



HM Government

Review of the Balance of Competences between the United Kingdom and the European Union Transport

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Transport

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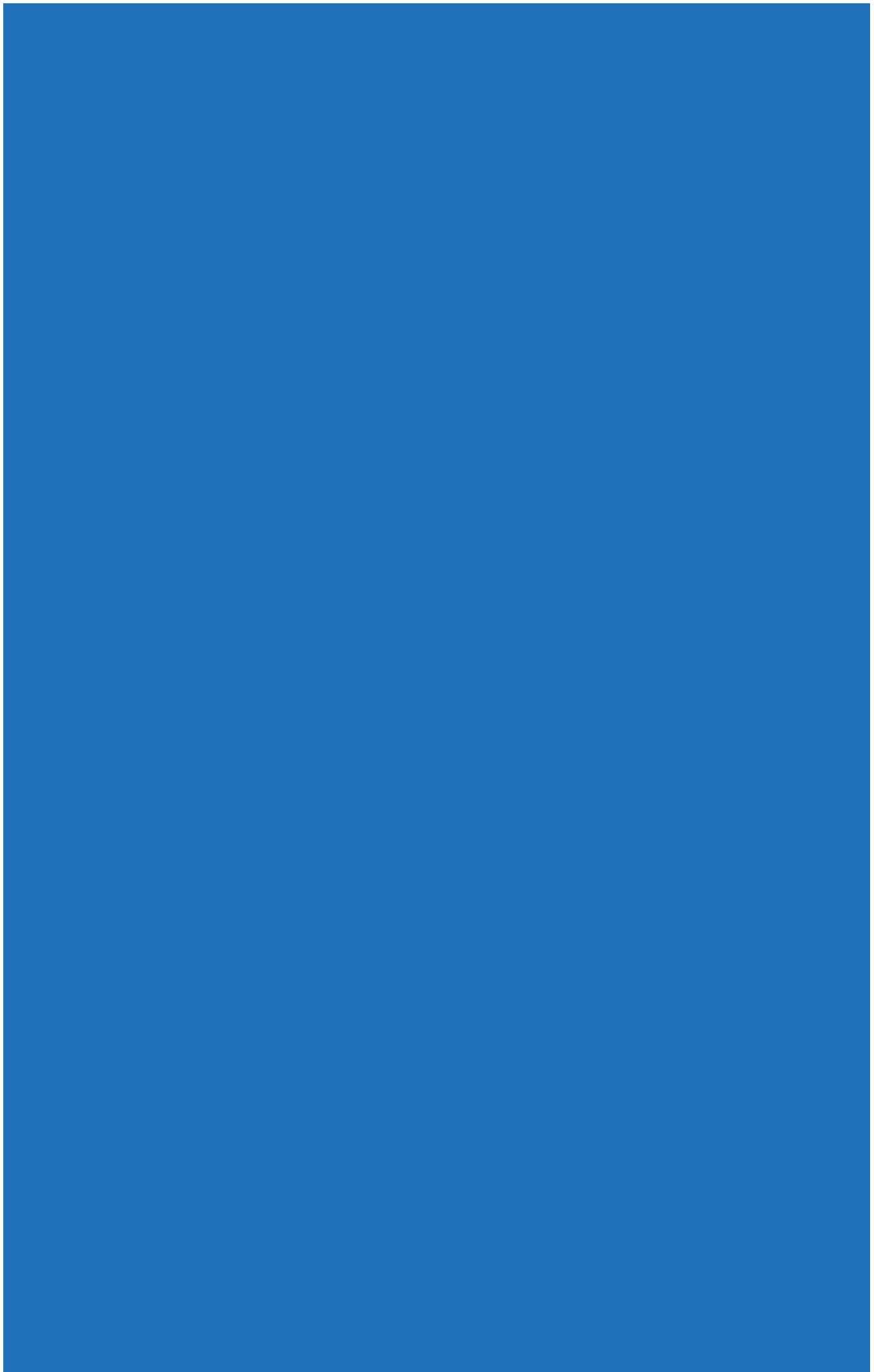
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Executive Summary

This report examines the balance of competences between the European Union and the United Kingdom in the area of transport, and is led by the Department for Transport (DfT). It is a reflection and analysis of the evidence submitted by experts, non-governmental organisations, businesspeople, Members of Parliament and other interested parties, either in writing or orally, as well as a literature review of relevant material. Where appropriate, the report sets out the current position agreed within the Coalition Government for handling this policy area in the EU. It does not predetermine or prejudge proposals that either Coalition party may make in the future for changes to the EU or about the appropriate balance of competences.

For the purposes of this review, the report uses a broad definition of competence. Competence in the transport context is about everything deriving from EU law that affects what happens to transport in the UK.

Chapter One sets out the historical development of the Common Transport Policy (CTP) first established in the Treaty of Rome, alongside the development of the Single Market. It outlines the EU laws implementing this policy and sets out the impact on transport of the current balance of competences.

It reflects the fact that the UK has generally been a leading advocate for the development of a single market in transport services, for example in liberalising air and rail services.

Chapter Two considers the evidence received from stakeholders relating to how the competence exercised by the EU has impacted on the development of transport policy and the UK's national interest. It considers this cross-modally under the following headings:

- The single market for transport services;
- Enforcement and implementation;
- EU representation in international organisations; and
- Common standards for –
 - i) Operating and technical product standards;
 - ii) Consumer, social and environmental standards.

The main messages from the evidence sent in by stakeholders were general support for liberalised free trade in the EU, and a desire for this to go further – for example in aviation, where the EU has made slow progress in its aspiration for a Single European Sky to improve the use of European airspace – and frustration where this aspiration has been held back by ineffective

implementation or lack of enforcement of existing regulation. While stakeholders recognised the value of common operating and technical product standards, for example in manufacturing and rail interoperability, and that these would not exist across the EU without EU action, there was some concern at the perceived use of common standards in other fields, such as safety or social policy, to claw back market freedoms and allow the potential imposition of national barriers, possibly in a protectionist way.

The role of the European Parliament, which some felt had a particular tendency towards consumers, was noted, as was the pressure to compromise between the positions of the EU institutions and the 28 Member States in order to get legislation agreed.

There was a broad welcome for EU-level action internationally where that can open world markets. But there was also frustration, particularly in maritime transport, over EU initiatives to legislate in areas where, in their view, regulation at United Nations agency level would be preferable because of the need for global standards to ensure a level playing field across the world.

While stakeholders supported EU action where transport crosses between Member States, there was a feeling that in some cases EU action fails to take account of the distinct circumstances of Member States with peripheral geographic locations, such as the UK. It imposes the same cross-border rules on local and domestic transport which operates solely within the UK and so does not affect the Single Market. While the concept of the single market in transport services is generally strongly supported, so too are the principles of subsidiarity and proportionality.

Chapter Three considers the future options and challenges that stakeholders have identified, and looks at the evidence under two broad headings:

- (i) Improving the Single Market; and
- (ii) Better regulation.

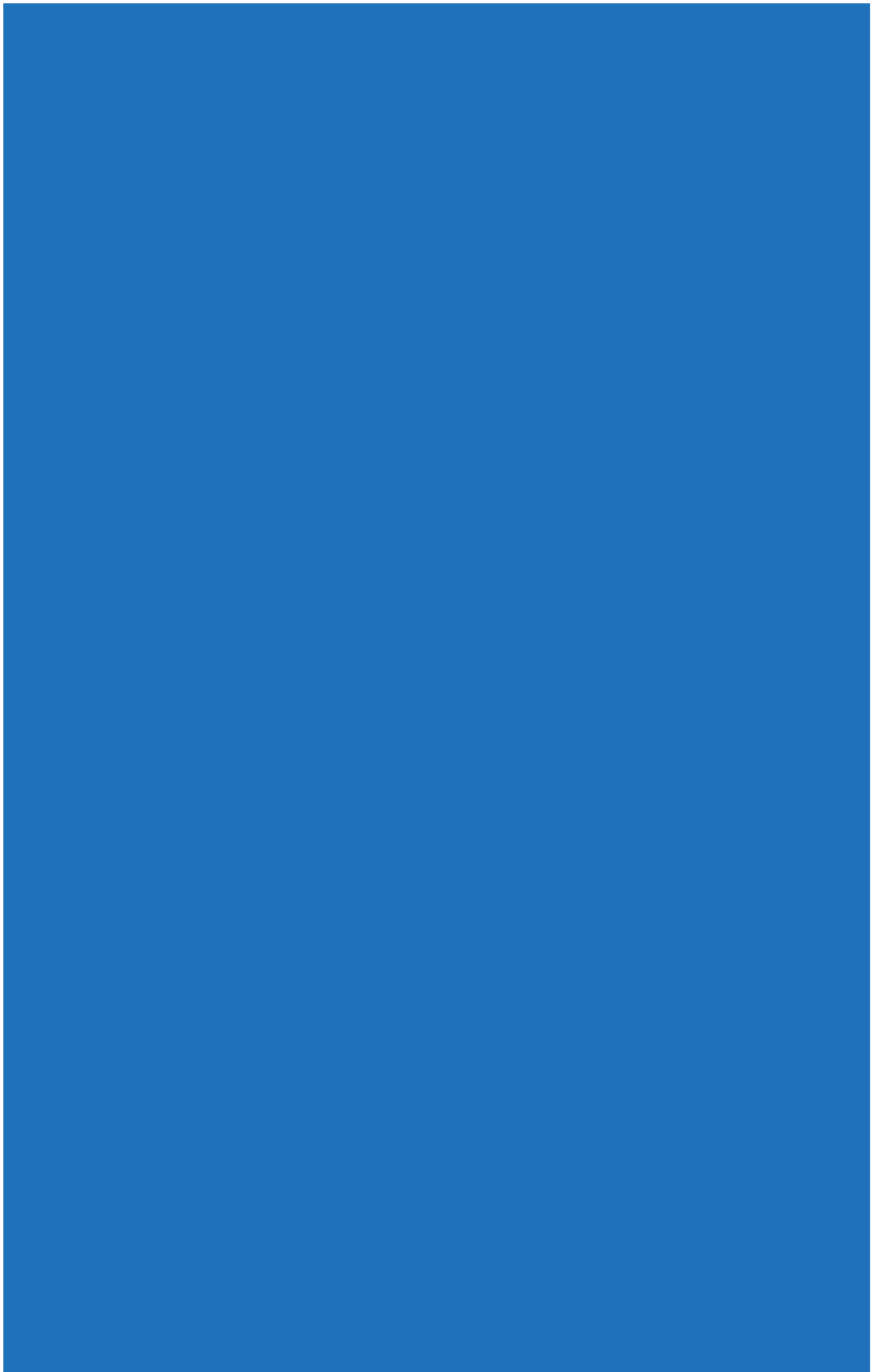
Under the first, stakeholders broadly wanted the EU to focus on implementing the existing laws which underpin the Single Market. A specific example was rail where there was concern at the failure of some Member States to reciprocate in opening their domestic rail markets. There were also specific suggestions, for example, in relation to car and van rental for EU action to broaden the single market in transport services.

Under the second, there was a general message from stakeholders that the European Commission should recognise the maturity of the EU as an organisation, focusing less on making proposals for new legislation and concentrating more on enforcement of existing legislation. For example, maritime stakeholders opposed current proposals for new port services legislation but would welcome more effective application of existing State aid rules. Nearly all stakeholders felt that before making proposals for legislation, the Commission should undertake more openly evidenced impact assessments setting out clearly the potential costs and benefits.

The EU was urged to legislate with a less heavy hand, or not at all, when it comes to non-intra-European issues and to allow greater scope for national handling of purely domestic issues. Stakeholders referred to the need for the EU to respect the principles of subsidiarity and proportionality. And some – particularly those representing recreational aviation and motorcycle training interests – suggested delegating responsibilities back to a national level where they felt that recent EU action had harmed essentially local interests with no significant Single Market dimension.

In summary, the evidence received from transport stakeholders generally reflects a broad consensus that the single market in transport services is at the core of the EU's transport policy, that it has driven growth and prosperity in the UK and in other Member States, and that it should continue to do so.

However, the evidence suggested that much further liberalisation is possible and that barriers, both formal and informal, remain. There was a general view among stakeholders that the way to achieve further liberalisation was, in many cases, through more effective implementation and enforcement of existing legislation rather than through continually seeking new legislation.



Introduction

This report is one of 32 reports being produced as part of the Balance of Competences Review. The Foreign Secretary launched the Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. It provides an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and to 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. It has not been tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between 2012 and 2014.

Other issues linked to transport will be covered in other balance of competences reports such as Single Market: Free Movement of Goods (semester 2), which will consider intra-EU trade in goods within the Single Market as well as the way in which trade is regulated, including through standardisation. Customs security and the impact this has on the transport industry will also be covered in this report. Foreign Policy (semester 1) includes consideration of external representation in international organisations, such as UN Agencies. Environment and Climate Change (semester 2) will look at environmental standards. Cohesion (semester 3) will consider Trans-European Networks, including the Trans-European Network for Transport (TEN-T). Social and Employment (semester 3) will assess the impact of the Working Time Directive and other related employment issues, while Competition and Consumer Policy (semester 3) will consider State aid. The report on Police and Criminal Justice (semester 4) will encompass transport security issues. Border issues relating to the UK's absence from the border and visa elements of the Schengen zone are dealt with in the semester 2 report on Asylum and Immigration.

More information can be found on the review, including a complete list and timetable of semesters and reports to be published, at www.gov.uk/review-of-the-balance-of-competences.

Engagement with Interested Parties

The analysis in this report is based on 111 pieces of evidence received in response to a Call for Evidence by the Department for Transport from 14 May 2013 to 6 August 2013. It also draws on notes of workshops and discussions held during the Call for Evidence period and existing material, such as a Transport Select Committee report and the recent Red Tape Challenge and the Prime Minister's Business Taskforce report. It also takes account of evidence submitted to other semester 2 Calls for Evidence where transport related issues were raised.

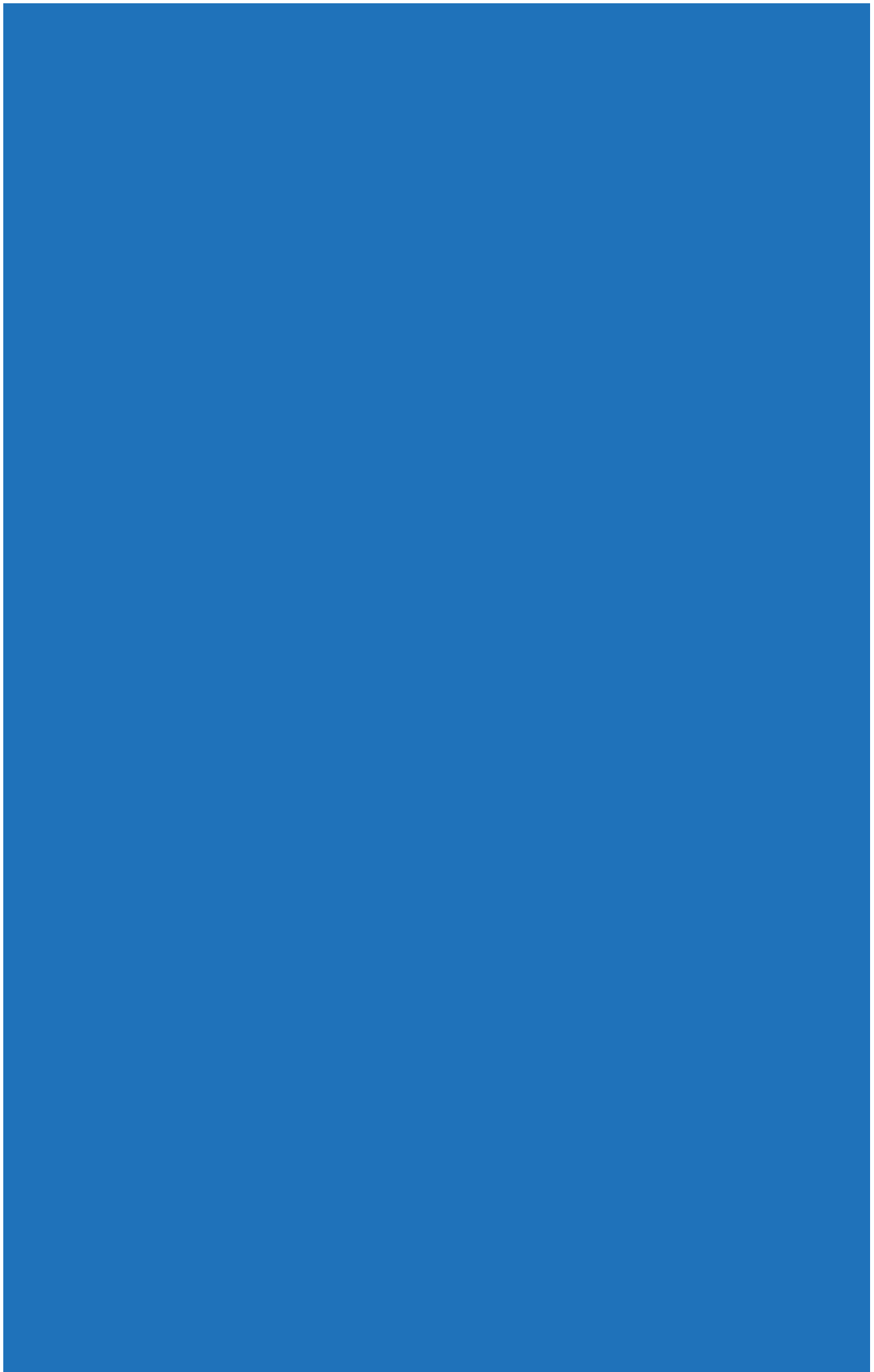
The DfT Call for Evidence was distributed widely in the UK and to other EU Member States and non-EU third countries. Organisations and individuals with an interest in transport were encouraged to respond. They consisted of trade bodies or groups representing other interested parties, such as civil society organisations. A significant number of individual businesses were included. Governments in Scotland, Wales and Northern Ireland, MEPs, Parliamentary Committees, and government agencies were also invited to contribute.

