



Department  
for Transport

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

## Transport: Consultation Response

February 2014

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# Contents

<b>Maritime</b>	<b>8</b>
British Maritime Federation	8
British Ports Association	11
International Group of P&I Clubs	15
Lloyds Register	18
Maritime Workshop	22
Port of Dover	27
Royal Yachting Association (RYA)	29
Trinity House	35
UK Chamber of Shipping	38
UK Major Ports Group - UKMPG	54
<b>Aviation</b>	<b>58</b>
Aerospace Defence Security (ADS)	58
Aircraft Owners and Pilots Association (AOPA)	64
Airport Operators Association (AOA)	68
Association of International Courier and Express Services (AICES)	74
Aviation Environment Federation (AEF)	76
Aviation Workshop	82
Graham Avery	87
British Airways	93
British Air Transport Association (BATA)	101
Civil Aviation Authority (CAA)	103

Crown Dependencies/Channel Islands	124
easyJet	125
GA Alliance	129
NATS	134
Rolls Royce	138
Thomas Cook Group	141

## Rail 152

ASLEF	152
Association of Train Operating Companies (ATOC)	156
Bruges Group	159
Eurostar	178
Freightliner Group	183
Hamburg Koln Express (HKX)	193
High Speed One	218
Mofair e.V	221
National Express	223
Network Rail	225
Office of Rail Regulation (ORR)	231
Passenger Focus and London TravelWatch	238
Private Wagon Federation	241
Rail Freight Group	246
Rail Future	271
Rail Standards and Safety Board (RSSB)	273
Rail workshop	280
RMT	284

## Roads

294

AB Sugar	294
Agricultural Engineers Association (AEA)	302
British Historic Vehicle Club	305
British Motorcyclists Federation (BMF)	307
British Parking Association (BPA)	311
British Vehicle Rental & Leasing Association (BVRLA)	313
Nick Beadle	319
David Clark	322
Nigel Cockayne	324
Community Transport Association UK	326
Confederation of Passenger Transport (CPT)	329
Cumbria Green Fuels Ltd	335
M Downes	338
Andrew Dudman	340
European Transport Safety Council (ETSC)	342
Freight Transport Association (FTA)	347
Government of Alberta, Canada	359
Trevor Hartley	360
Trevor Jenkins	362
Kapsch Austria	364
Maria Kinning	367
Motorcycle Industry Association (MCI)	370
MIRA Ltd	382
Optical Confederation	391
Terry Phillips	395

Prestons of Potto-Hauliers	398
RAC Foundation, RAC and AA	399
David Read	414
Renewable Energy Association (REA)	416
Retail Motor Industry Federation (RMI)	421
Road Haulage Association (RHA)	424
Roads workshop	430
David Robinson	432
SMMT	435
Alexander Watson	440
White Bike Training	443

## Other and cross modal respondents **444**

Catherine Bearder MEP (Liberal Democrat)	444
Phil Bennion MEP (Liberal Democrat)	447
British International Freight Association (BIFA)	455
Brussels and Europe Liberal Democrats	463
Business for New Europe	467
Business Taskforce	470
Channel Islands Brussels Office	509
Chartered Institute of Logistics and Transport (CILT)	510
Convention of Scottish Local Authorities (COSLA)	518
Tony Depledge	529
DHL	540
DRDNI	544
European Commission	550
European Scrutiny Committee report 15 April 2013	567

European Scrutiny Committee report 10 June 2013	573
Karin Haki (Austrian MP - OVP party)	579
Local Government Association (LGA)	583
HIGs Event	592
MEP meetings Brussels	595
Merseytravel	598
FACTS	603
Royal Academy of Engineering	612
Scottish Government	618
Senior European Experts Group (SEEG)	623
Transport for London	638
Transport Planning Society	646
Transport Select Committee report 23 March 2005	651
TUC	673
Unite	681

# Maritime

## British Maritime Federation

The British Marine Federation (BMF) welcomes the opportunity to assist the Government with this wide-scale review of the Balance of Competences between the United Kingdom and the European Union.

### **The British Marine Federation**

The BMF is the trade association for the UK leisure, superyacht and small commercial marine industry, representing over 1,500 member companies. Our industry is almost entirely comprised of small and medium-sized enterprises with over 95% of companies within our membership employing less than 50 people (based on BMF membership statistics). In total the UK leisure, superyacht and small commercial marine sector directly employs around 31,000 full time equivalent employees and generated annual revenues of approximately £2.9 billion in 2011/12, of which 35% represents international trade.

The BMF provides support to its membership across a wide range of legislation, including EU and international requirements. Our industry's interests outside the UK are supported by the international trade association, ICOMIA (International Council of Marine Industry Associations).

### **Modal Annex – Maritime (Environmental)**

**Q8 – What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU – US, EU – China)?**

It is our industry's experience that the shared competency in transport related matters might not be working in the best interests of the UK. There would appear to be a great deal of confusion, not just in the industry, but within Government agencies, about what powers the EU has to direct member states on matters relating to international agreements (e.g. IMO legislation).

We have provided a case study below, to highlight the issues recently faced by the UK's leisure marine industry, by a dispute between the UK and the EU over competency.

### ***Case Study – EU interference with UK interests at International Maritime Organisation***



The revised International Convention for the Prevention of Pollution From Ships 1973 as modified (MARPOL) Annex VI entered into force on 1 July 2010. Regulation 13 of MARPOL Annex VI introduces three Tiers of mono-nitrogen oxides (NO<sub>x</sub>) emission standards from ships. The Tier III standards provide for 80 per cent reduction of NO<sub>x</sub> emissions by 1 January 2016.

The superyacht (vessels commonly over 24m in length) industry has been addressing the challenges of Tier III NO<sub>x</sub> emission standard since 2010. However, it is considered that sub SOLAS (International Convention for Safety of Life at Sea) Yachts of over 24 meters and less than 500gt cannot be built to be Tier III compliant as the existing technology is not yet suitable for installation on these vessels due to constraints on space, design restrictions and significant cost impact. As such the industry faces the loss of the most commercially vibrant market sector with significant threat to revenue and jobs.

The UK has been actively involved in a correspondence group set up by IMO to discuss this issue, which ultimately led to the UK (the Maritime & Coastguard Agency [MCA], BMF and UK boatyards), working alongside other European industry members via ICOMIA and SYBAss (Superyacht Builders Association), to undertake a full technical, economic and social study to support a proposal that the deadline for implementing the Tier III NO<sub>x</sub> emission standard in yachts of less than 500gt be postponed by three years.

The EU has 'observer status' at IMO and was kept informed of this work and the UK's intention to submit a paper to IMO's Marine Environment Protection Committee (MEPC65). In fact, the UK's paper had the support of a number of Member States, so the Commission was also aware of its importance to a significant number of Member States. However, it was not until the penultimate pre-MEPC65 meeting of the Commission and Member States that the matter became of interest to the Commission as an air pollution issue, rather than an economic one. It was at this point that the Commission claimed competency and set about requiring the UK and other Member States to withdraw all support for the proposal. From this point on the Commission refused to consider the merits of the industry's proposal and Member States were threatened with infraction proceedings if they did not adhere to the Commission's competency. Both the MCA and the UK's permanent representative to the Commission worked hard to push the UK's position, but to no avail. The only opportunity the Commission offered to contest this decision was if the Council of Ministers voted that Member States would retain competency on this matter, knowing full well that this issue could not be brought before the Council within the timeframe prior to the MEPC65 meeting.

Owing to this decision by the Commission, the UK and its partners had to find an alternative IMO member (from outside the EU) to submit the paper on its behalf. While the UK was able to secure the support of other IMO members to undertake this submission, the Commission's position still meant that the UK and other member states were unable to support or vote on the proposal at MEPC65. The Commission had, in effect, rendered 27 votes at IMO redundant.

As it happens, it appears the Commission was not as confident on its decision of competency as it first appeared to be. Just prior to MEPC65, the Commission withdrew its declaration of competency, but at a point where it left next to no time for the UK or its partners to undertake any meaningful support work of the proposal, beyond that already done for the paper's submission by another IMO member.

Ultimately, the proposal supported by the UK was noted by IMO, but was sidelined by a paper from the Russian Federation which proposed a blanket delay to the implementation date for Tier III as it applies to all vessels of five years, thereby delaying implementation until 1 January 2021. This decision remains subject to legal challenges and ratification at MEPC66 in 2014, which means the uncertainty for industry remains until next year.

On the surface this is a positive outcome for the superyacht industry, in which UK businesses enjoy a high profile. However, this might not have been achieved had the European Commission maintained its stance in opposition to the postponement and continued to take the view that the UK was not permitted to pursue a position that did not align with that of the European Commission. Beyond this piece of specific international legislation, the initial decision of the Commission would appear to indicate that the UK, and other member states, position at IMO is under threat. This places future issues of relevance to the UK into a very precarious position.

Just to put this example into context, the potential damage to the leisure marine and superyacht industry should it not obtain a postponement, is that the major builders will stop production of certain models (namely vessels between 24m to 30m in length) due to the difficulty of compliance and this would have very serious implications to industry employment and revenue. Unlike the large commercial shipping industry, the pleasure vessels over 24m in length manufactured by our members have extremely low annual operating hours, frequently operate at low engine loads and have severe space constraints for the installation of exhaust after treatment systems. They are also operated across the globe, all of which exacerbate the issues associated with compliance with this legislation.

#### Questions arising from this case study

Where an area is under shared competency, does the Commission need to have a stated position or draft proposals on a topic published, prior to claiming competency on an issue? Is there a deadline in place for when the Commission can challenge for competency on an issue relating to International Law where a Member State has already assumed national competency?

# British Ports Association

**What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

There is very little direct EU legislation which affects ports and this is confined to the technical topics of port reception facilities and security. Of course there are significant effects from other policy and legislative areas such as competition and particularly the environment, but it has to be said that the effect of direct EU policies on ports is marginal. Nevertheless, the main potential benefit is to increase the efficiency of the transport network through developing compatible systems and regimes so that movement from one member state to another is not subject to delay and excessive bureaucracy. Even here, the beneficiaries of this tend to be Continental countries where land and rail links can be better co-ordinated. The process of privatization and de-regulation of transport in the UK (ports providing a particular example, but rail is another) also means that programmes initiated by the Commission to bring in similar reforms across the EU can be largely irrelevant. There have been useful schemes such as the Blue Belt initiative to reduce border controls for maritime and which have potential advantages, but have met with significant resistance from vested interests, particularly Customs. The UK has not so far been particularly engaged with this.

Ports are not in themselves a mode and to some extent make a difficult target for the Commission with responsibility falling across a number of Directorates General. DG Mare, for example, will deal with marine spatial planning, DG Move with matters of pure ports policy, but DGs Competition and Market will be major influences as well. The TEN-T programme has provided extra investment to the UK and funding for feasibility studies. It has been useful in identifying strategic corridors which connect with other member states. But the disadvantages have been a very unwieldy system of obtaining finance and the potential to attach extra conditions to ports on the network. An example of this is a possible requirement for TEN-T core ports to provide LNG bunkering.

A more specific example of where the UK has had its own regime but where the EU has introduced a pan EU equivalent is port security. The intervention of the EU post 2001 has created a more balanced approach to security which means that across the EU security is at least based on the same legislation, even though different approaches inevitably emerge.

**To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

In spite of all the efforts made by the EU the difference in the funding of and policy applicable to road and rail are significantly different from member state to member state. Road tolling is standard in some member states and the division between track and

operators for rail has only been partially achieved. Nevertheless, we do believe that an efficient internal transport market is beneficial to the EU and therefore to the UK. The major restriction on the EU creating an internal transport market is the regional and local nature of much of transport policy and spending. The biggest influences on the UK transport network are the Treasury and local government, particularly for road spending; the overwhelming majority of goods are brought into and out of ports by road. As to EU ports policy, this is an area where historically the Commission has taken little action, notwithstanding the proposed Port Services Regulation.

**To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

Transport is clearly fundamental to a successful economy, so the internal EU transport market is important, but its effect on UK ports is largely marginal for reasons set out elsewhere.

**To what extent is EU action to harmonise social and environmental standards (eg to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

As regards those social and environmental standards relevant to ports, the EU has a major influence on environmental standards with which ports have to comply. Although the cost of compliance and the effect on port operations may be sometimes negative, we do recognize that the prospect of each member state developing its own standards would be alarming. With countries in close proximity and in competition, if one were to accept significantly lower standards and thereby significantly free up its planning system, this would be clear example of unfair competition of the type the EU is best at tackling.

On issues such as vehicle standards, equivalent standards will support the proper functioning of the internal market as it facilitates cross border traffic.

**What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

The majority of port traffic is freight, so there is not the same relationship with “consumers” as there is with other parts of transport. For ferry passengers there is the new Passenger Rights legislation and this will have an impact, although this is mainly directed at the carriers rather than ports.

**The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

In the case of ports, and again notwithstanding the potential effect of the proposed Port Services Regulation, the Commission has tended to let ports develop in their own ways, resulting in the various forms of governance we see now. We believe this has been proportionate and to some extent reflects UK ports policy which also promotes port strategic independence. A more vigorous approach to state aid abuses in ports by the Commission would be helpful.

**To what extent could the UK national interest be better serviced by action taken at a national or wider international level, rather than by the EU, and vice versa?**

Shipping rather than ports is subject to international rules, so this is more an issue for them. However, limitations on the sulphur content of marine fuel were strengthened by the EU, which also has implications for ports. We are generally opposed to the EU taking a different line on international agreements in as much as they can affect the competitive position of the EU.

**What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (eg ICAO or IMO) or with third countries (eg EU-US, EU-China)?**

Please see answer to Q7.

**What challenges or opportunities are there for the UK in further EU action or transport?**

The main current challenge for the ports industry is the proposed Port Services Regulation which introduces measures on provision of port services, financial transparency and user consultation which would overlay current UK arrangements and introduce more bureaucracy. Another challenge for EU action is its policy on state aids to ports in Continental Europe. Current EU ports policy generally underestimates the effect of systematic state subsidy to some ports which distorts trade. Recent examples are the location of offshore renewable developments where public support on the Continent has been more attractive to potential investors, placing the UK at a disadvantage.

As to opportunities, we certainly support the principles of the Blue Belt initiative and indeed any measures, including immigration measures, which could reduce controls at borders and facilitate the movement of people and freight between member states.

# International Group of P&I Clubs

## **Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union**

I am writing on behalf of the International Group of P&I Clubs (IG) with regard to the Department for Transport's call for evidence on the Balance of Competences Review that opened on 14 May 2013. The IG welcomes the comprehensive review on specific areas of EU competence and the involvement of interested non-governmental experts and organisations that are directly impacted by EU rulemaking on the areas of competence covered. The IG's comments are provided below in response to the questions of relevance to the IG as contained on page 20 of the call for evidence dated May 2013.

### **Q.1 What are the advantages to the UK of EU action in the Field of transport?**

It is difficult to quantify in any tangible form the benefits of EU action in the field of transport in terms of legislation that directly impacts the IG Clubs. Such legislation is mostly restricted to:

- Directive 2009/20 EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims;
- Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents, and
- Directive 2004/35/CE of the European Parliament of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

Perhaps more pertinently, it would be appropriate to question whether there is actually a need for the EU to legislate on certain matters in the first place and whether any legislation that is proposed by the European Commission strikes the right balance between consumer protection and economic growth/impact on industry, without adversely impacting business interests where there is no overriding public policy objective to do so. 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 any such legislative requirements, that such a balance is always struck (see also response to Q5 below for further comments in this regard).

The impact assessment 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 such example, where the information provided in the assessment was either of limited value, irrelevant or factually incorrect.

Legislation should not be developed at the EU level simply to satisfy the European Commission's objective of gaining exclusive community competence on all areas where the EU has a legal basis to take action in the field of maritime transport. Such an approach does not make for good public policy and more often than not simply adds to the regulatory burden, with the accompanying bureaucracy and red tape, without any added benefit for industry and consumers.

Such an approach can be avoided, to a degree, if the Commission took a more inclusive approach to engaging with the relevant and appropriate industry stakeholders as part of the wider consideration to develop any particular legislative proposal, before any decision has been taken to table a proposed legislative change, rather than seeing engagement with industry as purely a 'tick box' exercise.

The UK should be more robust in responding to the Commission when any legislative proposal is tabled to ensure that proposals in particular:

- 1) Have a sound policy objective as the basis for legislating;
- 2) Strike the right balance between consumer protection and economic growth/industry interests, and
- 3) Are not simply exercises in competence creep on the part of the European Commission.

**Q.5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

The right balance between consumer protection and facilitating industry interests should be evidenced by means of the Regulatory Impact Assessments undertaken by the European Commission that accompany any legislation proposal. It is unfortunate that most impact assessments contain little of substance and are, it would seem, often drafted in a manner to suit the overall objective, namely to provide the justification for a legislative proposal in the first place. Most impact assessments also lack objectivity as well as input from those in industry who are able to provide both an informed opinion and, more importantly, statistical data on which sound and reasoned judgements can be made to determine whether there is a need to legislate or not. The IG also cites the impact assessment accompanying the proposal for a Directive of the European Parliament and the Council on the Civil Liability and Financial Guarantees of Shipowners (see COM (2005) 593 Final dated 23.11.2005) as one such example.

The UK should be prepared to question the Commission where accompanying impact assessments are not sufficiently robust and where there is little informed opinion and data from relevant sources to determine any need for legislative change.



**Q.8 What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

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 co-ordination of Member States' positions on issues for discussion at the Organization, whether through EU membership or by any other means.

The IG does not believe that EU membership of the IMO will either enhance the EU role at the Organization or positively contribute to the adoption of workable international rules. It is important to ensure that Member States' influence and expertise at the IMO is not diluted in the discussions that take place and that the quality of technical decision making is not adversely affected through the politicisation of debate, thereby limiting an open exchange of views based on technical and expert opinion.

The UK should oppose any moves to push for EU membership of the IMO and ensure that the expertise that resides in individual Member State continues to inform debate and provide for an open and frank exchange of views that is based on reasoned technical and expert opinion.

We hope that these comments are helpful. Please do not hesitate to contact me if you require clarification on any of the above.

# Lloyds Register

*The response given below is presented for the Maritime sector. Some of the questions as formulated are not immediately relevant to the work of Lloyd's Register; nevertheless we attempted to interpret them by placing the question in the context of our operation.*

## **Q.1 What are the advantages and disadvantages to the UK of EU action in the field of transport?**

The three elements of the EU action as relevant to the work of Lloyd's Register are: regulations, R&D, oversight/technical advice. The advantages and disadvantages are analysed for those three elements.

### Advantages:

#### Regulatory:

Where the EU single view benefits the UK, then there is an advantage from a potentially bigger voice at the IMO. Benefits are derived from the contribution from other EU States to the regional regulatory process, which otherwise would not have been available to the UK. From the societal point of view, the UK benefits from the development of a single level playing field in and potentially beyond the EU; due to the international nature of shipping the regional regime could apply to ships of non EU States visiting EU States ports. The goals which the UK shares with the EU partners have a better chance of being achieved having the mass of EU States behind them.

#### R&D:

Through the EU funding mechanisms the UK R&D industry has access to projects supported by the funding from all the EU States. The results of these projects usually carry credibility in the international organisation and used to support international regulatory development.

#### Oversight/technical advice:

Potential to impose a higher set of safety requirements onto ships of less advanced members of the EU, through PSC mechanisms, or through EMSA's development work as advisor to the Commission.

### Disadvantages:

#### Regulatory:

Where it does not benefit the UK, the UK view is overridden by the Commission. The wider international community would not benefit from it; the UK is not given the opportunity to receive support from other States at IMO for its priorities. The work on developing a proposal is wasted if its realisation is not permitted by the Commission.

R&D:

The money that the UK contributes to the EU budget could be spent on the high priority work items or those having the aim to contribute to the growth of the UK. If the UK does not agree with the way the Commission decides to take forward the results of the EU funded projects, the UK may not be able to argue with the results openly.

Oversight/technical advice:

There is little confidence amongst the UK industry that their technical advice would contribute to a favourable outcome, given the decision process in the EU institutions and the lack of transparency. The background for the decisions taken in the EU is not publicly available; therefore the Industry is barred from understanding the arguments behind the decisions. 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. As a result, the outcome from the UK's participation in the EU is of a lesser benefit to the UK Industry than desired. With the change of the UK political priorities, the degree of support for the Industry could change as well.

**Q.2 To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to the economic growth in the UK? What have been the costs and benefits?**

The internal transport network exists; that should contribute to the creation of the transport market. From the point of view of the consumer, the safety and the reliability of the assets involved in the transportation of the people and the goods would be an important aspect behind the success of the internal transport market – no one in Europe would work on or use clearly unsafe ships to transport people or cargo. In that respect, the actual application of agreed requirements (safety and environmental) should be enforced across the Union. Also, the 'gold plating' by the EU of the international regulations should be avoided.

**Q.3 To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

N/A

**Q.4 To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Whilst harmonisation is desirable in its own right (because of the creation of the predictability in the industry to favour business investment), the nature of the international shipping that is servicing the EU internal consumer interests is such that a regional action different from the agreed international safety and environmental protection regime could

negatively affect shipping from non-EU States to EU ports. Therefore, harmonisation of the requirements that are part of the existing international treaties should be pursued with care, and with the involvement and agreement of all parties.

**Q.5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

In respect of the adoption of Article 10.1 of the EU Regulation 391/2009 (mutual recognition of the classification certificates) and the current review of the draft Regulation on Sanctions under that Regulation, the EU action has created a conflict between EU States and non-EU States at IMO. If this is not resolved, potentially classification societies would have to choose whether to continue to provide the service to the UK flag and other flags of EU member States, or to work for other 100 States representing 82% of world fleet.

**Q.6 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

Regardless of the level of competency, the Commission should listen to the member States and coordinate the position at the IMO solely with the aim of reaching an international solution. The Commission should not impose their decision just because they hold competency. This is critical in respect of technical aspects of the maritime safety (equipment, strength of ships, integration, etc) where the Commission officials do not have the required knowledge or experience to legislate without causing disruption to the shipping industry.

**Q.7 To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

In addition to the points mentioned in response to Q1, the UK flag ships are trading worldwide, may have ownership based in non-EU States and have to compete with the companies operating internationally. It is therefore logical that the UK shipping industry should benefit from the international level playing field rather than a regional 'gold plated' set of requirements conceived by the functionaries with supranational ambitions. The same principles apply to the equipment manufacturers and service providers who choose to export their products internationally.

**Q.8 What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

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. Therefore the performance of its fleet and the relationships with the States involved in agreeing the international regime within which UK ships operate, depends on the ability of the UK to maintain direct

relationships with these States. 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. Also, the UK is one of the few IMO member States that is respected for its technical knowledge of the shipping and its hands-on experience of managing a fleet of technically complex ships. The dominance of the EU single voice silences the contribution from the UK therefore depriving IMO of the technical input from the Government and its Industry and stifling the debate at IMO by not allowing plurality of the arguments to be expressed. As a result the IMO decisions are less technically justified and more politically compromise driven. The Commission's view that a single EU vote at IMO representing all member States will benefit the EU is incorrect within IMO voting procedure. The same applies to the strict approach towards exercising Commission's competency over EU member States positions on technical aspects of IMO work; IMO member States treat with caution anything that comes from the 28 member States plus the Commission.

# Maritime Workshop

## BOC Maritime workshop

17/06/2013

### General remarks

- The Ports industry seemed generally content with the current amount of EU legislation although they recognised that there were some issues, for example state aid, which may require a more interventionist approach from the Commission. One participant emphasised that some of these broader, non-sector specific EU measures including state aid, environmental and competition policy also had a big impact on the maritime sector and that it was these overlaps that were key to assessing the impact of EU legislation.
- The freedoms bestowed by EU membership, for example free movement of persons, goods and services were welcomed by stakeholders but, emphatically, over-prescriptive EU legislation (such as that on red diesel) was not. However, it was also noted by one participant that *UK* policy over border controls created its own difficulties for industry.
- It was emphasised that the UK Ports industry is based on a different model - a deregulatory, private sector - to the majority of Europe and therefore the mindset across Europe differs.
- Industry was strongly opposed to the proposed Ports Services Regulation (PSR), which they claim is not beneficial to the UK. Perplexity was expressed at the Commission's obstinacy in making yet further attempts to legislate in this area given that two previous attempts by the Commission had failed. One stakeholder stated that 'the Ports Services Regulation is particularly badly thought through' and that 'the EU is on the brink of a hugely inconvenient intervention.'
- One participant highlighted that the EU is choosing more regulatory and bureaucratic interventions, which was later echoed by another stakeholder who stated that 'the Commission keeps spurting out legislation like a volcano.'
- Ship owners are constantly pushing the international dimension of the maritime industry. They need to know the rules and regulations of every country and port they visit; in short a degree of harmonisation of rules and standards is necessary.

"It's not the 'what'; it's the 'how'"

- Quite often the policy objectives are laudable but the issue lies with how the EU goes about achieving them and how the eventual legislation is framed and interpreted. Another weakness identified concerned enforcement issues. At a basic level, the uniformity with which rules and standards applied in the EU worked well. However, enforcement of those rules and standards across the EU was not uniform.
- For example, the policy objectives of the Sulphur Directive were commendable but the Commission's original proposals, based on the IMO standards, were unnecessarily gold-plated and went above and beyond what was needed.
- Another example given was the mutual recognition of maritime equipment certificates, which is a laudable policy intention but the way in which it has been framed means that it is uncompetitive for EU manufacturers. This example was linked to a previous point made that the EU is constantly opening itself up to competition but this is not being reciprocated internationally. For example, logistically it is incredibly difficult to enter the Japanese market and therefore the EU should seek to work with external competitors and Flag States to ensure a level competitive playing field where there are perceived abuses.

#### IMO and third party agreements

- The Commission's approach to trying to coordinate EU Member States' position in IMO negotiations often caused difficulties for stakeholders. An example was given relating to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs). The Commission had apparently pressed for an EU standard exemplified in some Italian regulations as being a model which IMO should adopt. The Commission could be impatient with IMO processes and had a strong instinct towards EU legislation that went further than what was agreed internationally.
- The Commission would like to be able to represent all the EU Member States in IMO (and other international forums) as opposed to the current arrangement whereby EU Member States are individually members of IMO in their own right. There seemed to be a general consensus among stakeholders that there was "strength in numbers" and that EU Member States should retain their individual voices in IMO. Similarly they felt that the IMO was at risk of losing valuable Member State expertise if the EU was allowed to speak with one voice. It was agreed that there was merit in EU coordination of Member State positions where it had competence but it should not attempt to dictate how Member States voted, nor should it let assertion of competence override the specifics of a particular dossier under discussion. EU Member States should seek to bolster the primacy of the IMO in international maritime legislation and constrain the Commission's ambitions as far as possible.

- One benefit identified of the UK's EU membership was in relation to the efforts to reach a new US-EU trade deal. It was in areas such as this that EU Member States could benefit from the collective weight of EU action with major trading partners.

### EU Competence

- Overall participants were not worried about EU competence. However, one stakeholder highlighted their concerns about how the Commission substantiates its competence. For example, in a recent Directive the Commission made reference to an international convention, thereby establishing its competence on this convention. When challenged, the Commission wasn't able to satisfactorily explain why it was able to do this. The stakeholder therefore argued that the UK needs to be more direct with the Commission in asking it to clearly demonstrate why it's taking competence in a particular area.
- Another stakeholder raised the point that the EU often decides to take competence on a particular issue prematurely before it's actually been discussed between Member States.
- One participant highlighted the disjoint between maritime and in-land transport. Maritime transport does not experience the same freedom as road transport. For example, it is easy to drive across Europe in a car but there are many more restrictions on a vessel calling at various EU ports as you constantly need to present the same safety equipment, certificates, etc to different port authorities.
- There were also concerns about comitology and how the Commission builds itself 'little doors' in legislation.
- Participants felt that the European Commission had some big weaknesses. Directorates General evinced "bunker style" thinking. Therefore, conflicting and confusing approaches could develop. There was no Commission equivalent of a Cabinet Office to exercise oversight of such things.

### Environment

- In terms of the environment it was felt that the aim to introduce common environmental standards is very important in terms of fair competition given that all Member States are required to achieve the same standards.

### Subsidiarity



- One stakeholder considered it difficult to persuade the Commission to leave things to a regional level when international conventions are left on the shelf for years. It was felt that where there are IMO standards Member States should adopt them quickly and where there are issues of competence that should be made clear.
- One participant argued that the national level in maritime was very important giving the examples of planning and spending on roads to demonstrate what remains within the UK's gift. They set out that most UK ports are actually in competition with each other and therefore many UK ports, including Aberdeen for example, don't actually care about the EU.
- It appeared that there was a growing trend for the Commission to "suck in" international agreements and legislate in respect of their application in the EU, thus gaining competence but at the expense of creating further legal layers of doubtful practical value. An example given was the International Labour Organization instrument, the Maritime Labour Convention 2006, where the Commission had sought to "tweak" the internationally agreed provisions of that instrument for application in the EU. It was questioned whether extra EU legal layers were necessary to facilitate the implementation of international conventions by EU Member States.

### Impact Assessments

- It was felt that the Commission exercised insufficient scrutiny over its proposals for legislation and it was agreed that 'a more substantive and rigorous system was needed than the current EU Impact Assessments.' It was proposed that a measure of international competitiveness could be introduced. It was also suggested that there was scope for more interrogation of proposals at a national level.

### UK influence

- One stakeholder questioned the efficacy of UK influence on the EU when compared with other Member States. It was argued that the UK could do better or better lobby other Member States and EU institutions if it wants to get the best out of the EU.
- One participant argued that there should be a standard, agreed protocol for Government to work closely with industry to help push the UK point in EU negotiations. In response, another participant highlighted the close ties between the DfT and industry in the context of the PSR proposal.

### Other remarks

- Commission going too far or adopting a wider interpretation of its role: The EU recently transferred an international convention into EU law, which was originally limited to international transport for a reason but the EU chose to extend it to coastal transport as well.
- Commission not going far enough: The Commission could usefully intervene on customs issues. The Commission, for example, is terrified of tackling Dock Labour Schemes and other restrictive practices for fear of adverse Union reaction.
- The Commission needs to be cognisant of the limitations and scalability of the technology available when developing proposals as part of the solution. There needs to be a pragmatic timetable for the achievement of goals given the technology available.
- In relation to economic growth one stakeholder questioned the extent to which the EU hinders the UK on a global competitive basis and whether EU intervention actually helps growth in the UK maritime sector.
- The EU needs to reflect the reality of where the power lies today. For example ships are no longer built in the EU and in the coming years approximately 40% of equipment will come from China. The EU therefore needs to realise that it can influence some but not all. The EU could do more to influence states such as China.

# Port of Dover

## Balance of Competences – Free movement of Persons and Goods

The Port of Dover's response relates to the issue of border controls that affect our ferry and cruise passengers and the movement of trade. For the Port of Dover, the two are to some degree intertwined and so the Port's response covers both issues.

The Port handles over 12 million passengers every year as Europe's busiest international ferry port and the UK's second busiest cruise port. There are two key points that the Port of Dover wishes to raise here. Firstly, based on statistics provided by the Border Force, some cross-Channel passengers actually spend longer queuing at the UK checkpoint in Calais than crossing the Channel. This is not only inconvenient, but these delays can and do result in passengers missing the sailing on which they were booked. This is not acceptable for an internal border. It can cause additional cost to passengers and it can result in a ferry operator not being able to load to its full capacity in order to meet sailing schedules and not disrupt the rest of the ferry schedules at Dover and Calais.

Secondly, what must be understood is that the vast majority of the 12 million passengers using the Port of Dover are travelling by car, coach or lorry i.e. they are in vehicles. Therefore any delay to passengers means delays to other vehicles and queues of traffic. Border controls therefore interrupt the free movement of goods, which whilst of course another issue it has a direct connection to this topic. Each ferry contains around 2 miles of traffic. It does not take much to cause significant delays if the traffic for one ferry is held up. The Port of Dover handles 100 miles of traffic every day (from Dover to the Houses of Parliament and beyond) as part of the vital £80 billion of trade handled by the port every year. Any delays not only impede passengers, they also impact on the UK economy.

Turning to cruise, in September 2012, the Home Office began stopping all cruise passengers coming ashore on day calls at UK ports and inspecting their passports, where it had never done so previously. This has the effect of depriving passengers of time ashore, causing the curtailment of excursions which they had booked (and paid for), and reducing the benefits for local businesses from the influx of tourists into these ports. We cannot stress enough the impact this has on UK ports' abilities to attract high paying international cruise companies and their passengers to the UK. One cruise line has already decided to call it a day in the UK (including calls at Dover) and others may follow suit.

Specifically, the volume of information that is already made available by the cruise lines to Border Force and the checks that are carried out by the port agents and the cruise ships make these tourists an extremely low risk category. Cruise lines are already working with Border Force to ensure that any additional information that is required is supplied. Over the 2012 cruise season, low-risk day visitor to British ports were increasingly subject to full face-to-face document checks. This is extremely time consuming and can take up to four hours on a half day call or 11 hours on a full day call. This does nothing to promote the UK

and is already losing us business by tarnishing the UK's reputation as an open and welcoming nation.

# Royal Yachting Association (RYA)

We refer to the Call for Evidence dated 14th May 2013 in relation to the above.

The Royal Yachting Association (RYA)<sup>1</sup> welcomes this opportunity to make submissions to the Department's Review of the Balance of Competencies between the UK and the EU and we set out below our comments by reference to the questions contained in the Call for Evidence.

## **Q.1 What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

As a broad generalisation, the advantages to the UK of EU action in the field of transport include the rights and freedoms conferred by EU law, whereas many of the disadvantages stem from the restrictions imposed on the UK under EU law.

By way of example, before the introduction of the Recreational Craft Directive in 1994 many EU member states imposed their own minimum construction standards for recreational craft to be sold in each state but these construction standards differed widely. This situation made it difficult for a manufacturer of recreational craft in one EU member state to sell its products in other member states. Following the introduction of the Recreational Craft Directive, a recreational craft manufactured in one EU member state in accordance with provisions of the Directive 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.

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<sup>1</sup> The RYA is the national body for all forms of recreational and competitive boating. It represents dinghy and yacht racing, motor and sail cruising, RIBs and sportsboats, powerboat racing, windsurfing, inland cruising and personal watercraft. The RYA manages the British sailing team and Great Britain won more sailing medals than any other nation at each of the 2000, 2004, 2008 and 2012 Olympic Games.

The RYA is recognised by Government as being the primary consultative body for the activities it represents. The RYA currently has over 100,000 personal members, the majority of whom choose to go afloat for purely recreational non-competitive pleasure on coastal and inland waters. There are an estimated further 500,000 boat owners nationally who are members of over 1,500 RYA affiliated clubs and class associations.

The RYA also sets and maintains an international standard for recreational boat training through a network of over 2,200 RYA Recognised Training Centres in 20 countries. On average, approximately 160,000 people per year complete RYA training courses. RYA training courses form the basis for the small craft training of lifeboat crews, police officers and the Royal Navy and are also adopted as a template for training in many other countries throughout the world.

Similarly, the EU rules relating to the free movement of individuals throughout the EU have resulted in recreational boaters arriving by sea from another EU member state no longer having to report their arrival in the UK or having to wait for clearance from HM Customs.

Conversely, as part of its overall fiscal policy the EU has sought to introduce pan-European rules prohibiting the use of marked “red” diesel in recreational craft. However, these rules manifestly fail to take into account the practicalities of recreational boating (such as the fact that the same vessel could operate both commercially and privately at different times, or that the only marine diesel available to recreational boaters in many places outside the EU is marked diesel) and create real difficulties for UK recreational boaters wishing to visit some other EU member states.

**Q.2 To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

We are not in a position to comment in relation to this topic.

**Q.3 To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

We are not in a position to comment in relation to this topic.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Many regulations designed to harmonise social and environmental standards within the EU have their origins in other international organisations. For example, much international regulation of coastal shipping stems from the International Maritime Organisation or the International Labour Organisation and the equivalent international regulation of inland transport (including inland water transport) originates from the UN Economic Commission for Europe.

There is an important role for the EU to play in encouraging member states to adopt relevant resolutions passed by such international organisations to ensure that there is consistency throughout the EU. However, the EU has a tendency to seek to modify the underlying resolutions as part of its mechanism for requiring member states to adopt them and, in doing so, some of the intricacies of the negotiations that led to the eventual agreement on the substance of the resolutions are lost.

In our view, therefore, 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 itself embellishing or modifying the resolutions.

**Q.5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

In relation to consumer protection, EU action has undoubtedly strengthened the legal position of the consumer in relation to the suppliers of recreational craft and supporting goods and services by providing a wider range of remedies, although for the most part UK consumer protection legislation exceeds the minimum requirements specified in EU legislation.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

Our perception is that the EU's involvement in an ever-expanding range of issues has been led predominantly by the EU Commission, which has the "right of initiative" to propose laws for adoption by the European Parliament and the EU Council and is organised to do just that. Although the principles of subsidiarity and proportionality mean that the EU may legislate only where action is more effective at EU level than at national, regional or local level, and then no more than necessary to attain the agreed objectives, nevertheless the EU Commission does not appear to have any difficulty in justifying legislative intervention where it considers it appropriate.

Although the European Parliament and the EU Council of Ministers are intended to provide democratic accountability to the process of European law-making, in practice that accountability does not appear to be as effective as it might be. For many years, the European Parliament appeared to have relatively little influence over legislative proposals, with the European Council of Ministers exercising most of the political power. In recent years, the influence of the European Parliament has increased but it appears to act as a constraint on the European Council more than it acts as a constraint on the European Commission.

Although not directly related to the maritime sphere, the recent EU proposal to expand the application of periodic roadworthiness testing for vehicles and trailers provides a timely illustration. We understand that the EU Commission originally proposed a range of quite onerous measures to be enacted as a Regulation, which would have precluded member states from applying local variations, and rebutted all attempts to modify the proposals. Eventually, we understand that political pressure applied by the European Council of

Ministers prevailed and the proposal was reconfigured as a Directive and various modifications were made, but this required a considerable concerted effort by national Governments that had to overcome significant resistance from the European Commission.

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.

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

As set out in our response to question 4 above, insofar as the EU considers it necessary to encourage or require member states to adopt international resolutions, in our view the UK national interest would be better served by the EU confining itself to doing just that, without itself embellishing or modifying the resolutions.

The EU should not have authority to negotiate international agreements (other than trade agreements) on behalf of its member states nor should it mandate that its member states vote in a particular way when such international agreements are being negotiated.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

While there are undoubtedly many advantages to the EU negotiating trade agreements with third countries, in our view it would be detrimental to the UK for the EU to have a greater say in negotiating agreements internationally through international organisations such as IMO, ILO or UNECE.

By way of example, the revised International Convention for the Prevention of Pollution from Ships 1973 as modified (MARPOL) Annex VI entered into force on 1 July 2010. Regulation 13 of MARPOL Annex VI introduces three Tiers of mono-nitrogen oxides (NOx) emission standards from ships. The Tier III standards provide for 80 per cent reduction of NOx emissions by 1 January 2016.

The superyacht industry has been addressing the challenges of Tier III NOx emission standard since 2010. However, it is considered that sub SOLAS Yachts of over 24 metres and less than 500gt cannot be built to be Tier III compliant due to limits on space, design restrictions and cost impact. As such the industry faces the loss of the most commercially vibrant market sector with significant losses of revenue and jobs.

The United Kingdom has been actively involved in discussions at IMO and wished to advance a proposal that the deadline for implementing the Tier III NOx emission standard



in yachts of over 24m and less than 500gt should be postponed for three years. However, the matter was also subject to considerable interest from the European Commission as an air pollution, rather than an economic, issue.

The UK, with the support of the International Council of Marine Industry Associations (ICOMIA) and the Superyacht Builders Association (SYBAss), was intending to submit a paper to IMO's Marine Environment Protection Committee. However, following the document being provided on a 'for information' basis to the European Commission (at the regular pre-MEPC meeting of EU members), the Commission indicated that it had competency in this matter (on the basis that it related to the environment) and therefore instructed the UK that it may not submit the paper and that it would expect all EU member states to withdraw their support for the paper.

The Commission's decision took all those involved by surprise, as it had been generally understood that competency sat at a national level in such matters and the Commission had not previously expressed any views to the contrary. It would appear that EU competency on these types of issues has only recently been sought by the Commission. In spite of the hard work of the MCA, the UK's permanent representative to the Commission and ICOMIA, the Commission refused to comment on the merits of the case the industry had put forward and simply reverted back to its self-declared competency.

In the event, a non-EU IMO member state submitted a paper proposing that the implementation date for Tier III as it applies to all vessels should be postponed by five years and the European Commission resiled from its previous stance (eventually withdrawing its assertion that it had competence) so IMO (MEPC65) agreed to the effective date for Tier III being amended to 1 January 2021.

Although there is still some uncertainty pending confirmation at MEPC66 the recent amendment was seen as positive by the superyacht industry, in which UK businesses enjoy a high profile. This might not have been achieved, however, had the European Commission maintained its stance in opposition to the postponement and continued to take the view that the UK was not permitted to pursue a position that did not align with that of the European Commission.

#### **Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

The expansion of the territory of the EU by the joining of additional member states provides a number of challenges for recreational boating.

Many of the countries that have recently joined the EU (such as Croatia) or are seeking to join the EU (such as Turkey) are popular recreational boating locations and many recreational craft flagged in EU member states are kept in these countries. When a country such as Croatia joins the EU it needs to make significant changes to its legislation

to ensure compliance with EU law and many of these changes have a direct impact on recreational craft.

For example, many recreational craft based outside the EU are not VAT-paid (since the EU VAT Directive provides for recreational craft exported from the EU to be exempted) but if the country in which they are located subsequently joins the EU then, unless express provision is made by the joining country at the time of accession, all such VAT unpaid recreational craft become liable to VAT at the local rate.

Please do not hesitate to contact me if I can be of further assistance.

# Trinity House

## Briefing on the need for a European Radio Navigation Plan

### **Background**

A European Radionavigation Plan (ERNP) has long been on the European Commission's agenda as a legal instrument to define the pan-European radionavigation system mix as a coherent, trans-European Network (TEN).

Satellite navigation – principally the global positioning system (GPS) – with its trans-national and cross-sectoral nature was the main driver for the EC's interest. With the availability and widespread use of GPS, the national approach to the governance and provision of navigation systems was no longer valid.

The onset of satellite navigation required a fundamental reappraisal of the traditional approaches to the control, operation and ownership of radionavigation systems. Satellite navigation is international in nature, not being restricted by national boundaries. From the transport perspective, it is truly multi-modal, bringing benefits to all classes of users. Furthermore, it is a multi-sectoral system and is finding use in many application areas, as diverse as precise timing and agriculture. From the European perspective, radionavigation aids intended for world-wide use by a multiplicity of nations and diverse users cannot be left to the control of any one particular State, particularly one outside the EU (the United States in the case of GPS) or be strongly influenced by any one particular user group, perhaps to the detriment of others. This led to the creation of the European satellite navigation programme, first through EGNOS and then through Galileo, as well as the creation of the associated pan-European institutional structures.

In addition, the EC saw the need for an ERNP, along the lines of the Federal Radionavigation Plan (FRP) published periodically in the United States. Originally the ERNP was envisaged as a tool to assist in achieving the goal of common, co-ordinated and harmonised radionavigation systems for Europe. The ERNP was intended to provide information and guidance to industry regarding the intention to provide a coordinated pan-European infrastructure for transport.

### **Continuing Need for an ERNP**

The ERNP is a critical policy instrument that should form the basis of the future European positioning, navigation and timing infrastructure. In this context it may be better to view ERNP as a European PNT Plan.

The economic impact of PNT on transport to, from and within the EU is already huge and will become crucial as Intelligent Transportation Systems (ITS) come into widespread use.

ITS cannot function without reliable PNT and ITS is fundamental to EU plans across all sectors.

It is expected that implementation of a coordinated plan for PNT in Europe would enhance resilience, leading to (i) additional efficiencies across all sectors, (ii) enhanced effectiveness of PNT, and (iii) new opportunities for European industry.

One of the drivers for the ERNP is GNSS vulnerability or lack of resilience. With Galileo, rejuvenated GLONASS, Beidou, etc, adding to GPS, all eggs are now definitely in one basket, since all suffer from the same vulnerability to interference. The message of the need for resilient PNT is being heard but there is little or no agreement on the complementary (to GNSS) systems that can provide that resilience. Without a top-down plan the majority of States (not only European but world-wide within, for example, the context of IMO), are not willing to make a commitment one way or another to any particular system. This reticence is both in the context of international obligations and within national interests, such as timing for telecommunications backbones. Aviation is the principal exception, where traditional systems are being retained, possibly at the expense of the realisation of benefits that could be delivered by more modern systems.

Without policy commitment, industry is, quite understandably, reluctant to invest heavily in the development of complementary (to GNSS) systems and the PNT community is in a state of planning blight.

In the worst case, this could mean a major event resulting from a GNSS outage causing disruption of critical infrastructure across a wide geographical area and many safety-business- and socially-critical industries. Previous work on this type of scenario has shown the magnitude of the potential impact of such events including loss of life, environmental damage and massive negative business impact. The social dimension must not be neglected as, for example, power distribution networks depend on precise time synchronisation.

In the best case, the result will be a patchwork of barely compatible back-up systems organised in a very uneconomic way, impeding the free flow of people and goods.

Thus an ERNP is needed urgently to ensure that Europe develops and operates a robust, resilient and economic PNT infrastructure to the benefit of the very wide range of industry sectors that routinely uses PNT either commercially or to deliver socially important services. The ERNP will be a catalyst and framework for Member States to make informed decisions in areas where they have statutory or moral obligations and will facilitate decisions within industry concerning investment and innovation.

ERNP is essentially a political project and requires political drive and support from all directions. It must have EU wide participation and support if it is to succeed.

## **Key strategic points**

If a further attempt to produce an ERNP is to be successful, it will need to address the following key strategic points:

ERNP must not undermine Galileo, indeed it should be clear that it supports Galileo

the reasons/arguments for the development of the ERNP must be system-neutral and not suppose any specific solution, but should be predicated on resilient European PNT for all

ERNP must be truly pan-European and multi-sectoral, since no transport sector or infrastructure organisation can provide its own systems. The approach to facilitating the ERNP must also be pan-European (coordinated and coherent) and multi-sectoral

progress will need strong high-level political support for anything to happen. Without this support it is just one of many EC projects competing for scarce resources. Given previous examples (e.g. Single European Sky), a High Level Group seems an efficient way of doing this but would need sponsorship at Commissioner level

it is necessary to recognise that the maritime and aviation sectors are bound by international conventions. IMO and ICAO plans must be fully taken into account

support should not be limited to transport - other sectors must be involved, e.g. telecommunications, law enforcement, power generation and distribution, commerce and finance

## **Conclusion**

Without an ERNP, European PNT will not be resilient and will be built as a patchwork of barely compatible, diverse systems constructed and operated inefficiently. If this situation continues, the EU (and EC) will have failed in its primary role of facilitating cooperation, in one of the most crucial areas to the economic and social well-being of its citizens and member states.

# UK Chamber of Shipping

## Q.1 What are the advantages and disadvantages to the UK of EU action in the field of transport?

There are both positive and negative aspects.

The positive include:

**Adoption of the Maritime State Aid Guidelines.** This was critical to the revival of the UK's merchant fleet on the back of the adoption of a tonnage tax regime in 2000. If there had not been precedents elsewhere (specifically within the EU) and if the tonnage tax concept had not been given the all clear in the State Aid Guidelines, it is highly questionable whether the UK would have been willing to contemplate exceptional treatment for shipping. This position is subject to regular review, one of which is currently underway. There is particular advantage to the UK for as long as such reviews are conducted in a practical and positive manner and continue to apply the guidelines according to the original intention. Should that change and should a significantly more restrictive approach be adopted, then this would become a serious disadvantage.

**Liberalisation and market access.** A "package" of four EU shipping regulations was adopted in 1986 and 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 UK has for many years had a liberal approach in terms of market access for shipping services and this principle was clearly enshrined in this first sequence of shipping regulations (which was adopted under a British presidency and effectively the beginning of the EU's shipping policy). Although this is touched on in the DfT's introduction, it is all subsumed – in an unusual interpretation – under the term "cabotage". It is important that this be broken down into the following different components.

The combination of these regulations provides a powerful and helpful foreign relations policy for shipping which has free trade principles at its heart. Although not a particularly active area at this time, the existence of these regulatory structures which give teeth to the free access principle on an international basis is of considerable advantage to the UK and will remain so for as long as no progress is made on maritime matters within the World Trade Organisation.

**Internal Market.** This element of the package (regulation 4055/86) – applying the principle of the freedom to provide services – opened access to all EU member states in the trades between individual member states and also in the trades between member states and third countries. The timetable for the opening-up of restricted trades was explicitly timed to coincide with the full consolidation of the Internal Market in 1992. This regulation applied – importantly – not just to ships registered in individual states, but more broadly to other ships operated by EU-based companies not registered in the EU.

**Cabotage.** The development of the maritime internal market was taken to the next stage in 1992 in regulation 3577/92, with a renewed focus on domestic shipping routes. The term “cabotage” is usually interpreted as meaning the trade, or its liberalisation, within an individual member state or – if taken regionally – within a regional grouping such as the EU. Here too, valued action was taken to liberalise access to trade within the EU internal market (but with a long lead-in period). By and large this operates satisfactorily today.

**Foreign relations.** Two of the other regulations addressed this aspect:

Third country restrictive action is the target of regulation 4058/86. This provides a framework for co-ordinated joint resistance to discriminatory practices by third countries which restrict or threaten to restrict free access by EU shipping companies to shipping trades to and from the EU. It includes a process for applying sanctions on a graduated basis in the event of such action. The use of this has been threatened usefully from time to time.

Regulation 4057/86 created defensive processes in the event of third-country shipowners engaging in unfair pricing practices (‘dumping’ of freight rates) which cause disruption to the freight pattern on particular routes to/from the EU member states. This was activated strongly in one case but has not been required since then. However, it too serves as a useful and tested trade defence instrument should that be required again in the future.

In contrast, the main area of disadvantage lies in the EU’s actions in the regulatory environment. While it is understandable that the EU should seek to establish technical and operational standards in any sector in the interest of underpinning the integrity of the single market, shipping is in the unusual position of very few sectors in also being subject to very extensive and successful regulation at a world-wide level. Both industry and governments consider that it is most appropriate for legislation for a global sector such as shipping to be established at the global level – ie in such organisations as the IMO and ILO. In principle, there is little or no value in a third tier at regional EU level. More detail is provided under questions 4, 7 and 8.

Other area of potential disadvantage involves the tendency on a number of issues for the EU to propose/adopt 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, and a range of employment measures where sector-specific rules have long applied to seafarers as distinct from other shore-based workers.

**Q.2 To what extent has the EU succeeded in creating an internal transport market, how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

and

**Q.3 To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

A full answer to these and other questions concerning the EU internal market has been provided to HMRC as part of the Balance of Competences review and is also attached at Annex 1. From the shipping perspective, the creation of the Internal Market has been both successful and wholly advantageous. The internal market opened new markets for UK goods, gave UK consumers full access to European source markets, and greatly simplified the movement of those goods between the UK and other EU countries. Statistics on trade growth within the EU since the creation of the Internal Market are set out in the answer to question 3 in Annex 1.

The establishment of the EU internal transport market has been critical to that success and advantage. Since over 80% of world trade by volume, including around 40% of European trade (and over 90% of UK trade) moves by sea, the internal market for shipping has been critical. Actions taken by the EU as part of the 1986 shipping 'package' and subsequently – to establish the freedom to provide shipping services both between and within individual member states have been described under question 1 above.

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.

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, but there is ample scope for it to be done in a manner that better facilitates trade and passenger movement. There is scope for the regulation of the movement of ships and the regulation of the movement of goods and passengers to be much more closely co-ordinated and less cumbersome. More specific comments are set out in Annex 1.

**Q.4 To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Harmonisation of social and environmental standards to ensure safety is important for the functioning of the single market. If the principle of freedom of establishment is to be upheld, it would not be acceptable for one operator to undercut another on the basis of operating to lower safety standards. Shippers and the travelling public need to have



confidence that whoever their service provider is conforms to minimum trans-boundary standards of safety and security.

The answers to questions 7-8 re-affirm the principle of standard-setting for international shipping industry being undertaken at the global level rather than regionally. On social regulation, the balance between this principle and the need for a degree of harmonisation in order to maintain a level playing field has been achieved on two occasions through the development of a 'social partners' agreement', which has been founded on conventions adopted at the ILO and which has then been transposed directly into EU legislation.

On the other hand, harmonisation of pay rates and conditions of employment can have the effect of distorting labour markets in individual Member States. There are signs that it leads to an influx of labour from poorer regions to wealthier ones, causing labour shortages in the latter and a reduction in employment opportunities in the poorer regions.

**Q.5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

The impact has been broadly reasonable, though there have been instances where the impact has been questionable. It is clear that in some conditions, ships are the only means of transport which can be relied upon. For example in the case of the cancellation of all flights following the Mount Eyjafjallajokull eruption in Iceland in April 2010, which caused the largest closure of European airspace since World War II, the only means of international transport which kept operating was shipping, particularly the ferries. To the extent therefore that unnecessary or unreasonable impositions (eg on passenger rights) are loaded on to the ship operators and reduce their ability to operate or compete with other modes, these essential services are weakened – to the disadvantage of all member states.

In another context, the existence of clear EU rules on state aid and the willingness of the European Commission to act against unfair subsidies in the passenger ferry sector has been welcomed.

**Q.6 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

Greater use of soft law e.g. guidance that has been shaped by the Social Partners should be encouraged in preference to legislation, which does not always take account of the employment relations landscape and culture in different Member States. For example, the concept of European Works Councils was little used outside Germany and unknown in the UK and, even now, in many Community-scale undertakings, the works council sits alongside existing information, consultation and negotiating mechanisms.

In terms of proportionality, our experience is that the challenge may lie just as much if not more in their application at the national level than in the original requirement. There are a number of examples where the manner in which individual measures are implemented has given cause for concern. One such, recorded in the answer to question 4 in the annex, relates to unwarranted interventions in the movement of vehicles between member states, ostensibly on roadworthiness grounds, that interfere with the free movement of goods, especially when these interventions are targeted at vehicles registered in other member states.

The issue of competence creep and proportionality has frequently arisen at EU level and the recent attempt to extend regulation 725/2004 applying the IMO Code on International Shipping and Port Facility Security to non-SOLAS vessels is a clear example of both creep and disproportionate measures.

**Q.7 To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

and

**Q.8 What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

On regulatory aspects, our answer to question 1 already affirmed our view that it remains imperative that shipping, as a global sector, should be regulated at the global level – ie in such organisations as the IMO, ILO and the UN bodies – to prevent distortion of trade and unfair competition. We see little or no value in a third tier at regional EU level. This is both logical and practical and designed to ensure that ships which trade internationally are not subject to multiple regulatory regimes within individual countries or groups of countries when they trade across the world.

IMO and ILO in particular have long-standing, highly respected and very comprehensive ranges of conventions and recommendations covering safety, environmental and labour matters, which are under constant review and updating. Whilst the good intent of the EU is recognised and largely supported in this area, for example, no EU environmental or climate change directive or regulation to date has had a positive impact for shipping.

EU action in this area may be and often is disadvantageous to the interests of individual member states, including the UK.

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

In terms of negotiating strength in trade and maritime agreements, clearly there is value and advantage in harnessing the greater economic bargaining power of the EU as a trading bloc. This is an area where competence has passed to the EU long ago. We see no advantage in trying to undo that and consider it unlikely that the UK could gain any advantage through separating itself from this process. That said, it is essential again that the sector-specific needs and objectives of the shipping industry are taken on board in negotiations and that, ideally, that there is greater opportunity – when required – for national industry interests to be represented in the negotiating process than at present.

**Q.9 What challenges or opportunities are there for the UK in further EU action on transport?**

**Port services.** While the opposition to the present EU draft ports regulation is understood because of the mismatch with the commercial nature of ports operations in the UK, there is still scope for deregulation of stevedoring and pilotage services in member states' ports.

**Internal market.** We would hope to see continuing (1) attention to improve the free movement of passengers on internal journeys and (2) other actions to reduce barriers to maritime trade in the internal market and the measured promotion of modal shift to inland and short-sea shipping routes.

**Industrial action.** Is there scope also for action to ensure that shipping routes are kept open in the face, eg, of French union actions blockading ports?

The UK Chamber of Shipping

12 July 2013

9 July 2013

Dear Sirs

## **BALANCE OF COMPETENCES: REVIEW OF THE INTERNAL MARKET**

The UK Chamber of Shipping, the trade association for the UK shipping industry, is pleased to respond to your call for evidence to your review of the Internal Market. Our membership – which comprises 140 members, who operate a total of nearly 1,000 ships, including ferries, container ships, tankers, and bulk carriers – has extensive experience of carrying goods within the Internal Market and on sailings into and out of the EU which are subject to customs control.

The UK Chamber of Shipping accordingly has a keen interest both in the functioning of the Internal Market and in the facilitation of trade between the EU and the rest of the world – as HMRC will be aware from our participation in the Joint Customs Consultative Committee for the last 40 years. Our answers below are limited to questions 1-7 and 11-12, as we are not in a position to respond to questions 8-10 on intellectual property rights.

**Q.1 What do you see as the advantages and disadvantages of EU action on the free movement of goods? How might the national interest be served by action being taken in this field at a different level (for example, at the WTO), either in addition to or as an alternative to EU action?**

Free movement within the Internal Market

In relation to free movement of goods within the Internal Market, EU action has been wholly advantageous. The creation of the Internal Market opened new markets for UK goods, gave UK consumers full access to European source markets, and greatly simplified the movement of those goods between the UK and other EU countries. Statistics on trade growth within the EU since the creation of the Internal Market are set out in answer to question 3 below.

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.

Ongoing EU action to uphold that right of free movement, as established (now) in the Treaty on the Functioning of the European Union, is similarly advantageous. There is, of course, a role for national Courts to ensure that Member States fulfil their duties under the Treaty in relation to the Internal Market – but the prospect of EU action, with an accessible judicial process and effective remedies (large fines on miscreant Member States etc), is a necessary backstop.

It is not obvious that any other international body, such as the WTO, could have achieved an equivalent effect; and it is certain that no international organisation could enforce the Internal Market as effectively as the EU does.

#### Trade beyond the Internal Market

EU action in relation to the movement of goods into or out of the Internal Market has been less obviously advantageous. The existence of the Internal Market undoubtedly necessitates a single set of rules governing the movement of goods into it, but the shape of those rules and the manner in which they are set is less than optimal.

When the Internal Market was created in the 1990s, onerous new procedural constraints (mostly on health, rather than customs grounds) were imposed on long-established UK trades, such as meat and dairy imports from Australia and New Zealand – to the clear disadvantage of the merchants concerned and of the shipping lines that carried those trades.

Despite the progressive lowering of customs tariffs, which is inherently welcome and undoubtedly stimulates economic activity, the EU continues to impose complex (and costly) procedures on the actual movement of goods into and out of the Internal Market – see our answer to question 6 below.

There is no obvious scope for another body to regulate trade into and out of the Internal Market. The management of the external border of the EU is plainly an EU responsibility, but there is ample scope for it to be done in a manner that better facilitates trade.

## **Q.2 To what extent do you think EU action on the free movement of goods helps UK businesses?**

EU action on the free movement of goods is vital to UK businesses. Trading relationships within the Internal Market are predicated on the ability to buy and sell goods freely and the knowledge that the goods in question will be able to move freely from seller to buyer. These freedoms are established in the Treaty, but threats to them nonetheless arise from time to time. EU action (or the prospect of it) is absolutely vital in guarding against such threats: it underpins trade.

The European Commission's record of taking action against Member States that have sought to exclude particular products from elsewhere in the EU from their home markets is well known. As well as providing an effective remedy in individual cases, this also doubtless acts as an effective deterrent to other instances in which Member States may be tempted to erect protectionist barriers.

Both the prospect and reality of EU action are particularly important to UK businesses and consumers, because of HM Government's track record of seeking to frustrate the operation of the internal market, ostensibly on anti-smuggling grounds. Repeated attempts have been made since the late 1990s to deter UK residents from taking advantage of the Internal Market by shopping in neighbouring countries. In 2002 (in the *Hoverspeed* judgment), UK law on cross-Channel shopping was found to be wrong, and HM Customs & Excise's practice of confiscating shoppers' vehicles was found to be unreasonable. Such practices have largely ceased, but great publicity is now given to "indicative levels" in an obvious effort to deter large purchases. In 2011, the UK Border Agency even publicised these levels, entirely wrongly, as "limits" that shoppers had to "comply with".

Various UK Government Agencies have also sought over the last 12 years or so to reintroduce, in effect, a requirement for customs declarations on movements of goods within the internal market. These are usually cast as a requirement on the haulier or ferry operator to notify full details of the goods (and of their buyers and sellers, etc), rather than

as a requirement on the importer to lodge a customs declaration, but the effect would be the same. The Immigration, Asylum and Nationality Act 2006 created such a requirement, at Section 33, to provide such notifications to the Police (for sharing with HMRC). The UK Chamber of Shipping also has direct knowledge of several other unpublicised instances where HMRC and other Agencies have asserted equivalent requirements, either on the basis that Article 36 of the Treaty allows for any control regime that is badged as having a “public security” purpose, or simply on the basis that they will stop all lorries disembarking from a ferry if they are not provided with such notifications.

In all these instances, the prospect of EU action has sufficed (eventually) to dissuade the Agencies and Departments concerned from pursuing their intended requirements. It is certain that, had that prospect not existed, they would indeed have imposed those requirements, and put an end to free movement of goods within the Internal Market – to the detriment of all UK businesses concerned.

Although it is beyond the scope of this review, it is worth noting that the primary legal base for all HMRC control activity, the Customs and Excise Management Act 1979, pre-dates the creation of the Internal Market by 13 years and has not been updated to reflect the fact that goods may move freely between the UK and other EU Member States. The combination of inappropriate law and a dogged reluctance within HM Government to accept that goods moving within the Internal Market are not liable to controls when crossing the UK border creates an ongoing risk to free movement, against which the prospect of EU action provides the only reliable protection for UK businesses.

### **Q.3 To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you when trading with countries inside and outside the EU?**

Trade with countries inside the EU

The existence of the Internal Market has brought tremendous economic benefits for all businesses engaged in trading within it. For the shipping sector, the greatest benefit is the growth in goods traffic between the UK and other Member States – best measured by the volume of road freight between the UK and the Continent (since almost all of these lorries will be engaged on journeys within the Internal Market). The number of goods vehicles travelling to/from the UK more than doubled from 1.4 million in 1992 to a peak of 2.9

million in 2007, before falling back to 2.4 million last year as a result of the economic recession.

All of these lorries are carried on ferries (or the Channel Tunnel), and freight traffic is now the motor of the UK ferry sector. It forms the core of ferry operators' business plans, and has led to the development of a new type of ship: the "ro-pax", very large ferries that are designed primarily to carry lorries rather than cars. Such vessels now dominate the UK ferry sector. Ferry schedules are similarly now oriented around hauliers' delivery schedules, rather than tourist travel patterns. The predictability of freight transport schedules within the Internal Market, made possible by the removal of customs controls, is vital to the highly efficient just-in-time delivery model on which large manufacturers and retailers rely.

EU action has been responsible for creating all these benefits, and remains responsible for ensuring that they are maintained.

Trade with countries outside the EU

The UK's trade in goods with countries outside the EU, as measured in numbers of containers shipped, has grown by a similar degree over the lifetime of the Internal Market: from 2.7 million in 1992 to a peak of 5.4 million in 2007, before falling back to just less than 5 million in 2010. The role of EU action in this context, however, is less obvious; much of the growth is usually attributed to rapid economic growth in countries outside, most notably China.

Moreover, EU action has imposed additional cost, in the form of procedural complexity, on trade with countries outside the EU. Examples are given in answer to question 6 below, but no figures for the resulting costs are available.

#### **Q.4 What types of EU action would be helpful or unhelpful for your activities as a business and/or as a consumer in the Internal Market?**

EU action in relation to the carriage of goods by sea within the Internal Market can broadly be classed into three types.



**1) Deregulation.** The removal of burdens imposed by EU law on maritime traffic within the Internal Market would be helpful. Maintenance of those burdens would be unhelpful.

□ Statistical reporting. Directive 2009/42 imposes a requirement for statistical reporting of movements of goods by sea within the Internal Market. Prior to 1993, such statistics were collected as a by-product of customs declarations; and, clearly, generating data for statistical purposes offsets the benefit of not having to generate it for customs purposes.

□ Customs controls. The EU Customs Code discriminates against goods moving within the Internal Market by sea, rather than by land. Goods arriving from another Member State over a land boundary are assumed to be in free circulation. Goods travelling between the same two Member States by sea are assumed not to be in free circulation, unless carried on an authorised “regular shipping service” – leading to additional costs. This discrimination is based on the notion that Customs do not know where a ship has actually come from – a justification which has always been feeble and is now, when Customs can and do track the movement of every vessel electronically, entirely groundless and bogus.

- Ships Reporting. Directive 2010/65 similarly imposes a requirement on all ships carrying goods within the Internal Market, unless authorised as “regular shipping services”, to report their movements to Customs or another competent authority. For same reasons as above in relation to controls on the goods, such reporting requirements are redundant and discriminatory.
- Environmental reporting. Under the Safe Sea Net programme, which exists in the UK as CERS (the Consolidated European Reporting System), ships trading within the Internal Market are required to generate a range of reports on their movement, cargoes, security arrangements, and waste disposal. In effect, trade within the Internal Market has been made conditional upon filing these reports, and the movement of the goods concerned is no longer free.
- Tax. Clearly, the disapplication of VAT on intra-EU maritime freight (by treating voyages between EU Member States as international voyages, to VAT does not apply) would be helpful, but there is no prospect of any such change.

**2) Avoidance of new regulation.** Similarly, it would be helpful if the EU were to avoid imposing new regulatory burdens and costs on movements of goods and ships within the Internal Market.

- Environmental restrictions. These are innumerable, but the imposition in January 2015 of a limit of 0.1% sulphur content on the exhaust emissions of ships trading between the UK and the Continent looks set to be particularly disruptive to the movement of goods within the Internal Market, significantly increasing fuel costs and possibly leading

to the closure of some long established ferry routes (and, ironically in view of the green objective of the regime, displacing traffic onto the roads).

- Tax. The European Commission's periodic attempts to apply VAT to passenger fares on sailings within the Internal Market and to restaurant catering sales on board such sailings threaten to disrupt the established business model for the provision of ferry services on which the Internal Market relies. The Commission has just last month (June) initiated a new study on a revision to the current arrangements, despite acknowledging only a year ago that there was no enthusiasm among Member States for any change.

**3) Watchdog against national barriers.** It would be particularly helpful – and it is clearly necessary – for the EU to remain on the alert for attempts by Member States to erect barriers to the free movement of goods within the Internal Market and to take action as necessary when they do so. Obvious examples of barriers of which a real risk remains include:

- Rogue controls, such as “requirements” for routine reporting of goods for anti-smuggling or security (or any other) purposes, or routine interventions in the physical movement of goods between Member States on similar bogus grounds.
- Interventions in the movement of vehicles between Member States, ostensibly on roadworthiness grounds, that interfere with the free movement of goods, especially when these interventions are targeted at vehicles registered in other Member States; or to collect road tolls or enforce unpaid traffic fines; or undue examination of drivers' passports and other documents.
- Obstruction by third parties, such as blockades of French ports by farmers, fishermen, or strikers, where EU action could help to ensure that the Member State concerned clears the obstruction immediately.

**Q.5 To what extent do you think the harmonisation of national laws through EU legislation (as opposed to international treaties) is helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market? In your experience do Member States take a consistent approach to implementing and enforcing EU rules? Please give examples.**

EU harmonisation of national laws relating to ships or governing the movements of goods by sea within the internal market has been generally unhelpful. Typically, the process does not begin – as it unquestionably ought to – with a consideration from first principles of whether the topic should be regulated at all. Moreover, the process too often takes a

lowest common denominator approach, with the effect that nothing gets any easier, and the outcome has been excessively prescriptive.

The EU harmonisation of ship's reporting, which resulted in Directive 2010/65, illustrates the problem well. There was no consideration of whether reporting ships' arrival in port any longer served a useful purpose now that all ships' movements are tracked electronically in real time, and the Directive prescribes the reporting of data (and the use of particular forms) that had passed out of use in the UK some years ago because they had been recognised to be redundant.

**Q.6. Do you think that the EU strikes the right balance between regulating imports and exports and facilitating international trade?**

We take this question to apply only to trade with countries outside the EU, as the legal concepts of import and export do not apply to movements of goods within the internal market. The answer is "no", for two main reasons.

Firstly, the EU generally exhibits a readiness (and often an enthusiasm) to regulate, heedless of the cost to international trade. The requirement to report incoming imports to Customs prior to arrival in the EU, which took effect in 2011, for example, was imposed without any regard to the compliance cost to the trade. Nor were the "benefits" ever set out in anything other than the most superficial terms. The plain purpose for introducing the regime was to match a similar requirement that had been imposed (similarly without regard to cost) in the USA.

Similarly, in 2006 (through Regulation 1013/2006), the EU created an entire regime of controls on exports of waste – including plastics and paper for recycling, which comprise a significant volume of UK exports. This regime operates in parallel with, but entirely separately from, the general regime of Customs controls of exports, leading to incompatible processes and duplicate compliance costs for shipping lines and other businesses affected. Trade facilitation was completely disregarded.

Secondly and more generally, the EU model for regulating imports and exports relies on a transaction-based control model – ie an individual declaration for every consignment – which may suit trucks crossing the EU's eastern frontier but is unhelpful in the context of carriage by sea, where a single ship carries many thousands of containers. Moreover,

alongside the requirement for electronic declarations, the EU control model also prescribes an “accompanying document” (for Transit and Export purposes, and with a similar arrangement for excise) which must travel with the goods in order to serve as a basis for customs controls during the journey. Again, this may suit road haulage but is entirely inappropriate for carriage by sea (where mid-journey inspections do not happen and documents travel separately), but the EU insists upon it, regardless of its obvious faults and excessive cost.

It is important to note, however, that the inconvenience and cost of these EU regulations for UK businesses is often exacerbated by the way in which they are implemented in the UK. Implementation of the regime of controls on waste exports was entrusted to the Environment Agency, rather than to HMRC, thus ensuring that there would be no integration with general export controls. The UK Government sought to extend the EU regime for pre-arrival reporting of imports beyond imports, to include goods travelling within the Internal Market as well. And while HMRC sets service standards for processing EU import and export entries, it has refused (despite repeated requests) to set any comparable standards for the X-ray and other physical examinations it performs for UK anti-smuggling purposes. Specifically, it has refused to give a commitment to examine a consignment within a set time period from selecting it for examination; and goods have on occasion been held on the quayside at UK ports for several days awaiting examination, for no reason other than poor organisation.

**Q.7. Do you think the UK’s ability to effectively regulate cross-border movements of goods would be better, worse or broadly the same as the result of more or less EU action? Please provide evidence or examples to illustrate your point.**

Broadly the same. The crucial determinant of effectiveness is the extent to which controls do not impede the movement of goods that are either in free circulation or, if not, are being moved in full compliance with all customs requirements. More EU action appears unlikely to inhibit further UK regulation. And, while less EU action might be likely to allow the UK to rely on less obstructive audit-based controls for fiscal purposes, the resulting benefit would almost certainly be nullified by the imposition of transaction-based frontier controls for security or anti-smuggling purposes.

**Q.11. What future challenges/opportunities do you think will affect the free movement of goods and what impact do you think these might have?**

The greatest challenge to the free movement of goods undoubtedly arises from restraints imposed by UK control agencies on goods arriving in the UK from other Member States, and on the vehicles in which they are being carried and on the individuals driving those vehicles. HM Government exhibits an institutional propensity to respond to a wide variety of public policy imperatives by seeking to restrict traffic arriving from overseas, regardless of its origin. Without an effective EU safeguard, to ensure that such restrictions are not applied to goods moving within the internal market, it appears likely that free movement will be prejudiced.

A second challenge comes from the propensity of the EU to impose ever greater costs on ships sailing within the internal market, in the name of environmental protection – whether through more expensive fuel, or complex reporting and procedural requirements.

The greatest opportunity, by contrast, lies in a fundamental review and updating of UK customs law, and in particular the Customs and Excise Management Act 1979, to reflect the existence of the Internal Market (and of roll-on/roll-off freight, and electronic systems). The process of re-casting the law from first principles, with the free movement of goods as the starting point, will necessitate a review of the controls practices that arise from it and should cause incompatible ones to cease.

**Q.12. Do you have any other general comments that have not been addressed above?**

For goods to move freely, it is not sufficient for the goods themselves to be free of restraints; the means of transport (be it a ship, lorry or train) needs to be equally free of restraints. This review of the free movement of goods within the internal market needs to have regard to the freedom of the movement of means of transport as well as of goods. There is scope for the regulation of the movement of ships and the regulation of the movement of goods to be much more closely co-ordinated. Both in the EU and in the UK, different bodies are responsible for each.

The UK Chamber of Shipping would be pleased to expand on any of these answers in discussions if you would find it helpful.

# UK Major Ports Group - UKMPG

## Introduction

UKMPG is an association representing 9 major commercial port groups operating 42 ports and handling over two thirds of the UK's international trade by volume. UKMPG ports are mainly privately owned and are funded by private finance and operate without subsidy. UKMPG members are currently investing at a record level of over £300m per annum mainly in facilities for handling increasingly large container ships and their cargoes. Many major ports have also developed proposals to invest in renewable energy facilities particularly offshore wind and biomass.

UK ports collectively handle over 95% of the UK's international trade by volume. Around 40% of UK ports traffic is with the EU, 35% is with non – EU countries and 25% domestic (mainly oil). The UK ports sector is a significant contributor to UK employment (nearly 400,000 people directly employed or supported) and to UK GDP (£21bn – 1.4% of total GDP) and is a key enabler for a number of other important economic sectors such as chemicals, oil refining, steel and fisheries.

Since 1980 short sea container and ro-ro traffic to and from the UK (including the Channel Tunnel) has increased by around 340%. Equivalent deep sea traffic outside the EU has grown by 330% over the same period.

## **Answers to specific questions below – all answers are from the perspective of ports policy**

### **Q.1 What are the advantages and the disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The ports sector is unusual amongst transport sectors in that there has been relatively little specific EU legislative action to date. Ports are of course covered by the general rules of the EU treaties and are also significantly affected by EU legislation in other fields notably environment, customs and public procurement. Some of the main reasons for the lack of action at EU level have been the wide variations in the nature and type of ports, their geographical situations and types of traffic handled and in their ownership and governance structures.

Overall since EU entry UK ports may well have benefitted from the growth of intra EU trade attributed to the internal market and from simplified customs procedures. There may also have been some marginal benefits from the limited amount of environmental subsidy available under the TEN-T, Motorways of the Seas and Marco Polo programmes. However the costs of complying with much environmental regulation have been high, particularly the Habitats and Wild Birds Directives (for example initial costs for ecological works at the London Gateway site to comply with Habitat Directive requirements are in the order of £16.5 million).

The major ports specific EU legislation to date has been the Port Security Directive which has required UK ports to make procedural changes to their security practices which have added to costs (for the Government as well as ports) and increased bureaucracy without producing any noticeable benefits in security.

**Q.2 To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

To date the EU Commission's approach on ports has mainly been to allow member states freedom of manoeuvre in determining the policy framework for ports provided that this was consistent with the general rules of the Treaty and regulatory requirements in other sectors such as customs, public procurement and the environment. The Commission has also promoted best practice through producing occasional guidance notes such as that published in 2010 on the application of EU Habitats legislation in estuarial areas. Another aspect has been the development of port performance statistics under the PPRISM programme co-funded by the Commission and by the EU ports association ESPO. This so called "soft law" approach has served UK ports well and has been consistent with the development of a market driven ports policy in the UK which has attracted in substantial international private investment. However the EU Commission is now seeking to apply a more regulatory approach to ports (see Q9 below).

**Q.3 To what extent is the EU internal transport market necessary for the functioning of the EU internal market as a whole?**

Since a high proportion of intra EU traffic is carried by sea at some stage in its journey it must be the case that ports have an important role to play in the functioning of the EU internal market. However this does not require there to a highly developed internal market for ports with common standards applied to a wide range of ports activities. Under the current "soft law approach (see Q2 above) UK ports and those in many parts of the EU particularly in N Europe have been able to develop as highly efficient undertakings comparable with the best in the world, attracting in the necessary investment and offering a good quality of service at a competitive price with strong links to other parts of the logistics chain.

**Q.4 To what extent is EU action to harmonise social and environmental standards (eg to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Extensive environmental and to a lesser extent social standards already apply to the EU ports sector. As mentioned above there has also been EU action on security at ports (see Q1 above). Apart from this, social and environmental regulation has largely been cross sectoral and has not been specifically applied to the transport or ports sectors.

**Q.5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

As mentioned above there has been little specific ports legislation so to date it is difficult to assess the effects on operators and users. UK Government policy on ports is based on ports themselves taking decisions on services, investment and pricing in accordance with market needs. In UKMPG's view this is the best way of giving customers a good service at a competitive price. One area which has concerned ports is public procurement legislation whose coverage is in the process of being extended through the addition of concession agreements. This is a complex area whose application to UK contract law is not yet well understood and which could have potentially wide reaching consequences for UK ports and their tenants and contractors. This is an example of a legislative proposal where there should have been a good deal more pre consultation before legislation was introduced – the same situation arises with the proposed Port Services Regulation discussed at Q9.

**Q.6 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would suit the UK?**

As mentioned at Q2 above, the Commission has to date generally followed a non legislative approach on ports. UKMPG sees significant benefits in continuing with this approach which reflects the wide diversity of port structures in the EU.

**Q.7 To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The maritime sector is worldwide and there are clear dangers in legislating at EU level without taking account of the wider international implications. Where a matter is within the competence of the IMO action should always be initiated at IMO level and if it is necessary to enforce the outcome at EU level this should be done without adding to it through "gold-plating".



For ports the national level is normally the most appropriate level for taking action as until recently the EU Commission themselves have recognised.

**Q.8 What advantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (eg ICAO or IMO) or with third countries (eg EU-US, EU-China)?**

There are very few international agreements specifically relating to ports.

**Q.9 What challenges or opportunities are there for the UK in further EU action on transport?**

UKMPG's strong preference is for the Commission to continue with the existing "soft law" approach on ports which has served the industry and the EU internal market well over recent years. We are also looking for the Commission to take a more consistent approach on applying state aid rules in the ports sector with ports (particularly larger ports which are in competition with each other) treated as normal economic undertakings and expected to operate without subsidy. However we do not support the Commission's recently published proposal for a Regulation on EU Port Services which would introduce new bureaucratic procedures coupled with Commission interference in normal 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. It is to be regretted that the Commission did not discuss its intentions more fully with the ports sector before introducing legislation as there might well have been agreement to achieving the objectives the Commission are seeking to secure through other means which would have avoided the difficulties which the proposal is now generating.

# Aviation

## Aerospace Defence Security (ADS)

### ADS Contribution

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

*Call for Evidence - Transport - (Department for Transport)*

### About ADS

ADS is the premier trade association advancing the UK's Aerospace, Defence, and Security industries, with Farnborough International Limited, the organisation that runs the Farnborough International Airshow (FIA), a wholly-owned subsidiary. ADS comprises around 900 member companies across all four industries, with over 850 of these companies identified as Small and Medium Size Enterprises (SMEs). Together with its regional partners, ADS represents over 2,600 companies across the UK supply chain.

**The UK is a world leader in the supply of Aerospace, Defence, Security and Space products and services. With strengths in both manufacturing and innovation, the four sectors that ADS represents support one million UK jobs, export £22bn and invest around £3bn in Research & Development on an annual basis.**

### Summary of ADS Contribution

*EU Competence over Transport brings benefits to UK industry - but the UK must work to improve issues surrounding regulatory implementation:*

## **EU ETS raises concerns over trade and market distortion but encourages a global deal**

The inclusion of aviation under the EU Emissions Trading Scheme (ETS) raises the risk of greater trade conflicts and distorts market competition. However, the UK would not benefit from taking unilateral measures, and EU action has brought renewed impetus for a global deal.

## **Single European Sky must be implemented quickly and successfully**

UK involvement in the EU development of the Single European Sky (SES) and the SESAR research programme, bring benefits of greater investment in R&D and procurement of new ATM technology. Further delays will be of detriment to UK industry and UK economic growth.

## **Harmonisation of safety standards increases efficiency for UK aerospace industry**

The development and harmonisation of aviation safety standards through the European Aviation Safety Agency (EASA) is welcomed, although some bureaucratic processes increase costs to businesses.

*UK Aerospace is a key stakeholder in EU competence over Transport*

The UK aerospace industry is the largest in Europe, and the second largest in the world. EU competence of transport measures affects the UK aerospace industry as a key aviation stakeholder, and supplier of products, equipment and services.

## **Overview of EU Transport Competence and the UK Aerospace Industry**

EU competence over aviation transport policy affects a wide range of stakeholders within the UK's aviation/ aerospace industry. Whilst much of the legislation and directives developed by the EU focuses upon issues such as passenger and workers' rights, travel and tourism, insurance schemes and airport security, a significant proportion of EU transport measures have a direct impact on the UK's aerospace businesses.

The UK aerospace industry, of which ADS represents, provides the UK with a high precision manufacturing and engineering industry which has a 17% global market share and which produced revenues in 2011 of around £11.8bn. In turn, it is estimated that over the next 20 years, the growth of the global aerospace industry could generate global revenues of up to £472bn from an estimated demand for new aircraft worth £2.8trillion and

numbering around 27,000<sup>2</sup>. With both government and industry determined to maintain the UK's global aerospace market strength, current and future development of EU transport competence will have a significant effect upon industry.

As such, ADS's contribution will seek to consider key areas of EU aviation transport competence which impact specifically upon the UK aerospace industry. It should be noted that the purpose of this contribution is not for ADS to determine whether the UK would benefit from either being part of or independent of the European Union. ADS believes that as the EU and its institutions currently play a key role in shaping the operating environment for UK companies, the UK must seek to maximise its influence – in whichever capacity – in order to support and expand economic growth, trade and global competitiveness.

### **Improvements to EU regulatory implementation required for long-term UK industry benefit**

The EU's competence over transport policy and regulation has allowed for the greater harmonisation of standards in aviation, the development of key initiatives and programmes that allow UK companies to access funding and compete for business, and also a greater focus on investment in new aerospace technology. UK industry benefits from being able to access these programmes and initiatives and also by being part of the success of the internal market. However, despite this, issues surrounding the delivery and implementation of such measures have caused significant concern for industry.

Below, ADS has sought to focus on some of the key EU transport directives affecting the UK's aerospace industry – analysing these measures and reviewing where the UK needs to focus time and energy on future improvements.

### **Aviation and the EU Emissions Trading Scheme (ETS)**

Of particular note to the UK Aerospace industry has been Directive 2008/101/EC of the European Parliament and of the Council, which ensured that aviation activities were included in the EU's Emissions Trading Scheme (ETS). Subsequent pressure from airlines, manufacturers and non-EU states resulted in the adoption of the 'Stop the Clock'

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directive in 2013, removing the ETS for international flights both into and out of the EU – whilst maintaining the scheme for all intra-EU flight operations.

EU competence over developing the ETS scheme has raised significant concerns for UK aerospace industry. Significantly, the critical reaction of countries such as China, the US and many Middle Eastern states to the initial inclusion of the ETS for international flights have seen increased incidences of ‘trade wars’, curtailing the UK aerospace industry’s ability to export. ADS supports and encourages emissions trading schemes which operate on a global level, and the EU’s implementation of ETS on a European level has caused market distortion throughout the aviation industry - increasing the costs for UK based and international airlines, as well as achieving knock-on effects for international trade.

In the pursuit of a global deal, the UK remains an independent member state within ICAO and so therefore retains the ability to promote its own national interests on an international platform. In addition, it has the ability to hold bilateral discussions with other member states in order to reach agreements. However, 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 by a much greater extent on a multilateral level.

The very nature of aviation means that for industry, any approach to impose emissions reductions schemes on a unilateral basis would create greater market distortion, harming the UK’s ability to trade, and also to gain increased access to both existing and emerging markets. The UK benefits from being part of the EU that can develop a scheme which, whilst not without its disadvantages, means UK industry is not isolated, and also gives far greater weight to achieving a global deal than any attempt made by the UK acting alone.

## **Single European Sky (SES) and SESAR**

EU transport competence over the future integration of European air traffic management through Single European Sky (SES) and the SESAR research programme, is an area which has the ability to bring significant advantages to UK industry and the UK economy. The UK’s base for technology and innovation research means not only is the aerospace sector set to gain from increased funding for R&D, but also, a study by McKinsey & Co outlined that SESAR would benefit the European economy by €419bn (of which the UK’s share would be €84bn) from 2013 to 2030, alongside the creation of 328,000 jobs and

saving 50 million tonnes of CO<sub>2</sub>. Alongside this, the prospect for greater EU-US airspace management integration could conceivably see UK at the forefront of such discussions.

However, the on-going stalemate in Europe around the implementation of SES, is delaying both improvements for air traffic management, reductions in carbon emissions and a lack of focused investment in technology. 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<sup>3</sup>.

EU competence over the future development of European air traffic management therefore allows the UK to potentially integrate its new technology on a far greater scale and gain access to EU funding for R&D. Alongside this, the UK can utilise its leading work with Ireland to create its own first stage Functional Airspace Block (FAB), and be central to further European and transatlantic ATM integration. The UK's strong position means it must ensure that it seeks to improve EU processes in applying the measures set out under SES across all EU member states, as successful implementation will bring economic benefit to the UK and industry through both growth and jobs.

### **The European Aviation Safety Agency (EASA)**

The establishment of the European Safety Agency (EASA) under Reg. (EC) No 216/2008 of the European Parliament and of the European Council, has allowed for greater harmonisation and the raising of safety standards across the EU. For UK Aerospace, which develops many safety critical areas of major commercial aircraft including wings, wheels and the undercarriages, not only has industry been able to play a key role in raising safety standards through EASA, but it has also enabled the implementation of new and innovative technologies.

In addition, such harmonisation has allowed for greater integration of Bilateral Aviation Safety Agreements (BASAs) with the US FAA and Canada, with the potential for more agreements with other safety organisations across the world. The EU-US Aviation Safety Agreement in particular, which entered into force on 1 May 2011, not only helps promote a high degree of safety in air transport on a global level, but also facilitates trade in goods and services, minimizes the duplication of assessments, tests and controls and reduces redundant regulatory oversight. The UK's membership of and input into EASA as a nation

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with a strong aerospace industry and aviation sector, is key in developing greater input in safety critical standards.

However, UK companies have reported that centralisation of technical expertise has caused the length of internal processes and procedures to become too slow and bureaucratic. Such processes can therefore cause increased workloads and costs to industry. Future UK involvement in EASA must therefore seek to improve its efficiency of operations, creating clear, concise and unambiguous documentation and improve slow and costly certification issues which may harm the future development of industry and the implementation of new technology and innovation.

## **Conclusion**

Whilst in each of the areas covered, EU competence over transport policy does have a significant effect on the UK's aerospace industry through uncoordinated regulation and implementation, the UK benefits from being within the decision making framework for these measures. As aviation is by its very nature a global market, UK industry would like to see many of the above measures developed by the EU, enforced at a global level. However, UK unilateral measures on things such as emissions trading and Air Traffic management would cause further distortion for UK industry. In addition, the UK maintains a separate seat at ICAO where these global decisions are made and so therefore does not lose the key focal point and environment to exert national sovereignty and issues of national importance.

Alongside this, the future path of European Transport policy and the internal transport market set out in Flightpath2050 is welcomed by industry – reflecting its focus upon new technology and innovation, which the UK industry is well placed to benefit from. This must be pursued throughout all EU transport measures, increasing funding for R & D and creating a balanced approach to mitigating the effect of an increase in noise and emissions concerns through the expected demand for air travel across the world.

## Aircraft Owners and Pilots Association (AOPA)

**Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

In the field of aviation ( private operators) there can be safety advantages through common safety standards. However the application of these common standards varies according to the individual state and its laws. In the UK the CAA is required to recover its costs plus 6% which automatically places a financial burden on UK operators whereas the French Tax payer pays of the French CAA ( DGCA)-Therefore the regulatory burden falls on the French tax payer and not the end user like in the UK- The Government may argue that personal taxes are also much higher in France which although is true it is not the answer - Mandatory Handling has reduced the availability of airport access to many of our operators because of the high level of fees- This also has a safety impact because many of these regional airports have landing aids which are available but at unjustifiably high costs- Personal transport is disadvantaged in favour of mass transportation - There are other issues around the training of pilots.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

The EU has focussed on access to about 500 airports in Europe where there are 10 times that number of landing sites thereby reducing the connectivity to the regions of Europe for businesses. Its difficult to quantify the costs other than to say that our activity has a estimated GDP value of €30-€40 billion. when compared to the USA where the GDP value is reported as \$104 billion annually. We need to speed up infrastructure improvements like EGNOS as an enabling technology for improved safety when flying private aircraft into European airports. EGNOS will eventually improve flight safety and efficiency generally but the member states need to work more closely with each other because currently the implementation is very fragmented. There will also be some environmental benefits also from improved flight paths and lower fuel burn and less emissions - So Europe has the ability to make rules and have R&D funds - the recent increase in transport funding from €8 billion to €24bill ( 70% will go on trains) must be used to deliver improvements to the aviation infrastructure for ALL users and not just the airlines.

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**



Well from our perspective access to the internal market is important and the easier it is to reach those markets the easier it is for UK business to do business. Video conferencing has not developed in a way that has reduced the need for face to face meetings. Airports are full - Our members like to use their aircraft in a way that enables them to use their time effectively- However we may have gone to far with some controls such as EC300

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

In our area there is little understanding of our operations and regulations that have been developed so far are based on standards which are based on airline standards and reduced slightly - the EC Reg needs amending to better reflect the diversity of airspace users.

**Q.5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

The impact on our industry has been to impose additional costs without any demonstrated gain in safety. The European system of regulating is at odds with the UK system of Better Regulation. European RIAs are meaningless but they are done because EU law says so. No risk assessments are done, and no CBAs are used to justify the changes to the regulations. I have heard the head of EASA say there is no compromise on safety, which means he considers safety at any cost ! For us this is not an affordable solution. We want a risk based regulator who understands the risks they need to regulate and for this there is a need for good quality data and analysis .

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

Many of the EU processes are not visible such as comitology- there is a feeling amongst our members that democracy is affected. One of our members asked and EASA policy

officer for an interpretation of a rule, the person admitted he had written the rule but the only interpretation could be one provided through the European courts !! This is crazy but it is the standard response from EASA

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The issue that comes to mind is the ETS scheme which should have been dealt with through ICAO. It nearly started a trade war with the USA, India and China. The issue is still not resolved.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

The big issue for our members is the lack of a single legal system and therefore negotiating at ICAO / IMO may be better served through a larger voice because of the wider benefit to the EU but it also reduces the ability for sovereign states to apply differences because we have gone in for a bloc voting system. This questions the value of a UK representative at ICAO? Albeit Europe is not a contracting state to the ICAO convention. So it's a question of how to protect national interests against the need to be a member of an economically larger block particularly on trade issues at the WTO.

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

The challenges come in the form of what improvements can be delivered to the widest range of users- How can the UK do better in getting structural funding that helps UK regional airports to join up rail and roads as part of a better use of infrastructure - Southend Airport is a recent example but it wants to reduce the amount of non-airline traffic without any real justification. Other parts of the UK could benefit from improved regional air transport services - and maybe grow an on-demand air taxi service - which could create more jobs and provide quicker links to the major hubs.

**Q.10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

We are concerned generally with the lack of proportionality in the rules and the commission needs to address this more purposefully and soon - The DfT needs to think about other airspace users and operations beyond that of just airlines.

# Airport Operators Association (AOA)

## **Response by the UK Airport Operators Association to the Department for Transport call for evidence on how the UK-EU relationship impacts on UK aviation**

The Airport Operators Association (AOA) is pleased to respond to the Department's call for evidence on how the relationship between the UK and the European Union impacts on UK aviation in general and UK airports in particular, as part of the UK Government's broader balance of competences review.

Our response first makes some general points and then seeks to respond to the specific questions tabled by the Department.

We note that the Treaty of Rome proposed a common transport policy as a necessary condition for achieving the free movement of goods, services, people and capital and that it gave the Council and the European Parliament a duty to lay down rules to govern cross-border provision of transport services. More recently, enlargement of the EU has had its own impact on the UK aviation sector, evidenced for example by the tripling of UK – Poland flights since Poland joined the EU.

We further note that the UK aviation sector is of particular significance to the UK economy, contributing £50 billion GDP and £8bn tax revenues, and supporting 1 million jobs. UK airports handle more passengers than any other EU country and the UK has the largest commercial airline fleet in Europe, with nearly two thirds of international air passenger movements at UK airports to or from other EU countries. These figures underline the special importance of the aviation sector to the UK economy.

In addition we have heard it suggested that the Department for Transport and the Civil Aviation Authority have responsibility for more EU directives and regulations than any other Whitehall department or regulator.

So, optimising the relationship between the UK and the EU is of considerable importance to the UK economy, to UK air passengers and to the UK aviation sector. It follows that we are strongly of the view that this importance should be reflected in the scale and quality of resources deployed by the UK Government and the EU institutions to deal with these issues.

On the following pages we give our responses to the Department's specific questions:

### **Q.1. The advantages and disadvantages to the UK of EU action in the field of aviation**

Aviation is affected by rule-making at a local, national, European and global level, and it is important to the sector that those who make the rules should take care to avoid unnecessary duplication. It is also important to our members that the EU institutions should pay due regard to the principles of subsidiarity and proportionality. That said, we take the view that the advantages of a joined-up approach by EU members outweighs the disadvantages. Specifically, we are of the view that through its support of liberalisation the EU has made a useful contribution to the growth of the aviation market. Similarly, we support EU efforts to create a Single European Sky and we regret that to date some member states have sought to block the implementation of this. We support the UK Government in its continuing efforts to ensure that EU action helps to enable a level playing field, while avoiding unnecessary prescription. We see some evidence that in recent years the European Commission has become more sensitive to the need to avoid over-detailed rule-making.

### **Q.2. The contribution of the internal transport market to UK economic growth**

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, though it is also important to recognise that some of the biggest opportunities in the future are likely to come from emerging markets, with whom it is essential that the UK retains and grows connectivity. While it is hard to quantify, we are clear that the creation of a liberalised single market in aviation has been of considerable importance to the aviation sector and to the UK economy in general.

### **Q.3. The extent to which that market is necessary for the EU internal market as a whole**

We think that it is self-evident that the continuing development of modern transport infrastructure is vital to the development of the UK economy and the economy of our European neighbours and that the internal transport market is a necessary element in the overall single market.

**Q.4. The extent to which social and economic harmonisation is needed for the proper functioning of the internal market and/or desirable in its own right**

We recognise that these questions have a political dimension and, as in the country as a whole, our members have a range of views on them. Our members have undoubtedly secured benefits from the creation of a single transport market and from the single market as a whole and they recognise that they can only function properly through the creation and uniform enforcement of rules for a level playing field. There is some evidence from discussions on a number of aviation issues that a degree of social harmonisation is required to secure majorities for economic liberalisation. However, social harmonisations 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.

**Q.5. Whether the EU has struck the right balance between consumers and transport operators**

All EU legislation and regulation is a balancing act between the interests of different stakeholders. In the aviation sector this is reflected in both consumer and environmental legislation. On the one hand, a vibrant aviation sector is crucial for economic growth and we look to legislators and regulators to reflect an understanding of this. On the other hand, passengers and local communities have rights too and these need to be given due weight. In our view UK airports have a good record in these areas and recognise that their continuing growth is dependent on delivering good services and contributing to sustainable aviation.

In our view the EU has generally struck an appropriate balance between consumers and transport operators. We see this reflected, for example, in the European Commission's proposal on air passenger rights, which recognises that the primary relationship is between carriers and passengers (and seeks to strike an appropriate balance there), while also imposing some obligations on airports. Through dialogue with the EU institutions, the AOA will continue to seek to ensure that such obligations are proportionate and not unduly prescriptive. We recognise that the European Parliament feels a particular responsibility towards consumers and therefore look to the Council in general and the UK Government in particular to provide an appropriate counter-weight.

Our members do, however, have some concern that the Commission and the European Parliament do not always strike the right balance in the environmental field. By way of example, we refer to current discussions on revision of the EU's environmental impact assessment regulations.

At a time when the UK Government has recognised the essential role that airport development plays in the overall growth of the UK economy, we are concerned that the EU is in danger of hindering and undermining these positive efforts. We fear that the Commission and the Parliament may risk imposing unnecessary costs, delays and administrative burdens on major infrastructure project developers – and therefore play a part in thwarting the EU's overall objectives of promoting economic growth and Europe's competitiveness in the global economy.

**Q.6. The extent to which the EU's overall approach has been proportionate**

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 that were unnecessarily prescriptive. However, we see some evidence in recent years of a greater understanding of the importance of both proportionality and subsidiarity. An example in the aviation sector is provided by the proposals in the aviation package on noise, which rightly place an emphasis on process over substance, seeking to deal only with the procedures used to establish noise-related operating restrictions at airports and not with the detail of what those restrictions should be.

**Q.7. The extent to which the UK national interest would be better served by action at national or international level, rather than by the EU**

In our view, the fact that transport is a shared competence between the EU and the UK has, broadly, worked well for UK airports. For example, we think it is right that the decisions about airport growth should be made at national level, while the detail is a matter for local authorities. 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. We value the role that the EU has played in liberalising the aviation market in Europe. In summary, we see no compelling case for a change in the balance of competences in our sector.

### **Q.8. The advantages and disadvantages for the UK in the EU having a greater or lesser say in negotiating agreements internationally**

In broad terms, there is merit in the EU negotiating internationally on specific trade agreements on behalf of the 28 member states, where it is in the interests of the member states to do so. As far as aviation is concerned – and given its international nature – taken together, the EU has more weight in such negotiations, for example, on a free trade agreement with the United States, than any one member would have internationally. However, we see some evidence that the quality of EU negotiators has not always been as high as it could be and would welcome action by the EU to address this weakness.

### **Q.9. The challenges and opportunities for the UK in further EU action on transport**

We are broadly supportive of continuing efforts by the EU and the UK Government to support the continuing development of an appropriately regulated aviation sector, which can make an important contribution to economic development. The major challenge will continue to be to

avoid unnecessary bureaucracy and duplication. While this may sometimes require constraint at EU level, there will be occasions when the same is true at national level. An example here would be the current discussions within the framework of air passenger rights on the obligation of airports to produce contingency plans. We think that UK airports already have a good track record in this area and this appears to be acknowledged by the European Commission. It will now be equally important to ensure that the CAA does not adopt an unduly overbearing approach to its oversight duties in this area.

### **Conclusion**

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.

We would urge both the UK Government and the European Commission to devote an appropriate level of high quality resources to the sector in order to ensure that the sector



can play its part in contributing to the growth of the UK and European economies and the quality of life of Europe's citizens.

# Association of International Courier and Express Services (AICES)

## **AICES Response to Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union: Transport**

The Association of International Courier and Express Services (AICES) welcomes the opportunity to respond to the Department for Transport's 'Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union: Transport'.

AICES is the trade organisation in the UK for companies handling international express documents and package shipments. Our members provide door-to-door transport and deliveries of tracked next-day or time-definite shipments, including documents, parcels and merchandise goods. AICES members – including DHL, FedEx, TNT and UPS – directly employ around 38,000 people and indirectly support a total of almost 82,000 UK jobs and are responsible for over 95% of the international courier and express shipments moved through the UK every day.

In 2010, the express sector contributed £2.3 billion to UK GDP, and the sector facilitated £11 billion of UK exports a year. The express sector connects UK business to the international marketplace. Express services allow UK companies to implement best international business practice in terms of speed and efficiency, improve their customer service and compete effectively in the global economy. Our members enable UK businesses to achieve rapid, time-definite delivery of high value goods and documents to customers throughout the world. This speed and the ability to deliver and collect overnight would not be possible without air freight hubs and night flights.

AICES believes that wherever possible decisions with regard to aviation policy should be taken at a global level. An example, where this has worked extremely well is the Balanced Approach on aviation noise, agreed in October 2001 at the International Civil Aviation Organisation General Assembly and implemented by EU Directive 2002/30/EC on the establishment of rules and procedures regarding the introduction of noise-related operating restrictions at EU airports. The EU Commission's latest Proposal for a Regulation on noise-related operating restrictions still maintains the Balanced Approach agreed at a global level.

The Balanced Approach aims to ensure that airports and airlines can strike a balance between stricter environmental measures and the need to meet the current and future demand for air transport by avoiding operational restrictions unless all other options have been exhausted. The Balanced Approach is based on the core principle that solutions to noise problems need to be tailored to the specific characteristics of the airport concerned.

It requires consideration to be given to the 4 principal elements of the Balanced Approach, namely:

- reduction of noise at source;
- land-use planning and management;
- noise abatement operational procedures; and
- operating restrictions.

The ICAO Resolution stresses that operating restrictions should be used as a last resort; only after consideration of the benefits to be gained from the other three elements; and while taking into account the possible impact of such restrictions at other airports.

AICES believes that the Government should adhere to the Balanced Approach in relation to all airports in the UK, for example there should be no automatic assumption that a noise envelope will be imposed in every instance. It is only once the Balanced Approach process has been adopted that an assessment can be made as to whether any issues need to be addressed with regard to noise, and what measures, if any, are the most appropriate.

AICES also believes that a global approach to aviation emissions reduction is the most effective. A unilateral approach by the UK Government simply puts UK companies at a competitive disadvantage and would drive business abroad. The UK should continue playing a leading role to try to secure progress internationally through ICAO. AICES supports the Single European Sky (SES) proposal due to the significant reduction in CO2 emissions that could be achieved as well as significant efficiencies for all airlines.

AICES welcomes this review of the balance of competencies and believes that the Government should continue to monitor how best to achieve benefits for the UK economy from EU Membership.

Please note that this submission is confidential and should not be disclosed without the consent of AICES.<sup>4</sup>

6th August 2013

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<sup>4</sup> AICES subsequently consented to the publication of this evidence.

## Aviation Environment Federation (AEF)

The Aviation Environment Federation (AEF) is the principal UK NGO concerned exclusively with the environmental impacts of aviation. Supported by individuals and community groups affected by the UK's airports and airfields or concerned about aviation and climate change, we promote a sustainable future for aviation which fully recognises and takes account of all its environmental and amenity affects. As well as supporting our members with local issues, we have regular input into international, EU and UK policy discussions. In 2011 we acted as the sole community and environmental representative on the Government's South East Airports Taskforce. At the UN we are the lead representative of the environmental umbrella organisation ICSA, which is actively engaged in the current talks aimed at agreeing global climate measures for aviation.

We welcome the opportunity to respond to this consultation insofar as we are able, recognising that consultation covers an extremely broad range of issues. We respond below to the questions set out in the Call for Evidence.

### *Advantages and disadvantages*

*1. What evidence is there that EU competence in the area of environment and/or climate change has:*

*i. benefited the UK / your sector?*

*ii. disadvantaged the UK / your sector?*

EU legislation on air pollution has been very beneficial. There is no doubt that it can be influential in protecting citizens from ill health and death. In studies on Heathrow expansion, EU air pollution limits (for PM10 and NO2) were considered by the UK government to be critical. The government addressed the meeting or otherwise of these limits in great detail because the EU 'limit values' were seen as potentially preventing expansion or only allowing expansion in a way that addressed air pollution. Air pollution continues to be a factor that is addressed in all other proposals for airport expansion. While the UK has its own limits, equal to the EU ones, these are not even mentioned in government studies and in impact assessments for planning applications. Unlike the EU, there are no constraints, fines or sanctions implicit in the UK targets. Thus it can be concluded that giving the UK competency on air pollution would remove all pressure to address air pollution.

EU legislation has undoubtedly been useful in addressing climate change, particularly as it encourages a levelling up in policy; it is hard to imagine that the UK would have agreed to the 80% emissions cut enshrined in the Climate Act if comparable commitments had not been made, and policy measures put into play, at European level. The EU emissions trading system for CO2 is potentially of great use, notwithstanding the current problem of

permits being higher than the demand, and has allowed the Committee on Climate Change to take effective account of aviation emissions under the Climate Act even though they are not yet formally included in UK carbon accounts. We very much hope that ETS can be rescued, for example through the use of a 'floor price' for carbon.

*Where should decisions be made?*

*2. Considering specific examples, how might the national interest be better served if decisions:*

*i. currently made at EU level were instead made at a national, regional or international level? (What measures, if any, would be needed in the absence of EU legislation?)*

*ii. currently made at another level were instead made at EU level?*

The answer to this depends on what one considers "the national interest". AEF considers it is in the national interest of the UK to protect the lives, health and quality of life for its citizens and to safeguard the future for the next generations.

There are some areas in which we would be opposed to any change in the current balance of powers between the EU and the UK

As noted above, EU competence on air pollution is a driver in reducing air pollution (or stopping it increasing). If competence were to be given to the UK, research, legal process, sanctions, etc would have to be instituted at UK level in place of EU activity, which is likely to be an inefficient process.

Also as noted above, the ETS has allowed the UK to develop a much stronger climate strategy than it would have done otherwise, given the inevitable concerns that would have arisen in relation both to competitiveness and to carbon leakage. It is also very unlikely that the stringent fuel efficiency standards for cars, which may help bring down air pollution around airports, would have been instituted in the UK.

For aircraft noise, the position is less clear-cut, as neither the UK nor the EU have introduced the quantitative noise targets that we consider necessary. Imposing noise standards for individual aircraft is already carried out internationally and it is not clear whether EU action would help. Noise standards for airports could be helpful, but they need to impose minimum standards and not prevent more stringent national standards. Legislation currently being debated by the EU legislation could actually make it harder for the UK to impose limits on noise at airports through operational restrictions.

There is one specific area in which we consider it may be useful for the UK to consider a change to the current balance of competency, namely air traffic management. The UK has long held the view – which we support – that auctioning of slots at airports would be a more efficient and effective system than the current arrangements, which are based largely around grandfather rights, and that it would encourage airports to operate those

flights for which most demand existed and that delivered the greatest economic benefit. Currently, however, our powers to effect change in this area are restricted as the system is managed at EU level, and the UK has been unable so far to persuade other states to agree to reform.

#### *Internal market and economic growth*

*3. To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?*

EU standards are important. Without them there would be competition between EU countries using low environmental standards as a competitive weapon. Airport lobbyists in the UK and other countries in the EU argue against environmental standards on the basis that they could impact their competitive position. (The main impact would be on transfer traffic, which is arguably 'footloose' as it could potentially go to another hub airport. Terminating traffic is much less affected.). A "race to be bottom" by EU countries would be unproductive because countries' attempts to take traffic from each other would cancel each other out when they all impose low standards. Meanwhile, all EU citizens would suffer the health and quality of life impacts. An internal market that leads to this sort of outcome is by no stretch of the imagination "proper functioning".

*4. To what extent does EU legislation on the environment and climate change provide the right balance between protecting the environment and the wider UK economic interest?*

The implication behind this question is that strong EU legislation on environment and climate change will damage the UK economy. We do not accept this simplistic "environment versus economy" view. As noted in 3, a race to the bottom between EU countries benefits no-one in the EU and therefore does not serve the UK's economic interests, particularly in the longer term.

Competition between the UK and countries outside the EU is a somewhat different issue. While it may be superficially attractive to argue for low standards in order to compete with the rest of the world, this is pernicious and ultimately indefensible. Does the EU really need to use low environmental standards as a weapon to compete with poor countries and 'emerging' economies? Should we be aspiring to the environmental and social standards of Bangladesh, China or Brazil in order to squeeze a few points increase in GDP? Low environmental standards can impose their own costs in terms of human health and productivity. Road noise in England alone has been estimated to cost £7-£10 billion annually, and just one type of air pollution – particulates – at, conservatively, £16 billion per annum.

Competition between the EU and the rest of the world is very commonly cited as a reason for the EU not to take action on climate, particularly in the case of energy-intensive manufacturing which may lead to those industries re-locating outside the EU. However, the

issue much less significant in other sectors. It is not a serious issue for aviation because flights from, say, the UK obviously cannot re-locate to, say, China.

The problem of competition between the EU and countries outside could be tackled by the EU imposing a tax (at the right level) on embedded carbon on all products brought into the EU.

### *Current legislation*

5. *Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:*

*i. focused on outcomes (results)?*

*ii. based on an assessment of risk and scientific evidence?*

We are not clear why a distinction is being drawn here. EU legislation is clearly focussed on outcomes (eg air pollution levels, protection of habitats, reduction of CO<sub>2</sub> emissions) but these outcomes are all informed by an assessment of risk and scientific evidence. (For example, CO<sub>2</sub> targets are informed by the risks of and due to climate change.)

A more relevant question is perhaps whether legislation relates to an over-arching objective or more proximate targets. There is a mixture. Air pollution targets, which are expressed in terms of limiting concentrations to protect human health, are an over-arching objective and an end in themselves. But emissions limits on cars or incinerators are proximate targets, intended to facilitate the aim of limiting concentrations.

### *Doing things differently*

6. How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals and/or impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/improving the environment?)

This is rather technical issue and the answers are likely to vary greatly according to type of environmental impact.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change

More action will help to protect EU citizens' lives, health and quality of life. For example, less illness and fewer deaths from air pollution, less heat stress, richer wildlife, and more beautiful landscapes.

*ii. Less action on the environment/climate change?*

Less action could lead to a slightly higher GDP for the UK in the short to medium term. This can happen for two reasons. Firstly, not taking action now is like borrowing money. It makes one richer for a short period, but ultimately a price has to be paid. Not protecting the environment is like mortgaging our future. Secondly, GDP is not a measure of human welfare. The only reason why sacrificing the environment for economic gain can seemingly work is because of the narrow definition of economic gain, namely consumption of goods and services that have a traded or market price but with no recognition of human life, health, welfare or happiness. Failure to make the right investments now to help the UK become a low carbon economy will almost inevitably lead to economic costs in the long term. Either carbon markets will have developed such that non-renewable energy sources have become very expensive or global efforts to develop low-carbon sources of energy will have stalled in which case high demand for fossil fuels is likely to increase their cost.

*8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?*

Any alternative should have as its aim to improve environmental protection, not weaken it as some would have.

*9. a. What advantages or disadvantages might there be in the EU having a greater or lesser role in negotiating and entering into agreements internationally or with third countries?*

As the EU is often better than most of the rest of the world in recognising and addressing environmental issues, a greater role should be beneficial to the local and global environment.

*b. How important is it for the UK to be part of "Team EU" at the UNFCCC?*

As the UK is better than many other EU countries in recognising and addressing climate change, a strong role should be beneficial for the local, EU and global environment.

*Future challenges and opportunities*

*10. a. What future challenges or opportunities might we face on environmental protection and climate change?*



We envisage two main challenges:

a) Continued or even increased claims that we should not protect the environment because it will damage the economy.

b) 'Beggar my neighbour' attitudes – if every other country doesn't take action, neither will we.

*b. Going forward what do you see as the right balance between actions taken at international, EU, UK, and industry level to address these challenges and opportunities?*

Action at all these levels is important. The order international, EU, UK and industry should be the order of preference because the broader the agreements or policies, the more can potentially be achieved. But where action at one level is not bearing fruit, it is vital that action at the next level down is prioritised. For example, currently, international action on climate is in many ways ineffective. This makes it more important to act at EU level.

*c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?*

This has been covered in previous answers.

*11. Are there any general points you wish to make which are not captured in any of the questions above?*

a) We notice that there are 32 separate strands to the consultation. Of these, just part of one addresses climate change. This suggests a distinct lack of concern and priority about what is probably the most important issue on earth.

b) As our responses indicate, we are generally in favour of strong EU environmental policies and of not allowing MSs freedom to damage the local, European and global environment. However, it is important that EU policies do not constrain MSs who want to go further than the EU. If a MS wants to provide, say, better protection against noise or to protect its habitats better than the EU requires, nothing in EU legislation or policies should prevent that or make it harder.

# Aviation Workshop

## BOC Aviation workshop

18/06/2013

### Market liberalisation

- Participants were very positive about the impact of the internal market on aviation and the importance of the EU in this. The liberalisation of the market had allowed the low cost carrier model to flourish which had led to both increased choice for passengers and significant profits for companies. This would not have happened without the EU.
- However, there was a feeling that since liberalisation the EU has sought to re-regulate the sector and has “chipped away” at the liberalised market over the past 20 years. One participant cited EASA as an area where the EU has used the safety argument as a guise to regulate the sector.

### EU approach

- Some stakeholders argued that the EU was too prescriptive, and they wanted to see a more outcome-focused approach with one participant adding that ‘it’s not the fundamental objective that’s wrong but it’s how [the EU] has gone about it.’ One example given was disabled passenger assistance where the EU should have set a standard and allowed the market to decide how to meet it. In response, one stakeholder argued that sometimes the EU did actually do this and gave airport contingency plans as an example of where the EU set the standard but allowed airports the flexibility to decide how to meet it.
- Stakeholders raised a number of alternative approaches, including the greater use of voluntary agreements, that the Commission could employ instead of resorting to the ‘regulatory toolbox’ and stressed the importance of having robust business cases and impact assessments to clarify the need to legislate.
- Major concern was expressed about the inconsistency of implementation of regulations among Member States and the patchwork nature of EU enforcement. It was agreed that the Commission’s efforts would be better focused on addressing the root of the problem and enforcing compliance rather than adding another layer of legislation or bureaucracy. Additionally, participants felt that non-compliance meant that potential efficiency savings were not realised. Inconsistency was also raised in relation to

consumer protection where it was felt that the Commission had not been consistent across the various transport modes.

- Participants felt that EU regulations, such as the denied boarding regulation, were often developed by non aviation specialists and were therefore sometimes badly drafted and tended to take a tick box approach rather than a more flexible and risk based one. They also felt that the nature of the EU decision making process slowed down legislation.
- There appeared to be a disconnect between the Commission and the aviation industry. Participants felt that the Commission seemed rather remote and unwilling to engage and discuss its proposals. Stakeholders felt that by the time industry was consulted on new regulations, the framework had already been set and there was only scope for industry to make small changes.
- A distinction was made between the roles of the different EU institutions. One participant thought that the Commission was actually trying to step back from regulating but it was restricted by the European Parliament and Council. One example given was bankruptcy protection where the Commission made it clear that they didn't want to regulate in this area but the European Parliament lobbied them to regulate. On passenger rights, one participant supported the Commission's proposal but felt that the subsequent ECJ rulings were wrong.
- EU action in other, non-aviation specific areas also has an impact on UK aviation. European tax law for example has been damaging to the UK aviation industry. A return flight from London to Manchester costs more in air passenger duty than a return flight from London to Rome because EU rules require the same amount of tax to be applied to all departures in a Member State. This means a passenger taking a return internal flight pays the high UK duty twice.

### Common standards

- There was concern that the EU institutions applied a one size fits all approach across the aviation industry in a way that did not take into account the differences between different sectors. For example, recreational and sporting operators were required to adhere to commercial standards which are not proportionate to the levels of risk involved. There was also concern about the regularity with which these standards changed. Businesses said that this constant changing made it very difficult for them to adapt and strongly felt that a level of stability was necessary.
- One example given where stakeholders felt that harmonisation was unnecessary was cabin-crew licencing. The UK operated efficiently and safely without licencing but other Member States decided to take a different approach and use licences. There was no

evidence to suggest that this was the best approach however the Commission decided to use this model.

- Another example given was occurrence reporting, where the UK has a good record, but because other Member States lagged behind the Commission decided to legislate across the piece and as a result the UK was unfairly affected.
- However, with regards to fuel and the environment one participant did feel that having common EU standards was very helpful in ensuring fair competition between oil companies.

### The international dimension

- While it was agreed that EU action in the single market had been beneficial overall stakeholders felt that the natural level for action in aviation was an international one. There was a feeling that the EU didn't always consider the global impact of its actions, which sometimes created competitive distortion internationally.
- Areas where stakeholders felt that the EU had gone beyond its remit, included: ETS, where they it appeared that the EU had acted extra-territorially; and airports where some participants felt it added the least value.
- Participants questioned the necessity of pan-EU action on issues particular to only one or two Member States. They argued that it would be helpful if there was scope for Member States to obtain derogations in some instances.

### International agreements and external representation

- Participants felt that the EU-US agreement was an appropriate area for the EU to take action in but that it was poorly executed. There were general concerns about the level of experience and negotiation skills within the European Commission. In the context of the EU-US bilateral agreement the US had been working on it for 30 years whereas comparatively the Commission was clearly very inexperienced. However, some participants felt that the open skies agreement with the US resulted in a much better deal for Member States than they could have achieved individually. Similarly, EU rules on air carrier operations have removed a lot of the administrative burdens which existed when separate bilateral air service agreements were in place with EU member states.

- Overall however stakeholders agreed that the Commission's coordination approach to third party agreements was positive as it seemed that the UK had a stronger voice as part of a group. However, there were minor concerns about the EU becoming a member of ICAO and Member States losing their individual membership. Participants felt that the Commission's role as a coordinator of positions was sensible but that it shouldn't go beyond this remit. It was concluded however that this wouldn't become a reality in the near future.
- Given that aviation issues extend beyond European skies participants agreed that international organisations e.g. ICAO were a good venue for resolving these issues. Some participants felt that the UK benefitted from the EU speaking for the UK at ICAO because it had the leverage of a significant block of countries. For example, the EU's refusal to back down over EETS had forced ICAO into looking at global emissions agreements.

### Stakeholder balance

- In terms of whether the EU has the right balance between different stakeholders there was some discussion about the extent to which it was appropriate for the Commission to involve itself in the various business models of the industry. For example, the Commission wants to get rid of the one-bag rule but one industry stakeholder didn't feel that this wasn't the Commission's decision to make as it related to their business model. Similarly, another stakeholder felt it was inappropriate for the Commission to set minimum service levels because consumers expect different levels of service depending on what they buy. For example, a consumer on a low cost flight would be more willing to wait longer at check-in than a business customer.
- Some participants felt that the institutional interplay had helped to ensure that the stakeholder balance remained stable with the European Parliament generally favouring passengers and the Council generally supporting businesses. From a commercial perspective, businesses like a certain level of prescription because it establishes set processes e.g. complaints. However, this was finely balanced. For example, on the one hand, some were concerned that certain regulations e.g. 261 set a dangerous precedent for businesses. On the other, some recognised the social benefits and felt that giving customers market confidence would create economic benefits.

### Future EU action

- Stakeholders identified several areas where further EU action would be welcomed including: taking stronger action on Single European Sky, which is currently being blocked by MSs; by ensuring consistency across MSs in areas such as ETS where there are duplicative green taxes in some MSs; and by concluding the border control area within the EU.

- Another area identified where the EU could usefully add value was stronger action in the handling of complaints. It was felt that the EU is currently inefficient at monitoring and acting upon non-compliance in MSs, for example the recent ground-handling complaint in Portugal. Stakeholders felt that complaints needed to be dealt with more expeditiously although the Commission's reaction is often to just add another layer of bureaucracy.
- There was a clear sense from participants that EU action in the areas of noise reduction and air quality had been largely beneficial and appropriate and that there was a role for the EU to increase its actions here. However, there was also a feeling that some legislation e.g. APD/capacity regulations should be decided by MS.

### UK approach

- Concerns were expressed about UK gold plating. Participants felt that the UK traditionally applied the highest safety standards in the world and that this led to economic disadvantages for businesses as well as the poaching of UK trained staff by foreign countries. Participants recognised that this did not result directly from EU action but from UK interpretation. One participant also thought that the UK could usefully learn lessons from the EU in the way that it regularly reviews its legislation.
- On the UK's lobbying strategy stakeholders felt overall that the HMG was effective at lobbying the European Parliament, especially UK MEPs. However, one participant argued that DfT's negotiating power in Brussels was not proportionate to the amount of transport legislation produced. UKRep is forced to prioritise its negotiations and transport is not high on the list even though it is one of the most heavily legislated areas.
- One stakeholder highlighted that often UK policy issues, such as capacity, got in the way of EU action. Recipients expressed concern that the UK's refusal to join Schengen had a negative economic and social impact on the UK. In particular, the increased bureaucracy and visa costs made it more difficult to attract non UK airlines to add new routes in the UK.
- European tax law has been damaging to the UK aviation industry. A return flight from London to Manchester costs more in air passenger duty than a return flight from London to Rome because EU rules require the same amount of tax to be applied to all departures in a Member State. This means a passengers taking a return internal flight pays the high UK duty twice.

# Graham Avery

## Transport Policy: Air Passenger Rights

### **Evidence of Graham Avery**

This evidence draws on my experience as a private citizen and expresses my personal opinion. My professional career was in the employment of the British government in London and the European Commission in Brussels, but not in the field of transport policy.

### ***Background***

The expansion of civil aviation in Europe has been greatly facilitated by EU policies to promote liberalisation and competition, and these have rightly been accompanied by a 'safety-net' of European measures to protect the rights of consumers.

There is limited scope for individual member states to protect international air passengers under national competence. Passengers from one state can have rights in relation to the operation in another state of an airline based in a different state. Consequently coordinated European action is necessary.

EU rules for the protection of rights of air passengers began in 1991 with Regulation 295 on compensation for passengers denied boarding, and this was extended in 2004 by Regulation 261 on protection for air passengers subject to denial of boarding, delays or cancellations.

### ***Problems***

Airlines often fail to accord passengers the rights to which they are entitled under the Regulation. In a public consultation carried out by the European Commission, consumer and passenger representatives complained of poor compliance and inadequate enforcement, especially with regard to financial compensation. Since airlines are not obliged under the Regulation to pay compensation if cancellation or delay is caused by

'extraordinary circumstances', they have developed ways of evading their obligations by attributing delays or cancellations to technical problems, adverse weather conditions, etc.

Another problem is that responsibility for enforcement of EU rules is delegated to national enforcement bodies in member states, which do not always ensure effective protection. Passengers can still experience great difficulty in obtaining the rights to which they are entitled. These difficulties are related to the lack of uniform interpretation and consistent enforcement by national bodies; differences between their complaint handling procedures and deadlines for replies to passengers; and the nature and the scope of their (non-legally binding) decisions. The European Commission has reported that 'enforcement in most Member States is too complex, too slow or, in practice, inapplicable'.

Since the review of the balance of competences needs to be evidence-based, I provide further evidence in Annex of difficulties encountered in the application of the Regulation.

Throughout Europe, the existence of European rules for protection of the rights of air passengers is well publicised. At Italian airports, for example, the following message (in English and Italian) is displayed prominently: 'Having problems with your journey? The EU has strengthened your rights'. But the existence of rules on paper does not ensure their application in reality. The way in which the system is actually administered frustrates and discourages passengers, and weakens the credibility of the policy.

## ***Conclusion***

The protection of the rights of air passengers is a field where the exercise of national competences is inadequate. The balance needs to be adjusted in favour of more effective coordinated European action.

The Commission recently submitted a proposal for better complaint procedures and enforcement measures, including a clearer definition of 'extraordinary circumstances'. That proposal does not go far enough. What is needed is an enforcement system and dispute resolution procedure at EU level, in cooperation with national authorities, in order to bring national action in line with common rules and procedures.

Graham Avery C.M.G



Senior Member of St. Antony's College, University of Oxford,  
Honorary Director General of the European Commission

Annex A: position of European consumer representatives

Annex B: advice of the Civil Aviation Authority

Annex C: my personal experience

## Annex A

### **Views of European consumers on Regulation (EC) 261/2004**

Source: BEUC - The European Consumers' Organisation: extract from pages 42-3 of evidence submitted to the European Commission, June 2012

The Regulation is not complied with by the air carriers who often interpret its provisions solely to their benefit (e.g. grounds for exceptional circumstances exempting airlines from paying compensation, refusal to provide assistance in case of delay or cancellation, refusal to provide re-routing at the passengers convenience). In-house complaint handling systems are not satisfactory: airlines often use weak excuses in order to discourage consumers from asserting their rights and in general they do not offer a quality service to the passenger who has to claim his rights. Overall the systems of enforcement are not efficient. National Enforcement Bodies (NEBs) do not handle complaints effectively and the fines imposed are not high enough to be dissuasive for the airlines. They do not function in a holistic manner and the two voluntary agreements between the NEBs on complaint handling are currently not fully respected (e.g. the right of the passenger to refer to the NEB of his country of residency is not effectively applied). Lack of harmonization in the complaint handling procedures of NEBs is also a problem for both consumers and airlines, since they may experience different complaint systems and different application of the regulation in various states. This lack of harmonization undermines the authority of the regulation and of the NEBs

## Annex B

### **Advice of Civil Aviation Authority**

The Civil Aviation Authority (CAA) is the United Kingdom's National Enforcement Body for Regulation 261/2004. It gives the following standard advice in response to enquiries:

'In the first instance, you should write to your airline so that they have an opportunity to respond to your complaint. If, when you receive a reply, you would like further advice or

assistance with your complaint, as your flight involves EC Regulation 261/2004 and you departed from another European Union (EU) country or from a country outside the EU to an airport in another European country, I am afraid that we are not in a position to assist. This is because every member state of the EU is required to have a body to receive complaints that fall under the Regulation. These bodies deal with complaints about flights from airports within their country and within their jurisdiction. You should therefore address your complaint directly to the relevant National Enforcement Body (NEB).

It is up to the individual NEB how they deal with your complaint and we have found that some may take enforcement action against airlines in cases of proven infringements of the Regulation but they may not obtain redress for individual complaints. Whilst we do not want to pre-empt their actions we felt we should let you know you may have to pursue your individual claim legally to seek redress. However the NEB should advise you further of their findings, which will help you build your court case, and your next course of action once they have reviewed your complaint'

Annex C

### **My personal experience**

At an Italian airport on 27 June 2013 17 passengers including my wife and myself were denied boarding on a flight to London Heathrow operated by a Spanish airline.

Regulation 261/2004 states in Article 4 "When a carrier expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations" and "If boarding is denied to passengers against their will, the carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9". It states in Article 14 "A carrier denying boarding shall provide each passenger affected with a written notice setting out the rules for compensation and assistance".

None of these actions were undertaken by the airline concerned. When passengers asked why the rules were not respected, airport employees replied that they did not apply to denial of boarding for reasons of safety due to adverse weather conditions. In fact, weather conditions at the time were not unusual or adverse, and other flights departed normally.

As a result of this experience, I requested compensation from the airline under Articles 7 & 9 of the Regulation. I addressed my claim to it on 2 July by email, and by post to it at London Heathrow, then by post to its head office in Spain, and then by post to its Chief Executive. After one month, I have not yet had a response.

I complained to the Italian national enforcement body, asking them to make an enquiry into the airline's non-respect of the Regulation. I addressed my request to them on 2 July by email, and then by post. After phoning to verify who was responsible, I re-transmitted my request by email to a named individual. After one month, I have not yet had a response.

I also consulted the UK's Civil Aviation Authority, who gave the advice shown in Annex B. Their reply was rapid, polite, and correct. It showed that the process of exercising one's rights can be long and complicated, and may require legal proceedings in another state.

It is possible that, in the end, I will receive a satisfactory response to my claim and my complaint. However, I have learned from this experience how difficult it can be for air passengers to obtain the rights to which they are entitled under the Regulation.

# British Airways

British Airways is the UK's largest international scheduled airline, carrying approximately 32 million passengers worldwide per year on an average of 750 daily flights. The airline employs over 40,000 people globally (the vast majority of these in the EU) and has an annual turnover of £8.5 billion.

The airline's two main operating bases are London's Heathrow and Gatwick airport, with a smaller base at London City airport serving New York and European business destinations. British Airways flies 237 aircraft to 152 destinations in 75 countries. British Airways also transports more than 750,000 tones of cargo per annum.

## **Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

British Airways believes that the main advantages for UK aviation in the EU has come from liberalisation, the creation and growth of the Single Aviation Market, Air Service Agreements, Single European Sky and harmonisation of safety.

### *1. Single Aviation Market (SAM) and Liberalisation*

SAM has been a key driver for growth:

- The single aviation market's destination pool has more than doubled from 12 nations in 1990 to over 28 in 2013.
- Intra-EU routes have grown by more than 170% since 1992

Over the past twenty years the Single Aviation Market (SAM) has enabled the abolition of governmental restrictions on fares allowing all airlines to be more creative and competitive with the fares they can offer the public.

Airlines have benefited from:

- A more level playing field for EU aviation via the internal market criteria and its growth to other member states.
- Mutual EU member states recognition of operating certification
- Unfettered and unlimited access to destinations within the EU
- Transparent and non-discriminatory allocation of slots for civil aviation at EU Airports and more legal certainty as to grandfather rights for slots.

## *2. EU Designation in Member States bilateral Air Services Agreements (ASA) with third countries.*

In 2002, the European court of Justice ruled that national designation of airlines in member states was in contravention of the Treaty of Rome as it discriminates on grounds of EU nationality. Since then, all member states have been obliged to seek EU designation to replace national designation in all third country ASAs. The EU has also speeded up this process by signing so-called Horizontal Agreements with third countries, thereby implementing EU designation simultaneously in all bilateral agreements held with that third country. The benefits of EU designation for BA are:

- The right to seek the opportunity to operate air services from other member states to third countries
- The right to offer more competitive fares from other member states to third countries (which in turn increases the choice of more competitive fares for all EU consumers)
- The right to enter into codeshare agreements with our alliance partners from all points in Europe to third countries, resulting in a better customer service for our passengers
- Greater opportunity for consolidation with other EU carriers as more and more third countries accept EU as opposed to single nation owned and controlled airlines.

## **3 Single European Sky (SES)**

Despite setbacks in the creation of the SES, the creation of a functioning SES is only viable at EU level.

The Single European Sky 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.

#### *4. Safety Standardisation*

British Airways supports the role of the EU in the area of safety harmonisation:

- The EU provides a co-ordinated 'one voice' communication channel with other agencies (e.g. the FAA to EASA)
- Multi-national airlines benefit from efficiency and harmonisation at an EU level via certification and harmonised safety rules.
- EU Level Agreements for Flight Duty Limitations and Occurrence Reporting
- EU black list of unsafe air carriers
- Creation of Eurocontrol
- The EU standardisation of aeronautical parts
- The expansion of EU safety levels with the addition of new member states

This harmonisation has contributed to the achievement of the safest period in European aviation safety.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

**No Comment**

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

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.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right**

Please see Q1' topic 4

**Q.5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

The Commission provides a non-national one-stop shop for decisions with regards to mergers and competition matters.

EU institutions, in their non-national role (separate from member states) can provide pivotal guidance on consolidation. In relation to mergers the EU institutions can take a narrow approach to market definition looking at segments of demand on given airport pairs. This does not recognise the reality of network competition. In order to increase efficiency and competitiveness the Commission should consider taking a more economic based approach to competition in the airline sector and encourage consolidation.

**In relation to the rules on Joint Ventures we are pleased that the Commission's recent practice has evolved to better take account of the benefits to consumers from the creation of inter continental JVs.**

**In relation to state aid policy, BA believes that the Commission presents a low barrier in the reviewing of rescue and restructuring plans for state-owned airlines.**



**Many airlines cannot attract investors and should exit the market leaving the way for more efficient operators who will better serve EU passengers and better connect EU regions.**

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

No comments

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

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.

- The EU has far greater leverage in securing major liberalisation with third countries than individual member states.
- The UK has long pursued a liberalisation policy towards Air Service Agreements when the third country concerned is willing to agree to safeguards which ensure fair and equal competition.
- By contrast, some other member states have sought to keep air services with third countries restricted to prevent competition with their own carriers, while their own carriers benefit from the UK's liberal market.

EU Air Transport Agreements ensure fairer competition throughout the EU for all airlines. The UK cannot ensure fair competition or access to the whole EU market in isolation from EU institution.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

British Airways 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.

The ECJ ruling of 2002 (referenced in Question 1) led to an acceptance by member states that benefits could be secured for airlines, consumers and the economy in general by replacing individual member state bilateral ASAs with third countries by having one, comprehensive, EU Air Transport Agreement (ATA) with third nations.

The overall economic leverage of the EU is far greater than the total of individual member states when negotiating with third countries, and provides for more liberal and open aviation arrangements EU wide, with clear benefits to consumers of air transport services and the UK economy. The EU has already secured comprehensive ATAs with the US, Canada, and Morocco and continues to negotiate with several other countries such as Brazil, Australia, New Zealand and Ukraine.

### *1 EU Air Traffic Agreements*

The EU has secured agreement with several neighboring countries to form an EU Open Aviation Area to extend some of the benefits of SAM to non-EU states. Such countries include Switzerland, Serbia, Albania, Kosovo, Macedonia, Bosnia, Israel, and Jordan, and negotiations are on-going with many more. The main benefits of EU Comprehensive ATAs are:

- Unrestricted traffic rights (and fares) from any point in the EU to any point in the third country, by airlines of both sides.
- harmonisation of regulations, most notably those concerning fair competition and consumer protection.
- rights to enter into commercial arrangements with airlines of both side such as codesharing and franchising.

Further opportunities for cross border investment and consolidation within the airline industry to provide a more financially sound industry.

## *2. EU US TTIP*

British Airways supports the negotiation of TTIP at EU level.

Solving the imbalance of ownership and control rules in aviation between the EU and the US would offer significant growth opportunities to EU aviation. British Airways looks forward to the successful resolution of these issues through the TTIP negotiations.

## *3. EU ETS*

British Airways supports the EU's role in finding a global solution to issues at the heart of the EU ETS impasse so that aviation is not faced with a patchwork of criteria or programmes in this area internationally.

## *4. EU-PNR Agreements*

British Airways supports the leading role of the EU in negotiating PNR agreements with third nations as it provides British Airways with harmonisation and greater legal certainty in the exchange of data in different jurisdictions.

British Airways supports the view that the Commission should initiate harmonised policy with regard to PNR data supplied to third countries. We have urged the Commission to work towards a comprehensive framework agreement on exchange of passenger data with third countries.

This has been successfully done between the EU and Canada, the United States and Australia. More and more nations are asking for or requiring PNR data, such as Mexico, Brazil, Russia, Japan and South Korea and a successful agreement will be expedited faster at EU level rather than at the national level.

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

No Comment

Q.10. If there are any general points that you wish to make that are not captured by the questions above then please write

BRITISH AIRWAYS

## British Air Transport Association (BATA)

The British Air Transport Association (BATA) welcomes the opportunity to submit evidence to the 'Call for Evidence' conducted by the Department for Transport on the 'Government's Review of the Balance of Competences between the United Kingdom and the European Union' with regard to transport matters.

BATA is the trade body for UK registered airlines. Our eleven members cover all sectors of the airline industry – including freight, charter, low fare, regional operations and full service. In 2012, BATA members employed 73,000 people, operated four-fifths of the UK commercial aircraft fleet and were responsible for some 96% of UK airline output, carrying 131 million passengers and 1.1 million tonnes of cargo. The eleven BATA member airlines are: British Airways, DHL, easyJet, Flybe, Jet2.com, Monarch, RVL Group, Thomas Cook, Thomson Airways, Titan Airways and Virgin Atlantic.

In general, as recognised in the Call for Evidence, 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.

