



EU SELECT COMMITTEE

The Review of the Balance of Competences

Oral and Written evidence

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Dr Samantha Currie, Professor Michael Dougan and Dr Thomas Horsley; Liverpool European Law Unit—Oral evidence (QQ 1-9)

Evidence Session No. 1

Heard in Public

Questions 1 - 9

TUESDAY 10 FEBRUARY 2015

Members present

Lord Boswell of Aynho (Chairman)
Earl of Caithness
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Harrison
Baroness Henig
Baroness Hooper
Lord Kerr of Kinlochard
Lord Maclennan of Rogart
Baroness O’Cathain
Baroness Parminter
Baroness Prashar
Baroness Quin
Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

Examination of Witnesses

Dr Samantha Currie, Professor Michael Dougan and Dr Thomas Horsley—
Liverpool European Law Unit, University of Liverpool

Q1 The Chairman: Good afternoon. Welcome to the witnesses from the Liverpool European Law Unit. You are very welcome here. We appreciate your presence, and we have some questions for you that will in effect be the unveiling of our short inquiry into the Government’s balance of competences exercise, on which I know you have been much engaged. It would be helpful if you would introduce yourselves. Who would like to kick off? Ladies first?

Dr Samantha Currie, Professor Michael Dougan and Dr Thomas Horsley; Liverpool European Law Unit—Oral evidence (QQ 1-9)

Dr Samantha Currie: I am Dr Samantha Currie. I am a senior lecturer in law at the School of Law and Social Justice at the University of Liverpool, and I, along with colleagues in the Liverpool European Law Unit, have been undertaking some on the balance of competences review.

Professor Michael Dougan: My name is Michael Dougan.

The Chairman: Could you speak up?

Professor Michael Dougan: I have to apologise; I developed a cold over the course of the afternoon, so I will try to keep my voice up. I am Professor of European Law at the University of Liverpool, and again, with my colleagues here and with quite a few other colleagues in Liverpool, I am engaged in various capacities with the balance of competences review. I think Thomas is going to talk a bit more about that.

Dr Thomas Horsley: I am Thomas Horsley. I am a lecturer at the Liverpool Law School. Again, with colleagues in the Liverpool European Law Unit I have been contributing to a number of the reports and written evidence, and in another capacity to some of the open and closed engagement sessions. If you permit me, I would be happy to provide an overview of our work.

The Chairman: That will be very helpful in a moment. For the record, as this is a public evidence session, we are recording it and will send you a transcript to correct any factual errors. We very much hope that this can be a dialogue. If there is a complex question, you may undertake to respond to it later. Conversely, if you have any afterthoughts or additional material to feed into us, you may also do so later.

Perhaps we will go straight on from that to ask Dr Horsley to make his statement on behalf of what you have been doing and where you are.

Dr Thomas Horsley: Thank you, it will be my pleasure. There are around 23 colleagues and academics at the Liverpool European Law Unit, with interests across a range of areas of European law. Thirteen of us have been involved in the balance of competences review across the four semesters. The nature of our involvement is that we have been submitting written evidence to 13 of the 32 reports. We have also, including me and my colleagues here, been involved in a number of the engagement sessions and in some of the expert closed legal sessions. I was involved in the FCO and the financial services and capital report, and my colleague Michael Dougan here—

The Chairman: As we feared, we are about to have the first of possibly two votes. The Committee, almost before we start, will be suspended for 10 minutes.

Sitting suspended for a Division in the House.

The Chairman: Dr Horsley, you were explaining your unit's work. Whether you want to reconstruct your earlier remarks or append what you have said I will leave to you.

Dr Thomas Horsley: Thank you, Lord Chairman. I will follow with a brief summary, if I may. We were describing the activities of our unit, the 23 colleagues and the 13 of us who have submitted written evidence to 13 reports across the semesters. In addition, as I mentioned, we and other colleagues have been involved in some of the engagement events across the individual reports, both open and closed. My colleague, Professor Michael Dougan, acted as a challenger to one of the draft reports for the Cabinet Office. In addition, and finally, a

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colleague, Professor Amandine Garde, the current head of the School of Law, drafted the legal analysis for one of the reports on consumer policy.

Q2 The Chairman: Thank you for that. You obviously have a very wide range of experience of this process. Indeed, that was one reason why we were attracted to asking you to come and give evidence to us. I kick off by simply asking you—and please feel free either to select one of you or to direct us across the troika, as it were—to give us your assessment of the review as a whole.

Dr Thomas Horsley: Certainly. It would be my pleasure to open on that question.

I think that overall we would summarise our assessment as positive of the review. We would say that as a whole the individual reports are an impressive technical exercise in attempting to understand the current balance of competences across a range of fields, and to try to collate in a fair, synthesised and balanced manner the range of responses that were received as the evidence base. In result, the exercise has provided a very rich, unique resource that we suggest is greater than the sum of its parts.

I would be happy to mention a few and isolate maybe three particular further points of detail of the assessment. My first comment is on the strength of the initial mandate in the Command Paper. We think that it was an ambitious mandate, but it was well conceived as a technical exercise. It compares favourably on many points to some of the obvious comparators: existing reviews or inquiries into the balance of competences that have been conducted elsewhere.

My second point is about process. As an overall opening observation and general assessment we note that the reports and the departments have, in our view, delivered generally on their commitment to conduct a rigorous and evidence-based, and indeed transparent, series of reports. We also compliment in particular the role of the two co-ordinating departments, the FCO and the Cabinet Office, in managing quite a complex process over a sustained period of time, and suggest that they have done quite a good job in imposing structural discipline across the individual reports. By way of illustration, the competence definition is a thread that is maintained throughout the reports, and the structure of the individual reports is maintained throughout over the two years.

Finally, we note as an opening assessment that to a greater extent in the individual reports the conclusions are a balanced synthesis of the full range of evidence that was submitted by the various stakeholders.

Q3 Baroness Quin: My question follows on from that. I would like your thoughts on how much the process has lived up to its original claims. It was originally claimed by the then Foreign Secretary that it would be the most thorough and detailed analysis possible. At the same time, it was made clear that it would be transparent and comprehensive. Do you all feel that it has lived up to those claims?

Dr Samantha Currie: I will preface our comments with a bit of detail on where we currently stand with our analysis. We have conducted a general review of all the reports and we are about to embark on a much more detailed analysis. We have forthcoming events at which we will present further detail of our research as it develops. To answer your question more specifically, we generally agree at this stage with the suggestion that the review is being conducted in the manner which the Command Paper initially promised. In general, we agree that it has been a very transparent, inclusive and far-reaching review.

I will, if I may, follow up that general statement with some more specific points to help to demonstrate that feeling. There have been a considerable number of engagement events, which we found very impressive, so we felt that the review across all the different reports did well not to rely simply on the written evidence submitted to the reports but to make a concerted effort to engage with stakeholders, experts and interested parties at these various meetings and engagement events.

The Chairman: May I interpose at this point by asking you whether it was your impression that the other participants in these seminars and engagement events—obviously not mentioning particular names—also came well prepared and ready to make a contribution and generally found it a useful exchange of views and process?

Dr Samantha Currie: Clearly we can only speak to our specific experiences, but certainly the impression that we all got as a unit was that the participants were very well engaged and felt very well supported in speaking freely at the events. As a follow-up to our engagement with the events, we were always asked, for example, to check our attribution to comments that had been made in the sessions, and we felt that the communication was very good even after the events had concluded.

On transparency, there are perhaps some specific points to be made about the inclusion of anonymous evidence, but only in very limited circumstances, in the reports. On the whole, the list of submissions and those who had engaged in the process was very thorough and transparent. The vast majority of reports were published on time, with the exception only of the report on the free movement of persons.

Q4 Lord MacLennan of Rogart: Did you think that the reports were comprehensive in their coverage of the policy areas of the departments? Were any issues not covered by the review, including any issues that you might have raised in your own responses to the call for evidence?

Professor Michael Dougan: The troika is working quite well. There are a series of positive comments to make on that issue, and a series of issues that are possibly worth highlighting. As Thomas mentioned, one of the real benefits of the review was the very broad definition of competence chosen across all the reports. It was not just about looking at EU legislation or treaty provisions, it was about the impact of EU law and policy-making in all its diversity on a particular field.