A programme of direct engagement was also undertaken. Six workshops were held, five in London and one in Brussels, to collect evidence. Social media were used to raise awareness of the Call for Evidence with messages on YouTube and Twitter.

A list of those who submitted evidence can be found in Annex A, with details of those who participated in the various workshops in Annex B.

The evidence itself can be found in the published responses to the consultation, at this address:

<https://www.gov.uk/government/consultations/eu-balance-of-competences-review-transport-call-for-evidence>.



Chapter 1:

The Development and Current State of Competence

- 1.1 This Chapter begins with a brief description of the development of EU competence to make rules in the area of transport. It draws on EU legislation to consider the existing scope of EU powers in this field.¹
- 1.2 The EU has wide competence in matters relating to transport and normally tends to act when there is a trans-national element involved. The text boxes which follow set out the definition of competence and explain the EU legislative process. As EU action has typically been taken on a modal basis, this chapter considers the development and the current state of competence separately for each mode.
- 1.3 The creation of a single market in transport services was considered vital to fulfilling the four freedoms of goods, services, people and capital. Although a Common Transport Policy (CTP), of which a single market in transport services was a central element, was enshrined as one of the first Community policies in the 1957 Treaty of Rome, progress was slow because Member States were unwilling to give up national control over transport. It was therefore not until the European Parliament successfully took the Council of Ministers to the European Court of Justice (ECJ) in 1983 for failing to implement its treaty obligations that the EU started progressively to exercise its competence to take action in this field.
- 1.4 The UK has been a leading advocate for the development of the single market in transport across all modes, and in the 1980s and 1990s led efforts to break down national barriers within the EU to the provision of transport services across borders and within other countries, to the benefit of UK businesses and consumers. Air services were liberalised as part of the creation of the single aviation market in 1992 and the Civil Aviation Authority (CAA), the UK's aviation regulator, noted that:

The UK was influential in the negotiations, playing a key role in helping to influence the thrust of the Commission's proposals and the shape of the outcome.²

And that:

The UK has usually found itself aligned with the Commission in promoting a liberal market-based aviation sector with high technical standards, making efficient use of available capacity.³

¹ A table containing key EU transport legislation is given in the legal annex to the Call for Evidence which can be found online alongside this report.

² CAA, *submission of evidence*.

³ *Idem*.

- 1.5 This leading UK role in liberalisation was seen in maritime too. The UK Chamber of Shipping, the trade association for the shipping industry, noted that:

The UK has for many years had a liberal approach in terms of market access for shipping services and this principle was clearly enshrined in the first sequence of shipping regulations [from 1986] which was adopted under a British presidency and effectively the beginning of the EU's shipping policy.⁴

- 1.6 In rail, UK domestic policy was often seen as one of the models for EU proposals given the experience of the market reforms and liberalisation introduced in the UK almost twenty years ago. The Office of Rail Regulation (ORR), the rail economic and safety regulator said:

The UK was one of the first member states to reform and liberalise its institutional framework for rail. As a result, UK domestic regulatory policy has often served as the starting point for EU proposals.⁵

- 1.7 The Treaty on the Functioning of the European Union (TFEU), while focusing on developing the Single Market, also emphasises the importance of other goals including environmental protection and improvements in safety. Under the transport Chapter of the TFEU the EU has wide competence to legislate in respect of certain themes which appear across all modes, notably safety, consumer protection, and common technical standards.

⁴ UK Chamber of Shipping, *submission of evidence*.

⁵ ORR, *submission of evidence*.

Treaty on the European Union (TEU) and Treaty on the Functioning of the European Union (TFEU)

EU competences are defined in the EU Treaties which have evolved since the Treaty of Rome established the European Economic Community in 1957. A number of amending treaties have subsequently extended the scope of EU objectives beyond the economic sphere as well as changing the EU's institutional structure. Currently, the TEU and the TFEU are the two main Treaties which together set out the competences of the EU.

Title I TFEU sets out the categories and areas of EU competence. Article 4(2)(g) expressly states that competence for transport is shared, meaning that both the EU and its Member States may adopt legally binding acts. However, once the EU has done so in a particular area, this may then limit the Member State's ability to act.

Title VI TFEU, Article 90 provides that the EU's objectives in transport matters shall be pursued within the framework of a common transport policy. Article 91 sets out the legal basis for the exercise of competence applying to all areas of land transportation. Accordingly, the European Parliament and the Council, taking into account the distinctive factors of transport, are tasked with providing:

- Common rules applicable to international transport within the EU;
- Conditions under which non-resident carriers may operate transport services within a Member State;
- Measures to improve transport safety; and
- Any other appropriate provisions.

While the provisions of Title VI only apply to transport by rail, road and inland waterways (Article 100(1)), the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may decide to lay down appropriate provisions for sea and air transport (Article 100(2)).

The EU Legislative Process

EU legal acts such as directives and regulations are generally adopted by what is known as the ordinary legislative procedure. In most cases, only the European Commission may propose a new legal act. But it cannot become law unless it is jointly adopted by the Council (Ministers from each Member State) and the European Parliament.

For the transport base under Title VI TFEU, the Council acts by Qualified Majority Voting (QMV) where a specified majority of votes is required for the law to be agreed, meaning that a single Member State does not have the power of veto. The share of votes of each Member State reflects its population size.

Aviation

- 1.8 The main EU legal base applicable to the majority of aviation measures is Article 100(2) TFEU which provides that the European Parliament and the Council may lay down measures for sea and air transport.
- 1.9 The EU has also taken measures affecting air transport on other treaty bases including approximation of laws (Article 114) and environment (Article 192). External competence is exercised under Article 218 (international agreements) as well as Article 100 (2) TFEU.
- 1.10 Some directly applicable Treaty articles are also relevant to air transport, in particular those relating to competition rules (Articles 101 and 102) and State aid (Article 107). The European Commission applies the EU's competition rules on mergers and alliances, price-fixing and other arrangements to the air transport sector. Regulation 487/2009 enables the EU to take measures to ensure the application of the competition rules to transactions between airlines which have an impact on routes between the EU and third countries.
- 1.11 Article 4(3) TEU provides for close and sincere cooperation between Member States and the EU. Although this does not affect the distribution of competences, it does, in the field of international relations, call for Member States and the EU to coordinate their action in international organisations such as the International Civil Aviation Organization (ICAO). The European Commission, with a mandate from Member States, also negotiates comprehensive EU-level air service agreements with partner countries, including the so-called 'open-skies' agreement with the United States.
- 1.12 Air transport has been subject to gradual liberalisation through successive legislative packages. The core legislative requirements for the aviation single market to harmonise the conditions for granting operating licences, open access and full freedom for fares and rates across the EU were consolidated under Regulation 1008/2008.⁶
- 1.13 The adoption of other common rules also sought to ensure fair and open competition. For example, the requirement for transparent and non-discriminatory allocation of airport take-off and landing slots at EU airports is enshrined in Regulation 95/93.⁷ Directive 2009/12/EC lays down common rules for levying airport charges.⁸ Further common rules, on air safety for instance, established through the European Aviation Safety Agency (EASA) legislation, and common rules on the use of airspace set out in the Single European Sky (SES) package aim to improve safety and air traffic management.
- 1.14 With the growth of air transport and the development of the Single Market the EU became more active in relation to passenger rights. For example, Regulation 295/91 established a system of compensation for passengers denied boarding on overbooked flights. Greater levels of protection were later afforded to air passengers subject to denied boarding, delays or cancellations through Regulation 261/2004.⁹
- 1.15 On the environmental front, the EU has acted to ban the noisiest aircraft from operating in

⁶ Regulation 1008/2008/EC of the European Parliament and of the Council, Common Rules for the Operation of Air Services in the Community (Recast), 2008.

⁷ Council Regulation 95/93/EEC, Common Rules for the Allocation of Slots at Community Airports, 1993.

⁸ Directive 2009/12/EC of the European Parliament and of the Council, airport charges, 2009.

⁹ Regulation 261/2004/EC of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation 295/91/EEC, 2004.

the EU. Noise management, for example, is addressed in Directive 2002/49/EC.¹⁰ The EU has also exercised its competence to address green house gas (GHG) emissions from aircraft and other measures to mitigate the impact of aviation on climate change.

Maritime

- 1.16 As with aviation, the main EU legal base for the majority of maritime measures is Article 100(2) TFEU. The EU has also relied on other treaty bases to take measures affecting maritime transport such as approximation of laws (Article 114), environment (Article 192), trans-European networks (Article 172) and international agreements (Article 218 TFEU). Some directly applicable treaty articles are also relevant to maritime transport, in particular, those dealing with competition rules (Articles 101 and 102) and State aid (Article 107 TFEU).
- 1.17 A Common Maritime Transport Policy, established in 1986, created a single market for shipping services. Significantly, it opened up cabotage services across the EU, applying the principle of freedom to provide services to maritime transport between ports of one Member State (Regulation 3577/92).^{11 12} Thereafter, EU legislative activity increased substantially in the area of safety and pollution prevention. Various measures on maritime pollution have been introduced under an environmental legal base, for example Articles 192 and 195, as well as Article 100(2) TFEU, including those covering shipping emissions (Directive 2005/33/EC) and controlling waste shipments to improve environmental protection (Regulation 1013/2006).^{13 14} Directive 2005/35/EC on ship-source pollution requires Member States to impose criminal penalties on persons held liable for discharging polluting substances.¹⁵ The type and level of the penalties is decided at Member State level.
- 1.18 As with other transport modes, the EU has become increasingly active in the protection of passenger rights. Regulation 1177/2010 establishes the right to assistance in cases of cancelled or delayed departures by ferries and lays down rules for compensation under prescribed circumstances.¹⁶

¹⁰ Directive 2002/49/EC of the European Parliament and of the Council relating to the assessment and management of environmental noise, 2002.

¹¹ Cabotage is the term used for the national carriage of goods for hire or reward carried out by non-resident operators on a temporary basis in a host Member State.

¹² Council Regulation 3577/92/EEC, Applying the Principle of Freedom to Provide Services to Maritime Transport within Member States (Maritime Cabotage), 1992.

¹³ Directive 2005/33/EC of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels, 2005.

¹⁴ Regulation 1013/2006/EC of the European Parliament and of the Council on shipments of waste, 2006.

¹⁵ Directive 2005/35/EC of the European Parliament and of the Council on ship-source pollution and on the introduction of penalties, particularly criminal penalties, for infringements, 2005.

¹⁶ Regulation 1177/2010/EU of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation 2006/2004/EC, 2010.

- 1.19 The EU has also exercised external competence by concluding agreements with third countries, such as the 2002 China Maritime Transport Agreement. The European Commission has observer status at the International Maritime Organization (IMO) and has encouraged Member States, all 28 of whom are full members of the IMO, to ratify and accede to existing international safety conventions.

Rail

- 1.20 Most of the rules covering rail transport are made under Article 91 TFEU. The EU has also taken measures affecting rail transport relying on other treaty bases including State Aid (Article 109), trans-European networks (Article 172), environment (Article 192) and international agreements (Article 218). Some directly applicable treaty articles are also relevant to rail transport, in particular, relating to State aid (Article 107).
- 1.21 In order to remove national barriers to successful integration, EU action has focused on three main themes set out under successive railway packages: the opening of rail passenger and freight markets to competition, the harmonisation of standards and approvals, and the development of rail transport infrastructure.
- 1.22 Legislation adopted in 2001 established a general framework for the development of the European railways, including the role of independent national regulators, separation of the functions of managing infrastructure and running train services and establishing an EU-wide licensing regime for railway undertakings.¹⁷
- 1.23 Further legislation adopted in 2004 supported market liberalisation by completely opening the rail freight market (Directive 2004/51/EC).¹⁸ It also included legislation introducing a framework for the regulation and management of safety (Directive 2004/49/EC) and established the European Railway Agency (ERA) (Regulation 881/2004) to assist in the creation of the single railway area by reinforcing interoperability and safety.^{19 20}

¹⁷ Directive 2001/12/EC of the European Parliament and of the Council, 2001, amending Council Directive 91/440/EEC on the development of the Community's railways, 1991; Directive 2001/13/EC of the European Parliament and of the Council, 2001, amending Council Directive 95/18/EC on the licensing of railway undertakings, 1995; and Directive 2001/14/EC of the European Parliament and of the Council on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, 2001.

¹⁸ Directive 2004/51/EC of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways, 1991.

¹⁹ Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community's railways, 2004, and amending Council Directive 95/18/EC on the licensing of railway undertakings, 1995, and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, 2001.

²⁰ Regulation 881/2004/EC of the European Parliament and of the Council establishing a European railway agency (Agency Regulation), 2004.

- 1.24 In 2007, legislation was introduced to open international passenger services to competition, to harmonise the licensing system for train drivers and to ensure minimum rights for rail passengers including on information provision, compensation, and rights for disabled passengers and those of reduced mobility (Regulation 1371/2007).^{21, 22, 23} Directive 2008/57/EC further enhanced technical harmonisation between Member States.²⁴
- 1.25 While the opening up of international rail passenger services to competition from new points of departure within the EU has been a positive measure for transport purposes, the UK is not a member of the Schengen border-free travel area. The prospect of new rail services from points of departure across the EU has created a significant challenge for both UK and Schengen border control authorities in identifying border control solutions for rail which support the rapid transit of high speed intercity services.
- 1.26 Two Directives in particular, made under an environmental legal base, brought rail transport within their scope: Directive 97/68/EC on exhaust emissions from diesel rail vehicles and Directive 2002/49/EC on noise management.^{25 26}
- 1.27 As EU action in the rail sector is generally aimed at achieving a common framework within the European railway area, the provisions have no broader international or global context. However, the EU's accession in 2011 to the Convention Concerning International Carriage by Rail (COTIF) was intended to widen the EU's sphere of influence in the international rail sector by facilitating the development of a uniform legal system applicable to the international carriage of passengers and freight.
- 1.28 The only specific reference in COTIF to complying with the formalities required by customs or other administrative authorities is in Appendix A to COTIF (Title II Article 10), with responsibility for compliance resting with the passenger, without recognition of a specific role or responsibility on the part of the international train operator.

Roads

- 1.29 Article 91(1) TFEU is the main legal base for the application of the majority of EU rules relating to drivers, vehicles and roads. The EU has also taken action in this area under other treaty bases including trans-European networks (Article 172), approximation of laws in relation to setting technical standards for vehicles (Article 114), environment (Article 192) and international agreements (Article 216). As with the other modes, directly applicable treaty articles in relation to competition rules and State aid are relevant.

²¹ Directive 2007/58/EC of the European Parliament and of the Council, 2007, amending Directives 91/440 and 2001/14, 1991, 2001.

²² Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the rail network in the EU, 2007.

²³ Regulation 1371/2007/EC of the European Parliament and of the Council on rail passengers' rights and obligations, 2007.

²⁴ Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community (Recast), 2008.

²⁵ Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, 1997.

²⁶ Directive 2002/49/EC of the European Parliament and of the Council relating to the assessment and management of environmental noise – Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise, 2002.

- 1.30 EU action in road transport began in the 1970s. Directive 70/156/EEC introduced a system of vehicle type-approval (the confirmation that production samples of a design will meet specified performance standards) aimed at enhancing functioning of the common market and in the late 1970s, the EU introduced requirements for roadworthiness testing.^{27 28}
- 1.31 International road freight and passenger services were liberalised in the 1990s with the opening of services across borders and a limited liberalisation of cabotage.
- 1.32 Further measures relating to free movement or liberalisation thereafter included the harmonisation of vehicle registration documents (Directive 1999/37/EC), common requirements for safety and environmental features (Directive 2007/46/EC), and common standards for the EU driving licence test (Directive 2006/126/EC).^{29 30 31}
- 1.33 Passenger rights regulations have also extended to bus and coach transport. Regulation 181/2011 includes rights for passengers with reduced mobility and compensation for delayed journeys.³²
- 1.34 Both the EU drivers' hours (Regulation EC 561/2006) and the mobile road transport working time rules (Directive 2002/15/EC) aim to promote road safety by limiting time spent at the wheel and on other duties.^{33 34}
- 1.35 The EU has also exercised competence relating to environmental protection with regard to road transport, particularly concerning air quality, carbon and noise, by setting limits for exhaust and carbon dioxide emissions from road vehicles, setting minimum requirements to promote the uptake of renewable transport fuels and establishing noise requirements for road vehicles. For example, Directive 2009/30/EC deals with the specification of petrol, diesel and gas-oil and introduced a mechanism to monitor and reduce GHG emissions.³⁵

²⁷ Directive of the Council on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, 1970.

²⁸ Directive 77/143/EEC of the Council on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers, 1976.

²⁹ Directive 1999/37/EC of the Council on the registration for vehicles, 1999.

³⁰ Directive 2007/46/EC of the European Parliament and of the Council establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive), 2007.

³¹ Directive 2000/56/EC amending Council Directive 91/439/EEC on driving licences, 2000.