**Aviation is an international industry with an international set of rules agreed and applied by ICAO. Any application of further rules at regional or national level has the potential to create market distortions and create additional cost at a local level. Examples of this can be found in EU environmental legislation such as the Emissions Trading Scheme (ETS) and the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).**

While ETS is supported by BATA as a first step to a Global Deal, the UK must not be left in the middle of a trade war between the EU and the Rest of the World over its implementation. 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. REACH threatens the ability of UK (and other EU) carriers to use vital chemicals such as nickel compounds and chromates in a variety of formulations – such as those required for paints that are specified and required for use on aircraft. Aviation maintenance could therefore be unintentionally forced outside of the EU by this regulation, undermining the viability of the air transport and aerospace sectors within the Union.

However, the overall picture is coloured by differing appetites for implementation of EU legislation by Member States, with the UK generally more eager to apply the law than elsewhere. This has the potential for placing UK interests at a competitive disadvantage when additional compliance costs are incurred. There is also a tendency for the EU institutions to 'be seen to be doing something' across a range of areas that impact the aviation industry, with the result that we now see the risk of considerable re-regulation and

micro-management of the sector that the liberalisation in the early 1990's aimed to remove. This affects the price and cost of air travel for the consumer.

A particular issue of concern to us is how EU tax law impacts upon UK domestic air transport. Abiding by EU law requires the UK's Air Passenger Duty (APD) to be levied on both legs of a domestic return air journey, whereas other flights within band A attract APD once – on the flight from the UK.

This means a return flight from London to Manchester attracts APD of £26 – double that applied to a return flight to Turkey for example. This 'double dip' on domestic air travel is damaging and unfair, creating a market distortion which imposes additional costs on UK domestic air passengers and damages UK based regional airlines.

# Civil Aviation Authority (CAA)

Question 1: What are the advantages and disadvantages to the UK of EU action in the field of aviation?

1.1 The response to this first question sets out the background to EU aviation policy and legislation, and an overview of its impact on the UK. More detailed description of its impact can be found in the responses to subsequent questions.

1.2 Air transport is by its nature one of the most international of industries, helping to facilitate the rapid growth in worldwide trade of goods and services over the last 50 years. Yet, paradoxically, it has some of the most restrictive rules on market access and international ownership and control.

1.3 Market access in civil aviation was historically governed by bilateral agreements between States, setting down in detail which airlines could fly on which routes, how much capacity they could provide, and what fares they could charge. Rights under bilaterals were normally available only to carriers owned and controlled in the home country, thereby restricting capital flows. Since bilateral agreements were commonly negotiated by governments on a mercantilist basis, with more regard to the interests of national airlines than the impact on passengers or shippers, consumer choice in terms of routes or carriers tended to be restricted, fares tended to be high, and it was difficult for start-up operators to challenge the entrenched position of incumbent airlines.

1.4 In the late 1970s the US Government deregulated its large internal market (of similar size to the EU internal market), with the result that airline competition flourished, more routes were served and fares fell. In the 1980s the UK succeeded in opening individual country-pair markets bilaterally with a few like-minded EU countries (eg the Netherlands), and there was some cooperation to harmonise civil aviation policy between European states through the non-statutory European Civil Aviation Conference (ECAC). But with many EU States anxious to protect their national carriers, progress on opening up market access in Europe was slow.

1.5 As in other industrial sectors, breaking down these national barriers required concerted action at EU level. The Commission gave a strong lead (including judicious use of the threat of court action), and with strong support from the UK and some other States, plus the example of the US, the political climate shifted sufficiently to adopt common rules creating a single EU aviation market in 1992. 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.

1.6 The legislation removed bilateral restrictions between EU Member States, and entitled so-called Community carriers to provide services within the EU without further permissions. Although the move was overall deregulatory in nature, common rules were agreed to ensure fair competition and minimum standards. The legislation provided a framework for the licensing of air carriers (for example in relation to safety, financial

fitness, insurance, and ownership and control), creating fair conditions under which eligible airlines could enter the internal market and compete. Certain operational safeguards (eg on predatory pricing) were introduced, primarily to smooth the negotiating process, but in practice were seldom activated.

1.7 The response to Question 2 below sets out in greater detail the impact of the single aviation market, but in summary it changed the face of short haul aviation in Europe. The creation of the single market, allied to the development of internet services, led directly to the formation of so-called “no-frills” carriers, of which easyJet (UK-registered) and Ryanair (Irish-registered) are leading examples. Mirroring earlier trends in the US, average fares have fallen sharply in real terms, more routes are served, and passengers enjoy enhanced choice. Legacy carriers have been increasingly forced to copy elements of the low-cost business model in order to remain competitive, sharpening their responsiveness to the market. However the growth of traffic heightened concerns about the environmental impact of aviation in Europe

1.8 The liberalisation of market access in the early 1990s ushered in over the next twenty years a swathe of EU aviation legislation and policy initiatives, covering (in broad chronological order):

- a) other market issues (eg slots, groundhandling, airline state aid);
- b) consumer protection measures to give passengers better information and a minimum level of rights;
- c) technical harmonisation in safety, air traffic management, environmental protection and security; and
- d) relations with third countries.

1.9 Almost every aspect of aviation policy, with the major exception of airport planning and construction, is now affected to a greater or lesser extent by developments in Brussels. In part these further legislative and policy measures were necessary to ensure the proper working of the single market, but working collaboratively at regional level has also delivered (or has the potential to deliver) other specific benefits.

1.10 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. In general the Commission has been right in its identification of key issues to address through common EU policy, and its declared objectives have been sound. The UK has supported in principle the major planks of EU aviation policy over the last twenty years – the creation of EASA, ensuring the safety of foreign aircraft visiting the EU, the drive towards a Single European Sky, the promotion of passenger rights, and



measures to protect the environment.<sup>5</sup> The only significant exceptions have been some airport-related proposals, of dubious added value though not seriously damaging, and differences, now historical, over the conduct of EU/US aviation relations.

1.11 Problems for the UK with EU aviation policy have been less with its underlying objectives than with the method of pursuing these objectives, the rate of progress, or over points of detail. To some extent this is inevitable. Once a particular objective is agreed, the enabling legislation or policy initiative is subject to negotiation between 27 (now 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. Furthermore, policy-making and legislation are not solely the province of the Commission and Member States – the outcome of proposals will be influenced by the European Parliament, and the Court of Justice may play a significant role through its subsequent interpretation of legislation (as has happened with the Denied Boarding Compensation rules).

1.12 Despite these risks EU aviation policy has delivered significant benefits to the UK beyond the single market:

- a) EASA has been established, has discharged its executive responsibilities effectively, and is gradually enhancing its capability and credibility as a full-service aviation safety regulator on the world stage;
- b) the air safety list has been an effective mechanism for driving out unsafe operations in Europe and protecting EU citizens flying in third countries;
- c) a reasonable balance has been achieved between passenger rights and operator freedoms (though this is now under review and revision);
- d) effective measures have been taken against noisy aircraft and to protect citizens living near airports; and
- e) a legal basis has been laid on which the Single European Sky initiative can be progressed, and some improvements in EU ATM performance have been achieved.

1.13 But these advances could have been greater, or achieved more quickly, but for some recurring difficulties:

- a) a tendency to regard legislation as the default option – with insufficient consideration given to the possibilities of other types of action, eg voluntary codes, guidance, dissemination of good practice, training etc. For example, the Single Sky Initiative has generated extensive legislation, but arguably with limited practical impact so far. Some of the causes of the currently largely national approach to service provision (for example, sovereignty and security concerns) cannot be

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<sup>5</sup> This response does not cover EU policy on aviation security, which is currently outside the CAA's remit

addressed through regulation alone, and for some time the UK, supported by other States, has been encouraging the Commission to develop a strategy for SES employing mechanisms other than rules to drive improvements. A happier example is scheduled airline failure, where the Commission has long resisted calls by the Parliament to make legislative proposals, in favour of other actions;

- b) where legislation is the best option, a tendency to be top-down and over-prescriptive, with insufficient flexibility for proportionate, performance-based implementation. This is partly because some States prefer the certainty of prescription, but there can also be an undue emphasis on harmonisation regardless of whether it is beneficial or necessary. Safety regulation of general aviation is a good example of where the drive for harmonisation has sometimes trumped subsidiarity for no good purpose;
- c) failure to ensure common, effective implementation of existing rules, and rigorous review of their impact in practice, in favour of moving straight to amendments (groundhandling is an example);
- d) inadequate or selective engagement with stakeholders, leading to impracticable or over-engineered proposals; and
- e) weaknesses in the Commission's ability to manage major change projects (Single Sky/SESAR and the initial establishment of EASA are examples).

1.14 In summary, it is difficult to imagine that the single aviation market could have materialised without political and legislative action at EU level. As a direct result of EU liberalisation UK passengers have enjoyed wider choice, more destinations and lower fares, though at some environmental cost. UK airlines, historically a significant part of the global market, have also benefited - new opportunities have arisen for innovative firms such as low-cost carriers, and legacy carriers have become sharper competitors in the European market and been able to leverage those advantages elsewhere. In addition to ensuring fair competition, other EU aviation policy and legislation over the last twenty years has generally been directed towards desirable objectives requiring action at EU-level, and delivered significant benefits for the UK. But the execution of these policies has not always been sure-footed, and a number of recurring weaknesses remain to be addressed.

1.15 Looking ahead, there are a number of areas of aviation policy in which action at EU level offers hope of making further progress - on safety, efficiency, passenger rights, environmental protection, operational resilience, and access to third country markets. But there are also a number of challenges, some old some new, to be successfully tackled if aviation in Europe is to remain productive, market-driven and consumer-focused. These opportunities and risks are covered in the response to Question 9.

Question 2: To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?

To what extent has the EU succeeded in creating an internal transport market?

2.1 Undoubtedly the EU has successfully created a single market in aviation, including open market access for qualifying airlines and freedom of ownership and control across the EU. The single market has been reinforced by ancillary legislation in areas such as slots and groundhandling to ensure fair access to aviation infrastructure; by Commission action under the single market rules to ensure non-discrimination (eg on slots at Orly airport, and on traffic distribution between Milan airports); and by concerted action under the EU's wider competition laws, notably a prolonged programme of legal action by the Commission to eliminate state aid to airlines (still ongoing in some relatively minor cases).

2.2 The EU has also been active in extending the common aviation area to cover neighbouring countries. Common rules now apply in the main to nearly 40 States, covering over half a billion people. Beyond that the EU has negotiated liberal air services agreements as a bloc with major third countries, including the US and Canada, though without removing airline ownership and control restrictions.

How far has this contributed to economic growth in the UK?

2.3 Air travel is an important facilitator of international trade and economic development. Changes in the international business environment, particularly as countries move towards more outward-oriented trade policies, have led to rapid increases in the flow of goods, services and capital (both human and physical) between nations. The liberalisation of international air transport markets such as the single EU aviation market has therefore played a key part as the world economy becomes increasingly globalised and financially integrated. Studies by IATA, the European Commission, European Parliament and others generally support this view<sup>6</sup>.

2.4 The increasing reliance of the UK economy on international trade in both goods and services, particularly financial services, has therefore been supported by the expansion of UK air services in terms of destinations and frequency. Recent surveys suggest around two-thirds of companies consider business air travel to be vital or very important for sales and marketing, enabling them to meet potential customers face-to-face and to keep in touch with existing clients, suppliers and staff across the world. The link between trade and business air travel is explored in depth in a CAA study, *CAP 796 Flying on Business*.<sup>7</sup>

2.5 Air travel has also significantly influenced leisure travel patterns. The expansion of no-frills airlines coupled with the existing charter sector has given rise to a wider range of

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European Commission <http://bookshop.europa.eu/en/flying-together-pbKO7606431/>

<sup>7</sup> [www.caa.co.uk/cap796](http://www.caa.co.uk/cap796) See Part2 Chapter 3, and in particular paragraphs 3.23-3.36.

possibilities for UK residents taking traditional holidays abroad and for inbound tourism to the UK, at cheaper fares<sup>8</sup>. In addition, the wider EU single market of which air services are just a part has led to freedom of movement for more people (and thereby increased migration, education abroad etc), and freedom of movement of capital over a wider area (for example, purchasing of second-homes). These changes have provided impetus to growth in the visiting friends or relatives (VFR) market. A CAA study in 2009, *International Relations – the Growth in Air Travel to Visit Friends or Relatives*<sup>9</sup> showed that between 2000 and 2007, while total passenger traffic to and from the UK grew by one-third, VFR passenger traffic grew by more than three-quarters, and most of that VFR growth was between the UK and the EU.<sup>10</sup>

2.6 The geographical proximity of other EU states to the UK means that EU destinations lend themselves to more frequent trips, as both the financial and time costs of travel are lower than for destinations further afield.

2.7 EU enlargement has added considerably to the scope of such movement, facilitating travel for leisure and work and through great accessibility to the European labour market, boosting the UK's access to workers from recent accession states. For example, the 10 accession countries in 2004 increased the EU population by almost 75 million.

2.8 Finally, a larger, more vibrant European air transport sector has had beneficial knock-on effects on demand and employment in the civil aerospace industry, in which the UK is a leading player.

What have been the costs and benefits?

2.9 The liberalisation of air markets seeks to create a framework within which competition can flourish. The resulting competitive spur has repeatedly been shown to give rise to a wider choice of airports, airlines and products for the user at lower prices, encouraging a more efficient aviation industry. Moreover, such liberalised markets are more likely to allow companies the flexibility to restructure and/or adapt their operations to changing circumstances in line with the requirements of the economic cycle. The freedom for EU airlines to be owned by nationals from any Member State, and to operate without restriction anywhere in the EU, has led to significant cross-border activity, whether this be through cross-border ownership or in the form of airlines with multiple bases in many different EU countries. The CAA puts the consumer's interest at the heart of all its work, and believes it essential to liberalise markets in the fullest sense in order for the consumer to reap the greatest benefits.

2.10 The CAA has produced a number of detailed reports on developments in aviation markets. Many of these consider the impact of the single aviation market:

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<sup>8</sup> Some of which of course may have negative as well as positive impacts on the UK economy.

<sup>9</sup> [www.caa.co.uk/cap787](http://www.caa.co.uk/cap787)

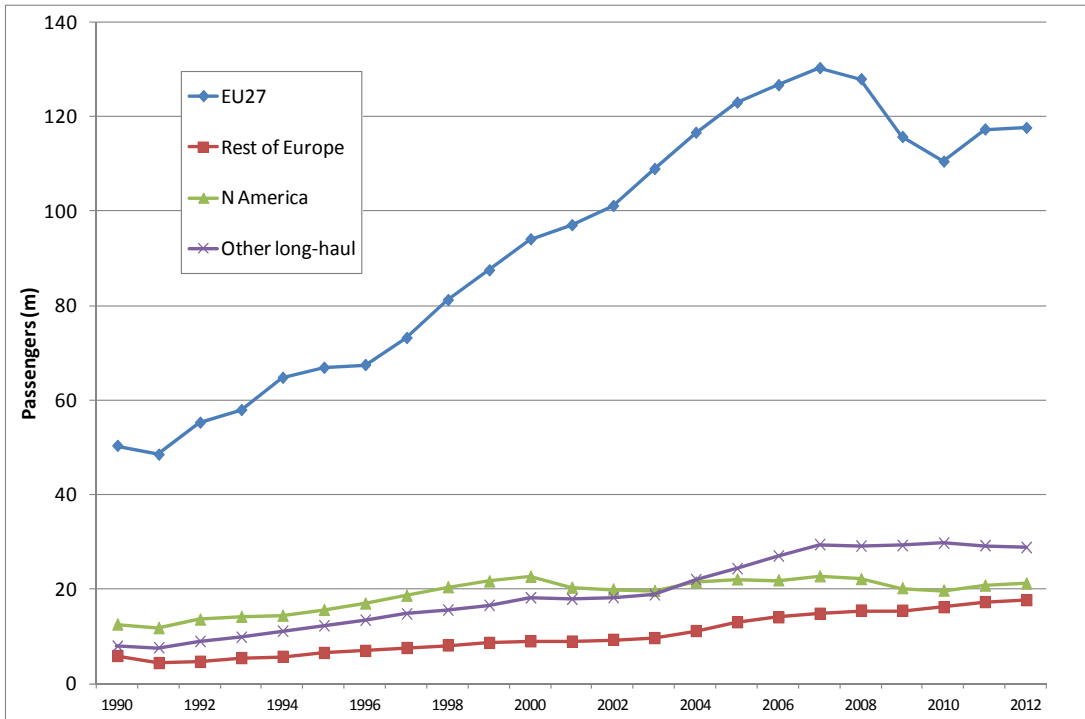
<sup>10</sup> Excluding passengers connecting at EU airports on to flights to non-EU destinations.

- [CAP 796](#) *Flying on Business – a Study of the UK Business Air Travel Market* (2011)
- [CAP 787](#) *International Relations – the Growth in Air Travel to Visit Friends or Relatives* (2009)
- [Recent Trends in Growth of UK Air Passenger Demand](#) (2008)
- [CAP 775](#) *Air Services at UK Regional Airports* (2007)
- [CAP 770](#) *No-frills Carriers – evolution or revolution?* (2006)
- [Demand for Outbound Leisure Air Travel and its Key Drivers](#) (2005)
- [CAP 749](#) *The Effect of Liberalisation on Aviation Employment* (2004)
- [Three studies](#) on the effect of EU liberalisation. The most recent was CAP685 *The Single European Aviation Market: The First Five Years* (1998)

2.11 .Figures 1 to 3 illustrate some of the developments since the single EU aviation market took effect.

2.12 Figure 1 shows traffic development on routes between the UK and EU compared with non-EU European routes and long-haul. The significance of EU routes to the UK aviation market is immediately apparent. There has been strong growth to many destinations, albeit often from a relatively low base. The recession has impacted EU traffic significantly, but nevertheless growth has generally been faster to EU points than to the US. The EU-US market was liberalised in 2008.

Figure 1: Passenger traffic to/from UK by origin/destination (excluding domestic UK services)

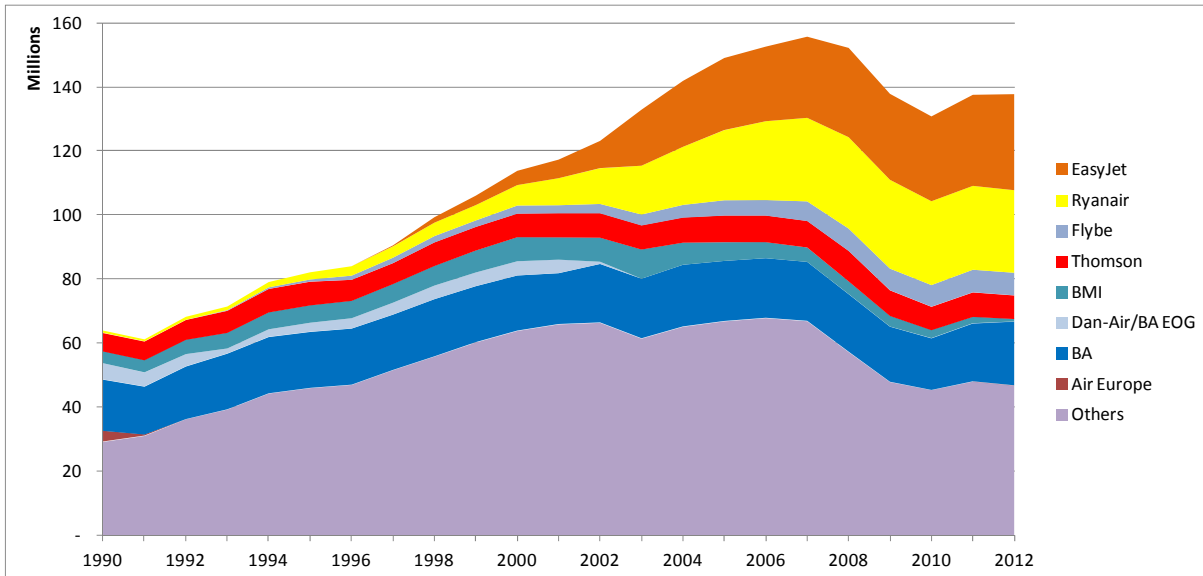


Source: CAA airport statistics

Note: For consistency the data is for all EU27 countries throughout the period, i.e. in some cases before countries joined the EU.

2.13 Figure 2 shows the top five airlines on UK–EU routes in terms of passenger numbers in 1990 and in 2012 and how their traffic has developed between those dates. While BA’s traffic has remained relatively static (prior to absorbing bmi routes), it has been overtaken by Ryanair and easyJet. Consequently while BA dominated UK–EU traffic in 1990, in 2012 there is a more even distribution with much stronger competition, broadening route networks and lowering fares.

Figure 2: Airline market share on UK–EU services (including domestic UK services)

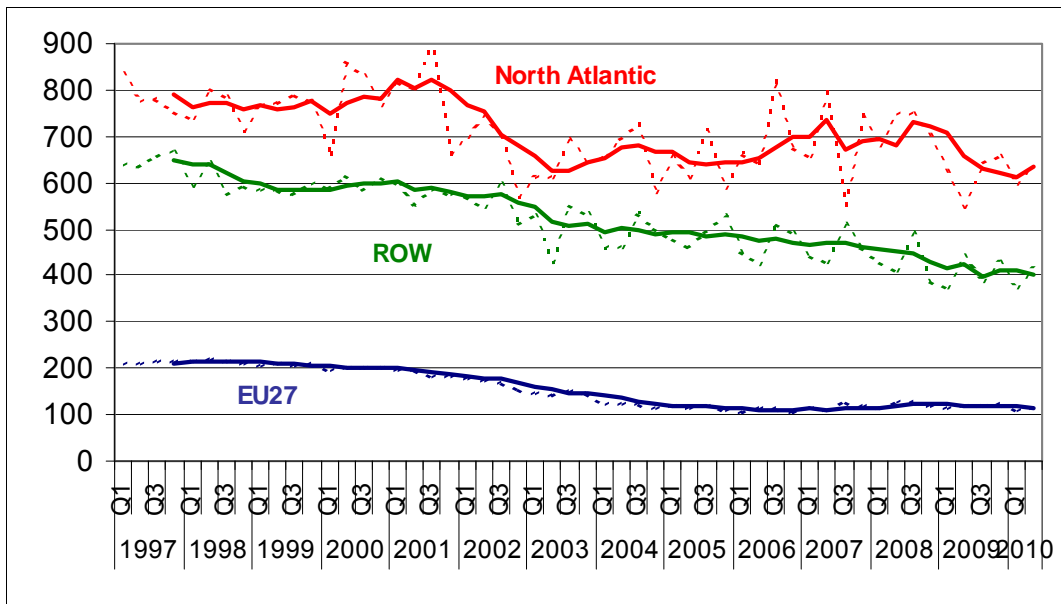


Source: CAA airport statistics

Note: For consistency the data is for all EU27 countries throughout the period, i.e. in some cases before countries joined the EU. Airlines identified are the top five in 1990 and the top five in 2012.

2.14 As an example of the decline in fares, Figure 3 shows average fares paid by UK-resident business passengers on UK routes to the EU (excluding domestic services) compared with North Atlantic and other destinations. The decline in the average EU fare began in the late 1990s, coinciding with the rapid expansion of no-frills carriers in Europe, brought about by liberalisation of EU air services, and almost halved between 1998 and 2006.

Figure 3: Average one-way fares (in 2005 prices) paid by UK-resident business passengers



Source: CAP 796 Flying on Business (CAA 2011). Analysis based on International Passenger Survey, ONS.

Note: The solid lines represent moving averages based on the preceding four quarters.

2.15 The CAA report *CAP 796 Flying on Business*<sup>11</sup> illustrates how the fare structure on a typical UK-EU route has changed dramatically since liberalisation: in the early 1990s, nearly all fares were set following discussion between IATA airlines, and consequently there was virtually no price competition, all but the highest fares required a Saturday-night stay, and the lowest fare, even unadjusted for inflation, was significantly higher than that applying today.

2.16 The elimination of barriers to entry to the EU market, with no additional governmental authorisations required, resulted in significant reductions in administrative and cost burdens on both the industry and the CAA. As an illustration, in the five years prior to EU liberalisation there were some 50 contested applications for intra-EU route rights in the UK. At that time the CAA also had a unit of around a dozen people dealing with tariff policy, filing and approval - with intra-EU liberalisation filing of EU tariffs was eventually discontinued and the unit downsized. By contrast the growth of European air transport has increased concerns about the environmental impact of aviation, with a consequential growth in the scale and reach of regulatory activity.

2.17 Concerns are sometimes expressed about the possible impact of the liberalisation of air services on labour. In 2004 the CAA published a study on the impact on UK labour of EU liberalisation.<sup>12</sup> The study concluded that liberalisation of aviation markets should boost competition, enhance efficiency, increase opportunities for airlines and provide

<sup>11</sup> [www.caa.co.uk/cap796](http://www.caa.co.uk/cap796) See Part2 Chapter 6, and in particular Figure 6-11.

<sup>12</sup> [www.caa.co.uk/docs/33/cap749.pdf](http://www.caa.co.uk/docs/33/cap749.pdf)



greater choice and keener prices for consumers, but that this need not be at the expense of labour. In fact the UK experience of liberalisation shows that the resulting growth of the aviation market has boosted aviation employment in the UK. A European Commission report reached a similar conclusion, with the UK being one of the main Member State beneficiaries.<sup>13</sup>

Question 3: To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?

3.1 For a market to function well people must be able to conduct transactions. International trade of goods requires that those goods be transported in a timely, cost-effective manner, and the provision of services across borders often requires the provider to travel in order to provide the service. Together with communication technologies, transport also enables people to meet to make business transactions, and consumers to consume goods abroad (ie tourism).

3.2 The EU internal aviation market also facilitates a mobile labour market. Aviation in particular allows people to migrate whilst maintaining links with their home country. CAP787 (see paragraph 18) shows a big growth in passengers travelling to visit friends and relations, and a clear link between that and migration growth. This suggests that aviation has played a significant role as an enabler for the development of the internal labour market.

Question 4: To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?

4.1 Over the last 20 years harmonisation of technical standards has formed a major plank of EU aviation policy and legislation. There has been extensive work in the areas of safety, air traffic management, environmental protection and security. In all these areas one of the driving forces for change has been the wish to ensure that all operators face similar conditions, and thus there is fair competition in the single market and no incentive for operators to indulge in regulatory “forum shopping”. This objective has sat alongside more specific aims, including to make the EU air transport sector more efficient and/or effective, and to make best use of scarce infrastructure. In practice it is difficult to disentangle or rank these different objectives.

4.2 On **safety**, the establishment of common rules through the creation of the European Aviation Safety Agency (EASA) aimed to ensure high and uniform standards of safety across Europe. The EASA legislative regime, underpinned by the Agency’s monitoring of national implementation and the threat of infraction, raises standards where they were lowest. It places equal demands on all operators, ensuring fair competition and guarding against any acceptance of lower standards to gain commercial or national advantage -

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<sup>13</sup>[http://ec.europa.eu/transport/modes/air/studies/doc/internal\\_market/2008\\_01\\_social\\_study\\_final\\_report.pdf](http://ec.europa.eu/transport/modes/air/studies/doc/internal_market/2008_01_social_study_final_report.pdf)

without common rules there would be a risk of operators gravitating to the less demanding regulatory regimes. These considerations apply to all types of air transport operators – airlines, airports, air navigation service providers, manufacturers, maintenance organisations, training schools etc.

4.3 The delegation to EASA since 2003 of responsibility for type certificating aircraft and parts, previously a national competence, also strengthened the single market in aerospace products. It greatly eased the burden on manufacturers by facilitating single certification across Europe, eliminating previously-existing national variations and thereby promoting the free movement of goods – eg Airbus can now sell a single product anywhere in Europe, and aircraft can be more readily transferred secondhand from one national register to another.

4.4 The creation of a single EU aviation safety system has also assisted Airbus and other European manufacturers in selling their products worldwide. Large equipment such as aircraft is sold with an accompanying safety regime (for example, ready-made approvals for use of the aircraft in Europe, approved maintenance procedures etc). The establishment of EASA and a system of European safety rules, as a counterbalance to the US Federal Aviation Administration and its system of rules, has had significant benefits for production and employment in the UK's aerospace industry.

4.5 On **air traffic management**, the EU has rightly recognised that the hitherto predominantly national approach to the organisation of airspace and the provision of air navigation services, originating from ICAO Standards and Recommended Practices, has resulted in inefficiencies in traffic routeing to the detriment of service levels and the environment. Although the UK can work bi-laterally with its neighbouring States to address these to some extent, the Commission's Single European Sky initiative has provided a mechanism for greater focus through the establishment of a Network Management Function, and has introduced a regime of targets and incentives through the Performance Scheme to force the pace of improvements. Working through this network approach the UK can promote actions to address inefficiencies affecting UK operators and citizens flying outside our airspace. In addition, the technical arm of SES, SESAR, has consolidated and channelled EU and private funds into research into advanced air navigation technology, which if successfully deployed over the next 10-15 years could greatly improve capacity, efficiency and environmental performance.

4.6 On the **environment**, the EU initially prohibited the use of noisier ("Chapter 2") aircraft, a measure which provided significant noise amelioration and promoted investment in cleaner aircraft worldwide, as well as ensuring fair competition. The EU has also legislated for a common approach to the introduction of noise-based operating restrictions at EU airports, which if not harmonised can distort the functioning of the internal market, transposing a worldwide agreement in ICAO aimed to balance the interests of airports, airlines and local communities.

4.7 The EU has acted to tackle the global emissions impacts of aviation through its proposal to incorporate aviation within the European carbon emissions trading scheme. Responding to opposition from international partners to what is perceived as a unilateral, extra-territorial measure, Member States and the Commission continue to work together for an international framework for tackling aviation emissions, negotiating with international partners through ICAO.

Question 5: What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?

5.1 Almost any policy or legislative initiative in aviation affects the balance between groups of stakeholders – eg between passengers and operators, between airlines and airports, between airlines and air service navigation providers, between large operators and smaller ones etc. It is difficult to generalise on the impact of EU aviation policy on different stakeholder groups, though the overall impact has certainly been beneficial for consumers.

5.2 The following are some illustrative examples where action at EU-level has affected “competing” stakeholder groups:

- a) as has been demonstrated in response to Q2, creation of the single market has benefited consumers substantially, and created new commercial opportunities for innovative and efficient operators, but at some environmental cost to citizens;
- b) the EU has legislated widely on consumer rights, both generically across sectors (eg on unfair trading and unfair contract terms) and specifically on aviation (eg on denied boarding, delays and cancellations, package holidays, pricing transparency, and passengers with reduced mobility). This legislation has undoubtedly shifted the balance in favour of passengers relative to operators, though there are concerns that recent developments, including some Court judgements, have gone too far, in effect over-favouring passengers in need of assistance at the expense of passengers generally. There is a balance to be struck here - being over-prescriptive on service quality risks eliminating a legitimate element of competition between airlines. And over-complex or ambiguous legislation can create unmet expectations amongst passengers leading to dissatisfaction;
- c) the creation of EASA has benefited large manufacturers which now enjoy one-stop certification, and no longer need to modify their products to meet local requirements. However the short timescales available in which to prepare and adopt common rules has led to a focus on large commercial air transport, with insufficient attention to whether applying similar or derived rules to smaller, non-commercial operators and users (so-called “general aviation”) is proportionate in scope or detail. This “slipstreaming effect” can be aggravated by the difficulties smaller operators may experience in dealing with a centralised organisation in Cologne. There is now a near-consensus that in some areas general aviation faces regulation which is over-intrusive and over-costly in relation to society’s risk

- d) the Single European Sky initiative aims to improve the performance of European air navigation services in terms of their cost, capacity and environmental protection, whilst maintaining and improving safety. It is very much work in progress, but it should in the long run be of benefit to airlines (and hence passengers and citizens at large) which operate in a competitive environment, unlike en-route air navigation service providers which are monopolies and in most cases close to Governments;
- e) there is a concern that the SESAR programme, which aims to modernise the technology of air traffic management over the next 10-15 years, will benefit large air transport airspace users at the expense of military and general aviation users, for whom the cost-benefit equation is unpromising;
- f) EU action on airport charges, whilst of dubious added value, shifted the balance of engagement between airlines and airports in some parts of Europe; and
- g) EU action on noise has struck a reasonable balance between the interests of the industry and of citizens.

Question 6: The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate? And what alternative approaches would benefit the UK?

6.1 The advances described in the response to question 1 above have been enabled by legislative intervention at EU level. In certain of those areas legislation at European level was preceded by alternative structures and methods. For example, the Joint Aviation Authorities system, in which civil aviation authorities of many EU and non-EU countries participated, was initially conceived as a means by which to develop common certification standards for aircraft. Its scope of activity subsequently expanded to include areas such as aircraft operation and maintenance. However, systems that proceed by consensus and rely on States' or aviation authorities' voluntary adherence find it difficult to reach agreement on complex, contentious issues; may leave industry facing a range of national variants, impeding the free movement of goods or services; and lack teeth to guarantee fair competition. Moreover, there are areas, such as passenger rights or provision of air traffic services, where commercial or political interests and drivers would not naturally deliver passenger-focused outcomes or efficient supra-national systems. Accordingly, binding supra-national legislation has been necessary to secure progress.

6.2 That said, it is noteworthy that the type of legislation deployed has changed over time. There is now much greater reliance on directly effective Regulations and Implementing Rules rather than Directives. The shortcomings identified in Paragraph 12

of the response to Question 1 are more readily identifiable in more recent legislative acts. To some extent the legislative reflex may be a consequence of the complex and contentious nature of the issues now being tackled; the extension of the EU to 28 Member States, greatly increasing the likelihood of patchy implementation; and the preference of newer Member States for definitive legislative codes that are easier to implement. But, just as automatic recourse to legislation and prescription in all cases is unhelpful, so too is an automatic refusal to countenance EU legislative action. Rather, the focus should be on identifying and agreeing on the issues to be tackled, the desirable outcomes to be achieved, and the approach – legislative or other - most likely to ensure consistent, effective and efficient implementation.

Question 7: To what extent could the UK national interest be better served by action taken at national or wider international level, rather than by the EU, and vice versa?

7.1 Aviation is by its nature an international industry. ICAO was established after the Second World War under the Chicago Convention in recognition that States had to act collectively if civil air transport was to flourish. The remarkable growth of international aviation in the last seventy years could not have occurred without the overarching framework of global standards agreed in ICAO, and the existence of a forum in which major worldwide challenges could be addressed (the prompt global action on security post-September 2001 is a good example).

7.2 However action at ICAO level has limitations. An organisation with nearly 200 Contracting States finds it difficult to move quickly. In aviation terms the membership of ICAO is a long convoy of States whose industries are at widely divergent levels of maturity. Differences in political priorities and cultural approach can make progress on key issues almost impossible to secure (as witness current efforts to curb greenhouse gas emissions of air transport).

7.3 Most significantly, ICAO does not have an effective underpinning legal framework which is binding on Contracting States. ICAO Standards and Recommended Practices are “soft” not “hard” law. States are entitled under the Convention to notify a difference if they have good reason not to comply with an agreed standard; and the enforcement mechanisms confronting States which fail to meet their obligations are cumbersome, protracted and of uncertain outcome.

7.4 One effect of the Chicago system was the almost universal continuation into the 1980s of arrangements whereby one State’s airlines could overfly, visit or fly within another State’s airspace only with specific permission, manifested in the network of bilateral agreements described elsewhere. Efforts to liberalise these arrangements made only marginal progress in ICAO, being against the interests of many States which valued having a national air transport industry but feared the impact on their national carriers of competition from stronger aviation countries.

7.5 It was at this point that the EU began to establish its own aviation policy. Whereas it was impossible to unlock the benefits for consumers of liberalisation on a global scale, the

EU States were sufficiently homogenous to make progress on a regional basis, underpinned by a comprehensive legal framework to ensure compliance. One element of this liberalisation was the abolition of ownership and control restrictions on airlines within the EU, an advance which to this day has proved impossible to mirror outside the EU. The benefits of the liberalisation process, covering a large majority of EU air transport by origin and destination, are described elsewhere in this paper, principally in the answers to questions 1 and 2.

7.6 The creation of the single aviation market in Europe led to subsequent EU legislation to establish common rules and structures at regional level in matters such as slots, passenger rights, groundhandling, safety, air traffic management and noise. It would not have been possible to achieve the same progress at global level in any of these areas. The EU, being a collection of States with relatively advanced air transport industries, ambitious standards, a broadly common culture, and the benefit of a shared legal system, were able to advance at a speed which could not have been achieved – if at all - in ICAO. There is no doubt that EU consumers and citizens have benefited 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. Furthermore, action at regional level can be an effective prompt for action at global level – for example the EU SESAR and US NextGen projects have driven ICAO to look at global interoperability of ATM modernisation.

7.7 Nor, in the main, is it likely that the UK could have achieved similar progress action nationally rather than through the EU. The original liberalising momentum required multilateral action, underpinned by a common legal framework. The UK might have been able to liberalise its aviation arrangements with some bilateral partners in the EU (for example, the UK and the Netherlands had liberalised their bilateral in the 1980s), but this would have been a protracted and uncertain process. Creating conditions for fair competition across Europe, or constructing a set of common rules on aviation safety, requires multilateral policy and legislation. As has already been discussed, at the margin it could be argued that some EU rules might have beneficially left more for national discretion (for example, safety regulation of recreational aircraft, or local rules on slot allocation), but these are points of relatively minor detail in the wider picture and remain potentially negotiable.

7.8 Thus aviation policy and legislation must be variously at national, regional and global level, and action at different levels is complementary rather than in competition. The UK benefits from having its own distinctive policy objectives, but also from participating fully in air transport developments both in ICAO and in the EU. Three other areas of aviation activity illustrate these points further:

- a) airport planning and construction remains a national prerogative. A European “Masterplan” for airports has at times been mooted but never attracted support. There would be no obvious benefits from a collective EU approach, which would rub

up against the wish of Member States to exercise strategic overview of national transport infrastructure and the interests of local communities affected by airport development;

- b) the EU's Single Sky initiative aims to meet challenges of organising air navigation services as efficiently as possible in crowded European airspace. This is essentially a network issue demanding a regional solution, within which free-standing national developments (eg the UK's Future Airspace Strategy) and cross-border arrangements (eg the UK/Ireland Functional Airspace Block) can co-exist. European influence in ICAO is then required to ensure the compatibility of future European ATM developments (through SESAR) with initiatives elsewhere (eg the US NextGen). Only the EU can mandate cross-border action – the previous arrangements under Eurocontrol, a separate international organisation, were not underpinned by statute; and
- c) proposals to curb greenhouse gas emissions from aviation would have little impact or purpose at national level. Initiatives at EU level (eg inclusion in ETS) have greater potential, but for maximum effectiveness and legal certainty require global acceptance. In this area the EU States, acting en bloc, try to influence decisions in ICAO.

Question 8: What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (eg ICAO or IMO) or with third countries (eg EU-US, EU-China)?

## The EU and ICAO

8.1 Adherence to the Chicago Convention and membership of ICAO are restricted to sovereign Contracting States. There is no provision in the Convention for membership of regional organisations such as the EU.

8.2 Much of ICAO's work focuses on areas of aviation such as safety, air traffic management, security and the environment in which the EU has established an extensive degree of exclusive competence. Several years ago the Commission formally sought a mandate to negotiate EU membership of ICAO, a proposal rejected by Member States. Such a mandate, even if negotiable, would have required a change to the Convention, which at best would take many years. If ultimately successful it would have changed the dynamics of ICAO, encouraging more "bloc activity" than there is at present, and would almost certainly have reduced the European presence on the ICAO Council from its present number of eight (out of 36).

8.3 In recent years the Commission has pursued a pragmatic approach, accepting that Member States will retain membership in their own right, but seeking to co-ordinate views and to promote and defend those views collaboratively. This approach has been used with success at a series of General Assemblies and other Worldwide Conferences, with European papers being presented and delivered on behalf of 44 ECAC States. The

Commission and EASA have full-time representatives in Montreal, and the EU has signed a Memorandum of Co-operation with ICAO.

8.4 Continuing to develop this collaborative approach looks to be the optimum way forward. It enables Europe to present itself as a credible and effective counterbalance to the influence in ICAO of the US, China and other quickly growing countries, protecting the interests of European industry and citizens. SESAR and ETS are examples of issues on which Europe can speak collectively with much greater authority than a single Member State unilaterally. As trust and confidence grow there will be increasing scope for EU States to target limited resources more effectively through combined working, whilst retaining the right to speak and vote on their own behalf.

#### The EU and Third Countries

8.5 To negotiate with a third country on behalf of Member States the Commission must seek and obtain a detailed mandate from the Council. The Council has authorised the Commission to negotiate at EU level with several countries, notably the US, but has declined to do so in the case of others.

8.6 It is not possible to generalise on whether negotiations at EU level with a particular third country would be advantageous for the UK. Each case must be assessed on its merits. This will depend on many factors, including the details of the proposed mandate, the state of the market, the likely response of the third country, and the possibilities for the UK to make progress unilaterally through its own bilateral with the third country in question. As a rule the UK would insist that any mandate granted to the Commission should aim for a fully open market, including liberalised ownership and control rules, with safeguards to ensure fair competition.

Question 9: What challenges or opportunities are there for the UK in further EU action on aviation?

9.1 EU aviation policy has come a long way in the last twenty years. The creation of the single aviation market has been a considerable achievement. Of course it is impossible to assess the counter-factual with certainty – ie what would have happened without EU action? But the evidence strongly suggests that supra-national action has secured benefits for citizens and for efficient operators which would not have been available in a fragmented, nationally-based system.

9.2 Under current arrangements the EU's legal structure, and its institutions, provide safeguards to ensure continuing access to markets under conditions of fair competition (eg through the application of competition policy, including state aid controls, and enforcement of aviation-specific law). Whatever the UK's relations with the EU in the future, such safeguards will be necessary. But if we assume the continuation of arrangements similar to the present, we can identify the following opportunities for the UK in further EU action:



- a) successful implementation of the Single European Sky initiative offers substantial potential benefits to UK airspace users, and by extension to UK passengers, UK industry and UK citizens more generally. The current air traffic management system in Europe is deeply fragmented, with provision of air navigation services organised separately by each State within its national borders, and (in most cases) closely linked to Government. The successive handover of aircraft from one of many air traffic centres to another, compounded by other inefficiencies in the system, extends route lengths and journey times, with significantly adverse impact on costs, capacity, and fuel burn. Streamlining and rationalising this system across Europe through the Single Sky initiative would be a major economic boost for the UK and Europe. It could also create substantial commercial opportunities for the UK's main (part-privatised) provider NATS if the programme results in a functioning competitive market in air navigation services. Allied to these opportunities are the potential gains to be made by airspace users and equipment providers if effective deployment of new technology emerging from the SESAR programme can deliver a new, more flexible concept of operations in air traffic management (subject to the protection of legitimate military interests);
- b) aviation safety risks facing UK passengers and citizens cannot be confined to UK operators under UK regulatory oversight. Further strengthening of EASA at the heart of the European aviation safety system will help to ensure high standards of safety across Europe to protect UK nationals;
- c) restrictions on airline ownership and control are increasingly anachronistic in a world of globalised trade. Dismantling such restrictions has become something of a holy grail for liberal-minded international negotiators, especially in dealings with the US. This is a tough nut to crack, but one on which only the EU acting collectively has any chance of making progress;
- d) the European Commission's most recent White Paper on transport set ambitious targets for reduction of aviation's dependence on fossil fuels and emission of greenhouse gases up to 2050. Relevant studies, eg into the use of bio-fuels, and design of engines, feature strongly in European research programmes;
- e) attempts to curb aviation's emissions of greenhouse gases via some form of market-based measures requires a collective approach. To make meaningful progress at a global level will require a strong, disciplined and well-orchestrated effort from the EU, but if successful could help to unblock grass-roots resistance to expansions of air transport capacity;
- f) EU action on passenger rights can help to maintain a reasonable balance between the interests of passengers and operators as an increasingly trans-national industry continues to develop in terms of structure, operating models and patterns of service;

- g) by negotiating skilfully and using the range of weapons at its disposal the EU can bring more neighbouring States within the ambit of Europe's common aviation rules, ie effectively inside the single market, thereby extending the benefits of liberalisation and effective regulatory safeguards to more passengers and operators; and
- h) action at European level will be required if we are to prepare and plan effectively against the possibility of another major volcanic eruption, minimising the consequent disruption.

9.3 But there are various ways in which the formulation and implementation of EU aviation policy can be sharpened up, to ensure that the benefits of regulation outweigh any costs. In pursuing the opportunities set out above we can identify the following challenges for the UK as EU aviation policy evolves further:

- a) with all actors (industry, Commission, Member States etc) facing resource constraints it will be imperative to target regulatory activity efficiently. This means being precise about what problem is being addressed; exploring different ways of tackling the problem; ensuring that the benefits of regulatory action outweigh any detriment; tailoring action proportionately to the target; ensuring that risks are clearly identified; and establishing appropriate implementation timescales and effective mechanisms for reviewing outcomes;
- b) ensuring that the interests and specificities of small and medium size operators are catered for, and that EU policy or legislation does not hamper sources of dynamism in the air transport sector. Large operators find it easier to engage with the EU system than their smaller counterparts. They have greater resources with which to track developments, participate in consultative processes, and lobby for their interests. They are better equipped to deal with the multi-lingual, multi-cultural climate of Brussels, and have more influence with States and MEPs. Small and medium-sized operators are more likely to experience regulatory burdens as being disproportionate, either in terms of the effect on their cost base or in terms of the problem the regulation is addressing. Protecting and promoting the interests of smaller and newer operators who may challenge established practices or provide more user-friendly services requires vigilance;
- c) 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;

- d) in a prolonged period of difficult commercial trading, calls to protect the interests of the EU air transport sector vis-a-vis the rest of the world become louder. Whilst it is legitimate to protect EU operators against unfair competition from third countries, and to adopt common measures to improve their productivity, we must beware of acting against the interests of EU users, or of reducing the competitive pressure on operators in such a way that it breeds inefficiency. Making sure that others continue to understand that the interests of passengers are best served by open markets and competition remains a constant challenge in this context;
- e) as the single aviation market becomes more deeply established, with mutual acceptance of compliance with common standards becoming increasingly the norm, the risk emerges that unless regulatory standards are homogenous there will be an incentive for operators or individuals to seek their regulatory entitlements where implementation of standards is less effective so that impacts are lowest. This places a premium on standardised implementation and enforcement across Europe. Alternatively, different regulatory fees and charges in different States – if they do not reflect genuine cost differences – may also lead to regulatory “shopping”. A current example where this kind of issue has not yet, but could, emerge is in pilot licensing, following the adoption of EASA Implementing Rules in 2012; and
- f) in the promotion of a Single European Sky, and the deployment of SESAR technology, there are very substantial potential benefits on offer, but enormous challenges of strategic thinking, project planning and change management – all areas in which the collective pursuit of EU aviation policy needs to raise its game.

# Crown Dependencies/Channel Islands

## BALANCE OF COMPETENCES REVIEW – CROWN DEPENDENCIES

### BOX TEXT

#### Transport

The Crown Dependencies (the Isle of Man and the Bailiwicks of Guernsey and Jersey) are not members of the EU. However some aspects of EU law apply to them, as set out in Protocol 3 to the UK's Treaty of Accession to the European Union, which essentially relates to trade in goods and the EU Customs Union.

The Crown Dependencies are outside the EU for the purposes of transport, since this is a service provision which is not covered by Protocol 3. However virtually all aviation and shipping links from the Crown Dependencies are to UK and other EU destinations. This requires the operator (the airline or ferry company) and the airport or port to comply with relevant EU standards. These transport links are vital for small island economies like the Crown Dependencies.

The EU does not always take adequate account of the fact that the Crown Dependencies are third countries for transport purposes – for example in the development of new functional airspace blocks for air traffic management, or in the application of the aviation emissions trading scheme.

Otherwise transport legislation in the Crown Dependencies is largely based on international standards set by bodies such as the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). These international standards have often been transposed into EU law, and built upon. The differences in requirements between international and EU standards can sometimes cause confusion.

The Crown Dependencies are part of the Common Travel Area (CTA) with the UK and Ireland, which allows for passport-free travel and which predates UK accession to the EU.

# easyJet

easyJet response to the call for evidence on the Government's review of the Balance of Competences between the UK and the EU: Transport

## Summary

easyJet is a product of the EU's deregulation of Europe's aviation market. Without deregulation we would not exist. Further, without this 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. Alongside this EU legislation ensures that passengers have a consistent set of consumer rights, and increasingly a common set of safety rules as well. Overall we think this has brought significant benefits to UK consumers.

## Introduction

easyJet has grown since 1995 to be the UK's largest airline, and the fourth largest in Europe. We have bases in five EU countries. Our route network encompasses domestic routes in several EU countries, as well as many routes that do not touch the UK. Over half of our passengers originate from outside the UK.

easyJet's business model, and therefore the services we provide to our passengers, are dependent on EU legislation. It is EU legislation, in particular the third package<sup>14</sup> which allows us to operate across Europe, and to operate as a single airline across Europe. Unlike many EU airlines (such as IAG and Lufthansa), easyJet operates as a single entity across Europe.

## The EU and the aviation market

The development of EU legislation on air transport has brought significant benefits to the aviation market. In particular it has:

- Significantly increased competition.
- Developed a common set of consumer rights.
- Harmonised many safety standards.
- Created a framework for more efficient airspace operations.
- Taken steps towards a common environmental framework.
- Supported the growth of the UK's aviation sector.

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<sup>14</sup> [http://ec.europa.eu/transport/modes/air/internal\\_market/integration\\_history\\_en.htm](http://ec.europa.eu/transport/modes/air/internal_market/integration_history_en.htm)

## **The competition benefits**

The third package removed restrictions on which airlines could operate which routes within the EU. This was consistent with the UK's aviation policy, which was to promote competition in aviation markets. These rules mean that any EU registered airline can fly any route across the EU. Prior to this there had been significant restrictions on competition.

The opening up of aviation markets brought considerable benefits to UK consumers. Airlines such as easyJet and Ryanair would not exist if it were not for EU deregulation. The rapid growth in routes<sup>15</sup> provided by these airlines (and others), particularly to UK regions has significantly increased choice for UK consumers. As well as increased choice the greater levels of competition have lowered fares, allowing greater travel<sup>16</sup> and saving consumers money.

Without EU involvement in deregulating aviation markets it is very unlikely that the UK would have made as much progress on its own, and any progress it did make would have been much slower. At the time of EU deregulation there were still significant restrictions in place across many markets, and there are still many countries outside the EU where there are restrictions placed on flights to the UK. This suggests that on its own the UK is unable to make the progress the EU has achieved.

## **Consumer rights benefits**

EU legislation, in particular the Denied Boarding and Passengers with Reduced Mobility regulations, has created a common set of consumer rights that apply across the EU. This means that whichever EU carrier UK consumers fly on they are entitled to the same set of protections. 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.

## **Harmonisation of safety standards**

Through the European Aviation Safety Agency (EASA) a common set of safety rules have been developed across Europe. This ensures that all EU registered aircraft are operated

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<sup>15</sup> <http://www.caa.co.uk/docs/33/CAP770.pdf>

<sup>16</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/200238/discussion-paper-04.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200238/discussion-paper-04.pdf) see page 14 for a discussion of the impact of lower fares

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.

### **A framework for more efficient airspace operations**

European airspace is subject to significant inefficiency. This both increases costs for consumers, and also has an impact on the environment from unnecessary fuel burn. EU Single Sky legislation aims to tackle both of these issues, by halving the cost of airspace and improving environmental efficiency.

The gains from Single Sky legislation have been slow to emerge. However, it is clear that without EU legislation in this area there will be no progress at all. This would leave UK consumers with unnecessarily high costs (airspace charges approach 10% of easyJet's cost base) and would also limit the potential for CO2 savings.

### **A common environmental framework**

The EU has made significant progress in developing a common framework for addressing the environmental issues surrounding aviation. easyJet fully supported bringing aviation into the European Emissions Trading System (ETS). It is important that aviation play its role in tackling climate change, and aviation's entry into ETS will help achieve this.

### **Supporting the growth of the UK's aviation sector**

easyJet is a UK based airline that operates across Europe. Without the deregulation of aviation within the EU it would not be possible for easyJet to operate across Europe.

### **The balance of competences between the UK and the EU**

We believe that overall EU legislation on aviation has brought significant benefits to UK consumers. 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 on its own. Looking to the future it is unlikely that this

situation will change. The UK will continue to be best served through EU legislation on aviation.



# GA Alliance

## **GA Alliance constituency:**

The GA Alliance (GAA) is a group of organisations representing, as far as possible, all UK General Aviation (GA), and Sports and Recreational Aviation interests (S&RA). The Alliance coordinates about 72,000 subscription-paying members of these bodies. It is estimated that in total more than 100,000 people are involved in GA. This covers ballooning, parachuting, hang gliding, gliding, sport and recreational flying in light and microlight aircraft and helicopters. Its objective is to co-operate and consult with government departments and other relevant organisations to support and progress these interests.

## **Consultation response:**

A GAA representative (Mr R Hopkinson) attended the DFT aviation workshop on this held on 18 June 2013. GAA supports the issues raised and noted at that meeting and in particular point towards the evidence recently accumulated from the Aviation Red Tape Challenge (RTC) 11 April to 15 May 2013. Our expectation is that relevant parts of that consultation response attributable to this consultation will be duly noted. However in that context we highlight (all detailed in the RTC response):

Excess costs and administration limiting operation of Approved Training Organisation - entirely due to EU regulatory changes -being yet another burden and cause of the demise of flight training in UK. An area where UK was once a world leader in now close to the bottom of the ladder. This noted by Industry and CAA in Forum

General excess of administrative detail on CAA forms brought about by EU Competence – CAA have made the same remark in forum. By example Pilot licensing is now complex burdensome and generally more expensive.

General, excesses where Commercial Air Transport regulatory requirements are applied to General Aviation. This is neither appropriate nor does it align with ICAO standards which accept that each activity is fundamentally different and indeed different safety standards are appropriate. This is particularly noted in Airworthiness and continuing airworthiness regulation

We were asked in forum for specific examples. Two are particularly relevant: firstly the effect of EU Competence on Gliding in the UK and the second Ballooning. In both these UK has historically been a world class player with both social and economic benefit to UK. Reports on the adverse effect of EU competence, submitted by the relevant Associations, follow.

## **EU Regulation: BRITISH BALLOON & AIRSHIP CLUB (BBAC) BRIEFING**

Ballooning in UK has been a growing activity since 1970 and covers a wide range of sporting, leisure and commercial elements. Business generation (estimated to be in

excess of £10,000,000 p.a.) from leisure flights and manufacturing provides employment by SMEs throughout the UK for pilots, crew, technical and support staff. It is of note that UK is one of only four EU nations producing balloons and is home to two of the tiny number of manufacturers of complete civilian aircraft left in UK, one of which is the world's largest manufacturer of balloons. The UK has traditionally led Europe in formulating safety-related oversight and operation of balloons and has more registered balloons and licensed pilots than any other nation in the world except USA. The activity has excellent and long-standing relations with the national regulator, the CAA, from whom many responsibilities have been delegated for over four decades with an enviable safety record.

The UK ballooning industry initially welcomed the advent of pan-European regulation as offering the opportunity to reduce barriers to both sporting and commercial activity throughout 31 countries. Despite nearly a decade of co-operative work from a small group of dedicated, but largely unpaid, experts the results have almost universally been to insert an additional layer of bureaucracy and attendant costs with no perceived safety benefit. Direct and pragmatic interaction with the CAA has been eroded and the playing field has been further tilted against UK as a result of the policy of 'user pays' and pre-determined requirements for financial returns from the CAA. Most EASA countries still see aviation oversight as a national responsibility rather than as a profit centre and so in effect subsidise activities within their jurisdiction. Most of the expected benefits of cross-border freedoms have evaporated as national authorities retain predominance in many areas.

Scarce resources from a largely voluntary administration by the BBAC have been consumed in trying to mitigate the effect of legislation largely imposed by non-aviation bureaucrats focusing on airline-style oversight. Faceless legislators are almost impossible to engage with and a 'one-size-fits-all' attitude has been imposed with minimal recognition of proportionality. Essentially all the most limiting features of each national rule-set are adopted. ICAO is followed without regard for existing reasoned national exclusions but also occasionally exceeded without justification.

Specific areas of concern are:

- 1) Directive 2002/2003 Part M Maintenance Rules. Already in force. Burdensome paperwork and approvals procedures plus complex oversight are inappropriate for a simple aircraft. Work previously done at devolved level by BBAC.
- 2) Directive 1178/2011 Part FCL Licensing/Training. In force but with transition until 7 April 2015. Over-complex training architecture (ATO) and additional hurdles and constraints for maintaining licence validity. Work previously done at devolved level by BBAC.
- 3) Directive 965/2012 Part OPS Operations. Not yet in force but likely to be introduced in late 2013/early 2014 and transition by early 2017. Brings areas of operation not previously considered commercial into that category with consequent constraints. Work previously done by CAA with BBAC support and pragmatic co-operation.

4) Directive 748/2012 Part 21. Initial Airworthiness. Any benefits from a common framework of design and manufacturing are far outweighed by the concomitant need for multiple approvals and the consequent cost of associated charges.

EASA is driven by principles and timelines not appropriate to aviation and the organisation is inflexible in the consultation and development process. Worse still there are examples of new legislation agreed by all signatories and EASA being varied or rejected by the Commission without explanation or opportunity for redress. Already since Part M was introduced in 2009 we have seen a significant decline in participation due to the increase in cost and complexity of ballooning as both a leisure and professional activity. AOC numbers for balloons have also declined from over 100 to around 60.

The BBAC feels that balloons (along with gliders) were inappropriately included in the EASA mandate when other more significant sectors (autogyros, microlights, historic aircraft) were excluded and now suffer particularly as a tiny element in a global structure intended for transport aeroplanes and helicopters.

In summary, balloons and ballooning should be removed from the scope of EASA.

### **EU Regulation: BRITISH GLIDING ASSOCIATION (BGA) BRIEFING**

Gliding is a fundamentally volunteer led and managed air sport in which most European member states excel. The sport is funded entirely from personal taxed income. Gliding Team GB is highly ranked internationally, and British glider pilots are influential in the widest development of the sport. There are some 80,000 glider pilots flying some 20,000 gliders in Europe. 8,000 of them fly some 2400 gliders in the UK.

In 2003, the European Commission decided to include gliders within standardised European aviation regulation. This decision set forth a chain of regulatory events that has an increasing capacity to seriously damage the sport of gliding and of course citizens fundamental right to continue to enjoy a sport and recreational activity that is safely integrated with other airspace users. This damage – which is already apparent -is caused by excessive cost, reduced levels of flying, regulation/change fatigue, frustration at unnecessary bureaucracy and even individual's physical inability to comply with new requirements, and manifests itself in;

- Diversion of limited central volunteer and professional resources from development, safety management and participation growth within the sport
- An increasing drop-out rate by experienced participants and resulting negative impacts on gliding clubs and other participants

The specific European regulations are;

**1702/2003 Part 21 – Certification Rules** . Part 21 requires gliders to be certified under rules designed for commercial air transport. Fortunately under pre-existing regulation, the design standard of sailplanes exceeds the new requirements. However, Part 21 resulted in

a major bureaucratic exercise that coupled with Part M requirements cost most UK owners of gliders a significant amount of their taxed income.

**2042/2003 Part M – Maintenance Rules.** Part M requires gliders to be maintained under rules designed for commercial air transport. Without exception across Europe, Part M has resulted in a significant negative impact on gliding and other air sport, primarily because of unnecessary bureaucracy as well as costly regulatory oversight including newly applied CAA fees. Part M has resulted in significantly increased costs to owners, encourages ‘underground’ airworthiness activity and adds nothing to previously accepted safe practices. Part M has doubled the cost of vital annual maintenance on UK based gliders and has very significantly increased the associated costs and administrative burden on the BGA.

**1178/2011 The Aircrew Regulation -Flight Crew Licensing and Pilot Training.** The Part-FCL rules require that pilots are trained within a regulated structure (subject to similar constraints, bureaucracy and costs as Part M) and subject to disproportionate medical requirements that will, despite UK developed AMCs, result in a number of currently active participants becoming grounded. The proposed glider pilot licence requirements negatively impact on existing privileges and therefore present highly significant operating limitations over the status quo. The ATO requirements, which are a watered down version of requirements designed for commercial air transport training, are essentially nugatory, disproportionate, unwieldy, costly and ultimately damaging. The industry and CAA are now engaged in a process of damage limitation that is consuming large amounts of time and resource, and are trying to ensure that existing acceptable levels of safety are not compromised.

EASA should be encouraged in the strongest terms to learn from the recent past and listen as well as delegate to the air sport industry rather than reinvent in two years a licensing system that has taken 50 years or more of experience to develop into user accepted and safe systems.

**Standardised European Rules of the Air (SERA).** Eurocontrol has proposed SERA requirements that failed to consider air sports and the associated numerous differences to existing ICAO rules of the air adopted by most Member States. After push back from industry (with some very timely political support), the majority of UK gliding concerns regarding the SERA requirements have or are being revisited. However, doubt remains as to whether or not existing privileges will be available to pilots following the full implementation of SERA.

**Operations.** The potential impact of this emerging regulation has yet to be fully analysed. Early indications are that the rules have again been developed for Commercial Air Transport but will be applied more widely and will be highly damaging.

## **Summary**

The BGA believes that the EASA approach to developing regulation is not based on an informed assessment of risk and ignores historic precedent regarding existing safety cases where sporting aviation is concerned. It appears to the BGA that EASA and more recently Eurocontrol are increasingly frustrated by the consultative rulemaking process and are therefore increasingly and openly paying lip service to the responses made by industry during that process. Meanwhile, disproportionate aviation regulation rolling out across Europe is beginning to cripple the sport of gliding despite only being partly along the aviation regulatory development roadmap.

An enormous amount of effort has been expended by the BGA, by sporting clubs and by thousands of individual owners and participants over a number of years in attempting to work with EASA and Eurocontrol to encourage them to adhere to the European Parliament's stated requirement for proportionality in rulemaking. Despite some successes, the BGA has concluded that European and domestic democratic intervention will be necessary to ensure that the sport of gliding can continue to exist as we know it beyond the middle of this decade under existing and emerging European aviation regulation.

The simplest solution would be to remove sailplanes from the scope of Regulation EC 216/2008.

# NATS

## **Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

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. 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. Duplicate regulation must be avoided and in industries with a high safety component there must never be any doubt whose standard to work to (ICAO, CAA or EASA for UK aviation). Ideally, EU level requirements should be such that the UK is not obliged to add additional specific requirements in order to meet national needs. This is particularly important where service provision costs are compared across the EU, irrespective of any difference in local regulatory requirements. NATS accepts that in some cases (e.g. Environment) it may not be possible to achieve EU-wide targets which go as far as NATS/UK would wish. However, EU-wide cost targets will only take the costs of complying with the EU environmental targets into account. In addition, NATS notes that EU competence cannot be unlimited as National Security issues must be taken into consideration. The Single European Sky and EASA Regulations recognise this.

## **Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

NATS understands that the EU's aims are focused on fostering a market approach as the preferred method for driving up service to customers while simultaneously driving down costs. This has been largely achieved in the airline industry but so far not in the Air Traffic Management (ATM) / Air Navigation Services (ANS) industry. Most service providers are State owned, particularly for en route Air Traffic Services (ATS). This in itself limits interest in competition. While some services, particularly en route ATS, are by their very nature monopolistic, competition for the market is possible at airports and for support services. NATS supports the Commission's aims to increase competition. In the Transport White Paper [COM(2011) 144 final] the European Commission states that transport policy frameworks should rely "to the greatest extent possible on market based mechanisms". More specifically, the impact assessment for the SES II+ legislative proposals, [SWD(2013) 206 final] identifies a key objective as being to "ensure that the provision of Air Navigation Services is transparent, based on market principles and customer value." However, to date the Commission's efforts in ATM /ANS have been largely focused on setting regulatory frameworks, rather than opening up markets and driving genuine competition between service providers. This is in contrast with the EU airline industry,

which now has a clear internal market, in part due to EU liberalisation actions. Currently the opportunities for competition in ATM/ANS are extremely limited, with some States' service providers effectively being protected by national law. Further, the different ownership models and legal status of the various service providers mean it is difficult to draw accurate comparisons on matters such as cost efficiency (e.g. cost of pension provision). There has been a limited amount of competition to provide Air Navigation Services at Airport Towers in recent years but this has arguably been driven by the States concerned (UK, Germany, and Spain) rather than by the EU. Similarly, the national regulators are at very different levels of maturity and technical capability. This needs to be overcome before there can be a genuine level playing field and thus effective competition. NATS consequently believes that there is currently little or no internal transport market in ATM / ANS and calls on the UK Government to encourage the Commission drive this forward in the coming years.

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

An efficient, sustainable and cost effective transport network is essential for the effective functioning of the EU internal market. This is particularly true for Aviation given the proportion of Commercial Air Traffic which crosses State Borders. ATM/ ANS are key enablers to this.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Improving the performance of the transport industry in areas such as safety or environmental performance is self-evidently desirable. All performance improvements in one area must be balanced against potential reductions in another (e.g. cost or capacity). Social and environmental obligations bring a compliance cost which needs to be fairly reflected across all EU States if companies are to compete or be subject to performance comparison on an even basis. EU action is thus essential to achieve a level playing field and ensure that companies in one State are not disadvantaged by having to comply with more stringent standards or service priorities than those required of their competitors in a different State. The Commission has recognised these issues in its SES II+ proposals. NATS calls on the UK Government to support the Commission in its aims to achieve a genuine internal market within ATM / ANS.

**Q.5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

Whilst we recognise that there is an ultimate consumer that should be protected, Air Traffic Management is largely a Business to Business service. As such, there are many different perspectives as to how the industry should develop. The Commission largely seeks to find a balance between these different perspectives. It is important that EU action does not drive up costs through over-regulation. The focus should be to seek performance based outcomes with a presumption of competition. NATS therefore supports the use of the Single European Sky Performance Scheme as the principal agent of change in Air Traffic Management. However, in addition to the Performance Scheme, we have detailed Implementing Regulations (particularly on SES Interoperability) prescribing specific technical solutions which must be implemented. These can have the effect of driving up costs, in conflict with the Performance Scheme's obligation to reduce costs. So far the UK Government has successfully used the Comitology process to avoid a number of excessive requirements being adopted into law (e.g. in the Implementing Regulations on "Surveillance Performance and Interoperability" and "Standard European Rules of the Area"), saving the UK industry several millions of pounds

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The EU's competence in Air Traffic Management is still relatively recent. As such, there has been little or no case law to date. The UK has a mature Aviation industry, supported by a technically competent aviation regulator - the CAA. This is not the case in all EU States. Prescriptive Implementing Regulations are thus developed at EU level to meet the needs of States whose regulators do not provide an equivalent level of competence or oversight. This disadvantages UK companies which have worked with CAA to develop a system of outcome-based oversight and regulation but now have to comply with the prescriptive rules as well. NATS would prefer the EU to focus on performance-based regulation in a competitive market, rather than producing detailed implementing rules which prescribe specific technical solutions. However, if the EU approach continues to include detailed and prescriptive rules, the UK will need to further adapt its regulatory model so as to avoid imposing an unnecessary burden on the UK aviation industry.



**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

ICAO already sets aviation standards at global level. In part, EU actions are aimed at fostering the uniform implementation of ICAO provisions within Europe. However, there may be scope for improving the efficiency of this process; in many cases standards developed and agreed at ICAO (over several years) are then selectively transposed into EU law. This takes time and adds regulatory cost.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

Membership of ICAO is at State level. NATS sees no reason to change this. However, within ICAO, coordination by the EU States and institutions, in conjunction with the members of the other European Aviation Organisations (Eurocontrol, ECAC, ICAO European Region), has proved very effective at global level.

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

As noted under Questions 2 and 4, NATS believes there is a challenge for the UK in moving the EU to a true internal market for ATM / ANS but also an opportunity for the UK to help the Commission in achieving this mutual desire. At present, the UK regulatory model is often different from those used in other States. Until there is a truly harmonised regulatory framework, UK Government needs to ensure that this does not result in an additional burden for UK companies by requiring compliance with regulatory standards that are more onerous than those required of our European counterparts.

**Q.10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

No additional comments

# Rolls Royce

## Impact on National Interest – Research, Development and Innovation

1. EU action has had a positive impact on research, technological development and innovation in the aerospace sector in the UK.

There are many examples of this impact from aerospace programmes in the Framework programmes, especially the most recent, Framework 7 (FP7). Through the FP7 CleanSky Joint undertaking, Rolls-Royce is leading 3 large jet engine demonstrator programmes, aimed at dramatically reducing the environmental impact of aviation. Rolls-Royce is also participating in a number of the Level 1 and Level 2 collaborative research programmes in FP7. Through its policies on research & technology programmes, the EU actively encourages the participation of SMEs and the academic sector. Nearly 40% of the competed research in Clean Sky goes to SMEs. Through its involvement, Rolls-Royce has been able to encourage the participation of a number of other UK companies and universities.

EU action has also been effective in pulling together an integrated industry view of the future of the aerospace industry through ACARE, the Action Committee for Aviation Research in Europe, and a technology strategy to ensure the future competitiveness of the European aerospace industry in an increasingly competitive global market. For Horizon 2020, ACARE is recognised as the “technology platform” for the European Aviation Sector.

In Horizon 2020 new and welcome focus is brought to the Marine Sector and to Advanced Manufacturing (Factories of the Future). Both of these provide further avenues for engagement and funding of UK Companies

2. The EU has slowed the speed of innovation in nationally funded programmes through its rules on state aid. For example, for nationally funded programmes over 10million€, EU approval must be obtained, taking at least 6 months.

On other occasions, UK (BIS) interpretation of EU rules for National programmes has been more stringent and limiting than the same rules as applied to the EU’s own programmes. This has penalised UK Companies in relation to the levels of funding they have enjoyed, particularly for early-stage pre-competitive research, when compare to European competitors. European allows such funding to be at 75% of full cost, whereas UK rules generally limit such funding to 50% of full costs, as for programmes which are closer to market.

3. The EU has had a positive impact on UK engagement with Japan and Canada, although due to its insistence on applying EU FP7 rules to participants from countries outside of the EU, setting up programmes has proved difficult and hence the active engagement is limited in scale. This and asymmetry between EU and non-EU country national programmes has made real collaborative projects difficult to launch.

The EU has been ineffective in helping relationships with the US. The aerospace COOPERATEUS programme degenerated into a talking shop with the EU participants doing most of the talking and no evidence of real research cooperation. The main problem here is complete asymmetry between EU and US institutions: e.g. the FAA (Federal Aviation Authority) can fund research whereas EASA (European Aviation Safety Authority) cannot; USA has NASA as both a funding agency and a body with skills and facilities to do research whereas The European Commission Directorate for Research can only fund research and the facilities and research resources similar to NASA exist only at national level, e.g. ONERA in France, DLR in Germany, etc.

#### 4. European Research Agency (ERA)

As industrial companies we have little or no visibility of the ERA. Since we work closely with UK national research agencies, especially EPSRC, this would suggest that national agencies and ERA have very little engagement, and few if any jointly integrated programmes.

5. The EU has established the policy instruments for all areas in FP7 through the set of rules governing participation. It is in the process of finalising the rules for Horizon 2020. It has been largely successful in these processes.

### **Future opportunities and challenges**

6. In order to most helpfully promote scientific and technological progress, the EU could most usefully:

- Reduce the complexity of its rules
- Increase the speed of its decision making
- Increase the speed with which payments are processed for programmes
- Continue to encourage to development of Joint Technology Initiatives (JTIs)
- Allow on derogation within JTIs to allow greater flexibility of operation: e.g. monobeneficiary participation for SMEs

7. There are concerns over future EU actions around the Lisbon treaty. Industrial companies need to gain protection of the Intellectual Property (IPR) they generate though investment in R&T programmes. Hence, mooted action to force opening up IPR will have serious implications for the willingness of industry to invest in R&T in the UK and the EU. Any move towards a European position similar to the USA's Bayh-Dole Act should be strongly resisted.

8. Further enlargement of the EU could have a negative impact on aerospace R&T as any new nations joining the EU are unlikely to be major players in the aviation industry. This would be likely to be seen in reduced funding for aerospace as new nations would have primary interests in other areas of research. We have seen this already, with a level of disinterest in aerospace programmes in many of the new accession states, which has left programmes like Clean Sky appearing to benefit predominantly the established western European nations, but that will benefit all of the EU.

# Thomas Cook Group

## **Thomas Cook Group plc: Overview**

This response is submitted on behalf of the Thomas Cook Group plc (TCG), the second largest vertically integrated leisure travel group in the UK. TCG is a tour operator, selling primarily air holidays through its Thomas Cook Tour Operations Ltd, Thomas Cook Retail Ltd, Thomas Cook Scheduled Tour Operations Ltd, Gold Medal Travel Ltd, and Elegant Resorts Ltd businesses, and is licensed in total for 4.8 million ATOL protected seats.

Furthermore, the Thomas Cook Group owns and operates Thomas Cook Airlines Ltd, which has a fleet of 30 aircraft on the UK register. That airline is a charter, or leisure airline, selling the majority of its seats to tour operators, particularly those in the Thomas Cook Group, to create packages. It does however sell approximately 1 million round trip seats to passengers directly. Virtually all those sales are used as the basis of holidays for UK citizens.

TCG operates a wide variety of business models, which includes a bedbank, trading as Hotels4U and medhotels, selling accommodation both direct to the public and through third party retailers. More notably, Thomas Cook is one of the largest travel retailers in the UK, with almost 1200 shop premises through its Thomas Cook and Co-Op Travel brands, a large call centre business and an online travel agency; all of whom sell significant numbers of air based holidays and other flights.

The Thomas Cook Group, whilst based in the UK, is one of Europe's largest travel businesses, and also brings holidaymakers to the UK from other markets across Europe.

As a result of all the above issues, UK and EU aviation strategy is of fundamental importance to the Thomas Cook group, and we are in a position to comment on many of the issues relating to aviation raised in the review document.

## **Overview of Response**

Whilst the Balance of Competences review is looking at all aspects of transport, the primary expertise of TCG is in relation to aviation, and as such, this response is focussed on legislation and activity regarding aviation.

As a general comment, aviation is primarily an international industry, and as such, an international framework towards aviation regulation makes perfect sense. Treating it as a purely national issue creates numerous potential cross border issues. The legislative framework regarding aviation stretches considerably wider than pure aviation issues, and it is apparent that many aspects of general legislation have particular impacts and effects within the aviation sector. This response looks to address those points, so far as they are relevant, as well as sector specific issues.

We would also comment that there is an international framework for aviation, established by the Chicago Convention of 1944, and administered by ICAO. 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, with a smaller membership, and working on the basis of majority voting, can potentially find it easier to achieve legislative and administrative solutions.

However, we would also observe that EU legislation needs to be implemented by national governments into national law. This leads to consideration of both how the legislation itself is implemented, and how the individual member states choose to enforce that legislation. We note that there are very significant differences between individual EU member states in this regard. In consequence, whilst an EU approach should lead to a clear and consistent pan European legislative approach, this is not always the case, with a surprising, and often challenging set of problems for international businesses to attempt to manage. The UK government tends to be one of the more rigorous and prompt in implementing EU legislation, and in consequence, UK businesses can find themselves challenged with different regulatory and enforcement programmes, with their own national approach being the most thorough. We believe that this trend is exacerbated by the willingness of the UK to “gold plate” EU legislation, adding to the burden on UK businesses.

### **The Challenges of the EU Legislative Approach**

Whilst the EU structure brings advantages, it also suffers from some challenges in its overall approach to legislation. This becomes particularly relevant when considering the legislative agenda overall, and has impacted in a number of practical ways on EU legislation, particularly that made since the Maastricht Agreement. We would suggest that since the Maastricht changes, there has been a significant change in emphasis on EU driven legislation, which is not necessarily in the best interests of the aviation sector as a whole.

We note the existing process, whereby the Commission produces an initial proposal, generally after consultation with interested stakeholders and after careful consideration of the impacts. Thereafter, the Council – of Ministers and European Parliament review that draft proposal separately, to attempt to agree within their own forums a Common Position or First Reading Agreement separately. We note that this approach makes it possible, indeed likely, that issues and interests will diverge, resulting in the Council and Parliament ending with entirely different drafts at the end of the first stage of the process.

Ultimately, 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, which can result in positions which are unsatisfactory to all involved, and which bear no relation to the actual position of either Council or Parliament. Furthermore, those compromises can result in rapid and ill thought through drafting changes to legislation, which 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.

We would observe that members of the Council are influenced by national interests, and whilst we would hope that these interests become more internationalised during the approval process for legislation, this does not always occur. Whilst this is not necessarily a bad outcome, in that it ensures that national voices are heard, it does lead to local politics having an important role in EU decision making.

On the other hand, Members of the European Parliament are generally elected on the basis of proportional representation, without necessarily a clear linkage with their constituents. This increases the risk that they will act in what they believe is a broader general interest, without always recognising the direct impacts of their decisions on those elected them. In particular, when considering the aviation sector, MEPs are extremely experienced consumers – and many of them fly 2 or more times every week, and as such, tend to be disproportionately influenced by a consumerist agenda.

One of the consequences of this legislative approach is that there can be very significant time lapse between an idea being developed and it being ultimately transposed into legislation. Whilst this is not necessarily a disadvantage, it may mean that particular problems remain untackled for many years.

We also believe that the workings of the European Court of Justice are unusual to those with a common law background. Their willingness to rewrite legislation, adopting a purposive approach means that they almost move from serving a judicial function, reviewing and interpreting legislation; to a legislative function, creating legislation. As a company primarily based in a common law jurisdiction, this approach seems surprising – and at odds with the normal division of responsibility expected in a classic approach to the rule of law. We will highlight more specific concerns regarding this aspect below.

## **The Main Political Agenda**

We note that most legislation relating to transport, whether emerging from the EU or from national governments can be classified under a number of broad headings:

- Creating and implementing an open market – or at a national level, keeping a market closed or under control
- Infrastructure management and control
- Taxation
- Labour law and workers' rights
- Responding to environmental issues
- Consumer protection

We would suggest that the evolution of legislation emerging from the EU has seen a gradual shift from the first 3 of these items to the last 2, albeit that all 5 remain high on the political agenda. There is also an inevitable overlap between a number of these issues.

## **Response to Questions**

Bearing in mind our opening comments, we have attempted address the questions raised in the Call for Evidence as below.

### **Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

As we indicated in our opening comments, we recognise that aviation is an international industry, and as such, it makes logical sense for an international approach to legislation to



be adopted. As a result, EU action should lead to consistent legislation on, at least a regional basis. It is considerably more practicable for any airline to deal with a smaller set of regulators, and the adoption of European approaches to safety through EASA makes eminent sense.

We believe that both the liberalisation of the aviation sector in the early 1990s and the open skies agreements negotiated by the European Commission have significantly aided the growth of aviation, and enabled more logical and sensible business models to be created. Aviation continues to be affected by rules which support national interests, such as rules on traffic rights and ownership rules, but the EU approach in this area has at least created liberalisation within Europe. From a travel company perspective, this 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.

We are concerned as to the changes in the EU agenda which we have highlighted in our overview, in that we have seen a very significant increase in legislative intervention to strengthen consumer interests. As a consumer focussed business, generally this should be seen as beneficial, but we are concerned that the experience of members of the European Parliament has on occasion made their thought processes relatively unbalanced, and this has resulted in an overly consumerist approach to issues, which does not always recognise that consumers are best served by strong companies providing services to them, creating the risk of legislation not being proportionate.

We have also referred in our overview to the role of the European Court of Justice, and in relation to aviation, have been concerned that that body has chosen to adopt law making powers. We would highlight particularly 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.

We also have some concern in relation to implementation of EU legislation, in that a framework may be agreed at a European level, and then that framework does not manifest itself in effective action at a national level. We would quote an example here of the development of the Single European Sky (SES). SES has massive potential benefits for the aviation industry, in reducing its environmental impacts and costs. Whilst the framework has been agreed at an EU level, implementation of this solution has been very slow, and subject to very significant impacts at a national level.

We are concerned that there is a danger of the current approach that EU businesses may be disadvantaged compared to non EU businesses. As an example, we would highlight the impacts of the airspace closures following the eruption of the Eyjafjallajökull volcano in 2010. In that instance, the UK advice we and other travel businesses received was that we had a duty to look after our customers and incur costs in so doing. EU proposals to reform Regulation 261/2004 enshrine that advice into a statutory obligation. However, non EU carriers had no obligation to look after their passengers or incur any costs under Regulation 261 in relation to passengers delayed in the destination airports. TCG reported in its accounts for the year ended 30<sup>th</sup> September 2010 that the airspace closures and their consequent impacts had cost the Group £53 million, whereas the costs for non EU businesses were minimal.

In summary therefore, as we have commented above, the EU has been most effective in creating a free market framework for aviation, which occurred prior to the Maastricht changes, and is probably less effective now at finding solutions to ongoing issues.

***Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?***

We believe that in relation to aviation, the growth in both visits abroad and in trips to the UK speaks for itself. We believe that the market liberalisation undertaken by the EU has significantly contributed to this growth, and continues to do so. Whilst in some respects, there has been a competitive disadvantage for the package travel holiday business model, the general growth in travel must be regarded as a positive step.

We would highlight an example of the EU approach to competition law as being beneficial in relation to the working of the internal market. One of the challenges faced by TCG as a long established, relatively stable but slightly declining business has been that competitors can receive financial support – whether that be for former state airlines in financial difficulty being bailed out by their governments, or new airlines adding capacity, demanding support for growing their programmes. We therefore believe it essential that there is an effective means of preventing demand being distorted by subsidies being made available to our competitors, and believe that this is an area where EU wide intervention is far more effective at creating an effective internal transport market than national intervention could ever be.

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

We have no particular comment on this particular question.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

We see and understand the merits of EU action in relation to these issues. We are not convinced that EU action has had entirely positive outcomes in these areas. We would start by quoting the example of the incorporation of aviation into the EU Emissions Trading Scheme. We would suggest that there have been a number of undesirable political outcomes in relation to this particular agenda. Whilst we see a merit in emissions trading, the international ramifications of the EU implementation have led to massive uncertainty, confusion and discontent. We would also question whether the current position is potentially damaging to the interests of UK and EU businesses particularly when compared to non EU airlines.

In relation to social standards, TCG in common with most other airlines broadly support the work of EASA in seeking to harmonise Flight Time Limitations. We note that this work was undertaken with a multi stakeholder group including airlines and workforce interests, and believe that the outcomes were positive and beneficial. As such, we find it surprising that the European Cockpit Association in particular is waging such an active campaign in opposition to the measures.

We are however concerned that some of the decision making of the European Court of Justice in relation to social issues is having the effect of stretching rights in a disproportionate fashion, and we would reiterate our comments in response to question 1 in this regard.

**Q.5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

We have earlier expressed our concerns in this regard. We do believe that the current climate is resulting in an imbalance between the perceived broad interests of consumers and the interests of transport operators. There is a very real danger that in looking to compensate consumers for poor performance that remedies become disproportionate. We would highlight again the issues relating to decisions of the ECJ in relation to flight delays.

This has resulted in a compensation regime designed to punish misbehaviour being applied to airlines who have simply experienced operational problems. Since affected consumers obtain disproportionate remedies, a secondary industry has developed, encouraging consumers to claim in return for a fee, normally a percentage of the compensation payable. In consequence, one of the impacts of the new remedies has been a value transfer from the aviation sector to these claims management companies. We would argue that this should not be the purpose of consumer legislation.

There is also no doubt that there has been a significant increase in the volume of consumer legislation in particular emanating from the EU. For the reasons expressed above, we are concerned that the European Parliament see themselves as consumer champions, particularly in relation to aviation, and we would argue that this has resulted in some measures disproportionately impacting on business. We would observe that there are occasions where the EU feels the need to intervene on consumer issues due to misbehaviour by individual businesses, and particularly airlines. This results, on occasion, in a harsh regulatory regime being applied to all carriers to reflect the behaviours of a few businesses.

We suspect that some consumer legislation is produced in a belief that there is unequal bargaining power between consumers and businesses. Whilst this may be true in some markets, we would suggest that there is such a wide choice within the aviation sector that there is an approach towards an economic perfect market, where consumers are aware of all options, and we believe that the majority of consumers are capable of making rational decisions, to a point where they will choose to pay a small premium to receive higher levels of service. As such, we suspect that certain legislation may be unnecessarily pro consumer.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

We would reiterate our previous comments in this regard. We have concerns that the European Court of Justice has increasingly developed its own legislative capability, which goes beyond judicial interpretation of legislation, and we are concerned that this approach, which is not subject to the same checks and balances to which new legislation would be subject.

However, we struggle to see an alternative approach which would benefit the UK. If we accept that EU membership remains in place, then the concept of implementing pan

European approaches makes sense. It is difficult to see how the European Court of Justice could be changed in a way which reduced their level of law making – and in practice, we would suggest that this is probably as much due to the civil law tradition as to any specific rules or processes in the ECJ. However, we do question whether the current law making process is well served by the approach being taken by the Court – and we would refer again to the Sturgeon decision as an example of the Court creating completely new law without any sort of impact assessment, or real consideration of the effects of its decision. A similar argument may also be applied to the decision made in relation to the Emissions Trading Scheme litigation, where most observers would comment that there was never a realistic possibility that the ECJ would find the way which this had been introduced as being unlawful.

We are also concerned as to the willingness of both the EU institutions to act on an extra territorial basis, and the willingness of the ECJ to support that action. We believe that this is well illustrated by the position in relation to aviation joining the Emissions Trading Scheme. The primary objection of many other countries was the extra-territorial nature of the scheme. For businesses, this creates a very real risk of retaliatory responses by non EU member states – and in most cases, those responses impact more on individual businesses than on governments or the EU itself – such as measures allegedly taken by the Chinese government to prevent Chinese carriers buying Airbus aircraft due to the impacts of ETS.

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

We recognise that there are complementary regimes, both at a national and an international level, particularly in relation to aviation. We have already referred to ICAO, who are able to create laws, or at least create and amend international Conventions. As an international industry, this benefits the aviation industry. However, the need to achieve broad consensus prevents speedy decision making by ICAO, and we do not believe that this can necessarily create a suitable legislative framework.

Equally, we recognise the need for legislation at a national level. However, this should be complementary to EU legislation, and so far as possible, should not overlap or conflict with the EU legislation.

We would highlight the issue of financial protection for holidaymakers as an area where the UK and EU systems overlap, and whilst the ATOL scheme and protection under the Package Travel Regulations 1992 are not necessarily in conflict, the boundaries between

the 2 schemes are not always as clear as they should be – and the UK has created a different level of protection compared to other EU member states. We recognise the reasons behind so doing, but would comment that this does create practical issues for businesses in complying with relevant legislation.

We would also refer to the question of Advance Passenger Information collection. Across the world, individual countries have each developed their own solutions and approaches to this issue. As a result, airlines have to comply with a multiplicity of approaches and standards. In every case, the airlines have to work collectively and individually to attempt to persuade the relevant governments to implement similar approaches and standards, not always successfully. The UK, in developing the E-Borders programme has created a particularly onerous approach to this issue, and has spent 10 years working on this subject without achieving clear, consistent solutions. We believe that this topic is one that should, ideally be addressed with a single international solution, and in the event that there is no obvious forum to achieve that international solution, then the EU should take the lead in developing a solution for all member states. We note however the UK opt out of certain EU measures, including measures relating to freedom, security and justice, and suspect that this opt out would discourage the UK from finding a common solution with other EU member states.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

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. We note that, for example, in relation to agreements with the USA, the airport that is of most interest from an access perspective is Heathrow, and as such, the UK has to be confident that its national interests are not being undermined by EU negotiators.

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

In view of the EU institutions' willingness to intervene actively particularly in relation to consumer rights, we believe it important that the UK and other governments provide appropriate checks and balances, and in particular, seek to support businesses in ensuring that any solutions are proportionate.

We do not see the need for substantial additional legislation in relation to the aviation sector.

We believe that there should be more work done by individual member states to overcome the barriers which prevent the Single European Sky being delivered, and where there are blockages created by national labour interests, we believe that the UK should be lobbying its fellow Council members to deal with those blockages.

# Rail

## ASLEF

### **ASLEF Response to the EU balance of competences review: transport call for evidence**

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and light rail systems.
2. ASLEF recognises that a greater amount of legislation is coming from the European Union. Britain has benefited from many aspects of closer cooperation within the European Union including from many new laws introduced from Brussels. However the Union is becoming increasingly concerned that 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.
3. ASLEF supports the concept of an increasingly integrated railway across Europe in terms of functionality. However the European Commission's 4<sup>th</sup> Railway Package looks to impose a privatised franchise system across the continent. In fact the commission propose that the rest of Europe introduce a similar franchising system to the one we have in UK.
4. The franchising system has been a disastrous policy for the UK railway. Subsidies are now about 3 times as high as they were at the time of privatisation. The open, private UK system has led to the highest fares in Europe, no real increased private investment into the network and a huge cost to the taxpayer. Simply looking at the West Coast franchise debacle shows the



failings of tendering for rail contracts, whereas the success on East Coast show the benefit of publically owned rail operators.

5. Yet our system appears to be held up as a beacon of virtue by the commission. At the core of the package is a desire to create an open market, across the European rail system that is open to companies throughout the world. The commission acknowledges that in order to ensure high quality, integrated services it will be necessary to “continue to require a large proportion of rail services... to be provided under public service contracts, specified and subsidised by Member States.” They therefore do not suggest only allowing open access operations. However, they do propose two levels of competition with “those services that can be provided through open access and competition 'for the market' to allow the transparent and cost-efficient award of Public Service Contracts, as experienced today in some member states.” In other words, the same system we have in the UK with franchises supplemented by a small number of open access operators.
6. ASLEF has continuously called on all governments since the privatisation of the railway to end franchising and take the profit motive out of our network. No government has done this. However ASLEF is concerned that the introduction of the 4<sup>th</sup> Railway package will severely restrict any future government’s ability to change the status quo.
7. Other elements of the 4<sup>th</sup> Railway Package could also be damaging for our network. The package proposes that in order to “realise the potential of the single market, a higher level of harmonisation is necessary at EU level.” Powers to issue vehicle authorisations and for safety certification for train operators will be transferred to the European Railway Agency.
8. The Commission makes it clear that the basis for this proposal is not improved safety. “The aim of these proposals is to achieve a 20% reduction in the time to market for new RUs and a 20% reduction in the cost and time taken to authorise

rolling stock. This should lead to €500 million savings over five years and contribute to the European rail industry's competitive edge and leading position on world markets.”

9. Additionally there are also concerns about the proposed coordination body that will set economic incentives and performance indicators to measure and to improve the efficiency of IMs (Infrastructure Managers). This could lead towards profit motive once again becoming part of infrastructure management. In the UK, we learnt the hard way from Railtrack that this is a potentially fatal mistake. This was proven by the incidents at Southall, Ladbroke Grove and Hatfield which lead to the not-for-dividend Network Rail taking over the UK's rail infrastructure. Also a European Network of IMs could be the first step towards a single European Infrastructure Manager.
10. Separate IMs and RUs (Rail Undertakings) can also create difficulties when it comes to compensation caused by delays. In the UK, often an enormous amount of time and money is spent by Network Rail and Train Operating Companies arguing about who is responsible and therefore liable for any delays. This is money that is leaving the industry and time that could be spent on improving it. This is a further example of the damaging effect of fragmentation.
11. Many of the issues ASLEF has raised in this response are problems we already have. The UK Government has continued with this broken system and as long as it does, ASLEF will continue to point to the significant evidence which shows that privately tendered contracts within rail are disastrous for the taxpayer and passengers. Yet what these rules from Europe highlight is the enforcement of this system. It would be impossible for future governments to make these changes and they would force our European neighbours to fundamentally change how their railway is run.
12. ASLEF accepts that past governments may have been supportive of much of what is within the 4<sup>th</sup> railway package as it broadly follows what previous

governments have introduced or maintained in the UK. But this has always been a decision made by the UK government. ASLEF has always managed to enter into a dialogue about these subjects. Removing the right of nation states to alter the ownership model of their networks would prevent constructive dialogue and make the railway even less democratic.

13. ASLEF believes that it is in the best interests of each nation to cooperate over rail functionality. We need more passengers and freight to be able to travel across our continent in an easier, cheaper and more joined up way. However the imposition of law will just restrict member states' ability to run efficient services and could have potentially disastrous effects on health and safety.

## Association of Train Operating Companies (ATOC)

**Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

ATOC's mission is to work for passenger rail operators in serving their customers and supporting a safe, reliable, attractive and prosperous railway. ATOC's members are truly European and international, including operators from the EU and from further afield, who have been attracted by the liberalised business environment here. Market reforms introduced to the UK railways twenty years ago strongly contributed to the success of the UK passenger rail. A recent report by ATOC and KPMG has clearly demonstrated that passenger growth in Britain has outstripped other external demand factors and other major European railways. By contrast, EU economic regulation in the rail sector has lagged behind the UK, and much of the EU passenger rail market remains closed to competition. The European Commission (EC) has recently proposed market reforms to introduce many elements of the UK system, particularly franchising, to other EU member states. ATOC strongly supports market opening and liberalization of the EU rail sector, which will benefit passengers and open up market opportunities for UK companies and further application of the UK model. 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. At the same time, regulatory reform creates risks and uncertainty, and we are closely monitoring and seeking to influence the debate in Brussels to try to avoid negative outcomes for our members. However we consider that the positive benefits of continuing the progressive opening of European markets will far outweigh the negatives.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

There is clear evidence that when EU has succeeded in creating an internal market, economic benefits have followed. The clearest example is in Aviation, where the internal EU market has helped reduce costs for passengers and clearly contributed to UK economic growth [any numbers to back this up?]. In contrast, EU attempts to create a Single Rail Market have been frustrated by national governments who have concerns about exposing their state owned railways to competition. ATOC considers that if a single EU rail market were created, then there would be benefits to the UK economy. Market reform would enable greater opportunities for UK based companies to bid for contracts in the rest of the EU.

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

An EU internal transport market would certainly contribute to a more effective functioning of the EU internal market as a whole. The ability to run passenger and freight services seamlessly across borders without artificial market distortions and barriers as well as deepening of equipment supply would aid the achievement of broader EU policy goals concerning the promotion of competitiveness and free movement of goods and people.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

In principle, ATOC supports the use of European wide environmental standards, which reduce the cost of equipment by enabling manufacturers to engineer for the entire EU market rather than simply one Member State. Nevertheless, other approaches are possible, such as aligning to standards in other major markets such as the U.S. or Japan.

**Q.5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

ATOC has been closely involved in debates over EU rail consumer regulation for many years. Broadly speaking we are content with the EU regulations on passenger rights, and Persons of Reduced Mobility. In most cases our UK codes of practice go further than the minimum standards required in Brussels and this seems a sensible overall approach.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

ATOC does not have a view on this question.

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

ATOC does not have a view on this question.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

ATOC does not have a view on this question.

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

There are significant business opportunities for UK companies to be gained by railway market reform in the EU and the development of the EU Single Rail Area. Currently the UK welcomes operators from many countries to bid for and run rail services; and the passenger benefits from the experience and best practice from these companies. As noted above, our judgement is that only actions at the EU level can break down national monopolies and achieve a true EU single transport market. Therefore it is essential for the UK to remain actively engaged at EU level to achieve market reform and a more competitive rail sector. Nevertheless, we need to remain alive to the possibility that EU technical and safety regulation may cut across the UK and inadvertently impose cost on the UK even as the single market is deepened but this is a well recognised issue that we are always alert to.

# Bruges Group

## About the Author

John Petley was educated at Charterhouse School and read music at Oxford University. He worked for over twenty years as an IT specialist, largely in the insurance sector, working both in the UK and in Holland. In January 2006, he switched over to political research and worked for over two years in Brussels at the European Parliament, where, among other things, he attended meetings of the European Parliament's Transport Committee.

John has had a long-standing interest in railways going back to his childhood days. His previous publication in this field, *Southern Loco-Hauled Finale 1980-2005*, was very much aimed at the enthusiast market, but his concern about the European Union's unwelcome and growing interference in so many aspects of Britain's life has resulted in his returning to the subject of railways, but from a very different angle.

Currently working as a freelance researcher and writer, John is married to Katherine and lives in East Sussex.

## Summary

The European Union faces a massive challenge in trying to "harmonise" the very diverse railway networks of the European Union's member states, with their different rail widths, clearances and electrification systems.

Nonetheless, an ever-increasing volume of legislation is emanating from Brussels regarding railway operation. From the UK's perspective, even though several aspects of the proposals are modelled on Britain's rail privatisation, the European Union's increasing interference is likely to be detrimental to rail operation in this country in several areas. For example:-

- The one trial implementation of the European Rail Traffic Management System on a single route in Wales has still not been completed, in spite of costing £59 million – over 10% of the cost of implementing Train Protection Warning System over the entire network.
- A European Commission proposal on giving priority to international freight trains on a busy UK trunk route, which if implemented could add 25 minutes onto passenger journey times only a few years after a £9 billion upgrade to speed them up.
- The possible costs of the planned extension of the Interoperability Directive to cover domestic train services will be expensive. Bearing in mind an earlier directive cost the UK over £80 million in implementation costs just for the very limited number of international trains that run here.

International trains crop up repeatedly in this analysis of European Union rail legislation – the key, alongside competition, to using rail as a tool to help break down national state-run rail monopolies across the Continent. Britain’s geographical location will ensure that these trains will always be a smaller part of the picture here than elsewhere. Our history has left us with a railway network including vast numbers of bridges and tunnels too restricted in dimension for most rolling stock in use on the Continent ever to run on.

This study shows that European Union legislation in the area of rail transportation, while not thus far enjoying the high profile of, for instance, agricultural, fisheries or financial legislation, adds to the growing case for Britain to withdraw from the EU.

## **Introduction**

Britain was in the forefront of railway development from the very beginning. Our nation gave the world the waggonway, the steam locomotive, standard gauge, the first passenger-carrying railway and the first inter-city railway. Victorian Britain boasted the world’s fastest trains, and the 126mph achieved by the London & North Eastern Railway’s A4 Pacific No. 4468 *Mallard* in 1938 remains the world record for steam traction. In 1975, Britain launched the world’s fastest diesel trains to date – the Inter City 125 trains. It is an impressive record, even if the French have now taken over the blue riband in terms of cutting-edge rail technology with their impressive LGV (high-speed line) network.

Under the first of three “pillars” in the 1992 Maastricht Treaty, establishing the European Union, can be found the heading “Trans-European Networks” or TEN’s. In order to assist the creation of a single market and to reinforce economic and social cohesion, a series of Europe-wide modern infrastructure projects were to be created. Transport, energy and telecommunications were the three principal networks, and railway systems form an important part of the first of these, especially in recent years with the EU’s growing enthusiasm for “green” transport.

As the first “pillar” covers areas which surrender the greatest power from

the member states to the EU, this basically means that the nation that gave railways to the world is no longer master of its own network. Such control as we still have will be surrendered if and when the Lisbon Treaty comes into force, for transport is one of the areas where decisions would henceforth be made by Qualified Majority Voting.

This study looks at what all this means in practise, examining some of the principal pieces of legislation that have affected our railway network. It also looks at what benefits, if any, would result from Britain withdrawing from the European Union and thus not being bound by European legislation.



We start by an analysis of the challenges faced by the European Union in their attempts to create a cohesive rail network across the member states, including Britain.

### **The limits of harmonisation**

The railway networks of the 27 member states of the European Union are remarkably diverse, and present a major challenge to the prevailing mindset in Brussels that everything should be “harmonised” at a European level. This has not prevented the EU rising to the challenge, notably in the fields of safety and interoperability, as will be discussed later, but particularly in the latter, there are a number of constraints which would be prohibitively expensive, if not downright impossible, to resolve.

### **Gauges (Rail width)**

This analysis starts with gauges – the distance between the inside edges of the two rails. 4ft 8½in, or 1435mm, is known as Standard Gauge and is the gauge of some 60% of the world’s railways. To discover why, we need to go back to the dawn of railways and their evolution from horse-drawn waggonways in the collieries of North East England. Before the 1820’s there was no standard gauge, although most rails were between 4 and 5 feet apart. It was the growing reputation of George Stephenson (1781-1848) which resulted in the early standardisation of rail width. Stephenson favoured a gauge of 4ft 8in for the colliery systems he was associated with, and chose this gauge for the world’s first public railway to use locomotives, the Stockton & Darlington Railway of 1825, a project for which he was the engineer. He added the extra half inch by the time his next major project, the Liverpool & Manchester Railway, was opened in 1830, and while some early railway projects planned by other engineers used different gauges, Stephenson’s influence gradually led to their conversion to Standard Gauge by the mid-19th Century, with the exception of Brunel’s broad gauge (7ft 0¼in) Great Western Railway.

With British engineers and manufacturers being involved in building the earliest railways in several other countries, Stephenson’s Standard Gauge was exported to countries as far afield as Australia and the USA, besides France and Germany nearer home. However, it never became the universal gauge, even across Europe, where Spain and Portugal chose 5ft 6in (1676mm) Russia and its neighbours went for 5ft (1524mm) and Ireland 5ft 3in (1600mm.) In recent years, the new Spanish high-speed network has been built to standard gauge, but the bulk of the country’s railways still use the broader gauge.

### **Loading Gauge (Clearances)**

Besides the question of rail width, another issue militating against standardising Europe’s railways is loading gauge – the maximum width and height for locomotives and rolling stock. At a conference in Berne, Switzerland, just before the First World War, a standard maximum width of 10ft 2in (3150mm) with a maximum height of 10ft 5in (3175mm) rising

to 14ft 0½in (4280mm) in the centre was agreed by representatives from much of Continental Europe. These dimensions are usually referred to as “Berne Gauge” although the official name is “Gabarit passe-partout international” or PPI, meaning pass-everywhere international.

It took a while before a widening process was completed on France’s railways in particular, but now trains can run from the Spanish border to the east of Poland without fear of colliding with a bridge or sideswiping a train on an adjacent track. Two important railway networks are excluded from the Berne Gauge – the Swedish and Norwegian systems, where more generous dimensions are allowed, and the British, where clearances are tighter and rolling stock dimensions are smaller.

In the early 1920’s, the Southern Railway, one of the four main British private companies at the time, carried out a study of converting the lines in Kent to Berne Gauge. The cost was prohibitive even in those days, so when direct freight and passenger services to the Continent via a train ferry were introduced a few years later, the vehicles used had to be smaller than other stock used on France. Even now, passengers at the Gare du Nord in Paris seeing a Eurostar side-by-side with a French TGV will notice the contrast in sizes, an unfortunate legacy of Britain’s pioneering role in railway development. A considerable rail network was already in operation before it became apparent that much larger locomotives and carriages could be built.

## **Electrification**

Electrification is another area where different member states opted for different voltages in some cases well before the European Union existed. 25Kv 50Hz AC is widely used in the UK, parts of France, Bulgaria and Romania and the new Spanish, Italian and Belgian high-speed lines, and could be regarded as the nearest there is to a European standard. Nonetheless, the substantial German network along with Austria and Sweden (plus non-EU Norway and Switzerland) all use 15Kv. The Dutch Railways use a 1500-volt DC system, as does part of the French network and some Dublin suburban lines (“DART”) – the only electrified lines on the island of Ireland. Interestingly, Europe’s 1500V network also includes one single route in both the Czech Republic and Portugal. Belgium opted for 3Kv, along with Italy, Spain and Poland and several smaller Eastern European nations. Strangely enough, although Portugal shares Spain’s unusual 5ft 6in rail gauge, it opted for 25Kv electrification.

All the systems considered so far use overhead live wires. In the South of England there is a substantial network of electrified lines that use a “third rail” energised at 750V DC. Third rail electrification the most common system for underground or “metro” networks, with 750V being the most popular voltage.

Even without EU intervention, railway companies across Europe have produced a number of ingenious solutions to the problem of different electrification systems. In the UK, a

number of dual-voltage locomotives and units are in daily operation on both passenger and freight services that cross London and therefore have to switch from 25Kv overhead to 750V third rail systems in the course of their journey. In France, the quadri-current 40100 series electric locomotives, able to operate over the Belgian, Dutch and German networks as well as the French, were introduced as far back as 1964.

## **Coupling**

Europe's railways employ a number of different methods of coupling locomotives, carriages or wagons. Some are automatic, such as the Scharfenberg coupler, but a good many trains are still coupled manually using a chain and drawhook, with buffers preventing the vehicles colliding with each other when the brakes are applied. Although a standard automatic coupler has been chosen by the European Union, based on the Russian SA3-coupler which is also used in Finland and in parts of Sweden, there is currently no proposal to implement this standard across the EU. Britain in particular, with its fragmented privatised system, uses a variety of coupling systems.

## **Which side?**

One further question that divides Europe is on which side do trains pass? Britain drives on the left and its trains likewise pass on the left. The trains in right-hand drive Germany and Holland pass on the right, but in right-hand drive Belgium they pass on the left! Even more confusing is France, where passing on the left is the norm on much of the country's network, but in the Alsace area, which was under German control for part of the railway era, they pass on the right.

## **Summary**

In recent years, Europe is seeing the emergence of a European high-speed rail network using 25Kv AC overhead electrification, Berne Gauge clearances and Stephenson's Standard Gauge. However, domestic train services in many countries do not conform to these standards and are unlikely to do so without the expenditure of vast sums of money. In the UK, only one route, the Channel Tunnel Rail Link or High Speed 1, conforms, and even if, as seems likely, the proposed high speed line from London northwards is built to these dimensions, a significant percentage of the British rail network is likely to retain its restricted clearances. For all the conformity to Standard Gauge and both existing and proposed use of 25Kv electrification, much of our nation's railway system will therefore retain its idiosyncrasies whatever the EU may decide.

## **Directive 91/440/EC: Fact, Fiction and Follow-up**

When the issue of European interference in Britain's railways is discussed, the most frequently mentioned directive is 91/440/EEC of 29<sup>th</sup> July 1991 on the development of the Community's railways. It is also the most misquoted.

### **Is it responsible for the privatisation of Britain's railways?**

Yes, say critics of Britain's privatised rail system like RMT leader Bob Crow, who recently stood for *No2EU, Yes to Democracy* in the 2009 European Parliamentary elections and said, "Many members of my union RMT have suffered as the result of EU diktats such as EU directive 91/440 which led to the privatisation of our rail network."<sup>1</sup> However, a closer look at the Directive shows that while it talks of "separating the management of railway operation and infrastructure from the provision of railway transport services", it adds that while "separation of accounts" is compulsory, "organizational or institutional separation" was optional. In other words, for those unhappy with the franchise system, the Railtrack fiasco or the vast profits made by the rolling stock leasing companies, it is John Major's Conservatives who are to blame, not this directive.

The enduring nature of the myth of this directive being behind rail privatisation is quite surprising considering that a trip across the Channel is all that is required to debunk it. In Germany where Deutsche Bahn remains Germany's last big state monopoly, privatisation has run into strong opposition, especially from the unions. Furthermore, when the privatisation was discussed in the German Parliament, the British approach was widely regarded as the model not to follow. All this would be irrelevant if this EU directive had dictated the privatisation of British railways eighteen years ago.

This directive definitely opened up the possibility of running privately-operated trains in countries where both the track and the bulk of the train services are still run by the State, as will be seen below. Here again, however, Britain had already anticipated this. The British Pullman train, which started running in 1982, was privately owned, as were the class 59 diesel locomotives introduced in 1983 to haul heavy stone carrying trains from quarries in Somerset to a number of destinations in Southern England. In Holland, where the State has owned the railways since they were built, the first privately-run rail services ran in 1996 between Amsterdam, Haarlem and IJmuiden, but they were not a success, being unable to offer fares sufficiently competitive to attract much business from the rival NS (Dutch State Railway) services. Interestingly enough, on the subject of Holland, the separation of track and trains was widely blamed for a steep decline in punctuality on the previously highly efficient national network.<sup>2</sup>

### **Did it cause the Hatfield Crash?**

Another claim made of this Directive, this time by a colleague of Bob Crow, is that it was responsible for the Hatfield accident of 17<sup>th</sup> October 2000, caused by a broken rail.<sup>3</sup> In order to evaluate that claim, it is important to look at the nature of the company involved, in particular how its shortcomings contributed to the accident and then to evaluate whether the Directive was a factor in the shaping of the company in such an unsatisfactory way.

The conclusion of the report into Hatfield stated that Railtrack, the private company that owned the nation's tracks at the time, had divested itself of much of its engineering expertise, with the result that it had consequentially failed to keep adequate records of track maintenance, with the result that it was caught unawares by the cracking of the rails. Once again, the finger of blame cannot be pointed at the directive and the concept of separation of accounts, but rather in the way that Britain had chosen to privatise its railways, seeking to encourage private companies to compete over privately-owned track, with the emphasis being on making a profit, and safety being the casualty.

### **Does it place any restriction on the shape of Britain's railways?**

The Directive would most certainly stand in the way of any move to re-structure Britain's railways along the lines of "vertical separation" – in other words, a return to the pre-1948 situation where there were four geographically based, vertically-integrated railway companies, each responsible for track, rolling stock and train services. During the run-up to the privatisation of Britain's railways in the 1990's, it was widely reported that this was the preferred model of the then Prime Minister John Major, but that the franchise-based scheme which finally prevailed was chosen because it would be harder for a future Labour government to re-nationalise.

By this time, the directive had already come into force, with little coverage in the press, as is often the case with EU legislation. However, before blaming the Major government's change of tactics on submission to Brussels, it is worth pointing out that British Rail had been moving away from the old region-based structure, which was largely derived from the geographical area covered by the pre-1948 companies, towards a more horizontal approach. Although the regions were not formally wound up until 1992, they had ceased to have any significant role by the late 1980's, with the railway being managed on a sector basis – Inter City, Railfreight, Rail Express Systems (Mail and parcels traffic) Network SouthEast among others.

So this Directive cannot be proven to have played any major part in defining the rather unique structure of Britain's railways today, merely of possibly preventing a future reorganisation along pre-1948 lines. Having said this, the structure of the British network reflects better than anywhere else in Europe the ideal of the European single market, with foreign companies running some of the train operating companies in some cases in competition with each other. Britain can be said to have anticipated the aims of the Directive before it came into force, but more importantly, subsequent directives (see below) which have encouraged greater private sector involvement in Europe's railways, seem to be taking them in the direction in which Britain's railways have already gone. Nonetheless, 91/440 is still viewed as the culprit by opponents of rail privatisation.

### **When the Private Sector really came in**

The first and second railway packages were both designed to open up the European rail freight market to competition, and specifically to privately-owned freight companies. A number of directives are included in these “packages” which need not be listed individually. Likewise, Directive 2007/58/EC, a key part of the “Third railway package” opens up international passenger services to competition from 1st January 2010.

In order to prepare the way for competition, separation of trains and track had to be pushed one stage further by bringing in European legislation on Track Access charges. Directive 2001/14/EC introduced common rules which had to be used in calculating these charges, which included not just the cost of the running of a train on a track, but of stopping at a station and the administrative costs.

So now, like it or not, private operators can acquire a license to run freight trains in any member state of the EU, even if they are running in competition with a state-owned company and running over state-owned track. As from next year, a similar situation will apply with international passenger services. Apart from the harmonisation of safety standards (which in Britain are much higher than in many other EU member states) Britain was already compliant with the aims of this directive thanks to privatisation, and its freight companies, particularly smaller operations with experience of niche markets that they have been able to supply at a more competitive rate than larger companies, are keen to start operations on the Continent.

Whether there will be any foreign companies wishing to compete with Eurostar for high speed services to the UK remains to be seen. The peculiar nature of the Channel Tunnel requires design features not required for other international services, such as being able to split the train into two. Newspaper reports a year or two back cited both Air France and Deutsche Bahn as interested in running services through to London, but there has been little mention of this in recent months.

## **Concluding comments**

There are many critics of Britain's railway structure, but not a great deal of political debate about it. Both Labour and the Conservatives appear committed to the current franchise-based structure, in spite of the recent failure of the East Coast Main Line franchise. The Green Party are committed to bringing the railways back into public ownership, but have not gone into detail about how they would manage the rail network. Their idea of a nationalised railway maintaining separation of trains and track would, of course, have been possible if EC/91/440 had been the EU's last word, but now taking back all the freight operations into public ownership would prove problematical if Britain remained within the EU.

It is surprising that there has been so little debate about the structure of Britain's railways among parties espousing withdrawal from the EU, and therefore not requiring to take this or any other directive into account. The BNP talk of the “Fiasco of rail privatisation” but go

into very little detail. UKIP, after dallying with re-nationalisation a few years ago, are currently supporters of the franchise system. The most vocal withdrawalists calling for total re-nationalisation are a number of left-wingers found within the RMT Union.

In view of how the track/train separation led to a degree of hesitation on the part of some transport operators to apply for franchises in the early days of privatisation and how some of the train operating companies have expressed a desire to be more involved in track maintenance on the lines over which they operate, there is certainly the potential for a major debate about the organisational structure of Britain's railways on leaving the EU, but at the moment, many in the rail industry, and the freight sector in particular, seem reasonably comfortable with the very EU-compatible but not particularly EU-inspired status quo.

### **The Interoperability Directive 2008/57/EC**

This directive merged two previous directives into one – Directive 96/48/ EC (July 1996) on the Interoperability of Trans-European TGV and Directive 2001/16/EC (March 2001) on the Interoperability of Trans-European Conventional Railways.

Even the most strident critic of the European Union would recognise the sense in there being some international standards when running regular international train services, especially fixed-formation trains such as the TGV or Eurostar where the entire train crosses international borders. The registration process, allowing rolling stock to operate over the rail network of an individual country, varies from member state to member state, but has become more complex as the trains themselves have become more sophisticated, particularly the high speed trains, which run at speeds undreamed of fifty years ago. Some trains like the French TGVs run over the tracks of at least six different countries, so the idea of streamlining the process by not requiring full separate registrations in every country of operation has obvious merits.

However, as the 2001 Directive highlights, it is not just the new purpose-built high speed lines that cross-national frontiers. Cross-border freight and conventional passenger trains have been part of the European scene for many years, and their numbers are growing.

The basic concept of the interoperability directives is to harmonise the registration process across the member states so that once an item of rolling stock has completed the process and is allowed to operate in one member state, the minimum additional work should be required to allow it to operate elsewhere. In 2004, the European Rail Agency was established to draw up technical specifications for interoperability (or TSIs)

Thus far, the legislation would seem to be of little relevance to most of the UK rail network. Apart from the Belfast-Dublin line in Ireland, the only international rail services operated from the UK are those that run through the Channel Tunnel – the car, coach and lorry shuttles, the Eurostar services from London to Paris and Brussels and international freight services. Even if we left the EU, we would obviously still have to ensure that any stock

used on international services would comply with European legislation, including this directive.

Thus far, so good. Where the Directive begins to cause concerns is the possibility of extending its scope by 2012 to cover domestic services as well. “The scope will be progressively extended to the whole network and all vehicles, provided that an impact assessment shows the economic benefit of so doing.” (See Introductory clause 20, also article 1:4). The “economic benefit” would seem to refer to the introduction of competition within domestic services, possibly using stock owned by a company based in and registered in a different country from that over whose rail network it is planned to be used – for instance, a French operator seeking to use French-registered stock to compete for traffic on an Italian domestic service.

Our domestic services are operated by stock designed with the restricted British loading gauge in mind, and a considerable part of the British railway network, especially the suburban and rural routes, will not see any international services whatever, not even the odd wagon that has worked across from the continent on a freight train. Most continental rolling stock, as we have noted, simply cannot operate over the vast majority of the UK rail network because of the loading gauge restrictions.

Furthermore, with international train services relatively less important as far as the UK is concerned, the aim of producing economies of scale across Europe’s railways is unlikely to be achieved in any great degree here. While it is true that the Class 66 freight diesel locomotives first ordered for freight work in the UK are now also in operation in Germany, France and Poland among other countries, even here a variant built to the broader dimensions possible across the Channel is under consideration. These would not be able to operate in the UK, and it is inconceivable that passenger stock ordered by rail operators for international or internal services within mainland Europe would choose vehicles that would fit in the narrower confines of the UK loading gauge just for the sake of this directive.

According to a UK government consultative document,<sup>4</sup> the Directive should also improve, “the environmental performance of the entire European transport system”. It is again hard to see what benefit it would provide to the UK’s rail network in this regard.

The result of any extension of this directive to cover domestic services is that unnecessary costs are likely to be incurred by the operators, for the exemptions are few in number – isolated rail systems such as the Isle of Wight’s Ryde-Shanklin line, light rail, heritage lines, rolling stock used only on a limited number of charter trains and a few self-contained branch lines. The possibility of applying for derogation is left open. Whether the government will do this remains to be seen. If not, it means more cost and more red tape – a particular nuisance for lines in rural areas that do not run at a profit and where the competition element is likely to remain non-existent. The earlier 2001 directive referring to international trains only cost the UK over £80 million according to a 2001 government



consultation document.<sup>5</sup> Upgrades to the power supply to conform to TSI's cost over £50 million, with rolling stock upgrades (such as European standard hot box indicators) cost over £10 million, with a further £20 million on infrastructure changes.

Closely linked to interoperability of stock is Directive 2007/59/EC, which creates a common European Licensing system for train drivers. This again seems an unnecessary extra cost for the vast majority of drivers. The aim of the directive is "above all to make it easier for train drivers to move from one Member State to another, but also to make it easier for them to move from one railway undertaking to another."

But is this necessary? It takes 9-18 months to qualify as a driver in the UK, depending on the train operating company. Two key components of train driving are route knowledge and familiarisation with the type(s) of traction unit used by the operating company. A British driver who relocates to a different company within the UK will most likely have to acquire new route knowledge and familiarise himself with different traction units. While some basic skills learnt under the first operator in the areas of safety and signalling would not need re-learning, this is only part of the skills required to move to another company. The proposed license, valid throughout the community, would assess such abilities as language skills. All in all, a typical "sledgehammer to crack a nut" approach as far as Britain's railways are concerned, and driven, as before, by the obsession to build up a trans-national rail network, references to which can be found at several places in the directive. According to Transport Committee Member Gilles Savary MEP in 2007, there are hopes of extending the idea of a European license to other rail staff as well by 2012.

The only conceivable benefit once again is restricted to international trains, both freight and conventional passenger services, where it has been customary to change crews when crossing national boundaries even where the locomotives are not changed.

In conclusion, the European ideal of interoperability, for all the aims or promoting rail travel, could create extra costs for train operating companies within Britain and thus achieve the opposite effect to what is intended. The obsession with international rail traffic is a millstone round the neck of the British rail network, where the vast majority of both passenger and freight services will always be domestic in nature.

## **ERTMS**

ERTMS, the European Rail Traffic Management System, has grown out of a desire to develop a state-of-the art signalling system for use across the European Union. Although in theory a private sector project involving six companies, Alstom Transport, Ansaldo STS, Bombardier Transportation, Invensys Rail Group, Siemens Mobility and Thales, it is being developed in close co-operation with the European Union. A glance at the website of the European Railways Agency (see page 33) will confirm this, for the agency describes itself, among other things, as the "system authority" for ERTMS, which it describes as a system

which will “create unique signalling standards throughout Europe” – in other words, the format for a future EU “harmonised” signalling system.

### **What does ERTMS consist of?**

There are two main components to ERTMS: Firstly, ETCS (European Train Control System) which is a sophisticated form of automatic train control, which would intervene, for instance, if a train overran a signal at danger. Secondly, GSM-R is a radio system providing a link between the train crew and signalling centres. ERTMS has three “levels” – Level 1 consists of track to train communications only, whereas Level 2 features continuous communications between the train and the radio block centre. Level 3 is still at the conceptual phase and will feature a “moving block” technology – that is, a system that allows trains to run at a safe braking distance apart from each other using lineside sensors and computers but without any need for conventional signalling. The first level 1 implementation was the Zaragoza – Huesca high speed line in Spain, which opened in December 2004, with the Italian Rome-Naples high speed line opening a year later being the first route using level 2.

ERTMS has attracted interest from outside of the EU – being in use in China, India, Taiwan, South Korea and Saudi Arabia.

### **Current automatic train control measures in the UK**

Britain had previously installed both automatic train control systems and radio signalling. The most recent automatic train control, TPWS (Train Protection and Warning System) is a system that applies the brakes automatically on any train that passes a red signal. It was applied to over 12,000 signals, 650 buffer stops, around 1000 permanent speed restrictions as well as the entire train fleet over a period of three years at a cost of £585 million. Since its implementation, it is claimed that the number of SPAD (Signal Passed at Danger) incidents has fallen by 80%. However, if ERTMS level 2 was to be implemented across the network, much of the TPWS installation would be redundant. ETCS (part of ERTMS) was considered for the West Coast Main Line upgrade, but it was rejected, as the technology was unproven at the time.

Radio signalling was first used on the East Suffolk line in the 1980s and is used on several lines in the Scottish Highlands. For these lightly-used routes, it was a useful way of cutting costs, reducing the need for signalling staff.

In view of the expenditure on TPWS, it is hardly surprising that the UK is dragging its feet with regards implementing ERTMS, even though TPWS is not failsafe. It would not have prevented the Southall rail crash of 1997, for instance, as one train was travelling too fast for TPWS to have stopped it in time.

The line chosen for the first British installation of ERTMS was the Cambrian Coast line to Pwllheli in North Wales. So far, the installation of the necessary masts is behind schedule,

and the implementation of the £59 million scheme has been put back to October 2009. One interesting beneficiary of this delay is the series of regular steam-hauled excursions that have run along the line during the summer season since 2005. At first, it was believed that steam would simply not fit into the ERTMS scheme, as the on-train equipment required must be carried “in the leading vehicle” and cannot be accommodated on a steam locomotive. However, as the West Coast Railway Company, the operator of these trains pointed out, the equipment is only to be installed in one coach of the two-car diesel unit trains which provide the regular service trains, it follows that this rule cannot apply when the train is running “backwards”. After negotiation with Network Rail, an agreement was reached on 3<sup>rd</sup> July whereby portable ERTMS signaling kits will be provided for use with steam locomotives. This deal only applies to the Cambrian route, but if ERTMS is deployed on other lines at a later date, it does look as if this solution or something similar may prevent ERTMS killing off steam-hauled excursions on the national network.

### **Would it be money well spent?**

Steam trains apart, the cost of ERTMS rings some very serious warning bells. Its installation on one line in Wales alone has cost more than 10% of the entire cost of equipping the nation’s railways with TPWS. It must be stated that Network Rail are enthusiastic supporters of the ERTMS project, even though no European directive has set any binding timescale for the implementation of ERTMS across the networks of the member states, although it is clearly their goal.

But at what cost? An article in the June 2004 issue of *Modern Railways* called *ERTMS: can it be made cost-effective?* answered the question by saying, “Quite simply, as it stands ERTMS is unaffordable.” Other critics claim that it would actually reduce capacity on lines where it was introduced.<sup>8</sup> In a time of recession, it does seem a most excessive item of expenditure when a combination of TPWS, other automatic train protection measures and conventional signalling has delivered a network with good safety and reliability records. Indeed, three of the last four years have seen no fatalities whatsoever from train accidents.

The official ERTMS website, [www.ertms.com](http://www.ertms.com), under the heading “Why does Europe need ERTMS?” points to the complexity of running international trains due to the incompatibility of train control systems across the EU as its main selling point. In other words, there is a political dimension. As has been discussed in earlier chapters, international trains are always going to be a small part of Britain’s rail services, and concentrated on a small handful of routes. A politically-inspired drive to implement ERTMS right across our country’s network could be taxpayers’ money very poorly spent. British supporters of ERTMS will rightly point that TPWS is not the last word in automatic train control, but other less expensive and sophisticated forms of automatic train control could well be better suited to the vast majority of Britain’s rail network.

### **COM (2007) 608 – Freight Corridors**

This proposal is a most alarming development, although it purports to have the laudable aim of boosting rail's share of the European freight market, which stood at a mere 10% in 2005.

The Commission White Paper on European transport policy for 2010 on which this document is based envisaged the creation of "multimodal corridors giving priority to freight." Every member state, apart from rail-less Cyprus and Malta, must be participating in at least one freight corridor by 2012. Included in these "corridors" are both the East and West Coast Main Lines, linking London to Scotland. Some 40% of UK freight services run along some part of the West Coast route, which has also recently undergone a £9 billion upgrade allowing tilting passenger trains to operate at 125mph for much of the way from London to Glasgow. The better-aligned East Coast Main Line operates conventional trains at speeds of up to 125mph.

Most freight trains operate at a maximum speed on 75mph. The most recent intermodal freight stock is capable of running at 90mph, although very few trains currently do so. Accommodation of these slower-moving trains is easier on the southern section of both East and West Coast main lines where there are long stretches of quadruple track, allowing the frequent 125mph expresses to use separate tracks from slower trains. Further north on double track sections, it is necessary to "loop" slower trains – that is, stop the train on a short section of quadruple track to allow the faster 125mph train to pass. Under the Commission's proposals, international freight trains would have priority in the allocation of train paths, which would seem on the face of it to be incompatible with looping, which gives priority to the passenger trains.

The result of this is estimated to be a 10% increase in passenger journey times – an absurd situation considering the time and money spent in upgrading the West Coast Main Line to allow a London-Glasgow journey time of only just over 4 hours. The Commission's proposals, if the estimates are correct, could add another 25 minutes to the London-Glasgow journey time, thereby undoing much of the benefit of the costly and disruptive upgrade.

Although the Commission Document is a strategy document rather than a piece of legislation, the phrase "The Commission will propose additional legislation on the international allocation of train paths and on the priority accorded to international freight" is an ominous declaration of intent and a classic example of political interference. On what grounds should international freight trains be given this priority? It makes neither operational nor economic sense. Why should one freight train bound for France or Belgium be regarded as *de facto* more important than another train using similar stock, similar motive power and running at a similar maximum speed but conveying, for instance, goods for a supermarket chain from one part of the UK to another? Having sought a "non-discriminatory" level playing field for access paths in the 2001 directive, the Commission is seeking to introduce politically-inspired positive discrimination in contradiction to its earlier thinking.

It would also be interesting to see how “international freight trains” are defined. The frequent services of container trains that run to ports like Felixstowe and Southampton could be regarded as “international” inasmuch as their cargo is destined for another country, even if the cargo in question will complete part of its journey by ship. One suspects that the introverted focus of Europe’s legislators will come up with a definition which restricts the term to those trains that cross Europe’s national frontiers by rail – in other words, in the case of the UK, only freight trains running through the Channel Tunnel.

One other interesting international freight corridor features in the map – Cork-Dublin-Belfast. While few would quarrel with the aim of boosting freight traffic on the Irish rail network, there are currently no regular freight trains whatsoever that cross the Irish border at the moment – the infrequent fertiliser traffic that used to run being a victim of a general downturn in Irish rail-borne freight over the last decade. Priority in this instance, if we are to take the document at face value, must be given to non-existent trains! Whoever drew the lines to mark out this particular freight corridor was clearly living in a fantasy world – as indeed, so it seems, was the author of the entire document.

### **The European Railway Safety Directive 2004/49/EC**

This Directive was designed to ensure that safety does not present a barrier to the establishment of a single market for railways. It required member states to agree to a set of common safety indicators (in other words, what are the hazards involved in rail operation, such as broken rails or SPADs), common safety methods (how these sorts of hazards are to be avoided) and common safety targets (a definition of minimum safety levels).

One requirement of this directive was the establishment of an independent rail investigation body. Britain had anticipated this directive by the setting up in 2003 of the Rail Accident Investigation Branch, which superseded HMRI (Her Majesty’s Railway Inspectorate) as the main body dealing with railway accidents in 2005. The RMT union claims that the effect of European interference in our railways will actually compromise safety.

The biggest problem to emerge with the transposition of this directive into British Law was the replacement of HMRI by a different procedure for verification of safety standards in new rail projects. This was accomplished by the ROGS (Rail and Other Guided Transport Systems) Safety regulations of 2006, which placed the responsibility for safety at the door of the railway operators themselves. While not a major problem for the big train operating companies, this caused a major concern for heritage railways, who operate with smaller cost margins and rely mainly on volunteer labour and who may struggle with the costs involved in training up suitable people to acquire the skills needed.

In this instance, it appears that this extra burden is a case of “gold plating” of EU legislation by those who transposed it into British law, and the blame cannot be entirely

laid at the door of the EU. It could also be argued that the provision of Railway Inspectorate staff to assess safety on heritage railways was an unwarranted luxury, but even so, without European interference, a system which has worked well for many years could have continued to operate.

### **The European Railways Agency**

This organisation was established by Directive EC/881/2004 and its mandate, according to its website, was “to help create this integrated railway area by reinforcing safety and interoperability”. A subsequent directive, EC/1335/2008 has superseded the original directive and increased the powers of this body.

Its mandate revolves around the three areas previously studied – interoperability, ERTMS and safety. It is based in the North of France and employs approximately 100 staff. It could be seen as the hub that directs all areas of the harmonisation process so beloved of the EU. It has a budget of €21 million for the current year.

As its staffing level grows, so will its interference in our nation’s railways as it pushes forward the implementation of EU legislation. Part of its current mandate is the working out of Technical specifications for Interoperability (TSI’s) for freight wagons, which, as has been noted, may result in extra red tape for the vast majority of such vehicles that will only ever operate in the UK.

Although this body does the bidding of the European Union rather than initiating legislation, its very existence and its potential to interfere with our national network underlines just how far we have fallen by joining the EU. Yes, we need to co-operate with overseas bodies when running international train services, but this apart, should not the nation that gave railways to the world be capable of managing its own railway network?

### **Conclusion**

Any student of European legislation will observe a familiar pattern in this study of the EU’s effect on our rail network – ideological confusion, poorly thought-out proposals and an end result that is bad for Britain.

Britain’s privatisation agenda has in many ways anticipated recent EU models for not just the railways but other areas as well, such as energy and communications, whereby large operations are split up and private sector competition is encouraged from companies operating across different member states but within a regulatory framework. Separation of trains from track has its parallels with the EU’s enthusiasm for “unbundling” in the energy and telecommunications sectors.

What differentiates the EU’s approach from the Thatcher privatisations of the 1980s is the emphasis on the European single market – breaking down Europe’s frontiers. This leads to

an in-built tension between on the one hand, strong support for the market in areas where the State formerly had a monopoly and, on the other, a constant political interference that goes way beyond the regulatory bodies set up under the Thatcher privatisations.

One thing is clear – the promotion of this model for so many sectors of the economy by the EU is going to be very difficult to reverse at EU level. The EU is too cumbersome and slow-moving to change direction quickly. This means that as far as the railways are concerned, with the exception of the franchise system, which is peculiar to Britain and thus far neither copied or encouraged elsewhere, Britain is stuck with private sector involvement, competition and the separation of train from track as long as it remains within the EU. Many in the industry see this structure as the best way forward. But is this actually the case?

Supporters point to how few rail networks in the developed world remain vertically-integrated. Amtrak in America and Japan's railway system are two such examples. Both are heavily subsidised by the state and the former carries remarkably few passengers considering the large track mileage in the USA – hardly a success story. Non-EU Norway and Switzerland have both introduced measures that, particularly in Norway have moved away from vertical integration. Are advocates of a vertically-integrated network misty-eyed romantics looking back to a bygone age? They are certainly on the back foot within the railway industry at the moment, even though they enjoy considerable support among the population at large.

At the moment, whether vertically integrated or separated, rail networks worldwide with very few exceptions are either very run down or receive substantial hand-outs from national and regional governments, and this raises a more fundamental question: what is the purpose of the rail network? Since the arrival of mass car ownership in the 1950s and 60s, the large subsidy paid to the railways has been defended both on social and environmental grounds – they provide a lifeline to some isolated areas and take passengers off the roads, thus reducing pollution and congestion.

Are these ideals now being replaced by a business-driven approach where profit at all costs is the new orthodoxy? The EU's approach is a mixture of both, just as the railways and train services in Britain are divided into those that can be run at a profit and those that are likely to need subsidy for years to come.

These questions are not being widely debated at the moment, but a number of ingredients including the high-profile failure of the East Coast Main Line franchise to the recent pronouncements of Bob Crow and his colleagues in the RMT union point to the potential for widespread discussion about the shape and function of Britain's railways in the not too distant future. What can be said with the EU pushing through more and more legislation in relation to the rail network is that any serious debate about the relative merits of private sector involvement versus state control, horizontal separation versus vertical integration or social service versus for-profit business can only be possible outside of the EU.

In the meantime, whatever the overall structure of Britain's railways, we have observed that EU legislation is likely already proving detrimental to the network, and this is likely to get worse over the coming years. In many ways, there is a degree of logic to many of the proposals studied as far as other member states are concerned, particularly in view of the growth of international rail traffic, both passenger and freight. Germany has rail links to eight other countries and Austria to seven, and in some instances, there are several different international rail routes between two given countries. In these circumstances, Europe-wide agreements make sense, even if the agenda of "ever closer union" and a Europe without frontiers may result in politics overriding economic and operational factors.

For Britain, our position as an island combined in particular with the restrictions of the loading gauge determines that our rail system will inevitably be more self-contained and less able to be "harmonised." International trains will always have a far less important role than elsewhere. In consequence, many of the measures studied in this survey are likely to lead to unnecessary extra expenditure, deterioration in the performance in some areas or an unnecessary rise in administrative procedures in others. An independent Britain would have to comply with EU law with regards the operation of international train services, particularly on the Channel Tunnel Rail Link and through the Tunnel itself, but would otherwise be free to repeal the legislation studied in this document, and in so doing would gain far more than would be lost.

This study has already proved that Britain's railways would benefit from our withdrawing from the EU without dwelling on every single aspect of EU legislation – in force or proposed. A brief look at a couple of further issues only serves to confirm the main points. One minor, but irritating feature of modern train travel – the plethora of announcements – has turned out to be EU-related. When Conservative MP David Willetts complained to South West Trains about this, he was told by the company that EU regulations state that all trains have to display and announce information regarding the destination and upcoming stops. The culprit on this occasion is Regulation (EC) No 1371/2007 on rail passengers' rights and obligations. Then there is the possible effect of changes to EU's emission charges rules from 2012. Although nothing has yet been decided, it is possible that diesel-hauled trains may become more expensive in consequence – a particularly bitter pill for residents in the East Midlands, whose main line to London was recently passed over for electrification in favour of the Paddington-Bristol and Paddington-Swansea routes.

This negative picture of the European Union's effect on our railway network is sadly mirrored by studies into its effect in other areas as diverse as fishing and banking. It is so utterly bizarre that considering so many analyses from so many different angles of the benefit or Britain's membership of the EU reach the same conclusion – that we are better off out – that the present Labour Government has dragged us deeper into the European mire by signing the Lisbon Treaty. As if that were not enough, both Labour and the Liberal Democrats still seek to stifle any debate about withdrawal on the grounds that it would be a catastrophe, and to label all proponents of withdrawal as madcap extremists.



It is to be hoped that this study may find its place in the ever-increasing volume of literature proving that the real extremists are those who refuse to have an honest and open debate about the true cost of Britain's membership of the EU, and that it will provide some additional ammunition for all who seek the noble cause of the independence of our nation.

