numbers of EU citizens have worked temporarily or permanently in another Member State. It soon became clear that a mechanism had to be found to compare a professional qualification gained in one Member State with one gained in another. This is a complex area, because it can be difficult to establish which qualifications are genuinely equivalent due to variations in Member State standards and expectations about formal education as opposed to professional training. Some areas, such as requirements to speak particular languages, have been particularly controversial. The first Directive in this area dates from 1989 (Directive 89/48/EEC). This set up a general system for the recognition of higher-education diplomas, but there has been much legislation since then, culminating in the Directive on Mutual Recognition of Professional Qualifications (MRPQ) (2005/36/EC) in 2005, which requires Member States to set up 'Contact Points' to assist citizens and assess individual cases. Significant amendments to this Directive have recently been agreed and will come into force early 2014 but Member States will have 2 years to transpose the Directive to bring their domestic regulation into line. The new Directive includes Common Training Frameworks which can be used to harmonize minimum standards, a new European Professional Card, and an alert mechanism to notify competent authorities when a professional has been barred from practising.

We would welcome your views on how well the existing system has worked and whether the new arrangements are likely to improve it.

Company Law

31. Harmonisation of many of the rules of company law, for example corporate governance, accounting, and auditing, has been regarded from early on as essential to allow companies to establish themselves across the EU. The first Company Law Directive was agreed in 1968 and set minimum standards for the information that limited companies should be required to publish. Thirteen further Company Law Directives have since been introduced, dealing with amongst other things, capital requirements, shareholders' rights, accounting, audit, takeovers, mergers and divisions. Various other Directives either modify these provisions in respect of companies carrying out certain activities, or contain provisions which impact on company law. The fundamental provision for company law legislation is Article 54(3)(g).

32. EU objectives for achieving agreements to proposals in the area of company law include: providing equivalent protection for shareholders and other parties concerned with companies; ensuring freedom of establishment for companies throughout the EU; fostering efficiency and competitiveness of business; promoting cross-border cooperation between companies in different Member States; and stimulating discussions between Member States on the modernisation of company law and corporate governance.
33. EU company law has also created the European Economic Interest Grouping (EEIG) and the European Company (*societas europaea* or SE). These are specifically European legal forms for corporate activity within the EU.
34. In 2002, a Regulation requiring companies with securities traded on a regulated market to produce their group accounts in accordance with International Accounting Standards was adopted. This was part of a wider global move to such standards, designed to make the capital markets work more efficiently.
35. European Court of Justice (CJEU) case law has also had a significant impact. The CJEU has consistently upheld the right of a company formed under the law of one Member State to do business in another without needing to follow that other country's company law provisions, to move its headquarters from one Member State to another provided it acts in accordance with the rules of its state of incorporation, and to reincorporate in another Member State.
36. In December 2012, the Commission published a further Action Plan in the company law area, foreshadowing further proposals on enhancing transparency between companies and investors; encouraging long-term shareholder engagement; and improving the framework for the cross-border operation of companies. Within this framework, Member States continue to have widely differing systems of company law and corporate governance, reflecting their different legal frameworks, business practices and ownership structures.

We would welcome your views on the effect of EU-level company law legislation, and the desirability or otherwise of further harmonisation.

Public Procurement

37. European rules governing public procurement and related matters fall within what is known as shared competence (ie they do not fall either into the field of exclusive Community competence, or decisions reserved exclusively for Member States).
38. In 2009, public procurement accounted for approximately 19% of the EU's GDP. Total public expenditure on works, goods and services exceeds 2 trillion Euro per year.

Three quarters of the value of procurement advertised in accordance with EU rules is for construction work and services. There are, however, considerable variations to this pattern across Member States.

39. The legal basis for EU rules on public procurement is Articles 53(1), 62 and 114 of the TFEU. Since the early 1990s the EU has legislated to lay down the rules covering government and public utilities' awards of contracts to supply goods and services above certain financial thresholds. The latest rules are set out in Directives 2004/18/EC and 2004/17/EC. There are also complementary enforcement Directives, which specify "remedies" available to aggrieved parties for breaches of these rules. Following an evaluation of the 2004 Directives and a European Commission Green paper on the modernisation of EU public procurement policy, new public sector and Utilities Directives have been negotiated, which together with a new Directive on the award of concessions contracts, form a public procurement package. Formal adoption of this package is expected early in 2014. The focus of the negotiation has been on updating and simplifying the rules.
40. The aim of EU rules in this area has been to bring more transparency into public procurement, so that there can be more competition among providers, and to make it more difficult for Member States in practice to limit the award of contracts to companies based in that Member State.
41. Compliance with the EU public procurement rules also ensures compliance with the World Trade Organisation Government Procurement Agreement (GPA), the rules and coverage of which the European Commission negotiates on behalf of Member States.
42. One of the issues that is regularly raised concerning the EU public procurement rules is whether their level of detail is needed to ensure that the award of public contracts is in line with the Treaty principles of transparency, equal treatment, non-discrimination and mutual recognition. The Commission's evaluation of the 2004 directives and its impact assessment of the new proposals showed that there was a clear overall benefit from having the existing rules and that this would improve further, particularly in reducing administrative costs for purchasers and suppliers, once the new rules were adopted and transposed.

