Department
for Business
Innovation & Skills

Review of the
Balance of Competences

GOVERNMENT REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Call for Evidence: Cohesion Policy Review

OCTOBER 2013

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Call for evidence

On the Government Review of the Balance of Competences between the United Kingdom and the European Union

Open date: 21 October 2013

Closing date: 13 January 2014

Introduction

1.1 The Foreign Secretary launched the Balance of Competences Review in Parliament on 12 July 2012. This takes forward the Coalition's commitment to examine the balance of competences between the UK and the European Union. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It will not be tasked with producing specific recommendations, and will not prejudge future policy or look at alternative models for Britain's overall relationship with the EU. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges.

1.2 As the Foreign Secretary further announced in Parliament on 23 October, the overall review will be broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by the Government, but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign governments, including our EU partners, and the EU institutions, are also invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it.

What is competence?

1.3 For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member States, without needing any further action by the EU institutions.

1.4 The EU's competences (that is, its powers) are set out in the EU Treaties. These provide the basis for any actions the EU institutions take. The EU can act only within the limits of the competences conferred on it by the Treaties. Where the Treaties do not confer competences on the EU, they remain with the Member States.

1.5 There are different types of competence, notably those known as "exclusive", "shared" or "supporting" competence. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In those areas Member States may not act independently. In areas of shared competence, such as Cohesion Policy and most of the Internal Market, either the EU or the Member States may act, but once the EU has acted it "occupies the field" and Member States cannot act independently in those areas. This means that the border between EU and national competence can and does move, according to the extent of EU legislation. In areas of supporting competence, such as culture, tourism and education, both the EU and the Member States may act, but action by the EU does not prevent the Member States from taking action of their own.

1.6 The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can act only if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

A brief history of the EU Treaties

1.7 The Treaty on the European Economic Community (EEC) was signed in Rome on 25 March 1957 and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 a series of treaties has extended the objectives of what is now the European Union beyond the economic sphere. The amending treaties (with the dates on which they came into force) are: the Single European Act (1 July 1987), which provided for the completion of the Internal Market by 1992; the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.

1.8 Following these changes, there are now two main treaties which together set out the competences of the European Union:

- The Treaty on European Union (TEU);
- The Treaty on the Functioning of the European Union (TFEU).

Scope of this review

1.9 This review focuses on some areas of EU activity that support economic development. Principally, this is through funding programmes which account for a large part of the EU budget but other actions, particularly coordination, are important means too.

1.10 Cohesion Policy is in effect the EU's regional policy and its scope is set out in Articles 174 to 178 TFEU which provide the legal base for the adoption by the EU of actions aimed at strengthening its economic, social and territorial cohesion. The main financial tools for supporting it are the European Regional Development Fund (ERDF) and the Cohesion Fund, although the legal bases for the European

Globalisation Adjustment Fund, the proposed Fund for European Aid to the Most Deprived, and the European Solidarity Fund also fall within these articles and will be covered by this review.

1.11 The European Social Fund (ESF) contributes to social cohesion. The ESF and ERDF together are known as the structural funds. They have the same basic management and control approach and fall within the same heading of the EU budget. The legal base for the ESF is in Articles 162 to 164 TFEU but it will be considered as part of this review rather than the review on social and employment policy.

1.12 The Trans-European Networks (Energy, Telecommunications and Transport), and the Connecting Europe Facility support infrastructure investment will also be covered by this review. These are covered by Articles 170 to 172 TFEU. Because of the integral nature of the Trans-European Network for Energy with the EU's energy policy, there is a strong link with the Energy Review which is being held in parallel to this review.

1.13 This review will also cover the EU's Industrial Policy. This is primarily set out in Article 173 TFEU which gives the EU the ability to develop and implement actions to help industrial growth if the scale and desired outcomes are beyond any actions which could be taken at an individual Member State level and which would not in any way distort competition.

1.14 This review does not cover the detail of European Agricultural Fund for Rural Development (EAFRD) nor the European Maritime and Fisheries Fund (EMFF). The EAFRD will form part of the Agriculture review and the EMFF will form part of the Fisheries review. However, as these funds for the 2014-20 period will be governed in part by the same EU Regulation as the structural and cohesion funds, this review will consider the extent to which synergies can be best achieved in order to improve the effectiveness of spend.

1.15 Finally, this review will consider ways that the local or regional dimension is reflected in EU policy-making. One way this is done is through the Committee of the Regions, set up under Articles 305 to 307 TFEU. The Lisbon Treaty also introduced territorial cohesion as one of the objectives for the EU and the review will look at the implications of this.

Call for evidence: what we are asking for

1.16 We are requesting input from anyone with relevant knowledge, expertise or experience. We would welcome contributions from individuals, companies, civil society organisations including think-tanks, and governments and governmental bodies. We welcome input from those within the UK or beyond our borders.

1.17 Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise. Where your evidence is relevant to other balance of competences reports, we will pass your evidence over to the relevant report teams.

1.18 Please base your response on answers to the questions set out below. You should feel free to answer a sub-set of these questions, should not all be relevant to you. In responding, it would be helpful if you could indicate whether you are responding as an individual, a business, a trade union, local authority, a civil society organisation, research institution or other grouping.

Cohesion Policy

1. How effective in your view have the structural funds been in addressing the tasks given to them under the various Treaties and what might be done to improve this?

2. To what extent have UK places, companies and workers benefited or not benefited from EU structural funds?

3. Are the types of activity covered by the structural funds and the other funds outlined in this paper more appropriately funded at EU, national or regional/local level? Should all Member States or regions receive structural funds in future? If not, what should be the criterion?

4. What is the right balance between strategic guidance at EU level, Member States management and control of the funds and regional or local identification of needs?

5. Do all parts of cohesion policy provide equal value for money? Are different approaches required for different funds and different geographies?

6 To what extent should the funds be targeted at less developed areas and disadvantaged groups of society rather than being available as sources of investment for economic development across all areas?

7. How effective in your view is accountability and financial management of the funds outlined in the paper? What further steps if any might be taken to provide increased assurance for EU taxpayers?

8. What are the main barriers to accessing EU funds? What might be done to overcome these?

9. What practical steps could be taken to reduce the administrative burdens in getting funding from EU programmes?

10. How can the local or regional dimension best be reflected in EU policy-making?

Trans-European Networks

You may want to split your answer between the current Guidelines and expected changes in the proposed new Regulation, and focus on one or more of the three sectors (transport, energy and telecoms).

1. In your view to what extent have the TENs supported or promoted cohesion, interconnection and interoperability of national networks and access to networks across the EU? Has this been in the UK's national interest?

2. Are the types of activity covered by the TENs more appropriately funded at EU, national or regional/local level.

Industrial Policy

1. What do you see as the major advantages or disadvantages of a EU-wide industrial policy approach?

2. How can the EU approach and the strategies of individual member states be better aligned? Do you consider it appropriate that they are aligned

3. Where, in your opinion, have EU actions had a positive effect on UK industry? What leads you to this conclusion?

4. Where, in your opinion, has EU action had a negative effect on UK industry? What leads you to this conclusion?

1.19 You do not have to answer all of the questions. Please feel free to answer as many or as few as you like. Some of the questions are particularly broad in scope. You may find it useful to consider your evidence with regards to the following sorts of issues:

- **Political** (for example, the extent to which the UK is able to have greater or less influence as result of the EU's cohesion policy);
- **Economic** (for example, the economic impacts of the EU's funding to support cohesion policy or infrastructure investment through TENS);
- **Social** (for example, the extent to which the UK's social policy agenda is impacted by the structural funds);
- **Technological** (for example, the extent to which technological advances such as the internet are affecting EU competence in industry policy and infrastructure investment); and
- **Proportionate** (for example, the extent to which there is a need to act at EU or any other level, whether the action taken is proportionate to this need, and whether the measure is effective in practice).

1.20 We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that even if you ask us to keep your contribution confidential we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it to be included.

1.21 Please send your evidence to balanceofcompetences@bis.gsi.gov.uk by 13 January 2014.

1.22 We plan to hold a workshop on the cohesion policy and TENS on 21 November and on industry policy on 29 November in London. Please contact balanceofcompetences@bis.gsi.gov.uk if you are interested in attending either or both.

2. Cohesion policy

2.1 The appropriate role of the EU across policy domains, especially in redistribution, has been debated for many years. Economic rationalisation of EU-level intervention traditionally points at market failures – notably economies of scale or scope and externalities since they are associated with under-provision of public goods in the absence of government intervention. Redistribution from richer to poorer countries is often seen as an EU public good since it fosters convergence, creating major benefits for the rest of Europe in the form of new and wealthier markets and steadier democracies.