The Bruges group		
<p>The Bruges Group is an independent all-party think tank. Set up in February 1989, its aim was to promote the idea of a less centralised European structure than that emerging in Brussels. Its inspiration was Margaret Thatcher's Bruges speech in September 1988, in which she remarked that "We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level...". The Bruges Group has had a major effect on public opinion and forged links with Members of Parliament as well as with similarly minded groups in other countries. The Bruges Group spearheads the intellectual battle against the notion of "ever-closer Union" in Europe. Through its ground-breaking publications and wide-ranging discussions it will continue its fight against further integration and, above all, against British involvement in a single European state.</p>		
Who We Are		
<p><b>honorary President:</b> The Rt. Hon the Baroness Thatcher of Kesteven, LG OM FRS  <b>Vice-President:</b> The Rt. Hon the Lord Lamont of Lerwick  <b>Co-Chairmen:</b> Dr Brian Hindley &amp; Barry Legg  <b>Director:</b> Robert Oulds MA  <b>head of research:</b> Dr Helen Szamuely  <b>Washington D.C. representative:</b> John O'Sullivan, CBE  <b>Founder Chairman:</b> Lord Harris of High Cross  <b>Former Chairmen:</b> Dr Martin Holmes &amp; Professor Kenneth Minogue</p>	<p><b>Academic Advisory Council:</b> Professor Tim Congdon Professor Kenneth Minogue Professor Christie Davies Professor Norman Stone Dr Richard Howarth Professor Patrick Minford Ruth Lea Andrew Roberts Martin Howe, QC John O'Sullivan, CBE</p>	<p><b>Sponsors and Patrons:</b> E P Gardner Dryden Gilling-Smith Lord Kalms David Caldow Andrew Cook Lord Howard Brian Kingham Lord Pearson of Rannoch Eddie Addison Ian Butler Thomas Griffin Lord Young of Graffham Michael Fisher Oliver Marriott Hon. Sir Rocco Forte Graham Hale W J Edwards Michael Freeman Richard E.L. Smith</p>
Bruges group MeetINgS		

# Eurostar

Thank you for giving Eurostar the opportunity to contribute to the Balance of Competencies Review.

Eurostar is the leading transport operator between UK and the near-continent, carrying nearly 10 million passengers each year. We provide more than three-quarters of the market to and from Paris and Brussels. With more than a quarter of passengers connecting, we also serve destinations across, France and Belgium, and into Germany, Holland and Switzerland. As such, we are therefore experiencing on a day-to-day basis the potential and difficulties of cross-border high speed rail.

As well as the important business travel market to Paris and Brussels, Eurostar plays an economically vital role supporting the French community in London. It is estimated that between 300,000 and 4000,000 French citizens live and work in London; they are, as a population, young skilled and economically active. The community also generates a secondary market of "Visiting Friends and Relatives" who also contribute to the UK economy. 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.

However, Eurostar's fastest growing market is non-EU. This accounts for over 1 million passengers per annum and is growing rapidly. Whilst a large proportion of this is Anglophone - such as US and Australian visitors - we also see travel from the Far East, including Japan and Korea.

Finally, whilst the economic impacts are, of course, at the centre of policy considerations, it would be wrong to ignore the social and cultural value of travel also, building the sense of integration which comes from having two European capitals as close by train to the centre of London as Manchester and enabling those experiences - the art tour, the lunch in Paris, the West End show, the family holiday - which enrich lives. Over half of our passengers have not used the service before and are experiencing this for the first time.

Against this background, the nature of the UK's relationship with Europe - be it the policies and resources it applies to immigration or its involvement in EU rail liberalisation discussions - is an essential factor.

As regards migration, Member States across Europe face similar pressures and challenges; they also compete to attract the same markets. Eurostar exists to facilitate travel, Put simply, the more integrated the approach the UK adopts, the easier this becomes. Ideally, Eurostar would welcome the UK joining Schengen. However, even short of this, we would still argue the case for greater integration and commonality of processes.

As regards rail liberalisation, our past 20 years of operation point to the fact that, although still a few percentage points of European rail traffic, there is strong potential for growth in cross border passenger rail. 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.

## **MIGRATION ISSUES**

Eurostar would highlight three areas where it believes the Government should consider carefully its approach when it comes to migration:

### **Do we welcome trade and travel?**

The language of the debate is important, whether for business or for leisure. Government therefore needs to think carefully about how it frames the debate. The very strong perception is that debate is dominated by the risks of uncontrolled immigration - security, crime and social pressure. The risk is that this creates an image of the UK characterised by suspicion and a lack of welcome. This will affect both propensity to travel - and propensity to travel to the UK, rather than other EU destinations.

### **Does the UK work in a complementary way with other Member States?**

It is notable that the strongest markets among Eurostar's Rest of the World travellers are from those Anglophone countries where passengers often have a positive reason to base their travel around the UK. The market is much less strong where the decision as to

whether or not to include the UK has a greater degree of optionally. Much attention has been drawn to the disparity between the number of Chinese tourists visiting Paris, compared to London but this illustrates a general problem: if a visitor can get a single visa for the whole of Schengen that is simpler, cheaper and more available, there is less incentive to undergo the additional cost and hassle of getting a separate UK visa. This is not just a leisure issue; it also affects where overseas travellers decide to do business.

Eurostar therefore believes that the UK should seek to integrate its visa processes and data sharing with Schengen states - perhaps in the form of a "UK also" extension to the Schengen visa. It would be entirely possible for the UK to continue to make separate decisions as to whether or not to grant the UK extension, but to do so on the basis of common data and a one-stop-shop for applicants.

This issue of integration is evident at stations also. Passengers are checked twice by the authorities (once Schengen Exit, once UK Border) for essentially the same purpose of establishing identity. (Indeed, there are actually checked a third time for Eurostar's own check-in). Even without granting the same rights to travel as exist within Schengen, there must be the opportunity to share data and process.

If decisions to opt out of EU competencies are taken on a blanket basis, there is a risk that the UK simply invents a separate set of parallel systems which are both costly and fail to secure the support of other Member States from which we are carriers must operate. In practice the effectiveness of any regime depends to a significant extent on cooperation and goodwill of other Member States.

### **Has the UK the right policies and the right resources to deliver them?**

The nature of Border Controls - and level of resources available to deliver them - are the biggest single operational challenge for Eurostar. "Right time" departures outbound from London averaged 91.5% in 2012. In the same year the figures from Paris and Brussels were 87.9% and 84.5% respectively. Whilst there are a range of factors involved in these measures, the time taken by UK inbound controls is a significant one. Such impacts matter, commercially and economically. The UK opened the high speed rail link to the Channel Tunnel in two phases: each reduced journey time by 20 minutes and each saw an uplift in passengers by between 10%-15%; the total public investment was over £6bn. Consistent delays have the same elasticity effect but in terms of reducing passenger numbers and the associated economic activity.

In this context the potential pressure on Border Force resources arising out of the recent Spending Review is of particular concern. Eurostar believes that Border Force and Home Office officials work positively with our company in a spirit of open engagement to maximise the efficiency and effectiveness of their officers. They take time to understand our business and the pressures we face and seek to be flexible in deployment of their

resources to help us meet these challenges. As a business, we respect their professionalism. However, the future is one where such resources are unlikely to grow (and may even be cut). At the same time, the trend of market growth and escalating policy requirements as to the extent and nature of checks will only add to the pressure on a system that is already stretched.

This is not entirely about staffing levels. There are issues of space and there may be technological approaches which help. But fundamentally, if resources are fixed and the economic activity supported by a growing market is deemed to be important, then policy must be open to review. At the very least, the costs and benefits of the economic/policy trade should be clearly measured and articulated, assessing the value of relative levels of security as with any other factor.

In this context, Eurostar would strongly support a move to greater risk-based controls for immigration and security - as has long been the trend for customs and goods.

## **RAIL LIBERALISATION**

Again, Eurostar wishes to highlight two areas where it believes the UK should consider its approach.

### **Is the UK making the most of its considerable experience in rail liberalisation?**

In the context of rail as in other policy areas, the UK has let the way for the rest of European countries when it comes to liberalisation. Through trial and error, it has put in place some of the most robust procedures needed to accompany the development of its industry, which the European Commission has been closely looking at when putting together its own policies. It is no wonder that some of the strongest opponents of the Commission's views on rail liberalisation also tend to use the UK case as an example of what not to do, usually misusing existing evidence in the process.

For instance, the ORR is to date one of the best equipped and most respected regulators, with a strong influence in the fledgling network of European regulatory bodies, and in drafting some of the more technical implementing measures, drawing on its own rich experience. Similarly, some of the financial products used by rolling stock leasing companies to provide trainsets to their customers can only be found in the UK.

If well managed, further liberalisation on the continent could provide huge business opportunities for British operators, manufacturers and consultants, which could be exporting their know-how and expand their business. Nascent EU-level coordination bodies (on regulators or infrastructure managers), although sometimes imperfectly designed, would also be likely to be disproportionately influenced by the UK experience given the wealth of experience acquired.

### **Does the UK gain from not engaging in rail standardisation discussions?**

While some EU harmonisation has in rare cases resulted in a lowering of previously higher British standards, in the vast majority of cases, there is a strong benefit to common EU standards, which allow manufacturers to achieve economies of scale and lower their costs. Although the UK will in the foreseeable future keep some of its distinctive specificities (loading gauges, etc...), there are no grounds to believe that new common standards on, say, interoperability or signalling would not benefit the industry as a whole.

In Eurostar's case, the opening of HS1 - all built to TSI specifications - has allowed the company to buy the proven and tested Siemens Velaro platform, therefore lowering costs of procuring the train, and avoiding some of the complex tailoring to the specific national environments and standards. This is also likely to significantly increase reliability.

Subsidiarity concerns do remain of course, but there is a strong case to be made for strong UK engagement in cross-border issues, in which operators suffer disproportionately from varying national standards, thereby losing market share to the highly standardised and globalised aviation sector.

Once again, Eurostar is grateful for the opportunity to contribute to the review and looks forward to engaging in its outcomes.

# Freightliner Group

We are writing to you in response to the consultation issued by the Department for Transport (DfT) concerning the Government's review of competences between the UK and EU. This is the formal response of Freightliner Group – representing Freightliner Limited and Freightliner Heavy Haul Limited.

Freightliner is a logistics operator specialising in rail, currently moving 79% of all deep sea containers that are moved by rail in the UK, as well as over 20 million tonnes of bulk goods by rail each year. As well as operating in the UK, Freightliner also has subsidiary operations in Poland and Germany, moving bulk products, as well as a recently acquired intermodal operation (ERS Railways), based in Holland.

## Overview

The movement of Freight transport across borders is vital for trade and therefore EU policies are important for transport.

The EU transport policies developed to date generally have good intentions but significantly also add risk that increased regulations add further cost to businesses when ensuring compliance. The 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.

Whilst the EU's White Paper on policy sets objectives to increased rail modal share, there remains a potential risk that so many of the EU directives make rail as a product more complicated for customers to understand, whereas for road hauliers, access to the highway network is simple.

It is important to ensure that existing directives are implemented as a priority before additional new directives are introduced. The Commission should also take into the account the costs faced by businesses to not only understand and implement new regulations, but also the costs and time involved when it is necessary to lobby for changes to be made to new proposals.

## **Q.1 What are the advantages and disadvantages to the UK of EU action in the field of transport?**

### **Interoperability**

Membership of the EU will be beneficial for UK businesses operating both into and within continental Europe if it leads to full interoperability between Member States. For rail freight to benefit from this it requires cross border acceptance processes to be less bureaucratic so that freight can flow freely across borders in the same way that its main competitors road and water freight can. To achieve this goal, it relies on effective regulation so that the infrastructure managers and national safety authorities apply common and fair acceptance processes between countries.

### **European Rail Traffic Management System (ERTMS)**

There are clear interoperability benefits to rail freight operators if the long term vision of a common signalling system throughout Europe is realised. However, the costs associated with loco fitment and staff training is significant and makes it harder for rail freight operators to compete with road hauliers who do not face the same barriers or operating costs to access the highway network.

### **4th Railway Package**

The 4th Railway Package, like the packages before it focuses solely on the railway industry and does not consider the wider impacts of the freight transport industry. We are concerned that more and more complicated legislation is introduced on the railway whilst road remains simple, with very little such legislation. In order to achieve the modal shift to rail targets set out in the Commission's White Paper it is of paramount importance that rail and road freight markets are considered holistically and rail is not made yet more complicated for users while road remains simple.

We also believe that it is important that the legislation proposed in the first 3 railway packages is fully implemented and effectively enforced before the EU considers the introduction of further directives.

The 4th Railway Package is designed in part to deliver some of the interoperability benefits between member states, in those countries where they are not happening already. Whilst this is positive, the change in practices has been painfully slow and has undoubtedly



hampered the efforts of UK rail freight operators to expand their operations, particularly on Channel Tunnel movements.

The proposals to grant EU wide vehicle authorisations are welcomed in theory but in our view will be very difficult to implement. As a freight operator with subsidiary companies across mainland Europe, Freightliner has extensive experience of operating services between neighbouring European countries. We have also exported locomotives for use in Europe, having previously been based in the UK.

Experience has found that for locomotives exported from the UK to mainland Europe have required considerable adaptation and to provide a single set of licencing regulations to cover every EU member state and operating system would be totally impractical. The principal of this idea is welcomed but requires more detail to understand how it could work in practice.

Furthermore, the UK has excluded itself from a vast number of common benefits on account of its clearance gauge. The Victorian infrastructure means that special design considerations for vehicle size, gauging etc are required to navigate the network. In turn, a significant proportion of the components are special so the European approvals process is just more expensive, time consuming and less flexible if a local change is required to meet a specific UK characteristic. There is evidence that these difficulties have made the procurement of rail vehicles for use in this country more expensive.

### **European Rail Network Connectivity**

It should also be remembered that the EU interoperability agenda could potentially be damaging for the UK as the proposals for TEN-T routes to meet certain gauge criteria will generate additional costs for the UK in order to ensure compliance on loading gauge. These are problems not felt so closely in other EU countries where the railway infrastructure was built to accommodate larger vehicles.

### **Access to EU Funding**

Membership has also provided potential access to EU funding relating to rail freight improvements. Whilst there have been some success stories many of the funding sources (e.g: TEN-T) are focused on encouraging cross border traffic. This naturally places the UK at a disadvantage and is makes it more problematic to bid successfully for funding of projects based entirely within the UK.

Whilst TEN-T funding is potentially helpful, current rules dictate that applicants can only qualify for funding if the capital investment is being spent in one tranche. This naturally favours larger companies who are able to invest in this way. Smaller and medium sized companies that rely on long term borrowing or lease arrangements can only access TEN-T funding up to a maximum level to cover repayments for one year.

As an example, Hutchinson Ports were able to qualify for TEN-T funding for the investment in their new rail terminal at Felixstowe whereas Freightliner Ltd were unable to access the same funding for our own investment in new cranes at our Southampton terminal for this very reason. As a medium sized business we have limited resources to lobby for changes in these areas. The annual TEN-T conference is this year being held in Tallinn over 3 days. The planning of these events doesn't appear to take into account the ability for businesses of different sizes to attend, given the time and expense involved.

### **European Rail Corridors**

The EU Directive 913/2010 is concerned with the development of a European network of freight corridors to assist in making rail freight more competitive. While this would appear to be a good concept on the face of it, in the UK the capacity that has been reserved to link to the Channel Tunnel is currently under-utilised. There is a strong possibility that the growth of domestic flows may well be stifled as it has been decreed that non-European traffic will not be able to utilise these paths.

### **Channel Tunnel Restrictions**

Freightliner does not currently operate cross-border services through the Channel Tunnel as it is not commercially viable to do so. A number of barriers remain in place that makes such an operation costly and difficult to undertake. The charges through the tunnel imposed by Eurotunnel are currently approximately 10 times the charge per mile on the UK or French rail network. This is particularly due to the additional security and freight train marshalling charges that are only imposed on rail freight operators and not faced by road hauliers competing in the same markets.

The current level of regulation and the lack of transparency over the allocation of network capacity also favour Eurotunnel (which also owns its own rail freight operating company, Europorte) over independent operators, adding further difficulties to run a cost effective and efficient operation.

It is also likely that the proposed merger of Eurotunnel and Sea France Ferries will further strengthen its competitive position and ability to control cross-channel freight movement prices further. Until these fundamental barriers are overcome, Freightliner believes that it will remain difficult for rail freight operators to develop further cross border traffic and compete effectively with road hauliers, as the tunnel is the only way of gaining access to the pan-European network. Unfortunately, current EU legislation does nothing to assist this aspiration.

### **Non-Road Mobile Machinery Directive**

There are also examples of European Directives that have only added additional complications to the running of our business and have arguably contrived to work against the objective that they were designed to achieve.

The Non-Road Mobile Machinery Directive (NRMM) was developed to limit the emissions of certain engine types, with a direct impact on rail freight vehicles. Unfortunately the legislation does not take into account how readily available the technology is to allow compliance with the directive. The UK rail freight industry has a bespoke and limited locomotive market due to the smaller gauge restrictions compared with other EU member states. Equipment is required to retrofit to existing locomotives which is problematic due to the limited space available, staying within the limited UK gauge restrictions.

The costs associated with ensuring EU compliance have limited the availability of suitable freight locomotives in the UK and arguably could contribute to a suppression of rail freight growth. These additional constraints have also made it a more complicated and expensive process to procure new locomotives as pre-existing European models is often not suitable for the UK network. The directive specifically does not apply to any machinery intended for carrying goods by road. As a consequence of this reduced modal shift onto rail has maintained HGV traffic levels, which works against the primary objective of the directive given that road transport emits greater sulphur levels.

The most common UK freight locomotive currently being used is the Class 66, built by an American manufacturer. Ideally, it would be helpful if EU standards could mirror those set in America and other areas of the world to allow businesses to choose from a wider choice of suppliers. With a limited pool of suitable locomotives and suppliers, it is easier for locomotive builders to dictate on price.

### **Interoperability of Rail Freight Wagons**

The EU directive 2008/57/EC has created similar issues for the construction of rail wagons as the NRMM has had for locos. Due to the difference in gauge in the UK (in simple terms platforms and track are closer together than in continental Europe), in order to comply with these regulations the design of new railway wagons that fit UK gauge are likely to be compromised through a reduced payload per wagon. The specific implications vary across different wagon types but the general implications of reduced payloads could lead to services becoming unprofitable to run.

### **EU Policy on Longer Lorries**

The EU Commission are proposing a revision of the directive 96/53 which governs the weight and dimensions of Heavy Goods Vehicles (HGV's). The proposed policy changes will allow 25 metre trucks to make cross border movements between consenting countries. Up to now, individual EU member states have been able to trial the use of longer lorries but only within their own borders.

Despite the UK Government stating its opposition to the introduction of mega trucks in this country, this policy is likely to lead to a domino effect as other member states, including the UK will be forced to allow these vehicles in order for the UK road haulage industry to remain competitive within Europe. 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. Furthermore, the introduction of these vehicles is likely to have impacts on the cost of maintaining UK road infrastructure, along with the environmental and safety impacts that road freight carries over rail.

The weights and measures directive is just another example of EU policy that is likely to deliver negative consequences for the UK rail freight industry, that the UK Government appears to be limited in its powers to influence its impact on the UK.

### **EU Pensions Directive**

Freightliner has a specific concern relating to the impact on UK businesses of a proposed overhaul of the European Pensions Directive. Under the proposals, the European Insurance and Occupational Pensions Authority (EIOPA) has proposed the European Commission adapt Solvency II capital rules, which would effectively force final salary pension funds to hold large cash reserves, depending on their liabilities, to insure against future risks to their businesses.

Although the Commission has decided not to include the Solvency II rules for now, a risk remains that something similar will be enforced given the overall objective of the commission to improve the governance and transparency of occupational pension funds.

As an employer that retains a final salary pension fund, Freightliner remains deeply concerned by the impacts of these proposals, given that it has been estimated that the cost to private UK businesses would be £450bn. Compliance with these directives would simply be unsustainable and would more than likely lead to the closure of these types of schemes and furthermore an undermining to the competitiveness of businesses as they would be forced to cut investment in other areas in order to cover these additional costs.

Whilst Freightliner agrees with the overall aspiration to improve the transparency of pension funds, it is vital that the EU recognises that it is difficult to develop a policy that deals with the range of different pension funds across member states in a fair and non-discriminatory manner.

**Q.2 To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

There has been some improvement in this area and the EU 4th Railway Package is clear in setting out a policy that strengthens cross-border cooperation between infrastructure managers. This is designed to improve the development of schemes such as the TEN-T network and encourage more growth in rail freight across borders.

Whilst this is a positive move, to date progress on enforcing the policy has been slow with some countries not complying with the legislation already set out in the earlier 1st, 2nd and 3rd Railway Packages. Freightliner would like to see the EU focus on ensuring the existing legislation is fully implemented by Member States before new directives are considered.

**Q.3 To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

A functioning EU internal market is vital to facilitate free trade between member states which will allow individual businesses to grow their businesses without being hampered by bureaucracy.

There is an important balance that needs to be struck between measures that support interoperability and trade between countries, and measures that add additional complexity and cost to operators that are seeking to operate directly across different EU borders.

Any policy affecting transport must also consider the impacts in the round on all modes. The EU have set targets on modal shift but many of the proposals add additional costs to rail and do not consider the impact of road and rail modal shift.

**Q.4 To what extent is EU action to harmonise social and environmental standards (eg to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Freightliner does not support the EU action to harmonise social and environmental standards as it will undoubtedly add significant additional costs to ensure working conditions are fully compliant. This response has already highlighted the issue that there is significant inconsistency in enforcing EU policy in different countries so there is already a risk of an 'uneven playing field'.

It has been well documented and also highlighted in the McNulty Value for Money Study that rail freight operators' productivity has improved since privatisation of the industry. The McNulty report found that staff per freight km has been reduced by 36% since 1998/9. The concern would be that by harmonising working conditions in some areas it will prevent this positive trend from continuing at a time when it is vital that the rail industry continues to find ways of working more efficiently.

**Q.5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

There have been positive impacts felt in some countries. For example, in the UK the number of rail freight operators has increased from 2 (once consolidated) to the current 5

since privatisation. At the same time, the volume of rail freight moved by rail has increased by around 60% since privatisation. Whilst it would be unrealistic to assume this is all due to EU interventions it has delivered some benefits (as described previously) and international rail freight flows are starting to increase again, albeit slowly.

The difficulty has come in some of the EU countries where, in some cases a monopolistic relationship still remains between the infrastructure manager and the dominant operator/s. The lack of transparency over certain aspects such as access charges and the sale of capacity make it very difficult for other operators to enter the market place. Whilst EU legislation is now in place to counter this, it is still not being enforced fully in those countries where these practices still exist.

**Q.6 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The policies developed by the EU to facilitate greater movement of goods and general economic activity between member states are certainly welcome. However, in our view the commission has placed too much focus on continuing to develop the next raft of legislation without ensuring that existing directives are being consistently enforced.

Freightliner believes that by concentrating on the full implementation of existing policies, it would then allow the commission to evaluate the effectiveness of these directives so that future policies could then be developed more effectively.

The EU should also consider the costs involved with ensuring compliance with each new directive and the ability that this has on businesses to remain competitive both in European and International markets.

The other important issue for rail freight is that any transport policies must consider the impact on all modes, particularly road which is the primary competitor with rail. As we have already highlighted, in relation to the NRMM directive, the difficulties in ensuring compliance for rail operators has an unintended consequence of working against the overall EU policy to deliver modal shift from road to rail (and other more sustainable modes of transport).

It must be remembered that in the sectors where rail competes with road, current EU and national policies do little to rebalance the added complexities that rail faces compared to road. Rail freight must pay access charges and navigate through a complex and time consuming process to access the rail network, with access severely limited on some sections during certain periods of the day. In comparison, road freight hauliers pay a marginal cost for their usage of the road network, and have unrestricted access to the available capacity. Freightliner would like to see both national and EU future transport policies do more to address these issues that are currently making it very difficult for rail to compete.

**Q.7 To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU and vice versa?**

Freightliner believes that it is important that the UK rail system continues to be regulated and managed at a National level given the significant differences from those operated in other European countries. However, at the same time to exploit the benefits offered by interoperability it is helpful that areas such as railway standards and safety are set at an EU level.

**Q.8 What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally or with third countries?**

Freightliner has no specific comment to make.

**Q.9 What challenges or opportunities are there for the UK in further EU action on transport?**

Freightliner has no specific comment to make.



## Hamburg Koln Express (HKX)

Our answers specifically regard the long distance passenger rail sector. As a brief introduction: our company is called Hamburg-Köln-Express (“HKX”). We compete against state-owned incumbent Deutsche Bahn (“DB”) which enjoys a 99% market share in German domestic long distance passenger rail.

Both HKX and our competitor, DB’s long distance trains division (“DB Fernverkehr”), are so-called “open access” operators because we receive no government subsidies in order to operate; we must finance ourselves fully from ticket revenue.

One of our investors is British. If HKX succeeds, then other UK transport groups may be enticed to enter the German long distance passenger rail market, which is very lucrative.

**Q.1 What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

### Advantages:

EU action could contribute to the opening of opening passenger rail markets for competition.

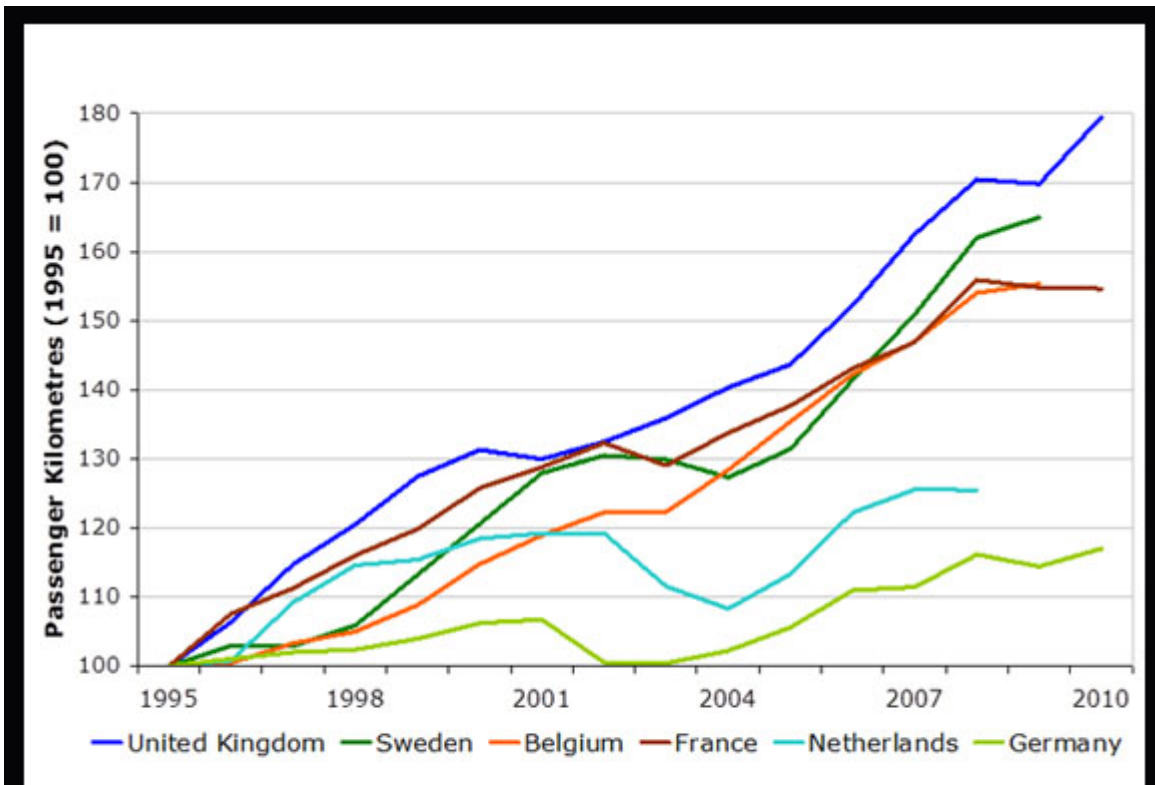
The European Commissioner for Transport Siim Kallas and his team are pushing in the right general direction. At Hamburg-Köln-Express, we believe that the European Commission genuinely wants a strong and competitive railway industry.

For example, Mr. Kallas wants to separate the operational functioning of managing infrastructure and running rail services. Also, the Fourth Railway Package was intended to liberalise the domestic passenger market.

In the case of Germany, this is desperately needed – 19 years after the supposed “liberalisation” of long distance passenger rail, the state-owned incumbent still has 99% share in a market worth over €4 billion.

The potential for publicly traded UK passenger transport companies to invest in an underdeveloped markets such as Germany is enormous – firms such as Stagecoach National Express and First have a track record of innovation and could provide competition to a tired, old monopoly such as DB. After all, Germany is a wealthy market of over 80 million people and, facing a 99% monopolist, there is huge growth potential (!)

At HKX, we believe that the UK is a good role model – between certain cities there has been competition in long distance rail for a number of years. For example, Grand Central and East Coast have been competing between London Kings Cross and York for many years. Innovation grew, prices sunk and ridership grew.



### Passenger Kilometres EU Comparison

Above: The graph shows that the UK leads Sweden, Belgium, France, Netherlands and Germany in passenger kilometres. (Source: OECD).

Countries with dominant state-owned incumbents are behind the UK in terms of passenger growth – please see the above graph.

Proper competition within Germany would attract more people to long distance trains. This would not only benefit consumers but also the environment, enticing people out of cars and coaches, which in turn would relieve the roads.

#### Disadvantages:

Rather than being ashamed of progress in the 19 years since liberalization, DB is trying to keep things this way. With profits from its monopolies, the holding company can acquire foreign subsidiaries where competition is open, such as in the UK.

Armed with an army of lobbyists both in Berlin and Brussels, Deutsche Bahn at the beginning of this year ensured that the (desperately needed) separation of infrastructure and train operators was removed from the 4<sup>th</sup> Railway Package.

Furthermore, key obstacles that hinder competition in German domestic long distance passenger rail are **not even mentioned** in the legislation, for example –

1. DB refuses to sell new competitors (such as Hamburg-Köln-Express) used intercity coaches that it inherited from the taxpayer. Instead it would rather sell them abroad or scrap them
2. Sales infrastructure within Germany is not regulated
3. Last but not least, the German infrastructure company – which is a natural monopoly – shares its logo “DB” with the subsidiary train operators of Deutsche Bahn. The logo “DB” has been around for decades; all Germans grew up with it. How can it be the case that a profit-making division of DB – the train operator– piggybacks off a state licensed brand that still receives taxpayer funding?

These three huge obstacles are entirely created by Deutsche Bahn. Without them, our company Hamburg-Köln-Express would likely already be profitable, enticing others (such as UK transport operators) to enter the market

Until they are tackled, there will never be a strong and competitive domestic passenger rail industry in Germany.

However, EU action is not going that far. Even after 4<sup>th</sup> Railway Package, Deutsche Bahn will likely maintain its status as the dominant monopolist for years to come.

### **How will the UK suffer?**

Deutsche Bahn’s tactic is to create enough artificial barriers so that foreign transport groups (for example Stagecoach, National Express, First & Go-Ahead) are put off from entering the German market.

However - at the same time - Deutsche Bahn profits from open markets in other European member states. For example, it used its monopoly profits in the home market to acquire passenger train operators in the UK, such as Arriva, Chiltern Trains, Tyne & Wear Metro, Cross Country Trains and Grand Central

Deutsche Bahn does not play by fair rules; it is achieving European domination through double standards. Furthermore, EU action is not preventing DB from doing so.

At Hamburg-Köln-Express, we want to warn other European member states about what is happening. There is no level playing field in Europe. Your Balance of Competencies

review is an excellent opportunity for us to do so. In course of the answers to the next eight questions, we will elaborate further.

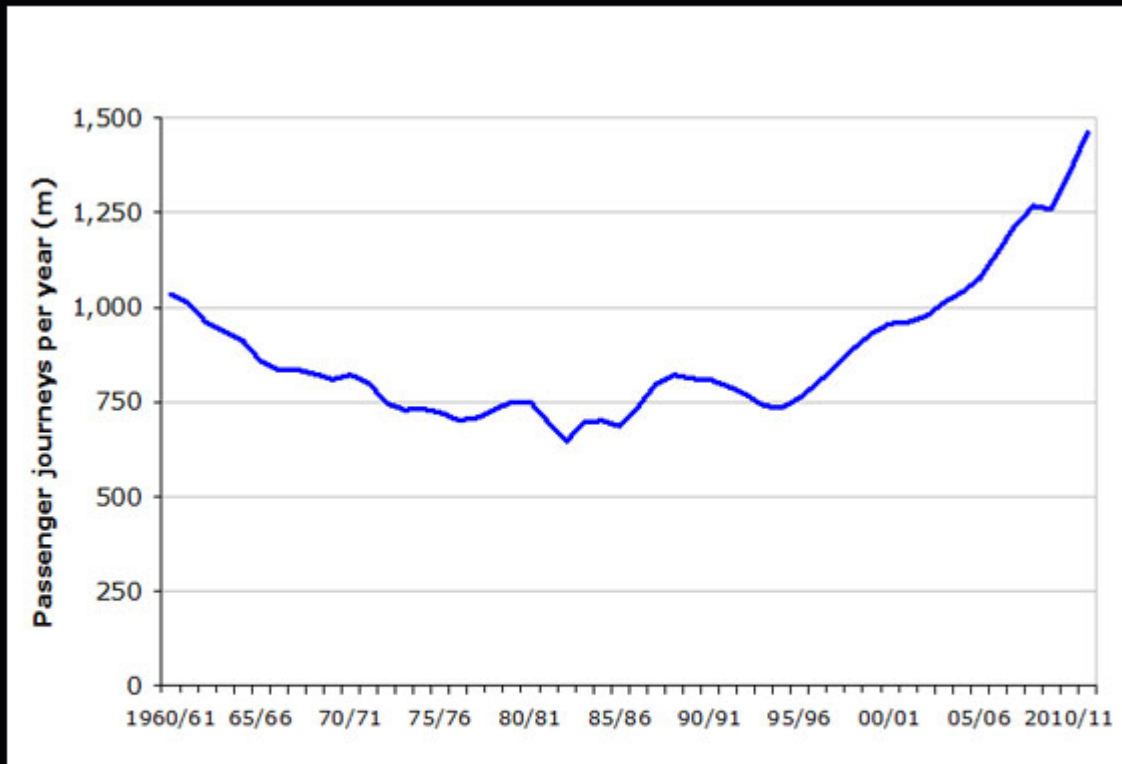
**2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

The EU has failed when it comes to creating an internal passenger transport within Germany. 19 years have passed since the German Railway Reform of 1994. But the state-owned monopoly still operates over 99% of long-distance trains.

This is nothing to be proud of – it is a real scandal! How was it allowed to happen? The incumbent was allowed to continue to exist (after liberalization) and also to maintain its key strategic advantages (in the branding, operational and infrastructure within the German railway system).

The First, Second and Third Railways Packages were not able to prevent this from happening. The Fourth Railway Package is also extremely unlikely to tackle the inherent advantages of the incumbents in their home markets; instead any such legislation is watered down by the governments that own the incumbents.

The UK did it the right way back in the 1990s, through legal separation of infrastructure manager from the train operators, not allowing British Rail to continue and maintain its special privileges and (more recently) allowing competition on the same tracks between the same stations. This may have caused extra cost at the time, but passenger journey per year have grown rapidly since UK rail privatization.



## Passenger Journeys

Above: Passenger journey per year have grown rapidly from 800m in 2000/01, to 1,100m in 2005/06 to 1,500m in 2010/11.

UK passenger rail operators have not expanded to Germany because the incumbent DB deliberately creates very high obstacles (see the answer to Question 5 of this survey). Most worryingly, it is a position to do so, meaning that legislation has failed.

However, the German and French state incumbents (DB & SNCF) have been able to successfully expand to the UK, because the UK (and not the EU!) purposefully ensured that there was a level playing field for all competitors within Britain.

The fact that the European internal markets allows for closed markets (i.e. Germany) to exist alongside open markets (i.e. the UK) has been to the UK's economic disadvantage.

As long as the UK puts up with these double standards, UK firms will not expand into the monopoly countries and UK economic growth will suffer.

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

While there is some intermodal competition, many consumers prefer a type particular means of transport for specific reasons. For example, long distance trains may be the preferred type of travel for pensioners who do not have the nerve to drive a car for several hours, do not want to sit on a coach but also cannot afford to fly. In a train, they can stand up and walk around.

If there is no intra-modal competition (instead just a monopoly), what alternative does the pensioner have? In many cases, he or she would simply not travel.

When intra-modal competition finally exists, often the entire market grows. Indeed, the incumbent long distance train operator can benefit too, because increased advertising raises product awareness for a certain route. Leisure travellers may be encouraged to go on a trip (e.g. on a new train service from London to Birmingham) that they previously would not have done. In the destination, they are likely to spend money in a hotel or a restaurant. This helps the entire EU internal market function more effectively

Let us look at a concrete example in Germany.

Our company Hamburg-Köln-Express (HKX) introduced the first domestic long distance passenger rail competition against state incumbent Deutsche Bahn just over one year ago, in July 2012. A good number of people have found out about us, and we have carried out surveys on board in order to get to know our customers. Recently, we found plasterers travelling from a job in Hamburg three hours on the train back to their home city of Gelsenkirchen. They stated that they simply would not have been able to offer their services in Hamburg if there had not been a cheap long distance rail service. Deutsche Bahn was too expensive for them and they did not have a road vehicle available. In other words, HKX has expanded the market for services along its route.

It is a real shame that Deutsche Bahn does not relish the chance to operate in an open market, growing from the additional consumer base that arise from more competition, seizing the chance to improve its processes and become more efficient

Instead, Deutsche Bahn likes to argue that there is no need for competition. On page 11 of its Competition Review of 2013

([http://www.deutschebahn.com/file/3933288/data/wettbewerbsbericht\\_2013.pdf](http://www.deutschebahn.com/file/3933288/data/wettbewerbsbericht_2013.pdf)), DB used the tactic of claiming that the new liberalization of long distance coach services (from January 2013) was keeping prices down and keeping its long distance trains competitive. In HKX's view, this is just a convenient way to justify maintaining its 99% market share.

Just for the record, in every other mode of transport within Germany there is competition. With the long distance coaches, just 6 months after marketing opening there are around 8 big players slugging it out. In the airline industry, there is not just Lufthansa. On the roads, there is not just one car manufacturer

Compared to this, how can a train operator with 99% market share – in a market worth over €4 billion per year – be beneficial for the internal market?

Here is some real numbers to illustrate our point

DB's anytime flexible fares ("Normalpreis" fares) on its Intercity services travelling at up to 320 km/h, are about €0.27 per km, similar to off-Peak fares in the UK but valid on any train.

As there is no reduction for off-peak travel and seat reservations are optional, overcrowding is common on peak trains.

Regular users can purchase a Bahn-Card which offers a 25% or 50% discount on Normalpreis fares upon payment of an up-front annual fee. In effect, a BahnCard 50 brings the fare down to about €0.15 per km.

DB does now offer "Sparpreis" (= savings price) advance purchase tickets at a discount of 50% or 75% (€0.15 or €0.075 per km). These are only available until three days before travel on trains where DB is certain there will be empty seats.

HKX has entered the market with just one single route (Hamburg to Cologne). Our prices and tariff is similar to the DB Sparpreis, although they are available up until departure and not just on trains where we expect lots of empty seats.

On other routes that HKX does not serve, DB's long distance trains division ("DB Fernverkehr") is still a monopoly. With its rather static pricing system with no incentive for improvement, many potential customers simply stay away.

On main routes without any competition such as Munich to Berlin, DB only operates one or two trains long distance trains per hours, where similar routes in the UK (such as London to Manchester) have three or four.

Monopoly incumbents often do not maximize the potential of a market. It is not hard to envisage the potential business opportunities lost between Munich and Berlin

One of DB's favourite tactics is to claim that there is not much money to be made on long distance passenger travel within Germany; instead DB is providing a public service. This is not true – last year's bottom results revealed DB Fernverkehr earned €372 million after taxes. Please see page 180 in the following report –

[https://www1.deutschebahn.com/file/3280422/data/2012\\_gb\\_dbkonzern.pdf](https://www1.deutschebahn.com/file/3280422/data/2012_gb_dbkonzern.pdf)

With more efficient processes and higher passenger volumes, long distance rail could earn potential market entrants a lot of money.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

It is clear that safety enjoys the highest priority. In Germany, there is no functioning 2<sup>nd</sup> hand coach market in Germany, because cross-border licensing of carriages (e.g. from Belgium or Austria) is very rare. It would be easier to get a coach from Italy and use it in Germany if its safety standards had been approved in Germany too

However, unlike in the airline industry, safety is normally certified on a national scale. In addition, there are divergent national standards and processes. We cannot simply import coaches from neighbouring countries

This limits HKX's ability to provide capacity at an acceptable quality standard for long distance passenger travel.

Without being able to provide the capacity that we would like to and that we would be able to fill, the market is not able to function properly

**Q.5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

***Answer: No the balance is not right!***

The EU has failed to prevent widespread discrimination by state-owned incumbents against newcomers. In Germany, we are still far away from reaching a level playing field

Please allow me to elaborate on our situation at Hamburg-Köln-Express ("HKX"), where the balance is still heavily lopsided in favour of the incumbent Deutsche Bahn.

There now follows an overview of the key areas of discrimination that still face HKX right now today on 6<sup>th</sup> August 2013 -

Lack of easy access to sales infrastructure at railway stations

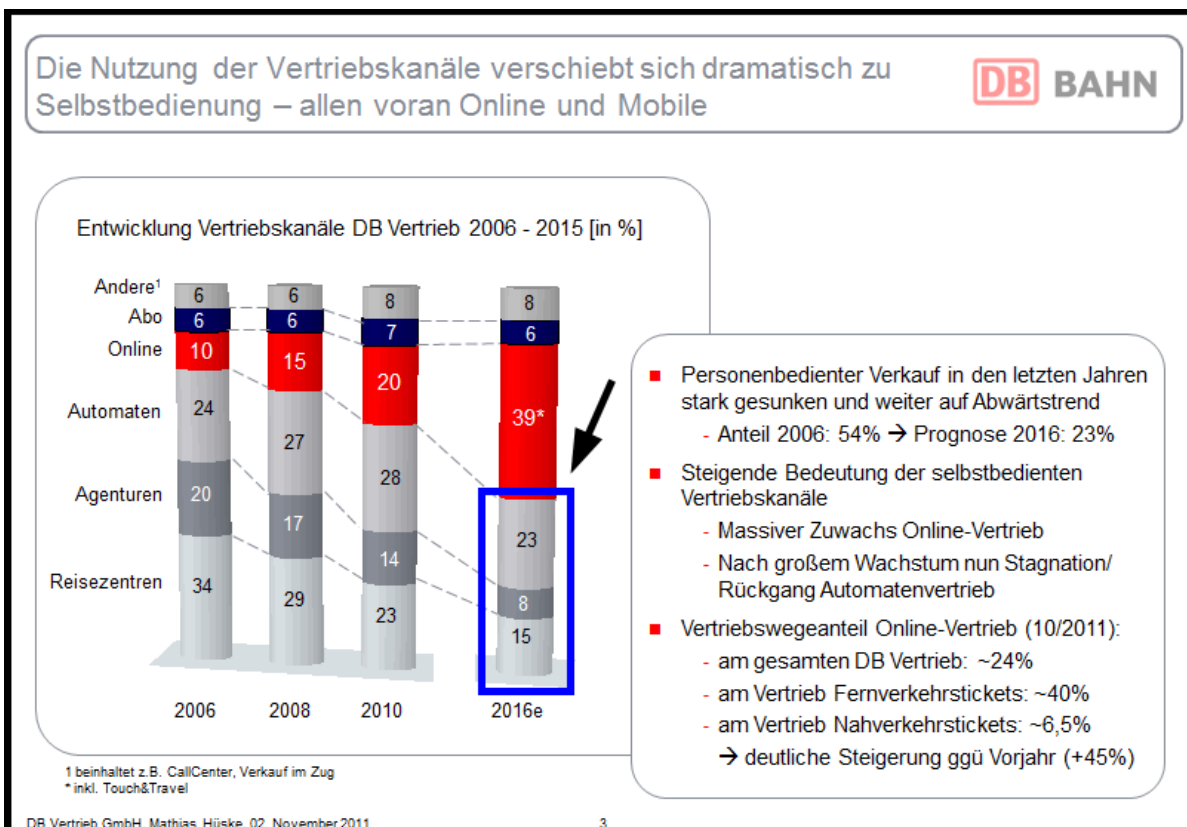
The relationship between DB's sales subsidiary "DB Sales" & its sister company "DB Fernverkehr" (i.e. the DB Long distance trains division) is such that, both being part of the same state-owned group, DB Sales treats its sister company preferentially. DB Sales freely admits this: "for strategic reasons" they do not want to give us access to its sales infrastructure at stations and **it is not obliged to do so.**

What is the justification for this? In contrast to the way UK rail privatization was devised, DB Sales claims that the railway sales infrastructure was never regulated because it was not considered to be essential for competition (that means it is not a so-called "essential facility").



Furthermore, DB considers “Sales to be a legitimate part of competition” –and with that, all the best locations for its ticket offices& ticket machines that it inherited from the German state are declared out of bounds for competitors. With this, DB Sales has an enormous head-start, which is very anti-competitive

How effective this deliberate “sales shut out” strategy discriminates is best illustrated by an internal presentation released by one of Mrs. Bohle’s staff – Mr. Matthias Hüske in autumn 2011 (see below). It stated that even in 2016, 44% of DB’s train tickets is still expected be sold at railway stations, where the incumbent enjoys huge advantages (in terms of branding and in terms of having inherited all the best office & ticket machine locations (see the points 1b & 1c below)).



65% of DB’s customers were still buying tickets at stations in 2010. 44% are forecast to still be buying tickets at stations in 2016. **That means that even now in 2013, 55% are still doing so!**

Who are these 55%? They are customers not as familiar with the internet and/or customers who want to talk to a person before making a booking. These are key customer groups for HKX! It is a learned habit that many people go to the stations in order to buy tickets.

Let us take just one example of how this damages not just HKX but also the consumer – pensioners are often retired, have more time and can adjust their plans to meet one of HKX’s 3 daily departures. Using HKX, they can travel cheaper and use their savings more effectively. Retired people tend to have the least affinity with the internet and tend to book

at railway stations. Currently, when visiting stations, such consumers are not only prevented from discovering that HKX exists (see point #1a below) but also –if they know about HKX beforehand – they cannot buy our tickets

The 55% of sales at stations is crucial to the success of any newcomer rail operator such as HKX. It represents 100% more turnover!

It is therefore completely understandable that 2 sister companies of DB “conspire” to make access to the station sales infrastructure as expensive and **as difficult as possible** for newcomers.

Mrs. Birgit Bohle, CEO of DB Sales, suggested to HKX during a visit with her in December 2011 that we can simply start a website and generate sales there. She knows full well that over 50% of our potential customers actually book at stations.

Mrs. Bohle would rather HKX wastes a lot of time, energy & money in painstakingly building up a separate sales infrastructure at each station (while DB subsidiaries in the UK do not have to do so)

Let us examine in four various sub-points (1a, 1b, 1c & 1d) what sales infrastructure discrimination at stations really represents -

#### 1a. Branding at stations:

DB's *supreme market domination* in German passenger traffic is most obvious walking around German towns & cities and going into any railway station. The letter “DB” and its red & white logo have become synonymous with stations and railways. Signposts pointing towards the stations in other parts of any city simply show the logo “DB” or “Deutsche Bahn” with an arrow pointing in the direction of the station.

Then, the huge sign hung on top of each station states “DB”. Inside each station, DB branding is truly omnipresent.

The customer enters a station and immediately encounters 3 different DB subsidiaries:

Firstly, the stations belong to the (regulated) infrastructure company, “DB Netz”.

Secondly, he goes to the ticket office or machine owned by DB Sales, of course with very prominent positions.

Thirdly, he then sees a train departing. Over 90% of passenger trains are still operated by DB

The brands of these 3 subsidiaries are absolutely identical, despite the infrastructure manager - allegedly - being independent of the operators.

Incidentally, the new DB logo introduced in 1993 is pretty similar to the old post-war DB logo; indeed the 2 letters “D” and “B” remained exactly the same. Essentially, DB has a 65-

year advantage (in terms of public perception) in the eight cities that we serve. Every business person knows the “value of brands”, especially such a dominant one.

To make matter worse, the brand of HKX’s major competitor “DB Fernverkehr” (DB’s long distance passenger rail division) is also simply “DB”. They do not refer to themselves as “DB Fern” or “DB FV” – they are also merely “DB”.

The (partially regulated) infrastructure agency, “DB Netz”, is a natural monopoly. The German taxpayer subsidizes it to the tune of billions of euros each year.

On the other hand, “DB Fernverkehr” is a profit making division of DB that enjoys 99% share. In addition, it piggybacks off the brand of the state infrastructure agency, enjoying by default the familiarity of a 65-year old brand.

In our opinion, “DB Fernverkehr” should be made to change its brand – there is no other industry where profit-marking companies can piggyback off a state-financed monopoly

Otherwise, all the signs pointing towards stations are implicitly advertising our competitor – this is very unfair!

Below is an extreme example pointing towards a station that we also serve in Cologne. Not only is simply the “DB” brand used, but the platforms on the electronic monitors are not simply called platforms but “DB platforms” (see the red column). Is this really necessary? Our trains serve this station too – the situation leads to a very unfair advantage for our competitor



How does someone at the station and not familiar with HKX even discover that we serve the station? – there is no equal branding for non-DB operators.

The situation is similar to British Airways owning Heathrow Airport, branding it everywhere with its own logo and only allowing BA check-in desks.

Neither German nor European regulators have recognised any need to act on this massive market distortion.

The Netherlands, Belgium, Britain and many other EU countries have a much fairer solution, with a neutral brand for the infrastructure manager. In each station, advertising boards for each operating company are allowed.

For any newcomer, building up a brand is critical in order to achieve success, especially if we cannot sell our tickets through the DB sales infrastructure (see below). Promoting our brand at stations is necessary.

Could this be a concerted effort by the (non-separated) DB holding company to “shut us out” of everyone’s awareness at the railway stations that we serve? We would appreciate this topic being highlighted, as it is never appears on the agenda at any European discussions.

HKX would be happy with rebranding at only the ten stations (in the eight cities) we serve – our logo merely appearing on the building would prompt many to research us and investigate who we are - it cannot be an impossible challenge to partially rebrand just ten out of the thousands of railway stations in Germany.

#### 1b. Ticket offices at railway stations:

Currently - at the ten stations we serve – potential customers wanting to travel our route will enter the building and *either* (1) not know HKX already *or* (2) knowing HKX (because they may have heard of us somehow)

DB Sales inherited ticket offices from the pre-1994 German Federal Railways (i.e. the first “DB” = “Deutsche Bundesbahn”) with favourable locations (and probably favourable, long-term, rents) in all stations that we serve. Let us take Münster Central Station half way along our route – you walk in through the main entrance, and the DB ticket is immediately there, next to the main departure board.

Alas, DB Sales informed us in December 2011 that the DB ticket offices are out of bounds for non-DB operators for “strategic reasons”.

Assuming that the potential customer **DOES NOT** already know HKX, he will enter a station with a huge “DB” sign on top of the building and immediately enter the DB ticket office. Little does he or she know that the sign on top is from “DB Netz” (infrastructure manager) and that the ticket office is a different DB subsidiary, DB Sales. After all, the logos are identical. Once inside the ticket office, DB Sales is not obliged to inform the customer about the price of HKX or that we even exist.

Assuming the customer **DOES** already know HKX, he or she will enter a station looking for the opportunity to buy a ticket, probably enter the (centrally located) DB ticket office and be

told by staff that they should go to the HKX website in order to buy tickets. Remember, this represents at least 50% of all travellers. For example, on 2<sup>nd</sup> April 2013, there was such a case that we were made aware of – an elderly lady standing at Cologne station was told by DB Sales to use the HKX website in order to buy a ticket. She called HKX because she has no access to the internet and was standing at the station.

This contrasts to the UK, when any new open access operator can immediately sell its tickets at any ticket office in the entire country, at a cheap, variable cost. One of the main beneficiaries of this is DB's open access subsidiary in the UK, Grand Central.

Furthermore, it is reasonable to assume that if there were healthy competition in the German intercity market, there would be a neutral company at rail stations offering the rail tickets all of all providers (similar to the case at airports). Rail operators – already saddled with massive fixed overhead costs from providing trains – would then pay a commission for every ticket sold.

With DB Fernverkehr currently having 99% market share, there is no incentive for anyone to offer this “neutral” service.

If DB Sales were an objective service provider, they would have an interest in selling all tickets of all train operators. By doing so, the market would be expanded, and DB Sales can broaden its customer base (and its profits). However, its CEO Mrs. Birgit Bohle instead chooses to follow the strategic objectives of the holding company by “shutting competition out”.

DB Netz (the infrastructure company) **does** offer HKX the opportunity to set up its own offices at locations in the stations. Indeed, this is a tacit admission by DB that sales are indeed an essential facility for any rail operator. These are often secondary locations, and HKX would be faced with huge fixed costs (rent, personnel) for just 3 departures per day, which would be terribly inefficient. Also, HKX would have to wait months for a shopfront to come free.

Although there is no proof for this, the evidence is compelling see this as a deliberate combined effort by all DB subsidiaries to cause an insurmountable barrier to entry. So much for the alleged “Chinese Walls” at DB.....

Why not sell HKX on commission or alternatively give us a counter in the existing DB ticket office? DB ticket offices have numerous empty counters - we have never found a single ticket office to be fully occupied. But that would be all too easy ...

Last but not least, DB Sales runs approximately 5 “classical” travel agencies that it owns at ten of the stations along our route. These travel agencies sell package holidays. In addition to only being present at half of our stations, these agencies do not have long opening hours (e.g. they are completely closed on Sundays). Also, it is not intuitive for potential customers to walk in to buy intercity tickets – instead, they go to a ticket office. Last but not least, our customers would often have to wait in line for others booking package holidays (e.g. to the Caribbean), which are much more time consuming.

We consider this offer to have been an attempt to “fob off” HKX. Were we to accept, then DB Sales would claim that we no longer need to be in the normal ticket offices. Many people have urged us to take the offer, saying it is “better than nothing”. But so far, HKX has resisted the “temptation”.

Furthermore, it is inconsistent that DB Sales should argue how the sales infrastructure at stations needs not be regulated but, as a gesture of tacit admission, offer us the chance to sell ticket in its classic travel agencies – is that not an admission that sales infrastructure at stations is indeed an “essential facility”?

To conclude, DB is to blame that HKX has not yet been able to sell a single ticket (in a cost effective manner) at any of our 10 stations, despite having been in operation for over a year.

#### 1c. Ticket machines at stations:

According to the survey of Mr. Matthias Hüske from DB Sales back in 2011, ticket machines made up well over 28% of all ticket sales – this is a sizeable chunk of all sales that can make up the difference between an operator being profitable (or not). They are clearly not a dying breed and will be around for many years to come

DB Sales’ Ticket machines at stations are, like the ticket offices, branded in an identical manner as the stations themselves – same colours and the same red & white omnipresent logo. Of course, for historical reasons they also enjoy the best locations.

The situation with ticket machines is actually *extremely bad* for HKX. The customer enters an exclusively DB-branded station that we serve (e.g. Hamburg Central Station), goes to the nearest ticket machine available (in the same DB-brand), selects a connection to Cologne (at the time of the day our train departs) and receives zero information whatsoever that there is an alternative train with alternative pricing. This is a truly scandalous situation!

Once again, the network infrastructure firm “DB Netz” offers HKX the opportunity to set up its own offices at locations in the stations. This is a tacit admission by the DB holding company that sales are indeed an essential facility for any rail operator.

Each machine would cost around €25,000 (before maintenance) which represents a huge fixed cost for just 3 departures each day – HKX would have to spend a quarter of a million euros in order to put machines in every station!

This is terribly inefficient, considering that DB already has numerous ticket machines in place. In addition, the DB machines have long since “bagged” the best locations in the stations. We could implement sales in existing DB machines much quicker than rigging up our own.

Once again, DB's open access subsidiary in the UK, Grand Central – with a similar number of daily departures - does not have to go to this kind of expense - it can sell its tickets immediately at any ticket machine in the entire UK at a cheap, variable cost.

Grand Central Trains pays approx. 5% commission to use any ticket machine in the UK. Assuming the average HKX ticket costs €30 and that we would pay the same commission rate, HKX would first have to sell 167,000 tickets at DB ticket machines before we would even incur the initial cost as setting up its own ticket machines (maintenance not included)

Once again, this is a barrier to entry caused solely by DB.

And once again, DB's British subsidiaries do not face this obstacle at all.

#### 1d. Sales through other entities at stations:

Seeing as we are refused access to the DB ticket offices and are not in a financial position to set up our own rival ticket offices (because of the high fixed cost), another option here would be to sell our tickets at other shops in the station, such as a bookstore or Sixt car rental. This way, HKX would only pay variable cost

However, the fully integrated transport company DB prevents this from happening. DB Stations & Service has a clause in the contract banning other business from selling railway tickets inside stations.

This clause is highly problematic for HKX. DB probably introduced it not to cannibalize proceeds at its ticket offices, but this now disadvantages newcomers such as HKX

#### Discrimination – lack of access to the online booking and reservation system of DB (www.bahn.de):

Very astutely, after competition was allowed in regional & intercity train travel, Deutsche Bahn began a re-branding campaign referring to itself as “Bahn”: This word means “Train” in English. By doing so, DB implies that it itself represents the rail system in Germany. HKX vociferously disagrees with this proposition.

DB was clever to reserve itself the website [www.bahn.de](http://www.bahn.de), despite “Bahn” indeed being a more generic word. It has now become one of the top 10 URLs used by German consumers. HKX also understand itself as a “Bahn” (i.e. a “train”), but we have been refused the opportunity to show our prices here, sell tickets or at the very least provide a link to our booking engine.

Yes, our HKX brand may (in the meantime) be somewhat well known in the cities that we serve. But for potential consumers in nearby cities (or from other parts of the country) that may not have heard of HKX before, they are not informed our competitive offering on [www.bahn.de](http://www.bahn.de)

Bizarrely, HKX arrival & departure times are indeed shown on [www.bahn.de](http://www.bahn.de)! This is due to a court case eight years ago, where DB was forced to show departure times of other train

providers. However, DB Sales (owner of [www.bahn.de](http://www.bahn.de)) has added the description “KeinVerkaufmöglich” (In English: “Ticket sales not possible”) to our trains, as if we were some kind of “exclusive” train service, not available to standard users. This hardly encourages our sales! Of course, the prices of sister company DB Fernverkehr (i.e. DB long distance trains) are shown WITH all of their prices! In addition, one more convenient click after that, and the customer is quickly inside the DB booking engine....

We ask ourselves – if DB’s Sales division argues that the website [www.bahn.de](http://www.bahn.de) is its own “private” possession and does not to be regulated, why did the courts force it to include all train departure & arrival time information back in 2004? That is a contradiction.

*Precisely because* German consumers regards it as the authoritative website on domestic rail travel (based on DB’s long history as state-owned rail operator) it is a **huge disadvantage** NOT to have our prices listed there (and they are mostly cheaper)

Compare this to Britain, where it was mandated that every operator (including Grand Central) can be sold on the neutral platform National Rail Enquiries [www.nationalrail.co.uk](http://www.nationalrail.co.uk) as well as on each other’s websites – with all of the prices

Compared to Britain, Germany has no “3<sup>rd</sup> party” railway comparison websites such as RedSpottedHanky or TheTrainLine. With the market still so heavily dominated by just one player (DB), it is no wonder that nothing has emerged to rival DB’s own website (i.e. [bahn.de](http://bahn.de))

In our view, because of its dominant market position and having such a generic name, [www.bahn.de](http://www.bahn.de) should be regulated, loosened from the tentacles of DB and show equal information (i.e. the times & prices of all rail operators)

Non-discriminatory access to information systems that benefit the passenger is something legislation should have provided, but this is unfortunately not the case in Germany!

Discrimination – lack of through (integrated)ticketing:

Through fares are mandated by European law. Please see Article 9 of Regulation 1371/2007.

HKX explicitly wants to offer through fares, so that somebody can use HKX when traveling between Hamburg and Bonn, or Cologne and Kiel (where a major part of the journey could be on HKX).Why?

This way, HKX can be part of a network, which is critical for our financial success but also for the convenience of the consumer. This is why railway law mandates through fares, which DB simply resists

Instead, customers have to go the inconvenience of buying 2 separate tickets.

Currently, because of HKX’s competitive pricing structure, it is mostly cheaper for the customer to buy 2 tickets when travelling from Osnabrück to Frankfurt. However, DB ticket



offices and ticket machines will never alert a customer to this – the customer simply has to “find out himself” that mixing train operators (i.e. HKX & DB) is cheaper.

The problem is that the DB train operators (and not an independent regulator) own the German anytime fare. DB inherited the right to run a network from its predecessor, German State Railways, and refuse to let anyone else share this advantage.

HKX also wants to offer through fares on to local destinations, e.g. Cologne to Hamburg and then on to one of Hamburg’s suburbs. DB resists this too because its regional subsidiary “DB Regio” claim it would lead to “massive financial disadvantages” for it and its sister company, DB Fernverkehr (i.e. the Long Distance Trains division of DB). This allegedly would be “contrary to the spirit of competition”.

In other words, newcomers should go to the huge expense of building up their own network, whereas DB inherited theirs. It would take HKX years to build up a rival network to DB.

Quite what “massive financial disadvantages” a company such as DB (with 80% market share in regional travel and 99% market share in domestic long distance travel) would incur was not specified. In the opinion of HKX, their refusal to provide through ticketing is “contrary to the spirit of competition”. In addition, DB Regio’s stance is contrary to European law (see Article 9 of Regulation 1371/2007).

Be warned – the UK Association of Train Operators (ATOC) has informed us that DB is lobbying hard to remove requirements for integrated ticketing, so that only it can offer a network connections.

And it gets worse. Because DB simply ignores Article 9, Hamburg-Köln-Express has attempted to form some kind of through ticketing with regional rail operators that are not part of DB’s regional subsidiary “DB Regio”. There are quite a few of these in the regions that we serve. In other words, Hamburg-Köln-Express has gone to the huge effort or trying to set up our own network

HKX applied to do through ticketing with NOB, a (private) regional train operator in the North of Germany. However, Because DB Regio owns the regional tariff (i.e. the regional anytime fare), Hamburg-Köln-Express and NOB had to apply to our competitor DB Regio in order to be granted permission to so introduce integrated ticketing. DB Regio refused.

In other words, HKX simply cannot win. DB insists that HKX should form its network and then refuses when we apply to do so. It is one thing for 2 willing partners – HKX and NOB – to have to “apply” in order to form a through ticketing product. In many other industries, such “applications” are unnecessary. Does a department store need to apply every time that it sells a new kind of suit? Of course not

But it is quite another thing that we have to apply to our competitor DB for permission to do so. In fact, this is extremely anti-competitive(!)

Once again, it must be mentioned that DB's open access subsidiary in the UK, Grand Central, can sell through fares to all stations in the UK, regardless of whether long distance or local stations - regardless whether Manchester Piccadilly or Surbiton. Thanks to legislation in the UK, every rail operator (however large or small) can offer through fares  
Discrimination – HKX obliged to inform DB of its prices before going public:

It gets even worse. Because of DB's history as the state operator, it is still the case that all non-incumbent operators are required by German Railway Law to publish their fares 4 weeks before launching them in a special internal railway publication called the TVA

The TVA is a special directory run by our competitor, DB Long Distance trains

It is a similar situation to Easyjet having to send its fares to British Airways 4 weeks before launching them. What could British Airways do with this advanced tip-off of their competitor's pricing strategy?

It beggars belief that such a process still exists in German long-distance passenger rail

#### Discrimination – Lack of separation between infrastructure company & train operator:

Allegedly, the infrastructure company "DB Netz" is neutral. In reality, it is part of an integrated structure – together with DB's train operating companies.

Integrated structures make it much more difficult to enforce the separation of accounts between infrastructure management and transport operations, especially seeing as both parts of the structure are dominant monopolies.

Regulators find it difficult to trace financial flows between the different subsidiaries and the holding company in an integrated structure. Accountancy tools allow for the artificial increase or decrease of the results of the respective subsidiaries. Cross-subsidising practices and transfers of infrastructure funds to competitive activities are a serious market entry barrier for new operators that do not have the possibility to rely on such funds. Cross-subsidising practises may also imply State aid granted to DB train operators that compete with HKX.

Allow us to give a few concrete examples.

Recently, DB Netz announced a new track charges that discriminated against shorter longer distance trains, increasing our access fee by 135%. Chief victim of this new pricing strategy was.... newcomer HKX with shorter trains. At the same time, DB Long Distance trains saved money from this policy change

Last Friday 2<sup>nd</sup> August 2013, a DB commuter train broke down near Cologne. All trains were delayed passing the spot, including HKX. However, DB's train operators have special access to the internal station signage system of the DB infrastructure company (which has been refused to HKX, because we are an external operator). They could directly issue

messages to their customers stranded at Dusseldorf Central Station. HKX could not. Afterwards, our customers complained (e.g. on our Facebook site) that DB customers were so better looked after, despite a DB train having caused the entire incident in the first place! So much for the EU's intention of providing "Non-discriminatory access to information systems that benefit the passenger"

The German version of OFT (called the "Bundesnetzagentur" or Federal Network Oversight Agency) is a government agency put in place to oversee the state monopolies. In the case of DB-Netz, the Bundesnetzagentur has no power to challenge the prices – DB Netz can charge rail operators whatever it likes, providing access charges are equal to all train operators.

HKX and the Bundesnetzagentur however have no way of knowing whether DB Netz gives some kind of volume discount to DB train operators. After all, it has been proven that DB's energy provider "DB Energie" has done exactly this

Because of their immense market share, DB train operators are the only ones able to take advantage of volume discounts

Furthermore, the internal financials of the DB holding company are so murky that there is no way of being conclusively sure that state taxpayer funding for infrastructure provider does not cross-subsidize train operators that compete with HKX.

Last but not least, when it is convenient to DB, all of a sudden it emphasizes the separation between infrastructure agency and rail operator. In the last three weeks, there have been three cases where the infrastructure company closed a route because of a storm and a suicide. Not having a huge fleet of trains in all locations at all times, we were forced to send some stranded passengers with a DB train. Did we have to pay for the DB train tickets – of course we did(!) Then, due to storms and suicides being something that it was not directly responsible, DB's infrastructure company refused to refund us the DB train tickets.

We have consistently asked DB trains for some kind of mutual "pickup" of our customers only in case of emergencies. Of course, DB train operators do not need HKX as much as we need them.

They know that by refusing such an agreement, we then have to pay normal ticket price when sending our stranded passengers, which earns them money and costs us a great deal

Sadly, both DB's infrastructure agency and DB train operators are answerable to the same bosses at DB's holding company. Disciplinary action cannot be taken by "Bundesnetzagentur" or Federal Network Oversight Agency, instead only by the DB holding company.

This leads to conflicts of interests. For example, DB's regional transport subsidiary "DB Regio" recently refused through ticketing to HKX. Months later, DB Regio's CEO Mr. Frank

Sennhenn became CEO of DB's infrastructure agency, which is meant to treat HKX neutrally. There was no grace period between changing companies such as you might have expected. Instead, he went from one company straight to the other

We strongly recommend separating infrastructure and operating companies because in practice DB is clearly not capable of treating non-incumbent rail operators in a fair manner.

#### Discrimination – less favourable financing conditions

As a state-owned company, all DB subsidiaries – both the infrastructure agency and the train operators – benefit from favourable financing conditions. The German government is wealthy and is unlikely to let DB ever go bankrupt – every private bank knows this. Hence the credit rating of all DB subsidiaries is phenomenal

HKX does not receive the same favourable rates of interest when borrowing money

#### Discrimination – Lack of access to rolling stock

DB Fernverkehr (DB long distance trains) routinely chides HKX for having old stock and sometimes borrowing the coaches of regional operators (e.g. the NOB). In its recent 2013 competition review, it brought this issue to the front and questioned the ability of HKX to offer a decent product.

Despite the fact that HKX is able to afford more coaches, there is no functioning 2<sup>nd</sup> hand coach market in Germany

There are only around 32 coaches licensed to operate at long distance speeds within Germany that do not belong to DB..... and HKX has around 26 of them. Otherwise, we have to pay expensive premiums for the handful of available coaches (licensed to operate in Germany) from neighbouring countries such as Austria and Belgium.

Our ability to offer a decent product, our ability to grow and other competitors' abilities to enter the German long distance market are also heavily impeded by this. It is a similar situation with locomotives

But who is REALLY to blame for this situation? Deutsche Bahn has hundreds of 2<sup>nd</sup> hand long distance coaches sitting in sidings in the German city of Hamm in Westphalia.

These coaches were purchased when DB was the national operator and are long written off.

Instead their owner DB Fernverkehr (i.e. DB Long Distance trains) would rather sell them abroad or scrap them than so that potential domestic competitors cannot get their hands on them

They are hidden behind tall trees in a yard not accessible to HKX, patrolled by DB security services. Here are some photos that were taken from behind the bushes:



Refitting these DB long distance coaches would only cost around €150,000 rather than current refurbishment of foreign coaches that can cost 3-4 times as much. They are of good quality and enable us to cure our extreme lack of capacity

HKX believes that the creation of a rolling stock leasing company to improve access to incumbent rolling stock is the only solution, but this is not foreseen at all in the 4<sup>th</sup> Railway Package.

As a final note, foreign operators such as Hungarian State railways that they cannot resell to us coaches they acquired from DB because there were clauses in the contract preventing them from doing so. But we have no proof of this

Indeed, the German monopolies commission launched a report stating that one of the barriers to competition was the availability of suitable rolling stock. Well, HKX suggests all the coaches just sitting around in Hamm as a solution!

#### Discrimination – extremely high prices paid to use DB stations

DB Stations & Service (a subsidiary of DB Netz) – which runs the stations - has a 22% profit margin. Nevertheless, the Federal Network Oversight (“Bundesnetzagentur”) or has never been mandated to challenge these extortionate costs.

How is a newcomer that wants to offer a discounted product appealing to a wider range of consumers (like Ryanair in the airline industry) able to afford these high fees?

Ryanair can make customers walk up steps into the aircraft in order to save airport costs, but HKX has no comparable option. We have to pass on DB Stations & Service astronomical prices to our consumer. As an integrated holding company, DB does not have this concern – the high prices that its train operators pay and passed on as profit to the infrastructure company.

#### Conclusion:

The British investor who puts money into a German long distance passenger rail company faces numerous barriers to entry. In the meantime, state-owned DB can use its vast low interest funds to invest in British rail firms and enjoy competitive advantages non-existent in Germany. Barriers to entry for intercity operators in Britain are much, much lower.

This is not a trivial issue – starting a new intercity operator is a hugely capital intensive affair – long distance trains are expensive! It is hugely inconvenient for HKX to face barriers to entry solely caused by the incumbent operator,

Instead, DB likes to define itself what competition should consist of (i.e. merely giving access to its tracks). Any business person or regulator should clearly realize that this is clearly **not enough**. **Commercially viable conditions do not exist**

HKX argues that sales infrastructure *is* an ***essential facility*** for passenger rail operators. If this were not the case, DB itself would not have such huge exposure in the stations (its dominant brand, ticket offices and ticket machines are everywhere to be seen).

All hurdles to effective competition are deliberately created by DB!

Without DB's barriers, HKX would earn around €10million more revenue per year – we would be profitable enough to entice others to enter the market too.

DB's main priority is that efficient, publicly traded UK transport operators such as First, Go-Ahead & Stagecoach are so put off by entering the lucrative €4 billion domestic long distance passenger rail market. If HKX fails – and EU action is doing little to help us – then other competitors will be put off for decades to come. In the meantime, DB will have bought up much of the rest of Europe and be well on the way to a pan-European monopoly

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The various railway packages of the EU Commission - while undoubtedly having the right intentions – are each time watered down by the lobbying efforts of the incumbents

Even in the 4<sup>th</sup> Railway Package, crucial reforms that would develop a strong and competitive railway industry are not even mentioned.

There is a lack of regulation, obscenely high barriers to entry and a failure of the market. Last but not least, the incumbent monopolies are not overseen sufficiently.

There are huge disparities between those Member States that have opened their markets, and those that have not.

The sad irony is that those member states that have opened their markets fall prey to incumbents from countries that have not – look at DB's vast expansion into the UK over the past few years

It is an unfair situation that state-owned incumbents appear to simply ignore the law, for example DB's complete disregard for Article 9 of Regulation 1371/2007.

Under these circumstances, HKX concludes that the EU approach has been less than proportionate. After all, playing fair has proven not to work

One of the redeeming features of the 4<sup>th</sup> Railway Package is that there are sanctions.

HKX urges the UK to follow through on these sanctions. Tough medicine (without flinching) may be the only thing that will cause DB to finally act fairly

Greatest sanction of them all would be to refuse Deutsche Bahn access to the Channel Tunnel. And quite frankly, DB does not deserve access to the Channel Tunnel

Alternatively, prevent DB's UK subsidiary Arriva from expanding further within the UK. Alternatively, prevent DB for any new acquisitions in the UK

However, if sanctions are adopted and DB is prevented from expanding in the UK; they will immediately react with a press campaign arguing how consumers in the UK will suffer due to less choice. (Regardless of the fact that German consumers have had little choice for decades – this inconvenient fact will be glossed over)

Only 2 weeks ago, an article appeared arguing how sanctions would disadvantage consumers in open markets <http://www.faz.net/aktuell/wirtschaft/wirtschaftswissen/eu-eisenbahnmarkt-wettbewerb-durch-wettbewerbsverbote-12286556.html>

If DB also successfully scuppers the possibility to introduce sanctions, there will be nothing more the EU can do prevent its domination of Europe – **Game Over for the British economic interests!**

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

Deutsche Bahn may not even be all that worried about sanctions. It knows very well that its owner, the German government, is the EU's most powerful entity and jumps to its defence.

Any sanctions could likely be watered down which would mute their effect

Furthermore – according to the 4<sup>th</sup> Railway Package - sanctions will only apply to attempts by an incumbent to enter the market directly, such as DB operating its high speed trains to London. If by contrast DB just acquires a UK-based rail operator, it can just get around the sanctions this way.

DB is active in over 100 countries around the world and is unlikely to be very intimidated.

Should sanctions be watered down, HKX recommends bilateral discussions at government level between British and German diplomats

Negotiations at a national level are likely to be more effective where the EU has failed

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries(e.g. EU-US, EU-China)?**



Due to the EU being unable to ensure the development of a strong and competitive rail industry, we see no real benefit.

If anything, the Americans have a better understanding of competition – monopolies are regulated better in the USA.

In the case of pressing for an open market in German long distance passenger rail, the UK is better advised to join forces with the American Chamber of Commerce and pressure the German government directly.

### **Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

There are huge disparities between those Member States that have opened their markets, and those that have not.

Britain is a nation of entrepreneurs. You have the companies such as First, Stagecoach, National Express and GoAhead. These are World Class companies that can easily match state-owned incumbents on a level playing field.

The opportunity is that these companies can become European giants through sheer hard work and resourcefulness

The challenge is that state-incumbents are shielding their home markets while demanding equal access in open markets

The obstacles caused by DB cost HKX at least €10 million per year. With this money, we could be profitable. If we are profitable, others (such as National Express) may enter the very lucrative German long distance rail market in Germany

It is now up to the regulator to step in. DB feels protected by its shareholder, the German government. After just one visit with Angela Merkel and the CEO of DB, Dr. Rudiger Grube, was able to torpedo parts of the 4<sup>th</sup> Railway package.

If Britain allows this kind of practice to continue, British economic interests will suffer

To conclude, the opportunities are large in number but there are numerous obstacles that could prevent them from ever reaching fruition.

# High Speed One

Response from HS1 Ltd to the Review of the Balance of EU Competences: Asylum and Immigration and Free Movement of Persons.

HS1 is the 109 kilometre high speed rail line connecting London's St Pancras International station to high-speed commuter services through Kent, and international passenger destinations in Europe such as Paris and Brussels via the Channel Tunnel.

HS1 Ltd holds a concession through to 31 December 2040 to operate, maintain and renew the railway including St Pancras International and three other stations along the route - Stratford International, Ebbsfleet International and Ashford International. HS1 is a modern, high performance, high-speed passenger rail line and is the UK's only high speed railway. It forms the UK section of the Paris-Brussels-Koln-Amsterdam-London "(PBKAL)" trans-European transport network priority project.

HS1 Ltd was concessioned in November 2010. It is now wholly owned by a consortium comprising two major global infrastructure investors-Borealis Infrastructure and Ontario Teachers' Pension Plan.

International passenger services on HS1 are currently operated by Eurostar International Ltd ("Eurostar"), predominantly servicing Paris and Brussels out of St Pancras international station. HS1 operates at world class levels of reliability, with a Moving Annual Average of less than 8 seconds delay per train from Infrastructure incidents. In addition the services have benefited from very high levels of punctuality, with Eurostar achieving over 90% punctuality (within 15 minutes of scheduled arrival times), which is significantly better than the average punctuality of airlines, estimated at approximately 81% on competing routes. International high-speed rail is a growth market across Europe, overtaking air travel on a number of major international routes, with demand stimulated by journey time improvements and increasing challenges to the air market such as environmental considerations and airport congestion. Eurostar estimate that they have an 80% market share of point to point travel between London and Paris/Brussels.

However to ensure continued growth all aspects of travel need to be smooth and efficient. This cannot be said for the border and security arrangements required at present across the EU. These are complex and time consuming.

Eurostar has been working on plans to serve 10 new cities in Europe over the next ten years. This summer it has trialled services to the south of France for example but is now being forced to make substantial capital investments in Lille station to allow for borders clearance for those services to be reintroduced on a full scale basis from 2015.

The arrangements governing train passengers in the EU are complex and depend in part on national regulations and in part on EU wide arrangements - as a single example, different member states take different views about who is responsible for checking passport on departure from the Schengen area.

In addition the physical and technical constraints on passport checking on arrival in St Pancras are significant - there up to 750 people on each Eurostar train arriving and platforms are not segregated between arrival and departures.

As well as being a constraint on Eurostar's development these issues also constrain new prospective operators - the complexity and lack of transparency in these areas, mean that it can be almost impossible for them to understand the implications for their business models.

To illustrate how negative this is for development of new services, attached is a redacted letter from Deutsche Bahn to HS1 which sets out clearly that the borders and security arrangements are one of the barriers to entry.

In summary then the implications of the current arrangements are that:

1. Customers considering travel to the EU and the UK are dissuaded - the tow visa system increases costs and complexity therefore tourism growth is likely to be restricted. In addition the extra time that the borders checks take on some services are significant - it can take up to an hour to clear a single train for example which adds 50% to a journey time from Paris or Belgium and would add 20% to the journey time from Frankfurt. Longer overall journey times make rail less competitive with air. Given the constraints on our London and the South East airport capacity this has even grater consequences for future travel across Europe; and
1. Train operators plans are complex, costly or even impossible to realise-in particular lack of clarity over processes and lack of agreement between member states about process both increase development costs and, in some cases, may prevent business case approval.

Options we have considered which might help overcome these issues are:

1. For the UK to:
  - a. Introduce a new streamlined visa application process
  - b. Develop new technology to improve speed of passport checking-in particular we envisage checking on trains as they travel through the Channel Tunnel as being the approach most likely to facilitate the development of the rail market and to meet the requirements of all member states
  - c. Request improved consistency in application of the Schengen area. This could happen in parallel with the development of new technology-neither is expected to be a swift solution but both would be beneficial.
2. For the EU to ensure improved consistency in application of the Schengen area.

Together with London First and the Home Office we are undertaking out own review of the current arrangements across a range of member states. We hope that this will allow:

1. Improved communication to prospective operators, and
2. work with other member states to remove barriers one by one

.....

January 22, 2013

Dear XXX

As a follow-up to your discussions with Wolfgang Merz and Steffen Geers and further to our phone conversation, I would like to update you on the current status of the London ICE project. As you know we were obliged to postpone the introduction of direct train services from Germany to the UK via the Channel Tunnel and are currently facing various challenges that make the start of the ICE London impossible or highly risky. Specifically these are as follows:

.....

#### **5. Requirements for check in procedures and safety**

Currently a security check-in for all passengers travelling towards the Channel Tunnel is required which would result in important and cost intensive reconstruction work in German stations to establish security zones.

#### **6. Border Control**

The process currently required with the exit and passport control of all passengers in Lille is a potential show-stopper for the project. Only the passport control upon arrival or departure in London or on the train would be feasible solution for DB. Furthermore, for technical and data protection reasons the obligation to deliver all passenger data to UK border force prior to arrival is not currently possible.

Due to the above mentioned difficulties we are currently not in the position to communicate a concrete starting date of the services. Given the various technical and commercial uncertainties, we have temporarily reduced the number of staff working on the project. Nevertheless, DB still aims to introduce direct high speed train services from mainland Europe to London once the technical and commercial obstacles have been removed. Thus the London ICE remains on DB's strategic map.

If you need any further information please do not hesitate to either contact Martijn Gilbert of Arriva in London or our project directors Silke KaulfuB and Merz in Frankfurt.

# Mofair e.V

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The opening of the rail market was an advantage for the enterprises of the UK. Arriva, National Express and nowadays Go Ahead are operating in the German railway market. This would have not been possible without liberalization through the EU. The activities of the EU together with the own experiences in the past led to better the railway infrastructure in the UK. The opening of the national rail market in the UK is one of the best in the EU. There is very less discrimination, because the railway infrastructure is separated from the operation of services.

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

Each member states tried and tries to protect its own railway undertaking and the EU has to get over many renitancies. So it needs a lot of time to reach success and a lot of compromises were made. With the 4th railway package the EU is on the right way. It seems as if the single european railway market can get completed in the next year. The liberalization has positive effects to the economic growth not only in the UK but also in the other member states.

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

Transport is very important for economic growth. Having a single market in productions and labour it is necessary to have a single european transport market. This leads to lower costs and helps to transport people and products a lot easier. The internal market is not functionable without internal transport market.

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

A minimum of social and environmental standards is necessary for a smoothly function of the internal transport market. This is the case not only in road traffic but also in rail traffic. So it is to agree with the activities in the 4th railway package to harmonise the standards in vehicles, vehicle permission and interoperability.

**Q5. What impact has EU regulation had on different stakeholders; for example, has it**

**provided the right balance between consumers and transport operators?**

The incumbent transport operators have too much lobby power. Fair competition in the railway market between the incumbents and the newcomers can help to stop the constant price rise. To ensure fair competition is the very important task of the EU.

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

We think there was no alternative. The approach to find the standards through the market would not have been successful. There would have been too many states which would have taken the bait, to get an advantage by using lower standards.

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

In the field of rail transport the mix of competences between the national and the EU level is just right.

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

We do not think that the economic and political power of the UK is so great, that it gets better conditions as the EU in a whole.

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

# National Express

## **National Express: A case study in the limitations of competition in the transport sector**

National Express (NE) has just won a €1.6 billion contract to provide the regional service RE7 between Bocholt, Cologne and Düsseldorf. It is also running coach services in the South and West of the country, under the brand City2City, and has been shortlisted in the tendering process for the renewed Berlin S-Bahn (light rail). NE is the first British company to enter the German rail market and aims to join Deutsche Bahn (the state-backed incumbent) in the top three service providers in Germany. Yet NE was quick to point out that their own and others' ability to succeed in Germany is being inhibited by an anti-competitive framework. Not only does Deutsche Bahn's monopoly on providing track infrastructure help it maintain a stronghold on passenger and freight operations, but DB is also favoured by structural conditions in **Finance, Rolling stock, Ticketing, Procurement and Energy supply**.

**Procurement & Rolling stock:** The splintering of regional procurement processes between 35 local bodies results in high entry costs to new firms. Many of these procurement bodies have their own, unique pre-qualification and approval requirements, which can cost applicants tens of thousands of Euros in compliance and take up to 44 months to complete. This diversity of standards and regimes within Germany itself also makes it very difficult for operators to sell-on their rolling stock when a contract comes to an end, so providers are left with sunk costs. In contrast to the UK where ex-British rail trains were available to lease in the 1990s and vehicles can now be rolled over between contracts, even if the operator changes, there is virtually no rolling stock leasing market in Germany. DB does not lease out its old trains to competitor companies and many public tender specifications demand new rolling stock. The result is high exit costs for companies between contracts and a lot of waste – DB dumps many of its disused trains at a storage site on the Baltic Coast. [There is a real gap in the market for rolling stock (ROSCO) companies. An opportunity for UK companies, perhaps?].

**Finance & Ticketing:** While DB can borrow cheaply to finance its investments, thanks to the surety of its Federal shareholder as a financial backstop, private companies have a hard time raising funds, especially since the crisis. Once in operation newcomers suffer financial discrimination through ticket sales structures. For distance journeys, tickets are sold through DB's subsidiary company *DB Service and Stations*. For each ticket sold DB gets 15% commission, while its competitors get only 7%. The main intercity ticketing platform is owned by DB and does not allow customers to buy tickets from its competitors.

DB also has a monopoly of information on its routes and passenger data, making it hard for a neutral alternative route planning website to become established.

**Energy:** New entrants are also penalised in access to energy, where once again DB has a monopoly on the supply. While DB can claim its offers access on equal terms, this is not the case in practice. Companies must agree a price with *DB Energy* according to their predicted need over a course of years. This involves no risk to DB, who will always have a use for the power, but presents a significant risk for newcomers or operators serving short tenders, who may be left paying for unused electricity even after their contract comes to an end. DB Energy offers a 5% discount on high volume purchases but at such a high threshold that even if all DB's competitors pooled their usage together their order still would not be large enough to qualify, hence only DB can benefit. DB has such great purchasing power among Germany's energy providers, that none dares to offer an alternative service for fear of losing DB's custom.

#### **Next steps...**

- Mr Schuster from NE Germany attended an embassy business dinner with Trade Minister Lord Green in May and UKTI is in touch with him to facilitate contact with Hitachi as a potential supplier.
- When the 35 new *Talent 2* trains NE has ordered from Bombardier Hennigsdorf are ready next year, it might be a good opportunity to hold a launch event in the embassy to publicise their presence in the market.
- British business may be interested in the gaps in the German market around ROSCO, train maintenance and alternative energy supply.
- On the policy side, as the UK develops its position on the fourth rail package, it is worth bearing in mind that the structural barriers to competition in Germany clearly go far beyond the issue of whether track management should be separated from DB's train operations. The President of *Mofair*, the German Rail alliance, said they would actually welcome more EU regulation, as this is the only way to force Germany to level the playing field for DB's competitors.



# Network Rail

Network Rail welcomes the opportunity to respond to the Department for Transport's (DfT) call for evidence on the Government's review on the balance of competences between the United Kingdom and the European Union.

## **1 Introduction**

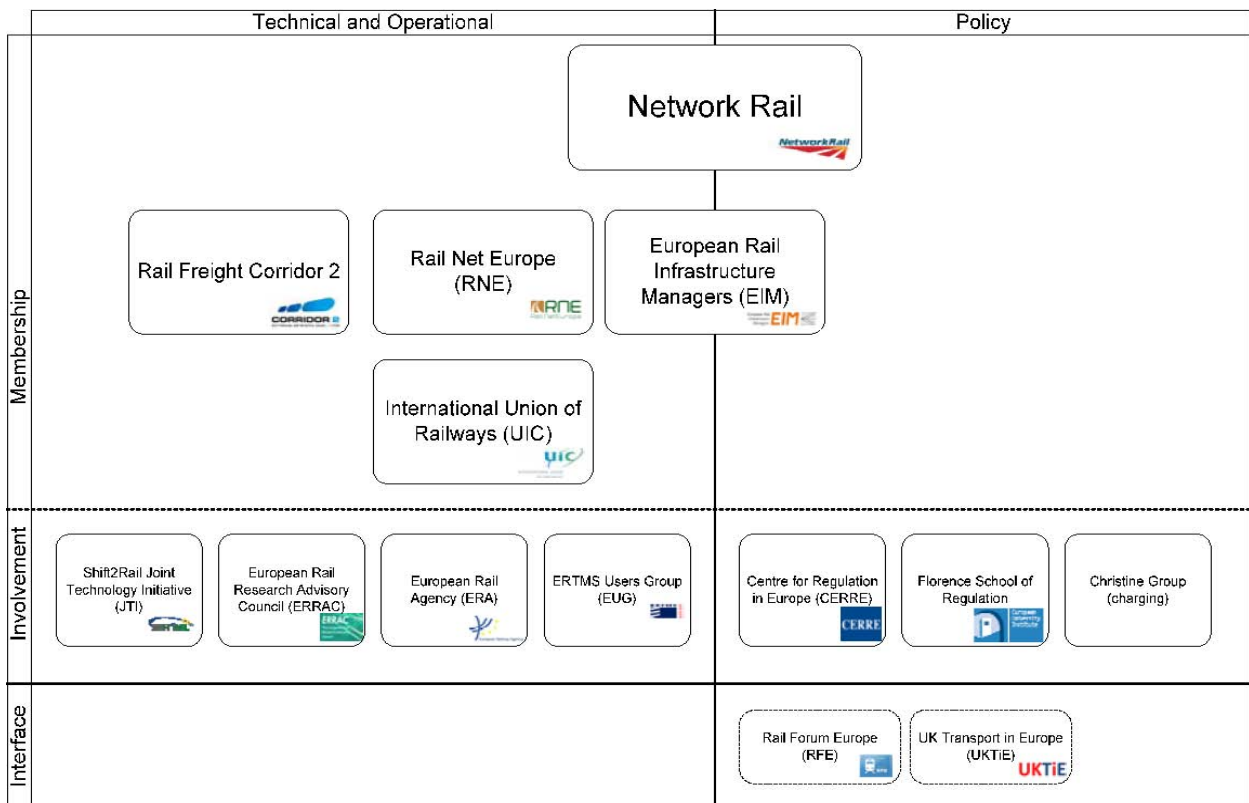
As a response to the Balance of Competences consultation, launched in June 2013, Network Rail has outlined its main interactions with European Union's (EU) principal institutions and highlighted areas where the competence is either in equilibrium or weighted in a way which is beneficial or detrimental to either the interests of the British railway sector, the UK as a whole or both.

### **1.1 Network Rail's key interfaces in Europe**

Network Rail engages with the institutions of the EU in technical, operational and policy areas on both a bilateral basis and in association with membership bodies and trade associations.

Network Rail seeks to inform the development of EU legislation through strong relationships with the European Commission, European Parliament and Council via the UK permanent representation to the EU (UKRep) and the DfT. These connections facilitate our influence on European policy and legislative proposals and support the raising of British interests on a European level.

An outline of Network Rail's interfaces with non-institutional organisations is shown below at Figure 1.



**Figure 1, Network Rail's key European interfaces**

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## Figure 1, Network Rail's key European interfaces

The majority of Network Rail's interface with the European Institutions and membership bodies focuses on technical aspects of infrastructure management and operation, most notably through the work of the European Rail Agency (ERA) via technical specifications for interoperability (TSIs).

Other areas of cooperation with non-UK infrastructure managers include bilateral benchmarking and coordination of processes and operational procedures through Rail Net Europe (RNE) and the emergent membership of Rail Freight Corridor 2 for example.

## 2 Background

Since 2001 and the first comprehensive package of rail legislation, there have been approximately 20 Directives and Regulations specifically affecting rail. These have focused on the liberalisation of the market through opening cross-border access rights, separating essential services such as capacity allocation and charging from operators, improving regulation, and promoting interoperability.

Currently there are three pieces of legislation that are at the forefront: the Fourth Railway Package seeking to further open the markets and enhance interoperability; the TEN-T

Regulations promoting the development of core routes on the European network; and the Connecting Europe Facility (CEF) promoting key corridors and providing funding for the enhancement of the network as part of the TEN-T Requirements.

Other policies and legislative initiatives, not specifically directed at the rail industry, can also have a significant impact on Network Rail and the sector. Current issues under consideration in Brussels include: changes to rules on public procurement in the utilities sector; changes to Environmental Impact Assessments (EIAs); provisions for the reduction of noise; transparency guidelines; open access to telecommunications networks; cyber security and state aid reform all of which are currently being considered.

### **3 Consultation Questions**

#### **3.1 What are the advantages and disadvantages to the UK of EU action in the field of transport?**

##### **3.1.1 Policy**

Coordinated EU action supports the principle of a single European transport area which for rail means seamless cross-border travel benefitting both passengers and freight. Standardisation for example not only supports the free movement of goods and people, but also supports the lowering of costs in the railway industry as suppliers can develop and deliver single types of components.

EU policy has focussed on the outcomes of free movement of goods and people through standardisation, interoperability and open, liberalised markets.

The principles of creating policy and legislating for 28 Member States inevitably create difficulties for any rail-specific proposals and Network Rail has asked EU institutions to provide sufficient flexibility in drafting to reflect necessary national differences whilst delivering the aims of a single market.

Currently EU policy on major rail issues supports the mandate and aims of Network Rail; consequently there is not any pronounced imbalance of the balance of competences. If the alignment of corporate, national and EU policies were to change we would want to seek assurances that the balance of competences allowed a Member State to take a flexible approach.

#### **Example: The Fourth Railway Package**

In March 2011 the EC set out its policy plans for transport in its White Paper, Roadmap to a Single European Rail Area building on the 50-year vision outlined in the 2010 White Paper. The aims are aligned to the principles of opening markets and reducing cross-border barriers. As the White Paper aligns with Network Rail's objectives of operating in a

liberalised market the existing policy platform of the Commission is not of immediate concern.

For example, Network Rail broadly welcomes the provisions in the proposed Fourth Railway Package, issued on this policy platform, as it will support growth, enable further Europe-wide competition, and encourage new market entrants. We are however concerned about some unintended consequences of the proposed legislation particularly where, in trying to prevent discriminatory behaviours, IMs and RUs operating in mature, liberalised markets are prevented from cooperating to improve performance.

Whereas Network Rail may agree with the target outcomes of proposed legislation, often the detail and the text is very prescriptive meaning that exact processes and practices are fixed so as to address those Member States who are not applying the spirit of the legislation. This is the case where, in the Fourth Railway Package, proposed measures to restrict the activities of holding companies in other Member States may cause difficulties for Joint Control Centres and Deep Alliances in the UK.

Although the policy and subsequent legislative proposals for TEN-T will require the British railway infrastructure to be upgraded in order to meet the prescribed standards, there is funding available from the EU to support this.

DG MOVE has had a policy of funding transport infrastructure upgrades as part of its policy to create a single transport market.

In the period 2007 to 2013 €8 billion has been attributed by the EU to the TEN-T programme in order to support studies or works which contribute to the TEN-T programme objectives such as improving cross-border links, removing bottlenecks and increasing capacity. This money is awarded and distributed by the TEN-T Agency who initiates calls for funding reflecting current objectives and priorities of the European Commission.

### **Example: TEN-T Funding**

Over the past four years Network Rail has been successful in securing funding from the TEN-T Agency supporting major capital projects. In this period Network Rail has been allocated over €86m from the Agency.

This funding has a significant benefit on the projects which have been beneficiaries particularly in the area of freight enhancements and electrification which has seen the bulk of the UK rail awards.

It is the other policies and legislative measures that are not specifically directed at the rail industries which tend to cause the imbalances. Legislation of this nature has an impact on those in the transport industry but there is often little consideration given to the unique market we operate in often creating unintended consequences.

### **Example: Land Transport Security**

The European Commission issued a working paper making the case for common pan-European standards on security for land transport. DfT, Network Rail and ATOC felt that beyond encouraging co-operation and information sharing there was little or no benefit from European regulations on this.

For the UK, which has more experience of combating terrorism than many of the other Member States, there is already a risk-based approach that is appropriate and focuses on those parts of the network that face the greatest threat. Standardising across Europe was felt to have the potential to raise costs protecting low-risk parts of the network, and more importantly, to have a levelling-down effect on the high risk elements that we most actively protect.

### **Example: EU Directive on Network and Information Security**

A Directive on network and information security has been proposed by the Commission to improve cyber security. Network Rail feels strongly that the proposals will both raise compliance costs and have the impact of undermining our security by requiring the reporting of more incidents to more parties.

In response to the UK Government's consultation, we went as far as to say that "we expect the frequency and seriousness of incidents to increase as a result of the Directive".

## **3.2 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

### **3.2.1 Delegated legislation**

Legislative proposals in the area of transport are often drafted with provisions for delegated legislation- a mechanism increasingly favoured by the Commission. This may be used in the near future to set out a number of requirements for industry processes (e.g. methods for calculating access charges or reporting performance) with significant reduced opportunities for the UK and Network Rail to influence eventual requirements.

Delegated legislation should either be used more sparingly in secondary legislation or the process should be reinforced so there are more opportunities for industry stakeholders to shape the proposals.

### **Example: First Railway Package**

In order to promote international rail services the Commission would like to more closely align track access charging in all Member States. This was proposed in the First Railway

Package Recast (2012/34/EU, Article 31) where it was agreed that the “Commission shall adopt measures setting out the modalities for the calculation of the cost that is directly incurred as a result of operating the train”. These measures will be adopted through delegated legislation.

Where this procedure is used, Member States and stakeholders are given a very limited opportunity to input before a framework is given legal force. Whereas we support the principle of cross-border standardisation in order to promote the free movement of goods and services and the opening of the market, we would like to see such important issues have longer to discuss with a stronger balance of power in favour of Member States.

### **3.2.2 Transposition**

There is an opportunity for Member States to redress any imbalance of power and any lack of clarity in the secondary legislative process through transposition into national law.

Currently the Government operates a policy of ‘copy-out’ for transposition meaning that opportunities to interpret EU legislation, and take advantage of flexibility in the texts, are not actively sought by the UK. Although transposition is a last-resort mechanism available to redress any anomalies which may upset the balance we believe it is a process which should receive a lot more emphasis and be taken as an opportunity to round some of the potentially sharp edges of European legislation.

Whereas we Network Rail would not advocate ‘gold-plating’ of EU legislation we would like to see greater emphasis and resources put onto the process of transposition.

### **3.2.3 Implementation**

The Commission sometimes proposes more secondary legislation in order to force compliance rather than using infraction or other sanctions. This means that processes and practices can become overly-bureaucratic and prescriptive. We would recommend that the Commission focuses on enforcement rather than new law.

#### **Example: First Railway Package**

The First Railway Package (2001/14/EC) introduced the principles of liberalisation through separation. The commission does not believe that Member States have been applying the spirit of the legislation and have passed further measures in the form of the first Package Recast (2012/34/EU) and proposals in the Fourth Railway Package.

In order to ensure compliance, the Commission have proposed more stringent measures concerning cooperation between infrastructure managers and operators for example. This means that mature, liberalised markets who operate open and transparent cooperation, with the aim of improving performance, may be hindered in order to tackle those Member States not complying with basic principles.

# Office of Rail Regulation (ORR)

## Summary:

The Office of Rail Regulation (ORR) is the independent safety and economic regulator for Britain's railways. ORR's legal functions come from both UK and EU legislation, principally the Railways Acts 1993 and 2005, the Health and Safety at Work Act 1974 and competition law. These functions include licensing all railway asset operators, setting track access charges, access arrangements with train operating companies, exercising competition and consumer law powers and enforcing health and safety legislation across the rail industry. EU legislation therefore has a significant impact on our regulatory powers and scope.

Our contribution to the BoC review is from a regulatory perspective. We do not attempt to answer on the part of all rail industry stakeholders, but instead address the extent to which EU action helps (or hinders) ORR in achieving its five strategic objectives.

These strategic objectives are:

- Drive for a safer railway
- Support a better service for customers
- Secure value for money from the railway, for users and funders
- Promote an increasingly dynamic and commercially sustainable sector
- Be a high-performing regulator

The EU vision for rail, as laid out in the 2011 White Paper, is compatible with our strategic objectives.

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.

The introduction of the European rail packages has been strategically positive for the UK rail freight and passenger market, contributing to a more liberalised sector where rail traffic

has grown its market share (passenger numbers up 45% in the last decade, and rail freight has grown by around 60% in the last 15 years). The introduction of common technical standards has also contributed to optimising the supply market in GB, allowing the rail industry to take advantage of wider and more innovative technical solutions.

EU legislative proposals for rail should focus on outcomes, and should be accompanied by robust impact assessments and cost benefit analysis. The EU should set the direction, seek to establish success-measures (the “what”), and require proper regulatory oversight, while allowing Member States discretion and flexibility in the method of achieving this (the “how”). There is a risk that excessively prescriptive legislation will not do justice to the genuine differences in the size and shape of rail markets, or the character of Member State legal systems.

ORR has some concerns over the pace of EU legislation. Where progress in the sector is slow, this is not necessarily due to insufficient legislation, but may be due to inadequate implementation in Member States of the existing law. The Commission should focus on ensuring proper implementation (and enforcement) of existing law, before adding to it. This would ensure consistent application of EU rules and improve legal certainty for stakeholders and potential investors.

European legislation has led to the creation of National Safety Authorities (NSAs) and Regulatory Bodies (RBs) throughout Europe. ORR has been involved in European forums for both NSAs (the International Liaison Group of Government Railway Inspectorates) and RBs (Independent Regulators’ Group – Rail).

These groups, with ORR playing a central role, have made a positive contribution to the European rail industry, including the UK, by sharing best practice, developing practical solutions to regulatory issues, and improving consistency.

### **What are the advantages and disadvantages to the UK of EU action in the field of rail?**

#### Advantages

##### Regulatory

- As a result of EU legislation, all member states are now required to have independent Regulatory Bodies and independent National Safety Authorities. Through discussion and cooperation with these institutions, we have had success in gradually harmonising regulatory principles and sharing best practice. This has brought, and will continue to



- In the UK there are proposals for industry reform along 'system operator' lines, with infrastructure managers helping to coordinate investment decisions and timetabling, improving the efficiency of capacity allocation and operations to make the most efficient use of the network. In the long-term, the EU has also advocated a 'system-operator' approach to infrastructure management. The UK must be ready to influence this emerging EU strategy, but the similarity in approach will present opportunities for the UK to benchmark infrastructure management and learn from others.

### Market opening

- The gradual liberalisation of European rail markets, under successive railway packages, will present opportunities for UK-based operators to win business abroad. For example, National Express recently won two 15-year contracts in Germany.
- Conversely, market opening has brought an increased number of other EU Member State railway undertakings that are willing to compete for business on the UK network. The increased pressure of competition will bring service quality and value-for-money benefits to UK taxpayers and passengers.

### Interoperability & technical harmonisation:

- Harmonisation of technical standards has the potential to diminish the bespoke requirements that have attracted a premium to new rolling stock and equipment in the UK (historically 30% more expensive than elsewhere in EU). Interoperability will also encourage ROSCO investment in new rolling stock, as the potential size of their customer base increases.
- The development of technical specifications of interoperability (TSIs) will also facilitate cross-border traffic. This has been seen in the Inter-Governmental Commission's decision to allow Deutsche Bahn trains to operate through the Channel Tunnel, a decision that is predicted to increase the tunnel passenger numbers by 3m per annum.

### Disadvantages

#### Regulatory

- The gap between UK law and EU law is not always fully understood. There is a risk that tried-and-trusted UK approaches to both safety and market regulation (eg: Health and Safety at Work Act; model access contracts) do not keep up with the evolution of European legislation. This risk is currently being managed, but the potential for increased legal uncertainty may over time deter investment, or carry an increased risk of infraction proceedings.

## Market opening

- EU legislation is often seeking to harmonise markets that are not yet liberalised. This may in practice inhibit the cooperative working, benefit-sharing and alliances that characterise the mature liberalised market in the UK.

## Interoperability & technical harmonisation

- The costs of technical upgrades and TSI specifications may not be matched by their benefits. Rigorous impact assessments and the application of better regulation principles are vital. For example, the corridor approach to TEN-T funding and freight networks may mandate expensive upgrades on routes that do not justify them in terms of traffic usage.
- Legislation that is not specific to rail may have unforeseen implications for the rail sector. For example, the Non-Road-Mobile-Machinery directive on emissions standards( see Directives 2004/26/EC and 97/68/E) included rail within its scope. This has resulted in restrictions on the specifications of new locomotive engines, with a cost and administrative burden for manufacturers and customers.

## **To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

- The European internal market for rail is not as advanced as other transport sectors, particularly air and road. National 'incumbent' operators are still dominant across much of European rail market. However, the direction of travel is clear, and EU action has brought more competition and cross-border market activity, with an increase in cross-border traffic and increased competition for contracts.
- The UK rail market is more liberalised than others: we have seen strong growth in passenger numbers, unlike many other Member States. This suggests that the EU move towards liberalised model may bring growth benefits.
- UK operators are competing for (and winning) business on the continent, and vice-versa. This implies, on the one hand, increased value-potential for investment in UK-based operators, and on the other, better value and services for UK customers and taxpayers where competitors from other member states have won contracts in the UK.
- Technical Specifications for Interoperability, and the steady harmonisation they have brought, have resulted in a widening of the supply market. The UK has helped to ensure that these specifications do not serve to discriminate against non-EU

manufacturers (eg: Hitachi manufacture of European Rail Traffic Management System (ERTMS) components).

**To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole.**

- The EU internal market is about the free movement of goods, capital, people and services. Where the internal market for rail is inefficient, this may create barriers to trade and distortions in competition – particularly in sectors that rely more upon rail (eg: heavy freight, passenger commuting).
- The TEN-T approach to infrastructure investment has been successful in prioritising funds for cross-border links and bottlenecks, areas that may not have been prioritised under Member State spending plans. The UK has benefited from EU development funding, for example at the rail terminal in Felixstowe port, and Network Rail has applied for TEN-T funding on other projects including electrification and freight capacity enhancements.

**To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

- A common understanding of safety, and how it should be achieved, is important in ensuring the proper functioning of the internal rail market. For example, operators and infrastructure managers require assurance that cross-border rolling stock is being kept and operated safely. EU action (on Safety Management Systems, Common Safety Targets and Common Safety Methods) has been helpful in this respect, although there is further work to be done to realise the full benefits of harmonisation.
- ORR works with other EU regulators to help deliver sensible safety regulation and a common European approach. This allows trains to run through the Channel Tunnel to British and European destinations safely, and allows trains built in one country to operate in another.
- The rail sector fell within the scope of the European directive on Non-Road Mobile Machinery emissions. This has resulted in restrictions on the specifications of new locomotive engines, with a cost and administrative burden for manufacturers and customers.

**What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

- A harmonised approach to passenger rights, across different sectors, has improved certainty for UK passengers travelling abroad.
- Unintended consequences: The cross-modal approach to legislation can carry disproportionate implications, including procedural confusion and unjustified cost, in areas beyond the intention of the law. For example, the wholesale application of passenger-rights legislation to areas of the rail sector outside the national network (eg: London underground, heritage) may not be justified.

**The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK**

- ORR has some concerns over the pace of legislation. Where progress in the sector is slow, this is not necessarily due to insufficient legislation, but may be due to inadequate or non-implementation of the existing EU law. The Commission should focus on ensuring proper implementation (and enforcement) of existing law, before adding to it. This would improve legal certainty for stakeholders and potential investors.

**To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

- There is a risk that prescriptive legislation will not do justice to the genuine differences in size and shape of rail markets, or the character of Member State legal systems. The EU should seek to set the direction and establish success-measures (the “what”), while allowing Member States discretion and flexibility in the method of achieving this (the “how”). Coupled with strong, regulatory oversight, this should help ensure that objectives are achieved in the best way.

**What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (eg: ICAO or IMO) or with third countries (eg: EU-US, EU-China).**

- The EU is a signatory to COTIF which established the Intergovernmental Organisation for International Carriage by Rail (OTIF) and has members from Europe, Africa and the Middle East applying the uniform law of COTIF. Our voice in this forum is amplified, and we would have less influence on our own.

- UK must monitor the risk, and act where appropriate, to ensure that non-EU suppliers are not shut out of EU market (eg: Hitachi for production of ERTMS).

**What challenges or opportunities are there for the UK in further EU action on transport**

- Some MEPs and industry stakeholders have suggested an EU-wide Regulatory Body for rail. There is a risk that this would bring an additional layer of cost and bureaucracy, and would struggle to do justice to the diversity in member state rail markets and legal systems. We believe that cooperation between national Regulatory Bodies is the best way of realising the tangible benefits of harmonised regulation.

# Passenger Focus and London TravelWatch

The following comments are submitted on behalf of Passenger Focus and London TravelWatch, the two statutory representative bodies for rail passengers (other than in Northern Ireland).

They relate primarily to the **rail safety** elements of the EU's competence. Jointly or separately, Passenger Focus and London TravelWatch may also comment on aspects of the EU's role in relation to matters other than safety, and to modes of transport other than rail which also fall within their remits (i.e. bus, coach and tram).

Passenger Focus and London TravelWatch have no remit in relation to freight transport.

They acknowledge, however, that since most main line rail infrastructure (including the Channel Tunnel, the only fixed rail link between Britain and the mainland of Europe) is used jointly by both passenger and freight trains, there is necessarily some commonality in policies which encompass both, e.g. in relation to technical and operational standards.

## **1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The key elements of the rail safety regulatory regime imposed by the EU's Rail Safety Directive are largely modelled on the structure put in place in Britain in the 1990s or following the Cullen/Uff inquiry in 2000: i.e. an independent safety regulator with enforcement powers, an independent accident investigatory body, operator safety licensing, common industry-led safety standards and operating procedures, etc. Although some changes to domestic legislation were necessary to give effect to the directive, they did not alter the fundamental characteristics of the regime. If (for example) a future British government decided to reestablish a single vertically-integrated rail operator on the model of BR, this might be in conflict with other EU requirements but it is unlikely that the safety regime would be greatly altered. So the short answer to this question is that EU action has probably neither helped nor hindered the advance of rail safety in Britain to any appreciable degree.

## **2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

Britain's domestic train-building industry has been in steep decline in recent years, because exports (other than of components) have virtually creased while a large part of the domestic market has been captured by foreign suppliers. But these have been Japanese as well as French and German, so it is difficult to tell to what extent this is a direct consequence of EU membership. The inability or unwillingness of British governments to protect domestic manufacturers, or to prevent their takeover by foreign interests, has been a key factor. But this has had no clear impact on safety, since all manufacturers are required to conform to the same basic technical standards.

## **3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

This would only be of relevance to rail safety if lower safety standards in some countries gave them a competitive advantage. This would be hard to prove, because poor safety standards tend to be associated with operational inefficiency and technical obsolescence, which may drive up costs.

**4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Taken in isolation, common standards and methods are not necessary simply to deliver safety. But in practice, safety assurance is usually an inherent element in the common technical standards and operating procedures which are necessary to facilitate the growth of a trans-European rail network. So any safety benefits are a spin-off from policies aimed at delivering wider economic objectives. Whether these objectives are desirable in themselves depends on the view one takes as to the pros and cons of protecting the British economy from (or exposing it to) EU-wide economic forces.

**5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

Although critics of the rail industry sometimes accuse it of putting profits before safety, empirical evidence of this is hard to find, because the industry as a whole has been on an improving safety trajectory for many years, and there has been little or no evidence of a link between changing ownership structures and safety outcomes. On the whole, poor safety standards tend to be costly, as there is little profit to be made from injuring either one's employees or one's consumers. So in relation to safety, the interests of consumers and operators are not normally in tension, and the division implied by the question seldom arises.

**6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The EU could, presumably, limit itself to a purely advisory and co-ordinating role, with international standard setting conducted on an intergovernmental basis through bilateral or multilateral agreements, or under other auspices such as UNECE, as was the case prior to the EU's creation. Such action is not necessary purely to deliver safety outcomes, but is necessary to the extent that the development of cross-border operation of rail services is seen as desirable for wider reasons of economic policy. Advocates of EU intervention tend to argue that such agreements were not always adequate to the task, and that this hampered the growth of international rail traffic relative to that of other transport modes.

Others would claim that technology and geography have been more powerful influences, and that (non) involvement by the EU has been irrelevant on corridors where there is a clear market for rail and strong political support for the industry, e.g. in the case of trans-Alpine freight crossing Switzerland. But safety considerations are not central to this argument.

**7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

This depends very much on the extent to which British interests coincide with those of other EU member states. Geography dictates that international traffic is only a very small part of the British rail market (but, conversely, a very large part of the British air and shipping markets). It is difficult to envisage a situation in which, in the short or medium term, much rail traffic to/from Britain is likely to originate from or be destined for places beyond the EU, so the scope for action at a wider international level seems limited. The case for repatriating powers to the national level depends on the extent to which the EU has acted in ways which are damaging to the national interest and offer no wider benefits.

This might be the case if, for example, the setting and enforcement of the rail Technical Standards for Interoperability was to impose burdens on the domestic rail industry not shared by its counterparts in other EU countries, and that it proved impossible to negotiate national opt-outs to accommodate uniquely British circumstances. It is arguable that this could be the case if (say) British operators are required to install ERTMS on all lines (and introduce ERTMS-compliant rolling stock) irrespective of whether or not the routes and vehicles in question are ever likely to be used by or for international services. But, again, safety is not a paramount consideration here, since although the delivery of common safety standards and systems is an inherent part of the TSI process, it is not its primary purpose.

**8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

ICAO and IMO exist because aviation and shipping are global industries. Their nearest rail equivalent is OTIF, the Intergovernmental Organisation for International Carriage by Rail, but its membership is limited to Europe, North Africa and the Middle East because there is no wider continuous intercontinental rail system. The EU is already a party to the Vilnius Protocol, but this deals with conditions of carriage and there is no obvious role in relation to safety unless (for example) non-EU member states in OTIF wished to embrace the EU's TSIs to facilitate through-running.

**9. What challenges or opportunities are there for the UK in further EU action on transport?**

The EU has already proposed further changes to the Safety Directive as part of the Fourth Railway Package, potentially including enhanced responsibilities for the European Rail Agency. These proposals appear to be primarily aimed at addressing the inability or unwillingness of some member states to give full effect to the existing EU legislation, and they offer no clear benefits to Britain's rail industry or the users of its services. Britain is already at or close to the top of the EU's rail safety performance league, and this is not an area in which further legislative initiatives from that source are likely to deliver any tangible benefits.



# Private Wagon Federation

## **Q.1 What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

PWF is a trade association representing companies with a specific interest in UK rail freight wagons and therefore we focus our response in this area.

EU action in the field of rail freight was expected to bring opportunity and potential benefit. Our members' experience has, however, demonstrated that in practise at detail implementation level it has led to significant increase in costs and difficulty without apparent benefit arising.

Freight wagons used for GB internal traffic have inevitably evolved differently from those used in mainland Europe because of differing infrastructure constraints and parameters. The restricted GB loading gauge means that European wagons cannot, and probably never will be, able to operate on the general GB network. Also the GB network generally permits the use of a higher axle load than is general on Mainland Europe.

Whereas there would appear to be potential for significant increase of rail freight traffic through the Channel Tunnel, the nature of current and likely future core UK rail freight business means that the majority of rail freight operation will probably remain internal to Great Britain. In this scenario the superficial attraction of endeavouring to produce 'interoperable' wagons is considered to be a hollow business goal compared to producing vehicles optimised to carry maximum payload on the GB network, except for the minority of vehicles required for international traffic.

## **Q.2 To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

Whereas Great Britain has created an open internal freight and passenger rail market due to the Government decision to fragment and privatise the industry 25 years ago the EU has not yet succeeded in this aim. Member states are at different starting points and do not all appear from their actions to demonstrate a 'hearts and minds' commitment to this objective.

The existence of open train operation and rolling stock markets in the UK is demonstrated by the diversity of the players involved, with the presence of companies from other EU member states being conspicuous.

Many of the fundamental requirements of the EU railways interoperability and safety legislation such as Safety Management Systems, risk assessment and risk management philosophies have been embedded in the UK railway industry for many years. Industry liaison, monitoring and consultation processes have also developed to a mature state, as has the process for the development, review and management of essential national standards. Mature systems such as TOPS and the Rolling Stock Library greatly assist train operation and vehicle maintenance and have the benefit of being integrated with the operating railway, unlike the situation generally on mainland Europe.

Against this background we would comment that although when considered at high level EU railways legislation may appear to replicate established UK practice its application at detail level has often meant making significant changes to the established arrangements. This has involved considerable effort and expense with no obvious benefit to the UK. An example of this is the introduction of Entities in Charge of Maintenance (ECMs) and, for wagon ECMs, the requirement for their certification under EU Regulation 445/11. Previously there was already a clearly defined responsibility for maintenance of every item of rolling stock registered within the UK to ensure that an adequate and effective maintenance system was in place through certificated train operator's safety management systems or the specific arrangements applying to 'Private Owner' wagons registered through the 'Private Wagon Registration Agreements' (PWRAs). Achieving compliance with the new EU requirements meant unravelling these previous arrangements, rewriting documentation, redistributing wagons and undergoing certification. This operation involved considerable resource and expense for no apparent UK benefit. Perversely this enforced change has led to a number of players selling, or even scrapping, their wagons thus reducing rather than widening the market. Also, whereas the requirements of this new legislation were implemented to the required timescale in the UK it should be noted that this was not the case throughout much of Europe.

A further example of significant cost increase arises from implementation of the vehicle approvals process imposed by the Interoperability Regulations. This is perceived as significantly more costly than the previous arrangements and is seen as a particular barrier to the renewal of small fleets of specialist wagons prevalent in the UK. Also compulsory TSI compliance prevents the building of new fleets of vehicles to proven historic designs. Unfortunately it is considered unlikely that in practice the recently introduced 'type approval' facility will be of major benefit in this area as this will effectively be 'time limited' when a TSI changes.

Whereas TSI compliance and Notified Body assessment is arguably appropriate for wagons designed for international traffic experience suggests that it has proved to be a non-value-added cost for wagons that will only ever be used internally within Great Britain.

In concluding our answer to this question we would also state that stability is vitally important given the significant investment requirement and asset lives involved in the rail freight business. We must therefore question why the Commission continues to introduce new legislation rather than ensuring that its existing legislation is enforced by all member states. This is considered to be of particular dis-benefit to the UK where our record of timely implementation has been good.

**Q.3 To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

We have no comment to make on this question.

**Q.4 To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Whereas to achieve a level competitive playing field it is important that social and environmental standards are harmonised across Member States, it is also crucial that imposed standards are realistically and economically achievable.

The introduction of tighter environmental standards could have the perverse effect of undermining the viability of rail freight compared to other transport modes. The noise TSI, for example, has introduced extremely challenging acceptable noise thresholds and requires the use of an expensive testing regime often involving the road transport of rail vehicles to specialist test tracks on mainland Europe. Whereas freight train noise may be a significant problem in some parts of Europe, it has not yet emerged as a general issue in the UK, possibly because cast iron brake blocks are used on only a small proportion of its wagon fleet. It is crucial that mandated noise levels are realistically and economically achievable otherwise wagons will not be replaced. Also in the GB situation the expensive requirement for noise testing of wagons built using modern 'track friendly' bogie designs and composite brake blocks is seen as an unnecessary expensive luxury.

**Q.5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

We have no comment to make on this question.

**Q.6 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

We have no comment to make on this question.

**Q.7 To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

EU involvement in cross-border rail services and applying common standards to the building of new railways to achieve compatibility of loading gauge and physical characteristics should offer benefit to the UK as well as to the EU generally. We believe however, that experience has shown that applying common EU standards and practices to rail wagons for internal GB use is potentially to the UK's dis-benefit. It is also relevant to note that the EU is not the exclusive source of good technology for the rail freight industry. In recent years large quantities of wagons, freight locomotives and equipment has been sourced from the USA where very different standards and approvals regimes operate. It is important that this option remains open to the UK.

**Q.8 What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

We would not support the EU having a greater say in negotiating agreements internationally in the field of Rail Freight transport as we believe that this could seriously prejudice the UK interest due to its particular situation.

**Q.9 What challenges or opportunities are there for the UK in further EU action on transport?**

Effective enforcement of current EU railways legislation in all member states to establish a truly open market should open opportunities for UK companies. It will be essential,

however, to continue to endeavour to ensure that UK interests due to its particular circumstances are not further eroded by new EU legislation or unintended consequences arising from its application. This will continue to involve the investment of considerable effort and time by UK players as well as Government agencies.

# Rail Freight Group

Rail Freight Group (RFG) is pleased to respond to the Department for Transport's (DfT) call for evidence on the balance of competencies between the United Kingdom and the European Union relating to transport.

## **RFG's Role**

RFG is the representative body for rail freight in the UK. Our aim is to increase the volume of goods moved by rail to deliver economic and environmental benefits. We represent over 100 member companies who are active across the rail freight sector, including train operators, customers, ports, terminals, suppliers, and support services

Many RFG member companies will be affected by European action across their businesses. In this response, we are only looking at transport, and we will focus particularly on rail transport. Other member companies may choose to respond separately to the consultation.

RFG's policy on European issues was recently confirmed by its Board as follows:

- *To ensure that European rail policy serves the best interest of UK rail freight,*
- *To improve the prospects for direct rail services between the UK and mainland Europe;*
- *To ensure that European rail policy supports RFG Member companies who are seeking to grow their businesses in mainland Europe. (In this context, the general principle applies, as ever, that we will support single member issues only where there is no conflict with other members, and where the action is in line with agreed policy)*

*Our consistent policy approach is to support the full implementation across all Member States of the European railway directives and, in considering amendments and new proposals, to maintain support for vertical separation, independent regulation and open access and competitive rail freight services.*

## ***General Comments - European Rail Policy and Rail Freight***

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. The principles enshrined are for

- An open and competitive market for rail freight operations;
- Full separation of track and train;
- Independent regulation;
- Principles of charging which respect rail freight's position as a marginal user of infrastructure optimised for passengers.

The consequences of this approach are well documented, most recently in joint publication GB Rail Sector Liberalisation (attached) produced to support the discussions on the fourth railway package. In the UK, not only has rail freight grown since privatisation, but it has transformed, with intermodal transport now around 1/3 of business, up from less than 20%. Liberalisation has also encouraged huge private sector investment, and encouraged sectors such as the retailers to consider using rail.

In the UK much of this policy was implemented at privatisation ahead of the first railway package. The First package in fact enshrined the UK structure in European law, which has delivered additional benefits to rail freight in the UK and to UK businesses operating in Europe. These benefits include;

- Some policy areas have been strengthened – e.g. the provisions around track access charges for freight.
- A common policy applied across Europe makes cross border freight traffic easier and simpler to achieve.
- UK businesses operating across Europe can do so on a common basis with reduced barriers to entry.

- European policy has added stability, making it more difficult for successive UK Governments to restructure the freight railway. This is absolutely essential if investment is to be encouraged and supported.

We would therefore suggest that the principles of European rail policy are essential for a thriving and successful rail freight sector, and should continue to be supported.

### ***General Comments – European Transport Policy***

The Commission's 2011 white paper *Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system* set out a case for 50% of goods to be moved by rail by 2050 to contribute to climate change and economic policies. This is an ambitious target taken across all Member States.

In that context, we do have concerns that the rail sector is exposed to more legislation and control than other competing modes, principally road. For example, at present, the Commission is considering changes to the Weights and Dimensions Directives for lorries, which could open the door to cross border movement of mega trucks. This could be severely detrimental to rail freight – yet no impact assessment has been undertaken. Similarly a current consultation on reducing noise from rail freight has numerous measures proposed which would increase the complexity and cost of rail – but no similar measures are suggested for other modes.

This is not unique to Europe – indeed we would argue that improvements could be made to cross modal assessment of domestic transport policy. Nonetheless it is an area where the EU is perceived as having weakness, and where negative impacts could arise for the UK.

### ***General Comments - Enforcement***

In recent years, the Commission has sometimes been perceived to be slow to take action against Member States who are not complying with legislation. Although in some cases action is now underway, the resulting non-compliances persist. In many cases, the Commission has sought to apply further legislation – for example the recast of the First Railway Package, partly as a response to weak enforcement. We consider that the Commission should take stronger, and prompter action in this area, to minimise the need for follow up legislation.



We take issue with paragraph C18 of the DfT document, which states that ‘the EU rail freight market is now fully liberalised...’ 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. Secondly, the issues of unfair subsidies to incumbents has been exposed by the Commission in several member states, and is likely to be occurring in many more. The current legislation might have been sufficient if the member states had implemented it in a positive and comprehensive manner. Sadly, this has not happened, and again the 4<sup>th</sup> Railway Package may suffer in the same way.

The UK Government should also take action to ensure its own actions are timely and appropriate. For example, the transposition of the flexibility package of the Non Road Mobile Machinery Directive has recently been completed some 6 months late, and has required persistent campaigning by many in the industry to achieve welcome progress. This package was necessary to support UK businesses in the rail freight sector and the delay has been unhelpful. A recent parliamentary question [http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/130715w0001.htm#wast\\_36](http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/130715w0001.htm#wast_36) demonstrates that this is far from unique.

### ***General Comments – UK Influence***

It is also vital that the UK is able to work to influence European transport policy to support the UK and UK businesses. We know that there are some excellent people undertaking these roles. However, there is a perception that the UK is not as effective as other Member States in influencing policy, which will inevitably lead to worse outcomes. This is an area that Government may need to address.

The UK should also take a broader perspective on the transport policy across other Member States where it affects UK businesses. Too often, UK policy is silent where there is no direct impact on the UK mainland, or limited to negotiating minor changes. It must be recognised that, just because a particular issue is not significant here, it can have major competitive consequences for UK exporters and service providers looking to grow their businesses.

### ***Specific Questions***

*What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.*

As above, we consider that EU action in rail has led to a positive outcome for the rail freight sector in the UK, and has helped UK companies operating in Europe. As noted above, a lack of full enforcement in certain member states has meant that there are still some difficulties in achieving cross border flows.

We agree with the statement in paragraph 20 of the DfT Consultation that ‘the UK’s overarching objective is for a seamless sustainable and efficient transport network across the EU, as part of the single market, that will drive economic growth.’ There is much therefore that can only be done and EU level.

This is particularly true for freight which operates as a global market with flows operating between and across many Member States. This means that opening up cross border rail freight traffic remains a key objective.

UK action for the rail freight sector focusses on the domestic market and in supporting cross border flows. The development of the Strategic Freight Network, and the funding for rail freight through the HLOS are examples of this.

*To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?*

We take issue with paragraph C18 of the DfT document, which states that ‘the EU rail freight market is now fully liberalised...’ Although in theory any company can operate trains in any member state, there remain many technical, operational, access and safety issues which mean that new entrants are unfairly treated. Secondly, the issues of unfair subsidies to incumbents has been exposed by the Commission in several member states, and is likely to be occurring in many more. The current legislation might have been sufficient if the member states had implemented it in a positive and comprehensive manner. Sadly, this has not happened. This means that the EU has only so far been partially successful in achieving its aims.

The creation of the single market in rail freight is also closely allied with the need for fair competition between operators, so that they can invest with confidence. Having one set of common standards is an essential part of this, since equipment is so expensive and tends to have long asset lives. Progress in achieving interoperability across Europe is slow, which frustrates these aims. Of course the UK’s smaller loading gauge does deserve an exemption from size regulations, which causes particular difficulties. However,

other areas should and could be aligned across Member States – for example, ERTMS software.

The practical outcome of this is to increase costs of rail equipment particularly for the UK market. Wagon manufacturers will build speculatively for mainland Europe, but require bespoke commitments for the UK, increasing cost and difficulty. The EU has also been slow to align its standard with worldwide equivalents – for example, European and American emission standards do not align, which again increases costs for those looking to trade globally.

Notwithstanding these difficulties, the rail freight sector continues to make an important and growing economic contribution. Research by Network Rail <http://www.networkrail.co.uk/asp/10439.aspx> shows that rail freight has grown by 60% since privatisation. It directly contributes some £870m to the economy and supports an output of £5.9bn. Each year, the sector transports goods valued at some £30bn. This would not be achievable without the open and competitive sector which has been achieved through the implementation of EU action in rail policy.

*To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?*

Freight transport operates as a global market, with international shipping and air freight – and increasingly rail services, as well as domestic movements. Reducing costs and barriers to effective transport networks is essential to growing and supporting the UK and European economy. For the UK, time to market for our export trade is of particular importance.

*To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?*

We agree that the EU has an absolutely fundamental role in ensuring minimum social standards which should apply, in common, across all areas of the economy – for example, in rights for part time workers.

We do not accept that the rail sector, or any industrial sector, should have more detailed or onerous standards than others, or that standards should be applied which are over and above the appropriate minimum, unless there are very exceptional circumstances. Of course, safety standards need to reflect the particular circumstances of each industry, but should seek equivalent cross industry outcomes.

In particular, there should be particular care to ensure that standards are common between competing modes. For example, Directive 2005/47/EC affects mobile workers in cross-border railway services. This limits the number of nights that a rail driver can stay away from home on any one trip. This does not happen in the road freight industry.

We support EU action in promoting low carbon transport and in improving the emissions performance of the freight sector. But there are similar concerns over the applications of environmental and emission standards. Recent action now limits severely the provision of locomotives for rail freight – which remains a lower carbon mode than road freight where less restrictions apply. More care is necessary to assess cross modal and market effects, and to align to international standards.

*What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?*

EU transport policy has transformed the market for rail freight services. By encouraging competition and a choice of operators and terminals, end customers have been encouraged to rail. This has been particularly true in the retail sector.

To that end, we would conclude that EU action has targeted, and benefitted, the correct stakeholders.

*The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?*

Although legislation has been a major part of rail policy, we note that UK has also benefited from other policy approaches, such as investment support for rail freight projects on the TEN-T network, and other funding for transport initiatives (such as Interreg).

Given previous comments on enforcement, and UK response to legislation, we think it unlikely that 'lighter touch' approaches could deliver the desired outcomes.

*To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?*

Clearly, there is a role for transport action to be taken at a number of levels, and we note and support the actions which UK Government have taken in support of rail freight. However, given that freight transport operates on a European and International basis there are clear benefits in co-ordinating action more widely than our borders. This is of particular importance to UK businesses seeking to operate elsewhere, or to export their goods.

*What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?*

These agreements do not relate to rail freight and as such we cannot comment. However, we note that through rail services between mainland Europe and China are now operating. These will place UK export businesses at a disadvantage in 'time to market' unless appropriate through links are facilitated. Government may wish to consider how UK participation can be secured.

However, the EU must also guard against protectionism from within its frontiers - an amendment was proposed to recent legislation preventing any company less than 50% owned from within the EU to be given an operating licence.

*What challenges or opportunities are there for the UK in further EU action on transport?*

To further develop the rail freight sector in the UK and Europe, we would suggest that;

- The EU conclude its infraction action against Member States who are in non compliance with existing railway legislation, to fully open up the market for cross border rail freight;
- The UK Government to be more vocal in support of the UK rail structure, the benefits it has delivered and the opportunities for UK businesses to exploit this success elsewhere;

- The UK Government to press for proper cross modal assessment of modes, and to resist action which damages the competitive position between modes;

## Story of GB Rail Sector



### Contents

1	Introduction.....	4
2	The GB Rail Sector.....	4
3	Liberalisation and the GB Rail Sector.....	6
	3.1 Growth in the passenger and freight markets.....	6
	3.2 Improvements in performance.....	8
	3.3 Competitive tendering for passenger services .....	8

3.4 Good safety record .....	9
3.5 High levels of passenger satisfaction.....	10
3.6 Investment and reduced burden on the taxpayer.....	11
3.7 Passenger fares.....	12
3.8 Access to rolling stock.....	13
3.9 Employment and staff protection.....	13
3.10 Integrated ticketing and information .....	14
4 Contact.....	16
5 Annex I: Network Rail.....	18
5.1 Company responsibilities.....	18
5.2 Company structure .....	18
5.3 Funding .....	18
6 Annex II: HS1 Limited .....	19
6.1 Company responsibilities.....	19
6.2 Company structure .....	19
6.3 Funding .....	20
7 Annex III: ATOC .....	21
8 Annex IV: RFG .....	22



# 1 Introduction

The GB Rail Sector underwent liberalisation in the early 1990s. The Fourth Railway Package proposals include a detailed report in the impact assessment showing how the railways in Europe have progressed and improved since the 1990s according to a range of 14 different factors – and it concludes that that Britain's railways are the most improved in Europe<sup>1</sup>. This paper outlines some of the achievements of the GB Rail Sector since liberalisation, highlighting why we can offer full support the Commission’s overall intention to develop a strong, competitive and sustainable rail market that will benefit citizens, business and the environment.

## 2 The GB Rail Sector

Following restructuring of the Railways in Great Britain (GB) in 1994, the incumbent operator British Rail (BR) was divided into two main parts: the Infrastructure Manager (IM), now Network Rail; and Railway Undertakings (RUs), including both freight and passenger operators. Under a separate arrangement, provisions were also made for the creation of the UK’s first high-speed railway, HS1, operating from London to the Channel Tunnel.

Network Rail and HS1 Ltd were established to be able to behave and make decisions independently of operators. The model is compliant with EU legislation and has aided the development of the liberalised market in GB. The Office of Rail Regulation (ORR) was created to provide the targeted regulation of the GB railway and following further legislative changes, to act as the National Safety Authority (NSA).

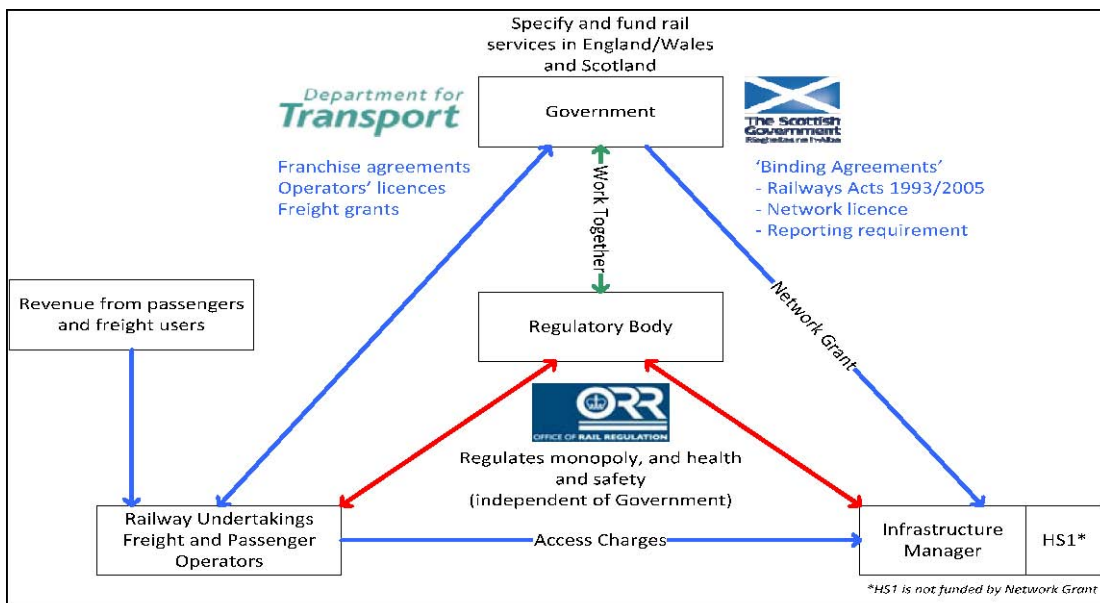


Figure 1, Structure of GB Rail Industry

HS1 does not receive a network grant and is subject to different binding agreements than Network Rail. HS1 works under the CTRL Act and Access and Management Regulations 2005 and 2009 (as amended), and a 30 year Concession Agreement.