We would welcome your views on the effect of EU-level procurement legislation, and the desirability or otherwise of further harmonisation.

Defence Procurement

43. One specific aspect of procurement that is attracting more attention is defence procurement. Although less than 5% of the overall procurement market, it represents a substantial proportion of central government procurement and has wider political and industrial significance. So far the defence market in the EU has largely been fragmented along national lines.

44. Defence procurement was theoretically covered by the general EU procurement legislation set out above, but has often excluded in practice under Article 346 of the TFEU and its predecessor. This Article allows a Member State to exempt procurements of warlike stores (e.g. military equipment) from EU procurement rules in order to take measures that are necessary for the protection of its essential interests of security.
45. The Commission has considered for some time that Article 346 has been used by some Member States to exempt contracts from procurement rules for economic reasons rather than on grounds of security interests; and the CJEU has made clear that Article 346 can only be called upon in exceptional and clearly defined cases. In 2007, the Commission's "Defence Package" sought to reduce some of the differing national approaches to defence regulation and create a more European defence market. This culminated in the agreement of the Defence and Security Procurement Directive (2009/81/EC), a Directive specifically adapted to the needs of the defence sector, and which should therefore reduce resort to the Article 346 exemption.
46. In July 2013, the Commission published its Communication "Improving the competitiveness and efficiency of the defence and security sector". This includes a number of proposed actions the Commission states are aimed at further strengthening the Single Market for defence and security and supporting the competitiveness of the defence and security industries. This Communication is due to be discussed at the December 2013 EU Council meeting. The European Defence Agency is also tasked with promoting a more competitive defence sector.

We would welcome your views on the effect of EU action so far in the defence sector and on the desirability of further action.

Call for Evidence: what we are asking for

47. This public Call for Evidence sets out the scope of the Review of the Balance of Competences in the area of the free movement of services. We request input from anyone with relevant knowledge, expertise or experience. This is your opportunity to express your views.
48. Please send your evidence to balanceofcompetences@bis.gsi.gov.uk by 13th January 2014.
49. Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise. We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that, even if you ask us to keep your contribution confidential, we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it included. Please base your response on answers to the questions set out below.
50. Where your evidence is relevant to other Balance of Competences Reviews, we will pass your evidence to the relevant review teams.
51. We will be holding a series of engagement events at the Department for Business, Innovation & Skills (BIS), 1 Victoria Street, London SW1A on 14 and 27 November. If you are interested in attending, please email balanceofcompetences@bis.gsi.gov.uk for more details.

Call for Evidence questions

1. What do you see as the advantages and disadvantages of EU action on the free movement of services? How might the national interest be served by action being taken at a different level (for example, at the World Trade Organisation level, or at the national level), either in addition to or as an alternative to EU action?
2. To what extent do you think EU action on the free movement of services helps or hinders UK businesses?
3. To what extent has EU action on the free movement of services brought additional costs and/or benefits when trading with countries inside and outside the EU? To what extent has EU action on the free movement of services brought additional costs and/or benefits as a consumer of services?
4. How well, or otherwise, have the EU's mechanisms for delivering the free movement of services worked?
5. In your experience do Member States take a consistent approach to implementing and enforcing EU rules, or not?
6. Do you think the UK's ability to effectively regulate cross-border provision of services would be better, worse, or broadly the same, as the result of more or less EU action?
7. What future challenges/opportunities might we face in the free movement of services and what impact might these have on the national interest? What impact would any future enlargement of the EU have on the free movement of services?
8. Is there a case for more EU action to ensure that assessments for proportionality and necessity are more consistently interpreted? [see paragraphs 22 and 27 for more detail]. Or should the competence to assess these remain with Member States, as is the case now?
9. Should decisions affecting the integrity of the Single Market be taken by all Member States and apply equally to all, or do you believe it is possible to take further liberalising action either unilaterally or with a selection of other Member States, whilst maintaining the integrity of the Single Market?
10. What do you see as the advantages and disadvantages of EU action on the **mutual recognition of professional qualifications (MRPQ)**? To what extent do you believe that the cost of existing or future European rules in this area is proportionate to the benefits?
11. What do you see as the advantages and disadvantages of EU action on **company law**? To what extent do you believe that the cost of existing or future European rules in this area is proportionate to the benefits?
12. What do you see as the advantages and disadvantages of EU action on **public procurement**? To what extent do you believe that the cost of European rules in this area is proportionate to the benefits? What is your view of the effect on the **defence sector**?