2.2 However, the policies and expenditure of national governments, through public investment, fiscal measures or welfare systems, will also have an impact on regional distribution of income. Furthermore, the institutional framework of a Member State will be at the core of its approach to regional policy.

2.3 From its inception, the EU has recognised the need to reduce the differences existing between the various regions and the backwardness of the less favoured regions. Initial actions were limited to employment measures and structural changes in agricultural regions.

2.4 In the 1970, there was a more general focus on least developed regions, in part stemming from the accession of two, at the time, relatively poor Member States. Regional funds were also used as a means for addressing the UK's budgetary imbalance, which was later resolved through the abatement.

2.5 During the 1980s, accession of Greece, Spain and Portugal brought increased regional disparities with more impetus for a genuine "European" cohesion policy through the Single European Act and adoption of the single market programme. There was seen to be a role for cohesion policy to offset the burden of the single market on poorer areas, with funding from the EU playing a key role in encouraging convergence.

2.6 This was reinforced by the biggest enlargement of the EU in 2004, with an additional ten Member States joining. Although increasing the EU population by

20%, accession of the ten new Member States increased the EU GDP only by 5%. The availability of funding to support economic convergence has been one of the attractions of the EU for new member states. Their economic growth provides trade opportunities for businesses from elsewhere, including UK companies.

2.7 At a Member State level, the poorest Member States – the cohesion countries - have closed the gap with the EU average over the period since the 1960s, although at very different rates and times. Spanish GDP has risen from 60% of the EU15 average in 1960 to 92% in 2004, Irish GDP from 65% to 130% , Portuguese GDP from 40% to 77% and Greece from 45% to 75%[1]. It is worth noting Spain, Greece and Portugal all experienced sustained growth before accession.

2.8 At a regional level, there was a general trend to catch-up prior to the 1980s but since the early 1980s the picture has become much more complex. Significant differences between and within regions remain, and indeed have become greater as the EU has expanded. The GDP per capita of the richest region (Inner London) is for example roughly twenty-seven times greater than that of the poorest (Severozapaden in Bulgaria). Further expansions of the EU are likely to bring in more regions with GDP per capita well below the EU average.

Regional GDP per capita in the EU27 in 2009

(in PPS, EU27 = 100) **The ten highest:**			**The ten lowest:**		
1	Inner London (UK)	332	1	Severozapaden (BG)	27
2	Luxembourg (LU)	266	2	Severen tsentralen (BG)	29
3	Bruxelles-Cap. / Brussels Hfdst. (BE)	223	3	Nord-Est (RO)	29
4	Hamburg (DE)	188	4	Yuzhen tsentralen (BG)	31
5	Bratislavský kraj (SK)	178	5	Severoiztochen (BG)	36
6	Île de France (FR)	177	6	Sud-Vest Oltenia (RO)	36
7	Praha (CZ)	175	7	Yugoiztochen (BG)	36
8	Stockholm (SE)	172	8	Sud-Est (RO)	38
9	Groningen (NL)	170	9	Észak-Magyarország (HU)	40
10	Åland (FI)	166	10	Sud-Muntenia (RO)	40

[1] FitzGerald, J (2004) Lessons from 20 Years of Cohesion. *Economic and Social Research Institute* Working Paper 159.

http://www.esri.ie/pdf/WP0159%20Lessons%20from%2020%20years%20of%20Cohesion.pdf

The structural and cohesion funds

2.9 The structural and cohesion funds are the main financial tool at EU level used to address differences between regions and between member states, although increasingly the funds are presented by the European Union as supporting general investment for growth and jobs across the EU.

2.10 There are three structural and cohesion funds:

- The **European Regional Development Fund** was set up in 1975. Its task under Article 176 TFEU is "to help redress the main regional imbalances in the Union through participating in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions". Typically, the ERDF finances direct aid to investments in companies to create sustainable jobs, infrastructures linked to research and innovation, telecommunication, environment, energy and transport and financial instruments such as risk capital funds and local development funds.

- The **European Social Fund** was established in 1958. Its aim as set out in Article 162 TFEU is to improve employment opportunities and raise living standards through making the employment of workers easier, improving their geographical and occupational mobility and facilitating adaptation to industrial change, in particular through vocational training.

- The **Cohesion Fund** was established in 1993. Under Article 177 TFEU, it supports large-scale projects in the areas of the environment and trans-European transport networks. It is available only to those Member States that have a Gross National Income (GNI) per head below 90% of the EU average. The UK does not qualify for funding from the Cohesion Fund.

2.11 The formula for allocating funds to Member States is based on a range of factors, negotiated as part of the overall financial framework for the EU. These aim to ensure that the poorest regions have the highest intensity of funding.

2.12 The European Parliament and the Council of Ministers agree regulations that set out the tasks, priority objectives and organisation of the structural funds. Negotiations on the set of regulations that will govern the use of the Funds for 2014-20 are on course to be concluded by the end of 2013. The same rules will apply to a large extent to all the structural and cohesion funds.

2.13 The Funds are administered under shared management between the Member States and the European Commission. Operational Programmes are drawn up by Member States, often at regional level, and agreed with the Commission. These set out priorities and form the basis for the delivery of projects, either through calls for proposals, public procurement or commissioning. The Member States appoint managing authorities[2] for each programme, who are required to exercise principles of sound financial management and who decide which projects to fund. A Member State's allocation is not formally handed over at the beginning of the programme or on an annual basis but rather claims are made against declared expenditure. If it believes there are irregularities, the Commission can withhold payments.

2.14 Increasingly, the Commission has sought to introduce a more strategic approach to use of the Funds. For 2007-13, the Commission developed Community Strategic Guidelines for Cohesion, which were adopted by the Council of Ministers[3] and which helped shape National Strategic Reference Frameworks produced by each Member State. Furthermore, 75% of the funds had to be earmarked towards delivery of the objectives of the Lisbon Strategy for Jobs and Growth in the richest regions (and 60% in the poorest).

2.15 For 2014-20, the Member States, European Parliament and European Commission have agreed a Common Strategic Framework that outlines guiding principles, and each Member State will produce a partnership agreement, signed off by the Commission, that will set out expected results from use of the Funds and their

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[2] In the UK, the managing authorities are the Department for Communities and Local Government (ERDF – England), Department for Work and Pensions (ESF – England and Gibraltar), Scottish Government (ERDF and ESF - Scotland), Welsh European Funding Office (ERDF and ESF – Wales), Department of Enterprise, Trade and Investment (ERDF – Northern Ireland), Department for Employment and Learning (ESF – Northern Ireland) and the Government of Gibraltar (ERDF – Gibraltar)

[3] Council Decision 2006/702/EC

contribution to the EU2020 strategy. There will be legal requirements to spend much of the money on specified objectives that make the greatest contribution to smart, sustainable and inclusive growth.

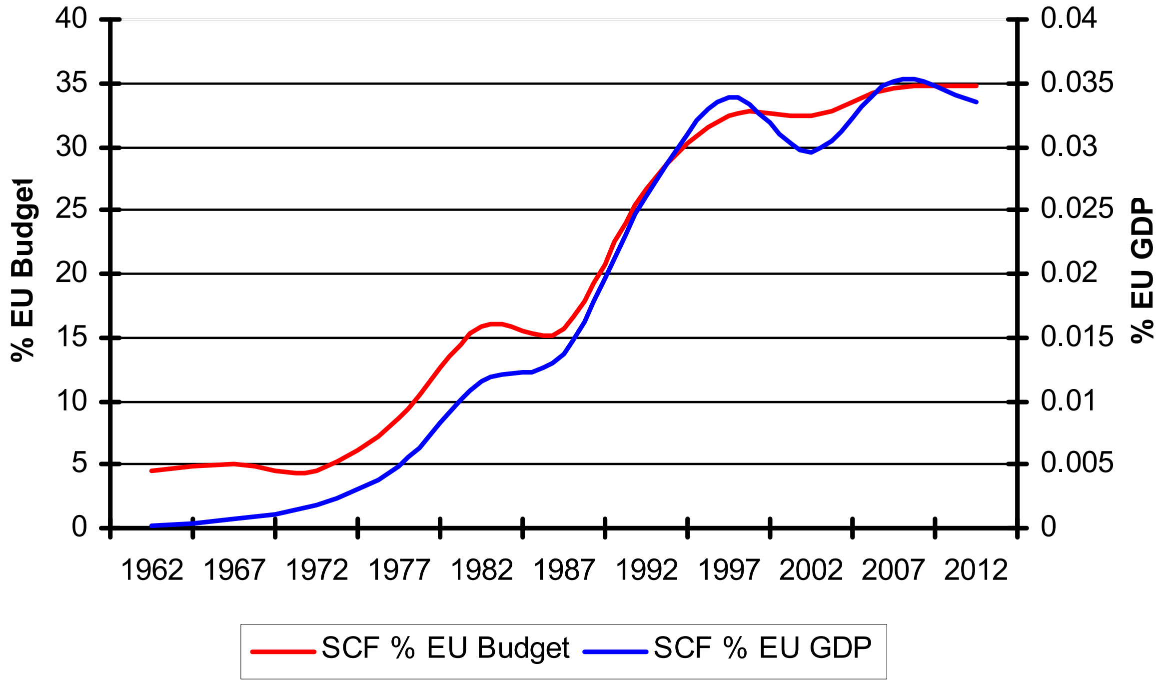
2.16 For 2014-20, Member States will also be expected to meet certain pre-conditions to ensure that spend is efficient and effective. Most of these pre-conditions require spending to be consistent with nationally or regionally developed strategies on for example innovation. In some cases, the pre-conditions concern policy areas which fall mainly within national, not EU, competence, such as areas of social policy and health.