The majority of passenger operations are run under franchises granted by the Ministry, the Department for Transport (DfT), and open access to the infrastructure is available. As a consequence of successive devolution, Transport Scotland, Transport for London, and Merseytravel let contracts to operate services in their areas. The Welsh Government have an increasing influence on contracts operating within their country. In general the RUs do not own their own rolling stock; instead this is leased from a rolling stock company (ROSCO).

The Association of Train Operating Companies (ATOC) is the official representative body of the passenger railway and coordinates joint activities of train operators. This includes responsibility for National Rail Enquiries, marketing railcards and for the allocation of revenue between train operators.

The freight network has been open to competition since privatisation with seven operators currently running services, all with licences to operate anywhere on the network. The Rail Freight Group (RFG) represents freight operators and their members include customers, logistics providers, suppliers, terminal operators, ports and freight train operating companies.

In a liberalised market like GB, the Regulator plays a critical role in many different ways. Outside of the DfT controlled franchise arrangements with train operators, and beyond competition, economic and safety regulation, the ORR has set out for itself three principal roles:

- Securing delivery by the industry of its regulatory obligations;
- Helping the mainline railway meet the long-term challenges; and
- Enhancing and keeping under review the industry's framework of incentives, accountabilities and competition.

In GB, applications for train paths by all operators are reviewed by the ORR, which makes an impartial decision on each case based on objective criteria.

### **3 Liberalisation and the GB Rail Sector**

Liberalisation has provided many benefits to the UK and the GB Rail Sector particularly in the areas of growth, punctuality, safety and satisfaction.

- GB success has been delivered under a vertically separated railway system with independent IMs, competitive tendering for railway contracts and open-access operators.
- Key success factors have been: delivery of social and commercial objectives; sustained investment; sound commercial and passenger-focused management; fair access to rolling stock; good staff protections; and a strong independent regulator.

#### **3.1 Growth in the passenger and freight markets**

Since privatisation and liberalisation of the freight market there has been an increase in rail freight demand<sup>2</sup>. Furthermore, passenger numbers have been steadily increasing on Britain's railways since liberalisation<sup>3</sup>.

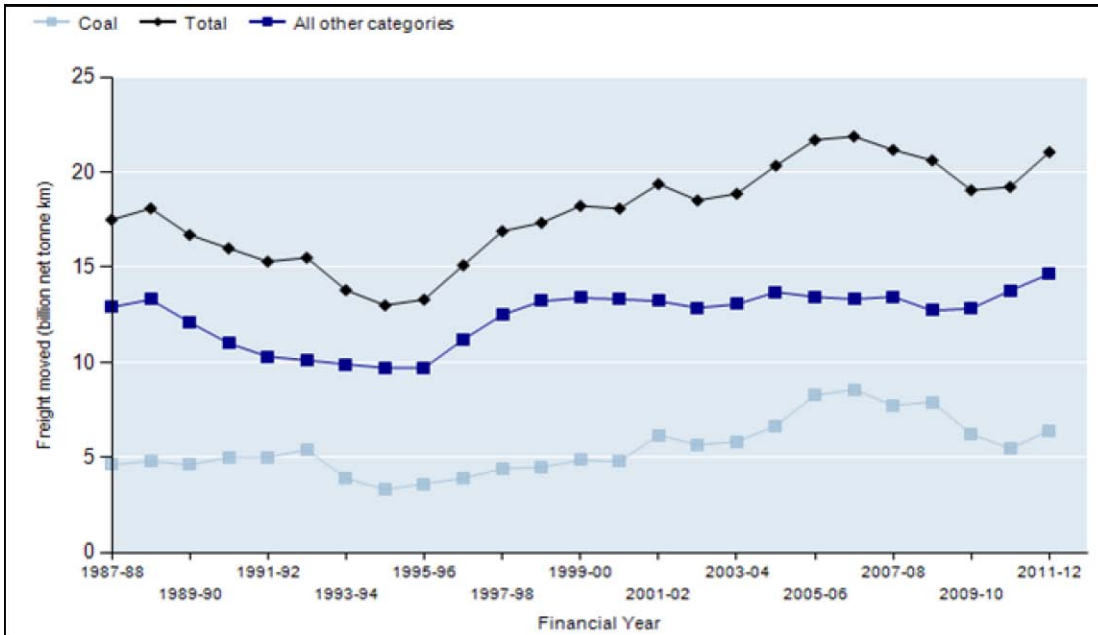


Figure 2, Freight moved, net tonne KM since 1987

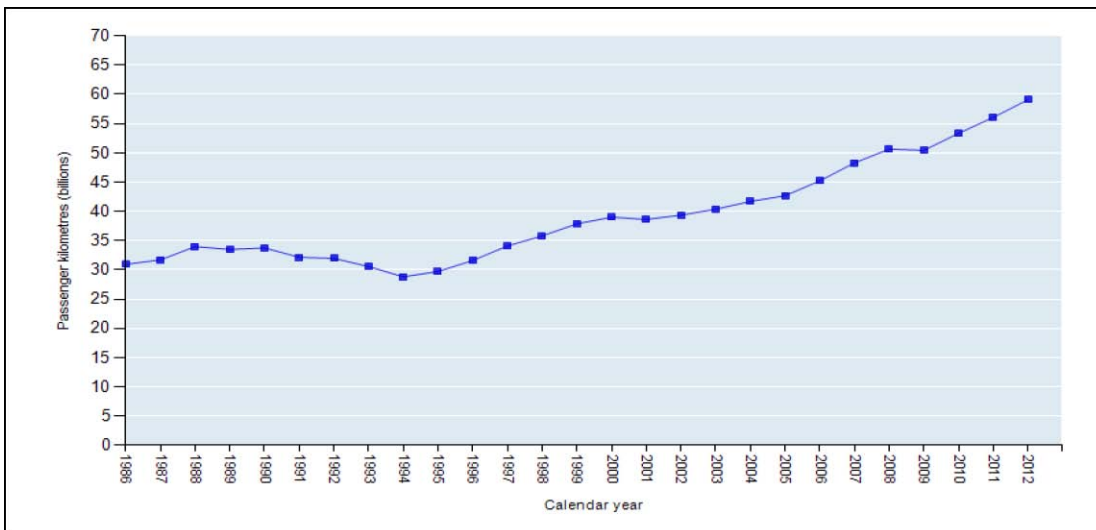


Figure 3, Passenger growth since 1996

Customers of rail freight appreciate the choice of operators and logistics providers, and the innovation, competition and improved service quality that this brings. Around 9% of all freight is moved by rail in the UK at present. In 2011/12 the amount of freight moved by rail was 21 billion NTKm.

The UK has the fastest-growing passenger railway in Europe, is now the second-largest passenger railway after Germany, operates with the highest level of passenger satisfaction since records began in 1999<sup>7</sup> and has the lowest public subsidy per transport unit among comparable railways.

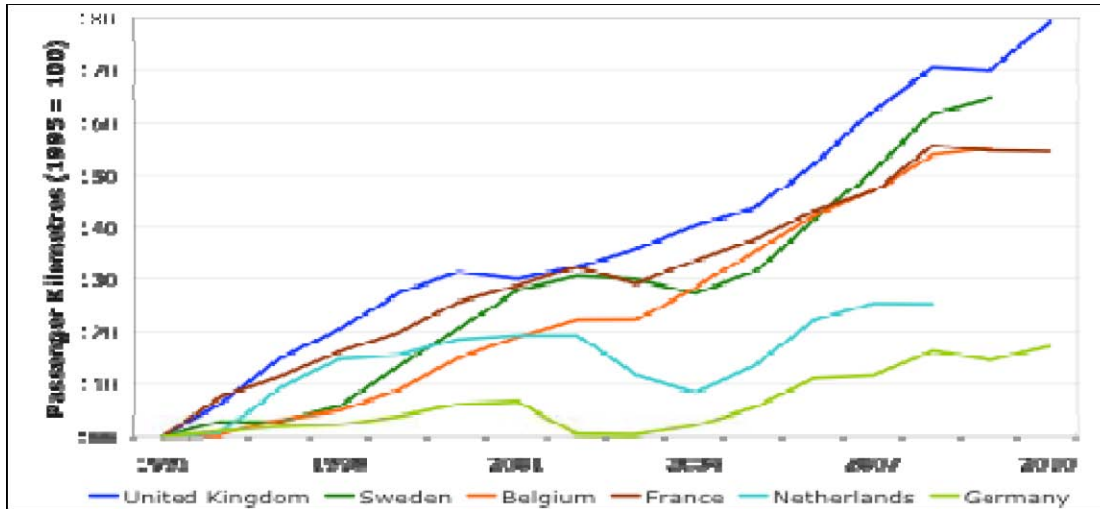


Figure 4, Comparative Passenger Growth

### 3.2 Improvements in performance

Under the separated structure, shown at Figure 1, performance has also improved. There has been sustained passenger growth, safety, record levels of passenger satisfaction and operational performance.

The Public Performance Measure (PPM) which shows the percentage of passenger trains which arrive on time has improved significantly since 2002 as a result of joint efforts between the IM and RUs. In 2002/3 around 79% of trains were arriving on time, by 2011/12 this had risen to over 91%<sup>11</sup>. Freight performance has also improved under the current industry structure.

HS1 has operated at world-class levels of reliability throughout, with a Moving Annual Average (MAA) of less than 9 seconds delay per train from infrastructure incidents as at 5 January 2013.

### 3.3 Competitive tendering for passenger services

There has been competitive tendering for passenger franchises in GB since 1996. In the Financial Year 2011-12 GB operated competitively-tendered services which provided for 52 billion passenger-km of travel, the most of any country in Europe.

These passenger franchises deliver specific social and commercial objectives for government, and the majority of them directly return premium payments to UK government. The competitive nature of tendering has ensured that train operators focus on

giving government and passengers the best deal, whilst returning modest operator profits of around 3%.

The European Commission, in its Impact Assessment for the Fourth Railway Package, has also found that the UK has the highest number of new entrants to the passenger rail market in Europe.

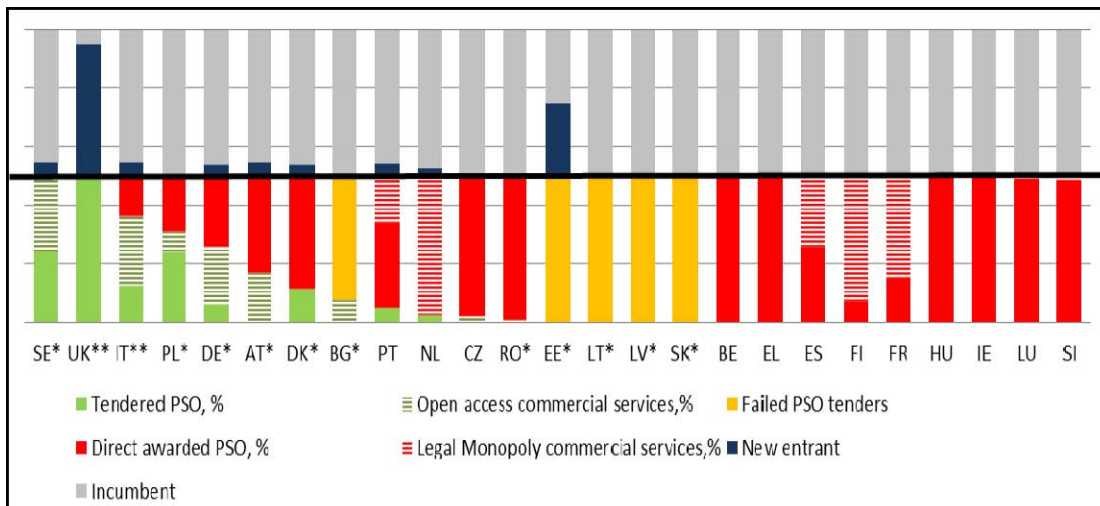


Figure 5, Railway market structure and railway undertakings market share

### 3.4 Good safety record

The ORR is the National Safety Authority (NSA) and is the independent health and safety regulator for the sector. It has powers to take action to ensure that those responsible for safety are held to account for any failures.

After every significant or major accident on the railways a report is published by the independent Rail Accident Investigation Branch (RAIB) with recommendations about the lessons learned. This process ensures that accidents are properly investigated and allows full analysis of the facts before new rules are considered.

The safety record has been supported by a light-touch regulatory approach where duty-holders take responsibility and cooperate to manage safety efficiently.

The result is that GB Rail has one of the lowest passenger casualty rates of any mode of transport. In 2011/12, four passengers and one railway worker were killed on the rail network, none of them in train accidents. In total there were 302 fatalities on the rail network, of which 236 (78 per cent) were suicides and 53 (18 per cent) classified as trespassers.

The number of train accidents leading to fatalities has also decline markedly over time.



Figure 6, Train accidents with Passenger of Workforce Fatalities

European statistics show that of the significant rail networks in Europe, the UK's is the safest

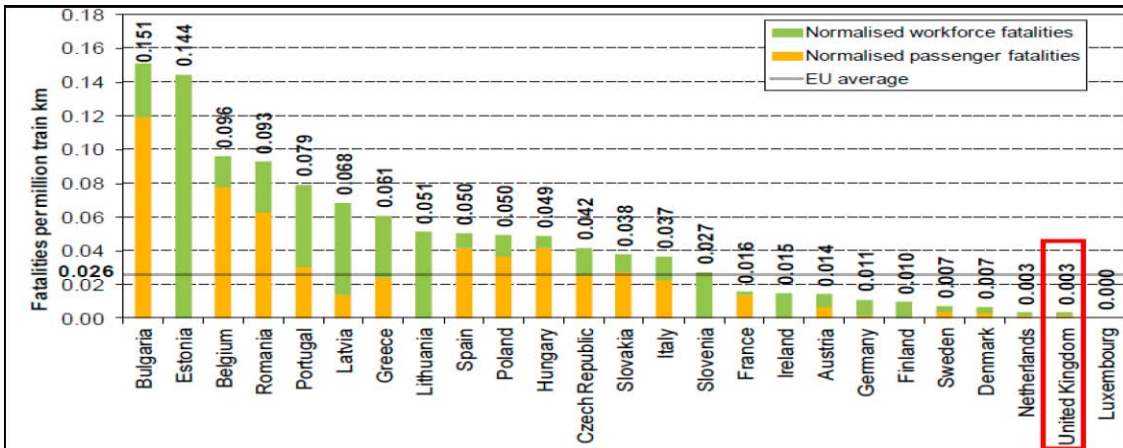


Figure 7, Comparative Safety Performance

### 3.5 High levels of passenger satisfaction

According to independent research undertaken by the watchdog Passenger Focus, nationally 85% of passengers on the railways are satisfied with their journey. This is the highest level of satisfaction since the survey began in 1999. Passenger satisfaction at large British stations is also very high with an average of 89% of passengers being very satisfied with facilities

The Commission's own analysis shows that satisfaction with passenger services is also higher in the UK than average satisfaction rates across Europe.

### 3.6 Investment and reduced burden on the taxpayer

The most important precondition for a successful rail sector, whatever the market structure, is sustained investment. In the UK, sustained government investment in rail has gone hand-in-hand with government confidence in the IM and operators to deliver key social objectives along with growth in patronage and revenue.

Over the last three years GB has made improvements in punctuality and achieved growth whilst reducing financial support from the Government. In 2010 passenger subsidy per mile from the DfT was £0.109 (€0.13), in 2011 this was reduced to £0.081 (€0.095) per mile and by 2012 had come down to £0.075 (€0.088). An independent report commissioned by the Community of European Railways (CER) showed that the UK has lower public subsidies per railway transport unit than many other European railways, including France, Germany and the Netherlands.

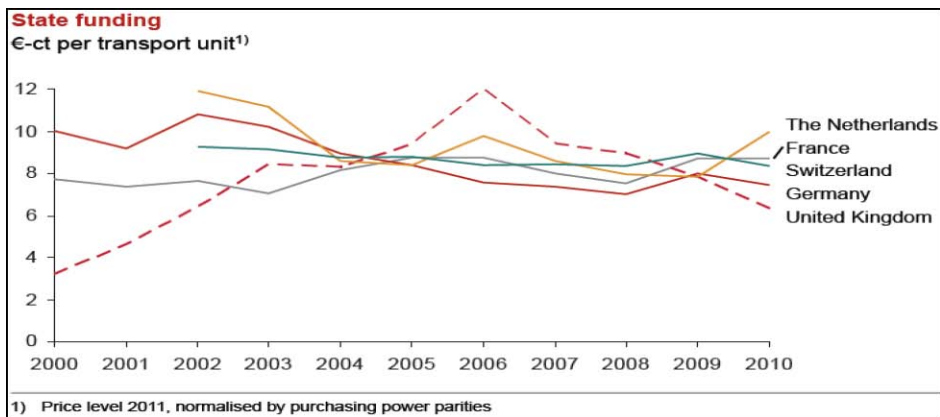


Figure 8, State Funding of Railways

Total rail sector industry expenditure in 2011-12 was £11.6bn (€13.7bn) a decrease of 2.1% in real terms from the previous year and before any adjustment for increase in output between the two years. To help pay for this expenditure, government subsidy accounted for £4bn (€4.7bn). Network Rail received the majority -£3.9 billion – while train companies receiving £0.1bn (€0.12bn). Fare revenues provided far more income to the rail industry than government subsidy – a total of £7.2bn (€8.5bn)

The rail freight sector has attracted over £2 billion (€2.5 billion) private investment in rolling stock, terminals and other items since privatisation. This investment was only achieved due to investor confidence that the structure of the railway would not be materially changed or unfair competition accepted either within the freight sector, or between freight and state owned passenger services.

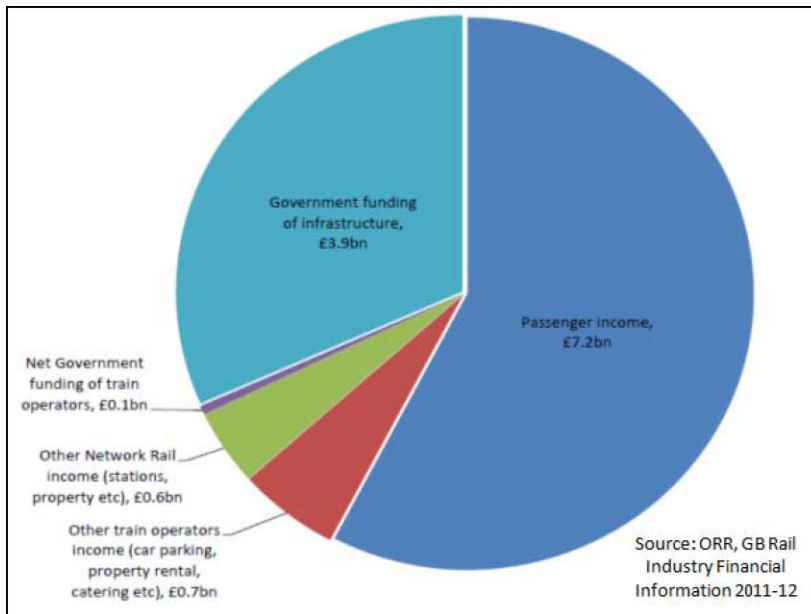


Figure 9, income in the GB rail sector

Indeed in 2011/12, the DfT actually received a net premium of £133 million (€157.3 million) from the train operators that it franchises. Although some of its franchises are operated to primarily achieve a social objective, this is outweighed by the income from those who now pay a premium.

The Government investment strategy for selling HS1 into the private sector along with the regulatory framework adopted for HS1 Ltd continues the GB success story of sustained investment in the UK whilst ensuring a zero increase in financial burden for the UK taxpayer.

### 3.7 Passenger fares

GB train operators offer a wide choice of fares designed to suit the range of markets-business, leisure and commuter travel-that they serve. Price increases for practically all season tickets are determined and regulated directly by the DfT or by arrangements with Transport for London. DfT policy has also been to increasingly see the service user pay a higher proportion of the fare costs.

Taken as an overall average, GB train fares are moderately priced. The independent report from the ORR shows that the average passenger fare per journey (calculated by dividing total passenger income by the total number of passenger journeys) in 2011□12 was only £4.93 (€5.83), an increase of 1.3% compared with 2010□11 a decrease of 3.6%

adjusted for inflation. Indeed the House of Commons Library reports that average annual increase in fares in real terms since privatisation has been only 1.2%.

### **3.8 Access to rolling stock**

To achieve a level-playing field for market entrants, it is vital that all RUs bidding for public service contracts have access to suitable rolling stock.

In GB, the vast majority of rolling stock is leased through Rolling Stock Leasing Companies (ROSCOs) and is transferred under new leases from one operator to another at franchise ends. Procurement of new rolling stock can be carried out either by the RUs, ROSCOs, or public authorities however, the majority of fleets ordered since privatisation have procured by RUs and ROSCOs working together.

50% of the vehicle fleet has been acquired since 1994, reducing its average age to 18 years. Open access operators lease their rolling stock directly from the market which has included some investment in brand new trains.

### **3.9 Employment and staff protection**

Staff protection and employment is an important issue when considering market opening in the railway sector.

When the railways were liberalised the incumbent operator BR was dissolved, and several different undertakings were created to operate passenger rail services. Staff were transferred to one of its successor companies including the IM or RUs on the same contractual terms and conditions under application of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), legislation, which implemented an EU requirement.

Furthermore, each time a new company is awarded a contract to run train services following a competitive tendering process, staff are automatically transferred to the new undertaking on the same terms and conditions. The arrangements constrain any so-called “race to the bottom” or “social dumping” whereby new market entrants could undercut rivals in bids by drastically reducing staff costs.

During a franchise, an undertaking and its staff can negotiate over the terms and conditions of their employment. This is done on a company-by-company basis rather than a national basis. Ultimately the funders have a very significant influence on the size of the workforce because they set out in contracts the services required, for example ticket office opening hours and queuing times, which in turn require a certain level of staff headcount to meet these objectives.

Since privatisation, and in line with growth in the sector the number of jobs in the rail industry (excluding manufacturing) has increased.



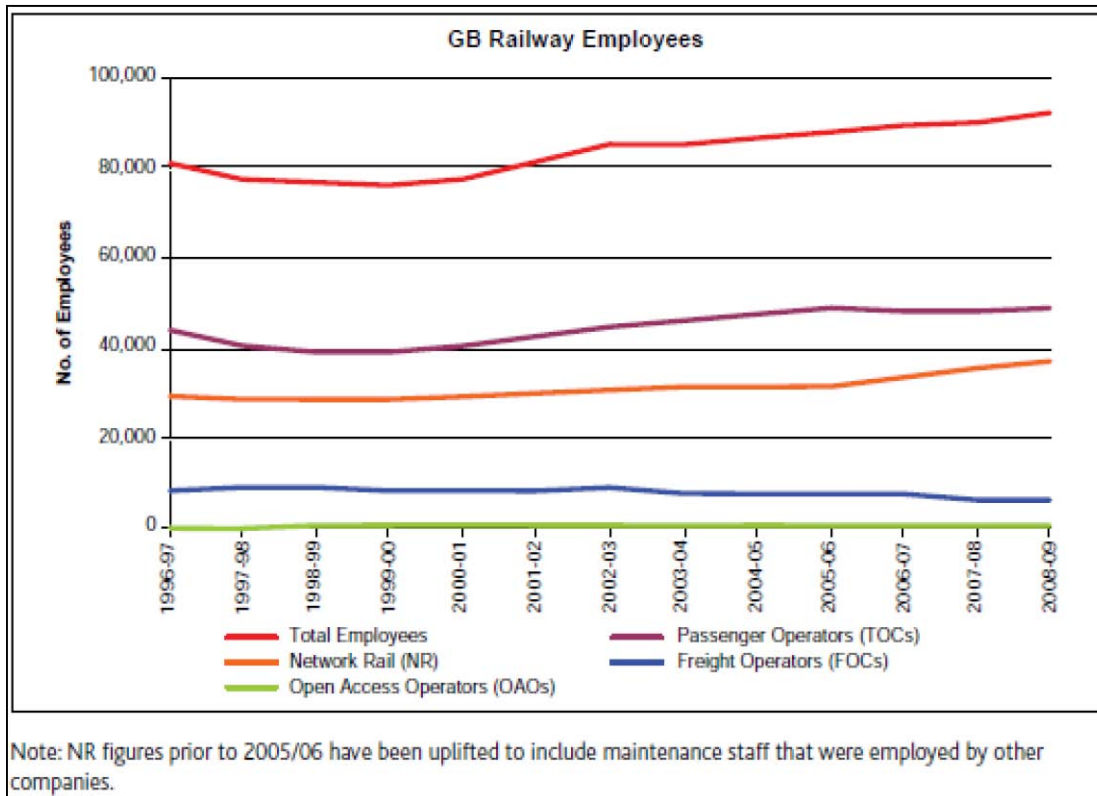


Figure 10, Employment in the GB Rail Sector

### 3.10 Integrated ticketing and information

Market opening in GB during the 1990s was carried out with the careful retention of “network benefits”, which include through ticketing and inter-availability and timetable information.

The principle of through ticketing and inter-available ticketing is a key element of the GB rail system. Passengers can buy tickets for any operator’s service from any other operator, including domestic open access operators. This is enforced through operating licences: passenger operators are required by ORR to join the national ticketing schemes that deliver inter-availability and through-ticketing.

The technical services that enable through ticketing are managed by Rail Settlement Plan (RSP), which is a company owned by the franchised passenger rail operators. It provides a range of common, largely IT-based services to those operators including open access operators and third party providers of information and retail services.

National Rail Enquiries (NRE) is the definitive source of information for all passenger rail services on the National Rail network in England, Wales and Scotland. NRE handles an average of 2 million journey enquiries every day either through their contact centres, self service channels or through information services supplied to 3rd parties.

The NRE website, [www.nationalrail.co.uk](http://www.nationalrail.co.uk), offers journey planning, timetable and fares information and provides a range of rail-related information to rail passengers and is classified by the Government as a super-site. NRE has been a world-leader in the

utilisation of technology to constantly improve its services to passengers.

Both RSP and NRE are part of ATOC.



## Annexes

### 5 Annex I: Network Rail

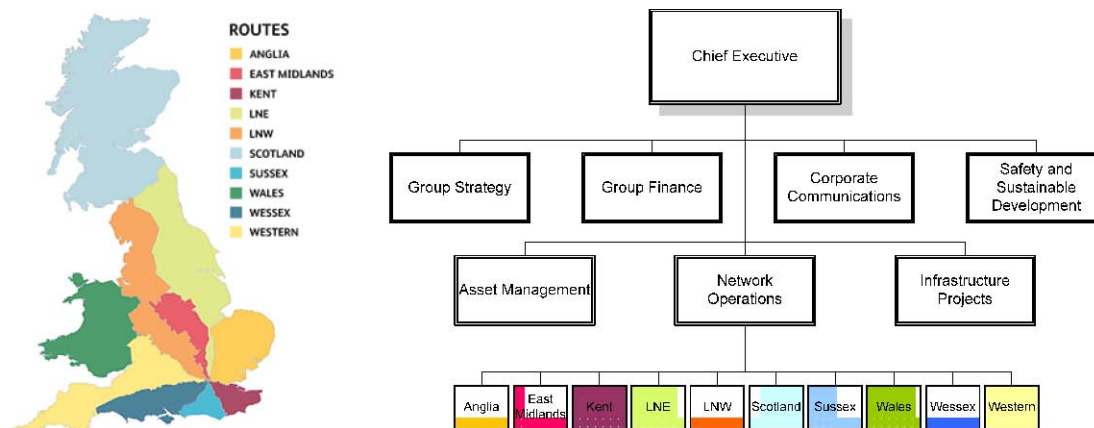
#### 5.1 Company responsibilities

Network Rail:

- Owns, maintains and renews infrastructure;
- Operates signals, sets timetable and reports performance;
- Organises track access for RUs;
- Conducts short and medium-term planning;
- Manage 19 of the largest stations; and
- Delivers enhancements.

#### 5.2 Company structure

Accountability for delivery has been devolved to ten geographic routes. The structure has a Route Managing Director who is given responsibility and accountability for relationships with customers and route performance. The centre of Network Rail still performs support for the ten routes.



**Figure 11, The structure of Network Rail**

## 5.3 Funding

Network Rail receives around 71% of its funding through a network grant which is reviewed and granted on a five-yearly cycle. Network Rail is currently coming to the end of Control Period (CP) 4 and is in the process of agreeing a settlement for CP 5.

The high-level arrangements at each periodic review are as follows:

- ORR sets charging objectives and provides guidance on calculations and audit;
- Network Rail analyses costs and, in consultation with industry, proposes charges;
- ORR audits and approves charges; and then
- Network Rail publishes final charges / price lists.

## 6 Annex II: HS1 Limited

### 6.1 Company responsibilities

HS1 Limited, under a 30 year Concessions Agreement. It owns, maintains and renews the HS1 assets comprising of 109 km of route connecting St Pancras International through Kent to the UK Channel Tunnel boundary and 4 international stations, St Pancras International, Ebbsfleet International, Stratford International and Ashford International.

Other ancillary rail infrastructure include a maintenance depot for network services; shared signalling control centres; signalling, communications, power supply and control systems; Ripple Lane exchange sidings and Temple Mills depot for rolling stock.

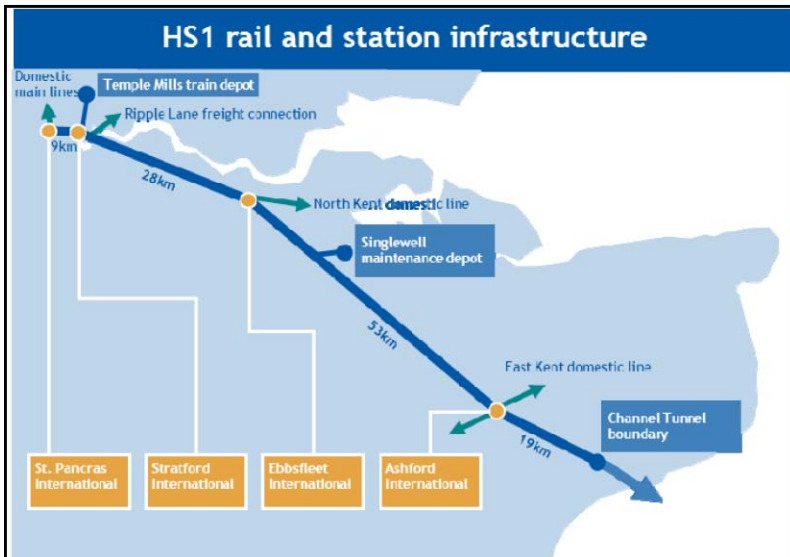


Figure 12, HS1 Infrastructure

## 6.2 Company structure

HS1 holds the concession to run the UK's only high speed railway, the first section of which opened in 2003 and which became fully operational from 2007. This private concession will last until December 2040 and is designed to be fully funded without tax payer support.

In November 2010, Borealis and OTPP successfully completed the acquisition of HS1 from the UK Government:

- The acquisition value was £2.1bn (€2.48bn), financed by £1.5bn (€1.77bn) of long term debt and £6.0bn (€7.09bn) by shareholders; and
- Borealis and OTPP each own 50% of HS1.

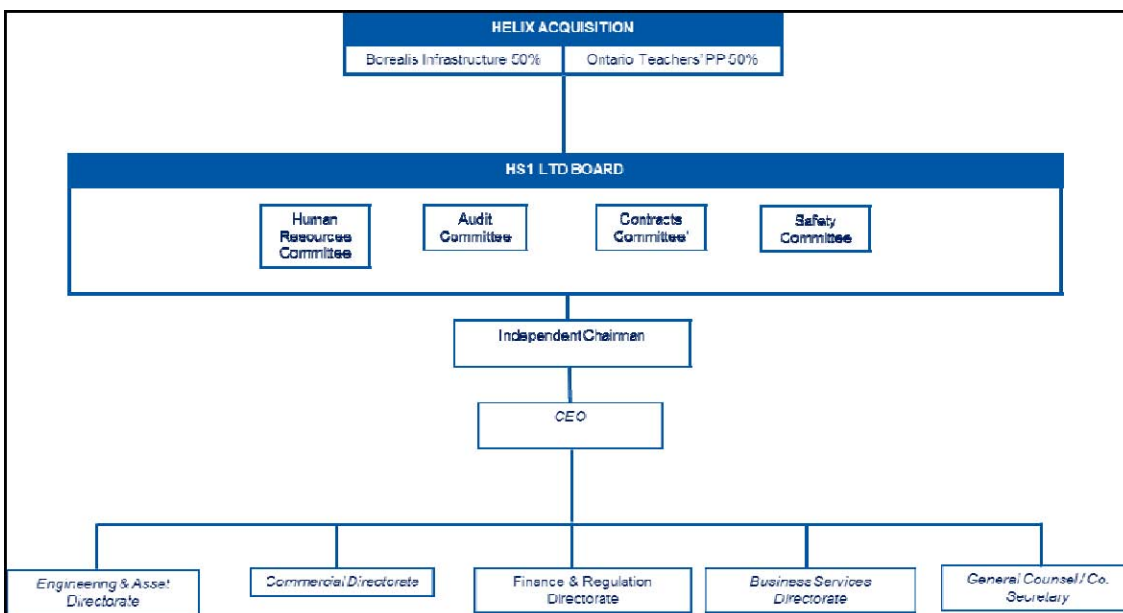


Figure 13, HS1 Corporate Structure

## **6.3 Funding**

HS1 Limited operates within a contractual and regulatory framework, regulated by both, the Department of Transport and the Office of the Rail Regulation.

Track access charges pay for all HS1 costs, including financing debt and shareholder return. The operations, maintenance and renewal elements of the route charging structure is reviewed periodically by the ORR in five-year cycles.

Stations access charges pay for the operations maintenance and renewals of all the international stations. Stations long term charges are subject to DfT scrutiny in five-year cycles.

HS1 Limited is coming to the end of its first Control Period (CP1) and is currently in the process of preparing its CP2 submission for both track and stations for ORR and DfT approval.

## **7 Annex III: ATOC**

ATOC's mission is to work for passenger rail operators in serving customers and supporting a prosperous railway. Set up after privatisation in 1994, ATOC brings together all train companies to preserve and enhance the benefits for passengers of Britain's national rail network, which jointly we do by providing the following key services:

- A central clearing house for the train operators, allowing passengers to buy tickets to travel on any part of the rail network, from any station, through the Rail Settlement Plan;
- A customer service operation, giving passengers up-to-the-minute information on train times, fares, reservations and service disruption across the country, through the National Rail Enquiries (NRE); and
- A range of discounted and promotional railcards, cutting the cost of travelling by train for groups including young people, families, senior citizens and people with disabilities, through Commercial activities

Trade association activities include providing a national voice for Britain's train companies and seeking to generate and shape policy on the railways, mainly through Policy, Operations and Engineering, and Corporate Affairs.

## **8 Annex IV: RFG**

Rail Freight Group is the leading representative body for rail freight in the UK, with a membership which includes some of the biggest names in logistics along with many smaller companies, all of whom contribute to the success of rail freight. Our members include ports, terminal operators, property developers, equipment suppliers and support services.

Since 1991, we have been working tirelessly to increase the amount of goods conveyed by rail. We seek to achieve this in three ways:

- Campaigning for a policy environment that supports rail freight
- Promoting the rail freight sector
- Supporting members as they grow their businesses.

RFG works to promote rail freight in a variety of environments, helping to highlight the benefits of using rail freight and to communicate the GB Rail Sector's successes.

RFG provides a forum for its members to participate in a variety of regional networking meetings, which provide the ideal opportunity to make connections and do business with others in an informal and social setting. These meetings also provide an opportunity for members to hear about the latest developments in rail freight and to help shape RFG's approach to the big issues for the GB Rail Sector.

# Rail Future

## INTRODUCTION

We welcome the opportunity to contribute to the study on what the EU does in the field of transport, and how it affects the UK.

Railfuture is the independent voluntary body for rail users nationwide. Through our membership of the European Passengers' Federation we are also in regular contact with similar organisations in 18 other European countries.

In our experience, EU involvement in transport matters is, on balance, beneficial for customers. There are, however, shortcomings which we believe can be addressed through constructive dialogue between all players.

Some measures were taken by UK Governments before they became the subject of EU Directives, of course. In such cases, our experience - positive or negative - may influence what is done elsewhere.

## **POSITIVE EXPERIENCES**

1. Liberalisation has helped to boost rail freight, although it was not the only factor.
2. EU funding to improve rail infrastructure has also been a positive move. For example, the TEN-T programme has led, and is leading, to improvements on the important rail freight corridor from Felixstowe to Nuneaton.
3. EU passenger rights directives have built upon passenger rights already introduced in our country in the early 1990s, with the result that train operators have become more customer-focussed. However, we have always argued that, to enable rail to compete on a level playing field, there must be comparable rights for users of other modes. We are therefore pleased that the EU has introduced such rights for airline, bus/coach and maritime passengers. The overall situation is not yet ideal, but it represents progress in the right direction.
4. For travellers from the UK to the Continent, information on fares and ticketing remains a challenge. The EU has attempted to meet this challenge through the Telematics Application for Passengers Technical Specification of Interoperability (TAP-TSI) and the EU Journeyplanner. These are "works in progress" which we hope that the UK Government will actively and constructively support.
5. The Fourth Railway Package now being debated in the European Parliament makes important proposals for streamlining the acceptance procedure for new rolling stock. This will benefit Continental countries more than ourselves but it still represents a positive move forward for the railway industry in general.

6. The aspirations of the 2009 Urban Transport Action Plan and the 2011 EU White Paper on Transport are ones which we support. It is however important that concrete steps are taken towards their implementation.

## **POINTS OF CRITICISM**

1. EU policymakers emphasise that liberalisation in the airline industry has increased passenger numbers and that the same measures can also boost rail passenger numbers.

This argument fails to take into account the different characteristics of air and rail. Walk-on facilities remain an important feature of the latter and the average train, even long-distance and high-speed, serves a greater variety of destinations than an aeroplane. Since the start of franchising in Great Britain, passenger numbers have certainly increased - but to what extent this might have happened anyway is a moot point. It is important that network benefits be maintained, notably with information, connections and ticketing.

2. EU liberalisation also enables open access passenger operators to run trains. In the UK this has had minimal impact, with currently only three such operators who provide for certain niche markets.

Our main concern is the lack of ticket validity if, for example, a passenger has to change travel arrangements - perhaps for good reason - and continue or return on a different operator's train.

It could, however, have a beneficial impact if one or more open access operators were to use the Channel Tunnel and offer an alternative to Eurostar for certain journeys.

3. Our other concern is that the EU may adopt a "one size fits all" approach. Harmonisation can be a good thing, but an element of pragmatism is desirable.

One example of this is in signalling, where 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.

Similarly, rolling stock that is never likely to be used on international traffic or exported to another DEU country, need surely only be subjected to a national acceptance and safety procedure? There are signs that the EU will agree such a compromise.

We accept that, in principle, an independent infrastructure provider is likely to mean fairer access provision for all freight and passenger operators; but on an isolated, self-contained railway, such as on the Isle of Wight, other models should be possible and permitted.

We should be happy to discuss these points further with you.



## Rail Standards and Safety Board (RSSB)

This response to the consultation is submitted by RSSB, taking account of its 10 years of experience in handling EU standards and safety issues. RSSB is a not for profit company, owned by the members of the rail industry but independent of any part. The comments and thoughts below are broadly reflective of where we understand the industry consensus to be, but for the purpose of this response are attributable solely to RSSB. [A draft of these comments has been shared with members of the industry System Safety Risk Group and Industry Standards Coordinating Committee.....]

### **Q.1 What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

*The railway sector has been progressively influenced by EU legislation and regulation since the 1990s. Although it has been a long and sometimes painful process, the overall objectives of freeing up markets, harmonising standards and reducing barriers to trade has been one that is both consistent with general UK Government policies (under all parliaments) and also conducive to the development of the industry.*

*The UK does not have a domestic rolling stock development and manufacturing capability. It is, at least for the time being, going to be dependent on overseas suppliers, and this means that the UK has to treat international developments seriously.*

### **Q.2 To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

*No comment*

### **Q.3 To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

No Comment

### **Q.4 To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the**

**proper functioning of the internal transport market as opposed to desirable in its own right?**

*We find that the harmonisation of standards is both necessary for the functioning of the market and desirable in its own right, for the reasons set out in this answer*

*RSSB has a significant experience in the management of standards affecting the safety and efficient operation of the railway system. This response concentrates on this aspect of 'social standards'. The principles set out in this response are however equally applicable to 'environmental standards'.*

*Harmonisation of standards is essential for the removal of 'virtuous barriers'.*

*There are many aspects of the railway system that can be managed in different ways without compromising the technical compatibility of the system. In principle these may be left to individual infrastructure managers and railway undertaking to manage, voluntarily using standards where they feel this is appropriate.*

*However, there are a number of areas where this approach may give rise to 'virtuous barriers', typically relating to safety. A Member State or an infrastructure manager may seek to deny access to a network on the grounds that a vehicle or operation is insufficiently safe. More improbably, a railway undertaking may similarly refuse to use a network on the grounds that it is insufficiently safe.*

*In principle, it is possible to create a commonly accepted set of 'risk acceptance principles' by which it can be shown that a proposed change (such as the introduction of a new vehicle) is sufficiently safe. The Common Safety Method (CSM) for Risk Evaluation and Assessment enshrines this approach. Pragmatically therefore, there are a number of safety issues which are best dealt with by setting mandatory standards which, if met, are presumed to be sufficient either at a European level (in Technical Specifications for Interoperability - TSIs) or national level (national rules). The CSM on REA allows the risk acceptability of a significant change to be evaluated by using 'codes of practice' that are widely recognised in the railway domain. The use of 'codes of practice' is the most efficient of the three risk acceptance principles allowed by the CSM on REA (the other two being comparison with similar parts of the railway system and explicit risk estimation). In*

*terms of the CSM on REA, TSIs and national rules can be effectively used as 'codes of practice'.*

*Closely allied to the issue of overcoming virtuous barriers is therefore the idea of opening the market and establishing a basis for fair competition.*

*The use of mandatory standards to overcome 'virtuous barriers' is generally most useful where there are many suppliers serving many customers. In practice this limits their application to rolling stock, and usually to those safety aspects where a failure could create hazardous conditions for other entities.*

*Prime examples of such mandatory standards are rules relating to fire resistance (a burning train puts the infrastructure manager's assets at risk) and integrity of wheelsets (a derailed train resulting from the disintegration of a wheel may obstruct the path of another railway undertaking's train).*

*For example, if a manufacturer has clear rules defining what an acceptable level of fire resistance is, rather than having to work these out from first principles, uncertainties as to whether his product is acceptable to all customers is reduced, and competition is fair, as everyone is delivering to a common baseline.*

*This illustrates an example where a European Regulation embeds a UK principle and protects UK interests by making allowing UK products not to be denied access to other Member States' markets because of 'virtuous barriers' while maintaining an acceptable level of safety in the UK.*

*The approach set out in this proposed response gives examples of the benefit of the harmonisation of safety standards. However the principles set out in this response are equally applicable to other standards, including environmental ones.*

**Q.5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

*No comment.*

**Q.6 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

*We support the EU approach which has been both logical and proportionate to the challenges facing transport. However, there are two aspects that cause concern. The first relates to the equity with which the EU addresses inter modal issues. The competition between road and rail, for both passengers and freight is not equal and there seems to be a reluctance at both national and EU level to really 'level the playing field.' The continuous moves to regulate and legislate in the field of rail, compare unfavourably with the relatively laissez faire approach to road competition (particularly in the freight arena) and are often in danger of creating bureaucratic barriers to the use of rail relative to the competition. Put another way, although the objectives of the legislation and regulation may be to free up the market, the result of the specific measures developed (often as a reaction to some regulatory or safety concern) can have the effect of handicapping rail relative to its competition.*

*The second concern is the consistent desire to press on with the next stage of reform and regulation without ensuring that the existing legislation is complied with in a consistent manner. We believe that the single biggest improvement in the approach to EU legislation and regulation would be to ensure and insist on each stage of legislation being fully and consistently implemented across the Union before any further steps are taken. This would enable the evaluation of the success of particular measures to be done as part of future legislation and also be fair. For the avoidance of doubt, this is not a pragmatic delaying tactic, but a principled concern that the lack of consistency in the adoption of EU legislation leads to more failures in the market, and greater confusion as to what is going on in each country.*

**Q.7 To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

*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, or to see them exported to the world wide arena would be a mistake. We believe that it is right for national administrations to be the specifier and procurer of socially desirable railway services, but that the organisational framework, interface standards and the requirements for safety are best set at the EU level.*

**Q.8 What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

*We have no particularly strong evidence, but would suggest that it is good for the UK to be involved in EU negotiating activities and by extension for the EU to be involved in international ones*

**Q.9 What challenges or opportunities are there for the UK in further EU action on transport?**

*The objective of EU legislation in the field of rail transport is to:*

- *facilitate, improve and develop international rail transport services within the European Union and with third countries;*
- *contribute to the progressive creation of the internal market in equipment and services for the construction, renewal, upgrading and operation of the rail system within the Community;*
- *contribute to the interoperability of the rail system within the Community*
- *ensure the development and improvement of safety on the Community's railways where reasonable practicable*

*This is notably achieved by:*

- *harmonising the regulatory structure in the Member States*
- *harmonising the regulatory, technical and operational conditions in the Member States*
- *defining responsibilities between the actors*

*In this context, the EU action to harmonise regulatory, technical and operational specifications (not technical standards only) fosters the proper and economic functioning of the EU internal transport market.*

*Market opening and removal of barriers to entry constitute the main opportunities for the UK in EU action. The response to Question 4 illustrates this principle.*

*For example, the development of harmonised European specifications facilitates the placing into service of railway subsystems. The European technical specifications for interoperability (TSIs) set out the harmonised European technical requirements for railway subsystems. TSIs recognise the existence and the need for some Member States-specific requirements and explicitly include them (specific cases). TSIs also recognise that they do not and should not set out the totality of the requirements. Therefore requirements necessary to ensure the technical compatibility between TSI-conform subsystems and existing non TSI-conform ones are managed by each Member State and remain under the Member State responsibility.*

*This approach allows the removal of barriers to entry for the UK rail industry to other Member States' market while preserving reasonable UK interests in the UK.*

#### **Q.9b: Challenges for the UK in further EU action on transport**

*The development of a coherent regulatory framework is a key challenge.*

*The Fourth Railway Package introduces some fundamental changes to the European regulatory framework, notably by the revision of the Railway Interoperability and Safety Directives.*

*When they come into force, these European Directives will need to be transposed into UK Law.*

*The transposition of these European Directives represents a challenge for the UK regulatory framework.*

*The UK industry needs a regulatory framework coherent both within UK and with the European regulatory framework. For example, the revised RIR and ROGS will have to provide a coherent regulatory system within UK. Because they do not need transposition in*

*UK law, this framework will also need to be coherent with Commission Regulations, such as the Regulations on Common Safety Methods.*

# Rail workshop

## General remarks

- Freight and rolling stock are predominantly a domestic issue for the UK; however it always complies with any freight regulations, which isn't always the case with other Member States. One example given was wagon ECM certificates, for which the deadline for compliance was 31 May 2013. The UK was the only Member State to actually comply on time, even though it felt that the regulation imposed unnecessary burdens as it replaced a system that was considered perfectly adequate. This point was picked up more generally by other stakeholders who felt that new EU standards tended to replace existing UK standards rather than creating additional ones.
- The EU was considered weak on enforcing implementation and it appears that few Member States, including the UK, conform. Rail packages are considered positive from a strategic point of view but fail on proper and consistent implementation and enforcement, which has created some barriers to market entry. For example, the UK has opened up its market but it can't achieve reciprocal market entry due to an imbalance of compliance. It was argued that it was up to the UK government to encourage the Commission to enforce legislation.
- In rail there were several examples given, including the 4<sup>th</sup> Rail Package and the safety directive, where the EU has taken the UK model as a basis for new rail regulation. This posed problems for the UK when it wanted to go further in a particular area but was restrained by other Member States wanting to reach the UK level.
- There was a general feeling from stakeholders that the EU institutions, particularly the Commission, were very open and accessible and willing to listen to stakeholder views, even though shaping proposals was considered to be time-consuming and resource intensive for stakeholders. For example, the Commission listened to the UK's arguments for a derogation for the Croydon tram link and as a result helpfully granted one.
- Overall it was felt that the Commission's vision behind proposals is often sound but the way in which the Commission sets about achieving those objectives is often very costly.

## Subsidiarity

- One stakeholder expressed concerns at EU action in land security, which they felt was better addressed at a national level. The UK already has a very good security management system in place and they were concerned about the EU imposing its own



measures in this area, particularly if the EU increased costs in areas that the UK wouldn't necessarily consider a risk.

- One participant argued that the UK interest would not be better served by national action because this would give even less market access to other Member States' markets than there is currently.

### Timing

- The inherent nature of rail legislation often necessitates long time delays and transition periods, which causes tensions for the UK if the Commission doesn't respect them. One example given was that of public service obligations, a debate which took approximately eight years to conclude and set out a ten year transition period until 2019. In the meantime the European Commission has already come forward to amend two elements of the package. Stakeholders expressed their frustration at the Commission's "bureaucratic fidgeting" and wanted regulatory stability. There was a feeling that the EU needed to focus on ensuring that existing legislation worked before considering possible further legislation.
- Long timeframes for procurement procedures were considered burdensome for some stakeholders, who often have to go through multiple procurement processes for similar works even if the successful bidder from the first process is the best bidder for the subsequent work. It was recognised however that this wasn't an EU-specific problem.
- Interoperability and market liberalisation at an EU level have both brought benefits to the UK by enabling manufacturers to drive down costs and increase their exports, and opening markets abroad.

### The EU approach

- While stakeholders recognised the difficulty in reconciling 27 Member States all starting from very different levels, they felt that the Commission was always keen to bring forward legislation and didn't look at other approaches. Participants agreed that guidelines work well in the UK but not in other Member States and as a result the Commission defaults to regulation. It was argued that different approaches were needed for different areas, for example, a risk-based approach was more appropriate for safety whereas rules and regulations were necessary for interoperability.
- Stakeholders felt that the Commission wasn't in favour of flexibility and instead preferred a one-size fits all model. For example, flexibility on Low Emission Zones across Europe would on the one hand be welcomed because each city has its own air

quality challenges, however on the other hand there is an argument for having common standards so that all concerned know what they are everywhere.

- Flexibility with regards to cities and urban transport was desired as cities are unique, even within Member States. Stakeholders felt that there should be a range of tools available to meet the individual challenges.
- One stakeholder expressed a desire for the EU to be more even-handed between modes of transport; that there should be an evenness of regulation. For example if the EU permits longer and heavier lorries it should permit longer and heavier rail freight wagons.
- Overall it was agreed that in the rail sector diminishment of the EU role would not be helpful.

### Social

- Rail passenger rights legislation was mainly already in existence in the UK – although EU action in this area did benefit passengers going abroad.
- The EU affects passenger rights both directly and indirectly. One stakeholder considered that the direct legislation on passenger rights, covering information, compensation, accessibility, etc, didn't provide much more than what the UK already had in place but was a useful "back-stop" to prevent people from back-tracking. Indirect legislation such as Technical Specifications for Interoperability (TSIs) can impinge on the passenger experience, especially Persons with Reduced Mobility (PSR) TSIs, which cover accessibility and telematic TSIs, which cover the booking arrangements.
- One participant highlighted that there was no common approach taken towards passenger rights across the modes, but it was argued that this isn't necessarily a negative given that there is a need to take different circumstances into account.
- On the issue of security one participant pushed back on paragraph C27 in the Call for Evidence stating that common EU standards would be better, simpler and cheaper than maintaining the current multi-lateral status quo between the UK, Belgium and France as it is much more restrictive than the security practices of other Member States.

### International agreements

- Rail is different to maritime and aviation in respect of international organisations and third party agreements as it is not inherently international. However, other countries are taking the TSI model and implementing it abroad.
- In terms of the relationship between the EU and COTIF EU law takes precedence so there is no tension between the two organisations.

### Future opportunities and challenges

- When identifying future opportunities and challenges one stakeholder commented that it would be helpful to have standard documentation on retrofits with regards to Low Emission Zones as currently it is often done on mutual trust.
- One challenge identified was the Commission's desire to transfer powers to a central regulator, the argument for which has not yet convinced stakeholders.
- Stakeholders identified the reciprocity of market opening as a key future opportunity. The UK already has a lot of experience in opening the market – over half of UK operations are now owned by the French, Germans and Dutch. However, protectionism in other Member States is an issue. To get equivalent openness in other Member States the EU's powers need to be implemented effectively. However, it was recognised that the UK, too, can be quite protectionist and protects its own position.

# RMT

## **1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

RMT believes that the proposed EU Single European Transport Area is designed to facilitate the integration of the EU and the Internal Market. RMT rejects both the Internal Market and the EU as a whole as being fundamentally undemocratic and anti-worker.

RMT believes that Britain's transport policies should reflect the needs of Britain's population and we cannot identify any advantage to having UK transport policy determined in any arena other than through our democratic institutions such as the national parliament, or devolved or regional administrations.

The EU Internal Market is based upon fundamentalist free market principles which are not designed to meet the needs of Britain's people, or the peoples of Europe, but rather to enrich transnational monopolies. This is particularly obvious in the field of land transport where a handful of transnational transport monopolies, operating through a wide net of registered companies, effectively dominate and exploit massive sections of Britain's transport infrastructure.

The economic benefits of the Internal Market should be judged against their ability to deliver on the democratic expression of the UK population. We believe that the needs of the people cannot be met through antagonism between monopolies or through the proscription of state intervention in the market on behalf of its citizens.

In relation to rail, for the past 20 years the EU has sought to enshrine privatisation of rail services. RMT has condemned the publication of the European Commission's fourth railway package which furthers the trend of liberalisation/privatisation of European rail policy. It will entrench separation of operations and infrastructure and require member states to compulsorily tender their public passenger services.

By 2019 the 4<sup>th</sup> Rail Package will result in:

- Mandatory re-tendering of all rail passenger services in the EU.
- Separation of rail infrastructure and passenger operations.
- European Rail Agency acquiring responsibility for all rail vehicle and safety licensing.

RMT believe that these changes will be deeply damaging to rail passenger services in the UK, and other Member States where over 90% of rail passenger services are provided by the public sector.

The 4<sup>th</sup> Railway Package ignores the mountain of evidence in favour of publicly owned rail services on the continent which continue to provide cheaper fares, more high speed services and greater rates of electrification than the privatised rail market in the UK.

The proposals on the European Rail Agency will add another layer of bureaucracy to the rail industry in the UK – an industry that is already over complicated by the franchising system and other features of privatisation. RMT opposes the transfer of safety related powers from Member States to the European Railway Agency. RMT believes that a significant incentive for a safe railway is for those responsible to be accountable. This is not the case with the European Railway Agency.

Furthermore, the EC's proposed revision of Directive 96/53, governing the dimensions of HGVs for international traffic, is of serious concern as it will permit 'mega trucks' on EU and UK roads. RMT is opposed to mega trucks as they pose a risk to both public safety and the environment.

RMT is also concerned at the effect on the workforce, communities and services of existing EU legislation<sup>17</sup> requiring regular re-tendering of maritime transport services. This legislation has caused job losses, privatisation and service reductions, most recently on Northern Isles ferry services operated by Serco since July 2012 and threatens the UK's maritime skills base.

The Scottish Government continues to argue that this legislation requires EU governments to re-tender public service contracts every 5 or 6 years. Regular re-tendering, designed to encourage competition, is clearly biased in favour of private bidders and has brought instability and uncertainty to lifeline Scottish ferry services.

The EU's threat of infraction proceedings against the UK has failed to address pay discrimination in the maritime sector. Unfortunately, as the then Shipping Minister openly stated, the UK government avoided infraction by enacting the 'bare minimum'<sup>18</sup> in 2011. Poverty pay amongst EU and non-EEA seafarers working on ships from UK ports continues to blight the industry.

We are also concerned at the direction of European maritime policy and its potential impact on the MCA and the UK flag. The 'Blue Belt' strategy from the European Commission is similar in tone and language to UK Government statements on the apparently causal link between de-regulation and economic growth in the maritime transport sector. RMT is concerned that the logical extent of the EC's proposals is an EU flag register which would be a direct competitor of the UK and other domestic European flags and could undermine industry pay rates and employment standards. This would seem to be the ultimate aim of the 'European Maritime Transport Space without Barriers'

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<sup>17</sup> EC Directive 92/50/EEC on procedures for the award of public service contracts.

<sup>18</sup> 12<sup>th</sup> Delegated Legislation Committee, House of Commons 11<sup>th</sup> July 2011.

proposal to simplify administrative procedures for maritime transport and “...which should be further developed into a 'Blue Belt' of free maritime movement in and around Europe.”<sup>19</sup>

**2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

The EU has succeeded in creating an internal market insofar as it has ensured the domination of foreign companies, often state owned by other EU member states, over substantial sections of Britain’s critical national infrastructure. RMT research shows the growing domination of foreign companies over the UK’s railways. The table below shows of the nineteen GB rail operations 11 or sixty percent are owned or part owned by European State Railway companies with over a quarter now owned by the German state rail company Deutsche Bahn.

**GB Rail Routes**

Franchise	Operator	Operator Owner name	Operator Owner - Country
Chiltern	Arriva	Deutsche Bahn	German State Railways
Cross Country	Arriva	Deutsche Bahn	German State Railways
Essex Thameside	C2C	National Express	UK private company
East Coast	Directly Operated Railways	Directly Operated Railways	UK state owned company
East Midlands	East Midlands Trains	Stagecoach	UK registered private company

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<sup>3</sup> Blue Growth: Opportunities for Marine and Maritime Sustainable Growth, COM (2012) 494, 13<sup>th</sup> Sept 2012. p.5

Grand Central	Deutsche Bahn	Deutsche Bahn	German state railways
Greater Anglia	Greater Anglia	Abellio	Dutch State railways
Great Western	First Great Western	First Group	UK registered private company
Integrated Kent	South Eastern	Govia (comprising of Go- ahead and Keolis)	French state railways owns Keolis,
London Midland	London Midland	Govia (comprising of Go- ahead and Keolis)	French state railways owns Keolis,
Northern	Northern	Serco / Abellio	Dutch state railways own Abellio
Scotland	Scotrail	First Group	UK registered private company
South Central	Southern	Govia (comprising of Go- ahead and Keolis)	French state railways owns Keolis,
South West	South West Trains	Stagecoach	UK registered private company
Thameslink	First Capital Connect	First Group	UK registered private company
TransPennine	First TransPennine Express	First Group / Keolis	French state railways owns Keolis,
Tyne & Wear Metro	Deutsche Bahn	Deutsche Bahn	German State Railways
Wales & Borders	Arriva	Deutsche Bahn	German State Railways

West Coast	Virgin West Coast	Virgin / Stagecoach	Virgin and Stagecoach are UK registered private company
London Overground	Arriva/MTR	Deutsche Bahn/MTR	German State Railways
Hull	First Hull Trains	First Group	UK registered private company
Merseyrail	Merseyrail	Serco / Abellio	Dutch state railways own Abellio
Eurostar	Eurostar	EIL is owned by London and Continental Railways(40%), SNCB (5%) and SNCF (55%)	SNCB is the Belgian State railway and SNCF is the French State railway.
Heathrow Express	Heathrow Express	Heathrow Airport Holdings	Heathrow Airport Holdings is consortium, 41.88% of which is owned by the sovereign wealth funds of Singapore, China and Qatar.
Heathrow Connect	Heathrow Connect	Heathrow Airport Holdings/First Group	Heathrow Airport Holdings is consortium, 41.88% of which is owned by the



			sovereign wealth funds of Singapore, China and Qatar.
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Furthermore, it is clear that UK economic growth drives the profits of these transnational monopolies, and not the other way around.

According to a recent independent report<sup>20</sup> “over the past thirty years there has been a strong positive correlation between year on year rate of growth in GDP and rate of growth in rail passenger journeys so that, for example, recessions in the early 1980s, 1990s and 2008 onwards all reduced the number of passenger journeys (although the effect is much less marked in the recent recession). In our view, this kind of correlation would most likely have existed, whatever the form of ownership.”

The report goes on to highlight the levels of direct and indirect public subsidy granted to the transport operators which clearly demonstrates that they are a drain on the UK economy, receiving public subsidy and removing it from the economy.

This is especially true of state-owned foreign operators who often reinvest UK public subsidy in the rail networks of their own countries. For example, it has already been stated that the German state owned operator Deutsche Bahn now operate over a quarter of rail passenger franchises in Britain.

A 2012 report, Rebuilding Rail<sup>21</sup>, noted : “A German transport ministry spokesperson described the rationale for the payment thus: *‘We’re skimming profit from the entire Deutsche Bahn and ensuring that it is anchored in our budget - that way we can make sure it is invested in the rail network here in Germany.’*<sup>22</sup> Effectively, the German Government is achieving higher investment in German railways by capturing monies that could have been invested in the UK railway, if the UK Government had not let them leak out as corporate profits”.

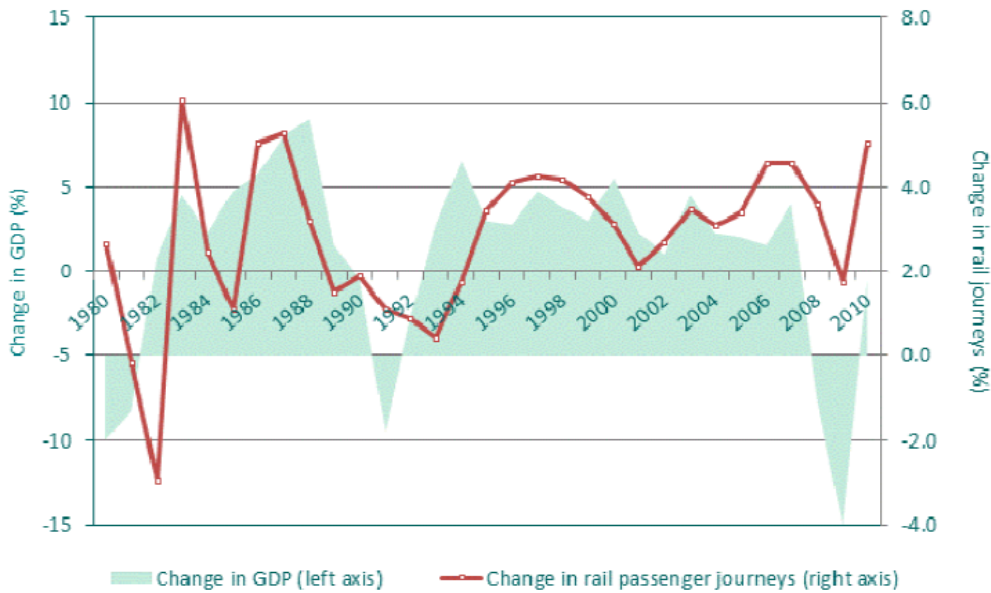
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<sup>4</sup> Bowman, Folkman, Froud, Johal, Law, Leaver, Moran & Williams (2013) THE GREAT TRAIN ROBBERY: rail privatisation and after. CRESC: University of Manchester. p.115

<sup>5</sup> Taylor & Sloman (2012) Rebuilding Rail. Transport for Quality of Life: London

<sup>6</sup> Deutsche Welle 7 April 2011 *Deutsche Bahn to Pay its First Ever Dividend*, <http://www.dwworld.de/dw/article/0,,14971427,00.html>, accessed 9 September 2011 in

**Exhibit 60: Percentage change in GDP vs. change in rail passenger journeys**



23

**3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

RMT believes that the internal transport market is not necessary for the effective functioning of the EU internal market. However, RMT recognises that in the eyes of the EU an internal transport market is desirable for both political and economic reasons.

The pressure currently being applied by the EU Commission on publicly owned and operated, integrated transport networks is designed to remove critical national infrastructure from the control of national parliaments and so further EU integration on the basis of a common economic model – despite recent history demonstrating that this model has failed.

RMT believes that the marketisation and privatisation of national transport bodies is an attempt to cement the neo-liberalism of the internal market in a field in which most EU Member States recognise that public ownership is in the public interest.

**4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

The Internal Market forces free market fundamentalism into the spheres of environmental, social and employment legislation and subsequently imposes the rights of monopolies above those of the peoples of Europe. This is especially true where the Internal Market does not allow democratic bodies such as national parliaments to intervene in these areas.

<sup>23</sup> Ibid. Source: ORR / DfT / IMF.

**5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

RMT believes that the events of the last few years have clearly demonstrated that EU action on transport has not worked for the people.

RMT believes that the correct balance between consumers and transport operators is not, and cannot be, met by EU measures.

The highest fares in Europe, coupled with massive taxpayer subsidy (without which the transport operators would be unprofitable), are clear evidence of this.

Average fare costs in the UK compared with other European countries (£/km)

	Long distance £/KM	Long distance advance £/KM	Day return £/KM	Restricted day return £/KM	Season ticket £/KM
France	0.15	0.06	0.08	0.08	0.08
Germany	0.28	0.13	0.17	0.17	0.08
Italy	0.22	0.10	0.12	0.11	0.04
Spain	0.24	0.16	0.09	0.09	0.07
UK	0.49	0.15	0.26	0.17	0.14

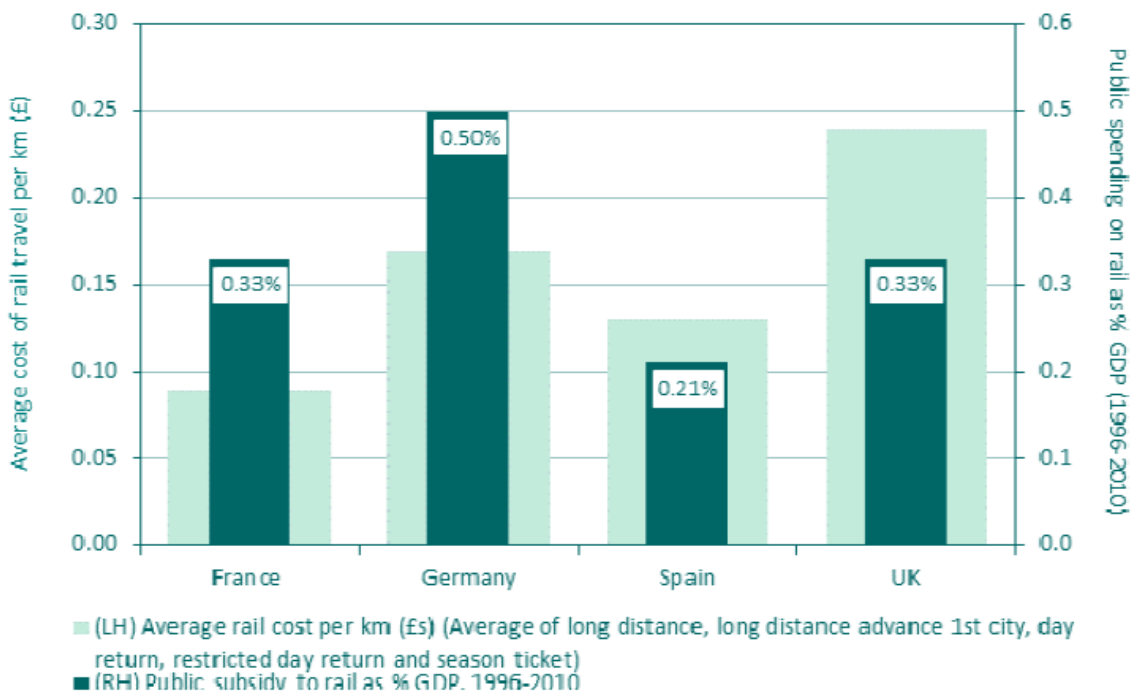
24

According to the CRESC report, and demonstrated by the table below, “in France, a near fully publicly owned rail system manages to give its passengers fares, which are far lower than the UK, for almost exactly the same amount of public rail subsidy between 1996 and 2010”<sup>25</sup>. Should the 4<sup>th</sup> Rail Package be implemented, France will no longer be able to do this and the UK will not have the option to return to public ownership.

<sup>8</sup> Bowman, Folkman, Froud, Johal, Law, Leaver, Moran & Williams (2013) THE GREAT TRAIN ROBBERY: rail privatisation and after. CRESC: University of Manchester. p.120

<sup>9</sup> Bowman, Folkman, Froud, Johal, Law, Leaver, Moran & Williams (2013) THE GREAT TRAIN ROBBERY: rail privatisation and after. CRESC: University of Manchester. p.119

Public subsidy to rail vs. average cost of rail travel for UK vs. major EU economies



26

**7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The UK national interest would be better served by foreign policy being based on the free and independent cooperation of sovereign nation states and whilst harmonisation is important in fields such as human rights, that these rights are best protected outside of the EU sphere of influence (and consequently outside the sphere of influence of big business) such as through the European Court of Human Rights.

In this way the UK national interest can be served through mutually beneficial arrangements outlined in bi/multi-lateral agreements with other countries and without necessitating the adoption of the EU's failed economic model by other countries.

**8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

RMT believes that the UK is greatly disadvantaged through the EU negotiating agreements internationally. Not only is there an obvious democratic deficit to the EU handling the UK's international relations, other disadvantages for the British people are evident through EU Free Trade Agreements with other countries which further enshrine free market fundamentalism and encourage phenomena such as privatisation, social dumping etc...

<sup>10</sup> Bowman, Folkman, Froud, Johal, Law, Leaver, Moran & Williams (2013) THE GREAT TRAIN ROBBERY: rail privatisation and after. CRESC: University of Manchester. p.120

**9. What challenges or opportunities are there for the UK in further EU action on transport?**

The challenge for the UK is to restore the sovereignty of Parliament over all matters relating to the UK's critical national infrastructure including transport.

# Roads

## AB Sugar

### Introduction to AB Sugar

AB Sugar is a business segment of Associated British Food plc (ABF) a diversified food, ingredients and retail group with 2012 sales of £12.3 billion and 106,000 employees in 47 countries. ABF has a primary relationship with the UK Government through the Strategic Relationship Management (SRM) initiative, for which its sponsor departments are DEFRA, BIS and UKTI.

AB Sugar produces cane and beet sugar plus a wide range of associated products in 9 countries worldwide. It has invested £1.6 billion since 2005, of which over £340 million has been in Britain, much of which has been in renewable energy. The UK beet sugar industry is one of the most efficient in Europe, makes an economic contribution of £1 billion/year and supports 13,000 jobs.

### General comments

Scope of our response: AB Sugar has a particular interest in renewable transport fuels and our response will focus only on this issue which is referred to in Part D on Roads, although renewable transport fuels can be used for other modes. The omission of transport fuels (in which the Department for Transport takes the lead) as a separate section within the review is surprising.

Balance of Competences Reviews in other sectors: AB Sugar is responding to the Environment and Climate Change review (Semester 2) where there is overlap with this response. We will also be responding to the reviews on Agriculture and Energy in Semester 3 which may be of relevance.

Climate Change legislation and the absence of a counterfactual: In relation specifically to Climate Change, in response to the Environment and Climate Change review, we have taken UK sign-up to the Kyoto Protocol to the UNFCCC as a given, whether this is independently or through the EU. For that area of the Transport review in which AB Sugar has an interest, renewable transport fuels, it is essential that, in the absence of the current operating EU Directives (see below) the UK should enact equivalent domestic legislation

designed to achieve the de-carbonisation of the liquid transport fuels market, and which would underpin the investments we have recently made in this sector.

Transparency:. Wherever legislation is initiated, it is important that procedures are transparent and subject to consultation with stakeholders. Because of the complex nature of the EU legislative procedure, there is much that is not transparent and UK Government representatives have a duty of care to UK citizens to ensure that relevant information is made public in due time. This is equally important when the subject under scrutiny is not one that finds particular favour with the Government of the day.

**Q,1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive); and Directive 98/70 as amended – quality of petrol and diesel fuels (Fuel Quality Directive)

Although these 2 Directives and the Renewable Transport Fuel Obligation are mentioned in paragraphs D. 17 and 18, they are not referred to in the table of key transport legislation which is a surprising omission.

AB Sugar has invested some £200 million in 2 plants in East Anglia and Humberside to produce 500 million litres annually of low carbon renewable fuel, bioethanol. These investments support over 1,000 jobs in remote or disadvantaged regions of England. The Renewable Energy Directive (RED) sets a mandatory target for the transport sector of 10% by energy to come from renewable sources. Prior to the RED there were indicative targets under the 2003 Biofuels Directive which failed to incentivise any significant UK investment. By contrast, the EU's initiative to set mandatory targets and sustainability requirements under the RED has underpinned over £1 billion of investment in the UK biofuels industry, supporting 3,500 jobs. These investments are also currently some of the few UK sources of low carbon fuel to contribute to the decarbonisation of the UK transport sector which currently accounts for about 25% of the UK's carbon emissions.

Given the scale of the AB Sugar bioethanol investments, in the absence of the EU RED and FQD Directives, equivalent UK legislation would be needed to:

- contribute to the UK's efforts under the Kyoto Protocol and the UK Climate Change Act
- underpin our investments
- secure UK jobs

The European institutions are currently considering a Commission proposal to amend these 2 Directives in such a way as to take account of greenhouse gas emissions caused by indirect land use change (ILUC). While a number of studies have been commissioned by the European Commission and other bodies, the burden of the science so far provides an insufficiently robust basis for legislation. In this particular instance, depending on the final decision on the proposal, the Commission and other EU institutions may encourage the UK to enact scientifically unsound legislation. This would not be in the interest of the UK economy or its citizens.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

**No comment**

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

Fuel specifications must be consistent across the EU to ensure that fuels supplies are fungible.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive); and Directive 98/70 as amended – quality of petrol and diesel fuels (Fuel Quality Directive)



Sustainability criteria for biofuels are included in these 2 Directives which are applicable to all biofuels placed on the markets of the EU member states. It is essential that these sustainability criteria are properly and consistently enforced, both to uphold sustainability standards for biofuels consumed in the EU, and to ensure that the UK bioethanol industry (which meets all these standards) is not placed at a competitive disadvantage in relation to competitors from the EU and third countries. It is significant in this context that the sustainability criteria under the RTFO were only voluntary from the start of the Obligation scheme in April 2008 until the implementation of the EU mandatory criteria in December 2011.

**Q.5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive); and Directive 98/70 as amended – quality of petrol and diesel fuels (Fuel Quality Directive)

Surprisingly this question does not refer to fuel suppliers. The 2 Directives have been important to UK renewable fuel suppliers such as AB Sugar as key pieces of legislation to encourage investment in Britain and to reduce carbon emissions in the transport sector. The UK policy mechanism selected to deliver the targets in the Directives is via a 'renewable fuel obligation'. The Government's bioenergy strategy shows that the use of bioethanol is a cost effective way of decarbonising road transport. Proposed fuel duty increases in recent years have had a far greater effect on consumers than the notional cost of renewable transport fuels.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

**No comment**

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive); and Directive 98/70 as amended – quality of petrol and diesel fuels (Fuel Quality Directive)

UK policy on renewable and low carbon liquid transport fuels has been entirely shaped by EU legislation. In environment and climate change terms, the national interest has not been served by national action and without EU legislation investment and jobs in this new sector would not have taken place. In order to protect these investments and their contribution to the national economy and climate change goals, it is therefore essential that in the absence of the RED or FQD equivalent legislation is introduced in the UK.

Both Directives set out a trajectory to 2020 targets (10% by energy for renewable transport under the RED and 6% reduction in GHG emissions under the FQD), but the UK Government has not yet introduced any trajectory to 2020 into UK law. This omission is undermining UK economic and climate change goals as it has weakened the UK biofuels market for existing producers and has also discouraged new investment in the sector, thereby greatly increasing the risk that the UK will fail to meet its targets under either Directive. We therefore recommend that a UK biofuels trajectory to 2020 is introduced as soon as possible.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

Renewable transport fuels

The UK Government generally takes a trade liberalising stance which does not necessarily help nascent industries such as the UK bioethanol industry. The UK Government preference is to allow the greatest possible import access regardless of the strength of a new industry, particularly one like renewable transport fuels where the same standards do not necessarily apply globally and where it is difficult to internalise external costs. In the absence of EU-based legislation, it would be essential that UK policy on international trade agreements was consistent with the new biofuels industry and did not undermine it.

That said, the UK Government recognises when trade practices are unfair and took action in 2011 to close a loophole in the implementation of the Common Customs Code on ethanol imports, which has been vital to the viability of the UK bioethanol industry.

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive); and Directive 98/70 as amended – quality of petrol and diesel fuels (Fuel Quality Directive)

Renewable transport fuels

Managing environmental protection and climate change is a long-term endeavour that invariably outlasts short-term political considerations. The European Commission is currently consulting on climate change targets to 2030 and the UK has given particular focus to 2050 targets in the Climate Change Act. While it is proper that Governments give attention to the more distant targets and the pathways to reach desired outcomes (such as an 80% reduction in carbon emission as set out in the UK Climate Change Act), it is important that shorter term legislation is put in place and enforced now to ensure that solid foundations are built to start the long process of transition towards these distant targets. Without this, the UK's ambitious long term aspirations will remain fanciful hopes rather than deliverable targets.

It is also important that short term political expedients do not cloud judgements that have to be made today for the benefit of tomorrow. In general the EU institutions are less influenced by short term political considerations and are able to propose more far-reaching legislation. Investors need longer-term horizons. Legislation for the environment and climate change, including in the transport sector, needs longevity if investments are to be made that will enable government-set targets to be met.

In the case of AB Sugar, investments in renewable, low carbon transport fuels are under threat as UK policy in this sector has weakened. In these instances EU competence has been a force for good, and in its absence we would need equivalent commitments and legislation from the UK to support the new industry.

## 2030 climate change targets

The European Commission is currently consulting on climate change targets to 2030. Given the incorporation of a specific transport target within the Renewable Energy Directive, AB Sugar believes that there should similarly be a separate transport target for 2030. This is essential if further investment in low carbon, renewable transport fuels is to be made and current investments are to be underpinned by legislation.

AB Sugar is aware that the UK Government is lobbying for a carbon reduction target for 2030 rather than a renewables target. Provided liquid transport fuels are specifically catered for in future legislation, we have no strong view as to whether they should be subject to a low carbon or a renewable transport target. In this context we note that the EU and UK have not made substantive progress on the implementation of the Fuel Quality Directive so steps must be taken to ensure that there is no similar impasse in future legislation, wherever the competence lies.

## Increase in the blending levels for renewable transport fuels

If the UK is to maintain any momentum towards achieving the targets under the RED and the FQD, blending levels must be increased from the current E5 (5% bioethanol permitted in petrol/gasoline) *as envisaged in the FQD which permits E10 (a 10% bioethanol blend)*. It is important that the UK Government supports the introduction of E10, either under the auspices of the current EU Directives, or under national legislation. The EU itself has made no attempt to amend the FQD further to allow blends above E10 to be introduced. Such changes will be needed if the liquid fuel market is to be de-carbonised.

## Other issues?

### Council Directive 2003/96/EC – taxation of energy products and electricity

The UK does not apply fuel duty on the basis of energy. AB Sugar has invested in two bioethanol plants in the UK which between them at full capacity will supply just under 500 million litres of renewable fuel annually for blending into fossil petrol/gasoline. As ethanol has a lower energy content than petrol, by taxing all fuel on a volume basis the UK Government is putting UK bioethanol producers at a significant disadvantage, not only compared to fossil fuel, but also compared to EU competitors whose Governments tax fuel on an energy basis as required by the Directive. Currently the bioethanol supplied by AB Sugar investments is paying an additional duty of just under £100 million more than it would if the duty were applied on an energy basis.<sup>1</sup> For bioethanol which delivers over 50% savings on carbon emission this additional tax is both discriminatory and perverse. The UK should apply fuel duty on bioethanol on an energy basis as set out in the Directive.

1 This calculation is illustrative as it does not take it account the precise energy content of all relevant fuels.

See also the General Comments at the start of this response.

August 2013

## Agricultural Engineers Association (AEA)

**Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

An advantage to the UK of EU action in the field of transport provides relatively free movement and a transparent level playing field for those who wish to operate on a European wide basis. The disadvantage exists when Member States implement their own National requirements which take precedence over EU legislation and the EC are loathed to take any action.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

No expertise to provide any relevant information.

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

It would appear logical to have a harmonised EU internal transport market to support the effective functioning of the EU marketplace.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Harmonisation in these areas is desirable to provide EU residents, the general environment and to a lesser degree flora and fauna, a reasonable cost effective minimum level of safety and confidence. However, the negative aspect of harmonisation is the lack of enforcement at EU level.

**Q.5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

No expertise to provide any relevant information.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

No expertise to provide any relevant information.

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The UK national interest would be enhanced by negotiation and action taken at an International level as the trend is for business to be traded in International markets and the EU is progressively repealing some European legislation and referring to International UNECE legislation. This approach harmonises with an additional 22 countries in addition to EU28.

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

No expertise, but our assumption is that the voice of the EU is far more powerful than that of the UK alone.

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

An EU wide operator licencing system based on the UK model would benefit the UK and provide a level playing field for all European goods hauliers and passenger transportation.

**Q.10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

This consultation has very limited impact on the Agricultural sector of our industry which is the reason our comments are extremely general without any supporting evidence.



# British Historic Vehicle Club

The Federation of British Historic Vehicle Clubs represents over 500 subscriber organisations that between them have over quarter of a million enthusiasts for historic vehicles of all types. The Federation is also supported by specialist traders and individual enthusiasts. Our research shows that the historic vehicle sector is worth £4.3 billion to the UK economy and supports 28,000 jobs. The public enjoy seeing our historic vehicles at museums, rally events, static displays, road runs and they are an important part of this country's heritage. Many events raise funds for charitable causes.

We ask you to bear in mind the large number of people we represent when considering this response. For the purposes of this consultation response we consider an historic vehicle to be one that is over 30 years old and our responses are confined to matters concerning road-going vehicles of that age group.

## **Vehicle testing**

In the UK vehicle testing has always been based on roadworthiness and not on authenticity, which reflects the long history and tradition of using historic vehicles in this country. Over the years, and particularly the war years, vehicles have become modified from the original simply to keep them on the road. The UK has one of the largest historic vehicle parcs in Europe but over time manufacturers have ceased to exist, and build records and construction and use data have been lost. There is of course no type approval for this age of vehicle. It is therefore not possible to check for authenticity as has been suggested in the EU Roadworthiness proposals currently being debated.

There has also long been an overarching principle that historic vehicles should not have to conform to standards that were not in force at the date of manufacture.

## **Driver testing**

The interpretation of the Third Driving Licence Directive in the UK has led to three-wheeled car drivers being subjected to the motorcycle testing regime. It is surely disproportionate for a driver of one of these cars to have to undertake the motorcycle test – a vehicle completely different in characteristics - in order to be able to drive, eventually at 24 years old, a three-wheeled car. We hope that the consultation issued by DVLA on 15 July 2013, 'Motorcycle, lorry and bus driving licences and driving test rules' will address this problem.

### **Drivers' hours and tachographs**

Provision should continue to be made for historic vehicles in preservation, not used for commercial purposes.

### **Emissions and air quality**

Provision should continue to be made for historic vehicles, many of which are unable to use petrol with a high ethanol content without modification. 'Protection grade' fuel with a significantly lower ethanol content must be available beyond the end of the current supply agreement which finishes in December 2013.

### **Infrastructure**

Provision should continue to be made for historic vehicles. Electronic toll systems will need to take into account that not all vehicles can be fitted with electronic devices.

We confirm that we have no objection to this response being published.

# British Motorcyclists Federation (BMF)

## About the BMF

The British Motorcyclists Federation is the UK's oldest and largest representative body for motorcyclists having been formed in 1960 and currently having around 80,000 paying members around the United Kingdom.

## The European Union

Views on the European Union amongst the motorcycling community are mixed. Some decry the loss of ability to make our own rules. However, there are an equal number who find being part of a larger bloc of countries useful and desirable, both socially and economically.

### *The good*

There are many pieces of legislation that have been beneficial to motorcyclists.

**First Council Directive 80/1263 EEC and subsequent driving licence directives** - The ability to travel around the EU without exchanging licences, obtaining International Drivers Permits or other documentation is particularly beneficial to motorcyclists and especially those who enjoy touring. This freedom is down to both the many driving licence directives, but also the UN ECE rules on mutual licence recognition. This was partly undermined in motorcycling by the EU creating new motorcycle licence categories outside the UNECE agreement.

**Directive 2009/103/EC** - On the same theme, the mutual recognition of insurance and the uniform offering of motor insurance that is valid outside its home territory has had added benefits. Policies have become slightly more complicated as the exclusions now have to describe where the full extent of the policy is valid and where not, but this minor inconvenience is outweighed by the benefit of not having to purchase a new policy for short trips.

**Directive 1999/37/EC** - The mutual recognition of registration documents has been useful when travelling, although to a lesser extent than in the other mutual recognition schemes, partly due to the UK not recording the owner of a vehicle on the document.

**Directive 83/182 EEC** – None of the above could take place without the ability to temporarily import vehicles into member states without a bond or tax.

As a whole, the various directives on mutual recognition on licences, documentation and the like have certainly supported the growth of motorcycle touring as a popular activity in the European Union.

**European Health Insurance Card** – The mutual recognition of health benefits are also highly prized by motorcyclists travelling in the EU. Although it is not complete coverage

including things like repatriation and the like, it does offer peace of mind if the worst happens.

**Type Approval** – Type approval has two main benefits for consumers. Firstly, it allows control of product quality and safety at a reasonably low cost for mass produced items. EU-wide type approval allows this cost to spread further and thus reduce. Secondly, harmonisation allows manufacturers access to larger uniform markets which wouldn't be the case if each state had widely or even slightly different rules. This is particularly useful for smaller markets like motorcycling where parts may have a short run and thus the economies of scale are achieved more easily.

**Access to markets** – Simply in terms of road bikes, the UK has scores of new models available. However, the current size of the market is barely above 90,000. Given the cost of development of models and cost of tooling for production, the chances of UK consumers having access to that many different models without a free trade area and market harmonisation are slim to none. Even the largest selling motorcycle models in the UK, the Honda CBF 125 sold only 2,316 units in 2012 and the biggest selling motorcycle over 125cc, the Triumph Tiger Explorer, selling less than half that. For a global company like Honda, which sells literally millions of 125cc motorcycles around the world, developing a UK specific model to sell just over 2,000 low margin units is simply bad business. Obviously, the UK market does have some unique rules about driving on the left and using miles per hour, but manufacturer adaptations required to meet these rules are relatively minor add-ons that cost little or can be shared amongst similar models.

It is a similar picture for accessories, clothing, spare parts and the like. The UK bike market is not insignificant, being one of the 5 largest in the EU28, but at only 1 - 1.5 million riders, it is not huge in terms of other consumer markets. Therefore, logic on economies of scale also applies to aftermarket tyres, exhausts, jackets, helmets, oil, fuel, armour, etc.

Access to both the EU free market and the harmonisation of rules has led to wide consumer choice that benefits UK riders. A worst case scenario would be if 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. Not only that, but as the EU would no doubt continue to exist, parts, vehicles, etc., would still need to be approved for the EU and also the UK, adding an extra cost on entry to market, not to mention any duty.

### ***The bad***

Conversely, there are many pieces of legislation that have not been beneficial to motorcyclists.

**Third Council Directive 2006/126/EC** – The various driving licence directives and their implementation have had a seriously detrimental effect on UK motorcycling. Although, as stated above, the exchange and mutual recognition of licences has been beneficial, the other provisions have not been. In particular, the requirement to undertake particular manoeuvres (brought in as amendments to the 2<sup>nd</sup> directive, Commission Directive 2000/56/EC) before the issuing of a motorcycle licence has been particularly problematic.

In the first instance, these were not suitable for inclusion in the pre-existing test and necessitated some substantial changes to the system. The fact that the problems caused were exacerbated by the Driving Standards Agency, as reported by the Transport Select Committee, only made things worse. As a matter of fact, the European Commission employs no experts on motorcycle licence acquisition or training and has no expertise in the subject. Moreover, they have no practical experience of delivering training or testing and poor knowledge of the differing systems in member states.

On top of this, before the first licence was issued under the new test, they had already written and passed new laws on licence acquisition introducing new categories and age limits. There wasn't and still isn't any evidence to support the changes. This has made a complicated picture all the more complicated and now official guidance on routes to motorcycle licence acquisition takes up several pages (as opposed to a simple theory test followed by a practical test for all car drivers). The constant moving around of quads and tricycles between and A and B category licences has not helped either. The picture is complicated and off-putting for potential motorcyclists, but the situation is even more complicated for those who have to enforce the system, who are also required to remember previous entitlements. The simple fact is that these directives and their subsequent poor implementation have decimated the availability of motorcycle training in the UK and halved the number of test candidates entering into motorcycling.

**Road Safety** – As a body corporate, the European Union's main aims are supposedly to enable the free movement of goods and people. Understandably, expedience is an important factor in this and safer journeys are by definition more expedient. However, the European Commission in particular has over-reached on road safety issues. Firstly, there is the addition of several compulsory manoeuvres to the motorcycle test as noted above. Prior to this, the UK's motorcycle tests were considered safe and adequate tests and these additions have not improved them. Secondly, there is the addition of compulsory ABS to motorcycles as part of the Type Approval Regulation. By the UK's estimate, this will have only a small benefit compared to its enormous cost passed on to vehicle purchasers. Thirdly, despite the UK having a longstanding and widely accepted vehicle scrutiny regime, the MOT, the European Commission is attempting to harmonise rules for motorcycle testing across the EU and introduce new requirements.

To be blunt, the European Commission has absolutely no experience dealing with practical road safety; it does not run motorcycle licence tests, it does not build and maintain motorcycles, it does not run a vehicle inspection regime. Therefore, it does not have real world experience of the rules it tries to create. Moreover, it is not directly connected to the consequences of its policies and therefore has no feedback on the successes and failures of those policies.

Although we would all like safer roads, safer vehicles and safer road users, the fact is that top down policy making with no grounding in reality and experience harms this. Fatalities are usually down to a unique combination of circumstances with road user culture being a key factor and are best delivered on as local level as possible. For example, some EU

countries have large numbers of small motorcycles on gravel roads and therefore compulsory ABS will decimate the market there with little road safety benefit.

**Renewable Transport Fuels Obligation** – Whilst this set of legislation is not directly harmful to motorcycling yet, the requirement to force retailers to dilute their fuel for sale places a burden on riders to be aware of what their machines can use or modify them at their own expense. Many motorcycles, in particular those with fibreglass fuel tanks, were never designed for high concentrations of ethanol and this remains a problem for classic motorcycle owners. Admittedly, the UK and the fuel retailers have done a good job in preventing the worst effects, but as usual the EU doesn't have the power to force something so has to introduce legislation that loads cost on to consumers.

### **Summary**

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. However, in some areas, notably road safety, the institutions lack the hands-on experience required as well as any mechanism for feedback and this has led to idealistic and unrealistic policies. UK motorcyclists have not benefited from these rules, particularly as we have usually born the cost often for marginal or usually no gain.

## British Parking Association (BPA)

The British Parking Association (BPA) welcomes your call for evidence regarding the Government's Review of the Balance of Competences. I am pleased to set out below our response made on behalf of the membership of the British Parking Association (BPA).

We have reviewed the content within your consultation, and we would like to outline the BPA's policy on foreign registered vehicles which we feel may be of interest to you. These views can also be found as part of our Annual Master Plan for Parking 2013-14, which can be viewed [here](#).

### ***No one should be able to avoid legitimate enforcement action by driving unregistered or untraceable vehicles***

We want to see better enforcement of the Vehicle Registration Acts because we believe that every vehicle which is driven in the UK should be properly registered. If a vehicle is properly registered outside the United Kingdom but elsewhere in the EU, it should still be traceable from the UK. It is unfair that some people can avoid enforcement action by not complying with traffic and parking laws by failure to register themselves and/or their vehicles properly in accordance with the law.

We will support the DVLA in their enforcement activities where this helps to improve the proper registration of vehicles and we will work closely with the Information Commissioner to ensure that motorists' data is properly safeguarded and where data is released for parking enforcement purposes that it is used appropriately and in accordance with the law.

Working across borders to ensure payment technologies are consistent is important for travelling parking customers and the BPA will continue to work in partnership with the European Parking Association to this end.

As you may know, the British Parking Association (BPA) is the largest professional association in Europe representing organisations in the parking and traffic management sector. These organisations are many and varied and include manufacturers, car park operators, local authorities, health authorities, universities and higher education facilities, airports, railway stations, shopping centres, theme parks, construction companies, learning providers and consultants.

Currently we have over 720 members, equally split between the public and private sectors. As the recognised authority within the parking profession, the BPA represents, promotes and influences the best interests of the parking and traffic management sectors throughout the UK and Europe. As well as this work, the BPA provides its members with a range of benefits aimed at helping the professional in their day to day work.

The BPA also manages initiatives for the sector including the Safer Parking Scheme (on behalf of the Associations of Chief Police Officers), the Approved Operator Scheme (for those managing and enforcing parking on private, unregulated land) and the Parking Forum.

For more information regarding us here at the BPA, please click [here](#).



# British Vehicle Rental & Leasing Association (BVRLA)

## Executive Summary

Thank you for inviting us to comment on the Balance of Competences Review.

Our members operate in a highly competitive and sophisticated market and fully recognise the immediate benefits of ensuring that UK regulations are targeted and proportionate. Good regulation is vital to maintaining standards and making sure there is a level playing field for businesses to compete. Effective and targeted regulation can play a vital role in correcting market failures, promoting competition, ensuring fairness at work and providing protection for consumers and the environment.

However, we believe that European legislation does not always fall into this definition of good regulation for UK firms. In fact, we would go as far as to say that European legislation can have a corrosive impact on UK firms. European legislation often appears to be introduced with little or no accountability back to the legislators who introduced and implemented the changes. In particular, we note the absence of any post implementation reviews of legislation which confirm the lack of accountability and assessment as to whether the policy objectives have been secured.

We have attempted to use some practical examples in our responses to the questions to help provide examples of where European legislation has and has not worked.

## Specific Comments

### **Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

We are of the view that the advantages to the UK of EU action in the field of transport are limited to involvement with setting common standards which help reduce the costs for operators. This includes areas such as ensuring that all road tolls across Europe can be paid for using one method of payment.

The disadvantages are where the EU restricts the UK in developing its own local legislation, for example with the HGV Road User Levy. We were dismayed to hear of the reasons as to how and why legislators in Europe could be so deeply involved in determining the framework for vehicle taxation in the UK.

This has caused difficulties with the UK with the introduction of the HGV Road User Levy. Again, we fail to see how legislators in Europe can set a minimum for vehicle taxation as

the level of taxation is surely influenced by many local factors that cannot all be taken into account when determining a minimum level for vehicle taxation.

From a road safety perspective we believe the EU involvement does not take into account the variances in road safety records across the EU. For example, the UK has one of the best road safety records in Europe and is often required to introduce new legislation to solve issues in other member states which the UK addressed years ago. For example, the legislation around infrastructure does not take into account the needs of individual countries.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

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. For UK businesses who travel across Europe we imagine there has been some benefit and growth in their business but are not sure how much of an impact this has on the UK economy.

We believe that there is more to do to create an internal transport market, there is a role for EU legislators in helping create an internal transport market particularly regarding the movement of vehicles between member states. At the moment if a rental company in Belgium rents a vehicle to a customer who is planning to start their rental in Belgium and end their rental in France the rental company is unable to rent that vehicle in France they have to repatriate the vehicle back to Belgium before renting it again. This is costly and time consuming for the rental company based in Belgium. Equally if a Belgium citizen moved to France they would have to export their vehicle from Belgium and import it into France which is administratively burdensome and very time consuming.

We are currently working with EU officials to simplify this legislation to help improve the free movement of vehicles across member states. This is an example of where there is a role for European legislators and how the EU can benefit citizens and businesses alike.

The unintended consequences of European legislation are not always taken into account when new legislation is introduced. For example, when digital tachographs were introduced the unintended consequence of this was that non-business operators who occasionally use minibuses had the extra burden of having to apply for a driver card to observe the EU drivers' hours rules. This had an impact on the volume of rental transactions in the UK and therefore had an adverse impact on the UK economy.

This is similar to 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.

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

From an operator perspective there are some areas where EU involvement is important. We believe that the interoperability of charging systems is a key area for EU legislators to be involved with as hauliers need to be able to travel throughout Europe without the need for several charging mechanisms. This involvement at a European level provides real benefit and cost savings to business in terms of being able to operate in different member states in an efficient manner.

However, we believe that interoperability should not extend to which roads can be chargeable as this should again be determined at a local level.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

In terms of setting CO2 targets we believe the role for European legislators should be limited. European cities are all different and therefore emission limits for cities are surely very difficult to set.

However, from a vehicle emission perspective it makes sense for there to be EU involvement as vehicles are no longer made specific to each member state. Whilst it makes sense for there to be vehicle emission standards, we are not sure these are always set correctly. In particular, the latest EURO VI emission standards deliver little benefit or no benefit for HGV operators as the fuel consumption is not improved and additive use increases which all signify an increase in costs.

We strongly believe that European legislators should take into account the benefit for operators of vehicles when designing emission standards, as the take up of new vehicles will be minimal if the vehicles cost more and there are little or no benefits.

**Q.5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

EU action has in some cases caused a great deal of difficulty for businesses. Driver Certificate of Professional Competency is a good example where the right balance for businesses was not struck. Transposition of this legislation offers a good example of where the UK Government has gold-plated European law to the detriment of UK firms.

The driver certificate of professional competency regulation was introduced as a standard for professional drivers to achieve in 2008. The regulations include a number of exemptions one which includes:

*'A vehicle carrying material or equipment to be used by that person in the course of his or her work, provided that driving that vehicle is not that person's principal activity. For example, a brick layer who drives a load of bricks from the builder's yard to the building site and then spends their working day laying bricks. In this case, driving a lorry is incidental to their main occupation.'* This exemption does not extend to our rental and leasing members' employees who occasionally drive vehicles to customers' sites and between branches as the vehicles are not carrying any equipment.

The estimated cost for affected members completing the periodic training for all employees who may be driving commercial vehicles or minibuses is calculated to be around £5 million per annum. The cost of training just one new driver with relevant category on their driving licence is estimated to be around £1,700.

Our members' employees do very little driving it is not the main task which they are employed to do. It therefore seems an unnecessary legislative burden for members' when other industry affected drivers are exempt. Rather than a copy out procedure for the legislation it would have made more sense for the UK government to implement the legislation based on the requirements of UK businesses and ensure that the draftsmen take these requirements into account.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

We do not believe that case law is helpful as it takes far too long for clarification to be received which leaves businesses with years of uncertainty. We believe that if legislation is

implemented in a specific area there should be accompanying guidance on enforcement and how to comply. It should clarify any ambiguities and remove the need for case law.

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

We do not believe that action at a wider international level would be of advantage to the UK, as we would be a very small fish in an even larger pond which would mean further diluting the UK position and our uniqueness.

**Q.8. What challenges or opportunities are there for the UK in further EU action on transport?**

As we have mentioned at question 2 we believe the cross border movement of vehicles presents a good opportunity for EU action in transport which could benefit citizens and businesses.

**Q.9. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

We have no comment on this question.

**Closing Comments**

We welcome the opportunity to continue our constructive dialogue and hope our comments go some way to help shaping the wider Government position on the impact of European legislation on UK businesses.

**Leasing Members**

In general, vehicle leasing is an arrangement where the user simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

## **Short Term Rental Members**

Rental Members offer hourly, daily, weekly and monthly rental of vehicles to corporate customers and consumers. As explained above, rental members are the owners of the vehicle.

**Response from:** British Vehicle Rental and Leasing Association

### ***Bona-fides* BVRLA, the industry and its members**

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its members provide rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.75 million cars, vans and trucks, buying nearly half of all new vehicles sold in the UK.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and the millions of people who use a rental vehicle each year. As well as lobbying the Government on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct. [www.bvrla.co.uk](http://www.bvrla.co.uk)
- The full-service vehicle leasing and short-term rental sector contributed almost £14.3 billion in value-added to the UK economy in 2011. This contribution is the sum of the individual impacts of the operations of the industry itself, the UK-made vehicles it purchases, the use of UK-made engines, the activity in dealerships, and its impact on the used-car market.
- The sector generated nearly £2.8 billion of tax revenue in 2011. This is equivalent to the total cost of employing nearly 31,000 advanced nurses or paying the salaries of around 85,000 secondary school teachers.

# Nick Beadle

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

THERE ARE NO ADVANTAGES .WE ARE LUMBERED WITH A LOAD OF BEUROCRATIC HOGWASH MADE INTO LAW BY SOMEONE WHO HAS AN EXPENSIVE EDUCATION AND LETTERS AFTER HIS NAME WITH OUT A CLUE WHAT WE DO AT THE SHARP END.

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

MOST LAWS FROM THE EU HAVE A NEGATIVE GROWTH EFFECT. WE NOW HAVE A FLEET OF VEHICLES WITH SO MUCH EXTRA STUFF AND REGULATIONS THEY ARE DIFICULT TO OPERATE AND MAINTAIN.

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

ITS PEACEMEAL RUN BY SELF CENTRED HALFWITS TRYING TO BECOME GREAT EUROPEAN POLATICIANS.

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

ITS NOT THERE SEEMS TO BE NO COHESIVE EUROPE WIDE POLICY . MOST EU COUNTRIES HAVE DIFERENT BUILD AND USE REGULATIONS . THE LORRIES WE IMPORT READY FOR THE ROAD FROM GERMANY NEED EXTENSIVE ALTERATION AND ADDITIONS TO BRINGING UP TO THE REQUIRED SPEC .

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

NO MOST EU RULES HAVE CAUSED A RIFT .THE DRIVER CPC BEING THE LARGEST WASTE OF TIME AND MONEY.WE ARE THE ONLY GROUP OF ROAD USERS YOU CAN LEGISLATE AGAINST AS WE ARE THE SMALLEST AND MOST REGULATED ,THIS CAUSES RESENTMENT IN OUR DRIVERS AS WE ARE THE FIRST GET ARRESTED AT THE SCENE OF AN ACCIDENT REGARDLESS OF WHOS AT FAULT. ALL ROAD LAWS AND TRAFFIC IMPOSITIONS ARE AIMED AT THE HGV SECTOR INSTEAD OF THE PEDESTRIANS , CYCLISTS AND CAR DRIVERS .

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

ANY LAW WOULD BENEFIT FROM BEING DRAUGHTED BY THE END USER AND PASSED BY A COMITTEE OF THEIR PEERS WITH NO POLITICAL INTERFERENCE ,IT MIGHT JUST THEN BE A HELP. WE GET NO BENIFIT FROM EU RULES AND REGULATIONS

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

DONT LET THE EU IMPOSE ANY LAWS ON TRANSPORT AS WE DO NOT HAVE THE SAME SET OF GROUND RULES AS THE REST OF EUROPE.

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

THERE ARE NO ADVANTAGES AS MOST EUROCRATS ARE STEERING LAWS AND AGREEMENTS TO LINE THEIR POCKETS NOT TO BENIFIT THE PEOPLE THEY SERVE .

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**



NO OPPORTUNITIES AS WE ARE WEAK IN EUROPE AND COMPROMISE. THE CHALLENGES ARE TO DO WHATS BEST FOR THE PEOPLE, IE REMOVE THE TOLLS FROM THE DARTFORD CROSSING AND BUILD ANOTHER CROSSING FROM THE ISLE OF GRAIN TO CANVEY ISLAND WITH ALL EXTRA ROADS M12 ,M47 ETC ETC. REPAIR ROADS INSTEAD OF PUTTING UP SIGNS SAYING THEY NEED REPAIRING . IMPLIMENT A LINKAGE TO PREVENT LOCAL AND NATIONAL AUTHORITIES FROM WASTING MONEY ON GRAND SCHEMES THAT HAVE NO EFFECT OR BENEFIT.

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

THE DFT IS DISFUNCTIONAL ,OUTDATED AND WASTES MONEY FASTER THAN YOU COULD BURN IT .THE LARGER THE DEPARTMENT AND THE MORE THEY SPEND THE MORE THE TOP DOG GETS PAID,INSTEAD OF RUNNING A LEAN EFFICIENT USEFUL ORGANISATION . THE ROAD TRAFFIC ACT NEEDS SHREDDING AND A NEW MUCH SMALLER DOCUMENT WRITTEN IN PLAIN ENGLISH PRODUCED WITH OUT ANY GREY AREAS OR EXCLUSIONS .

# David Clark

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

In regards to motorcycling the new tests of the last few years have been bought in in a farcical way with little input from UK motorcyclists and the UK seemingly bowing down to irrelevant systems of testing

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

It hasn't, not all aspects of the test have been adopted EU wide

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

It doesnt

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

It is a farce as the EU are trying to impose ever tighter regs when they are continually wasting themselves, our tests are some of the most stringent in the world yet the rest of the world is way behind our testing, surely our expertise should be going overseas to non EU rather than forever penalising the UK and EU transport system

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

N/A

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

Not proportionate at all, bully boy tactics employed

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

let us set our rules and regs to suit our own market

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

# Nigel Cockayne

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

Motorcycling: The E.U. Third Directive on Driving licences has resulted in regulations that will result in a significant reduction of competent riders on the road. The regulations do nothing to encourage younger riders to do more than a CBT until they are twenty four.

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

Motorcycling: E.U. regulations don't appear to result in economic benefits or UK growth. They seem to be having the opposite effect, by making the route to a motorcycle licence over complex. You cant sell motorcycles, accessories or clothing with out motorcyclists.

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

(I have no idea what this question means)

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Due to national variations, I doubt it is having a positive effect. Transport regulations, especially licence regulations should be based on national circumstances. What works for Spain, may not be relevant to the UK.

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

Motorcycling: By making a candidate's route to a motorcycle licence so complicated it has created an imbalance. There are fewer customers, so many trainers are leaving the industry.

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

National level regulations are better for the UK, Europe wide regulations don't match the needs of the UK.

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

The UK MUST take a stronger position when it comes to the economic effect of changes in regulations on the UK. Many recent regulation introductions have no sensible reason to be changed. It comes across as though the E.U. regulators create regulations to justify their jobs rather than what's in the E.U.'s interest, either economically or benefits to road safety.

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

Motorcycling: E.U. Motorcycle licence regulations are pushing people away from an economic method of personal transport. This situation must be reversed.

# Community Transport Association UK

**Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

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; derogation for Section 19 and 22 permit operations in the UK has been positive for supporting the development of volunteer-led and non-commercial services; there should be a common approach across all member states for minibus driving enforcement and vehicle testing. The change in the UK's driver licensing legislation in 1997 is causing disadvantages to the voluntary sector with regards to who can drive minibuses. The decision to restrict the capacity in which someone can driver (receives no other consideration for driving other than out-of-pocket expenses) and the weight of the vehicle (MAM of 3500kg or 4250kg if the vehicle is accessible) simply because of when a person passed their car (B category) test is now restricting the delivery of minibus-based transport services in the voluntary sector. The cost of driver training to PCV D1 standards is prohibitive and unnecessary to the sector and also continues to cause confusion. The CTA would wish amend the agreed derogation to remove both of the above restrictions to promote MiDAS training or similar across the sector as an alternative approved training package. A disadvantage is that Member States can decide their own implementation dates so instead of the legislation taking effect on the same date we have a phased approach which can cause problems i.e. Driver CPC deadline dates vary from country to country which may cause problems for incoming PCV drivers from 9 September 2013 and HGV drivers from September 2014. The phased approach to Driver CPC training means that those countries implementing the legislation first have to incorporate the training costs into their charges making their transport costs more expensive than other transport provision by other Member States. The inconsistency of Driver CPC provision has made a mockery of the legislation as there is no requirement to undertake topical training just any training this means that a driver can undertake seven hours of first aid training every year and retain their DCPC. Sector specific training topics should be a requirement.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

No comment

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

Due to ambiguities around the definitions of “state aid” and “non-commercial” there are barriers for not-for-profit passenger transport operators in entering the tendered passenger transport market. One of the biggest issues affecting viability of the community transport sector in Britain is procurement law. We are not sure if it is the EU legislation that is the problem or the way in which different local authority officers have interpreted the legislation. Unfortunately, whether it is to make the tendering process easier for the public services or whether it is to seek economies of scale, tenders are being let at national and regional level rather than at local. This is having a devastating effect on local business including community transport.

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

The CTA supports the harmonisation of social and environmental standards across all member states.

**Q.5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

EU action in relation to addressing the rights of passengers has generally been positive. However action has been slow in addressing the rights of passengers with mobility issues specifically for local bus services.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

No comment

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

No comment

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

No comment

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**

Review the regulations for post 1997 driver licensing restrictions in the UK for drivers with category D1 as it is restricting the provision of many non-commercial services. There is a need to increase the skill levels of drivers in the passenger transport sector and attract younger drivers. A need for additional type approved smaller vehicles which are suitable for the carriage of passengers with disabilities or reduced mobility to increase the supply in the market.

**Q.10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

No comment



# Confederation of Passenger Transport (CPT)

## Submission to DfT by the Confederation of Passenger Transport (UK)

5 August 2013

CPT represents the operators of local bus services, long distance scheduled coach services and coach holidays. It also represents businesses that provide coaches for hire with a driver. There are more than a thousand enterprises in membership and the public and private sectors are both represented.

The Treaties give very broad scope for Community intervention in transport. In practice, virtually every area of our members' business is open to regulation at the European level. We welcome the opportunity to contribute to this Review, but the structure of the standard questions does not fit very well with the points we would like to make (which are nevertheless relevant, we feel). We therefore offer a brief discussion, for each of the sectors we represent, of the perceived merits and disadvantages of EU membership.

We restrict our comments to those measures that either apply specifically to our sector, or which are broader in nature but have a specific impact on the organisation of road-based passenger transport.

It is important to understand that the breadth of EU competence means that we spend a good deal of time and effort influencing the EU institutions so that they understand the consequences of their legislative plans on the day-to-day business of carrying passengers. "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. We find ourselves engaged in time-consuming discussions on proposals about fine detail which would simply not arise in a national context. For example, we have recently influenced a proposal to require buses to have a space for prams as well as a space for a wheelchair, and a separate proposal for the outline of coaches to be defined by reflective tape so that they could more easily be identified at night.

### **Operating Local Bus Services**

## Vehicle Standards

The EURO emissions standards for heavy vehicle emissions have produced certain costs for uncertain benefits. This process continues. Buses built to the EURO VI standard, which will become mandatory at the turn of the year, cost approximately £15,000 more than the equivalent model built to EURO V. Although it has not been a feature of the latest stages, there was an unwelcome tendency for improved emissions to be achieved at the expense of worse fuel economy. Unlike cars, a typical modern bus uses more fuel to travel a given distance than one put on the road thirty years ago. We are not suggesting that the associated air quality benefits, in particular, are not worth having, but it is probably true to say that EU measures have forced the pace, in the case of buses and coaches, compared to what would have happened if standards were determined at national level. The emissions standards for a new bus are the same whether it is to be put to work in Hackney or in the Hebrides.

The UK market for buses and coaches is competitive, and has been for many years. The prices paid by our members are low in comparison with those charged for broadly similar vehicles on the near continent. It is difficult to find evidence that EU measures on Type Approval have actually reduced prices in the UK market. Although we fought, successfully, to retain the option of building and operating double deck buses, the specification against which standard approvals are granted has a few poor features. For example, there needs to be an emergency exit accessible from the low floor area of a single deck bus. Although virtually never used in practice, these doors create rattles and draughts and make it harder to sell advertising space on the outside of the bus.

## Working time and rules on Driving Time and Rest

The UK bus industry is typified by a much more diverse workforce – and a more diverse set of working practices – than the European norm. We have been able to match economic efficiency with social diversity by offering work to people who want to work hard and earn a good living and also to people who are more restricted in what they can offer, but are useful (because, for example, they want to work during school terms). It is extremely important to our sector that restrictions on working patterns are firmly rooted in road safety and nothing else. The availability of the “48 hour opt-out”, in particular, is absolutely critical.

There is a very important exemption from EU rules on tachographs and working patterns for regular services on short routes (up to 50km). This limit is somewhat arbitrary, and has the greatest impact in rural areas where the economics of bus operations are probably weakest. Although there are certain work-around solutions, the impact of these rules on longer services add cost with no clear benefits.

### Market Organisation

There are two separate strands to this. The common rules to pursue the occupation of road transport operator (Regulation 1071 of 2009) are broadly fit for purpose, although the interaction of road safety, market stability and fair competition objectives, expressed through the concepts of good repute and financial standing, is poorly understood. The EU rules probably benefit established businesses because they make it more difficult for under-capitalised, poorly-qualified and disreputable entities to take part in the market. A national view might set the various bars at different heights.

Regulation 1370 of 2007 on public passenger transport services by rail and road came close to requiring a complete reorganisation of the market-initiative approach that currently applies to buses in the UK (except in London and Northern Ireland). This Regulation is already under review and it is likely (in our judgement) that the outcome will restructure the responsibilities of authorities and operators in the domestic market in a way that we would not choose. There is also a substantial risk that measures designed to deal with one set of circumstances will cause unintended bureaucracy in other situations.

The perspective of British enterprises seeking to enter the local transport market in other Member States may be different.

### Passenger Rights

The Statutory Instrument to implement EU Regulation 181 of 2011 on the rights of passengers in bus and coach transport is currently awaiting final approval. Most of the rights set out by the Regulation are in line with reasonable practice, but we are concerned that the text may unintentionally give a right to information in circumstances, and in forms, in which it is not currently provided, with very significant cost consequences.

### Driver Certificate of Professional Competence

Another example where European legislation has placed a greater burden on our industry than would have been likely to have arisen under domestic powers. The objectives of the legislation include contentious measures such as the raising of drivers' earnings, which is not necessarily in the industry's interest. The administrative costs alone run into tens of millions of pounds. Perhaps the ultimate irony is that 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.

## **Operating Long Distance Regular Coach Services**

### Seat Belts

The provision of belts on coaches is an example of EU legislation that has developed broadly in line with UK custom and practice, with a demonstrable link to safe operation. The obligation on passengers to wear them is a different matter. It is difficult to persuade citizens to wear their belts, even under threat of spot checks and fines. This is not unique to the UK. Our Government continues to agonise over how to meet its obligation under EU law to compel children to wear any belts provided before they reach the age of criminal responsibility.

### Physical Speed Limiters

The link between the maximum safe speed of coaches, road geometry and the behaviour of other traffic is unclear and we believe that physically restricting coaches to a lower speed than the motorway limit for cars is arbitrary, and discriminatory in competition terms with both cars and railways. It also reduces the capacity of the highway infrastructure. The advent of speed limiters has led, ironically, to domestic legislation banning coaches from the third lane of motorways on the grounds that they cannot go fast enough to avoid being a risk to car drivers. This combination of restrictions is deeply resented by the industry.

### Working time and rules on Driving Time and Rest

Long distance regular services do not benefit from the exemption for rules on tachographs, driving time and rest that applies to local services. As the road network becomes busier, the 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 has “run out of hours” and they need to wait for a replacement driver to be found. This degree of rigidity can also be a problem when ferries are delayed in docking, and in similar unplanned circumstances.

### International Regular Services

Although the mechanisms for authorising international regular services are bureaucratic, by UK standards, they do exist and it is reasonably practicable for adequately resourced companies to enter this market and compete with airlines, railways and car travel.

### **Coach hire and Coach holidays**

Although these sectors are afflicted with some of the disproportionate regulatory burdens that European legislation imposes on the other parts of our industry, they do have the compensating advantage that it is relatively easy, with a single set of papers, to carry passengers in coaches across the length and breadth of Europe.

More could be done, certainly, to improve the fairness of enforcement of technical standards and the rules on driving time and rest. It is currently too easy, in our view, for enforcement officials to levy very large fines for technical offences which were virtually unavoidable and had no demonstrable effect on safety. The benefit of free movement is also reduced by labyrinthine VAT rules and a perplexing variety of local road charging schemes and low emission zones. These factors in other countries are beyond the scope of this Review but they are, of course, relevant for operators from elsewhere in the world carrying passengers in the UK.

The EU Package Travel measures are an example of relatively successful legislation insofar as they codify a set of supplier responsibilities that is broadly in line with good practice. They do, however, place firms that supply pre-assembled packages of travel and

accommodation (as coach holiday firms do) at a commercial disadvantage compared to those that assemble transport and other package elements on a bespoke basis.

Although it is of no direct benefit to the UK coach industry, the relative ease of movement through the Community for tourist coaches facilitates this relatively sustainable mode of tourism in the UK for groups from other parts of Europe, benefiting UK hotels and attractions.

# Cumbria Green Fuels Ltd

**Q.1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

Cross-border road transportation of goods and services has been made easier through harmonisation of transport regulations throughout the EU but this has been at the cost of small local transport operators working solely within national boundaries.

**Q.2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

No comment

**Q.3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

No comment

**Q.4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Harmonisation of vehicle engine emission standards is a good thing in general but in order to comply with these standards engine manufacturers have come up with tricks to fool the standard ( e.g. Ad-Blue additive in engine exhaust systems) rather than developing proper engineering solutions.

**Q.5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

Increase legislation from wherever it comes costs money and the consumer eventually has to pay these increased costs.

**Q.6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

EU legislation has been heavy-handed and disproportionate to the requirements of member countries. The current rules governing goods vehicles operating licences (O licences) are costly and bureaucratic. They are a great hinderance to the development and running of a small business. Traditionally in the UK only vehicles over 7500 Kgs MGW were classed as Heavy Goods Vehicles requiring 'O' licences (see most road signs). Under EU legislation this is now 3500 Kgs. This is an extra cost burden that we could do without. Small businesses need to grow and develop and this often necessitates moving premises. Under the current rules this requires the operator to re-apply (even if there is only one vehicle of 7500 Kgs) This can cost £2000 per application. It would seem far more sensible for small companies with say up to 5 vehicles to be exempt from 'O' licencing where the operator just works within a national boundary. This could save an operator up to £1000 per vehicle per annum. Safety would be unaffected as safety rules as with other vehicles would still be monitored by VOSA. Agricultural vehicles and trailers that do not move between national boundaries should not be subject to EU regulation. 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.

**Q.7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

No comment

**Q.8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

No comment

**Q.9. What challenges or opportunities are there for the UK in further EU action on transport?**



The proposed safety regulations regarding the testing of small vehicle trailers are quite unnecessary. There is no evidence that trailers are direct link to accidents (possibly the reverse is true as speed limits apply). They are subject to roadside roadworthiness checks by VOSA and the police.

**Q.10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

No comment

# M Downes

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The main disadvantage to the UK eg VSL devices have led to major congestion on our M-Ways on gradients as Lgv ! vehicles have lost the ability to overtake, having little or no speed differential. Ultimately requiring the widening of the highway on the gradient to prevent congestion .Uk is an island with serious differences from other Eu countries. The Govt taxes on fuel and subsidies are another disadvantage

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

The Eu transport open market has destroyed the traditional 'owner driver' haulage industry in the Uk .The majority put out of business by cut price Eu operators undercutting the market price

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

If it works for Eu then keep it in the Eu dont include the Uk

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

It is masively over-rated and being so widespread has lead to the usual corruption in high places. eg The London Bus Co who remove particulate filters blow them out with compressed air and re use them rather than follow best practice

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

some have been put out of business

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been**

**proportionate: what alternative approaches would benefit the UK?**

the uk needs top stop 'rubber stamping every piece of Eu legislation before its true impact is evaluated

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

Stand up against the Eu dictats and fight for what is best for the UK much the same way as the French only adopt what suits them

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

Who knows what is best for the UK .UK politicians or Eu bureaucrats ????

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

There can only be more restrictions and more policies which do not apply to us.eg Why do we need to drive in daylight in summer with running lights on our cars??

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

# Andrew Dudman

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

I can see no advantage for the UK in having a foreign, unelected super quango deciding our transport policy.

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

I can see no area where the EU has succeeded in stimulating economic growth in the UK

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

It is not necessary

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

It is not necessary

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

On a personal note EU meddling has done nothing but increase our costs. We have had the Mod 1 and Mod 2 tests. Necessitating our purchasing of a new goods vehicle to transport our bikes 100 miles to the nearest MPTC. Then we had 3DLD. This necessitated the purchase of new motorcycles to comply with the new licence structure. Furthermore this will do nothing to reduce KSIs as there is no incentive for 17 -19 year olds to pass a practical test and benefit from the associated training. In our experience they are content to ride on their CBTs until they are 19. No doubt we will see more laws to counteract this. An ill thought out law that our government could not prevent.

**Q6. The EU's competence in the field of transport has primarily been exercised through**

**legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The EU is not proportionate in its approach. An ideal alternative would be the UK government deciding UK laws instead of passing EU derived legislation via statutory instrument.

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The UK national interest would be better served if the UK government, via due legislative process, made laws that directly affected UK citizens. This is rather a non question and common sense surely.

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

The UK should be free to negotiate with other countries to best serve the UK's interest. One of the funniest things I have seen recently is Ken Clarke lauding the EU for the trade deal with the USA. Did we not have such a trade deal with the USA and other Anglosphere countries prior to our membership of the EU.

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

The EU invariably makes things more complex.

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

What is the point of the EU?

# European Transport Safety Council (ETSC)

On behalf of the European Transport Safety Council see the below contribution to the UK 'Balance of Competences Review'. ETSC is submitting this to both the Internal Market and Transport Review.

## 1. Vehicle Safety

The advent of new EU legislation has led to unprecedented improvements in occupant safety, which has benefitted UK and EU citizens. The EU has exclusive competence on vehicle safety and vehicle type approval under Article 114 of the EU Treaty. One of the single most effective ways of achieving the reduction of the risk of injury on collision impact is by improving the safety of cars.

Minimum technical requirements for vehicles, participation in UNECE and worldwide technical harmonisation on vehicle standards have delivered considerable benefits to all EU member states including the UK in terms of lives and serious injuries saved. Vehicle occupants have been the group that has benefitted the most. Thus Broughton modelled the severity of vehicle crashes in the period 1980 to 1998 using data on vehicle model year. The concludes: "It is estimated that, of the casualties that would have occurred in 1998, if all cars had had that level of secondary safety, improved secondary safety reduced the number of drivers who were KSI by at least 19.7%. This figure relates to all cars on the road in 1998, and rises to 33% when confined to the most modern cars (those which were first registered in 1998). The benefits have been proportionately greater in accidents occurring on roads with speed limits of at most 40 mph." A more recent analysis confirms that the contribution of improved vehicle safety standards has continued: Broughton calculated that the number of fatalities in 2010 was 20.5% less than it would have been if there were no improvement in secondary safety between 2006 and 2010.

There are further improvements that need to be made and the EU can benefit from UK expertise in vehicle safety.

The European vehicle industry faces a time of crisis. Beating off the international competition will be a challenge but developing its safety credentials and profiling itself as the producers of the world's safest vehicles can play a crucial role. Thus investing in vehicle safety can also contribute to providing a competitive advantage for the European and the UK's vehicle industry.

## 2. Infrastructure Safety

All EU Member States, including the UK, are working towards the same high standards of infrastructure safety on the TENT. There are two main pieces of EU legislation that contribute to safe infrastructure: Directive 2008/96/EC on road infrastructure safety management and Directive 2004/54/EC on minimum requirements for tunnels in the TransEuropean Road Network. The implementation of the Directive on infrastructure safety has the potential of saving 600 lives and avoiding 7,000 serious injuries every year across the EU<sup>6</sup>. The Infrastructure Safety Directive also helps to protect UK travellers on European roads including the TEN.

### **3. ITS to enhance Safety**

Increasingly enhanced safety and other transport benefits are being delivered through new technologies including information and communication technologies. The UK managed motorways provide a good example of such deployment in that the use of ITS is more cost-effective than the use of more traditional approaches. The ITS Directive can promote common standards and common deployment across the member states, so enabling deployment at a lower cost and greater scale than would occur with a more piecemeal approach. Crossborder traffic is an obvious beneficiary but all European motorists can benefit from harmonisation. The prospect is that in the future ITS technologies will be able to deliver very considerable benefits.

### **4. EU Road Safety Target and International Data Exchange**

The European targets can help ensure that the level of safety across the EU converges to the performance of the best member states such as the UK. This helps to protect UK drivers and passengers when travelling outside the UK. The adoption of the EU target in 2001 to halve road deaths gave a boost to the combined efforts at national and EU level to improve road safety. The UK has also contributed to the EU road safety targets. The UK has one of the lowest levels of road deaths per inhabitant in the EU, in 2012 there were 1,802 road deaths representing a fall of 50% compared with 2001. Since 2001, in the EU15, the countries who originally set the target, road deaths have been cut by 48%. Clearly the EU target for reducing the number of road deaths served as a strong catalyst for progress. A new target to reduce road deaths again by 50% was set in 2011 together with a longer term 'vision zero' for 2050. It is regrettable that GB has not adopted a new numerical road death reduction target. However its progress will nevertheless still contribute to the joint EU target.

Moreover, international comparison can help national policy makers to identify fields in which better progress is possible. The EU is already collecting data on collision outcomes and collision circumstances within the CARE database. The EU funded SafetyNet research project also came up with safety performance indicators which allow actions to

be targeted in key areas systematically. ETSC has been running the Road Safety Performance Index (PIN) Programme since 2006 which also aims to identify best practice and promote positive competition between countries to deliver a safer road transport system. The UK is also able to benefit from participating in these bodies and learn from others as well as contributing its own excellent knowledge to the EU pool.

## **5. Sharing of European best practice**

A key part of EU road safety work is sharing best practice in the context of EU funded projects. Over the past decades this has benefitted all EU Member States including the UK. Even with an outstanding road safety record and with a history scoring amongst the best in terms of road deaths per million inhabitants, in Europe, the UK can also still benefit from sharing experience with other EU Member States.

A 'one size fits all' approach is not recommended by ETSC, but ETSC has developed a checklist for road safety which can be regarded as a "step ladder" which has been used as a point of reference by EU Member States. As one of the S.U.N countries, the UK is indeed looked upon by other less well performing EU Member States as a source of inspiration and ideas. Amongst the road safety front runners the S.U.N countries have now been joined by a number of newcomers including Denmark and Ireland. This new slightly enlarged group at the top of the road safety league also benefits from this healthy competition and sharing best practice between each other.

The EU has in their "Policy Orientations on Road Safety 20112020" set up a structured open cooperation framework on road safety for EU Member States including the aims of sharing national road safety plans and monitoring progress towards the EU 2020 target through exchange of best practice. Representatives of national road safety departments continue to meet regularly with the European Commission in the EU High Level Group on Road Safety.

## **6. Research and Development Project**

Sound policies are based on known, effective, science based countermeasures, which in turn are grounded in good research. The EU has a global reputation as a centre of excellence and innovation in research and development in areas of road safety. Research and development in the UK is supported by the spending from public authorities including the EU. The automotive industry itself is a key driver of knowledge and innovation in the UK and the EU. It represents Europe's largest private investor in research and development. The EU automotive industry was the biggest investor in R&D in 2009 (€ 28bn/year) and also participates in many joint European projects.

UK research institutes and universities, including ETSC's member organisations, have also benefitted from EU funds to explore new ideas and contribute to road safety



knowledge. Road safety research in the UK should continue to benefit from European funds under the new research framework programme Horizon 2020.

## **7. Overseas Travel and Road Safety**

Finally, the DfT documentation details the flow of overseas travel in and out of the UK. This shows that over two thirds of visits abroad by UK residents in 2011 were to EU countries, amounting to over 40 million visits. Higher levels of EU road safety policy will benefit the safety of UK visitors when they are travelling abroad. Moreover, the report states that there were over 20 million visits to the UK by EU residents, accounting for two thirds of all foreign visitors, a quarter travelling on business. Again, UK citizens can benefit from the increased safety brought about by higher levels of road safety of visitors to the UK through their compliance with EU legislation, in terms of their driver behaviour, awareness of prevailing UK traffic rules and the roadworthiness condition and safety standards of their vehicles.

## **8. Cross Border Exchange of information on Road Safety Related Traffic Offences**

As of November 2013 the Directive 2011/82/EU on facilitating the cross-border exchange of information on road safety related traffic offences will come into force. The UK has yet to opt in to this Directive, an action that ETSC would strongly recommend. The objective of this Directive is to facilitate the enforcement of financial penalties against drivers who commit an offence in another Member State than the one where the vehicle concerned is registered. UK authorities will be unable to access help from authorities in other EU Member States in penalising non-resident traffic offenders in the UK, unless the UK concludes bilateral agreements with other countries. The EU Directive aims to provide one EU system to prevent the need for multiple bilateral agreements. Moreover, EU Member States will not be able to benefit from the new system that would have enabled UK authorities to help in dealing with offenders from the UK who have broken the law abroad.

One of the important articles of the Directive also covers informing non-residents of the traffic rules in the country they are driving in (see Point 7 on overseas travel). The European Commission has a new website which gives a useful overview of the road safety legislation in the different Member States covered by the Directive. The UK is encouraged to provide the EC with updated information on the most important road safety related traffic information. This Directive's effectiveness also relies on its deterrent effect and enabling drivers to have access to information on the relevant road safety rules and increasing their awareness of them will increase compliance and improve road safety.

ETSC strongly encourages the UK to opt in. EU citizens are entitled to fair and equal treatment and the principle of non-discrimination is enshrined in the Treaty. At present this

principle is not being applied with non-residents acting with impunity and escaping punishment whilst travelling abroad. Not only is this important as regards non-residents flouting laws in the UK but also in the interest of reciprocal treatment. UK drivers should also be protected when they go abroad. Their safety would be better protected under a UK opt-in to this EU wide road safety initiative.

**ETS Contact:**

The European Transport Safety Council (ETSC) is a Brussels-based independent non-profit making organisation dedicated to reducing the numbers of deaths and injuries in transport in Europe. The ETSC seeks to identify and promote research-based measures with a high safety potential. It brings together 47 national and international organisations concerned with road safety from across Europe.

## Freight Transport Association (FTA)

FTA is pleased to respond to the Government's call for evidence on the review of the balance of EU competencies as regards transport. On this page the Association provides its overall assessment of the current role of the EU, whilst separately we set out in more detail our views on the most notable areas of regulation.

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 consumers. British beef, cars, technology and pharmaceuticals are examples of sectors that have benefited.

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. The differences in fuel duty, outside of EU jurisdiction, show how diverse non-harmonised markets could be. The one mode of transport that has been shielded from this 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.

In more recent years the EU has imposed additional costs and burdens through attempting to harmonise social conditions – working time, employee rights and entitlements, working conditions, etc. This has caused friction by presuming a common approach towards work and the role of business across a continent of 500 million people. 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.

Please see further detail attached. FTA is happy to discuss any of the points raised further.

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
<b>ROADS</b>				
Driver Licensing	Harmonises minimum driving licence requirements making operating businesses easier	Burdensome medical requirements set – eg vocational drivers below the age of 45 with 5 yearly renewals of the licence.	Yes – Single Europe wide standard therefore easier for business to recognise.  Essential as a legal requirement.	There should be national derogation for the renewal of licenses.
Operator Licensing	Raise standards across community. Reg 1071 includes interconnection of databases for enforcement	EU fail to recognise application to large, Centrally Managed Fleets	Yes - visiting vehicles must maintain as high standards as GB with associated costs	Better recognition by EU of nature of logistics in 21 <sup>st</sup> C.

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Driver CPC	Driver CPC raises standards of driver knowledge across community	Re training, the Directive added unnecessary constraints to responsible operators who already invested in their drivers.	No. Driver training reaps its own benefits. Operators who fail to invest in their drivers' knowledge voluntarily will (e.g.) attract infringements and suffer increased fuel costs	Framework should be less burdensome on already compliant operators.

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Vehicle design & standards	Provides for harmonisation of vehicle design and construction standards. This helps with economies of scale for vehicle manufacturers, thus keeping costs down.	Standardised construction standards (EC Whole Vehicle Type Approval) restricts individual Member States with regard to deviation from EC standards, such as vehicles and trailers over 4 metres in height in the UK. Manufacturers who produce vehicles and trailers over 4 metres in height for example may only do so if they have bespoke type approval in place, which is limited in production volumes and costly.	Yes - Harmonisation in construction standards for 'European specification' vehicles is advantageous for vehicle manufacturers. However, deviation from the standards for domestic purposes only has no effect on market competition.	Individual Member States should be able to construct and supply vehicles and trailers which deviate from the harmonised type approval standards for vehicles and trailers which are only intended for use domestically, and no volume limits or onerous specific approval requirements should apply.

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Fuel standards	High specification harmonised fuel standards. This is critical due to the very high tolerance engineering with the latest vehicles and fuel systems.	None.	Yes – retains harmonisation of fuel specification across the EU, meaning the price of the fuel itself (fuel duty excluded) and the specification is harmonised.	Current approach works well, the EU standards are set by a Standards working group of which the BSI (British Standards Institute) play a significant role in.
Fuel taxes	Sets a common EU-wide minimum level of fuel taxation.	Allows operators to source fuel in another EU state with low taxes and travel throughout the EU with a significant competitive advantage over other operators.	Yes, in that it prevents one Member State from seriously undercutting others by lowering the rate.	Move to harmonise UK level of taxation towards the EU average, i.e. cut the levels; or push to increase the minimum across the EU towards the UK level.

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Access to market (cabotage)	Helps prevent foreign operators with lower fuel costs from undercutting UK companies.	Cabotage restrictions could be seen as a barrier to a proper single market in transport services.	Yes, helps prevent foreign operators with lower fuel costs from undercutting UK companies.	Case law now being developed in the UK, demonstrates successful enforcement is possible.  May have some minor revision in coming year.
Road pricing/tolling	EU regulation could provide interoperability of tolling systems – a significant business benefit	EU legislation which determined <i>which</i> roads are tolled would potentially drive up cost for road operators unnecessarily	No - UK can operate independently but use EU standard where necessary	The harmonisation of tolling systems has not yet happened after years of work by the EU and therefore is not successful



Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Infrastructure issues (eg TENS; ITS etc)	EU regulation could theoretically provide a common system across all members states on routes and intelligent transport systems	<p>UK has a different method of identifying strategic routes, whilst they are mapped on EU routes. The UK is already a leader in its own right in ITS. EU legislation may add cost to what we are already doing.</p> <p>As a comparatively wealthy state the UK has not seen significant investment through the EU into its land side infrastructure.</p>	No. Modern mapping system don't need a TENS identification system and that could also apply to the identification of routes for funding.	Change unnecessary.

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Social conditions (EU drivers' hours and working time)	EU Drivers Hours rules maintain standards of road safety across Union	Road Transport Directive is an additional burden which demonstrates no evidence of improving road safety risk beyond EU Drivers hours.	EUDH yes. RTD no.	EU should concentrate on EUDH and repeal RTD
Cross border security checks	There is only a limited role for EU regulations, much legislation is set by global organisations such as the WCO; and by national regulations	EU regulations can differ or complicate national rules which does nothing to help trade facilitation and compliance	To a limited degree, see adjacent comments.	EU develops some useful initiatives (for example, on freight data information) but then makes implementation unnecessarily complex and unworkable in practice
Motor insurance	Motor Insurance Database allows those involved in a accident with a vehicle registered elsewhere to track down insurance if held	Sometimes mandatory timescales to populate data on MID are tight – specially for fleet operators	Yes - Essential for both free movement and fair competition	Generally works well

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Dangerous goods	ADR/RID provides an international system that has become understood and facilitates international journeys.	When introduced UK thresholds were more generous taking more goods out of scope on thresholds both of danger and packing size.	Yes: the adoption of ADR/RID across the EU has provide a common platform for dangerous goods transport both on international and domestic journeys	The approach to harmonise across the EU has been successful but these conventions are wider than the EU and could be kept in the UK even without EU requirements
<b>RAIL</b>				
Establishing a single European Rail market (e.g. 1 <sup>st</sup> Railway Package etc)	Levels playing field and opens competition	Compliance cost	Yes, see advantage	Yes, we want greater harmonisation at EU level, but without additional cost burdens imposed on GB domestic only operations.

