

HOUSE OF LORDS

European Union Committee

12th Report of Session 2014–15

**The Review of the
Balance of
Competences
between the UK
and the EU**

Ordered to be printed 17 March 2015 and published 25 March 2015

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 140

The European Union Committee

The Committee considers matters relating to the European Union.

The Committee scrutinises EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold it to account. The Committee 'holds under scrutiny' any documents about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny. The Government must give reasons for any breach of the scrutiny reserve.

The Committee also conducts inquiries and makes reports. The Government is required to respond in writing to a report's recommendations within two months of publication. If the Committee wishes, the report is debated in the House of Lords, during which a Minister responds to the points made by the Committee and the speakers during the debate. Reports are also usually sent to the European Commission, for it to consider and respond to any relevant points and recommendations.

The Committee has six Sub-Committees:

Economic and Financial Affairs
Internal Market, Infrastructure and Employment
External Affairs
Agriculture, Fisheries, Environment and Energy
Justice, Institutions and Consumer Protection
Home Affairs, Health and Education

Membership

The Members of the European Union Committee are:

<u>Lord Boswell of Aynho</u> (Chairman)	<u>The Earl of Caithness</u>	<u>Lord Cameron of Dillington</u>
<u>Baroness Eccles of Moulton</u>	<u>Lord Foulkes of Cumnock</u>	<u>Lord Harrison</u>
<u>Baroness Henig</u>	<u>Baroness Hooper</u>	<u>Lord Kerr of Kinlochard</u>
<u>Lord MacLennan of Rogart</u>	<u>Baroness O'Cathain</u>	<u>Baroness Parminter</u>
<u>Baroness Prashar</u>	<u>Baroness Quin</u>	<u>The Earl of Sandwich</u>
<u>Baroness Scott of Needham Market</u>	<u>Lord Tomlinson</u>	<u>Lord Tugendhat</u>
<u>Lord Wilson of Tillyorn</u>		

Further information

Publications, press notices, details of membership, forthcoming meetings and other information is available at: <http://www.parliament.uk/hleu>

General information about the House of Lords and its Committees is available at: <http://www.parliament.uk/business/lords>

Select Committee staff

The current staff of the Committee are Christopher Johnson (Principal Clerk), Luke Hussey (Clerk), Paul Hardy (Legal Adviser), Alistair Dillon (Policy Analyst) and Karen Sumner (Committee Assistant).

Contact details

General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. Telephone 020 7219 5791. Email euclords@parliament.uk

Twitter

You can follow the Committee on Twitter: [@LordsEUCom](https://twitter.com/LordsEUCom).

CONTENTS

	<i>Page</i>
Chapter 1: Introduction	5
What is a competence?	5
How was the Review conducted?	6
How did the EU Committee engage with the Review?	6
Chapter 2: The conduct of the Review	8
Scale of the Review	8
Box 1: The Foreign Policy report	8
Gaps in the Review	8
Balance and political impartiality	10
Animal Health and Welfare and Food Safety	10
Fisheries	10
Single Market: Free Movement of Persons	11
Chapter 3: The cost of the Review	13
Why does cost matter?	13
Establishing the costs	13
Table 1: Summary of known expenditure (excluding staffing costs)	14
Staff costs	14
Table 2: Known minimum staff costs	15
Publicity costs	16
The total cost of the Review	16
Chapter 4: The legacy of the Review	17
An overall assessment	17
Informing the debate	18
International interest	19
List of Conclusions and Recommendations	21
Appendix 1: List of Members and Declaration of Interests	23
Appendix 2: List of Witnesses	24
Appendix 3: Reports published under the Review of the Balance of Competences	25
Appendix 4: Correspondence with the Minister for Europe	26
Appendix 5: Evidence submitted to the Subsidiarity and Proportionality report	33

Evidence is published online at www.parliament.uk/balance-of-competences-review and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

The Review of the Balance of Competences between the UK and the EU

CHAPTER 1: INTRODUCTION

1. The relationship between the European Union and the United Kingdom has been a recurrent theme in British politics in recent years. The impact of the long economic and financial crisis, the increase in support for anti-European parties, and a deepened feeling of alienation from the decision-making institutions in Brussels, have led many in Europe's Member States to re-evaluate their relationship with the EU.
2. Against this backdrop, the Coalition Agreement in May 2010 stated that the Government would “ensure that there is no further transfer of sovereignty or powers over the course of the next Parliament. We will examine the balance of the EU's existing competences and will, in particular, work to limit the application of the Working Time Directive in the United Kingdom.”¹ This commitment became the Review of the Balance of Competences between the UK and the EU (‘the Review’), announced by the then Foreign Secretary, the Rt Hon William Hague MP, on the floor of the House of Commons on 12 July 2012:

“The review will be an audit of what the EU does and how it affects us in the United Kingdom. It will look at where competence lies, how the EU's competences, whether exclusive, shared or supporting, are used and what that means for our national interest. These are issues that affect all EU member states and could have a bearing on the future shape of the EU as a whole.”²

3. The Foreign and Commonwealth Office (FCO) indicated that the Review would be an analytical and evidence-gathering exercise, which would not draw conclusions or make recommendations regarding the UK's future relationship with the EU, but would instead seek to inform public debate. The Review concluded in December 2014.

What is a competence?

4. In 2009, for the first time in an EU Treaty, the Treaty of Lisbon listed the ‘competences’ of the EU, those areas where the power to legislate had been conferred by Member States upon the EU.³ For the purposes of the Review, the Government adopted “a broader definition of competence”.⁴ The Review

¹ HM Government, *The Coalition: our programme for government* (20 May 2010) p 19: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf [accessed 11 March 2015]

² HC Deb, 12 July 2012, [col 468](#)

³ [Title I](#), Treaty on the Functioning of the European Union (TFEU)

⁴ FCO, *Review of the Balance of Competences between the United Kingdom and the European Union*, Cm 8415, July 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35431/eu-balance-of-competences-review.pdf [accessed 11 March 2015]

would encompass “all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action.”⁵

How was the Review conducted?

5. The Review was conducted over four ‘semesters’, with each containing 6–10 reports on individual competences. Before each set of reports was published, and in order to inform their content, the Government departments responsible took evidence, by issuing 12-week Calls for Evidence to relevant stakeholders and parliamentary committees. Each report addressed an aspect of the competences listed under Title I of the Treaty on the Functioning of the European Union. By the time the Review was completed in December 2014, 32 reports had been published. They are listed in Appendix 3.⁶

How did the EU Committee engage with the Review?

6. We carefully considered how to engage with the Review. Following a briefing provided by officials from the Cabinet Office and FCO in December 2013, we decided that we would not respond formally to the individual Calls for Evidence. We did ask that departments take account of our prior and future reports and correspondence with respect to each competence review, especially during their analysis of the evidence received in response to Calls for Evidence.
7. Following the publication of each set of reports, we considered:
 - (1) Whether the content of each report adhered to the neutral and factual tone promised at the outset of the Review;
 - (2) Whether each report had been successful in securing a diverse and balanced range of stakeholder input; and
 - (3) Whether each report had acknowledged relevant reports and scrutiny work by the Committee.

We then wrote to the Minister for Europe, the Rt Hon David Lidington MP, setting out our views on each set of reports (see Appendix 4).

8. Exceptionally, the Committee also submitted formal evidence to the fourth semester Call for Evidence on subsidiarity and proportionality, reflecting the direct salience of those topics to the work of the Committee. Our evidence is reproduced at Appendix 5.
9. Following completion of the Review, we saw merit in assessing it in its entirety, as for any major project. We accordingly carried out a brief inquiry. We received oral evidence from the witnesses listed in Appendix 2. We also received two pieces of written evidence. To all our witnesses we are most grateful.