2.17 The size of the funds has increased markedly over the years, and further expansion of the EU will place more pressure on the budget. Until the mid 1970s, the structural funds, in the form of the ESF and the European Agricultural Guidance and Guarantee Fund (EAGGF[4]), accounted for less than 5% of the EU budget and they were focused on addressing employment differences structural and natural disparities in agricultural regions.

2.18 The first significant increase to 15% of the budget came with the creation of the ERDF in 1975. When the ERDF was first introduced, its budget was the equivalent of €1.3bn over the three years 1975-78, or 5% of the total EU budget. For 2007-13, the budget for ERDF was €201bn, or 20.5% of the budget. The combined amount for all the structural and cohesion funds for 2007-13 was €354.8bn[5] in commitments, representing 35.7 % of the budget.

[4] The European Agricultural Guidance and Guarantee Fund (EAGGF) was a fund within the overall European Union budget for the financing of the Common Agricultural Policy (CAP). On 1 January 2007 the EAGGF was replaced by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD).

[5] Unless otherwise stated, all sums are expressed in 2011 prices



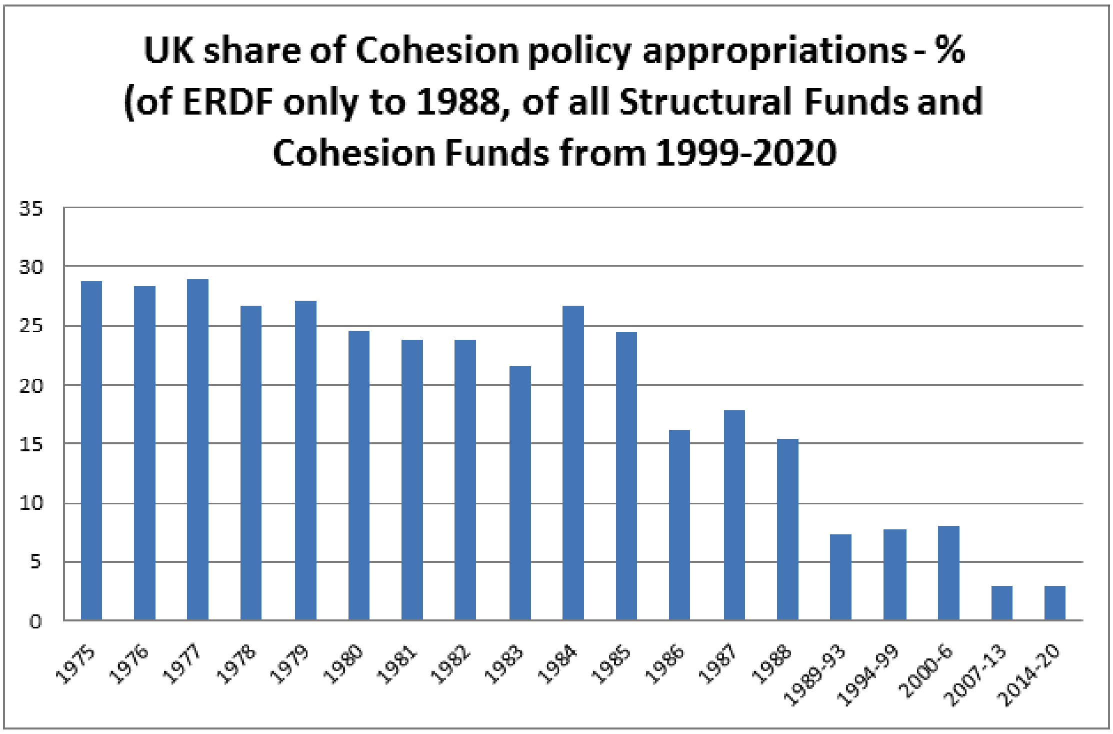
SCF as a share of the EU budget and EU GDP[6]

2.19 For 2014-20, a lower figure €325bn has been agreed, representing 33.9% of the budget. The UK's allocation is expected to be around €10.5bn, including a special allocation to deal with youth unemployment.

2.20 The UK's share of structural funds has fallen dramatically over time but it should be noted that the size of the pot has increased and the number of Member States has altered too: the total 1975 commitment was just 300 million EUA[7] (at 1975 prices) for 9 Member States while the annual average commitments for 2014-20 are set to be almost €46 billion (2011 prices) for 28 Member States.

[6] From HMT calculations

[7] European Unit of Account



2.21 Support for cohesion policy represents a third of the EU budget. It is important that the funding is used effectively and is additional to national funding and does not directly displace this.

2.22 In its report on the 2011 EU budget[8], the European Court of Auditors found 59 % of the 180 regional policy payments audited to be affected by error. The most likely overall error estimated by the Court was 6.0 %. For 62 % of the regional policy transactions affected by error, the Court considered that sufficient information was available for the Member State authorities to have detected and corrected at least some of the errors prior to certifying the expenditure to the Commission. For expenditure from the ERDF and the Cohesion Fund, the main risks related to the funding of projects which do not comply with EU and national public procurement rules or which do not fulfil the eligibility conditions specified in the EU Regulations or the Operational Programmes. In addition, the risk also exists that beneficiaries declare specific costs that are ineligible.

2.23 However it is also important that unnecessary burdensome requirements are not imposed on those, often small firms, receiving the funds and on authorities