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Train operator Licensing	Levels playing field and opens competition	Compliance Cost	Yes, see advantage	Yes, we want greater harmonisation at EU level, but without additional cost burdens imposed on GB domestic only operations.
Railway interoperability	Allows international services development	Compliance cost	Yes, see advantage	Yes, we want greater harmonisation at EU level, but without additional cost burdens imposed on GB domestic only operations.
Noise and other environmental standards?	Levels playing field and opens competition based upon quality	Compliance cost	Yes, see advantage	Yes, we want greater harmonisation at EU level, but without additional cost burdens imposed on GB domestic only operations.

<b>Area of Regulation</b>	<b>Advantages of EU Regulation</b>	<b>Disadvantages</b>	<b>Essential for internal market/Competition reasons?</b>	<b>Is the current approach successful? If not how should it change?</b>
Infrastructure	EU regulation could be used to bring down Channel Tunnel access charges and increase utility to freight	None	Yes, see advantage	No - timescale and applicability uncertain re EU Track Access Charging Directive.
<b>MARITIME</b>				
Environmental standards	Consistency for industry to work to	If standards are set too high, harms economic activity	Yes – but need to be set at a reasonable level	
Maritime emissions-Monitoring, Recording and Verification directive	Possible long-term benefits including harmonisation of methodology in EU & elsewhere	A regional initiative to be applied extra-territorially	No - should be pursued internationally through IMO	As per boxes 2 & 3.
<b>AVIATION</b>				
Single European Sky	Increased capacity and efficient on-time flights	None	Yes	No - needs greater political will & commitment
Air Traffic Management	As above	As above	As above	As above

Area of Regulation	Advantages of EU Regulation	Disadvantages	Essential for internal market/Competition reasons?	Is the current approach successful? If not how should it change?
Safety standards	Levels playing field		Yes – but needs to be standardised	
Emissions Trading Scheme	Harmonisation across Europe	<p>Cumbersome &amp; bureaucratic reporting and recording procedures.</p> <p>Aviation is a global market place – EU level actions create a barrier to trade.</p>	Yes - but needs to be at a global level.	No - should be dealt with an global level in ICAO
Security	Levels playing field	Potentially unnecessary requirements	Yes – but needs to be standardised at a global level.	The measures are not uniformly enforced. Standards to conform to ICAO/WCO protocols

## Government of Alberta, Canada

Thank you for the opportunity to attend the FCO's Balance of Competences briefing held on 20 May. Your review's call for evidence has been firmly noted and, in the first instance, I thought you might be interested in the Government of Alberta's experience of proposed European regulation with unintended consequences.

You may be aware that the Government of Alberta has been engaging with the European Commission and Member States over the implementation of Article 7(a) of the Fuel Quality Directive (FQD), which, as it currently stands, could unfairly discriminate against the Albertan oil sands. While we fully support the principle of the FQD, we remain concerned that its implementation will be based on discrimination, not sound scientific evidence.

It is on this point that the FQD is a prime example of EU level regulation, imposed on the UK, which is poorly thought out and may carry with it a number of unintended consequences that the UK government may wish to consider:

- The proposed implementing measure currently contains a series of provisions which are designed to discriminate against the oil sands of Alberta while not applying a similar degree of scrutiny to most of Europe's current major crude oil sources. This approach may have the knock on effect of penalising UK companies operating in (or supplying) the Canadian Province of Alberta.
- Currently only 40% of crudes entering the EU are reported. The Government of Alberta is fully transparent in its crude reporting and so the FQD has the effect of heavily penalising transparency. It is hard to see how this approach will assist in meeting the FQD's objective of securing a 6% reduction in Eurozone CO2 emissions, and how this will possibly assist the UK in meeting its own environmental reduction targets.

The Government of Alberta is fully committed to the principle of transparency in the adoption and enforcement of policy and regulation. We hope that the comments above may be considered as part of your Balance of Competences review. Please do not hesitate to contact me should you require any further information.

# Trevor Hartley

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Since 2009 Eastern European nationals from countries in Romania, Lithuania, Latvia, & Poland have been allowed the right to just simply exchange their driving licences for a full UK cat B driving licence, without any formal assessments or training. I have witnessed a rise in clients that have have a full European licence for their country, and demonstrate very poor vehicle control and possess no skills in road traffic awareness and planning. Once they have admitted themselves for driving training, they cease training once they believe can drive safely, on average after 16hrs training. This in my professional opinion has not been adequate training for these individuals, to be safe as Uk road users in today's complex traffic situations. The UK has a world wide reputation for having the highest driving standards bar none. I am quite frankly astounded that we can let this loop hole stay open. Many driving instructors in my industry are currently analysing themselves and challenging the way that they have been teaching the core business age group of 17 - 25 year old's up to now. This is because the UK's road safety and Insurance organisations have been calling for major changes to driver training standards. Driver trainers are now being asked to focus on an new system that focusses on the outside influences that take place outside a standard driving lesson. It's called the GDE matrix, (Goals for Driver Education). Does it not appear to be ridiculous to improve standards to our own nationals, but not those that migrate from parts of Europe that clearly have less than adequate driving standards? Europeans that take up permanent residence and want to drive, MUST take a UK practical driving test.



**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

New legislation that would require certain European nationals to take a UK driving test after formal training with an approved driving instructor would boost not only generate much needed revenue within the ADI industry, it would also create new jobs, and revenue within the DVLA, and DSA. This in turn can only go towards improving the Uk economy. To quote Tesco's "Every little helps"

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

# Trevor Jenkins

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

EU should keep it's nose out of our affairs

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

They have not. Growth is hampered by EU legislation which is favoured to other countries and not the UK

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

None whatsoever. We pay them about 1.2 million pounds and hour for no benefit.

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

None

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

None

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

no benefit at all to the UK

**Q7. To what extent could the UK national interest be better served by action taken at a**

**national or wider international level, rather than by the EU, and vice versa?**

We should look after our own affairs, that's we have an elected parliament, not unelected commissioners in the EU

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

We should keep our noses out of other countries policy

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

It will always be a challenge to keep the EU from taking over our daily lives

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

Yes. Get us out of the EU.

# Kapsch Austria

1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.

EU transport policy aims to introduce even competition and aims at liberalising markets. In sectors such as airports or ports this means moving towards business models already in use in the UK and hence would strengthen British service providers.

2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?

The internal transport market is far from complete and still allows for a lot of market distortion. The internal market of course offers British companies access to EU transport markets. I have the feeling this access is not really used by British companies in the road sector. To allow for fairer competition it would already help to enforce the existing rules in a harmonised way across the EU. Many Member States are lenient on their own operators and fines/penalties for the same infringements vary greatly across the EU.

3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?

What does the right to market your goods across a market help, without competitive means getting them there? The two belong together.

4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?

The uneven application of social or environmental rules distort the market. This links again to enforcement. Example: an overloaded truck poses a risk to safety and puts correctly loaded truck at disadvantage, so environmental and social rules are needed for fair competition. This point also links to the point on enforcement made above. Without indiscriminate enforcement and similar fines/penalties there is no guarantee of fair competition.

5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?

6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?

The EU also exercises its transport competency through the TEN-T. Which are underdeveloped. The UK

7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?

I think the UK fares better investing in influencing the EU once rather than negotiating different rules with individual states, which in the end would result in different red tape for every country dealt with.

8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?

If Britain would make its full weight felt on EU level it would be able to steer EU positions its way and then use the weight of the EU to deal with third countries or organisations.

9. What challenges or opportunities are there for the UK in further EU action on transport?

EU transport legislation in moves into the direction of market liberalisation, which ought to be welcomed by the UK, since this moves the EU closer to the business models used in the UK and hence makes the internal market more attractive to UK enterprises.

# Maria Kinning

## **Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The recent changes to the motorcycle test have facilitated a large burden on what are essentially small businesses, they have had to purchase new motorcycles to comply with the EU directives at a time when they may not have chosen to change the fleet. The EU were asking for motorcycles that were not practical in regards to the cc and more negotiating by our government to find a suitable cc, whilst we were in the dark waiting to be told what machines we can use. We also had to change course structures and due to the distance we have to travel to the Mod 1 testing/training area this has impacted on our profits as the economic climate doesn't allow us to increase the prices of lessons as much as we would feel is a fair price. There are many training schools closing down as the general public see the ever-changing testing as the government wanting motorcycles off of the road. As the roads become busier powered two wheelers are much better for the commuter and the environment. We as a country must negotiate much harder to take on board the road safety benefits but make them suitable for OUR ROADS not just agree with the EU.

## **Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

The EU has damaged the motorcycle training industry, as I say industry - I mean motorcycle dealers, mechanics, parts, leisure, clothing, training, track and racing by being inflexible with the UK upon implementing the 3DLD. I am sure we could have preserved the road safety element but made it to fit a little better. I feel that our industry has suffered from what could have been a positive change over a reasonable agreed timescale, instead it seemed to start and stop which left the motorcycle manufacturers struggling to make the correct bikes and us knowing when and what to buy - if we bought too early the rules may have changed again and we could have wasted money. I also feel that the new EU test has prohibited some groups from taking a test, the Vespa / mod type scooter riders are unwilling to use a larger capacity bike to take a test and prefer to put a larger engine into the 125 frame, also the ladies, although the A2 licence is popular there are a lot of ladies that would like a 33bhp bike obtained from a 125cc test. Overall I don't think that the new laws have contributed any economic growth just the opposite.

## **Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

i feel that the Eu should be more sympathetic to each countries needs, we are not all the same and the one rule for all clearly dosent work.

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

No i do feel so some of the rules they have implemented are prohibitive , the motorcycle training industry whilst complying with the new directives is struggling to survive, as i dont feel that the instructors are recognized by the consumers as professionals in their field, car driving instructors seem to have a higher regard. I do realise that you are responsible for your own image, however i feel the profile of instructors could be further enhanced by the government and EU as the road safety professionals they are.

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

recognition of the professional motorcycle instructor qualification by the public, this could be enhanced by the government and backed by the EU with the qualifications suited to each member state. ( eg; if you are looking for insurance the only options in the drop down box are driving instructor car or hgv even for bike insurance! ) A much higher profile must be to encourage further training after test- at the moment most members of the public look toward the police for training however with respect they are not qualified instructors and most of the accidents are due to poor machine control with is the area of a qualified specialist approved motorcycle instructor - so leave it to the specialists please

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

it is always good to have the EU consultations however i firmly think that all changes should be made internally by each country, as they understand there own needs and wants and what works for themselves

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third**



**countries (e.g. EU-US, EU-China)?**

I am struggling a little with this one the only thing i can think of is the type of motorcycles that are imported to the uk are often of poor quality, but are purchased in large numbers as they are cheap. Thinking of road safety are they fit for purpose ? the ones i have seen are usually broken before they have completed a cbt and only last a couple of years at most due to the poor quality and lack of spare parts , as a rule they seem to be disposable and not repairable therefore we are damaging the environment and using up resources and energy wastefully. Negotiating minimum vehicle standards more closely worldwide would be advantageous.

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

we have another change to the minimum motorcycle used for test, but i would like to see another consultation to gain opinions on how the present system is working within the uk.

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

# Motorcycle Industry Association (MCI)

## Summary and General Comments.

The Motor Cycle Industry Association is the trade association for the supply side of the UK motorcycle industry. It represents over 90% of the motorcycle industry and includes membership from manufacturers and importers of machines and associated products - plus the suppliers of goods and services across the industry. The Manufacturers include all the household names in motorcycle and related goods manufacturing, including Triumph Motorcycles, the UK largest wholly British owned automotive manufacturer. Honda and Harley-Davidson have their European head offices in the UK.

The motorcycle industry is a willing partner on EU legislative matters and active representation on a range of issues is made to the European Commission, Council and Parliament by the European motorcycle industry association (ACEM) of which MCI and many of its member companies are active members.

The industry is a strong supporter of the single market and several aspects of the motorcycle Type Approval regulations that are a necessary consequence of the Single Market. The Single Market has introduced many benefits for the production, sale and use of motorcycles, particularly in terms of common standards for the EU area instead of the previous situation of a divergence of standards across various countries.

The motorcycle industry's position on the EU can be summarised thus:

Strong support for the principles of the Single Market and a fundamental desire for it to continue as far as the UK is concerned.

Concern about the recent depth of detail technical regulation that the EU has embarked upon in relation to the single market in motorcycles, with this in danger of making the EU uncompetitive in global terms.

Strong concern about the manner in which the EU exercises its competency in the area of Transport Safety and Transport Policy – particularly in relation to rider licensing.

Concern about the 'gold plating' of EU regulations upon UK implementation.

The seemingly personally motivated attitude and views of EU officials and the seeming unwillingness of UK officials to challenge this, given the position that EU Treaties put them in.

Lack of democratic accountability:- the powers of the EC's directorates and officials should be re-balanced in favour of Member States.

Support for the repatriation of competencies on detailed road Transport Safety and road Transport Policy beyond the Trans-European Road Networks and the core framework of the Single Market (which is already in place).

By way of general comment, the motorcycle industry does not take a view on Britain's membership of the EU. But in order to address its credibility, the EU needs to take better account of citizens and businesses before it legislates. Arguably, there is little or no evidence that the EU has properly acted to put 'users at the heart of transport policy', with many decisions taken behind closed doors with sometimes little account taken of various interest groups.

There is a strong argument to suggest that little further action should be taken at EU level in areas of detailed transport and safety policy, given that the European Commission in particular appears to be focusing interest in areas which should remain under the control of Member States (Periodic Technical Inspection, driver/rider training/integrated transport policies/road user charges and taxation etc).

Article 4(2)(g) of the TFEU and in particular the clause 'any other appropriate provisions' has given carte-blanche for the EU to legislate in a number of areas where proposals have often been ill thought out, carry little justification in research terms and have led to several unintended and negative consequences, particularly in the area of motorcycle rider licensing and some aspects of technical regulation.

Type approval legislation in particular has now gone far beyond the headline justification for creating a single market and is leading to in-depth technical regulations which are costly for both manufacturers and consumers. These are sometimes justified in 'road safety' or 'environmental' terms, though in many technical areas little evidence seems to support such contentions.

Industry is concerned that the Single Market is reaching such complexity that the EU is fast becoming uncompetitive in global terms. The latest version of Whole Vehicle Type Approval for motorcycles is of such complexity that it has essentially rendered uneconomic the notion of an entirely new bulk manufacturer of road motorcycles emerging in Europe. This is hugely damaging to the potential for the motorcycle industry to contribute to growth and job creation. This is also damaging to EU competitiveness on the global stage. Non EU countries are increasingly attractive bases for manufacturing for example.

Our response to the consultation questions will focus on these areas and specific examples, including a case study, will be used to illustrate our concerns.

## **The consultation Questions**

### **1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The advantages that have been seen from EU action relates mainly to creating the basic conditions for the free movement of peoples and goods across borders and of course matters related to the creation of a Single Market. Much of this was possible to achieve under the old Common Market rules in a way that allowed Member States to enforce certain requirements that were in their national interest. However, motorcycle manufacturers would not welcome any attempt to dismantle the key principles or core framework of the Single Market as it currently exists.

The modern general difficulty comes where under successive Treaties; the now European 'Union' has extended its competency into areas of how such freedom of people and goods should be exercised. This particularly relates to EU competency in the areas of road safety, environment and transport policy. This has created particular difficulty in how necessary rules should be created in the areas of technical policy and motorcycle rider licensing. There is also a concern in relation to the seeming ideology based 'doctrinaire' approach to different transport modes, which for the motorcycle industry has meant rafts of bureaucratic and costly rulings which have sought to over complicate motorcycle design and restrict its use – often with very little or no balanced research or evidence to support new measures.

### **2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

The internal market exists, its framework functions well in essential areas and there is a strong case for the EU to go no further. To do so could impact negatively on growth and competitiveness within the EU and also in relation to trade with non EU areas.

In addition, in relation to the motorcycle industry, the evolution of technical regulations in relation to Type Approval are moving from being of benefit to industry to being a costly burden. A case study is outlined later in this document,

### **3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

On the basis that goods and services can be traded and transported via EU roads, the essential framework of the 'market' is functioning acceptably and arguably requires no further tampering by the EU. It carries enormous advantages to UK business.

### **4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

In terms of environmental standards, it could be suggested that the debate has moved beyond Europe and that such standards would be better set at a global level. This would ensure that the EU remains competitive in a global sense and that EU regulation does not become a barrier to imported/exported goods in whole world markets. This is not to say that such standards should be watered down in any way, but creating international and not EU frameworks in this area, will ensure a level playing field for both competition and environmental protection.

The issue of the EU's competency over motorcycle safety in particular raises great concerns. The EU has demonstrated time and again that it is keen to enforce new regulations without first demonstrating through proper research the need for such regulations. There appears to be little motorcycle specific expertise at Commission level and an unwillingness to appreciate or understand motorcycling, or how effective road safety solutions can be developed which don't undermine usage of this important, cost effective, carbon efficient, congestion easing mode of transport.

Safety competency in relation to motorcycling has been largely exercised through ever more restrictive EU licensing systems. This does nothing to address safety for the millions of existing motorcycle licence holders, but acts instead to create costly and complicated barriers to motorcycling in a manner that is likely to discourage use of this beneficial mode rather than improve safety overall. This can only serve to undermine an industry that is worth in excess of Euro100billion to the EU economy.

In the case of technical regulations, a case study is attached to this response which illustrates the complications and difficulties that have arisen from the ongoing recast of EU Type Approval regulations, many of which were justified in 'safety' terms.

Industry is strongly concerned about the high level of confusion that has been generated by the technical categorisation of motorcycles, quads and light four wheeled vehicles within the so called 'L Category'. There now exists a bewilderingly complex series of 'L' sub categories. These overly bureaucratic sub categories have created enormous problems for industry in terms of the definition of product and how these should be dealt with in a technical, licensing and legislative sense. There are also difficulties in determining which area of the automotive industry the L6 and L7 categories come under. This has caused particular problems for both the MCI and the SMMT.

In the case of Driving Licence Directives, an EU framework of licensing categories was created by the mid-1990s as part of the Second Directive on Driving Licences (2DLD) initial phase. This was initially welcomed by industry, as a commonality of licensing categories was of great benefit to the Single Market in motorcycles and established a credible licensing framework, applicable across Europe.

However, post 2000, the EU decided to create new regulations on motorcycle training and testing that did little more than to complicate the situation. This was done through the creation of several age based sub categories under a new Directive and prescribing requirements for motorcycle testing. The effect of the new 3DLD has been to complicate licensing for consumers and potentially to discourage people from motorcycling or from taking their riding test (particularly young people). 3DLD has also had the effect of creating a divergence of rules across Europe, not further harmonisation. This was observed in Spain, where 'pre compliance' of 3DLD created several problems. Questions have also arisen regarding the implementation of the 'A2' category of licence in some countries which has created uncertainty and a market that manufacturers cannot immediately support until the situation is resolved. It can therefore be suggested that 3DLD has actually led to 'disharmonisation'.

A further grave concern is that certain enforcement aspects of 3DLD, such as detecting the unqualified riding of A2 category machines. This is all but impossible due to the difficulty that the police now have in determining which category a motorcycle belongs. The same problem applies for consumers looking to buy second hand motorcycles in particular. MCI is concerned that this will lead to a rise in unwitting unlicensed and uninsured motorcycling. This runs contrary to the objective of the 3DLD Directive.

An important difficulty was that the EC pressed ahead with 3DLD without first conducting research into the effect of the existing 2DLD and considering the results of this before regulating. This led in 2004 to what the industry strongly believes was bad legislation. The UK Government did oppose the 3DLD package, but found itself in a minority.

Further adjustments to the old 2DLD before the introduction of 3DLD led to changes in the motorcycle test which were implemented in 2009. The effect of these in the UK has been nothing short of disastrous. Though it must be acknowledged that many of the negative effects in the UK were down to how the UK Driving Standards Agency chose to 'gold plate' the implementation of the rules. This came under Parliamentary criticism in 2010, which resulted in a Government review of the motorcycle test. This concluded unsatisfactorily in July 2013.

However, although industry remains critical of the implementation of the current motorcycle test, it should be noted that the catalyst for this was EU regulation in detailed areas of training and testing that should have remained a matter for Member States. We now hear that the EC wishes to further regulate in the area of motorcycle training, so deepening its competence in this area.

A further example which serves to illustrate that the EU has a long history of limited professional competence in the road safety area can be illustrated by a 1990s attempt to introduce motorcycle power limits. A wealth of evidence already existed which demonstrated that a power limit would have no effect on safety. But the EU refused to acknowledge this, basing their policy on a single report from Germany. The resultant campaign and lobby by all sections of the motorcycle industry and community (right across Europe), which involved the commissioning of further international research, was hugely costly to industry and involved nearly two years of activity before the European Commission eventually backed down.

A very serious issue in relation to areas of safety is the seeming ability for unelected EC officials to use the various Treaties to pursue individual and often ideological agendas in the road safety and technical areas. This is illustrated by the case study on technical regulation below. It seems that the motorcycle world is particularly susceptible to the negative views of officials, who seem to exercise enormous power in an unfettered way. Worryingly, officials from Member States seem unwilling to properly challenge this, citing 'powerlessness' under the Lisbon Treaty.

There also seems to be a lack of recognition that when it comes to safety 'one size does not fit all'. Attempts in the past to introduce common motorcycle clothing standards for climates as diverse as Sweden and Greece are an example of this.

This is a major reason why industry feels that in the area of detailed transport safety, competency should be largely returned to Member States.

The current issue of Periodic Technical Inspection is a further example where regulations should be set at national level. Although the motorcycle industry across Europe strongly supports the principle of PTI, the UK already has an effective MoT system. The bolting on of further EU inspired regulations in this area (It is known that EC officials are heavily influenced by the commercial PTI organisation DEKRA), will be likely to see additional costs and bureaucracy for consumers, with little real benefit for safety. The EU should do no more than require Member States to develop national PTI systems, but leave it to Member States to create testing systems that are moulded to the national interest.

A final area of concern is the rapid evolution of EU road transport policy in recent years. The EU seems concerned with creating a collectivist transport policy, (particularly for urban areas) based predominantly around walking, cycling and public transport - using environmental concerns as a justification. This is in danger of discriminating against individual choice and private motorised transport. The 'User/Polluter pays' principle may have general merit, but other concepts such as the charging of external costs of safety to users are in danger of being interpreted in a way that would heavily affect users of private powered transport (potentially via EU-wide road charges, taxation and insurance premium increments).

Despite often being mentioned in terms of safety issue, motorcycles are largely ignored as a mode of transport that has significant environmental social and economic benefits for users and society.

This is also another area where national transport choices and networks have historically developed and evolved according to national need and how individuals view their transport needs. Industry does not feel that the EC should be seeking to set detailed road transport policies outside the area of the Trans European Road Networks.



With regard to emerging technologies, the EU has acted as a catalyst for debate on alternative propulsion for vehicles, telematics and so called 'I-Mobility'. Thus far, this has been broadly positive, though it remains to be seen how the debate will translate into more binding Directives and Regulations. Industry is concerned that there appears to be an unwillingness to acknowledge the role of alternative powered motorcycles and has already had to make representations to the EC on the proposed Directive related to alternative powered vehicle infrastructure, where electric motorcycle (ePTW) needs have not as yet been taken fully into account.

In conclusion, Industry would therefore support a repatriation of powers, not related to the essential framework of the single market in the areas of transport safety and road transport policy.

**5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

Although this question seems to be aimed at the public transport sector, it is worth generally noting that the lack of democratic accountability at the European Commission in particular means that the EU is a closed world to many stakeholders. The EU is a system that is difficult for most consumers to understand, penetrate and engage. For transport sectors such as the motorcycle industry, a costly operation is required in order to engage EU/EC officials on a range of issues.

**6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The key points that the motorcycle industry would wish to make in relation to this are addressed in the answer to Question Four.

**7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The area of vehicle design and environmental standards would seem to be an area where the EU is creating an uncompetitive situation. Further comments on this area are made in the Industry's answer to Question Four. Industry in the UK does feel that a close look needs to be taken at the level of European competency in these areas.

**8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

The current round of EU negotiations are welcome, though we are concerned that these could lead to further proposals to harmonise areas of public life under a 'Brussels Model' given the diversity that currently exists across Europe in a number of areas which could come under trade agreements. Because of this, the current round of talks should not preclude the opportunity for Member States to make trade representations in their own national interest. In addition, Member States should be allowed to pursue agreements with countries where the EU does not currently seem willing to pursue action.

**9. What challenges or opportunities are there for the UK in further EU action on transport**

As the DfT briefing outlines, it would seem that the EU has managed to gain competency in just about all areas of transport. Experience suggests that the issue is not whether or not the EU will act, but to what timescale they will do so. The forthcoming proposal from the European Commission on common road pricing is an example of this.

The fact remains that we already have in practical terms the free movement of peoples and goods in road transport terms. There would appear to be little benefit for Member States, businesses or citizens in further regulations from Brussels that do not relate to the overall framework of the Single Market. Indeed, such regulations would be more likely to increase costs and bureaucracy, not reduce them.

Therefore, the MCI would support any UK moves to renegotiate competency in the areas of detailed transport policy where the EU has not yet acted.

**Case Study**

**UK experience in regard to the development of EU Regulation 168/2013:**

**on the approval and market surveillance of two- or three-wheel vehicles and quadricycles**

**(This experience has been common to all manufacturers of motorcycles, either based in the EU, or as importers to the EU)**

Regulation 168/2013 will replace the current type approval Directive 24/2002/etc from January 2016. The motorcycle industry welcomed the previous Directives as they harmonised the otherwise diverse national legislations on the construction standards of powered two and three wheeled vehicles. They brought together the key elements of each of the member states national rules, while eliminating some non-essential elements. However, the cost for type approving a new model is currently between £30,000 and £50,000 per type, depending on the type approving authority and technical services chosen by the manufacturer. This cost is not insignificant as the production runs of motorcycles are much more limited than those of cars by way of a factor of 10 or more. This has led to a severe reduction in the choice of models available on the EU markets.

The Regulation that will replace the current Directive is an altogether more complex document. It was originally intended to come into force in January 2013, but has been delayed by 3 years. To say that it is onerous would be an understatement. The cost of type approval of a new model is expected to treble to circa £150,000 per new model.

The Regulation has five elements:

The Co decision text, “the political text”, 4 “delegated acts” providing the technical details of testing, and methods of testing.

It is unfortunate for the industry (and consumers) that the EC desk officer largely responsible for drafting the legislation took a very heavy handed approach and has placed burdens on industry that have little or no benefit to society. Much of this individual’s thinking seems based on personal opinions – but these opinions stand to cost the industry millions of £/Euro. There would appear to have been little oversight or control from this individual’s more senior line managers.

A specific example is as follows:

Regulation 168/2013/ec Article 23 (4) (5), where the Commission is required to initiate research to confirm the need for:

*a) the enforcement dates of the Euro 5 level referred to in Annex IV;*

*(b) the Euro 5 emission limits referred to in Annex VI (A2) and the OBD thresholds in Annex VI (B2);*

*(c) that all new types of vehicles in (sub-)categories L3e, L5e, L6e-A and L7e-A shall, in addition to OBD stage I, also be equipped with OBD stage II at the Euro 5 level;*

*(d) the durability mileages for the Euro 5 level referred to in Annex VII (A) and the deterioration factors for the Euro 5 level referred to in Annex VII (B).*

However, the measures are going ahead anyway, despite the wording of the regulation. Research should be objective as to the need for legislation, not to justify it.

There are also examples of regulations that are either badly thought through in engineering terms, un-costed or just plain unnecessary. These have also been insisted upon by the Official mentioned above.

Crankcase emissions test: Industry demonstrated that there are no emissions to clean up - yet a test is still being insisted upon.

Evaporative Emissions. As far back as 2005, industry demonstrated that this didn't fit any cost/benefit norm. Yet a test is still being insisted upon.

Durability, The EU is slowly realising that the 'Standard Road Cycle' is as unrepresentative as industry said it was. It now can't be used to condition canister components as you only need to turn the engine off four times in 35,000km for the test. Totally unrepresentative of the real world.

Repair and Maintenance Information. This represents a huge cost for the industry to set up, but such information is already widely available in many cases and it is unclear who and where are the customers for it are.

The MCI is a member of the "Association des Constructeurs European des Motocycles" (ACEM) which carried out negotiations with DG Enterprise. ACEM has done its best on behalf of the European industry but has been frequently frustrated by the EC's doctrinaire attitude.

The MCI also liaised closely with officials in the Department for Transport, who were most supportive. They also considered that the officials in DG Enterprise took an unduly heavy handed approach, but felt that following the Lisbon Treaty their powers of intervention were much more limited that had been the case pre-Lisbon. Therefore they felt that they had to be very selective with their interventions.

The impact of the Regulation and its delegated acts on the British consumer will be that:

the average price of motorcycles will increase by 10-20% due to the cost of type approval and additional equipment that is required, consumer choice will be further eroded.

For the industry the affects will include:

- greater manufacturing cost
- a wider divergence with specifications for non EU markets export markets
- the elimination of the potential for new bulk manufacturers

## **Conclusion**

The key conclusions drawn from the negotiations between ACEM and the Commission in Europe and the MCI and DFT in the UK are:

The power that the individual EC officers yield and the extent to which their personal attitudes can result influence “technical legislation”.

The extent to which they may make technical demands that are of little or no benefit to society, with little objective control, no research based justification and on occasions appear personally motivated.

The very limited opportunities for Member state intervention and therefore the need to limit these to just a few key issues.

The effect of the regulations in destroying opportunities for innovation and the removal of the ability for entrepreneurship in motorcycle manufacturing from all but those with the necessary many millions in up-front finance needed to create new product

The reduction of diversity and choice in motorcycling and the suppression of new business and growth opportunities within the sector.

It is therefore our conclusion that the powers of the EC’s directorates and officials should be re-balanced in favour of Member States

Motor Cycle Industry Association (MCI).

August 2013.

## Research and Development Call for Evidence Questions

### Impact on the national interest

- 1. Where has EU action had a positive impact for the UK on research, technological development, innovation or space? What evidence is there for this? Has EU action encouraged national action in any areas?**

The European automotive industry has an excellent track record in innovation investing 4% of annual turnover in R&D (€20billion). It is the largest private investor in R&D in the EU, covering approximately one h of Europe's total private R&D expenditure. In vehicle design, the numerous innovations leading to increased functionality, safety and reliability whilst reducing costs are dramatic.

Co-ordinated EU action such as the framework collaborative research programmes and legal frameworks have become key drivers of this innovation in the industry resulting in the EU automotive industry becoming a global leader in technological development. For example the European Emissions Standards which first came in to force in 1993 to control vehicle exhaust emissions and by 2014 will reach their 6<sup>th</sup> generation (EURO6). Since their introduction these standard have led to dramatic reduction in most exhaust emissions from vehicles through technological development and innovation. The UK has benefited significantly from this European scientific innovation eco-system

The need to innovate in order to meet such demanding legal frameworks within the EU has been a key factor in fostering a close co-operation between car companies, their suppliers and the EU with large sums of public money committed to joint, pre-competitive strategic research via EU programmes.

- 2. Where has EU action had a negative impact for the UK in these fields? What evidence is there for this? Has EU action prevented potentially useful national action in any areas?**

European state aid regulations applied in the UK can sometimes act as a blockage to innovation by hampering the opportunities for existing industry players (which have the competences and value chains established) to secure capital grants for higher risk technology projects. Too often this seems to default to capital grants for universities rather than industry.

**3. How, and where, has UK engagement with partner countries or international bodies, both within and outside the EU, been helped or hindered by EU involvement?**

Example EU instruments where UK engagement with partner countries has been helped are “Networks of Excellence (NoE)” and “Co-ordination and Support Actions (CSA)” NoE’s have developed strong linkages between areas of excellence across the EU focussed on emerging trends (which will form future grand challenges). They have also stimulated the exploratory activities needed to prepare for research and innovation to address these emerging trends. CSA’s support activities have helped with awareness building and knowledge management on the results of EU research and technology development projects.

**4. What benefits or difficulties has the objective of a European research area (ERA) delivered for the UK?**

UK Engagement with partner countries has benefited significantly from the EU Framework Programmes (most recently FP7) for research and technological development which bundle all research-related EU initiatives together in a common framework and are the main EU instruments for funding research in Europe. These programmes have been instrumental in creating a scientific base for tackling pan-European (and global) grand challenges and, together with EU policy instruments have driven innovation needed to tackle them and generate the economic growth opportunities for EU companies.

**5. How has the EU sought to coordinate the policy instruments at its disposal across different policy areas to create an enabling environment for researchers and innovators? How successful has this been?**

In our sector (road transport) what is particularly impressive is the creation of a coherent and dynamic strategic framework for advancing research and development, driving deployment, informing and guiding policy and raising awareness. The EU has successfully introduced organisational “instruments” to achieve this level of strategy and these include various EU industry organisations (with significant involvement by UK companies) such as EUCAR, ERTICO, EARPA and many more. The effectiveness of such organisations is seen in their co-ordination activities focussed on achieving the level of strategy needed not just to focus the EU funding but the much greater amounts of industry funding leveraged by the EU funding. By developing effective frameworks and processes these organisations have helped ensure that EU research planning and exploitation is not sub-optimal and is closely linked to deployment and policy development.

## Further opportunities and challenges

### 6. What could the EU most helpfully do to promote scientific and technological progress and innovation (including in the space sector)?

- How could the EU use its existing competence differently to deliver more in your area?

Increase the focus on research, development and innovation as a driver for economic growth in the application of EU Structural Funds such as ERDF.

Accelerate the simplification process of the EU research and innovation programmes to help increase industry engagement.

- How might a greater or lesser degree of EU competence deliver more in your area?

Greater focus on improving linkages between EU research and policy instruments to rapidly drive deployment of technologies to help deliver advanced technology competencies in the EU in time for developing global markets. A good EU template for this is the use of emissions directives (EURO6) another is the EU consumer organisation EuroNCAP both of which have had a major influence in driving innovations to improve vehicles. There are opportunities for a similar approach to be taken with technology areas such as Intelligent Transport Systems for example.

- How could improvements to existing EU activities make them more effective and efficient?

Increased exchange of information and more coordination between RTD projects would result in a better leverage of the public funds invested – for example this could be achieved by increasing budget share for NoE's and CSA's

### **7. Where might future EU level action be detrimental to your work in this area?**

Reduced or diluted funding for collaborative research and innovation activities

### **8. Where might action at national rather than EU level be more appropriate / effective?**

There are perceived barriers to entry at an EU level for SME's to engage directly with EU innovation instruments. A nationally led approach for SME innovation, linking through to EU instruments as appropriate, would be most effective.



**9. How could EU and national policies and funding streams interact better?**

Raise profile of UK instruments for facilitating the involvement of UK companies in EU research projects, industry associations and networks of excellence.

**10. What impact would any future enlargement of the EU have on this area of competence?**

There would be a greater level of competition for already limited EU research, development and innovation funding

**11. Are there any other points you wish to make which are not captured above?**

No

# National Farmers Union (NFU)

The NFU represents more than 55,000 farming and growing members in England and Wales. In addition it represents some 40,000 'Countryside' members with an interest in the countryside and rural affairs.

Government review of the balance of competences between the United Kingdom and the European Union

Transport

## Background

The EU is the main destination for the majority of UK agricultural produce. At the same time, imports from the EU directly compete with UK produce at point of sale. It is essential that EU transport policy and regulation ensures a level playing field amongst Member States to ensure food security, economic growth and UK competitiveness.

Agricultural transport in the UK is characterised by relatively short incidental journeys on public roads by a variety of agricultural vehicles. Vehicles such as tractors (and any equipment or trailer that they tow), harvesters, material handlers, self-propelled sprayers, agricultural quad bikes etc will have to undertake some incidental travel on public roads. Transport of passengers is also undertaken, such as taking stockmen or harvesters to the fields, often over short distances. Transport of produce from field to farm is normally undertaken by tractor and trailer, whilst transport of livestock to market or slaughter can be undertaken via smaller trailers towed behind utility vehicles. Additionally some farm businesses operate larger vehicles to transport goods longer distances (requiring Operator Licences) e.g. livestock and sugar beet, but transport of produce of this nature is predominantly within the UK.

Whilst EU transport regulation and policy clearly has a large impact on the free movement of goods over longer distances, it also has an impact on businesses that use or depend on transport as an incidental part of their main business. This consultation response focusses on those matters related to EU competencies that affect our members on an operational scale. We will answer the questions most relevant to the UK agricultural industry focussing on road transport.

## **What are the advantages and disadvantages to the UK of EU action in the field of transport?**

### Advantages

#### Driver licensing

One notable area where the EU has succeeded in helping to improve UK agricultural transport is 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. This has helped to ensure that there is a sufficient workforce of qualified drivers, particularly at peak times such as harvest.

Whilst the “f” category for tractors remains a domestic requirement; it is given upon completion of an EU category B test in the UK. The Motor Vehicles (Driving Licences) Regulations 1999 enables holders of valid EU licence categories to drive vehicles authorised by the same category. Harmonisation of tractor categories across the EU would also authorise foreign drivers who may not hold a relevant B category test but are classed as competent to drive agricultural tractors in their country of origin.

### Disadvantages

#### Driver CPC

The NFU believes that the UK’s implementation of Directive 2003/59 in relation to Driver Certificates of Professional Competence to incidental drivers in agriculture is a disproportionate burden. Whilst the Directive is clear in its recital that it should not apply to *“vehicles used to carry out transport where this is considered to have a lesser impact on road safety or where the requirements of this Directive would impose a disproportionate economic or social burden”* the UK has directly transposed the requirements of the directive without further exemption for incidental drivers. The Netherlands is an example of a country that has included an exemption for drivers who are at least 21 years old and drive within a distance of 50km, and small businesses.

Farmers may fall under the Directive when using goods vehicles to take produce or livestock to market, or when taking harvesters to the field in minibuses. Such driving is either sporadic or seasonal, as is the case during harvest where farmers may drive for a very limited distance for couple of months a year. This directive is designed to improve driving standards and safety. It is most appropriate for drivers who spend a significant time

driving and not incidental driving where any benefits would be disproportionate to the burden of the training.

We do not consider that Driver CPC is a necessary requirement for the UK given the UK's excellent road safety record and robust driver training programme. The UK also has far reaching and comprehensive health and safety and environmental legislation. We therefore consider that there are existing ways to implement these changes.

The Commission has clarified to the Government that the exemptions should not apply to a whole industrial sector such as farming. The recent consultation from the Commission seeks views on harmonising the scope and exemptions in the Directive to that for drivers hours. If this change happens it will exempt most transport activities for farming businesses.

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. This is especially important for businesses where driving and transport are incidental to their main business activity.

#### Tractor and trailer weights and speed

One area where UK agricultural transport is at a competitive disadvantage is due to its relatively low tractor and trailer weights and permitted speeds. This is one area where increased harmonisation with European weights and speeds is important for the competitiveness of UK farmers. Whilst the haulage industry has seen permitted weights increase over the years, partly to ensure free movement of goods across borders, weight limits for tractors and trailers have remained at the same levels since 1986.

Whilst there are no harmonised weights and speeds across Europe, many European Member States operate weights and speeds far in excess of the UK current maximum limits of 25mph and 24.39 tonnes. This would mean for example; a UK farmer harvesting 350 tonnes of grain in a day would undertake approximately 33 trips from the field to the grain store (assuming tractor and trailer weigh 13.5t unladen). In France where the legal speed limit is 40km/h with 38 tonnes maximum weight; the same 350 tonnes could be moved in just 15 trips. This means a UK farmer is at a competitive disadvantage, not only because of the direct cost of extra journeys, but also because of the reduction in flexibility

to be able to bring produce in from the field quickly to take advantage of weather windows. This is one area where increased competence from the EU may be advantageous.

**To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

In terms of construction standards we consider that harmonisation is appropriate at a European level as the cost of developing and implementing technology is significant. It is important to ensure that implementation is undertaken multilaterally to prevent unfair advantage. This is especially important for environmental standards where costs to industry may not be so immediately apparent.

For maintenance of social standards, such as periodic vehicle inspection and roadside tests, we consider that the current directives to harmonise standards are sufficient. We consider that there should be a suitable degree of flexibility to enable Member States to implement enforcement and testing regimes appropriate to the nature of the transport sector in their particular country. We therefore do not consider it necessary to have further harmonised standards for safety checks.

Harmonising periodic inspections can bring its own set of problems. The EU Roadworthiness Package announced in July last year contained proposals for the testing of agricultural tractors with a design speed of greater than 40km/h. The reason for their inclusion was that in some Member States tractors and trailers are being used for haulage. This is not the case in the UK as we have robust legislation preventing haulage for those without Operators Licences. Where haulage is undertaken, a robust testing scheme already exists. The impact assessment that supported the Roadworthiness Package did not contain a strong argument to support the case for inclusion of tractors into the testing regime. This is one example of where a European requirement can fail to recognise the nuances of an industry in a particular Member State; this could result in burdensome and disproportionate legislation, as we have seen with the Driver CPC regulation discussed earlier.

**What challenges or opportunities are there for the UK in further EU action on transport?**

The challenge for the UK in further EU action on transport is ensuring that any further policy or regulatory changes reflect the nuances of the agricultural industry in the UK. It is important to retain sight that regulatory and policy changes have a much broader impact than on national and international haulage.

# Optical Confederation

1. Thank you for consulting the Optical Confederation on the Review of the Balance of Competences specifically related to Transport.
2. The Optical Confederation represents the 12,000 optometrists, the 6,000 dispensing opticians and 7,000 optical businesses in the UK who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of the five optical representative bodies: the Association of British Dispensing Opticians (ABDO); the Association of Contact Lens Manufacturers (ACLM); the Association of Optometrists (AOP); the Federation of Manufacturing Opticians (FMO) and the Federation of Opticians (FODO). As a Confederation, we work with others to improve eye health for the public good.
3. As a number of the abovementioned bodies are members of the European Council of Optometry and Optics (ECOO)<sup>27</sup>, the Optical Confederation as a whole is well accustomed to working with the European Union Institutions (EUIs). For example, we regularly share the views of our members through ECOO in response to consultations launched by the EUIs, thereby ensuring that the optical and optometric position of the UK is understood and taken into account.<sup>28</sup>
4. Since 2008 we have been a proactive member of Vision 2020 UK and the cross-sector UK Vision Strategy (a Vision 2020 UK initiative led by the Royal National Institute for Blind People and involving all four UK Governments).<sup>29</sup> The UK Vision Strategy was developed in response to the World Health Assembly Vision 2020 resolution to reduce avoidable blindness by the year 2020.<sup>30</sup>
5. In February 2013, we responded to the review of competences with regard to Health<sup>31</sup>, in which we stressed that there was a greater leadership role for the EU to play in highlighting the public health and prevention contributions to the European economy, due

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<sup>27</sup> The European Council of Optometry and Optics (ECOO) is the European umbrella organisation which represents the interests of more than 75,000 optometrists and opticians from 27 European countries. More details are available here: <http://www.ecoo.info/>

<sup>28</sup> A list of recent consultations submitted by ECOO can be found here: <http://www.ecoo.info/projects-and-eu-affairs/consultations/> (Last accessed: February 2013)

<sup>29</sup> Members of the Optical Confederation were involved in the development of the strategy with a view improving the eye health of the nation, a key aim of the strategy.

<sup>30</sup> <http://www.who.int/blindness/partnerships/vision2020/en/index.html> (Last accessed: February 2013)

<sup>31</sup> <http://www.opticalconfederation.org.uk/downloads/consultations/Review-of-Balance-of-Competencies---OC-FINAL-response-Feb-2013.pdf> (Last accessed: July 2013)

to the fact that patients move across borders and our economies are highly integrated. We hope this response will be shared between Department of Health and Department for Transport.

6. Similarly, for this review, the Optical Confederation would welcome a greater role for the EU Institutions to play in the field of transport, as there are thousands of drivers who travel across borders, for example, 2 million British drivers cross into neighbouring Members States every year<sup>32</sup>. We would therefore like reassurance that these drivers can see clearly to drive safely. Two potential areas we feel are pertinent are, those concerning “the promotion of high safety standards” (paragraph 18, page 10) and the harmonisation of the assessment of eyesight standards for drivers across Europe in accordance with the EU Driving Licence Directives.<sup>33</sup> This would support the European Commission’s vision to halve the overall number of road deaths in the EU between 2010 and 2020 (Part D.8, page 44), which we support.

7. The Optical Confederation has consistently called for greater consistency on drivers’ vision. In our view, the UK has not implemented the EU Driving Licence Directives to best effect. The number plate test is not an accurate method to assess whether drivers meet these tougher measures as it is not a consistent and robust assessment of visual acuity, and it does not check a person’s peripheral (side) vision. The Optical Confederation continues to call on the UK Government to introduce vision screening for all drivers throughout their driving career to ensure they meet these requirements. This will also reassure drivers that they have safe vision to drive and that they meet the legal eyesight requirements.

8. We would also urge the Department for Transport to work with the European Union Institutions to improve sharing of relevant information or data, such as cross border information on road safety standards and road fatalities related to eyesight (Part D.12, page 45).

9. As explained in this review, quite rightly it is the responsibility of the European Parliament and the Council to provide for measures to improve road safety. For illustration, we welcomed the adoption by the European Parliament of an Own Initiative Report from the Transport and Tourism Committee on European Road Safety 2011-2020 (2010/2235 INI). In particular, this Report stated that the European Parliament: “*calls for an eye test for all drivers in categories A and B every 10 years and for drivers older than 65 years every 5 years; calls on the Member States to establish an obligatory medical check for drivers at a certain age, to identify the physical, mental and psychological ability required to continue*

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<sup>32</sup> RAC, Driving Abroad Report, page 2, <http://www.rac.co.uk/pdfs/report-on-motoring/driving-abroad-report.aspx>

<sup>33</sup> 2006/126/EC and 2009/113/EC Directives



*driving on the basis of their statistical accident data for the respective age groups” (Paragraph 37).<sup>34</sup>*

In line with the European Parliament’s views, the Optical Confederation propose a fairer, scientific and validated model of driver vision screening in the UK with ongoing assessment for all drivers as part of licence renewal. We believe that this would help to achieve safer roads at a minimal cost to the driver and Government, with the offsetting benefit of picking up avoidable sight loss and potentially causing less road incidents. This proposal has been echoed by a range of road safety organisations.

10. We are very happy for this response to made publicly available.

## Questions

**What are the advantages and disadvantages to the UK of EU action in the field of transport?**

N/A

**To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

N/A

**To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

N/A

**To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

N/A

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<sup>34</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-408>  
(Last accessed: July 2013)

**□ What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

N/A

**□ The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

N/A

**□ To what extent could the UK national interest be better served by action taken as a national or wider international level, rather than by the EU, and vice versa?**

In the light of our experience with the UK's recent implementation of the Driving Licence Directives, we would have concerns about the standards being set nationally. As noted above, huge numbers of drivers move between Members States and we would wish to have reassurances that all have adequate vision to drive safely.

**□ What advantages or disadvantages are there for the UK in the EU having greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

N/A

**□ What challenges or opportunities are there for the UK in further EU action on transport?**

As noted above, we feel that acting on priority actions in the European Parliament's Own Initiative Report provides a framework and a starting point for further moves to improve road safety. We would like to see this as a priority for the UK Government.

August 2013

# Terry Phillips

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

Area of focus – motorcycle rider training The main disadvantage to the UK has been the imposition of a new driving test. This has required the creation of Multi-Purpose Test Centres at a cost of many millions of pounds, and the requirement for the training companies to provide their own areas for training students to match the new test. The change to the specifications of suitable machines to be used for test has resulted in a big expenditure by training companies on buying new machines. The uncertainty over the changes has caused some companies to have to change the fleet several times within the space of a year.

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

There is no internal transport market within the EU as far as rider training is concerned. An EU licence has to be surrendered for a UK licence after 12 months. A UK instructor qualification is not accepted outside the UK. There can be no free movement of instructors within the EU.

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

No comment

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

No comment

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

There is no incentive for a young rider to undertake training when they are 17 years old. This has been shown very clearly in the drop in numbers taking the A1 test. The introduction of three identical tests (A1, A2 and A) has also put people off. There are significant numbers of people who use a powered two wheeler as their sole means of transport. The requirement to take the A2 test when all they want to do is use a machine 'slightly' bigger than the 125cc limit imposed by the CBT is also reducing the numbers taking their test. This is having a very significant effect on the training companies who have seen their turnover take a dramatic downturn. It will also have an impact on the number of cars on the road, increasing congestion, and also increasing the carbon footprint.

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The approach has been very centred on the EU. No account has been taken of local conditions within the UK. A prime example of this is that the speed requirement for the manoeuvres within the module one test is expressed in kilometres per hour rather than miles per hour. This has required most training companies to purchase speed measuring equipment at their own expense and requires access to an off-road area.

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

There has been no consultation with the UK training organisations by the EU. By your own admission "the UK has among the lowest levels of road fatalities per inhabitant in the EU". Surely then the EU should be talking to; and taking the lead from the UK rather than vice versa.

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

No Comment

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

Further changes coming down the line may further depress the market. If we don't start people training and learning to ride safely when they are young, then we may lose them as customers and riders for ever.



## Prestons of Potto-Hauliers

There is no comparison between our competitors in Europe and the road haulage industry in UK.

Our fuel duty in UK is the highest in Europe sometimes double that of other European countries.

Most European vehicles coming into UK have a 4x2 combination – much cheaper to run whereas here in UK we have to have a 3x3 combination. A lot of the 4x2 combinations coming in from Europe are over loaded.

Do they ever pay parking or speeding fines – I don't think so.

Any offence of overloading etc. by UK hauliers has to be reported to the licensing authority who can if the offence is serious enough revoke our licence and our livelihood – this does not happen in Europe.

The Europeans pay nothing for using our roads.

The percentage of accidents by foreign vehicles is higher than in UK yet they pay nothing towards the police, hospitals etc.

I understand they do not have the rigid maintenance checks we have in UK.

My company has spent a lot of time and money on CPC training and after 2014 will not be allowed to employ drivers without the certificate – this could result in a massive shortage of drivers and large cost increase for UK economy. Foreign drivers, if caught, only have to pay £30 fine.

I could go on and on but there is no fair balance.

# RAC Foundation, RAC and AA

RAC Foundation, RAC and AA response to the “EU balance of competences review: transport call for evidence”

This is a response from the RAC Foundation, RAC and AA to the DfT’s call for evidence on the EU balance of competences.

The RAC Foundation is a transport policy and research organisation which explores the economic, mobility, safety and environmental issues relating to roads and their users. The Foundation publishes independent and authoritative research with which it promotes informed debate and advocates policy in the interest of the responsible motorist.

RAC is one of the UK’s oldest and most progressive motoring organisations with over 7 million members. The business delivers motoring services, including roadside assistance, insurance, vehicle inspections, legal services and traffic and travel information, to both individual members and on behalf of corporate partners. RAC endeavours to champion the interests of responsible motorists and regularly surveys their views to inform policy. RAC is wholly owned by the Carlyle Group, one of the world’s largest private equity asset managers.

The AA was established in 1905 and is the UK’s largest motoring organisation with around 15 million members. It has helped guide and shape motoring policy for more than a century by analysing and researching issues, and campaigning on behalf of members and motorists. The AA provides a range of services including motor and home insurance, financial services and breakdown repair cover. There are AA products and services to help private and fleet motorists choose and run vehicles.

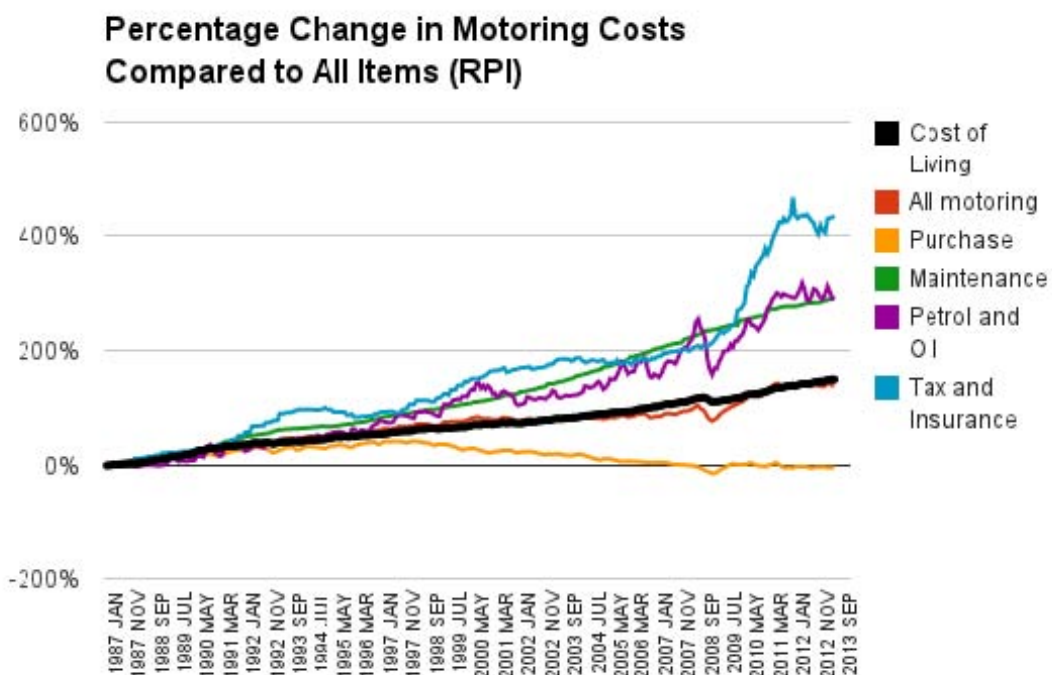
Our responses will be answered from the motorist’s and road user’s perspective.

## **1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The answer to this question must be viewed in the context of the general objectives of the EU: to create a Single European Market (SEM), which means to facilitate the free

movement of people, goods, services and capital (the 'four freedoms') across all the member states. This objective can be viewed as desirable in itself.

The main advantage to UK motorists of EU action in the field of transport is the single market for vehicles. Type Approval legislation and specifications (developed through the UN Economic Commission for Europe) on emissions, safety and other technical aspects of vehicles have meant that vehicle manufacturers can sell to a single market, benefit from economies of scale, and thereby reduce costs. It has also meant 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:



Source: RAC Foundation based on ONS data

Another benefit is the facilitation of travel within the EU through, for example, mutual recognition of third-party insurance and pan-European driving licences.

A disadvantage of EU action is that in some instances EU legislation prevents the UK government to adopt what it considers optimal policies. A case in point is biofuels: the Renewable Energy Directive mandates a 10% renewable energy target for transport by 2020 (measured as energy, not volume). While 'renewable' includes electricity and



hydrogen, it is expected that the target would have to be met by biofuels because of the fledgling nature of the electric vehicle market (and non-existence of a hydrogen market). Following the Gallagher Review into the potentially negative secondary effects of biofuels, the UK government revised down its targets for biofuels, which jeopardises the UK reaching the EU 2020 target.

Another example is that of eCall, a telematics system that notifies emergency services in the case of serious incidents: the benefits to the UK motorist are likely to be relatively low given the country's geography, yet the system will add cost to every new vehicle. There are also issues around privacy if in future the system is used for other tasks (which involve monitoring the driver).

Overall, however, we believe that the advantages outweigh the disadvantages, and that EU action on transport is generally positive.

**2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

From the motorist's perspective, the main success of the EU has been in creating a single market for vehicles and thereby making them more affordable, as outlined in our answer to question 1. Common standards have meant that UK-manufactured engines or vehicles can be easily sold on the European market.

However, the impact of the 'internal transport market' is mainly in transport services, that is, road haulage, collective passenger transport, rail freight and aviation which are significant but have only limited effects on the ordinary motorist.

**3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

It is essential for the free movement of people, goods and some services and facilitates the movement of capital.

**4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the**

**proper functioning of the internal transport market as opposed to desirable in its own right?**

We believe that the combination of environmental, safety and other technical standards are in most instances beneficial for the motorist and industry, and support the functioning of the internal transport market. This is because they guarantee a level-playing field and competition between vehicle manufacturers in the large market that the EU presents. Environmental standards in particular are also desirable from a global competitiveness perspective since other regions, notably the USA and Japan, are adopting similar fuel economy standards, so it will be important for the EU to maintain its leadership and thereby support a healthy and sustainable automotive industry.

**5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

EU action has strengthened the consumer voice and has acted principally for the benefit of consumers (better and cheaper vehicles, easier and safer motoring within the EU).

**6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

Generally speaking, the EU approach has been proportionate and appropriate: achieving its objectives (the SEM and free movement within the EU) requires and justifies the introduction and harmonisation of certain laws. In the areas where the EU (through the European Commission) has a legal basis for action, which are agreed by the member states and ratified in the treaties, it proposes, decides, implements and enforces binding legislation; where it does not have the legal basis, it provides opinions and recommendations.

However, the more deeply involved the EU gets into some of the larger policy issues (e.g. setting road safety targets for individual member states or mandating a common methodology for setting road user charges), the greater is the danger it will overstep the mark. It is therefore necessary for the principles of subsidiarity (taking action at the lowest and most appropriate level) and proportionality (taking the right kind of action) to be rigorously applied. It is also important that legislation proposed by the European Commission does not become an end in itself (to justify its existence), but that it is a response to specific market failures and is informed by decision-making tools such as cost-benefit analysis.

**7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

Many of the EU actions which to date have been beneficial to the motorist and to the automotive industry are matters on which the UK would wish to continue to conform in any case. To do so from outside the EU might well be more challenging (dealing with large international industries and institutions), as achieving some of the desired objectives may be difficult for individual governments. Membership of the EU therefore gives the UK 'a seat at the table': it ensures that the UK government can directly influence EU law (regulations, directives and decisions) and the strategic direction that is set.

A further benefit of EU action is its ability to enforce and sanction – it is only through these powers, which are conferred to it through the consent of all member states, that compliance with legislation can be achieved.

**8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

The same arguments apply as in the answer to question 7: if the UK is part of the EU, it can shape the EU position and carry more influence overall. On its own, the UK is simply not powerful enough to influence decisions in international negotiations with the other major power blocs such as China and the USA.

**9. What challenges or opportunities are there for the UK in further EU action on transport?**

It will be important for the UK to remain in a position where it can influence and be part of EU action on transport, partly to pursue its own interests (both for legislation it would and would not like to see introduced) but also to carry more weight in international negotiations as part of a larger economic bloc, notwithstanding that some decisions are best taken at the national and sub-national levels. It is also important that EU decisions are based on the best possible evidence and stakeholder engagement, to ensure that legislation is 'right' and in the interest of the responsible motorist and road user more generally.

**RAC Foundation, RAC and AA**

**July 2013**

Action	Piece of legislation	EU competence	Impact	Rationale	Consequence of EU withdrawal	Comment	Area
EC Whole Vehicle Type-Approval (vehicle, air pollutant, noise and safety standards)	<a href="#">Directive 2007/46/EC (Framework Directive) (EEA relevance)</a>	Exclusive	Positive – certain standards might increase costs to motorists but confer wider societal benefits	Automotive industry and motorists benefit from EU-wide common standards, as it facilitates competition and therefore lower costs for motorists.	Most of this is covered under UN ECE regulations, but these cannot be enforced through sanctions.	On balance positive. Question whether benefits would be sustained if reliance on UN ECE regime. Cost-benefit analysis must be applied with each step forward to make sure that each intervention is justified.	Vehicles
Specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions (fuel quality)	<a href="#">Directive 2009/30/EC (EEA relevance)</a>	Shared	Fuel quality: positive  GHG: positive overall	UK motorists benefit from being able to refuel their vehicles satisfactorily in other EU member states.  GHG: meet the EU's climate change targets.	Harmonisation of standards could not be guaranteed but in practice this unlikely to lead to significant problems.  GHG: the UK could develop its own GHG reduction targets for	This is not likely to be an issue because commercial interests of oil companies ensure that common fuel standards are met.	Vehicles

Driving licences (mutual recognition and minimum standards)	<a href="#">Directive 2006/126/EC (EEA relevance)</a> <a href="#">Decision 2013/21/EU (EEA relevance)</a>	Shared	Positive	Makes driving in the rest of the EU easier and aids enforcement of road use by non- EU drivers.	fuels. Current arrangements would probably survive but it is possible but uncertain as to whether voluntary effective agreements in respect of future changes would be made.	Drivers
Single European emergency call number	<a href="#">Decision 91/396/EEC</a>	Exclusive	Positive	Sits alongside 999 and can be used in 79 other countries.	This could be retained by national government. UK has not fully embraced the concept of a <i>single</i> number; it runs the universal 112 system in tandem with its preferred 999 number. However, a common number (i.e. 112) should be retained.	Safety
Provision for an	<a href="#">Commission</a>	Exclusive	Mixed – but on	Will help	This technology	The technology Safety

interoperable  
EU-wide eCall

[Delegated  
Regulation  
\(EU\) No  
305/2013 \(EEA  
relevance\)](#)

balance  
positive

assistance in  
the event of  
accidents but is  
estimated to  
cost €100 per  
vehicle.

is likely to  
develop  
'naturally' but  
standard  
protocols will  
be needed.

is claimed to  
open up other  
functionalities.  
Standardisation  
is desirable for  
UK motorists  
travelling in  
Europe, and for  
European  
motorists  
travelling in the  
UK, although it  
is unclear  
whether the  
relatively  
limited benefits  
justify the extra  
costs for the  
consumer.  
There are also  
potential  
consumer  
issues that  
arise if the  
system is  
engineered to  
deliver a wider  
range of  
telematics  
services. One  
obstacle to the  
system is the

organisational structure of the 'public service answering point' - the presumption is that systems will be state-run.

Cross-border exchange of information on road safety related traffic offences	<a href="#">Directive 2011/82/EU</a>	Exclusive	Positive overall	Better enforcement of traffic laws.	Current arrangement would probably survive but uncertain whether future changes would be voluntarily adopted and, if so, effective.	Although desirable, better enforcement of traffic laws may not necessarily mean a level-playing field in terms of enforcement intervention thresholds and sanctions applied.	Safety
Data and procedures for the provision, where possible, of road safety-related minimum universal traffic	<a href="#">Commission Delegated Regulation (EU) TBC (EEA relevance)</a>	Shared	Positive	Better safety information for motorists should help reduce injuries and fatalities from road traffic	The government would probably want to see similar initiatives taken in the UK.		Safety

information free of charge to users

accidents.

Minimum safety requirements for tunnels in the Trans-European Road Network	<a href="#">Directive 2004/54/EC</a>	Exclusive	Positive	Contributes to safer motoring at home and in the rest of the EU	The government would apply its own standards on UK roads.		Safety
Insurance against civil liability respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability	<a href="#">Directive 2009/103/EC (EEA relevance)</a>	Shared	Positive	Facilitates free movement by car between members states	It is possible but uncertain as to whether voluntary effective agreements would be made .	This regime is highly beneficial.	Safety
Roadworthiness tests for motor vehicles and their trailers	<a href="#">Directive 96/96/EC</a>	Shared?	Positive	Ensures minimum standards of vehicle safety while permitting free movement of vehicles within EU/EEA	Separate arrangement would have to be negotiated with the EU to permit free movement of UK-registered vehicles in the EU/EEA and vice versa.		Safety



Technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community	<a href="#">Directive 2000/30/EC</a>	Shared	Positive	Ensures minimum standards of vehicle safety while permitting free movement of vehicles within EU/EEA	Separate arrangement would have to be negotiated with the EU to permit free movement of UK-registered vehicles in the EU/EEA and vice versa.		Safety
Road infrastructure safety management	<a href="#">Directive 2008/96/EC</a>	Shared	Positive overall	Helps improve road safety both at home and in the rest of the EU	The UK would continue its own efforts in this field.	Given the UK's high standards in these matters, the value is limited to travel by UK motorists elsewhere in the EU.	Safety
Emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO <sub>2</sub> emissions from	<a href="#">Regulation (EC) No 443/2009 (EEA relevance)</a>	Exclusive	Positive	Directly impacts and improves the fuel economy of new vehicles, which means lower fuel bills for motorists. Creates a level-playing	Potentially higher fuel bills than would otherwise be the case. Risks achievement of UK climate change objectives.	Industry and the motorist benefit from common regulatory standards which may be difficult to achieve outside of the EU process. The	Environment

light-duty vehicles

field for industry, and follows/leads the trend in other regions (e.g. USA and Japan).

same arguments apply for the new van CO<sub>2</sub> emissions targets.

Promotion of the use of energy from renewable sources (transport element)

[Directive 2009/28/EC \(EEA relevance\)](#)

Shared

Positive overall

To meet the EU's greenhouse gas reduction targets and reduce the bloc's reliance on imported oil.

The UK government would probably still want to pursue a similar initiative with different targets and timescales.

In the longer run this could help reduce dependence on fossil fuels and moderate other restrictions on carbon emissions.

Environment

Deployment of alternative fuels infrastructure

[Proposal for Directive - currently COM\(2013\) 18](#)

Shared

Uncertain (may lead to excessive expenditure on certain technologies)

Would depend on the framework and whether it imposed additional cost/quality penalties on motorists.

This would allow the UK government worthwhile discretion to determine its exact strategy.

The role of government is to provide the right regulatory, fiscal and grant regime within which the market generates the right, long-term solutions. However, there would be benefits from

Environment

having EU standards on charging infrastructure.

Availability of consumer information on fuel economy and CO<sub>2</sub> emissions in respect of the marketing of new passenger cars

[Directive 1999/94/EC](#)

Shared (EU minimum requirement)

Positive

Helps motorists make informed choices about vehicle purchase, specifically fuel economy.

This, or something similar, could be retained by national government.

A national scheme could be equally effective.

Environment

Labelling of tyres with respect to fuel efficiency and other essential parameters

[Regulation \(EC\) No 1222/2009 \(EEA relevance\)](#)

Exclusive

Positive

Helps motorists make informed choices about tyre purchases.

This, or something similar, could be retained by national government.

A national scheme could be equally effective.

Environment

Promotion of clean and energy-efficient road transport vehicles

[Directive 2009/33/EC \(EEA relevance\)](#)

Shared

Positive overall

Ensures that contracting authorities take into account lifetime energy and environmental impacts when purchasing

This could risk the UK government achieving its greenhouse gas reduction targets.

The government could come up with its own policies in this area to meet its climate change targets.

Environment

Taxation of energy products and electricity (minimum fuel duty)	<a href="#">Directive 2003/96/EC (EEA relevance)</a>	Shared	None (in practice)	vehicles. Ensures the functioning of the single European market.	The government would continue to set its own fuel duty levels	Motoring taxation / charging is an area where the Commission wants to play a greater role. Minimum fuel duty is well below the UK level and seems likely to continue to be so.	Taxation
Interoperability of electronic road toll systems	<a href="#">Directive 2004/52/EC (EEA relevance)</a>	Exclusive	Positive	If electronic tolling becomes more common in the UK it would be advantageous for the Electronic Tolling System to be useable on other EU roads; benefit of practicality	It is possible but uncertain as to whether effective agreements would be achieved voluntarily.		Integrated transport
Framework for the deployment	<a href="#">Directive 2010/40/EU</a>	Recommendation	Generally positive	Should help contribute to	The UK would be unable to	The UK industry and	Integrated transport

of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport

[\(EEA relevance\)](#)

interoperability of key ITS functionalities across the EU roads' systems (electronic and physical)

influence what is likely to be an important long-term process of applying developing technologies to road operations.

motorist benefits considerably by being part of this long-term development.

R&D programmes (e.g. FP7, COST and EEN)

Exclusive

Positive

Supports cooperative research and exchange of ideas to develop road transport technology, management and policy.

UK level of involvement would diminish to an uncertain extent.

These have been an important source of funding for UK research institutions. It must be ensured and demonstrated, however, that the programmes deliver genuine added value.

Funding

# David Read

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The EU has far too much say in the organisation of our transport system

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

To introduce the driver CPC requirement is just a money making policy but will do nothing to help the industry

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

The EU has become far too big and does not have the same standards throughout. British drivers are targeted more in Europe but EU drivers are left untouched in UK

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

The EU should do more for UK and leave all transport policy's for UK to decide on

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

The EU has made it harder for companies in UK to survive due to tight rules and regulation

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

It has made companies close due to constant changes in regulation

**Q7. To what extent could the UK national interest be better served by action taken at a**

**national or wider international level, rather than by the EU, and vice versa?**

The UK should stand up for itself and not be told what action to take by EU members

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

There will not be a great advantage

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

Until UK has some form of policy that see all transport being felt with as equal. EU drivers are not targeted by Vosa as much as UK drivers but UK drivers working in EU have to abide by different regulation in different states

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

Why do different EU countries have different rules when all should be the same. France you must have breatherliser kit ?

# Renewable Energy Association (REA)

## **Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union (Transport) – Response from the UK's Renewable Energy Association**

### **About the REA**

The Renewable Energy Association (REA) is pleased to submit this response to the Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union (Transport). The REA represents a wide variety of organisations involved in renewable energy in the UK, across power, heat and transport. Members range in size from major multinationals to sole traders. There are over 1,100 corporate members of the REA, making it the largest renewable energy trade association in the UK. The REA's main objective is to secure the best legislative and regulatory framework for expanding renewable energy production in the UK. The Solar Trade Association is affiliated to the REA.

### **Introduction**

Though absent from the table of key EU transport legislation provided with this call for evidence, the Renewable Energy Directive (RED)<sup>1</sup> and the Fuel Quality Directive (FQD)<sup>2</sup> have to date been the primary drivers for the reduction in greenhouse gases (GHGs) in the transport sector. We presume this omission is because the RED will be addressed in more detail in the Government's Review of the Balance of Competences for Energy which is due out in the autumn. However as referenced in the modal annex of the call for evidence document, these Directives are very important in the context of EU environmental competences for road transport and thus we will address them within the scope of the transport review, in addition to the energy review when published.

1 European Commission (2009) Directive 2009/28/EC on the promotion of the use of energy from renewable sources

2 European Commission (2009) Directive 2009/30/EC regarding the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions

3 European Commission (2013) Proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure

### **Harmonisation of standards creates an effective EU internal transport market**



EU action to harmonise environmental standards and targets is necessary for the proper functioning of the internal transport market because harmonisation significantly reduces complexity for industry (e.g. vehicle manufacturers and fuel suppliers) and avoids the creation of fragmented markets. Successful examples of this harmonisation include:

RED targets for 10% renewable transport (e.g. biofuels, electric vehicles) by 2020

FQD targets to reduce carbon intensity of petrol and diesel by 6% by 2020 (i.e. primarily through the blending in of biofuels)

Implementation of CEN standards in the road transport sector

Proposals for alternative fuels infrastructure<sup>3</sup> which will require Member States to install a minimum number of electric vehicle recharging points, hydrogen fuelling stations, define EU wide technical specifications and adopt consumer information on alternative fuels and the compatibility of vehicles

The establishment of an internal EU transport market also gives the region a better position in global trading and makes the EU a more attractive place for global investment. By setting out targets for decarbonisation of transport at an EU level, the UK benefits significantly not only in relation to environmental benefits but also from a stable policy landscape and an attractive investment market.

### **The use of biofuels offers much more to the EU and the UK than just carbon mitigation**

Decarbonisation of transport through the use of biofuels offers much more than carbon mitigation. Biofuels provide enhanced energy security, opportunities for significant domestic economic growth and employment, and good export prospects. The renewable transport sector including first generation (1G) biofuels, advanced biofuels (2G) and other alternative transport fuels provides multiple opportunities for investment in UK growth. In 2010/11 the UK biofuels sector directly and indirectly employed more than 3,500 people across 200 companies, with an export value of £25million<sup>4</sup>. Given the right support, companies like INEOS Bio seek to have five bioethanol-from-waste (2G biofuels) refineries operational in the coming years which would create 250 skilled permanent jobs, 1,500 construction jobs and more jobs in the supply chain<sup>5</sup>.

<sup>4</sup> REA (2012) Renewable Energy: Made in Britain

<sup>5</sup> REA (2012) Renewable Energy: Made in Britain

<sup>6</sup> HMG (2012) UK Bioenergy Strategy

Despite their significant potential, 2G biofuels are at an early stage of development and consequently are more expensive to deploy. The UK's Bioenergy Strategy<sup>6</sup> estimates that wide spread deployment of alternative fuels is unlikely to occur until well into the 2030's and 2040's. Therefore first generation (1G) biofuels are the only option to decarbonise the transport sector so long as the internal combustion engine dominates the vehicle market. Unfortunately investment in the renewable transport sector has become significantly more difficult as a result of UK policy uncertainty and a lack of visibility about the mid and long-term policy perspectives. To see continued investment in 1G biofuels, which supports investment in 2G biofuels and other forms of renewable transport, a stable policy framework, such as that provided by the RED and the FQD, is essential.

### **Maintaining the current level of competences is in the national interest**

To realise both the economic and environmental benefits of decarbonising transport, continuing support of EU competence in the area of transport should be maintained. EU policies have shown they provide a much clearer signal to industry than national or indicative targets. This is discussed in more detail below.

### **EU Renewable Energy and Fuel Quality Directives vs. UK Climate Change Act**

Without the RED and the FQD to drive UK policy, it is unlikely the UK would have seen any real investment in decarbonising the transport sector. Past experience in the UK (for example under the 2003 Biofuels Directive which only had indicative targets) has shown that, before the current mandatory sectoral target for transport in the RED, Government was unwilling to introduce the measures necessary to incentivise the uptake of renewable fuels for transport.

While the UK Climate Change Act (CCA) imposes an overall 80% GHG reduction target by 2050, to date it has not driven the decarbonisation of the transport sector. The reason it has failed in this respect is because the CCA is not sufficient in outlining what policies the UK will in fact implement to achieve its goal. Therefore this leaves the transport sector – which is responsible for 25% of the UK's GHG emissions – with no clarity or longevity of policy and therefore no direct incentive to decarbonise. The RED and the FQD are much more effective in promoting investment and reducing GHG emissions from transport than the CCA. The binding nature of renewables targets and fuel quality standards set at an EU-level provide medium-term certainty, independent of UK political cycles.

Setting carbon targets at a wider EU level has been suggested as an alternative to renewables targets. However we have seen from the failure of the EU Emissions Trading

Scheme (EU-ETS), which embraces the polluter pays principle, that carbon taxes are at risk of being watered down when applicable to a variety of industries and therefore not robust enough to encourage the investment needed. Carbon taxes also risk unfairly punishing certain industries, whereas renewables targets spur innovation and investment while reducing carbon emissions.

By setting EU-wide targets but giving Member States ultimate flexibility in how these targets are achieved, the RED strikes a good balance in achieving real GHG emission reductions while preventing fragmentation of the transport market. It is important to point out that even with the 10% EU-wide target, progress has been very slow with the most recent data showing that renewable fuels represent 3.1% (by volume)<sup>7</sup> of all transport fuels in the UK. The FQD has only recently been translated into UK legislation and no interim targets have yet been set to achieve the 6% reduction in the carbon intensity of fuels. However, this is not a failure of the RED but rather a fault of the slow implementation of the RED through the Renewable Transport Fuels Obligation (RTFO) and changes to the scheme, including revising the 2013/14 target down in April 2013 to accommodate the inclusion of non-rad mobile machinery (NRMM). Most importantly the failure to set interim targets in the RTFO up to 2020 beyond 4.75% by volume has led to a halt in investment.

<sup>7</sup> DECC (2013) Renewable sources of energy: chapter 6, Digest of United Kingdom energy statistics (DUKES)

### **Policy clarity beyond 2020 is essential**

The required investment will only materialise if there is a strong regulatory driver, underpinned by an EU-wide renewable transport target. The REA has previously supported the extension of renewable energy targets to 2030 and a separate sub-target for the transport sector in our response to the European Commission's Green Paper: A 2030 framework for climate and energy policies. By providing the necessary long-term predictability of market volumes and direction, a binding 2030 renewables target will decrease the costs of uncertainty while at the same time facilitating the achievement of the existing 2020 targets in the most cost-efficient way. Transport will continue to require its own sub-target because, unlike heat and power which are subject to much more local markets, biofuels are globally traded. Therefore to encourage further innovation and investment here in the UK a sub-target will encourage the UK Government to take a more active stance in providing a framework for renewable transport.

### **Additional benefits to the UK from a harmonised approach to sustainability**

Sustainability criteria for biofuels which have been implemented EU-wide through the RED have not only been successful in ensuring that only the most sustainable biofuels are

consumed in the EU, but have also made the compliance with these criteria uniform across the EU. Uniformity across the EU reduces the costs of compliance to businesses seeking to invest in the EU (i.e. slightly different criteria across Europe would increase the overall costs of compliance and the increased complexity in selling to the EU market would discourage investment and growth).

Building on the sustainability criteria, the European Commission has put forward proposals to address indirect land use change (ILUC) attributed to biofuels. If the UK were to try to tackle this issue alone, any efforts to ensure that biofuels are delivering real GHG savings could easily be undermined by policies of other Member States as well as those of countries outside the EU. Therefore if we are to address ILUC, it is best addressed at an international level. In light of the difficulty of applying binding international legislation, EU-wide legislation is the second best option. Though negotiations within Europe have proven complex, ensuring sustainability and uniformity across the EU is important to maintaining a successful and strong internal transport fuels market.

## **Conclusion**

Policies which ensure stability and predictability mitigate risk and increase market confidence. This in turn reduces the cost of capital and helps to unlock the investments needed to decarbonise transport in the UK. Maintaining the current level of competences between the UK and the EU will give the UK adequate flexibility in meeting environmental and renewable transport targets set EU-wide, while providing the necessary policy stability to encourage investment and economic growth here in the UK. The REA urges the UK Government to support setting out renewable transport targets to 2030 in order to provide investors with the required clarity and policy visibility to spur further investment in the decarbonisation of the transport sector.

# Retail Motor Industry Federation (RMI)

## **Response from the Retail Motor Industry Federation to the Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union: Transport.**

### Introduction

The Retail Motor Industry Federation (RMI) is a leading automotive trade body in the UK. It is made up of several associations, including the National Franchised Dealers Association (NFDA) representing franchised car and commercial vehicle dealers and the Independent Garage Association (IGA), representing independent garage workshops. In addition to this, RMI membership is also made up of bodyshops, motorcycle dealers, petrol retailers, auction houses and cherished number plate dealers all of whom provide sales and services to motorists and businesses across the UK.

We welcome an opportunity to respond to this call for evidence, as our members are increasingly affected by legislation coming out of Europe that impact on the running of their businesses.

Below, we have answered the questions provided within the call for evidence document relevant to us as an organisation and omitted questions that are not relevant. Our answers focus on social and environmental aspects of issues falling into the "roads category".

Should you have any further questions, please do not hesitate to get in touch as per the details below.

### **Question 1**

**What are the advantages and disadvantages to the UK of EU actions in the field of transport? You may wish to focus on a particular mode.**

RMI welcomes the EU commitment to decreasing both road fatalities and emissions, though it is worth noting that the UK Government has itself committed to and achieved progress with regards to both these objectives – for instance, the UK has the second lowest recorded number of road fatalities record in the EU.

EU action in the field of transport often takes the form of harmonisation. Due to existing, stringent levels of testing and compliance in the UK, it is rare that EU legislation imposes onerous requirements which resultantly cause significant detriment to RMI members. For example, recent proposals to standardise maximum heights for commercial vehicles have had very little effect.

However, there have been examples where EU legislation does require businesses to invest in certain equipment. For example, EU regulation 2010/48 required our members to procure specialist equipment to comply with testing requirements. In these situations,

costs such as this undermine profitability of a business and will ultimately be passed on to the consumer.

Due to the nature of EU legislation, having to cater for the industries of 27 different Member States, there will often be instances where aspects of it will not be fit for purpose and create burdens for compliance. For instance, the Third Driving License Directive (3DLD) which came into force in 2011 implemented swerve testing for motorcycles. In the UK, this could not be undertaken on a public highway and as a result the Driver Standards Authority (DSA) had to adapt facilities to ensure this could be undertaken, at a significant cost.

Another disadvantage is that the Department for Transport is tasked with liaising with the European Commission and DG MOVE to understand and shape proposals, removing time that could be spent on the national agenda. In the UK, there is a good working dialogue between the Department for Transport and industry groups to inform key decisions in the UK where as legislation undertaken at a European level is less likely to be influenced by stakeholder views. There is a worry that EU officials may be “out of touch” therefore with the true needs of industry across the European Union and specifically in the UK. It also means the Department for Transport cannot always set their own agenda that is fit for purpose in the UK.

In summary, while there are advantages to be gained as a result of EU action, by promoting high levels of road safety and lowering emissions across the European Union, quite often legislation imposed actually has very little discernible impact in the UK, due to the already demonstrable commitment by the UK government to achieving shared objectives. The disadvantages are that where legislation does require investment by businesses, these costs will ultimately be passed on to the consumer and can also be complex for businesses to discern. Finally, there is the risk that standards set will not be fit for purpose in the UK, and distracts the Department for Transport from shaping their own agenda which can be shaped by important views of the industry and consumer groups alike.

#### **Question 4**

**To what extent is EU action to harmonise social and environmental standards (eg to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

EU action to harmonise social and environmental standards are desirable in their own right in order to ensure road safety and decrease harmful emissions. In terms of the effect of harmonising such standards to ensure the proper functioning of the internal transport market, RMI are of the view that this is not necessary – the nature of a market is that it evolves shaped by demand and innovation and it is not therefore vital to impose such requirements.

## **Question 7**

**To what extent could the UK national interest be better served by action taken at a national and wider international level, rather than by the EU, and vice versa?**

The UK pays a great deal towards the EU budget at a time when there are significant cuts to Government agencies under the remit of the Department for Transport, such as the Driving Standards Agency (DSA) and the Vehicle and Operator Services Agency (VOSA). The negative impact of any cost to the Department for Transport in dedicating resources to understanding and reacting to European legislation, as well as the overall cost to UK businesses, must be weighed up against the positive impact of any EU action. For example, a recent quote from the Secretary of State for Transport, Rt Hon Patrick McLoughlin MP, stated that the estimate for original EU Roadworthiness Proposals still under consideration is “a €1billion cost to the UK, with no discernible benefit”,<sup>35</sup> a clear example of where EU action is unfit for purpose in the UK. Where cases such as this occur, it is hard to justify EU action opposed to action taken at a national level.

## **Question 9**

**What challenges or opportunities are there for the UK in further EU action or transport?**

Currently, the transport repair and testing industry is facing further action from the EU in the form of proposed roadworthiness proposals. While the UK welcomes possible amendments to the proposals that remove items of concern there are still proposed requirements that remain, notably the stipulation that testing and repair cannot be undertaken by the same individual. Such amendment processes and the uncertainty of the final outcomes of such proposals leave businesses unsure of what will ultimately be required of them, at a time when economic certainty is also in doubt. It is this complex process and the difficulty in interpreting final legislation that is causing challenges for the industry.

There are, of course, opportunities for accomplishment in relation to environmental targets. As a result of emissions targets imposed by the EU, much cleaner transport and fuels are under development and there is a real commitment by industry to promoting such developments. However, there are concerns that such targets are being imposed too “hard and fast” with little consideration for the time industry needs to make changes to facilitate the uptake of new fuels or forms of transport, or the time needed to provide the information required to consumers.

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<sup>1</sup><http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121025/wmstext/121025m0001.htm> (Column 67WS)

# Road Haulage Association (RHA)

1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.

There has been too much support of unsustainable modes such as rail, backed up by direct and indirect taxpayer subsidies that distort competition and the ability to devise proper transport policies. For example, the major European rail entities have become, through no operating success of their own, major road haulage enterprises, and use the excuse of offering multimodal services while operating predatory pricing policies on legitimate competitors when not operating multimodal contracts. The UK should not be part of such processes, for which the EU has become either an ignorant or uncaring promoter. The assumption that road is bad and rail is good has been used to effect much wasteful investment and taxpayer support at the same time as proper road investment has been starved of funds. Reports speak of a £5 billion budget shortfall on roads in the UK alone. The current crisis in road transport infrastructure funding has been in part because the wrong modes have attracted EU wide state support and PR backing and road costs have risen to support others without proper business case analysis. Channel Tunnel history is instructive in this respect.

See:<http://www.iea.org.uk/sites/default/files/publications/files/upldbook419pdf.pdf>

2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?

The EU institutions have focussed on liberalisation without considering economic stability and road safety, mainly to suit the large shippers. One consequence has been that some shippers have driven haulage rates down to unsustainable levels, and offsetting the loss of viable road hauliers with cheaper, less sustainable alternatives, most recently from Eastern Europe. In our judgement the road safety improvements that have been achieved have happened despite not because of EU involvement. The disparity between UK accident rates and those of other countries is proof that harmonisation achieves little if not backed up by a culture of support and enforcement. France, which claims the best truck driver training system in the EU (it was the template for the Training Directive 2003/59) still kills twice as many people on its roads as the UK. Drink driving is the main cause of these fatalities. The EU has done nothing to prevent that.

3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?

Other than by removing customs barriers not much. But here the UK is at fault for retaining customs and other borders when other Member States have removed them. Cross border



road transport is a minority activity, even on the European mainland, and comprises at best 10% of total activity (Proudhomme et al). If individual Member States want internal market trade they will support it, or at least not hinder it. The Benelux countries created a multilateral customs free zone without EU involvement. What is not needed in the future is EU wide political interference in cross border trade.

4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?

Social legislation is declared as a support to the single market whereas it is often the opposite. For example, applying the Posting of Workers Directive to international transport workers has been bureaucratic, protectionist and unnecessary. Transport workers, especially road haulage drivers, are considered as posted even when the cabotage rules limit an individual's stay in any one foreign country to no more than 7 days and often much less.

Legislative efforts and initiatives, much of it in environmental legislation, have progressively become devoid of operational reality and become the plaything of vested corporate interests. For example, the ITS Directive and Galileo programmes are little more than EU institutional support of declining elements of the defence industry masquerading as a support for the EU Growth Agenda and creating a surveillance capability not mandated by the member states. (The recent Prism scandal could well determine EU populations' willingness to have their vehicle movements monitored). Other, more cost effective solutions already exist either within transport at a profit to the providers and/or at no additional cost to the consumers.

The EC's own academic experts currently believe that the industry lacks innovation when there is plenty of evidence to the contrary. However, the official innovation business model normally under consideration is one that often requires and attracts government research and long term development aid. That model may be rare in the road haulage sector but that is because it invests in consumables that have already been developed and applications that derive from entrepreneurial foresight, not long term, capital intensive programmes whose customer base is confined to a small number of large customers, requires taxpayer support and where the business case is poor, if it exists at all. It should also not be forgotten that one man's subsidy is another's tax and mathematics tend to show that both run out before many a policy objective is achieved.

Current legislation is often being amended on the grounds that previous legislation is unclear, unworkable or both. This is not an endorsement of the Institutions' earlier work but confirmation that much done in the past has been at worst useless. There is/has been little evidence to show that, under the current institutional frameworks, legislation will get any better. For example, low UK accident rates have not been enough to protect the UK from having to adopt legislation that does not contribute to any reasonable outcomes. Examples

include imposing the Working Time Directive on the self-employed, the introduction of E-Call and the current Driver Certificate of Professional Competence (DCPC).

5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators? Operators are often regarded as the source of problems when this is far from the truth. What is often the cause of difficulties is the lack of effective enforcement, which this association has always supported, yet roadside enforcement officers have in the last 6 years reduced by 25%. This is the result of either a failed, bankrupt state apparatus not a failing industry, that the enforcement offered was not satisfactory and could be done more efficiently or effectively by other means, or that reducing accident rates have removed the need for these officers. But again, EU decision making has been irrelevant as the Member States, in this case the UK, made the decision about enforcement policy.

One method of attempting to improve enforcement was to increase the relevant time period allowed for scrutiny of tachograph records. Even though it made little if any difference to reducing driver fatigue but merely a new, more complicated method of driving time analysis, it was not always successful, it resulted in the needless imposition of sometimes petty but sometimes excessive fines depending on the Member States involved, and gave unscrupulous operators the incentive to corrupt the tachographs themselves. Thanks to the EU we now have a technical arms race where legislation becomes more onerous and criminals try to frustrate enforcement technologies. The rules are becoming too complicated to be enforceable hence, despite Prism, an EU advocacy of yet more surveillance of the motoring public. .

6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?

*There have been too many poorly costed proposals. The current low emission regime has increased not decreased emissions from road transport because the modelling, designed to benefit certain manufacturers, was wrong and focussed on inter-city cruising not urban stop/start transport. It would have been far simpler and cheaper to have imposed truck bans in certain areas at certain times.*

*Current fuel consumption methodologies are also misleading and underreport actual experience. One commercial press report recently stated:*

The challenge of Euro 6 legislation to the industry has yet to make its presence truly felt. "It is going to have a major impact, and woe betide any of us who think it will simply 'go away'" writes Nick Hay, managing director of multi-temperature consolidator, Fowler Welch.

"On the one hand the government is taxing us to the hilt while forcing us toward ever-greener (EU inspired) environmental performance, yet on the other they do nothing to

mitigate the significant on-cost of this EU legislation, and the considerable investment being made by fleet manufacturers: the arrival of Euro 6 will put further pressure on our sector.

My concern is that, as an industry, we have little idea of the future effects of Euro 6. And that's everything from new vehicle availability to operational impacts; there is undoubted risk in the assumptions of Euro 5 residual values. So growing numbers of operators are taking a gamble on what the future holds, with no opportunity to test their theories until it is too late. In a sector where investment levels are already huge and margins perilously small, that is a gamble too far. Is the short-termism and focus on Euro 5 going to be a mistake that we, as a sector, will regret.?"

7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?

The UK has tended to be more outcome based. The EU tends to believe that more legislation automatically results in desired outcomes. It often does not, especially when the Member States most in need of reform do not implement the legislation for which they have voted. It is very easy to impose costs on net contributors. It is a positive step that, for the first time, the EU budget has been constrained. Hopefully, this will force the Commission to only propose legislation that has a high priority and sufficient support. Whether financial control would be better achieved via member state budgets is another question. Then we would see how much support of the EU came from those willing to pay for it. We also find it strange that the Commission still remains the major source of legislative initiative. This is outdated. It suggests that only the Commission knows what it is doing and needs to be done. This model also means that the Commission is prone to end up at the mercy of those wishing to sell something through use of a political mandate. The retro-reflective tape saga is a good example of this. Most importantly we must not forget the EU's core aim is promote "deeper and closer union" not necessarily better transport, industry etc. EU and member state aims have not always coincided. We see the EU as a means to an end. Many see it as an end in itself.

8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?

The UK is a founding nation of current aviation and maritime practice and law. The EC rarely has much to offer without UK expertise, which it often then ignores in preference to other supplier based nations. The EC is too corporate and not enough consumer focussed. (Emissions and ITS are 2 examples). We believe that world organisations provide better legitimacy than the EU, which has a vested interest in promoting its own harmonising agendas rather than argue the merit of a case. It seems to have an itch to act, whether it adds value or not.

9. What challenges or opportunities are there for the UK in further EU action on transport?

Little or none in the road sector since the UK, as an island nation, is increasingly coming up against the vested interests of transit countries and state rail monopolies.

ADDITIONAL COMMENT

Competencies in UK road transport are finely balanced in our sector. Although there is considerable and useful harmonisation of technical standards, commercial and social standards vary. Whether further harmonisation would be worthwhile is uncertain. Although we have not got a 100% per cent solution in terms of market access we have got the most of what we think the industry would want and therefore see no reason for further harmonisation or repatriation.

By and large our operating environment is liberal and welcoming. Given that 80%+ of trucks crossing the English Channel are foreign registered would suggest that the market suits the needs of our customers without much change. Therefore, rather than take competencies back we would be content for the balance of competencies to remain where they are but for the UK to stop gold plating what exists already, to impose penalties on visitors as much as resident hauliers (there is considerable evidence that London LEZ penalties and some motorway service station parking penalties are not pursued abroad) and for the UK to resist further EU initiatives, most of which rarely benefit us, without a strong business case.

It seems to us that the EU agenda is based on a social market economy. Whether this supports innovation or merely existing vested interests is arguable. It seems to be difficult for an innovative member state to separate itself from the pack and offer competitive attractiveness. Road transport regulation seems to have developed an image of a permission industry where the EU institutions or an institution can stop any innovation. The European Commission seems to be populated less by engineers and people with business experience and more by lawyers and linguists. Useful though they may be they are vulnerable to better qualified vested interests. The European Parliament has confessed to a lack of knowledge on technical matters and a desire for more expert advice including lobbying, at a time when it has become more influential because of treaty change. Whether this will put “the inmates in charge of the asylum” remains to be seen. The current EU dislikes bi-lateral or multilateral arrangements, and even though the EC has suggested a willingness to contemplate this in the future, it has yet to be proven.

A major difficulty is the legal process in many Member States, which repatriation of powers would not alter. As most of the EU operates on the Napoleonic Code it offers more power to the authorities which would often be unacceptable in the UK. Furthermore, Member States seem to be quite happy to ignore EU rulings by which the UK abides. Our infraction record, though not always perfect, is much better than many other Member States. This makes us look weak. Yet repatriation of powers would not help us and we may have to content ourselves with planning better when we go abroad so as to be compliant in whatever regime de facto applies to us at the time. If this is so, the benefits of further harmonisation and qualified majority voting seem unattractive.

Much of what the EU proposes comes through the back door. The internal market and social harmonisation are being increasingly used to justify legislation for which barely a partial connection exists. Not only that but many of the justifications for legislation seem not to be based on hard facts, but merely visions of a further integrated Europe, which for many has become an article of faith.

Therefore, we think that our best policy option is to support those institutions and processes that can cope with hard facts and intellectual rigour not entrap us in visions which are proving more difficult to achieve. Whether this requires a repatriation of powers will depend on the subject in question but we believe that our future is better served by an inclination to do things at the Member State level, especially as we have the safest road environment in Europe if not the world, where international road transport forms such a small proportion of our transport mix.

# Roads workshop

## BOC Roads workshop

21/06/2013

### Impact assessments

- There was a general consensus amongst stakeholders that the Commission needed to do more on its impact assessments as they often suffer from a lack of cost/benefit analysis. Furthermore, impact assessments are not of a consistent quality, with one stakeholder highlighting the recent FQD impact assessment, which did not meet the criteria. One participant also underlined the important role the UK has to play in carrying out timely national impact assessments.

### Subsidiarity

- Stakeholders broadly felt that EU action in environment and international action in engineering standards was the right balance. One participant thought that EU action in environment was vital for vehicle standards. It was recognised that technical standards have to be harmonised at an EU level, however, stakeholders felt that any targets should be set nationally. One example given was the recent Cleaner Power for Transport proposals, which set out targets for charging points that have been based on arbitrary measures. Stakeholders agreed that Member States were better placed to decide what infrastructure was appropriate and where. While stakeholders appreciated the good intention behind the proposal, they felt that the Commission had gone too far and was being too prescriptive and questioned whether it was also leading technology.
- A greater understanding of national particularities would be welcomed.
- One participant argued that industry would very often prefer tailored, local options to address local issues because there are unwelcomed additional costs at an EU level that don't necessarily address competition.
- One participant felt that EU-level grant funding arrangements were very helpful and thought that they would be less effective at a national level. However, another participant questioned the effectiveness of these grants as their purpose and criteria often excluded worthy organisations from the competition.

### Common standards

- Generally, stakeholders were content that common standards are set at an EU level. Having common EU standards generally means safer equipment, however one participant cited the quad bike legislation as a bad example of harmonisation because it made the equipment too cumbersome to be of any practical use.
- Another area where common standards haven't worked as well is in health and safety. The UK has a good approach to health and safety, whereas other Member States do not and this often leads to the UK being unfairly affected by harmonisation. One specific example of this is drivers' CPC. The UK already has excellent driving standards but due to varying standards across the EU the UK has to implement a new system with a cost to the industry, which was not deemed necessary. More generally, it was felt that drivers' CPC has been poorly implemented and has also been misapplied to incidental drivers in the agricultural industry.
- Another example given was the roadworthiness proposal, which originally had tractors in scope. The UK agricultural industry was against this because there were already excellent standards and testing regimes in place. It felt that the proposal should have been aimed at those Member States that don't have robust regimes in place and not the UK. It thought that the EU should be looking to enforce standards in other Member States rather than to add more legislation.

#### Further EU action

- Further EU action would be welcomed to address the current inconsistencies between vehicle and driver licencing. It is currently possible to retire in Spain with a UK driving licence but it isn't possible to take your car without significant paperwork and bureaucracy. This is restricting the free movement of vehicles both for private motorists and vehicle rental businesses that are unable to move their fleet freely across Member States. For example, if a company rents a car in France that is then returned to a branch in Holland, they are not able to release the car for rent in Holland.
- Further harmonisation in tractor and trailer weights would also be welcomed as the UK is currently limited by domestic legislation.

# David Robinson

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

On motorcycle training, none, it overcomplicates and applies rules that simply don't make sense. eg all test motorcycles now have to be 600cc when 500cc were allowed resulting in unnecessary burdens on business and impacting on jobs. No obvious or explained benefits in safety have resulted from eu regulations

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

N/A

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

N/A

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

EU has a one size fits all approach, what may be good for a different part of the eu will not be good for us and indeed not relevant. eg current European legislation encourages motorcyclists to learn and ride bike bikes (600cc) rather than serve an apprenticeship on smaller bikes, this will work where there is a culture of small bike riding already (warmer countries), as some experience has already been gained. In this country instructors are faced with novice riders wanting to ride large bikes as that is what legislation states to get a bike licence, riders are discouraged by the regulations from taking intermediate steps on smaller bikes. This massively increases training risks and results in serious training incidents with rider injury.

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**



No regulations should take onboard uk specific issues and not try to fit all of Europe under same rules.

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

In terms of motorcycle training, legislation makes no road safety sense indeed it increases risk. We could make low capacity bikes more desirable by allowing motorcycle tests still to be taken on them and encourage low emission cheap environmentally friendly transport rather than make a 600cc bike a learner bike!!

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

Regulations should reflect uk needs in motorcycle training and safety not those dreamed up by European regulators. I have been a motorcycle instructor for 20+ years and feel I have no input into any rules or regulations but I have to adhere to them even if they make little sense. Even the DSA (my uk Government body) simply says its European Regulations and can't give good reasons why we are doing them (most in DSA don't agree with them either)

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

N/A

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

Further EU regulations will put people out of work in rider training, no consultation takes place on the key issues, we are told what to do and only have minor choices on regulation changes - choices which are already pre defined.

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**



# SMMT

6 AUGUST 2013

## Introduction

The Society of Motor Manufacturers and Traders (SMMT) is one of the largest and most influential trade associations in the UK. It supports the interests of the UK automotive industry at home and abroad, promoting a united position to government, stakeholders and the media. The automotive industry is a vital part of the UK economy accounting for £59 billion turnover and £12 billion value added. With more than 700,000 jobs dependent on the industry, it accounts for 10% of total UK exports and invests £1.7 billion each year in automotive R&D. The industry plays an important role in the UK's trade balance, with vehicle manufacturers exporting around 80% of production. Additionally, the UK is home to the world's largest number of specialist vehicle manufacturers and boasts global centres of design, R&D and engineering staffed by some of the industry's most highly skilled employees.

SMMT welcomes the opportunity to respond to the Department for Transport's Balance of Competencies Review on transport. This response focuses on the road transport element of the consultation. The automotive industry is global, exporting primarily to European markets and selling high value products into key markets across the world. Success for growth depends on active leadership by UK government in key decisions about the EU's political, economic and industrial future.

SMMT has called for government to pursue an industrial strategy that prioritises proactive UK engagement and leadership in the EU across all critical policy areas which pursue growth, innovation and employment, supporting stabilisation of the Eurozone and completion of the internal market. It is also vital that government ensures that UK positions on current trade negotiations and the development of EU free trade agreements reflect the UK's industrial priorities on growth in automotive, prioritising free and reciprocal market access and the abolition of non-tariff barriers (NTBs) to support UK export ambitions. The recently published, joint government and industry, sector strategy for automotive, recognises the importance of Europe to the sector.

## Comments on transport

SMMT has identified a number of examples relevant to the UK automotive sector in relation to the role and competency of the EU in transport policy. While not necessarily

within the scope of the balance of competencies review, SMMT believes it is important to note the issues around better regulation and ensuring that the EU through its regulatory procedures is not causing unnecessary administrative burden on businesses.

### Subsidiarity and proportionality

Subsidiarity is an important issue, where the EU has to judge the appropriateness of taking or not taking action at a European level. SMMT recognises the assertions made in the call for evidence document that a complete single market provides a framework for competition and access to goods and services across Europe. There are clear benefits from policy at an EU level in some areas, such as type approval, legislation on CO<sub>2</sub> emissions and other environmental transport related policies. Action under these areas reinforces the internal market and recognises that the European nature of the automotive industry. Harmonisation of technical requirements and recognition of approvals establishes the Europe-wide market for vehicles and components.

### Impact assessments

An overriding issue that is relevant across the balance of competencies reviews is the need for robust impact assessments. Where EU legislation is affecting environmental issues, a strong evidence base is needed to ensure that policy is made in the most rational and planned manner. An example of the importance of impact assessments is the legislation around long-term targets for reducing CO<sub>2</sub> emissions from cars and vans. Until there is robust evidence in place to inform the feasibility and cost impacts of a given ambition level of such legislation, it would be short-sighted to be instigating negotiations. For instance, increasing the technology and purchase costs of vehicles would affect fleet-renewal and potentially lead to less environmental progress, through an aging fleet, than a lesser ambition that can be achieved at lower cost to the consumer.

Similarly, when drafting legislation on emission reductions choosing the right metric is critical. For instance, regulating heavy duty vehicles (trucks) based on g CO<sub>2</sub>/km could result in the unintended consequence of vehicle operators deciding to use several smaller light commercial vehicles (vans) to deliver a cargo that was previously delivered by a single truck. The single truck is likely to be more efficient when measured in cargo tonnes/g CO<sub>2</sub> km.

### Emissions

A large focus for the automotive sector in relation to EU action on the environment relates to emission standards and targets on CO<sub>2</sub>. Competence of the EU in this area is critical to

ensure a level playing field across Europe, as well as providing the same standards for a single market where automotive companies can design and manufacture to one technical requirement with the benefits arising from the economies of scale.

#### Role of global technical regulations

The UN ECE 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 and reducing costs to sell products to a larger number of markets. Economies of scale are greater where agreement can be reached on a global level. The UK should be a proactive voice in discussions at both EU and UN levels. SMMT understands that tightened resources within the Department for Transport and other government departments has had an impact on the UK's representation and voice at UN and European-level discussions on important issues relevant to technical standards. SMMT believes that the balance of competency is set at the right level in this area and UK government should support these EU and UN processes.

#### Clean Power for Transport

SMMT supports initiatives at a European level that encourage and support member states' ambitions to promote low carbon vehicles and associated infrastructure. The EU plays a crucial role in technical harmonisation and the implementation of common technical specifications for low emission vehicles.

The proposed directive on the deployment of alternative fuels infrastructure (COM(2013)18) under the Clean Power for Transport package includes minimum number of electric vehicle recharging points for Member states. This could be seen as an area where the EU goes beyond reasonable subsidiarity principles. The proposed directive makes reference to the necessity of EU action as "Member states do not have the necessary legal instruments to achieve pan-European coordination in terms of build-up and technical specifications of infrastructure for the alternative fuels". The text goes on to say that manufacturers of vehicles and infrastructure need to rely on consistent development across Europe, with the EU providing coordination of the market and implementation of common technical specifications. SMMT believes that the EU should drive forward technical harmonisation and standardisation in this field, and acting to support and build the market across Europe is a positive move. A substantial difference between member states in terms of infrastructure availability may limit the benefits of a single and unified market and could discourage the uptake of alternatively fuelled vehicles, even in member states with good infrastructure, if their neighbours do not have it.

Member states across Europe are adopting a variety of policies in the promotion, support and uptake of low emission vehicles. SMMT has supported UK government in the adoption of incentives and has provided input into government's plans for infrastructure. SMMT believes that policy around low emission vehicles has to be taken holistically and that separating the infrastructure requirements from other aspects of policy could lead to an imbalanced strategy.

The transition to low and ultra-low emission vehicles is happening across Europe, and the EU new car CO2 legislation that sets emission reduction levels is a key driver. Setting minimum infrastructure targets can be helpful, but they should not be mandatory to ensure we allow for each country to move at a speed appropriate to its need. Consideration should be given to targets reflecting local characteristics, market uptake rates and focus on publicly available infrastructure only. UK government is best placed to assess the local conditions and characteristics of market uptake in the UK.

#### Transport White Paper

The European Commission's White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" covers issues related to road user charging and Low Emission Zones. SMMT supports the European Automobile Manufacturers' Association ACEA's position, which states that while the EU has an important role to play in the methodological elements of LEZs, the EU should respect subsidiarity, maintaining a neutral role and not be involved in proposing traffic management solutions, including LEZ schemes. The Commission should set methodology to ensure that member states

implement sustainable LEZs which promote consistency, periodic review and monitoring, integration with other mobility policies, and engagement with stakeholders to allow those affected to adapt to new restrictions or measures.

#### Conclusion

SMMT believes that the balance of competency in terms of transport policy is broadly right. It is vital that the EU acts in the interests of the single market in establishing common technical and environmental legislation to enable economies of scale and a level playing field across Europe. This also enhances the EU's negotiating power when looking at trade agreements with third parties with the establishment of shared common vehicle standards. SMMT has highlighted other areas where it is appropriate for the EU to be involved but has reservations about the extent to which the European Commission should legislate on

matters that are best decided and assessed at a local member state level. UK government should continue to have a strong voice and influence in global-level discussions to ensure that the UK is represented at the UN and other key fora crucial to the development of global technical standards to increase competitiveness and reduce international market barriers.

# Alexander Watson

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

Eu action can only disadvantage UK transport policy ? Because, UK policy can only be changed by an act of Parliament. The possibility that the UK will start driving on the RIGHT side of the the road isn't going to happen. To advantage drivers from EU members, they should have to show that they are aware that, Uk transport legeslation is different.

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

This is about 'cost and effect' EU and UK share the same transport market. The benefit is shared. The difference in cost is political. The EU has created a large market with it's member states, benefiting all, except UK growth ? EU transport companies bring goods in and take money out. Uk transport companies, take goods into EU, get cheap fuel, which offsets the costs they face in the UK.

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

Critical.

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Excellent concept. Harmony is an amazing word. Driven in Paris, Milan London Barcelona recently ??

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

I think EU isn't capable of coping with different stakeholders. The market will decide.



**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The more you legislate, the less you get. Blanket legislation across EU members only creates 'Lawyers Delight' De-legislate and allow member states to control their own legislation. The UK already does.

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

UK is already at the front line. EU ignore at your peril

**Q8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

The UK and EU partners already spend large amounts in influencing International agreements and Moratoriums. We all have Global trade partners. Advantage, can only be enhanced by co-operation and dialog between all parties. I think it is already happening.

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

The UK challenge is two fold:- 1- Persuade the EU to up grade scrutinisation at North Sea Ports. 2. Encourage EU to educate Transport Companies to ensure that their vehicle drivers are capable of driving in the UK. The opportunity is a better understanding and safer movement of Inter EU transportation of goods.

**Q10. If there are any general points that you wish to make that are not captured by the questions above then please write them here:**

I do believe that the EU should not expand any more. People born in the EU now, should be issued with a DNA traceable card ( The technology is available ) Anyone living in EU countries, should have the option to have a similar DNA card. ( I believe most would not object.) Maybe that would slow down the movement of economic migrants, who use transport systems illegally and save massive amounts paid out in benefits and the cost of re-patriation of people out of place !! I have no prejudice, but, the UK and EU cannot afford to accommodate these migrants and the transport system is the KEY.

## White Bike Training

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

Seriously making motorcycling dangerous for the younger generation Evidence I have for this is that since directive Three of the licensing laws came into force on the 18th January the number of younger people seeking further training after there has dropped by about eighty percent and I keep seeing on the television on the police reality shows . The biggest group that have accidents are the 16-19 year old bracket . This is the biggest group that are discouraged to do further training and to pass there motorcycle test as they now have to either do it twice more to end up with a fully powered motorcycle which they can do without seeking further training as there is only a testing requirement.

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

For my motorcycle training school our turnover is down about sixty five percent as a direct result of directive three as the consumer under 23 is reluctant to bother with further training.

# Other and cross modal respondents

## Catherine Bearder MEP (Liberal Democrat)

**Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The EU provides funding for the UK's infrastructure giving millions of euro annually to road and rail projects across the country. The proposed Single European Sky initiative should lower the cost of aviation whilst simplifying the process of European air traffic control. Via a set of common standards in safety, fuel efficiency and other areas the EU has harmonised how transport is organised in Europe thus fostering the growth of a Europe wide transport network whilst providing higher standards to transport users.

**Q2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

Admittedly, this is still a work in progress. The EU can be said to have begun this with the policy of free movement of people which is one of it's key aims. There has been much funding allocated to the development of cross border transport projects such as the Eurotunnel amongst others. The benefit of this is the integration of the United Kingdom into the rest of the European rail network. European policy in aviation has helped paved the way for the advent of the era of low cost flights enhancing the travel options of many millions of British people annually whilst giving more and more people from the rest of Europe the option of visiting Britain.

**Q3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

It is vital for the functioning of the EU internal market that Europe have a reliable and efficient transport network across several modes so as to allow for the speedy movement of goods. An open and easily accessible market plays a strong role in ensuring this. One should also bare in mind that the reduced costs implied by the reduction in transport costs that the internal market aims to achieve can lead to reductions in prices for consumers as well.

**Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions)**

**necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

It makes life easier for operators working across borders if they only have to comply with one simplified set of standards. This gives business an amount of certainty and clarity in their dealings and keeps bureaucracy and administration to a minimum. It would be prohibitively costly for example if car manufacturers had to comply with 28 different standards for emissions in order to access the EU market as opposed to just one.

**Q5. What impact has EU regulation had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

In all its decision making, the EU seeks to strike a balance in the input it receives from various different stakeholders and transport is no different. In terms of aviation for example, airline passengers have been given rights by the EU vis-a-vis delayed or cancelled flights but at the same time airlines benefit from common standards at airports and in aviation in general.

**Q6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

Proportionality is a key principle in EU decision making as enshrined in the Lisbon treaty. This has been kept in the field of transport and I don't believe the EU has overstepped the mark here. The benefits have been extensive and the legislation has not been over handed.

**Q7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The EU remains the most effective arena for this type of action in my opinion. Wider international action is only of limited potential as prospective progress can be diluted. For example the transport sector in Mali is a lot different to that of Japan. This also makes the decision making process very difficult as well. The increased role of Parliaments, both nationally and in the EP level in the democratic processes post

Lisbon has been hugely beneficial in strengthening the type and scope of integrated transport systems across the Union. Everyone is involved in Transport and we all rely on it and have a view about what works locally and Internationally and the parliamentarians bring this interest to their decision making and have a key role to play now.

**Q9. What challenges or opportunities are there for the UK in further EU action on transport?**

There are opportunities for UK based airlines to grow given that aviation is set to be simplified due to the Single European Sky. On the whole, being part of an integrated and efficient transport network will allow British citizens to move around Europe quickly and cheaply. Not to mention the benefits such a network would have regarding those who wish to move goods around.

## Phil Bennion MEP (Liberal Democrat)

Phil Bennion MEP Liberal Democrats' spokesperson on transport in the European Parliament

We welcome the launch of the second stage in the Balance of Competences Review, an initiative aimed at deepening public understanding of the United Kingdom's EU membership. An evidence-based analysis of the added value of EU regulatory action will develop a better understanding of the nature of the UK's relationship with the EU. It is important to underline the benefits of the Common Transport Policy (hereafter CTP) to the UK in terms of economic growth, energy-efficiency, technological development and social change. In particular this paper explains why the UK as part of the EU is better equipped to defend its interests than as a stand-alone country in transport policy. What is important to keep in mind is that the EU transport policy remains the backbone of the single market. Without a strong and coherent transport policy, the single market cannot function effectively.

### 1. The advantages to the UK of EU action in the field of transport

The main advantages of EU regulatory action are the facilitation of free movement of goods and persons, with the EU Institutions incrementally dismantling the barriers to a fully-integrated market for transport. As transport costs account for 10% of the cost of a finished product<sup>36</sup>, tariff, quantitative, technical, political and administrative barriers hold back transport users, businesses and citizens alike. Free movement of goods and people within the EU is conditional on the removal of these barriers. EU legislation provides for open competition and non-discrimination on the basis of the country of origin. It has led to a decrease of national monopolies and has given competitive UK firms access to new markets.

For instance, the fourth railway package put forward by the European Commission in 2013 seeks to open up domestic passenger services to new entrants from 2019 onwards,<sup>37</sup> with rail freight and international passenger rail markets having already been opened up to competition through previous legislation. The UK has the most liberalised rail market in Europe,<sup>38</sup> which means that no major change to domestic legislation is needed, but it will give UK firms the opportunity to compete for new markets in the rest of Europe. Consequently the UK's net foreign asset position is likely to increase. Also, higher interoperability of rail across Europe has the potential to reduce costs, allow the European economy to grow, and encourage modal shift to rail.

EU legislation also raises safety criteria to UK standards. A study carried out in 2010 by the Vehicle & Operator Service Agency (VOSA) found that respectively 23.3% of non-GB registered Heavy Goods Vehicles (HGV) and 19.9% of non-GB trailers had

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<sup>36</sup> [http://ec.europa.eu/transport/strategies/facts-and-figures/all-themes/index\\_en.htm](http://ec.europa.eu/transport/strategies/facts-and-figures/all-themes/index_en.htm)

<sup>37</sup> Proposals 2013/0028 and 2013/0029

<sup>38</sup> Rail Liberalisation Index 2007

roadworthiness defects.<sup>39</sup> EU legislation seeks to reverse this trend and consolidate the UK's outstanding results in the reduction of road accidents. For instance, it is beneficial for the UK that the EU requires robust road side checks of vehicles and comprehensive MOT testing. It guarantees UK drivers and vulnerable road users' safety regardless of whether they are driving abroad or at home. It ensures that vehicles registered in other EU Member States that are using UK roads have been properly tested.

## 2. The benefits to the UK associated with the creation of the internal transport market

2.1 At macro-level, there is strong evidence that the Common Transport Policy impacts positively on UK growth, competitiveness and employment. The CTP increases transport demand for both goods and passengers, which in turn stimulates GDP growth.<sup>40</sup> More traffic boosts tax revenues for the UK and its trade partners, resulting in more exports and cheaper imports, further increasing the traffic. The connections created between cities and markets favour foreign direct investment, business clusters and specialisation.<sup>41</sup> These spill-over effects on the UK economy's productive capacity lead to an increase in employment levels and competitiveness. The improvements in the UK's transport infrastructure performance and supply chain efficiency are corroborated by the 2012 World Bank Logistics Performance Index.<sup>42</sup> While intra-EU freight and passenger transport are expected to grow respectively by 80% and 50% by 2050, EU legislation provides the UK with the right incentives to improve its competitiveness and to compete at the global level.

The air transport sector illustrates the extent of these macro-level benefits. The creation of the Single European Aviation Market in 1993<sup>43</sup> opened access to EU air carriers to all EU routes, harmonised requirements for EU airlines' operating licences, provided for non-discriminatory rules regarding take-off and landing slots and enacted full freedom of fares. As a result, average annual growth rate in traffic between 1995 and 2004 doubled in the years 1990 to 1994.<sup>44</sup> It represents an increase of 44 million passengers. This boosted EU GDP by 4% and created about

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<sup>39</sup> UK Department for Transport, Fleet Compliance Checks 2011/12:  
<http://www.dft.gov.uk/vosa/repository/Fleet%20Compliance%20Checks%202011-12.pdf>

<sup>40</sup> European Commission, *Communication on the future development of the common transport policy*, December 1992:  
[http://aei.pitt.edu/1116/1/future\\_transport\\_policy\\_wp\\_COM\\_92\\_494.pdf](http://aei.pitt.edu/1116/1/future_transport_policy_wp_COM_92_494.pdf)

<sup>41</sup> Oxford economics, *Economic Benefits from Air Transport in the UK*, 2012:  
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<sup>42</sup> 2012 World Bank Logistics Performance Index: [http://siteresources.worldbank.org/TRADE/Resources/239070-1336654966193/LPI\\_2012\\_rankings.pdf](http://siteresources.worldbank.org/TRADE/Resources/239070-1336654966193/LPI_2012_rankings.pdf)

<sup>43</sup> Third Aviation package including Regulations (EEC) No 2407/92, 2408/92, 2409/92

<sup>44</sup> IATA, *The Economic Impact of Air Service Liberalisation*, 2012:  
[http://www.iata.org/whatwedo/Documents/economics/liberalization\\_air\\_transport\\_study\\_30may06.pdf](http://www.iata.org/whatwedo/Documents/economics/liberalization_air_transport_study_30may06.pdf)



1.4 million new jobs in Europe.<sup>45</sup>

2.2 At micro-level, economic benefits of the CTP to the UK have been spread widely among consumers and businesses. Firstly, the UK low-cost transport industry is thriving. Easyjet has a strong position across Europe and continues to gain market share.<sup>46</sup> Secondly, EU regulatory action facilitates cross-border trade between European companies and UK customers, UK companies and European customers and within firms. Final and intermediate goods are available to domestic consumers and firms at equivalent quality but at a much lower price than before. UK firms benefit from higher demand and economies of scale. Trans-national, intra-business relationships are facilitated. The CTP is clearly anchored on users. For example, there have been a number of new entrants in the road, air and maritime freight market, which have forced incumbent operators to lower their prices. Thirdly, the CTP facilitates the transportation of goods within the UK. EU-financed rail connections, bridges, tunnels and roads substantially reduce journey duration. For instance, the EU granted funding to 35 UK projects as part of the so-called Trans-European Transport Network (TEN-T). Among others, the improvement of a rail route freight trains travelling from the Port of Felixstowe to the Midlands, North West and Scotland. EU Funding also supports the necessary works to accommodate longer freight trains between the port of Southampton and the West Coast at Nuneaton, thereby yielding additional capacity and an improved environmental performance.<sup>47</sup>

In addition, the CTP has increased the competition between airlines which has driven down prices for consumers and increased the number of intra-community air routes by 140% between 1992 and 2010.<sup>48</sup> [Regulation 261/2004](#) gives rights to EU passengers when travelling by air such as financial compensation, food and re-routing. The ongoing revision of 261/2004 should enhance those rights by closing loopholes and clarifying some aspects of the law for both airlines and passengers.

### 3. The need for EU action to set social and environmental standards for the proper functioning of the internal transport market

Cross-border mobility heavily depends on citizens' and businesses' confidence in the networks and the quality of the services provided. This is why the European Institutions' move to complement their push for liberalisation with minimum standards aimed at increasing safety and sustainability is so essential. Agreeing common rules

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<sup>45</sup> Eurocontrol Experimental Centre, *The Economic Catalytic Effects of Air Transport in Europe*, 2005

<sup>46</sup> Easyjet, January 2012: <http://corporate.easyjet.com/~media/Files/E/Easyjet-Plc-V2/pdf/investors/results-centre/2012/investor-day-presentation-2012.pdf>

<sup>47</sup> <http://www.networkrail.co.uk/asp/8512.aspx>

<sup>48</sup> European Commission, 2011, p.2  
[http://ec.europa.eu/transport/modes/air/internal\\_market/doc/2011\\_fitness\\_check\\_roadmap\\_def.pdf](http://ec.europa.eu/transport/modes/air/internal_market/doc/2011_fitness_check_roadmap_def.pdf)

and regulations with other EU countries allows the UK to tackle issues relating to the pollution of skies, seas and roads on an international level far more effectively than if it could alone.

3.1 The creation of a level-playing field removes risks of regulatory competition between Member States looking to achieve marginal competitive gains. It eliminates distortions that would otherwise be created by uncoordinated safety regulations. Common standards also reduce red tape and increase transparency. Having to comply with a single set of rules and procedures reduces the costs borne by UK firms in their cross-border activities. The American Chamber of Commerce has expressed the desire of American companies to deal with a single EU set of rules and procedures in every sector. It means ensuring a level playing field between each company regardless of its country of registration. For example, the modernisation of tachographs reduces fraud and ensures the proper enforcement of maximum limits on driving time.<sup>49</sup> Also, the creation of a common licensing system for train drivers<sup>50</sup> guarantees that they all meet minimum professional standards.

3.2 Furthermore collective action is preferable to nationally-centred legislation to internalise the effects of negative environmental externalities. We need to force firms and consumers to bear the social costs they charge on society (i.e. pollution), when taking their decisions. A European mechanism is necessary to avoid firms' relocation. The transition towards a low-carbon transport system decreases the EU's dependency on oil (i.e. 96% of its energy needs), which in turn strengthens the bloc's energy security and resistance to shocks. In the long-run it encourages the industrial transformation of the UK transport sector, thus fostering innovation, competitiveness and employment. It is equally valuable to the UK that the EU encourages innovation in bio-fuels and low-energy cars. Only by changing production and consumption patterns at EU level can Europe get back on track to sustainability. Transport greenhouse gas emissions rose by 26% between 1990 and 2007 and this trend needs to be reversed through collective action.

#### 4. The proportionality of EU regulatory action

Both the content and form of the CTP are in keeping with the aims pursued.

4.1 What is being done: EU Institutions remove the obstacles to intra-EU transport in order to promote best practises and correct the negative externalities produced by markets. 1) The liberalisation policies, such as the opening of markets in the rail sector, can be of low priority for national governments. The EU Institutions, through their action to remove barriers to the single market, are pushing for the opening of national markets. 2) The EU's benchmarking efforts are proportionate in the sense that they provide the UK with an analysis of the pros and cons of the innovations

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<sup>49</sup> Regulation 2011/0196

<sup>50</sup> Third Railway Package

launched in European cities (e.g. urban tolls, self-service system for hiring bikes, car-sharing...) the results of which are not legally-binding, and do not compel the government to take any actions. 3) Likewise, the EU's push to internalise negative externalities is balanced between the needs to realise the long-term objective of a sustainable transport market and accommodate local authorities' preferences. Therefore the involvement of the EU institutions is limited to what is necessary.

4.2 How it is being done: EU Institutions involve national experts in the early stages of the legislative process and offer some flexibility to Member States in the implementation process. The work and cooperation throughout the legislative process is crucial to reach a good result and to determine if there is a need for a specific level of flexibility or even exemptions in the case of politically sensitive services. For example, Member States are still entitled to subsidise unprofitable transport routes and services using Public Service Obligations.<sup>51</sup> The Connecting Europe Facility, an EU instrument which can be utilised to create growth and jobs, should have been more ambitious, in particular as it introduces innovative financial instruments to leverage EU funding. Indeed, project bonds for instance are designed to leverage 20 times more than the initial amount of public money put aside. This instrument could be a valuable source of funding for intra-UK project, such as HS2.

#### 5. The respect of the principle of subsidiarity

Transport is a cross-border business. Unsustainable mobility practises at national level have consequences for the EU economy as a whole. While global agreements are often out of reach, national initiatives need to be complemented by EU legislation. Due to the extent of economies of scale, EU action maximises national efforts in many areas. It is right for the policy setting function to be conferred to the EU level (i.e. openness of the markets, setting safety and environmental standards, monitoring).

However, it does not mean that the EU should propose legislative action in all transport related matters. It is the role of national parliaments to ensure subsidiarity is respected and that matters better dealt with at local or national level stay at these levels. For instance, as the context substantially differs from one city to another, an argument could be made against the EU's action on urban mobility.

Another example would be the EU proposal on Noise-operating restrictions where the EU has to act on a European framework to guarantee some certainty to airlines and businesses while respecting subsidiarity and leaving room for manoeuvre to local authorities. Speed limits should not be dealt with at EU level either due to differences both in geographical (i.e. intensity of traffic, weather) as well as social expectations (i.e. local preferences). The same goes for social provisions governing train drivers' working time and conditions.

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<sup>51</sup> Regulation 1370/2007

## 6. The advantages for the UK of the EU having a greater say in negotiating agreements internationally (e.g. ICAO) and with third countries (e.g. EU-US)

Currently the EU is only an observer in international organisations on transport. Yet the interests of the UK and other EU Member States would be enhanced were the EU to represent the Member States and speak with one voice on these matters. Apart from a few exceptions, EU decision-makers' ambitions are more or less aligned with UK interests. Relying upon stronger market power in negotiations due to the EU's status as the world's largest economy, trading block and consumer market; UK's voice is stronger when associated with the rest of the EU.

For example, the European Commission has successfully negotiated the Open Skies agreement with the Western Balkans and Morocco to the benefit of UK airlines. They provide for non-discriminatory arrangements regarding the use of airspaces and airfields. Also the application of the Emission Trading Scheme to non-EU airlines can only succeed if the EU speaks with one voice. This is why Liberal Democrat MEPs were keen to "stop the clock" for one year of the ETS for aviation to give more time to ICAO to reach an agreement.

## 7. The opportunities for the UK in further EU action on transport

The internal transport market is still incomplete. Existing challenges can be transformed into opportunities.

Further common systems should be used. For example, we should further develop intelligent transport systems across Europe to encourage mobility of citizens and businesses. The Eurovignette and the possibility for the UK to benefit from enhanced electronic tolling are means to this end. There is also an urgent need to improve the interoperability of rail transport systems across the EU under the guidance of the European Railway Agency, in particular through the deployment of the European Rail Traffic Management System, the UK having signed up to an ambitious deployment plan. The deployment of Single European Sky ATM Research and the unification of the European Sky are also urgently needed to improve the efficiency and sustainability of air transport. The lack of a single European Sky results in unnecessarily long flight paths as airlines seek to avoid expensive areas of sky, with consequent increases in both costs and emissions. Twice as many flights are managed for the same cost as the EU in the US.<sup>52</sup>

Rail and maritime transport services are lagging behind. Despite successive legislative packages, market penetration is still very limited in both sectors. We support the European Commission's push for further integration in these areas to reap the full benefits of liberalisation and end the distortion in competition between different modes, which is currently the case in freight.

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<sup>52</sup> [http://ec.europa.eu/transport/\\_static/flipbook/index.html#p=4](http://ec.europa.eu/transport/_static/flipbook/index.html#p=4) (page 22)

4) We need to push for better legislation and better implementation. For instance, several countries still fail to implement the 2008 rail interoperability Directive. The simplification of the EU regulatory environment would make legislation less burdensome for businesses, easier to apply and therefore more effective. When amending existing legislation, the EU Institutions should always strive to bring together previous texts and the new amendments to it in a consolidated legislative act. It is conducive to ensure better enforcement of the rules from national administrations. We need to keep in mind that transport is a heavily regulated sector at national level. Therefore by bringing 28 regimes down to a single set of rules, EU legislation reduces compliance costs. Yet, to ensure enforcement, we encourage the Commission to launch systematic infringement proceedings against countries breaching EU law.

5) We need to continue to pool resources to innovate. The EU has to remain the prime exporter of transport technology, as illustrated by the success of the ERTMS (interoperable signalling system) and SESAR (harmonised air traffic). As a full Member of the EU, the UK benefits from strong knowledge and know-how exchanges. In the future, Britain will only be able to seize growth-enhancing opportunities if all EU countries maintain their joint efforts to have the highest level of investment in R&D for transport.<sup>53</sup>

### Concluding remarks

The balance of competences in the transport sector is appropriate and should not be changed. However, this does not mean that both proportionality and subsidiarity principles should be forgotten. These play key roles in all aspects of EU legislation. It is the responsibility of the Council of the European Union and the European Parliament, including the UK MEPs, to make constructive and pragmatic proposals. Full participation in the EU gives the UK huge influence in drafting and agreeing EU legislation, and national decision-makers and regulators should pro-actively engage at the European level to influence proposals at all legislative stages.

Several limits to the cost-benefit exercise embedded in this review should be kept in mind. Due to intra-EU interdependencies, one needs to analyse the whole EU economy to understand the true impact of EU membership on the UK. Otherwise, there is a tendency to underestimate the benefits of the single market and overestimate its costs. This misrepresentation is a recurring problem, in particular when countries calculate their net contributions to the EU.

To conclude, we reiterate our support for the threefold approach of the European Institutions aimed at opening markets, ensuring safety and promoting sustainable mobility. The assignment of competences to the EU-level on transport is beneficial to the UK. EU regulatory action and funding generates higher efficiency with minimal public expenditure due to economies of scale, internalisation of externalities,

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<sup>53</sup> [http://ec.europa.eu/transport/\\_static/pdf/connect-to-compete-innovation\\_en.pdf](http://ec.europa.eu/transport/_static/pdf/connect-to-compete-innovation_en.pdf)

homogeneous preferences, reduction of market distortions caused by different national and avoidance of free-rider effects. For these reasons, the Common Transport Policy is a safe-heaven for the UK economy rather than a straightjacket. We hope that the Review of Competences will reinforce dialogue between EU and UK stakeholders and provide the necessary impetus for a new strategic reflection on the EU's role in transport issues, allowing the UK to cope with the challenges that are reshaping our economies.

The CTP also provides an opportunity for the UK to play a leading role in liberalising the transport industry across Europe. This process has the potential to improve the standing of the UK within the EU, thereby increasing our political influence within the EU and helping us form effective alliances with like-minded Member States

in other policy areas<sup>.54</sup>

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# British International Freight Association (BIFA)

## Review of Internal Market:-Free Movement of Goods.

### General comments

Within the EU our Members' trading activities tend to be focussed on the road mode and customs management (as opposed to frontier clearance). In recent months an increasing trend has been noted where BIFA is being contacted by UK hauliers, who are being asked if they undertake EU trucking activities. From many of our Members' perspective, in strictly transport terms there is little difference between moving free circulation goods from London to Manchester than moving the same goods to Berlin.

At a recent meeting it was noted by Members that the EU project is at a half way stage. The UK initially joined the EEC to benefit from free trade, this process has developed further towards closer integration in other areas, but variances in national legislation and application of EU legislation do exist. There are certain regimes where there are sufficient differences to create confusion and delay. Within the scope of this Review, we would draw attention to differences within excise regimes and variances between national prohibitions and restrictions.

There are also cultural differences, between those nations which are facilitators relying on targeted risk based analysis and interventionists who prefer to undertake more physical checks.

Within the EU forwarding sector there are also significant differences regarding the requirements to act as a customs broker. In some countries, for instance Spain and Greece, there is a strict qualification and licencing system and in others such as the UK it is unregulated beyond the need to be legally compliant.

We have limited our responses to those areas where we have direct knowledge.

**Question 1: What do you see as the advantages and disadvantages of EU action on the free movement of goods? How might the national interest be served by action being taken in this field at a different level (for example, at the WTO), either in addition to or as an alternative to EU action?**

The encouragement of the free movement of goods has been one of the most significant advantages of the EU. However, there are clearly occasions when national industry and specific sectors have been disadvantaged-such as for instance when joining the EEC, customs clearance agents found that they had fewer frontier

customs declarations to make. This particularly impacted negatively on those agents located at Channel ports. Negative impacts may stem not just from purely economic policies but also from employment law and wider social policies including sick pay, maternity benefits etc. which allow traders based in other EU MS to undercut British based companies.

## Advantages

- Due to fewer frontier barriers this has led to greater predictability in the movement of goods leading to better planning of production schedules, lower inventory levels and also maximisation of economies of scale. It is felt that this has helped large pan European manufacturers and traders maximise their economies of scale
- As goods in free circulation are not subject to customs duties when crossing intra EU borders cost is reduced because the goods are either duty free due to being manufactured in the EU or having duty paid when entering free circulation. Duties are not due every time goods cross national frontiers
- Rules of origin are simplified with goods being in free circulation if manufactured in the EU or duty has been paid
- As customs formalities are minimised for free circulation goods this reduces administrative and transport costs. Documentary requirements and delays are kept to a minimum.
- The overall impact of these advantages is to drive out cost

## Disadvantages

- There are concerns that the lack of internal frontier controls means that it is more difficult to control trade to prevent fraud, the movement of prohibited and restricted goods-evidenced by VAT and Excise fraud
- In effect this means that it is more difficult for the government to keep a track on goods that they should be concerned with. One of our Members operating trucking operations to and from Poland and beyond has commented that long sections of the frontier were unguarded-increasing the likelihood of smuggling. Once in the EU this would be virtually impossible to detect. Similar comments have been made in the wake of "Horsemeat gate" and the spread of disease in trees and plants.
- Free trade also makes security more difficult to achieve largely due to the reasons detailed above
- Intrastat is still required post departure-this is regarded as an unnecessary administrative burden, accounting techniques and commercial evidence of the movement should be sufficient.



Whilst the UK is a member of the EU, in order to prevent confusion and duplication it is not appropriate to look outside the EU to bodies such as the WTO or WCO. Unfortunately the EU does not always incorporate into legislation these organisations policies as they intended. Security would be a good instance of this where the main thrust of responsibility in the EU is placed on the carrier and in the USA on the importer.

Due to the larger membership and even greater economic divergences with the WTO and WCO there are serious concerns that agreement would be more difficult to achieve and take longer than within the EU.

**Question 2: To what extent do you think EU action on the free movement of goods helps UK businesses?**

The general perception is that the free movement of goods has benefitted UK business, particularly larger ones who have derived the greatest benefits. It is not so clear as to the benefits for smaller companies and those who do not trade across international frontiers.

Theoretically all businesses should be able to benefit from EU trade, but the official statistics indicate that only 15% of UK businesses are engaged in any form of international trade this is a significant but not decisive percentage. For those not directly engaged in trade, they will have purchased items from third party suppliers including wholesale suppliers and retailers. Choice, availability and supply have been boosted, but in many cases the same or similar goods are available from outside the EU.

Some UK businesses are adversely affected by the free movement of EU goods because fraud is probably more difficult to detect. We are aware for instance that alcohol fraud is adversely affecting the brewing industry, large quantities of beer on which duty has not been paid is undercutting legitimate trade. We have been led to believe that similar problems exist within the cigarette industry because once the product has been smuggled into the EU then it is easy to distribute the product because of a lack of inspection.

We do not have the precise statistics on legitimate versus illegitimate trade-all we can do is highlight potential problems.

**Question 3: To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you when trading with countries inside and outside the EU? To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you as a consumer of goods?**

Our perception of the main advantages of intra EU trade has been highlighted in our response to Question 1. For goods originating from outside the EU, once imported to being in free circulation the benefits are that duty is not payable again when crossing MS frontiers and also the origin rules have been satisfied. This overcomes complications such as when trading with Switzerland, when goods need to have undergone significant processing to change their nature in order to meet their rules of origin.

A feeling is emerging in the freight forwarding sector that the benefits that have accrued under the current Customs Code will be reduced for the UK to a certain extent when the Union Customs Code (UCC) is implemented. The UK has benefitted from Customs facilitations such as liberal transit rules and not requiring guarantees to underpin certain customs regimes, particularly those with economic impact. These benefits will cease when the UCC is introduced.

Outside the fiscal environment, membership of the EU does provide the mechanism to challenge non-fiscal barriers such as when the UK successfully challenged the French ban on UK beef exports.