The decision to treat policy fields in their broad sense and to look, for example, at how single market provisions might impact on healthcare or how a directive that might well be about something other than public health but has an impact on public health policy—the working time directive is a very good example—meant that the review was a very thorough and comprehensive approach to the individual reports.

There are a few small examples of issues that were not covered, which are probably understandable. For example, the police and judicial criminal co-operation report was very carefully delimited not to deal with the measures that were the subject of the opt-in, opt-out debate, which was working its way through Parliament. It is very understandable that that was not dealt with. That of course means that in the report on police and judicial criminal co-operation, many of the most important measures—the European arrest warrant, Europol and Eurojust—are not covered, but for very understandable reasons.

If we are thinking about more general gaps, it is arguable that there are a few more horizontal issues—to put it that way—which could have been dealt with in the review. Issues like subsidiarity and proportionality were dealt with very thoroughly. Fundamental

rights are another very good example of a cross-cutting EU competence that was dealt with very thoroughly. It is arguable that an area like enhanced co-operation and flexibility more generally—flexible integration—could have been addressed more systematically in the review, given that it is one of the main characteristics of UK membership of the EU and, potentially, for future EU policy.

Obviously, specific aspects of flexibility were dealt with under economic and monetary union or criminal co-operation, but arguably a more horizontal look at flexibility could have been valuable.

The most important issue that we have identified as a gap in the coverage is an overall assessment. The Command Paper mentioned that, closer to the time of the conclusion of the review, thought would be given to the type of overall assessment that would bring the 32 reports together. One issue that we have been talking about is whether the lack of an overall assessment was a good or a bad thing. On the one hand, you can say that it is very difficult to make the review comprehensible to the broader public and accessible to politically engaged actors when it is a series of 32 quite lengthy, detailed and technical reports, and that without a broader reflection it is difficult to make the optimum use of that massive exercise.

On the other hand, we think that one of the risks with an overall assessment is that the review can say all things to all people. If you want to pick up one of the reports and find criticisms of the EU, you can of course find them, because every report has criticisms of certain aspects of EU policy-making. If you want to pick up the reports and find reasons to dislike particular areas of EU activity, of course you can. Whether that represents a balanced assessment of those reports or of the review overall is much more open to question. We feel that it is arguable that not having an overall assessment leaves it to the political actors to make of the review what they will. If they want to use it in effect to prejudge their own preferences and policy conclusions, of course they can perform that function. Our suspicion is that if you tried to conduct an overall assessment of the review, it would probably end up with that type of exercise anyway.

The Chairman: Thank you. To be honest, you have neatly pre-empted a question which I might have asked the end. I am grateful to you for that, but I will use the indulgence of the Chair to follow-up with one specific. On reading the reports myself, I felt that generally they were rather light on comments on the agencies and in certain cases absolved themselves from commenting on things done in the EU's name but not actually through the main administrative processes. Would you see that as a potential area of concern as well?

Professor Michael Dougan: Potentially, but on the other hand it is probably worth bearing in mind that in most cases the EU agencies do not have real decision-making powers. In most areas, they are primarily technical, advisory bodies or purely executive, but they do not exercise any real form of political discussion. So yes, the agencies may not be dealt with in any great detail in a lot of the reports. On the other hand, it is arguable that agencies are not one of the more politically interesting parts of the EU policy-making, or rather the decision-making, process.

Q5 Baroness Scott of Needham Market: I wanted to go back to the question of stakeholder engagement. I am sure I was not alone in my concern at the beginning that this would be an exercise with a few loud voices with significant axes to grind, and that the whole process would be hijacked by that, so it has been heartening to hear what you had to say about stakeholder engagement. I guess that the process was written submissions and then, as you suggested, a kind of trawl was done to make sure that there were events to

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which people could come. Can you comment on whether the process was the same across all four semesters in all departments? In other words, did you see that being done differently? From your interested observer status, are you confident that the whole range of people, and the right sort of people, were approached?

Dr Samantha Currie: I would begin by saying that there is indeed evidence of a lot of systematic engagement with stakeholders, not only in the UK but in the EU—and beyond, actually, thinking of candidate countries and the like.

In many respects, what we saw was not too dissimilar from what we would see with public consultations in general. What makes this unique is that the interested parties were asked to keep coming back, if you like, so it was not just the one-off submission that you would get with a consultation; many were engaged across the whole process. Of course we would be thinking about NGOs and think tanks, but also the European Commission itself and representatives of other member states.

We found no evidence of evidence fatigue across the semesters. From what we can see at this stage, the volume of evidence continued and in many cases increased. There was an increase in evidence submitted across the second and third semesters of the review. We went from approximately 600 submissions overall in the second semester to around 800 submissions in semester three. So from what we can see at this stage, that stakeholder involvement remained and did not tail off.

What is happening at the moment to help us gain a full picture? We have colleagues at Liverpool who are undertaking a more systematic and rigorous analysis of stakeholder input. That work is currently being carried out, so that might give us more of a sense of which stakeholders remained with us right through the semesters and which dipped in and out of different semesters and different reports.

Baroness Scott of Needham Market: I have two final questions. Do you have a sense at this stage of the quality of the evidence? How seriously were stakeholders taking the process? Did they feel that it was worth the time to seriously engage, or was it sending in a glossy brochure that you happened already to have? How confident are you that subsequent reports actually reflect the breadth of the contributions made by the stakeholders?

Dr Thomas Horsley: On the nature of the evidence, one thing that is absolutely undeniable is the enormous range of evidence in both its nature and quality. Submissions go from the individual, perhaps disgruntled, making some short comments to incredibly detailed statistical qualitative and quantitative analysis. There is enormous range in the quality across the reports and within reports.

One positive thing that we have found, at least at this impressionistic stage, is that it would be reasonably safe to conclude that the reports present quite a faithful synthesis of the full range of evidence that was submitted. That is our general working conclusion. We certainly have not found, looking through the reports with that particular aspect in mind, any evidence of a systemic prejudicial approach to the conclusions. A typical narrative that emerges is that there is a summary of the various pieces of evidence, there is an acknowledgement that it is a contentious political point and there is a faithful attempt to synthesise the full range of evidence.

In that sense, going back to my earlier remarks, I would say that the departments have to a great extent done a good job of doing this as a technical exercise. The various different reviews that come out of it reflect the fact that the national interest, which incidentally is not

defined in the Command Paper or the reports, emerges from the variety of submissions. What is the national interest is often in the eye of the stakeholder.

However, I would say that we are beginning to find small instances of potential concern with respect to some of the use of evidence. One example is the free movement of persons report. There is a section, chapter 3, on future options and challenges, which appears in all the reports, where we would say that conclusions are drawn through a relatively small pool of evidence. That is probably the best way to put it. We would say that the balance is maintained—there is no attempt to present that as the only evidence—but in a report that has attracted 79 submissions we find a relatively small pool of evidence, often from individuals as well. That is a qualification to a general theme.

Q6 Lord Foulkes of Cumnock: I think you have already answered the first part of my question in that the conclusions are based on the evidence, albeit some of them on a small pool of evidence. Do you believe that some of those conclusions were prejudged and the evidence then selected to back up those prejudged conclusions?

Dr Thomas Horsley: There is no evidence of a systemic attempt to achieve that. The free movement of persons report is probably one of the stronger examples of a sense of a smaller evidence pool, which raises questions. We would question why that pool of evidence is the size that it is. Even then, I would say that there is an attempt to maintain a balance of views. Even that particular section of that particular report cross-references a range of opinions.

We have found isolated instances in some of the reports, particularly the 22nd report on fisheries where it seems that the weight of the evidence has been used to adjust the structure of some of the report. As I mentioned at the beginning, there is a neat structure across all the reports. In fisheries, there is an additional section on alternative competence models. That is very out of line with the other reports. Indeed, we would say that it strains the mandate in the original Command Paper. The report section is also prefaced by the statement that it is based on the view of the views of a small number of respondents. Again, it is not an indication that there is any imbalance in the presentation of their views, it is just evidence of an outlier to what is otherwise, we would say, a pretty balanced and fair review of individual submissions.

Lord Foulkes of Cumnock: Far be it for me to criticise what Baroness Scott described as “loud voices with axes to grind”. Did you get the feeling anywhere that there were lobbies getting lots of people to write in on a particular topic to try to get a particular conclusion adopted?

