



European Scrutiny Committee

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Review of the Balance of Competences – Call for Evidence

In response to the Calls for Evidence of the Government's Review of the Balance of Competences, the Committee has reviewed its recent reports. I enclose a table setting out, with a brief synopsis, chapters of the reports which are relevant to those subjects covered in the first semester of the Review.

I am copying this letter to Arthur White of your Department.

CHAIRMAN

Departmental lead	Subject	ESC Report reference & document number ¹	Comments
BIS	Internal Market	38 th Report, 2010-12, 428-xxxiv, Chapter 2, European Private Company (9713/11)	The European Private Company Statute formed part of the Small Business Act. The compromise text had struggled to pass through Council and the Government acknowledged that there were areas of concern to the UK. The Committee stated it would keep this issue under review and also asked how the Government intended to comply with the European Union Act requirement to pass an Act of Parliament before final agreement in Council.
		44 th Report, 2010-12, 428-xxxix, Chapter 1, Implementation of the common commercial policy (11762/11)	The Treaty of Lisbon stated that the European Parliament should be fully associated with the conduct of trade policy. All decision-making procedures needed to be adapted to the regime for delegated acts. The UK was determined to retain an appropriate balance between institutions during this transition. The Committee thanked the Government for being open in its thinking and kept the issue under scrutiny.
		1 st Report, 2012-13, 86-i, Chapter 1; 5 th Report, 2012-13, 86-v, Chapter 4; 19 th Report, 2012-13, 86-xix, Chapter 7, The posting of workers and the right to take collective action (8042/12; 8040/12)	The proposal was a draft Directive to strengthen the 1996 Posting of Workers Directive and a Regulation to clarify the interaction between fundamental social rights and economic freedoms, presented as a package. The Commission's Impact Assessment Board judged that the evidence base for the draft Directive was very weak, and that it was entirely absent for the draft Regulation. The Committee recommended that the House issue a Reasoned Opinion, which the House proceeded to do. For the first time since the Lisbon Treaty entered into force on 1 December 2009, the threshold required under Article 7(2) of Protocol No. 2 on the application of the principles of subsidiarity and proportionality to trigger a formal review of the draft Regulation was met; 12 national Parliament chambers raised Reasoned Opinions. The Commission proceeded to review the draft

¹ Where available, Council numbers are given. The Committee's unique reference number has been included for documents such as Opinions and Reports which are unnumbered.

			<p>Regulation.</p> <p>The draft Regulation on collective rights was eventually withdrawn but the Committee expressed concern about the Commission's response to Reasoned Opinions. The Committee sought further information on how the Government would be making use of (widely differing) responses on the contents of the draft Directive in its negotiations.</p>
		<p>18th Report, 2012-13, 86-xviii, Chapter 1, The Single Market Act II (14536/12)</p>	<p>The Single Market Act was introduced in 2011, and cleared by the Committee at that stage on the basis that its specific proposals should be considered by the House at the appropriate time. At this point, however, progress had been so slow in agreeing key areas (1 out of 12) that the Committee recommended the document be considered in European Committee A. This was as much to discuss the future of the Single Market as to examine progress on the Act.</p>
		<p>20th Report, 2012-13, 86-xx, Chapter 3, The Radio Equipment Market (15339/12)</p>	<p>A draft Directive on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment: the Government and the Committee shared concerns about the likely cost to the UK, and the possible overuse of delegated powers to amend a Directive, going beyond the scope of TFEU. The Committee drew the issue to the attention of the BIS Select Committee.</p>
		<p>21st Report, 2012-13, 86-xxi, Chapter 2, Implementation of the Common Commercial Policy (7455/11)</p>	<p>This concerned a draft Directive to implement changes to both the framework for the adoption of delegated and implementing acts and for the power of the Commission in the conduct of the common commercial policy, consequent to the Treaty of Lisbon coming into force. The Committee had previously noted the existence of this draft Legislation and kept scrutiny open. At this time, the Committee noted that the Government had successfully negotiated to ensure adequate consultation time on changes.</p>
		<p>3rd Report, 2010-12, 428-iii, Chapter 7, Financial services (12346/10)</p>	<p>The Committee recommended a Reasoned Opinion on the Investor Compensation schemes draft Directive on the grounds that the "borrowing last resort mechanism" between national schemes at Union level would prove less effective than leaving the</p>