⁵ *Ibid.*

⁶ All reports and evidence are available on the Government’s website: <https://www.gov.uk/review-of-the-balance-of-competences>

10. In Chapter 2, we consider the conduct of the Review, and the reports therein, in terms of their evidence bases; analysis; neutrality; and comprehensiveness. We consider the costs of the Review in Chapter 3. Finally, in Chapter 4, we consider the outcome of the Review: what should now be done with the reports in order to realise the benefits of this major piece of work.
11. **We make this report to the House for information.**

CHAPTER 2: THE CONDUCT OF THE REVIEW

Scale of the Review

12. The scale of the Review is unprecedented. Academic commentators have noted that the Government has “assembled the most comprehensive-ever assessment of the workings of the European Union”.⁷ Dr Samantha Currie, Co-Director of the Liverpool European Law Unit, University of Liverpool, stated that “it has been a very transparent, inclusive and far-reaching review.”⁸ Thirty-two reports were prepared and published to a tight timetable (with one notable exception). Almost all reports followed the same structure, addressed the questions posed by the Command Paper, and drew on a diverse evidence base.
13. Dr Thomas Horsley, Co-Director of the Liverpool European Law Unit, told us 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”.⁹ The General Council of the Bar of England and Wales agreed that “the resulting reports in themselves are good pieces of work”.¹⁰ The Foreign Policy report, outlined in Box 1, exemplifies some of the best features of the Review.

Box 1: The Foreign Policy report¹¹

The Foreign Policy report, published in July 2013, drew on evidence from a wide and representative range of academic and other expert witnesses. The frank analysis of issues affecting UK and EU foreign policy continues to be valuable, almost two years after publication. For example, the report presciently highlights evidence that “the EU should not place too much stock in ideas of a strategic partnership or of Russia converging towards EU norms”, suggesting instead that the EU should pursue “a more pragmatic form of engagement based on interests” (paragraph 3.84). This analysis has been borne out by recent events, and anticipates elements of our own report on *The EU and Russia: before and beyond the crisis in Ukraine*, published on 20 February 2015.¹²

Gaps in the Review

14. We asked our witnesses if they thought that the reports had been comprehensive in their coverage of the policy areas of the departments. Professor Dougan, of the Liverpool European Law Unit, told us: “there are a few examples of issues that were not covered, which are probably understandable”.¹³ He noted in particular that the Police and Criminal

⁷ Edited by Michael Emerson, *Britain’s Future in Europe: reform, renegotiation, repatriation or succession?*, (Brussels: Centre for European Policy Studies, 2015), executive summary.

⁸ [Q 3](#)

⁹ [Q 2](#)

¹⁰ [Q 2](#); Written evidence from the General Bar Council of England and Wales ([RBC0003](#))

¹¹ HM Government, *Review of the Balance of Competences between the United Kingdom and European Union: Foreign Policy* (July 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227437/2901086_Foreign_Policy_acc.pdf [accessed 11 March 2015]

¹² European Union Committee, *The EU and Russia: before and beyond the crisis in Ukraine*, (6th Report, Session 2014–15, HL Paper 115)

¹³ [Q 4](#)

Justice report had been “carefully delimited not to deal with the measures that were the subject of the opt-in, opt-out debate”.¹⁴ This is a reference to the Protocol (No. 36) decisions, which were finalised in December 2014, and on which we have made our views known.¹⁵ The issue is mentioned in the executive summary of the report:

“In particular, a large amount of evidence that relates to measures subject to the UK’s block opt-out under Protocol 36 to the Treaties (‘the 2014 opt-out decision’) was submitted. The 2014 opt-out decision was out of scope in the call for evidence as a result of, what were at the time, the ongoing negotiations on this matter ... Whilst that negotiation was completed on 1 December, it means this report does not address much of the pre-2009 legislative *acquis* in PCJ [the Report]. Evidence received relating to this matter has therefore not been included.”¹⁶

15. Leaving aside our own frustrations at the parliamentary handling of the Protocol (No. 36) decisions, it is evident that the Justice and Home Affairs measures which the UK has opted back into are of significance. They include the European Arrest Warrant, which has been the subject of heated and sometimes ill-informed public debate. A strong evidence-base should be at the centre of any public debate in this area.
16. Professor Dougan suggested that “an area like enhanced co-operation and flexibility more generally—flexible integration—could have been addressed more systematically”, adding that “a more horizontal look at flexibility could have been valuable”.¹⁷ We agree that including these areas would have made the Review even more comprehensive—flexible integration is a valuable asset for both the UK Government and other Member States, enabling closer, faster working in areas that the EU is slow to address. Failure to include it in the Review represents a missed opportunity.
17. The Minister for Europe suggested 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 court and the relative power that each institution is able to exercise.”¹⁸ Our own Report on the role of national parliaments in the EU bears this out, demonstrating that inter-institutional relationships (including all parliaments) are vital to the successful passage of legislation.¹⁹
18. The Bar Council argued that the reports as a whole lacked consideration of possible alternative models of competence.²⁰ However, this omission reflected the mandate established by the July 2012 Command Paper, which made it clear that the Review would “not be asked to look at alternative

¹⁴ [Q 4](#)

¹⁵ [Letter to the Home Secretary and Secretary of State for Justice](#), dated 16 December 2014

¹⁶ HM Government, *Review of the Balance of Competences between the United Kingdom and European Union: Police and Criminal Justice* (December 2014): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388645/PCJBoCreport.pdf [accessed 11 March 2015]

¹⁷ [Q 4](#)

¹⁸ [Q 10](#)

¹⁹ European Union Committee, *The Role of National Parliaments in the European Union*, (9th Report, Session 2013–14, HL Paper 151)

²⁰ Written evidence from the General Bar Council of England and Wales ([RBC0003](#))

models for Britain’s overall relationship with the EU”.²¹ Indeed, the inclusion of some consideration of alternative models in the Fisheries report prompted Dr Horsley to express concern:

“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.”²²

Balance and political impartiality

Animal Health and Welfare and Food Safety

19. When questioned about the comprehensiveness of the Review, the Minister for Europe said that it “was tough to get a consumer voice for some of the reports”.²³ He noted that “my instructions to officials were always that we needed to make every effort, where we felt that a perspective 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.”²⁴
20. The risks to which the Minister alluded are illustrated by the Animal Health and Welfare and Food Safety report,²⁵ which was weakened by the absence of academic and scientific input, as well as by having no input from consumer organisations. The result was that evidence was not consistently used in a balanced manner. In Chapter 2, for example, on the ‘Impact on the National Interest: Summary of Responses’, farmers’ concerns relating to the live animal transport regulation were set out clearly, but no attempt was made to present views on the other side of the argument.

Fisheries

21. One of the sources of evidence used to support the additional chapter in the Fisheries report, referred to above, was a 2005 Conservative Party Green Paper.²⁶ In our letter of 22 October 2014, we observed that the report placed undue reliance on the recommendations contained in the Green Paper.²⁷ While we accept the inclusion of political contributions to the Review, in this case the Green Paper was written by the Rt Hon Owen Paterson MP, the Secretary of State responsible for this report until a week before publication. It would have been appropriate to have acknowledged Mr Paterson’s authorship of the Green Paper, in order to avoid potentially compromising the objectivity of the report. This underlines the peculiarity of the decision to

²¹ *Review of the Balance of Competences between the United Kingdom and the European Union* (July 2012): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35431/eu-balance-of-competences-review.pdf [accessed 11 March 2015]

²² [Q 6](#)

²³ [Q 12](#)

²⁴ [Q 12](#)

²⁵ HM Government, *Review of the Balance of Competences between the United Kingdom and European Union: Animal Health and Welfare and Food Safety Report*, (Summer 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227367/DEF-PB13979-BalOfComp-HMG-WEB.PDF [accessed 11 March 2015]

²⁶ Conservative Party, *A Conservative Party Green Paper: Consultation on a National Policy on Fisheries Management in UK Waters* (2005): <http://www.eureferendum.com/documents/fishinggreenpaper.pdf> [accessed 11 March 2015]

²⁷ See Appendix 4

include this particular chapter in the report, given that, as we have noted, it overstepped the Review's mandate (see paragraph 18).