Dr Thomas Horsley: My answer is in two parts. The first, as my colleagues have mentioned, is that we are at the early stages of stakeholder profiling, if you like. We do not have access to the data set yet, so we cannot give it. The second is that even if there is evidence of lobbying, this review has been conducted to a greater extent as a technical exercise, which has ironed out those views. Those views, which are very controversial in some cases, are simply attributed within a broader summary of the evidence, which again for the most part we think is a faithful synthesis of the collated evidence. They are part of a balanced picture.

Q7 Earl of Sandwich: My question is about these subsets and communicating with the public. Professor Dougan has already said that it will be difficult to communicate with the public and that the Government are very likely to make use of it, which means interpretation and using conclusions that they already have. Was it not the intention to provoke a public

debate on the whole question of Europe through this process? Therefore they still owe the public that, but they only have six weeks to do it.

Professor Michael Dougan: I think it is quite right to judge the review on its own mandate when assessing the quality of the review itself. Its mandate was not to provide recommendations or to look at alternatives but to provide an evidence base for a broader public debate. One of the interesting questions that we are thinking through at the minute is the nature of the public debate that can come from this review. There are a few potentially critical comments that we could make here. If we are going to be critical about this review, we are probably less critical of it as a technical exercise by the Civil Service and more critical of it in terms of how it might provide an evidence base for public and policy debate.

One of the interesting things that again we will probably have to explore in a bit more detail before we can feel confident about making assertions is the degree to which the value of the balance of competences review was overtaken by the Prime Minister's promise of a referendum in early 2013 and then by the quite famous speech on immigration of EU nationals in late 2014. There is a sense, which we will have to think through a little more, that some of the value of the balance of competences debate might well be undermined, because instead of providing a full and broad evidence base of the vast, complex relationship between the EU and the UK we become focused on a relatively small number of issues that were going to be the subject of public debate anyway, and a lot of this evidence will either in effect be ignored and sidelined because it does not tally with the debate which the political parties have pursued already or may well be overtly instrumentalised so as to bolster particular political positions, but taking the evidence out of the broad context in which it was developed in all 32 reports.

I suppose that links up with the question, which we mentioned before, of whether the lack of an overall assessment is a good or a bad thing. Would an objective overall assessment help to counter any tendency towards instrumentalising these conclusions, or might it merely provide a systematic opportunity to instrumentalise them?

The other slightly critical comment that we might make concerns the media coverage that has accompanied the review so far. It has been relatively limited. Possibly if I were one of the people involved in this exercise I would be a little disappointed that so much work has not attracted more attention. Again, we are in the process of conducting a more thorough analysis of this, but our impression at the minute is that a lot of the media coverage has dismissed the review as a whitewash, primarily because it did not provide some of the conclusions that certain political actors wanted it to provide. Instead of it providing an evidence base for an objective and independent review, maybe some of the value of the review has been questioned because it did not tally with pre-existing preferences.

That is one section of the media coverage so far. The other, more concentrated, section of the media coverage was the free movement of persons report. I am sure everyone is aware that there were some press coverage suggestions in the newspapers that there was tension between the Foreign Office and the Home Office about whether the evidence was being manipulated in some way as to point more towards a particular Home Office policy, or not. Whether that is true or not—and of course it is impossible for us to say—we think it is very unfortunate that coverage of that nature has the potential to undermine so much good work that was not politically coloured and that was genuinely objective and independent. Any impression that these reports might have been doctored by political actors undercuts some of the real value that they should have.

Q8 Baroness O’Cathain: Are you aware of interest beyond the UK on the outcome of this exercise, including civil society and public administration? Indeed, are we interested in other countries’ assessments of competences? It makes me think that this was a great exercise and that it will be marvellous in years to come for people who are doing PhDs on the European issue, but what relevance does it have either to the 60 million people in this country or, indeed, to the 500 million people in the EU?

Dr Samantha Currie: Undoubtedly we are aware of growing interest in the review beyond the UK. A first point to make is that the involvement of those outside the UK in the review itself and in submitting evidence to the reports automatically speaks to those outside the UK as interested parties initially. Public bodies outside the UK in other member states definitely have an interest in the review. It has a profile outside the UK and engagement with different public stakeholders. There were also a number of submissions from academics based in other EU member states, and being part of that process will initially engage those parties with the subsequent reports and any onward developments.

Even aside from those involved in the review, we are becoming increasingly aware of policy and academic interest in other EU countries. Work is being carried out, for example, in Germany by Almut Möller and Tim Collins, who are embarking on a project at the minute that specifically reflects on the balance of competences review. We are also aware of Michael Emerson at the Centre for European Policy Studies in Brussels, which has recently put together an edited collection that specifically reflects and analyses the review. We have recently become increasingly aware of this growing interest.

On the question of what happens at a governmental level, whichever way the developments go here politically, there is this growing interest, which may take on a force of its own outside that.

The Chairman: Following up on that, do you have any impression that the Commission is taking it seriously? I am thinking in particular of the new administration there with the work programme and the refit programme.

Dr Samantha Currie: I will just mention initial points and then hand over to my colleagues. We are aware of European interest in the review. At one event that we will undertake at the end of March, we will have Commission representatives involved in the discussions to steer some of the debate on the review. Although we cannot say too much, because we simply do not have the knowledge at the moment, we have European Commission interest on the radar. Thomas may want to pick that up.

Professor Michael Dougan: I also think that Thomas might want to comment here. A lot of the value of the review beyond the UK will boil down to what the UK wants to do with it. As Thomas mentioned, we have a unique exercise—perhaps we can talk a little about some of the comparable exercises—which has presented an enormous body of evidence. What is striking is that many of the issues that have been flagged up in the individual reports are of interest to every member state, or at least to lots of member states, not just to the UK.

If the UK wants to use the review as the basis for a constructive engagement with the other member states, it has a very strong evidence base on which to go in there and engage with other Governments and other parliaments about how to reform EU policy-making or how to look at competencies. If the UK decides that this review does not actually have much value and will be left on the shelf—in some cases it might be brushed aside as some sort of whitewash because it did not meet some of the expectations which political actors hoped it would provide—that could do some damage to the UK’s credibility. What is the point of carrying out an enormous, evidence-based objective exercise if you do not push it to one

side because it does not necessarily tally with some of the political preferences of particular actors?

Dr Thomas Horsley: If I may, Lord Chairman, I will briefly add to that. One of the really interesting things about the review is that although it is driven by a lot of stakeholders with a variety of interests, when you look at some of the individual reports they are a bit of a gift. They diagnose through market actors and a variety of big-interest stakeholders areas where they think that there is good scope for further reform at European level and are feeding particular points of policy into it. I am talking in particular but not exclusively to some of the single market reports, which isolate very technical parts. Industry, stakeholders, consumer groups and other bodies have diagnosed some particular points of policy. To echo the comments of my colleagues, it would be a great loss, or rather unfortunate at the very least, if the United Kingdom did not in some way rely on this in a constructive manner to reinvigorate some of its earlier moves to act as a leader in driving forward particular aspects of European policy.

Lord Wilson of Tillyorn: I wonder if you could drill that down or flesh it out—whichever direction you want to go in. You talked about the UK using it, which means the Government, does it not? In what other ways do you see there being a legacy, an afterlife, for what you called a unique resource? For instance, in what specific ways might academics like you and some of the interest groups you talked about use it? It would be useful to get concrete examples of how it might be used.

Dr Thomas Horsley: I am happy to respond further with some additional thoughts on that point. Again, I preface my comments with the echoed remark that we are dealing collectively with 2,300 written submissions and multiple engagement events with European and national stakeholders. It is a really rich resource. When we think about the legacy issues, it is worth bearing in mind the mandate of the review. Looking back at the Command Paper, as one member of the Committee noted, one of those is not just to inform public policy but to think about public engagement. Indeed, the Command Paper states that it is to give everyone, including the British people, a far greater understanding of those issues.

When it comes to the public-facing constructive use of this, it is quite difficult to say. One option would be to explore the idea of a synoptic review of the review, but we have spoken to some of the concerns there. Using it constructively can cause challenges that are not unique to this exercise. In disseminating complicated multifaceted interlinked concerns and issues, it is often not easy to simplify them and distil them into a presentable package, but we would encourage dissemination in our own work and in government, as well as other public and indeed private efforts to try to disseminate some of those broader conclusions.