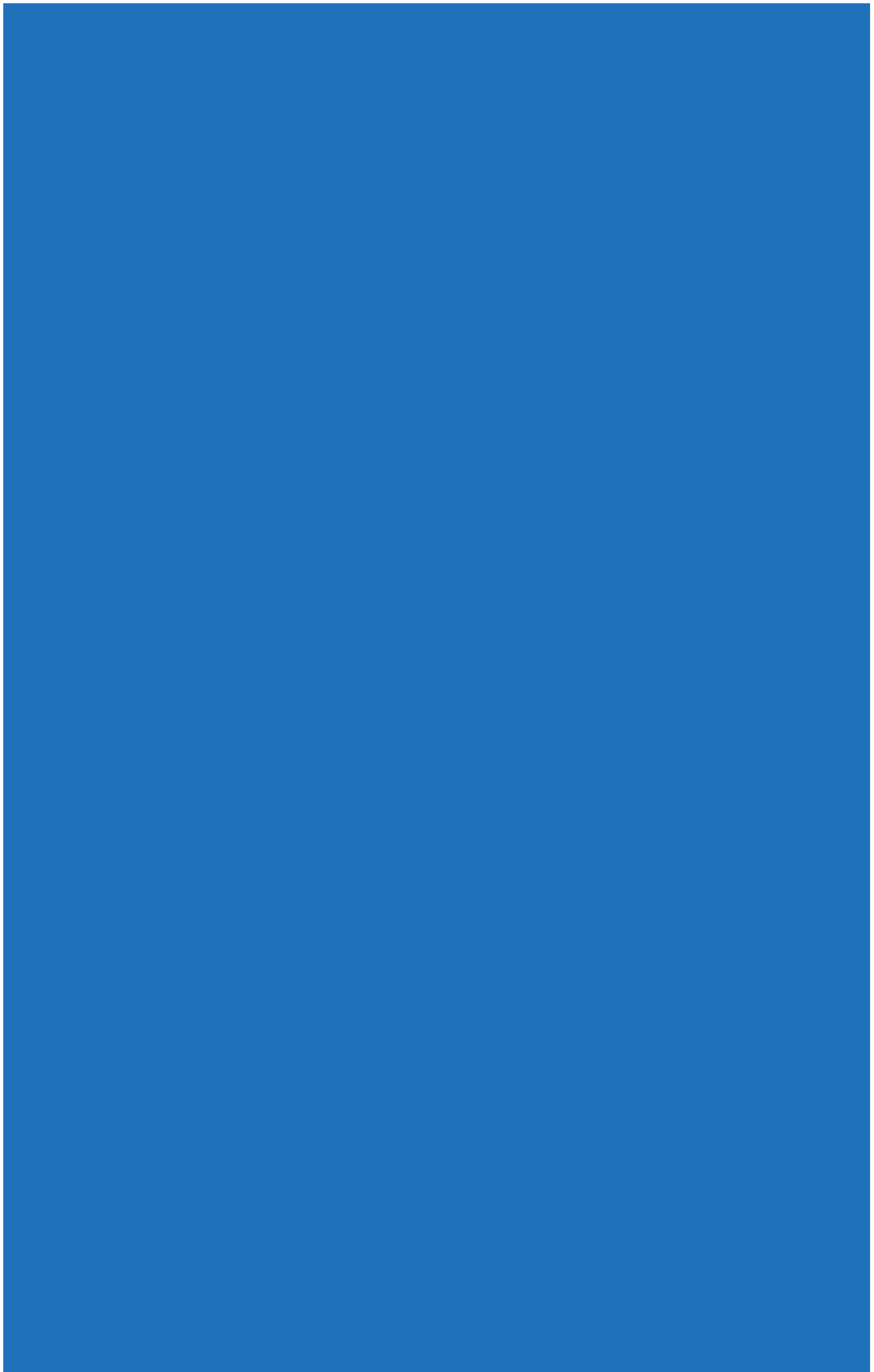
³² Regulation 181/2011/EU of the European Parliament and of the Council concerning the rights of passengers in bus and coach transport and amending Regulation 2006/2004/EC, 2011.

³³ Regulation 561/2006/EC of the European Parliament and the Council on the harmonisation of certain social legislation relating to road transport, 2006, and amending Council Regulations 3821/85/EEC and 2135/98/EC and repealing Council Regulation 3820/85/EEC, 2006.

³⁴ Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities, 2002.

³⁵ Directive 2009/30/EC of the European Parliament and of the Council amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC, 2009.

- 1.36 In many instances, EU action needs to be seen in the context of international arrangements at the UN Economic Commission for Europe (UNECE). For example, a 1958 UNECE agreement has been effective as the main international framework for the harmonisation of vehicle technical standards at the international level and recent regulatory developments at the EU level have seen Directives replaced with a number of UNECE Regulations.



Chapter 2:

Impact of Competence on the UK's National Interest – A Summary of Evidence

Cross-Modal Themes

- 2.1 This Chapter looks at the evidence submitted to the DfT. The evidence is considered according to the principal themes that emerged from responses.
- 2.2 The evidence showed that respondents from all transport modes were concerned with the working of the single market in transport services, and with the implementation and enforcement of the EU legislation which underpins it. They were concerned with common operational standards and how these impacted on European and global competitiveness in manufacturing and what the exercise of competence in relation to common standards in consumer, social and environmental matters meant for a fair and efficient balance between operators and consumers. There were nuances between modes, often based on their different physical characteristics. Thus, for aviation and maritime as inherently international modes of transport, there was close interest in EU representation in international organisations and how global rules and bloc rules interacted. For rail there was an overriding issue of market reciprocity, of a tension between liberalisation and state monopoly, while in road transport, and to some extent in rail, there was perceived to be a division between local transport, such as buses, local trains, local freight movements, both in road haulage and in the use of private rail wagons, and international transport. There was a feeling that one size could not comfortably fit all and that the European Commission did not sufficiently recognise this. These cross-modal themes are considered in more detail below.

The Single Market for Transport Services

- 2.3 Evidence from stakeholders across modes showed a firm consensus of support for the Single Market as a concept and as a practical driver for economic growth and efficiency. Equally firm was the idea that it could go further and deliver yet more benefit to the UK if it was fully and properly implemented across the 28 EU Member States. Problems were often seen to have been less with the underlying objectives than with the method of pursuing these objectives, the rate of progress, or poorly planned and overly detailed legislation. Suggested actions identified by stakeholders for addressing these issues are considered in Chapter 3. Stakeholders also noted that an efficient, sustainable and cost-effective transport network was vital for the successful functioning and growth of the wider Single Market. As the Royal Academy of Engineering put it:

Effective transport is essential for economies to flourish across the EU – inefficient and expensive transport infrastructure is likely to hold economies back.¹

- 2.4 In aviation the development of the Single Market was strongly supported by the UK which had been influential in the negotiations and played a key role in influencing the Commission's proposals and shaping the outcome. The aviation industry's view is that it has benefited from this. The British Air Transport Association (BATA), representing the major UK airlines, welcomed the liberalisation of the air transport market in Europe:

EU oversight over air transport in recent decades has been extremely beneficial, creating a very liberalised and efficient sector in Europe, allowing the industry entry to markets in Member States and to grow across borders, delivering better and cheaper travel for the public.²

- 2.5 EasyJet, the UK's largest airline and largest low-cost carrier, went further:

EasyJet is a product of the EU's deregulation of Europe's aviation market. Without deregulation we would not exist.³

- 2.6 British Airways, the UK's largest international scheduled carrier, said:

British Airways believes that the area of engagement by the EU in transport is a success, and the UK national interest would be better served by the UK taking a leading role within the EU in helping to form and shape the direction of the EU, based on the UK model of liberalisation and free markets.⁴

- 2.7 Air travel was identified as a great facilitator for the freedom of movement of people and capital in Europe. The exercise of EU competence was recognised as having broken down restrictive trade and operating barriers that had previously existed, and was credited with encouraging growth in the sector with deregulation facilitating new business models, such as the low-cost carriers.

- 2.8 These new business models have increased competition in the industry, driving down prices and forcing efficiency savings. Air travel has become more affordable and this promoted more leisure travel and tourism, leading to huge growth in the market for passengers visiting friends or relatives (VFR). For example, between 2000 and 2007, while total passenger traffic grew by one-third, VFR passenger traffic grew by more than three-quarters, mostly to and from the EU.⁵

¹ Royal Academy of Engineering, *submission of evidence*.

² BATA, *submission of evidence*.

³ EasyJet, *submission of evidence*.

⁴ British Airways, *submission of evidence*.

⁵ CAA, *submission of evidence*.

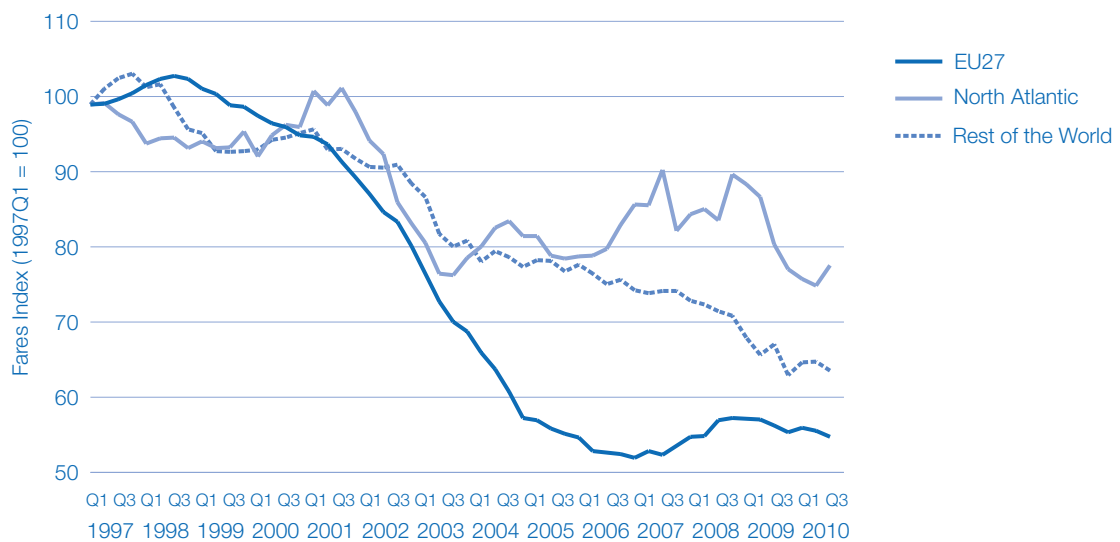
Wider European Aviation Context

The Civil Aviation Authority noted that ‘overall, air transport contributes €365 billion yearly to European GDP and directly supports 5.1 million European jobs.

Air transport is the main vehicle for tourism in Europe generating €900 million per day and provides direct and indirect employment for 23 million people’.⁶

‘EU enlargement has added considerably to travel for leisure and work and through greater accessibility to the European labour market, boosting the UK’s access to workers from recent accession states. For example, the ten accession countries in 2004 increased the EU population by almost 75 million people’.⁷

Chart 3: Average One-Way Fares (in 2005 prices) Paid by UK-Resident Business Passengers



Source: CAA calculation based on the International Passenger Survey (ONS)

- 2.9 The rapid growth in routes to UK regions has significantly increased choice for UK consumers. According to easyJet, ‘without deregulation we would be unable to offer our passengers the range of flights and the good value low fares that they have come to expect from us’.⁸
- 2.10 The Thomas Cook Group added, ‘from a travel company perspective [liberalisation] has made it considerably easier to operate to new markets, and we believe that it is no coincidence that international tourism has grown so significantly since the early 1990s’.⁹
- 2.11 While respondents, including those named above, perceived the balance of competence heavily to favour the EU in aviation legislation, they were generally happy with the current legislative framework, and did not advocate adjustment of that balance.

⁶ CAA, *submission of evidence*.

⁷ British Airways, *submission of evidence*.

⁸ EasyJet, *submission of evidence*.

⁹ Thomas Cook Group, *submission of evidence*.

2.12 The Airport Operators Association (AOA), which represents the major UK airports including Heathrow, Gatwick, Stansted and Manchester, said, ‘the UK economy is heavily dependent on international trade and investment and, as the largest Single Market in the world, the EU is an important element in that’.¹⁰ But they also widened the argument to say that the AOA ‘broadly supports the current balance of competences between the EU and the UK in the aviation sector, but would like to see: a new emphasis on ensuring that existing rules are applied uniformly; complaints dealt with expeditiously; the quality of EU negotiators enhanced; and that, taken together, UK and EU regulation avoids duplication and excessive bureaucracy’.¹¹ These points are considered later.

2.13 In the view of NATS, the UK’s leading provider of air traffic control services, there was scope for liberalisation in their industry (Air Traffic Management and Air Navigation Services) which they argued would in turn improve airline operational efficiency. NATS said:

Aviation is an intrinsically international transport mode. NATS believes that aviation within the EU cannot fully develop to meet society’s needs if action is only taken at State level.¹²

2.14 In summarising its position, easyJet made explicit the reach of EU legislation, compared to the reach of UK legislation: ‘while there are areas where we do not support the detail of EU legislation, we do in general support the intent. It is not that EU legislation is “better” than UK legislation would have been, it is that legislation at the EU level can achieve (and has achieved) much more than UK legislation can do on its own. The UK will continue to be best served through EU legislation on aviation’.¹³

2.15 British Airways, making a different but related point said, ‘BA supports the leading role of the EU in international agreements as it provides consistency, standardisation and a level playing field for markets in all 28 EU nations and relevant third countries which in turn provides greater legal certainty’.¹⁴

2.16 Beyond the aviation industry, stakeholders credited the liberalisation of the single market for air transport, and the subsequent market expansion, with delivering economic growth to ancillary services and related industries. ADS, the trade association representing the UK’s Aerospace, Defence, Security and Space industries, acknowledged the benefits of a common EU safety and certification regime and said that ‘the UK benefits from being within the decision making process for these measures’.¹⁵

2.17 Turning to the maritime sector, stakeholders acknowledged the business opportunities which core EU legislation has created, notably the Single Market itself and the legislation which underpins it. The UK Chamber of Shipping, the trade association for the UK shipping industry, said:

The existence of the Single Market has brought tremendous economic benefits for all businesses engaged in trading within it.¹⁶

¹⁰ AOA, *submission of evidence*.

¹¹ *Idem*.

¹² NATS, *submission of evidence*.

¹³ EasyJet, *submission of evidence*.

¹⁴ British Airways, *submission of evidence*.

¹⁵ ADS, *submission of evidence*.

¹⁶ UK Chamber of Shipping, *submission of evidence*.

A package of four EU shipping regulations adopted in 1986 was of very direct and practical advantage to the UK. It provides a crucial underpinning to shipping business in Europe in market access and trade defence terms. It liberalised maritime transport within the EU and regulated external maritime relations involving third countries [...] The combination of these regulations provides a powerful and helpful foreign relations policy for shipping which has free trade principles at its heart.¹⁷

- 2.18 Statistics showed a correlation between market opening and freight traffic. The Chamber of Shipping, for example, found that vehicle freight traffic between the UK and mainland Europe more than doubled between 1992 and 2007, with numbers of goods vehicles travelling to and from the UK rising from 1.4m to 2.9m.¹⁸
- 2.19 The UK Major Ports Group (UKMPG), the trade association representing most of the larger commercial ports in the United Kingdom, stated that, since 1980, short sea container traffic and roll-on roll-off (ro-ro) traffic to and from the UK, including Channel Tunnel traffic, has grown by 340% and that equivalent deep sea traffic outside the EU has grown by 330%. The Single Market and other core EU legislation had helped the maritime industries to become an engine for growth and prosperity. While the current world financial climate has adversely affected that growth, the maritime industries are confident that working within a framework of EU law creates significant business opportunities.
- 2.20 Taken as a whole, responses from the shipping industry covered more ground than those from the ports sector, perhaps reflecting that the impact of EU legislation was much greater on shipping operations than on ports. The main concern of many UK ports is domestic because they are mainly or exclusively in competition with other UK ports. Moreover, there was a fundamental difference between the shipping sector and the ports sector. As the British Ports Association pointed out:

Ports are not in themselves a mode [...] The majority of port traffic is freight, so there is not the same relationship with 'consumers' as there is with other parts of transport.¹⁹

- 2.21 The British Ports Association felt that to date, the Commission 'had tended to let ports develop in their own ways', something it viewed as proportionate and which allowed ports strategic independence.²⁰ That said, ports sector responses indicated a strong preference not to see more EU legislation on ports and did not support moves towards new legislation on port services.
- 2.22 The wider Single Market, that is, beyond the single market in transport services, was also seen as a benefit to society at large. The Chamber of Shipping pointed out that:

The removal of customs (and other) controls on passengers' luggage when travelling within the Internal Market has also been wholly advantageous: removing an element of anxiety and hassle from holiday travel, easing business travel generally, and creating (in some contexts, like shopping for wine in France) an incentive to visit new places. This is clearly to the advantage (and enjoyment) of UK citizens, and all the businesses in the travel sector that serve them.²¹

¹⁷ Idem.

¹⁸ Idem.

¹⁹ British Ports Association, *submission of evidence*.

²⁰ Idem.

²¹ UK Chamber of Shipping, *submission of evidence*.

- 2.23 Generally, responses from the maritime sector were of the view that it has benefited from the application of State aid rules under the Maritime State aid Guidelines, as well as liberalisation and market access in trade with non-EU nations, all of which are aspects of a successful EU approach.
- 2.24 In the rail sector, the creation of an open and transparent internal transport market was seen as vital to the effective and efficient functioning of the wider EU Single Market.
- 2.25 The UK's initiative in pressing for rail liberalisation was noted by many stakeholders, including the Association of Train Operating Companies (ATOC), High Speed One, the Rail Freight Group (RFG), the leading representative body for rail freight in the UK, and Network Rail. They felt that UK domestic policy was often seen as an initial model for EU proposals, given the experience of the market reforms and liberalisation introduced here almost twenty years ago. Since that time, the performance of the rail network has improved significantly in many areas, and especially in terms of delivering greater capacity, accommodating a substantial increase in demand.²²
- 2.26 ATOC said: 'ATOC strongly supports market opening and liberalisation of the EU rail sector, which will benefit passengers and open up market opportunities for UK companies and further application of the UK model'.²³
- 2.27 The RFG said: 'at its highest level, the principles of European rail policy, as expressed in the First and subsequent railway packages, have driven fundamental and successful change for rail freight'.²⁴
- 2.28 Nearly all rail stakeholders felt that the EU's vision for rail was correct and that, overall, the UK rail industry had benefited from EU action in this area to date. Although many respondents conditioned their answers with concerns surrounding the practical implementation of the legislative framework created by the EU, it was widely held that the positive benefits of continuing the progressive opening of the EU rail market far outweighed the negatives and represented a significant opportunity for UK companies.
- 2.29 There were two exceptions to this generally favourable stakeholder view of the benefits of Single Market liberalisation. The Bruges Group noted that, due to the UK's restricted loading gauge, 'most trains that run in the UK will be built solely for use in this country' and that interoperability of technical standards in particular was therefore 'an unnecessary burden'.²⁵ This view was shared by the Private Wagon Federation (PWF), a trade association representing companies with a specific interest in UK rail freight wagons, in relation to wagons which would only ever be used domestically. The PWF noted that 'it has led to a significant increase in costs and difficulty without apparent benefit arising', 'preventing the building of new fleets to proven historic designs'.²⁶
- 2.30 According to the Bruges Group, 'international trains are always going to be a relatively minor feature of the UK railway scene because of our island position' and 'the UK would be better off being in charge of its own railway network'.²⁷

²² GB Rail Sector Liberalisation discussion paper written by ATOC, High Speed One, RFG and Network Rail, May 2013, RFG *submissions of evidence*.