Single Market: Free Movement of Persons

22. The Single Market: Free Movement of Persons report²⁸ was the only report whose publication was delayed. It was announced in spring 2013, and scheduled to be published in February 2014.
23. The Minister for Europe, in a meeting with the Committee in January 2014, informed us that the Government had taken the decision:

“To take the freedom of movement report out of the batch for the second semester publication and spend some further time doing that, not least because with the removal of restrictions to the employment market for nationals of Romania and Bulgaria there is clearly not only a great deal of commentary on that but understandable public interest in understanding what happens after midnight on 31 December. We have taken the view that on that report we should take a little bit more time so that we can take account of what has happened in the first part of 2014.”²⁹
24. The report was finally published on 22 July 2014. In September 2014, we wrote to the Minister, expressing our surprise that in Chapter 3, entitled ‘Future options and challenges’, “evidence submitted by Demos and Open Europe, evidence which was closely aligned with the position of the UK Government”, was given weight over and above that of other evidence received under the Call for Evidence.³⁰ Dr Thomas Horsley told us that this was an example of “potential concern with respect to some of the use of evidence”, adding that the conclusions of Chapter 3 “are drawn through a relatively small pool of evidence”.³¹ The delay was accompanied by press coverage focusing on “whether the evidence was being manipulated in some way to point more towards a particular Home Office policy”.³² Dr Horsley added that “any impression that these reports might have been doctored by political actors undercuts some of the real value they should have.”³³
25. **The Review was an ambitious, indeed unprecedented, exercise. The production of the reports, broadly within the projected timetable, was a considerable achievement.**
26. **We believe that, for the most part, the individual reports within the Review give a fair and neutral assessment of the balance of competences between the EU and the UK.**
27. **At the same time, we are disappointed that no consideration was given to the Justice and Home Affairs measures subject to the block**

²⁸ HM Government, *Review of the Balance of Competences between the United Kingdom and European Union: Single Market: Free Movement of Persons*, (Summer 2014): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335088/SingleMarketFreeMovementPersons.pdf [accessed 11 March 2015]

²⁹ Oral evidence taken on 14 January 2014 (Session 2013–14), [Q 2](#) (the Rt Hon David Lidington MP)

³⁰ [Letter dated 22 October 2014](#), Lord Boswell of Aynho to the Rt Hon David Lidington MP

³¹ [Q 5](#)

³² [Q 7](#)

³³ [Q 7](#)

opt-out decision, particularly as evidence was received on this issue. The Review is weaker as a result.

28. **The lack of balance in the Single Market: Free Movement of Persons, Animal Health and Welfare and Food Safety and Fisheries reports, and the undue weight given to evidence reflecting the Government's own position, is a disappointing blemish on the Review as a whole.**
29. **Consideration should be given to the merits of completing the Review with a final report that could reflect upon cross-cutting areas, such as inter-institutional agreements and flexible integration.**

CHAPTER 3: THE COST OF THE REVIEW

Why does cost matter?

30. The Government has pursued a rigorous and determined policy of public expenditure restraint in this Parliament. In December 2013, it published the Financial Management Review, in which the Rt Hon Danny Alexander MP, Chief Secretary of the Treasury stated:
- “It is more important than ever that tax-payers’ money is spent efficiently and effectively and that we maximise the value secured for every pound we spend. Strong financial management across central government has been, and will continue to be, critical to achieving this. Moreover, the improved information that comes with stronger financial management will be key to delivering better public services and driving public sector reform.”³⁴
31. The Review was a major exercise, involving officials across Government departments, witnesses and stakeholder events. The published outputs—the 32 reports—were substantial. As for any project, it is therefore reasonable to ask, first, what it cost, and, second, what was its outcome. The General Bar Council of England and Wales said that it was “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.”³⁵ In this chapter we focus on the cost of the Review; in the final chapter on its outcome.

Establishing the costs

32. In order to establish the cost of the Review, on 28 January 2015 the Chairman tabled a Question for Written Answer (QWA) asking the Government what the total cost of the Review had been (broken down by staff time; printing costs; the running of engagement events; witness expenses; publicity of reports; and any and all other associated costs).
33. On 5 February, the question was answered by Baroness Anelay of St Johns:
- “There is no central record of the overall cost of the review. Each department was responsible for allocating its own resources to meet its priorities, including delivering the reports on which it led or to which it had an interest in contributing.”³⁶
34. Following this response, questions were tabled to each department involved in conducting the Review. The responses varied widely in quality, and in some cases further questions for written answer were tabled to elicit more information. In respect of staff costs most departments declined to provide a figure, for reasons discussed below.

³⁴ HM Treasury, *Review of financial management in government* (December 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266174/review_of_financial_management_in_government.pdf [accessed 11 March 2015]

³⁵ Written evidence from the General Bar Council of England and Wales ([RBC0003](#))

³⁶ Written Answer [HL 4497](#), Session 2014–15

35. The figures in Table 1 represent the minimum spend across Government in five of the six areas about which we asked.

Table 1: Summary of known expenditure (excluding staffing costs)

Item	Cost
Printing costs	£140,000
Running of engagement events	£34,000
Witness expenses	£2,000
Publicity of the reports	£0
Any and all other costs	£143,000
Total	£317,000

Staff costs

36. The issue of staff costs remains shrouded in confusion. The Written Answers revealed huge inconsistency: no two departments seem to have tracked staff costs in the same way—indeed, only six departments gave estimates of staff costs at all. In response to our specific Question for Written Answer, the FCO told us only that “providing a full breakdown of staff time and costs would exceed the disproportionate cost threshold, but the staff cost of the Review was borne entirely within existing staff budgets.”³⁷ Yet in evidence, the Minister for Europe informed us that the FCO “had a small dedicated team to co-ordinate the work, both in the FCO and across Whitehall, as we had the overall lead responsibility.”³⁸ The Minister then wrote to us with an estimate of the cost of this central team, indicating that “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.”³⁹ For a period covering 27 months, this equates to a total cost of approximately £498,375.
37. It is extraordinary that the FCO, in its role as the co-ordinating department for the Review, and despite having a dedicated team working on the Review, was not able, in response to a Question for Written Answer, to provide any estimate of the staff costs it incurred.
38. Of those departments that did provide an estimate of staff costs in response to our Questions, only the Department for the Environment, Food and Rural Affairs (Defra) provided an estimate of the aggregated cost of the time of all staff working on the project, which it put at £500,000. This was the closest any of the departments came to a credible figure.
39. The Department for Business, Innovation and Skills (BIS) and the Department for Education, on the other hand, gave the salary ranges of staff who made up the specific project teams, while declining to provide an estimate of the cost of the time devoted to the project by other existing

³⁷ Written Answer [HL 4823](#), Session 2014–15

³⁸ [Q 14](#)

³⁹ Supplementary written evidence from the FCO ([RBC0004](#))

staff.⁴⁰ This enabled us to calculate the minimum cost of staffing the Review in these departments.

40. Table 2 gives the staff costs (to three significant figures) provided by the seven departments who provided substantive answers to our written questions, or, in the case of the FCO, via correspondence.

Table 2: Known minimum staff costs

Department	Stated staffing cost
BIS	£143, 000
Department for Education	£33,000
Defra	£500,000
Department of Energy and Climate Change	£283,000
FCO	£498,000
Northern Ireland Office	<£1,000
Treasury Solicitor's Office	£7,000
Total	£1,465,000

41. Other departments either hid behind the “disproportionate cost” threshold, or asserted that the work was undertaken by staff as part of their normal duties, within existing budgets.⁴¹ The Minister for Europe said that “the value of the exercise is in the way in which it provides for better policymaking, both now and in the future”; he did “not think that is a persuasive line of argument” that “wherever something has not gone completely right in any department, that demonstrates that some other area of activity ought to be reduced.”⁴² We agree that the value of the exercise is indeed in the information it provides for better policymaking. This does not, however, absolve the Government of its responsibility to ensure that taxpayer’s money is being spent appropriately, and that major undertakings such as the Review are properly managed.
42. The argument that the cost of staff working on the Review fell within existing budgets, and is therefore unquantifiable, is indefensible. Staff time given to any project comes at a cost, which would normally be factored into any business case. More generally, staff across Whitehall are a precious resource: it seems inconceivable that, in a time of staff reductions, they could simply be assigned to a new project, within existing budgets, without any attempt either to put a cost on their time or to prioritise between core tasks. In fact, the 2014–15 session saw a significant deterioration in the Government’s handling of parliamentary scrutiny of European legislation, while our report on EU-Russia relations, published in February 2015, highlighted the reduced

⁴⁰ For obvious reasons, they do not disclose the precise salary paid to those staff, and we have therefore assumed that they were paid at the lowest point in the salary range

⁴¹ The Government apply a “disproportionate cost threshold”, currently set at £800 to written questions, and may decline to answer questions where the cost of answering would exceed this figure. [HL Deb., 20 January 2010, col. WS60.](#)

⁴² [Q 14](#)

analytical capacity of the FCO.⁴³ We do not suggest a link between these issues and the Government's commitment of staff to the Review: but we are astonished that departments appear to have been so slap-dash in managing and monitoring the costs of the Review.