Membership of the EU has increased the ability of UK companies to trade freely within the EU thus widening markets. The reverse side is that companies in other countries with lower cost bases have access to the UK market and can undercut domestic based companies. These lower costs may be for fiscal reasons such as the variations in VAT and Excise duty or social costs such as variations between maternity and other social benefits.

Statistics from BIS demonstrate that EU MS trade twice as much with each other as a result of the single market. The impact of this is that per capita income is estimated to be 6% higher than if the UK had not benefitted from this increase in trade.

For private individuals the single greatest benefit is that they can buy goods for their own personal use without the need to pay tax when returned to the UK.

**Question 4: What types of EU action would be helpful or unhelpful for your activities as a business and/or as a consumer in the Internal Market?**

From our perspective looking at purely fiscal measures, all taxes and prohibitions and restrictions should be harmonised. We accept that politically this would be difficult to achieve but from trades perspective there should be commonality of all taxes and regulations that impact on the movement of goods across internal EU frontiers. The reverse side of this would be that individual EU customs authorities would have to act in the same way in individual MS.

We would like to illustrate this argument using a specific example that we have been made aware of recently. This involved a consignment of coffee being transported by a UK haulier from Poland to Germany. In the UK, as far as we have been able to ascertain coffee is not subject to excise duty-in Germany it is and needs to be pre-declared to German customs. The UK haulier when entering Germany had their truck seized and a heavy fine was imposed.

We are also aware of problems stemming from variations in national regulations as diverse as adult literature, replica guns and foodstuffs.

This then brings us onto the very thorny subject of variations in VAT rates between individual MS and how this creates significant problems for companies trading across EU frontiers and seeking to maximise the benefits of such concepts such as centralised customs clearance.

**Question 5: To what extent do you think the harmonisation of national laws through EU legislation (as opposed to international treaties) is helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market? In your experience do Member States take a consistent approach to implementing and enforcing EU rules? Please give examples.**

Previous responses give a clear indication that harmonisation would be beneficial for EU trade-providing a level playing field. The reality may be somewhat different because so often our perception is that “harmonisation” equates to “dumbing down”.

We would like to illustrate this point with the following example. The UK has a fairly old but working customs entry system called CHIEF, which links to trade via Community Service Providers (CSP)s. This gives the UK a significant advantage over some of its EU rivals with regard to processing import and export cargo declarations and controlling the inventory location of that cargo. This system gives government control and allows targeted risk based interventions.

Other EU countries rely rather more on physical checks and interventions by customs officers. In this particular case if harmonisation meant bringing the rest of the EU up to UK standards then we would be in favour. If it meant that our system was “dumbed down” which would increase intervention and slow the supply chain down then the answer would be no.

From our Members representing large pan global forwarders, there are anecdotal comments that there are variations in the enforcement of customs legislation. For instance, there have been comments that there are variations between MS when conducting risk assessments within the Import Control System. These may be

because customs in certain MS do not work 24/7 or that there are variances between prohibitions and restrictions.

One of the most significant examples that we have come across in recent months is the interpretation of Temporary Storage regulations between the UK. HMRC are moving towards a stricter regulatory system closer to the German model, which involves transit and withholding entries until goods have been moved from the frontier to the Temporary Storage Facility. In Holland they have established a trial under which the goods move within Temporary Storage obviating the need to use Transit thus speeding the movement of goods.

Also we would draw attention to our previous comments regarding problems relating to variances in different Excise regimes. This indicates how bad the situation could be if the free circulation for other goods did not operate.

Whilst the UK appears to be adopting more rigid processes which it has to be accepted other EU countries also follow, the Dutch are clearly moving towards liberal policies relying on IT systems to control the inventory and cargoes release.

Our final point is that the EU does not always follow international agreements. For instance it has not adopted all the principles of the revised Kyoto Convention on trade facilitation and does not allow a system of duty drawback on Exports. It is even abolishing the current Inward Processing Drawback scheme which will be an additional cost burden to UK exporters.

**Question 6: Do you think that the EU strikes the right balance between regulating imports and exports and facilitating international trade?**

There is a general view that in particular for SME enterprises that it is extremely difficult for them to have their voices heard in Brussels. Our perception is that the EU legislative process is not as structured and transparent as for instance in the UK. Too many processes appear to take place in ill publicised committee meetings and contact is too often via Trade Contact Groups.

From our experience raising complaints and issues via MEPs is not considered effective. MEPs seem to have specific interests and excluding notable exceptions such as Malcolm Harbour it is difficult to find one with specific trade interests, and due to their workload and geographical remoteness to be able to adequately understand complex issues.

It is believed that the EU is very doctrinaire regarding collecting and safeguarding import duty, and there seems to be a movement towards less flexibility-which will increase costs and harm trade. There are particular concerns within the UCC regarding the need to provide guarantees (unless you qualify as an AEO for exemption).

There is also a move towards punishing minor clerical errors with a severity which is disproportionate to the offence. Where it suits the EU they focus that paperwork is in order rather than checking that the goods were correctly processed and exported

For example, the recent European Court of Justice ruling (Case 262-10 Dohler Neuenkirchen GmbH) ruled that the failure to supply a Bill of Discharge within the specified time limit incurs a customs debt under Article 204 (1) (a) of the Customs Code for all goods covered by the Bill of Discharge even if some of the goods had been correctly re-exported and evidence of re-export subsequently provided.

Rather inconsistently there are times when the EU is more concerned with the physical movement of cargo. For instance the EU seems to have an obsession with regard to the physical arrival of goods relative to their "presentation" during the import process and does not seem to comprehend that inventory systems can provide the necessary control and visibility (and now we regret HMRC seems to be stepping back from this position).

The main failing of the EU is that due to its size and diversity is that the law making process simply takes too long. The ideal example of this is the Union Customs Code (UCC) which has taken at least 10 years to pass and due to the impact of the Lisbon Treaty was renamed. Worse still is that there will be now Delegated Provisions and Implementing Provisions to underpin the functioning of the UCC.

This inability to act quickly can put EU businesses at a commercial disadvantage, particularly regarding sensitive dual use goods. For example, the EU dual use export control list still places a control over cryptography which has been de-controlled at international level via the Wassenaar Arrangement. This means that such goods originating from the EU remain subject to licencing arrangements and controls and the inevitable additional delays and costs, whilst the same goods purchased from the USA are not so encumbered.

**Question 7 Do you think the UK's ability to effectively regulate cross-border movements of goods would be better, worse or broadly the same as the result of more or less EU action? Please provide evidence or examples to illustrate your point.**

Ever since the Twin Towers attack, security has become an increasingly important aspect of customs activity. There is a tension between trade which seeks the most liberal trade policies and the minimum of intervention and those parties who seek increased checks to ensure national security and to prevent the smuggling of items such as cigarettes and alcohol.

HMRC figures estimate that alcohol fraud in beer alone costs the Treasury up to £700 million per annum. EU statistics estimate that between 10% and 12% of all

global trade involves some form of criminal activity, including shipping stolen goods, smuggling and sending goods that infringed intellectual property rights. It has not been possible to discover the impact on intra EU movements of similar illegal activity-although it has to be accepted that it does exist and the presumption that they are in free circulation diminishes the likelihood of detection.

### Concluding comments.

BIFA's responses are as objective as possible based on the information available to the Association. Our Members facilitate both intra EU trade and trade with third countries. Our perception is that membership of the EU does allow goods to move more freely than would otherwise be the case, which is a significant benefit. This has to be set against an increasingly bureaucratic EU mind-set, which has to accommodate from the 1<sup>st</sup> July 2013 the views of 28 Member States.

One trade related subject that needs to be highlighted is the benefit of trade treaties. The EU negotiates free trade treaties such as the recent one being currently negotiated with the USA. It has been widely reported this will generate many billions of pounds in increased trade. As part of a large trading block, the EU, it is probable that the UK enjoys greater influence than would be the case if it was negotiating as an individual nation. From the perspective of countries outside the EU, it is probably more attractive to negotiate with the EU because it is economically a large block and also one treaty can be negotiated rather than individual ones.

# Brussels and Europe Liberal Democrats

## **1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

Transport has an effect on almost all areas of life in the UK. It has an impact on the environment, on safety, on trade, on security and even on individual freedom and liberty.

Therefore coordinated EU-level action on transport has vast implications for the UK, Europe and all European citizens.

For example, EU action has:

Given British passengers many additional rights when they are travelling within the EU<sup>55</sup> (*NB. Air passenger rules apply to all flights leaving the EU, regardless of carrier*)

Increased road safety and the safety of vehicles on Europe's roads (*aiming to cut road deaths by half by 2020*)<sup>56</sup>

Reduced the negative impact of transport on the environment whilst cutting pollution in urban areas (*See the Environmental Noise Directive, National Emission Ceilings Directive, Cleaner Air for Europe Directive, vehicle emission limits and fuel quality*).

Liberalised Europe's air travel, delivering cheaper flights for all EU citizens.

Removed and reduced barriers to road travel in Europe (*for example all insurers must cover citizens throughout the EU, whilst the removal of borders and the introduction of the euro currency has meant there are no unnecessary delays or obstacles*)

Harnessed the power of technology to keep transport flowing safely and economically.

An efficient, effective and standardised European transport infrastructure makes the UK and Europe more competitive, cleaner and safer.

## **2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

This depends where you live, but generally speaking the success of the internal transport market mirrors the single market itself with most countries cooperating closely while others - such as the UK - retaining some opt-outs. In countries that belong to both Schengen and the eurozone, for example, transport drivers and

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<sup>1</sup> <http://europa.eu/youreurope/citizens/travel/passenger-rights/air/>

<sup>2</sup> <http://www.fiafoundation.org/news/archive/2010/Pages/EUlaunchesRoadSafety2011-2020plan.aspx>

operators are free to move around without border controls while having the considerable advantage of trading in a single currency. UK drivers and hauliers do not benefit from this level of liberalisation and must deal with both national border checks to get in and out of the Schengen area as well as fluctuations in currency conversion rates. The UK should reconsider as a minimum its opt-out of the Schengen area so it can take greater advantage of the opportunities of the single market it itself helped create.

In other areas, UK citizens benefit from harmonised rules such as minimum road safety standards. Road deaths in the EU have been cut by 50% since 1992. Fatalities fell by 9% in 2012 – meaning 3,000 less deaths.

### **3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

Transport underpins the EU's internal market. It makes the free movement of people and goods possible.

### **4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Harmonised social and environmental standards are necessary because, in addition to their stated aims; they avoid a 'race to the bottom' in which nations attempt to undercut each other by lowering safety and environmental standards. They also prevent 'trade wars' between EU member states because unified standards mean that no member state can create additional (often spurious) technical trade barriers to block competitors from their markets.

They also make policing and regulation a great deal simpler because British Police have a single set of rules and standards to which they can monitor all EU registered vehicles.

### **5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

N/A

### **6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

N/A

### **7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**



It could be argued that national transport infrastructure projects should only be awarded to UK companies, but this would be extremely short-sighted. Firstly, it may benefit UK corporations, but may cost British tax payers more (EU contractors may be cheaper). Secondly, it is unlikely that any large UK contractor is wholly owned or run in the UK, and finally, this kind of national protectionism would shut the UK out of the huge EU market where (especially in Central and Eastern Europe) we are seen as high quality manufacturers.

The EU procurement market is highly competitive and completely open even to non-EU companies. This EU approach fits in entirely with the free trade philosophy of successive British governments.

In terms of manufacturing and production, the UK's market is simply too small on its own, so vehicles and other products imported from or exported to the EU would have to meet EU specifications anyway.

It is hard to think of a transport network which is not already Trans-European, or which would benefit from national isolation.

#### **8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

As always, nothing beats 28 EU countries with over half a billion consumers combining together to present a common negotiating position towards the rest of the world, where possible. Once internal agreement is reached, preserving unity is increasingly important.**9. What challenges or opportunities are there for the UK in further EU action on transport?**

The greatest challenge comes from the UK's belligerent approach towards the EU, a lack of understanding of the EU and a lack of vision which precludes our country from playing a leading role in developing the EU's transport network.

Take Pan-European eCall as a case study.

*What is it?*

In case of a crash, an eCall-equipped car automatically calls the nearest emergency centre. Even if no passenger is able to speak, it cuts emergency service response times by 50% in the countryside and 60% in built-up areas.

The European Union has coordinated the development of eCall by funding a number of pilot projects across the continent and implementing research and testing programmes comprising of a wide range of European stakeholders – including the UK.

*How has it been adopted?*

Proposed new EC rules mean that all cars sold in Europe must be fitted with eCall from October 2015, and all EU member states must be equipped to handle eCall emergency alerts. This means EU citizens will benefit from the system wherever they are in Europe.

*Additional economic benefits:*

The strength of Europe's car manufacturing industry means that eCall has vast economic potential and Japan, China and Russia have all shown interest in implementing the system. There is likely to be a huge market for retro-fitting vehicles with eCall and for developing additional services build on the eCall infrastructure.

*The UK's position?*

The UK government has consistently refused to engage with eCall and the development of the system and its associated infrastructure. If the system were not implemented in the UK, it would put British lives at risk – despite the fact that all new cars will be fitted with the system. This approach also undermines R&D and the potential economic benefits.

Were the UK to withdraw from the EU, we would completely remove ourselves from the R&D process on all projects like eCall, we would lose access to EU research funding (and European wide cooperation), but we would still need to integrate our transport network with our European neighbours.

European cooperation and standardisation offers the UK a great deal. Not just in terms of safety, security and environmental protection, but also in streamlining trade and product delivery and offering all of us far greater personal freedom.

# Business for New Europe

## Transport Policy

### KEY POINTS

- A Common Transport Policy is needed for the proper operation of the movement of goods and services.
- The EU has improved consumer rights in regards to air travel and automobiles.
- Investment in the Single European Sky will ready air travel control in the EU for future capacity and safety needs.

### Common Transport Policy

- A Common Transport Policy is vital to the proper operation of the single market – especially the free movement of goods and people.
- The EU Trans Europe Transport Network (TEN-T) plans to modernise operations in the internal market for the mobility of goods and persons. The majority of investment will be in the removal of the main bottlenecks.<sup>57</sup>

### Consumer Rights

- Airlines are now required to show the full price of travel, including taxes and extra charges, when pricing tickets for travelling to an overseas destination.<sup>58</sup>
- The EU has introduced regulation which affords consumers compensation when their flight is cancelled, delayed or they are denied boarding, under certain circumstances (for example if there flight is cancelled without 14 days' notice).<sup>59</sup>

### Single European Sky

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<sup>57</sup> Roadmap to Single European Transport Area, 28 March 2011

<sup>58</sup> Common rules on the operation of air services, 24 September 2008

<sup>59</sup> Common rules on compensation and assistance to passengers, 11 February 2004

- The Single European Sky is an EU programme to unify European air traffic control to meet future capacity and safety needs.
- 440 airports in the EU cater for 1.4 billion passengers and 10 million flights a year. The number of flights is growing by up to 5% a year. The Single European Sky scheme will reduce charges to passengers by €2.4 billion through reductions in delays and air navigation costs per flight.<sup>60</sup>
- GALILEO is a global network of 32 satellites providing precise timing and location information to air traffic controllers on the ground.
- A contract has been signed by both OHB System AG and EADS-Astrium GmbH lasting from 2010 until 2016 with the first of the satellites to be delivered in 2014.
- The completion of a Single European Sky would have a beneficial effect on the efficiency and sustainability of air travel, and lead to a 12% reduction of carbon emissions.<sup>61</sup>
- The GALILEO satellite programme is forecast to produce €90 billion in benefits over a 20 year period. The third and fourth satellites were successfully launched on the 12 October 2012.<sup>62</sup>

### Reforms still needed

**Rail:** Operators from one Member State are still not allowed to transport passengers on domestic lines within another Member State. According to the Commission, tendering of public service contracts has resulted in savings of 20-30% which can be re-invested to improve services. Again, according to the Commission, Germany, Sweden, Italy, UK, Austria and the Czech Republic already allow open access to their domestic passenger railway services (Tunnel Vision? Completing the European Rail Market, House of Lords EU Committee Report, 2011), but extending this to all members would be an important step in completing the Single Market. The Commission has made the proposed changes in the “Fourth Railway Package.”

**Maritime:** 40 per cent of goods transported in the EU are transported between EU ports. Currently, vessels traveling between EU ports are deemed to have left the EU’s customs territory and therefore have to go through the same formalities as ships traveling from overseas, outside the EU. We should call on member states to support the Commission’s proposals to introduce a “blue belt” of measures to make intra-EU shipping procedures as simple as those for air, road and rail.

**Aviation:** The main priority here is to complete the “**Single European Sky**” (SES) initiative. This program is moving Air Traffic Control (ATC) from national borders to much more efficient “Functional Airspace Blocks” (FABs) based on traffic flows (see map below.) The Commission estimates that the fragmentation of the European

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<sup>60</sup> Single European Sky performance scheme – guide, 19 July 2012

<sup>61</sup> European Express: A genuine European single market

<sup>62</sup> European Commission, Industry and Enterprise, website accessed 4 July 2013

airspace causes additional costs to airlines of around €5 billion a year. The Commission also estimates that the SES will reduce environmental impact by about 10 per cent through more direct routing.

### **Potential impact of leaving the EU**

- Were the UK to leave the EU, we would have to renegotiate agreements in existence with both EU member states and third countries, including bilateral air transport agreements (ATA) and air service agreements (ASA) which regulate the right of a country to use the air space of another's. This renegotiation process would probably be lengthy and create uncertainty, leading to potential adverse effects on investment.

# Business Taskforce

## Cut EU red tape: Report from the Business Taskforce

Published 15 October 2013

### **Contents**

1. Foreword
2. Executive Summary
3. Part 1: Principles
4. Part 2: Proposals for reform to EU rules, regulations and practices
5. Annex 1: Additional concerns raised by business
6. Acknowledgements

### **1. Foreword**

Firms face a challenge. They produce superb products, offer world-class services and benefit from being able to sell to a European market of 500 million customers. But they are often encumbered by problematic, poorly-understood and burdensome European rules. The impact is clear: fewer inventions are patented, fewer sales are made, fewer goods are produced and fewer jobs are created. The burden also falls heaviest on small and medium-sized firms who make up the vast majority of businesses.

This would be bad enough if the world was standing still – but it isn't. The global economy is being re-shaped at breakneck speed. In the past decades, political systems have changed, new players have emerged on the markets, as well as new materials, new technologies and workers who are better skilled than ever. To compete in this fast-changing economy requires regulation that promotes growth, better access to markets and the availability of new sources of energy.

When US companies can get new products licensed and to market in days, it should not take weeks or months in Europe. When small and medium-sized enterprises are crucial to creating new jobs, it doesn't make sense for the EU to extract £300 million from UK businesses alone to implement new data protection rules. When innovation is so important for future businesses, it is self-defeating that new EU regulations have accompanied a 25% drop in biomedical research, and that complex and diverse rules on sales, promotions, labelling and web content hamper e-commerce. And when the discovery of shale gas in the United States has led to that country's industrial renaissance, Europe must help its chemical, plastics and steel industries, now paying several times more for gas than their US rivals, get the same benefits.

As businesspeople, we are convinced that these and many other problems must be addressed if British and European firms are to compete in the global marketplace. We need regulation to operate in a pan-European market. We are not against regulation per se. But we need regulation that is pro-growth and pro-innovation.

To help sweep away barriers to growth, we were asked by Prime Minister David Cameron to develop a set of recommendations for reform for the British and European governments as well as the EU institutions. And we, in turn, asked British and European businesses what they thought. With input from hundreds of firms, individuals and business associations across Europe we have developed 30 priority recommendations to address five kinds of barriers:

- Barriers to overall competitiveness
- Barriers to starting a company and employing staff
- Barriers to expanding a business
- Barriers to trading across borders
- Barriers to innovation.

If these are implemented, billions of pounds, euros, zloty and kroner could be saved, while thousands of new firms and new jobs could be created:

- In the digital economy alone, estimates suggest that reforms could add 4% to Europe's GDP;
- Removal of all outstanding EU barriers to trade in services could lead to an additional gain to the EU economy of 1.8% of EU GDP;
- A successful transatlantic trade deal could, in the long-term, boost the EU economy by some €120 billion annually;
- Whilst removing the requirement to write down health and safety risk assessments could save businesses across the EU some €2.7 billion.

In particular, the Services Directive – which aims to remove outstanding barriers to free trade in services in the EU – has failed to realise its full potential, due to poor and uneven implementation across the EU. Addressing this must be a key priority, given that the services sector is a key driver of competitiveness, growth and jobs. And further liberalisation of telecoms, transport, construction, and legal services, is of crucial importance in creating the right environment for competitive European businesses to prosper.

In drawing up our recommendations, we have focused on a number of key priorities. However, in preparing this report, we heard from business about a wide range of EU measures which affect their competitiveness. We set out in Annex 1 a further 66, all of them reflecting concerns raised with us by business during our work on this report.

But it isn't enough just to remove existing rules: Europe must avoid adding new ones. And when new rules are necessary they must be unashamedly pro-growth. Some of us run large corporations, others manage smaller business. Yet we all believe this. We have therefore developed principles that we think should be applied to any new regulations or legislation. They should function as a first common-sense filter through which any new EU proposals must pass. We have called these the COMPETE principles – because if they are used they will make Europe more competitive.

Many reports have been written about removing European rules, including by European governments and the European Commission. This isn't the first such report and it won't be the last. Indeed, European Commission President Jose Manuel Barroso has just published a

review of regulation, committing the EU to screen two-thirds of all European rules for their commercial fitness – a welcome move.

Yet for all the reports, change is still needed. We therefore call on the British and European governments, on the European Commission and the European Parliament to implement our findings. For while this report is written by businesspeople and for the British government, its recommendations, if implemented, will benefit all of Europe, helping firms start, employ staff, grow, expand, innovate and export.

- Marc Bolland - Marks & Spencer
- Ian Cheshire - Kingfisher
- Glenn Cooper - ATG Access
- Louise Makin - BTG
- Dale Murray, CBE - Entrepreneur and Angel Investor
- Paul Walsh - Diageo

## **2. Executive Summary**

This report is drawn from evidence we received from some 90 UK businesses and business organisations, and over 20 business organisations across Europe. It sets out a range of proposals to ensure that the EU single market makes it easy for businesses in Europe to trade across borders, and to ensure that the EU regulatory framework is, and remains, competitive in the global market place.

We call on the European Commission to adopt a new ‘common sense filter’ for all new proposals – the COMPETE Principles. No new EU legislation should be brought forward which does not successfully pass through this filter.

Competitiveness test

One-in, One-out

Measure impacts

Proportionate rules

Exemptions and lighter regimes

Target for burden reduction

Evaluate and Enforce

As well as these overarching principles, we also looked at specific pieces of existing EU legislation, and proposals in the pipeline, that hold businesses back. The removal of unnecessary regulatory burdens in areas which are critical for job creation and growth will free up businesses across the EU to lead the way towards economic recovery. We highlight barriers in the following five areas:

We have identified Barriers to Overall Competitiveness. To address these, the EU should:

- Ensure the full implementation of the Services Directive across the EU
- Ensure data protection rules don't place unreasonable costs on business
- Refrain from bringing forward legislative proposals on shale gas
- Drop proposals to extend reporting requirements to non-listed companies.



We have identified Barriers to Starting a Company and Employing People. To address these, EU Governments should be allowed flexibility to decide:

- When low-risk companies need to keep written health and safety risk assessments
- How traineeships and work placements should be provided.

For new employment law proposals the starting presumption should be that micro-enterprises are exempt. When inclusion is sensible (e.g. a beneficial proposal) micros should have a proportionate regime. In particular the:

- Pregnant Workers proposals should be withdrawn
- Posting of Workers Directive should not introduce mandatory new complex rules on subcontracting
- Existing legislation on Information and Consultation should not be extended to micros, and no new proposals or changes to existing legislation should be made
- Working Time Directive should keep the opt out; give more flexibility on on-call time/compensatory rest; clarify there is no right to keep leave affected by sickness
- Agency Workers Directive should give greater flexibility for individual employers and workers to reach their own arrangements that suit local circumstances and give clarity to companies that they only need to keep limited records
- Acquired Rights Directive should allow an employer and employee more flexibility to change contracts following a transfer.

We have identified Barriers to Expanding a Business. To address these, the EU should:

- Drop costly new proposals on environmental impact assessments
- Press for an urgent increase of the current public procurement thresholds
- Exempt more SMEs from current rules on the sale of shares
- Minimise new reporting requirements for emissions from fuels
- Drop plans for excessively strict rules on food labelling
- Remove proposals to make charging for official controls on food mandatory
- Remove unnecessary rules on SMEs transporting small amounts of waste
- Withdraw proposals on access to justice in environmental matters
- Withdraw proposals on soil protection.

We have identified Barriers to Trading Across Borders. To address these, the EU should:

- Take action to create a fully functioning digital single market
- Rapidly agree measures to cap card payment fees
- Remove international regulatory barriers which inhibit trade
- Reduce the burden of VAT returns, and stamp out refund delays
- Drop proposals on origin marking for consumer goods.

We have identified Barriers to Innovation. To address these, the EU should:

- Improve guidance on REACH to make it more SME-friendly

- Rapidly agree the new proposed Regulation on clinical trials
- Improve access to flexible EU licensing for new medicines
- Introduce a risk-based process for the evaluation of plant protection products.

We urge the European Commission, European governments, and the European Parliament to take these recommendations forward rapidly. And we call on UK Government Departments to examine the scope for action to address the additional concerns raised by business on the wide range of further EU measures at Annex 1.

### **3. Part 1: Principles**

#### **3.1 The COMPETE Principles for removing EU red tape**

##### **Competitiveness test**

- All new proposals from the European Commission must pass a rigorous competitiveness test to demonstrate that they will boost European competitiveness. If they fail, they should be rejected and not allowed to proceed.

##### **One-in, One-out**

- The European Commission should introduce a one-in, one-out principle for European legislation, and offset any new burdens on business by reducing burdens of an equivalent value elsewhere.

##### **Measure the impact**

- The European Commission should publish an annual statement of the total net cost to business of the proposals which it brings forward – and update the figures to take account of changes made by the European Parliament and the Council of Ministers.
- The European Commission should publish provisional Impact Assessments when it goes out to consultation – setting out the impacts of the options proposed.
- A single independent Impact Assessment Board should scrutinise all EU Impact Assessments. Proposals which do not receive a positive opinion from the Impact Assessment Board should not proceed.

##### **Proportionate rules**

- The European Commission should take a risk-based and proportionate approach when developing new proposals, drawing on objective scientific advice.
- The European Commission should bring forward clear guidance as soon as possible after legislation has been agreed, where this would help businesses comply with EU legislation in the least burdensome way.

## **Exemptions and lighter regimes**

- The European Commission should exempt micro-enterprises and young companies from new legislation whenever possible; and always propose lighter regimes for SMEs and young companies when developing proposals.

## **Target for burden reduction**

- In addition to applying the one-in, one-out principle, the EU should adopt a target to reduce the overall EU regulatory burden on businesses.

## **Evaluate and Enforce**

- The European Commission should not bring forward any new proposals until the existing legislative framework has been evaluated, and should ensure EU legislation is implemented and enforced consistently across the EU.

### **3.2 Why are these principles needed?**

Businesses have repeatedly called for relief from an endless stream of new EU regulations, rules and requirements which create unnecessary complexity and costs in their day-to-day operations.

We have seen numerous examples of legislation being brought forward by Brussels which does not add value – for example, overly prescriptive requirements around safety signs, or how olive oil may be provided in restaurants.

We also see EU rules which are disproportionately costly for business – especially small businesses – without any evidence of benefits. This seems to be particularly prevalent in proposals stemming from negotiations between the social partners. For example, recent proposals on ergonomics and on hairdressers would have placed extortionate costs on SMEs if implemented. Legislation which is brought forward through the social partners process must be subject to all of the same checks and balances as other proposals.

And all too often we see the EU adopting a highly risk-averse approach to new and innovative technologies and products. If we are to remain globally competitive, the EU must not introduce unnecessary barriers and restrictions which stifle innovative industries.

For this reason we urge the EU to fully implement these principles, to enable business to COMPETE, grow, and create jobs.

Competitiveness test

One-in, One-out

Measure impacts

Proportionate rules

Exemptions and lighter regimes

Target for burden reduction

Evaluate and Enforce

## **4. Part 2: Proposals for reform to EU rules, regulations and practices**

### **4.1 A. Barriers to Overall Competitiveness**

#### **Overview**

The future of European business depends on the removal of unnecessary, burdensome regulation, which stifles growth and competitiveness. In particular, further efforts should be made to liberalise the market for services at EU level. Gains in EU GDP of 1.8% have been predicted over the long term, if the plethora of unnecessary restrictions still in place could be removed.

But whilst a complete and fully functioning European single market is an essential foundation, it is only part of the picture. If our businesses are to compete in the global marketplace, they need a level playing field. European business needs an environment which fosters global competitiveness and does not hold it back.

UK and European companies are in competition with the best in the world. They will not succeed if they are subject to additional costs and burdens which their competitors in other developed markets do not face. We must ensure that EU rules do not put European firms at a competitive disadvantage in the race for international business.

High energy prices, additional charges on business, onerous record keeping, and unnecessary bureaucracy all make it harder for our companies to compete in global markets. EU rules cannot be allowed to undermine the competitiveness of European business. Where EU rules place EU firms at a competitive disadvantage, they must be tackled rigorously and speedily in order to free up our businesses to help create growth and jobs.

We have identified a number of areas which need reform to boost the overall competitiveness of EU business:

- The lack of a true single market for services
- Prescriptive requirements on data protection
- Unnecessary proposals on shale gas
- Unnecessary non-financial reporting requirements.

#### **A.1 – The lack of a true single market for services**

The Services Directive

Full implementation of the Services Directive could boost intra-EU services trade by up to 14.7% – European Commission Economic Paper, June 2012

#### **Problem**

The Services Directive has not been fully implemented across the EU. And it still allows European states the ability to maintain far too many restrictions in their services markets.

#### **Analysis**

The European Commission has predicted a potential gain of 1.8% of EU GDP if EU states were to remove all outstanding EU barriers to trade in services.

It is also clear that more ought to be done to raise performance on services integration. This becomes even more important at a time where Europe needs to boost competitiveness and realise untapped potential for growth.

However, it is apparent that some European states have been taking advantage of flexibilities granted in the Directive to maintain unjustifiable barriers to their services markets – notably by choosing to interpret concepts such as ‘proportionality’ and ‘necessity’ in the broadest manner. The introduction of a ‘proportionality test’ against which these measures could be challenged would help to address this.

And a raft of further restrictions in key enabling sectors such as telecoms, transport, construction, financial and legal services needs to be addressed, to improve the competitiveness of European business across the board.

### ***Recommendation***

The European Commission should:

- Ensure the full implementation of the Services Directive across the EU
- Eliminate all remaining unnecessary restrictions – notably by applying a ‘proportionality test’ to national measures which place unjustified restrictions on trade in services
- Take action to address outstanding restrictions in key sectors such as telecoms, transport, construction and legal services.

## **A.2 – Prescriptive requirements on data protection**

Data Protection Regulation

“The Commission’s proposal is likely to drive many small firms out of business” – an online marketing company

### ***Problem***

New onerous data protection proposals are of particular concern to SMEs. They are costly, too prescriptive, and focus on process rather than outcomes.

These obligations, backed up by punitive sanctions, could act as a barrier to new entrants to the market, and impose unnecessary additional costs on current businesses. The proposal will cover the use of personal data across a range of sectors, and will have wide-ranging effects.

### ***Analysis***

The UK’s Impact Assessment concluded that the European Commission proposal could have a net cost to the UK economy of £100-£360 million per year, of which £80-£290 million would be costs on SMEs.

For example, a small advertising business uses personal data to work out the performance of its online advertising. To keep doing this, the SME would need to designate a data protection

officer, be expected to carry out an expensive Data Protection Impact Assessment, and provide free rights of access to consumers to their data. All of these measures would be hugely costly, and in many cases would require external legal advice and consultancy.

### ***Recommendation***

Negotiators in Brussels should ensure the final package does not impose unnecessary burdens on SMEs. Data protection rules should be proportionate to the risks at stake. In particular:

- There should be no mandatory obligation for businesses to do a Data Protection Impact Assessment, unless there is a specific risk of harm to people
- Firms should still be able to levy a 'subject request access fee', to prevent vexatious requests and cover the costs of providing a response
- A data protection officer should not be required.

### **A.3 – Unnecessary proposals on shale gas**

“Shale gas is a potentially game changing resource where, in the US, it has slashed energy prices and helped spur a re-industrialisation. As we continue to struggle to rebalance our economy and balance our books, we cannot ignore this potentially significant resource.” – a business organisation

#### ***Problem***

Energy firms seeking to extract shale gas want regulatory certainty, so that they can plan their business with confidence. New European legislation could increase costs to business and threaten the exploitation of this valuable source of energy, without offering any additional environmental protection.

#### ***Analysis***

Extracting shale gas requires compliance with existing EU environmental legislation. The Commission is considering a number of options to update EU legislation. These include guidance to clarify how existing legislation should be applied to shale gas; amending existing Directives; introducing a new framework Directive to make a set of changes to existing Directives; and introducing a new detailed Directive on shale gas. The existing Directives provide important environmental protections, but were written before the development of the latest techniques for the extraction of shale gas. Without clarification, there is scope for legal challenge, which would create damaging uncertainty for the industry.

However, new specific and prescriptive legislation for shale gas would create additional cost for little benefit. Notably, firms carrying out shale and non-shale projects would not be able to standardise their compliance work, and there is a risk of stifling innovation by regulating details while technology is still in flux. Most importantly, there would be uncertainty for up to five years whilst legislation was under discussion, deterring investment. The alternative of amending existing Directives in a piecemeal fashion would create uncertainty and clashing rules.

### ***Recommendation***

There is no need for a new detailed Directive on shale gas. The current regulatory framework ensures proper environmental safeguards are in place, is tried and tested, and is well understood by businesses. A new Directive would bring years of uncertainty, deterring investors. Instead, guidance should be produced to clarify how existing EU environmental regulation applies to the new possibilities of shale gas exploitation. This would minimise scope for differences in interpretation, and enable safe and sustainable exploitation of shale gas.

#### **A.4 – Unnecessary non-financial reporting requirements**

Proposed Directive on the disclosure of non-financial and diversity information by certain large companies and groups “Non-financial reporting should be flexible and focus on material, relevant information” – a business organisation

##### ***Problem***

The European Commission’s proposal would extend non-financial reporting to unlisted companies over a certain size. The proposal would bring no benefit to shareholders of unlisted companies. And it could limit the scope of company directors to make forward-looking strategic statements in their annual report.

##### ***Analysis***

The Directive would apply to companies that have, on average, over 500 employees. This will affect 6000 companies in the UK – 5000 more than under the previous system. All of these additional companies are unlisted.

The European Commission has not produced evidence of benefit gained by adding requirements to the reports of non-listed companies. Initial estimates suggest these requirements could cost these additional companies £30,000 each in the first year, with further costs after that.

The proposal as drafted would also stop companies making ‘forward look’ strategic statements, which are useful to shareholders and potential investors.

##### ***Recommendation***

Business supports transparency. However, the case for this proposal has not been made. The hassle and cost for 5000 unlisted businesses in the UK is not matched by any expected gain to stakeholders or the public.

The proposal should be amended to apply to listed companies only. The proposal should allow companies flexibility in presenting ‘forward look’ statements, as long as these are not reckless or deliberately misleading to shareholders and potential investors.

## **4.2 B. Barriers to Starting a Company and Employing People**

### **Overview**

We are at one in the belief that all workers should have good employment standards. We consider this is also the view of the vast majority of companies. However, Europe can and

should do far more to help all employers deliver good standards, as we set out below. European employment law issues are a key concern for business. We have heard consistently from businesses, in particular SMEs and micro-enterprises, that they are struggling to cope with the unnecessary burdens placed on them by EU laws.

Faced with the risk of being sued for breaking the law by accident and countless pages of law they cannot understand, many micro-enterprises simply decide not to employ people. In short, the complexity and quantity of employment legislation coming from Europe is preventing job creation. This cannot continue.

We believe that the starting presumption for all EU employment law should be that micro-enterprises are exempt. Where this is not advisable (some proposals can be beneficial for companies) special provision should be made for micro-enterprises to have a regime that imposes lighter burdens on them. New employment law should apply to them only where there is clear evidence – from industry responses to a consultation and from the impact assessment published with that consultation – that micro-businesses would benefit.

Exactly the same principle should apply to laws proposed by the ‘social partners’. Industry, including SMEs, should have the right to be consulted upon social partner proposals, and such proposals must be subject to a rigorous impact assessment.

In addition to these overarching principles, we make recommendations in the following areas:

- Requirements to provide written risk assessments
- Barriers to helping young people into work
- Costly proposed amendments to rules on pregnant workers
- Burdensome proposals for sending workers to other EU countries
- Burdensome proposals for change to information and consultation Directives
- Inflexible and unclear rules on working time
- Inflexible rules on hiring agency workers
- Complex and unfair results from rules on transferring staff between companies.

## **B.1 – Requirements to provide written risk assessments**

Health and Safety Framework Directive

“Removing the requirement to write down risk assessments could save businesses across Europe €2.7 billion” – a small business organisation

### ***Problem***

Small businesses are required to keep written health and safety risk assessments, even if they are working in a low-risk sector. These record-keeping requirements cost businesses time and money.

### ***Analysis***

The Health and Safety at Work Framework Directive requires all businesses to keep written records of risk assessments carried out in their workplace, regardless of risk. Managing risk to health and safety is about far more than keeping the right records.



European states should therefore be free to exempt small businesses carrying out low-risk activities from the burden of record-keeping. This would benefit at least 220,000 UK small businesses, and save businesses across the EU an estimated €2.7 billion.

### ***Recommendation***

The European Commission should give national governments the flexibility to decide when small, low-risk businesses need to keep written risk assessments. National governments are best placed to judge which businesses are low-risk, and should be able to decide where exempting businesses from record-keeping is appropriate.

## **B.2 – Barriers to helping young people into work**

### Quality Framework on Traineeships

“With youth unemployment in the EU at 22.8% in 2012, we must do all we can to help young people take their first steps in the labour market” – a large UK company

### ***Problem***

The European Commission’s possible recommendations about how traineeships are provided could be an unnecessary constraint on employers wanting to offer opportunities to young people.

### ***Analysis***

The European Commission has identified issues with the way some traineeships are provided in Europe. This includes insufficient working content, pay and working conditions.

We do not yet know how the European Commission will respond to these issues, but from past experience we know that the UK would be expected to do its utmost to comply with any recommendations. We fear that the European-level action will cover anyone – of any age – doing work experience, and could lead to legally-binding proposals at a later date.

The UK helps under-25s into work through a range of informal schemes. For example, the Prince’s Trust has run a series of successful schemes with leading UK firms as well as state-sponsored training schemes. Employers value their ability to run a range of schemes with minimal bureaucracy to help get young people into work.

Short-term work placements have proven success. These schemes offer unemployed young people an unpaid placement of up to 37 hours training each week for a month, including feedback, evaluation, workplace skills and support through a buddy and career coach. These placements regularly lead to a traineeship or directly to employment. Flexibility is key. Young unemployed people need, for example, to be able to continue to receive social benefits during short-term placements, to avoid the bureaucracy of having to leave and rejoin the benefits system.

Any attempt to impose a one-size-fits-all approach risks putting off all parties, with companies reluctant to offer opportunities, and the unemployed unable or unwilling to accept them. Schemes work because they can be tailored to suit individual needs.

### ***Recommendation***

Any Commission action should build on best practice and not resort to legislative proposals. It should also reflect the fact that individual European states need a variety of schemes that can be flexible to young people and employers' needs.

### **B.3 – Costly proposed amendments to rules on pregnant workers**

“Companies need to be given the space to deliver growth and jobs – without being hamstrung by new and costly maternity rules” – A business organisation

#### ***Problem***

In 2008, the European Commission brought out a proposal to amend the Pregnant Workers Directive, which was first adopted in 1992. The original proposal would not significantly increase costs for business. But the European Parliament is demanding a change to require 20 weeks' maternity leave on full pay. This would be hugely costly for UK and European firms. Despite widespread opposition, the proposal has not been withdrawn.

#### ***Analysis***

The UK has its own maternity leave system with a long period of maternity leave. The current Government has published plans for new shared parental leave. This is an example of how European states develop systems which suit their own individual circumstances. Relative to other European states, the UK has an excellent record of women being active in the labour market, and take-up of maternity leave is high. If the European Parliament's position were to be adopted, the UK would face extra costs of around £2.5 billion per year, while other European states would face a similarly high bill. Such high costs would be likely to lead to a greater share of this financial burden falling directly on business.

### ***Recommendation***

The European Commission should withdraw its proposal to amend the Pregnant Workers Directive.

### **B.4 – Burdensome proposals for sending workers to other EU countries**

Posting of Workers Enforcement Directive

“The administration involved will be both unnecessary and prohibitively expensive, requiring multiple translations of contracts and employers to maintain a network of representatives in different parts of the EU” – a business organisation

#### ***Problem***

This issue relates to the rules applying to European companies sending workers temporarily to work in another EU country. The draft law on the enforcement of these rules could really help. It could stop other countries imposing all sorts of confusing extra burdens on companies wanting to send their workers abroad. But there is a risk that some parts of this law could make the whole process much more costly.

#### ***Analysis***

The proposed Directive includes many things which are helpful. If implemented properly, it will give employers and workers clear information about how the system works, online and in their own languages.

But there are two areas of risk. Firstly, the proposal introduces complicated rules on subcontracting (called joint and several liability), which would make a business liable to pick up the bill if one of its subcontractors did not pay wages. This would require UK businesses sending workers to other European states, or receiving workers from other European states, to take out additional and costly insurance.

Secondly, there is a risk an employer would have to fill in a very substantial amount of paperwork before sending a worker to another European state, with the potential for further requests while the worker is there. This could impose significant costs on business.

### ***Recommendation***

The proposal should not introduce mandatory new and complex rules on subcontracting.

There should be strict limits on the paperwork a European state can ask a business to provide before sending a worker to another EU country.

## **B.5 – Burdensome proposals for change to information and consultation Directives**

“The existing European legal framework is sufficiently robust and does not need to be further expanded” – an EU SME organisation

### ***Problem***

The European Parliament has called for further action to give workers rights to information and consultation. The European Commission is considering a range of proposals in response. These include requiring restructuring businesses to pay for the retraining of their employees; expanding the scope of the Directives that relate to information and consultation to cover micro-businesses (who are currently exempt); and introducing standardised agreements for dispute resolution.

### ***Analysis***

Further EU action in this area would be costly to business, without adding any real value. The European Commission frequently returns to this issue, despite a lack of evidence suggesting there is a problem with existing information and consultation rights.

There is a real risk that, if these proposals are implemented, there will be significant new burdens to businesses – including requiring employers to pay for the re-training of any staff made redundant, even if they find employment immediately afterwards.

Introducing standardised agreements for dispute resolution runs the risk of reducing flexibility, and actually reducing the amount of employee consultation.

Increasing the costs on businesses carrying out redundancies will reduce their capacity following redundancies to take on new staff or restructure their business.

## ***Recommendation***

The European Commission should neither make new proposals nor change existing legislation on the information and consultation Directives. In particular:

- Existing legislation on information and consultation should not be extended to micro-businesses
- There should not be any action to standardise agreements for dispute resolution.

## **B.6 – Inflexible and unclear rules on working time**

“Losing the...opt-out would have an impact on nearly three-quarters of businesses (73%), with close to half (46%) saying it would be severe or significant” – a survey of UK employers

### ***Problem***

Company after company told us that complying with the Working Time Directive is a huge headache. Keeping the ability to opt out from the 48-hour week limit is essential. But problems caused by European Court rulings on how ‘on-call’ time is treated – and requiring paid leave to be given to workers who have not worked a day all year – need urgent action, as they have expanded the original scope of the legislation.

Companies also need more flexibility and clarity on the rules.

### ***Analysis***

It is clear from the evidence we have received, and from numerous industry surveys, that an individual’s ability to opt-out of the 48-hour week is a key flexibility. Many workers see the ability to work the hours they choose as a matter of personal choice. Businesses and public services that rely on on-call working face unnecessary extra costs due to the European Court’s rulings. Workers and employers are left with little flexibility, and rulings on annual leave and sick leave interaction have caused confusion all round.

## ***Recommendation***

The level of fear, confusion and uncertainty created by the provisions of this Directive is unacceptable. So bad is it, that it prevents companies, particularly SMEs, giving opportunities to their workers. It may even prevent companies taking on additional contracts. Any new proposal must:

- Keep individuals’ ability to opt out of the 48-hour week, and remove the uncertainty which surrounds this opt-out
- Provide more flexibility on on-call time and ‘compensatory rest’: clarifying that not all workplace on-call time counts as working time, and that compensatory rest does not have to be taken immediately
- Make clear in the Directive that there is no right to reschedule leave which is affected by sickness, nor any right to carry over leave
- Ensure record-keeping requirements are kept to a minimum, and that there is clarity so that businesses, especially SMEs, have confidence that all they need to retain is proportionate, limited records.

## **B.7 – Inflexible rules on hiring agency workers**

“In the face of these costs 57% of affected firms had reduced their use of traditional agency workers” – a survey of UK employers

### ***Problem***

The Agency Workers Directive has increased the burden of hiring agency workers, and reduced the flexibility that business has to hire people. This can reduce employment opportunities, and deter businesses from hiring for fear of breaking the law.

### ***Analysis***

The Agency Workers Directive creates rights for agency workers to get the same rates of pay, holidays, rest periods, and working time as if they had been recruited directly by the hiring company. The Directive states these rights apply from the agency worker’s first day in the job, unless a different start date for these rights can be agreed by representatives of employers and employees. In the UK, agency workers are entitled to these rights after 12 weeks in the same job as a result of a 2008 agreement between the UK social partners – the Trades Union Congress and the Confederation of British Industry.

### ***Recommendation***

Any new proposal must:

- Start by considering if a Directive is still actually necessary and/or what provisions in it are no longer required
- Give greater flexibility for individual employers and workers to reach their own arrangements that suit their own local circumstances
- Keep administrative burdens on business, in particular SMEs, to a minimum
- Ensure record-keeping requirements are kept to a minimum, and that there is clarity so that businesses, especially SMEs, have confidence that all they need to retain is proportionate, limited records.

## **B.8 – Complex and unfair results from rules on transferring staff between companies**

Acquired Rights Directive

“It would be highly beneficial to allow companies to have their staff on the same reward package to make it easier to manage their workforce as one entity...The directive should be amended to allow an employer and employee to be able to negotiate agreeable terms following a transfer, providing that they are no less favourable overall at the point of transfer” – a business organisation

### ***Problem***

This Directive protects employees’ rights where there is a transfer of a business – or a part of one – to another. However, this protection goes too far. Following transfers, if employers wish to harmonise terms and conditions for two or more groups of staff, they are frequently unable to do so, even if employees are quite happy with the proposed harmonisation.

## ***Analysis***

Currently, changing the terms of staff who are transferred in a less favourable direction, merely to bring them into line with the terms of existing staff, is not permitted. This is so, even if the change is in return for other beneficial changes.

In many cases, employers will be unable to make legally-binding changes to terms and conditions after a transfer, even if employees are willing to agree them and receive other benefits in return for giving up entitlements. All this is highly inconvenient for business, and can lead to increased costs – for example the need to run multiple pay rolls.

There is also confusion in other areas. Where a transferred employee agrees changes to his contract, these changes may or may not be valid depending upon the reasons for the change.

Increased flexibility would boost business and could improve fairness for employees. It could reduce potential sources of discontent between employees who might be doing the same work but receiving different rates of pay and benefits. It might also allow employees to work more flexibly.

Based on changes of ownership of workplaces with five or more employees, we estimate there are around 31,000 transfers in the UK per year, affecting around 4% of the total number of workplaces with five or more employees.

## ***Recommendation***

The Directive should be amended to allow employers and employees more flexibility to change contracts following a transfer.

### **4.3 C. Barriers to Expanding a Business**

#### **Overview**

EU regulation should create the best possible conditions for businesses to grow. But too often the burden of EU regulation acts as a disincentive to growth. EU rules and regulations must not hold back companies which have the means to grow at a time when growth is so clearly needed.

This matters to businesses of all sizes. But it is a particular concern for SMEs. Over 99% of European businesses are SMEs. They need to be allowed to grow in order to stimulate economic recovery. Antonio Tajani, European Commissioner for Enterprise, has himself said “80% of all new jobs in Europe in the past five years have been created by SMEs”. We have identified a number of areas of EU law which discourage business, and SMEs in particular, from expanding, due to additional costs or added complexity:

- Onerous requirements to assess environmental impacts
- Low thresholds for procurement contracts that place burdensome requirements on SMEs
- Rules which restrict smaller companies’ access to capital markets
- Costly new reporting requirements on the oil industry
- Excessive rules on country of origin labelling for food

- Costly official controls on food and animals
- Unnecessary rules on SMEs transporting a small amount of waste
- Unnecessary proposals on access to justice in environmental matters
- Unnecessary proposals on soils.

## **C.1 – Onerous requirements to assess environmental impacts**

Environmental Impact Assessment Directive

“The current proposal for the revision of the EIA Directive will have serious consequences for the UK’s small firms and their ability to contribute to economic growth.” – a trade association

### ***Problem***

The European Commission’s proposed revision of the Environmental Impact Assessment (EIA) Directive would significantly increase burdens on developers. It would also place disproportionate and unacceptable costs on SMEs if adopted in its current form.

### ***Analysis***

The current Directive means developers seeking planning permission for many larger projects must do an EIA. This is a flexible system. It allows European states to set thresholds for screening out projects depending on size, location and impact.

However, the European Commission’s proposed revisions would significantly extend its scope and requirements – effectively making the current screening thresholds redundant. New rules would introduce a pre-screening exercise for all projects, making developers scope exactly what the EIA should cover, and requiring the use of accredited experts.

In practice, this will mean that thousands of small projects – from installing micro-generation power technologies to setting up specialist micro-breweries – would need to be appraised for their impact on the environment, even if it is clear there is no environmental risk.

This would vastly increase the time and cost in securing planning permissions for even the smallest projects. UK business groups say that existing costs of a full EIA can already range from £35,000 for smaller developments such as a new car park, to £250,000 for larger infrastructure projects. SMEs cannot take on this burden.

### ***Recommendation***

Negotiators should ensure that the revision to the Directive places no additional regulatory burdens on SMEs that will increase costs and delays.

## **C.2 – Low thresholds for procurement contracts that place burdensome requirements on SMEs**

Public Procurement Directives

“We were effectively ruled out of tendering for a public sector scheme which we were highly qualified to deliver due to the 30 pages of onerous requirements imposed by the Directives” – a small company

## ***Problem***

Detailed EU rules apply to all public sector procurement where contract values exceed certain thresholds. The thresholds have been in place for over 20 years and have not increased to keep pace with inflation. The rules are onerous, especially for SMEs. This leads to a regulatory ‘cliff edge’ that inhibits SMEs from bidding for work above the threshold.

## ***Analysis***

Provisional agreement has just been reached on revised EU Procurement Directives. The new rules should make public procurement faster, less costly, and more effective for business. The Commission estimates that this could reduce costs to SMEs by up to 60% across the EU. The UK Government has said it intends to implement the new Directives as quickly as possible to realise these benefits.

But the thresholds remain unchanged. The European Commission is not due to review them for another four years. This is far too long. And the EU thresholds will only be changed if there is a comparable review of the World Trade Organisation (WTO) Government Procurement Agreement (GPA) thresholds.

## ***Recommendation***

The European Commission should press for an urgent review of the current WTO GPA thresholds, and propose an increase as soon as possible. In the meantime, the Commission needs to bear down on the regulatory burden of the public procurement process for the smallest businesses – notably by revising the 2008 EU code of best practice on SME access to public procurement.

## **C.3 – Rules which restrict smaller companies’ access to capital markets**

Prospectus Directive and Markets in Financial Instruments Directive

“The cost of publishing a prospectus is disproportionate for smaller equity offerings; private placements are often preferred” – a small company

## ***Problem***

The European rules governing the sale of shares mean that small companies seeking to raise capital through public fundraisings face disproportionate costs. This reduces the options for many such businesses seeking to raise funds to support growth and investment. It also inhibits the development of a large and diverse group of retail investors willing to invest in SMEs and help them grow.

## ***Analysis***

When a business seeks investment through a public offering of shares, EU legislation sets the rules on the information that must be disclosed to potential investors. Those rules need to strike the right balance between protecting investors, and not burdening companies with excessive compliance costs.

For a public equity offer of £5 million, the cost of producing a prospectus in the UK is estimated at between £350,000 and £600,000. For smaller companies seeking to raise funds,



that is a disproportionate cost. Since the current rules – the Prospectus Directive – came into force in 2005, less than 40% of funds raised by businesses on the main UK market have been through public placements. The majority of funds are raised privately, from institutional investors. That reduces the liquidity of the public (retail) investor market, and affects the ability of smaller companies to fund business growth.

The rules were changed in 2011 to increase the number of small placements that are exempted from the rules, including those up to €5 million or 150 investors. But in the US, the equivalent exemption has recently been increased from \$5 million to \$50 million and from 500 to 2000 shareholders. A proportionate disclosure regime also came into force following the 2010 Review of the Prospectus Directive, intended to reduce administrative burdens for SMEs. But, in practice, this has only resulted in limited additional flexibility.

### ***Recommendation***

The European Commission should increase the exemption from the current rules for SMEs, as recently recommended by the European Securities and Markets Authority Stakeholder Group. It should also, as part of the current review of the Markets in Financial Instruments Directive, implement the proposal for the new ‘SME Growth Markets’ category across other Regulations, enabling a more proportionate approach to financial services regulation for SMEs across the board.

## **C.4 – Costly new reporting requirements on the oil industry**

### **Fuel Quality Directive**

“Proposed reporting rules under the Fuel Quality Directive would make the refining industry less competitive” – a large oil company

### ***Problem***

The oil industry is concerned that additional reporting, necessary to calculate greenhouse gas emissions from fuel, could be costly for UK refineries, and require sharing of commercial data.

Any additional administrative burden would affect already tight margins, damaging the sector. Any costs which could be passed through to consumers – both domestic and business – would have an effect on pump prices. And any refinery closures could have an impact on energy security.

### ***Analysis***

Exact estimates of reporting costs required under the Fuel Quality Directive are difficult to make. But the UK petroleum industry estimates these could be in the region of £60 million to £150 million per annum for UK refineries. It is also concerned that the reporting effort for fuels which are exported is likely to be nugatory. And it is not clear how imports will be subjected to an equivalent reporting requirement. This would place European industry at a competitive disadvantage.

### ***Recommendation***

The European Commission is currently developing a revised proposal on reporting requirements for greenhouse gas emissions from fuels. It should ensure that any methodology minimises any additional reporting burden on business.

## **C.5 – Excessive rules on country of origin labelling for food**

Regulation on the provision of food information to consumers

“Country of origin labelling can add to the regulatory burdens and costs on business. More research needs to be carried out to establish consumers’ real needs and expectations” – a trade association

### ***Problem***

Businesses could face significant additional costs if the European Commission adopts stringent criteria for defining country of origin for labelling of fresh and frozen meat.

Extending blanket country of origin labelling to meat used as an ingredient in food would also be extremely impractical and costly for business.

### ***Analysis***

The European Commission is expected to adopt rules on Country of Origin Labelling of fresh and frozen meat in December. These rules could impose significant costs on UK businesses, for instance by including in the definition of origin the country of slaughter as well as the country of rearing. These costs are estimated at roughly £8 million per annum.

Rigid criteria could also prevent business from using voluntary origin indicators, for instance by identifying meat as coming from Scotland or Wales rather than the UK.

Businesses have also said that it would be a significant burden to require them to label the origin of the meat used as an ingredient in food. This would mean wholesale changes to the sourcing and processing practices of businesses. Costs would be significantly higher than for origin labelling of fresh and frozen meat, estimated to be in the tens of millions of pounds.

Business has highlighted that it believes there is no evidence that consumers want information on where the animal was slaughtered. Collecting this would be a completely unnecessary additional cost.

### ***Recommendation***

The European Commission should adopt country of origin labelling rules that are both practical for business and promote growth in the food sector. They should not impose overly strict rules that stop businesses communicating meaningful information in a flexible way, or add unnecessary costs to business.

The European Commission should take a proportionate approach to balance this with meaningful consumer information on Country of Origin Labelling.

## **C.6 – Costly official controls on food and animals**

Regulation on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

“We need assurance of cost-effective and transparent official controls across the EU Member States. It is important to reduce administrative burden as much as possible before imposing further costs on farm and rural business” – a trade association

### ***Problem***

The European Commission’s recent proposal would significantly extend charges, and would require European states to charge businesses for the majority of official controls carried out in agri-food businesses. Under the current proposal, only micro-businesses would be exempted from paying the costs of routine official controls.

This proposal would add costs to businesses along the agri-food chain, from farmers to restaurants.

### ***Analysis***

Industry is concerned about the additional financial burden the charging proposal could impose. Costs are likely to be high – in the tens of millions of pounds per annum.

This change would hit across the food sector. Some sectors, such as primary producers, would have to pay particularly large amounts towards the costs of controls. This would be a major burden, taken alongside the already high cost of regulation to these sectors.

### ***Recommendation***

The proposal to make charging mandatory should not be taken forward. European states should be free to determine whether food businesses should be charged for official controls. This would allow national governments to take a more targeted approach to charges, and consider the wider context – for instance a business’s track record, or the impact of raising costs on a particular sector.

## **C.7 – Unnecessary rules on SMEs transporting a small amount of waste**

Waste Framework Directive

“We are concerned that, given the difficulties UK small businesses have in accessing suitable waste and recycling services, many of our members will face significant cost increases” – a small business organisation

### ***Problem***

EU rules on the disposal of business waste place a significant burden on SMEs. Even low-risk SMEs such as gardeners, that transport only a small amount of their own waste, need to register as waste carriers. The time and administrative cost spent on doing this is disproportionate for SMEs.

### ***Analysis***

The Waste Framework Directive governs the collection, transport, recovery and disposal of waste across Europe, including the UK. All businesses that produce waste will usually pay for its collection and disposal. The cost varies depending on the nature of the waste material and the method of its management. SMEs have said that the effort of registering to regularly transport a small amount of their own low risk waste is disproportionate.

120,000 UK businesses are registered to collect and transport waste professionally and pay a fee every three years. A further estimated 220,000 to 460,000 SMEs in the UK regularly carry their own waste. These businesses will also need to register as waste carriers from 2014. Whilst some small companies transport hazardous waste or arrange for the export of large quantities of waste, most do not. So a risk-based approach should be taken to how controls are applied.

### ***Recommendation***

The European Commission should propose an amendment to the Directive to introduce SME exemptions – for example, by removing the requirement for SMEs to register as waste carriers if they only transport a small amount of their own non-hazardous waste. This could benefit up to 460,000 small businesses in the UK alone.

The European Commission should use its ongoing waste review to identify further opportunities to reduce burdens on SMEs, including through simplifying reporting requirements.

## **C.8 – Unnecessary proposals on access to justice in environmental matters**

Proposed Directive on Access to Justice in Environmental Matters

“There are a number of proposals which the Commission will propose to withdraw...including access to justice in the environmental field” –The European Commission’s REFIT Communication: 2 October 2013

### ***Problem***

The European Commission’s proposal for a Directive on access to justice in environmental matters is unnecessary – the EU is already signed up to an international convention that guarantees access to justice. The draft Directive’s ‘one-size-fits-all’ approach would impose a disproportionate, inflexible set of rules. It would waste businesses’ time and money.

### ***Analysis***

In 2003 the European Commission proposed a Directive on access to justice in environmental matters. This was rightly blocked by European states. It would mean huge uncertainty for the development of major infrastructure projects. And it would force businesses to comply with an overly rigid set of rules.

The Directive has never been formally withdrawn. The European Commission has, in its ‘REFIT’ Communication earlier this month, indicated its intention to withdraw the current proposal whilst it considers alternative measures in this area.

But all EU Member States and the EU itself are already party to the Aarhus Convention. This guarantees access to justice in environmental matters. Any new Directive would place unacceptable costs on businesses trying to expand. Any business which interacts with environmental law could be affected – from a large developer to an SME setting up in a technology park or opening a new warehouse.

### ***Recommendation***

All proposals for further legislation in this area are unnecessary. The Commission should now withdraw this proposal, in line with its commitment in its REFIT Communication.

## **C.9 – Unnecessary proposals on soils**

Soil Framework Directive

“The Commission will therefore examine carefully whether the objective of the proposal...is best served by maintaining the proposal or by withdrawing it” – The European Commission’s REFIT Communication: 2 October 2013

### ***Problem***

The European Commission’s proposal on soil protection would impose unnecessary regulatory burdens on farmers and other land managers. The proposal takes a prescriptive approach to land management and tackling soil degradation. Many of its provisions duplicate requirements under the Common Agricultural Policy. Farmers would therefore be faced with additional administrative burden without any additional benefits for the protection of soil.

And in the contaminated land sector, the Directive could cause widespread and unnecessary ‘blight’ of low-risk sites. The requirement for ‘Soil Status Reports’, on the sale and purchase of land and property, will stifle growth in the housing and development sector.

### ***Analysis***

Most farmers and many landowners are small businesses. This proposal will therefore hit those businesses with the least resource to spend on complying with new, unnecessary administrative burdens. Margins in the agricultural sector can already be small, so extra costs could threaten the survival of some small farming operations. Additional costs to an individual farmer could be as much as £4000 per annum.

The proposal could also stifle the redevelopment and regeneration of many thousands of hectares of former industrial (brownfield) sites. This would hamper the potential for growth in the development sector.

### ***Recommendation***

The European Commission should withdraw this proposal, which would impose additional costs on European business and threatens growth and jobs.

## 4.4 D. Barriers to Trading Across Borders

### Overview

A recent European Commission study showed that only 27% of UK businesses sell across borders. And a Eurostat report highlighted that between 2010 and 2012, there has been only a 2% increase in the number of consumers making cross-border purchases of goods or services over the internet in the EU. This clearly demonstrates that the single market is not yet complete. The EU must take urgent action to address these issues if we are to stimulate growth.

Completing the digital single market could increase EU GDP by 4% by 2020. Urgent and immediate action must be taken to complete the single market for e-commerce. Unnecessary establishment requirements and restrictions in individual European states should be removed; disparate reporting, accounting and administration requirements for VAT should be addressed; and remaining areas of complexity – such as those on labelling requirements and parcel delivery – should be removed.

In addition, more should be done to make it possible for businesses to trade with non-EU countries. In ongoing trade negotiations, the EU's top priority must be the removal of barriers which block our firms from accessing lucrative international markets.

We have identified a number of areas where action is needed to remove barriers which make it harder for businesses to trade:

- The lack of a fully functioning digital single market in the EU
- High card fees that stop SMEs trading across frontiers
- Restrictive barriers to international trade
- Complex VAT returns and delayed refunds
- Onerous proposals on country of origin labelling for consumer goods.

### D.1 – The lack of a fully functioning digital single market in the EU

“Completing the digital single market could increase EU GDP by 4% by 2020” – the European Policy Centre

#### **Issue**

A fully functioning single market for e-commerce is far from a reality. A range of barriers continue to inhibit the development of cross-border e-commerce, to the detriment of both businesses, large and small, and consumers.

Issues such as data protection, VAT, and payment services and interchange fees are dealt with elsewhere in this report. But, in addition, there are many barriers to cross-border e-commerce, including complex and varying rules on labelling, sales promotion and web content. And arrangements for parcel delivery and returns across borders do not work effectively.

#### **Analysis**

According to Eurostat, the total market value of e-commerce in Europe was around €175 billion in 2010, making it one of the fastest growing markets in Europe. However, recent Commission studies show that most online consumers in Europe prefer to buy from domestic retailers – only 10% of UK consumers buy online from other EU countries.

There are unnecessary regulatory and legal barriers to establishing an online operation in individual EU states, which are particularly difficult for SMEs to navigate. Labelling requirements for online selling vary – both in terms of language and information required. Different sales promotion laws mean that a legal offer in one Member State may be prohibited in another. Rules determining the information a company must put on its website are implemented inconsistently. And more consumer- and business-friendly systems for cross-border parcel delivery and returns are needed.

### ***Recommendation***

The European Commission should take action to:

- Remove unnecessary national requirements on establishment and other legal restrictions to providing cross-border e-commerce
- Review and simplify the labelling requirements and sales promotion regulations
- Address the inconsistent application of the rules on web content
- Improve international standards for cross-border parcel delivery, to create a reliable and affordable system within the EU.

## **D.2 – High card fees that stop SMEs trading across frontiers**

Proposals on Multilateral Interchange Fees and Payment Services Directive

“Interchange fees are opaque and there’s no competition in that market, but we know that rates can be higher for SMEs, as high as 2%, which puts us at an even greater disadvantage”  
– a small company

### ***Problem***

When a customer uses a credit or debit card, the card company charges the seller a fee. The level of this fee is often hidden until after a transaction goes through, and can vary significantly across the EU. Such fees make it harder to trade across borders and can result in SMEs deciding not to sell in other European states.

### ***Analysis***

Every time someone makes a purchase with a credit or debit card, the seller is charged an ‘interchange’ fee by the card company. The European Commission estimates that the total value of Multilateral Interchange Fees (MIFs) in the EU in 2011 was over €10 billion.

Interchange fees vary considerably across the EU: from 0.3% in France to upwards of 2.0% in Poland. Rates within European states vary too. SMEs often pay higher rates than large companies, as they lack the financial power to negotiate better terms.

Retailers can be unaware of the exact cost of interchange until after they are billed, which significantly increases risk and uncertainty, particularly for SMEs.

Card transactions are increasing with the growth of electronic and mobile commerce. International customers increasingly expect to be able to pay by card. But high interchange fees deter SMEs in particular from selling across borders. Some are deterred from even offering card payments.

Lower fees could save retailers across the EU billions of Euros per year – benefitting SMEs in particular. This would enable more cross-border trade and e-commerce, thanks to harmonised, competitive, and transparent fees.

### ***Recommendation***

The European Commission has published a draft Directive on Payment Services. Alongside this, the Commission proposes a Regulation that would set a maximum cap on interchange fees that would be applied to card payments. It would also impose structural separation of card schemes and payment processors. This would be good news for retailers, exporters and consumers, who deserve a clear, comprehensive framework to cover card, internet and mobile payments. These measures should be agreed as a matter of urgency.

## **D.3 – Restrictive barriers to international trade**

Completing ambitious EU Free Trade Agreements (FTAs), including the Transatlantic Trade and Investment Partnership (TTIP)

“An ambitious and comprehensive transatlantic trade and investment agreement could bring significant economic gains as a whole for the EU: €19 billion a year” – Centre for Economic Policy Research

### ***Problem***

Whilst trade tariffs are lower than ever, bureaucracy and regulation slows down trade. Greater regulatory coherence would boost innovation and competition. Different product standards between the EU and US hinder trade. The European Commission negotiates trade policy on behalf of EU states. It should continue to pursue an ambitious free trade agenda. TTIP is an important opportunity to boost the transatlantic economy by aligning standards with our biggest trading partner.

### ***Analysis***

FTAs make it easier and cheaper for businesses to trade outside the EU. They address the traditional obstacles that inhibit trade such as tariffs and export subsidies. But they also address non-tariff barriers such as labelling or product-testing standards.

Ambitious FTA negotiations, such as the TTIP, can also highlight gaps in the single market. Differing standards across the EU inhibit trade between the EU and third countries. But they also inhibit trade between EU states and impose extra costs on business. Addressing these difficulties clears the way for businesses to grow.



The European Commission is negotiating FTAs with the US, Japan, Canada, and India – amongst others. Concluding all of the FTAs the EU is currently negotiating could generate over £20 billion of benefits for the UK alone.

The largest FTA is the TTIP. Each day, goods and services of almost €2 billion are traded between the EU and the US. If the Commission maintains an ambitious approach to TTIP, the EU's exports of motor vehicles could increase by as much as 42%. EU finance and insurance sector exports could grow by 4% each.

### ***Recommendation***

The Commission must address the regulatory barriers that businesses say inhibit trade, and pursue an ambitious free trade agenda – notably in the TTIP, given the potential value of the deal. Sectors such as automotive, financial services, insurance, chemicals, and processed foods should be priorities for liberalisation.

## **D.4 – Complex VAT returns and delayed refunds**

“There is much confusion between accounting for VAT and reporting for Intrastat – especially if your customer is in one country and he wants the goods sent to another. We spend hours trying to sort this out and prepare reports” – a small company

### ***Problem***

The VAT rules for businesses involved in cross-border trade within the EU can be complex and confusing. Although a high proportion of smaller businesses in the UK are not involved in such trade, those that are, struggle, in particular with the information requirements, including:

- Understanding the difference between, and requirements of, VAT reporting and Intrastat
- Understanding the different VAT returns in different EU Member States, the lack of consistent definitions, and different rules and procedures for submission. Guidance is often patchy and inadequate in many EU Member States.

UK businesses also experience delays in the processing of cross-border VAT refunds in some EU Member States.

### ***Analysis***

SMEs with more than ten employees account for about one third of the value of UK exports – equivalent to well over €100 billion per year. In 2010, over 60% of that total went to EU countries – higher than the proportion for exports by large businesses.

VAT is the most frequently cited area of burdensome regulation mentioned by SMEs who responded to a recent European Commission consultation. The annual cost of completing VAT declarations alone across Europe is estimated to be €40 billion.

UK businesses already benefit from one of the simplest administrative regimes for VAT within the EU. But compliance costs are higher for businesses involved in cross-border trade.

Lack of clarity over VAT rules was the most common problem cited in a recent survey of small exporters in the service sector, mentioned by 36% of respondents.

The process of applying for VAT refunds from other EU Member States was simplified in 2010, enabling all EU businesses to file applications electronically. EU Member States are under an obligation to respond to straightforward applications within set timescales, and in normal circumstances within four months. But this doesn't always happen.

### ***Recommendation***

UK businesses involved in cross-border trade within the EU, particularly SMEs, need far better and more accessible information about the VAT declaration process, including the underlying rules and procedures that apply in other EU Member States. Any proposals from the Commission with the aim of reducing business burdens across the EU – such as the standard VAT return, and better online information – must achieve real savings for UK businesses, and must not impose any additional burdens on them. Such proposals must also ensure they fully respect the principle of subsidiarity and the competences of Member States in relation to tax. The processing of VAT refunds by other EU Member States needs more rigorous monitoring. Where persistent delays occur, the Commission must act to enforce the existing legal limits.

## **D.5 – Onerous proposals on country of origin labelling for consumer goods**

Proposed Product Safety and Market Surveillance Package

“It is difficult to foresee the circumstances in which a country of origin mark would assist either safety or traceability” – a business organisation

### ***Issue***

The European Commission is proposing that non-food consumer goods should be marked with their country of origin. This would place an unnecessary additional obligation on manufacturers and importers. EU labelling requirements are already complicated enough without these additional rules.

### ***Analysis***

The European Commission has made a proposal to simplify and strengthen rules on product safety. This incorporates a requirement to mark all non-food consumer goods with their country of origin.

The proposed labelling requirement does not serve a safety purpose. There is no relationship between a country of origin mark and product safety, so the requirement has no consumer protection benefits. Consumer groups in the UK support this view.

Instead, mandatory country of origin labelling is an extra cost for already hard-pressed retailers and manufacturers. SMEs and micro businesses in particular struggle to understand the EU's complex rules of origin.

### ***Recommendation***

Country of origin labelling should remain voluntary. The proposal to make this mandatory should be dropped.

## **4.5 E. Barriers to Innovation**

### **Overview**

All too often, EU legislation places restrictions on products and technologies without adequate evidence of risk. EU legislation must be evidence-based in order to encourage innovation.

It is vital that the regulation of emerging technologies does not stifle these technologies before they have a chance to deliver benefits. Innovators are risk-takers, but excessively cautious regulation can sink a good idea and the start-up business that came up with it. We must design a regulatory framework which enables them to take calculated risks, rather than setting ourselves the impossible task of eliminating all risks.

European states and the European Commission alike should lead public opinion, by encouraging informed debate and highlighting where media-hyped reports do not accord with the body of scientific opinion. The European Chief Scientific Adviser and the Science and Technology Advisory Committee should have a key and stronger role in this regard.

European industry will relocate to more dynamic markets unless we adopt a much more innovation-friendly approach to regulation.

We have identified a number of areas which need reform to encourage innovation and growth:

- Costly and complex chemicals regulation
- The need for a competitive clinical trials framework
- The need for a quicker, more flexible licensing regime for medicines
- Crop protection rules that make EU farmers less competitive.

### **E.1 – Costly and complex chemicals regulation**

REACH (Regulation on Registration, Evaluation, Authorisation and Restriction on Chemicals)

“We’ve had to employ an additional four people – that’s 2% of our workforce – just to deal with the paperwork associated with REACH and keep us compliant” – a small company

#### ***Problem***

The cost of registering chemicals under REACH is excessive. SMEs across the EU are hit disproportionately hard. REACH is forcing some smaller businesses to consider manufacturing outside Europe or stop manufacturing altogether.

#### ***Analysis***

Current REACH guidance is unwieldy and complex. It forces small companies to buy in expertise to help them comply, which can cost €180 per hour.

In 2018, the threshold for registration will reduce from 100 tonnes to one tonne per annum. Most SMEs will then be covered by the regime. They will have little option but to pay fees, often prohibitively high, to join ‘registration’ consortia to gain access to information on chemicals and register for REACH. Costs can be as high as €100,000. We have been given evidence of small firms being advised by their trade association not to grow so that they remain under the threshold.

Such arrangements can result in small companies having to obtain information from larger competitors – an open invitation to disreputable larger companies to abuse their position to keep smaller competitors out of the market.

We have heard concerns that enforcement and implementation of REACH varies significantly across the EU. This requires business to work with different sets of rules and to incur extra cost.

Businesses are paying for more research than necessary to prepare ‘authorisation dossiers’ required by the European Chemicals Agency (ECHA), due to uncertainty as to what is needed.

### ***Recommendation***

The European Commission and ECHA should make REACH more business-friendly. They should ensure that REACH is implemented in the simplest and most cost-effective way by:

- Issuing clear guidance on fair cost-sharing with SMEs and other experts. The Commission and ECHA should produce draft guidance by December 2013
- Providing simplified guidance. This should focus on those areas which SMEs find most difficult to interpret. The European Commission and ECHA should outline a clear timetable for publication by December 2013
- Listing known authorisation consortia on the ECHA website
- Producing a worked example of what an ‘authorisation dossier’ would look like, so companies have a better idea of what is required
- Ensuring its consistent implementation and enforcement across the EU.

## **E.2 – The need for a competitive clinical trials framework**

### **Proposed Clinical Trials Regulation**

“Different interpretations of the legislation across the Member States, different national laws and a general increase in the number of requirements greatly increased the administrative burden associated with performing clinical research...this steep increase in complexity is considered to have contributed, along with other factors, to the steady decline in numbers of clinical trials performed in the EU since 2004” – a trade association

### ***Problem***

The 2001 Clinical Trials Directive (CTD) was intended to harmonise rules for trials but had the opposite effect. It created new burdens for business and allowed European states to introduce contradictory domestic rules, making the EU a less attractive location for clinical trials.

EU clinical trials regulation needs urgent reform if UK and European pharmaceutical businesses are to remain globally competitive.

### ***Analysis***

Between 2007 and 2011, applications for clinical trials in the EU fell by 25%, and by 22% in the UK. The CTD created a complex regulatory framework for business that significantly impacted the feasibility of conducting EU clinical trials at the best sites in Europe. The CTD increased the costs to business and made getting licensed products to market slower. This was compounded by variations in national rules on clinical trials.

The European Commission itself estimates that the changes it has proposed for the authorisation process could save EU businesses €710 million per year. SMEs are disproportionately disadvantaged by the current regulatory framework, so will benefit most from the proposed reforms.

### ***Recommendation***

The new Regulation proposed by the European Commission in July 2012 to replace the CTD needs to be agreed urgently to provide:

- A single EU portal for all clinical trial applications
- Faster approval and a more proportionate approach for low intervention trials
- A harmonised authorisation dossier.

## **E.3 – The need for a quicker, more flexible licensing regime for medicines**

European Medicines Agency (EMA) licensing, and breakthrough designation

“There is a lack of visibility and recognition of the different licensing flexibilities available at the European level and they are not packaged in a way that makes it easy for applicants to understand the requirements, additional support or benefits for companies. In the US licensing flexibilities are clearly defined and well communicated and the recent introduction of ‘breakthrough designation’ in the US has had a very positive impact on industry” – a trade association

### ***Problem***

Pharmaceutical businesses lack clarity about what EU legal flexibilities exist to allow a product to be licensed more quickly – by analogy with those available to international competitors, notably in the US.

### ***Analysis***

Pharmaceutical businesses need to be agile, in order to respond to future challenges and promote innovation. Uncertainty about the EU legal regime holds them back. In particular, they want greater certainty on the scope to make use of flexibilities such as EU ‘conditional licensing’ – where there is less complete data than normally required to demonstrate the potential to address unmet medical needs.

In the US, ‘breakthrough designation’ – a regulatory support mechanism that offers advice and support to companies early in development – sends a clear signal to investors that a drug might be promising. Although comparable mechanisms exist in the EU, they are not packaged in a way that attracts investor attention. A similar designation in the EU is needed.

The flexibilities which do exist in the EU system are complex and difficult for some businesses, especially SMEs, to navigate. The EMA is shortly to publish guidance on adaptive licensing. It should consider introducing a designation similar to the US ‘breakthrough designation’.

### ***Recommendation***

The EMA should:

- Ensure that there is clear information available on EU legal flexibilities already available in the EU licensing system
- Develop new regulatory support mechanisms or repackage existing ones to send positive signals to investors, as US ‘breakthrough designation’ has done, to encourage faster access to new medicines.

## **E.4 – Crop protection rules that make EU farmers less competitive**

Plant Protection Products Regulation

“The Plant Protection Products Regulation reduces the attractiveness for developing new crop protection technologies within Europe” – a trade association

### ***Problem***

EU regulation denies business access to innovative crop protection products.

This hinders EU businesses in their efforts to improve crop yields and quality. As a result, EU farming businesses are disadvantaged on world markets.

### ***Analysis***

Farming businesses have said that EU rules mean they are denied access to new and innovative crop protection products. Existing products can also be removed from the market when they are reviewed, even though they are often still used in non-EU countries. All of this reduces the competitiveness of EU farmers.

The reason is that EU decision-making is not based solely on risk. This leads to decisions for approval that are based on theoretical concerns rather than sound scientific evidence. The assessment process is complex, with businesses often feeling that the decision made does not fit the evidence.

This also discourages agri-chemicals companies from investing in the EU, undermining the competitiveness of the European industry.

### ***Recommendation***

The European Commission should propose amendments to the Plant Protection Products Regulation to introduce a process for evaluation that is based on scientific risk assessment alone.

The European Commission's guidance also needs updating, so that it does not impose excessive cost in exchange for negligible health or environmental benefits.

## **5. Annex 1: Additional concerns raised by business**

In addition to the specific recommendations we make in this report, we received representations from business about a wide range of other EU measures. All of the measures and areas set out below have the potential to affect the competitiveness of business. These should be subject to further examination, in order to identify the scope for additional reductions of burdens on business.

### **5.1 Law, Proposal or Issue**

Animal Health Directives and proposal  
Aromatic Mineral Oils in Food Packaging – anticipated proposal  
Artificial Optical Radiation Directive  
Audiovisual Media Services Directive (AVMSD)  
Batteries Directive and proposal  
Biocidal Products Regulation  
Biotechnology Directive  
Boatmasters – anticipated proposal  
Capital Requirements Directive and Regulation (CRD IV)  
Chemical Agents Directive  
Common European Sales Law proposal  
Computer Screens Directive  
Cosmetic Products Regulations  
Driver Certificates of Professional Competence Directive  
Driver Licensing Directive (motorised tricycles)  
eCall proposal  
E-Commerce Directive  
Emissions Trading Scheme Regulation  
Energy Efficiency Directive  
Energy Performance of Buildings Directive (Energy Performance Certificates)  
E-Privacy Directive  
Equal Treatment Directive  
Ergonomics  
European Aviation Safety Agency Regulation  
European Tissue and Cells Directive  
Exclusions for Seafaring Workers proposal  
Feed Oils and Fats Regulation  
Food Information Regulation  
Food Safety  
Food Supplements Directive

GM low level presence in food – anticipated proposal  
Habitats Directive  
Hygiene for Food of Animal Origin Regulation (minced meat controls)  
In Vitro Diagnostic Medical Devices proposal  
Institutions for Occupational Retirement Provisions (IORPs) – anticipated proposal  
Intrastat Reporting Directive  
Labelling of Additives in Feed Regulation  
Medical Devices Directive and proposal  
Minced Meat Labelling  
Mobile Workers on Inland Waterways Social Partner Agreement  
Network and Information Security proposal  
Nitrates Directive  
Nutrition and Health Claims Regulation  
Olive Oil Action Plan  
Packaged Retail Investment Products (PRIPS) proposal  
Passenger Ship Safety Directive and anticipated proposal  
Plant Health Directive and proposal  
Plant Reproductive Material Directive and proposal  
Ports Policy proposal  
Prior Informed Consent Notification Regulation  
REACH Regulation (nickel)  
Reporting Formalities for Ships Directive  
Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive  
Road Charging – anticipated proposal  
Roadworthiness Package of three proposals  
Roll-on/Roll-off Passenger Ship Safety – anticipated proposal  
Sale of High Resolution Satellite Data – anticipated proposal  
Simplification of the Re-registration of Vehicles proposal  
Solvency II Directive  
Solvent Emissions Directive  
Telecoms Package proposal  
Temporary and Mobile Construction Sites Directive  
Train Driver Licensing Directive  
Transmissible Spongiform Encephalopathy (TSE) Control Regulation  
Type Approval for Motor Vehicles Directive  
Veterinary Medicines Directive and anticipated proposal

## **6. Acknowledgements**

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# Brussels stakeholder workshop

## General introductory remarks

- Amid a general welcome for the BOC review one stakeholder commented that if the UK wanted a proper single market it needed to support a proper transport market. The UK had everything to gain from this and should be taking a European lead. Establishing such a market in rail was proving difficult; and more needed to be done in aviation in terms of airspace planning.
- Not only was this about how EU legislation affects member states, but also the other way about. There was difficulty with opening up MS markets.

## Rail

- One participant commented that many EU MS would never open up their domestic rail markets without EU action. Everyone wanted to expand their share of the EU rail market but keep their home market at the same time.
- Reciprocity was needed between countries, and the lack of reciprocity had an important negative effect. Complaints from some EU member states that third country markets were closed to them were hypocritical when those same MS did not open their own markets. If EU and third country companies were not allowed into each others' markets then ultimately it is passengers who lose out.
- In relation to freight a stakeholder pointed out that there was no overarching freight policy. Road and rail policies were considered separately and this made for difficulties, for example in container movements.

## Aviation

- When considering the separate roles of EU institutions (Q6), one participant commented that the recent outcome on air passenger rights was not just the ECJ's fault. For example, the UK and other MS hadn't been prepared for the conciliation process with MEPs which had resulted in legislation (EU261) which the ECJ had then had to interpret when cases came before it.

## Shipping and IMO

- When participants were asked about EU competence and international organisations (Q8) the maritime participants expressed strong support for the IMO and felt that the EU over-coordinated member states. Using member states as a bloc vote of 28 handicapped the IMO because it is a technical body not a political body. Using it in a political way had led to sterile politicised debates (the example of greenhouse gas emissions was given).
- The IMO will not admit the EU as a member in its own right. The EU prevents member states from speaking in the IMO against an agreed common position. One stakeholder said that this resulted in the loss of valuable MS expertise. At bloc level there is no room for national experts and the breadth of IMO debate is restricted.
- One participant highlighted that the EU then gold plates what it gets back from IMO. The example given was the EU Sulphur Directive where the Commission's original proposals, based on the IMO standards, were unnecessarily gold-plated and went above and beyond what was needed. It would have been preferable to shape the legislation better at IMO through open discussion and then stick with that.
- The shipping industry generally is in favour of common rules in an international industry but wants these determined at IMO not EU level. It considers it important for EU countries to have their own separate voice at IMO.

### Ports

- Maritime representatives considered that often EU legislation was characterised by the imposition of inappropriate uniformity. The example given was the Commission's desire for a standard training certificate for dock workers. This was impractical and did not take account of different markets. In practice workers were hired differently depending on their role and location. There was a real difference between efficient North European ports, and inefficient South European ports which lay in the restrictive labour practices of EU MS like Spain and Italy.

### Enforcement

- Several stakeholders remarked that instead of addressing the underlying barriers to the single market head on (especially where these were erected by EU MS themselves), the Commission busied itself with peripheral problems. Legislative uniformity would not remove inefficiencies and the Commission needed to consider proper enforcement.

- In some areas the Commission had gone too far (e.g. in legislating for the sake of it) and in other areas not far enough (e.g. in enforcing the single market). The Commission tended to look to regulation as opposed to proper enforcement which could resolve many of the problems stakeholders had identified.
- One participant pointed out that the EU has no common enforcement role and were it to assume one it would mean transferring more competence to it. Another participant observed that often the EU's enforcement effort was knocked back by the Member States themselves in their own interests.

### Strategic overview of EU Regulation

- One participant asked why EU Presidencies were not taking a strategic stance and stopping to reflect and review existing EU legislation. There was too much emphasis on production of regulations as the yardstick for success. The stakeholder asked whether the upcoming EU Elections provided an opportunity for the UK to approach the new Commission to seek to change this.

# Channel Islands Brussels Office

## Legal and constitutional context

The Crown Dependencies (the Isle of Man and the Bailiwicks of Guernsey and Jersey) are largely self-governing, with their own parliaments, tax and legal systems, but the UK retains ultimate responsibility for their international relations and defence.

## Current state of EU competence regarding the Crown Dependencies

The Crown Dependencies are not members of the EU. However some aspects of EU law apply to them, as set out in Protocol 3 to the UK's Treaty of Accession to the European Union, which essentially relates to trade in goods and the EU Customs Union. For other purposes they are treated as third countries, although they are closely integrated into the UK and EU policy and regulatory frameworks and have significant economic and cultural ties to the UK and other Member States.

## Crown Dependencies' interests related to EU action in the area of Transport

The Crown Dependencies are outside the EU for the purposes of transport, since this is a service provision which is not covered by Protocol 3. However virtually all aviation and shipping links from the Crown Dependencies are to UK and other EU destinations. This requires the operator (the airline or ferry company) and the airport or port to comply with relevant EU standards. These transport links are vital for small island economies like the Crown Dependencies.

The EU does not always take adequate account of the fact that the Crown Dependencies are third countries for transport purposes – for example in the development of new functional airspace blocks for air traffic management, or in the application of the aviation emissions trading scheme.

Otherwise transport legislation in the Crown Dependencies is largely based on international standards set by bodies such as the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). These international standards have often been transposed into EU law, and built upon. The differences in requirements between international and EU standards can sometimes cause confusion.

The Crown Dependencies are part of the Common Travel Area (CTA) with the UK and Ireland, which allows for passport-free travel and which predates UK accession to the EU.

# Chartered Institute of Logistics and Transport (CILT)

1. The Chartered Institute of Logistics and Transport in the UK (“CILT(UK)”) is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration. We have no political affiliations and do not support any particular vested interests. Our principal concerns are that transport policies and procedures should be effective and efficient and based, as far as possible, on objective analysis of the issues and practical experience and that good practice should be widely disseminated and adopted. The Institute has specialist forums, a nationwide structure of locally based groups and a Public Policies Committee which considers the broad canvass of transport policy. This submission draws on contributions from all these sources.

## **Question 1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

2. EU transport policy and its implementation has created a range of benefits for the UK which outweigh the negative impacts. Economically, the UK has benefited from freer and more efficient movement of freight and people to and from mainland Europe (see response to Q2-4). Environmentally, the EU’s sustainability objectives (e.g. emissions reduction, waste reduction) are in line with UK aspirations and have helped drive action. Social benefits are generally less clear cut, but have included greater freedom for UK citizens to travel in the EU and improved service and choice in some sectors.

3. At a sectoral level, the UK transport industry has, on balance, benefited from both the overarching common transport policy and specific interventions. For example, there are instances of the EU using its clout as a multi-national organisation to negotiate more favourable agreements with competitors outside the EU than UK organisations would have been able to achieve independently (see response to Q8). Internally, the development of EU standards has generally had a positive overall effect on the UK transport industry (e.g. raising and clarifying PCV drivers’ professional competence and encouraging technological advance). They have also supported exports where EU standards have led developments in other areas of the world (e.g. low emission engine technology and low floor buses). In these cases, standards have strengthened UK manufacturers’ position in markets outside the EU because they have been able to comply with emerging disability and environmental requirements in advance of local manufacturers. In a number of areas (e.g. rail safety standards), UK practice has been adopted by the EU to the benefit of UK industry.

4. However, standard setting demands greater consideration of market impact and capability than has sometimes been shown, particularly in recent years. Over-ambition will lead to targets and objectives being missed and unintended adverse consequences on industry (see response to Q7). In addition, the impact of standards in promoting technical advance is not always as great as it could be, as the EU approach can be overly-prescriptive, suppressing innovation (see response to Q4).

5. At a national legislative level, there is potential for the UK government to make greater use of any scope for interpretation in EU legislation to ensure implementation maximises benefits and/or prevents adverse consequences (see response to Q6). In addition, EU transport legislation itself sometimes fails to take account of the distinct circumstances of member states with peripheral geographic locations, such as the UK, compared with those with several land borders. The UK government has not been able, at times, to secure sufficient emphasis on these issues in developing EU legislation. This has been exacerbated in some cases by the EU's variable record of enforcing legislation in member states which have not complied sufficiently rigorously.

6. In summary, the UK has benefited from the core aims of the common transport policy, particularly freedom of movement and environmental protection. However, there have been some disadvantages from instances of poorly-planned and overly-detailed legislation at EU level, poor implementation at UK level and insufficient emphasis on enforcement.

**Question 2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

7. Overall, the concept of an internal transport market has been implemented. There is extensive freedom of movement for both people and freight which has supported economic growth and enhanced personal mobility. Innovation and efficiency in road and maritime freight transport across the EU has translated into lower-priced and more readily-available goods for consumers, with consequent economic benefits. Business has gained from access to a wider labour market as well as lower freight transport costs.

8. Progress has however been variable between, and indeed within, sectors. In aviation, the liberalisation of the airline industry has been highly effective at one level, driving lower costs and greater choice for consumers, and market growth. With the largest aviation industry in the EU, the UK has been a particular beneficiary. However, the EU has made slow progress in its aspiration for a Single European Sky as member states continue to restrict movement across their airspace, leading to inefficient routing, increased emissions and unnecessarily long journey times.

9. In the rail sector, progress in implementing efficient, well-developed networks of cross-border freight and passenger services remains slow throughout the EU. This has impacted on the cost of rail freight transport in the EU and hence the costs of distribution for UK manufacturers and the costs of imported goods for UK consumers. Cross-border passenger journey options through the Channel Tunnel (and to a large extent throughout Europe) remain limited. In theory, the long distance cross-border rail sector is fully liberalised. In practice, however, the EU has made insufficient progress in taking action against member states to enforce measures to stimulate service development.

**Question 3: To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

10. The successful creation of an internal transport market, despite limitations in some sectors (as described in response to Q2), has contributed significantly to the functioning of the EU internal market as a whole.

11. The EU has made great strides overall in minimising restrictions on the transport of commodities and the movement of people across borders, so reducing the cost of freight transport on UK business, enabling quicker transport of goods, and facilitating more efficient movement of skilled labour.

12. Efficient border controls are a significant element of a successfully functioning internal market (their impact and application in the EU is subject of a complementary competence review being undertaken by HMRC). Freight operators have worked to minimise the impacts of the specific border controls that apply in the UK on the efficiency of their business. However, the fact that the UK lies outside the Schengen Area has deterred a significant number of visitors, who would be required to obtain a separate visa, to the detriment of the UK economy.



**Questions 4: To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

13. Standards remove barriers to free trade and efficient operation within the EU by preventing individual nations from implementing protectionist measures which could impose onerous requirements on operating within their borders. This applies equally to social and environmental standards as to operational standards. However harmonisation is not necessary to achieve this worthwhile objective. Appropriate minimum standards should be enough to prevent protectionism, while lifting constraints on innovation and dynamism in transport industries that harmonisation can impose.

14. Environmental and social standards can also be beneficial where they stimulate or support economic growth and otherwise add value, without placing unjustified regulatory burdens on industry. CILT(UK) endorses the UK government approach of opposing unjustified regulation.

15. While the EU's standards are effective in the high level objective of supporting the internal transport market, there is considerable room to improve the way they are targeted and specified. Their prescriptive nature means they are less effective than they should be in achieving their stated objectives. By specifying technical, operational and commercial solutions to achieve specific goals, the standards restrict innovation and create unintended consequences. Rather than specify technical measures, legislation should set outcomes so that the market can test a range of solutions to find the most effective and efficient means of meeting the EU's objectives.

**Question 5: What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

16. In sectors where it has been fully or substantially implemented, the internal transport market has increased mobility for consumers and provided conditions for business growth. Successful operators have consolidated the economic importance of the transport industry in its own right across the EU. In these circumstances of effective liberalisation and high competition (e.g aviation), there has been mutual advantage for customers and operators, without the need for specific additional pro-

consumer legislation. Active competition authorities provide the necessary protection for UK consumers.

17. Nonetheless, the EU has stepped up its consumer protection activity. The level of intrusion is in most cases unwarranted and can be detrimental to both business and consumers. A notable example is draft legislation requiring ferry operators to pay compensation to passengers if services are delayed. This may result in operators requiring passengers to arrive an hour before departure, creating inconvenience for their customers and customer service challenges for operators. In the case of airlines, operators were even held liable for compensating customers against volcanic ash disruption. While beneficial for consumers in this instance, the regulations placed unjustifiable penalties on business. The EU's position is also highly inconsistent between sectors, with no requirements for international coach or train operators to compensate customers.

19. In industries where liberalisation has been less effective (e.g rail), consumers have been adversely affected by the EU's inability to progress its reforms at the desired pace. Businesses have been at the same time protected from competition and restricted in their growth ambitions. Even in the UK, where rail liberalisation is most advanced, UK government policy is limiting value and choice for consumers by effectively blocking higher levels of on-track competition (as pointed out by ORR) while complying with EU legislation.

19. CILT(UK)'s conclusion is that the EU would provide for consumers most effectively by pursuing a more active liberalisation agenda in sectors which have not been fully liberalised and taking a more proportionate and consistent approach to consumer protection activity. In fully liberalised markets, primary responsibility for that role should lie with the competition authorities.

**Question 6: The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

20. The principles of subsidiarity and proportionality are established in EU process and are essential to ensure appropriate EU legislation. However, several issues exist which prevent them having the intended effect.

21. In many cases, the overarching EU legislation can be overly prescriptive. As a result, it does not support evolving national requirements effectively (e.g obstacles to the most efficient implementation of 'deep' rail alliances). In other instances, there are examples of the EU failing to ensure member states work collaboratively to implement essential steps to further develop the internal transport market (e.g. cross-border rail freight access).

22. These issues reinforce CILT (UK)'s view that:

a. Outcome-based legislation would enable more proportionate approaches to be taken to implementation at a national level

b. The EU needs to place greater emphasis on delivering strategic objectives by:

i. Taking enforcement action to require member states to fully adopt measures essential to completing the internal transport market

ii. Allowing member states greater flexibility in cases where implementation of legislation in their country will make no material contribution to completing the internal transport market.

23. This latter point is particularly relevant to the UK given its geographical position on the periphery of the EU.

24. Within the existing approach, government departments do not always make effective use of any scope for interpretation to ensure legislation is implemented in the most effective/least detrimental manner for industry. There is also a need for UK organisations, both in government and industry, to continue to build links at EU level (e.g through secondments and other forms of engagement) to ensure sufficient recognition of UK circumstances is built into legislation in the first place.

**Question 7: To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

25. 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.

26. In recent years in particular, the adverse impact of some EU legislation on costs and operations has eroded the competitive position of UK companies (and those in

other member states) in some of these markets. New requirements have been placed on industry before sectors and their supply chains are in a position to implement them (e.g. requirements to reduce sulphur content of shipping fuel) and without sufficient consideration of progress in revising international treaties.

27. In these instances, the EU's position must run in parallel to negotiations taking place at United Nations level, for the benefit of EU/UK industry and its own credibility. While the EU may properly exert heavy influence over international issues, it should not attempt to act independently where the global interest needs due consideration. It has had chastening experience of attempting to do so in the case of aviation emissions trading.

28. Consistent with CILT(UK)'s response to Q4, interventions at EU level should be targeted to support the internal market or add value after allowing for the regulatory burden. The UK national interest is perhaps better served by action at Westminster or in the devolved administrations for policy areas where these outcomes are unlikely to be achieved by EU action.

**Question 8: What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

29. In cases where negotiations cover activity which takes place across the EU, there can be considerable benefits to the UK from the EU taking the lead. Examples include the EU's role in negotiating aviation treaties with the US which were formerly agreed on a bilateral basis. This has resulted in far more equitable agreements.

**Question 9: What challenges or opportunities are there for the UK in further EU action on transport?**

30. 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. As such, the greatest opportunity for the UK is in ensuring the EU focuses intently on completing and enforcing the internal transport market, creating further benefits for the UK transport sector, consumers and economy. This should involve:

- a. Greater enforcement activity to complete the implementation of the internal transport market and less peripheral legislative activity
- b. 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 effective market-tested solutions
- c. Continuing to develop research and knowledge exchange programmes to support member states in efficient and effective compliance. In doing so, the EU must ensure that research programmes are carefully defined, targeted and managed. The objective should be to contribute significantly to the future development and implementation of an internal market which provides high-quality, value-for-money transport.

# Convention of Scottish Local Authorities (COSLA)

## Review of the Balance of Competences - Transport

*1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.*

The Convention of Scottish Local Authorities (COSLA) is the representative voice of all Scottish municipalities both nationally and internationally and it has long been advocating that the European Union legislation to fully respect the local competences and autonomy of Councils to organise and provide local services, including transport.

COSLA therefore welcomes the opportunity to contribute to this review, indeed as strong supporters of the principle of subsidiarity we very much welcome that the UK Government undertakes this thorough review on the distribution of powers between the EU, national and local governments.

Indeed COSLA has recently agreed a Vision for Scottish Local government<sup>1</sup> that aims to empower local democracy, foster integration not centralisation, focus on outcomes not inputs and puts local democracy at the heart of improvement and accountability. This vision precisely also notes the lack of constitutional protection for Local government that is further complication if the EU dimension is added.

The below response precisely tries to address these concerns and proposals outlined in the vision and translate them on what it means for future EU Transport policy.

While we could comment other parts of the EU transport policy we will focus our submission on local /urban mobility as it is the area which does more closely affect the areas of competence of Scottish local authorities.

Equally the we feel that the Balance of Competence call for evidence paper makes in our view not sufficiently emphasis on urban mobility which is, of all EU transport dossiers, it is precisely the one that has the greatest potential in the near future to affect the balance of competence between the EU and the national/local levels.

We might soon see an unexpected and unintended expansion of EU competence on local transport an area that hitherto the EU had at most a very indirect and general power and therefore we will discuss this in detail as our main contribution to the BoC review on Transport.

### **Consideration of EU competence on local transport**

COSLA starting point is that wherever local transport frameworks and solutions are already well developed, added value from any forthcoming European transport

proposal would be better achieved by supporting the development of existing structures.

Therefore *COSLA would not support any EU measure that would introduce mandatory local transport rules* (planning, green zones, organisation of transport, etc.);

The reason for that is that we fundamentally disagree with the balance of competence view about the fact that the Title VI of the Lisbon Treaty (TFEU) provides the EU with “wide competence to act in the field of transport” [even if ]” the EU has limited its action to certain circumstances and areas. For example, the EU has so far not exercised its competence to act directly in local transport matters or in relation to cycling policy”

Indeed we believe that this ignores the point that in order to establish a proper balance of competences between the national/local level and the EU all provisions on the EU Treaties must be regarded in its entirety and cross- read. It is simply not possible to merely argue that the EU has powers in one area merely looking at one of the articles (article 91 TFEU establishing general EU powers on transport) when at the same time article 5 of the Treaty of European Union establishes legally enforceable principle of subsidiarity and proportionality which are overriding over any provision featured in the Treaty of the Functioning of the European Union. The more so as both the TEU and TFEU are to be also jointly read with treaty Protocol No. 2 on the application of the Principles of Subsidiarity and Proportionality.

Failing to do that comprehensive reading of the treaty is what has precisely led in the past to the European Commission to “pick and choose” which article it would be used as legal basis to table new legislation and expand EU competences. For instance prior to Lisbon Treaty and the introduction of the uniform ordinary legislative procedure the European Commission the EU tended to use the predecessors Article 114 (internal market) or Article 192 (environmental protection) as it was easier to pass transport-related legislation using that legal basis.

Therefore clearly one of the key recommendations that in our view should come from the Balance of Competence review is that EU transport related legislation must be argued only when it complies with all relevant articles and protocols including the subsidiarity and proportionality.

Secondly, as the call for evidence rightly points out that ‘the EU generally exercises its competence in relation to transport issues when there is a transnational element’. However this is simply a matter of practice whereas any future treaty revision should specifically spell out that “the EU exercises its competence in relation to transport issues only when there is a transnational element’. Indeed the successor of article 91 TFEU should eliminate the provisions the EU can legislate on “any other appropriate provisions” (Article 91.1.d) and replace it with the transnational criteria as referred above.

<http://www.cosla.gov.uk/sites/default/files/private/l130426item09appendix.pdf>

The reasons for so doing is not due to a desire by Local Authorities, not only from Scotland but indeed from any of our counterparts from the EU, to protect their powers and ability of democratically elected councils to autonomously define local policies and services in the face of centralisation and harmonisation (for instance COSLA works very closely with our counterparts in the EU Committee of the Regions and this is always a very common line of argument).

In fact the above concerns run deeper: the EU Treaties have formulated, alongside subsidiarity the also legally enforceable principles of conferral and proportionality (also article 5 TEU). Basically the whole point of having thoroughly negotiated and extensive EU treaties is precisely to define exactly what the EU could do and what should remain at national/local level. The principle of conferral whereby the EU *“shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States”*.

This overriding provision of the EU Treaties (that is why is put in article 5 TFEU) exists to precisely fight any moves of expansion of EU competences beyond what Member States (national parliaments and often the population at large through referendum) have explicitly agreed to confer upon the EU. While it is true that there are treaty provisions that enable the EU to enter into new areas of legislation by primary (Regulations, Directives) or secondary (implementing acts) it would be a misrepresentation of the EU treaties themselves if these provisions were used for issues that were not due to emergencies or developments (such as technological change) that were not foreseen/known at the time of the drafting of the treaties. Clearly urban mobility is not one of them. If the drafters of the Treaty wanted local transport and urban mobility part of EU competence it would have explicitly said so in the treaties; the treaties are very long precisely to include all this level of detail. As it is not, we can only conclude that local transport and urban mobility are not EU power.

Finally this discussion about whether the EU has overriding powers on transport reminds very powerfully the discussion in Constitutional Law between the originalist (the constitution must be read literally) and activist (the text can be interpreted flexibly according to the new times) schools of thought. And therefore some people would say that mirroring the activist school in Constitutional law same principle could be applied to the EU treaties. However this would be ignore the fundamental difference between a national constitution and the EU Treaties which do remain international law treaties, indeed the developments over the last decade consistently proof that the EU Treaties are not akin to a Constitution; therefore it is the principles of International Treaty Law rather than those of Constitutional Law that should be applied.

## **Detailed considerations on competence**



Having established above that in our view the EU has not powers on local transport matters we do of course recognise that the EU has related areas of competence that do have an indirect effect on local transport

Indeed Article 114 TFEU on Internal Market does have an impact in local transport as it regulates common rules (vehicle standards, Intelligent Transport Systems or ITS, for instance) that are uniform across the EU so that companies, including the UK can produce and sell such systems across the EU thus avoiding protectionism on the basis of technical standards and requirements. COSLA line has always been supportive of this provided internal marked rules are not used to impose a particular standard (such as in ITS) but to allow that different technologies can be exploited to achieve common EU standards be that of quality, endurance or environmental.

Equally we also recognise that article 192 TFEU which defines the very large powers on EU Environmental protection do have a local impact including local transport rules: clearly air quality and noise are typical examples of EU wide standards that have a very local translation and indeed frame to a very significant extent the limits upon which local authorities can autonomously define local transport policies. However in both areas there is scope for a better balance of competences. Following the above section on the need for EU action to have a clear transnational effect the forthcoming revision of the EU Air Quality and Noise Directive offer a great opportunity to provide a more targeted approach of EU legislation that respects better conferral and subsidiarity: clearly there are parts of current EU Air Quality and Noise that have a transnational effect.

### **Cost issues**

The Commission preparatory studies and indeed previous official statements place great emphasis on the societal benefit (environmental benefit of internalising environmental externalities, more efficient transport system, and reduction of traffic/transport costs) of EU rules such as in Urban Mobility. There is little doubt that rationalisation of transport does provide such benefits. Urban planning exists for that very purpose.

However what the Commission and indeed their commissioned studies always fail to provide is a detailed estimate of the compliance costs for Local Authorities (be to adapt to the new EU standards or the cost of building them from scratch, particularly to meet a given timescale, say 2020). The EU proposals have typically a very weak set of economic, territorial and subsidiarity impact assessments in spite of the EU Treaties requiring them to have so.

*2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?*

As expressed in the above question (and the next) one there have been great advantages to the existence of transnational rules on transport both for users, operators and industry. Clearly the existence of EU standards requires compliance

and implementation costs. While this question is more appropriate for industry and users clearly an issue when considering cost is the often limited cost assessment of new EU transport policies when it comes to properly measuring local impacts. Very often the impact assessments that are carried out are either too complex or too limited with perhaps too self-selecting approach to the evidence required. Therefore it would be useful for better policy making that more robust, evidence based and straightforward impact assessment at subnational level of draft EU transport legislation is developed. COSLA as the national association of Scottish Councils has indeed contributed to this effort with the Commission whenever possible however there is great scope of maximising the evidence gathering opportunities that COSLA and our sister organisations across the EU can provide. Finally it must be said that this does not only regard the EU but also the MS own impact assessments towards formulating the MS negotiating stance or the implementation of policies. As regards to the UK, the Part 2 Policy of the Localism Act 2011 is a welcome first step but it is still a long way to go to have the sophisticated local impact assessment systems that exist in some Member States.

*3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?*

As explained above the EU has a role to play in defining EU minimum standards that enable the movement of goods, vehicles and passengers across the EU Internal Market as well as avoiding undue national barriers for the sole purpose of shielding businesses from EU wide competition. As mentioned in the above question the problem arise when the EU powers on Internal Market (Article 114 TFEU) is used on issues that do not just refer to the free movement of goods, passengers and vehicles but is also used to enable the EU to legislate in other subject areas. The previous sets a number of limits on when this is admissible from the point of view of subsidiarity and when this is not.

**Mutual recognition** of certificates, insurance permits etc. is something that benefit the Internal Market without imposing an individual model (just establishing terms of equivalence) does not affect subsidiarity)

**Safety Standards:** clearly common and minimum transport rules do benefit the internal market let alone the safety passenger themselves so in terms of subsidiarity the devil would always be in how detailed these rules would be. What would be open to question that the EU has explicit powers on issues such as road fatalities. Clearly as the BoC call for evidence highlights there are areas of EU policies that can have an indirect effect on traffic accidents but clearly, as the Commission has recognised to date, this is an complex area with numerous local and national (even cultural) factors that explain the enormous differences in fatality rates per Member State and indeed within each MS. Thus EU legislation on that area would not only be against the principle of conferral but also on subsidiarity as often fight against accidents requires very local policies. Indeed it could be even said that if there were detailed

EU legislation on this area this could have hampered the existing UK policies that make the UK the best performer in terms of road fatalities per inhabitant in the EU.

Industrial standards: clearly making interoperable systems is something that can benefit the EU Internal Market (for instance of ITS) provide that the choice of a particular scheme is not made at EU level it could be supported. However there are alternative ways than EU legislation as argued in the next question.

*4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?*

As regards to **Air Quality** the existence of pollutants in the atmosphere is without a doubt a part of Environmental policy that has a transnational effect and thus may need to be regulated at EU level. However it would be open to question why the measurement at a very local level of air quality standards (which often results in EU penalties in local authorities that register readings above the agreed ceilings) should be defined by EU legislation. Very often the quality of the local readings is very patchy across Member States thus penalising the more thorough LAs such as those of the UK and others. At the same time there are a number of factors at play upon local air quality readings that are well beyond the control or indeed the competence of local authorities. This is why it would be much more advisable from the point of view of subsidiarity and proportionality that EU air quality legislation addressed EU-wide impacts and national contribution to them, leaving for each Member States/Devolved Administrations to define how local authorities (and hopefully in partnership with them) could contribute to improve air quality.

As regards to **noise**, the same much more targeted approach would make more sense: clearly there are issues such as noise engine standards that make sense from a point of view of EU Internal Market powers (as well as Environmental Protection) that would be better regulated at EU level and indeed there are no major subsidiarity issues involved. However as regards to noise maps these are very local impacts that, other than in transnational urban areas, it results very hard to imagine why the EU should legally define local noise boundaries at EU level. Clearly from the point of view of subsidiarity and proportionality this should be left to the competent authorities (national or local as appropriate depending on which MS) to define.

There are other parts of transport policy in which there is a clear transnational effect that in most cases should not raise issues as regards to subsidiarity

**Social Legislation** for transnational transport workers and passengers: clearly this is an area that minimum EU rules to ensure that transport workers operating beyond their own country may be better protected and thus ensure a common level playing field across the EU internal market. The devil would of course be in the detail on how detail this should be but in principle minimum standards for those transnational

workers (but clearly only for those transport workers that do cross borders as an essential part of their work) does not raise issues as regards to subsidiarity.

*5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?*

*6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?*

In question 1 we discussed in great detail the extent of which EU powers on transport are compliant with the principles of subsidiarity, proportionality and conferral.

Responding to the question of alternative approaches it would be particularly useful to consider the options open to the Commission for an eventual expansion of EU competence on Urban Mobility as it is the one area in which there is the biggest risk of EU action beyond the existing EU transport policy remit.

### **Sustainable Urban Mobility Plans:**

The commission has long been considering, and indeed it is likely to propose in the forthcoming EU urban Mobility Package, a framework directive that would introduce a mandatory SUMP framework with minimum or comprehensive requirements of content and scope that would be compulsory upon local authorities upon a certain population threshold (100,000 inhabitants, for instance or at least those cities that are urban nodes of the Trans European Network for Transport).

As discussed in Question 1, we see that legally the EU has no power whatsoever in this area. Using their powers of Internal Market rather than Transport would be not just against subsidiarity principle but that of conferral, and indeed an abuse of EU power.

However this does not mean that the EU cannot act on this area. The EU as an international organisation is very well placed to propose common benchmarks and guidelines that can be eventually incorporated into national legislation. Indeed new EU Guidelines: *'Developing and Implementing a Sustainable Urban Mobility Plan'* for Local Authorities will be tabled in August 2013 ([www.mobilityplans.eu](http://www.mobilityplans.eu)) and there are indeed dozen other schemes (CIVITAS, STEER, PolySUMP, ELTIS, etc.) that have been developed at EU level that do not infringe subsidiarity and conferral.

**Ex-ante conditionalities:** the EU as it does not have significant powers nor resources upon road infrastructure is keen to introduce ex ante conditionalities such as the existence of a SUMP that Member States might have to comply if they wanted to access Trans European Network Transport and indeed EU Structural Funds for Investment. Clearly we find such conditions as counterproductive however from the point of view of multi-level governance there is clearly a transactional relation between the EU and the Member State (funds in exchange of EU rules). The

problem that might arise is that such commitments are made between the Member State and the EU without due regard that this often affects local or regional powers, so it would be not just a matter of subsidiarity between the EU and the MS but one of subsidiarity within the Member State itself.

### **Access Restriction Schemes (ARS)**

The Commission regards ARS as 'a *policy measure implemented to regulate road vehicle access to an urban area*' (COWI, ECOTEC study). ARS is thus a broad category that includes: Absolute access restrictions (pedestrian zones, historical centres), **Low Emission Zones** (LEZs, appointed areas available only to certain vehicles such as low emission ones), **Charging/Toll measures** (such as congestion charging) **or parking measures** (traffic management and revenue generating schemes)

The view of the Commission is that hundreds of individual local authorities apply a great variety of ARS schemes, with different objectives, rules, permits, regulations, time windows, target groups, technologies and pricing schemes. This number is expected to grow considerably in the next 10 years, according to DG MOVE.

The Commission has often expressed concerns about the lack of harmonised system of regional/national/European guidance for cities. This might result in their view to cost to users but in particular to cost of the transport industry having to comply with different requirement at national level, as most journeys take place within national borders.

The diversity of types of schemes (access restrictions, low emission zones, congestion charging, traffic reduction, revenue raising, comprehensive/selective targeting of vehicles, etc.) is seen at an EU aggregated level as a problem however COSLA believes that this diversity is the reflection of very specific needs.

### **Alternative approaches to EU harmonisation ARS**

There are ways of better addressing the concerns of the EU in this area that better respect subsidiarity. ARS is a complex set of schemes hence it would require different levels of EU engagement as suggested below.

### **ARS as part of Environmental norms:**

The Commission does have robust powers on Environmental policy, specifically in air quality and noise which is specifically locally concentrated problems. However, even if it would be difficult to argue about that from the point of view of the EU powers on environmental protection as expressed in question from the point of view of EU transport powers and subsidiarity an alternative approach as expressed in Question 3 could be than rather than centrally imposing zonification at local level that implementation of EU wide legislation to fight transnational impacts of Air Quality at noise to be left at national level to decide (hopefully once again in partnership with

Local Authorities) given that very often the solution will require local and national governments working against predefined shared outcomes.

### **Low Emission Zones:**

part of the above point, the EU could certainly be keen to propose criteria for the establishment of LEZ as part of Air Quality and Noise, the same way that Air Quality already foresees criteria for zoning air quality areas. However any detailed provision on how a low level of emission outcome is to be achieved could infringe subsidiarity and be contested that way. A useful benchmark to assess that is to look for any LEZ criteria that is more detailed than the zoning provisions for the Air Quality Directive.

Detailed EU rules, even in the shape of a legally binding framework of compulsory use whenever a Council wishes to introduce a local scheme, would in practice leave the definition of rules and its updating to the Commission, officials, national experts and industry leaving in practice to set local rules according to local conditions.

Against the claim of hundreds of different local schemes being a barrier for the internal market rather than going the full haul to the European level it should be possible to attempt first the national legislative route, thus reducing significantly the number of different regimes in place.

Still this is a far from perfect route either as in the Scottish/UK context a national legislation on LEZ could raise the same subsidiarity and proportionality concerns that EU level LEZ legislation would bring about. As the level of constitutional protection of Scottish Council powers is significantly less than our peers from other countries it is clear that the SG can harmonise LEZ standards overruling existing local powers on transport as defined in domestic legislation.

COSLA has recently agreed a new Vision for Local Government that runs contrary to this and hence would be opposing unilateral changes to the current local government powers on LEZ as conferred to Councils by primary and secondary legislation.

### **ARS as Technological Standards:**

Again this is something that the European Union has clear powers due to the Commission role as watchdog of the EU Internal Market. Indeed there are several pieces of EU legislation on Intelligent Transport Systems. However the bottom line is that any such standard should be the outcome and it should not force Councils for a specific technology or device to achieve that standard.

### **ARS as parking, congestion:**

Clearly the Commission and indeed the EU has no power whatsoever on this area and any proposal on that area is head on against subsidiarity principle: these are local powers. Indeed the ill-fated proposals for cross-border traffic penalties might have been a double edged sword, as while some Councils with a great level of foreign registered drivers might benefit had this Directive been approved it would have signified an area of expansion of EU powers to local transport. Experience

shows that having established the general principle of competence it would only expand through secondary legislation or implementing provisions. This is why on balance it is better that there was not final agreement on this piece of legislation. However once again this does not mean that there should not be EU action on this field. Member States law enforcement agencies could develop systems exclusively for the purpose exchange information on traffic offences (the same way that exists for a range of areas such as the Schengen Information System or the Services Directive IMI system) without legislating about the subject matter itself i.e. traffic offences.

### **ARS Information provision and interoperability of transport information systems:**

As with the Technological standards provided are technology/device neutral this is something that could be supported. However there is a clear question whether legislating on this is need at all. The example of well-known internet web mapping tools and their route planning device clearly shows that it is not necessary to have a predefined legal standard interoperability. These free web-based applications area able to put into one single application hundreds of non-compatible transport information/travel planning (including [www.travelinescotland.com](http://www.travelinescotland.com)) sources across the world. Hence the focus should perhaps not be in defining EU standards or transport policy, but of EU Competition policy i.e. to prevent that a single web service/ company in the future has a dominant position in the transport information sector.

Exchange of information tools is good for both industry and citizens. For instance setting up a web-based Internal Market Information system for green zones/access restriction/congestion charging building on the existing EU-supported [www.lowemmissionzones.eu](http://www.lowemmissionzones.eu) would go a long way to address industry concerns without forcing common standards.

### **ARS harmonisation evaluation methodologies:**

Provided it is not legally binding this could be supported. The annex below shows however that this is being done at the moment so the need of further (new) action on this is open to question.

*7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?*

Some of the alternative policies outlined in Questions 3 and 6 not only would benefit from international action beyond the EU but that they would be essential that global standards are developed: industrial standards on vehicle emissions, transport interoperability, air quality, mutual recognition of certificates, etc. Clearly the EU can exercise a greater leverage as still the largest trading block in the world to negotiate standards that can bring environmental or quality outcomes up at a global scale.

*8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?*

*9. What challenges or opportunities are there for the UK in further EU action on transport?*

As expressed throughout this submission we see the role of the EU in transport more in consolidation, incremental improvement of the remit and ensuring integrated outcomes across several EU policy goals rather than of expansion of EU powers. Very often the litmus test in transport policy would be the respect of the subsidiarity and proportionality principles



# Tony Depledge

## Review of the Balance of Competences between the UK and EU – Transport

This submission in response to the DfT consultation on the Balance of Competences in the field of transport is made by Anthony Depledge who writes in a personal capacity.

### Background

Until my retirement in May 2013 I was employed by Arriva plc as Director - Transport Policy where I was responsible for work with the UK government and, more recently, with the European Union Institutions. From May 2009 until May 2013 I was President of the European Union committee of the international trade association UITP, acting on behalf of operators, national associations, public authorities in the association's work with the EU institutions on transport policy and legislative actions impacting on the road and rail passenger transport sectors. I have also been President and have served as a member of the Board of EPTO, the European Passenger Transport Operators' association which represents operators who are active in bidding for road and rail passenger transport contracts across the European Union: Arriva, FirstGroup, Stagecoach, National Express, Go-Ahead Group, Grupo Barraqueiro and Transdev. In 2000/1 I was President of the Confederation of Passenger Transport, the principal trade association for the bus, coach and light rail industries in the UK.

I will be pleased to expand on or clarify any of the points raised in this note.

### Key themes

As outlined in the call for evidence, the European Union has a substantial impact on public transport in each member state. This response relates solely to public transport in the urban, suburban and regional sectors.

Passenger transport - particularly road-based modes such as buses and light rail - are essentially a local business; decisions made at the level of local (or, to an extent, regional) bodies have a direct impact on service quality, notably in relation to the provision of proper levels of priority for bus and tram users in the design and management of highway networks. This has a significant impact on the economic performance of services (in relation both to passenger revenue and, crucially, the efficient operation of services). The extent to which action at a local level can be

promoted or encouraged by national governments is limited by their willingness to direct action at a local level; the extent to which the European Union institutions can have an impact on these crucial local decisions is weak and the case for strengthening this influence is weaker. EU principles of subsidiarity are unlikely offer greater power for the EU institutions, since this would be unpopular with most (if not all) Member States.

The European Institutions should consult closely with Member State governments before new legislative proposals are brought forward, so that the implications across the Union's very different legislative, administrative, technical and cultural landscapes can be assessed at the earliest possible stage. The test of subsidiarity should also include an assessment of whether action at an EU level is in line with the policy objectives of member state governments and whether the impact on passengers, operators and public expenditure is proportionate to the outcomes proposed. In particular, the limited scope for action on transport at a European level should not encourage the EU institutions to concentrate on what can be done at the expense of what needs to be done.

The European Commission is required to make a regulatory impact assessment as part of the legislative process; such assessments should be updated and revised as proposals are developed and amended during the legislative process so as to ensure that the impacts are understood and are proportionate.

This response to the Call for Evidence is arranged in line with the questions set out in the paper.

#### Advantages and Disadvantages of EU action in the field of transport

The limited ability that the EU institutions have to influence change at a local level can lead to a situation where, in wanting to take action and to be seen to do so, the European Commission and the European Parliament may find themselves concentrating on areas where they can take action, rather on those areas where action is necessary or desirable. An example is EU rules on passenger rights in the bus and coach sector: although the initial proposal (and the Regulatory Impact Assessment based on it) considered initially the needs of passengers on international services, the plans were amended by the Commission at a comparatively late stage before publication to include all bus and coach services across the EU, with very little justification. Although the final proposal limited the impact (for some aspects) to services of over 250km, the debate wasted a great deal of legislative time and energy in looking at areas where Member State governments have a clear responsibility for their citizens (or, where services are based on contracts let by the public sector, those public authorities themselves can deal with

the impact of service delays, etc.). The Regulatory Impact Assessment was not amended either on publication of the wider proposal nor as the debate evolved in the EU institutions.

On the other hand, the establishment at a European level of a standard framework for the relationship between operators and public authorities was welcomed by operators. Regulation 1370/2007 sets out the basic principles under which contracts (both contracts in the strict sense and concessions for the operation of services) are developed in a way that encourages greater transparency in the bidding, awarding and financial assessment processes. While those operators who see the growth of a liberalised passenger transport market as a powerful instrument to secure better value for money for public authorities would have preferred to see a regulatory regime that reduced the option for the so-called "direct award" process, they recognise that direct award is a politically-sensitive issue. Further, there are clearly situations where direct award is an appropriate mechanism. For this reason, allowing Member States a measure of flexibility in this issue is important.

A significant number of the operators who are active in the public transport market across the EU are UK-based companies; on this basis, EU action to encourage a more liberalised market has benefitted UK-businesses.

2. An internal market for transport; has this contributed to economic growth in the UK; costs and benefits

As is well-documented, the commercialisation of bus passenger transport in Great Britain (outside London) and the contract regime in London itself both led to reductions in overall public expenditure. The EU institutions have recognised the link between the increased involvement of the private sector along with competition (and the threat of competition) in increasing rail passenger numbers in, for example, Great Britain and Sweden. While this is not the sole reason for an increase in passenger numbers - given that overall economic activity, investment in service quality and, for example, new trains will also be important - it is clear that the United Kingdom's commitment to a more commercial approach to services - where a focus on the passenger becomes an essential feature, both in the public and private sectors - has had a significant impact on policy development across the EU.

In the field of local road and rail passenger transport, action by the EU has helped to provide opportunities for UK-based companies to develop businesses elsewhere in the European Union; similarly, UK-based public authorities have been able to secure

bids from non-UK companies, thus increasing the competitive pressure on prices in the UK. Work by UK companies outside the UK and non-UK companies in the UK has increased the exchange of knowledge and best practice in the transport field to the benefit of all those involved in the sector; this "best practice" includes also what one might characterise as "worst practice", that is to say, avoiding mistakes made elsewhere, given that, with its local focus, there is a risk of parochial thinking about public transport by decision-makers in public authorities who may not have had the opportunity to consider the outcomes from similar actions elsewhere or may not be aware of more innovative solutions to the problems they may believe are peculiar to their own area.

On the other hand, there are aspects of the single market that do not function as well as planned, notably the opportunity for operators who have the benefit of direct award in their home market being able to compete against operators elsewhere in the EU, despite the sanctions against this being set out in the so-called "reciprocity" clauses in Regulation 1370. It is not clear which body holds the competence to deal with problems of this nature: is it the public authority that makes the direct award; the body that gives a contract to such an operator in another location or the Member State authorities either in the country where the operator is based or where the contract is awarded? In this case, the objectives of the Regulation do not appear to be robustly enforced. It is likely that the forthcoming Guidelines on Regulation 1370, proposed by the European Commission, will set out a view on the implementation of the reciprocity rules; whether there are sanctions that will enforce the rules remains to be seen. Similarly, operators from outside the European Union are not subject to such rules, which runs the risk of EU-based companies being under-bid by operators from other countries to the detriment of EU-based businesses.

### 3. The functioning of the EU internal transport market being necessary for the effective functioning of the EU internal market as a whole

While it is not clear that there is a direct link between the EU internal market and the internal transport market, there is a clear philosophical link between the two concepts such that the transport market, in so far as it mirrors the functions of the EU market as a whole, is part of that internal market. Dismantling part of the internal market would risk similar arguments being raised in other market segments.

On the other hand, the specific characteristics of the transport market, particularly the need to ensure the provision of efficient, effective and economic local public transport services mean that there cannot be an automatic assumption that the rules in the transport sector can be replaced with general State Aid rules, for example; the

Treaty on the Better Functioning of the European Union makes specific provision for the separate treatment of the transport sector for this reason. Operators, public authorities and trade associations were dismayed by the proposal of the European Commission at the end of 2012 to replace the specific transport rules on State Aid in Regulation 1370, so that they would in future be dealt with by the Commission on an administrative basis; in view of the long and complex debate over Regulation 1370 as it passed through the legislative process, it was the view of operators and others that this matter should remain one in which the three parts of the EU institutions should retain an interest; at the present time, the Commission's proposals seem not to be proceeding.

4. The harmonisation of social and environmental standards as a necessary element of the proper functioning of the internal market as opposed to such standards being desirable in their own right.

Given the local nature of the majority of public transport across the European Union, there is little justification for the development of a full package of harmonisation of many standards in this area. While there are benefits from standardisation in some aspects of procurement, the different starting point for many technical issues makes standardisation either impossible or very long-term. Any work on standardisation must assess whether there is a need to remove anomalies simply because they are anomalies where, for example, the technical standards for a detached part of a railway network should not be required to conform to irrelevant technical standards developed for long-distance, international services running at high speed. There should be a clear understanding of the objectives, costs and benefits from standardisation and harmonisation. The burden on smaller operators of taking an active part in standardisation debates should not be underestimated: most smaller operators – who may be the most adversely impacted by irrelevant harmonisation – do not have the resources to take a full and active part in work of this sort; the result is that the EU institutions may not fully recognise the impact of their work.

In addition, the question raises several separate, though inter-related issues:

Social questions: there is no justification for applying specific legislation at a European level in relation to social conditions of employment for employees beyond the existing provisions for working time (including working time on longer-distance services) and the transfer of undertakings. Specifically, any proposals to set working time patterns for local bus or rail services (currently subject to Member State decisions) should be strongly resisted as being incompatible with subsidiarity principles. Similarly, the provisions on the transfer of undertakings that apply across the EU remain valid for the transport sector and do not require additional legislative action at a European level.

Some member states believe that greater liberalisation leads to the concept of “social dumping”, for which there is no evidence or justification. If the employment costs for passenger transport move below market rates, operators will be unable to recruit; if they move above market rates, passengers or public authorities will pay too much for services. Legislative action at a European level to protect such rates is both unnecessary and undesirable.

Safety standards: some general safety standards apply across the EU and there should be a presumption that vehicles authorised in one member state are authorised for use in all others. This is particularly important for the development of the rail market where there remain problems with the authorisation processes for rail vehicles.

Environmental standards such as exhaust emissions: there are advantages in having a clearly-understood set of exhaust emission rules across the EU so as to promote cross-border services and the development of a larger market for manufacturers. One problem here is that diesel engines are largely developed for the heavy goods vehicle market (which, in terms of numbers of units sold, is much bigger than the bus market) so that engines are developed for lorry duty cycles rather than the more stop-start nature of bus work. While recent developments in hybrid vehicles may help to redress the balance it remains an issue that a single set of rules can have undesirable consequences, such as the increase in fuel consumption as each of the Euro norms has been introduced. While Euro V is better than Euro IV, fuel consumption for buses will continue to rise as pre-Euro and earlier Euro vehicles are replaced. It is important that the processes of setting Euro norms support Member State carbon-reduction policies rather than concentrating on one specific area (such as exhaust emissions) that may work in the opposite direction. For this reason, Member States need to ensure that they take a strong lead in the work of the EU institutions that develop norms and standards.

Other types of standardisation: there is a general view in the EU institutions that standardisation brings benefits to the internal market. In the transport sector, this must be balanced against the effect of applying irrelevant standards: for example, setting rail safety standards for a local, separate suburban rail service that match those that apply to a high-speed line passing through several Member States. While standards for international services have clear benefits for the development of long-distance rail, it is less clear where the benefits of this work will accrue for regional and suburban services. If standardisation increases costs for the regional and suburban market - which carries a much larger number of passengers than long-distance services - this will not benefit either users or public authorities.

Similarly, politically-driven objectives such as EU-wide inter-operable smartcards and through-ticketing run the risk of being both expensive and irrelevant to passenger needs. Member States must ensure that work on such initiatives at a European level does not impose costs on the provision of transport that are out of proportion to the benefits accruing. It is hard to see that there are many benefits from being able to

buy a through ticket from any rail station in the EU to any other station - while this may sound attractive in principle, the administrative, technical, marketing and revenue distribution costs must be part of the assessment of whether this proposal brings a benefit or not - and not simply a view that such an idea is in line with the EU project as a whole. Given the local nature of rail services at most stations in the EU, it is hard to see how a single ticket would take on board the complexities of local matters such as travel concessions for the young or the elderly, different types of ticket class on local, national and international services and options for discounts through fixed-price tickets sold as part of a yield management process (where they exist). If the through ticket is simply the summation of the walk-up fare for each leg of a journey, it will be priced significantly higher than might otherwise be possible. The number of passengers wishing to make such journeys does not justify significant expenditure on this project.

Paragraph 29 of the DfT's call for evidence suggests that the Commission "generally exercises its competence in relation to transport issues where there is a trans-national element". This is not the case in the bus sector, where many legislative instruments apply to specifically local services.

## 5. The impact on different stakeholders

As might be expected, different provisions have had different effects. In the case of passenger rights in the bus and coach sector there was a stated view by the European Institutions that passengers were the weaker party to the contract between an operator and its customer. This does not take account of the strong financial link between customer service (and price) and operator revenue. It is not clear that the EU institutions recognise that additional costs do not fall simply onto operators but will be passed on either to passengers or, where services are run under public service contracts, to public authorities. The European Institutions themselves are not directly affected by the cost arising from their proposals as such costs fall within Member States, either onto passengers or onto public authorities. There is little if any evidence that there was a strong view among bus users across the EU that greater passenger rights, set at a European level, figured in their list of objectives - users are much more interested in measure to improve service quality, such as priority measures that improve punctuality, for example.

## 6. Legislation and case law

There have been few cases before the courts to clarify EU legislation on local transport; a State Aid case in Denmark remains unresolved; the so-called Altmark

decision has been the subject of much confusion as its relevance to Regulation 1370 is highly questionable, given that it pre-dates the implementation of the Regulation in 2009. The European Commission proposes to issue Guidelines on the implementation of Regulation 1370 - they are expected "soon". The latest version seen by trade associations raises some questions of applicability to many parts of transport legislation in the UK and it will be important to read them alongside both the Regulation and domestic legislation (e.g. the Guidelines may say that public authorities may decide to give direct award of a contract to an operator that they control; this is not permitted under UK legislation - and thus, the Guidelines apply only where Member State legislation itself allows that action). For this reason, there are good arguments to suggest that the DfT should issue its own guidelines or commentary on the Commission's guidelines, so as to ensure that operators and public authorities do not misunderstand the relationship between EU and domestic law (and the many places in Regulation 1370 where the provisions apply "unless prohibited by national law".)

Compliance with European law is also a complex area; it is now several years since the then Commissioner for Transport, Jacques Barrot answered a question from a French MEP where he drew attention to the need to amend French law to remove the restriction that prevents regional authorities from entering into contracts for rail services with an operator other than SNCF. The problem remains unresolved.

#### 7. The interests of the UK being better served by action at a national or wider international

It is important that Member States are able to protect their national objectives and structures where these are not incompatible with the general economic well-being of the EU. In local public transport, the plans to review how BSOG may be reformed in England need to be developed in line with EU rules, whereas there may be a much better solution that would take account of the liberalised model in Great Britain. Schemes such as Kickstart that were run some time ago were very much on the edge of what could be allowed under EU rules. Some local authorities are nervous about some parts of current Green Bus Fund applications, for example. If the provisions of the Fourth Railway Package were to prevent plans to develop closer relationships between infrastructure providers and operators, this would be very regrettable, as would any impact on the structure of transport in Northern Ireland if the Assembly there believes that its current model should evolve in a way that takes account of the small scale of rail services in the Province (and cross-border to the Irish Republic), for example.

An EU proposal to a United National transport committee about mandatory space for pushchairs on buses was an ill-informed response to a small problem that would be



better resolved at a local level, taking account of vehicle design and service patterns in specific localities.

It is clear that developing rules that can apply across the EU risks a failure to take account of different operational, cultural, legislative and economic conditions; when seen from a Western European, urban context it may not seem to be a problem to require operators to provide information at every bus stop - yet the scale of this across the EU is vast and will present immense challenges in rural or remote areas, where alternative means - primarily telephone and web-based solutions - may well be a more efficient, passenger-friendly solution which operators will be pleased to develop, though less so if they are expected to conform to a central set of rules that appear irrelevant to the needs of their passengers. Indeed, complex central rules may not take account of changes in technology that would be far preferable to a solution developed through long negotiation over many years for the whole of the EU.

For this reason, there must be a rigorous examination of any proposal being brought forward by the European institutions, to establish whether a local solution will be more appropriate. UITP for some time has encouraged the Commission to concentrate more on outcomes than outputs: the outcome from work on the Fourth Railway Package should be fair, open and non-discriminatory access to rail infrastructure; the Commission should not seek to specify how this is achieved by defining a series of outputs relating to the organisation of railway in the Member States.

## 8. International agreements

The negotiation of international agreements is not generally relevant to the local transport market, with which this note is largely concerned.

## 9. Challenges or opportunities from further EU action

The limited competence that the EU has in relation to transport runs the risk that the legislators will concentrate on those areas where they can have an impact, rather than on those areas where action is needed. Not surprisingly, the Commission and MEPs want to show that their work is relevant to the citizens of Europe and will seek measures that can be a legacy for their actions. And yet, this is not where benefits for local transport users can best be developed. As the DfT's Call for Evidence points out (para 29) the EU has not exercised its competence in relation to cycling policy - nor to taxis. However, the DfT's suggestion that the EU has not acted directly in local transport matters is not strictly correct, given the impact of Regulation

1370, Euro norms, TAP TSI work, some elements of the passenger rights rules and plans to open the domestic rail market in the Fourth Railway Package for example,.

