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## British Balance of Competence Reviews, Part II:

### Again, a huge contradiction between the evidence and Eurosceptic populism

**Michael Emerson, Steven Blockmans,  
Steve Peers and Michael Wriglesworth**

#### Abstract

This paper is the second in a series for a CEPS project entitled "The British Question and the Search for a Fresh European Narrative". It is pegged on an ambitious exercise by the British government to review all the competences of the European Union on the basis of evidence submitted by independent stakeholders. In all, 32 sectoral policy reviews are being produced over the period 2013-2015, as input into public information and debate leading up to a referendum on whether the UK should remain in, or secede from, the EU, planned for 2017.

This second set of reviews covers a broad range of EU policies (for the single market for goods, external trade, transport policy, environment, climate change, research, asylum, non-EU immigration, civil judicial cooperation, tourism, culture and sport). The findings confirm what emerged from the first set of reviews, namely that there is little or no case for repatriation of EU competences at the level they are defined in the treaties. This does not exclude that at a more detailed level there can be individual actions or laws that might be done better or not at all. However, that is the task of all the institutions to work at on a regular basis, and hardly a rationale for secession.

For the UK in particular the EU has shown considerable flexibility in agreeing to special arrangements, such as in the case of the policies here reviewed of asylum, non-EU immigration and civil judicial cooperation. In other areas reviewed here, such as the single market for goods, external trade, transport, environment, climate change and research, there is a good fit between the EU's policies and UK priorities, with the EU perceived by stakeholders as an 'amplifier' of British interests.

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### 1. Introduction

The British government is in the middle of producing the most comprehensive review ever of all domains of EU policy, under the heading of “Balance of Competences”, i.e. screening for evidence that the EU’s competences might have become unduly large, or otherwise warrant revision. The distinguishing feature of these reviews is that they are based on responses to an open invitation to stakeholders to submit evidence and the published reports are based on the submissions from all quarters – business, academia, civil society, etc. The reports have been drafted by the relevant British government departments, but the civil servants were not mandated to draw conclusions, but rather to assemble the evidence submitted in an ordered way. Others are invited to draw their own conclusions, however, which is an invitation that CEPS is happy to take up.

This huge exercise is producing 32 sectoral reviews, of which the first six were discussed in our first working paper in the current series.<sup>1</sup>

The second set of eight reviews was published by the government this February, with another 18 to come over the next 12 months. For those without the time to study the 600 pages of evidence submitted in this second set of reviews, the next section of this paper supplies a summary.

The final section of this paper summarises the conclusions that can be drawn at this stage, i.e. roughly half-way through the research. Table 1, below, assembles the key messages from both the first and now second set of reviews, and will be filled out completely in due course.

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<sup>1</sup> Michael Emerson and Steven Blockmans, “British Balance of Competence Reviews, Part I: ‘Competences about right, so far’”, CEPS/EPIN Working Paper No. 35, October 2013 ([www.ceps.eu/book/british-balance-competence-reviews-part-i-%E2%80%98competences-about-right-so-far%E2%80%99](http://www.ceps.eu/book/british-balance-competence-reviews-part-i-%E2%80%98competences-about-right-so-far%E2%80%99)).

Basically, this second set of reviews confirms the findings of the first set, and suggests a pattern; namely that there is no case for repatriation of EU competences at the level at which they are identified in the treaties.<sup>2</sup> This does not exclude that individual actions or laws might be done better or not at all. But on the whole the EU institutions and its member states are seen to have refined their respective competences, often ‘shared competences’, in a reasonably sensible way.

This is at least the story so far, but it remains to be seen what emerges from the remaining second half of this entire exercise, with issues around the governance of the eurozone possibly to prove more controversial (although of course the UK has itself opted out of the euro). In addition there is the case of the review of ‘Internal market – persons’, which was scheduled to form part of the present second set of reviews. This was delayed until after the May elections of the European Parliament, apparently because of divergent assessments by the coalition parties over the amplitude of intra-EU migration, which is disappointing since the basic idea of the whole exercise has been to collect evidence from independent stakeholders.

A further finding is that one has often to go below the level of broad competences as they have been labelled in the treaties (e.g. ‘competition policy’, or ‘energy policy’) in order to make practical assessments of whether the EU’s competences have been suitably defined in individual laws and properly executed. This indeed makes the whole exercise a highly complex one, especially for the purposes of broad public debate, which is mostly conducted in more simplified terms. The present paper (and CEPS project of which it forms part) is therefore seeking to distil and assess the huge amount of relevant information made available by the Balance of Competence reviews, and so make a contribution to public debate not just in the UK in relation to the in/out referendum planned for 2017, but in all member states for whom the May 2014 elections to the European Parliament underlined the need for well-digested information about EU policies in action.

## 2. Sectoral reviews

### 2.1 Single Market: Free Movement of Goods

For the British government and Prime Minister Cameron in particular the single market corresponds to their highest priority for the activity of the European Union. The big breakthrough in completing the single market came in the late 1980s when Mrs. Thatcher’s nominee to the Commission, Lord Cockfield, got acceptance for a 300-point plan to eliminate cross-border restrictions by 1992. The plan overcame previous obstacles that had reduced progress towards the single market objective to a snail’s pace with two key innovations.

The first was to switch the decision-making rule for single market legislation to qualified majority rather than unanimity, which enabled the Cockfield plan to be implemented.

The second was to reduce the burden of harmonisation of product standards by a ‘New Approach’ extending the use of the mutual recognition principle. Already from 1979 onwards there had been a number of rulings by the European Court of Justice that established the mutual recognition principle, as for example in a number of landmark cases for liqueurs and beer.<sup>3</sup>

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<sup>2</sup> Michael Emerson, “Cameron’s reality check on Europe”, CEPS/EOIN Paper No. 38, April 2014 ([www.ceps.eu/book/cameron%E2%80%99s-reality-check-europe](http://www.ceps.eu/book/cameron%E2%80%99s-reality-check-europe)).

<sup>3</sup> The landmark Cassis de Dijon ruling of 1979 where Germany had blocked the import of this French liqueur on the grounds that its alcohol content was below the minimum set by German law, whereas the product was in conformity with French law. The Court of Justice ruled that an importing member state could not forbid the sale of a product that was in conformity with standards set in the exporting member state. It took time, however, for this principle to gain general acceptance, as was seen in the 1988 case

The Review explains in some detail how the New Approach of the ‘1992’ programme overhauled the prior system more generally and radically. Legislation would be restricted to identifying the essential health or safety requirements. Technical specifications were now to be entrusted to European standardisation bodies. If products were made to conform to these standards they would gain the ‘presumption of conformity’. But manufacturers could still produce goods according to other technical standards, but in this case they could be required to justify them to the mutual recognition authorities of member states. The New Approach is now taken for granted, such that reversal to the situation that prevailed some 30 years ago would be considered unthinkable.

Still, it may be noted that Prime Minister Cameron’s flagship speech on Europe on 23 January 2013 hardly recognised this, with a statement such as “the EU cannot harmonise everything”.

However, the conclusions of the review on the EU’s competences for the free movement of goods may be considered to reflect the broad European consensus on the question – not just a British view.