13. Are there any general points you wish to make which are not captured above?

Thank you for your comments.

Annex A: Links with other Balance of Competences reports

The review of the Free Movement of Services overlaps with a number of other Balance of Competences Reviews.

Semester One (final reports published in July 2013)

Single Market review — This review considered the Single Market as a whole. The review explored the level of market integration thought to be necessary for an effective Single Market. There is an overlap with the Free Movement of Services review since the regulation of services is important to the functioning of the Single Market.

Taxation – Overlap with the Free Movement of Services review: Securities law, transparency issues and banking regulation links with Company Law; taxes for services.

Health – Overlap with the Free Movement of Services review: Issues relating to Mutual Recognition of Professional Qualifications (MRPQ) in relation to healthcare professionals. The issue was covered to some extent in the Health review, but the main discussion of MRPQ will be in the Free Movement of Services review.

Foreign Policy – Overlap with the Free Movement of Services review: Interaction between EU defence policy and defence procurement.

Animal Health and Welfare, and Food Safety – Overlap with the Free Movement of Services review: Issues relating to MRPQ since vets qualify for automatic recognition under MRPQ. The issue is covered to some extent in the Animal Health and Welfare and Food Safety report but the main discussion of MRPQ will be in the Free Movement of Services review.

Semester Two (final reports will be published in Winter 2013/14)

Single Market: Free Movement of Goods – Overlap with the Free Movement of Services review: Overlap between goods and services; movement of Arms across borders; e-Commerce directive. The main discussion on the e-Commerce directive will be in the Free Movement of Services review.

Single Market: Free Movement of Persons - Overlap with the Free Movement of Services review: MRPQ, issues relating to the right to reside for self-employed persons. MRPQ is covered to some extent in the Free Movement of Persons review, but the main discussion of it will be in the Free Movement of Services review.

Transport - Overlap with the Free Movement of Services review: the Single Market for transport services. The main discussion of this will be covered by the Transport review.

Semester Three (published alongside this Call for Evidence)

Single Market: Financial Services and the Free Movement of Capital – will cover Financial Services and is distinct from the review of the Free Movement of Services. Overlap with the Free Movement of Services review: Directives and Regulations on certain activities eg. insurance, banking and Financial Services are expressed in ways that affect Company Law.

Social and Employment – Overlap with the Free Movement of Services review: The cross-border provision of services has a direct impact on health and safety, and licensing.

Competition and Consumer policy - Overlap with the Free Movement of Services review: Services of General Economic Interest (SGEI) and state aid. SGEI will be covered by the Free Movement of Services review and state aid will be covered by the Competition and Consumer policy review.

Energy - Overlap with the Free Movement of Services review: issues relating to the provision of cross-border services. The main discussion of these will be in the Free Movement of Services review. The Energy review will cover the Single (Internal) Market in Energy.

Further details about how you can contribute evidence to these reviews can be found at: <https://www.gov.uk/review-of-the-balance-of-competences>

Annex B: Exemptions from the Services Directive

The Services Directive covers a wide range of activity. The basic rule is that a service is within scope of the Directive unless it is explicitly excluded from it. The following is the list of services **excluded from the Directive**:

Financial services, (banking, credit, insurance, pensions, securities, investment funds, payment and investment advice); [These will be covered by the review of Financial Services and the Free Movement of Capital.]

Electronic communications services and networks, (as defined in five Directives on electronic communications and related matters in five 2002 Directives); [These will be covered by the Free Movement of Services review.]

Services in the field of transport (e.g. air transport, maritime and inland waterways, road and rail transport, urban transport, taxis and ambulances); [These will be covered by the Transport review.]

Services of temporary work agencies; [These will be covered by the Free Movement of Persons review.]

Some healthcare services, healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health professional in the Member State in which the services are provided; [These will be covered by the Health review.]

Audiovisual services, (e.g. cinemas and broadcast services); [These will be covered by the Free Movement of Services review.]

Gambling services, (e.g. lotteries, gambling in casinos and betting transactions); [These will be covered by the Free Movement of Services review.]

The exercise of official authority as set out on Article 45 of the Treaty; [These will be covered by the Free Movement of Persons review.]

Private security services; [These will be covered by the Free Movement of Services review.]

Services provided by notaries and bailiffs appointed by an Act of Parliament; [These will be covered by the Free Movement of Services review.]

Services of General Economic Interest are excluded if they fall within one of the general exclusions listed in Regulation 2, such as services in the field of transport; [These will be covered by the Free Movement of Services review.]

Other Services of General Economic Interest are excluded from Regulation 24 (freedom to provide services), including those in the postal, electricity and gas sectors, water distribution and supply, and waste treatment services; [These will be covered by the Free Movement of Services review.]

Social services relating to social housing, childcare and the support of families in need, where these are provided by the State, by providers mandated by the State or by charities recognised as such by the State. [These will be covered by the Free Movement of Services review.]

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