²³ ATOC, *submission of evidence*.

²⁴ RFG, *submission of evidence*.

²⁵ The Bruges Group, *submission of evidence*.

²⁶ PWF, *submission of evidence*.

²⁷ The Bruges Group, *submission of evidence*.

- 2.31 The ORR was of the view that 'EU action has brought more competition and cross-border market activity with an increase in cross-border traffic and increased competition for contracts'.²⁸ Also, the RFG added that the 'principles of European rail freight policy are essential for a thriving and successful rail freight sector and should continue to be supported'.²⁹
- 2.32 Many stakeholders, of which Freightliner was representative, considered the wider European Single Market and felt that 'a functioning EU internal market is vital to facilitate free trade between Member States'.³⁰
- 2.33 At the same time, stakeholders also expressed concerns, such as about the mechanisms used to implement change, which they felt often created additional costs and regulatory burdens, and the inherent risks and uncertainty of what were viewed as constant legislative amendments and a lack of enforcement by the EU, which meant that market opening was progressing more slowly than expected. This issue is considered further in the next section.
- 2.34 Regulatory stability was highlighted as a particular challenge for the rail industry given the significant investment required to procure both rail vehicles and infrastructure and the long economic life of those assets relative to other modes.
- 2.35 From the perspective of organised labour, there was broad dissatisfaction with the perceived EU emphasis on markets. The Trade Union Congress (TUC) commented: the Commission has focussed too much on creating markets and strengthening competition without doing enough to ensure that the countervailing social, environmental equalities and work rights are strong enough to make EU citizens feel confident about our place in Europe'.³¹
- 2.36 The TUC also opposed the model of rail liberalisation saying, 'the European commissioners have been drawing exactly the wrong conclusions from the UK experience since privatisation. Europe [...] is set to make the mistake of entrenching the failures of the competitive franchising process and division between managing the tracks and running the trains that has proved so problematic in the UK and spreading the model through Europe'.³²
- 2.37 For ASLEF, the train drivers' trade union, 'EU rail policy is centred on simply opening up European networks to profiteers with legislation being used to force countries to create an open market out of their networks'.³³
- 2.38 ASLEF mentioned recent problems with the franchise model and said that new legislation, proposed as part of the Fourth Railway Package, would further restrict the ability of governments to 'alter the ownership model of their networks' which would in turn 'prevent constructive dialogue and make the railway even less democratic'.³⁴
- 2.39 This was not a view supported by other stakeholders, including Network Rail, ORR, the Rail Freight Group and ATOC, who believed there had been significant potential for benefits for both passengers and the taxpayer through improved efficiency and reduced costs.

²⁸ ORR, *submission of evidence*.

²⁹ RFG, *submission of evidence*.

³⁰ Freightliner, *submission of evidence*.

³¹ TUC, *submission of evidence*.

³² *Idem*.

³³ ASLEF, *submission of evidence*.

³⁴ *Idem*.

- 2.40 Like the other major transport modes, most roads industry stakeholders took a positive view of the aims of the Single Market. Although the UK is on the geographical periphery of Europe, the Single Market enables it to access a large number of businesses and consumers. The Freight Transport Association (FTA), the trade association which represents the transport interests of companies moving goods by road, rail, sea and air, said:
- The EU has created the biggest single trading bloc in the world on our doorstep that takes 50% of our exports. This has created a market that logistics has served for nearly half a century on behalf of exporting businesses and insatiable customers. British beef, cars, technology and pharmaceuticals are examples of sectors that have benefited.³⁵
- 2.41 The Road Haulage Association (RHA), which represents hauliers including those operating as small and medium enterprises, felt that for their sector the overall judgment was a fine one. They said, ‘competences in UK road transport are finely balanced in our sector. Although we have not got a 100% solution in terms of market access we have got the most of what we think the industry would want and therefore we see no reason for further harmonisation or repatriation’.³⁶
- 2.42 The RAC Foundation, Royal Automobile Club (RAC) and Automobile Association (AA) all saw advantages in the EU exercising its competence in the creation of a Single Market to facilitate the free movement of people, goods, services and capital across all Member States. They also identified that ‘another benefit is the facilitation of travel within the EU through, for example, mutual recognition of third-party insurance and pan-European driving licences’.³⁷ However, they also pointed out that the impact of the internal market has ‘only limited effects on the ordinary motorist’ and mainly impacts on transport services.³⁸
- 2.43 And the Society of Motor Manufacturers and Traders Limited (SMMT), which supports the global interests of the UK automotive industry, concluded its remarks by saying that the ‘SMMT believes that the balance of competence in terms of transport policy is broadly right’.³⁹
- 2.44 This belief in the economic benefits of a single market in transport services was not universal. The British Vehicle Rental and Leasing Association (BVRLA), the trade body for companies engaged in the leasing and rental of cars and commercial vehicles, was of the view that ‘from a UK perspective, given the fact that we are an island, we are not sure there has been a great deal of economic benefit to the EU in creating an internal transport market’.⁴⁰
- 2.45 And in terms of international road transport, the Transport Planning Society observed that, ‘in 1992, 50% of goods vehicles on international ro-ro ferries at UK ports were UK-registered vehicles. That had reduced to 22% by 2009, reflecting a small drop in absolute vehicle numbers in a significantly expanded market, and a considerable loss of market share by UK hauliers’.⁴¹

³⁵ FTA, *submission of evidence*.

³⁶ RHA, *submission of evidence*.

³⁷ RAC Foundation, RAC and AA, *submission of evidence*.

³⁸ *Idem*.

³⁹ SMMT, *submission of evidence*.

⁴⁰ BVRLA, *submission of evidence*.

⁴¹ Transport Planning Society, *submission of evidence*.

2.46 Turning to representatives of motor cycling interests, there was strong support for the free movement of people and vehicles. The British Motorcyclists Federation commented that:

Membership of the European Union has been hugely beneficial to motorcyclists in a number of ways with various bits of legislation encouraging and supporting tourism and travel by motorcycle. The free trade aspects and the membership of a trading bloc with common rules for products have helped as well.⁴²

2.47 There was no consensus from roads stakeholders that individual areas of current EU road law should fall outside the competence of the EU in the future.

Enforcement and Implementation

2.48 The need for full and proper implementation of existing EU rules by Member States, and for enforcement of EU law by the European Commission, was widely remarked upon by stakeholders. The EU was considered to have a variable record of enforcing legislation in Member States which had not complied sufficiently rigorously.

2.49 Failure to enforce was perceived to be disadvantageous to UK interests because it meant that there were inadequate reciprocal arrangements across the Single Market. The challenge of inadequate implementation of existing EU law by Member States was picked up mainly by those who responded from a rail and aviation viewpoint.

2.50 In the railway sector industry stakeholders saw the largest single challenge to the creation of a single rail market as the continued proliferation of large, state-sponsored incumbent operations in many Member States which is preventing the establishment of a level playing field. ATOC said, 'only action at EU level as part of the completion of the Single Market can open up national monopolies in those member states which have persistently resisted exposing their national monopoly railway companies to competition'.⁴³

2.51 Notwithstanding this, the ORR felt that there had been some successes. They noted that, 'EU action has brought more competition and cross-border market activity with an increase in cross-border traffic and increased competition for contracts'.⁴⁴ Examples have included the success of National Express in winning two 15-year contracts to operate train services in Germany and a number of foreign train operating companies now providing services in the UK.

2.52 However, these successes were not complete. National Express and the German operated Hamburg/Koln/ Express company (HKX) felt that competitive disadvantage could arise in a number of structural ways associated with an illiberal model including inadequate access to ticket offices, less favourable financing conditions, lack of access to rolling stock and network access charges amongst others. Their responses, and that provided by Mofair e.V., a German private passenger railway alliance, identified the separation of the management of railway infrastructure from the operation of services as a critical first step towards fairer competition. In Mofair e.V.'s view, 'to ensure fair competition is the very important task of the EU'.⁴⁵

⁴² British Motorcyclists Federation, *submission of evidence*.

⁴³ ATOC, *submission of evidence*.

⁴⁴ ORR, *submission of evidence*.

⁴⁵ e.V., Mofair, *submission of evidence*.

- 2.53 Much therefore remained to be done and the ORR noted that, ‘EU legislation is often seeking to harmonise markets that are not yet liberalised’, a practice it considers may ‘inhibit the cooperative working, benefit sharing and alliances that characterise the mature liberalised market in the UK’.⁴⁶
- 2.54 A number of respondents felt that the problem was not necessarily one of insufficient legislation, but rather of inadequate implementation or non-transposition of existing legislation. The Rail Safety and Standards Board (RSSB) shared ORR’s view that the ‘focus should be on ensuring proper implementation (and enforcement) of existing law before adding to it’ which would ‘improve certainty for stakeholders and potential investors’.⁴⁷ The current market was working inefficiently and was therefore creating ‘barriers to trade and distortions in competition’.⁴⁸
- 2.55 Uniform rules were of value only if they were truly uniform, and some felt that the UK was perceived as being significantly more willing to transpose and apply both the text and spirit of European legislation than other Member States. The liberalisation of international freight services and international passenger services had led to national freight companies and passenger operations being bought up by companies from other countries who nonetheless made it difficult for new entrants to operate services in their own domestic markets.
- 2.56 At the UK Transport in Europe (UKTiE) stakeholder workshop in Brussels one participant noted that, ‘the EU’s enforcement effort was often knocked back by the Member States in their own interests’.⁴⁹
- 2.57 The problem of insufficient enforcement effort was also noted by those attending the London rail workshop. They noted that, overall, ‘diminishment of the EU role in the rail sector would not be helpful’.⁵⁰ ATOC said, ‘it is essential for the UK to remain actively engaged at EU level to achieve market reform and a more competitive rail sector’.⁵¹
- 2.58 The restrictive effect of national monopolies was also felt in aviation, where the potential to bring greater efficiencies into the market was frustrated by Member State inaction. The most commonly cited example of this was in relation to the Single European Sky (SES). Legislation for the SES was already in place, but was being inadequately implemented by Member States. This was a matter of concern for respondents as the project had the potential to deliver huge efficiency savings for airspace users and contribute to European emissions reduction targets.

⁴⁶ ORR, *submission of evidence*.

⁴⁷ *Idem*.

⁴⁸ *Idem*.

⁴⁹ *Record of 9 July UKTiE stakeholder event*.

⁵⁰ *Record of 20 June rail stakeholder event*.

⁵¹ ATOC, *submission of evidence*.

The Single European Sky

What is SES?

The Single European Sky (SES) is an initiative to modernise air traffic management systems across Europe. By organising European airspace into functional airspace blocks, according to traffic flows rather than national borders, SES will provide opportunities for passengers and businesses alike.

These opportunities include:

- Enabling an increase in capacity so that future demands can be met;
- Quicker flight times from reducing the fragmentation of service caused by national boundaries;
- Improvements in safety;
- Potential reduction in environmental harm as flights can be more direct; and
- Reduction in the costs of air traffic management.

2.59 British Airways noted that, 'SES will help generate essential cost efficiencies and environmental benefits for the European aviation industry. The EU must ensure that it does not falter behind other nations (especially the United States) in the modernisation of air traffic management'.⁵²

2.60 EasyJet sought to quantify those cost efficiencies and noted that 'airspace charges approach 10% of easyJet's cost base'.⁵³

2.61 ADS too addressed some of the figures behind the issue. They noted in their evidence that:

From a UK aerospace industry perspective, implementation of Single European Sky would allow not only for improved efficiencies of aircraft but a wide range of supporting technologies including networks, IT supplies and new sensor/automation systems. The study by McKinsey & Co also highlighted that a 5 year delay would cost Europe €117bn, and a 10 year delay €268bn and 189,000 jobs.^{54 55}

2.62 There was also room for improvement and liberalisation in the Air Traffic Management/Air Navigation Service industry. NATS was of the view that:

Action at EU level is thus essential to support sustainable development and ensure a level playing field so that UK companies can compete effectively within Europe.⁵⁶

2.63 More concerted EU effort to implement fairly and rigorously existing legislation would overall be welcomed by respondents.

⁵² British Airways, *submission of evidence*.

⁵³ EasyJet, *submission of evidence*.

⁵⁴ ADS, *submission of evidence*.

⁵⁵ Commission Communication, *Governance and Incentive Mechanisms for the deployment of SESAR, the Single European Sky's Technological Pillar* (2011).

⁵⁶ NATS, *submission of evidence*.

EU Representation in International Organisations

2.64 The EU has over many years sought to increase its role and present itself with a single voice in international organisations such as agencies of the UN, including the International Maritime Organization (IMO), the International Civil Aviation Organization (ICAO) and the International Labour Organization (ILO).

2.65 The desire to forge a common EU position, and to have that position expressed by a single body on behalf of all the Member States has been driven in large part by a belief that a united front on behalf of up to 28 Member States, carries greater weight than 28 individual national positions. This applies particularly in pursuit of those challenges which have an impact globally, for example climate change, and which are better addressed through universal membership bodies such as the UN. It may also reflect a greater sense of realism about the effectiveness or otherwise of influence exercised by individual Member States acting on their own. As Lloyds Register put it:

The goals which the UK shares with EU partners have a better chance of being achieved having the mass of EU states behind them.⁵⁷

2.66 However, the evidence received from the maritime industry suggests that the Commission's representation at the IMO has not proved to be as successful as it could have been, and that it can potentially detract from the UK's own scope to act effectively. The UK Chamber of Shipping reflected a common view when it said:

Shipping is in the unusual position of [...] also being subject to very extensive and successful regulation at world-wide level [...] it remains imperative that shipping, as a global sector, should be regulated at the global level.⁵⁸

2.67 Maritime industry stakeholders were not supportive of European Commission ambitions to represent all EU Member States in the IMO or ILO and considered that Member States were more effective in the IMO when acting as individual entities.

2.68 The Commission's attempts to forge common positions in IMO negotiations were seen by many as counterproductive, making it harder to achieve desirable outcomes. It was felt by the industry that Commission efforts should not run counter to those of individual Member States who were seeking to work with a broader range of IMO member nations towards agreed and workable international rules. Moreover, EU officials were not felt to have sufficient expertise in the areas under discussion and should therefore be prepared to be guided by Member States and industry stakeholders. One participant at the UKTiE stakeholder workshop in Brussels commented that putting forward bloc views to a technical body like the IMO risked politicisation of the debate and could detract from the quality of technical decision making because an open exchange of views based on technical and expert opinion is curtailed.⁵⁹

2.69 There are several examples of EU legislation obliging Member States to comply with international instruments such as those agreed in the IMO. Maritime stakeholders were of the view that when implementing IMO or ILO rules, the EU must recognise the primacy of those bodies in regulating the industry and should not seek to augment rules agreed internationally. Creating slightly different regional EU rules can lead to a loss of competitiveness in the global market. As the Royal Yachting Association (RYA), which represents recreational and competitive boating, put it:

⁵⁷ Lloyds Register, *submission of evidence*.

⁵⁸ UK Chamber of Shipping, *submission of evidence*.

⁵⁹ *Record of 9 July UKTiE stakeholder event*.

Insofar as the EU considers it necessary to encourage or require member states to adopt international resolutions then it should confine itself to doing just that, without embellishing or modifying the resolutions.⁶⁰

Case Study – Mono-nitrogen oxide (NOx) Emissions from Yachts

Evidence submitted by the RYA and the British Marine Federation (BMF) looked at the arguments over international rules regarding mono-nitrogen oxide emissions from ships.

They described how efforts by some EU Member States, supported by the super yacht manufacturing industry, to secure a delay in the IMO on the introduction of NOx emission standards for large yachts were halted when the EU claimed competence, which prevented a UK submission to the IMO on the issue.⁶¹

The BMF commented that:

The Commission had, in effect, rendered 27 votes at IMO redundant.⁶²

The RYA observed that ‘in the event, a non EU IMO member state submitted a paper proposing that the implementation date should be postponed and the European Commission resiled from its previous stance’ while the BMF noted that, ‘the European Commission withdrew its declaration of competency, but at a point where it left no time for the UK or its partners to undertake any meaningful support work of the proposal’.^{63 64}

- 2.70 Stakeholders felt that part of the tension stemmed from the fact that the EU Commission itself is not a member of the IMO – it has only observer status – since such bodies generally comprise sovereign states, and could not attain membership without a change to the IMO’s constitution. This aspiration was currently unrealistic and was not supported by industry, as the following views indicate. The UK Chamber of Shipping said:

There is no advantage in the EU having a greater say in IMO under the present circumstances: nor is that foreseeable in the future.⁶⁵

- 2.71 Lloyd’s Register said:

The EU is not a flag; the Commission does not have international treaty obligations to treaty parties in the maritime world. The UK is and does [...] The EU Commission may take decisions for the good of the Union but the practical consequences will fall on the shoulders of the flag States.⁶⁶

- 2.72 The International Group of P&I Clubs (IGP&I), said:

It is difficult to identify any benefit for the UK in the event of either the EU having a greater say in negotiating international agreements at the IMO, or greater coordination of Member States’ positions on issues for discussion at the Organization, whether through EU membership or by any other means.⁶⁷

⁶⁰ RYA, *submission of evidence*.

⁶¹ RYA and BMF, *submission of evidence*.

⁶² BMF, *submission of evidence*.

⁶³ RYA, *submission of evidence*.

⁶⁴ BMF, *submission of evidence*.

⁶⁵ UK Chamber of Shipping, *submission of evidence*.

⁶⁶ Lloyds Register, *submission of evidence*.

⁶⁷ IGP&I, *submission of evidence*.