Publicity costs

43. One consistent element of the responses received to our Questions for Written Answer was that no department had spent any money on publicising the reports and their findings. We would not expect departments to take out advertising, and excessive expenditure on publicity would in fact have been a cause for concern—but the Review was launched with the intention of informing and engaging the general public in a debate on the UK's relationship with the EU, so some expenditure on publicity or out-reach might have been expected.
44. When asked about the lack of spending on publicity, and the lack of media attention given to the reports, the Minister for Europe informed us that the Government “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 ... 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.”⁴⁴

The total cost of the Review

45. In the absence of helpful data from the Government, our own estimate, based in part on the aggregated figure provided by Defra (£500,000 in respect of the production of four reports) is that the real total staff cost of the Review is likely to have been at least £4 million. Once additional costs are factored in (including a literature review to inform the BIS reports, which included legal analysis costing £108,738.28 for eight reports),⁴⁵ we estimate the cost of the entire Review to have been in the region of £4.5–5 million.
46. **The Government has no clear idea of the cost of the Review to the public purse. While the Government's figure of £317,000 for non-staff costs may be credible, the figure of £1,465,000 for staff costs is not: we reject the notion, which seems to be widespread in departments, that the cost of staff involved in producing the 32 reports should be discounted. Our estimate is that the total cost of the Review is likely to have been between £4.5 million and £5 million.**
47. **We recommend that the Government provide as accurate an estimate as possible of the amount spent in conducting the Review. Acknowledgement of the scale of the investment made in the Review will provide a powerful incentive to realise its potential benefits.**

⁴³ European Union Committee, *The EU and Russia: before and beyond the crisis in Ukraine*, (6th Report, Session 2014–15, HL Paper 115)

⁴⁴ [Q 14](#)

⁴⁵ Written Answer [HL 4840](#), Session 2014–15

CHAPTER 4: THE LEGACY OF THE REVIEW

“The review will be a valuable exercise for deepening understanding in Britain of the nature of our relationship with the European Union and how it has evolved over time, and will provide a constructive and serious British contribution to the public debate across Europe about how the EU can be reformed, modernised and improved.”⁴⁶

48. So said the Rt Hon William Hague MP, Foreign Secretary, in July 2012 on the floor of the House of Commons. The investment in the Review can only be justified if it does indeed deliver the benefits Mr Hague described. The Review needs to inform policy and public debate, and it needs to be discussed with other Member States.

An overall assessment

49. The Command Paper in July 2012 repeatedly stated that “a final decision will be taken closer to the time on how best to draw together the analysis produced during the review”.⁴⁷ The natural meaning of this statement is that an attempt would definitely be made to draw together the major themes of the 32 reports, but that the precise form this would take was still to be decided.
50. The Minister for Europe, looking back on the Review, said that “we took the view at the end of the day that the 32 reports all stood on their own merits.”⁴⁸ This was a reversal of the position taken in 2012, and we remain unclear as to when the decision not to draw the analysis together was taken, and why it was not properly communicated to Parliament.
51. This change of tack caused concern among our witnesses. Professor Dougan said that the “most important issue that we [the Liverpool European Law Unit] have identified as a gap in the coverage is an overall assessment.”⁴⁹ He added “that it is very difficult to make the Review comprehensible to the broader public and politically engaged actors” without such an assessment.⁵⁰ At the same time, Professor Dougan acknowledged the risk that such an assessment could be used by policymakers “to prejudge their own preferences and policy conclusions.”⁵¹
52. On the other hand, Dr Horsley warned that “it is often not easy to simplify [the reports] and distil them into a presentable package.”⁵² The Minister for Europe made a similar point: “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.”⁵³ The Minister stated that “every report has an

⁴⁶ HC Deb, 12 July 2012, [col 468](#)

⁴⁷ *Review of the Balance of Competences between the United Kingdom and the European Union* (July 2012)

⁴⁸ [Q 11](#)

⁴⁹ [Q 4](#)

⁵⁰ [Q 4](#)

⁵¹ [Q 4](#)

⁵² [Q 8](#)

⁵³ [Q 11](#)

executive summary, and those summaries provide a more readable account than ploughing through the whole report. So those are available to people.”⁵⁴

53. We acknowledge that the executive summaries are accessible accounts of the content of each report—but the Government’s belief that 32 entirely separate, subject-specific summaries, can provide the necessary overview is wishful thinking at best. There is no reason why these executive summaries could not, at the very least, be drawn together to form the basis of an overall assessment. This could help to kick-start a genuinely informed debate on the UK’s relationship with the European Union. In contrast, the Government’s failure to provide an overall assessment, a failure compounded by the lack of any expenditure on publicising the reports, gives the appearance of burying the Review’s excellent output.
54. **We are disappointed by the Government’s failure to take effective steps to publicise either individual reports or the Review as a whole.**
55. **We are also disappointed by the Government’s decision to go back on its earlier commitment to draw together the analysis contained in the 32 reports. The value of the Review in informing public or political debate is undermined by the lack of an overarching assessment.**

Informing the debate

56. The Command Paper stated that the Review would both inform policy and the public debate surrounding the UK’s place in Europe.⁵⁵ Since then, events have of course moved on. The Prime Minister’s speeches in Bloomberg in January 2013, and in Staffordshire in November 2014,⁵⁶ changed the tone of current Government policy towards the EU before the Review was able to publish all of its reports. We are under no illusions that the political climate has made it difficult or impossible for the Government to wait until completion of the Review before making its views clear on Europe. However, it is now time, both for this Government and its successor, to take full account of the Review in making policy decisions.
57. Ministers have repeatedly informed us, and both Houses of Parliament, that the purpose of the Review is to ground the public debate on the EU on a strong evidence base. This seems an unrealistic aim, as long as the public are unaware of the Review’s existence. We have already noted the Minister for Europe’s comments on publicity: but the groups he mentions as being targeted via social media (“Commissioners, senior Commission officials, Ministers and officials in other Governments, and business organisations in other European countries”) are both well-informed already, and are not based in the UK.⁵⁷ What is missing is any attempt to inform the debate taking place in the UK media, which could involve the general public and those who are not policy professionals. The Minister expressed “hope that some of it eventually percolates through a better understanding of what some

⁵⁴ [Q 12](#)

⁵⁵ *Review of the Balance of Competences between the United Kingdom and the European Union* (July 2012)

⁵⁶ The Rt Hon David Cameron MP, EU speech at Bloomberg, 23 January 2013: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> [11 March 2015] and JCB Speech Staffordshire, 28 November 2014: <https://www.gov.uk/government/speeches/jcb-staffordshire-prime-ministers-speech> [11 March 2015]

⁵⁷ [Q 14](#)

of the balances and tensions in the European debate are about”.⁵⁸ This seems to be another example of wishful thinking, particularly if the Government makes no concerted effort to make the Review more readily accessible.

