Submissions to the Call for Evidence

Contents (A-J)

AB Sugar

DEPARTMENT FOR BUSINESS INNOVATION & SKILLS

Government Review of the Balance of Competencies Between the United Kingdom and the European Union

CALL FOR EVIDENCE
November 2012

Submission on behalf of Associated British Foods plc dated 5th February 2013

Market integration and the Internal Market

1. ***Question:*** *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?*

   Answer: The essential elements of an internal market are the free movement of goods, services and capital. We also believe the free movement of labour is important but we recognise that other criteria may be necessary to manage the free movement of people e.g. the ability of a countries infrastructure to absorb potential influxes of un-controlled immigration.

   The criteria for judging economic benefits should be overall GDP growth and external trade not just trade within the EU. The true test for EU membership must be the UK's overall improved competiveness; if we are more competitive in Europe we should expect it to make us more competitive globally.

   To be fully effective the internal market needs to be the deepest it can but wider societal considerations may legitimately make it necessary to sacrifice economic effectiveness for other reasons or to ensure competitiveness in international markets.

2. ***Question:*** *To what extent is EU action in other areas – for example, environment, social, and employment – necessary for the operation of the Internal Market, as opposed to desirable in its own right?*

   Answer: In principal action in other areas is not necessary if the single market is the only objective

   A consumer driven single market can operate without non-market regulations and instead rely fully on consumer preferences. This approach would be supported by broad and appropriate consumer protection rather than overly prescriptive and costly regulation that impinge on consumer choice. Regulation covering other areas is best taken to address specific issues at a national level.

The operation of the Internal Market

3. ***Question:*** *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?*

   Answer: In general we see mutual recognition as far more powerful tool in delivering consumer preferences and believe that harmonisation carries with it a risk of detaching producers from the wider global market place.

4. ***Question:*** *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.*

   Answer: The answer to this question is not clear, many factors are a play both within and outside the EU but it does appears it could in part result from interference due to protectionism and political trade-offs. Comparatively strong oversight by the Commission Departments responsible for delivering the single market could be a factor too.

   That said we must be mindful of the need to transition from regulated markets to liberalised trade both within and outside the EU. The Common Agricultural Policy is relevant here and we recognise and support that on occasion the application of the internal market needs to be done overtime otherwise you run the risk of entrenching un-fair historical structural advantages particularly where significant capital investment is required.

Interaction with other forms of market integration

5. ***Question:*** *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 Schengen Area?*

   Answer: The four pillars of the internal market are un-affected by the Eurozone and Schengen other than transaction costs of converting Sterling to Euro's.

   Thus far the Eurozone does not appear to have assisted in the efficient allocation of resources instead it has assisted in mispricing assets between the North and South of the EU region.

6. ***Question:*** *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?*

   Answer: On balance UK membership has helped by providing a more external perspective and contributes diverse insights and relationships from the Commonwealth.

7. ***Question:*** *To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?*

   Answer: Being a member of a customs union by definition means the UK is more internally focused than globally orientated. This inevitably brings both costs and benefits however these have not been material in our expansion but is something we continue to monitor closely.

   Specifically with regard the production of food the Common Agricultural Policy has resulted in prices which at times are slightly higher than some countries but overall they have been stable, elsewhere they have been extremely volatile. This stability has encouraged investment and resulted in tangible improvements in yields, quality and food safety.

8. ***Question:*** *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?*

   Answer: Our observation is that the trend for the UK Government has been to seek voluntary agreements through a preference for consumer and market led solutions which is something ABF support.

   In general the EU regulates too much but if the UK is successful in repatriating powers the Government must ensure appropriate oversight so the UK does not go further than the EU e.g. food labelling, environmental restrictions and energy regulations.

   A specific example is the desire from some within government for restrictions on sugar and salt contents in food. Lower limits in the UK would increase production and packaging costs resulting in producers becoming less competitive. A voluntary approach to labelling remains the right approach leaving consumers to decide.

Future options and challenges

9. ***Question:*** *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?*

Answer: We are all increasingly aware that in general the EU GDP is in decline whilst BRIC economies are growing. We must not lose sight of the threats and opportunities arising from this.