			assessment of risk and provision of compensation to Member States individually.
		42 nd Report, 2010-12, 428-xxxvii, Chapter 1, Financial services: prudential requirements (13284/11; 13285/11)	Draft Regulation on prudential requirements for credit institutions and investment firms. The Committee recommended, and the House agreed, a Reasoned Opinion based on concerns that achieving maximum harmonisation by removing Member State discretion to impose stricter prudential requirements impinges on the discretion of national governments to act in this area and was therefore in breach of the principle of subsidiarity. Action was taken on Internal Market grounds but the Committee's assessment was that the overwhelming objective was in fact prudential supervision. It did not feel this adequately justified removing national competence.
DEFRA	Animal Health and Welfare	13 th Report, 2012-13, 86-xiii, Chapter 4; 20 th Report, 2012-13, 86-xx, Chapter 6; 23 rd Report, 2012-13, 86-xxiii, Chapter 2, Bern Convention on wildlife and natural habitats (14025/12)	The Committee considered a draft Decision to oppose a Swiss proposal to amend the Bern Convention on wildlife and natural habitats to which the UK and the EU are contracting parties. Because it covered an area of international law outside the <i>acquis</i> , the Government and Committee agreed that the EU should not be acting. The UK voted against it but the Decision was adopted. The Committee asked whether the Government would seek to challenge the Decision in the Court of Justice.
DH	Medicines and Medical Devices	11 th Report, 2012-13, 86-xi, Chapter 9, <i>Regulating clinical trials</i> (12751/12)	The Committee queried the legal basis for the provision in a draft Directive for the Commission to carry out Member State inspections to check whether the States were able to comply with the regime for clinical trials for medicines for human use. (The Government replied that it felt the inspection regime would be otiose and would seek amendments to reflect this.)
		53 rd Report, 2010-12, 428-xxlviii, Chapter 14; 5 th Report, 2012-13, 86-v, Chapter 8; 11 th Report, 2012-13, 86-xi, Chapter 10; 20 th Report, 2012-13, 86-xx, Chapter 23, <i>Responding to serious cross-border health threats</i> (18509/11)	The Commission put forward a draft Decision on serious cross-border threats to health. The Government and Committee were concerned about competency creep in relation to a requirement to 'consult', rather than 'inform', the EU on preparedness and response planning. This was later amended. Article 12 of the Decision, which delegated the Commission to put into place 'common temporary public health measures' in a