58. The Bar Council concluded that “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.”⁵⁹ We agree. A concerted effort needs to take place to engage with UK and European media in order to inform the public as well as policymakers about the Review.
59. We acknowledge the Minister for Europe’s observation that “no one is making too many plans until we know the outcome of the election”.⁶⁰ At the same time, we strongly agree with his suggestion that “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”.⁶¹

International interest

60. The Review has implications for all other Member States. No exercise as comprehensive as this has been conducted by any other Member State—the closest comparable exercise was the Dutch Government’s ‘Subsidiarity Review’, published in July 2013.⁶² This review considered the principles of subsidiarity and proportionality, and was, as Professor Dougan said, “a much more limited exercise” than the Review of the Balance of Competences.⁶³ In the context of reform in the European Union, Professor Dougan concluded that the Review meant that “if the UK wants to, it has the opportunity to show real intellectual leadership in these debates”.⁶⁴ The General Bar Council of England and Wales agreed “that the data collected is widely seen as valuable, and that it is being relied on in discussions in Brussels and beyond”.⁶⁵
61. Dr Currie drew our attention to work in Germany, and at the Centre for European Policy Studies in Brussels, which has just published a book on the Review.⁶⁶ The Minister for Europe stated:

“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

⁵⁸ [Q 18](#)

⁵⁹ Written evidence from the General Bar Council of England and Wales ([RBC0003](#))

⁶⁰ [Q 18](#)

⁶¹ [Q 18'](#)

⁶² Government of the Netherlands, ‘Testing European legislation for subsidiarity and proportionality: Dutch list of points for action’ (June 2013): <http://www.government.nl/documents-and-publications/notes/2013/06/21/testing-european-legislation-for-subsidiarity-and-proportionality-dutch-list-of-points-for-action.html> [accessed 11 March 2015]

⁶³ [Q 9](#)

⁶⁴ [Q 9](#)

⁶⁵ Written evidence from the General Bar Council of England and Wales ([RBC0003](#))

⁶⁶ [Q 8](#)

it came to an assessment of the impact on consumers of greater integration of the digital sector at EU level.”⁶⁷

This is a welcome sign that the Government is seeking to promote the work and knowledge embodied in the Review. This could be applied to all relevant dossiers under consideration in Brussels, for as long as the Review remains salient.

62. We were informed that “many of the issues that have been flagged up in the individual reports are of interest to every member state.”⁶⁸ Professor Dougan warned us that “if the UK decides that this Review does not actually have much value and will be left on the shelf ... that could do some damage to the UK’s credibility”.⁶⁹ The Minister for Europe said that “the French have told us that they are using the transport report as a point of reference in their own transport policymaking”.⁷⁰ We welcome the interest shown by other Member States and encourage the Government to continue to engage all Member States in discussion of the content of the reports. We also agree with Professor Dougan that if the Review is not used to inform public policy and discussions with other Member States, the UK’s reputation will be damaged. The Commission could make explicit use of the work, particularly in line with its current REFIT agenda. The Government should continue to share the reports with other Member States and encourage them to take advantage of the work completed under the Review.
63. **Although the reports represent a significant and worthwhile body of work, the Review as a whole is diminished by the Government’s failure to deliver its undertaking in 2012 to draw together the analysis contained in the Review.**
64. **As a result, this major project, despite the good quality of its outputs, has yet to deliver an outcome, in the form of measurable benefits. It has so far made no impact on the public debate on the UK-EU relationship.**
65. **We therefore recommend that the incoming Government produce an overall analysis of the results of the Review at the earliest opportunity.**
66. **We also recommend that, in future correspondence with parliamentary scrutiny committees, and in explanatory memoranda on EU documents, ministers should include references to the relevant sections of the Review.**
67. **Finally, we urge the Commission to make explicit use of the work, particularly in line with its current REFIT agenda. We also urge the Government to continue to share the reports with other Member States and encourage those Member States to take advantage of the work completed under the Review.**

⁶⁷ [Q 13](#)

⁶⁸ [Q 8](#)

⁶⁹ [Q 8](#)

⁷⁰ [Q 15](#)

LIST OF CONCLUSIONS AND RECOMMENDATIONS

The conduct of the Review

1. The Review was an ambitious, indeed unprecedented, exercise. The production of the reports, broadly within the projected timetable, was a considerable achievement. (Paragraph 25)
2. We believe that, for the most part, the individual reports within the Review give a fair and neutral assessment of the balance of competences between the EU and the UK. (Paragraph 26)
3. At the same time, we are disappointed that no consideration was given to the Justice and Home Affairs measures subject to the block opt-out decision, particularly as evidence was received on this issue. The Review is weaker as a result. (Paragraph 27)
4. The lack of balance in the Single Market: Free Movement of Persons, Animal Health and Welfare and Food Safety and Fisheries reports, and the undue weight given to evidence reflecting the Government's own position, is a disappointing blemish on the Review as a whole. (Paragraph 28)
5. Consideration should be given to the merits of completing the Review with a final report that could reflect upon cross-cutting areas, such as inter-institutional agreements and flexible integration. (Paragraph 29)

The costs of the Review

6. The Government has no clear idea of the cost of the Review to the public purse. While the Government's figure of £317,000 for non-staff costs may be credible, the figure of £1,465,000 for staff costs is not: we reject the notion, which seems to be widespread in departments, that the cost of staff involved in producing the 32 reports should be discounted. Our estimate is that the total cost of the Review is likely to have been between £4.5 million and £5 million. (Paragraph 46)
7. We recommend that the Government provide as accurate an estimate as possible of the amount spent in conducting the Review. Acknowledgement of the scale of the investment made in the Review will provide a powerful incentive to realise its potential benefits. (Paragraph 47)

The legacy of the Review

8. We are disappointed by the Government's failure to take effective steps to publicise either individual reports or the Review as a whole. (Paragraph 54)
9. We are also disappointed by the Government's decision to go back on its earlier commitment to draw together the analysis contained in the 32 reports. The value of the Review in informing public or political debate is undermined by the lack of an overarching assessment. (Paragraph 55)
10. Although the reports represent a significant and worthwhile body of work, the Review as a whole is diminished by the Government's failure to deliver its undertaking in 2012 to draw together the analysis contained in the Review. (Paragraph 63)

11. As a result, this major project, despite the good quality of its outputs, has yet to deliver an outcome, in the form of measurable benefits. It has so far made no impact on the public debate on the UK-EU relationship. (Paragraph 64)
12. We therefore recommend that the incoming Government produce an overall analysis of the results of the Review at the earliest opportunity. (Paragraph 65)
13. We also recommend that, in future correspondence with parliamentary scrutiny committees, and in explanatory memoranda on EU documents, ministers should include references to the relevant sections of the Review. (Paragraph 66)
14. Finally, we urge the Commission to make explicit use of the work, particularly in line with its current REFIT agenda. We also urge the Government to continue to share the reports with other Member States and encourage those Member States to take advantage of the work completed under the Review. (Paragraph 67)

APPENDIX 1: LIST OF MEMBERS AND DECLARATION OF INTERESTS

Members

Lord Boswell of Aynho (Chairman)
 The Earl of Caithness
 Lord Cameron of Dillington
 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
 The Earl of Sandwich
 Baroness Scott of Needham Market
 Lord Tomlinson
 Lord Tugendhat
 Lord Wilson of Tillyorn

Declaration of interests

Lord Kerr of Kinlochard
Chairman, Centre for European Reform
Vice-President, European Policy Centre (Brussels)
Council Member, BI and BNE

No other interests relevant to the subject-matter of the report were declared by Members of the Committee.

A full list of Members’ interests can be found in the Register of Lords Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/balance-of-competences-review and available for inspection at the Parliamentary archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order or oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

- * Dr Samantha Currie, Liverpool European Law Unit, University of Liverpool [QQ 1-9](#)
- * Professor Michael Dougan, Liverpool European Law Unit, University of Liverpool
- * Dr Thomas Horsley, Liverpool European Law Unit, University of Liverpool
- ** The Rt Hon David Lidington MP, Minister for Europe; Mr Richard Crowder, Head of the Future of Europe Department; and Mr Vijay Rangarajan, Europe Director, Foreign and Commonwealth Office [QQ 10-18](#)

Alphabetical list of all witnesses

- * Dr Samantha Currie, Liverpool European Law Unit, University of Liverpool (QQ 1-9)
- * Professor Michael Dougan, Liverpool European Law Unit, University of Liverpool (QQ 1-9)
- Foreign and Commonwealth Office [RBC0004](#)
- * The Rt Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office (QQ 10-18)
- * Mr Richard Crowder, Head of the Future of Europe Department, Foreign and Commonwealth Office (QQ 10-18)
- * Mr Vijay Rangarajan, Europe Director, Foreign and Commonwealth Office (QQ 10-18)
- General Bar Council of England and Wales [RBC0003](#)
- * Dr Thomas Horsley, Liverpool European Law Unit, University of Liverpool (QQ 1-9)