Compared to other economies the EU is guilty of over regulation and this affects its competitiveness outside its borders and reduces the attractiveness of the UK as a place to invest.

Future enlargement of the EU will create more potential customers but this needs to be evaluated against the social costs and impact along with balancing the current economic realities with longer term opportunities.

General

10. ***Question:*** *Are there any general points you wish to make which are not captured above?*

Answer: Consumer led competitiveness is the key to economic prosperity but Government must not disadvantage UK business by implementing policies which impinge on this or inadvertently entrench un-fair historical structural advantages such as those enjoyed by the French and German agricultural sector arising from their initiation of the Common Agricultural Policy.

The solution must be supportive, time limited, policies which encourage investment now but deliver tempered liberalisation step-by-step along with improvements in competiveness measured in global terms.

All-Party Parliamentary Group on Modern Languages

ALL-PARTY PARLIAMENTARY GROUP
on
MODERN LANGUAGES

SUBMISSION TO THE DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

SUMMARY

1. The APPG on Modern Languages welcomes the opportunity to contribute to this review. Our response is general rather than specific, bringing together evidence from a range of sources to show that the UK is failing to derive the full economic, political and educational benefits from membership of the European Union because of a lack of language skills.

2. We are pleased that the Department for Business, Innovation and Skills has already recognised the value and importance of languages in Higher Education. We hope that the review will help to raise awareness more widely of the need to boost Britain's linguistic capacity, in the interests of individuals' educational experience, the future competitiveness of the UK economy and our international standing and reputation.

BACKGROUND

3. The APPG was established in January 2008 and its terms of reference are to:

- explore the educational, skills-related, employment, competitive and cultural benefits of learning and using modern languages throughout the United Kingdom;
- provide a parliamentary forum for information exchange, discussion and consultation; and
- encourage and support policies and action to improve the take-up of modern languages in schools, further and higher education, in the workplace and in the community.

4. Over the last five years, the APPG has held regular meetings at which we have had the benefit of hearing from and questioning a wide range of experts. These have included employers and departmental officials, academics, researchers and policy advisers, professional and specialist bodies as well as teachers, head teachers and pupils.

5. **Our overall conclusion is that the national deficit in languages is now so serious that it needs to be acknowledged and redressed by coordinated government action across a range of departments including the FCO, BIS, the Home Office and the Department for Education.**

LANGUAGE SKILLS AND EXPORTS IN THE SINGLE MARKET

6. There is now a considerable body of evidence, both policy-oriented and academic, which shows that languages are linked to export growth. This year, both the CBI and the British Chambers of Commerce have published reports highlighting the risks to British companies because of insufficient supply of language skills among British graduates and college leavers[1]. Business leaders say that language availability, instead of market strategy, is driving exporting decisions, and that a lack language and cultural capability is a barrier for non-exporters who want to start trading internationally.

7. The econometrist James Foreman-Peck has shown that market failure in language skills affects the UK disproportionately: whilst there is an inbuilt tendency for everyone to under-invest in language skills, patterns of world trade show that, allowing for other factors, the UK is more likely than other countries to gravitate towards trading partners which have a language in common[2].

8. The Department for Business, Innovation and skills has noted that the proportion of UK's exports of goods and services which went to the other 26 EU member states is falling and now stands at less than 50%[3]. At the same time, participation in EU trade networks can help UK exporters to access high growth markets beyond Europe.

9. The CBI/Ernst and Young report 'Winning Overseas' makes it clear that the need to improve foreign language competence is not simply a question of communication skills to service existing or future markets, but about the internationalisation of business outlook and the rebranding of the UK as being 'open for business'.[4]

10. However, there is also evidence that UK businesses are less 'language aware' than their counterparts in other parts of the EU, and this means that

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[1] CBI/Pearson, 'Learning to Grow□: What Employers Need from Education and Skills', 2012. British Chambers of Commerce, *Exporting Is Good for Britain - Skills*, 2012 <http://www.britishchambers.org.uk/policy-maker/policy-reports-and-publications/exporting-is-good-for-britain-skills.html#.UMDH-9vKdAM>.

[2] James Foreman Peck, 'Costing_Babel. The Contribution of Language Skills to Exporting and Productivity'.