Q9 Baroness Eccles of Moulton: My question has pretty well been answered, but I wanted to know, from the point of view of practical usefulness, because the evidence has been drawn from and composed in a particular period of time, what longevity it will have. Will it go on being a useful document—it will obviously always be useful in an academic sense—from the point of view of practical people adapting whatever we do to EU competencies?

Dr Thomas Horsley: The information, the evidence base, captured in these reports has a shelf life. As we know, European policy-making often occurs in waves and is often packaged together in narratives. Again, speaking, although not exclusively, to the single market, a lot of things that emerge as policy prescriptions in specific reports can be packaged with the digital single market agenda, so there is a shelf life in that sense. Some of the other issues in particular reviews have also been overtaken by domestic events, so there are certainly

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points in particular reports—I am thinking again of aspects of the free movement of persons—where it is absolutely correct to bear in mind the shelf life of some of the conclusions.

Baroness Prashar: You were talking earlier about the interest in our exercise in Europe, but as you know there have been exercises in Germany, Norway and the Netherlands. What lessons can the Government here learn from those exercises about dissemination, encouraging debate and so on?

Professor Michael Dougan: I think that the lessons are probably fairly limited. There are two main exercises, which you might call comparable, which have been conducted by other countries in Europe: one by Norway and one by the Netherlands. I say that you could call them comparable, because in the final analysis they are not really comparable at all.

The Norwegian exercise has some similarities to the balance of competencies review in the UK. It was a very large-scale exercise conducted over about a two-year period as well, but it was conducted in a very different manner. It was primarily an investigative exercise by an independent committee. More importantly, the framework of the Norwegian relationship to the EU is so different. Norway's concerns about its relationship with the EU are so different from the UK's. The Norwegians basically had to ask themselves, "Are we happy to trade off all the economic and social benefits of association with the EU against the massive impact on our own democracy of not being involved in EU decision-making?". That is a fundamental dilemma for the Norwegians.

The Netherlands exercise is quite different again. It was a much more limited exercise, and it was also much more focused on concrete legislation and legislative proposals. They attempted to draw some broader lessons, but it was effectively an exercise in a subsidiarity review: which existing pieces of EU legislation or proposals do we think are best left to the member states rather than being undertaken by the EU? It is probably fair to say that it did not have the same degree of political independence which, on the whole, our review did. Our review was largely conducted by an independent Civil Service—acting, of course, under a mandate from the coalition Government but not under the instruction of the coalition Government. The Dutch exercise was more overtly political; it was about what that Government wanted to do in their EU negotiations.

Those exercises are very interesting, but perhaps we do not have an enormous amount to learn from them, except for something that we have mentioned a couple of times. The UK exercise is still unique and in many ways so impressive. If the UK wants to, it has the opportunity to show real intellectual leadership in these debates. As we said before, the UK may choose otherwise—I should say the UK Government, not all 63 million of us—but if the Government want to, they have an enormous resource, unique among the member states, to say, "We think this is what needs to be reformed and we have conducted a massive exercise to provide the evidence base for that". That is the distinction with what we have to learn from the other exercises. It is more of a lesson that this is a really valuable opportunity rather than, "Should we learn lessons from the others?".

Baroness Prashar: That is very important. It is all the more a shame that when ours is so comprehensive and intellectually rigorous they are not disseminating it or using it properly. Thank you.

The Chairman: Dr Currie, Professor Dougan and Dr Horsley, you have exemplified intellectual rigour very well in your answers to our questions, and they have been very helpful to the Committee. We have a little time and no outstanding specific items, but if you could reference back to our secretariat what Dr Currie said about the work being done in

Dr Samantha Currie, Professor Michael Dougan and Dr Thomas Horsley; Liverpool European Law Unit—Oral evidence (QQ 1-9)

Germany and elsewhere, that would be helpful. Equally, and understandably, as you said, there were lots of items in your analysis of the exercise by those who participated that are yet to be on it. That is the work of academics. We will probably report next month before the dissolution of Parliament on our initial impressions of the exercise. Please feel free to share with us any other information as it develops. Meanwhile, I express on behalf of all the Committee our sincere thanks for your time and attention and your very helpful evidence.

Professor Michael Dougan, Dr Samantha Currie and Dr Thomas Horsley; Liverpool European Law Unit —Oral evidence (QQ 1-9)

Professor Michael Dougan, Dr Samantha Currie and Dr Thomas Horsley; Liverpool European Law Unit —Oral evidence (QQ 1-9)

[Evidence to be found under Dr Samantha Currie](#)

Rt Hon David Lidington MP, Mr Richard Crowder and Mr Vijay Rangarajan—Oral evidence (QQ 10-18)

Evidence Session No. 2

Heard in Public

Questions 10 - 18

TUESDAY 10 MARCH 2015

Members present

Lord Boswell of Aynho (Chairman)
Earl of Caithness
Lord Cameron of Dillington
Lord Foulkes of Cumnock
Lord Harrison
Baroness Henig
Lord Kerr of Kinlochard
Lord MacLennan of Rogart
Baroness O’Cathain
Baroness Parminter
Baroness Prashar
Baroness Quin
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

Examination of Witnesses

Rt Hon David Lidington MP, Minister for Europe, FCO, **Mr Richard Crowder**, Head, Future of Europe Department, FCO, and **Mr Vijay Rangarajan**, Europe Director, FCO

Q10 The Chairman: Good afternoon, Minister. Welcome to yet another public session. We are in between deliberative sessions of the European Union Committee. You of all people have been assiduous in your attendance at this Committee, and we are grateful for that. We are particularly grateful that you have come this afternoon to answer questions with a view to our interest in the balance of competences review—the documents are set out in front of us—and, as it were, as a taster for the upcoming European Council¹. You will

¹ This transcript contains the evidence relevant to our inquiry on the Review of the Balance of Competences between the UK and the EU. The full transcript of the session, including the questions relating to the March European Council, is available on our website.

be entirely familiar with the rules of engagement on these occasions. This is a public session of which we will be taking a webcast and a record, which we will offer to you. I make that point only for others in the public gallery. I suggest, not least because of the constraints of time and, as you will be aware, of our rather full agenda, we invite you to go straight into the first question, which I will pose, and perhaps introduce your team, who again, I think, are familiar to many of us, as part of that response.

First, can you give us an assessment of the conduct of the balance of competences review as a whole against the original framework set up by the Foreign Secretary in the White Paper of 2012? Are there any gaps? Is there anything that you might feel on reflection has been left out?

Rt Hon David Lidington MP: Thank you Lord Chairman. I am supported this afternoon by Mr Vijay Rangarajan, Europe Director at the Foreign Office, on my left, and by Mr Richard Crowder, Head of the Future of Europe Department in the FCO, on my right.

The review succeeded pretty well in delivering within what William Hague when Foreign Secretary announced as the parameters. We set out to provide an evidence-based and comprehensive analysis of how our membership of the European Union was having an impact on all aspects of policy for which the United Kingdom Government are responsible. This was discussed at length within the Government before we announced the terms of the review, and we decided that we would not seek to present conclusions and recommendations that went beyond agreed coalition government policy—the risk with doing that is that you end up either with a long shopping list which some Ministers might agree with and others do not agree with, or with the lowest common denominator of the things that everybody is happy with. So we decided from the start that this would be evidence-based, that we would publish all the evidence, that this would be transparent and that there would be no hiding of points of view or information given to us - in order to do justice to the range of evidence and points of view that were submitted to us. I think we gave business and NGOs in Britain a safe space within which to make clear their views about the good and bad aspects of EU membership without being overtly partisan in party political terms. I think it was successful on that score.

The review has enabled a debate, grounded in knowledge of the facts, and whether with officialdom, think tanks or political parties of all stripes there is now an available body of evidence on which people can draw in some confidence in framing their policy approaches for the future. I think that as a result of the review we now have a more informed debate than before about our membership of the EU that is carried on at the level of think tanks, opinion formers, trade organisations and the like. I do not say that this review and its outcome are the subject of everyday conversation in the pubs, but I think that at the level of people who spend time reflecting on European policies this has had a significant impact.

Any gaps? Having read all 32 of the reports, I am tempted to say very firmly, “No, we couldn’t have done any more”. I am trying to think of anything obvious. With the benefit of hindsight, I would say that there was possibly a gap in relation to inter-institutional relationships. In various reports, one of the themes that comes through is the interplay between Commission, Council, Parliament and the European Court of Justice and the relative power that each institution is able to exercise. How those powers evolve as a result both of treaty changes and of court jurisprudence over the years is an aspect that is immanent in many of the reports, which perhaps if I was doing this again I would say we might have sought to draw out in a separate volume in its own right. It is certainly an issue that is talked quite a lot about at my level among my ministerial counterparts at the moment.