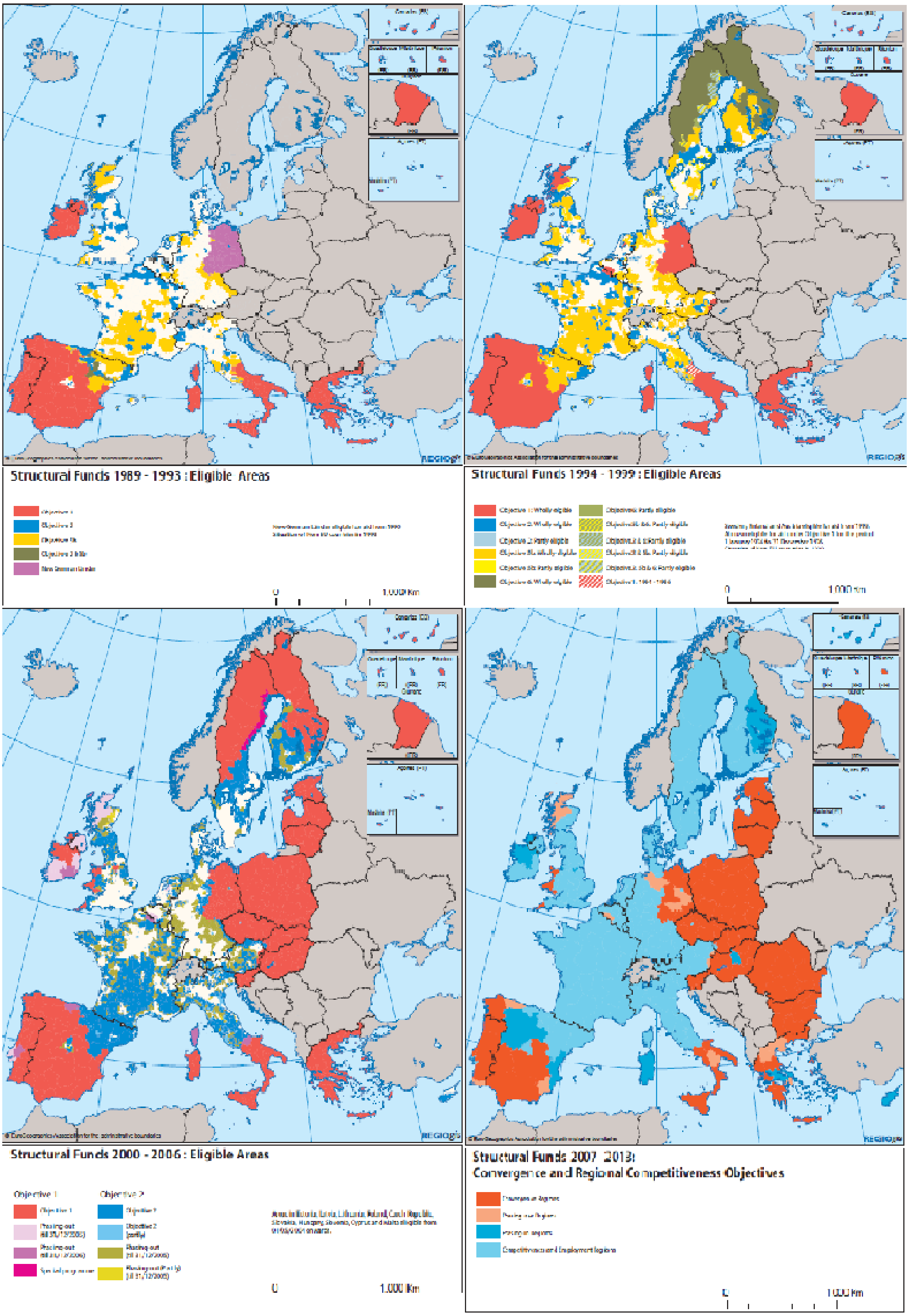
[8] http://eca.europa.eu/portal/pls/portal/docs/1/18320745.PDF

administrating the funds, which may increase public costs. One of the main complaints about the structural funds identified in a recent consultation[9] was the complexity of the rules, both in terms of accessing money and also in terms of complying with financial reporting and audit requirements.

2.24 The thematic coverage has broadened over time. The ESF, for example, was originally available only to support the unemployed, but can now support vocational training and improving employment opportunities for those already in work. There has also been an increasing focus on targeting disadvantaged groups and for 2014-20 at least 20% of the ESF in each Member State is intended to be spent on social inclusion measures.

2.25 The geographical coverage of the funds has also increased. Although all parts of the EU have always had access to ESF, for many years only the poorest regions were eligible for ERDF and for specific objectives set out in the regulations. As the maps overleaf show, some areas did not have any entitlement to ERDF. For 2007-13, all regions were eligible for ERDF and ESF.

[9] European Structural and Cohesion Funds: consultation on proposed changes to managing the funds 2012. https://www.gov.uk/government/consultations/european-structural-and-cohesion-funds-consultation-on-proposed-changes-to-managing-the-funds



Maps showing coverage of EU Structural Funds, 1989 – 2013, from EuroGeographics (European Commission)

2.26 For 2014-20, regions will be split into three categories: less developed regions where GDP per capita is less than 75% of the EU average, transition regions where GDP per capital is between 75% and 90% of the EU average, and more developed regions where GDP per capita is over 90% of the EU average. Poorer regions will have more flexibility over how to spend the funds, as well as needing to find a lower level of match-funding. However, even richer regions, including in those Member States that are net contributors to the EU budget, are eligible to receive structural funds. One issue to consider is whether it is more efficient in such cases for regional policy to be funded by the EU or only by the Member State concerned, particularly if the EU expands and there is further pressure placed on the EU budget.

2.27 For 2014-20, two regions in the UK, Cornwall and the Isles of Scilly and West Wales and the Valleys will be classified as less developed regions. There will also be 11 transition regions in the UK: Cumbria, Devon, East Yorkshire & Northern Lincolnshire, Highlands & Islands, Lancashire, Lincolnshire, Merseyside, Northern Ireland, Shropshire and Staffordshire, South Yorkshire, and Tees Valley & Durham. All other regions will be classified as more developed regions.

2.28 The different parts of the United Kingdom are each taking advantage in different ways of opportunities to streamline administration of the funds and bring them more closer together for the 2014-20 period. In England, Local Enterprise Partnerships are being asked to develop strategies setting how ESF, ERDF and a small amount of EAFRD can be spent in an integrated approach to challenges and opportunities in their area. In Scotland, the Scottish Government has rationalised the number of programmes and is seeking to “hide the wiring” in administering the Funds and make access easier for beneficiaries. Similarly, in Wales, the Welsh Government is developing a one-stop shop approach. The Northern Ireland Executive is seeking to harmonise simplified cost options and application processes across funds and programmes.

European Territorial Cooperation

2.29 European Territorial Cooperation programmes, formerly known as the INTERREG Community Initiative, are also financed by ERDF. These seek to encourage co-operation and learning between regions in different EU countries. Across the EU, the budget of €8.7bn for this objective accounts for 2.5% of the total 2007-13 allocation for cohesion policy.

2.30 European Territorial Cooperation Programmes are split into Cross-border programmes, transnational programmes and four EU-wide interregional programmes[10]. Cooperation, while important, is not a goal in its own right. Such programmes, and the projects delivered under them, should be able to demonstrate substantive benefits and economic impact as well.

2.31 The UK takes part in four cross-border programmes and six transnational ones set out in the table below, as well as in the interregional programmes. Each programme has its own management structure, with the lead authority often outside the UK.

Programme	Budget from ERDF for 2007-13[11]	UK participation and other Member States
Two Seas Programme	€167m	Southern and Eastern England; with Belgium (Flanders), Netherlands and France
France/England (Channel) Programme	€173.5m	Southern and Eastern England; with France
Wales/Ireland cross-border	€52.7m	West Wales; with Ireland
Scotland/Northern Ireland/Ireland cross-border	€192m	Western Scotland and Northern Ireland; with Ireland
North Sea Region Programme	€139m	Eastern UK; with Belgium, Denmark, Germany, Netherlands, Sweden, Norway
Atlantic Area Programme	€98m	Western UK; with Ireland, Spain, France, Portugal

[10] ESPON – a research network; INTERACT – a network of cooperation projects; URBACT – a network of cities and IV – a network to spread best practice

[11] Figures in current prices

Programme	Budget from ERDF for 2007-13[11]	UK participation and other Member States
North West Europe Programme	€355m	All UK; with Belgium, Luxembourg, Germany, Netherlands, France and Switzerland
Northern Periphery	€35.1m	Highlands and Islands, NE Moray, Dumfries and Galloway, Northern Ireland with: Ireland, Finland, Sweden, Norway and Iceland
South-West Europe	€99m	Gibraltar; with France, Spain, Portugal, Andorra
Mediterranean	€193m	Gibraltar; with Greece, Spain, France, Italy, Cyprus, Malta, Portugal, Slovenia, Croatia, Albania, Bosnia-Herzegovina, Montenegro

2.32 PEACE, the EU Programme for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland, is a distinctive programme supported under European Territorial Cooperation. It aims to reinforce progress towards a peaceful and stable society and to promote reconciliation by assisting operations and projects which help to reconcile communities. The PEACE III programme covers the period 2007-2013. This programme is partly funded through the European Union (€225m from the EU with further national contributions of €108m[12]). A special provision was agreed at the February 2013 European Council to provide €150m of EU funding to the PEACE programme.

Macro-regional and Sea-basin Strategies

2.33 Macro-regional strategies are a form of enhanced cooperation, although without a dedicated budget. Normally endorsed by Heads of State and Government, these set a framework of actions to deal with common challenges in a defined geographical area. There are presently two macro-regional strategies, the Danube Region Strategy and the Baltic Sea Region Strategy. The Commission is working on a third macro-regional strategy, the Adriatic and Ionian Region Strategy.

2.34 In addition to macro-regional strategies, the Commission has launched six sea-basin or maritime strategies covering the following areas: Atlantic Ocean, Arctic

[12] Figures in current prices

Ocean, Baltic Sea, Black Sea, the Mediterranean Sea and the Adriatic and Ionian Seas. Each strategy aims at targeting the needs of the specific sea-basin shared by Member States and regions, from the Arctic's climate change to the Atlantic's renewable energy potential, to problems of sea and ocean pollution, to maritime safety.