- 2.73 In aviation, another inherently international mode of transport, the position of the European Commission is similar in that it does not have membership of ICAO, which is at State level. NATS saw no reason to change this.⁶⁸ Instead, the EU Commission has only observer status, which can limit the effect it can deliver on behalf of the 28 Member States. The Thomas Cook Group pointed out that the international framework for aviation was established by the Chicago Convention of 1944 and that this is administered by ICAO. They said, ‘as this framework is genuinely international, and not regional, as the EU may be said to be, it is very important that both UK and EU legislation is seen to work in the context of that Convention. However, it is equally important to comment that ICAO works by consensus across its member states, and achieving that consensus can be difficult. The EU [...] can potentially find it easier to achieve legislative and administrative solutions’.⁶⁹
- 2.74 Aviation stakeholders identified the value of the EU in this field as a vehicle for coordination. The EU was perceived as able to amplify the voices of the component Member States, either in multilateral agreements with third countries or when negotiating agreements at ICAO, and to be able to extract greater commitments to liberalisation and fair competition from third countries such as China or the USA. Thomas Cook noted that:
- In principle, we believe that the EU negotiating agreements internationally provides benefits for UK businesses, in that theoretically, the EU should have greater bargaining power than individual member states. However, as the largest aviation market within the EU, the UK has to be comfortable in handing over some of its powers to EU negotiators.⁷⁰
- 2.75 The Emissions Trading System (ETS) was often referred to as a policy area where the EU in its coordination role was playing, or had the potential to play, a positive role. The inclusion of aviation in ETS was considered to be a positive development in terms of environmental regulation, but one which was currently putting the European aviation industry at a competitive disadvantage. Stakeholders recognised the potential benefits of ETS, but advocated a global system agreed at ICAO, rather than a regional system that created market distortions. BATA said:
- UK airlines have always argued for a global approach to tackling the impact of aircraft emissions on climate change and we would therefore welcome any progress on this made at international level through ICAO.⁷¹
- 2.76 The EU was encouraged to use its role as a coordinator to promote a globally agreed system to address the challenge of aviation emissions. ADS noted that ‘as a strong member state within the EU, the UK benefits from the power and ability of the community to act. Indeed, it can be strongly argued that the power and impact of the EU and its measures through the ETS have ensured that emissions trading schemes and emissions reduction is at the forefront of the agenda at the forthcoming ICAO General Assembly in September 2013. Competence over this area through the European Union is therefore served to a much greater extent on a multilateral level’.⁷²
- 2.77 Like Thomas Cook, the CAA added a note of realism about process in international bodies, saying, ‘action at the ICAO level has its limitations. An organisation with nearly

⁶⁸ NATS, *submission of evidence*.

⁶⁹ Thomas Cook Group, *submission of evidence*.

⁷⁰ *Idem*.

⁷¹ BATA, *submission of evidence*.

⁷² ADS, *submission of evidence*.

200 Contracting States finds it difficult to move quickly.' Consequently a 'collaborative approach looks to be the optimum way forward'.⁷³

2.78 The CAA added that, 'there is no doubt that EU consumers and citizens have benefitted over the last 25 years to an extent that would have been impossible had the UK and other EU states not acted regionally. Progress at regional level may in theory be a second best solution to progress at global level, but in practice has proved the best way forward'.⁷⁴

2.79 The Government has taken the firm position that any EU statement in international organisations on issues where competence is shared between the EU and the Member States, must make clear that it is delivered on the Member States' behalf as well as on the EU's. The UK also takes a more restrictive view than the Commission of the extent to which EU delegations may deliver EU statements in line with Article 17 TEU. The Government takes this position because it believes that, in the absence of clarity over EU representation in international organisations, there is a risk that the Commission assumes that, having represented the Member States on an issue, it has gained unfettered competence to act. As the report on foreign policy said:

Put simply, the UK sees a risk that representation comes to equate to competence.⁷⁵

Common Standards

2.80 Common standards remove barriers to free trade and efficient operation within the EU by preventing individual nations from implementing measures which could be construed as protectionist, or impose onerous requirements on operating within their borders. This applies equally to social and environmental standards as to operational and technical standards. The EU has exercised its competence increasingly in the social, consumer and environmental spheres of transport policy and this has brought with it contention, perhaps given the closeness of these issues to ideas of national identity and what is broadly acceptable in any one Member State. The next two sections of this report look at what stakeholders felt about common standards from these perspectives.

i) Operating and Technical Product Standards

2.81 Stakeholders recognised the value of applying common standards to manufacturers and operators working in a global market place. In considering whether harmonised rules or greater flexibility afforded the UK the most benefit, it was acknowledged that greater flexibility, seen by some as allowing greater local autonomy, could in effect become regulatory competition between Member States.

2.82 The setting of common standards in many areas of EU legislation, such as vehicle standards, was generally viewed by respondents as being positive in helping to reduce costs and allowing for the free flow of vehicles. Given that much of EU law in the roads sector either involves crossing borders or the construction and use of vehicles and fuel types, responses acknowledged that it is logical to legislate at EU level. For example, a single type of vehicle can be sold or bought across Europe. The FTA said:

⁷³ CAA, *submission of evidence*.

⁷⁴ *Idem*.

⁷⁵ HMG, *The Balance of Competences between the UK and the EU: Foreign Policy Report* (2013).

The EU creates a level-playing field of technical requirements for the construction, maintenance and operation of road vehicles. Although complex and sometimes cumbersome the EU rules are infinitely better than 27 variants all designed to protect the home markets of indigenous producers.⁷⁶

- 2.83 It added: 'harmonisation of vehicle design and construction standards helps with economies of scale, thus keeping costs down'.⁷⁷
- 2.84 The Royal Academy of Engineering, the UK's national academy for engineering, noted:
- It is hugely beneficial that the EU sets standards for road vehicles. EU approval processes make it possible for a car manufacturer to obtain approval against a set of standards knowing that the car is then free to travel or be sold across the EU without further inspections.⁷⁸
- 2.85 The Community Transport Association (CTA), the national representative body of voluntary sector transport operators covering the whole of the UK, was of the view that:
- A common approach to the regulation of passenger transport is good; recognition of driving licences, driver training, vehicle technical standards on passenger transport is good.⁷⁹
- 2.86 The AA and RAC highlighted that the EU Type Approval legislation has also given additional benefits such as 'economies of scale, increased competition between manufacturers and has reduced the general price differential between Member States. This benefit is evidenced in falling purchase prices in real terms'.⁸⁰
- 2.87 The SMMT put its comments in a world context and pointed out the global nature of motor manufacturing. It urged the UK to engage at both EU and UNECE levels and said, 'the UNECE process in Geneva plays a crucial role in setting global technical regulations. While European standard setting and legislation ensures a level-playing field and establishes a common set of rules for automotive companies to manufacture products for the Single Market, global standards potentially go one step further in opening up the global market. Economies of scale are greater where agreements can be reached on a global level'.⁸¹
- 2.88 Another benefit of common standards is the ease and efficiency which can accrue from the resulting fall in bureaucracy and this was put into historical context by the Senior European Experts Group (SEEG) who noted:
- There were approximately 100,000 sets of technical regulations in the then EU Member States in the mid-1980s that were subsequently replaced by EU level regulations. To transport a lorry load of goods from London to Milan in 1988 required 88 separate documents; the internal market replaced them all with one piece of paper.⁸²
- 2.89 The FTA also saw business advantages to Europe-wide standards for minimum driving licence requirements which are better for business. They thought that the Motor

⁷⁶ FTA, *submission of evidence*.

⁷⁷ *Idem*.

⁷⁸ Royal Academy of Engineering, *submission of evidence*.

⁷⁹ CTA, *submission of evidence*.

⁸⁰ RAC Foundation, RAC and AA, *submissions of evidence*.

⁸¹ SMMT, *submission of evidence*.

⁸² SEEG, *submission of evidence*.

Insurance Database allowed those involved in an accident with a vehicle registered elsewhere to track down insurance, if held, and that the exercise of EU competence was essential for fair competition.

- 2.90 Turning to more specialised areas of the roads sector, the National Farmers' Union (NFU) explained that the EU has helped, 'to improve UK agricultural transport through greater recognition of EU driver licences. This has enabled agricultural workers from abroad to be more easily permitted to drive common agricultural equipment on the road. As a result there is a sufficient workforce of qualified drivers, particularly at peak times such as harvest'.⁸³
- 2.91 And in the world of motor cycling there was strong support for technical harmonisation from the British Motorcyclists Federation who also set their remarks in a global context:
- Given the cost of development of [motorcycle] models and the cost of tooling for production, the chances of UK consumers having access to the different models available without a free trade area and market harmonisation are slim to none. [...] For a global company like Honda, which sells millions of motorcycles around the world, developing a UK specific model to sell just over 2000 low margin units is simply bad business.⁸⁴
- 2.92 For the British Motorcyclists Federation the 'worst case scenario would be if we left the EU and, like Switzerland and Norway, ended up with the same products made under the same rules without any input into how those rules are made'.⁸⁵
- 2.93 The Retail Motor Industry Federation (RMI) considered the interface of common standards with national enforcement regimes and commented that the existing, stringent levels of testing and compliance in the UK meant that it was rare for EU legislation to impose onerous requirements which caused significant detriment to RMI members. For example, in their view, the recent proposals to standardise maximum heights for commercial vehicles have had very little effect.⁸⁶
- 2.94 The RHA, while echoing a general support for technical harmonisation commented that, 'although there is considerable and useful harmonisation of technical standards, commercial and social standards vary'.⁸⁷ This is considered further in the following section.
- 2.95 Standard setting demands greater consideration of market impact and capability than has sometimes been shown, particularly in recent years, and there was evidence that EU harmonising action was sometimes disproportionately burdensome, with a fear expressed that an overly-prescriptive approach could lead to suppressing innovation. The Chartered Institute of Logistics and Transport in the UK (CILT UK) hoped for, 'a less prescriptive approach, with legislation based on specifying outcomes rather than actions. This would stimulate innovation, reduce costs and enable targets to be achieved through market-tested solutions'.⁸⁸
- 2.96 Away from road transport, other industries also submitted evidence on common operational standards. In aviation the establishment of common standards for aircraft

⁸³ NFU, *submission of evidence*.

⁸⁴ British Motorcyclists Federation, *submission of evidence*.

⁸⁵ *Idem*.

⁸⁶ RMI, *submission of evidence*.

⁸⁷ RHA, *submission of evidence*.

⁸⁸ CILT UK, *submission of evidence*.

parts and safety was widely regarded as beneficial. The CAA noted that delegation to the European Aviation Safety Agency (EASA) since 2003 of responsibility for type certificating aircraft and parts, which was previously a national competence, had strengthened the single market in aerospace products, had greatly eased the burden on manufacturers and had assisted Airbus and other European manufacturers in selling their products worldwide.⁸⁹ easyJet noted that this harmonisation of safety standards ensured that, 'all EU registered aircraft are operated and maintained to the same set of rules, enhancing protection for UK consumers and UK airline operators. Without harmonisation of safety standards by the EU there would be no common set of standards across the EU. Commonality reduces risk and brings benefits on its own. Further, UK consumers receive increased protection as all EU airlines operate to the same set of standards'.⁹⁰

2.97 British Airways added, 'this harmonisation has contributed to the achievement of the safest period in European aviation safety'.⁹¹

2.98 In a rail context, the Royal Academy of Engineering strongly supported the role of the EU and noted that:

It is essential that standards are imposed by a supra national body, to ensure that individual nations do not lag behind in meeting standards, or use the differing standards between countries as a means to pursue protectionist practices.⁹²

2.99 The Academy added: 'rail is often a matter of national pride and entrenched practices so a supra national body, with the power of legal compulsion, is needed to ensure international interoperability'.⁹³

2.100 The RSSB agreed:

We find that the harmonisation of standards is both necessary for the functioning of the market and desirable in its own right.⁹⁴

In the field of standards and harmonisation we believe that the EU is by far the most important player and that any attempts to repatriate powers would be a mistake. The organisational framework, interface standards and the requirements for safety are best set at the EU level.⁹⁵

2.101 The RSSB pointed out, however, that there were many aspects of running a railway system which could be managed in different ways without compromising technical compatibility which, in their view, could lead to an approach where 'virtuous barriers' were put in place, typically relating to safety, and which could be used as grounds to deny access to a network.⁹⁶

2.102 The introduction of common technical standards and assessment procedures to facilitate interoperability enabled both manufacturers and supply chain providers to drive down costs and increase their potential for exports through opening markets in other Member States. Overall, evidence from stakeholders including ORR, Eurostar and the RSSB,

⁸⁹ CAA, *submission of evidence*.

⁹⁰ EasyJet, *submission of evidence*.

⁹¹ British Airways, *submission of evidence*.

⁹² Royal Academy of Engineering, *submission of evidence*.

⁹³ *Idem*.

⁹⁴ RSSB, *submission of evidence*.

⁹⁵ *Idem*.

⁹⁶ *Idem*.

found that the introduction of interoperability had been useful and several believed that the EU should go further and align standards with those used internationally, for example in the US or Japan, to allow EU businesses to choose from a wider range of suppliers and potentially widen their export potential. ORR felt that interoperability had also ‘contributed to optimising the supply market to take advantage of wider and more innovative technical solutions’.⁹⁷

- 2.103 An example of the benefits of technical harmonisation which were possible, particularly in relation to cross-border operation, was provided by Eurostar which indicated that interoperability had allowed it to purchase trains on the ‘proven and tested Siemens Volaro platform, thereby lowering costs of procuring the train, and avoiding some of the complex tailoring to the specific national environments and standards’.⁹⁸ Eurostar added that this was also likely to lead to a ‘significant increase in reliability’, although it was recognised in many cases that the direct level of benefit was difficult to determine and that there remained ‘strong potential for growth in cross-border passenger rail’.⁹⁹
- 2.104 Freightliner’s view was that ‘there are clear interoperability benefits to rail freight operators if the long term vision of a common signalling system throughout Europe is realised’.¹⁰⁰ But they added, ‘the UK has excluded itself from a vast number of common benefits on account of its clearance gauge’.¹⁰¹
- 2.105 However, a contrary view was taken by the PWF who maintained that ‘applying common EU standards and practices to rail wagons for internal GB use is potentially to the UK’s dis-benefit.’ They also said that ‘it is also relevant to note that the EU is not the exclusive source of good technology for the rail freight industry’ and that the USA had been a source of rail wagons and freight locomotives in recent years.¹⁰² For the same reasons the PWF opposed the EU negotiating internationally in the field of rail freight transport as they believed the UK interest would be ‘seriously prejudiced, due to its particular [geographical] situation’.¹⁰³
- 2.106 The option of working to non-EU standards was also noted by ATOC who said, ‘other approaches are possible, such as aligning to standards in other major markets such as the US or Japan’.¹⁰⁴
- 2.107 Support for access to non-EU suppliers also came from ORR who said that ‘the UK must act to ensure that non EU suppliers are not shut out of the EU market, for example, Hitachi for production of signalling and components for ERTMS (the European Rail Traffic Management System’.¹⁰⁵
- 2.108 Meanwhile Railfuture, an organisation campaigning for better rail services for both passengers and freight, linked signalling requirements to local needs and said, ‘in signalling, an insistence on ERTMS on lines which are never likely to carry international trains (such as the Cambrian Coast) represents over-provision and a cheaper system is sufficient’.¹⁰⁶ Railfuture concluded

⁹⁷ ORR, *submission of evidence*.

⁹⁸ Eurostar, *submission of evidence*.

⁹⁹ *Idem*.

¹⁰⁰ Freightliner, *submission of evidence*.

¹⁰¹ *Idem*.

¹⁰² PWF, *submission of evidence*.

¹⁰³ *Idem*.

¹⁰⁴ ATOC, *submission of evidence*.

¹⁰⁵ ORR, *submission of evidence*.

¹⁰⁶ Railfuture, *submission of evidence*.

that other models of rail service provision should be possible and permitted on isolated self-contained railways, such as that operating on the Isle of Wight.

2.109 Turning to the efficacy of common operational standards in the maritime sector, the RYA noted in relation to Directive 94/25/EC that:

A recreational craft manufactured in one EU member state could then be sold anywhere in the EU and Member States were prohibited from applying different standards. This has made a significant difference to the recreational boating sector, with UK manufacturers gaining access to a pan-European market and UK boaters gaining access to a wide range of European products.^{107 108}

ii) Consumer, Social and Environmental Standards

2.110 A number of stakeholders responded with evidence on how the EU had exercised its competence to set common standards in relation to consumer, social and environmental matters, including the balance between consumers and service providers, the social dimension to the Single Market, and environmental issues. Although views were mixed, respondents recognised that the EU endeavoured to make the common transport policy work for both operators and consumers and that this was a fine balance.

2.111 In contributing to this debate the AOA noted that, 'social harmonisation touches on sensitive issues of national identity and it is therefore important to ensure that such harmonisation is necessary and goes no further than what is required for the delivery of specific objectives'.¹⁰⁹

Passenger Rights

2.112 Overall, EU action in relation to addressing the rights of passengers has generally been considered to be positive and respondents recognised attempts by the EU to have a consistent approach.

2.113 The Passenger Transport Executive Group (pteg) noted that:

For the benefit of consumers, it has, for instance, imposed basic passenger rights in all modes and allowed for public service obligations to be taken into account in transport contract tendering. For operators, it has tried to ensure greater equality of access to the transport market. However, the complexity of the rules can lead to lack of uptake of their rights by passengers and considerable administrative burden for authorities and operators.¹¹⁰

2.114 In aviation, easyJet noted that:

EU legislation has created a common set of consumer rights that apply across the EU. easyJet supports these rights and we believe they are an essential part of the aviation policy framework.

We believe that without EU involvement in this area these consumer rights would not have emerged in a consistent way across Europe. We are not aware of any bilateral consumer rights agreements with third countries that the UK has negotiated on its own.¹¹¹

¹⁰⁷ Directive 94/25/EC of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft, 1994.

¹⁰⁸ RYA, *submission of evidence*.

¹⁰⁹ AOA, *submission of evidence*.

