

Balance of Competences Review Free Movement of Services

Discussion Event Berlin, 5 December 2013

NB: the following views were expressed by meeting attendees.

Summary

- In conducting the Balance of Competences Review, it will be important to consider the definition of 'national interest', because all Member States act in their own national interest. It might be more useful to focus on what is better for the Single Market as a whole or the individual citizen or consumer.
- For the Review to be taken seriously, the UK will need to avoid the impression that it is only concerned with the advantages of the Single Market. At the same time, the interaction between
- The Commission sometimes uses the Treaty provisions on free movement to justify the expansion of its competences. Once lost by Member States, competences can be difficult to regain.
- However, the division of competence should not be seen as binary: the third option of deregulating entirely should also be considered, as should the role of other policy instruments such as the Commission's country-specific recommendations.
- When the EU does exercise competence, it is important that regulation is of good quality. Factors to consider include the evaluation of existing implementation, the choice of legal instrument; the potential use of sunset clauses and the cost of compliance.
- The increasing dominance of the service sector means the single market risks becoming irrelevant if it focuses on goods.
- External shocks such as the 2008 financial crisis provide an opportunity for extensive reform and should not be squandered.
- The impact of taxation is an important aspect of the cross-border provision of services

Balance of Competences

Some participants questioned the underlying motivation behind the Balance of Competences Review: if the exercise is designed to assess what is in the UK's national interest, why should external stakeholders contribute? And what does this mean for other Member States, who will also act in their own national interest? Would it not be better to define the national interest in terms of what is best for the ordinary citizen or consumer?

The Review needs to be clear about whether it is examining what is good for the UK or what is good for the Single Market. The Single Market itself is a result of compromise, which inevitably has costs as well as benefits for all participants. If the Review is to be taken seriously, it will have to avoid the perception that the UK is only interested in the advantages of Single Market membership. Given that the Single Market is intrinsically linked to the euro-zone, it may be difficult for the UK to influence policy in one area without being involved with the other.

Participants felt that the Commission sometimes misuses the competences which it is entitled to exercise. Because of this, while it would not be appropriate to talk about 'repatriating' competences 'back' to Member State level, it would be reasonable to conduct a

'health check' of how competences are divided within the EU. In particular, there was a sense that the Commission uses the privileged status of free movement in the Treaties as a pretext to expand its remit, and it seems that once a competence is lost, it can never be regained. The *acquis communautaire* is, therefore, destined to grow ever larger.

However, it is important not to view the division of competence as purely binary: in some cases it would be better to 'remove' the competence and de-regulate entirely rather than regulating at European or Member State level. In others, the balance of competences may be correct, but there may be problems with implementation, which is why implementation is an important aspect. Other policy instruments should also be taken into consideration, such as the Commission's country-specific recommendations.

Better Regulation

When a competence is exercised by the EU, participants discussed the importance of ensuring that this is done using good quality legislation. The choice of legislative instrument can have a real impact. Some businesses would prefer Regulations, as they provide a greater degree of certainty. Directives, on the other hand, tend to involve more compromise and can allow Member States a degree of flexibility that may be used for reaching other policy goals.

Some businesses are also in favour of sunset clauses that automatically repeal legislation after a certain period. However, this provides little incentive for legislators to find a workable compromise or for Member States to correctly transpose and implement Directives if they know the issue will be re-examined again soon. Individual companies too are also likely to delay implementing on legislation with a sunset clause.

Proportionality and the cost of compliance are important: EU money-laundering rules are one example of overly burdensome regulation.

Other Points

The huge expansion of the services sector across the EU means that the Single Market will become irrelevant if attention is only focused on the free movement of goods.

Taking a more long-term perspective shows us that countries that have federated smaller units into a single market, such as Germany, Italy or the USA, have always had to centralise competences to a certain extent, and this has sometimes come as result of an external shock. If the 2008 financial crisis had been even more severe, there would perhaps have been even more European integration.

Taxation is an important but often overlooked element of the free movement of services within the EU.