Rt Hon David Lidington MP, Mr Richard Crowder and Mr Vijay Rangarajan—Oral evidence (QQ 10-18)

The Chairman: Thank you for that. That is most helpful. I suppose I ought to declare an interest. I am not sure how many people in the room have read every word. You have admitted to doing so, and I am another sad person who has read every word.

What you said has been very interesting. Would you perhaps add to the benefits of that analysis that you perhaps regret you have not mentioned, as well as the possibility inter-institutionally of looking at understandings, as it were, at the political level—which may be relevant for example to another report of ours—of issues such as the power of national Parliaments, for example?

Rt Hon David Lidington MP: Yes. Those are certainly questions that are of benefit anyway. The balance of competences exercise is concluded, and I do not, I hasten to say, propose to reopen it, but we would be right as politicians to continue to give attention to the discussion both about formal relationships between EU institutions and national parliaments and the informal understandings, the political culture, that oil the machinery of institutional relationships.

Q11 Baroness Quin: When the review was launched, an overall analysis was promised of the review's findings at the conclusion of the court semester. Has there been an analysis to draw the findings together?

Rt Hon David Lidington MP: In fairness, we said at the time in the Command Paper that accompanied the launch of the review that a final decision on whether to publish a concluding summary volume would be taken closer to the time: "A final decision will be taken closer to the time on how best to draw together the analysis produced during the review, in the light of the EU's rapidly changing situation". We took the view at the end of the day that the 32 reports all stood on their own merits. They were each crafted to try to present a balance of what in some of the reports in particular was a pretty wide spectrum of opinion and evidence. The risk in trying to distil all this into a single concluding summary volume is that you would inevitably have to leave out important aspects of what came up in evidence in particular reports, and that would have added to the risk of particular points in that summary volume being taken out of context. I preferred in the end, along with my colleagues, to leave this as it was with the 32 reports, each with an executive summary, each speaking for themselves, and evidence published in support of those reports.

Baroness Quin: In the absence of a published analysis, do you have a feeling of what the overall outcome of this has been? Obviously, there have been impressive reports from a number of different departments, but do you have a sense of the overall outcome?

Rt Hon David Lidington MP: I can draw out some themes that I think come through. One was the one I mentioned earlier in response to the Chairman's question, which is how institutional relationships and powers have changed over the years. Looking back at various reports, one theme is how the jurisprudence of the court has had a very significant impact in particular policy areas. There are one or two reports where people presenting evidence said, "We had believed that a directive meant this, but then we had a court judgment that interpreted the law in a more ambitious fashion and that has caused us these problems".

Another issue that came through very strongly from most of the business representatives was the need for a broadened, deeper single market—a recognition of the benefit to the United Kingdom of participation in the single market but coupled with some concern about legislation that was at times overprescriptive and did not allow sufficient margin for the individual practices and traditions of member states and ways of organising business within particular member states. In some of the reports, the tension with which we are familiar in

our domestic affairs between producer and consumer interests came through. We had a specific report on subsidiarity and proportionality, as the Committee will know. That was deliberately cross-cutting in nature, and perhaps drew together a number of themes that were in quite a number of the specific subject reports.

Q12 Lord MacLennan of Rogart: Minister, the people who are directly affected by the balance of competences will no doubt read the documents and the volumes that are relevant to them, but they do not cross to the general public, who are going to be asked, if your party is successful, to say yes or no to the European Union. It is going to be very difficult for them to assimilate what has been said. I wonder whether it is too late even now to come to a decision about what the most important issues are that have been raised.

Rt Hon David Lidington MP: The organisations—political parties and others—that are likely to play an active role in any referendum campaign will certainly have studied the reports and will be working out which items of evidence and which arguments are most likely to support the case that they wish to make to the British people. I do not think, frankly, that it would have worked for the Government to try to produce an easy-to-read tabloid version of the balance of competences. Almost inevitably, I think we would have been at risk of oversimplifying the sometimes rather subtle messages that come through and the differences between the opinions in the evidence submitted to us. There would have been a great deal of “on the one hand, and on the other”. No political party has cracked the secret of writing a manifesto that attracts a mass public circulation and readership. I have never thought that the balance of competences reports were going to be *Harry Potter*, but I do think they have been taken very seriously by think tanks, campaign groups, business representative organisations, NGOs and, indeed, European institutions and other European Governments. That means that the whole debate starts on a more informed basis than was previously possible.

Baroness O’Cathain: Very briefly, did this whole schedule of reports meet your wish at the beginning of it all? Do you think we have lost out? Is it even better, or is it what you expected? Frankly, although you have just listed all these people who see the reports, such as think tanks and business representatives, I am sure that business representatives do not have the time to read through all that. The reality is that it is in language that is difficult, and although you are saying that nobody would do a digest, it is very important, once the whole election is over, that the Foreign Office and the Government—whoever they may be, of whatever colour—put their minds not to saying, “Vote this way or that way” but just to telling the public what Europe is all about, because they do not know.

Rt Hon David Lidington MP: Every report has an executive summary, and those summaries provide a more readable account than ploughing through the whole report. So those are available to people. Was it everything I had hoped for? If I look back at some of the difficulties we experienced, it was tough to get a consumer voice for some of the reports. This will not surprise anybody, but by definition consumers tend not to be organised in the way the business sector is. It was more difficult to get small business than big business. Again, I do not think there is anything new about that. We made a big effort with organisations such as the Federation of Small Businesses to get them to contribute. Some small and medium-sized businesses came forward when we were addressing a sector and certain problems that mattered a great deal to them. There were some areas where I felt that it would have been nice if we had had more representation of that particular perspective, but we have to deal with the evidence presented to us. My instructions to officials were always that we needed to make every effort, where we felt that a perspective

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that we knew to exist was not being taken account of, to find a way of seeking out that point of view to make sure that the report was representative.

Q13 Lord Tugendhat: I think, Chairman, that this question has already been covered to a large extent. I was going to ask the Minister how he believes the Government are going to use the reports to inform their own policies in future.

Rt Hon David Lidington MP: To a considerable extent, that is a matter for individual departments, but we are collectively encouraging all departments to use the reports to help develop and inform their thinking on present government policy but also to substantiate the Government's declared policies in Europe and to develop new ideas from external sources. We have, as a result of the review, enabled various parts of government to establish new channels of communication with organisations with which they had not been terribly familiar before. That will widen government access to information from outside sources. I will give one specific example of how we have drawn on reports. The United Kingdom's paper on the digital single market, which we released in January this year—and which, without boasting too much, has had a very good reception in Brussels and in national capitals—drew very heavily on the basis of evidence from the review, particularly when it came to an assessment of the impact on consumers of greater integration of the digital sector at EU level. I know that officials in my department, when they come to a European brief for the first time, are given copies of the relevant reports and that that is part of their introductory reading. I do not know if Vijay wants to add anything more to that. We are seeing this in a number of government departments; it is becoming part of the official training course.

Mr Vijay Rangarajan: Yes, many departments are using this as part of their induction material for new staff. We are also seeing some other Governments around the EU using the balance of competences reports as a good explanation, particularly the initial sections, which set out the sometimes very complicated legal basis for different parts of the competences and summarise what is now quite a complicated *acquis* in many areas. Finally, these are being read quite heavily inside the Commission and we can see some elements of this in the recent legislative packages, for example on energy union and, as the Minister said, definitely on the digital single market. Some of the detail there has been churned through quite heavily by officials, including the European Parliament, as well.

Lord Tugendhat: In the event that there is a Conservative Government after the election, do you think that our partners in the EU would be wise to study these reports with a view to getting a fix on what the negotiating position of the UK Government is going to be, or would you advise them against that exercise?