APPENDIX 3: REPORTS PUBLISHED UNDER THE REVIEW OF THE BALANCE OF COMPETENCES

First semester (autumn 2012– summer 2013)	Second semester (spring 2013– winter 2013)	Third semester (autumn 2013– summer 2014)	Fourth semester (spring 2014– autumn 2014)
Reports published on 22 July 2013	Reports published on 13 February 2014	Reports published on 22 July 2014	Reports published on 18 December 2014
Single Market (BIS) Taxation (HMT) Animal Health and Welfare and Food Safety (DEFRA) Health (DH) Development Cooperation and Humanitarian Aid (DfID) Foreign Policy (FCO)	Single Market: Free Movement of Goods (HMRC) Asylum and Non- EU Migration (HO) Trade and Investment (BIS) Environment and Climate Change (DEFRA) Transport (DfT) Research and Development (BIS) Culture, Tourism and Sport (DCMS) Civil Judicial Cooperation (MoJ) Civil Judicial Cooperation (MoJ)	Single Market: Free Movement of Persons (HO) ⁷¹ Single Market: Financial Services and the Free Movement of Capital (HMT) EU Budget (HMT) Cohesion (BIS) Social and Employment (BIS) Agriculture (DEFRA) Fisheries (DEFRA) Competition and Consumer Policy (BIS) Energy (DECC)	Economic and Monetary Policy (HMT) Police and Criminal Justice (HO/MoJ) Information Rights (MoJ) Education, vocational training and youth (DfE) Enlargement (FCO) Voting, Consular and Statistics (CO/FCO/NSO) Subsidiarity and Proportionality (FCO)

⁷¹ This report was launched under the second semester but published at the end of the third semester.

APPENDIX 4: CORRESPONDENCE WITH THE MINISTER FOR EUROPE

Letter from the Chairman to the Rt Hon David Lidington MP, Minister for Europe, 10 September 2013

Thank you for your letter of 22 July 2013 regarding the publication of the six first semester reports under the Balance of Competences Review. I was also grateful to receive your letter of 14 May regarding the publication of the nine second semester Calls for Evidence, which I note have now been received.

As you will be aware the Committee decided that we were not in a position to respond formally to each of the Review's individual Calls for Evidence. Instead, in a letter to you of 19 December 2012, we drew your attention to the numerous reports that we have published since session 2007–08 until the present, as well as scrutiny correspondence, which concern the majority of the competences which will be covered by the Review. An update to the Annex which was enclosed with that letter is attached [not printed] containing a list of the reports and enhanced scrutiny correspondence that have been published or sent since the date of that letter.

As before, we would be grateful if each department could take account of the content of all the Committee's past and future reports and scrutiny correspondence with respect to each remaining competence that is reviewed, especially during their analysis of the evidence received in response to each of their Calls for Evidence. We will also continue to take account of each semester's Calls for Evidence when considering the substance of EU proposals.

With regard to the first semester reports, which we have now had a chance to consider, we would like to make the following general observations:

We are pleased to note that the level of interest in each report and the number of submissions made by a diverse range of stakeholders to each Call for Evidence was high. We are sure that this is testament, in part, to the efforts made by each Review teams to ensure that this was the case.

We further note that the level of interest among and submissions received from other Member States, EU Institutions and other international organisations has generally been low. Nevertheless, we encourage you to continue engaging with the other Member States, in particular, regarding the progress of the Review.

We are also pleased to note that the tone and content of the first semester reports is generally in line with the Balance of Competences Review's mandate to produce balanced and evidence-based reports, which inform the public's understanding of the EU without making specific policy recommendations. We do not doubt that this is the result of the robust internal scrutiny and oversight arrangements that have been put in place at the official and ministerial level.

We also welcome the simple and succinct explanation that these reports have provided of sometimes very complex EU policy areas and believe that they

make an important contribution to the debate about the UK's continued membership of the EU.

We would also like to make the following specific comments about individual reports:

The majority of the reports appear to acknowledge and refer to relevant reports produced by the Committee for each competency although this does not appear to be the case with respect to the reports on Health, and Animal Health and Welfare and Food Safety. We hope that this will also prove to be the case, in a more consistent manner, during the production of the second semester reports.

With respect to the preparation of the Health report the seminar that was organised with interested Members of the House of Lords on 13 February 2013, chaired by Earl Howe, was a welcome initiative. The organisation of similar seminars during the preparation of the second semester reports may also provide benefits in terms of engaging with other Members of the House of Lords who have an interest and expertise in the other competence areas.

Despite the general objectivity of the reports the inherent faults in some policy areas and proposals appear to have been taken for granted with no counter-arguments being presented despite being supported by a number of stakeholders. This appears to be the case with the Taxation report, regarding the commentary on the proposed Financial Transaction Tax (FTT), as well as the Animal Health and Welfare and Food Safety report. The Government position on particular matters is also awarded prominence in the Animal Health and Welfare and Food Safety report, which appears to undermine the otherwise objective tone of its content.

Despite the generally diverse range of stakeholder contributions received for each report we note that the evidence received for the Taxation report appears to be drawn mainly from business perspectives, including professional bodies and trade associations, rather than academic and third sector organisations.

We would be grateful if these comments could be taken into account during the preparation of the second semester reports ahead of their scheduled publication at the end of this year. In the meantime we will continue to take an interest in the process of the Review as a whole, and we would be grateful if you could continue to keep us informed of its progress, particularly as the second batch of reports nears the publication stage, and before the third semester is due to commence. We will also take the opportunity of questioning you about the progress of the Review so far during your next appearance before the Committee.

Letter from the Chairman to the Rt Hon David Lidington MP, Minister for Europe, 7 May 2014

Thank you for your letter of 13 February 2014 regarding the publication of the second semester reports under the Balance of Competences Review.

We note that the Report on “Single Market: Free Movement of Persons”, for which the Home Office is responsible, still remains outstanding. In your recent letter of 28 April you attributed the delay to the complex nature of this area of EU law and practice. You assure us that the Report will be published as soon as it is complete but, in our letter of 9 April, we asked when publication is expected. We

would welcome greater clarity from you in respect of the timing of publication. Furthermore, we do not accept that there is unique complexity in this policy area compared to others and would appreciate an explanation which more clearly justifies the continued delay. You also drew our attention to the publication of the launch of the fourth and final semester Calls for Evidence. As you will be aware, the Committee decided that we were not in a position to respond formally to each of the Review's individual Calls for Evidence. Instead, in letters to you of 19 December 2012 and 10 September 2013, we drew your attention to the numerous reports that we have published since session 2007–08 until the present, as well as scrutiny correspondence, which concern the majority of the competences covered by the Review.

An update to the Annexes which were enclosed with those letters is attached containing a list of the reports and enhanced scrutiny correspondence that have been published or sent since 10 September 2013.

As before, we would be grateful if each department could take account of the content of all the Committee's past and future reports and scrutiny correspondence with respect to each remaining competence that is reviewed, especially during their analysis of the evidence received in response to each of their Calls for Evidence.

In the light of the topics that you highlight in your letter as falling within the competence of the Foreign and Commonwealth Office, we would draw particular attention to the reports that we have published on Enlargement⁷² and on the Role of National Parliaments⁷³. These relate to the Calls for Evidence on Enlargement and on Subsidiarity and Proportionality.

In our letter to you of 10 September 2013, we set out some general observations on the first semester reports. With regard to the second semester reports, which we have now had a chance to consider, we would like to make the following general observations:

We commend the structure of each Report and the clear articulation of the salient issues within complex policy areas.

We are also pleased to note that, as was the case for the first semester, the tone and content of the second semester reports are generally in line with the mandate to produce balanced and evidence-based reports, which inform the public's understanding of the EU without making specific policy recommendations.

There is a generally diverse range of stakeholder contributions received for each report, with evidence systematically collected through workshops in addition to written contributions. It is disappointing, though, that the range of evidence received across the topics continues to demonstrate a lack of significant interest beyond the UK in this exercise among public authorities, civil society, academia and the private sector. We consider that some of the topics covered in the fourth semester should in principle attract particular interest beyond the UK and we would re-iterate the need for engagement with other Member States.