“The majority of respondents to this review, including most respondents from business organisations and individual firms, supported the current balance of competence on the free movement of goods.... They felt that the advantages of EU action – for example a level playing field for UK businesses and a single transparent set of rules with scope for legal redress – outweighed the costs arising for administrative burdens, regulatory costs or policy trade-offs” (p. 6).

Beyond this general assessment, the Review goes into a number of key issues in some detail.

Supply chain economics have become an increasingly important factor in the structure and functioning of European industry. For example, the UK automotive sector sources 90% of motor vehicle components from the EU. For this and other sectors the need for fast, reliable and low-cost shipment of goods across borders for ‘just-in-time’ delivery is a competitiveness factor of paramount importance. The removal of the need to make customs declarations has represented a major administrative simplification and cost-reducing factor. This is taken for granted now, but would re-emerge as an issue if the UK were to leave the customs union.

The EU’s competence in the field of intellectual property rights is a complex matter, which the review examines. The findings from stakeholder representations were that the EU’s responsibilities for the ‘Trade Mark’ and ‘Design Right’ received strong support. The European Patents Convention and Patent Office have simplified the process of obtaining patent protection across Europe, while the forthcoming Unitary Patent and Unified Patent Court are seen as strengthening enforcement.

There remain some exceptional categories where member states can restrict imports of goods from elsewhere in the EU. UK legislation in particular can require import or export licenses for antiquities of cultural value, drugs, firearms, animals and military goods. Customs controls are governed by EU law but execution remains in the hands of national customs services, and criminal offences are dealt with under national legislation.

The review reports findings on the costs of EU regulations as well as the benefits of open markets. Small businesses, and especially those that do not export or import, complain most about the burden of EU regulations. However, the counterfactual case of not being subject to EU regulations would not mean freedom from regulation. UK manufacturers would need to comply with EU standards in any case if they wished to export to the EU, and the UK would

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around German beer ‘purity’ law (*Reinheits Gebot*) dating back to 1487 (sic!), which was being used to prevent the import of, for example, Dutch Heineken beer on the grounds that it endangered the health of German consumers. The Court of Justice again supported the case that these imports could not be blocked.

itself probably adopt laws and procedures similar to those set by the EU. At the same time it is considered desirable to devise regulatory regimes that where possible mitigate burdens on small enterprises, and this is an issue that the Commission seeks to address in a number of areas.

The Review reports concern by representative business organisations over unequal performance of member states in implementing and enforcing EU rules. In the British case, while there is widespread demand for a light regulatory touch, there is also a legal culture favouring strict enforcement.

**Assessment.** The majority of evidence presented suggests that the balance of competence for the free movement of goods and intellectual property rights was in the UK's interest. While some respondents advocated withdrawing competence from the EU, most respondents felt it better to work with and through the EU institutions. While there is concern for the EU's competences to be executed more efficiently and effectively, the case for drastic deregulation found little support. Even outside the EU, the UK would find itself adopting much the same regulatory standards, but with the disadvantage that divergences in product standards would reduce economies of scale on production lines, and lead to increased costs and prices. However, even inside the EU, products standards are voluntary rather than mandatory, such that if enterprises wish to predominantly target external markets there is nothing in the regulatory regime from aiming at, for example, the Chinese market with products conforming with Chinese standards.

## 2.2 Trade and Investment

Trade policy is a core exclusive competence of the EU. There are nonetheless a number of second-order issues that concern the extent of this competence for both trade and investment. The report goes into these second-order issues in detail. It also reviews the hypothetical alternatives should the UK wish to withdraw from the EU's trade policy, which necessarily would mean secession from the EU, since wholesale repatriation of this competence is inconceivable.

*The extent of EU competence.* While the original competence of the EU (or earlier EEC) mainly concerned trade in goods, the importance of trade in services and trade-related aspects of intellectual property rights has been growing to the point that much case law of the European Court of Justice has enlarged the EU's competence in these fields. This led to a tidying up of these particular competence questions in the Treaty of Lisbon, which also opened up investment protection as a field, with a new exclusive competence for the EU.

For services the Treaty of Lisbon clarifies the EU's exclusive competence to negotiate agreements over trade in services as defined in the GATS texts of the WTO. Similarly, for intellectual property rights the EU is now competent for negotiations in the field covered by the TRIPS texts of the WTO. While the extent of these competences had earlier been the subject of much uncertainty alongside many ad hoc rulings of the Court of Justice, the extension and clarification of EU competences did not meet with particular objections from stakeholders contributing evidence to the review.

*Investment issues.* This field has so far been occupied by bilateral investment protection treaties ('BITs'), of which the member states have in force no fewer than 1200 examples, and the UK on its own has 96. The case for an EU competence here is for simplification, clarity and a level playing field. However, the precise extent of the EU's new post-Lisbon competence in this field is still to be clarified in two respects, namely whether it concerns only foreign direct investment or all investment, and whether it concerns only investment liberalisation agreements or also protection of actual investments. The review considers that resolution of these issues will require rulings by the European Court of Justice.

*The Double-Decision Mechanism.* A related question is whether future EU agreements in this field will be ‘exclusive’ or ‘mixed’ agreements, with member states retaining greater say in the legislative process in the latter case. There remain ambiguities over the extent of the EU’s competence to negotiate on behalf of member states in areas that remain national competences. Since the EU-Japan FTA mandate of 2012 the Council has started using a ‘double-decision’ mechanism whereby the Council authorises the Commission in two separate acts to negotiate issues of its exclusive competences on the one hand, and on the other its competences ‘shared’ with member states. The report remarks that the Commission does not explicitly support this mechanism, but does not oppose it either.

*Trade and investment promotion.* The report shows that stakeholders felt that trade and investment promotion, as opposed to trade policy, should remain a national competence, although the EU could provide a useful supporting role in this regard. This position would be considered uncontroversial in the EU as a whole, and there are no proposals for legal competence transfer in this field.

*The alternatives.* The report discusses six hypothetical alternatives for how trade policy would be handled from outside the EU.

- i. *Going it alone.* The UK would have a third-country relationship with the EU as any WTO member state that does not make a preferential agreement with it. Customs duties would be reintroduced between the UK and the EU, thus diminishing trade flows. The UK would be free to negotiate FTAs with other countries, but whether it would be able to negotiate better deals than the EU is open to doubt, since its bargaining clout would be so much smaller.
- ii. *The UK to make an FTA with the EU for trade in goods.* This would require that complex ‘rules of origin’ be introduced, to prove that UK exports to the EU would have been sufficiently ‘made in the UK’. Compliance costs, including a lot of ‘red tape’, would amount to a significant non-tariff barrier.
- iii. *The UK makes a more comprehensive FTA with the EU.* There would be additional provisions for services and investment, like the EU-Korea agreement. This would still require the ‘rules of origin’ red tape, without guaranteeing full access to the single market.
- iv. *The UK joins the EU customs union from the outside, like Turkey.* In this case the UK would still be bound by the EU’s external trade policy, without having fully guaranteed access to the single market.
- v. *The UK joins the European Economic Area (EEA), like Norway.* The EU would have freedom to make its own trade policy with third countries, and would retain full guaranteed access to the single market. However, it would lose ‘sovereignty’ in having no say in the ongoing development of single market policies, the external dimension of which would significantly impact on UK trade policies.
- vi. *The UK makes a more flexible agreement with the EU, like Switzerland.* This consists of a bundle of agreements that amount to almost being in the EEA. This was the ad hoc outcome to patch up the system after Switzerland voted in a referendum against joining the EEA. The Swiss model is criticised within the EU for its cherry-picking and complexity. It is therefore unlikely that the EU would be willing to replicate it for the UK.