Rt Hon David Lidington MP: I would advise them to read the reports, because the reports will be worth studying, whichever Government are elected on 7 May this year. The review was a coalition exercise. Both Conservative and Liberal Democrat Ministers were involved at all stages. Yes, there is a lot here that a re-elected Conservative-led Government would want to see as part of their negotiation agenda. The Prime Minister has often spoken about the importance of deepening the single market, particularly on digital and services, and of smarter, less costly regulation of business. Those themes come across very powerfully in a number of volumes. We have tried to be fair to all points of view. I recall looking at the report that dealt in one chapter with the working time directive, and although it did not necessarily accord with my personal political views, we represented fairly, I think, the trade union movement's views of that directive and of other elements of employment legislation. We tried very hard to make sure that the full spectrum of opinion was given fair representation.

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The Chairman: Thank you. We will move to a slightly different area. Lord Foulkes.

Q14 Lord Foulkes of Cumnock: Minister, you mentioned earlier the importance of transparency in this exercise. In that spirit, can you tell us what the projected budget was at the start of the exercise and the expected outcome of the costs?

Rt Hon David Lidington MP: We told all government departments that they had to meet the costs of the review from within their existing budgets. There was no additional provision to any department for this. Therefore they needed to do it in the most cost-effective manner possible. I think the Committee will have seen the Answers from various departments to Written Questions that were tabled about the costs of the review. It is genuinely difficult to give a detailed estimate for each department, partly because different departments went about this in a different way. Some used a dedicated team. The Foreign Office had a small dedicated team to co-ordinate the work, both in the FCO and across Whitehall, as we had the overall lead responsibility. Some had people who took on a review responsibility in addition to what they were already going, so this was simply something that they had to fit into their normal working hours without any reduction in their other responsibilities. When it came to what we called engagement events—the seminars, discussion groups and so on—we tried to take advantage of existing opportunities, so we looked to see whether there was a meeting or gathering already taking place that we could turn into a discussion about the review. We did them jointly between departments. I probably could dig out some figures on the cost of the central unit in the Foreign Office. What I cannot give is an accurate picture of how every part of the FCO was involved in this.

Lord Foulkes of Cumnock: Can I help you, Minister? With respect, you have not answered the question. If we take staff as a cost, whichever way you do it, with your existing staff you know their salaries, you know their timetabling. Defra estimated that it would cost £500,000 to produce four reports: that is staff costs alone. Overall, 32 reports were produced and our officials project that to be £4 million of staff costs. Is that a reasonable estimate?

Rt Hon David Lidington MP: The staff were going to be employed whether or not the review took place, so there was no additional cost of carrying out the review. Defra calculated its costs in a particular way. I looked at the Foreign Office figures and we did not keep a record of which official in which team might have been asked to look at a particular passage in any one of the 32 reports to check it off. I would certainly argue, Lord Foulkes, that it would not be a sensible or proportionate use of resources to have time sheets for the departmental officials.

Lord Foulkes of Cumnock: Let me try something else—an easier one. Defra produced four reports and it cost £130,000 to print them; that is £32,500 per report. The Committee Office prints between 35 and 40 reports every year at a total cost of £40,000. That is a huge printing cost. Can you give me the total cost of printing all the reports? That must be easily available.

Rt Hon David Lidington MP: The figure I have for Defra's printing costs is £13,000.

Lord Foulkes of Cumnock: It says £130,000.

Rt Hon David Lidington MP: No, I think there is a decimal point out of place. Richard, do you want to respond to that?

Mr Richard Crowder: I understand that the figure was incorrectly transcribed and it has now been corrected.

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Lord Foulkes of Cumnock: Okay, let us take BIS. BIS produced eight reports at £8,000 per report. That is still a large cost. What is the total cost of printing all the reports? That is not a difficult question.

Rt Hon David Lidington MP: It has been up to each one. The figure I have for printing in total is £257,000². That is across Whitehall.

Lord Foulkes of Cumnock: How can you decide whether this has been a worthwhile exercise if you do not really know the total cost of the whole exercise?

Rt Hon David Lidington MP: Because the value of the exercise is in the way in which it provides for better policymaking, both now and in the future, for the United Kingdom by enabling this country to secure its objectives in Europe based on very clear analysis and evidence about the interests of British business and other important interests in British society. That seems a perfectly proper use of Civil Service resources.

Lord Foulkes of Cumnock: But you have taken officials away. Let us take the Department for Transport—we have had dreadful experiences in franchising. If you take other departments, there have been all sorts of criticisms. They could have been more effectively used carrying on the normal work of the department, could they not?

Rt Hon David Lidington MP: No, I do not agree. It is obviously a matter for each department to decide exactly what resources it devotes to the reports that were commissioned, which after all was a commitment in the coalition programme. One could make an argument that wherever something has not gone completely right in any department, that demonstrates that some other area of activity ought to be reduced. I genuinely do not think that is a persuasive line of argument. If one looks, for example, at the digital single market, which I referred to earlier, and the significant commercial advantage that this country would stand to gain, one can see that the review has enabled us to present that case on the basis of better information, or persuasive evidence, in language that will persuade our partners, than would have been the case without the review, and I think that provides a very powerful argument on its own.

The Chairman: Minister, we will not necessarily get to the bottom of that fully and, as you know, the Committee has it under consideration. I think I can summarise your response as saying that whatever the actual cost was, the exercise gave value for money in informing policy. In return, I would like you to reflect on two things connected with the offer to provide further information. One is in relation to your own department. The answer given by your colleague to us on 26 February was a little reticent, particularly as you said there was a dedicated team, on the full breakdown of staff time costs, which you said would exceed the disproportionate cost threshold. Clearly, if there are people assigned to things, they are not doing other things. On reflection, if you can give us any further information you feel you can, that will be helpful to have.

The second point relates to the alleged mistranscription. I think it would be worth you and your colleagues looking at the quality control of this to see whether you are satisfied across the exercise that all the Written Answers are now lined up and accurate, because it occurs to me, although I appreciate that it is not your department directly, that if one has been mistranscribed, as far as I know, it has not yet been notified to us by the colleagues who answered us. It is important that the record is set straight on that.

Rt Hon David Lidington MP: We will certainly look into that.

² The Minister wrote to the Chairman suggesting that the figure was estimated to be £130,000 for all 32 reports.

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The Chairman: Thank you very much. Lord Kerr?

Lord Kerr of Kinlochard: I just wanted to put one question to the Minister. Our research has established that no department spent any money at all on publicity for these reports. If the aim of the exercise was to inform public debate, do you find it at all surprising that these reports dropped like stones into a deep, deep pool?

Rt Hon David Lidington MP: First, I do not accept the description that Lord Kerr gives, because I think they have had a significant impact upon those whom we were seeking to influence: namely, think tanks, other national Governments, EU institutions, NGOs and business organisations in this country and outside. We used free, particularly digital, means of communication. We used social media and email to make sure that the reports were available to those at whom they were being targeted. The absence of glossy publications and high-profile launch events and so on has not stopped Commissioners, senior Commission officials, Ministers and officials in other Governments, and business organisations in other European countries from reading them and telling us that they have found them extremely valuable.

Q15 Lord Wilson of Tillyorn: Minister, obviously a huge amount of work was done, but there is that strange figure that nobody spent any money on publicity. You referred to, as it were, opportunistic attempts to pick up meetings that were taking place and feeding this in. Can you elaborate on that at all and any specific efforts to try to stimulate debate on what has come out of this, either now or what might be planned for the future?

Rt Hon David Lidington MP: What I was talking about in answer to the previous question were the events that took place as part of the review process. Since the reports have been published, we have talked about them in speeches and seminars in which both Ministers and officials have taken part. We have seen the reports referenced in publications by varied organisations, such as Business for Britain, the CBI, TheCityUK, Clifford Chance, the Centre for European Policy Studies and the Centre for European Reform, and in parliamentary Select Committee reports. The French have told us that they are using the transport report as a point of reference in their own transport policymaking. I spoke last week to Senator Keller from the French Senate, whom the Chairman and members of the Committee may have met, and she said that the French Senate is planning to do a review of the UK's review in order to learn from that. I know that Danish think tanks, German academics and Swedish think tanks are also drawing on these reports. I draw on them both explicitly and sometimes just in passing, when I refer to a policy outcome rather than a particular volume, in my meetings with organisations such as MEDEF, which I had breakfast with when I was last in Paris. A number of the attendees said that they had read some of the reports and found them very helpful in stimulating their own thinking. That work is going on. The evidence from the reports is part of the briefing and agenda that any British Minister or senior official will have in taking part in a public event, a Chatham House rules event or just a bilateral with a counterpart.

Lord Wilson of Tillyorn: You refer to the Chatham House rules. Have you done anything about trying to encourage Chatham House to run a series of seminars or debates on these reports?

