Balance of Competences Review
Free Movement of Services

Discussion Events
London, 14 and 27 November 2013

NB: the following views were expressed by meeting attendees.

Services Directive

- Many businesses described themselves as initially enthusiastic about the Services Directive 2006/123, but expressed frustration about consistent problems with implementation.
- In particular, they complained that Member States often rely on provisions in national legislation to counteract some of the effects of the Services Directive.
- This can be especially complicated where local and regional governments are also involved with implementation.
- Differential implementation of Services Directive means that some companies prefer to make use of the freedom of establishment rather than the freedom to provide services.
- Systems that are designed to solve problems with implementation, such as SOLVIT and IMI, are too slow and cumbersome to be of use to businesses which need a fast solution. Users of these services also described varying quality across the Member States.
- Businesses broadly welcomed the potential benefits of the completion of the Digital Single Market, but complained that this area has been complicated by the wide range of legislative proposals, including for example the Telecommunications Package and proposals on data protection and cyber security.
- Participants were more enthusiastic about EU consumer protection legislation, where they were less concerned by implementation but rather with the perceived lack of knowledge and awareness on the part of end users.

Mutual Recognition of Professional Qualifications

- As with the Services Directive, the majority of participants described problems with the implementation of current rules on mutual recognition of professional qualifications and the lack of legal certainty that this creates, as well as concern about the implementation of the recently adopted Directive in this area.
- Competent Authorities reported very varied experiences with their counterparts in various Member States, with some expressing concern that there is a potential risk to public safety because of differing standards.
- Although some Competent Authorities complained that their counterparts did not apply sufficiently robust standards, others were concerned by a rigid, legalistic application of the rules. In some cases experienced professionals were prevented from working in some Member States because they could not demonstrate qualifications in a very specific individual area.
- EU legislation on professional qualifications is not the only provision that affects service providers: they must also comply with rules on insurance, data protection and other aspects of doing business.

Company Law

- Participants felt that generally, the balance between EU and national legislation was appropriate, but commented on how the Commission is unappreciative of historical national systems
- They felt that, in general, EU legislation was flexible enough for national implementation, but that legislation at EU level achieves a global outcome.
- Participants also suggested that changes to Company Law were used as a vehicle for culture change, rather than to target a particular problem. They cited money laundering rules as an example of this.
- Although there is a strong push to cut red tape in both UK and EU legislation, participants stressed the importance of not removing essential protections, such as directors' and auditors' liability.
- There are significant cultural differences between national administrations in this area, with more recent Member States preferring a prescriptive approach whereas more established Member States prefer a principles-based approach. This makes the EU's 'one size fits all' approach difficult to implement.
- It was suggested that the EU may be pressured to make wider use of 'soft law' measures, including via the European Semester.
- Participants suggested that this is an area that is difficult for some newer Member States.

Public Procurement

- Participants welcomed EU action in this area because there is a significant advantage to having a sound legal underpinning, which allows procurement professionals to adopt a thorough approach, provided they understand the rules. The openness of public procurement markets provides opportunities for UK suppliers. Participants also pointed out that even in the absence of EU legislation in this area, the UK would still be bound by the WTO and the Agreement on Government Procurement.
- Consistency, transparency and principles are very useful, but some SMEs can find the administrative requirements of the EU public procurement process can be burdensome.
- In particular, EU procurement processes are sometimes used even for small transactions below the official thresholds, which makes the process even more complicated for SMEs.
- Despite the rules, it is still very difficult for firms to make bids for contracts in other Member States without having a physical presence there. At operational level there is anecdotal evidence that Member States interpret EU rules differently. There is also a perception of the UK 'gold plating' EU rules.
- Only if there is strong robust evidence that there is not a level playing should there be more proactive enforcement by the European Commission.
- In the current climate, investing in the training of procurement professionals who are familiar with EU tender procedures is a challenge but is a good way of ensuring that value for money is obtained.
- Another challenge is cultural: there is currently too much standardisation, which stifles innovation and collaboration.

Defence Procurement

- Advantages of EU action in this area include the opening-up of markets and the ability to challenge issues of national sovereignty when these are inappropriately used as a justification for limiting competition. However, there

is only a certain extent to which the defence procurement market can be opened before issues of national sovereignty are involved.

- Article 346 TFUE can be misused, but one factor in its application is the different role of the armed forces in some Member States. For example, the coast guard is considered part of the military by some countries but not by others.
- Furthermore, Article 346 TFUE decisions are made behind closed doors – there should be an open forum for some strategic items, so that the interested parties can see and understand rationale.
- The current balance of competences between the EU and Member States is about right in this area. The issue more concerns the implementation of existing regulation and the EU stepping in as an honest broker where appropriate.
- Member States have been slow to implement the existing Defence Package and have had limited success. Member States do not take a consistent approach to enforcing existing EU rules and national issues remain paramount.
- Obstacles remain to the creation of a single market in defence goods and services. These include the evolution of the defence industry and managing mergers and acquisitions when defence companies are either nationalised or part-owned by governments. One potential useful activity of EU might be to ensure that free market forces countered these anomalies.
- There should be no role for the European Defence Agency in the defence industrial sector. EDA seems to be seen as having a political role for Europe. The idea of EDA single defence organisation is problematic because each country has its own unique foreign policy.
- EU action in the defence industrial sector can be very beneficial in the right circumstances. However, it is important to note that NATO also has a role because it exists in same space in which the EU is trying to legislate. The EU has to recognise that bilateral agreements between countries take precedence and that NATO shapes EU activity in this respect.
- There was a general feeling that UK is under-represented in EU and NATO, and related technological committees, especially R&D.
- It can be a relief to trade with non-EU countries as it is so much more complicated to trade within EU.

General Points

- The process of making EU legislation is too slow and cumbersome, especially when individual Member States can introduce protectionist measures that exclude companies from other countries very quickly. At the EU level, stakeholders complained about a lack of transparency in the policy-making process, which can be exacerbated by the fact the Commission frequently makes proposals in overlapping areas.
- Many participants complained that many proposals for new EU legislation do not take into account the administrative burdens of existing legislation, especially for SMEs, or whether or not it could be implemented more efficiently.