**Assessment.** The large majority of stakeholders responding to the call for evidence expressed the view that the existing competences of the EU in the field of trade and investment were ‘broadly appropriate’, or that they saw ‘no advantages in altering the current balance of competences in this area’, although there were a few dissenting opinions. The report traced the evolution of the EU’s competences, including the provisions of the Lisbon Treaty which clarified, updated and somewhat extended these competences, such as in the services area. These developments were not contested, however.

There remain concerns of a more detailed character, such as the fine-tuning of the competences of the EU alongside those of the member states, notably in the area of ‘shared’ competences. In addition, there are calls for greater transparency and more comprehensive impact assessments to be made by the Commission in relation to ongoing negotiations for new free trade agreements. The present authors concur with that, having in mind more precisely the new model of Deep and Comprehensive Free Trade Agreements (DCFTAs) with countries of the European neighbourhood, where huge blocks of EU legislation have been included for compliance by the partner states with no evident assessment of the potential (and unreasonably high ) costs of compliance.

Since any basic repatriation of this competence to member states is out of the question, the alternatives have to involve the hypothesis of secession by the UK. The report therefore thoroughly reviews the landscape of alternatives, but on inspection they all reveal serious inherent disadvantages or risks. Finally, the review considers that the EU, with the UK outside it, would be more protectionist, and more willing to use trade defence instruments, including against the UK.

“The evidence received for stakeholders generally suggests that the balance of competences in this area allow the UK to achieve results that are in the national interest” (p. 6).

### 2.3 Transport

According to Article 4(2)(g) TFEU, transport is a competence shared between the EU and its member states, which means that both may adopt legally binding acts in this policy area but the latter only insofar as the former has not exercised its competences or has explicitly ceased to do so. Seen through this prism, the Department for Transport, which has drawn up the review currently under consideration, rightly uses a broad definition of EU competence in the transport context: “[it] is about everything deriving from EU law that affects what happens to transport in the UK.”

As such, this review links in with issues which have been or will be covered in other balance of competences reports, for example standardisation of goods, customs security procedures, environmental standards, employment issues, etc.

In the transport field the Council acts by qualified majority voting, meaning that the UK, like any other single member state, does not have the power of veto. The evidence collected suggests that, generally speaking, this is not problematic. British domestic transport policy and experience is seen as one of the models for EU proposals on transport market reforms and liberalisation:

“[t]he UK has been a leading advocate for the development of the single market in transport across all modes, and in the 1980s and 1990s led efforts to break down national barriers within the EU to the provision of transport services across borders and within other countries, to the benefit of UK businesses and consumers.”

While respondents perceive the balance of competence as heavily favouring the EU in legislation, they are generally happy with the current legislative framework, and do not advocate adjustment of that balance. It was acknowledged that “EU level legislation can achieve (and has achieved) much more than UK legislation can do on its own.”

The British opt-out from the Schengen area is identified as posing a challenge:

“The prospect of new rail services from points of departure across the EU has created a significant challenge for both UK and Schengen border control authorities in identifying border control solutions for rail which support the rapid transit of high speed intercity services.”



While the balance of competences in transport is generally supported strongly, so too are the principles of subsidiarity and proportionality. There is broad support for the

“leading role of the EU in international agreements as it provides consistency, standardisation and a level playing field for markets in all 28 EU nations and relevant third countries which in turn provides greater legal certainty.”

The EU is perceived as being able to amplify the voices of the component member states (e.g. in international organisations) and extract greater commitments to liberalisation of global markets and fair competition from third countries like China or the US. However, the UK Government was keen to reiterate its stance that

“any EU statement in international organisations on issues where competence is shared between the EU and the Member States must make clear that it is delivered on the Member States’ behalf as well as on the EU’s.”

To avoid ‘representation creep’, the UK also takes a more restrictive view than the Commission of the extent to which EU Delegations may deliver EU statements in line with Article 17 TEU (see also Report No. 6 on Foreign Policy). Among stakeholders there is also frustration over EU initiatives to legislate in areas where regulation at global level would be preferable rather than creating regional systems that lead to losses of global competitiveness for European industries (e.g. maritime port services and the Emissions Trading System in aviation).

Whereas some stakeholders (e.g. in the recreational sectors) urge the EU to “legislate with a less heavy hand, or not at all, when it comes to non-intra-European issues and to allow greater scope for national handling of purely domestic issues”, the greater body of evidence from across all transport modes shows frustration where the aspiration of the creation of a single market has been held back by ineffective implementation (EU mechanisms used to implement change were often felt to create additional costs and regulatory burdens) or lack of enforcement of existing regulation by the European Commission across the 28 member states.

While British industry recognises the value of common assessment procedures; operating standards and technical product standards in helping to reduce red tape and costs in manufacturing; in spurring innovation; facilitating interoperability and increasing the potential for exports through opening markets in other member states; and that these benefits would not exist across the EU without EU action, there was also concern at the perceived use of common standards in other fields, such as safety, environment or social policy, to claw back market freedoms and allow the potential imposition of national barriers, possibly in a protectionist way. Many of the responses to the call for evidence were centred on social standards in road transport.

As for the issue of better regulation, a general message from stakeholders is that

“the European Commission should recognise the maturity of the EU as an organisation, focusing less on making proposals for new legislation and concentrating more on enforcement of existing legislation.”

The report also states that nearly all stakeholders feel that

“before making proposals for legislation, the Commission should undertake more openly evidenced impact assessments setting out clearly the potential costs and benefits.”

**Assessment.** The UK has generally been a leading advocate for the development of a single market in transport services, which is at the core of the EU’s common transport policy. This review suggests that the current balance of EU competences in the field of transport is broadly right. Evidence from stakeholders shows that there is broad support for the EU common transport policy to continue yielding those benefits for Britain. There is no consensus that individual areas of EU transport law should fall outside of the competence of the EU in the

future. However, there is a general view among stakeholders that the way to achieve further liberalisation is, in many cases, through more effective implementation and enforcement of existing legislation rather than through continually seeking new legislation. There is evidence of frustration with some of the social, safety and environmental rules, especially where these impinge on purely domestic transport without any international dimension. The concerns expressed about new regulatory burdens and costs mean that there is still much work to be done to find the right level of legislative prescription that will achieve the stated aims without imposing disproportionate costs or prohibiting innovation.

## 2.4 Environment and Climate Change

This review of the development of environmental and climate change legislation gives a clear grounding for considering the objectives and balance of this legislation as developed so far, and of options for its further development.

The major turning point for facilitating EU environmental legislation came with the 1987 Single European Act, which introduced qualified majority (QMV) voting into the legislative process for the first time, including for environmental legislation. During that period, the UK was under considerable pressure from other member states on environmental issues. It was no coincidence that Prime Minister Thatcher's promotion of the long-term issue of climate change emerged at a time when the pressures in favour of QMV voting were building up in the Council.

The climate change issue has distinctive characteristics, including complicated interactions, in particular with energy policy with its shared legal competences in the EU. So, the balance of competences for climate change is best addressed separately, even if the legal basis used for much of the EU legislation in this area has been environmental.