Rt Hon David Lidington MP: I have not thought of doing that. If Robin Niblett wanted to do it, I think it would be very interesting.

The Chairman: Minister, I will ask a specific question, which is rather coming out of the line of your answers, and then perhaps we can ask, as it were, a consolidated final question

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in this area. Mine is simply: would it be your impression—and it would be an impression, I realise—that in certain respects, as opinion-formers, these 32 documents have been more seen, studied and attended to outwith the United Kingdom than inside it?

Rt Hon David Lidington MP: I think it is both. I completely accept the argument that these have not been fed into the general public consciousness, but I think that is true, if I may say so, of most things that we debate in detail in Parliament. Most people have lots of things to do in their lives without getting into the detail of political policy work. I mentioned earlier some of the United Kingdom organisations that have been active in reading and developing the ideas of the reports. I mentioned some others outside this country. I would say that the Commission has been particularly attentive.

The Chairman: I have three colleagues who would like to put questions that are all cognate to this, so I am going to invite them to do that as one, as it were. Then perhaps you can give one collective answer, and we can move on to the other area of questioning.

Q16 Baroness O’Cathain: How do you plan to use the review to engage other member states in developing a reform agenda, for example on the single market?

Q17 Earl of Caithness: I want to follow up more on what you said about the perception in the EU—Vijay made some very interesting remarks, and you mentioned France just now—particularly the Commission, the Parliament and the other institutions.

Q18 Baroness Prashar: Minister, you have given us a description of how the reports have been used but how would you like to see the reports being used to inform public debate, and what would you do to encourage public debate?

The Chairman: Lord Maclennan is a late entry—can you carry four points in your head, Minister? I am sure you can.

Lord Maclennan of Rogart: What conclusions do you draw from the review regarding a possible renegotiation of the United Kingdom’s relationship with the EU? Are there specific aspects of the treaty that you think need to be revisited in the light of the findings of the review?

The Chairman: Over to you, Minister.

Rt Hon David Lidington MP: If I can take Lord Maclennan’s question first, I have to be careful here, because the review was very deliberately designed not to come to conclusions that went beyond the coalition Government’s agreed policies. Clearly individual party manifestos in a few weeks’ time will set out what particular parties want to achieve at European as well as national level. Some of the messages that come strongly and powerfully from the evidence and which I certainly support are that there is a need for the EU to do more to deepen the single market, and that it is a good single market when it comes to trading goods but is woefully underdeveloped when it comes to trade in services—and services are what every European country is going to have as the growth area as we look forward. The significance of the EU in amplifying the United Kingdom’s weight in foreign policy in a number of areas is another theme that comes through, although coupled with that was quite a lot of evidence that it is important that we keep this unanimous, that there is a tension between on the one hand saying that a more effective Europe could be a bigger a bigger, weightier player in the world and on the other hand the fact that there is just not the public support for the idea that you could settle foreign policy decisions by majority vote. There has to be consensus to take something forward.

What also came through in a lot of the evidence was that the EU does good, useful things but at times becomes a bit too bossy and does not give the advantage to individual countries to do things in the particular way in which they have been used to doing them. One of the reports said that you do not always need to go for harmonisation; the Cassis de Dijon judgment provides you with a model for mutual recognition—which is another way of failing at the single market debate.

On the other questions, we talk to the Commission at every opportunity. Frans Timmermans was here last week, and the Foreign Secretary and I drew heavily on the material that was in the review in suggesting things to him that he could put into his programme, and not just in terms of new EU action, although we argued very strongly for the Commission to do more on services and digital. We said, “Look, the reports show that there are areas in which the Commission could rein back, and that it could make a reality of subsidiarity and proportionality to a greater extent than it is at the moment. These reports provide some good, concrete evidence of areas, Frans, where you could be investigating how to deliver on those objectives”. We have other Commissioners coming over in the very near future. We have Commissioner Cañete coming over to talk about energy policy, as well as Commissioner Moedas and Commissioner Malmström, so there will be other opportunities to talk to individual Commissioners about this too. We are doing the same with individual member state Governments. I mentioned France a moment ago. We know that other countries—Slovenia, Slovakia, the Netherlands, the Czech Republic—are undertaking reviews on a smaller scale, but their Governments have been saying to us, “We like what you have been doing and we want to learn from how you have gone about the work”.

EU institutions? The Commission provided reports for each semester. They always told me that they were factual reports, not statements of opinion. We had evidence from 43 Members of the European Parliament and representatives from the Commission, and other institutions such as the ECB came to some of the engagement events that we held in London, Brussels or other member states. We have had a statement from President Juncker since his election saying, “Respect for the principles of subsidiarity, proportionality and better regulation will be at the core of the work of the new Commission”. British government departments have already used some of the reports to inform how they approach the European Parliament and gain evidence that they give to MEPs whom we are trying influence to come around to our point of view.

Lady Prashar asked me how I would like to see this taken forward. I would be being naive if I said that I ever thought that this was likely to be primetime television, but I would like to see not the reports per se—those are instruments—but the arguments, the themes, the evidence that comes out of the reports becoming part of the informed debate in Parliament, the media and the think-tank world about this country’s involvement with Europe, and that evidence being used successfully to drive forward United Kingdom priorities.

How do we engage the public? I will continue to refer to reports, speeches and any contributions that I make, and I encourage other Ministers to do the same, but I think we have to be realistic that this is going to be at the level of the people who we refer to as opinion-formers, and it is not going to be of mass interest, but I hope that some of it eventually percolates through through a better understanding of what some of the balances and tensions in the European debate are about.

Baroness Prashar: But you have no active plans as such?

Rt Hon David Lidington MP, Mr Richard Crowder and Mr Vijay Rangarajan—Oral evidence (QQ 10-18)

Rt Hon David Lidington MP: Because of the proximity of the general election, no one is making too many plans until we know the outcome of the election, but whoever is the next Government will have this source available and will certainly want to make plans as to how we develop both our thinking and our communications on the basis of what is there.

The Chairman: On which note, Minister, we thank you for those exchanges.

Foreign and Commonwealth Office—Supplementary written evidence

Balance of Competences Review

I am writing to follow up on a couple of points regarding the costs of the Balance of Competences Review, as discussed at the evidence session on 10 March 2015.

In my response I set out that with regards to the costs of the review overall, it was anticipated at the start of the review that most resources would be found from existing departmental budgets.

With respect to staff costs, it is difficult to give an estimate of the cost of the entire review as each department had a different model for how they appointed staff/teams to work on the review and for project management. The PQ responses from departments on this, therefore, only provide a partial answer and cannot be scaled up across the total review.

I explained during the evidence session that the PQ answer for the Foreign Office combined both the FCO central team spend and spend for the four FCO report teams. For the four FCO report teams, staff were largely drawn from existing resources contributing some of their resource to the reports at different times. A figure for FCO staff costs would, therefore, not be the whole picture but I can provide an estimate of the staff costs for the FCO central team which, along with the Cabinet Office, provided overall co-ordination for the review. The FCO central team costs cover the salaries of 5.5 full time staff for the period of the review September 2012 to end 2014 at an annual cost of approximately £221,500.

The other point on which the Committee focused was printing costs. The Committee will be aware now that the printing costs supplied by Defra in their PQ answer were mistranscribed. These were in fact £13,000 for their four reports, rather than £130,000. Defra has now issued a correction.

Given this adjustment, total printing costs were in fact lower than the figure which I quoted to you during the session. Departments have provided you with their estimates in the PQ answers supplied. We also had cost information from Williams Lea, which provided the majority of the typesetting and printing. Based on both these figures we estimate typesetting and printing cost at £130,000. It should be noted that Williams Lea provided the large majority of the printing for the review but a couple of departments chose to undertake printing in house for some reports

I would reiterate that departments provided appropriate levels of resource to their parts of this exercise, as with any other issue, and that the Government was very conscious of the need to ensure value for money throughout.