2.35 The UK does not participate in any macro-regional strategy but the UK is one of five Member States (Portugal, Spain, France, Ireland and UK) which participate in the Atlantic Maritime Strategy. The Action Plan for the Atlantic Strategy was adopted by the Commission in April 2013 and encourages collaboration and the sharing of best practice. The key objectives of the Atlantic Strategy are to encourage the Member States to enhance cooperation in a number of fields including both traditional activities, such as fisheries, aquaculture, tourism and shipping, as well as emerging ones such as offshore renewables and marine biotech.

European Globalisation Adjustment Fund

2.36 The European Globalisation Adjustment Fund (EGF) was set up in 2006 to provide support to workers made redundant as a consequence of major structural changes in world trade patterns. The Regulation was subsequently amended in 2009 to include redundancies caused by the global financial and economic crisis under the EGF in 2009-2012.

2.37 It can draw money - up to €500m each year - from within the EU Budget, where there are underspends or decommitted funds (that is, there is no ring-fenced EGF budget). Bids can be made on a case by case basis by Member States to support actions that reintegrate into the labour market workers made redundant.

2.38 The UK has never applied to use EGF. The UK Government’s position is that this is seen to be an inefficient instrument for managing those at risk of unemployment, or made unemployed, as a result of large redundancies. The UK believes that other instruments, such as the ESF, are more suitable for improving the capacity of national institutions and programmes to manage labour market shocks.

2.39 Negotiations on the EGF Regulation for the period 2014-2020 continue between Council and the European Parliament. The UK will continue to closely scrutinise any future proposals for the EGF in the context of continuing to prioritise the EGF's efficiency.

European Solidarity Fund

2.40 The Solidarity Fund was set up to respond to major natural disasters. The Fund was created as a reaction to the severe floods in Central Europe in the summer of 2002. Since then, it has been used for 52 disasters covering a range of different catastrophic events including floods, forest fires, earthquakes, storms and drought. 23 different European countries have been supported so far for an amount of more than €3.2 bn.

2.41 The Solidarity Fund can provide financial aid to Member States and countries engaged in accession negotiations in the event of a major natural disaster if total direct damage caused by the disaster exceeds €3bn at 2002 prices or 0.6% of the country's gross national income, whichever is the lower. A neighbouring Member State or accession country that is affected by the same disaster as an eligible country for which a major disaster has been recognised can also receive aid, even if the amount of damage does not reach the threshold.

2.42 Following the severe flooding in England, Wales and Northern Ireland in the summer of 2007, the UK received over €162m from the Solidarity Fund.

2.43 The Commission published in July 2013 a proposal to amend the Solidarity Fund.

Fund for European Aid for the Most Deprived

2.44 The EU's "Food Distribution programme for the Most Deprived Persons of the Community" has been in place since December 1987, when the Council adopted the rules for releasing public intervention stocks of agricultural products to Member States wishing to use them as food aid for the most deprived persons of the Community. This was a measure adopted under an Agriculture and Fisheries legal base (Articles 42 and 43(2) TFEU). There was no consensus in Council to extend this measure beyond 2013. The UK has not participated since the mid-1990s, and a small number of other Member States do not currently participate.

2.45 In February 2013, the European Council decided to earmark €2.5bn for the period 2014-2020 for a successor instrument, the Fund for European Aid to the Most Deprived. The new Fund does not provide additional money as it would be taken from the Structural Funds allocation. In June 2013, it was agreed that Member States should have the option of increasing their allocations under the Fund by up to a total of €1bn, so that overall up to €3.5bn may be spent on the Fund in 2014-2020. Member States would be responsible for paying 15% of the costs of their national programmes, with the remaining 85% coming from the Fund.

2.46 The new instrument was proposed under a Cohesion Policy legal base (Article 175 (3) TFEU). Under the European Commission's proposal, the purpose of the Fund is to provide food aid to the most deprived and basic consumer goods to homeless people and children. Each Member State may choose to address one or more of these. It may also support accompanying measures, complementing material support, to contribute to the social reintegration of the most deprived persons. The House of Commons and the House of Lords have both adopted "reasoned opinions" that the proposal was inconsistent with subsidiarity.

Territorial cohesion

2.47 A Green Paper[13] published by the European Commission in 2008 suggested that territorial cohesion is about ensuring the harmonious development of all places and making sure that their citizens are able to make the most of inherent features of their territories. The UK response[14] to this Green Paper set out that a "place-based" approach "can help economic development by better tailoring policies to reflect the particular characteristics and context of a place and particular people within it and help them to contribute more effectively". It also set out the UK view that Territorial Cohesion policies are primarily for Member States to develop and implement.

2.48 The development of the concept has been further elaborated through the Territorial Agenda 2020[15], agreed by EU Ministers responsible for territorial cohesion in 2011,

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[13] http://ec.europa.eu/regional_policy/archive/consultation/terco/consultation_en.htm

[14] http://ec.europa.eu/regional_policy/archive/consultation/terco/pdf/2_national/6_uk_en.pdf

[15] http://www.eu2011.hu/files/bveu/documents/TA2020.pdf

as “a set of principles for harmonious, balanced, efficient, sustainable territorial development”. The territorial dimension of other EU-level policies was recognised as a particular concern. This resulted in the European Commission bringing forward operational guidance on assessing territorial impacts through their Impact Assessment system[16].

[16] http://ec.europa.eu/governance/impact/key_docs/docs/cswd_ati_en.pdf

3. Trans-European Networks and the Connecting Europe Facility

3.1 There are a number of financing sources at EU level for infrastructure investment on top of national funding and private sector resources. In addition to Cohesion Policy (ERDF and the Cohesion Fund) described above and the European Investment Bank and the European Investment Fund, the EU Budget provides funding through Trans-European Networks (TENs).

3.2 The concept of Trans-European Networks emerged at the end of the 1980s in connection with the development of the integrated single market. Trans-European Networks are infrastructure networks in transport, energy and telecommunications. They seek to overcome the problem of insufficient infrastructure linkages between the Member States, thereby contributing to economic growth.

3.3 In its 1993 White Paper on "Growth, Competitiveness and Employment: The challenges and ways forward into the 21st century" the European Commission called for the establishment of Trans-European Networks and defined the objective of Trans-European Networks to "enable citizens, economic operators and regional and local communities to derive full benefit from the setting up of an area without internal frontiers and to link the peripheral regions with the centre".

3.4 Since 1996 the TENs policy has been taken forward through guidelines that identify which projects of common interest were eligible for EU funding. The EU provided support (on the principle of additionality) through:

- feasibility studies;
- loan guarantees;
- interest-rate subsidies; and
- in the case of transport networks, grants through the TEN-T Fund as well as support from the Cohesion Fund.

3.5 In 2011 the Commission proposed a common infrastructure funding instrument, the Connecting Europe Facility (CEF). The aim of the CEF is to streamline and facilitate EU support to infrastructures by optimising the portfolio of instruments available, standardising the operational rules for using them, and capitalising on possible synergies across the three sectors. The CEF provides a common financing framework for all sectors. The new legal framework provided by CEF will replace the previous legal bases for TENs funding and is expected to be adopted by the end of 2013.

3.6 The CEF will be managed through the TEN-T Executive Agency[17] whose scope will be widened to cover all three sectors. It is currently responsible for the technical and financial preparation and monitoring of decisions on the TEN-T projects, which are managed by the Commission.

3.7 The final budget figures for the CEF still need to be determined in the light of the outcome of the negotiations with the European Parliament on the next multi-annual financial framework, for the years 2014-2020. However, they are likely to correspond more or less to those set by the European Council in February 2013, namely an overall CEF budget of €29.299bn, with €23.174bn (including €10bn earmarked in the Cohesion Fund) allocated to the transport sector, €5.126bn to the energy sector and €1bn to the telecommunications sector.

Trans-European Network - Telecommunications (eTENS)

3.8 The existing guidelines for Trans-European Telecommunications Networks were adopted in June 1997.

3.9 In October 2011 the European Commission proposed a Regulation under Article 172 TFEU to establish a new series of guidelines covering the objectives and priorities envisaged for broadband networks and digital service infrastructures in the field of telecommunications in the context of the CEF. This intervention was considered necessary in order to deliver the Digital Agenda for Europe, as the

[17] The Agency was originally created by the Commission's Decision C(2006)5034 of 26 October 2006, in accordance with Council Regulation (EC) No. 58/2003.

Commission had concluded that currently projected levels of investment in broadband networks would not be sufficient to achieve the Agenda targets.