¹¹⁰ pteg, *submission of evidence*.

¹¹¹ EasyJet, *submission of evidence*.

- 2.115 However, the Thomas Cook Group was of the view that these benefits had been stretched unfairly in the courts. Specifically they felt that rulings by the ECJ on aviation passenger rights legislation had gone too far in favouring passengers.¹¹² They gave the example of the ECJ decision in *Sturgeon v Condor*, 'where the ECJ has very significantly extended passenger rights from those agreed during the legislative process. This has resulted in a significant increase in costs for the aviation sector which were not subject to any form of Impact Assessment, nor any other consideration as to the impacts of the decision'.^{113 114}
- 2.116 Thomas Cook considered that action was needed to restore the balance between the costs to the aviation industry and the expectations of air passengers. As the CAA put it, 'being over-prescriptive on service quality risks eliminating a legitimate element of competition between airlines'.¹¹⁵
- 2.117 The AOA, noting that obligations must be proportionate and not unduly prescriptive, introduced the EU institutional dimension and drew attention to the roles of the European Parliament and Council of Ministers. The AOA said: 'we recognise that the European Parliament feels particular responsibility towards consumers and therefore look to the Council in general and the UK Government in particular to provide an appropriate counter-weight'.¹¹⁶
- 2.118 Thomas Cook added, that 'in attempting to agree final versions of legislation there is a very real risk that decision making becomes excessively influenced by the need to achieve compromise [...] and which bear no relation to the actual position of either Council or Parliament [...] [This] can create issues and problems at a later stage, particularly if courts are asked to give their opinions on the intentions behind individual items of legislation'.¹¹⁷
- 2.119 The fact of compromise was also brought out by the CAA who said, 'once a particular objective is agreed, the enabling legislation is subject to negotiation between 28 States. The UK cannot always expect to achieve its ideal outcome – sub-optimum outcomes are sometimes the price for agreement. Put simply, an 80%-proof common solution will probably be preferable to no agreement'.¹¹⁸
- 2.120 In the maritime sector concerns about common passenger rights were raised by the UK Chamber of Shipping which suggested that the EU had 'adopted requirements and standards which are not suited to the particular circumstances of the shipping sector, but which are proposed because of a desire for uniformity of treatment with other sectors or transport modes. Particular recent examples include the imposition of requirements in the context of passenger rights, which were developed initially for airlines under very different circumstances than apply to the passenger shipping sector'.¹¹⁹

¹¹² Regulation 261/2004/EC of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation 295/91/EEC, 2004.

¹¹³ Thomas Cook Group, *submission of evidence*.

¹¹⁴ *Sturgeon v. Condor; Bock v. Air France*, Cases C-402/07 and C-432/02, [2004].

¹¹⁵ CAA, *submission of evidence*.

¹¹⁶ AOA, *submission of evidence*.

¹¹⁷ Thomas Cook Group, *submission of evidence*.

¹¹⁸ CAA, *submission of evidence*.

¹¹⁹ UK Chamber of Shipping, *submission of evidence*.

Social and Environmental Standards

- 2.121 Many of the responses on social standards were centred on road transport and there were a variety of views, mostly on the commercial sector.
- 2.122 Drivers' hours were an issue on which respondents were divided. The Confederation of Passenger Transport (CPT) said, 'it is extremely important to our sector that restrictions on working patterns are firmly rooted in road safety and nothing else'.¹²⁰
- 2.123 The rules were considered too inflexible by the FTA who argued that 'regulating drivers' hours to guard against fatigue is one thing but attempting to impose a maximum working week based on what one nation is prepared to work is an example of the limits being exceeded. Social harmonisation has not always worked in European businesses interests as the migration of manufacturing and other sectors to less disciplined and lower cost parts of the world has shown'.¹²¹
- 2.124 The CPT also pointed out that 'inflexible rules and efficient recording equipment mean that journeys that could be reliably done by one driver cease to be possible without a second member of staff, greatly increasing costs. It is extremely difficult to explain to passengers that they must stop a short distance from their destination because congestion, or an incident earlier in the journey, has caused their driver to "run out of hours" and they need to wait for a replacement driver to be found'.¹²²
- 2.125 Some respondents felt that there was an imbalance between different stakeholder interests which was due more to the way in which Member States had chosen to apply the EU rules, rather than the problem lying in the legislation itself. For instance, pteg further observed that: 'with reference to local buses, the UK would be well served by taking action at national level to seek competition for the market, as in London, rather than in the market, which is what we have in the rest of the country; this is permitted under EU rules but UK Government has chosen to apply a different model'.¹²³
- 2.126 The absence of uniform enforcement across the EU was viewed by some respondents as a problem. The Transport Planning Society, which promotes best practice in transport planning, said that 'driving or operating an HGV is strictly controlled in the UK on safety and environmental grounds [but] less so elsewhere. There is evidence that foreign registered HGVs are involved in a disproportionate number of accidents in the UK due to tired drivers and less well maintained vehicles'.¹²⁴
- 2.127 The RFG wanted to ensure that standards were common between competing transport modes and pointed out that Directive 2005/47/EC on mobile workers restricted the number of nights a rail driver is permitted to stay away from home on any one trip.¹²⁵ They commented, 'this does not happen in the road freight industry'.¹²⁶ Issues of cross-modal freight transport giving the perspectives of road and rail stakeholders are considered further in chapter 3.

¹²⁰ CPT, *submission of evidence*.

¹²¹ FTA, *submission of evidence*.

¹²² CPT, *submission of evidence*.

¹²³ Pteg, *submission of evidence*.

¹²⁴ Transport Planning Society, *submission of evidence*.

¹²⁵ Council Directive 2005/47/EC on the agreement between the community of european railways (CER) and the European transport workers' federation (ETF) on certain aspects of the working conditions of mobile. workers engaged in interoperable cross-border services in the railway sector, 2005.

¹²⁶ RFG, *submission of evidence*.

2.128 A different view of social legislation was put forward by the trade unions. The TUC said:

It is simply inconceivable that cross EU transport would have been as efficient, or would have developed the same degree of worker and consumer protection, without European legislation.¹²⁷

2.129 The TUC also made the observation that, in the roads industry, there was a need to limit total working time as well as driving time otherwise, for example, a HGV driver could work for 48 hours per week in the depot and another 48 hours driving. The TUC also noted the difference between maximum permitted hours for bus drivers, under domestic UK rules, compared to the lower maximum permitted hours for coach drivers, covered under European rules. They felt that the EU could do more to ensure parity of requirements on driving hours across modes. Unite the Union agreed:

We do not support any attempts to weaken existing EU-derived rights or forms of membership that reduce protections and standards for working people in the UK.¹²⁸

Driver Certificates of Professional Competence (Driver CPC)

2.130 Directive 2003/59/EC which requires the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers had, in relation to Driver CPCs caused considerable frustration to hauliers, incidental agricultural drivers, and coach and bus drivers alike.¹²⁹

2.131 The FTA explained that this Directive ‘added unnecessary constraints to responsible operators who already invested in their drivers’ and that the ‘framework should be less burdensome on already compliant operators’.¹³⁰

2.132 The NFU argued that ‘driver CPC is an example of poorly drafted EU legislation being directly transposed into UK law. There is a shared responsibility between the Commission and Member States to understand the nuances and impact of legislation on businesses, especially where driving and transport are incidental to their main business activity’.¹³¹

2.133 The inconsistency of driver CPC provision was criticised by some respondents given that there is no requirement to undertake sector specific training. For example, a driver undertaking seven hours of first aid training every year would retain their driver CPC. The CPT warned that there is a potentially contentious issue whereby ‘British bus and coach drivers will shortly have to stop working if they have not taken the necessary periodic training while drivers who are nationals of certain other Member States will be able to continue working – including on UK roads – for another two years’.¹³²

2.134 The BVRLA, commenting partly on the legislation and partly on the implementation echoed the general view that driver CPC is ‘a good example where the right balance for businesses was not struck’.¹³³

¹²⁷ TUC, *submission of evidence*.

¹²⁸ Unite, *submission of evidence*.

¹²⁹ Directive 2003/59/EC of the European Parliament and of the Council on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, 2003, amending Council Regulation 3820/85/EEC 1985 and Council Directive 91/439/EEC 1991 and repealing Council Directive 76/914/EEC 1976.

¹³⁰ FTA, *submission of evidence*.

¹³¹ NFU, *submission of evidence*.

¹³² CPT, *submission of evidence*.

¹³³ BVRLA, *submission of evidence*.

Localism

- 2.135 In making their own comments on this issue Cumbria Green Fuels Ltd also brought in the domestic and localism agenda. Given that most agricultural vehicles and trailers do not move between national boundaries, they felt they should not be subject to EU regulation. Cumbria Green Fuels Ltd argued that: ‘agricultural vehicles are often designed specifically for local conditions and harmonisation rules are unnecessary and costly as they often do not relate to circumstances in which these vehicles are used’.¹³⁴
- 2.136 And localism of a different sort was touched on by the ORR who felt that the application of passenger rights legislation to railways outside the national network, such as London Underground, ‘may not be justified’.¹³⁵

Social and Environmental

- 2.137 Turning to other transport modes there was an equal variety of views when it came to social and environmental matters. In aviation, there was a clear sense from participants at the London aviation workshop that there was a role for the EU in the areas of noise reduction and air quality.¹³⁶ EasyJet was of the opinion that aviation must play its role in tackling climate change and said that it ‘fully supported bringing aviation into the European Emissions Trading System (ETS)’.¹³⁷ The AOA expressed their view as: ‘we would welcome an agreement at international level on aviation emissions, while recognising that the EU has played a useful role in raising the profile of this issue’.¹³⁸
- 2.138 The Aviation Environment Federation (AEF), a non-governmental organisation concerned with the environmental impacts of aviation, said, ‘EU legislation on air pollution has been very beneficial’.¹³⁹ Rolls Royce pointed out that through the ‘Clean Sky’ research undertaking they were leading three large jet engine demonstrator programmes ‘aimed at dramatically reducing the environmental impact of aviation’.¹⁴⁰
- 2.139 For rail, Freightliner made clear that it ‘does not support EU action to harmonise social and environmental standards’ which it felt would add significant additional costs.¹⁴¹ The PWF added that the introduction of tighter environmental standards could have the ‘perverse effect of undermining the viability of rail freight compared to other [more polluting] transport modes’.¹⁴² Network Rail added that it is frequently the ‘other policies and legislative measures that are not specifically directed at the rail industries which tend to cause the imbalances’.¹⁴³
- 2.140 Eurostar struck a different note in the discussion of consumer and social matters and pointed to its own, ‘economically vital role supporting the French community in London. It is estimated that between 300,000 and 400,000 French citizens live and work in London; they are, as a population, young, skilled and economically active and [...] contribute to

¹³⁴ Cumbria Green Fuels, *submission of evidence*.

¹³⁵ ORR, *submission of evidence*.

¹³⁶ *Record of 18 June aviation stakeholder event*.

¹³⁷ EasyJet, *submission of evidence*.

¹³⁸ AOA, *submission of evidence*.

¹³⁹ AEF, *submission of evidence*.

¹⁴⁰ Rolls Royce, *submission of evidence*.

¹⁴¹ Freightliner, *submission of evidence*.

¹⁴² PWF, *submission of evidence*.

¹⁴³ Network Rail, *submission of evidence*.

the UK economy'.¹⁴⁴ In Eurostar's view, 'this is just one aspect of the openness, tolerance and ease of access which makes London a World City and which in turn enables the UK to exert a level of European and global influence beyond that which simple statistics would suggest'.¹⁴⁵

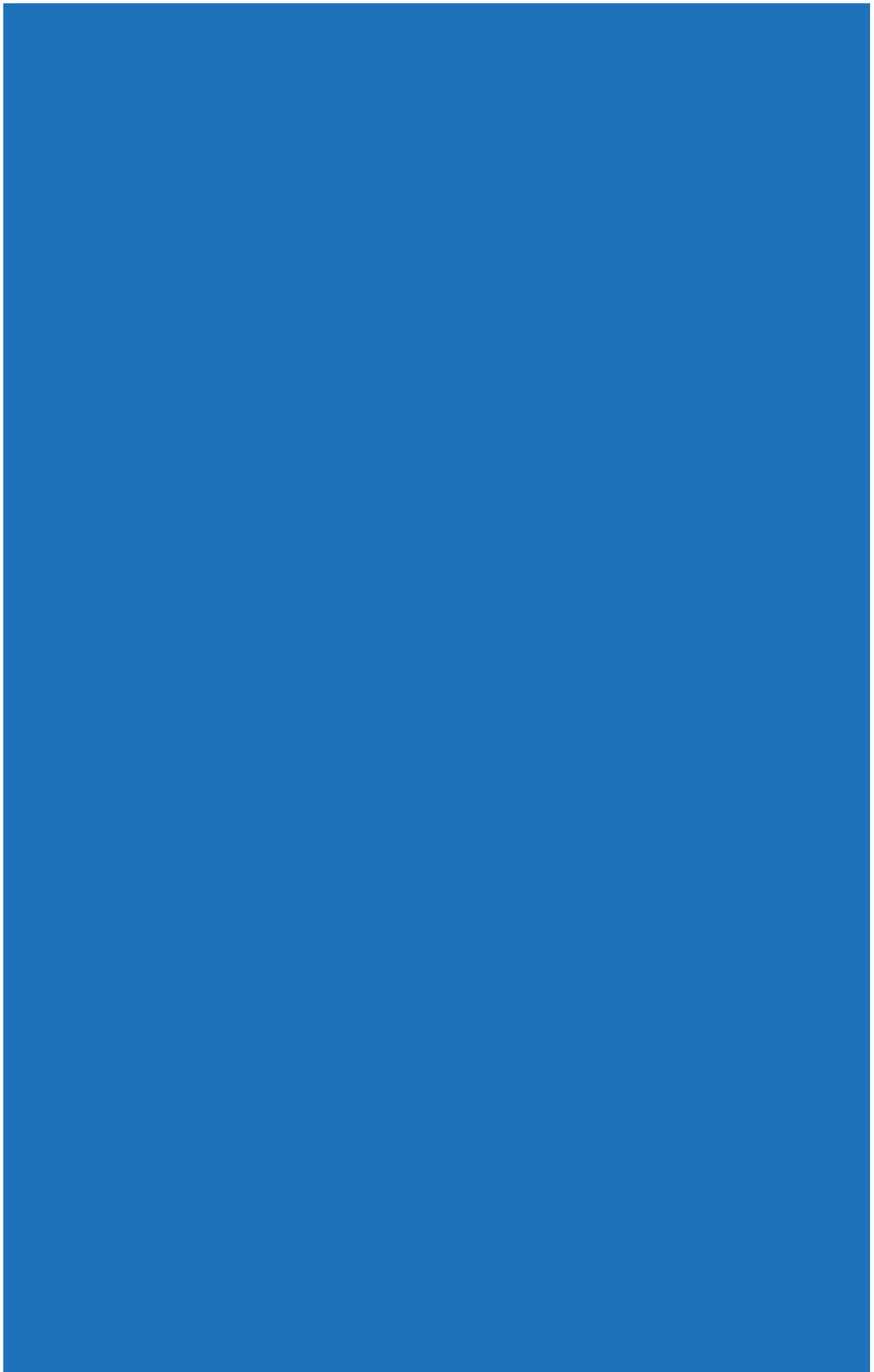
The Balance of Competence

- 2.141 The different approaches to dealing with the cross-modal issues outlined above across Member States have a number of drivers. These include cultural and political differences, attitudes toward free trade and societal views on issues such as privatisation and new technologies. EU policy-making has to cope with this tension between consistency, fairness within the Single Market and broad social acceptance of decisions and policies.
- 2.142 Overall, the evidence submitted by transport stakeholders suggested that the current balance of EU competences in respect of the single market for transport services was, in the words of the SMMT, 'broadly right' and that significant benefits had been accrued through closer cooperation between the EU and the UK.¹⁴⁶ There was evidence that, where the EU had succeeded in creating a single market, such as in the aviation sector, economic benefits to businesses and consumers followed.
- 2.143 Business stakeholders in particular have been supportive of the concept of the single market in transport services. The effects of market liberalisation are widely considered to have been beneficial for UK businesses and consumers. The transport single market was also seen to underpin the wider EU Single Market because to be effective the free movement of goods and people requires the free movement of transport. There was evidence from stakeholders that more needs to be done in some areas to deliver the full potential of the Single Market concept.
- 2.144 But there were important riders to this general acceptance of EU competence. The exercise of competence in developing rules for social, safety and environmental matters was more controversial among some respondents than the exercise of competence to develop rules to establish market liberalisation. And the perception that the EU is seeking to extend the exercise of its competence for social, safety and environmental rules into the arena of international regulation is also contentious, with some businesses fearing competitive disadvantage especially where they trade globally. This was felt especially in the maritime industry.
- 2.145 There is evidence of frustration with some of the social, safety and environmental rules especially where these impinge on purely domestic transport without any international dimension. The concerns expressed about new regulatory burdens and costs mean that there is still much work to be done to find the right level of legislative prescription which will achieve the stated aims without imposing disproportionate costs or prohibiting innovation. This is considered in the next chapter.

¹⁴⁴ Eurostar, *submission of evidence*.

¹⁴⁵ *Idem*.

¹⁴⁶ SMMT, *submission of evidence*.



Chapter 3:

Future Options and Challenges

- 3.1 This Chapter looks at the implications of the evidence from stakeholders considered in the previous chapter. Future options and challenges are considered under two headings: improving the transport Single Market and better regulation. No recommendations for action are made.