**Environment.** The review correctly identifies that EU environmental legislation started with the purpose of protecting the proper functioning of the single market. The fundamental issue is over how to achieve environmental objectives, while also safeguarding a competitive level playing field within the single market. Whereas the single market objective is clearly a UK priority, the competitive consequences of uneven application of environmental (and social) legislation within the single market are not well understood by the general public and some in industry. Germany, also a strong supporter of the single market, has often taken the lead in enacting and promoting strong environmental (and social) legislation, while not wanting to be placed at a competitive disadvantage as a result.

The review reflects the strong interest in environmental protection in the UK, even if there is less agreement on how this is best achieved – locally, or through EU and international cooperation. In the consultation some respondents considered that lack of trans-boundary impact is a sufficient reason for the EU to abstain from individual actions. Other respondents advocated reliance on the principles of subsidiarity and/or proportionality. However, there was no case made for the UK to repatriate the environment from the competences of the EU as a general proposition. There was strong recognition of the benefits of setting high environmental standards at EU level, and of extending such approaches more widely, at UN level and in trade agreements, often using the powerful principle of the 'technical equivalence' of standards.

A contentious issue concerns the protection of natural habitats, and related assessments of environmental impact. At the heart of the former are different views about the value of protecting the natural environment. In the past there have been contentious problems between the Commission and the UK about the implementation of the Environmental Impact Assessment (EIA) Directive, relating to a series of projects, including motorways and a major oil pipeline project in Scotland. The tension here is that the UK has led in promoting the EIA approach, but fallen foul of implementing the EU directive incorporating these principles.

This is the familiar UK problem when a UK-supported approach becomes burdensome in its implementation at the EU level. There is a balance of judgements here between welcoming implementation of UK-initiated principles, and recognising that implementation at the EU level will inevitably become rather more bureaucratic than a UK national approach.

The review picks out important tensions between the interests of larger exporting companies in the setting of standards within the single market, and concerns of SMEs that increased legislation can lead to administrative burdens they can ill afford. Coupled with this are the twin concerns that implementation of EU legislation is both over-elaborate ('gold-plated') in the case of the UK, and less stringently implemented in some other member states. These issues have parallels in other areas, such as in the social, health and safety legislation. The review correctly identifies that a balance needs to be struck between these tensions, and that this balance might be improved.

The UK originally led in developing the Environmental Quality approach to setting standards, based on the idea that the environmental impact of emissions is key in making cost-effective choices to achieve high environmental standards, e.g. in air and water quality. The review sets out the important development and implementation in the EU of the Precautionary Principle, and the approach grounded in the EU treaty that the polluter must be the one to pay. As part of the Precautionary Principle the review sets out another important contribution that the UK has helped to make in developing environmental and health legislation, namely assessing and managing risk when hazards have been identified.

This is helpful for resolving tensions over some of the most contentious environmental legislation, e.g. the REACH regulation to control hazardous chemicals, where intrinsic hazard is approached by a process of risk assessment and risk management. The UK initiated the EU process that led to agreement of REACH, but it is often used as an example of EU legislation that is burdensome for companies, especially SMEs. However, REACH does not seem to be an example of the UK over-elaborating, or 'gold-plating', legislation in implementation. REACH is actually an example of legislative simplification, replacing a number of directives and regulations with a single system to control dangerous chemicals. Registration is centralised in a single system through the EU Chemical Agency, to allow free movement of chemicals within the single market. There is a case now being considered, however, for implementation of REACH to be further simplified as much as possible, especially to make its registration and reporting obligations less burdensome for SMEs.

A major concern about the REACH approach for international chemical companies has been that once implemented in Europe, an equivalent approach would be adopted in the US, and this has in fact started to happen.

Overall, the review makes the case for the EU to further apply the principles of proportionality and subsidiarity to environmental policy and legislation, which the Netherlands also is supporting, rather than identifying scope to repatriate to the UK legal competences in this environmental area.

**Climate Change.** The major characteristic of the climate change issue is the need for international agreement and cooperation, even though this is proving difficult to achieve. The key issues – mitigation of greenhouse gas emissions, transfer of technology, and adaptation to expected impacts of climate change – all need agreed global responses, to be both effective and to ensure that less developed countries are also able to contribute to global effort.

The review recognises that the need for agreed actions and cooperation in implementation calls for shared competences, both at global UNFCCC level, and particularly in the EU. Specifically, the EU acts as a team in UNFCCC negotiations, first agreeing its own positions by EU consensus, before moving on to the more challenging UN level.

The EU, and within it the UK, have a long record of leadership roles on these issues, and the UK has been effective as an active member of the EU team within UNFCCC. This is recognised in the review, and expressed as UK influence being amplified by the EU. The concern of a minority of respondents that the UK's voice might not be adequately reflected in EU decisions is not borne out by the record of the EU's role in UNFCCC, or in EU legislation that has been agreed. Partly, this derives from the initiative of former Prime Minister Margaret Thatcher to put the UK in a leading role, both in UNFCCC and in the EU, including nomination of the then head of the UK Metrological Service as the first chair of the Intergovernmental Panel on Climate Change (IPCC), as part of the UN process.

A fundamental aspect of climate change policy is how closely it interacts with energy policy, for which there is shared competence between member states and the EU. In particular, the crucial choice of fuel mix, and carbon emissions, is specifically reserved for member states. Germany and the UK have led in ensuring that the EU team effort on climate change will not compromise these national energy priorities. These two member states started with rather different views on the suitability of emissions trading (EU ETS) as the central instrument of EU policy in implementing climate change obligations, but they were able to resolve their differences.

The EU's ETS is the lynchpin of concerted action on climate change, giving the European Commission important standing in relation to member state strategies. To prepare an ETS allocation plan, a member state must prepare a mitigation strategy for all of its emissions, and these strategies need to add up to the EU's overall commitment. Industry lobbying resulted in over-allocation of emission allowances, which, compounded by the recession, has slashed the price of CO<sub>2</sub> allowances. This does not negate, however, the strategic importance of putting a price on carbon, which principle the UK led in asserting, at the UN and EU level.

A fundamental point for the UK in climate change policy is that, for its major interests to be protected, it is vital to remain engaged as a full member state. A current example is the UK's concern (shared by other member states) not to have renewable energy targets imposed as part of a 2030 climate change and energy package. A UK half engaged, say by remaining within the EU single market but not as a full member state, might find itself having to meet EU requirements without being able to represent its major concerns in the course of the EU's legislative process.

**Assessment.** The review has shown that the UK has been both a major driver and beneficiary of EU environmental policy, and a leader on climate change policy both within the EU and at the UN level. The consequences of a hypothetical UK secession from the EU would compromise the UK's ability to lead and steer effectively, whilst leaving it vulnerable to being required to contribute to EU internal and international commitments as a condition of continued membership of the single market, but without having a say in what is agreed.

Many in the UK welcome the drive to improve environmental standards coming from the EU. This has been in many fields, including coastal bathing and drinking water, urban air quality associated with single market standards for vehicles and fuels, waste disposal and ground water protection. Improved environmental quality in these fields is on the record, as it is for dangerous substances and installations (Seveso directives), and for chemicals.