[3] Department for Business, Innovation and Skills, 'Government Review of the Balance of Competences between the United Kingdom and the European Union', 2012

[4] CBI/Ernst and Young, 'Winning Overseas□: Boosting Business Export Performance', 2011.

there is a need to stimulate demand by improving business language management practices, as well as taking action on the supply side[5].

11. We conclude that improving Britain's language skills and expertise in *managing* language issues would allow employers to take greater advantage of the Single Market in goods and services.

LANGUAGE SKILLS AND JOBS IN THE SINGLE MARKET

12. Poor or non-existent language skills impact on the opportunities for UK individuals to take advantage of labour mobility within the Single Market, whilst leaving them open to competition from incomers. Whilst UK employers are dissatisfied with the language skills of British graduates, they are enthusiastic recruiters of multilingual graduates from other EU countries. In a recent survey, nearly 57% of UK employers said they recruited from other EU countries, compared with a European average of 30%[6]. Although this shows that the Single Market is working well in terms of the free movement of persons, British workers are limited in their ability to take advantage of this freedom in the opposite direction because of their lack of language skills.

13. Improving Britons' language skills would enable individuals to take greater advantage of opportunities for employment within the Single Market, and be better equipped to compete for jobs at home.

LANGUAGES AND INTERNATIONAL INFLUENCE

14. The Foreign and Commonwealth Office has itself noted that a shortage of British staff in international institutions is detrimental to the national interest and undermines UK policy influence internationally. It highlighted that UK nationals make up only 5% of the European Civil Service, whilst accounting for more than 12% of the population of Europe. In 2011 only 2.6% of applicants were from the UK - fewer than from any other member state - and a key reason for this was that English-speaking applicants must offer either French or German as a second language[7]. This situation must surely be repeated in international organisations worldwide.

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[5] H Doughty, 'La Grande Illusion: Why Scottish Further Education Has Failed to Grasp the Potential of Modern Languages', *SCILT Languages Review*, 2011.

[6] Eurobarometer and European Commission, *Employers ' Perception of Graduate Employability Analytical Report*, 2010.

[7] Blog by David Liddington, Minister for Europe on FCO website accessed 13/8/12 http://blogs.fco.gov.uk/davidlidington/2012/03/20/more-british-nationals-in-the-eu-civil-service-can-transfrom-our-influence/

15. Improving Britain's language capacity would enable UK nationals to have greater influence in international organisations both within and beyond the European Union.

LANGUAGES AND INVOLVEMENT IN EUROPEAN COOPERATION PROGRAMMES

16. UK participation in EU mobility programmes, which improve employability and equip individuals with skills and competences to work across borders, is a fraction of that of comparator countries such as France and Germany.

17. In 2011, only 4,265 Britons took part in work experience placements in another European country under the Leonardo programme, compared to more than 10,000 French and nearly 15,000 Germans[8].

18. UK participation in overseas university placements under the Erasmus programme is around one third that of France and Germany, with only 8,577 Britons benefitting in 2010/11 compared to more than 25,000 in both France and Germany[9].

19. European Parliament research into take up of Erasmus placements, which interviewed students in 7 countries, found that lack of language skills was the major reason, after finance, why students were put off taking part. The deterrent effect of lack of foreign language skills was highest amongst UK students (62% compared to an average of 41% across all countries)[10].

20. Organisations such as the CBI and the Council for Industry and Higher Education (CIHE) have stressed the importance of international experience for acquiring the language and cultural skills which are increasingly valued by employers[11], and the Department of Business, Innovation and Skills' Joint Steering Group on Outward Student Mobility has recommended that greater emphasis should be placed on language skills at primary, secondary and tertiary levels within the education system[12]. The House of Lords EU Committee has also recently concluded that the UK's prevailing monoglot culture is a barrier to British students participating in Erasmus and other mobility schemes to the same extent as those of other member states[13].