Improving the Transport Single Market

- 3.2 Although many stakeholders strongly supported the principle of a single market in the transport sector, this does not mean they were entirely uncritical of it. In considering where competence might be exercised in future in transport there was considerable feeling that more could be done to maximise the potential that liberalised markets offered to consumers and businesses, and frustration where this was held back by ineffective implementation or lack of enforcement of existing regulation. As has been seen in chapter 1, the single market in transport services is something that historically the UK has pressed strongly for and has driven in a broadly liberalising direction. Stakeholders mostly believe this has benefited the UK and would like to see the process improved.
- 3.3 Even in areas of full harmonisation, stakeholders recognised that Member States can interpret, implement and enforce the law in different ways, which can potentially lead to unfair competition, distortion of the market and hindrance to growth. Where harmonised standards are not being applied appropriately the European Commission has a role to ensure that Member States comply and to guard against unfair competition. Fulfilment of that role would bring benefit to UK businesses and consumers.
- 3.4 The aviation industry, for example, saw considerable potential for economic growth and efficiency through the delivery in practice of the SES as well as the establishment of a liberal market for air traffic management and the provision of air navigation services, where most European service providers are state owned. The challenge for the EU was to ensure the full and proper implementation of SES legislation by all Member States, particularly where traffic crosses the airspace of transit countries.
- 3.5 Representatives of the maritime industry also believed that the single market in their sector could be further enhanced. There was support from the British Ports Association for the EU initiative to create a 'Blue Belt' in which seaborne EU goods could circulate with a reduced obligation to customs procedures. If introduced, it was felt that the logistical efficiencies that should follow for operators should themselves be a significant factor in growth generation.

3.6 For rail, the largest single challenge for the future is perceived by some stakeholders, including those quoted below, to be finding a way whereby the EU can ensure that there are proper reciprocal arrangements to open up domestic markets to intra-European competition. The UK had opened its markets and there was concern at the failure of some Member States to do likewise. The RFG said:

Although in theory any company can operate trains in any member state, there remain many technical, operational and safety issues as well as access to tracks and terminals, all of which mean that new entrants are unfairly treated.¹

3.7 Eurostar was of the view that:

Without any collaboration between national authorities, existing legacy systems and entrenched national differences are likely to subsist, holding back existing and future investment in rail travel, while the UK might be missing out on a possibility to export its know-how and experience.²

3.8 Stakeholders suggested opportunities for British firms in the emerging single rail market and considered that the expertise the UK had developed in, for example, rolling stock leasing, train maintenance and alternative energy supply, could be invaluable in exploiting gaps in other Member States' industries. National Express reported to the UK embassy in Berlin that there was a real gap in the market for rolling stock companies (ROSCOs).

3.9 In road transport, there were specific suggestions, in relation to vehicle rental, for EU action to broaden the Single Market. The BVRLA thought more could be done to create a single market in the movement of rented vehicles between Member States. Present constraints requiring rented vehicles to be repatriated to their originating countries before they could be rented out again were administratively burdensome and time consuming. The BVRLA consider that the free movement of rented vehicles across Member States would be of benefit to citizens and businesses.

3.10 In the field of road safety, the Parliamentary Advisory Council for Transport Safety (PACTS) felt that a 'European competence on speed limiters is desirable', while Transport for London (TfL) considered that, 'further EU action to improve the safety of vulnerable road users such as cyclists is imperative' regardless of where the vehicle originated.^{3 4}

3.11 For those industries engaged in global trading, it was very important that the single market opens onto the wider world economy. CILT UK said, 'the nature of EU involvement should depend on the market. In sectors where EU companies operate against global competitors in global markets, the EU must ensure its legislation does not place member states at a material disadvantage'.⁵

Better Regulation

3.12 CILT UK put the matter thus:

The EU is now a mature organisation, but there are questions over whether it has adequately embraced the change that needs to come with that status. It needs to evolve from a body whose primary role was legislative to one whose primary role is enforcement and monitoring of already agreed strategic objectives.⁶

¹ RFG, *submission of evidence*.

² Eurostar, *submission of evidence*.

³ PACTS, *submission of evidence*.

⁴ TfL, *submission of evidence*.

⁵ CILT UK, *submission of evidence*.

⁶ *Idem*.

3.13 One of the issues most remarked upon by stakeholders was the constant flow of legislation emanating from the Commission. At the London workshop on maritime issues an attendee described the Commission as ‘spurting out legislation like a volcano’, and at the London rail workshop attendees expressed their frustration at the Commission’s ‘bureaucratic fidgeting’ and wanted regulatory stability.^{7 8} The RHA said the Commission ‘seems to have an itch to act, whether it adds value or not’.⁹

3.14 As well as concerns about the quantity of legislation there were also concerns about the quality of legislation. The Confederation of Passenger Transport (CPT) representing the bus and coach industries said:

‘Brussels’ generates some classic examples of the ‘wouldn’t it be a good idea if ...’ school of policy making which has largely been superseded in the UK by an evidence-based approach.¹⁰

3.15 The CAA identified five recurring categories of difficulties which prevented the EU making greater or quicker progress. These categories were separately identified by stakeholders in other modes too, so the CAA list can perhaps be considered as representative. They are:

- Legislating as the default option, with insufficient consideration of other types of action such as use of voluntary codes, guidance, training, and disseminating good practice;
- Where legislating, being top down and over prescriptive;
- Failure to ensure common effective implementation of existing rules;
- Inadequate or selective engagement with stakeholders leading to impracticable or over-engineered proposals; and
- Weaknesses in the Commission’s ability to manage major change projects (for example, SES).¹¹

3.16 But the CAA cautioned that just as an automatic recourse to legislation is unhelpful, so too is an automatic refusal to countenance EU legislative action. Instead, the ‘focus should be on identifying and agreeing the issues to be tackled, the outcomes to be achieved and the approach – legislative or other – likely to ensure effective implementation’.¹²

3.17 Looking at the Commission as the source of legislation, the UK Chamber of Shipping said:

There is no obvious scope for another body to regulate trade within, into and out of the internal market. The management of the free movement of goods and passengers within the internal market and of the external border of the EU is plainly an EU responsibility.¹³

3.18 Concerns were expressed about new regulatory burdens and the costs these imposed, and about the difficulties in finding the right level of legislative prescription which would

⁷ *Record of 17 June maritime stakeholder event.*

⁸ *Record of 20 June rail stakeholder event.*

⁹ RHA, *submission of evidence.*

¹⁰ CPT, *submission of evidence.*

¹¹ CAA, *submission of evidence.*

¹² *Idem.*

¹³ UK Chamber of Shipping, *submission of evidence.*

achieve the stated aims without being disproportionate. In an area like transport which is already so heavily regulated at a European level, there were frustrations that transport was still the focus of such a continuing EU legislative effort, and a sense of an incremental decrease in returns.

- 3.19 Specific areas where stakeholders expressed their frustrations can be drawn together under the following headings: proportionality and subsidiarity, how local transport is affected by international rules, and the need for proper impact assessments. Cross-modal issues between rail and road freight and the enforcement of State aid rules were also raised. Some stakeholders, particularly covering general aviation and motorcycle training interests, suggested delegating back to a national level areas where they felt that recent EU action had harmed essentially local interests where there was no significant Single Market dimension. Each of these headings is considered in more detail below.
- 3.20 In short, stakeholders felt that further market liberalisation to the benefit of UK businesses and consumers remained possible, but that many barriers, both formal and informal, still remained. There was a general view that the way to achieve the UK's aim was, in many cases, through more effective implementation and enforcement of existing legislation, rather than through new legislation.
- 3.21 Drawing back from an approach to governance that does not involve over-prescriptive or unnecessary regulation of business was seen as facilitating growth in the Single Market and in trade with the wider world.
- 3.22 As the Prime Minister's Business Taskforce on EU Regulation stated, 'when new rules are necessary they must be unashamedly pro-growth'. The findings of that report generally chimed with many of the responses received to the DfT Call for Evidence, for example in relation to the Single Market, that 'further liberalisation of [...] transport [...] is of crucial importance' and, on regulation generally, that 'it isn't enough just to remove existing rules: Europe must avoid adding new ones'.¹⁴

Proportionality and Subsidiarity

- 3.23 There was a strong view that EU institutions should respect the principle of proportionality. The AOA voiced the thoughts of many when it said:
- It is also important to our members that the EU institutions should pay due regard to the principles of subsidiarity and proportionality.¹⁵
- 3.24 They added: 'there may have been occasions in the past when the enthusiasm of the EU institutions to legislate and regulate, particularly for the internal market, have led to proposals which were unnecessarily prescriptive. However, we see some evidence in recent years of a greater understanding of the importance of both proportionality and subsidiarity'.¹⁶
- 3.25 An example of what was perceived to be disproportionate EU action was given in the area of harmonised rules for issuing driver licences. In the FTA's view, the medical requirements set for vocational drivers below the age of 45, with five-yearly renewals of the licence, were over-prescriptive and they would prefer a national derogation for the renewal of licences.¹⁷

¹⁴ 'Cut EU Red Tape': A Report from the Business Taskforce (2013).

¹⁵ AOA, *submission of evidence*.

¹⁶ *Idem*.

¹⁷ FTA, *submission of evidence*.

3.26 The BVRLA noted that regulatory change sometimes had consequences which were bad for UK business. It said that, ‘the unintended consequences of European legislation are not always taken into account when new legislation is introduced [...] For example the decision to not allow non-EU driving licence holders to drive minibuses and goods vehicles up to 7.5 tonnes in Europe, which has reduced business opportunities for UK rental businesses’.¹⁸

Local Circumstances and International Rules

3.27 The Commission was urged by some stakeholders to legislate with a less heavy hand, or not at all, when it comes to non intra-European issues, and to allow greater scope to national handling when it comes to purely domestic issues and local circumstances. This concern was raised by stakeholders from the recreational aviation, rail and roads sectors.

3.28 It is worth noting again the point made by Cumbria Green Fuels Ltd that most agricultural vehicles and trailers do not move between national boundaries: ‘agricultural vehicles are often designed specifically for local conditions and harmonisation rules are unnecessary and costly as they often do not relate to circumstances in which these vehicles are used’.¹⁹

3.29 The debate about whether one size of regulation can fairly fit both domestic and international transport operators needs to have within it a consideration of the needs of Small and Medium-sized Enterprises, many of whom may be more domestic than international in their operations. The CAA identified as an important future challenge for the EU the need to ensure that ‘the interests and specificities of small and medium operators are catered for, and that EU policy or legislation does not hamper sources of dynamism. Large operators find it easier to engage with the EU system than their smaller counterparts’.²⁰

3.30 The argument for greater autonomy for domestic transport was also joined by the maritime industry with the RYA saying: ‘in terms of proportionality, in our view the European Commission errs too far on the side of seeking to regulate domestic transport arrangements within member states rather than focussing on facilitating transport between member states and between EU and non-EU states’.²¹

3.31 The Convention of Scottish Local Authorities (COSLA) said it, ‘would not support any EU measure that would introduce mandatory local transport rules’ and that it was in favour of the EU only exercising its competence in relation to transport matters where there is a transnational element.²² However, pteg took the view that ‘organisation of domestic transport can also benefit from EU action, especially on safety, sustainability and customer service aspects’.²³

3.32 Turning to rail, participants in the London rail workshop noted that ‘freight and rolling stock are predominantly a domestic issue for the UK’.²⁴ And TfL, also commenting on rail, was of the view that ‘greater localisation of standards, away from major strategic routes,

¹⁸ BVRLA, *submission of evidence*.

¹⁹ Cumbria Green Fuels, *submission of evidence*.

²⁰ CAA, *submission of evidence*.

²¹ RYA, *submission of evidence*.

²² COSLA, *submission of evidence*.

²³ Pteg, *submission of evidence*.

²⁴ *Record of 20 June Rail stakeholder event*.

would be desirable. Such an approach could prove a useful way to reduce the cost of compliance with regulations and standards that are inappropriate to the function and role of particular routes. Unfortunately the Fourth Rail Package appears to move in the opposite direction'.²⁵

Impact Assessments

- 3.33 Impact assessments were seen as the key evidence-based policy tool with which to determine whether proposed legislation was necessary and proportionate, and justified its costs. This was picked up on by stakeholders from all modes. The IGP&I, the RHA, and participants in the London aviation workshop agreed that before deciding to legislate the Commission should first identify the practical need for the legislation, if indeed any was needed at all. It should then undertake properly evidenced impact assessments clearly setting out the potential costs and benefits of doing so.
- 3.34 The SMMT said 'an overriding issue that is relevant across the balance of competences reviews is the need for robust impact assessments'.²⁶
- 3.35 It was noted that this was often not the case and that impact assessments which should have shown up disproportionate costs of proposed measures or the lack of a strong case for them had not done their job. This, it was held, resulted in an inadequate evidence base to justify new regulatory measures.
- 3.36 The IGP&I said 'the IG's experience would suggest that the impact assessments drafted by the European Commission are not, generally, sufficiently robust to satisfy concerns, from those that are required to comply with legislative requirements' and are often drafted 'in a manner to suit the overall objective, namely to provide the justification for a legislative proposal in the first place'. IGP&I added, the 'IA accompanying the proposal for a Regulation on the liability of carriers of passengers by sea in the event of accidents can be cited as one example, where the information provided in the assessment was either of limited value, irrelevant or factually incorrect'.²⁷
- 3.37 Referring to the Roadworthiness Testing Directive (2009/40/EC), the Department for Regional Development in Northern Ireland (DRDNI), said, 'the case for the proposals was not sufficiently made by the Commission and seemed to be driven for philosophical rather than evidence-based reasons'.^{28 29}
- 3.38 And the RHA urged that the UK, 'should resist further EU initiatives, most of which rarely benefit us, without a strong business case'.³⁰
- 3.39 Another common theme from respondents was that the Commission's decision processes lacked transparency, and that the background to why actions were being taken was not publicly available. There was a perception that the Commission was often insensitive to the costs imposed by regulation.

²⁵ TfL, *submission of evidence*.

²⁶ SMMT, *submission of evidence*.

²⁷ IGP&I, *submission of evidence*.

²⁸ DRDNI, *submission of evidence*.

²⁹ Directive 2009/40/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers (recast), 2009.

³⁰ RHA, *submission of evidence*.

- 3.40 Lloyd's Register said, 'the lack of transparency and participation stifles industry's efforts to properly adjust their businesses to accommodate the changes to the benefit of the UK'.³¹
- 3.41 The IGP&I was of the view that these difficulties could be mitigated if 'the Commission took a more inclusive approach to engaging with the relevant and appropriate industry stakeholders [...] before any decision has been taken to table a proposed legislative change, rather than seeing engagement with industry purely as a "tick box" exercise'.³²
- 3.42 The evidence from stakeholders quoted above is the context for the Government's ongoing efforts to hold the European Commission to its commitment to improve the quality of Impact Assessments – including through its 'Smart Regulation' initiative – and to review systematically the effectiveness of existing EU regulation, detect regulatory burdens and identify opportunities for simplification through its Regulatory Fitness and Performance Programme (REFIT).

Recreational Aviation

- 3.43 The general aviation community (that is, the private and recreational flying sector) felt unfairly burdened by EU legislation which they considered was made without regard to their interests but, rather, to those of the commercial air transport industry.³³ As a result they felt their sector to be governed by an overly prescriptive approach and a lack of proportionality.
- 3.44 The General Aviation Alliance wanted a more nuanced approach for light aircraft and sports and recreational aviation. They advocated 'light-touch' regulation in recognition of the fact that each activity is fundamentally different, and that differing safety standards are appropriate.³⁴
- 3.45 They drew attention to what in their view were excesses, for example, safety regulations for ballooning and gliding which are not, generally, cross border activities, and encouraged the EU to adopt a more flexible approach and to consider alternative means of problem solving before introducing new legislation.
- 3.46 The CAA acknowledged that 'there is now a near consensus that in some areas general aviation faces regulation which is over-intrusive and over-costly' and noted that 'there is a specific challenge to ensure that regulation of the smaller end of general aviation, in particular recreational aviation, is commensurate with society's risk appetite and proportionate in terms of its burden on participants. Much of general aviation, especially on the operational side, does not have single market implications, and some of it is not even international in nature. This is one area in which the EU might usefully consider delegating back some tasks and responsibilities to National Authorities'.³⁵

Motor Cycle Training Industry

- 3.47 A feeling of unfair treatment was also present in representations from the motor cycle industry. The British Motorcyclists Federation considered that the EU lacked the knowledge to be fully effective in this field and this had led to unrealistic policies. The Motorcycle Industry Association (MCI), the trade association for the supply side of the

³¹ Lloyds Register, *submission of evidence*.

³² IGP&I, *submission of evidence*.

³³ General Aviation Alliance, *submission of evidence*.

³⁴ *Idem*.

³⁵ CAA, *submission of evidence*.

UK motorcycle industry, while noting that ‘the industry is a strong supporter of the single market’, agreed and said:

There appears to be little motorcycle specific expertise at Commission level and an unwillingness to appreciate or understand motorcycling.³⁶

- 3.48 It expressed concern about the depth of detailed technical regulation in relation to the single market in motorcycles and the manner in which the EU exercises its competence in the area of transport safety and transport policy with regard to motorcycle rider licensing. They drew specific attention to what they saw as the lack of prior research and consultation about the need for regulation before its introduction.
- 3.49 In the view of the MCI, the changes to the motorcycle test implemented in 2009 have been ‘nothing short of disastrous’.³⁷ While in the view of the British Motorcyclists Federation, EU action has ‘over-reached on road safety issues’, and has ‘decimated the availability of motorcycle training in the UK and halved the number of test candidates entering into motorcycling’.³⁸
- 3.50 The motor-cycle representative bodies sought support for delegating back these responsibilities to national authorities.

Cross-Modal Issues Between Road and Rail Freight

Road and Rail Freight Statistics

- In 2011, around **21bn tonne-kilometres** of freight were moved by rail.
- Around **1.3m tonnes of freight** were transported between the UK and Europe through the **Channel Tunnel** in 2011.
- In 2010, around **1.5bn tonnes of goods** were transported by road in HGVs within the UK.
- In addition, **4.9m tonnes of goods were transported abroad** and **5.6m tonnes were transported from abroad in UK-registered vehicles**. A large majority (well over 95%) of these goods were transported to/from other EU countries. **HGVs registered in other EU countries** uploaded a further 12.7m tonnes of goods in the UK and unloaded 18.8m tonnes.