There is an issue over the detail and reach of EU environmental legislation, but here the UK can surely join with its EU partners in seeking regulatory simplification, whilst maintaining high standards. Then there will be the further opportunity to join with its EU partners in taking these high environmental standards into the global market place.

## 2.5 Research and Development

The UK prides itself on having a highly competitive research capacity in a wide range of fields. Statistics of articles and citations show a stronger performance than any other EU member state. The UK does exceptionally well in winning EU research funding, and under the current seven-year budget (2007-2013, Framework Programme 7) it has received €6.1 billion, or 15.4% of the total, second only to Germany's score of 16.1%.

The EU's legal basis for action in the research area is its 'shared competence'. However, it is an unusual hybrid variant on the standard shared competence in that it does not limit the competence of member states to act in this field (Article 4(3) TFEU). Prior to the Lisbon Treaty the EU's competence was in a supporting capacity only. While the Lisbon Treaty was in theory upgrading this into a shared competence, the hybrid factor mentioned has limited the significance of this change. The review comments that this has added, rather than removed confusion around the competence question.

In concrete terms however the EU is increasingly influencing strategic decisions about which research area to prioritise through the weight of its funding programmes. The FP7 programme has had a budget of prides itself in €50.5 billion, making it the world's largest research programme. The ten priority sectors covered are quite vast in extent: health, food, agriculture and fisheries, biotechnology, information and communications technologies, nanosciences, nanotechnologies, materials and new production technologies, energy, environment including climate change, transport including aeronautics, socio-economic sciences and the humanities, space, and security.

The EU's latest research programme for the years 2014-2020, (Framework Programme 8, dubbed 'Horizon 2020') has a larger budget than ever, with €79 billion. Its priorities are placed under the headings of excellent science, enabling technologies to support industry, and a number of European and global challenges such as energy security, food security and climate change.

The Lisbon Treaty also embraced the idea of the European Research Area (ERA), which is an umbrella concept for promoting mobility among European scientists and researchers, and reinforced partnerships between member states and the Commission's programmes. However the value-added of this concept, beyond the major operating programmes, is not so clear.

The EU has a long-standing competence in the field of space, funding flagship projects such as the Galileo satellite programme, and the Copernicus programme that undertakes environmental monitoring from space. The European Space Agency (ESA) is a major partner for the EU, but it is institutionally separate from the EU. Integration of the ESA into EU structures has been discussed, but is not currently being pursued. In the latest call for space projects under the FP7 around 80% of successful bids include a UK partner and around 24% are led by a UK partner.

There is a significant international cooperation dimension to the Framework Programmes, with 13 countries having made agreements with the EU to participate in projects and contribute to the budget.

The review reported widespread stakeholder frustration over the heavy bureaucratic procedures involved in both applying for grants, in the programming of deliverables, and reporting requirements. The review further commented that this might have led stakeholders to advocate recourse to simpler arrangements that might come with national funding, but that this case was not made. There was recognition that a certain degree of bureaucracy was unavoidable to ensure fair competition and minimise fraud. National funding would have its own bureaucracy, and there was lack of confidence that under a national funding regime comparable resources would be made available. Most stakeholders seemed confident that the Commission was addressing these problems and that improvements were anticipated under Horizon 2020.

A strong message from stakeholders is that the UK's reputation with international partners both in business and research is enhanced by being part of the EU. Views were expressed that 'the European brand can also give an additional guarantee in dealings with parties in non-EU countries', and that EU funding made it possible to build more international partnerships than otherwise would have been possible.

**Assessment.** The review's summary assessment was as follows:

“The majority of respondents felt that a combination of local, national, EU, bilateral and international policies and collaborations was the most effective way of managing the complex needs of differing research fields. To this end, current arrangements, while not perfect, were broadly considered or provide a good foundation” (p. 6).

The present authors' experience of European research institutes working in the social sciences highlights two points. First, it is true that the bureaucratic burden of EU funding procedures is disagreeable for the grantee, and by comparison funding from private foundations is a totally different experience, in which the private grant-making foundation makes its judgement of what project to support on the basis of much simpler specifications. It is important that the Commission try to devise ways of simplification of procedures without prejudicing the academic objectivity and freedom from national bias in decisions. At the same time it deserves to be noted that the Framework Programmes are generally considered to be well protected against unfair bias through the use of independent assessors or corruption, and the rigorous financial reporting requirements are an effective barrier to corruption.

Secondly, the review perhaps fails to underline sufficiently how in the space of a few decades the European research area has effectively come into existence, replacing the prior system of national research communities which were largely operating in isolation from each other. The community of European researchers is nowadays highly integrated. This is now taken for granted; any idea of reverting to the prior regime of nationally segmented research structures receives little or no support.

## 2.6 Asylum and Non-EU Immigration

This review deals with border controls, asylum and immigration, which involve shared competences of the EU and member states, and is an important part of the EU's broader Area of Freedom, Security and Justice. This is an area with substantial growth of the content of EU competences over the last decades.

The present legal basis is set out in Articles 77 to 79 of the TFEU, which empowers the EU to minimise border controls, adopt a common visa policy and measures on passports, and develop a common asylum policy and a common immigration policy.

The strategic basis for this complex of policies originated in the decision taken in 1985 by continental EU states to abolish frontier controls in the Schengen system, whereas the UK with Ireland opted to retain their national border controls, given their island geography. While the Schengen system originally lay outside the EU treaties, it is now fully integrated in EU law (Article 77 of TFEU), and the UK's opt-out is enshrined in Protocol No. 20 of the TFEU.

With regard to asylum and immigration policies (Articles 78 and 79 of TFEU) the UK with Ireland enjoys special provisions (under Protocol 21 of TFEU), under which it is only bound by EU legal acts if it chooses to 'opt in'. Even if the UK chooses not to opt in when a measure is introduced it retains the option to opt in at any stage later, subject to Commission approval.

*Border controls.* The UK does not participate in core features of the Schengen system, namely the Schengen Borders Code establishing common external border checks, or the Visa Information System (VIS) which is a database to serve security purposes, while it partly participates in the Schengen Information System (SIS), which is used to issue alerts over

suspected criminals. These limitations mean that UK security interests may not be optimised. The UK does participate in some other Schengen measures, such as the Advance Passenger Information Directive, and the Carriers Liability law. The UK also has limited involvement in the workings of the Frontex agency, and may do so also with the European Border Surveillance System (Eurosur). The UK has opted in to the Biometrics Residence Permit regulation.

*Asylum.* European norms for the handling of asylum seekers originated with the Dublin Convention of 1990, which however was an intergovernmental agreement of the then 12 member states outside EU law, and whose core principle is that an asylum seeker has to be handled by the member state he/she first enters. Following the rapid growth of EU competences in this area a revised version of the Dublin Convention was integrated into EU law in 2003 ('Dublin II'). A related development was the creation of the EURODAC, namely a biometric fingerprint database to enable individual member states to verify whether asylum seekers have already applied elsewhere. The UK has opted in to both Dublin II and EURODAC. The UK is currently making use of an important ruling of the European Court of Human Rights that refines the basic Dublin rule, in saying that asylum seekers should only be returned to the country of first entry if there are not "systemic deficiencies" in that state's capacity to handle the asylum seekers properly: concretely, as a result, the UK does not currently return asylum seekers to Greece. On the other hand, the UK has not opted in to other measures such as the Reception Conditions Directive, the Qualifications Directive and Asylum Procedures Directive.