3.10 The Commission has originally proposed a budget of €9.2bn (approximately £8bn) for digital networks and services within the CEF. The European Council conclusions in February 2013 set the budget for what came to be referred to as 'CEF Digital' at €1bn. As a result of this reduction, the European Commission adopted an amended proposal for an eTENS Regulation on 28 May 2013 to take into account the smaller funding envelope.

3.11 The amended eTENS Regulation proposal is intended to help deliver the Digital Agenda for Europe which includes aims for universal coverage across the EU of 30 Mps broadband, and subscriptions by 50% of households to 100 Mps by 2020.

3.12 It prioritises for funding "core service platforms" to address the interoperability and security needs of projects of common interest. These are intended to enable digital interactions between public authorities, businesses, and citizens.

3.13 The proposed Regulation will use a combination of financial instruments and grants to stimulate investments by private parties and public authorities at local level for projects which would have difficulty in attracting sufficient private investment by themselves.

3.14 While the rationale for public financial support in areas where private investment is insufficient remains valid, public support will need to come primarily from other sources than the CEF, in particular from national sources, and from the ERDF and European Agricultural Fund for Rural Development.

3.15 Issues which remain for negotiation include whether to retain the proposed €150 million (within the overall funding envelope of €1 billion) for broadband infrastructure development. Although the sum concerned is relatively small, it will be justified to the extent that it can leverage private sector investment.

3.16 Retention of this sum will leave €850 million funding for services, which currently include electronic identification, electronic delivery of documents, automated translation services, critical digital infrastructure support, and electronic invoicing. Given the relatively small funding envelope, there may be a case for greater prioritisation, with only three or four priority sectors, as opposed to the five currently listed.

3.17 Negotiations with the European Parliament are continuing, and it is possible that agreement may be reached before the end of the year.

Trans-European Networks – Transport (TEN-T)

3.18 The objective of TEN-T is to promote cohesion, interconnection and interoperability of national transport networks in order to support and facilitate free movement of goods and people as well as access to transport networks across the EU.

3.19 The current guidelines[18] cover the objectives, priorities and broad lines of measures to gradually establish the Trans European Transport Network by 2020. They provide a framework to encourage Member States, and where appropriate the Union, to carry out projects of common interest to support the objectives set out above.

Map of the UK TEN-T Rail Network

Map of the UK TEN-T Road Network

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[18] Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union Guidelines for the Development of the Trans-European Transport Network (Recast)

3.20 The TEN-T programme, which is funded from the EU Budget, helps to co-finance infrastructure projects and studies for roads, railways, inland waterways, airports, ports, satellite navigation and traffic management systems on the designated network (see the maps on p. 31 above). The programme is meant to act as a stimulus for infrastructure projects, not a subsidy. The rates of co-funding vary depending on the type of project. Studies can attract up to 50%, infrastructure projects can be between10-20%.

3.21 Projects are selected through a series of open “Calls” for funding issued by the Commission usually on an annual basis. Each “Call” has a particular set of criteria and a timescale that projects must meet in order to be eligible for funding. Projects must also show that they are mature and have a full financing package in place.

3.22 The TEN-T Executive Agency manages the process on behalf of the Commission. Applications for funding are subject to evaluation by an external panel of experts. They are scored in several areas (including maturity, relevance to TEN-T Call objectives, impact of the project on the network and the quality of the project). Projects must score highly in each area to be submitted to the Commission for a decision on funding. All applications submitted are, in effect, competing against each other, with the projects that demonstrate the best fit with the criteria for the “Call” being successful.

3.23 The current TEN-T Guidelines are due to be replaced by a new Regulation[19] expected to be adopted over the winter of 2013/2014 - i.e. during the period of this Call for Evidence.

3.24 The Transport Network would be comprised of two layers (see maps overleaf):

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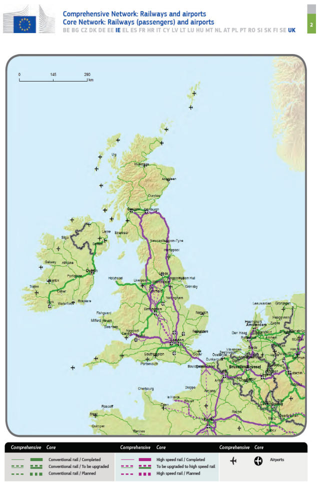
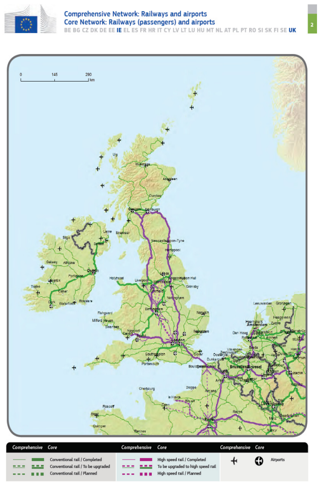
[19] Details of the proposed Regulation can be viewed at http://register.consilium.europa.eu/pdf/en/13/st10/st10060.en13.pdf



Rail Network - Passengers



Rail Network - Freight

Road Network

- **Comprehensive Network** (the thin lines, proposed by Member States) - a detailed network of road, rail, airports, ports[20] and inland waterways that ensures accessibility and connectivity to all regions in the Union including remote areas.
- **Core Network** (the thick lines, proposed by the Commission). This is a sub-set of the Comprehensive Network and comprises the more strategic routes, nodes[21] and hubs of strategic importance for transport flows within the EU and between the EU and its neighbours.

3.25 Core Network Corridors are also proposed to facilitate the implementation of the Core Network. These corridors will be multi-modal, should cross at least two borders, coordinate the development of infrastructure with a particular focus on cross-border sections and bottlenecks.

3.26 Detailed technical standards and physical infrastructure developments have been added for each transport mode (examples below) for implementation on the TEN-T Core Network by the end of 2030 and the Comprehensive Network by the end of 2050.

[20] Based on thresholds and methodology set by the Commission.

[21] Nodes include capital cities, major population areas, airports and ports with 1% of EU passenger or freight traffic.

Proposals by transport mode

Rail

- Full electrification of the TEN-T Network.
- Deployment of the European Rail Traffic Management System (ERTMS).
- Ability to accommodate 740m freight trains on Core Network freight lines

Road

- Core Network to be based on motorways and express roads and their respective standards.
- Implementing Intelligent Transport System (ITS) infrastructure.
- Safe and Secure parking for commercial users.
- Compliance with Safety Directive.
- Availability of alternative clean fuels

Airports

- Core airports identified in the TEN-T Regulation to be linked to the TEN-T rail network by 2050.
- Offer at least one terminal open to all operators in a non-discriminatory way and apply transparent, relevant and fair charges.
- Comply with the Regulations safeguarding civil aviation.
- Capacity to make available alternative clean fuels.

Ports

- Core ports identified in the TEN-T Regulation to be linked to the TEN-T rail network by 2030.
- Maritime ports serving freight traffic to offer at least one terminal open to all operators in a non-discriminatory way with transparent charges.
- Availability of alternative clean fuels

3.27 Although all the requirements in the new Regulation are regarded as projects of common interest they should be economically viable on the basis of a socio-economic costs and benefits analysis, comply with national and EU law and not prejudge the financial commitment of a Member State or the EU.

3.28 Under the new TEN-T Regulation Projects will still be able to apply for funding under the same approach outlined above. Details of the types of projects and co-funding rates will be set out in the new finance regulation Connecting Europe Facility (CEF). In relation to the TEN-T CEF also includes proposals on:

- the definition of the TEN-T Core Network Corridors (Annex, Part I);
- an indicative list of significant transport projects likely to take place during the next EU budgeting period (2014-2020) that could seek CEF funding (Annex, Part I); and

- the alignment of the Core Network Corridors and the Rail Freight Corridors by amending the Annex to Regulation 913/2010/EU22.

Trans-European Network – Energy (TEN-E)

3.29 In 2010 the Commission estimated that €1 trillion of investment in energy infrastructure and networks was needed in the ten years to 2020 to meet energy and climate change targets.

3.30 Given the scale of investments needed, the Commission proposed in October 2011 a new Trans-European Energy Infrastructure Regulation (TEN-E) to replace the existing guidelines. The existing TEN-E guidelines were deemed to be no longer fit for purpose (new projects could not be added to the list, in practice there was sufficient funding to provide only for seed-corn feasibility studies with a pot of around €22m per year and it did not address planning and permitting issues, time delays or cost allocation issues between EU Member States).