			situation where national measures were insufficient and/or a major outbreak of hospitalisation or death occurred across the EU was also a concern. The Government considered that this did not comply with the subsidiarity principle and had asked for it to be deleted, which it eventually was.
DfID	Development	5 th Report, 2012–13, 86-v, Chapter 13; chapter 30, 13 th Report, 2012–13, 86 xiii, EU Budget Support to Third Countries (15561/11)	This Commission Communication aimed to strengthen and coordinate budget support for third countries. The Government lobbied for, and achieved, text in the Council Conclusions to expressly acknowledge that where bilateral funds from Member States are involved, coordination will take into account the views of non-EU budget support providers, respect sovereign decisions, and not transfer additional responsibility to the EU. The Committee, which has similar concerns, cleared the Communication following this assurance.
FCO	Foreign Policy (Common Foreign and Security Policy, Common Security and Defence Policy, Treaty on the Functioning of the European Union)	54 th Report, 2010-12, 428-xlix, Chapter 1, The External Action Service (unnumbered – ELC 33638)	A Report by the HR on the European External Action summed up the first year of the EEAS; the Committee saw it as an opportunity to reiterate the need to hold the EEAS to those powers specified in the Treaties, specifically as regards consular protection. The UK Government maintained that the EEAS power to provide consular support was limited to facilitation of contact between Member States, and did not stretch to providing EU consular services, which it said was a matter of national competence. The Committee agreed; it referred the Report for debate in European Committee B.
		54 th Report, 2010-12, 428-xlix, Chapter 7, Diplomatic and consular protection of Union citizens in third countries (1882/11)	This Draft Directive on the right of Union citizens to consular protection abroad. There is discussion between Member States, some of whom want the EEAS to develop independent consular support, others of whom, like the UK, feel this infringes on national competence.
		61 st Report, 2010-12, 428-lvi, Chapter 2; 3 rd Report, 2012-13, 86-iii, Chapter 2, Cooperation with Southeast Asia (6677/12)	Although the Committee welcomed this Council Decision in which the EU would accede to the Treaty Amity Co-operation, it raised concerns about the ambiguity around areas of exclusive competence. The Committee sought assurances that the delimitation of competence set out in the Treaties would be respected. The Government agreed that it would need careful policing but the Committee felt it

			was unclear how this would be achieved practically and so recommended a debate in Committee B.
		11 th Report, 2012-13, Chapter 7 and 18 th Report, 2012-13, Chapter 12, The EU and the Arctic Region (12013/12)	The Committee first considered the EU's Arctic policy following a Commission Communication in 2008 on which it had competency concerns. The EU was seeking to join the Arctic Council as a Permanent Observer despite having no competence to legislate on several policy areas or, where it did, no evidence that action would be more effective at EU level than would be policy determined by those few states with a direct interest. Concerns were raised specifically with formulation of CFSP policy on the Arctic as the Commission has no right of initiative.
HMT	Taxation	16 th Report, 2010-12, 428-xiv, Chapter 3, Taxation (5037/11)	A Commission Communication <i>Removing cross-border tax obstacles for EU citizens</i> urged EU action to make Member States' taxation systems more compatible. The Government noted that the ECJ had consistently held that taxation sat within national competence and noted that any proposals for action on an EU level would have to be demonstrably outside existing national and bilateral measures. The Committee recommended debate in Committee B.
		27 th Report, 2010-12, 428-xxv, Chapter 2, Taxation (7263/11)	A draft Directive on a common consolidated corporate tax base caused serious concern on several grounds, including subsidiarity. The Government was challenging the Commission on the Directive on the basis that there was no single market argument for it and no express Treaty provision for harmonisation of direct taxation. The Commission claimed TFEU Article 115 as its legal basis, an assertion with which the Committee disagreed. The Committee was concerned that the Government did not appear to be sharing its full concerns about the Directive. The Committee produced a draft Reasoned Opinion and also sought an Opinion from the Treasury Committee under S.O. No, 143(11). The Government later submitted that the legal basis for Article 115 was justified, but the Committee opposed this view.)
		34 th Report, 2010-12, 428-xxxi, Chapter 6, Taxation (9270/11)	A draft Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy

			<p>products and electricity reached the Committee too late for a Reasoned Opinion to be produced. The Committee had serious concerns about the legal basis of the Directive and its compliance with the subsidiarity principles. In particular, the Commission had failed to produce a detailed subsidiarity statement, as required by Article 5 of Protocol (No. 2), and did not appear to meet the requirements of Article 113 TFEU. The Government also had concerns. The Committee therefore wrote to the President of the Commission.</p>
		<p>44th Report, 2010-12, 428-xxxix, Chapter 4, Taxation (14942/11)</p>	<p>A draft Directive on a system of financial transaction tax caused concern to both the Government and Committee. The legal basis of Article 113 TFEU required that the instrument be considered essential for the continued working of the single market, but the argument made in favour of this was far from persuasive the measure has since been taken forward by a number of Member States under enhanced co-operation.</p>