*Immigration.* The EU has legislation creating certain funds for dealing with immigration, but the UK has not opted in to the External Borders Fund in particular. The EU makes readmission agreements with many countries, and the UK opts in to many of these, but not all. The UK has not opted in to a large set of nine directives concerning criteria for acceptance of migrants, including the Blue Card system for highly qualified persons and other detailed provisions concerning social security rights of immigrants and measures to counter illegal migration. The UK government generally feels that details of its own rules are better suited to its needs and perceptions.

Overall this is a complex of policies where the UK has negotiated a status quo characterised by large-scale opt-outs, together with various continuing opt-in possibilities; i.e. a remarkable combination of selectivity and flexibility. The review reports that the UK has chosen to opt in to roughly one-third of EU measures in this whole field, with fewer more recently, however, as the EU has extended its activities. The opt-in/out arrangements allow for successive adjustments of the UK's relationship with the core EU that in principle mean that it can choose, largely unilaterally, its optimal policy package, and recalibrate it at times. This selectivity and flexibility has to be considered a privilege, since the EU knows full well that a generalisation of these options would make the system unworkable to the point of disintegration. For this reason the EU is in principle extremely reticent to agree to measures that are commonly described as 'cherry-picking'. However the island geography of the UK and Ireland provides some objective foundations for this special deal.

**Assessment.** Given the UK's strategic non-participation in the Schengen system and related matters of border controls and immigration policy, subject only to some specific elements of cooperation with the EU, this review chose not to assess whether the EU's overall competences in these fields was appropriate. The review notes that for the UK the balance of competences in these areas lies mainly with the UK itself, and the government does not intend to change this. The review concentrates on assessing whether the UK's opt-outs and special provisions are in the national interest.

The review reiterates the UK government's view that, while these large exclusions from EU competences entail certain costs, they are largely outweighed by the benefits of enhanced border security. While this cost-benefit conclusion appears more as an assertion than something

evidence-based, there is little counter-argument presented by independent stakeholders. The review points out that the opt-outs are largely supported by public opinion.

On various details, even from a purely British standpoint, there may be grounds for debating whether the UK has optimised all its options in this area. For example, while the keeping of border controls is generally supported in the UK, the costs to the tourist sector and transport industry of having a separate visa system are seen to be considerable: a visa mutual recognition agreement between the EU and the Schengen system might cut these costs without the UK losing control of its borders (e.g. the UK might accept foreign travellers with Schengen visas).

Although not discussed in this review, it is also evident that the Schengen system is largely supported by public opinion on the continent. For the founding EU member states it would now be considered unthinkable, for example, that a road traveller from the Netherlands to Italy should again have to pass frontier controls at the Belgian, Luxembourg, French or German borders. For the new member states the freedom of border controls is highly valued for both practical reasons and as embodiment of the European ideal. For these reasons there is no basic questioning of the EU's competences in this broad field; on the contrary there is determination on the part of the Schengen states to deepen their common policies in the Freedom, Security and Justice area.

## 2.7 Civil judicial cooperation

The contributors to the review in this area took different views as to whether the EU's measures in this area were an improvement on intergovernmental cooperation. One group of contributors argued that they were, on the grounds that the UK would have difficulties replicating the results by means of bilateral arrangements with member states. A smaller group argued the contrary.

Many contributors agreed with the scope of Article 81 TFEU (the legal base for measures in this field), although others were worried that it left too much scope for measures that were not limited to cross-border cooperation.

Most contributors were supportive of the flagship measure in this area, the Brussels I Regulation, which has the effect of promoting English law for international contracts, and ensures legal certainty and enforceability of judgments in international disputes. There was some concern about certain judgments of the Court of Justice of the European Union (CJEU) on the Regulation, for example concerning arbitration disputes, third-country jurisdiction and choice-of-court clauses in contracts, but those concerns had been addressed by recent amendments to the legislation.

Many also supported the EU Regulations on the choice of law in contract and in tort, although some had doubts about their uniform interpretation, or the problems that would arise if a foreign court tried to interpret English law.

As for EU family law rules, most stated that the Brussels II Regulation had simplified cross-border divorce proceedings, but it still was open to litigants to 'rush to court' rather than consider mediation. The rules in that Regulation regarding children were also broadly supported, although they could be improved for children in care or with foster families. Some had doubts about EU rules on maintenance proceedings, since their interaction with the rules on divorce could be complex.

There were also views about other measures: support for the evidence Regulation; opposing views about the usefulness of the legislation on service of documents; and support for the potential use of the small claims regulation and the mediation Directive. There was a general view that awareness of these measures should be raised, since the available statistics showed that they were not used very often. There was also support for the Regulation on insolvency proceedings.



Some contributors were critical of certain judgments of the CJEU on civil law matters, suggesting some improvements in the Court's proceedings to help matters.

A very large majority of contributors took the view that the EU measures in this area were helpful for the single market, given that they promoted legal certainty in the context of cross-border trade relationships and contracts.

Most contributors supported the opt-out for the UK, although some disagreed with its use in particular cases. For instance, some legal associations wanted the UK to opt in to the latest Justice Programme, and the succession Regulation.

Opinion was divided as regards the EU's external role in this area, given that it often has exclusive external competence to enter into agreements in this field. A number of contributors questioned the Commission's claim that the EU has exclusive competence to decide on the extension of The Hague Convention on child abduction to new countries (as far as member states are concerned), or complained about the delay in EU ratification of international treaties.

Finally, as for future measures, contributors called for the EU to focus on reform and consolidation of existing rules, rather than the development of new measures affecting civil law and family law more generally.

### **Assessment**

The overwhelming majority of contributors appear to support civil law cooperation as an important issue linked to the single market for business and trade and (as regards family law) the movement of persons. This support would doubtless be reduced if it were not for the UK's opt-out, which has enabled it either to stay entirely outside of measures which it considered undesirable, or at least to 'hedge its bets' by staying out when a measure was first proposed, and then opting in after its adoption if it was satisfied with the result. There were some doubts, however, as to whether this approach was sustainable in the long term.

Having said that, British contributors have a number of detailed suggestions for improvement of the EU measures, which would facilitate the accomplishment of their objectives particularly in cases involving divorce and children. Some have also suggested that some awareness-raising would increase public use of measures that could be quite helpful in many cases.

It should be noted that some of the issues raised by contributors have been addressed in practice. As the contributors themselves noted, the recent amendments to the Brussels I Regulation addressed many of the complaints that practitioners had about the CJEU's case law. This proves that when British practitioners make a detailed and reasonable critique of an EU measure, they can be successful in convincing others in the EU to share their point of view.

A number of issues raised in this part of the balance of competences review have also been addressed since it was carried out. The issue of competence regarding extension of The Hague Convention on child abduction should soon be resolved by the CJEU, after that Court held a hearing on the issue earlier this year. In late 2013, the Commission proposed amendments to the small claims Regulation to improve its use, including a large increase in the threshold for application of that Regulation. The EU has now ratified The Hague Convention on maintenance, and the Commission has recently proposed that it ratify The Hague Convention on choice-of-court clauses, which will bring that Convention into force. A proposal to improve the insolvency Regulation is also under discussion; the Commission recently began a public consultation on improving the rules on child abduction and divorce jurisdiction; the CJEU has now been inundated? with cases concerning the maintenance Regulation, which might clarify the issues concerning interpretation of that Regulation; and there is no sign that the EU legislature will take a broad view of the scope of competence under Article 81, and apply it to proceedings that do not have a cross-border element.