3.31 The new TEN-E Regulation[23] was adopted in April 2013 and entered into force in June 2013, except for articles 14 and 15 that shall apply as from the date of establishment of the linked CEF regulation. TEN-E sets robust criteria for a project to achieve the status of EU "project of common interest". This includes the eligibility requirement that it needs to demonstrate significant cross border benefit for two or more Member States or a Member State and European Economic Area (EEA) member.

3.32 The selection process is biannual and includes: gas and electricity transmission interconnection projects; LNG, gas storage, smart grid and electricity highways projects; development of cross- border carbon capture and storage transport infrastructure; and some limited oil connections in central eastern Europe..

3.33 Projects of common interest will benefit from streamlined cross-border planning procedures (maximum 4 years 3 months to complete the planning process) and

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[22] Regulation 913/2010/EU of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight.
[23] Regulation 347/2013/EU. This repeals Council Decision 1364/2006/EC

framework methodologies for allocating project costs between Member States and harmonised cost benefit analyses.

3.34 Projects of common interest will also be able to access financial instruments under CEF. The criteria for accessing funding, including grants, are set out in the TEN-E regulation. This includes circumstances where projects are not commercially viable, but nevertheless can demonstrate significant externalities and societal benefit for example to address security of supply or sustainability concerns or both.

3.35 Examination of the impact of TEN-E as regards energy is being considered in the context of the Energy Review which runs concurrently with this Review

4. Industry policy

EU Approach to Industry Policy

4.1 Industrial policy connects a wide range of sectors and supporting disciplines across the whole value chain.

4.2 There are approximately 500 million consumers, 220 million workers and 20 million entrepreneurs in the EU. In 2010 it was estimated in the EU one out of every four jobs in the private sector was in the manufacturing industries and at least another one out of four was in an associated service based sector (that is, as a supplier or a client) which depends on the industry. 80% of all private sector research and development is undertaken in manufacturing sectors.

4.3 However, the recent economic crisis has resulted in European industry being put under increasing pressure. Production in 2012 was estimated at 10% lower than before the crisis with over 3 million industrial-based jobs being lost.

4.4 The rise of, for example, China, Brazil, Russia and India are changing the international economy. While this could be argued to be seen as a threat to European industry in the form of increased competition, another argument is that it offers opportunities for Member States to expand their overseas markets.

4.5 Article 173(1) TFEU (see Annex on Legal basis) requires the Union and Member States to ensure that the conditions necessary for the competitiveness of the Union's industry to exist.

4.6 Article 173(3) envisages the possibility of the Union contributing to the objectives specified in Article 173 (1) (that is, competitiveness) through the policies and activities it pursues under provisions of the Treaty other than Article 173 TFEU.

4.7 Thus the EU has powers under other provisions of the Treaty which would allow it to act in the interest in specific sectors. This includes Article 3 TFEU which gives the Commission exclusive competence to "the establishing of competition rules necessary for the functioning of the internal market" and Articles 107-109 TFEU which provide the scope of aid granted by Member States which enables development and responds to market failures or structural changes. Although actions under these articles will affect industrial competitiveness they are not within the scope of this review which covers only the Industrial Policy provisions in Title XVII, Article 173TFEU[24].

4.8 Article 173(1) TFEU provides that the Union and the Member States to take actions aimed at speeding up the adjustment of industry to structural changes such as encouraging closer co-operation between individual businesses, fostering better exploitation of industrial potential from innovation, research and technological development and helping business to adjust to structural changes.

4.9 So as to pursue the objectives, Article 173(2) TFEU provides a mechanism for consultation and co-ordination of actions between Member States. The Commission may act to promote such co-ordination through issuing of guidelines, dissemination of best practice and monitoring through published indicators, etc.

4.10 In addition, Article 173(3) it gives the EU powers to adopt specific measures (through the ordinary legislative procedure and after consulting the Economic and Social Committee) in support of action taken in the Member States to achieve the aims listed in 173(1) TFEU. It however expressly excludes for any of these measures to result in any harmonisation of the laws and regulations of the Member States.

4.11 Article 173 TFEU however provides that the EU shall not take action by taking any measure which could lead to a distortion of competition, contain tax provisions or provisions affecting the rights and interests of employed people.

4.12 The Commission have used this competence to introduce initiatives and measures which encourage Member States and Industry to examine their position against other Member States and the EU as a whole against global competitors. This includes establishing task forces to explore specific issues (for example, Advance Manufacturing Technologies and working with Industry explore how better

[24] These issues are covered in the separate review on Competition and Consumer Policy.

relationships can be developed between the public and private sector (ie the workings of Public Private Partnerships).

4.13 EU Industrial Policy is separate (albeit supplementary) from the work undertaken by individual Member States. Industrial policy at an EU level is about creating the right environment for competitiveness across the Union. It does not address the industrial landscapes or economic priorities of individual Member States. It is for individual Member States to identify priority sectors and supporting areas for action and the most appropriate mechanisms for these to be addressed.

UK Industrial Strategy

4.14 Article 173 provides that Member States must also take action to ensure a competitive environment within their own borders. The UK is meeting this through the development and implementation of its national Industrial Strategy

4.15 The UK Government in partnership with industry has now published 11 sector strategies and four cross-cutting strategies[25] aims to build on the solid business environment and complement but not duplicate the work undertaken at an EU level. It is developing a long term approach in partnership with business to give confidence for investment and growth.

4.16 The Industrial Strategy is a general UK-wide strategy focusing on sectors, technologies, access to finance, skills and procurement. The sector strategies themselves set out a series of short, medium and long term priorities to deliver economic growth and competitiveness within the UK

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[25] The 11 Sector Strategies are Life Sciences, Aerospace, Nuclear, Oil and Gas, Information Economy, Construction., Automotive, International Education, Off-shore wind , Agri-tech, and Professional Business Services. The cross cutting themes are – Key Emerging Technologies, Access to Finance, Skills and Public Procurement.

More details can be found at https://www.gov.uk/government/policies/using-industrial-strategy-to-help-the-uk-economy-and-business-compete-and-grow/supporting-pages/developing-strategic-partnerships-with-industry

Annex on legal base

Cohesion policy

1. The Treaty of Rome in 1957 identified the harmonious development of economic activities as one of the main tasks of the European Communities. In its preamble the Treaty states that the Member States were “anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions”. The Treaty of Rome did not include specific articles on regional policy. The European Investment Bank was tasked in Article 130 of the Treaty of Rome to “facilitate the financing of projects for developing less-developed regions”.

2. The first of the Structural Funds to be created was the European Social Fund (ESF) which was set up in 1958. Its creation was set out under Article 3 of the EEC Treaty. The ESF’s objective was to “improve employment opportunities for workers and to contribute to the raising of their standard of living”. The first reform of the ESF, in 1971, sought to target the funding towards particular groups and categories of people. This reform was accompanied by a significant increase in the budget made available to the ESF.

3. In 1969 the Commission published a Communication on “A Regional Policy for the Community”[26]. This included the Commission’s first formal proposal for a Council decision on the organisation of community instruments for regional development. This proposal was based on Article 235 of the Treaty of Rome. This article allowed the Commission to propose legislation in areas where the Treaty of Rome did not provide specific powers to initiate legislation but which would prove necessary to attain one of the key objectives of the Community, in the course of the operation of the common market. In these cases the Council had to act unanimously on a proposal from the Commission and after consulting the Assembly (now the European Parliament) and take the appropriate measures.

[26] COM(69) 950

4. In the context of the first enlargement of the European Economic Community (EEC), it was agreed that it was necessary to address regional and structural imbalances in economic development. The Commission came forward with a further legislative proposal in July 1973 to set up the European Regional Development Fund (ERDF). This was adopted in March 1975[27]. The objective of the ERDF, as defined in the Regulation, was to "correct the principle regional imbalances within the Community resulting in particular from agricultural preponderance, industrial change, and structural under-employment". Further amendments to this Regulation and the introduction of new Regulations proceeded during the 1980s. These continued to be based on Article 235 of the Treaty of Rome.

5. The first time cohesion policy was given a specific Treaty basis was in the Single European Act of 1985. The Treaty introduced a specific title "Economic and Social Cohesion". Article 130a stated that "In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular the Community shall aim at reducing disparities between the various regions and the backwardness of the least-favoured regions". It also placed the ERDF on a Treaty basis (Article 130c – now Articles 176 and 178 TFEU). The task of the Fund was restated "to help redress the principal regional imbalances in the Community through participating in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions."