For this reason, it must be better to ensure that action at an EU level is only taken where the measures are necessary for the continued development of the internal market and that they take account of locally determined views on how the local transport sector works. For example: proposals to harmonise insurance rules (as outlined in the initial draft of the rules on passenger rights in the bus and coach sector) would have seen the UK forced to adopt a strict-liability regime in relation to bus and coach accidents rather than the contingent liability rules now in force. The Commission believed that strict liability is the norm across most of the EU; while this may be true, it is usually accompanied by tariff rules that determine what costs fall on an operator for various levels of injury - and which are far below what can be paid in a contingent liability process. A move to a tariff-based regime was not envisaged in the Commission's proposals with the risk that the UK (and other contingent-liability regimes) would have had the worst of both worlds.

Where the EU is keen to encourage more cross-border services, its actions should address only those issues that are necessary to achieve the outcomes that it seeks. There should be a rigorous assessment of the consequences for the domestic market and users. It would be greatly preferable if the Commission consulted more closely with Member State government before legislative initiatives are published. Without such a process, Member States are put into a difficult position of arguing against proposals that may appear popular at first sight but are less than sensible or proportionate in terms of their impact. This creates an unnecessarily adversarial approach to the proper consideration of complex legislative proposals.

Early consultation would increase the burden on Member States to ensure that they have the resources, in consultation with national trade associations, operators and public authorities, to assess impacts and to determine appropriate responses; it might also delay such legislation. However, the outcome should be a more balanced and effective set of rules that take account both of the Commission's objectives and the ability of actors in member states to implement what is required in a way that avoids unintended consequences.

The management of legislative proposals has to take account of situations such as the case of the ill-conceived proposal to change how State Aid in transport might be defined. Such proposals may not be seen as "transport" issues if they come from Directorates General other than DG Move, but may also impact on transport - for

example, a debate about changes to VAT or fuel duty would have a significant impact on transport in the UK.

Paragraph 17 of the DfT's Call for Evidence draws attention to the Commission's White Paper from 2011 in which is set out a roadmap "to remove major barriers and bottlenecks in many key areas across the field of transport infrastructure and investment, innovation and the internal market"; it refers also to a "fully integrated transport network which links the different modes and allows for a shift in transport patterns for passengers and freight." The Commission's objectives are, of course, commendable; what is less clear is now the Commission can deliver the network that it hopes to see, for which responsibility is widely spread across different organisations in the Member States.

# DHL

COMMERCIAL & IN CONFIDENCE<sup>63</sup>

August 2013

Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union -Transport

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## **The DHL Position**

DHL welcomes the opportunity to comment on this Call for Evidence as we are the largest freight and logistics operator in the UK.

UK membership of the European Union (EU) has delivered benefits to the UK freight and logistics industry, not least by breaking down restrictive trade and operating barriers that existed between countries prior to the formation of the EU. These have helped to facilitate international trade by enabling greater ease of movement across the borders between EU Member States.

Over the following pages we have provided our views on the questions posed in this Call for Evidence on transport policy.

## **Advantages and disadvantages to the UK of EU activity on transport**

There is evidence across all modes of transport of EU transport policy achieving positive outcomes for UK businesses. For example in aviation policy, EU intervention led to the adoption across EU Member States of the Balanced Approach to aircraft noise. This established EU-wide rules and procedures for introducing noise-related operating restrictions at airports. These rules and procedures were based on the principle that solutions to aviation noise need to be tailored to the specific characteristics of an airport, rather than applying a one-size fits all approach.

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<sup>63</sup> DHL subsequently consented to the publication of this evidence.

Similarly, there are examples of EU transport policy interventions producing less positive outcomes for the UK, for example in the liberalisation of access to European air-space for US airlines.

Under a current EU-US aviation agreement, US cargo carriers have received 5th Freedom rights to and from all airports in Europe including the UK. The agreement allows US carriers to treat the EU as a single entity, making multiple stops in a single journey (for example flying from the US and stopping in the UK before travelling on to Germany). However this operating freedom has not been fully reciprocated.

For example, a UK based cargo company might want to fly from the UK to John F Kennedy (JFK) Airport in New York, then on to Cincinnati before terminating in San Francisco, all in a single outbound journey. This would be prohibited with a single aircraft under the current terms of this US-EU agreement, with the EU carrier only able to fly into JFK and no further.

Ideally, the EU would have negotiated a reciprocal arrangement so that the US and its States would be classified as a single entity just as the EU has been. This principle of reciprocity should be a key consideration in future EU aviation liberalisation agreements as access to EU consumers is an important asset and it is right that the EU should leverage this asset to maximum effect and achieve the best possible outcome for the economy.

### **Creating an internal transport market**

The EU has taken steps to open up the transport market across Member States to facilitate international trade. This has had a range of impacts not least through the harmonisation of transport policy and regulations, creating a consistent operating environment for transport services and transport service providers (e.g. hauliers, airlines, railway companies, etc) that operate across EU borders.

Harmonisation of policies and regulation also helps to deliver greater efficiency for the freight and logistics industry. For example the harmonisation of driver's hours restrictions (i.e. the number of hours drivers can undertake before a rest period becomes mandatory), has helped to improve working conditions for drivers as well as improving road safety by reducing the number of accidents caused by sleep deprivation.

However harmonisation needs to be applied appropriately with standards that are achievable and realistic for all Member States. This creates two challenges for policy makers: firstly how to account for existing circumstances that may occur within Member States; and secondly how to deal with enforcement of harmonised rules.

An example of the first of these challenges is the recent EU proposals on masses and dimensions for vehicle type approval which proposed a maximum height limit of 4m for single-deck trailers and 4.95m for double deck trailers.

Whilst the proposal would have harmonised vehicle specifications across the EU and assisted the cross border movement of freight, it did not fully account for the individual operating environment within Member States. For example, over 80% of UK trailer units exceeded the proposed new height limits, and adhering to the new rules would have generated significant operating costs including re-fleeting and warehouse reconfiguration. Ultimately, the UK freight industry and the UK Government successfully won concessions from the EU to continue to build and operate trailers over 4m high.

In this example, the principle of harmonisation across the EU was appropriate; however it failed to consider potential local impacts. When several Member States want to allow non-standardised vehicles across their domestic markets this should be allowed, for example with the European Modular System for road freight transport, as long as it does not seriously distort the EU market.

The second challenge for the EU is in the enforcement of policies at both EU and domestic level. This must be consistent otherwise it can create unfair competitive advantage for businesses from countries that do not fully enforce regulations.

An example of this is the rules for cabotage which is the haulage of goods in one Member State on a temporary basis by a vehicle registered in a different Member State. Since May 2010, under Regulation (EC) 1072/2009, every haulier is entitled to perform up to three cabotage operations within a seven day period starting from the day after the delivery of an initial international shipment in a different Member State.

Inconsistent enforcement of cabotage across the EU can skew the market by making businesses from one country uncompetitive against their European rivals. For example a European haulier could make a number of collections and drop-offs in the UK, whilst running on cheaper European diesel and potentially with lower employment costs. The difference in total operating costs between the UK and the Continent could prove a determining factor for the profitability of the delivery, potentially enabling European hauliers to undercut their UK competitors.

The European Commission has a duty to monitor the application of market rules by Member States to ensure consistent application and where necessary to instigate infringement procedures to assist enforcement.

In the 1990's, the use of infringement procedures by the EU against Member States improved compliance with the EU regulatory framework for liberalising aviation. The EU should consider similar action today to assist enforcement of cabotage and to achieve other policy objectives such as liberalising the rail freight market across the EU.

New EU regulations should be developed with enforcement procedures considered at an earlier stage of the legislative process. Failure to do this leads to weaker enforcement of regulations which creates unnecessary business burden and legal uncertainty as has been seen with the cabotage rules that are widely viewed as being too complex and difficult to enforce locally.

## **Negotiating internationally**

As a member of the EU, the UK must adhere to the collective decisions of Member States, even where the outcomes might not be to the benefit of the UK. Similarly, when the EU negotiates international transport agreements, the UK influence is diluted as we compete with 27 other EU Member States, all

with their own agenda that may or may not conflict with the UK's position. It can therefore be difficult to reach a consensus on an EU negotiating position on transport policy.

If the UK was to relinquish its EU membership then potentially we would need to renegotiate transport agreements that we currently enter into through our membership of the EU. This could provide the UK with an opportunity to introduce transport policies that create a more pro-business operating environment and encourage overseas organisations to operate in and trade with the UK. However, given the continued liberalisation of the EU market and the cross border nature of logistics, UK transport policy would need to be developed in parallel with, or at least taking in to consideration, broader EU transport policy.

Finally it is worth noting that, given the globalised nature of international aviation, wherever possible decisions regarding aviation policy should be taken globally with implementation and enforcement taking place at the regional trading-block and country level. The introduction of region specific regulations serve only to skew the global air service market as has been seen with the introduction of the EU Emissions Trading Scheme (EU-ETS) which gives carriers from non-EU Member States a competitive advantage over EU carriers as they are not liable to participate in the scheme.

We trust that this information is useful. **The content of this response letter must be treated as highly confidential and must not be disclosed without the prior consent of DHL.**

If you or your officials require clarification of any of the points made in this documentation, then please contact me at [charlie.allen@dhl.com](mailto:charlie.allen@dhl.com) or call us on 0208 818 8000.

Yours sincerely,

# DRDNI

Further to your publication of the open consultation on 14<sup>th</sup> May 2013 in relation to the above matter please find our responses set out below.

We had circulated the request for input around the Northern Ireland Departments and can confirm the following response in relation to transport matters.

## **Role of the Department Of Environment (DOE)**

DOE is responsible for a range of road transport matters, including

- Management, coordination, monitoring and reporting on delivery of Northern Ireland's Road Safety Strategy to 2020;
- Management of a legislation programme which includes the legislative progressing primary legislation through the Assembly and making subordinate legislation to transpose EC Directives and Regulations, to maintain parity with GB in road traffic law and to take forward NI initiatives;
- Driver licensing and testing;
- Vehicle testing;
- Regulation of road transport industries (hauliers, bus operators and taxis).

This part input therefore focuses on the road transport element of the DfT request for responses. It focuses on some particular examples, to highlight positive and negative aspects of our engagement with the EU on road transport matters.

## **Recent positive and negative examples of the impact of EU Directives and Regulations have had on NI transport industry;**

- **Bus cabotage**

DOE has been actively engaged with the European Commission for a number of months on the issue of cabotage for bus operators who are licensed in one EU member state but wish to undertake cabotage operations in another. Given Northern Ireland's land border with the Republic of Ireland, this resulted in policy and operational problems for DOE as Irish buses were undertaking operations in Northern Ireland which resulted in local bus operators raising their concerns with the Department.

Cabotage operations are defined in EC Regulation 1073/2009 (EC Regulation) as: National road passenger services for hire and reward carried out on a temporary basis by a carrier in a host member state, or the picking up and setting



down of passengers within the same member state, in the course of a regular international service, in compliance with the provisions of the EC Regulation, provided that it is not the principal purpose of the service.

A complex issue, EU guidance was difficult to interpret and was at odds with similar cabotage advice relating to goods vehicles. As a result the Department had to obtain legal advice and engage directly with EU officials to get clarification. Considerable time and resources had to be devoted to this work which could have been avoided had the EU Regulations and guidance been clearer and more coherent.

The European Commission indicated that these issues had not been raised as regards any other border within the EU, which seems odd, given the extent of the Northern Ireland/Republic of Ireland cabotage operations. The lack of reporting of these issues to the Commission until 2012 has highlighted issues in the connections between DOE and DfT, which have been addressed over the last year, with considerably stronger linkages having been put in place.

- **Roadworthiness Directive**

The European Commission published a package of proposals on 13 July 2012 on periodic roadworthiness tests for motor vehicles and their trailers, roadside inspection and vehicle registration.

The overall changes in the original proposals would have had significant implications for testing, enforcement and licensing in the Department's Driver and Vehicle Agency.

Of particular concern was considerable extension of testing scope (to small trailers, including caravans, and faster tractors), additional requirements for tester training and equipment, and the requirements for a vehicle to be assessed so that standards are generally measured against original specification or vehicle type approval. A requirement to test to the original manufacturer's specifications would also introduce new test items; tighten existing test requirements, increase test time and potentially the vehicle failure rate.

Following exchanges with DfT and seeking the support of NI MEPs, sufficient change has been made to the proposals to decrease the unease that officials and sections of the vehicle industry had about the EU proposals. There have been a number of amendments made which make the introduction of the regulations more acceptable. However it is not clear why the EU initially failed to identify the potential the original proposals had on imposing additional costs on government, industry or the public at a time when most EU member states wish to stimulate their economies by reducing regulatory burdens. The case for the proposals was

not sufficiently made by the Commission and seemed to be driven for philosophical rather than evidence-based reasons, resulting in very considerable time and effort from the Department, Assembly and MEPs to raise concerns that should have been addressed in the original proposals.

- **EU Regulations 1071, 1072 and 1073**

These three EU Regulations form a package of new Road Transport Regulations, all of which will be applied from 4 December 2011 and require implementation in member states. They relate to:

**1071/2009** - on common rules for access to the occupation of road transport operator;

**1072/2009** - on common rules for access to the international road haulage market; and

**1073/2009** - on common rules for access to the international market for coach and bus services.

The EU Regulations ensure that any EU carrier is permitted to carry out regular international carriage services without discrimination on grounds of nationality or place of establishment, which is a fundamental underpinning of the single market.

In particular, Regulation 1073 sets aside some of the safeguard measures in previous legislation such as appeal to the European Commission in the event of a serious disturbance of the internal market and opens up the market to greater competition.

As highlighted above, the Regulations (1072 and 1073) do not offer a consistent approach to bus and freight cabotage and this has caused confusion for both officials and the bus and freight industries. The new regulations also place greater responsibility on licensing authorities to monitor and enforce the legislation to ensure that the market operates on an equal basis across and within Member State borders. The EU appears to have failed therefore to recognise the resourcing implications the Regulations create for member states. Explanatory Memoranda often focus on costs to the Commission budget, and not the overall financial impact for the EU as a whole, thereby giving a partial picture of the costs and benefits of proposals.

1071/2009 has brought consistency to the regulation of the freight industry and that is welcome.

The categorisation of infringements into MSI/VSI/SI/MI has been very helpful but urgent work should be undertaken to apply it to all infringements as quickly as possible.

- **EU Regulations covering road transport operators**

The suite of European legislation is complex, at times confusing and in places apparently contradictory. There are, for instance, places in which 'non-commercial' and 'not for profit' appear to be used interchangeably, and other places in which they appear to be used differently. There is also insufficient cross-referencing between the various components of the legislation, thereby making it difficult to make a definitive interpretation of the body of legislation. This leads to inconsistent interpretation of European Law within and between Member States and therefore reduces the potential benefits of a body of legislation to underpin the single market.

Examples include:

- The differing use of 'non-commercial' and 'not for profit' between Regulations 1071/2009 and 1073/2009;
- The lack of explicit linkages between 1071/2009 and 561/2006;
- Lack of clarity in Article 2 of 2003/59 as regards exemptions for the community transport sector from driver Certificate of Professional Competence requirements.

In summary, the pursuit of fairness across the single market is welcome, and provides competitive opportunities for UK operators; but the complexity of the EU legislation and its attempts to over-engineer disproportionate solutions reduces its effectiveness in a number of areas, such as the examples set out above.

**Department for Regional Development.**

**In relation to TEN**

**Trans-European Transport Network and Connecting Europe Facility Regulations**

- The European Commission published its new TEN-T Guidelines on 19 October 2011. At the same time the Commission published its proposals for establishing a Connecting Europe Facility (CEF). The Commission's proposals will see the TEN-T move from being essentially a funding

programme to a genuine European transport infrastructure policy, with the CEF as its main funding instrument.

- Whilst there were clear opportunities for Northern Ireland in Europe's original proposal, it included binding deadlines and infrastructure standards which would require Northern Ireland to spend €1.46 billion on the rail network and €13 billion on roads to meet standards which would fail to deliver any significant benefits in a Northern Ireland context.
- A first reading agreement was reached on the TEN-T Regulation on 29 May 2013 and the CEF was agreed at COREPER on 20 July 2013.
- Engagement between the Department for Regional Development (DRD) and the Department for Transport (DfT) was proactive and productive throughout the negotiation process. This resulted in amendments being secured which addressed concerns about inappropriate infrastructure standards and recognised Northern Ireland's unique circumstances and regional needs.
- Amendments secured include:
  - exemptions for Isolated Rail Networks from costly rail infrastructure standards;
  - the inclusion of Conventional Strategic Roads in the Regulation's definition of a 'High Quality Road';
  - the removal of the requirement for Express Roads not to cross at grade with footpaths;
  - binding deadlines for the completion of the Comprehensive Network removed and replaced with an aspirational commitment to meet the requirements; and
  - upgrades to the Core Network to meet the required standards must be economically viable.
- The outcome of the negotiations has also strengthened Northern Ireland's position in terms of bidding for funding from the CEF.
- DRD recommends that the method and level of engagement between DfT and DRD used for the TEN-T and CEF Regulations is highlighted as a model of best practice for future engagement with the Devolved Administrations (DA's) on European Transport Dossiers. This will help to ensure that the DA's are fully consulted prior to formal adoption thus helping to ensure that regional needs are taken into account and enable them to take account of upcoming European Legislation when formulating transport plans.

## **Airports - Seaports**

The Department would also like to take this opportunity to record our interest in the areas of ports and airports matters in relation to the effect and impact of EC legislation. However at the strategic level these matters are reserved and DfT (London) would usually take the lead in transposing and responding to such matters. It however remains important that the respective Northern Ireland Departments are kept informed of any new or amending EC measures likely to impact on these areas as early as possible as this allows time to influence the proposed UK response, to ensure that specific NI issues are identified and taken into account and to ensure that the Department is in a position to advise the Industry on the need to implement and react to any changes or legislative measures which may be needed to be developed on a timely basis.

### **Railways.**

The Department has a clear involvement in the railway field as a result of the devolution settlement and has a well established working relationship with colleagues in DfT in delivering these responsibilities. At present the Department acts as the Safety Authority and also the Rail Regulator for Northern Ireland and regards it as a key policy aim to retain these functions. This is both to protect the present devolution settlement and to reflect the excellent working relationships in place with the relevant rail operators on the island of Ireland and with the existing authorities in GB and the ROI, The Department has significant experience in operating in all these roles and plays a full part in the development of UK rail policy through its membership of rail fora such as the European Rail Policy Forum, the Interoperability Working Group, the RINF Working Group and the Rail Industry Advisory Committee. The Department is grateful to colleagues in DfT and the Office of Rail Regulation for the on-going co-operation which underpins the delivery of rail services within Northern Ireland and recognises the importance of retaining these links. Regarding the overall issue of the balance of competencies, the Department supports the GB proposals for agreeing those issues with the EU but requests on rail matters that DfT recognises the role of the Department and especially bears in mind the need for a proportionate and effective application of EU requirements to the Northern Ireland network, judgements which the Department remains best placed to make.

I hope you find our response helpful and let me know if you need any additional input.

Yours sincerely

# European Commission

## UK Review of the balance of competences

### VI) Transport

In this contribution, the Commission decided to focus on the actions to implement the White Paper on transport, the roadmap to a single European transport area – towards a competitive and resource-efficient transport system, presented in March 2011 (COM(2011)144). This exemplifies and demonstrates the preoccupation and ambition of the Commission to ensure a good functioning of the internal market by ensuring there is free circulation of traffic, persons, goods and services. On this occasion, the 40 numbered points of the White Paper are regrouped under thematic headings.

As foreseen in the Call for Evidence, it should be mentioned that this overview also covers specific transport-related initiatives related to environment and/or climate objectives.

#### 1. General policy orientation

- White Paper on Transport: Roadmap to a Single European Transport Area – Towards a competitive and Resource-efficient transport system: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF>

- 20 years of Single Market Achievements in Transport: [http://ec.europa.eu/transport/static/pdf/success-stories\\_en.pdf](http://ec.europa.eu/transport/static/pdf/success-stories_en.pdf)

- Connecting Europe Facility – Investing in Europe's growth: <http://ec.europa.eu/transport/themes/infrastructure/connecting/doc/connecting/2012-10-02-cef-brochure.pdf>

2. Recent proposals, Directives and Regulations mainly relating to achieving the policy objectives of the White Paper (organised according to mode and/or theme)

#### 2.1 Aviation

##### Point 2: Completion of Single European Sky

- Communication from the Commission: Accelerating the implementation of the Single European Sky:

[http://ec.europa.eu/transport/modes/air/single\\_european\\_sky/doc/ses2plus/com\(2013\)408\\_en.pdf](http://ec.europa.eu/transport/modes/air/single_european_sky/doc/ses2plus/com(2013)408_en.pdf)

- Proposal for a Regulation amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services:

[http://ec.europa.eu/transport/modes/air/single\\_european\\_sky/doc/ses2plus/com\(2013\)409\\_en.pdf](http://ec.europa.eu/transport/modes/air/single_european_sky/doc/ses2plus/com(2013)409_en.pdf)

- Proposal for a Regulation on the implementation of the Single European Sky:  
[http://ec.europa.eu/transport/modes/air/single\\_european\\_sky/doc/ses2plus/com\(2013\)410\\_en.pdf](http://ec.europa.eu/transport/modes/air/single_european_sky/doc/ses2plus/com(2013)410_en.pdf)

- impact assessment:

[http://ec.europa.eu/transport/modes/air/single\\_european\\_sky/doc/ses2plus/swd\(2013\)206-ia.pdf](http://ec.europa.eu/transport/modes/air/single_european_sky/doc/ses2plus/swd(2013)206-ia.pdf)

Point 3 : Capacity and quality of airports (Airport package)

- Communication from the Commission: Airport policy in the European Union – addressing capacity and quality to promote growth, connectivity and sustainable mobility:

[http://ec.europa.eu/transport/modes/air/airports/doc/2011-airport-package-communication\\_en.pdf](http://ec.europa.eu/transport/modes/air/airports/doc/2011-airport-package-communication_en.pdf)

- Proposal for a Regulation on common rules for the allocation of slots at European Union airports:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0827:EN:NOT>

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1443:FIN:EN:PDF>

- Proposal for a Regulation on groundhandling services at Union airports and repealing Council Directive 99/67/EC:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0824:EN:NOT>

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1439:FIN:EN:PDF>

- Proposal for a Regulation on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0828:EN:NOT>

-impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1455:FIN:EN:PDF>

Point 10: A socially responsible aviation sector

- Proposal for a Regulation on groundhandling services at Union airports and repealing Council Directive 99/67/EC:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0824:EN:NOT>

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1439:FIN:EN:PDF>

Point 12: Cargo security: New implementing rules on inbound cargo

- Commission Regulation (EU) No 72/2010 laying down procedures for conducting Commission inspections in the field of aviation security:

[http://ec.europa.eu/research/horizon2020/index\\_en.cfm?pg=h2020-documents](http://ec.europa.eu/research/horizon2020/index_en.cfm?pg=h2020-documents)

- Commission Implementing Regulation (EU) No 859/2011 on amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:220:0009:0015:EN:PDF>

- Commission Implementing Regulation (EU) No 1082/2012 amending Regulation (EU) No 185/2010 in respect of EU aviation security validation: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:324:0025:0049:EN:PDF>

Point 12: Cargo security: Mutual recognition with US



- Commission Regulation (EU) No 983/2010 of 3 November 2010 amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security (*One Stop Security with the U.S.*):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:286:0001:0002:EN:PDF>

Point 13: Air passengers security (Liquids and Gels)

- Commission Regulation (EU) No 72/2010 laying down procedures for conducting Commission inspections in the field of aviation security: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0001:0005:EN:PDF>

- Commission Regulation (EU) No 297/2010 amending Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:090:0001:0003:EN:PDF>

- Commission Regulation (EU) No 357/2010 amending Commission Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:105:0010:0011:EN:PDF>

- Commission Regulation (EU) No 358/2010 amending Commission Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:105:0012:0014:EN:PDF>

- Commission Regulation (EU) No 334/2011 amending Commission Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:094:0012:0013:EN:PDF>

- Commission Regulation (EU) No 720/2011 amending Commission Regulation (EC) No 272/2009 supplementing the common basic standards on civil aviation security as regards the phasing-in of the screening of liquids, aerosols and gels at EU

airports: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:193:0019:0021:EN:PDF>

- Commission Regulation (EU) No 245/2013 amending Regulation (EC) No 272/2009 as regards the screening of liquids, aerosols and gels at EU airports: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:077:0005:0007:EN:PDF>

- Commission Implementing Regulation (EU) No 246/2013 amending Regulation (EU) No 185/2010 as regards the screening of liquids, aerosols and gels at EU airports: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:077:0008:0011:EN:PDF>

Point 13: Air passenger security (scanners)

- Commission Regulation (EU) No 72/2010 laying down procedures for conducting Commission inspections in the field of aviation security: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0001:0005:EN:PDF>

- Commission Regulation (EU) No 1141/2011 amending Regulation (EC) No 272/2009 supplementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:293:0022:0023:EN:PDF>

- Commission Implementing Regulation (EU) No 1147/2011 amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security in respect of security scanners: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:294:0007:0011:EN:PDF>

- Commission Implementing Regulation (EU) No 711/2012 of 3 August 2012 amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security as regards the methods used for screening persons other than passengers and items carried: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:209:0001:0003:EN:PDF>

Point 17: Occurrence reporting for safety in aviation

- Proposal for a Regulation on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and repealing Directive 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0776:FIN:EN:PDF>

- impact assessment: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0441:FIN:EN:PDF>

#### Point 17: Occurrence reporting for safety in aviation

- Proposal for a Regulation on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and repealing Directive 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0776:FIN:EN:PDF>

- impact assessment: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0441:FIN:EN:PDF>

#### Point 17: SESAR Joint Undertaking

- Prolongation of the SESAR Joint Undertaking Mandate: Proposal for a Council Regulation amending Regulation (EC) No 219/2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) as regards the extension of the Joint Undertaking until 2024: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0503:FIN:en:PDF>

#### Point 21: Revision of Regulation 261/2004 on passenger rights in aviation. Communication on passenger rights in all modes

- Proposal for a Regulation amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay in respect of the carriage of passengers and their baggage by air: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0130:FIN:EN:PDF>

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF>

- Communication from the Commission: A European vision for passengers: Communication on Passenger Rights in all transport modes: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0898:FIN:EN:PDF>

Point 40: European common aviation area. Agreements already signed with the Western Balkans, Morocco, Jordan, Georgia and Moldova; signature of EU-Israel aviation agreement.

- Decision of the Council and of the representatives of the Member States of the EU meeting within the Council of 9 June 2006 on the signature and provisional application of the Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area (ECAA): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:285:0001:0002:EN:PDF>

- ECAA Agreement signed with Georgia on 2 December 2010: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=8821>

- ECAA Agreement signed with Moldova on 26 June 2012: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=9441>

- Agreement between the European Community and the Hashemite Kingdom of Jordan on certain aspects of air services, signed on 25 February 2008: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=7427>

- Agreement between the European Community and the Kingdom of Morocco on certain aspects of air services, signed on 12 December 2006: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=3521>

## 2.2 Rail

Point 1: Internal market for rail (4<sup>th</sup> railway package)

- Communication on the fourth railway package: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0025:FIN:EN:PDF>
  
- Report on the implementation of the provisions of Directive 2007/58/EC on the opening of the market of international rail passenger transport: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0034:FIN:EN:PDF>
  
- Proposal for a Directive on railway safety: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0031:FIN:EN:PDF>
  
- Proposal for a Regulation repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0026:FIN:EN:PDF>
  
- Proposal for a Directive on the interoperability of the rail system within the European Union: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0030:FIN:EN:PDF>
  
- Proposal for a Regulation amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0028:FIN:EN:PDF>
  
- impact assessment: [http://eur-lex.europa.eu/Result.do?T1=V7&T2=2013&T3=10&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V7&T2=2013&T3=10&RechType=RECH_naturel&Submit=Search)
  
- Proposal for a Directive amending Directive 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0029:FIN:EN:PDF>
  
- impact assessment: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0012:FIN:EN:PDF>

- Report from the Commission on the progress made towards achieving interoperability of the rail system: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0032:FIN:EN:PDF>

- Report from the Commission on the profile and tasks of other train crew members: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0033:FIN:EN:PDF>

Point 19: Enhance the role of ERA in the field of rail safety (4<sup>th</sup> railway package)

- Communication on the fourth railway package: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0025:FIN:EN:PDF>

- Proposal for a Regulation on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0027:FIN:EN:PDF>

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0008:FIN:EN:PDF>

## 2.3 Road

Point 6: Road freight: Weights and dimension

- Proposal for a Directive amending 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: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0195:REV1:EN:PDF>

- impact assessment: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0108:FIN:EN:PDF>

Point 6: Road freight: Tachograph

- Communication from the Commission: Digital tachograph: Roadmap for future activities: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0454:FIN:EN:PDF>

- Proposal for a Regulation amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0451:FIN:EN:PDF>

- impact assessment:

[http://ec.europa.eu/transport/modes/road/social\\_provisions/tachograph/doc/2011-07-18-ia.pdf](http://ec.europa.eu/transport/modes/road/social_provisions/tachograph/doc/2011-07-18-ia.pdf)

- Political agreement reached between EP and Council on Regulation amending Council Regulation (EEC) No 3821/85:

<http://register.consilium.europa.eu/pdf/en/13/st12/st12241.en13.pdf>

Point 14: Establishment of expert group on security of land transport (LANDSEC)

- Commission Decision of 31 May 2012 on the creation of an Expert Group on Land Transport Security: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0047:0048:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0047:0048:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0047:0048:EN:PDF)

Point 16: EU strategy on road injuries

- Communication from the Commission: Towards a European road safety area: policy orientations on road safety 2011-2020:

[http://ec.europa.eu/transport/road\\_safety/pdf/road\\_safety\\_citizen/road\\_safety\\_citizen\\_100924\\_en.pdf](http://ec.europa.eu/transport/road_safety/pdf/road_safety_citizen/road_safety_citizen_100924_en.pdf)

Point 16: EU strategy on road injuries: Roadworthiness package

- Proposal for a Regulation on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing

Directive 2000/30/EC: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0382(01):FIN:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0382\(01\):FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0382(01):FIN:EN:PDF) and

the annex: [\[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0382\\(51\\):FIN:EN:PDF\]\(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0382\(51\):FIN:EN:PDF\)](http://eur-</a></p></div><div data-bbox=)

- Proposal for a Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/49/EC: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0380(01):FIN:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0380\(01\):FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0380(01):FIN:EN:PDF)

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0206:FIN:EN:PDF>

- Proposal for a Directive amending Council Directive 1999/37/EC on the registration documents for vehicles: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0381:FIN:EN:PDF>

Point 16: EU strategy on road injuries

- Staff Working Document on the implementation of objective 6 of the European Commission's policy orientations on road safety 2011-2020 – First milestone towards an injury strategy: [http://ec.europa.eu/commission\\_2010-2014/kallas/headlines/news/2013/03/doc/swd\(2013\)94.pdf](http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2013/03/doc/swd(2013)94.pdf)

Point 24: eCall

- Proposal for a Regulation concerning type-approval requirements for the deployment of the eCall in-vehicle system and amending Directive 2007/46/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0316:FIN:EN:PDF>

- Proposal for a Decision on the deployment of the interoperable EU-wide eCall: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0315:FIN:EN:PDF>

- Commission Delegated Regulation (EU) No 305/2013 supplementing Directive 2010/40/EU with regard to the harmonised provision for an interoperable EU-wide eCall:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:091:0001:0004:EN:PDF>

2.4 Water-bound transport

Point 4: Port services and transparency of ports' financing (market access to ports)

- Communication from the Commission: "Ports: an engine for growth": <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0295:FIN:EN:PDF>



- Proposal for a Regulation establishing a framework on market access to port services and financial transparency of ports: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0296:FIN:EN:PDF>

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0181:FIN:EN:PDF>

#### Point 4: A "Blue Belt" for Short Sea Shipping

- Commission Implementing Regulation (EU) No 530/2013 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (enhancement of regular shipping service): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:159:0001:0004:EN:PDF>

- Communication from the Commission: "Blue Belt, a Single Transport Area for Shipping":

[http://ec.europa.eu/transport/modes/maritime/news/doc/com\(2013\)510\\_en.pdf](http://ec.europa.eu/transport/modes/maritime/news/doc/com(2013)510_en.pdf)

#### Point 5: A suitable framework for inland navigation

- Commission Directive 2012/48/EU amending the Annexes to Directive 2006/87/EC laying down technical requirements for inland waterway vessels: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:006:0001:0048:EN:PDF>

- Commission Directive 2012/49/EU amending Annex II to Directive 2006/87/EC laying down technical requirements for inland waterway vessels: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:006:0049:0086:EN:PDF>

- Administrative agreement concerning a framework for cooperation between the Central Rhine Commission and DG MOVE: [http://www.ccr-zkr.org/files/conventions/Administrative\\_Arrangement\\_CCNr\\_CE\\_en.pdf](http://www.ccr-zkr.org/files/conventions/Administrative_Arrangement_CCNr_CE_en.pdf)

- Declaration on effective waterway infrastructure maintenance on the Danube and its navigable tributaries:

[http://ec.europa.eu/transport/modes/inland/promotion/doc/danube\\_declaration.pdf](http://ec.europa.eu/transport/modes/inland/promotion/doc/danube_declaration.pdf)

Point 9: Maritime Labour Convention and transposition of the Convention on training and certification of seafarers (STCW convention)

- Directive 2012/35/EU amending Directive 2008/106/EC on the minimum level of training of seafarers:

[http://ec.europa.eu/transport/modes/maritime/seafarers/doc/new\\_stcw\\_directive.pdf](http://ec.europa.eu/transport/modes/maritime/seafarers/doc/new_stcw_directive.pdf)

Point 9: Port and Flag State controls

- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on Port State control: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0129:FIN:EN:PDF>

- Proposal for a Directive concerning flag state responsibilities for the enforcement of Council Directive 2009/13/EC implementing the agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0134:FIN:EN:PDF>

Point 18 : Safer shipping

- Proposal for a Directive on marine equipment and repealing Directive 96/98/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0772:FIN:EN:PDF>

- Regulation (EU) No 100/2013 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:039:0030:0040:EN:PDF>

Point 25: Cleaner shipping

- "Monitoring, Reporting and Verification of GHG for Shipping": Proposal for a Regulation on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending Regulation (EU) No 525/2013: [http://ec.europa.eu/clima/policies/transport/shipping/docs/com\\_2013\\_480\\_en.pdf](http://ec.europa.eu/clima/policies/transport/shipping/docs/com_2013_480_en.pdf)

- Report from the Commission - First Progress report on the implementation of the Commission Staff Working Paper "Pollutant emission reduction from maritime transport and the Sustainable Waterborne Transport Toolbox":

[http://ec.europa.eu/commission\\_2010-2014/kallas/headlines/news/2013/06/doc/com\(2013\)475\\_en.pdf](http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2013/06/doc/com(2013)475_en.pdf)

## 2.5 Clean transport

### Point 24: Proposal on Clean Power for Transport

- Communication from the Commission: Clean power for transport: A European alternative fuel strategy: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0017:FIN:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0017:FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0017:FIN:EN:PDF)

- Proposal for a Directive on the deployment of alternative fuel infrastructure:

[\[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0018:FIN:EN:PDF\]\(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0018:FIN:EN:PDF\)](http://eur-</a></p></div><div data-bbox=)

- impact assessment:

[http://ec.europa.eu/transport/themes/urban/cpt/doc/swd\(2013\)5-2-impact-assessment-part1.pdf](http://ec.europa.eu/transport/themes/urban/cpt/doc/swd(2013)5-2-impact-assessment-part1.pdf)

- Proposal for a Directive amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources:

[http://ec.europa.eu/energy/renewables/biofuels/doc/biofuels/com\\_2012\\_0595\\_en.pdf](http://ec.europa.eu/energy/renewables/biofuels/doc/biofuels/com_2012_0595_en.pdf)

### Point 28: CO<sub>2</sub> emissions from vehicles

- Proposal for a Regulation amending Regulation (EC) No 443/2009 to define the modalities for reaching the 2020 target for reducing the CO<sub>2</sub> emissions from new passenger cars: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0393:FIN:en:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0393:FIN:en:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0393:FIN:en:PDF)

- Proposal for a Regulation amending Regulation (EU) No 510/2011 to define the modalities for reaching the 2020 target to reduce CO<sub>2</sub> emissions from new light

commercial vehicles: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0394:FIN:en:PDF>

Point 39: Smart pricing and taxation (motor fuel taxation)

- Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and energy:  
[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/com\\_2011\\_169\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2011_169_en.pdf)

Point 39: Smart pricing and taxation (internalisation and GHG)

- "Stop the clock for aviation": Decision No 377/2013/EU derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:113:0001:0004:EN:PDF>

## 2.6 Intelligent transport

Point 25: Deployment of ITS

- (proposal for a) Commission Delegated Regulation ... supplementing Directive 2010/40/EU with regard to data and procedures for the provision, where possible, of road-safety related minimum traffic information free of charge to users:  
[http://ec.europa.eu/transport/themes/its/road/action\\_plan/doc/comm\\_native\\_c\\_2013\\_2550\\_commission\\_delegated\\_regulation\\_en.pdf](http://ec.europa.eu/transport/themes/its/road/action_plan/doc/comm_native_c_2013_2550_commission_delegated_regulation_en.pdf)

- (proposal for a) Commission Delegated Regulation ... supplementing Directive 2010/40/EU with regard to the provision of information services for safe and secure parking places for trucks and commercial vehicles:  
[http://ec.europa.eu/transport/themes/its/road/action\\_plan/doc/comm\\_native\\_c\\_2013\\_2549\\_commission\\_delegated\\_regulation\\_en.pdf](http://ec.europa.eu/transport/themes/its/road/action_plan/doc/comm_native_c_2013_2549_commission_delegated_regulation_en.pdf)

## 2.7 Infrastructure

Point 34: TEN-T guidelines

- Proposal for a Regulation on Union guidelines for the development of the trans-European transport network: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0650R\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0650R(01):EN:NOT)

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1212:FIN:EN:PDF>

Point 35: Multimodal freight corridors

The TEN-T proposal has introduced the concept of multimodal (freight) corridors

- Proposal for a Regulation on Union guidelines for the development of the trans-European transport network: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0650R\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0650R(01):EN:NOT)

-impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1212:FIN:EN:PDF>

The CEF has ensured an alignment of rail freight corridors with the core network corridors.

- Proposal for a Regulation establishing the Connecting Europe Facility: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0665:FIN:EN:PDF>

- impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1262:FIN:EN:PDF>

Point 37: CEF Regulation on a new funding framework for infrastructure

- Connecting Europe Facility – Investing in Europe's growth:

<http://ec.europa.eu/transport/themes/infrastructure/connecting/doc/connecting/2012-10-02-cef-brochure.pdf>

- Proposal for a Regulation establishing the Connecting Europe Facility: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0665:FIN:EN:PDF>

-impact assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1262:FIN:EN:PDF>

Point 38: Framework for PPP and project bonds

- Regulation (EU) No 670/2012 amending Decision No 1639/2006/EC establishing a Competitiveness and Innovation Framework Programme (2007-2013) and Regulation (EC) No 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:204:0001:0010:EN:PDF>

## 2.8 Research

Point 24: Horizon 2020

- Communication from the Commission: "Horizon 2020 – The Framework programme for Research and Innovation": <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0808:FIN:en:PDF>

- Proposal for a Regulation establishing Horizon 2020 – the Framework Programme for Research and Innovation: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0809:FIN:en:PDF>

-impact assessment:

[http://ec.europa.eu/research/horizon2020/pdf/proposals/horizon\\_2020\\_impact\\_assessment\\_report.pdf#view=fit&pagemode=none](http://ec.europa.eu/research/horizon2020/pdf/proposals/horizon_2020_impact_assessment_report.pdf#view=fit&pagemode=none)

# European Scrutiny Committee report 15 April 2013

## 9 Road transport: dimensions and weights

(34891) 8953/13 + ADDs 1-2  COM (13) 195	Draft Directive amending Directive 96/53/EC of 25 July 19996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic
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<i>Legal base</i>	Article 91 TFEU; co-decision; QMV
<i>Document originated</i>	15 April 2013
<i>Deposited in Parliament</i>	3 May 2013
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 20 May 2013
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

### Background

9.1 Directive 96/53/EC requires Member States to set maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic for heavy goods vehicles (HGVs), buses and coaches circulating on EU roads. The purpose of the Directive is to ensure that no-one has an undue advantage in terms of competition, to help facilitate the free movement of goods and to avoid damage with overweight vehicles to road infrastructures across the EU.

### The document

9.2 The Commission believes that given the advances in vehicle and infrastructure technology and general increases in cross-border road freight traffic, an update to some of the more out-dated standards of Directive 96/53/EC is necessary. Additionally, a public consultation regarding amendments to the Directive in 2012 suggested that continued infringement by over-weight vehicles needs to be better addressed. Therefore, with this draft Directive the Commission proposes to amend Directive 96/53/EC to allow manufacturers to develop more aerodynamic, fuel-efficient and safer vehicles, improve road safety and intermodal transport and to facilitate improved enforcement of vehicles that infringe the maximum weights and dimensions of the Directive.

9.3 In relation to improved aerodynamics of vehicles the Commission says that:

- they would not only give fuel efficiency savings and reductions in carbon emissions, but would also give the driver a better field of vision, so cutting collisions with vulnerable road users; and
- given that EU heavy vehicle manufacturers are market leaders and the sector is one of the largest corporate investors in research and development, new aerodynamic cabins and rear flaps would provide an opportunity for manufacturers to develop new models, which would help support job creation and economic growth in the EU.

#### 9.4 The draft Directive would:

- allow an increase in length of up to two metres at the rear of the vehicle and an unspecified length at the front for the new aerodynamics, for a transitional period;
- give the Commission powers to adopt Delegated Acts specifying the detailed technical requirements, which would replace the transitional provisions;
- allow an increase in weight by one tonne for hybrid or electric lorries and coaches, to account for their heavier powertrains and battery components, whilst not allowing for any increases in loading length for HGV's;
- allow an increase in weight by one tonne for all buses and coaches, to accommodate the increased average weight of passengers and their luggage, of new mandatory safety equipment and of new Euro VI engines (engines meeting the latest emission standards).

9.5 The Commission estimates that up to a third of heavy goods vehicles across the EU are overloaded, causing damage to road infrastructure and compromising road safety. To address this, it proposes that the draft Directive should:

- pave the way for such enforcement mechanisms as on-board weighing systems linked to digital tachographs and weigh-in-motion stations on main roads, so, it asserts, allowing more consistent controls between Member States and having a positive effect on competition;
- require Member States to establish a system for pre-selecting and targeting checks on vehicles or combinations of vehicles to ensure compliance with the Directive's requirements and stipulate a minimum threshold of one weighing per 2,000 vehicle kilometres for doing this;
- harmonise technical specifications of onboard weighing equipment and require Member States to improve data exchange at EU level regarding offences, with the Commission adopting Delegated Acts harmonisation of technical specifications of onboard weighing equipment; and
- categorise infringements according to their severity and state the sanctions incurred.

9.6 Being keen to promote intermodal transport and to reduce red tape by allowing 45 foot containers to be switched more easily between ship, road and rail, the Commission proposes that there should be an increase in maximum length of vehicles involved in intermodal transport of 15 centimetres to allow them to carry 45 foot containers.

#### **The Government's view**

9.7 The Parliamentary Under-Secretary of State at the Department for Transport (Stephen Hammond) tells us that the Government broadly welcomes the Commission proposal. Saying that in principle it would support amendments to Directive 96/53/EC to permit the use of aerodynamic devices that reduce fuel consumption and carbon dioxide emissions, provided that road safety is not compromised and the maximum load length of vehicles is not increased, the Minister notes that a Ricardo plc research study



indicates that improved aerodynamics would reduce carbon emissions and give fuel savings along the lines of the Commission's estimates. [22] He continues that the Government agrees with the Commission's assertion that improved aerodynamic designs of cabs would also be likely to make vehicles safer and better protect vulnerable road users by reducing blind spots in the driver's vision under the windscreen, citing a Transport Research Laboratory report that considered both the environmental and safety issues associated with lorry fronts. [23]

9.8 In more detailed policy comments the Minister says that:

- the Government would welcome the opportunity for UK industry to be involved in researching and developing more aerodynamic vehicles and agrees with the Commission that this would be an excellent opportunity to help support job creation and economic growth in the EU;
- it welcomes the Commission's proposal for an increase in weight by one tonne for hybrid or electric lorries and coaches, to account for their heavier powertrain and battery components;
- it would also want this increase in weight to be extended to include gas powered vehicles, due to the higher weights of the fuel tanks, which the Government will raise in negotiations;
- it is open, subject to further detailed consideration, to the proposal to increase the weight limit for all two-axle passenger vehicles by one tonne, which would be welcomed by industry;
- it is concerned about the proposals for the Commission to be empowered to adopt Delegated Acts relating to front and rear aerodynamics and to specifications for weighing equipment and procedures;
- this would give the Commission very broad powers for an indeterminate period to specify and then at any time revise the technical specifications for vehicles and for enforcement equipment and procedures;
- the Government will seek to limit these powers in the course of negotiations, preferably setting such important details in legislative acts and ensuring that any delegated powers, where they are appropriate, are limited to a maximum of five years;
- in relation to authorisation by Member States, before adoption of these Delegated Acts, of the use of vehicles with the new aerodynamic devices that, in the absence of harmonised technical requirements, meet the basic requirements, the Government's concern is that this would compel the UK to accept vehicles with devices authorised by other Member States, which could have a negative effect on the safety of UK roads;
- in the absence of harmonised requirements, the Government will seek the inclusion of provisions that would allow Member States to refuse visiting vehicles so equipped from using their roads;
- the Government is concerned that there are no provisions for an implementation period so some manufacturers that are ready to implement some of the proposals immediately, in particular at the rear of the vehicle, may gain a commercial advantage over others;
- it has some concerns about the proposals that the aerodynamic features at the front and at the rear of the vehicle should be certified by Member States — the draft Directive does not have any detail on how this would be achieved;
- it is one of the details to be decided by Delegated Acts and there is, therefore, a significant risk that this requirement could incur significant costs for Government and for industry and could be unnecessarily bureaucratic;
- it may well be preferable for the implementation of such standards to become part of the existing vehicle type approval process as set out in the framework Directive 2007/46/EC, rather than set up a separate certification scheme;
- proposals to aid fuel efficiency by changing regulations on weights and dimensions for more aerodynamically efficient vehicles in principle should be in the UK's interest;

- the Government accepts the Commission's intention to allow vehicles exceeding certain dimensions for international transport to cross borders where two adjoining Member States allow their use for national transport;
- the proposed amendment, however, only specifies vehicle length and does not make clear the position on vehicles exceeding four metres in height, which is the maximum height the present Directive allows for international transport;
- this could potentially give rise to problems between the UK and the Republic of Ireland, both of which currently allow vehicles over four metres high to operate nationally and between the two countries;
- the Government considers, therefore, that the amendment needs to include provisions that would make clear that vehicles exceeding four metres high can cross borders where adjoining Member States allow their use — this would confirm that goods vehicles exceeding four metres high can continue to travel between the UK and the Republic of Ireland;
- the Government has concerns regarding the proposed requirement to establish a system for pre-selecting and targeting checks on vehicles or combinations of vehicles to ensure compliance;
- the Vehicle and Operator Services Agency (VOSA) considers that this would mean the installation of approximately 70 ANPR/WIMS (automatic number plate recognition combined with weigh in motion technology) systems at its enforcement weighbridges — it already has eight such systems in place for targeting overloaded vehicles;
- the proposal would allow, alternatively, these checks to be enabled by onboard systems installed in vehicles — this would lead to additional costs for operators, as well as for VOSA in obtaining the equipment to communicate with these onboard devices and is unlikely to be preferable to the use of ANPR/WIMS technology;
- VOSA's weighing activity is already highly targeted, which means that vehicles are only weighed if they appear to be obviously overloaded;
- this proposal would mean that VOSA's enforcement strategy would need to change dramatically to ensure compliance — sifting for overloaded vehicles on the scale suggested would mean a marked change to the number of vehicles actually weighed;
- the Government considers that its current enforcement practices are sufficiently rigorous and well targeted to ensure safety and compliance and do not need to be modified in the way that the Commission proposes;
- the proposed penalties for non-compliance largely align with current UK practice — however, the Government considers that it is for Member States to decide upon their enforcement regimes and what penalties to levy and therefore considers that this provision is unnecessary and should not be included in the Directive;
- the Government has concerns about the proposal to restrict overhanging loads (for example, on car transporters) and it will look at the implications of this in more detail in the negotiations;
- it is generally supportive of the principle that shippers should be responsible for weight declarations and should make them more accurately than often happens; and
- it welcomes, alongside industry, the proposal to reduce bureaucracy by allowing 45 foot containers to be switched more easily between ship, road and rail and the proposal to allow for an increase in the length of vehicles involved in intermodal transport to allow them to carry 45 foot containers.

#### 9.9 Turning to consultation the Minister says that:

- the Government has had informal consultation with the Freight Transport Association, the Road Haulage Association, the Society of Motor Manufacturers and Traders and the Confederation of Passenger Transport about the proposal;
- their views have been reflected in his detailed policy comments; and

- the Government will continue its consultation with stakeholders in the lead up to and during the course of the negotiations.

9.10 The Minister continues that:

- the Government has not produced an impact assessment of the proposal; and
- it intends, however, to undertake an "Impact Assessment Checklist" during negotiations, since part of the proposal would necessitate significantly changing part of the UK's current enforcement regime, with cost implications.

9.11 On cost implications the Minister says that the Government does not currently have high level figures for the financial impact of the proposal on the UK, but it intends to undertake more detailed financial analysis. However, he continues that:

- the requirement to establish a system for pre-selecting and targeting checks on vehicles or combinations of vehicles to ensure compliance would pose the most significant financial impact on the Government;
- VOSA has estimated that the additional 60 systems that would be required would involve an initial capital spend of around £6 million, with about £1.5 million ongoing annual costs;
- additional manpower would also need to be found, increasing the costs further; and
- this equates to approximately £100,000 capital investment per weighing in station, compared with the €50,000 to €75,000 (£42,215 to £63,323) estimate in the Commission's impact assessment.

9.12 As for the Commission's impact assessment itself the Minister notes that:

- the Commission has considered three policy packages, preferring the second option, as in its view the benefits obtained are far greater than the costs and is more likely to achieve the main objectives of environmental, safety and enforcement improvements;
- it estimates that improved aerodynamics, such as more rounded, streamlined cabins and rear tail flaps, would reduce the fuel consumption of long-distance road haulage by 7-10% thus making a very important economic and environmental contribution;
- this equates to approximately €5,000 (£4,222) saved in fuel costs per annum for a typical long-distance lorry covering 100,000 km;
- it is also estimated that the cut in greenhouse gas emissions would be approximately 7.8 tonnes of carbon dioxide for the same long-distance lorry covering 100,000 km;
- the Commission gives a projected estimate for 2030 for carbon reduction (in thousands of tonnes) between 13,538 and 54,153 (for 25% to 100% of heavy goods vehicles, buses and coaches in the EU with the improved aerodynamics) and a total fuel saving (in millions of euros) of between €10,935 (£9,232) and €43,739 (£36,929) (again for 25 to 100% of EU vehicles with the improved aerodynamics);
- it says that the new shaped cabins would provide less risk of injury to vulnerable road users involved in a collision than do traditional flat fronted HGVs;
- the new shape would also improve the driver's field of vision, in particular for vulnerable road users in front of the vehicle; and
- the Commission estimates that these improved road safety characteristics would save between 300 to 500 lives of vulnerable road users annually, across the EU.

9.13 On the timetable for the proposal the Minister tells us that:

- the Presidency has not yet indicated when negotiations will commence, but it is envisaged that they will begin sometime in the early summer;
- the proposal is not expected to be included in a Council agenda during the current Presidency;
- the timetable for consideration by the European Parliament is not yet known;
- the Commission envisages that the new trucks could be on the roads by 2018-2020; and
- certain features, such as aerodynamic devices at the rear of the vehicle, could be on the road sooner as these can easily be added to existing vehicle designs, but radically redesigned vehicle cabs could take much longer to develop.

## Conclusion

9.14 Although the objectives of this proposal may be laudable, there are clearly problematic elements which need to be addressed during Council working group consideration of the draft Directive. We are particularly concerned by the Commission's liberal approach to making policy with significant national impact through delegated legislation. So before we consider the proposal further we should like to hear about progress in negotiation on the issues the Minister has drawn to our attention and about the Government's more developed analysis of the financial implications. Meanwhile the document remains under scrutiny.

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22 See "*Technology Roadmap for Low Carbon HGVs*". (Atkins, P. 2010) at [www.lowcvp.org.uk/assets/reports/RD10\\_205201\\_4\\_low%20carbon%20HGV%20roadmapping.pdf](http://www.lowcvp.org.uk/assets/reports/RD10_205201_4_low%20carbon%20HGV%20roadmapping.pdf). [Back](#)

23 See "*Safer aerodynamic frontal structures for trucks: final report*" (Robinson, BJ; Knight, I; Robinson, T; Barlow, T and McCrae, I. TRL 2010) at [http://www.wspgroup.com/upload/28823/D8\\_Safer%20Aerodynamic%20fronts%20update2\\_3\\_11.pdf](http://www.wspgroup.com/upload/28823/D8_Safer%20Aerodynamic%20fronts%20update2_3_11.pdf). [Back](#)

# European Scrutiny Committee report 10 June 2013

## 7 Roadworthiness of vehicles

(a) (34131) 12786/12 + ADDs 1-3 COM(12) 380	Draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC  Draft Directive amending Council Directive 1999/37/EC on the registration documents for vehicles
(b) (34138) 12803/12 + ADDs 1-3 COM(12) 381	Draft Regulation on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC
(c) (34139) 12809/12 + ADDs 1-4 COM(12) 382	

*Legal base* Article 91; co-decision; QMV

*Department* Transport

*Basis of consideration* Minister's letter of 23 May 2012

*Previous Committee Reports* HC 86-xv (2012-13), chapter 1 (17 October 2012), HC 86-xvi (2012-13), chapter 10 (24 October 2012) and HC 86-xxv (2012-13), chapter 8 (19 December 2013)

*Discussion in Council* 10 June 2013

*Committee's assessment* Politically important

*Committee's  
decision*

(a) Cleared

(b) and (c) Not cleared; scrutiny waivers granted and further information requested

## **Background**

7.1 The current EU regime sets minimum standards for roadworthiness testing across the EU. Before a vehicle is allowed to be put on the market, it has to fulfil all the relevant type or individual approval requirements guaranteeing an optimal level of safety and environmental standards. Cars on the road have to be regularly submitted for periodic roadworthiness tests. The aim of these tests is to ensure that such cars remain roadworthy, safe and do not pose any danger to the driver and other road users. Cars are therefore checked for compliance with certain requirements, such as those for safety and environmental protection, as well as for retrofitting requirements.

7.2 In July 2012 the Commission proposed this new package of measures dealing with roadworthiness of motor vehicles and trailers. It would move beyond the current regime by seeking to ensure a vehicle maintains compliance with its original specification throughout its life in respect of safety elements and environmental protection. The two draft Regulations and the draft Directive in the package would replace existing Directives already transposed into domestic legislation. The Commission's primary aim was to harmonise vehicle testing throughout the EU to reduce fatalities, injuries and harmful emissions. The package aimed to facilitate the market in second hand vehicles by easing the movement of used vehicles between Member States and to reduce fraud in the second hand car market.

7.3 We have considered these proposals a number of times. In October 2012 we wrote to the Presidents of the Council, the European Parliament and the Commission about concerns we had in relation to the Draft Regulation on periodic roadworthiness tests, document (a), and the subsidiarity principle. In December 2012 we noted significant improvements that were now achievable in relation to that same proposal and agreed, in terms of paragraph (3)(b) of the Scrutiny Reserve Resolution of 17 November 1998, that the Government could, if an acceptable deal could be secured, support a general approach on the proposal at the December 2012 Transport Council. Meanwhile the document remained under scrutiny pending a report on developments. As for the other two proposals, we noted that there had been as yet little discussion of them and they too remained under scrutiny pending further information.[\[19\]](#)

### **The Minister's letter**

7.4 The Parliamentary Under-Secretary of State at the Department for Transport (Stephen Hammond), writes now about developments on the proposals, which have been under negotiation for nearly a year. The Minister reports first that the December 2012 Transport Council did agree a general approach on the Draft Regulation on periodic roadworthiness tests, document (a). He says that:

- the general approach represented a much more acceptable version of the proposal to the UK and dealt with many of the Government's concerns;
- it would, if the European Parliament agrees, convert the proposed Regulation to a Directive; and
- the Government believes that the modified Directive would support road safety, but without imposing excessive costs and unnecessary administrative burden on the Government and road users.

7.5 Turning to the other proposals in the Commission's package the Minister says that:

- during the Irish Presidency discussions in working group have mostly focused on the proposed Regulation on roadside inspection of commercial vehicles, document (c);
- progress in working groups was slow initially but has picked up in the last month or so, as the Presidency's ambition is to reach a general approach on the proposal at the Transport Council on 10 June;
- one final working group meeting is scheduled before the Council, agreement is close and the Government anticipates that it should be able to get the further concessions it wants;
- discussions on the much smaller draft Directive dealing with minor amendments to the EU specification for vehicle registration documents, document (b), only started on 13 May; and
- the Presidency also hopes to reach a general approach on this proposal at the June Transport Council, however with little progress made so far it is doubtful that it will be ready.

7.6 The Minister then discusses in more detail the proposal on roadside inspection, document (c). He says first, on some financial implications, that:

- the initial assessed cost associated with the proposal was £48 million over five years;
- that estimate was, however, incomplete as officials felt that many costs could be mitigated on implementation or avoided through careful amendment of the proposal; and
- resources were limited in the time available so the focus was on obtaining figures for impacts with high degrees of certainty that could be defended in discussions with other Member States, the Commission and the European Parliament.

7.7 The Minister continues by reminding us that the original roadside inspection proposal included:

- a roadside inspection target of 5% of commercial vehicles, including N1 vehicles (vans such as a Transit or smaller);
- adoption of a compulsory risk rating system for vehicle operators, including N1 light commercial vehicles, (uncosted and likely to be very expensive);
- ability to charge a fee to the owner of a vehicle inspected at the roadside if a major or dangerous defect were found;
- a requirement to keep the original roadworthiness certificate on board the vehicle at all times, (uncosted and inconvenient);
- a requirement that if a detailed roadworthiness inspection were needed that this should be conducted at premises no more than 10 kilometres away from the roadside inspection or by using mobile inspection units, (uncosted and inflexible for hauliers); and
- a requirement that roadside inspectors should be qualified to the same standard as periodic testing inspectors.

7.8 The Minister then tells us that two key issues divide the Member States at the moment and are likely to need to be resolved ahead of or during the June Transport Council – inclusion, or not, of N1 vehicles within the scope of the proposal and the rules surrounding the inspection of the securing of loads. He says that in both cases the Government believes that a suitable compromise is possible. The Minister explains that:

- inclusion of N1 vehicles as a type of vehicle subject to roadside inspection is not at issue in itself for the UK;

- the Government has the power to inspect such vehicles and it does;
- its concern is that the systems embedded in the proposal would make inspection slower, more complex, more expensive and less effective for vans because there would be new obligations for inspectors and restrictions on how van inspections must be done;
- the Government is seeking either the total exclusion of N1 vehicles from the scope or the removal of all subsidiary obligations for N1 vehicles, (they would still be inspected but all other rules relating to the inspection would remain with the Member State);
- exclusion of N1 vehicles is probably the majority view among Member States;
- the Government's proposed compromise on removal of all detailed obligations for N1 vehicles is yet to be discussed by the Member States;
- the issue of inspection of load securing has proved to be very difficult in working group meetings;
- a consensus is yet to be reached but opinion has moved towards a flexible approach which would allow Member States to check load securing using the legislation as guidance rather than a compulsory standard;
- the Government has been supporting this more flexible approach as there is massive diversity through the EU on how inspections are done now; and
- it is expected that the final text will be suitable for the Government as the remaining debate is revolving around detail that is not likely to be of concern to the UK.

7.9 The Minister tells us that there is otherwise a broad consensus elsewhere and that the key changes the Government believes will be agreed for the general approach are:

- change from a Regulation to a Directive;
- allowing use of permanent dedicated roadside testing sites as an alternative to having expensive mobile units, (this saves significant cost);
- small trailers (O1) and medium trailers (O2) removed from the scope of the Directive, (Member States still able to inspect at their discretion);
- removal of a specific target for a minimum number of roadside tests based on a percentage of the total number of commercial vehicle registered in its territory, (the UK along with some other Member States is wary of target based approaches as there is a risk of specification creep);
- major changes to the risk rating systems so they work better, exclude N1 vans and are more flexible for authorities, (reduces cost for the UK);
- change to the initial tests so that there is flexibility to be more targeted in finding faults so they can be rectified quickly and the vehicle allowed to proceed on its journey when safe without having mandatory "more detailed" inspection, (this supports road safety, is quicker for business and has a nil cost for the UK as it aligns with existing system and practice);
- changes to the "more detailed" inspections, now avoiding the costs associated with over specification on where these could take place;
- removal of fee charging provisions and the requirement to keep an original test certificate on board vehicles at all times; and
- inspectors would have to be trained for the job they perform, so it would no longer be necessary for training beyond what is needed.

7.10 The Minister encloses with his letter a table, which we annex, outlining the financial impact of these changes to the roadside inspection proposal, comparing the original Commission text with the expected general approach text. He says that in addition to avoiding costs in areas where the Government had been able to identify the impacts, costs have also been avoided in the areas that had not been previously been valued, such as changes to risk rating system and mandatory "more detailed" testing at facilities remote from the roadside.



7.11 The Minister comments that:

- considerable progress has been made on the roadside inspection proposal and the text is now greatly improved;
- many concessions have been gained and if a general approach is possible at the June Transport Council it would be sensible for the Government to protect these by indicating its support;
- negotiations are, however, ongoing on some issues, including the N1 point, and these are not expected to be concluded in time for consideration at our final meeting before the Council; and
- the Government is continuing to work closely with other Member States on these remaining issues, but it is possible that some may not be resolved until the Council itself.

7.12 He emphasises that:

- there has been no dilution in the standards of roadside inspection in the UK as result of the changes made at the working group meetings; and
- across the EU as a whole the Government would expect higher standards of inspection and therefore improved road safety.

7.13 The Minister tells us that it is possible that the draft amending Directive concerning registration documents for vehicles, document (b), may also reach a general approach. He says that:

- the proposal is limited, but may have serious consequences, as it includes a requirement that a vehicle registration must be withdrawn if a vehicle is prohibited from use;
- this is opposed by the Government as this would add major bureaucratic burdens into the process without any positive benefit;
- some Member States use the vehicle registration to give effect to a prohibition, but Northern Ireland and Great Britain do not;
- the problem with the current text is that Member States would be forced to use the withdrawal of registration process regardless of whether they need to or not;
- many other Member States are also opposed to the use of withdrawal of registration too;
- a very simple change to the text is likely to solve the problem so that Member States who need to use the provision could do so and those that do not need to use the withdrawal method could use alternatives; and
- the general approach on the periodic roadworthiness testing proposal, document (a), used this way of dealing with the issue, so it is likely that a similar approach will also be taken for the registration Directive.

7.14 The Minister says that, although he expects that the proposed general approach on the roadside inspection proposal, document (c), will be in a form that the Government would be content to support and that it might be possible to resolve concerns on the proposal on registration documents, document (b), he appreciates that we may not be ready to lift the scrutiny reserve on the proposals while the outcome of further negotiations is unknown. He asks therefore if we would grant waivers, in terms of paragraph (3)(b) of the Scrutiny Reserve Resolution of 17 November 1998, so that the Government may, if acceptable deals can be secured, support a general approach on the proposal at the June Transport Council.

7.15 Finally the Minister tells us that:

- the European Parliament is also considering the whole roadworthiness package;

- it is scheduled to vote in plenary on amendments in late May; and
- its amendments will not be included in the general approach texts.

## Conclusion

7.16 We are grateful to the Minister for his account of the satisfactory general approach on the periodic testing proposal, document (a), and now clear that document.

7.17 As for the other two proposals, we note the significant improvements that are now achievable in relation to the roadside inspection proposal, document (c), and the possibility of a simple change being agreed to the proposal on registration documents, document (b), so rendering it acceptable. So we are content to agree, in terms of paragraph (3)(b) of the Scrutiny Reserve Resolution of 17 November 1998, that the Government may, if acceptable deals can be secured, support general approaches on these proposals at the June Transport Council. Meanwhile the documents remain under scrutiny pending a report from the Minister of further developments.

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19 See headnote. [Back](#)

# Karin Hakl (Austrian MP - OVP party)

Balance of Competences Review: Transport

Contribution by: Mag. Karin Hakl MP, Member of the Austrian Parliament for the Austrian People's Party (ÖVP), Member of the Transport Committee, Chairperson of the Austrian-British Parliamentary Friendship Group.

## **1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The UK should pay more attention to shaping the EU's internal transport market, as the EU continues to be the Britain's main trading partner. EU-level action in this field is essential to enhancing the competitiveness of European manufacturers, both within the internal market and globally. In the following, I will focus on areas where *more* EU competence would benefit both Britain's economy, as well as EU Member States more widely.

## **2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

Liberalisation of rail transport is incomplete, especially regarding competition between train operators (rather than ownership of the rail network infrastructure). National train operators, such as the French national railway, are blocking liberalisation in this area. This is protectionist. Lack of competition is keeping prices of rail transport higher than they should be, preventing a shift from road to rail that is both economically and environmentally desirable.

Britain has a special role to play here. The UK's rail privatisation is often held up – wrongly - as a negative example of liberalisation. In fact, initial problems in the UK resulted from privatisation of the rail infrastructure, rather than liberalisation of train operators. Meanwhile those initial problems have been overcome, and Britain's private operators are working well. The UK could hence be more vocal in setting the record straight and advocating rail liberalisation across EU.

Increased EU competence can help drive rail liberalisation forward, as national jurisdictions are currently blocking such a move. EU competition law would be the right avenue to do this, laying the ground for fair competition between train operators on European rail networks. This would require the standardisation of technical norms (such as train signals), and correspondingly standardised training for train drivers across the EU, leading to a single EU train drivers' licence. Norms and licenses currently vary from Member State to Member State; EU competence here would be essential.

Further, EU competences in non-transport areas would indirectly benefit the single market in transport, and the internal market more widely. In particular, the lack of a common European asylum policy (with clear quotas for each member state) has led to distortions in the Schengen zone of free movement: Member States have compensated for the lack of a functioning EU asylum system by clamping down on free movement instead, thus unintentionally damaging the single transport market. A common EU asylum system, therefore, would also benefit the efficient movement of goods and people in the single market, essential for competitiveness.

### **3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

The competitiveness of the internal market, notably of European manufacturers, is intimately tied to the transport market, especially given today's dominant business model of "just in time" delivery. Transport costs, especially in shipping and road transport, are currently lower than actual costs (due to the economic crisis), and do not reflect externalised costs (to the environment, traffic jams, wear and tear of roads) either. This is market distorting; it damages both European tax payers and European manufacturers. Tax payers have to bear the externalised costs that should be borne by transport companies and their customers. Moreover, this artificially cheap transport (especially for shipping) has enabled the outsourcing of low-cost manufacturing overseas. At current transport prices, it is profitable to ship cheap goods (such as clothes) from China to the EU. If the actual cost of transport were applied, the marginal costs for those goods would no longer be economical. Price dumping of low-cost goods from overseas labour markets would stop; local production in the EU (closer to consumer markets) would become more attractive again. Conversely, higher transport costs would not damage European exports, concentrated in the high-end manufacturing sector, because transport makes up a much smaller part of the final costs of those products.

So, an honest and fair allocation of transport costs would be a more effective – and less controversial – way of protecting the EU's internal market, and European manufacturers, from overseas competitors than tariff barriers. This can be achieved through enforcing road and shipping tolls, thus internalising the costs that are currently externalised to the public. In turn, the revenues can be used to improve the rail network, thus displacing traffic from the road to the rail.

The EU already has competence in this area, but it is not being implemented effectively. Notably, the internalisation of external costs has long been an EU aim (reflected in the EU Transport White Papers). But Member States are not implementing that aim, as they want to hang on to cheap transport. This is damaging to our economies and the internal market.

**4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

As stated above (under point 3), an honest allocation of transport costs (including the costs to the environment) to transport providers and their customers is necessary for fair competition. The current externalisation of those costs to European tax payers is market distorting, aiding the price dumping of overseas manufacturers and damaging European ones. So, an honest allocation of transport costs protects the internal market – and Europe as a manufacturing location – not only the environment.

In terms of the environment, a sustainable use of resources is possible only if the users (i.e. transport companies and their customers) are accountable for their usage, and pay the price for it.

**5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

**6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

**7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

**8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

Globally, the EU can only prevail as a single negotiating bloc; individual countries, including the UK, have too little weight on their own, and can be played off against each other by outsiders. Only the EU – as the largest internal market in the world – can negotiate with the US or China on an equal footing.

**9. What challenges or opportunities are there for the UK in further EU action on transport?**

There is a mixed record with regard to technical norms for cars, which are currently left to the national level. In particular left-hand driving in UK – and corresponding production of cars with steering wheel on the right hand side - makes cars disproportionately more expensive for British consumers compared to those in the rest of the EU. However, while damaging the consumer, it also protects the British car industry and its jobs. If technical norms were standardised across the EU, car prices for Britons would drop, but British manufacturers would face competition from across the EU. The EU as a whole faces the same question in free trade negotiations with the US: if car norms were standardised across the Atlantic, this would potentially enlarge the market for European car manufacturers, but competition would also become tougher. This is a difficult decision.

# Local Government Association (LGA)

## SUMMARY

1. The Local Government Association (LGA) is the voice of English local government. Our mission is to help support, promote and improve local authorities in England.
2. Given the broad range of EU competences affecting local government, the LGA is submitting a single response to the Government's Balance of Competences Review rather than respond to each specific consultation. Our response covers the role of local authorities, principles of subsidiarity, good governance and better regulation in EU legislation and its implementation, which are relevant to all policy fields.

## INTRODUCTION

3. We understand that the Review aims to develop an audit of that the EU does and how it affects the UK on 32 specific policy topics. Members of the LGA European and International Board discussed the Review with a Foreign Office official in July 2013. Our members expressed reservations about the organisation of the review, which they considered to be protracted and over-complex. Overall, they felt that the local dimension was missing from the Review, and that the "call for evidence" may not distinguish between objective fact-based evidence on the one hand, and anecdotal, politically-motivated commentary on the other.
4. The LGA is responding to this review for three reasons:
  - i. The Review covers many areas where local authorities have a duty to provide services, enforce regulations, and/or inform the general public. We estimate that around half of all new UK laws affecting the sector have their origins in EU law. Once transposed, they may have financial, administrative and regulatory implications;
  - ii. The 2011 Localism Act EU Financial Sanctions provision requires a significant shift in the way that the Government considers how new EU legislation could affect local councils in terms of new obligations and burdens; and
  - iii. More needs to be done to ensure the process of negotiation, transposing and implementing EU laws is effective. We recommend practical steps are taken to achieve this within the UK and in Brussels.
5. The LGA is a cross-party organisation and does not take a view on the future UK role and relationship with the EU. Our role is to assess the

impact and practicability of the specific EU legislative proposals and policy initiatives on a case-by-case basis. The earlier local authorities can influence the process, and the more involved they are with the Government in doing that, the more effective new laws are likely to be. Our aim is to ensure that EU legislation is proportionate and fit for purpose, in that it delivers its intended benefits without imposing undue financial, administrative and regulatory burdens on our member authorities. We are concerned that in recent years, local authorities have had to deliver many new EU obligations at a time of severe budgetary constraint.

6. We want to ensure that our member authorities benefit from EU funding and other opportunities that can be accessed through our EU membership, and that exchange of experience and good practice is promoted. Working through institutions such as the EU Committee of the Regions (CoR) and the Council of European Municipalities and Regions (the pan-European LGA) can be an effective way of ensuring that the interests of English local government are pursued.

## IMPACT OF EU RULES ON LOCAL AUTHORITIES IN ENGLAND

### ***Wide-ranging impact of EU obligations on local authorities***

7. Local authorities have a broad range of functions. Many of these are affected by EU laws, with which they comply through UK Statutory Instruments which transpose EU Directives, or through EU Regulations which have 'direct effect'. These can have a significant, administrative, financial and regulatory impact on the way in which local authorities are run, and the services that they provide or procure, costing time and money to implement.
8. We estimate that around half of all new UK laws affecting the sector have their origins in EU law. Broadly, the areas of EU legislation and policy that we prioritise include promoting jobs and growth via EU funds; regulation of public services and procurement; state aid rules; environment, waste and energy; employment law; equalities and social policy; good governance and local democracy.
9. Once transposed, EU law impacts local authorities through:
  - a. Energy efficiency and consumption rules affecting municipal buildings, housing stock and public transport;
  - b. Landfill, waste framework, waste electrical and electronic equipment, and air quality rules framing all local environmental and waste management services;
  - c. The renewable energy directive setting ambitious targets for energy generation and in the transport sector;



- d. Internal market laws on public procurement framing the way in which local authorities buy goods, works and services; and laws on licensing affecting their regulatory activities;
  - e. State aid rules affecting how new businesses, public transport, and airports can be supported with public finance;
  - f. New EU rules affecting the activities of local authority registrars – EU birth, death and marriage certificates;
  - g. Working time and health and safety rules affecting shift patterns in Fire and Rescue Authorities and residential care homes; other EU employment laws stipulate parental leave entitlements and rules on the employment of temporary workers;
  - h. Wide ranging consumer policy laws are regulated by local authority trading standards officers;
  - i. Regulation of businesses, often delivered through local trading standards, environmental health and licensing services;
  - j. Rules on the free movement of people and labour can affect local communities and local economies in many ways, with the consequence that local services may need to be adapted;
  - k. EU cohesion policy defines how much funding is available to create growth and jobs in local communities; and
  - l. Rules to make it easier for the service and retail sector to operate across the EU impact on council licensing functions.
10. The impact of these laws may be positive or negative, and the burdens imposed may be negligible or substantial, proportionate or disproportionate to the objectives being pursued. The magnitude of the burden may be affected by the way in which the EU law is transposed into UK law ('goldplating'). In some cases, the EU provides funding to assist local authorities to meet their obligations.

### ***Transposition issues***

- 11. The Localism Act AU Financial Sanctions provisions enable a Minister to seek to pass on to a local authority a fine from the EU for tacitly failing to comply with an EU obligation, if the Government can prove that the local authority contributed to UK non-compliance. This significantly changes the relationship between central and local government on EU legislative matters.
- 12. The Government assumes that all local authorities know if a UK Statutory Instrument implements an EU Directive and should therefore be aware if

they are potentially liable to an EU financial sanction. The reality though is not that clear cut. This is because the Government has not always made explicit in domestic legislation that it is wholly, or in part, transposing an EU law. This practice, if continued to future EU legislation, will have a significant impact in enforcing the Localism Act EU financial sanctions provisions.

#### **Case study: Air Quality**

The government transposed its responsibilities under the EU Ambient Air Quality Directive through the UK Air Quality Standards Regulations. It is entirely separate to, and has no read across with, UK legislation setting our local authorities' air quality management role through the Environment Act and Air Quality Regulations, neither of which makes clear that they result from an EU law, or that failure to comply could potentially result in an EU fine being passed on by the Government.

13. It can take years for EU laws to be agreed, transposed and implemented. Often these decisions are made without a thorough assessment by the Government on how these rules will be implemented. At times the concerns of local government are inadequately addressed, which may result in unforeseen financial and administrative burdens on local authorities

#### **Case study: EU procurement directive**

When it came to agreeing the 2004 EU public procurement Directive, the Government predicted that the new rules would not add new costs or administrative burdens to the public sector or business, and that 'any costs in the procurement process should be reduced by these simplified and improved rules'. In practice, there have been a number of different cost and administrative burdens on local authorities. These include needing to seek legal advice on certain types of contractual relations, and having to spend time dealing with the threat of legal challenges. Typically procurement officers spend more time on legal issues, whilst failed bidders seek disclosure of all information to the contract aware, and seek to challenge it. A 2010 LGA survey revealed that 66% of local authority procurement managers felt the Directive brought increased procurement process costs and administrative burdens, creating a more complex procurement process.

14. Recent changes to be agreed by the end of 2013 will help local authorities allowing faster award procedures, greater local authority collaboration, and an ability to stipulate environmental and social conditions. They are required to fully adopt e-procurement within 30 months following the introduction of the Directive.

15. Unclear and poorly drafted reinterpretation of directives into domestic regulations can lead to uncertainty and significant additional cost.

#### **Case study: Waste Framework Directive**

One example is the experience of DEFRA and the Welsh Government who, following a costly and time-consuming legal challenge, recognised that the domestic regulations as drafted did not adequately reflect the requirements of the Waste Framework Directive and should be amended. DEFRA and the Welsh Government have now replicated the requirements of the Directive into domestic regulations. The officer resource and wider litigation costs incurred by both the Department and the Welsh Government could have been avoided by taking this clearer approach at the outset of proceedings.

#### ***Reducing the burden of EU law on local authorities***

16. Despite English local authorities being subject to an array of EU obligations, little is done by the Government to adequately involve them in assessing the impact of these laws before they are agreed or transposed, which creates unnecessary burdens.

#### **Case study: Energy Performance of Buildings Directive**

Reducing energy consumption is a significant EU, national and local authority priority. However, the original Energy Performance of Buildings Directive and its implementation have added administrative and financial burdens to local authorities. The Directive sets minimum energy standards for new and existing buildings undergoing major renovation, but implementation in England focused on process, rather than outcomes. The Directive recommended that all public buildings be assessed and display an energy certificate (DEC) no more than ten years old, highlighting energy consumption. DCLG however set out that DEC's be renewed *annually*. This cost fell to local authorities, increasing implementation costs for English local authorities compared to EU counterparts.

17. EU legislation sometimes impinges on the ability to make local decisions about how services are fundamentally designed and delivered. For example, the EU Services Directive contains many positive initiatives but it also places limits on how licensing services can operate and the fees that can be charged. On-going discussions relating to EU good legislation suggest councils may be required to charge for some services. This would restrict the ability for councils to design services based on local needs and priorities.

#### ***Success stories***

18. There are instances where the Government has engaged effectively with local authorities on EU legislation, but these are the exception rather than the rule. Key to this has been early engagement before a UK policy line is developed, enabling local authorities to help give an evidence base to UK policy positions.

#### **Case study: Energy Efficiency Directive**

The draft Directive proposed to apply a binding annual 3% renovation target to local government buildings. While the policy intentions of the EU were supported by local government, it would have been financially impossible for councils to achieve this without diverting significant resources from key services, at a time of unprecedented budgetary constraint. Working with the Government and other local governments across the EU to identify the potential impact of the EU target, we were able to successfully remove local government from the scope of the Directive. Moreover, from a UK perspective these targets were unnecessary since a number of national initiatives (Carbon Reduction Commitment, Green Deal, and other local measures) already steer English local authorities to achieve energy efficiency improvements in their building stock.

#### **Case study: Directive promoting renewable energy sources**

The Renewable Energy Directive set the UK a target to increase alternative energy usage to 15% by 2020. Through the CoR, the LGA successfully campaigned for the Directive to recognise local authorities' role in decentralised, alternative energy generation and the positive impact it could have on local green job creation, secure energy sources, and more local control on future supplies. It enabled local areas to press ahead with renewable energy, without adding complexity to local planning regulations. Only by working closely with the Government from the outset was local government able to influence the outcome in Brussels and Westminster.

## **CONCLUSIONS AND RECOMMENDATIONS**

19. Our experiences have led us to the conclusion that the decision making process in agreeing EU laws and transposing them into UK law, and their implementation, could be more effective.
20. Given the breadth of EU obligations affecting local authorities and the introduction of the Localism Act, the LGA has repeatedly called for a more robust, closer and structured involvement from the outset with Government Departments on EU issues involving the sector. For us, it is imperative that Ministers have an appreciation of the impact of specific targets and

deadlines in proposed EU laws, and of local authorities' ability to deliver them.

21. While the Localism Act left to a Government commitment towards a more systematic approach to gather intelligence and evidence on the local implications of EU laws, it remains to be seen how effective and systematic this will be.
22. The LGA has initiated a series of activities to promote better partnership working. Principles of sharing relevant information, working together in compiling a shared evidence base to further our mutual priorities and to ensure maximum influence on shared priorities are key outcomes that we would like to achieve. We anticipate a number of EU review on existing Directives, including working time, and seek assurance from the Government that it will examine the implications on local public services (Fire and Rescue Authorities and residential care homes), so that future pressures are mitigated.
23. The LGA frequently lobbies the Government (in Whitehall and Brussels), the European Commission and Parliament to promote the principles underlying these recommendations through the EU smart regulation strategy, and by applying these principles to specific directives. The LGA has good working relationships in Brussels with UK civil servants (UKREP) for intelligence gathering and influence.
24. **Rewiring Public Services**, a new LGA campaign proposes ten significant changes between local and central Government in order to transform public services. The initiative contains two important elements which are relevant to this consultation and which are reflected in our recommendations. The first is to address the 'English question' relation to devolution. Our model reduces bureaucracy and red tape by streamlining services and devolving to the local level, resulting in a slim core for central government of England. The second is to ensure that the principle purpose of regulation is to enable the delivery of economic growth aligned to local vision. Our recommendations are presented in the light of these benchmarks.

### **Recommendations relevant to the Government**

25. **Identifying challenges early.** As the sole UK negotiator for EU laws affecting English local authorities, the Government has an important role in securing the best possible outcome for UK taxpayers. This should require a thorough examination by the Government in partnership with the LGA and its member authorities to analyse challenges and opportunities in delivering and/or implementing measures at local authority level and ensuring it is costed. It must engage with the LGA at two crucial stages: firstly: whilst negotiating the UK's line on a draft EU law which could affect

local services; and secondly: when UK Parliament transposes an EU directive into UK law (see public procurement example).

26. **Systematic, high level engagement is needed.** Scotland, Wales and Northern Ireland have a constitutional right to be consulted and influence UK national policy, including on EU legislation, and to participate in Council meetings in Brussels. There is no equivalent influence or representation for England. This absence was most notable when decisions were made to re-allocate part of England's EU funding allocation to the Devolved Administrations. It is our view, as set out in *Rewiring Public Services*, that in most cases this would best be done by consulting local government through the LGA.
27. **Avoiding goldplating.** There is a risk that the original purpose of legislation may be lost by over-zealous legal interpretation or reinforcement, losing sight of the original intention to enable or safeguard appropriate rights and responsibilities. The LGA therefore urges the UK Government to apply new EU rules in the lightest possible way and avoid 'goldplating' (see energy performance of buildings example). In recent years, English local authorities have had to implement new EU obligations at a time when they have had to absorb cumulative reductions in their budgets. The Government has outlined its commitment to protect businesses from goldplating EU legislation by using direct 'copy out'<sup>64</sup>. The same commitment should apply to local authorities, in particular given their new exposure to potential EU fines at a time when their capacity to deliver has been reduced.
28. **Effective transposition.** In line with the above, the Government should identify more explicitly the link between EU obligations and UK Statutory Instruments (see air quality example), so that there is clarity where and how domestic law responds to EU obligations and statutory requirements. This could be done by stating on the face of a UK Statutory Instrument which EU law it fully, or in part, transposes, and any EU targets and deadlines it incorporates and which may in consequence expose the local authority to a potential EU fine.
29. **Effective communication.** The Government could use the [www.gov.uk](http://www.gov.uk) website more effectively to house in one place all information relevant to a Directive and its implementation. An annual list of EU legislation affecting local government could be published to ensure that all parties understand the origin of new obligations. This should be in addition to systematic, timely and co-ordinated communication, which is critical if local authorities are to apply rules in a timely manner and thus avoid the UK being in breach of EU law.

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<sup>64</sup> <https://www.gov.uk/government/news/government-ends-goldplating-of-european-regulations>

## Recommendations for EU decision-makers

30. **Only legislate when necessary.** We acknowledge that ‘good governance’ is not ‘no governance’. In some policy areas it is logical that EU countries collaborate to set a level playing field. However, the EU should legislate only when absolutely necessary and with a minimum of bureaucratic rules and a maximum of consultation, forewarning and financial assistance, leaving it to local authorities and the UK Government to work out the detail. This addresses the issue of ‘subsidiarity’.
31. **Light-touch EU legislation.** We recommend ‘light touch’ EU legislation where appropriate, in which the legislative purpose is clearly articulated, and that it should be for the Government, in consultation with local authorities and the LGA, to work out the detail of how we achieve EU objectives. This addresses the issue of ‘proportionality’.
32. **Alternatives to legislation.** The EU should consider alternatives to legislation, and introduce time limits and review periods (‘sunset clauses’), to accelerate the repeal and simplification of existing rules (the concept of ‘one-in, one-out’).
33. **Strengthen democratic legitimacy.** EU decision-makers must better involve local authorities – through the LGA, European associations and local government representatives in the CoR – to strengthen the democratic legitimacy of EU decisions and ensure that all new EU laws are necessary, proportionate and workable.
34. **Effective EU wide enforcement of rules.** Where EU laws are in place, there must be more effective enforcement of rules across Member States. We note that the UK assiduously implements its EU obligations, while others take a less robust approach to compliance.

# HIGs Event

HIGs event: 30/07/2013

- Participants broadly welcomed the Balance of Competences Review, with one participant calling it an 'interesting and useful intellectual exercise' and another stating that it will be a 'useful stocktake'.
- One stakeholder felt that it was sometimes difficult to see the value added by EU action, particularly in the global maritime context. In terms of implementation they went on to say that there was not an obvious role for the EU to fulfil and yet it wants to do something. Overall they questioned the Commission's assessment of problems to solve, for example on passenger rights in maritime they felt that there wasn't a problem that actually needed to be resolved.
- One participant described the Commission as an 'impatient regulator', which was echoed by others round the table.
- One maritime stakeholder raised the issue of the Commission's tendency to try and get ahead of IMO decisions, which has caused tensions for example on environmental issues. They recognised that the IMO takes a while to come to a conclusion but that at least this was based on international consensus.
- In the roads sector one stakeholder stated that the EU was a good forum for generating ideas but that should be the extent of its remit. With regards to standards it was important to have these set on an international level, i.e. by the UNECE who has competence for manufacturing standards. This stakeholder also questioned the role of the European Parliament in technical decision-making, assessing the institution as being based on nothing but hard lobbying and lacking in expertise. They doubted that the EU institutions would progress in a positive way, stating that they had been relatively lucky so far but that issues bubbling on the horizon were likely to change that.
- One participant felt that the EU was using the idea of creating a 'level-playing field' out of fear – from China in particular. They also felt that the Commission was coming up with gold-plated regulations on emissions and safety that weren't competitive on a global scale. Some of the EU standards for example are not recognised within the US market, which is clearly an important target market, putting EU manufacturers at a disadvantage. They expressed a desire for more mutual recognition between big trading blocs.
- Participants felt that the EU has a regulatory heavy agenda due to its assumption that increasing regulation will increase safety, which stakeholders would challenge. The Commission's review cycle and the rotating presidency also lead



to a regulatory agenda due to presidential desires to have a certain amount of regulation on the statute books.

- The Ports Services Regulation was raised as an example of where the Commission has been led to legislate due to perceived issues in isolated areas – in this case in Mediterranean ports – that is largely irrelevant to the UK but has negative implications for the UK ports industry.
- One area where the Commission could usefully act is in the clarification of state aid guidance to ensure a competitive level-playing field.
- The role of the UK was also discussed in the context of it being a net contributor to the EU and therefore it was perceived that we needed to really question how to make best use of the EU institutions and lobby the EU on the real issues. For example, safety standards for HGVs or state aid guidance.
- There was a perception that the Commission sometimes went beyond its policy aims by entering into market operations, which caused issues for some stakeholders.
- Some participants felt that the Commission's focus on inter-modal transport was misguided given that the vast majority of onward travel from ports was carried out by road. Similarly, given that the freight model in the UK is largely privatised they questioned whether the EU helped to develop that model sensibly given that its focus is on multi-modal transport.
- One stakeholder wondered whether the EU institutional framework gives enough freedom to encourage innovation in the transport sector.
- On the provision of infrastructure one transport provider expressed a desire to see an objective provision rather than politically driven. They felt that currently there was an obvious favouritism when choosing projects, both at a UK and an EU level.
- From a fuels perspective one participant felt that having standards and consistency across the EU was helpful but that implementation was always an issue. On FQD and RED in particular the review periods and timelines have created investment uncertainty and an unstable environment for the market. For example, there is a plan for advanced biofuels until 2020 but no certainty beyond that date, which is clearly not an investment incentive.
- On aviation stakeholders echoed sentiments from previous sessions affirming that liberalisation of the market had delivered benefits for both consumers and

operators, however there were issues around inconsistent implementation not just with regards to the EU institutions but also individual Member States.

# MEP meetings Brussels

## BOC MEP meetings Brussels

9/07/2013

### Approach to EU and general remarks

- There was a general welcome for the BOC transport Review from MEPs who had agreed to take part in meetings with the Department. The discussions included the following points.
- One MEP commented that without a strong and coherent transport policy, the single market cannot function effectively. Where the transport single market has succeeded the benefits are measurable and quantifiable. For example there had been huge economic benefits from aviation liberalisation.
- Another outlined an approach to EU Regulation based on; does EU action add value, how does EU competence affect my constituents, and where does EU competence help the single market. The MEP expressed little interest in what lay outside of those criteria.
- A third MEP challenged EU process. Some subjects were best left to specialist technical committees, not discussed by MEPS who had no knowledge of the matter in hand. How could EU process be re-structured to get away from this type of interfering?
- People needed certainty and clarity, not endless legislation, so that they can plan business.
- The view was expressed that EU Commission Impact Assessments were not independent and were always written by the same firm/contractor. Understanding that this was part of the process was critical to getting a UK view across.
- The UK must not gold plate EU Regulations.
- The UK "must play hard-ball with the Commission because they're not listening."
- An MEP commented that in a highly regulated area like transport consolidating legislation was actually helpful to industry which then has to know less.
- As transport costs account for 10% of the cost of a finished product, tariff, quantitative, technical, political and administrative barriers hold back transport users, businesses and citizens alike. Free movement of goods and people within the EU is conditional on the removal of these barriers. Keeping those costs down was significant for a global trading bloc.
- Caring properly for the environment could not be done at MS level - and would be too fragmented. Agreeing common rules and regulations with other EU countries allows the UK to tackle issues relating to the pollution of skies, seas and roads on an international level far more effectively than if it could alone.
- Where the UK is in a minority at the EU level it loses its voice. On the whole it's positive for the UK to be part of a wider bloc to get our way internationally. Sometimes you have to look outside of your backyard in transport.
- Where the EU has liberalised but there has been no reciprocation by third countries is an issue to be tackled.

## Rail

- One MEP said that on rail liberalisation the UK and Sweden were model examples of opening up markets. The UK has seen an increase in market share since liberalisation and both countries had benefitted.
- A contrary view was expressed that in rail policy the "EU was over-egging the pudding every time". The UK did not need a one size fits all rule which doesn't work for the UK as an island state.

## Aviation

- There was considerable support for EU action in establishing an aviation single market. MEPs who met the Department were supportive of the Single European Sky, FABs and aviation security, as these initiatives added value at EU level. One commented that SES was "not a sovereignty issue" but that some EU MS were baulking at implementing it. Further EU action was needed.
- However, scepticism was expressed by some about the role of EASA - especially in relation to its rule making about the leisure flying of gliders. The concept of EASA was felt to be good but its "implementation was awful"; it was too close to the Commission and there were issues of proportionality (in rule making) and efficiency which it did not address.
- One MEP felt that the "EU kept duplicating ICAO". This interfering was making EU aviation uncompetitive and obliging them to comply with two sets of rules. Another felt the EU always wanted to add to ICAO and "over-egg it".
- Some MEPs were strongly critical of the EU ETS position. The Commission had tried to achieve its wishes without getting global agreement and often seeks to legislate without considering the wider/longer term consequences. Another commented that the application of ETS to non-EU airlines could only succeed if the EU spoke with one voice and that in the absence of that voice it was better to give more time to ICAO to reach an agreement.
- On air passenger rights one MEP expressed the belief that the revision of EU 261 "was going to be a shambles, the new proposals are bonkers". There was an interaction between EU 261 and the Package Travel Directive which risked leaving service providers open to two sets of different rules and having to pay compensation to passengers twice over, under each set of Regulations.
- An MEP commented that the lesson of the air passenger rights legislation was not to legislate in a vague manner. Matters should not be left open to be tested in the court several years down the line.

## Shipping

- One MEP commented that the EU was always duplicating what the IMO does, and that this adds uncertainty and extra cost to the industry.

- Another MEP felt that the Commission's social agenda was interfering and gave examples of the rights for ship passengers to obtain compensation if delayed by only an hour, and the relocation of Cunard to Bermuda because of the WTD.
- One MEP highlighted the EU Sulphur Directive as a single market issue because it applied only to the North Sea not the Mediterranean Sea and thus distorted competition between northern and southern Europeans.

## Ports

- The proposed new Ports Services Directive was mentioned by one MEP as a bad example of the imposition of an inappropriate uniformity which was both unnecessary and designed to keep EU officials in work.

## Roads

- Two MEPs considered that road worthiness issues should be left to nation states. Periodic testing - to see if the driver is competent and the vehicle is well maintained was all that was required. One MEP asked "Why do we want to change our MOT system? What was the problem?"
- Both these MEPS opposed the inclusion of caravans in the roadworthiness package. Both were strongly opposed to drivers hours and the Working Time Directive.
- Another MEP said that while there were aspects of social policy which needed EU action, there were areas where it had gone too far. WTD was an example of this. Transport policy spilling over into social policy was a grey zone. There needed to be a really obvious requirement for action to be taken.
- An MEP considered periodic vehicles testing was largely a positive measure, and knowing that foreign vehicles coming into the UK had been properly tested was reassuring.
- An MEP considered the medical stipulations in driving licences was an example of the EU going too far.

## Enforcement

- The lack of proper enforcement of existing legislation was noted. One MEP said there should be, "enforcement of what you've got, not adding to what you've got." Another commented that the EU didn't do compliance and enforcement of regulations and gave examples from the aviation sector including on ground handling and slots.

# Merseytravel

Merseytravel is a public body comprising the Merseyside Integrated Transport Authority (ITA) and the Merseyside Passenger Transport Executive (PTE), acting together with the overall aim of providing an integrated transport network for Merseyside which is accessible to all.

Integrated Transport Authorities have a statutory requirement to produce Local Transport Plans (LTPs) as a result of the Local Transport Act 2008. Via the Local Transport Plan, the ITA is responsible for multimodal transport policy issues. However the Passenger Transport Executive (PTE) remains responsible for delivery of passenger transport, concessionary travel, ticketing and so forth, and as a result, works in partnership with the local authorities and other partners to deliver the LTP.

The Local Transport Plan and its associated documents came into force on the 1 April 2011 and form the transport policy framework for Merseyside.

Our comments, opinions and observations in regard to this call for evidence are based on our experience as a transport authority and experience of participating in a number of EU initiatives and projects and bids for EU funding.

Merseytravel's responses to the consultation questions are as follows:

## 1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.

Ideally, the concept of a Single Market and a Single Transport System with common standards and structures across the European Union to allow for seamless movement of people and goods with ease across the continent is a good idea. It could also have great economic, social and environmental benefits for people and businesses across Europe and enable seamless travel across borders and regions via a variety of transport modes.

But, in practice the EU consists of a multitude of unique, disparate nation states each with their own history and culture. As a result they have developed their transport systems in different ways with different cultures, institutional structures, technical standards, political contexts, etc. over a long period of time. Consequently harmonising these varied and disparate transport systems to a single standard and model to create an ideal, ultimate, integrated, seamless, efficient transport system across the EU has very great challenges. For example the UK is unlikely to be able to enlarge all of its railways to the European loading gauge due to the immense and prohibitive cost involved. Harmonising standards across several transport modes may be too difficult, since each mode of transport has its own culture, technical standards, political and institutional frameworks. Arguably this is likely to be difficult to achieve and may take many decades, and require substantial investment by countries or private operators to bring their transport systems to the required standard. Ultimately this cost has to fall somewhere, and often it falls on the consumer/passenger leading to increased fares etc.

Another important factor is the impact of liberalisation and privatisation of transport networks, which is particularly prevalent in the UK, and is being encouraged by the

EU for elsewhere. Indeed the UK has gone further than most EU countries in terms of liberalisation. Full privatisation can create an increasingly expensive and fragmented transport network, where private operators have a very different ethos to state owned operators.

On certain routes there is only one choice of rail operator, for example Virgin West Coast on the West Coast Main Line from London to Liverpool and Manchester, whilst local rail services in Northern England are dominated by Northern Rail. Likewise Eurostar is the only rail provider of international services between London and the Continent via the Channel Tunnel. But there is potential interest to start up international services through the Channel Tunnel on an open access basis.

On the Continent, the state operators still dominate their rail markets, and this seems to be slow to change. There has been reluctance in many countries to allow open access operators to compete directly with state or franchised operators on domestic and international services, subject to capacity constraints. There are only a few examples of open access operators, for example Italy has an open access rail operator (NTV), which entered the market to compete directly with the state owned FS on the key intercity high speed rail routes.

Liberalisation of the rail market does not necessarily mean that full privatisation and break up of state operators has to be the approach taken, but it could instead simply involve allowing open access to enable entry of new operators into the rail market, to compete alongside existing state, franchised or private operators.

But open access rail operators face significant political, institutional and technical barriers to entering the rail market quite often. Rolling stock availability can also be an issue. Second hand rolling stock is often in the hands of existing operators or of low quality, so new entrants are often forced to order new-build rolling stock at substantial cost. If open access operators were encouraged, then true competition could develop, and this would greatly benefit the passenger in terms of service quality, frequencies, fares, etc. But this faces significant political challenges. It is also of relevance that between the UK and the Continent there are border controls, which can be a barrier to new international services.

Rail is the only transport mode which is not truly open access. Arguably key reasons that prevent new entrants to the rail market in the European Union include:

- Lack of technical uniformity across countries
- Very complex rail regulations
- Little reliability and consistency of railway regulations and reform processes

This indicates that the EU efforts to harmonize technical norms and principles of rail regulation across EU member states will be beneficial. However creation of a single transport system for the European Union is perhaps unlikely so the focus should be more on strategic assistance in opening up the market to new entrants thereby enabling more choice and healthy competition.

2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?

The European Union is beginning to create a single transport market in certain modes although it appears that the EU lacks holistic thinking across the transport modes. Whilst great strides have been made they tend to be specific to a particular mode. The areas of transport competences where the EU has had most activity include railways, aviation and maritime. Promotion and investment in trans-European networks and tackling infrastructure gaps and bottlenecks in these networks is a particular area of success for the EU. Concepts such as “motorways of the sea” also are an area of success. Investment and funding gained via European Structural Funds has also been greatly beneficial and helped implement key transport projects that otherwise may not have progressed, or been delayed. The EU has had less of a role on local transport, urban mobility, walking & cycling as these areas are seen as more the role of national and local government. There are clearly great challenges to overcome, and it will take substantial investment and many decades before a truly integrated, single transport market across all the modes of transport is created in the European Union.

Another issue is with the EU Structural Funds; while funds such as the TEN-T, EU Structural Funds, and European Investment Bank can be very useful, there may be a case for a general purpose EU Transport Fund to be set up.

### 3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?

Good transport connectivity is essential for seamless movement of people and goods within the European Union, therefore measures to improve transport, and tackle capacity bottlenecks, are clearly welcome in this context. Targeted simplification of the regulatory framework to overcome key barriers to seamless transport can also help. However this doesn't necessarily equate to the creation of a single transport market or a totally harmonised generic transport system across Europe, just improved international and long distance transport and connectivity within and between countries. Arguably this can be achieved by greater cooperation and dissemination of best practice.

The Single Market encourages aviation and long distance transport but this may not necessarily be sustainable in the context of climate change and reducing emissions when we should really be promoting jobs and activities to be more local, where possible, to reduce the need to travel. Although it is acknowledged that aviation and other sectors are working hard on technical solutions to reduce their carbon footprints and emissions. The EU tends to take a very mode specific approach to its policies, but the EU needs to take a holistic view across modes and join up long distance and local transport as well as promoting sustainable and integrated transport across a variety of modes while also meeting its environmental targets.

### 4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?

The consumer benefits from improved vehicles e.g. low floor buses for people with wheel chairs, and buses that emit lower levels of pollution, which in turn is good for their health and leads to savings to the health services.



The standards are beneficial for the low carbon economy; they drive manufacturers to produce better cleaner vehicles, keeping them competitive and allowing them to sell the vehicles to other markets.

Without the standards, the manufacturing companies may focus their efforts in some but not all areas. This would make it harder for organisations to specify which standard of vehicle they want, and make it harder to review tenders.

If the UK fails to convert vehicles to cleaner less polluting standards, there is a significant threat of a very substantial EU fine for air quality. Furthermore, increasing carbon in the atmosphere may accelerate climate change. The fine, and the effects of flooding and sea level rise, will be far more costly than the cost of cleaner buses.

In many cases these new standards and regulations require substantial investment by countries or private operators to bring their transport systems to the required standard.

5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?

The moves by the EU to harmonise the transport system to try to create a single transport system has forced countries and operators to invest very substantially to upgrade their transport networks to the required standard. This has had its advantages with improved quality of transport services, vehicles and infrastructure but there is a substantial cost to this.

6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?

The European Union can, and does, play a major role in strategic coordination, disseminating best practice in transport, to help target the political, institutional, cultural and technical barriers that impede seamless transport within countries and modes but also across several countries and between several transport modes. Thus it can help create a level playing field across Europe and take enforcement action against those countries that are less inclined to facilitate this and undertake protectionist measures.

At times the EU has been criticised for a perceived tendency of being too prescriptive, in terms of those issues that are better dealt with at a national level, such as local transport, walking and cycling. The EU does have a role to play in more strategic and cross boundary issues e.g. aviation, rail, maritime, etc. but it is our opinion that the European Union has significant value, and an important and positive role to play, whilst acting prudently, and focussing on where it can add value at a strategic and European level.

7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?

It is difficult to make a generic comment on this issue as each level has its own role and relevance in addressing issues. Some issues are best resolved locally or nationally, some need action at the European level (either by the EU itself or

separately by a number of EU member states collaborating) and some at the international level, either at the global scale or with a few key countries. Another factor to consider is that member states within the EU still are competing countries in terms of aviation or maritime sectors for example so in some instances they may need to take individual actions themselves with international partners and not go through via a collective EU tactic. It therefore depends on the issue, as this then defines the problem and informs the solution, the action needed and the deliverer.

8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?

As mentioned in the previous question, it depends on the issue; it may be better for the UK to negotiate as itself with a few key countries internationally on some occasions, but on other occasions it may be better for the UK to act within the EU with a stronger collective voice and for the EU to negotiate internationally.

9. What challenges or opportunities are there for the UK in further EU action on transport?

As outlined in our responses above, there are many challenges and opportunities for the UK in further action on transport by the European Union and its member states. Therefore, the European Union has significant value to the UK and an important and positive role to play in aiding UK interests whilst acting prudently and focussing on where it can add value at a strategic and European level.

We hope you find our comments and observations useful.

# PACTS

PACTS welcomes this consultation. The balance of competencies between the UK and the EU is an important issue. As more competencies have moved to the EU it has become more challenging for the UK parliament and UK institutions to engage with these issues. The distance, complexity, time scales and costs have all increased. On the other hand, some issues can only be sensibly addressed at an EU level (or higher) and PACTS supports the role of the EU, EC and other institutions where appropriate and effective.

The topics covered by the consultation are broad. As you would expect, PACTS has restricted its response to specific matters of transport safety (roads and aviation). These relate primarily to consultation questions 1, 4 and 9. PACTS makes no comment on other matters such as the internal market.

The European Transport Safety Council, of which PACTS is a founder member, has submitted a more detailed response, focusing on the positive role played by the EU and UK governments in promoting higher standards of road safety across the EU. This response relates particularly to consultation Question 1. We do not repeat those points here.

Our supplementary points are therefore as follows:

## **On road safety**

We would support stronger action at EU level to raise and enforce higher safety standards for cross-border HGV movements (for vehicles and drivers). Driver licensing and driver hours are of critical importance.

PACTS supports the introduction of in-vehicle speed management safety systems. A European competence on speed limiters is therefore desirable.

## **On aviation safety**

Levels of expertise and commitments to safety standards vary across the EU member states. In some states the regulatory authorities do not appear to have the experience or knowledge to fully monitor or regulate the EASA mandates.

It is therefore important that EASA seeks to raise standards to that of the better states and does not compromise the powers of individual states to maintain their own higher standards.

It is also vital that EASA and the EU secure and maintain high levels of safety expertise. We understand that that ICAO (International Civil Aviation Organisation), a UN entity that produces standards and recommended practices (SARPs) and carries out audits of NAAS, has been concerned that EU member states may not have enough experienced personnel to oversee effectively the existing EASA regulatory schemes. This relates to operations, air traffic control and engineering.

For the future we are most concerned about the regulations and oversight of flight time limitations.

We hope these comments are of use.

# Passenger Transport Executive Group - pteg

Consultation response

## 1. Introduction

1.1. The Passenger Transport Executive Group or **pteg** represents the six Passenger Transport Executives in England which between them serve eleven million people in the conurbations of Tyne and Wear ('Nexus'), West Yorkshire ('Metro'), South Yorkshire (SYPTTE), Greater Manchester, Merseyside ('Merseytravel') and the West Midlands ('Centro'). Leicester City Council, Nottingham City Council, Strathclyde Partnership for Transport, Transport for London and Bristol and the West of England are associate members.

## 2. **pteg** response

**Question 1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

2.1. EU action can most obviously help the UK where the transport flows concerned are in themselves trans-national. However, organisation of domestic transport can also benefit from EU action, especially on safety, sustainability and customer-service aspects, through the EU:

- Facilitating mutual learning, meaning that UK transport actors do not have to discover through trial and error lessons that have already been learned by counterparts elsewhere in Europe;
- Providing funding for such mutual learning and other relevant actions, such as research and demonstration projects and infrastructure investment;
- Contributing to a more level playing field for transport operators across Europe for each mode, thereby potentially creating economies of scale, diversification of market players and improvements in the public transport offer;
- Harmonising and improving technical standards for vehicles and infrastructure, leading to direct improvements in environmental performance and safety, as well as indirect improvements, through, for instance, the use of Euro standards as a basis for low-emissions zones;
- More generally, leading debate, reflection and appropriate action on how transport authorities across the EU can improve their performance.

2.2. Disadvantages can include:

- That EU-level rules may not sufficiently take into account the diversity of local transport conditions across Europe, meaning that bespoke solutions cannot always be pursued;
- Conversely, that such diversity may lead to lowest-common-denominator approaches, thereby diluting their efficacy;
- That, given this diversity, some mutual learning may be of limited value and application;
- That organisations may have to devote considerable resources to understanding, following and influencing the EU decision-making process;
- That resources expended on meeting the bureaucratic requirements of certain EU funds may outweigh, or at least significantly undermine, the benefits of receiving the funds.

**Question 2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

2.3. The EU has succeeded in levelling the playing field somewhat across Europe. For instance, the Public Service Obligations Regulation prevents certain operators in a monopoly position in one part of Europe from competing for tendered contracts elsewhere. Existing EU rail legislation has taken measures to facilitate market access for new entrants, and current proposals for further rail reform would extend this access.

2.4. There are many benefits to having large, competent operators in the transport industry, though this may be at the cost of small and medium-sized operators. Furthermore, full privatisation carries significant disadvantages not fully recognised by the Commission, which recently proposed a revision of the Public Service Obligations Regulation that would see compulsory competitive tendering for rail for all but the smallest of contracts. Any EU rules need to continue to offer a range of models for awarding contracts so that member states retain key flexibilities to structure their markets according to their needs.

2.5. Other fields of transport legislation, such as passenger rights and working time, have created a degree of harmonisation of quality standards.

2.6. The Trans-European Transport Network (TEN-T) has helped to plug some of the gaps in the EU transport network and promote some technical harmonisation on key transport infrastructure.

**Question 3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

2.7. The core principle of the EU internal market is free movement of goods, services and people. Clearly, an effective transport system is key to furthering this principle.

2.8. Perhaps the most obvious way in which EU action on transport has supported the internal market has been the designation of the TEN-T and support for the network's development. This has allowed new infrastructure to be developed for areas underserved by long-distance transport relative to their needs in terms of movement of goods and people. It has also improved performance of existing infrastructure and helped with the local impact of long-distance transport flows, for instance by alleviating bottlenecks.

2.9. EU action on market opening has also had an impact on the functioning of each mode by attempting to diversify the number of operators acting in a given transport market. This may, in certain cases, lead to cost efficiencies and improvements in performance. These, in turn, further the free movement of goods and people.

2.10. Finally, Structural Funds support for local transport issues can help to improve residents' access to employment and essential services, thereby boosting the EU economy.

2.11. The EU also fails to give enough consideration to how its policies affect modal share, and the impact this has on the environment. The TEN-T has historically given much support to less sustainable modes and to infrastructure that encourages private transport use. Similarly, though the European Investment Bank's transport-lending policy gives much attention to sustainability, the EIB's own analysis shows that this is not reflected in the modal share of the loans awarded, with a large proportion going to aviation and road-transport projects.

**Question 4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

2.12. Local variations, for example in relation to emissions standards, could undermine the achievement of wider objectives and lead to imbalances in the internal market. Having single standards across the EU is, in certain circumstances, more efficient for government, manufacturers, operators and public authorities than a multitude of separate national standards and can create useful economies of scale. In order for them to confer these advantages, however, they have to be set at an appropriate level - neither too high nor too low.

2.13. EU social standards pertaining to transport include the suite of passenger rights legislation (separate legislation for each mode) and working time rules (both cross-sectoral and transport-specific). These help to ensure a minimum level of quality across Europe for each mode on aspects such as: access for people with disabilities; delays and cancellations; safety, accidents and injury; loss of and damage to luggage. This provides a degree of certainty for passengers and may improve uptake of collective transport. It also encourages operators to improve their

performance and goes some way toward providing a more level playing field for them.

2.14. Passenger rights legislation has been developed recognising the difference between different modes: high-frequency, short-distance, turn-up-and-go bus services cannot possibly have the same compensation regime for delays and cancellations as pre-booked, long-distance, low-frequency air services. This is welcome. Furthermore the establishment of core principles common to all modes for people with reduced mobility has provided a minimum level of protection for the most vulnerable of users. The European Commission's attempts to promote multi-modal journey planning, particularly via open data, are an important step in creating seamless travel information across all modes and are preferable to attempts to legislate in this area.

2.15. EU environmental standards also have an important function in terms of the internal transport market: for instance, environmental improvements in vehicles enhance the image of public transport. Furthermore, such standards can be used as the basis for low emissions zones and other access-restriction and charging schemes, and allow for compliance of foreign vehicles.

2.16. EU environmental and social standards are desirable in their own right; in other words, for the environmental and social benefits they confer. They should not be evaluated just in terms of their benefits for the proper functioning of the internal transport market. Vehicle emissions standards and air quality legislation reduce populations' exposure to harmful pollutants and improve health. Standards on infrastructure safety, vehicle safety and driving time and rest periods reduce injuries and fatalities. Standards on passenger rights may improve customer satisfaction and help to ensure passengers with disabilities are not discriminated against. If it were left to member states alone to legislate, many of these standards might not exist.

**Question 5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

2.17. The EU tries to make its transport policy work for both consumers and operators. 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.

2.18. Sometime the failure to balance different stakeholders' interests is the fault of how member states choose to apply EU rules, rather than the rules themselves. For instance, 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.

**Question 6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

2.19. This has largely worked well. There have historically been attempts by the European Commission to over-extend the EU competence on transport; but these have reliably been checked by the European Parliament and Council of Ministers, either by throwing out the proposed legislation in its entirety (port services, for instance) or imposing fundamental changes to its final form (rail packages, public service obligations, passenger rights), notably the exemptions that apply. This, together with the case law, means the Commission has demonstrated in recent years a much better understanding of where it can initiate proposals for new transport legislation, and how far it should go in those proposals. Sometimes, however, the initial Commission proposal can still be alarming, requiring much time and effort to be taken to follow and influence the subsequent legislative process, even though the final outcome is usually workable. The Commission also has a tendency to issue new proposals where it is unsatisfied with the final form of existing legislation; a case in point is the Public Service Obligations Regulation: the current version of this only took effect in 2009 and yet earlier this year the Commission already proposed a revision on the aspects pertaining to rail. This does not foster the legal stability necessary for the proper functioning of the rail market. There is also an argument that the Commission should take greater steps to ensure implementation of existing legislation before proposing new legislation.

2.20. The EU decision-making process on transport is mostly the "normal legislative procedure" (formerly known as the "co-decision"). This is largely an accessible, transparent and consistent process: basically, the Commission initiates proposals and the Council and Parliament amend and agree together the final form. Of all the legislative procedures, this is the one that allows the most opportunity for input by UK organisations: the Commission will generally hold consultations prior to initiating proposals and approaches can be made to the Council (via UK government) and Parliament (via UK MEPs and other MEPs) during the amendment stage.

2.21. There are areas where more transparency is needed, however. The detail of EU legislation is increasingly being done through 'non-legislative acts' decided by a less open process. It is also often unclear what lobbying the EU legislators are subject to on a given proposal.

**Question 7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

and

**Question 8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

2.22. This is a very complex area. Our comments are therefore restricted to a few general observations.

2.23. The potential advantages in the EU having a greater say are as follows:

Negotiating international agreements as an EU bloc can give us more influence than we would have by acting alone.

Ratification as a bloc is more efficient than having each of the 28 member states ratify independently and also helps to ensure a level playing field within the EU.

The EU as a whole has important areas of influence (single-market issues) and geographic links (for instance with areas neighbouring the EU, such as the Mediterranean or Eastern Europe) it can bring to bear in international negotiations.

2.24. The potential disadvantages are:

The EU position may end up being a lowest-common-denominator one, with the result that any UK-specific angle is not taken into account.

The EU's potential power as a bloc is not always exploited and agreements can still end up being one-sided to our disadvantage. A notable example in the transport field, for instance, is the EU-US agreement on aviation passenger name records, which is perceived as conferring few advantages to the EU and not offering EU citizens the same levels of data protection concerning the transferred data as they would enjoy at home. In this particular case, whether individual member states could have negotiated a better deal is doubtful, however.

**Question 9. What challenges or opportunities are there for the UK in further EU action on transport?**

2.25. There is potential for further action in the field of urban mobility. For instance, the Commission could more proactively encourage cities to adopt Sustainable Urban Mobility Plans which could help to raise everyone's level and allow us more usefully to learn from each other; the content of such plans should remain discretionary, however. The EU has had a policy on urban mobility since 2009; this policy will be refreshed later in 2013, yet the existence of an urban mobility policy has not been matched by proposals for improved EU funding opportunities on urban mobility under the next EU budget for 2014-2020.

2.26. Indeed, there has been a general failure of EU funding to keep pace with the growing EU policy competence on transport. There remains no dedicated, general-purpose EU transnational fund for local transport. Instead, transport projects have to be funded under programmes for other, related sectors, such as research and innovation, clean energy, the environment or inter-regional cooperation.

2.27. These other sectoral funds should optimise their support for transport. For instance, Horizon 2020, the new EU research and innovation fund, is likely to dedicate a substantial part of its budget to transport. This will only be of use to passenger transport authorities, however, if the new fund is made more predictable, has a greater focus on large scale demonstration projects and is less bureaucratic and more accessible to new entrants than the fund it replaces, the Seventh Framework Programme.

2.28. Structural Funds (ERDF and ESF) for 2014-2020 should remove the restrictions on transport infrastructure investment that have hampered passenger transport authorities' use of the current funds. Furthermore, the proposals to make transport one of the priority themes for ERDF should be retained.

2.29. There is also a need for better read-through between transport and other EU sectoral policies. For instance, affordable, accessible public transport can play a major role in furthering social inclusion by offering improved access to services and jobs for disadvantaged communities, and the UK is a leader in this area, yet transport barely features in EU social and employment policy and funding.

**Question 10. If there are any general points that you wish to make that are not captured by the questions above then please write them here.**

2.30. The EU competence on transport is, broadly speaking, correctly applied, though it can sometimes require considerable effort from UK and other stakeholders to ensure it remains so. The legislative process on transport is an open one, allowing opportunities for UK actors to make their voice heard at most stages.

2.31. The EU policy plans on transport (such as the Common Transport Policies, renewed every ten years), the use of seven year multi-annual budgets (the next one running from 2014-2020) and the clear rationale under which certain key EU funds operate (TEN-T for pre-identified transport infrastructure of European significance, the Structural Funds for regions that are lagging economically) create a relatively stable and fair EU policy and funding backdrop, which can provide a useful foil to changing national political priorities.

2.32. It is not for us to debate the merits or otherwise of the EU as a whole but, given that it exists and has transport policies that affect the UK, we believe the importance of local transport should be recognised within these policies and that the EU funding streams and policies should support the development of sustainable urban transport systems, although not in a way that is burdensome or restricts the freedom of urban transport authorities to develop solutions that fit local circumstances.

# Royal Academy of Engineering

The attached document was prepared with the contributions of Fellows of the Royal Academy of Engineering, and other experts. The focus is largely on rail transport, with some comments on road. This reflects the expertise of those Fellows who responded, although it is acknowledged that rail forms a relatively small proportion of passenger and freight journeys across the UK and EU.

The overall response was that there have been many developments at the EU level that have greatly improved passenger transport and freight movement. It was also felt that a supra-national body was needed to ensure interoperability and shared standards in transport systems across the EU. This EU-wide oversight could bring several economic benefits to the UK.

## **1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

### Interoperability and shared standards

It is clearly beneficial that rail networks should be interoperable. This is not only so that trains can run across national borders, but because there are also considerable economies of scale arising from common specifications for sub-systems and components. However, 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.

In terms of road haulage, crossing national borders was very difficult for road hauliers until the Schengen agreements were established. Road freight was frequently held at border crossings because documents were not in order. Today only a single, four part document is required for normal goods and this has created significant savings in time, inventories and fuel. The move to this common approach to documentation was a sensible and pragmatic development in enabling the free movement of goods by road.

It is also 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. The same is seen in the European New Car Assessment Programme which carries out the crash testing of vehicles (saving manufacturers the cost of complying with different national standards) and the EU standardised fuel efficiency measures which allow easy comparisons of fuel consumption (though it is essential that these are utilised accurately to report actual mileage by manufacturers).

In terms of electric vehicles, the EU is a major player in deploying standardised charging sockets across the continent and is working on standardised card systems to allow international smart-card charging. As with all standards, there is joint

working between the EU bodies, the IEC (International Electrotechnical Commission) and various American bodies; however a single EU voice is essential.

### Infrastructure and operations

***The EU requires separation of the control of rail infrastructure from train operations. This enables new, innovative and efficient operators to run trains, challenging existing and potential monopolies to the benefit of rail customers (passenger and freight). This EU requirement has been implemented in the UK, with significant success in freight and some success in passenger operations. If such improved services result in a shift of mode to rail there would be significant sustainability benefits. However, some EU countries have been slower to separate infrastructure from operations. It is important for UK operators and customers that the separation is achieved to promote competition.***

### ***Investment and research***

The EU has paid attention to the need for appropriate investment in transport infrastructure, particularly for transport crossing boundaries between member states, both by playing a coordinating role and by direct provision of resources (although on a very limited scale except in countries or regions receiving regional or cohesion funds). While it may be doubted whether the EU has always paid enough attention to ensuring that resources are efficiently spent, this is in principle an important issue for the UK. Given its location on the periphery of Europe, land transport from the UK to large European markets and sources of supply beyond France necessarily have to pass through neighbouring countries.

A further area in which EU action in the transport field has benefited the UK is that of research. The EU has provided substantial funding for transport research and UK universities and other organisations have been major beneficiaries. By encouraging the formation of consortia from all over Europe, EU research funding has enabled UK researchers to interact with the best researchers all over Europe and to gain from the much wider experience available across Europe as a whole.

## **2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

A main aim of EU policy is completion of the internal market; achieving a position whereby operators in any EU country can compete for traffic in any other one. Given that Britain had a competitive transport market in most modes before other EU countries, we already have a number of companies able to take advantage of this to compete elsewhere.

In seeking to achieve completion of the market, the EU pays important attention to equalising the terms of competition by ensuring comparable social conditions and environmental standards, and by basing charges for the use of infrastructure on

marginal social costs (including environmental costs for some modes). Such a policy is economically efficient and should prevent countries with lower standards or inappropriately low tax regimes from unfairly undercutting British operators.

However, despite great efforts, the EU has not yet achieved a single internal market in rail or other forms of public transport. In rail, the biggest failure is the lack of compulsory competitive tendering for public service contracts; though it is proposed to introduce this as part of the Fourth Railway Package. In urban public transport, it is still permitted to grant a monopoly to an in-house operator.

Nor has the EU succeeded in fully achieving its aim of fair terms of competition. 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.

Implementation of EU policy has been incomplete, because of the difficulty of securing agreement between the member states and of achieving implementation even when agreement is reached.

Nevertheless, there have been some benefits in terms of more efficient road and rail transport, improved terms of competition and the ability for British operators to compete elsewhere in Europe. ***The EU framework involving separation of infrastructure and operations particularly has led to a resurgence of rail freight and growth for this sector in Britain. Operators have sought business and reduced costs in ways that the monolithic nationalised rail freight industry did not. The same is true in the passenger market, with innovative fare structures enabling cheap off-peak travel and improvements in service frequency, speed and customer service leading to greatly increased use of rail at all times.***

***Further growth in the passenger market could be achieved if all major conurbations were able to benefit from competition between train operators. The multiple rail routes between the West Midlands and London mean that this has been achieved even though two of the three routes are franchised monopolies. Further growth could result from increased competition by allowing more open-access operations, by franchising more than one operator per route and by encouraging direct long-distance services to the many sizeable towns and cities that currently rely on branch line trains for access to main lines. Such growth would make franchises more valuable to DfT, although it is important that franchises are sufficiently long term to enable investment in upgraded rolling stock.***

It must be recognised, however, that separation of infrastructure and operations will lead to more interfaces than in a monolithic national railway. Each interface results in costs for the contractual arrangements and their monitoring. For these costs to be justified, it is all the more important that competition be allowed, in order to grow the market.

### **3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?**

Freight and business traffic play an important part in the internal market as a whole, and distortions in those transport markets will impact on the efficient working of the whole internal market. In other parts of the transport market, completion of the internal market is more a part of ensuring that the transport market operates efficiently than contributing to the efficient working of the internal market as a whole.

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

### **4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Harmonisation is necessary in order to ensure that firms and countries cannot gain market share by neglecting social and environmental responsibilities and undercutting those who do. ***Without harmonisation, fair competition is inhibited or even prevented.***

***Harmonisation is also an opportunity to identify necessary best practice, and to identify cases where countries incur costs by going beyond shared standards. For example, the fencing of railways in the UK and reluctance to permit track renewals adjacent to operational tracks create extra costs which other countries without such standards will not face.***

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.

### **5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

EU action in transport has sought to achieve an efficient transport market by extending competition, while protecting those in the industry from unreasonable pressures on working conditions and including measures to protect consumers. The EU's activities have shifted the balance to consumers greatly, and there are arguments that it has sometimes gone too far in seeking to introduce specific consumer rights, when these should be adequately protected by a competitive market. ***However, the overall balance is right, and the core EU action requiring separation of infrastructure and operations has been good for both consumers and operators.***

### **6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU**

## **approach been proportionate: what alternative approaches would benefit the UK?**

In some cases the EU has sought to legislate in too much detail; in others, legislation is too loose.

An example of the former is in the rail sector. There is evidence that, while the basic principles of open access and marginal social cost pricing should apply everywhere, the structure of the rail industry should be allowed to vary with circumstances. These circumstances may include the proportion of passenger network subject to competitive tendering; balance of freight and passenger traffic; amount of international as opposed to national traffic; and traffic density. Therefore legislation should establish only the basic principles and set the requirement that there is an independent regulator to ensure they are carried through. However, because of doubts as to whether such regulators do in fact have sufficient independence and powers to implement the policy, the EU seeks to legislate in detail on the structure of the industry. One effect may be that unless amended the Fourth Railway Package will make deep alliances between train operators and the infrastructure manager illegal. While it is important that the two remain separate (for reasons noted above), the McNulty report found strong evidence that alliances between them could be very beneficial in the British context.<sup>65</sup>

In terms of legislation being too loose, it is noted above that there is no requirement to implement marginal social cost pricing in road transport. In rail however, infrastructure charges are not allowed to fall below 'direct cost', although environmental externalities do not have to be charged for unless they are charged for on road, and mark ups are permitted. The result is that transport prices remain distorted. There is good evidence that all member states would benefit from more thorough application of marginal social cost pricing for transport infrastructure.

***Furthermore, the EU has not been strong enough in ensuring rapid implementation of its policies.***

### **7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

Action at national level is inadequate and probably economically infeasible. ***The UK rail system is linked to other European countries, but for rail, reasons of geography mean that the wider international level is much less relevant.*** Therefore, within land transport, there are likely to be great benefits from having a common policy throughout Europe.

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<sup>65</sup> <http://assets.dft.gov.uk/publications/report-of-the-rail-vfm-study/realising-the-potential-of-gb-rail-summary.pdf>



**8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?**

For sea and air, where much traffic is intercontinental, worldwide agreement would be the ideal, it is likely that Europe working as a bloc can achieve more in negotiation with other large players such as the US than can individual countries. A similar issue arises with regard to the global problems of greenhouse gas emissions; ideally a world-wide solution is required, but action at a European level would enable UK policy to be more effective than if it acted in isolation.

**9. What challenges or opportunities are there for the UK in further EU action on transport?**

As noted above, further action to establish the internal transport market is likely to open up new opportunities for British firms in the rail and public transport fields. Further action on transport pricing too is likely to improve the efficiency of the British and Europe-wide transport markets. ***Also as noted above, by identifying best practice, further EU action could challenge unnecessary costs within current UK operations exceed expected standards.***

A key area for road transport which the EU plays a role is enforcement. While free-flow charging or tolling schemes are likely to be part of the way forward, they are not evasion free. Although non-domestic or foreign vehicles are relatively small in percentage terms when compared to domestic users of such schemes, persistent evaders present a repeated issue that needs to be managed to reduce financial loss and to maintain the integrity of any scheme.

The ability to identify the registered keeper details is the main determinant needed to pursue non-compliant evaders. There is limited or no access to foreign-registered keeper details which makes identification a real challenge. Cross-border European agreements that recognise the validity of registered debt following non-payment of a road user charge or toll, that could then be pursued in the respective country (either by the Country itself or third party), would greatly enhance compliance and reduce financial loss.

# Scottish Government

## BALANCE OF COMPETENCES REVIEW

### SCOTTISH GOVERNMENT RESPONSE

#### TRANSPORT

1. The Scottish Government welcomes the opportunity to contribute to this call for evidence. We were approached by the Department for Transport (DfT) prior to the launch of the call and have engaged throughout the process, with teleconferences held between the Scottish Government and DfT on 13 June and 30 July.

2. We also requested that key Scottish stakeholders, including CoSLA and Regional Transport Partnerships, were consulted as part of this exercise. We would ask that, where possible, any Scottish-specific issues raised by respondents are reflected in the final transport report.

#### **Development of EU Transport Competence**

3. Transport is central to the realisation of the single market. EU competence therefore continues to seek improved standards, market liberalisation and interoperability of transport systems across Member States, to support the free movement of people and goods.

4. Although transport has long been an area of shared competence, the Commission has broadened its transport policy focus in recent times. In earlier years, EU action on transport was often restricted by national interests, or limited to rules for cross-border services.

5. However, in the last 20 years, a series of White Papers have bolstered the EU vision of a common transport policy, most notably through the continued opening of markets across all transport modes, but also increasingly in the areas of air protection, safety and passenger rights.

6. This broad scope of competence is illustrated by the extensive list of major pieces of legislation published as part of the call for evidence. We would add that Trans-European Transport Networks and Connecting Europe Facility regulations are also highly significant but understand that these will be covered under the Cohesion review in Semester 3.

7. The current Treaty of the Functioning of the European Union includes a number of articles establishing EU transport competence, most notably articles 90-100 but also 170-172 and 177 (Trans-European Networks and its funding, respectively). Overall, the Treaty seeks to support a Common Transport Policy including:

- common rules applicable to international transport to or from, or passing through, at least one Member State;
- conditions under which non-resident carriers may operate transport services within a Member State;
- measures to improve transport safety; and
- any other appropriate provisions.

8. The Treaty makes clear that, while its provisions only apply to rail and road, the Council and Parliament may also make provision in the areas of maritime and aviation transport, again if appropriate. This has led to an increasingly wide range of legislative proposals which are now typically subject to co-decision and Qualified Majority Voting.

9. The most recent EU Transport White Paper, Roadmap To A Single European Transport Area (2011), focuses on a fully integrated transport network and sets out long term aims for improved safety, modal shift and significant reductions in greenhouse gas emissions from transport. These mirror the key transport aims of Scottish Ministers, as reflected in our National Indicators to reduce Scotland's carbon footprint, traffic congestion and road deaths, as well as increase journeys made by public and active transport.

#### Benefits and opportunities

10. In supporting the free movement of people and goods throughout the EU, transport is central to the realisation of the single market. For example, consumers and industry require confidence that minimum standards for passenger rights and roadworthiness testing exist across the common market.

11. In many cases, EU legislation helps to ensure that other Member States improve their standards (e.g. safety, accessibility) in line with those already employed in the UK. Taking motor insurance directives and the recent Roadworthiness Package as examples, minimum standards provide Scottish drivers with confidence, wherever they drive in the EU, that their counterparts across the EU are adequately insured and driving a vehicle subject to comparable safety standards.

12. Drivers' hours legislation similarly helps to ensure that commercial drivers are not in an overtired state while on UK roads, supporting fair competition which does not neglect road safety imperatives.

13. EU action has helped to open and liberalise transport markets, most notably in the aviation sector, though also to varying degrees in maritime, road and rail. This market opening has led to air travel becoming more affordable, in turn creating significant economic benefit for the UK, whose airports handle more passengers than any other EU country. The benefits of opening aviation markets can also be illustrated by the increased number of flights from Scotland to countries such as Poland who joined the EU in 2004.

14. While this market liberalisation has brought about significant economic and other benefits, this must be balanced with specific geographical circumstances, for example the continued need to support 'lifeline' transport services, especially ferries, to remote Scottish regions. This will help to ensure that all EU regions have the opportunity to prosper.

15. Strategic issues where the EU is a global leader, such as action on emissions reduction, require international cooperation and cannot be achieved by Member States in isolation. In areas such as international maritime law and aviation agreements with third countries, there are also benefits from having a strong, collective EU voice at the negotiating table. This collective EU action on transport has helped create an environment of sharing best practice on safety, security and technological advances such as Intelligent Transport Systems.

16. There a common approach is not appropriate, there is, of course, scope to exercise opt-outs. For example, the UK has opted out of certain aspects of the Schengen Agreement, favouring the Common Travel Area between the UK, Ireland, Channel Islands and the Isle of Man. This, however, has more of an impact on border control and visas than transport policy.

## **Challenges**

17. Certain EU proposals have raised subsidiarity issues, aiming to influence Member State investment and planning priorities, and target setting. One such area is road charging, which Scottish Ministers oppose, and where the Commission's ultimate aim is to introduce mandatory distance-based HGV charging based on the "polluter pays" principle.

18. The original proposals for revised Trans-European Networks guidelines (being covered separately under Cohesion), to take another recent example, raised issues around EU competency creep in the area of planning, which is devolved to Scottish Ministers. While negotiations have led to a compromise, this again illustrates the potential appetite for more EU influence on national and regional transport policy.

19. There are short-term challenges in funding strategic transport infrastructure at both a national and EU level. Longer term, as the EU continues to expand, there may be challenges in balancing the need for minimum standards (e.g. on safety, passenger rights) while ensuring that harmonisation proposals do not lead to abortive costs and indirectly penalise Member States and regions who have already invested heavily to improve in these areas.

20. Perhaps the greatest challenge will be reducing emissions from transport, in order to achieve the vision set out in the 2011 White Paper. While the Scottish Government supports these aims and believes they can throw weight behind our own world-leading climate change targets, care must also be taken to ensure that the principles of subsidiarity and proportionality are recognised.

21. There is a sense that the Commission's impact assessments for transport proposals are not of a consistently high quality, often underestimating the cost to industry and government, and that it therefore often falls to individual Member States to untangle the rationale for proposals. We would continue to encourage the Commission to undertake more thorough impact assessments, perhaps in partnership with Member States.

22. The EU has had a long standing aim of liberalisation of the railway sector and various Directives over the last 13 years have been introduced to support that. We have worked closely with the Department for Transport and the Commission to ensure that we are compliant, although it does restrict Scottish Ministers' options for ensuring the greatest benefit for rail users and taxpayers. It is regrettable that in our current franchising procurement programme it is possible for foreign state-owned companies to bid to run ScotRail services while a domestic state-owned railway cannot. Indeed, we are not alone in feeling restricted by these EU Directives as several other Member States are facing infraction proceedings for failing to implement them.

23. The EU has also pursued an open market in the provision of maritime transport, reflecting the international nature of the shipping industry. EU maritime cabotage and State aid rules and guidance seek to strike a balance between keeping markets open and ensuring the provision of essential ferry services. Our experience of working with these rules over a number of years is that they are unnecessarily restrictive particularly when compared with the parallel rules for other modes such as rail and bus. In particular, ferry service contracts are limited to 6 years when the typical amortisation period for a vessel is 25 years – this makes it impractical for operators to buy new tonnage. We consider that contracts of 12 years should be permitted when operators are making significant investments.

24. Clearly, there are transport challenges faced by all Member States. It will be important going forward that DfT, in partnership with the Scottish Government and other devolved administrations, engage with other Member States and the European institutions to help ensure that proposals reflect EU transport competence and

shared goals from the outset. This will help build confidence in new proposals at an early stage and ensure they are fit for purpose.

# Senior European Experts Group (SEEG)

## Submission by the Senior European Experts Group

### Background

The Senior European Experts group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, a former Secretary-General of the European Commission and other former officials of the institutions of the EU. A list of members of the group appears in the Annex.

SEE has no party political affiliation. As an independent group, it makes briefing papers on contemporary European and EU topics available to a number of organisations interested in European issues, drawing on the extensive knowledge and experience of its members.

Several members of the group have particular expertise in internal market issues having worked for or as the UK Representative to the EU or in the Commission.

### Questions

#### Market integration and the Internal Market

*1. What are the essential elements of an Internal Market and against what criteria should we judge its economic benefits? How deep does it need to be to be effective?*

Free movement of goods, services, capital and labour along with a common set of rules adjudicated by independent courts are the core elements of the internal market. If you take one or more of these elements away, the market ceases to be a true internal market accessible across the 27 Member States and the 500 million citizens of the EU. This paper deals primarily with the free movement of goods, services and capital. We will deal with the free movement of people in the next semester.