RT HON DAVID LIDINGTON MP

12 March 2015

General Bar Council of England and Wales—Written evidence

Bar Council response to the House of Lords inquiry on the Review of the Balance of Competences

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the current inquiry by the EU Select Committee of the House of Lords, into the Government's Review of the Balance of Competences between the UK and the EU.
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Background

4. In mid-2012, the Government launched a two year, detailed review of who does what as between the EU and the UK. It was presented as being intended to form the basis of any UK bid to renegotiate the Treaty on the functioning of the EU, and also to inform a possible referendum on EU membership in 2017. The review was spread over four semesters, with the Government publishing a set of calls for evidence on specific topics at the start of each, based on the responses to which it then published open-ended reports.³

The Bar Council's approach to the review

5. The Bar Council was actively encouraged to participate in the review across a range of subject areas. We attended both general workshops and bilateral meetings regarding specific calls. The main factor compelling the Bar Council to contribute to this exercise was to ensure that the debates were properly informed in the areas of our expertise. Our focus was on identifying relevant legal issues. By the end of the process, we had provided nine formal written responses⁴, and contributed informally, through participation in meetings, to at least one other (Subsidiarity and Proportionality):

Semester I: **Synoptic Review of the Internal Market** (February 2013)

³ Links to all relevant documents are available at: <https://www.gov.uk/review-of-the-balance-of-competences>

⁴ All Bar Council responses are carried on the Bar Council's external consultations webpage: <http://www.barcouncil.org.uk/for-the-bar/consultations/responses-to-external-consultations/>

Semester 2: **Civil Justice** (August 2013)

Semester 3 **Fundamental Rights** (January 2014)
Internal Market – Financial Services (January 2014)
Competition and Consumer Policy (January 2014)
Social and Employment (January 2014)
Internal Market – Services (February 2014)

Semester 4: **Police and Criminal Justice** (July 2014)
Information Rights (July 2014)

6. The Bar Council's evidence is often cited in the government reports on the calls to which we responded, particularly in the areas of Civil and Criminal Justice and Financial Services. The Bar is seen as an objective source of learning on legal issues, with no particular axe to grind on behalf of a particular client group. Members of the self-employed and employed Bar variously act on behalf of the entire range of citizens, businesses and bodies with an interest in the framework of EU law.

The Bar Council's assessment of the process

7. Our assessment of the calls for evidence is necessarily confined to those to which we responded. These calls, including the presentation of historical developments and current legal frameworks, were well researched and presented. The questions posed, in the main, covered the necessary ground, and provided scope for stakeholders such as ourselves to present our views. Where there was repetition, we simply said so. Likewise, we indicated if we chose not to answer all questions in a particular call. In one or two instances, the Bar Council diverted from the specific questions posed, as we wished to raise matters that were not necessarily foreseen in the way the call was framed. Here we refer in particular to our response to the First Semester Synoptic Review of the Internal Market, in which we focussed on the increasing and worrying use by the EU institutions of the internal market legal basis (Article 114 Treaty on the Functioning of the EU (TFEU) for measures for which we consider it to be inappropriate, in particular in the civil law and financial services fields. In our well-received response to the Third Semester Internal Market Services call, in addition to replying to questions posed, we provided an overview of our positive experience of the lawyers' establishment and services regimes, which together are widely seen as an Internal Market success story.

The Bar Council's assessment of the product

8. Whilst committed to contributing to the review for the reasons outlined above, the Bar has been concerned throughout, and remains so, as to the real value of this entire exercise. It was time-consuming and resource-heavy for the Bar, as it was, we understand, for other stakeholders and for the relevant government departments. That being the case, its value going forward is of great interest to us. In summary, we have two main areas of concern:

(i) The reports themselves fall short of addressing the underlying question of the nature of the UK's future relationship with the EU. Sufficient material has been gathered to allow an analysis of alternative scenarios in the various areas of

competence, but this has not been exploited. We consider that it should be undertaken.

(ii) Is enough being done to ensure that the product of the Balance of Competences review is fully disseminated to ensure an informed and balanced public debate in advance of the UK general elections and / or a UK - EU in-out referendum, as well as to contribute to the wider EU reform debate?

9. With regard to the first point, the lack of conclusions or exploration of alternative scenarios, the Bar Council takes the view that the resulting reports in themselves are good quality pieces of work. However, they are all essentially an analysis of responses rather than a statement of government thinking, or of possible alternative ways forward, informed by those responses. Despite all of this valuable data, no real conclusions are drawn, or alternative scenarios developed.

10. This brings us back to the long-standing question – what in the end was the exercise for? The general approach of the reports is to analyse in detail how competences have been divided and exercised at the national and EU level. They consider where the current balance of competences has left the EU or Member States at a disadvantage and they consider how interactions between the two levels could operate better. The reports generally assume however that barring a little tinkering to the overall structure, the general relationship of the EU and UK remains unchanged. They say very little about whether the current balance of competences, or some improved balance of competences is better than some other radically different UK/EU model. The evidence and reports are of course highly relevant to this key question, but stop short each time of tackling that central issue and without doing so they fail to provide much useful material to inform that debate.

11. For example, the Energy report is a high quality analysis of some very important, often rather technical matters, but it does not really address the key questions, such as whether in principle the UK should be part of an EU in which another Member State, sharing no common border, should be in a position to challenge national policy choices in the energy sector? Nor does the report really grapple with the question why the current UK/EU relationship or an improvement to it is a basis for a better UK energy situation than some other bilateral or UK only solution. Any political choice about continued membership of the EU is not about whether the relationship could be improved. Self-evidently it could. The political choice will be why or whether such a relationship is worth maintaining at all. The answer to that is likely to be highly technical. That is what the review should have addressed but it generally avoided those questions. There are exceptions where the reports went a little further. For example, the Internal Market, Services report looks at how life would be relying upon the Transatlantic Trade and Investment Partnership (TTIP), but it is more a marker than a piece of analysis.

12. Turning to our second area of concern, the review's contribution to the wider, public debate. Though as outlined above, we consider that the reports can and should go further, even as they stand, they contain much valuable data. What is being done domestically with this material, given how relevant it is to a key question in the run-up to the next General Election and a possible referendum on membership of the EU – that of the nature of the UK's relationship with the EU? Are the reports simply to serve as a portfolio of academic reference materials? Will elements be taken up in national election manifestos? Will the arguments be given a balanced, public airing in the event of an in-out referendum on

EU membership? How is the government proposing to disseminate the wealth of data gathered so that it properly informs the public debate? How does it intend to make data which will often seem dry and technical, accessible to the electorate? And on the wider EU stage, to what extent is the government communicating with other EU governments and institutions about the issues raised, thus encouraging and contributing to a wider EU reform debate that is not purely UK-centric?

13. We have raised these and other related questions during the course of the review, and subsequently, in meetings with UK officials, both in London and Brussels. We have received assurances that the data collected is widely seen as valuable, and that it is being relied on in discussions in Brussels and beyond. Specifically, we were told that the results have been shared with other permanent representations, the EU institutions, and that they are cited by Commission desk officers, Council secretariat, and others in relevant working groups and other fora. The officials we have spoken to are confident that it will be seen as reference work for future negotiations regarding any extensions of competence or discussions on wider EU reform agenda. But if all that is so, and it has not been stated expressly by government, it brings into even sharper relief the absence of any indication of how – if at all – the responses to the calls for evidence have so far shaped government thinking or the public debate on the UK's future relationship with the EU. It is also acknowledged however, that at a political level, the influence of the review may depend on the outcome of the 2015 General Election.

Conclusions

14. The Bar Council considers that more can and should be done to harness the wealth of expert evidence that the review collected in the various areas of EU – UK competence. We would like to see:

(i) Further conclusions drawn, perhaps as an annex, to each of the resulting reports, in which the impact of the results on the UK's relationship with the EU in the different areas is examined. We understand that the government may not want to pre-judge the debate, but it can and should set out the arguments and justifications on both sides, and in certain instances, we believe that the reports do in fact lead to clear conclusions as to the appropriateness of EU competence – or at minimum, clear identification of the main legal and policy issues arising from the various choices that could be made - which can be further drawn out.

(ii) The key findings of the review should be widely disseminated in the coming months, presented in an accessible and user-friendly manner, and making full use of multimedia resources.

Bar Council⁵

March 2015

⁵ Prepared for the Bar Council by the EU Law Committee

Dr Thomas Horsley, Dr Samantha Currie and Professor Michael Dougan; Liverpool European Law Unit —Oral evidence (QQ 1-9)

Dr Thomas Horsley, Dr Samantha Currie and Professor Michael Dougan; Liverpool European Law Unit —Oral evidence (QQ 1-9)

[Evidence to be found under Dr Samantha Currie](#)