6. The Maastricht Treaty created the basis for the Cohesion Fund. The Treaty stipulated that the Cohesion Fund was to be established by 31 December 1993 with the purpose of contributing to specific projects in Member States in the area of transport infrastructure. The current provision in relation to the Cohesion Fund (Article 177 TFEU) provides that this fund "shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure". Article 4(2)(c) TFEU provides that economic, social and territorial cohesion is an area of shared competence between the Union and the Member States.

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[27] Regulation (EEC) No 724/75 of the Council of 18 March 1975 (OJ L 73, 21.03.75, p1)

7. The Lisbon Treaty introduced the concept of territorial cohesion, alongside economic and social cohesion as Title XVIII (Articles 174 to 178 TFEU). What the concept means in practice is still subject to much discussion but in essence it involves recognising the importance of territories and place in policy-making.

Overview of the Treaty framework on Structural Funds

8. Articles 174 to 178 in Title XVII TFEU provide the legal basis for the adoption by the EU of actions aimed at strengthening its economic, social and territorial cohesion ("cohesion policy"). Article 174 TFEU provides that "the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions".

9. The Structural Funds and the Cohesion Fund are the financial tools set up to support the achievement of the objectives of EU cohesion policy specified in Article 174 TFEU and consist of EU budgetary reserves set aside for the purposes of reducing regional disparities in terms of income, wealth and opportunities.

10. The Structural Funds are made up of:-

- The **European Regional Development Fund** (ERDF) (Article 176 and 178 TFEU) which provides support for the creation of infrastructure and productive job-creating investment, mainly for business;

- The **European Social Fund** (ESF) (Articles 162 to 164 TFEU), which contributes to the integration into working life of the unemployed and disadvantaged sections of the population, mainly by funding training measures;

11. Apart from funds under the Cohesion policy, there are other funds that have the potential to contribute to the regional development. These are funds under the Common Agricultural Policy (namely the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development), and the European

Maritime and Fisheries Fund[28] (see second part of paragraph 1 of Article 175 TFEU).

12. It is up to the European Parliament and the Council acting by means of legal instruments (generally directly applicable Regulations) through the ordinary legislative procedure and in consultation with the Economic and Social Committee and the Committee of the Regions, to "define the tasks, priority objectives and the organisation of the Structural Funds, which may involve the grouping of the funds" (Article 177 TFEU).

13. The cohesion policy framework is implemented through programmes which run for the duration of the EU seven-year budget circle. The next programme covers the period from 2014 to 2020.

14. The programmes are given effect through directly applicable European Regulations. For the period of 2007 to 2013, there was a package of five Regulations adopted by the Council and the European Parliament in 2006. These are now being updated so as to give effect to the cohesion policy programme for the 2007-2014. A package of six directly applicable Regulations is currently being negotiated with the aim of final texts being adopted by the end of 2013[29].

Trans-European Networks

15. The first Treaty reference to Trans-European Networks was made in the Maastricht Treaty in 1992. Article 3n of the EC Treaty stated that the Treaty should provide "encouragement for the establishment and development of Trans-European Networks" as a key part of the European Community. Under Title XII of the Maastricht Treaty (Articles 129b-d), Trans-European Networks were to be

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[28] The EAGF and the European Agricultural Fund for Rural Development (EAFRD), which finances the rural development programmes of the Member States, were set up on 1 January 2007 following Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the Common Agricultural Policy. They both replaced the European Agricultural Guidance and Guarantee Fund (EAGGF), which had been set up by Regulation No 25 of 1962 on the financing of the CAP (as amended by Regulation (EEC) No 728/70

[29] For a summary of the European Commission's proposals for 2014-2020 see: http://ec.europa.eu/regional_policy/sources/docoffic/official/regulation/pdf/2014/proposals/regulation2014_leaflet_en.pdf

established to help achieve the objectives of the single market (Article 7a, TEC) and economic and social cohesion (Article 130a, TEC) “and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting up of an area without internal frontiers, the Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.”

16. With the entry into force of the Lisbon Treaty, Trans-European networks are covered under Title XVI in Articles 170-172 TFEU. Article 170 specifies: “The Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures”.

17. The right for the EU to act in the field of infrastructure financing, and hence the basis for shared competence in this area, is set out in Article 171 which provides that the Union "may support projects of common interest supported by Member States, (…) particularly through feasibility studies, loan guarantees or interest-rate subsidies". Article 172 TFEU specifies that "the guidelines and other measures referred to in Article 171 (1) shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions." Guidelines and projects of common interest (PCI) are adopted in this area by the Council and the Parliament, acting under the ordinary legislative procedure (Article 294 TFEU), after consultation with the Committee of the Regions and the European Economic and Social Committee. Under the second paragraph of Article 172 TFEU, guidelines and projects of common interest which relate to the territory of a Member State require the approval of the Member State concerned.

Industrial policy

18. The Industrial Policy title was first added to the EC Treaty by the Treaty of Maastricht in 1992 as Title XVI in Part Three of the Treaty. Following the Treaty of Lisbon, Industrial Policy was included in Title XVII as Article 173 TFEU.

19. Although the specific Industry Policy Title was only first added in 1992, the creation of a common industrial development policy has been an objective clearly identified since the European Coal and Steel Community was created in 1951. In 1970 the

European Commission presented to the European Council an extensive Memorandum on the Communities Industrial Policy which acknowledged that “a common industrial development policy encouraging the creation of a European industrial ‘fabric’ is indispensable if three vital objectives are to be achieved: the establishment of firm foundations for the economic - and soon the political - unity of Europe, the maintenance of economic growth, and a reasonable degree of technological independence of major world powers” [30].

20. Industrial Policy can be said to consist of a horizontal ‘complementary’ policy not generally expressed in terms of legal obligations, but mostly as broad guidelines or programmes for promoting greater competitiveness[31]. For that purpose Article 173 TFEU requires the Union and the Member States to ensure that “conditions necessary for the competiveness of the Union’s industry exist”. 173(1) TFEU then provides that their actions shall be aimed at:

- Speeding up adjustments of industry to structural changes;
- Encouraging an environment favourable to initiatives and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings[32];
- Encouraging an environment favourable to so-operation between undertakings;
- Fostering better exploitation of the industrial potential of policies for innovation, research and technological development.

21. However, 173(1) TFEU provides that these aims are pursued in accordance with a system of open and competitive markets. Furthermore, this point is emphasised in

[30] COM(70) 100, page 4 of the Community’s industrial policy Commission Memorandum to the Council - Principles and general deadlines of an industrial policy for the Community.

[31] The nature of the power under Article 173TFEU is set out in Article 6 TFEU. This Article gives the Union competence to support, co-ordinate or supplement the actions of Member States in several areas, including the area of industry. However, as as provided by Article 2(5) TFEU, this category of Union competence does not supersede the Member State’s competence in this area.

[32] “Undertakings” includes any entity engages in economic activity, regardless of its legal status and the way in which it is financed. Economic activity is defined as any activity offering goods and services on a given market.

the last paragraph of Article 173(3) TFEU which expressly confirms that this Title does not provide “a basis for the introduction by the Union of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons”.

22. The tools to pursue these policies are set out in paragraphs (2) and (3) of Article 173 TFEU. Article 173 (2) provides for a mechanism for the consultation and coordination of actions between the Member States, with the Commission promoting such coordination by way of guidelines, indicators, organising exchanges of best practice, etc.

23. Article 173(4) provides that the Union shall contribute to the achievements of the objectives listed in 173(1) through the policies and activities it pursues under other provisions of the Treaty. In addition, it gives the Union powers to adopt specific measures (through the ordinary legislative procedure and after consulting the Economic and Social Committee) in support of action taken in the Member States to achieve the aims listed in 173(1) TFEU. It however expressly excludes for any of these measures to result in any harmonisation of the laws and Regulations of the Member States.

24. Examples of instruments made under Article 173 TFEU include Decision No 1639/2006/EC of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013) or more recently the Proposal for a Regulation of the European Parliament and of the Council establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014 - 2020)[33] which is expected to enter into force by the end of 2013. As required in Article 173, none of these measures are designed to replace national initiatives or other binding obligations at EU level, but to complement national measures make them work better by “giving an EU dimension to them, by better coordination and the removal of cross-border obstacles to cooperation either by private actors or public authorities. Cooperation of national and regional actors and

[33] COM/2011/0834 final - 2011/0394 (COD).

structures is encouraged by means of "horizontal" networking rather than "vertical" centralisation"[34].

[34] See section on Subsidiarity and Proportionality in page 11 of the Explanatory Memorandum in COM/2011/0834/2 – 2011/0394 (COD).

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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