The procedure for the agreement of the common rules that govern the market is important as well. So long as the EU retained unanimity for internal market measures virtually no progress towards a single market was made. It was the introduction of qualified majority voting (QMV) in the Single European Act which paved the way to a single market. In a community of 27 Member States some

method of overcoming objections from a single Member State is essential in order to reach agreement on the common rules of the internal market.

Assessing the effectiveness of any intervention in the economy is notoriously hard because there are so many factors that determine success or failure in economics. The three main benefits of the internal market could be summarised as:

- greater competition has meant wider choice, lower prices and contributed to economic growth;
- greater opportunity has meant bigger markets and higher inward investment;
- reduced risk for EU businesses has created greater incentives to expand and to innovate.

It is unquestionably in the UK's interest to be in a single market of 500 million people worth £11 trillion and to be able to participate in shaping and agreeing the rules of that market.

Greater competition has resulted from the removal of countless non-tariff barriers to trade that existed between EU Member States. There were approximately 100,000 sets of technical regulations in the then EU Member States in the mid-1980s that were subsequently either replaced by EU level regulations or made mutually recognisable. To transport a lorry load of goods from London to Milan in 1988 required 88 separate documents; the internal market replaced all of them with one piece of paper. Such controls were estimated to cost business up to €8 billion and governments up to €1 billion annually at that time.<sup>1</sup> In 1996 it was estimated that 76 per cent of intra-EU trade would be at risk of disruption through technical barriers if it were not for EU action.<sup>2</sup>

The internal market has largely ended the practice of Member States using non-tariff barriers to protect their home markets, through EU mutual recognition and harmonisation rules enforced by the European Court of Justice. The German beer market was effectively closed to non-German producers by Germany's national laws on purity which applied nowhere else. For 25 years some EU countries argued that chocolate made in Britain (and in some Scandinavian countries) could not be sold in their countries as it did not contain enough cocoa butter. These and other non-tariff barriers have been removed opening up new markets to many EU companies.

Prices have fallen as a result of removing the web of restrictions that protected many markets. For example, the opening up of public procurement for rail rolling stock cut



prices by 20-30 per cent within five years.<sup>3</sup> Manufacturing prices are estimated to have fallen 3.9 per cent in the four biggest EU Member States as a result of the internal market.<sup>4</sup> Air fares fell by roughly 41 per cent between 1992 and 2000 following deregulation and the cost of telephone calls by half as national monopolies were removed.<sup>5</sup>

The internal market has given companies in the EU far greater opportunities because access to a market of 500 million people exceeds anything in their home markets. The value of this greater scale in some sectors, for example aerospace, is considerable. The era when each of the larger EU Member States could expect to have their own aerospace industry is clearly over but the internal market has made possible the development of joint ventures that cross borders thus achieving the scale needed. This has led to companies being big enough not only to thrive in the EU but to be globally competitive as well. The internal market has given EU companies the benefits of scale that were previously only available to US companies.

The internal market has been an important driver of foreign direct investment (FDI) into the EU and particularly into the UK. FDI quadrupled in the EU between 1992 and 2001 as overseas investors saw the benefits of the internal market.<sup>6</sup> In the UK FDI rose from about 20 per cent of GDP in 1992 to around 36 per cent in 2002 – despite a decline in the mid-1990s caused by the recession.<sup>7</sup>

Removing internal barriers to trade in the internal market has reduced risk to companies. For example, prior to the internal market pharmaceutical manufacturers had to apply to each of the national regulators to license their product, a process that took on average five years for each country. The creation of the internal market and the single European Medicines Evaluation Agency cut that to one year for approval across the entire EU. By removing risk, innovation and investment has been incentivised.

Generalising about how deep the internal market needs to go to be effective is not easy because it is likely to vary from sector to sector. In some areas a considerable degree of harmonisation and fairly tight regulation is needed to give confidence to consumers that cross-border trade will be safe and successful (for example when purchasing a car from a retailer in another country). In other areas mutual recognition may be sufficient to ensure effective operation of the market (for example in deciding whether a worker trained in another Member State is qualified to work in a particular profession). While it is important not to be too doctrinaire about harmonisation versus mutual recognition, a pragmatic decision needs to be made in

each sector, and in many cases the EU has adopted mutual recognition. The aim must be to create a level playing field on which all players can fairly compete.

The concept of "minimum harmonisation", where the EU lays down minimum rules that must be applied to all the goods/services covered by the Directive concerned whilst permitting Member States to apply higher standards of protection within their own territories, has proved to be a valuable tool. Minimum harmonisation gives consumers confidence while permitting a Member State a degree of latitude to apply higher standards, provided that those higher standards do not breach the non-discrimination rules of the EU. A recent example of this was the Consumer Rights Directive adopted in 2011.<sup>8</sup> A similar case was the Food Information Directive which harmonised many aspects of food labelling, but left it to Member States to decide if they wanted to do more on a non-obligatory basis - this is what enables the UK to apply the "traffic light"/GDA food labelling rules that the Government has agreed with the food industry.<sup>9</sup> The recent bank capital rules were another example; in that instance the UK decided to adopt tougher rules than the minimum agreed at EU level because we believed that it was in our interest to do so. We have now reached a stage where the choice between mutual recognition and harmonisation is not quite as stark as the BIS briefing paper suggests.

An example of where mutual recognition is working well, relying on the *Cassis de Dijon* judgment in relation to trade in goods, is that of food composition. In this sector mutual recognition has replaced the former reliance on harmonisation directives such as those on jams and on chocolate.

All internal market legislation is now subject to a test of subsidiarity (and a separate test of proportionality) by the Commission and the Committee of Permanent Representatives has responsibility under the Council of Ministers' rules of procedure for ensuring that these tests are complied with. Under the Lisbon Treaty national parliaments also apply these tests and, if one-third of them raise problems over the subsidiarity of a Commission proposal, the Commission has to think again. These tests are valuable but it is important they do not become just a process but a genuine assessment of whether or not legislation at the EU level is necessary.

Although not part of the legislative process for the internal market, the work done by the Commission with the European and national standards bodies (BSI, CEN etc) to develop Europe-wide standards is extremely useful. These agreed standards are not usually obligatory but are universally applied and are important in making the internal market efficient, especially for new products. The same is true of the "CE" mark, which also supports mutual recognition.

2. *To what extent is EU action in other areas – for example, environment, social, employment – necessary for the operation of the Internal Market, as opposed to desirable in its own right?*

### **Environment**

EU environmental legislation covers aspects of nature protection, water quality, air quality, waste disposal and the incorporation of environmental issues in other public policies. Clearly EU regulation of, for example, water quality and air quality, has significant implications for the private sector. Costs have undoubtedly been imposed on water companies and users of road vehicles as a result of this legislation. But these policies might well have been adopted anyway because of public concern in individual Member States. For example, bathing water quality would have been an issue in the UK regardless of the EU Bathing Water Directive because of widespread concern about the public health consequences of sewage outfalls on British beaches.

Pollution is no respecter of national boundaries; pollution in the Rhine or the Danube, for example, will affect many Member States. Having one set of environmental regulations covering air and water quality and the disposal of waste across the EU does ensure that all private sector enterprises affected face a common regulatory burden and one that is justiciable in the European Court of Justice. To this extent they form a relevant part of the internal market. For example, the common standards on emissions and vehicle noise have assisted the internal market by establishing a single set of standards in a sector where manufacturing is dispersed and there is a great deal of crossborder trade.

Regulation of the natural environment, such as wildfowl and habitats, has less relevance to the internal market but the EU's involvement is more limited in its scope.

### **Social and employment legislation**

Social and employment legislation through the internal market has long been controversial in Britain, reflecting the views of different political parties, although the so-called social market economy is as important to politicians of the right as of the left in most continental countries. There are those who would argue that social and employment legislation was made part of the internal market as part of a “grand

bargain” in which deregulation and the opening up of markets were balanced with greater protection for the rights of workers.

Some employment legislation, for example on coach drivers’ working hours, could be said to have a direct bearing on health and safety and to provide protection for consumers (no one wants to go on holiday on a coach driven by someone who has been driving for an excessive number of hours). Having common basic standards for employment does make it easier for companies working across borders to be clear about their obligations and reduces regulation because they only have to comply with one set of rules. Nor is it easy to dismiss the argument that wide differences in social protection between Member States, imposing economic costs, lead to distortion of competition.

### **The operation of the Internal Market**

*3. How have the EU’s mechanisms for delivering an Internal Market worked? In particular, what do you believe is the right balance between harmonisation and mutual recognition? What evidence is there that harmonisation has worked well or badly? What are your views on the scope and effect of the EU’s powers under Articles 114 and the use of Article 115 for non-tax measures?*

In respect of the internal market in goods, we now have complete absence of border controls and dramatically reduced non-tariff trade barriers and obstacles due to processes of production or labelling rules. Compared to the situation in 1985, where each Member State applied its own rules in many sectors and checked compliance at the border, it is a real success story for Article 114 and the other EU mechanisms. These mechanisms have clearly been less successful in relation to services (though the Services Directive was a major step in breaking down barriers), but that is primarily a matter of political will rather than inadequate mechanisms (see below).

Successful examples of harmonisation include the Directives on toys, novel foods, cosmetics and tractor safety which have successfully harmonised safety standards to enable the internal market to function effectively and have given consumers the necessary confidence. There is a substantial body of environmental legislation, such as that on car and van CO2 emissions, tyre noise and truck emissions performance that are essentially harmonising in order to enable the internal market to work for these products.

Where harmonisation has not worked so well is where the Member States and the European Parliament have sought to use the legislation to restrict economic activity rather than to encourage it; for example, legislation on genetically-modified organisms and pesticide regulation.

The report by former EU Commissioner Mario Monti in May 2010 highlighted the obstacles to completing the single market but it also emphasised the benefits which would come from further integration in this area.<sup>10</sup>

*4. Why is the Internal Market so much deeper in some areas than others? How effective has implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules?*

The internal market varies in depth because it has proved easier to reach agreement in some sectors than others. Some parts of the internal market, for example air travel, took a long time to deregulate because of powerful opposition from vested interests which commanded significant political support. In that instance many of the fiercest objectors were flag carrier airlines that were state-owned or dependent on public sector subsidies. In areas of largely private sector dominance, such as insurance, agreement has been easier to reach. The qualified majority voting (QMV) system has helped to overcome objections where few countries objected to opening up the market.

The first wave of internal market measures in the late 1980s, promoted by Lord Cockfield in the Delors Commission, achieved high levels of political and public support. They achieved a momentum of their own and quickly produced visible economic benefits such as reduced air fares and cheaper telecommunications. Subsequent measures have often been in areas where harmonisation or mutual recognition is politically more contentious (such as general services or the energy market) and where the benefits may be less visible or take longer to appear. A particular problem has been the presence of large state-owned enterprises in some countries which politicians have sought to protect from both an external takeover and from competition. The process of completing the internal market has slowed as it has become more difficult. New areas of economic activity have developed since 1992, so it is perhaps not surprising that, for example, creating the digital single market has been difficult.

The opening up of the market in services (excluding financial services which are the subject of separate legislation) has been far more difficult. The Services Directive,

which was adopted in 2006 but only came into force at the end of 2009, has had some effect. Fourteen Member States changed their approach to implementation of the directive in various ways when pursued by the Commission under enforcement procedures but in order to reach agreement the draft directive had to be narrowed in scope.<sup>66</sup> The absence of a country of origin principle in the directive, despite a precedent having successfully been established in EU financial services legislation, was regrettable and significantly weakened the directive.

As we suggested above, the mechanisms established by Article 114 have been effective and we should continue to support them. Article 114 is the central enabler of internal market legislation which, were it to be weakened, would only reduce our ability to break down barriers. And it is well balanced with references to high environmental and other standards. We know of no case where Article 115 has been used for non-tax measures.

It would not be in our interest to give every other Member State a veto over measures to open up the internal market – which is why Mrs Thatcher’s Government supported the introduction of QMV in the Single European Act.

Failure to implement internal market measures either at all or in a timely way has hindered the development of the internal market. There are still too many Member States whose compliance is dilatory but performance, as shown in the European Commission’s September 2012 *Internal Market Scoreboard*, has improved. The target of no more than one per cent of directives not having been transposed by the deadline was reached in 2012 (but regrettably the UK is one of the countries still not reaching the target).<sup>67</sup> But there are still significant problems in getting some Member States (notably Italy and Poland) to transpose internal market legislation correctly into national law.<sup>68</sup> Effective enforcement is crucial to make the internal market work effectively – and to its credibility to investors.

## **Interaction with other forms of market integration**

*5. To what extent do you feel that the Internal Market has been positively or adversely affected by other forms of integration of which the UK is not part, for example the Eurozone or the Schengen Area?*

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<sup>66</sup> [http://ec.europa.eu/internal\\_market/services/infringements/index\\_en.htm](http://ec.europa.eu/internal_market/services/infringements/index_en.htm)

<sup>67</sup> [http://ec.europa.eu/internal\\_market/score/docs/score25\\_en.pdf](http://ec.europa.eu/internal_market/score/docs/score25_en.pdf), p.10

<sup>68</sup> *Ibid*, p. 14.

Exchange rate variations between sterling and the eurozone can increase costs as well as confer benefits.

As regards Schengen, UK visa requirements are known to have a negative impact on tourist numbers and may deter business visitors. For example, after the UK imposed visa requirements on all South African visitors to the UK from March 2009 visitor numbers fell by 30 per cent over the subsequent three years.<sup>69</sup>

The UK visa application form costs £78 and entitles the holder to access two countries (the UK and the Republic of Ireland); it is eight pages long and must be completed in English. The Schengen visa application costs €60 and gives access to 26 countries and the form is three pages long.<sup>70</sup> At present 80 per cent of Chinese visitors to Europe get a Schengen visa, 11 per cent a UK visa but only seven per cent obtain both.<sup>71</sup> Not being in Schengen is likely to have had a negative impact on tourism in the UK, particularly as regards visitors from emerging markets such as China and India.

Two other problems have arisen: the difficulty in getting visas has deterred companies from setting up in Britain and thus choosing to locate elsewhere in the EU; and the restrictions on the issue of student visas have adversely affected some UK universities and colleges.

*6. Has the Internal Market been helped or hindered by UK involvement in other groupings, such as the G20, the G8, the OECD, or the Commonwealth?*

Every Member State belongs to these or similar organisations which add to their influence. The G8 and G20 played an important part in resolving the global financial crisis with agreements at the G20 on financial services, for example, leading to subsequent EU legislation.

Trade with Commonwealth countries has not been impeded by EU membership. On the contrary, 51 per cent of New Zealand sheep meat exports go to the EU with

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<sup>69</sup> Cited in, *The Impact of Visa Facilitation on Job Creation in the G20 Economies*, UNWTO & World Travel & Tourism Council, [http://www.wttc.org/site\\_media/uploads/downloads/Visa\\_facilitation.pdf](http://www.wttc.org/site_media/uploads/downloads/Visa_facilitation.pdf)

<sup>70</sup> European Tour Operators Association statement, <http://www.travel-impact-newswire.com/2012/05/uk-becoming-victim-of-its-own-visitor-visa-hassles-etoa/#axzz2lzzek5b3>

<sup>71</sup> <http://www.ft.com/cms/s/0/6714469a-0f06-11e2-9895-00144feabdc0.html#axzz2J047Y0Q7>

France and Germany large importers as well as the UK.<sup>72</sup> The EU is Australia's third largest trading partner after China and Japan.<sup>73</sup> EU trade with India has risen dramatically over the last decade and the proposed EU-India free trade agreement (of which the UK is a strong supporter) could lead to a further expansion in trade in both goods and services. UK membership has helped Commonwealth countries, including those in Africa and the Caribbean, to get greater access to the single market, greater flows of official development aid and to stabilise their export receipts from European countries.

*7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?*

In the last 20 odd years the EU has emerged as a global rule maker, shaping and influencing rules and standards worldwide. Common standards adopted by EU can be of benefit to companies outside the EU because they know that if they meet the standard in many sectors for one EU country they meet them for all. For EU countries it has been useful because it has created very clear, enforceable safety standards in goods often imported from outside the EU (e.g. toys). This enhances consumer confidence in the market place.

In areas such as product safety, environmental protection, public procurement, financial regulation and accounting, the EU has in effect become the global standard-setter. The best example is the GSM standard - created in the EU in 1982, now used by over three billion mobile phone customers in 212 countries.

As EU standards have so wide a coverage it is all the more important that the UK should join in setting them - since it will be influenced by them, in or out.

All the main elements of the internal market have been adopted by a number of European countries that are outside the EU: Norway, Iceland and Liechtenstein through their membership of the European Economic Area (EEA), and Switzerland through a series of bilateral agreements with the EU. For these countries access to the internal market is so vital that they have accepted the direct application of EU rules on their territory without having a part in the EU's decision-making process; and they also make a contribution to the EU budget without benefiting from expenditure under it. As a member of the EU the UK enjoys substantial benefits in relation to

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<sup>72</sup> [http://business.newzealand.com/vBFwRkA/media/957498/meat\\_industry\\_factsheet\\_2012.pdf](http://business.newzealand.com/vBFwRkA/media/957498/meat_industry_factsheet_2012.pdf)

<sup>73</sup> European Commission 2010 figures,

<http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/australia/>



these countries not only in the field of trade but through free movement of services, capital and persons. As a participant in the EU's decision-making process, the UK has more political influence over the regulatory regime applied by these countries in fields covered by the internal market than they have themselves.

*8. To what extent has the UK kept requirements over and above the EU minimum, and what effect has that had on the UK's place in the Internal Market? Have other Member States done so, and if so with what consequences?*

There has been a vigorous debate within the UK – and other Member States – as to the extent of what has been called “gold-plating”, where implementing legislation goes beyond the requirements of EU law. This issue has been the subject of independent scrutiny through the Davidson Review in the UK which did not find that there was a significant problem:

“Inappropriate over-implementation may not be as big a problem in the UK - in absolute terms and relative to other EU countries - as is alleged by some commentators”.<sup>74</sup>

But the perception of gold-plating remains and the current government has introduced new procedures to try to ensure that it does not happen. It is important that the effectiveness of these procedures is kept under scrutiny. The 2010 study by the OECD and the European Commission of regulation in 15 countries, including the United Kingdom, was a useful exercise in highlighting the challenges presented by EU regulation at Member State level.<sup>75</sup> The UK does, on occasion, set standards higher than the EU agreed minimum because it concludes that it is in its interests to do so, for example with bank capital requirements or environmental standards.

### **Future options and challenges**

*9. What future challenges/opportunities might we face in the Internal Market and what impact might these have on the national interest? What impact would any future enlargement of the EU have on the Internal Market?*

Completing the internal market has long been an objective of British policy and has been endorsed by the European Council as a key EU priority. More work needs to be done to deliver this objective as regards digital issues, to realise the energy internal market and to complete the internal market in services.

Better compliance with existing internal market obligations is a key concern. As the

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<sup>74</sup> Cited in the Report of the House of Lords EU Select Committee, 22nd Report 2006/07.

<sup>75</sup> <http://www.oecd.org/unitedkingdom/betterregulationineuropeunitedkingdom.htm>

Commission itself acknowledges through its published *Internal Market Scoreboard* there are some countries that are persistent offenders when it comes a failure to either implement or to transpose correctly EU law. Whilst the greater emphasis placed on improving compliance is welcome, we believe that there is a strong case for reviewing the current enforcement procedures to see if they are effective, particularly in services. A significant issue for companies and consumers is the time taken to ensure compliance. The existing system of deadlines does not appear to always work because of the tendency for them to be seen as a target date to achieve the passing of any necessary domestic legislation in a Member State rather than being the date when the new law comes into force.

Each enlargement of the EU increases the size of the internal market, and increases the opportunities for the U.K. to benefit from it. The accession of Turkey, for example, would add a growing economy and a population expected to exceed 90 million by the year 2025 and increase the market for services, a strong export sector for the UK. On the other hand enlargement can pose problems to the internal market if new Member States are not equipped with adequate regulatory authorities.

General

*10. Are there any general points you wish to make which are not captured above?*

No.

20.02.13

## Annex

### Sir Michael Arthur

Director-General Europe, FCO, 2001-3; British High Commissioner to India 2003-07; British Ambassador to Germany 2007-10.

### Graham Avery

Director, European Commission, 1987–2006.

### Sir Colin Budd

Chairman of the Joint Intelligence Committee 1996/97. British Ambassador the Netherlands, 2001-05.

### Sir Michael Butler

British Permanent Representative to the European Communities, 1979-85.

### Lord Butler of Brockwell

Secretary to the Cabinet and Head of the Home Civil Service, 1988-98.

### John Cooke

Member of the UK Permanent Representation to the EC 1969-73 and 1976-77. Under-Secretary, International Trade Policy Division, DTI, 1992-96. Chairman, OECD Trade Committee 1996-97.

### Sir Brian Crowe

Director-General (External & Politico-Military Affairs) Council of the European Union, 1994-2002. Previously Deputy Under-Secretary for Economic Affairs, FCO.

### Sir David Elliott

UK Deputy Permanent Representative to the EU 1982-91. Director-General (Internal Market), Council of the European Union, 1991-95.

Sir Michael Franklin

Deputy Director-General (Agriculture) European Commission 1973-77; Permanent Secretary, Ministry of Agriculture, Fisheries & Food, 1983-87.

Lord Hannay

UK Permanent Representative to the European Communities 1985-90 and to the United Nations, 1990-95.

Lord Jay of Ewelme

Permanent Under-Secretary of State, Foreign & Commonwealth Office, 2002-06.

Lord Kerr of Kinlochard

UK Permanent Representative to EU 1990-1995; Permanent Under-Secretary of State, Foreign & Commonwealth Office, 1997-2002.

Andy Lebrecht

UK Deputy Permanent Representative to the EU, 2008 – 2012.

Sir Emyr Jones Parry

UK Permanent Representative to NATO, 2001-03 and to the UN, New York 2003-07. Political Director and previously EU Under-Secretary at FCO. Now President of Aberystwyth University.

Sir Nigel Sheinwald

UK Permanent Representative to EU 2000-03. Prime Minister's Foreign Policy & Defence Adviser, 2003-07. British Ambassador to the United States, 2007-12.

Sir Stephen Wall

UK Permanent Representative to EU 1995-2000. Head, European Secretariat, Cabinet Office, 2000-04.

Michael Welsh

Member of the European Parliament for Central Lancashire, 1979-94.

Lord Williamson of Horton

Deputy Director-General (Agriculture) European Commission 1977-83. Cabinet Office 1983-87. Secretary-General, European Commission, 1987-97.

January 2013

# Transport for London

Thank you for the opportunity to contribute to the Government's Review of the Balance of Competences between the UK and EU.

We have attended stakeholders events hosted by the Department for Transport on rail and roads and are grateful to officers for their offer to disseminate to other Departments any relevant comments contained in this response.

Our response focuses on the rail and roads modes of your call for evidence; we have also included some commentary on aviation from the experience we have gained in preparing evidence for the Independent Airports Commission. While we do have an interest in inland waterways through Thames river services and the Woolwich ferry, we are not affected by the legislative provisions identified in the call for evidence to a degree that enables us to provide a detailed response in relation to that mode.

You will be aware of the facilities and services for which TfL is responsible and, therefore, the context in which this response is made. For the sake of completeness, however, a description of TfL's areas of activity is provided in MTN programme prospectus which can be seen on our website at <http://www.tfl.gov.uk/assets/downloads/mtn-programme-prospectus.pdf>.

Following the questions listed in your call for evidence, our response is as follows:

1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.

## Roads

The roads for which TfL is responsible carry a considerable proportion of foreign traffic, largely from EU countries and consistently high driving standards are key in avoiding accidents and disruption to smooth-flowing traffic; TfL supports, therefore, driving standards being addressed at EU level.

In the context of traffic signalling, while high level consistency across the EU from a driver perspective is desirable, TfL considers that manufacturing standards and specifications would be better handled at industry level and do not require EU intervention. In TfL's view, current EU interventions can lead to over-specification and, therefore, unnecessary cost to the public purse.

The adoption of European Whole Vehicle Type approval (covering matters including exhaust emissions and noise) has reduced the regulatory burden on vehicle manufacturers, who no longer require national approvals for every member state in which they operate. To the extent the cost benefit of that reduction is shared with vehicle purchasers, that benefit will be reflected in the cost of vehicle-based services used by TfL.

2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?

#### Aviation

The EU has been successful in creating an internal market in aviation. The UK has been a first mover in this field and this has benefitted UK aviation, with UK-based airlines taking full advantage by flying routes outside the UK and foreign carriers developing significant operations in the UK. This has created UK jobs, encourages investment in the UK and reinforced the UK as a centre for the global industry. Businesses in the UK have also benefitted from airline competition which has brought a wider range of destinations and services along with a downward pressure on fares.

London, in particular, has benefited and the connectivity its airports offer has been reinforced by its unimpeded access to the EU aviation market, one of the world's largest. The work TfL is doing on airport capacity is related to safeguarding that connectivity by responding to future growth.

Work undertaken by TfL provides indicators of the benefits of maximising London and the UK's connectivity, including creating jobs and encouraging investment. For example, foreign direct investment contributed £52bn to London's economy in 2008- and accounted for 42 per cent of London's economic growth between 1998 and 2004. Anything that poses a risk to London's unfettered access to the EU aviation market could jeopardise those connectivity benefits.

3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?

No comment

4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?

#### Aviation

Action to harmonise environmental standards across the EU remains essential if the internal transport market is not to be distorted by individual member states applying different environmental regulations. This enables progress to be made towards environmental objectives without placing carriers operating from the UK at a disadvantage to rivals. This applies particularly to the EU's work on aviation noise which has been invaluable in creating common EU metrics for aviation noise, enabling the impacts at UK airports to be understood in a wider context, benchmarked and evaluated accordingly.

#### Rail

The EU should be wary of the unintended consequences on the transport market when promoting legislation to improve environmental performance. The Non Road Mobile Machinery Directive provides a good example of this. If implemented as originally proposed it 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 resulted in manufacturers withdrawing from the market, causing significant losses in passenger and freight train capacity which would have encouraged modal shift to road, worsening overall environmental performance.

Fortunately, concerted lobbying prevented the above outcomes by making adjustments to the proposed legislation. Nonetheless, the EU should have considered such cross modal impacts whilst evaluating the options for this legislation to ensure environmental performance across the entire transport market improved.

5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?

#### Aviation

TfL considers that, in developing UK airport policy, Climate Change Commission targets for aviation emissions should be addressed. EU action in this area is welcome and can influence the global agenda, as demonstrated by proposals to include aviation in the European emissions trading system. Nevertheless, a global agreement on aviation emissions remains the most effective solution to the issue and should be pursued.

#### Rail

TfL has concerns that EU legislation does not always strike an appropriate balance between different users of the rail network. The EU has often suggested that international rail freight should receive priority access to rail networks, in relation to the legislation associated with European Rail Freight Corridors for example, Experience in the UK demonstrates that such an approach can, however, constrain the development of other rail services (such as suburban train services) for which there is a better economic case, as shown by the underutilisation of the paths reserved for international rail freight on the classic network between London and the Channel Tunnel. EU legislation should focus on ensuring access to the network is granted on a fair and non discriminatory basis rather than on the promotion of international services at the expense of others, regardless of considerations of value (which need to reflect specific local circumstances). This remains TfL's view despite significant improvements that have been made in the drafting following considerable lobbying.

TfL also has concerns that EU legislation does not always strike an appropriate balance between existing and new operators. For example, the Recast of the First Rail Package includes requirements for existing operators to offer economically



viable alternatives to new entrants where they do not have the spare capacity to share existing facilities (e.g. depots). This process is unreasonable as it should be for the new operator to provide additional facilities if required, provided that the owners of existing facilities can demonstrate that there is no spare capacity available within them.

6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?

Rail

TfL recognises and values the broadly proportionate approach taken to application of EU legislation to London's transport networks, particularly the exclusion of metro and light rail services in the capital from the requirements of Interoperability. This is appropriate given the self contained nature of these networks. TfL suggests that this approach could usefully be extended to other parts of the National Rail network that are focused purely on meeting local market requirements and serve no strategic, international role in the European transport market. This would avoid the need to adopt standards that have little practical value on such routes.

TfL would also suggest that there are other ways for the EU to achieve its objectives rather than legislation. The EU should encourage cooperation between Infrastructure Managers and other interested parties to develop products and associated standards that reduce costs within the rail industry and are therefore adopted voluntarily by organisations within member states. There is much value to be gained from such an approach as organisations are much more likely to adopt products and processes that they have played a role in developing, particularly where these reduce costs.

For TfL, the Public Service Obligation Regulation 2007/1370 has, in its implemented form, been proportionate in recognising the "internal operator" relationship that exists between TfL and its subsidiary, London Underground Limited. Achieving that recognition required significant lobbying and it is imperative that it is not undermined by proposed adjustments to that Regulation. It is disappointing that only three years into the ten year implementation period for the Regulation, the Commission came forward with two new proposals to amend different aspects. This regulatory instability is unhelpful and is a deterrent to long term stable financing for public transport networks.

In general terms the Commission is too quick to legislate. Much greater emphasis should be placed on the correct implementation of existing legislation and an exploration of non-legislative routes before new proposals are introduced.

7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?

Rail

Greater localisation of standards and approvals would be desirable, away from major strategic routes to better reflect the diversity of railways within the EU. 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 requiring much greater centralisation of approvals through the European Rail Agency. TfL therefore welcomes the attempts made so far to reverse this trend as the detail of the Fourth Rail Package is negotiated.

## General

TfL has significant experience of public procurement, both under the public sector and utilities regimes. TfL would welcome greater national flexibility in this area to address three key issues in the area of procurement, which also impact upon State aid:

Increased thresholds for procurements so that compliance with procurement regulation can be handled in a way that is proportionate to the requirement;

The ability to pursue responsible procurement policies (the GLA Group Responsible Procurement Policy can be seen at

[http://www.tfl.gov.uk/assets/downloads/businessandpartners/GLA Responsible Procurement Policy.pdf](http://www.tfl.gov.uk/assets/downloads/businessandpartners/GLA%20Responsible%20Procurement%20Policy.pdf)) is stymied procurement regulation, curtailing the ability to stimulate the economy through SME engagement, which is one of the stated, but unachieved aims of the latest proposed procurement Directives;

The proposed procurement Directives are insufficiently flexible to deal with the vast range of procurements they address; in particular, TfL considers they do not adequately support major procurements which, in public infrastructure, are necessarily of a long duration and need to be able to adjust over time to reflect prevailing circumstances.

8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?

No comments

9. What challenges or opportunities are there for the UK in future EU action on transport?

## Aviation

Emerging EU proposals for revising the rules governing slot allocation present a valuable opportunity for the UK to make better use of capacity at its constrained airports.

A revision of the State aid rules as applicable to airports is being considered by the Commission; though designed to prevent market distortions, it is important that they do not preclude a Government from making significant investment in new infrastructure, particularly when wider economic and environmental benefits are at stake.

The Single European Sky remains an important ongoing EU commitment, with the prospect of more efficient, better utilisation of scarce capacity with fewer emissions. This will relieve Europe's congested skies, supporting future expansion of airport capacity in the UK. It will also reduce costs for airlines, with competition helping ensure much of the saving is passed on to consumers.

## Rail

The key challenge is to ensure that EU legislation is applied in a manner that is proportionate and focused on those routes that are of strategic importance to the European travel market. Legislation should always look to promote approaches which represent value for money and deliver improved environmental performance across the entire transport market.

## Roads

TfL considers further EU action to improve the safety of vulnerable road users such as cyclists in imperative. By way of context, between 2008 and 2011, 56 per cent of the cycling fatalities in London have involved large commercial vehicles, including a disproportionate number of construction vehicles. Large commercial vehicles represent only three per cent of traffic on London's roads. The specific areas of action TfL has identified are:

### Maximum weights and dimensions of road vehicles

The review of Directive 96/53/EC on maximum authorised weights and dimensions of road vehicles is generally focussed on improving vehicle aerodynamics and vehicle efficiency. Improving the safety of other roads users, increasing driver direct vision and reducing vehicle blind spots is regarded as a secondary benefit and should have more prominence within this review. The review is also limited, in that it looks to 'facilitate the introduction' of improved vehicle standards which could have limited impact. A progressive approach by the EU to mandating vehicle safety and efficiency standards in a similar way to that of Euro standard engines is advocated.

### Driver Certificate of Professional Competence (CPC)

Under Directive 2003/59/EC, HGV drivers must undergo 35 hours of training over a 5 year period. There are no mandatory requirements for road safety training within the syllabus which states that training 'must include some of the subjects in this list.' TfL has developed approved Driver CPC training objectives and criteria for vulnerable road user safety and requires this training for drivers operating on its contracts. TfL considers that the EU should review the Driver CPC syllabus with a view to

introducing a mandatory and more prescriptive road safety objective including minimising the road risk to vulnerable roads users.

#### Lateral underrun protection (Sideguards)

Directive 89/297 does not apply 'vehicles designed and constructed for special purposes where it is not possible for practical reasons, to fit lateral underrun protection'. This exemption is exercised by vehicle manufacturers at Type Approval for construction sector vehicles such as tipper trucks and cement mixers. TfL does not regard construction logistics as 'special purpose' and has ensured all vehicles operating on its contracts have sideguards fitted. In light of TfL's evidence in overcoming what is possible and practical' TfL considers that the EU remove this wholesale exemption clause for construction vehicles.

#### Public and promote EC guidance documents to improve road safety

Commercial vehicles operating only to the minimum regulatory requirements is insufficient to ensure the safety of vulnerable road users. Best practice guidance is required to ensure common work related road safety standards are achieved in urban areas. Good transport operators are supportive of this approach as it fosters economic fairness but there has been call for a common standard to be adopted across the UK and beyond. TfL has two complementary baseline documents which it recommends the EU should review and produce guidance on:

Improving road safety through public procurement - since February 2012, TfL has required specific work related road safety requirements in all new relevant contracts. Due to a widespread call for advice and guidance from other public bodies to follow this lead, TfL developed the improved road safety through procurement guidance documents.

Approved code of practice for work related road safety - TfL has a well-established industry code of practice comprising of work related road safety standards in its Fleet Operators Recognition Scheme (FORS). The FORS Requirements cover transport management cultures and operations and vehicle roadworthiness and driving standards. These standards are also subject to an independent audit.

In the context of vehicle emissions, TfL considers that further EU action on licensing documentation would be valuable, providing consistent, accessible information, including emissions data. Similar information would also be valuable to consumers, enabling easy comparison of available products.

TfL also understands that the Commission is considering measures that might harmonise across the EU schemes that restrict road usage such as London's Low Emission Zone and the Congestion Charge. TfL considers it is not appropriate for such schemes to be standardised as they are designed to manage specific situations at a local level. Decisions on such schemes and their operating conditions should be left to local policy makers.

Whilst TfL understands the Commission's reasons for imposing minimum electric vehicle charging point targets on member states, this is a matter for which the detail at a sub-strategy level should be addressed at a local level. It should not be mandated at an EU level.

#### General

Reference is made above to TfL's lobbying efforts. While TfL does not have data on the cost to it of such efforts, TfL considers that lobbying at EU level is more complicated than at national level and is, therefore, more expensive. TfL would generally wish to avoid that additional cost.

I trust these comments are useful and am happy to assist if you should have any follow-up questions.

# Transport Planning Society

## Type of organisation

Professional Body. The Transport Planning Society is an independent institutional body based in England, established to facilitate, develop and promote best practice in transport planning and to provide a focus for dialogue between practitioners and others interested in the field. It is supported by four long established professional institutions – ICE, CIHT, CILT and RTPI - all of whom have an interest in transport planning within their own core activities. The Transport Planning Society administers its own Professional Development Scheme for transport planners, leading to award of the Transport Planning Professional qualification which is the only professional qualification uniquely aimed at transport planners. The Society has almost 1000 professional members in the UK and elsewhere. Our members are active throughout the world including the EU.

Which subject area(s) of the Transport Report does your evidence relate to?

Rail Roads Economic Social Environmental Infrastructure Other (please specify)  
Various aspects of EU investment in transport in the UK and impacts on UK transport operations

Q1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.

We comment on :

- some effects of EU membership on transport investment in the UK
- EU funding for university research in transport
- EU stimulus for ITS
- travel planning
- public transport operators
- opportunities for the transport planning profession arising from EU membership

We have concentrated on a small number of selected areas of particular interest to our members, but we hope that this submission will be of value.

EU membership and transport investment in the UK

While it is difficult to know what would have happened if the UK had not joined the EU, our impression is that membership of the EU has resulted in a higher level of funding for transport than would otherwise have been the case.

There has been substantial investment in transport schemes from the EU Structural and Cohesion Funds, in support of the EU policy of encouraging economic growth and employment in regions lying significantly below the EU average in these respects. Within the UK, EU investment tends to have been made in areas outside the South-East. During the 1990's and 2000's, this supported a large number of transport schemes which (we believe) would otherwise not have been funded.

While there is still significant EU funding available, its impact in the UK is now less as funds are directed at the eastern Accession States. Nevertheless, many local authorities and others value the funding that can be obtained to supplement domestic sources, and our transport system continues to benefit as a result.

### University research

UK universities and other research institutions command international respect in the transport field. They attract students and researchers from around the globe and the resulting research outputs have made a major contribution to improving transport both in the UK and elsewhere. It would not be unfair to describe UK transport research institutions as a centre of excellence in this sector within the EU. Some are also world class.

The EU has recognised this by making co-funding available to a range of institutions and projects, which is particularly helpful at a time when domestic funding from bodies such as EPSRC, ESRC and DfT is at a low level. EU funding is proving of vital importance in preserving the UK's pre-eminent position in transport research.

The amount of funding varies from institution to institution depending on the research projects to be supported and the success of individual institutions in attracting funding. The EU is particularly keen to encourage research undertaken collaboratively between research institutions in different Member States and this has led to some useful collaborations being established with wider spin-offs.

A sample poll of our members involved in university transport research indicated that the sector receives about 30% of its funding from the EU (significantly higher in some individual cases), up to £10m/annum in total. While this is a small sum in the grand scale of things, its importance in maintaining the UK's reputation in this field should not be underestimated.

The only downside is sometimes EU's insistence that funding must be given to organisations containing collaborating partners from one or more Member States. In many cases, this has produced high quality and stimulating work, with a good synergy between partners. But in others, weak partners chosen to meet the Member States requirement can lead to a lack of integrated working and become a weak link. While we welcome EU funding for collaborative research, we recommend that more

attention is paid to forming quality teams than to having widespread representation for its own sake.

### EU stimulus for ITS

The EU has been, and still is, a strong driver for the implementation of ITS solutions in the transport sector. The UK has benefitted significantly from this. The ROMANSE traffic management system in South Hampshire is a good example of a long-lasting legacy of EU sponsored research and application. The development of toll collection and road pricing technology also owes a lot to EU funding.

UK transport planners and IT specialists appreciated the potential of ITS solutions in the transport sector a long time ago, particularly as a means of achieving more efficient and effective use of existing infrastructure. They were (and continue to be) well placed to take advantage of EU strategy and funding in this area. Often working in collaboration with their EU counterparts, they continue to be a strong influence in this field.

### Travel Planning

Travel planning involves the development of travel plans for schools, businesses, industries, hospitals etc. which encourage and facilitate the use of sustainable modes by those accessing the locations concerned. In terms of congestion and emissions reduction, they can offer extremely good value for money.

The development of travel planning in the UK owes much to EU funding and lessons learnt on mobility management from other Member States. In this area, EU membership has had a positive effect.

### Public transport operators

Traditionally, public transport within the Member States was operated by public sector bodies or private sector companies based within the Member State concerned. A significant effect of the EU has been the opening up of public transport operations with operators now free to operate outside their home countries. This has resulted in companies such as Deutsche Bahn (German), Keolis and RATP (French), and Abellio (Netherlands) gaining a significant share of the British market - sometimes in joint venture with established British operators and sometimes by taking over British operators.

On the one hand, they have brought with them investment, experience and management expertise, to the benefit of our public transport services. On the other, there is perhaps some concern about whether state- or regionally-owned operators (even if at arm's length) from other Member States offer fair competition with wholly privately owned British companies, and whether it is appropriate that profits made in Britain should accrue to such bodies.

### Transport Planning profession



Given the UK's reputation in the transport sector for research and analysis, EU membership has opened up a variety of opportunities for the transport planning profession. Consultancies and public sector transport planning professionals have benefitted from EU funding of transport projects in the UK. Consultancies in particular have benefitted from access to work elsewhere in the EU, where there has been a demand for UK transport planning skills.

The CIHT Transport Consultants Directory 2013 shows 66 out of 176 UK companies listed as working in the EU. We estimate transport planning consultancy fees earned within the EU to be of the order of £25m/annum. Again, this is not a large sum but it is an export, selling UK transport planning services to other EU countries. It should be noted that there is no comparable import of transport planning skills from EU countries to the UK, which testifies to the strong position of the UK in this respect. UK transport planning consultancies benefit from access to new work through the Official Journal of the European Union, and many have now acquired local companies within EU Member States, particularly in the eastern Accession States. Again, this has not occurred in reverse to a significant extent.

We conclude that the UK transport planning profession benefits from EU funding of transport projects in the UK, and has gained work in EU markets through UK membership of the EU.

Q4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?

There are benefits in having a single market for transport operations (freight and passenger). However, this must be accompanied, and preferably preceded, by common standards.

In the road freight sector, the absence of enforced quality standards is a serious problem. For example driving or operating an HGV is strictly controlled in the UK on safety and environmental grounds, 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, although this is also influenced by use of left hand drive lorries.

Relaxation of rules on cabotage has led to a fall in market share for UK based hauliers and increased business for operators and drivers from the eastern Accession States in particular. For example, 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.

In addition to the higher safety and environmental standards observed by the UK fleet, another reason for loss of market share by UK hauliers is believed to be the high fuel prices in the UK. These are the highest in the EU, mainly due to the high rate of duty included in UK pump prices. They impose high costs on hauliers who have to refuel in the UK.

We believe that the liberalisation of the road freight market without at the same time (or in advance) standardising safety and environmental vehicle controls, and without standardising policy on fuel prices, has been to the severe disadvantage of UK hauliers. A single market operates fairly only when all have to play to the same rules, and we recommend that these rules are in place and applied in practice before liberalisation takes place.

# Transport Select Committee report 23 March 2005

**Wednesday 26 May 2004**

Members present

Mrs Gwyneth Dunwoody, in the Chair

Mr JeVrey M. Donaldson	Mr John Randall
Mrs Louise Ellman	Mr George Stevenson
Miss Anne McIntosh	Mr Graham Stringer

*Witnesses:* **Rt Hon Alistair Darling**, a Member of the House, Secretary of State for Transport, **Mr John**

**Stevens**, Head of Europe Division, and **Mr Michael Smethers**, Head of International Aviation and Safety

Division, Department for Transport, examined.

**Chairman:** Secretary of State, you are most warmly welcome here, as always. As you know, you are not only our most important witness but our most valued witness. We are delighted to have you with us today. Forgive us if we have a little housekeeping to do before we start. Are there members having an interest to declare?

**Mr Stevenson:** Member of the Transport and General Workers Union.

**Miss McIntosh:** Interest in Eurotunnel, Railtrack, BA, BAE, BAA, and RAC.

**Mr Stringer:** Member of Amicus and a director of the Centre for Local Economic Strategies.

**Chairman:** ASLEF.

**Mrs Ellman:** Member of the Transport and General Workers Union.

**Q350 Chairman:** Secretary of State, am I to take it that you have some words of wisdom to tell us this afternoon, before we begin?

**Mr Darling:** That is always possible during the course of the afternoon, but perhaps I could introduce John Stevens, who is the Divisional Manager for the Europe Division of the Department.

**Q351 Chairman:** Divisional Manager? Is this a new title?

**Mr Darling:** I believe so, yes.

**Q355 Chairman:** With your usual care and attention.

**Mr Darling:** Absolutely. I thought that my views on the various things that I have views on would best be explored through your questioning.

**Q356 Chairman:** How extraordinarily tactful.

**Mr Darling:** However, if you would like me to make a half-hour introduction, I would be only too happy, I suppose.

**Q357 Chairman:** I feel that, on this very rare occasion, perhaps we might forego that pleasure.

Are the UK and the European Commission's transport policies aligned?

**Mr Darling:** They are on some places and are not on others, is the answer to that.

**Q358 Chairman:** And which are which?

**Mr Darling:** Perhaps I could make a general observation. That is, I strongly believe our starting point ought to be the position of subsidiarity. In other words, where a Member State, the United Kingdom, can best sort things out for themselves, then we ought to do that. However, undoubtedly there are other areas, which you will no doubt want to explore—for example, in aviation negotiations, in the question of the Eurovignette—

**Q359 Chairman:** I apologise for interrupting you, Secretary of State, but before we get into specifics,

**Q352 Chairman:** What happened to the old Civil Service designations? Do not answer, Mr Stevens. Please continue, Secretary of State.

**Mr Darling:** You may like a separate seminar on the grades of civil servants, which is something of a mystery tome after seven years! Michael Smethers is the Head of International Aviation and Safety Division within the Department.

**Q353 Chairman:** Is he not a manager?

**Mr Darling:** He is not designated as a manager, but he probably is a manager for the purpose of these things.

**Q354 Chairman:** Never mind, Mr Smethers. We all have our crosses to bear! Secretary of State?

**Mr Darling:** I was not proposing to make an introductory statement. Obviously I have followed your proceedings, inasmuch as I have been able to, and—  
that if we can do it ourselves, that is the best thing; but there are clearly areas where we do need to co-operate, or there is an interest where we co-operate. I mentioned aviation, pollution, the Eurovignette. They are examples where there is clearly a wider interest and, if we are going to have a single market or we are going to get the full benefits of a political and economic alliance, then we ought to use Europe. Obviously, where things are best left to Member States—for example, the railways—as you know, there are some European directives but there is an awful lot which we are looking at which, frankly, are best dealt with here.

**Q361 Chairman:** Do you think that the Commission is anti-roads and anti-aviation?

**Mr Darling:** I have heard it said. If you look at the plan they produced in 2001, on one view there was a bias towards railway and I suppose some people said, because of that, there was a bias against roads. Since that White Paper was published we and other Member States have pursued a policy—which is Certainly our Government's policy—that you have to have a measured and a balanced policy: one that recognises the importance of railways but also recognises that the vast majority of journeys are by road. I am not aware and do not have any evidence of there being people sitting in the Commission who spend their time plotting the downfall of roads. There will undoubtedly be individuals who take a stronger pro-rail view than others, but that is no different than you will find in this country.

**Q362 Chairman:** So you would not say that there was an enormous divergence between the views of the Department on transport priorities and responsibilities and the Commission?

**Mr Darling:** No, I would not say that there is an enormous divergence. Of course, on the particulars—the Eurovignette is a case in point Where there is a difference of opinion between us and

does the Department have some clear line of demarcation for subjects that can be described as being subsidiarity and non-subsidiarity? How do you, as a Department, decide what is your responsibility and what is the responsibility of the European institutions?

**Mr Darling:** The first point of reference are the treaties to which you are a signatory, which specify these things, but there is a whole substructure of jurisprudence.

**Q360 Chairman:** I know about the theory, Secretary of State, but I was interested in the practice.

**Mr Darling:** When you look at a particular issue—a question may arise as to whether we should do it or whether it should be a matter for the European Union or the European Commission—if there is any doubt about it, the first point of reference are the treaties and the various jurisprudence made following that. As I said to you earlier, before you got your tackle in first, my general presumption is know, the issue before us is whether or not we can negotiate a genuine—and I use that word advisedly—Open Skies agreement. At the moment, there are a series of bilateral agreements, including the Bermuda 2 agreement, and the decision that was taken last year was that a mandate would be given to The Commission to try and negotiate something. The advantage of having a Europe-wide position is that there is more on offer, if you like; but that will only work provided the European Union takes full advantage of it and plays to the strength of its hand in negotiating with the United States, which, as you will know, for many years now has been notoriously unwilling to open up its markets to entry, never mind from Europe—from anybody else. The advantages are therefore tremendous, provided we exploit that advantage to the full. I have made the point that these negotiations are at an early stage. What has been offered by the United States so far, in my view, is far from adequate. It is a lopsided deal. It would not give us access into the American market. My ultimate objective, the Government's ultimate objective, is that we have a completely liberalised market in aviation, which we have in just about every other industry. In my view, it is nonsense that there are still these restrictions in place.

**Q364 Mr Stevenson:** I think that those comments will be very reassuring, but of course, in terms of the Bermuda 2 bilateral, the real jewel in the crown is Heathrow. That is particularly important to the UK. How do you see the UK protecting this, what I call, “jewel in the crown”, Heathrow, and the interests there? That is, in a situation where by definition the Commission is negotiating, and their tendency is to look for compromises and then identify what the problems may be, as distinct from exploiting what is a reasonably strong position in the first instance and protecting UK interests.

**Mr Darling:** You are right to emphasise the importance of Heathrow. From our point of view,

the Commission, but there is by no means a unanimous view within the Council of Ministers. The general thrust of Commission policy ought to be to attend to those things where you do need some pan-European approach, and then to leave matters that are properly the province of Member States for them to get on with.

**Chairman:** We like conditional tenses in this Committee, Secretary of State.

**Q363 Mr Stevenson:** What advantages do you see in the European Commission negotiating our services agreements—Bermuda 2, for example—and what disadvantages could there be?

**Mr Darling:** The advantage of the European Union negotiating is that, in principle—the negotiation here is in the EU-US context at the moment and I

will address my remarks to that, and I will certainly go on to the other areas if you would like me to—potentially you are talking about by far the single biggest aviation market in the world. It is a question of whether or not you can get more leverage by negotiating on behalf of the whole of Europe in those negotiations with the United States. As you

40% of the EU-US aviation trade is through the United Kingdom; most of that is through London and most of that is through Heathrow. From the American point of view, it is Heathrow they want into, because it is geographically well placed and better connected compared with some of the other airports. We had a very robust exchange at the last Council of Ministers in relation to this. It was well reported at the time. There were some who said, “Let’s take what the Americans have got on offer”.

My view is that what the Americans were offering is the standard offer they make to anybody who goes and asks them for an Open Skies agreement. What we have to do is to make sure that we remain robust in our negotiations. The Americans would expect no less.

**Q365 Chairman:** But you are not doing the negotiating, Secretary of State.

**Mr Darling:** No, I am not. As I said in reply to Mr Stevenson earlier on, a decision was taken—the advantages to the Americans of getting into the whole of Europe is that there is a huge market there. So there is arguably a far greater negotiating power.

There are also other issues why we did it. As you know, prior to all that, the European Court held that the Member States, when entering into bilateral agreements, had to designate all European carriers rather than just their carriers. That would have been very difficult to have negotiated bilaterally. In relation to the EU, I think the leverage that is potentially there is very substantial. I was just mentioning the discussion that we had in March. Happily, quite a large number of other countries took the same view as we did: that, in any negotiation, to take what is offered immediately is probably not going to get you the best deal. It may take time to achieve a successful outcome, and I do not think that the Americans seriously expect Europe to have accepted what was on offer at the end of the first round of negotiations.

**Q366 Mr Stevenson:** Yes, that is interesting, Secretary of State. Transport Council decisions are or will be by qualified majority?

**Mr Darling:** They are.

**Q367 Mr Stevenson:** So clearly there is an issue there for us. There is a lot of talk about red lines at the moment, in another context. Would it be fair of me to put to you that the UK Government's position on the bilateral Bermuda 2 is that red lines are: the removal of foreign ownership restrictions around US airlines; access to the domestic market; access to America's Civil Reserve Air Fleet policies; and cargo and wet leasing arrangements? Would it be fair of me to describe those as red lines?

**Mr Darling:** I think that we have to be careful here. The red lines, commonly talked about, are in a rather different context. They are things that we believe are properly the province of Member States, like tax, social security, foreign policy, and so on. Let us just be clear about that, therefore. In relation to the EU-US aviation negotiations, we want to get the best possible deal we can. You mention access beyond the first port of call, so that one of our airlines could, for example, fly to New York and then on to Chicago. That is important to us. Yes, ownership is equally important. There are a number of other issues that are important. In a negotiation, obviously there are some things we will get and some things we will not get. What I am vehemently against is a situation where you get an Open Skies agreement that is open skies into Europe but is pretty closed when you get to the other side of the Atlantic. That is not an Open Skies agreement. In relation to all the things that might be discussed, however, some things we might agree now; some things we might have to work towards. Similarly from the Americans' point of view, if you look at what they want out of Europe. These are things that may have to be discussed.

**Mr Darling:** They are important issues.

**Q369 Mr Stevenson:** . . . on which we have taken evidence before, are vitally important to the UK.

**Mr Darling:** They are important. It is just when you use the phrase "redline"—as I say, that is commonly used in relation to the discussions which are taking place now in relation to the Treaty discussions. It is not quite the same thing.

**Q370 Mr Stevenson:** We have taken evidence on this, and it has been very clear that the UK Government's position has been that these are things that must happen in negotiation. I need to be clear on this. Are you saying—and I will not use "red lines" again—that there may be elements of that package which we may compromise on, or not?

**Mr Darling:** Until there is a package in front of us, it is very difficult for me to say whether it will be acceptable to us or not. It could be, for example, that we look at a whole range of things that are of concern to us—and just suppose, for the sake of argument, that nine out of ten were met—we would

have to make a judgment as to whether the tenth one was actually so important. What I am very clear about, however—and you were right to mention those issues, because they have been mentioned before by the Department and they are the ones that we have put in the Transport Council, and so on—is that they all add up to the same thing: can we get a genuine Open Skies agreement? Is it a liberalising measure or is it—as was certainly the first offer which was made to the Commission, and indeed the same offer that has been made to this country from time to time—not particularly, as it seemed to me, open skies? We will continue to take a robust attitude so far as that is concerned. As to the detail of anything on offer, obviously at this stage you would be very unwise to say in advance that you were not prepared to look at any of the detail. Of course we must look at that. We would expect the Americans to look at what we are doing. But it has to be a genuine Open Skies agreement.

**Q371 Mr Stevenson:** Do you believe that the aviation industry is sufficiently closely involved with the Commission in these negotiations?

**Mr Darling:** That depends. The aviation industry, of course, does not speak with one voice as far as this is concerned. They have different views, depending on how they are placed. I think that the aviation industry—put it this way—is getting more involved than it was at the outset, because it could have serious implications for them, depending on where they are. Whilst it is very important that the Commission does keep in touch with what the

What I am pretty clear about is, if you are going to negotiate an Open Skies agreement, it has to be an Open Skies agreement; it cannot just be one where basically they can come here but we cannot go there.

**Q368 Mr Stevenson:** Nevertheless, those issues I have identified—

**Mr Darling:** No, but Ministers and Member States are supposed to represent the people that elect them. That is why we are there. That is the most important thing. In relation to Open Skies, and why the UK Government will continue to take a very robust line with our colleagues in the Council of Ministers and with the Commission, it is because we believe that what we should be after here is a genuine liberalising measure, in the same way as the liberalising measures in the 1990s opened up Europe and allowed the low-cost airlines in. It is the same giant step we need to take, frankly.

**Q373 Mr Stevenson:** The notion we should reach agreement with the US on a European Union basis that does not satisfactorily resolve these vital issues, when 40% of the world's aviation market is the United States, seems certainly to many of us to be bordering on the unacceptable. Finally, do you think that the European Commission have sufficient expertise to conduct these negotiations?

**Mr Darling:** Again, the picture is mixed, in that they do have some very good, skilled people. Most of the experience, if you like, of negotiating these things tends to rest with Member States because they are the ones who have been doing the negotiating. For example, within my department we have long experience of negotiating, not just with the United States but also with other countries. I think that the European Commission in this case is getting a lot better in these things. The issue here is not just the individual skill in negotiating, but actually having the political will on the part of the Commission to make sure that we get the best possible deal for the people we are supposed to represent. That is actually the most important thing. It is a matter of politics, I think, rather than blaming the civil servants.

**Q374 Chairman:** Does that exist?

**Mr Darling:** The will? I certainly hope it does. Certainly at the discussion we had at the Council earlier this year, in March, a large number of Member States made it very clear that they expected to get a better deal than the one that was being offered. Given that we are at such an early stage—

**Q375 Chairman:** Why is there therefore this very

industry thinks, we should not lose sight of the most important people in all of this, and that is passengers or freight carriers—the customers, in other words. They are the most important people.

**Q372 Chairman:** They are not represented at all in these negotiations, are they? Not in any language. you have these negotiations. This was fairly well reported at the time. Not just us, not just me, but others made it very clear that, if we were going to do this thing and given the importance not just for the EU-US, these negotiations would be looked at by the rest of the world, and the position eventually reached at the end of these negotiations will be looked at by the rest of the world as a benchmark as to what might follow—which is why it is so important that we get these things right. My guess is that, if we can reach a deal on the EU-US, then other markets will follow.

**Q377 Chairman:** Particularly if it is one that is to the advantage of the people with whom you are negotiating. I do not think that there is any difficulty. It will be warmly received as a benchmark.

**Mr Darling:** If it is a good deal, it would be.

**Chairman:** Yes, the definition of a “good deal” is an interesting one.

**Q378 Mrs Ellman:** Are you satisfied with the way the Commission carries out impact assessments of its proposals?

**Mr Darling:** The answer to that is we would prefer it to carry out more rigorous assessments and—

**Q379 Chairman:** “No”, in other words?

**Mr Darling:** I will answer the question. If you wish to answer Mrs Ellman's question, then by all means go ahead!

**Q380 Chairman:** We might get some more satisfactory answers.

**Mr Darling:** It depends from which point of view you are looking at it. I think that the answer is that, of course, yes, there are some cases where they do it properly, but there are other cases—railway safety is a case in point, where a third directive is being proposed at the moment—where we want to be very sure that, before there is any directive, people have properly looked at the costs and the impact and then decided whether or not the thing is justified. So, yes, it is a qualified answer, Mrs Dunwoody, but, like so many things in life, they are not black or white.

strong view, echoed in a letter which I received from British Airways this week—and which I am sure has been received by other members of this Committee—that the Commission are about to do a deal which will not encompass any of the points that either Mr Stevenson or you have just made?

**Mr Darling:** British Airways are understandably concerned that they should not be disadvantaged in relation to any—

**Q376 Chairman:** But they are not alone, are they, Secretary of State?

**Mr Darling:** They are not. Indeed, I can think of occasions when we have been negotiating bilateral deals when different airlines in this country have feared that we were going to be doing things.

Sometimes they lobbied privately; sometimes they lobbied publicly. That sort of thing goes on when

**Mr Darling:** And maybe a rest in between times. However, if the proposal meant that all drivers had to be certificated to do that, then you have to ask yourself whether the man who drives the train from Kyle of Lochalsh to Inverness really needs to be competent to drive the train down to Naples if he is never going to take his train anywhere near Edinburgh, let alone Naples. So that is an example

of where you need properly to assess whether or not the benefit you are allegedly going to get is justified. There are places where that has been done; there are places where, frankly, we would like to do more. This is probably a very good example. As you know, there is a live issue within our own country as well as within Europe.

**Q384 Mrs Ellman:** The Commission's proposals very often change significantly through the various processes of negotiation and discussion that take place. Do you think there is a need for more impact assessments at later stages of proposals?

**Mr Darling:** If they change and if there has not been an impact assessment, it should be done. I think that my starting point would be that, before something is proposed, one of the first questions you should ask yourself is "What is the impact of this? What is the cost? Is it justified?". I am sure that there are many proposals that, had they been looked at at the start, they would not have had to be amended quite so much along the subsequent procedure. So what is important is that you do it at the start but also, as you reach the conclusion, and this looks like the directive that is going to be implemented, then perhaps you should double-check. If you go round the country, as I am sure all of us do, and speak to people in business and they complain about red tape, an awful lot of it comes from European legislation. One of the things we have done, and it is one of the things that we are pursuing with the Irish presidency, and the next presidency through our own presidency, are the measures that I hope will result

**Q381 Mrs Ellman:** What are the areas where you are concerned that the impact assessments were not done properly?

**Mr Darling:** I mentioned railways just now.

**Q382 Mrs Ellman:** Is that the major one?

**Mr Darling:** Let me give you one example. This is something that has been proposed—for example, that there should be a common system of certification or training for drivers. I understand the rationale for that. If you have a driver taking a freight train from southern Italy to the north of Scotland, you would like to think that he is competent to drive all through these things.

**Q383 Chairman:** You would like to think that he got a rest!

think these figures are right because you have not taken into account this or that". Let us face it, in most propositions, if someone is against you, one of the first things they will dispute is the independence of the consultant that was hired. Equally, when others produce their consultants, we will criticise them as well. I am afraid that is just a fact of life.

**Q386 Mrs Ellman:** The assessments of the proposals for the European Intermodal Loading Unit have produced very different reactions, have they not?

**Mr Darling:** Yes.

**Q387 Mrs Ellman:** The industry disputes the findings of the Commission. What would you put that down to? Is it something wrong in the way it was assessed or is it just different interests?

**Mr Darling:** It could be a number of things. This is a measure where I can see why you would want to avoid a situation where, within a few years, there were lots of different types of containers or things that move people about. As you know, there are international standards at the moment. The question you have to ask is, why do you need a European level on top of that? But I suspect it is something where you will get a difference of opinion between different people. Our view is, whatever the outcome of these various consultants' findings, we need to be sure there is a justification for doing these things. That comes back to the point that I made right at the start. You need to ask yourself on each occasion why is this thing being done and is it actually necessary. If it is not necessary, you should not be doing it.

**Q388 Mrs Ellman:** How important do you think Members of the European Parliament are in decision-making?

**Mr Darling:** They are important because, over the years, they have been given power to amend or to make proposals in relation to various directives, and



In our having a real assault on that red tape. As I say, it is very easy, when you are making the rules and regulations and you are far away from the people that you affect, to forget that these things do have a cost and do have an impact. The question is do you get a better benefit as a result. These things need to be tested.

**Q385 Mrs Ellman:** If it is the Commission who appoint the consultants to assess its own proposals, can those results actually be trusted, or is there any way of dealing with it other than to repeat the exercise?

**Mr Darling:** The answer to that question, I think, is yes. Of course, with all of these things, you can hire 57 consultants and get 57 different answers. Successive governments have hired consultants and said, "This is our evidence". Others, who oppose a proposition, will hire consultants and they might come up with something different. What you have to do is get consultants, or do it yourself, or whatever, and you say, "This is the impact". It is then open, and quite rightly so, for others to come forward and say, "That's actually a load of rubbish. We don't keep in touch. As in this place, there are areas where particular members maintain an interest and we will talk to them more—because they come to us and ask to be kept informed—than other members, who may have little interest in whatever the subject happens to be.

**Q391 Mrs Ellman:** Do you think they have sufficient access to information from the Department, as matters proceed?

**Mr Darling:** I think that they do; or, to put it another way, they have not complained to us that they have not. On the occasions when they have said, "Could You tell us more?" then, within the normal bounds of what we can do, we will tell them. I think that is the case.

**Q392 Mrs Ellman:** The Draft Constitutional Treaty has some new provisions on looking at subsidiarity issues. How would that affect the way you operate, if it went through as it is now?

**Mr Darling:** It depends on what the thing looks like in its final form. Do you mean in communications with the European Parliament?

**Q393 Mrs Ellman:** Yes, on how issues to do with subsidiarity would be identified, and early warning systems—how they would operate.

**Mr Darling:** Whatever the new system happens to be—and, as you know, these things are all being discussed—we will clearly need to look at our procedures more. I think that it comes back to the point I made right at the start. It is important that our starting point should be that subsidiarity is key. The question is, can we do it here? Is there any

there are a lot of areas where there is co-decision. It is important. It is an example of where the quality and, dare I say, the political beliefs of MEPs actually matter, because they can influence things. That is something that has been in place for a number of years now.

**Q389 Mrs Ellman:** How do you communicate with them? Do you have any fixed system, where they are aware of your concerns?

**Mr Darling:** Yes.

**Q390 Mrs Ellman:** How does it work?

**Mr Darling:** We maintain our relations with all MEPs. Obviously the Department does it, and therefore it is with all MEPs. It is not ones of one political party. We keep them up to date with what we are doing and the issues that are coming. Where there are things that are of concern to us, then we lobby them: sometimes successfully; sometimes not. We cannot tell them what to do, obviously. Even here we have problems from time to time, as you know, instructing people what to do! It is even more difficult in the European Parliament. But, yes, we do corner—and the negotiations are not yet concluded—we can influence things. I will give you another example of where we should have been in earlier: the Working Time Directive, which had its genesis about 10 years ago. Had we got in there earlier and been engaged when the thing was formulated 10 years ago, then some of the things we have had to fight to negotiate—depending on which view you take of these things, of course – to try to get a more flexible approach would have been a lot easier. Those are two examples, if you like: one thing we could have done better; one thing that we have done. There are lots of examples of things that are happening throughout Europe at the moment. Single skies, for example—that is at a very early stage. We think that we have a good regime here in terms of air traffic control and air safety. It is one where we are engaging in Europe, through NATS and at a governmental level. It is an example of where we share the objective. Given the importance of having a good air traffic control system throughout the whole of Europe, we need to make sure that we get in there and influence it in a way that will be beneficial to us.

**Q395 Miss McIntosh:** In relation to the bilateral negotiations with the US, you refer to political will. How has the US demonstrated it has any degree of political will in these negotiations, when to agree to the three key factors—of Fly America, access to cabotage and access to foreign ownership of US carriers—would require fundamental changes in US law? How open do you think they are actually being in these negotiations? Where is the political will on their side?

reason for anyone else to do it? These are things where there are a variety of things we need to do, to be in there at the start. One of the things at which we are getting progressively better is getting in there before the decisions are made, or before minds start to firm up, rather than waiting for something to be tabled—which, as you know, in most procedures is late in the day. It is much better to be trying to influence opinion at an earlier stage, rather than at a later stage.

**Q394 Mrs Ellman:** Could you give any example where the UK's involvement at an earlier stage has made a difference?

**Mr Darling:** I will give you one example, which I think you are looking at, in relation to shipping and the oil spills after the *Erica* and the *Prestige*. We were involved at an early stage. We are a maritime state. As you know, there is this tension between MARPOL, which is an international agreement, and the proposal from the Commission, and there are some Member States—France and Spain, for perfectly obvious reasons—who say, “That’s not nearly enough. We want to get an awful lot further”. Our concern is to make sure that we do not get too far away from international obligations, for obvious reasons. Although, like any state that is surrounded

by water, we are very conscious of the potential damage that could be caused. However, it is an example of where, getting in there and arguing our the US Government would push through the law change that is required? The Chairman will recall that my husband did work for an American carrier for 23 years and now, by choice, is no longer working for an American airline. Do you really think that they can deliver on a change of law, to agree to a liberalising scheme?

**Mr Darling:** The answer to that, I suppose, would be that, if an agreement could be reached, it would depend upon what was on offer. The Americans would ask, just as we would ask on this side, “What’s in it for us?”. One of the things that American Airlines, for example, would weigh in the balance is “What do we get out of this? Is it advantageous to us?”. If there was not much on offer then, you are right, they would be very difficult. If, on the other hand, there was a lot on offer, in terms of getting into what would certainly be the largest economic union in the world, then they might be interested in that. It is very difficult for me to speculate as to what the outcome might be; but you are right in saying that the Americans, historically, have been very reluctant to open up their aviation market—in contrast to ourselves, for example, where we have operated a fairly liberal regime for some time. It is just one of these things you have to work your way through. However, suppose we take the view, “There’s nothing we can do. Therefore we will just carry on

**Mr Darling:** I do not think you should confuse political will with difference of opinion. As you well know, the view of successive American governments and the aviation industry there is that they would be very reluctant to allow a substantial liberalisation. On the other hand, because of the huge pressures on the US airlines—they have huge financial pressures—one of the things they would like to be able to do is to get into the very large market that is the European Union. We have made clear that if they want into the European market, then there has to be some kind of quid pro quo: we have to be able to get access there. However, you are right. I do not think that anyone would fool themselves into believing that this is an easy negotiation and that there are not difficult issues to be tackled, and strongly held views. It depends to whom you speak in the United States but, as you know, the US aviation industry has gone through a very difficult time. A lot of their companies have financial difficulties. I have always taken the view that this negotiation, and moving forward towards a genuine Open Skies agreement, is something that will take time; but it is worth taking time to achieve because the benefits, if it will work and if you get it through, would be very substantial.

**Q396 Miss McIntosh:** Perhaps I may press you on that point, Secretary of State. Are you convinced, in your own heart of hearts and in your own mind, that

**Mr Darling:** That is on the ships.

**Q399 Miss McIntosh:** Yes. In particular, I gather that there is a suggestion that the Commission is proposing that confiscation of a ship or imprisonment would be a sanction for a pollution incident. Does it concern you that the master of the *Prestige* is effectively under house arrest to this day?

**Mr Darling:** There are two things here. First, the question of criminal sanctions is a matter for Member States. I was referring to the fact that what the Commission is more exercised with at the moment is defining what the offence is. As you know, under MARPOL there are circumstances where discharges are permitted, for saving a ship or saving lives at sea or if there is a collision and it is not your fault—I generalise, but you know what I mean—whereas they are proposing a rather stricter liability. In relation to the position of the captain in Spain, that really is a matter for Spain and the process has been overseen by the Spanish judicial authorities. I am not in a position to pass comment on it, one way or the other.

**Q400 Miss McIntosh:** Returning to the Commission possibly going further than MARPOL and usurping the role of the IMO, are you not in a unique position to use your good offices to press the Commission to

with Bermuda 2, and maybe Bermuda 3 in another few years' time". I think that would be to miss an opportunity. It is well worth making an attempt to get an agreement, but an agreement has to be a genuine Open Skies agreement and not one that is lopsided, as I said.

**Q397 Miss McIntosh:** Have you made an assessment, in terms of delivery of policy through the European Commission, of what difference it will make having only one Commissioner from the autumn? That is, the fact that Britain will only have one Commissioner in the new Commission?

**Mr Darling:** No, I do not think that it will make a substantial difference. Taking my own experience, if you look at transport, yes, there may be occasions when you want to speak to the British Commissioner and say, "Can you help us here?", but most of your discussions tend to be, in this case, with the Commissioner who deals with transport. Given that the European Union now has 25 members, if everybody had two Commissioners then the Commission would become a very large body. This is the whole argument about having an agreement as to how to operate Europe. One of the difficulties you have, for example with a presidency that changes every six months, is that you can be moving along and then the next person takes over. These are things you just have to work through, and what is important is that the Commissioner for the relevant area is fully engaged and alive to all the issues.

**Q398 Miss McIntosh:** In your replies this afternoon you have said that the Commission is seeking to go further than the MARPOL provisions. then I suspect questions coming from this place would not be, "Why aren't you sticking to MARPOL?" but "Why aren't you going a damned sight further?". These are difficult issues, therefore. They are examples where we are fully engaged. In fact, the Irish presidency wants to reach a conclusion in June, and I hope that we can, because it is in all our interests that we do. This sort of thing could happen any time.

**Q401 Chairman:** If these vessels had broken down off our coast, do you not think that some of the questions coming from this place might have been directed to the quality of the services that were called into operation by the nation state?

**Mr Darling:** I think that you are right, Mrs Dunwoody, but our procedures—if you take the *Prestige*, for example, which got into distress off the

stay with the MARPOL provisions?

**Mr Darling:** We aren't. We are not the only one either: there are other Member States that are equally concerned. Our position is that we should broadly try to stay within the international agreement, which is MARPOL. I have to say, however, that you should bear in mind that this

could happen to any coastal state—and we are the most coastal of all the states. One of the things that the French and the Spanish are concerned about is, how do you get at the owner who wilfully neglects to maintain his vessel, so that it becomes a rust bucket in effect, with the result that if something goes wrong it could break up in bad weather? Arguably, MARPOL is primarily aimed at dealing with the negligent master of a ship, although you can obviously affect ship owners as well. There the Spanish and the French, for example, say, "We need to go further than that, because we believe that there are these ships which are sailing up and down these waters and the same thing could happen again as happened with the *Erica*"—which broke up off the French coast. I am not unsympathetic with what they are trying to achieve; however, I think that we need to avoid a situation where we get too far away from what are our international obligations, because shipping is a pretty international business; it is not just European. At the moment, there are discussions continuing; we are actively engaged in them. Because we are a maritime state, we have a lot of experience in the matter. We are trying to get an agreement that would bring together those concerns. In other words, basically you take MARPOL as your starting point. There is a legitimate concern,

however, on the part of some of these other governments. To put it another way, if the *Erica* or the *Prestige* had broken up off one of our coasts, covers all the things that we need to cover, including having the right procedures to sort these things out; also, because it is important that all Member States implement these powers. As you know, these ships can be registered just about anywhere. They call into several different ports. We want to make sure that there is a consistently high standard. We have high standards in this country, born of experience of tankers—for example, Milford Haven, Shetland, and so on. What I was saying, Mrs Dunwoody, was that I am sure that our systems could always be better but, in the light of the experience we have, we do have quite a good system—which would mean that, hopefully, if there was an incident like the *Prestige*, it would be handled differently and would not result in the sort of pollution that we saw on the Spanish coasts.

Spanish coast, then had to sail out to sea and then broke up—are that, basically, if a ship gets into distress, if you can secure it and take it to a place where you can manage the problem, that is the right thing to do. I hope that, were such a thing to happen—a tanker to get into distress, and we needed to do something about it—we would have the procedure to deal with it. The other thing is that, I think it was following the Milford Haven inquiry, we set up a position where there is an individual called the Secretary of State's Representative, who is my representative, who has the statutory power to take control over any incident.

**Q402 Chairman:** In other words, Secretary of State, we have perfectly efficient systems, which have been brought into operation based on experience, and therefore, as far as we can see in the United Kingdom, there is no conceivable reason either to expand or to change those existing systems? **Mr Darling:** No, it would be complacent to say that we would be in that position.

**Q403 Chairman:** No, not complacent, Secretary of State—factual.

**Mr Darling:** I hope we have a good system and, for example, the Secretary of State's Representative is involved every year in a number of incidents where ships get into difficulty. What we have found is, because he has the power to take control and order a ship to go to one place or to another, that has removed some of the difficulties that have occurred in other countries, where there may have been discussions between various people who might have had some sort of role—and, all the time, the ship is getting into deeper and deeper trouble.

**Chairman:** So we certainly would not need European legislation on that then, would we?

**Q404 Miss McIntosh:** Are you not concerned that the *Prestige* disaster could happen again, because they do not have a Secretary of State's Representative and they do not have safe havens?

**Mr Darling:** As I was saying to you earlier, Miss McIntosh, I am not against—far from it—the proposed legislation from Europe. There are two reasons for that. One is to make sure the legislation that we like but which another Member State may not like, in which case it would be difficult to see how on earth it could work, if there was unanimity.

**Q408 Mr Stringer:** I understand the arguments about qualified majority voting. Can I interpret your answer this way, Secretary of State: that you would consider a less than complete Open Skies deal and less than a change in ownership?

**Mr Darling:** No, you could not do that. What I have said to you is that my objective is to get the best possible deal, and whatever we do we must be moving towards a liberalised market where,

**Q405 Mr Stringer:** You must be exhausted, answering questions about the US negotiations, but there are two or three things that I would like to clarify. You said that it was qualified majority voting. That means that it is therefore possible for the Commission, with the support of the Council of Ministers, to come to a conclusion that you do not like.

**Mr Darling:** That is always possible. The objective is to try and avoid that unhappy situation.

**Q406 Mr Stringer:** We tried to get out of Mr Plant, at our last-but-one evidence session—

**Mr Darling:** Mister who?

**Q407 Mr Stringer:** . . . Plant, at our last evidence session, whether or not he thought that it was likely that there would be a deal made just on the ownership issue, and to leave cabotage—because those are the two big issues. What would be your position, Secretary of State, if the Commissioner came back and said, “We've got a deal on ownership. The Americans will relax on ownership, but not on cabotage”?

**Mr Darling:** Can I just make two points? I hope you will forgive me for saying this, but it is not a terribly good idea for me to reveal my negotiating position well in advance of where we might be. These proceedings, thankfully, are public. The proceedings of your Select Committee are read the world over, including in the United States. I am therefore reluctant to get into a position at this stage where I start setting out, “I'll take this. I'll not take that”, and so on. As I said earlier to Mr Stevenson, the negotiations ought to proceed. Let us see what develops. The test I apply is, is there a gain? Is there a benefit for passengers and the freight operators—the people whom we are there to represent? What I am reluctant to do, here, in advance of these negotiations reaching a conclusion, is to set out what our negotiating stance might be. Never mind what the EU-US stance should be, but what we might say to the Commission. The other thing to say in relation to your first point is that one of the things about QMV is that it is just that, and equally it cuts two ways: there could be an agreement which is reached there was a period a couple of years ago when I started this where the process had rather stalled. I think it is important that whilst this goes on we do not end up with a freeze. I want to see far more agreements. As I say, my whole philosophy is we should be opening up the market not closing it down.

**Q412 Mr Stringer:** During the evidence we took two or three weeks ago we had witnesses telling us that because the committee had not been set up, which was to look at these new agreements which had

ultimately, what I would like to see is people being able to set up business and operate routes without governments having to enter into treaties to achieve it. I am very liberal when it comes to these things but I think it is good for people, generally, as we have seen within Europe. So the test I apply is this: is the agreement an Open Skies agreement moving towards a more and more liberal market? I am going to reserve my judgment as to what I think about particular propositions until I actually see them. We took a very robust line when we met in March and we will continue to take that line.

**Q409 Mr Stringer:** Can I move away from the American negotiations to the other implications of the judgment of the European Court of Justice, which was the Community clause. You are familiar with that?

**Mr Darling:** Yes.

**Q410 Mr Stringer:** Can you take us through what the British Government's role has been since the idea of a Community clause was introduced, I think it was just twelve months ago?

**Mr Darling:** That is right. Basically, after the European judgement which held that there had to be a Community clause—it did not say that Member

States could not negotiate bilaterally but it did say there had to be a Community clause—there was essentially political agreement reached that the Commission would try to negotiate an Open Skies agreement with the US but in the meantime Member States would carry on negotiating bilateral deals but that they had to offer the Community clause. If they were not able to do it then they had to say that the agreement was conditional on the Commission saying that was okay. Actually, that position has been formalised by a regulation that is about to be promulgated. Since this we have negotiated a number of bilateral deals—

**Q411 Mr Stringer:** Since when?

**Mr Darling:** Since this procedure was agreed in 2003. What we do with the negotiations, as other Member States do, is say there is a requirement for a Community clause but if the other contracting party does not accept that then we report that to the Commission. I cannot tell you off-hand how many bilaterals there have been across Europe, obviously, but within our own country we know which ones we have entered into. However, the point is it has allowed bilateral deals to be entered into, whereas

**Mr Smethers:** There has been no delay.

**Q416 Mr Stringer:** That is not what we were told in evidence previously. We were told that there had been delays to Pakistan International Airlines applying for freedoms for Manchester Airport.

**Mr Smethers:** There have been negotiations about that but there has been no delay as a result of the

failed to agree a Community clause, there was a delaying process.

**Mr Darling:** I am not sure—

**Q413 Mr Stringer:** Are you saying they are wrong?

**Mr Darling:** The regulation that allows these things to happen is about to be put in place; it comes in at the end of this month. What it provides for, amongst other things, is that if you negotiate with another country and they say “We are not having a Community clause. We do not understand what this is all about, we just want to fly to your country”, we report that to the Commission. Given the time lag it takes to set up these flights anyway, I am not aware it has held things up particularly, as far as we are concerned. I am not saying it has not been held up elsewhere. Michael, are you aware of—

**Mr Smethers:** There is one agreement, it is an agreement with Hong Kong, but that was at the request of the Hong Kong authorities.

**Mr Darling:** Not Europe.

**Mr Smethers:** We are allowed to provisionally implement that agreement and then take it to the Commission when they set up a committee, but the Hong Kong authorities said “No, we do not want to do that, we want to wait until the Commission—

**Q414 Mr Stringer:** That was because of the uncertainty caused by there not being a regulation and there not being a committee set up, was it not? So it would be wrong to say that this process had not delayed something?

**Mr Darling:** The Hong Kong agreement has been delayed. As I say, it was at the request of the Hong Kong authorities. Yes, the Hong Kong people want some certainty about these things. The point I was making is that with a lot of these agreements that we have entered into it takes some time to get all these things set up for the flights to actually happen. Now that we have got this regulation coming into force next week then, obviously, we would like the Commission to get their procedures in place so they can be cleared as quickly as possible. It is not just us, every other Member State enters into these agreements and, indeed, there is a lot of interest across the world in entering into these agreements at the moment.

**Q415 Mr Stringer:** Have there not also been delays with Pakistan International Airlines?

has been taking over from the International Maritime Organisation; in aviation it is taking over individual agreements and we are now just about to have health and safety legislation to take over working time regulations that were in existence before. It now appears that there are proposals to force the introduction of random breath tests on this country. Is that not a much more accurate reflection

Community clause in the ECJ ruling. It has not been agreed.

**Mr Darling:** Mr Stringer, the Manchester agreement rings a bell. I think you discussed this with me about twelve months ago. I do not think it was this that was holding it up. If it would help I shall write, perhaps to you, Mrs Dunwoody, copied to Mr Stringer—

**Q417 Chairman:** I think you should know, Secretary of State, we were specifically told that this was being held up, not that it was in the process of negotiation; because Pakistan was unable to accept this Community clause it has been held up.

**Mr Darling:** My recollection is that it was something else that was holding it up, but I will write to you in relation to that.

**Q418 Mr Stringer:** Are we using in this country the same rules and some processes to deal with this new Community clause as other countries?

**Mr Darling:** As far as I am aware we are.

**Q419 Mr Stringer:** We have been told that other countries have worked round this clause and are not using the same process.

**Mr Darling:** Before this agreement was entered into, I think I am right in saying that there were other countries, before the ruling of the court, that were certainly entering into agreements that did not have a Community clause in them. But the new regulation which comes in next month is absolutely clear on what all Member States have to do, and if they do not do it then those agreements are challengeable in law.

**Q420 Mr Stringer:** There are, of course, those countries who refuse to negotiate with the Commission, are there not?

**Mr Darling:** Yes. Well, they do not want to; I do not know that they have actually said they refuse, as such.

**Q421 Mr Stringer:** They have said they do not recognise—

**Mr Darling:** Yes, but what these countries tend to say is, “We want to negotiate with you, the Member State, rather than the Commission”. You are right, the Russians take a particularly strong line on that.

**Q422 Mr Stringer:** You have given model answers, Secretary of State, on subsidiarity and the boundaries between national government and Commission responsibilities. However, the evidence we have had has not shown that to be the case. We have had people—they have not used this word but I will use it—saying, in effect, there has been Euro-creep; that in maritime matters the European Union start doing things which, frankly, Member States

of the relationship between this Member State and the European Union than the theoretical answer that there are very clear lines, and actually the balance is moving one way?

**Mr Darling:** No, I do not think so. In my experience, frankly, if people like what has come from Europe then they say it is a jolly good idea and if they do not they say it is Euro-creep. I may generalise but I think it is not an unfair generalisation.

**Q423 Mr Stringer:** That was not the question, to be fair.

**Mr Darling:** Whether you like it or not, I think that is my general response. If you look at any one of these measures that you mention, you have to decide whether or not it is necessary in order to make the single market work and whether it is convenient because it is better to do these things at a European level. If you take the example of breath testing, criminal law is something for Member States. I am thinking of another example where, I suppose, there will be argument in relation to the directive that will be coming along soon on driving licences and driving standards. Obviously that is a primary concern between Member States. However, it is in our interests that somebody who drives a lorry from, say, the Eastern side of the European Union and drives it up and down the streets of Manchester is competently taught, that the driving licence is his driving licence and not somebody else's and that he knows what he is doing. That is an example of where one person might say that that is an imposition and another might say that might be a jolly good idea if we are going to have a single market. So you can run those arguments both ways, I think.

**Q424 Mr Stringer:** You can run the argument in favour or against them both ways, but what you cannot have both ways is the amount of space covered by those arguments. The fact is that the European Commission is taking more responsibility for more areas, and the list I gave you is evidence of that.

**Mr Darling:** In all the areas we have covered in aviation and safety at sea there are good arguments for saying some of this ought to be dealt with at a European level. I have touched on railways, and interoperability, for example—making sure that the markets are open. That is fine and something which should be dealt with at the European level. There are other things that, frankly, are properly the province of the Member State. In each case you have to reach a judgment on what is appropriate. I am not saying there are not people in Brussels, in the Commission, who would dearly love to extend what they do. It is up to Member States to be vigilant, to make sure that Europe does what Europe is good at and does not

**Q430 Mr Stringer:** Do you believe they exist?

ought to be doing. In relation to the space that these things take up, as you know, Europe takes up a lot of space in political discussions in this country, and that is just a fact of life.

**Q425 Mr Stringer:** Will you resist random breath testing if the Commission proposed it?

**Mr Darling:** I read this in the newspaper at the weekend and the Home Secretary made the position quite clear that we do not think that is justified. Again, we must not be complacent, but our record on road safety is good in this country—perhaps, one of the safest in Europe—and we think that the regime we have in relation to being able to stop

people and breath-test is the right one. Of course, we will always keep these things under review. We do not think that random breath testing is a particularly good way of dealing with risks; in this country the police know the sort of areas that they are far better targeting. I am not sure that the Commission has made a proposal, as such, in relation to that. I know that right across Europe—in France, for example, the French Government, because of the very high road casualty rate has recently put in a lot of effort into tightening up their drinking and driving laws. That is a matter for France if that is something they ought to be doing—something I would encourage as somebody who has occasionally driven through France because it is in my interest we should have safe roads—but something like that is really, I would have thought, better dealt with by the Member State; it is a matter of criminal law, after all.

**Q426 Mr Stringer:** As I understand it, it is a nonbinding Recommendation at the present time which the Commission are considering enforcing.

**Mr Darling:** There is a huge difference between a Recommendation and a directive. Recommendations can be filed in the top drawer. As I said, the Home Secretary made it pretty clear at the weekend, which is when this thing hit the newspapers, how the Government thought of it.

**Q427 Mr Stringer:** One final question. In reply to Mrs Ellman's questions on Regulatory Impact Assessments, you said that, basically, they were not as good as you would like them to be. Have you seen one?

**Mr Darling:** Have I seen one? I would not pretend to

have studied one in great detail. The department sees them and I have read our assessment of them, yes.

**Q428 Mr Stringer:** So you have not actually seen one?

**Mr Darling:** I do not think I have ever sat down and studied one from start to finish.

**Mr Darling:** Yes.

**Q431 Mr Stringer:** This is not a theoretical question I have asked, because the predecessors of these

Regulatory Impact Assessments were European Economic Impact Assessments which were supposed to be attached to every piece of European legislation, and I have never met a Commissioner, or a member of the Commission, who has ever seen one.

**Mr Darling:** They do exist and within the department I think I am right in saying that one of my ministerial colleagues has a very happy existence

looking at the things. The way we organise the work in the department, there is a lot of legislation that comes from European proposals, and so on, and I look at some and I deal with different aspects of it and other ministers deal with other ones. I will happily have a word with my ministerial colleague, and it could be that he has been telling me all the time that he was not looking at them, but I certainly believe that he was looking at them. I certainly look at assessments of these things, especially the big issues that I have to deal with. If somebody told you they do not exist, I know it is difficult to prove a negative, but if you would like to tell me which one does not exist I will certainly see if I can find it.

**Q432 Mr Stringer:** I have searched for them in a previous existence and never actually found one.

**Mr Darling:** We do consult people in relation to that. I would have thought that if you were right that they did not exist then somebody would have pointed it out to us.

**Mr Stringer:** Thank you.

**Q433 Chairman:** Not necessarily, Secretary of State. I can think of nothing better than sitting in the Department of Transport and looking at something that does not exist and giving reports thereon! **Mr Darling:** It is an important point. When you get

one of these proposals we consult. I would find it hard to believe that the various people we consult, who are pretty well equipped to do that, would not say "Where is your assessment?"

**Q434 Chairman:** We can save all this, actually, Secretary of State. You have got people doing this; perhaps you would give us a one-page note which tells us which particular assessments have been looked at in the last year.

**Mr Darling:** Even better, I will send you some.

**Q435 Chairman:** How kind. We would like the

**Q429 Mr Stringer:** Can you tell me which one you have looked at?

**Mr Darling:** No, I cannot, offhand. As I said I have not looked at one.

**Mr Stevens:** Yes.

**Q436 Chairman:** No, no, I will be quite happy knowing the numbers of papers that are thrown out by the Commission, and quite happy with a list of the numbers that have been looked at and an *exemple*.

**Mr Darling:** How will you know if they really exist if we do not send them to you? Let me see what is feasible and, perhaps, send a sample. How about that?

**Q437 Chairman:** Yes, perhaps a little organigram on

how many of your civil servants have been having you on in the last five years.

**Mr Darling:** I might even send you along—perhaps I should not inflict this on my ministerial colleague for whom too much of his life is engaged in looking

at these things.

**Chairman:** We always like to contribute to the

education of our colleagues.

**Q438 Mr Randall:** Secretary of State, how have measures to improve the single market benefited the UK transport sector?

**Mr Darling:** The regime that was changed to allow low-cost airlines is one example.

**Q439 Mr Randall:** Can you think of any more?

**Mr Darling:** There is one currently going through, as you know, in relation to the European vignette, for

example, which would allow us properly to implement the Lorry Road User Charging scheme which is in support of the freight industry, which is another example of where the single market operates. There are others as well. For example, the regime that has allowed cabotage. That is good for

UK hauliers and it is good for consumers in this country. There are many examples of where a large market is beneficial and where opening up access to transport is also beneficial as well.

**Q440 Mr Randall:** Do you think that a single market

numbers of others as well, not just the only one you can find.

**Mr Darling:** If you want—is it feasible to send every single one we have got?

**Q444 Randall:** Do you think UK road hauliers are justified in their complaints about their inability to compete with hauliers from other EU states?

**Mr Darling:** I think you need to look at costs and taxation in the round. For example, if you are a French haulier it is more expensive to employees, because the cost of hiring an employee in

France is more than it is in this country. VAT rates can be higher in other European states than they are in this country; even personal taxation rates are different. The second thing is this: you will remember in the year 2000 that one of the reasons we introduced the Lorry Road User Charging system is

that it charges on the basis of distance travelled. This

was one of the things that the industry themselves wanted because they said that is a fairer way of making sure that continental operators coming onto UK roads paid to use UK roads, whereas their argument was that they load up with petrol in Calais,

or wherever, and they did not necessarily have to buy

fuel from this country at all. So the Lorry Road User

Charging system has huge benefits also to us but actually, so far as the industry is concerned, it is something they very much welcome.

**Q445 Mr Randall:** You would rather take the view

that the road hauliers over here are looking at one issue, and that there are some pros and some cons.

**Mr Darling:** As in everything in life, you have to look

at things in the round.

**Q446 Mr Randall:** Do you think road hauliers have made the most of the opportunities that the EU offers them?

**Mr Darling:** Some have, I suppose, and some have not. What do you have in mind?

**Q447 Mr Randall:** What does the Government do in

the way of helping them take advantage?

**Mr Darling:** We will do anything we can to help hauliers in that regard, but basically this is an example of where we need to be careful in trying to usurp the function of the market, or standing in the shoes of a particular haulier. It surely must be for



should require the harmonisation of fuel duty used for road haulage?

**Mr Darling:** No, because tax is a matter for Member States. I am absolutely sure about that. We were

talking about red lines earlier, and taxation is one.

**Q441 Mr Randall:** Would you not say, in a way, that aviation fuel is harmonised throughout the world because it has an exemption already?

**Mr Darling:** That is part of an international treaty reached in the late 1940s, I think.

**Q442 Mr Randall:** You do not think there is anything that should be done for road hauliers' fuel?

**Mr Darling:** No, because I think matters of taxation—

**Q443 Mr Randall:** I understand that.

**Mr Darling:**—are not up for negotiation. So the

answer is no.

help, but our objective is to try and ensure that we have as open a market as possible so that UK hauliers, for example, and many of them do, can

take advantage of the skills and prices they can offer in continental Europe and not just here. That is the

whole rationale behind the single market.

**Q449 Mr Randall:** Secretary of State, you mentioned the Lorry Road User Charge. Is there anything to stop the UK introducing that in advance of EU legislation?

**Mr Darling:** I think we probably could do it but there is a view that the 1999 Directive needs updating because the concept of road user charging was pretty undeveloped even five years ago. It would be much better if we had a directive that cleared up a lot of the things that are not clear at the moment. The answer is we could do it. As it happens, because it is due to

come in, I think, in 2007–2008, I hope there will be

a new directive prior to that time. It would have been nice if we had reached agreement in March, but it

was not possible to reach agreement then and I think we are going to have another go at it in June.

hauliers to exploit markets as best they can, just as they do in this country. If people want help in terms of explanation or education or in terms of having difficulties within a Member State and they need our

help, of course we stand ready to give it. What we cannot do is be their marketing department, if you like, and they would not want us to be, I suspect.

**Q448 Mr Randall:** Do you have a specific area or some facility where UK road hauliers might say “Can you give us some help on how we can take the best advantage of going into Europe?”

**Mr Darling:** As you know, we maintain regular contact with a number of trade associations, at official level and also at ministerial level as well, and

when they raise matters of concern if we can help then we will certainly do what we can. I am not going to say to you we could not do better—there are

always things that we could do better—and if there are specific proposals that the industry or individual

hauliers have in mind, of course we stand ready to

**Q452 Chairman:** Congestion charging.

**Mr Darling:** We do not, generally, hypothecate in this country and successive British governments and

most continental European governments take the same position, especially their finance ministers, for

obvious reasons.

**Q453 Mr Randall:** Finally, could you tell me what particular challenges the transport sector has posed to the recent expansion of the EU?

**Mr Darling:** I suppose negotiating a satisfactory Eurovignette is one; we have mentioned the EU/US—that is another one. There is a whole range of issues where something has been proposed that we need to work hard on to make sure that it fits with what we would like to see. It is a question of being vigilant on all fronts, really.

**Q454 Mr Randall:** There is no way, particularly, that

those countries that were in the former Eastern Bloc

impact on the transport sector?

**Mr Darling:** I think the big impact, I suppose, as you

would expect, with a lot of the accession countries which have pretty elementary infrastructure, is that they are looking to see what additional funds they can get to help them develop. The whole argument of a European network tends to be the way—the

new

**Q450 Mr Randall:** EU legislation is not necessary but obviously would be preferable?

**Mr Darling:** Yes, because with anything like this you want legal certainty. We could introduce the scheme. It may be that there would have to be amendments slightly to take account of the existing directive, but I think it would be better if we could get a new directive because then that would deal with a lot of the matters that were not about in the late-1990s that

we know about now and need to be sorted.

**Q451 Mr Randall:** Is the Government opposed to the principle of hypothecation of revenue raised by road user charging, or the agreement of any hypothecation at European level?

**Mr Darling:** Yes, we are and that has been the position of successive British governments. I think the problem, really, is this: that in continental Europe there is a history, in some countries, of tolled roads whereby you collect a toll and the money then goes back into that particular road or into roads generally. Until the M6 opened at Christmas time, with the exception of some river crossings, we did not have any tolled roads in this country. For countries that have that history of tolled roads hypothecation is not a problem because that is what happens. When you go further than that – suppose you were going to have a wider system of Lorry Road User Charging and you then had hypothecation – it completely changes the way in which we fund public expenditure generally in this country. We do not hypothecate in this country, generally speaking (there is one big exception, I think, and that is the penny on National Insurance which went into the health service) -

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**Mr Darling:** It will be dealing with some aspects of it.

countries tend to look at it from the point of view of what help can they get and the older countries tend to look at it from the point of view of how do we contain this budget?

**Q455 Mr Randall:** There is nothing specific?

**Mr Darling:** There is nothing new there.

**Q456 Mr Randall:** There is nothing that has landed

on your desk recently that has arisen from the—

**Mr Darling:** No, on the contrary. Actually a lot of the newer countries are quite open to some of the things. If you take our view on liberalisation of markets, some of them are actually very helpful to us.

**Q457 Mr Stevenson:** Secretary of State, Commission seems to be intent on representing, or attempting to represent, all Member States. On such bodies as the International Civil Aviation Organisation and the International Maritime Organisation. What is the government's view of that ambition?

**Mr Darling:** We think that is really a matter for the Member States who are members of it, in that these are truly international organisations and they comprise Member States. That has been our position. I know the Commission has, from time to time, wandered in to the IMO for example, and I am not sure if it has been unanimous but certainly the majority view of Member States is that they should remain members.

**Q458 Mr Stevenson:** With regard to the European Safety Agency, which will take on responsibility of air safety from this year -

**Q462 Stevenson:** I think we all support that. You talk about flexibility, Secretary of State, and there is

**Q459 Mr Stevenson:** It does not alter my question. My question is two-fold: how are we going to guard against duplication and how are we going to maintain the high standards we have in the UK in those areas that are transferred?

**Mr Darling:** They are both very important points. Again, it comes back to this point: what do you need to be concerned about at a European level? If you take aviation, for example, we want to make sure, for example, that the same standards are applied in relation to airworthiness or things ultimately like checks on aircraft and so on. We want to be satisfied that aircraft coming from other parts of Europe, and indeed other parts of the world but in this sense Europe, flying into Heathrow, for example, are properly checked. So there is a good argument for having common safety provisions. However, it is likely to be the case for some considerable time to come that the actual policing of this and checking will rest with Member States—in our case the CAA. On your second point in relation to cost, yes you need to be very clear we do not end up paying twice for the same thing. I think we have somebody on the European Safety Agency.

**Mr Stevens:** We have a chairman on the Maritime—**Mr Darling:** But on the European Air Safety one? **Mr Stevens:** On the Air Safety one we have people attending.

**Q460 Mr Stevenson:** I thought it was Michael.

**Mr Darling:** If the costs go up, here is your man! Do you want to say something about the costs?

**Mr Smethers:** We are obviously very concerned to avoid duplication of costs.

**Chairman:** Order. The Committee stands adjourned. Secretary of State we need to ask you some more questions.

*The Committee was suspended from 3.59 pm to 4.10 pm for a division in the House*

**Q461 Mr Stevenson:** One further area, if I might, and that is the Working Time Directive and lorry drivers' hours. Why was it necessary to extend the Working Time Directive to lorry drivers, given that we had European regulations governing drivers' hours in place already?

**Mr Darling:** I think it was primarily driven by safety. If I remember rightly, when the Working Time Directive was first promulgated in 1993 there were a number of exemptions in relation to transport workers and it was felt necessary to bring lorry drivers, in particular, within it. I think over the last couple of years or so we were trying to get as much flexibility as possible, which is something that I think both sides—employers and employees—in this country wanted. Indeed, when we published the way in which we were going to implement it it was broadly welcomed by both sides. I think it is necessary simply because it is a safety measure. It must be in our interests generally to make sure that we do not have tired drivers driving lorries round

concern about such things as the distinction made between employed drivers and self-employed drivers. It would be interesting to know why that extension is there. Are you concerned about it? There are many in the industry that suggest this is going to mean that many employers will be moving their employees over to self-employed status and that would be detrimental. Are you concerned about that?

**Mr Darling:** I would be concerned if that happened, but the directive will apply to self-employed people from 2009, I think, to give them time to make appropriate arrangements. Frankly, if you are another road user, pedestrian or driver, it does not matter to you whether the truck coming down the road towards you is driven by an employed or a self-employed person. Obviously, in order to make this thing work and to be reasonable, my recollection is that originally it was not going to apply to self-employed people at all because, of course, the legislation, generally speaking, looks at the employer/employee relationship, but given that so many drivers, not just in this country but on continental Europe, are self-employed, it would have been odd if they had been exempted. Indeed, had you exempted them I think precisely that move you have described would have happened. I do not think, simply because there is such a short timescale, that it is likely to happen in quite the way that some people fear.

**Q463 Mr Stevenson:** Are you satisfied there will not be a disproportionate adverse effect on the UK haulage industry by the inconsistent application of this Directive throughout the European Union, given that some states, as I understand it, have got certain exemptions?

**Mr Darling:** We have negotiated a flexibility that, generally speaking, UK hauliers, no matter what their status is, have welcomed. I think people recognise that there has to be some framework to govern these things. We wanted to make it as flexible as possible, recognising the peculiarities of driving heavy goods vehicles.

**Q464 Mr Stevenson:** The eternal question: how is the Government going to ensure to the maximum possible degree that we have got a reasonably level playing field in the European Union?

**Mr Darling:** You are right, no matter what the regulation is we have to ensure, as best we can, that if there is a rule or regulation it is applied in the same way in each Member State. The obvious difficulty is that it is up to Member States to enforce their own laws. Put it this way: if other Member States were complaining about the way in which we implement laws then people would understandably be upset. The right thing to do, though, is if you believe that if the rules or regulations are not being implemented in the way they should then you take it up in the right quarters—and, ultimately, I suppose you could go to the European Court or get the Commission to go

the country. ensure that there is a level playing field. However, the only way we can ensure that that is the case is to have no rules and regulations at all, but I think most people would take the view that something that does seek to ensure there is some control over the length of time that someone can drive a lorry or be on duty is probably sensible, providing it is implemented in a sensible way.

**Q465 Mr Stevenson:** The Working Time Directive applies to many other industries, but in all other industries, I think, there is an individual opt-out whereby an individual employee can opt to work more hours, which will not be available when this Directive is implemented next year for lorry drivers. Why is that, given that one could make a safety argument, presumably, if you worked in a steelworks, or whatever it maybe? Is it solely on safety grounds?

**Mr Darling:** I think it is predominantly safety. I suppose the answer is if you work in a steel works you tend to work on a shift and the shift comes to an end at some point—people go home. If you are driving a lorry from Greece to Britain and back again you want to have some sort of rule that puts some sort of check on how long someone can actually be working behind the wheel. You could construct an argument to extend the Working Time Directive to some other industries, or even I suppose you could say “Well, we need even more opt-outs in transport”, but I think what we have got is a sensible compromise. As I said earlier, if you go right back to the roots of the Working Time Directive there were a number of things that were pre-1993 which, frankly, had we been better engaged on it then, would have probably benefited us. However, in relation to lorry drivers, I think we have come up with something that is flexible and something that is good. It was fairly warmly welcomed which is not necessarily the case on everything we do, as you know.

**Chairman:** I think, Secretary of State, if we want to release you we are going to have to ask for shorter, sharper answers.

and do something about it. It is important that we have an effect upon safety. The difficulty was on the other side of the calculation; it was never easy to ascertain what the costs on industry would be. Of course, we consulted our industry in this country, but that is the way the debate progressed.

**Mr Darling:** Mr Stringer, you will recall that just about every summer we have incidents of coaches going off the road where it has either been found or suspected that people have fallen asleep at the wheel. Proving these things—you can do the eyes and the rest of it—can sometimes be difficult. I think there are two things: one is safety when we are talking about road haulage, but I also suspect that when you look at these things it is also to do with a desire to have reasonable employment provisions. I suspect there is a bit of both in it.

**Q468 Mr Stringer:** This is the application of one set of rules to a situation where there are already drivers’ regulations, so I think although there has to be an element of theoretical calculation about the number of lives that are going to be saved, I am trying to get to how many lives you believe will be saved, because the haulage industry say none. **Mr Darling:** I am interested in how they can be so definitive as to say none.

**Q469 Mr Stringer:** To be fair, they say it is not a safety issue, you said it is, so I would like to know, in your assessment, how many lives you estimate, given all the difficulties there are about—

**Mr Darling:** I am not in a position to tell you how many lives I think it will save. What I am saying to you, though, is that, intuitively, having some sort of control on the amount of hours that somebody works must be the right thing.

**Q470 Mr Stringer:** But they are already regulated, are they not? Is that not good enough, Secretary of State, in this matter where extra costs are going to be put on business?

**Mr Darling:** You are right, but remember that the

**Q466 Mr Stringer:** Just following Mr Stevenson's last couple of points, the hauliers, when we had them here last week, said that they did not believe the introduction of this new measure was a safety issue at all. Was there a regulatory impact assessment that assessed whether this would improve safety? If so, by how much?

**Mr Darling:** Can you answer that, because I do not know offhand?

**Mr Stevens:** There was, Chairman. The Commission did produce some evidence of that at the time but I have to say it was always in debate as one of the things that was constantly under discussion as to how far there would be benefits or costs from this.

**Q467 Mr Stringer:** I do not think there is any doubt on whether there are going to be costs; the issue is whether there are going to be safety benefits.

**Mr Stevens:** There was never any doubt about the safety side; I think people understood that this would reduce working time hours and that would

**Q472 Mr Stringer:** To be accurate it is but you know as well as I do, Secretary of State, that when there are investments made in the railways, when the case on health and safety is made, there are standard formulae: cost against lives, and it is a very unpleasant process—

**Mr Darling:** As you know, they are the subject of some criticism.

**Q473 Mr Stringer:** They are, and I wondered which ones you were using. If you are saying that this is a safety issue I assume you would not be saying it was a safety issue without knowing who was going to be saved or roughly how many people were going to be saved.

**Mr Darling:** It is very difficult to say. If I told you the answer was 42 you would quite rightly raise your eyebrows and say "How on earth do you know that?"

**Q474 Mr Stringer:** All caveats say "This is how the calculation is done", and of course it cannot be accurate, which is what is said in every safety case in every factory, applying to the railways, applying to aviation and applying to every other sector of industry. That is how government does its case. Why is the case not made in this example?

**Mr Darling:** I have explained the history of this. The Working Time Directive was entered into 11 years ago and it was subsequently amended. What we have sought to do is to try and get something of satisfaction to both sides. It is terribly, terribly difficult to be certain as to what the effect will be. Trying to prove a negative is actually very difficult.

genesis of this is the agreement reached in 1993, so we are stuck with that. It was agreed by the government—I am not saying we would not have reached one but I think we might have tried to do it in a different way. There then followed this dreadfully named Horizontal Amending Directive which implemented these things. What we have sought to do is try and implement it in a way that was satisfactory, both to the employers and employees and the self-employed. As I said to Mr Stevenson, I think, on balance, we managed to do the best we possibly could. If we had our time over again, were we negotiating this in 1993 would we have come to a different solution? Possibly, but that is really impossible to say.

**Q471 Mr Stringer:** So you cannot tell us how many lives the Government believes this implementation will save?

**Mr Darling:** It is terribly difficult to come up with a definitive number on something like this.

**Q477 Stringer:** Just on a different one of Mr Stevenson's questions, you were talking about bringing air safety standards to the same level in Europe. Are you not concerned that when, in the event, we have high standards traditionally and in southern Europe and the newer states to the European Union they have had lower standards, we are delaying improving our safety standards? **Mr Darling:** No.

**Q478 Mr Stringer:** Are you not concerned that the recommendations made after the Manchester air disaster, for instance, by the Air Investigation Branch have not been implemented, by and large? One of the reasons why, we have heard in other evidence sessions, is because we are waiting for everybody to get to the same level. Are you not concerned about that?

**Mr Darling:** I would at least look at the precise allegations you are making in relation to the Manchester air crash, as to which ones have not been—this is the engine fire in 1985? I would need to check that. I do not want to answer off-the-cuff because it is rather important that we get it right. The general point is that we do have high standards here and there is no reason on earth why if something was required following an AIB report, or something like that, where we needed to increase safety that we should not do it. Indeed, all the time we are doing it. I am not saying there are not some things that, for one reason or another, do not get implemented—not because of what is happening in Europe but there may be other reasons—but safety in aviation is absolutely paramount; we have a good record and we need to make sure that we maintain that good record. If you have any evidence that we are not

**Q475 Mr Stringer:** I do not want to labour this, Chair, but I am not asking for certainty I am asking what case lies behind it. We all know that predicting how investment in safety will work is not an absolute business, but I also know that when taking decisions in every other industry and in most of transport these assessments are made. I ask this question because the practitioners themselves say that this is not a safety matter. You are saying it is, I am trying to get to the bottom of why you disagree with me.  
**Mr Darling:** The rationale for regulating the hours that somebody can drive is predominantly safety. I am happy to send you all the papers—presumably they were not locked up under the last government—I can get.

**Q476 Mr Stringer:** Was the Working Time Directive not originally social policy? Has it not been applied in this area where there were already regulations made on safety issues? Is that not why there is no assessment?

**Mr Darling:** I said to you just a few moments ago that if you look at the Working Time Directive itself its genesis was partly safety measures in transport and, also, partly because of a desire to regulate relations between employer and employee. So, yes, I do agree with that.

**Mr Darling:** I think they probably can because governments are closer to the ground than the Commission is.

**Q481 Mrs Ellman:** What does the Government do to work with the industry to ensure that they do have all the available information?

**Mr Darling:** We work closely with trade organisations, trade unions and with various groups in relation to transport, of course, as well as listening to individual organisations—companies and so on—to make sure that we know what is concerning them and we try and keep them informed. As I said in answer to previous questions, I am sure that all these things we can do better than we are doing at the present time.

**Q482 Mrs Ellman:** What conclusions can we draw from the delay on digital tachographs?

**Mr Darling:** The conclusion is that the Commission should have moved faster. It cannot do anything until there is a standard and that standard is not now going to be in place until a year, come August. That is not a satisfactory situation. We have been pressing the European Commission—I think it was a couple of years ago—trying to get some progress there, and they have not. It is an example of where the Commission did need to do something, did not do it and they need to do it better.

doing something because we are being held back by others then I will happily look at it, but I will check that Manchester position.

**Q479 Mrs Ellman:** You referred earlier to the importance of influencing proposals before they are actually published. Would you say that there is enough discussion with the transport industry before the Commission does produce proposals?

**Mr Darling:** Not always, no. There are some cases where there is and there are some cases where there is not. We have just had an exchange with Mr Stringer in relation to the Working Time Directive and the transport sector. Those discussions obviously happened, to a large extent, after the original directive was put in place. So the answer to your question is sometimes there is discussion but sometimes there is not. Obviously, of course, there will be cases at times when there are discussions but no agreement. That might not be a bad thing and it sometimes is inevitable if you are going to do something that you think is right but others, for one reason or another, do not.

**Q480 Mrs Ellman:** Why do you think that happens? Do you think the Government can assist in enabling more discussion to take place?

**Mr Darling:** I think the civil service code probably says that there should be other procedures that—

**Q487 Chairman:** That is the other thing that is not standardised throughout Europe.

**Mr Darling:** The serious point in this is that if we want to get the Commission to start looking at things in the way that we would look at them, one of the best ways of doing it is making sure that we have got middle-ranking and low-ranking as well as senior civil servants seconded there. This is a generalisation, but in this country, generally speaking, when you elect a government the politicians come up with ideas and the civil servants then translate them and tell them why they are all so difficult and all the rest of it and try and make things work. In a lot of continental Europe there is a tradition whereby the civil servants generate proposals which are then discussed by the politicians, and that is basically how Europe works on a number of occasions. I think it is terribly important that we use our influence in Europe to try and get them to, firstly, work out what is the problem you are trying to solve rather than: “What is the solution and let us then look for a problem”. You need to get in there with the bricks, and so seconding civil servants is important. Do you know offhand, John, how many civil servants we have from the Department of Transport?

**Mr Stevens:** Six, at the moment?

**Q483 Mrs Ellman:** With hindsight, is the fault only with the Commission or is there something the UK Government could have done to make this happen quickly?

**Mr Darling:** No one is ever going to say there is

nothing we could ever have done. I think we did our level best. If this is going to work there has to be a pan-European standard, because all the lorries we are talking about are driving all over Europe. This is a classic case of where, frankly, only the Commission could do it; it cannot be done unilaterally. We can use all the influence we have and the Commission will, no doubt, say that there are all sorts of things with technical problems and all the rest of it, but I think it is extremely unfortunate that we do not have a common standard because without that common standard people cannot produce the kit that is necessary.

**Q484 Mrs Ellman:** Does the department second staff to the Commission? **Mr**

**Darling:** We do.

**Q485 Mrs Ellman:** How does that work? Does that help to get quicker information to us or is the communication better?

**Mr Darling:** The way I would put it—it is not like where you have a spy in the cab, and someone pulls you up and says “By the way you ought to look at this”—

**Mr Stringer:** That would be useful

**Q486 Chairman:** It would be useful if it was standard practice in most other Member States—

things the Commission is up to, I do not detect a mood amongst the majority of Member States to shift on that position.

**Q492 Chairman:** We have been talking about Euro-creep because that is what concerns this Committee and we are very concerned that the existence of an EU Framework Decision on “penalties which apply”—for example, in ship-source pollution—might result in the Commission taking competence in these areas by the back door. Is that not the case?

**Mr Darling:** As I was saying earlier, that is one of the things that I think we have to be pretty clear about—that criminal matters and penalties are a matter for Member States. Going back to the spillage point, the Commission, interestingly, has now tried to introduce another procedure through the Justice and Home Affairs Committee because it recognises that this is, again to use the Euro-jargon, a Third pillar area which is an area which is reserved to Member States.

**Q488 Chairman:** What levels are they? Not this afternoon, but can we have a note, please, on the numbers of people and their levels?

**Mr Darling:** Sure.

**Q489 Chairman:** It is perfectly true that when the French civil servants are seconded they remain *Francinere*, do they not? It is made very clear to them that failure to live up to the interests of their masters will have a direct effect upon their civil service careers.

**Mr Darling:** I cannot possibly comment on that, Mrs Dunwoody.

**Q490 Chairman:** You do not know any French civil servants, obviously.

**Mr Darling:** I do not, but Mr Stevens tells me that there are ways of keeping in touch with our people. They are all going to come back, actually.

**Q491 Chairman:** You want to go and I want to ask you an important question. The Commission appears to be determined to take over the role of the various Member States in the IMO, and you answered some aspects of that earlier on. Frankly, how many other Member States apart from us believe it is important to uphold the supremacy of the IMO?

**Mr Darling:** I was going to say, before you said that, that we do have a majority, I think, who take our view. Of course, these things may change from time to time but we do have a majority. Obviously, the maritime states are more focused on this than those that are not, but we do have a majority. With all the

**Q495 Chairman:** One talks about subsidiarity (which is another one of these uncomfortable words). Is this just a grand principle which everybody agrees and then totally disregards?

**Mr Darling:** I do not think that is the case at all. We think we do have to be vigilant to make sure that the Commission concentrates on things that the Commission can and should do.

**Q496 Chairman:** That would be unique, would it not, in my experience?

**Mr Darling:** I do not think that is the case, but I do think you need to be vigilant. If you look at the general point that has been put to you by many people, there are some things that Europe can do to the advantage of Britain and British business, and there are other areas where we need to guard against the growth of red tape which imposes costs, and where there is not a clear benefit.

**Q497 Mr Stevenson:** Very quickly on this because unless I am mistaken subsidiarity was a concept that flowed out of the Maastricht Treaty, which was 1992, and try as I might, as an individual Member of Parliament, I have not been able to identify a single

**Q493 Chairman:** Something that goes along with this "Horizontal Mandate".

**Mr Darling:** I am afraid there is a lot of Euro-jargon.

**Q494 Chairman:** It certainly is not English. Secretary of State, it does seem to us, particularly in the field of transport that there is more and more targeted effort on the part of European institutions to interfere in this particular field. Can we just have from you a very simple statement that the United Kingdom Government has no intention of ceding responsibility without making it very clear to people that any change is justified and can be defended?

**Mr Darling:** As I said to you right at the start, my starting point is a presumption that subsidiarity applies, and that is that if there are things that are properly within the province of Member States then we ought to deal with them and we ought to deal with them alone. However, there are other areas

where it is very much to our advantage to have co-operation from the rest of Europe. The general thrust of what you are saying in relation to making sure that the European Commission does not extend competence into areas where it should not be is one that I would agree with.

measure that has been enacted under subsidiarity. Now I do not put that forward as any definitive research, I want to hasten to add, my question/ request would be, because it is again reassuring to hear, Secretary of State, you have put so much

emphasis on subsidiarity, it would be interesting for the Committee if your Department could identify an issue that has been the subject of subsidiarity since the concept was established in, I think, 1992, following the Maastricht Treaty?

**Mr Darling:** Again, I will have to send you a note but I suppose road safety springs to mind.

**Q498 Mr Stevenson:** It would be interesting to know because my researchers, limited as they are, have not been able to find them.

**Mr Darling:** I will turn over the limited research facilities of the Department for Transport to producing a note for you.

**Mr Stevenson:** Thank you.

**Q499 Chairman:** Secretary of State, you are always not only very courteous and helpful, always very fluid and we are always delighted to see you. Some day we might even be surprised by your answers! Thank you very much.

**Mr Darling:** Good afternoon.



# TUC

Introduction: Europe-wide transport of goods and people relies on Europe-wide legislation

The TUC recognises that the European Union will necessarily generate quite a high volume of legislation on transport, as the free movement of goods and people is fundamental to the EU, and transport quite rightly has strong cross-national strands in some modes.

In terms of operating standards, this chimes with the direction of the transport industry before the Single European Act, as there has long been a limited degree of standardisation in some parts, driven by the need to operate trains, planes and ships and lorries across national borders.

The general philosophy of the European Union is that a greater degree of cross-national standards are necessary to support competition and the development of continent-wide markets. The attendant imperative is to set minimum standards so that environmental damage is minimised, safety is maintained, consumers are protected and employment conditions are not driven down by countries using poor standards to undermine those with better ones, which has been commonly known as “social dumping”.

Our general view is that none of these goals would be achievable in transport without legislation, as we discuss in the answers below.

However, getting the balance right is extremely important for the transport industry, which by its very nature can be extremely open to transnational competition, and environmental and social dumping.

The TUC favours strategies that are likely to deliver the combination of strong industries and social protection that are good for the UK, and for the EU as a whole.

Sadly, in recent years the EU has had a tendency to push to strengthen markets without instituting that social protection is strengthened to a sufficient degree. Strong marketisation without enough countervailing protection is an obvious recipe for increasing unpopularity.

The TUC would argue that the UK government has a moral duty to play a full role in arguing for more social, environmental and consumer protection initiatives from Europe for the transport sector, and to deploy domestic measures to try to fill the gap in the meantime.

It is also clear that attempts to create managed markets and EU wide competition in cases where there are natural monopolies are overly bureaucratic, prone to continual failure and can end up costing more than a state-run monopoly provider. The UK rail sector provides a good example of this kind of process, as demonstrated by a recent TUC report published

earlier this year<sup>76</sup>. The UK should also argue for more sensible limits to marketisation in transport.

Questions in the DfT's consultation paper "[transport call for evidence on the government's review of the balance of competences between the UK and the EU](#)"

1. What are the advantages and disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.

As the consultation document notes, the UK is one of the most successful maritime nations in the EU. The focus of UK imports and exports have shifted strongly towards EU member states. The vast majority of goods are moved by sea, as it is by far the most economic international mode for everything except very high value just in time products. As much as 71 per cent of our seaborne exports now go to Europe.

Some large member states used to use restrictive practice to deter imports of certain manufactured goods, while in other cases exports were frustrated simply because technical standards did not match. These barriers have been reduced by European Union legislation, and the process has automatically benefited maritime nations within the EU.

Probing further the example of shipping, EU member states benefits from legislation that, for example:

protects the environment, such as 2000/59/ EC, which regulates how ports deal with ship-generated waste;

Helps maintain maritime safety, such as Decision 2004/71/EC, which set minimum standards for radio communication and distress calls;

Improves health and safety on vessels, such as directive 29/92/EEC, which sets minimum standards for medical treatment on board ships, and regulation 408/2010 which improves the inspection of ships and Directive 2008/106/EC, which improved the minimum training standards for seafarers.

Safety on the sea necessarily rests on international standards as well as regulations set by the EU, and it is also possible for the UK to do more<sup>77</sup>. However, the EU has an important role to play in rolling out these standards and setting its own Europe-wide standards, many of which apply to vessels from all over the world calling at UK ports.

Note though that the UK has weakly implemented the regulations ensuring that maritime cargos should be secured before leaving the quay side. In practice, the MCA allows ships to leave the quay as long as cargos are secured by the time the ship has left port. The rules are too weak and once the ship has left the quay the MCA has no way of checking that these weak rules have been followed.

One area that gives the TUC concern is the incidence of crime at sea. In too many instances, member states do not treat investigations as seriously as they might, except in cases where the ship has a close connection to the state where the crime occurs, because they know that the problem will literally float away. This is a suitable area for future EU legislation.

2. To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?

The EU project is not without its difficulties for the transport sector. For workers and consumers across Europe, it is a very real problem that in recent year the commission has focused 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.

As well as the need to improve the citizens side of the contract, the commission should also face the fact that there are some sectors that are pretty well de facto natural monopolies, where everybody's interest would be served by having a dominant carrier, working to create partnerships with their counterparts in other countries and properly regulated to ensure affordable travel, innovation and value for money.

Exports to Europe have increased over the long run, and transport has literally delivered this growth, but British companies could do better than at present when it comes to exporting vehicles and other transport stock. Government and trade associations should be able to do more to help them.

3. To what extent is the EU internal transport market necessary for the effective functioning of the EU internal market as a whole?

Promoting the free movement of goods and people is at the heart of the EU project. The brunt of such movement is necessarily borne by the transport system. Lack of common standards would mean that significant technical and legal barriers to cross border transport would remain. Nation states were very slow to address these issues before the advent of the Single European Act.

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.

4. To what extent is EU action to harmonise social and environmental standards (e.g. to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?

EU action to establish environmental standards to limit vehicle emissions, as in the case of aviation emissions, is a necessary and integral part of the EU's internal transport market. Emission limits, and the application of carbon allowances and emission trading, are

essential to the “proper functioning of the internal transport market in its own right” and are not an alternative to it.

EU action on the environmental impacts of aviation has focused on noise, GHG and other emissions. This is an area where standards have been discussed and developed at a global level through the International Civil Aviation Organisation (ICAO), and much of the debate has been about whether the EU should move farther and faster than the rest of the world.

The EU has been seeking a global agreement to tackle aviation emissions through the International Civil Aviation Organisation (ICAO) for more than 15 years.

As a step towards global action to mitigate the climate impacts of aviation, the EU has imposed a cap on CO<sub>2</sub> emissions from flights arriving at or departing from EU airports. The Commission believes a global solution is within reach at the 2013 ICAO General Assembly. In its statement the Commission made clear that, should this meeting fail to make the necessary progress, the EU ETS legislation would be applied in full again to all flights to and from European airports?

This debate has been brought into particularly sharp focus by extension in 2012 of the EU Emissions Trading Scheme (EU ETS) to cover aviation emissions. The application of the measure to non-EU airlines, in respect of emissions outside the airspace of EU Member States, has provoked opposition from other countries, and the EU has temporarily suspended – for one year – the implementation of the extra-European Economic Area aspects of the aviation ETS to allow ICAO time to make “clear and sufficient” progress towards reducing aviation emissions globally.

Direct emissions from aviation account for about 3 per cent of the EU’s total greenhouse gas emissions<sup>i</sup>. The large majority of these emissions comes from international flights. By 2020, global international aviation emissions are projected to be around 70 per cent higher than in 2005 even if fuel efficiency improves by 2 per cent per year. ICAO forecasts that by 2050 they could grow by a further 300-700 per cent. Including aviation in the EU ETS is forecast to save around 176 million tonnes of CO<sub>2</sub> emissions by 2015.

5. What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?

The TUC believes that the EU has rather pursued the stimulation of competition and the broadening and deepening of markets without deploying a sufficiently strong degree of protection for workers and consumers.

However, that is not to say that there has been no attempt to redress the balance. For example, EU legislation has given air passengers the right to compensation when flights are delayed or cancelled.

The UK government could have implemented similar legislation for UK carriers, as a previous government did with rail travel, but many more UK travellers are protected by the EU legislation, which has a much broader territorial application.

In addition, the TUC has field-tested the EU legislation on air passenger rights and found that it has been weakly implemented in the UK and demands a very strong degree of persistence on the part of the passenger in the face of silence from the carrier. This does not suggest that the UK would have created stronger rights for passengers of its own accord.

The government's review will examine labour rights in a separate exercise, but it is worth noting here that the TUC believes that the Working Time Directive has been implemented too weakly in the UK, and is not strongly enforced.

Excessive working time should be prohibited because it undermines safety and health. Regularly working more than about 48 hours per week greatly increases the risk of developing depression, stress, diabetes and, as the Civil Service study recently reaffirmed, raise the incidence of heart disease by about 40 per cent<sup>ii</sup>.

The directive has been implemented as a series of "daughter directives" which are similar to the main working time directive but have some variations between modes.

Just to focus on road transport for a moment, whilst the UK was able to establish its own domestic drivers hours rules, they are widely ignored by the drivers of light commercial vehicles and they were in any case not sufficient for the risks associated with HGVs and PSVs.

Nor could domestic legislation maintain safe operations in the face of increased international road haulage, as drivers would simply need to leave the UK in order to escape jurisdiction.

There was also a clear need to limit total working time as well as driving time, otherwise an HGV driver could work for 48 hours per week in the depot and another 48 hours driving.

The need for tighter control was highlighted in a tragic way when an HGV driver impaired by fatigue accidentally killed an off-duty policeman just before the Road Transport Working Time Regulations took effect.

Yet VOSA and the other transport agencies get strong signals from government that say that the UK does not see working time law as a high priority. Abuse thus continues to thrive, particularly around the mis-recording of unscheduled "waiting time", which does not count toward the limit on weekly working time.

The effect of the legislation is such that excessive working time has fallen, so that whilst in 2002 10 per cent of HGV drivers were contracted to a basic week of 54.4 or more, by 2012 that figure had fallen to 50.0 hours, excluding overtime.

However, although there has been improvement, dangerous long hours continue. Given that the directive sets a limit of 48 hours per week, no driver should be contracted to 50 hours per week, and with overtime 60 hour weeks are still easy to find. The Government should put more effort into enforcing this EU-wide minimum standard of health and safety.

The TUC also has a particular concern about the regulation of driving time in passenger transport buses. Clearly driving a bus is a job where very high standards should be required in order to ensure the safety of bus passengers and crew, and other road users. It is therefore an anachronism that the regulation of working hours is devolved to domestic rules, with the result that bus driving time is less tightly controlled than other form of PSV driving.

The UK rules allow bus drivers to work a 16-hour day, of which 10 hours can be spent driving. In contrast, a coach driver covered by the EU regulations would only be allowed to drive for nine hours. The EU should extend the drivers hours rules (EC561/2006) to cover all bus drivers.

In addition, there is a problem with the DfT guidelines for bus drivers, which does not effectively ensure that routes that exceed 50 kilometres are properly covered by the more stringent EU rules.

Turning to the rail sector, the TUC believes that the European commissioners have been drawing exactly the wrong conclusions from the UK experience since privatisation. Passenger growth figures in the UK stem from a range of economic factors outside of the industry itself which has occurred despite such counter- pressures as sharply rising fares and lack of sufficient investment in new rolling stock and infrastructure<sup>78</sup>.

Thus, whilst the European Commission's proposed Fourth Railway Package<sup>iii</sup> aims to move towards trains and rolling stock being built and certified once to run everywhere in Europe, it is also 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 throughout Europe.

The Commission believes that the cost of this measure will be offset by savings in subsidy. This flies in the face off all the evidence in the UK, where subsidies are now about three times as high as they were at the time of privatisation.

Much has been made of the UK growth in passenger numbers since privatisation. However this has been on the back of public investment rather than private management.

6. The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?

EU member states have a strong moral duty to obey the legislation that they themselves have created. The TUC believes that the European Commission has been both astute and politically sensitive in its deployment of enforcement measures.

7. To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?

The various levels of legislation and agreement are not necessarily in conflict, since they serve different, but overlapping purposes. However, from the point of view of protecting transport workers and transport users, fully international standards are always going to be either too weak or, where they are strong, simply not adopted by many countries.

Unfortunately this analysis includes the UK in the case of a number of key ILO labour conventions. Conversely, well meaning individual governments who seek to protect their workers and consumers are likely to be undermined by international competition. This is the rationale for European legislation, and it applies very strongly to the transport sector.

8. What advantages or disadvantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (e.g. ICAO or IMO) or with third countries (e.g. EU-US, EU-China)?

The EU is simply a much larger trading bloc than the UK and, as such, is a more desirable customer for international agreements. UK only agreements would, by definition, be more modest. This consideration applies sharply to the business of movement of goods and people by the transport sector, as the focus of the UK economy has swung towards the EU over the long run.

Returning to the example of the aviation industry, discussed in the response to question 4, the EU emissions trading scheme has been met with a strong push-back from the USA and China, to the extent that negotiations have been paused for a year. The EU has a much better chance than its individual member states of holding the line against unwarranted pressure from the super-powers.

Strong efforts are also being made to establish a global agreement. The existence of EU schemes gives the global negotiators more chance of success, although strong opposition still remains.

9. What challenges or opportunities are there for the UK in further EU action on transport?

UK manufacturing needs to be better geared up to produce for the transport industry, and to export more widely to other EU countries. The UK government should have a role to play in leading this change, using its own purchasing power to help ensure domestic prosperity and offering more advice on public procurement opportunities both here and abroad, by convening a summit or a series of master-classes so that leading exporters can

share some of their knowledge with suppliers in other modes, and by taking the measures set out in the TUC's 2012 report on manufacturing<sup>79</sup>.

The experience of rail procurement shows that significant barriers to export remain. The most pertinent example is that of train manufacturing, which in the UK means manufacturing for the domestic market only, due to the proliferation of gauge clearance and traction unit types. Thus Bombardier may currently assist in the production of units elsewhere in the EU at the design stage, but those units will not be built in the UK.

A key point is to ensure that the tender outline is drafted in the correct fashion, in order to avoid the problems seen with the Thameslink contract<sup>80</sup>.

Another challenge is to foresee trends in transport and take advantage of them in a timely fashion. For example, in the maritime sector the trend is towards ever larger shipping, but an ever smaller number of UK ports have the deep water clearance necessary for handling such ships. Investment in ports is thus a priority, and government needs to be aware of the potential for short-sea shipping to create transport hubs and to reduce the need to move freight by road.

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# Unite

## Introduction

1. This response is submitted by Unite the Union, the UK's largest trade union with 1.4 million members across the private and public sectors. The union's members work in a range of industries including transport, manufacturing, financial services, print, media, construction, energy generation, chemicals, local government, education, health and not for profit sectors.
2. In transport, Unite represents over a quarter of a million members in all transport modes, making it the largest transport union in the UK. Our members work in all areas of transport including buses, coach, tram, taxi, rail, logistics, civil aviation, docks, ferries, waterways and road haulage.
3. Unite contributed to and supports the submission made by the TUC to this review. 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.
4. There is a clear international dimension to transport and a need for decent standards to ensure environmental damage is minimised, safety upheld, consumers protected and employment conditions not driven down by countries with poor standards undermining those with better ones.
5. Presented below are some specific issues that Unite wishes to raise that are of relevance to this transport review.

## Inferior Driving Regulations in UK

6. We note that the Government's review is to examine social and employment rights in a separate call for evidence. However, it needs to be recognised that the UK's failure to properly implement and enforce the Working Time Directive has had particular effect in the transport sector. For example, current UK regulations allow bus drivers to legally work a 16-hour day, 10 hours of which can be spent behind the wheel. Under the European regulations, the driver must, after 4.5 hours of continuous driving, take a break of at least 45 minutes. The UK's domestic regulations are less stringent than the EC rules, allowing an extra hour's driving before a break must be taken, and limiting the day's driving to 10 hours rather than 9.
7. In addition, Unite currently has an unresolved issue with the Department for Transport's (DfT) interpretation of the criteria for determining whether a route is a

"separate route" for the purposes of the 50km threshold for regular bus services under the EU drivers hours rules (EC561/2006). It is Unite's belief that in the UK the EU Regulation is not being enforced in its intended fashion. This has resulted in routes in excess of 50km, which have no enforcement recourse because VOSA are following DfT guidelines which Unite believes contravene the EU Regulation.

8. The very different requirements in respect of bus drivers as compared to PSV and HGV drivers working under domestic rules simply no longer make sense.
9. Unite would like to see better standardisation of effective standards for drivers across Europe such as a cross industry 'driver's passport' to ensure proper standards are enforced for drivers from other countries. Unite has been instrumental in the introduction of the 'Petroleum Drivers' Passport' to establish an Industry Training Standard for health, safety and driver training, with appropriate means of accreditation.

### **Maritime sector**

10. EU member states benefit from a number of EU standards in respect of the environment and health and safety. However, the strict regulation of lashings on vessels to ensure that all cargo is secured before leaving the quay side is weakly implemented in the UK. There is a need to ensure that cargo is secured all the way up to the quay as the MCA allows ships to begin the unlashing process as soon as they enter a port. The key issue is that the MCA does not have the resources to confirm that the loads are secured before or after they leave the port, only when they are at the quay and only then on an ad hoc basis. These jobs should be carried out by trained dock workers not exhausted crew members who have just completed a voyage or ones who are only just starting such a journey.
11. The trend in the maritime sector is towards ever larger shipping, however an ever smaller number of UK ports have the deep water clearance necessary to enable the handling of such ships. Investment in UK ports is critical and the Government needs to recognise the role for coastal shipping and short sea voyages to provide local transport hubs, and the positive effects for employment and the environment. It takes 50 times less fuel to move the same ton of freight by water than it does by road and hence an integrated transport policy to move goods to the closest port to the destination is highly desirable. It also reduces the need for drivers to drive to their maximum hours and spend the night in lay-bys at the side of major roads. Rail freight moves an estimated 43.5 million tonnes of goods to and from the UK's ports and with the electrification of lines, there is the potential to reduce carbon emissions even further.

12. It is important that the EU also gives proper consideration to any unintended consequences that may arise from its initiatives, such as the impact its drive to reduce sulphur in fuel may have on short sea and coastal shipping costs.

### **EU ETS and the inclusion of aviation**

13. Unite supports aviation's inclusion in the EU Emissions Trading Scheme (ETS). There have been some issues concerning some countries' opposition of its application to non-EU airlines in respect of emissions outside EU airspace. Having a scheme that is only applicable to flights in and out of Europe favours routes that circumvent a landing in the EU. This is leading to increased fuel burn and hence more emissions for a lower overall flight cost. The answer is, of course, a scheme which is global in nature, something the EU is seeking to achieve through the International Civil Aviation Organisation (ICAO).

### **Fourth Railway Package – failing to learn from the UK experience**

14. The European Commission's proposed Fourth Railway Package fails to learn the lessons of the UK's experience of privatisation and risks repeating the mistakes of the competitive franchising model. A recent report by experts from the University of Manchester finds that rail privatisation has amounted to a 'great train robbery' and that the privatised rail system relies upon billions of pounds of hidden subsidies and has failed to bring in private investment. It says that direct public expenditure on rail has more than doubled since privatisation and is currently running at £4 billion a year, despite fair rises which are now higher than in other major European countries.

### **Manufacturing of vehicles**

15. The UK needs to do more to support UK manufacturing production for the transport industry, including through its procurement practices. Unite's '2020 Vision for Manufacturing' includes calls for better use of government purchasing power to secure manufacturing jobs in the UK.
16. Barriers to export remain in respect of UK train manufacturing where different gauge clearances around the carriages and traction units means manufacturing is for the UK only. Thus Bombardier may assist in the production of units for the rest of the EU at the design stage, but they would not be built in the UK. As highlighted in the CRESC report 'Knowing what to do: How not to build Trains', the key is getting the tendering outline drafted in the correct fashion initially, unlike the problems seen in respect of the Thameslink contract.

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