- 3.51 The effect of EU action on the cross-modal competition for market share in freight was raised by interested stakeholders. Some felt that the rail sector is exposed to more legislation and control than other modes such as roads, as rail’s primary freight competitor. It was felt that the EU was not taking into account its stated aim of making rail more competitive in developing specific proposals and that this was having a damaging effect on the ability of rail freight operators to compete on a level playing field.
- 3.52 The Royal Academy of Engineering noted:

In road transport, marginal cost pricing for the use of transport infrastructure remains essentially voluntary. In rail, charges for environmental costs are not permitted unless they also apply to road, while mark-ups on marginal social cost are permitted. The result is that transport pricing remains inefficient and distorted.³⁹

³⁶ MCI, *submission of evidence*.

³⁷ *Idem*.

³⁸ British Motorcyclists Federation, *submission of evidence*.

³⁹ Royal Academy of Engineering, *submission of evidence*.

- 3.53 Freightliner agreed that ‘EU policies don’t consider rail versus road holistically. In cases where these costs are not borne by all transport modes, it can distort the ability to compete with these other transport modes in the same markets’.⁴⁰ It also said, ‘road freight hauliers pay a marginal cost for their usage of the road network, and have unrestricted access to the available capacity’.⁴¹
- 3.54 Freightliner and the RFG also drew attention to EU proposals to revise Directive 96/53/EC which governs the weight and dimensions of HGVs.⁴² Freightliner said, ‘Freightliner remains deeply concerned that the impacts of this policy on modal shift between road and rail have not been fully understood and the introduction of these vehicles will be very damaging for the rail freight industry’.⁴³
- 3.55 TfL offered a different example. In their view, the ‘Non Road Mobile Machinery Directive, if implemented as originally proposed, would have severely damaged the market for diesel locomotives and multiple units in the EU, by requiring manufacturers to meet very stringent standards that are costly to accommodate within the limited market for diesel traction in Europe. This could well have [...] encouraged modal shift to road, worsening overall environmental performance. The EU should have considered the cross-modal impacts whilst evaluating the options for this legislation’.⁴⁴
- 3.56 Perhaps unsurprisingly, the RHA had a very different perspective. In their view, ‘European rail entities have become [...] major road haulage enterprises [...] [which operate] predatory pricing policies [...] when not operating multi-modal contracts’.⁴⁵ The RHA added that ‘the UK should not be part of such processes, for which the EU has become either an ignorant or uncaring promoter’.⁴⁶
- 3.57 And, in the view of the FTA ‘the one mode of transport that has been shielded from common technical requirements has been railways, where proliferation of rolling stock, operating practices and signalling and safety arrangements still apply and accounts for the rapidly diminishing share of the transport market enjoyed by technically and operationally harmonised road transport sector’.⁴⁷

State Aid

- 3.58 The ports sector urged the EU to enforce existing State aid rules to ensure that Member States did not permit actions which disrupted the single market, such as port blockades. The British Ports Association said that the EU should act to take ‘a more vigorous approach to state aid abuses in ports’.⁴⁸
- 3.59 The issue of State aid was also picked up by British Airways (BA) who considered that the Commission should take a more economic based approach to competition in the airline sector and encourage consolidation. They said: ‘in relation to State aid policy, BA believes that the Commission presents a low barrier in rescue and restructuring plans for state-

⁴⁰ Freightliner, *submission of evidence*.

⁴¹ *Idem*.

⁴² Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic, 1996.

⁴³ Freightliner, *submission of evidence*.

⁴⁴ TfL, *submission of evidence*.

⁴⁵ RHA, *submission of evidence*.

⁴⁶ *Idem*.

⁴⁷ FTA, *submission of evidence*.

⁴⁸ British Ports Association, *submission of evidence*.

owned airlines. Many airlines cannot attract investors and should exit the market leaving more efficient operators to better serve EU passengers and better connect EU regions'.⁴⁹

The Proposed EU Ports Services Regulation

3.60 Lastly, the UKMPG and the British Ports Association were resistant to a new Commission proposal for a regulation on EU port services which in the UKMPG view would:

Introduce new bureaucratic procedures coupled with Commission interference in commercial negotiations which could have a serious adverse effect on investor confidence. The Commission has tried unsuccessfully on 2 previous occasions to introduce similar legislation. We hope that this latest proposal will also be defeated or withdrawn.⁵⁰

3.61 No stakeholders supported EU action in this area.

Summary

3.62 From the evidence received, a summary of where stakeholders felt that progress, both in terms of more or less EU action, would help the UK is set out below.

Summary of Where Stakeholders Felt More EU Action Would Help the UK

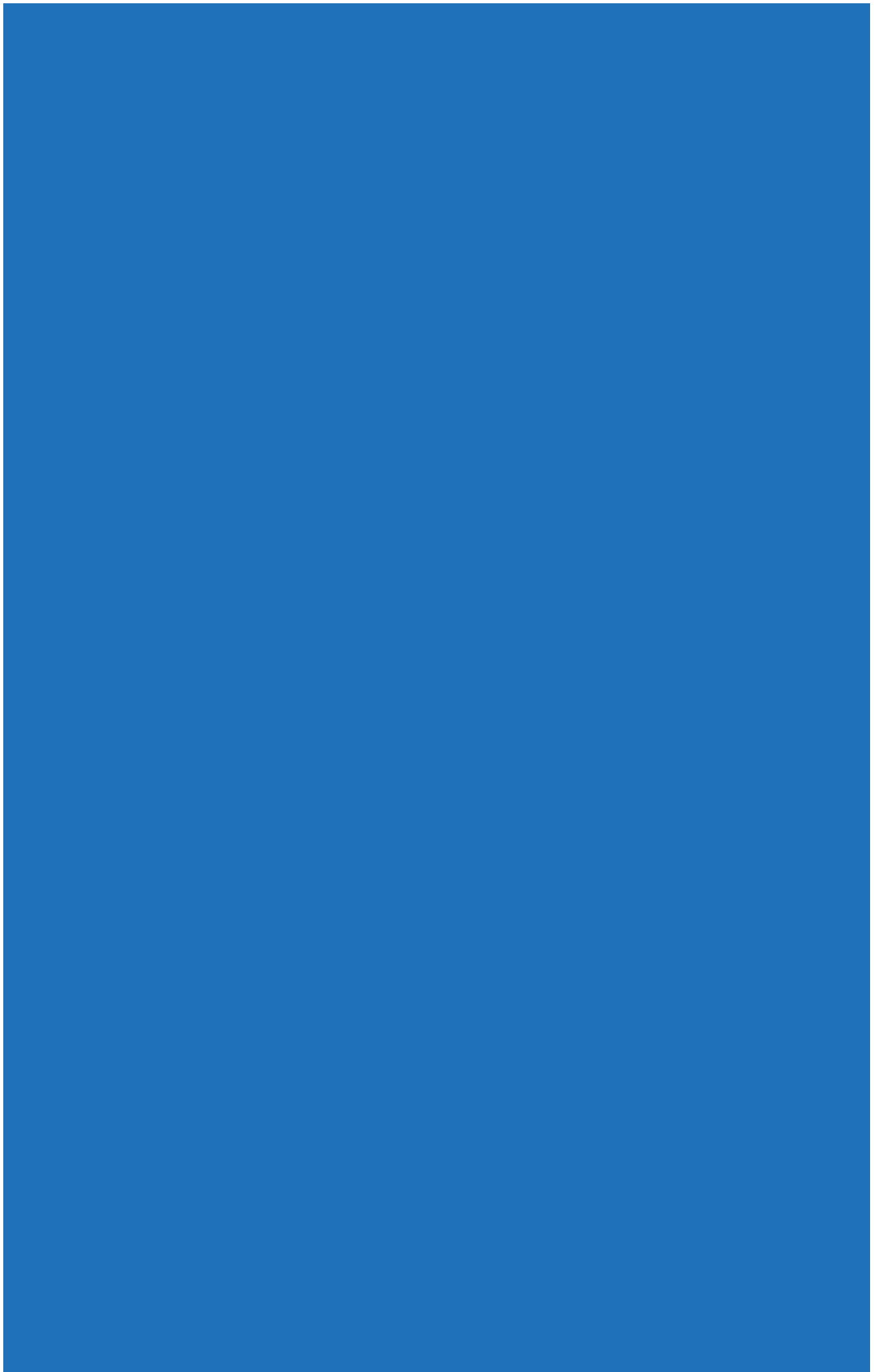
- Single Market improvements in aviation (Single European Sky), in maritime – ‘blue belt’ initiative to reduce obligations to customs procedures) and in rail (opening up of EU Member State domestic rail markets).
- Greater enforcement of existing rules to ensure adequate implementation and market reciprocity.
- Greater enforcement of State aid rules to prevent unfair competition.
- Meaningful impact assessments and genuine engagement with stakeholders before legislation is proposed.

Summary of Where Stakeholders Felt Less or Different EU Action Would Help the UK

- Overall, less legislation and, where necessary, better legislation.
- Recognition that in an area already as heavily regulated as transport there was a lack of appetite for more EU action. Justifying the perceived diminishing returns, and the risk to action already taken, of further legislation made the benefits to the UK more questionable.
- Recognition that local and domestic transport which has no impact on the single market should not be subject to the detail of legislation designed for trans-national or trans-continental transport.
- Delegating back to a national level issues such as those relating to the safety of recreational flying and the training of motor cyclists.
- Restriction of the EU role at the IMO and recognition that the maritime industry is best regulated at world level.

⁴⁹ British Airways, *submission of evidence*.

⁵⁰ UKMPG, *submission of evidence*.



Annex A:

List of Respondents Submitting Evidence

Written Evidence by Organisation

A B Sugar

Aerospace Defence Security (ADS)

Agricultural Engineers Association

Aircraft Owners and Pilots Association (AOPA)

Airport Operators Association (AOA)

A&M Rider Training

Automobile Association (AA)

Association of International Courier and Express Services (AICES)

Association of Train Operating Companies (ATOC)

ASLEF (Trade Union)

Aviation Environment Federation (AEF)

British Airways (BA)

British Air Transport Association (BATA)

British Historic Vehicle Clubs

British International Freight Association (BIFA)

British Marine Federation

British Motorcyclists Federation

British Parking Association (BPA)

British Ports Association (BPA)

British Vehicle Rental & Leasing Association (BVRLA)

Bruges Group

Brussels and Europe Liberal Democrats

Business for New Europe

Chartered Institute of Logistics & Transport (CILT UK)

Civil Aviation Authority (CAA)

Community Transport Association

Confederation of Passenger Transport (CPT)

Cumbria Green Fuels

DHL

Easyjet

European Transport Safety Council (ETSC)

Eurostar

Freightliner Group

Freight Transport Association (FTA)

General Aviation Alliance

Government of Alberta, Canada

Hamburg Koln Express (HKX)

High Speed One

International Group of P&I clubs

Kapsch Austria

Lloyds Register

Merseytravel

Mofair e.V. (German private passenger railway representative group)

Motorcycle Industry Association (MCI)

MIRA Ltd (Motor Industry Research Association)

NATS

National Express

National Farmers Union (NFU)

Network Rail

Optical Confederation

ORR (Office of Rail Regulation)

FACTS

Passenger Focus (including London Travel Watch)

Passenger Transport Executive Group (pteg)

Port of Dover

Prestons of Potto
Private Wagon Federation (PWF)
RAC
RAC Foundation
Rail Freight Group
Rail Future
Rail Standards and Safety Board (RSSB)
Renewable Energy Association (REA)
Retail Motor Industry Federation (RMI)
Road Haulage Association (RHA)
Rolls Royce
RMT (Trade Union)
Royal Academy of Engineering
Royal Yachting Association (RYA)
Society for Motor Manufacturers and Traders (SMMT)
Thomas Cook Group
Transport for London
Transport Planning Society
Trinity House
TUC
UK Chamber of Shipping
UK Major Ports Group
Unite (Trade Union)
White Bike Training

Written Evidence from Individuals

Elected representatives

Catherine Bearder MEP (Liberal Democrat)
Phil Bennion MEP (Liberal Democrat)
Karin Hakl (Austrian MP – OVP party)

Members of the Public

Graham Avery
Nick Beadle
David Clark
Nigel Cockayne
Tony Depledge
M Downes
Trevor Hartley
Trevor Jenkins
Maria Kinning
Terry Phillips
David Read
David Robinson
Alexander Watson

Evidence from Workshops

Maritime workshop -17 June 2013
Aviation workshop – 18 June 2013
Rail workshop – 20 June 2013
Roads workshop – 21 June 2013
UKTiE workshop Brussels – 9 July 2013
FCO stakeholder event – 30 July 2013

Government Institutions

Convention of Scottish Local Authorities (COSLA)
Crown Dependencies
Department of Regional Development Northern Ireland (DRDNI)
European Commission
Local Government Association (LGA)
Scottish Government

Other Sources of Evidence

European Scrutiny Committee, Road transport: dimensions and weights (34891), 4th Report (2013-2014)

European Scrutiny Committee, Roadworthiness of vehicles (34131) 12786/12, (34138) 12803/12, (34139) 12809/12, 13th, 16th and 25th Reports of 2012-13; 4th Report of 2013-14.

House of Commons Transport Select Committee report of 23 March 2005 ('EC Competence and Transport')

Senior European Experts Group (SEEG)

Meetings with MEPs in Brussels (9 July 2013)

'Cut EU red tape' – A Report from the Prime Minister's Business Taskforce (October 2013)

Respondents by Modal Sector

Maritime

British Marine Federation

British Ports Association

International Group of P&I Clubs

Lloyds Register

Port of Dover

Royal Yachting Association (RYA)

Trinity House

UK Chamber of Shipping

UK Major Ports Group

Aviation

Aerospace Defence Security (ADS)

Aircraft Owners and Pilots Association (AOPA)

Airport Operators Association (AOA)

Association of International Courier and Express Services (AICES)

Aviation Environment Federation (AEF)

Graham Avery

British Airways

British Air Transport Association (BATA)

Civil Aviation Authority (CAA)

Crown Dependencies

Easyjet

GA Alliance

NATS

Rolls Royce

Thomas Cook Group

Rail

Association of Train Operating Companies (ATOC)

ASLEF

Bruges Group

Eurostar

Freightliner Group

Hamburg Koln Express (HKX)

High Speed One

Mofair e.V. (German private passenger railway representative group)

National Express

Network Rail

Office of Rail Regulation (ORR)

Passenger Focus/London Travel Watch

Private Wagon Federation

Rail Freight Group

Rail Future

Rail Standards and Safety Board (RSSB)

Roads

A B Sugar

Agricultural Engineers Association

A&M Rider Training

Automobile Association (AA)

British Historic Vehicle Clubs

British Motorcyclists Federation (BMF)

British Parking Association (BPA)

British Vehicle Rental & Leasing Association (BVRLA)
Nick Beadle
David Clark
Nigel Cockayne
Community Transport Association
Confederation of Passenger Transport (CPT)
Cumbria Green Fuels
M Downes
Andrew Dudman
European Transport Safety Council (ETSC)
Freight Transport Association (FTA)
Government of Alberta, Canada
Trevor Hartley
Trevor Jenkins
Kapsch Austria
Maria Kinning
Motorcycle Industry Association (MCI)
MIRA Ltd
National Farmers union (NFU)
Optical Confederation
Terry Phillips
Prestons of Potto – hauliers
RAC
RAC Foundation
David Read
Renewable Energy Association (REA)
Retail Motor Industry Federation (RMI)
Road Haulage Association (RHA)
David Robinson
SMMT
Alexander Watson
White Bike Training

Other and cross modal respondents

Catherine Bearder MEP (Liberal Democrat)

Phil Bennion MEP (Liberal Democrat)

British International Freight Association (BIFA)

Brussels and Europe Liberal Democrats

Business for New Europe

Chartered Institute of Logistics and Transport (CILT)

Convention of Scottish Local Authorities (COSLA)

Tony Depledge

DHL

DRDNI

Karin Hakl (Austrian MP – OVP party)

Local Government Association (LGA)

Merseytravel

PACTS

Passenger Transport Executive Group – pteg

Royal Academy of Engineering

RMT (Trade Union)

Scottish Government

Senior European Experts Group (SEEG)

Transport for London

Transport Planning Society

Transport Select Committee report 23 March 2005 ('EC Competence and Transport')

TUC

Unite – Trade Union

Trades Unions

ASLEF

RMT

Unite

TUC

Biofuel interests

Cumbria Green Fuels

Government of Alberta, Canada

Renewable Energy Association (REA)

A B Sugar

Annex B: List of Participants at Workshops and Meetings

Automobile Association (AA)

Airport Operators Association (AOA)

APCO Worldwide

Association of British Ports (ABP)

Association of Train Operating Companies (ATOC)

Baltic Exchange

Philip Bennion MEP

Philip Bradbourn MEP

British Petroleum (BP)

British Air Transport Association (BATA)

British Airways (BA)

British Marine Federation

British Ports Association (BPA)

British Vehicle Rental and Leasing Association (BVRLA)

Campaign for Better Transport

Civil Aviation Authority (CAA)

Community of European Railway and Infrastructure Companies (CER)

Confederation of Passenger Transport (CPT)

Cruise Lines International Association Europe (CLIA Europe)

Dover Harbour Board

European Commission

Eurostar

Fleishman-Hillard

Ford

Jacqueline Foster MEP
Freight Transport Association (FTA)
Freightliner
Freshwater Public Affairs
Gatwick Airport
Hanover Communications
Heathrow Airport
Hutchison Europe
Institute of Civil Engineers
International Group of P&I Clubs
Light Aircraft Association (LAA)
Lloyds Register
Luther Law Firm
Manchester Airports Group (MAG)
National Farmers' Union (NFU)
NATS
Network Rail
Office Rail Regulation (ORR)
Passenger Focus
Private Wagon Federation
RAC Foundation
Rail Delivery Group
Rail Freight Group
Rail Safety and Standards Board (RSSB)
Road Haulage Association (RHA)
Royal Yachting Association (RYA)
Shell
Society of Motor Manufacturers and Traders Limited (SMMT)
Transport for London (TfL)
Trinity House
TUI
UK Major Ports Group (UKMPG)
UK Transport in Europe (UKTiE)
Virgin Atlantic