All in all, the UK has been able to select from the civil proceedings measures those which are best adapted to the common law system (and the Scottish hybrid system) and which best serve the needs of British business and the legal profession. It has also been able to shape the amendment of those measures when necessary, and avoid their application if it disagreed with them.

## 2.8 Culture, Tourism and Sport

The EU's competences in the fields of culture, tourism and sport are relatively new. The Lisbon Treaty provides that they are all "supporting competences" (Article 6 TFEU), which means that while the EU may decide certain actions under these headings, this does not restrict in any way what the member states do under their own competences.

**Culture.** It is expressly excluded that the EU legislate in order to harmonise national laws in the cultural field. The EU's main actions in the cultural field include the Media programme for supporting the European film industry, and the European programme of the digitisation of cultural material in European libraries and museums. The British Museum, for example, contributes to the Europeana programme, which now includes 1.5 million digital assets from the UK. Other measures include the Cultural Objects Directive (93/7/EEC), which provides a cooperative procedure for returning national treasures that have been unlawfully removed from a member state. The Capitals for Culture programme, from which Glasgow and Liverpool have been beneficiaries has been particularly appreciated.

The report says that "The 30 contributors from the culture sector were the most unequivocal in their support of EU activity under its competence" (p.27), with various contributors stressing the comparative success of UK cultural organisations in securing EU funding. There was emphasis on how the bringing together of cultural communities across member states delivers benefits that are not achievable at national level, and on how such programmes could achieve a critical mass allowing the UK and European partners to compete on the global stage and project 'soft power'.

**Tourism.** Actions in this sector are not very extensive. There are several measures effectively protecting the rights of travellers and tourists, such as the Denied Boarding Regulation protecting air travellers in the event of delays, and the Package Travel Directive, which protects consumers in the event of a travel operator going into liquidation.

The European Tour Operators Association noted the risk that the UK's self-exclusion from the Schengen visa system may have a negative impact on the UK tourist sector, through the UK being dropped out of multi-country itineraries.

Overall, contributors felt that the impact of EU measures in this field were quite modest.

**Sports.** In this there have been some important specific measures, influenced by the case law of the European Court of Justice relating to the free movement of workers. In particular, as a result of the Bosman case in 2005, UEFA and FIFA were obliged to make far-reaching changes in their regulations on transfer systems for footballers, preventing restrictions on the freedom of footballers to move clubs once their contracts had expired. In the broadcasting domain the Audiovisual Media Services Directive (2010/13/EU) lists major events that are to be made available for free TV viewing, including major football, rugby, athletic and golfing championships. The huge increase in following of European football championships makes it imperative that discussions over policy in this area be organised. Stakeholders were unequivocal in their view that the EU's new competence in relation to sport was a positive development for both professional and grassroots sport. The UK is extremely well represented in EU Expert Groups on sport, providing the chair for three of them: Good Governance in Sport, Sustainable Financing of Sport, and Education and Training in Sport. All contributors who expressed a view felt that the current balance of competences in the field of sports was appropriate.

## Assessment

Culture, tourism and sport are relatively new and secondary competences of the EU. However the evidence shows that there are important niche activities performed by the EU, more notably in the culture and sports fields. All the contributors who submitted evidence held the view that the current EU's supporting competence in culture, tourism and sport were on balance either beneficial to the future development of these sectors and UK national interest or had the potential to be so. On the other hand, none of the contributors argued in favour of extension of EU competences in these sectors, and some warned of the need to remain vigilant over moves by the EU to extend these competences (p. 45).

## 3. Conclusions

This set of eight new reports fall into several distinct categories for the purpose of assessing the suitability of the EU's competences.

Three reviews (free movement of goods in the single market, trade and investment, transport) concern core aspects of the internal market and international trade. Here there is robust support for the present balance of competences, which are in line with the UK government's prioritisation of the single market and open trading system as the EU's foremost competences. The alternatives to EU membership are considered in some detail, notably in the external trade area, and these are found to be unattractive. As regards both the single market and transport the emphasis for the future is on consolidation of these 'mature' competences, rather than their extension, although in the single market for services and external trade domains there are important agendas for future action.

Two reviews (environment and research) concern sectors where there is a highly complex layering of competences between local, national, EU and international levels. There is general agreement that the EU should be active in these fields, alongside continuing needs to work on the optimal distribution of these competences, but without major arguments contesting the present balance of competences. In both areas the UK has a leading and positive role, either as a driver of policy development (environment), or as a major beneficiary of EU programmes (research). There is therefore a good fit between UK interests and EU activity in these fields.

Two reviews (asylum, non-EU migration, and civil judicial cooperation) concern areas where the UK already enjoys 'opt-outs' or discretionary 'opt-in' possibilities. While there is room for debate about whether the UK's present large degree of opting-out is optimal for the UK national interest, the hypothetical case for repatriation of competences does not arise. In practice, the UK has been able to calibrate its participation in or out of EU policies in line with its preferences. While this 'cherry-picking' approach would be unworkable for the EU as a whole if all member states tried to do this, the EU has been willing to be flexible to accommodate the UK's demands. The island geography of the UK and Ireland made the exclusion from Schengen readily understandable, but the flexibility factor has been stretched into many fields of judicial cooperation where geography is not so relevant.

One review (culture, tourism, sport) concerns the special legal category of "supporting competences", where the EU's role is very limited, but still judged by stakeholders to be beneficial in various niche activities.

Overall, this second set of reviews is confirming the pattern seen in the first set, with no major arguments emerging in favour of straight repatriation of competences at the level they have been defined in the treaties (see Table 1). Stakeholders are observing that the precise distribution of competences between the EU and member state level has usually been worked out through the processes of negotiation to a point of quite sensible balance. In both these sets of reviews there is much in the detail to be attended to, notably where the principles of

subsidiarity need more serious application, and where the quality of regulatory texts and impact assessments need improvement.

What is also confirmed is the huge chasm of mutual incomprehension between informed stakeholders and leaders of Eurosceptic populism, as now emphasised in the results of the 25 May elections to the European Parliament. The latter are making extremely simple arguments that the EU has taken too many powers, which should be returned to national governments. When these arguments are followed through at the concrete level there are two issues that stand out for their clear identification: problems of eurozone governance in the recent financial crisis and immigration. Other controversies over EU competences seem to lack forceful credibility, or rely more on uninformed arguments and myths, rather than the realities that the Balance of Competence reviews have painstakingly documented.

Returning to the British question in particular, it is all the more relevant that the UK has been able to opt out of the euro, Schengen and much of the Schengen-related rules for controlling immigration from non-EU sources. This has led some commentators to observe that the UK has managed over time to negotiate for itself 'the best of all worlds', in the sense of being fully in the single market, the EU's foreign policy and the EU's political deliberations, without being in the euro or Schengen, and while also keeping its ongoing special budget rebate. For UK politicians who seek a 'flexible' EU the UK has in fact acquired for itself a unique flexibility from the EU that could never have been agreed in straight accession negotiations, either in the past or for future candidate countries. In several other areas here reviewed stakeholders have observed the EU to be functioning as an 'amplifier' of British interests and priorities (single market, external trade, environment, climate change, and research).