⁷² European Union Committee, *The future of EU enlargement* (10th Report, Session 2012–13, HL Paper 129)

⁷³ European Union Committee, *The Role of National Parliaments in the European Union* (9th Report, Session 2013–14, HL Paper 151)

We would also like to make the following specific comments about individual reports:

There is fair acknowledgement and reference to relevant reports produced by the Committee where such reports are available. Across the topics, though, the approach remains inconsistent. The Transport report makes no reference to our work in this area, notably our 2011 report on completion of the European rail market⁷⁴. While the Environment and Climate Change report makes frequent reference to our report on EU freshwater policy⁷⁵, it does not refer to the substantial content on climate change included in our recent report on EU energy policy⁷⁶. We were surprised that our report on Research and Innovation⁷⁷ was referenced only once in the Research and Development report (paragraph 3.26) despite the relevance of our conclusions to various aspects covered in your review. There was a reference to the “UK Parliament European Scrutiny Committee” at paragraph 2.71 of the Environment and Climate Change report. This is a regrettable inaccuracy which will not, we trust, be repeated. Three of our reports are mentioned in the report on Civil Judicial Cooperation, but only in passing in the form of footnotes. This is disappointing, particularly given our detailed scrutiny of the workload of the ECJ and the relevance of our conclusions to the Government’s report. We hope that the third and fourth semester reports prove more assiduous in reflecting, accurately, any of our work that is salient to their content.

While the tone and content of the reports are generally balanced and impartial, we observed one exception. The Culture, Media and Sport report arguably gave undue prominence to the warning, by five contributors out of 52, of the need for vigilance against extension of EU competence in these areas. We assume this to be the basis for the warning at paragraph 3.35 of the report about the threat of “competence creep”.

Despite the overall success in reflecting a wide range of views, it was apparent that Small and Medium sized Enterprises were under-represented in the Research and Development review.

We would be grateful if these comments could be taken into account during the preparation of the third and fourth semester reports. In the meantime we will continue to take an interest in the process of the Review as a whole, and we would be grateful if you could continue to keep us informed of its progress, particularly as the third batch of reports nears the publication stage, and as the fourth semester progresses.

Letter from the Chairman to the Rt Hon David Lidington MP, Minister for Europe, 22 October 2014

Thank you for your letter of 22 July 2014 regarding the publication of the third semester reports under the Balance of Competences Review.

⁷⁴ European Union Committee, *Tunnel vision? Completing the European rail market* (24th Report, Session 2010–12, HL Paper 229)

⁷⁵ European Union Committee, *An Indispensable Resource: EU Freshwater Policy* (33rd Report, Session 2010–12, HL Paper 296)

⁷⁶ European Union Committee, *No Country is an Energy Island: Securing Investment for the EU’s Future* (14th Report, Session 2012–13, HL Paper 161)

⁷⁷ European Union Committee, *The Effectiveness of EU Research and Innovation Proposals* (15th Report, Session 2012–13, HL Paper 162)

In our letters to you of 10 September 2013 and 7 May 2014, we set out some observations on the first and second semester reports respectively. With regard to the third semester reports, which we have now had a chance to consider, we would like to make the following observations:

Our overall impression was that the reports offered useful background to a series of very complex policies. Specific issues to be covered by each report were, generally, clear from the outset.

As with earlier reports, we found those produced for the third semester to be largely balanced and evidence-based. We sensed a greater tendency, though, for the Government position or particular Government negotiation achievements to be highlighted. This was particularly noticeable in the reports on Energy, Budget, Agriculture, Free Movement of Persons and Competition and Consumer Policy.

In previous correspondence with you on the Review, we have expressed some frustration at the inconsistent reference to our own work. Regrettably, this inconsistency is a feature of the third semester reports. On the one hand, the Fundamental Rights report included a variety of references, including nine references to our Report “The Treaty of Lisbon: an impact assessment” (2008). On the other hand, two very obviously salient Reports were not mentioned in the respective reports: “Re-launching the Single Market” (2011) and “The Progress of the Common Fisheries Policy” (2008). Somewhat surprisingly, our 2013 inquiry into EU Energy Policy was only referenced once in the Energy report. Evidence to our inquiry on the Consumer Rights Directive (2009) was cited in the Competition and Consumer report, but the Report itself was not. In that same report, the work of the House of Commons on the Common European Sales Law was referenced, but our own substantial scrutiny was not mentioned.

Each report acknowledged a wide range of stakeholder input, reflecting for the most part the balance of the debate. References within the narrative, though, were not in all instances as balanced. In the Fisheries report, for example, undue reliance was placed on the recommendations of a 2005 Green Paper by the Conservative Party. Similarly, while the range of stakeholders who submitted evidence to the Free Movement of Persons report was impressive, there was significant reference in Chapter 3 to evidence submitted by Demos and Open Europe, evidence which was closely aligned with the position of the UK Government. This is particularly surprising in the light of your explanation to us that one reason for the severe delay in publishing the report was the need to gather a stronger, more up-to-date, evidence base. We were struck by the paucity of academic contribution to the Fisheries and Agriculture reports, including the lack of any apparent reference in the Fisheries report to the views of experts on the international law of the seas. Finally, we considered that the positions of industry were given disproportionate attention in the Energy report.

We would be grateful if these comments could be taken into account during the preparation of the fourth semester reports, the publication of which we await with interest.

Letter from the Chairman to the Rt Hon David Lidington MP, Minister for Europe, 28 January 2015

Thank you for your letter of 18 December 2014, regarding the publication of the fourth and final semester reports under the Balance of Competences Review. This was considered at the European Union Select Committee's meeting on 27 January, alongside the seven reports published in December.

In our letters to you of 10 September 2013, 7 May 2014 and 22 October 2014, we set out observations on the first, second and third semester reports respectively. With regard to the fourth semester reports, which we have now had a chance to consider, our overall impression was that the reports offered useful background to a series of very complex policies. Specific issues to be covered by each report were, generally, clear from the outset. The EU enlargement report was drawn from, and reflected, a diverse evidence base, as did the Information Rights report. Similarly, the Subsidiarity and Proportionality Report covered the issues in a balanced and measured way.

On the other hand, we found that some of the reports produced for the fourth semester were much less balanced; in particular, we are concerned at the range of the evidence-base used. The Police and Criminal Justice report in particular presented little evidence that might contradict the Government's policy position. Given that we have published several reports on the issues covered, we are fully aware of the range of evidence that exists on these issues, which ought to have been referenced to produce a credible analysis. In particular, we note that there also a clear lack of evidence taken from academics in this report. The same can be said for the Voting, Consular and Statistics Report.

We also sensed a greater tendency for the Government position or particular Government negotiation achievements to be highlighted. This was particularly noticeable in the report on Police and Criminal Justice, where almost no evidence was included in the analysis to counterbalance the defence of the Governments 'case-by-case' approach to opt-ins. We were surprised, for instance, to see that there was no reference to our reports on the opt-in decisions in respect of the draft Eurojust and CEPOL regulations. It was also a surprise to us that you cited evidence submitted to our inquiry into *EU police and criminal justice measures: The UK's 2014 opt-out decision*, but made no reference to the report itself, published in April 2013, or to our follow-up report, published in October 2013.

Regrettably, this inconsistency in the referencing of our work is a feature of many of the fourth semester reports. In the Economic and Monetary policy report, use of our reports is uneven, with almost no reference to the reports published on the Euro Area Crisis (2012, 2014), Banking Union (2012), or Genuine Economic and Monetary Union (2014). In the Information Rights report, you make no reference to our report *EU Data Protection law: a 'right to be forgotten'?*, which was published on 30 July 2014. In contrast, we note that the Enlargement report includes a significant variety of references, including 27 references to our report on *The Future of EU enlargement* (2013).

As you will be aware, we took the unusual step of submitting evidence in response to the Subsidiarity and Proportionality review's Call for Evidence. This reflected the specific parliamentary role under the Treaties in respect of subsidiarity. It is therefore disappointing that, while the report as a whole is balanced in tone, the Government appears to have taken no notice of the Committee's evidence. In particular, we commented on the role of the Council, and it is disappointing that

the report failed to engage in any critical assessment of this issue, and consequently lacks any useful conclusions on the point.

We will be producing a short report looking at the Review of the Balance of Competences, to be published before the dissolution of Parliament, and we look forward to discussing the Review, along with forthcoming Council meetings, when we meet you on 10 March.

