

Implications for National Policy

‘Competence’

The first key question you need to ask is whether or not there is EU competence in this policy area. This is the jargon phrase for whether or not the EU already has a role/responsibility in a particular area, and if so how much of one. Some areas are of *exclusive competence* for the EU – the EU is the only body with the right to develop policy in this area and the Commission speaks for the EU. The best examples here are agriculture and international trade. One good (but alas not definitive) clue is if people talk about a ‘Common XXX Policy’. Other areas of policy are of *mixed competence* for the EU – it has a significant role, but so do the Member States and they can speak for themselves in international discussions. Good examples include environmental policy and development aid. The third category, logically, is that of *national competence*, where the EU has no significant role (often being limited to information exchange, exhortation, and so on). Examples here are military matters, healthcare provision and education. It is also true to say that there is a tendency over time for the EU to try to extend its competence – to transform mixed competence into exclusive and national competence into mixed.

In attempting to answer the competence question, you must remember that even in the areas of pure national competence there can be overspill. Just because you are commissioning a brand new hospital (healthcare provision), it doesn’t mean you can ignore EU rules on public procurement or state aids! If there is exclusive EU competence, then the probable implication is that you cannot do anything at a national level that has a legal effect, and even some exhortation or tax/spend options may not be feasible. Your main option in this instance is to try to persuade the EU to act as you would like, which has its own problems and risks.

If there is mixed competence then you will probably need more expert advice as to whether there is a conflict or not, usually from your lawyers. If there is no conflict, or only national competence, and there is no overspill, then off you go! However, you may wish to consider checking with the Commission to ensure it also agrees there is no problem (it’ll probably find out about the policy sooner or later – many Commission officials regularly listen to the *Today* programme and read the *Financial Times* – so best to make sure there won’t be problems down the line). You may also want to keep the Commission and/or other Member States informed of what you are doing, especially if you might be able to learn something from their experience or if you might at some stage want to export your ideas to the European level.

Other typical EU issues that may arise with implications for national policy are:

- **Transposition/Gold plating** This issue considered in the Policy Process chapter of this book.
- **State aids** (subsidies) – giving support in cash or kind to someone in a way or for purposes that run counter to the rules on state aids;

- **Public procurement** (purchasing goods and services by the state, broadly defined) – there are some strict rules requiring companies from other Member States to find out about and tender for significant public procurement on an equal basis;
- **Free movement of goods, services, labour and capital** – there is a general prohibition on establishing legal or practical barriers to these ‘four freedoms’ without good reason, such as public security, or protection of the environment. In some areas, failure to notify such barriers to the Commission can result in them being invalid and unenforceable in the courts. (This follows a case in the Netherlands where failure to notify technical standards for supply of breathalysers resulted in all who had been convicted of drink driving on the basis of tests by those breathalysers having their convictions quashed...!)
- **Environmental impact** – there are rules on carrying out environmental impact assessments on a range of projects;
- **Competition law** – deliberately or accidentally putting up barriers to competition.