The huge political problem of populist Euroscepticism clearly still remains, however. In part this merges indistinguishably into the much broader wave of anti-central government and anti-establishment protest movements in evidence in much of Europe and across the Atlantic. It is sure that there will remain a strand of anti-Brussels sentiment in European public opinion, just as there is an enduring anti-Washington sentiment across the US, together with the newer phenomenon of anti-globalisation.

In the UK the Farage/UKIP phenomenon is equally anti-establishment and anti-European. Nigel Farage has acquired a celebrity-entertainer status not unlike Beppe Grillo in Italy. But it is also notable that despite the UKIP's success in the May 2014 European Parliament elections, British public opinion seems to be turning towards a significant majority in favour of staying in the EU.<sup>4</sup> This apparent paradox might be explained by the prospect of an in/out referendum; leading people to consider seriously and concretely the consequences of secession, whereas the Farage/UKIP phenomenon may prove to be more of a protest bubble, as appears to be the case of Beppe Grillo and his Five Star Movement. In this context the painstaking work being done by the Balance of Competence reviews is of the highest relevance, even if the findings are unsensational in pointing out a certain routine normality in EU affairs. However, the extent of the Eurosceptic populist results, including the dramatic gains of the Front National in France on May 25th, still demands robust explanation and the drawing of political conclusions by the European political mainstream. Chancellor Merkel has, for example, suggested that the main problem has been the seriousness of the recession in the eurozone, and that with a robust macroeconomic recovery the Eurosceptic populists will see their support decline. If this is so, the rational conclusions to be drawn by British public opinion should be rather reassuring. The UK has kept outside the eurozone and its macroeconomic recovery is proceeding rather well.

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<sup>4</sup> See <http://yougov.co.uk/news/2014/03/26/eu-referendum-highest-lead-two-years>, where there is reported a 42/36% majority in favour of staying in, with a much larger 54/25% majority if the UK secured a 'renegotiation'.

For the rest of the EU's competences the evidence so far is that they are quite well balanced. But this exercise is still only half complete, so premature conclusions should be avoided.

*Table 1. Summary of Balance of Competence findings*

<b>Sector of policy</b>	<b>Competence question</b>	<b>Other comments</b>
<b><i>Foreign policy domain</i></b>		
Foreign policy	Majority supports UK working through EU	Unanimity rule guard against + EU competence
Development & humanitarian aid	EU 'parallel competence' not contested	UK free to do own aid policies & actions.
Trade & investment	EU competence appropriate, in national interest	Alternative regimes outside EU unattractive
Enlargement		
<b><i>Internal market domain</i></b>		
Internal market (synopsis)	UK key driver & beneficiary of EU competence	UK top beneficiary of FDI
Internal market – goods	Majority respondents support EU competence	UK government's highest priority
Internal market – persons		
Internal market – capital		
Internal market – services		
Work place safety, consumer protection		
Food safety and animal welfare	EU harmonised approach essential	UK a progressive influence on EU policies
Transport	Broad support for EU competence	Social standards of concern
Agriculture		
Fisheries		
Energy		
Competition		
Public health	Limited EU actions useful	UK benefits from inflow of EU professionals
Environment & climate change	UK major driver & beneficiary of EU competence	EU as amplifier of UK interests
Social & employment		
<b><i>Justice &amp; home affairs domain</i></b>		
Asylum & non-EU immigration	UK opt-outs & opt-in options supported	UK has flexible special arrangement
Civil justice	Large majority support opt-in/out options	UK has arrangements suiting its legal system
Fundamental rights		
Police and criminal justice		
<b><i>Economic policy</i></b>		
Economic and monetary union		
Taxation	Limited EU competences useful	Unanimity rule guard against + EU competence
EU budget		
Cohesion		

<b><i>Education, research, culture</i></b>		
Education		
Research and Development	Current arrangements broadly good foundation	UK major beneficiary of EU programmes
Tourism, culture & sport	EU niche activities supported	UK leading role in good governance for sport
<b><i>General</i></b>		
Cross-cutting areas		
Subsidiarity and proportionality		

*Note:* This table summarises the findings of the first two out of four semesters, and will be completed in due course when the remaining two semesters are published.

## Annex A. Balance of Competences Review - Schedule of the British government's work

Each item will see publication of a report of around 40,000 words.

Summer 2013 (published July 2013)

1. Internal market (synopsis)  
<https://www.gov.uk/government/consultations/call-for-evidence-on-the-governments-review-of-the-balance-of-competences-between-the-united-kingdom-and-the-european-union>
2. Taxation  
<https://www.gov.uk/government/consultations/taxation-report-review-of-the-balance-of-competences>
3. Food safety and animal welfare  
<https://www.gov.uk/government/consultations/call-for-evidence-animal-health-welfare-and-food-safety-review>
4. Health  
<https://www.gov.uk/government/consultations/review-of-the-balance-of-competences-health>
5. Development & humanitarian aid  
<https://www.gov.uk/government/consultations/development-cooperation-and-humanitarian-aid-report-review-of-the-balance-of-competences>
6. Foreign policy  
<https://www.gov.uk/government/consultations/foreign-policy-report-review-of-the-balance-of-competences>

Winter 2013 (published in February 2014)

7. Internal market – goods  
<https://www.gov.uk/government/consultations/single-market-free-movement-of-goods-report-review-of-the-balance-of-competences>
8. Internal market – persons<sup>5</sup>
9. Asylum & immigration  
<https://www.gov.uk/government/consultations/asylum-and-non-eu-migration-review-of-the-balance-of-competences>

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<sup>5</sup> This review, on the internal movement of EU persons, has been delayed. According to the British press this is because of controversy between the coalition parties over the scale of actual or potential migration from new member states, and in particular from Bulgaria and Romania for whom free movement came into effect on 1.1.2014.

10. Trade & investment

<https://www.gov.uk/government/consultations/review-of-uk-and-eu-balance-of-competences-call-for-evidence-on-trade-and-investment>

11. Environment & climate

<https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review>

12. Transport

<https://www.gov.uk/government/consultations/eu-balance-of-competences-review-transport-call-for-evidence>

13. Research

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279331/bis\\_14\\_592\\_balance\\_of\\_competences\\_review\\_government\\_reponse\\_to\\_the\\_call\\_for\\_evidence.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279331/bis_14_592_balance_of_competences_review_government_reponse_to_the_call_for_evidence.pdf)

14. Tourism, culture & sport

<https://www.gov.uk/government/consultations/call-for-evidence-culture-tourism-and-sport>

15. Civil justice

<https://www.gov.uk/government/consultations/balance-of-competences-review-call-for-evidence-on-civil-judicial-cooperation>

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16. Internal market – services
17. Internal market – capital
18. EU budget
19. Cohesion
20. Social & employment
21. Agriculture
22. Fisheries
23. Competition
24. Energy
25. Fundamental rights

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26. Economic and monetary union
27. Workplace health & safety & consumer protection
28. Police and criminal justice
29. Education
30. Enlargement
31. Cross-cutting areas
32. Subsidiarity & proportionality