APPENDIX 5: EVIDENCE SUBMITTED TO THE SUBSIDIARITY AND PROPORTIONALITY REPORT

1. The Government's Call for Evidence addresses the principles of subsidiarity, proportionality and Article 352 TFEU, the flexibility clause.
2. This submission is limited to two aspects of the principle of subsidiarity.
3. This Committee's recent report, *The Role of National Parliaments in the European Union*,⁷⁸ is directly relevant to other aspects covered in the Call, such as changes to the Reasoned Opinion procedure and inter-parliamentary co-operation on subsidiarity. We trust the evidence received in the course of that inquiry, and the conclusions drawn, will be taken into account by the Government as part of its review of the evidence received for this Call. We do not repeat those conclusions here.

Assessment of compliance with subsidiarity in Government Explanatory Memorandums

4. Within ten days⁷⁹ of the deposit of an EU document in Parliament the Minister with lead responsibility for the document is obliged to deposit an Explanatory Memorandum (EM), setting out the Government's policy on the document. The EM is essential to how well Parliament scrutinises Government policy on the EU. Where subsidiarity is a relevant consideration, each EM should contain an assessment of a proposal's compliance with it.
5. In the Committee's experience the quality of subsidiarity assessments in government EMs fluctuates markedly, and is at times unacceptably low. The Committee has criticised this on several occasions, yet the quality continues to fluctuate. (Experience to date also shows that EMs are often deposited late; this is considered in the above-mentioned report). We provide the following examples of poor subsidiarity assessments.

Example 1

6. In the Government's EM on the proposed Regulation on a Financial Transaction Tax,⁸⁰ which was two weeks overdue, the subsidiarity assessment was limited to the following statement:
7. "The Government has concerns that introducing a financial transactions tax through enhanced cooperation does not meet the conditions of subsidiarity."
8. The Committee replied as follows:
9. "We regret that we have to complain once again about failures in the scrutiny process in relation to this important proposal. The Commission proposal was published on 14 February and an EM was due on 4 March 2013. Yet it was not received until 19 March, over two weeks late. This meant that we were not able to take it into account in our evidence session on 19 March, and, given the paucity of information you provide in relation to your concerns on

⁷⁸ European Union Committee, *The Role of National Parliaments in the European Union* (9th Report, Session 2013–14, HL Paper 151)

⁷⁹ However, a shorter deadline of eight working days is attached to those EMs on JHA proposals which are subject to the UK's opt-in decision.

⁸⁰ HM Treasury, Explanatory Memorandum 6442/13 (19 March 2013): <http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/03/6442-131.pdf> [accessed 11 March 2015]

subsidiarity, means that it will not be possible for us to give due consideration to the use of the Reasoned Opinion procedure before the deadline of 16 April.”⁸¹

Example 2

10. In the Government’s EM on the proposed Regulation on Indices used as Benchmarks in Financial Instruments and Financial Contracts,⁸² the subsidiarity assessment was limited to the following statement:

“The Government is concerned that this proposal and its scope may raise subsidiarity issues.”

11. Under the heading of “policy implications”, the Government raised contradictory concerns which appeared to relate to subsidiarity, prompting the following reply from the Committee:

“We note that you raise concerns relating to subsidiarity. On the one hand you state that action in relation to benchmarks can be more effectively taken at national level but on the other you state that benchmark reform is an international issue given the use of many benchmarks across borders. Can you clarify at what level you think it is best to legislate in relation to benchmarks? Does it depend on the type of benchmark, for instance if it were to operate across borders? If so, we would welcome more detail on which types of benchmarks you believe should be dealt with at national level and which are best dealt with at international level.”⁸³

Example 3

12. The Government’s EMs in January of this year on the package of Commission proposals on procedural safeguards in criminal proceedings were both deposited late and lacked sufficient subsidiarity assessments. This meant the Committee was unable to complete its own subsidiarity assessment, and prompted a request for the Secretary of State for Justice to give evidence to explain his Department’s conduct:⁸⁴

“I regret that the Sub-Committee was unable to make progress in its scrutiny of these documents because of inadequacies in the EMs. In view of the very tight timetable by which the Committee is bound, in order to consider the questions of compliance of the Commission’s proposals with the principle of subsidiarity and whether to recommend that the UK opt in to any of the proposals, I have asked my officials to contact yours seeking the appearance of a Minister from your Department at the next meeting of the Sub-Committee, on 22 January, to give evidence to assist the Sub-Committee’s deliberations.

13. “Among the matters which the Sub-Committee will wish to discuss are the following:

The EMs which you submitted did not comply with the timetable of ten working days for submission of EMs following deposit of the documents;

⁸¹ [Letter dated 26 March 2013](#), from the Chairman to the Rt Hon Greg Clark MP.

⁸² HM Treasury, Explanatory Memorandum 13985/13, (14 October 2013): <http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/03/13985-131.pdf> [accessed 11 March 2015]

⁸³ [Letter dated 29 October 2013](#), from the Chairman to Sajid Javid MP.

⁸⁴ [Letter dated 16 January 2014](#), from the Chairman to the Rt Hon Chris Grayling MP.

Although the Communication forms part of this package of measures and present a summary of the proposals, no signed EM covering it has been submitted at the time of writing;

None of the EMs covering the proposals gave information as to the Government's approach to the proposals, or of the Government's view on the compliance or otherwise of the proposals with the principle of subsidiarity; and

None of the EMs set out any view on the factors which you would take into account in deciding whether or not to opt in to the proposals.

“We regard these failings as unacceptable and tending to show a disregard for the process of Parliamentary scrutiny.”

14. There are, of course, examples of good government practice, where the subsidiarity assessment in the EM has helped the Committee formulate an opinion on compliance with subsidiarity within the eight-week timeframe. The Government's EM on the draft Directive on the supervision of occupational retirement schemes is a recent example.⁸⁵ But this does not detract from the Committee's principal concern: that the standard fluctuates too much.
15. A good subsidiarity assessment in the Government's EM is crucial to this Committee's role in monitoring EU proposals for compliance with subsidiarity. This is because the Government is often better placed and resourced to assess whether a legislative measure is more appropriately dealt with at national level and to assess domestic impact—better placed because it has national and international oversight of the policy area in question; better resourced because a larger number of officials will be working on the policy area in question. The Committee, in contrast, has a much smaller staff and is faced by a demanding eight-week deadline. Thus whilst the Committee forms its own opinion on compliance with subsidiarity, which can often differ from the Government's, the Government's assessment is a vital first point of reference.
16. We recommend that the Government considers as a priority how to ensure greater consistency across Whitehall in the quality of the subsidiarity assessments in EMs deposited in Parliament. We suggest a central team of officials with sufficient expertise in each Department, rather than the team leading the policy, should have ultimate responsibility for assuring the quality of subsidiarity assessments in that Department's EMs.

The soft power of a Reasoned Opinion in the Council

17. The Committee is currently unable to assess the informal impact, if any, in the Council of a Reasoned Opinion issued by the House. It is not known, for example, to what extent the Government relies on a Reasoned Opinion issued by the House to support its position in negotiations, nor to what extent it may it share it with other Member States to garner support.
18. Given the amount of Parliamentary time vested in agreeing to issue a Reasoned Opinion, the Committee is keen to know whether the Reasoned

⁸⁵ HM Treasury, Explanatory Memorandum 8633/12 (30 April 2014): <http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/05/8633-141.pdf> [accessed 11 March 2015]

Opinion procedure should be seen as being limited to the question of thresholds alone, or whether it can influence the negotiation positions of Member States in the Council.

19. The ‘soft power’ of a Reasoned Opinion is arguably as important as the consequences of the yellow card being met, given the high thresholds required for the latter. Indeed, even where the threshold has been met but the proposal not withdrawn, as was the case with the proposal for a European Public Prosecutor’s Office, it would be helpful to know the extent to which the Reasoned Opinions issued by national parliaments influenced the Council’s negotiations, and ultimately the decision of the Greek Presidency to table an alternative text.
20. We therefore recommend that the Government should report back to the Committee on the impact, if any, in the Council of a Reasoned Opinion issued by the House.
21. The Committee’s Report on The Role of National Parliaments applied a similar logic to national parliaments’ input to Commission policy-making, concluding in several instances that the Commission “should make clear when and how national parliaments have influenced the development of policies”.⁸⁶ The Report does not, however, address the impact of Reasoned Opinions in the Council.

⁸⁶ Paragraph 40; see also paragraphs 35 and 48.