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[8] European Commission, *Leonardo Da Vinci Mobility Figures by Country in the Years 2000 – 2011 (Number of All Individuals Who Went on Mobility to Another Country)*, 2011, mmxi, 2011.
[9] European Commission, *Erasmus Figures 2010-11*, 2011.
[10] European Parliament, *Improving the Participation in the Erasmus Programme*, 2010.
[11] E.g. J Diamond, A, Walkely, L, Forbes, P, Hughes, T, Sheen, *Global Graduates into Global Leaders* (AGR/CIHE).
[12] Joint Steering Group on UK Outward Student Mobility, *Recommendations to Support UK Outward Student Mobility Submitted to David Willetts by the Joint Steering Group on Outward Student Mobility , March 2012*.
[13] House of Lords European Union Committee, *The Modernisation of Higher Education in Europe*, 2012.

21. Improving Britain's language capability would enable UK individuals to take greater advantage of the opportunities to participate in work experience and study placements offered through European Union programmes.

RECOMMENDATIONS

22. In order to ensure that the UK and its citizens derive the full economic, cultural and educational benefits from membership of the European Union, the APPG on Modern Languages urges Her Majesty's Government to implement the following:

- A national languages recovery programme in education and training. This should include compulsory language learning in both primary and secondary schools up to school leaving age, as well as opportunities and encouragement for older students to continue with a language either as a specialist discipline or alongside other studies.

- Stimulating the demand for language skills through training and awareness-raising to improve practices in the strategic management of language skills. This should include, for example, auditing the linguistic skills of existing employees, training and recruitment policies, and the use of specialist interpreters, translators and other multilingual services.

- Appointing a single government minister responsible for coordinating government policy on foreign languages across departments.

American Chamber of Commerce to the EU

British American Business and AmCham EU Response to the UK Government Consultation on the EU Internal market

Internal Market

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?

Internal Market policy must clearly remain an EU-level competence if it is to have any meaning. Effective implementation and extension in some areas (e.g. energy, telecoms markets, services and broader public procurement) would be very welcome. Fair competition and access to markets clearly depends on a consistent approach to market liberalisation, but the missing ingredient is usually more timely and more effective transposition and better enforcement rather than additional legislation.

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?

Legislation on the EU level is preferable when it levels the playing field and provides equal opportunities for all business to engage in the market to offer goods and products to consumers. EU proposals for new legislation can potentially have implications for competitiveness and innovation. Employment-related legislation (such as on working time and agency workers) is an area where there are few real issues for the effective operation of the Single Market and where a greater role for national governments may be appropriate given national socio-economic specificities.

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?

A review of the overlaps and interdependencies between EC directorates and between EU institutions may help to drive efficiencies in policy-making and to avoid 'a thousand flowers blooming'. A case-by-case approach needs to be taken. There are some instances where a single harmonised approach is preferable while in other cases greater efficiencies can be achieved by following national specifications. There are, for example, many complexities and possible inconsistencies in the development of EC policy on climate change and energy/environment policies as they impact on the ICT and other sectors. The same applies to the many initiatives from various parts of the EC on sustainability, CSR and human rights and related mandatory reporting, accounting or voluntary codes. Another prime example is the draft Data Protection Regulation which, whilst sensible in broad principle in relation to harmonisation, goes into very substantial detail and complexity on definitions, new rights and obligations, free DSARs, anti-trust level fines, etc. This is not proportionate in view of the need to maintain the EU's global competitiveness and against the background of the costs to EU businesses and the negative impact on innovation.

The AmCham EU report "The EU Single Market: a work in progress' lists specific examples of the benefits and shortcomings of the single market and how the situation can be improved.

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?

There remain sectors within the EU that are fundamentally aligned with the national interests of individual member states. Culturally and economically, these will remain red line issues for the near future. While we welcome the aspiration that all options should be on the table, negotiations in certain areas are likely to face institutional obstacles.

Competition Policy, where it has cross-border implications, should clearly remain embedded at EU-level and is the mainstay of completion and fair market access across Europe. It is essential to UK firms' ability to compete cross-border and for ensuring a fair deal for consumers. This is not to say that improvements cannot be made: the application of state aid rules and mergers regulation must ensure that it does not stand in the way of achieving other EU priorities where consolidation or state support is necessary to create the right conditions for investment (such as on broadband networks or roll-out of 4G mobile technology) and needs to employ common sense and flexible principles according to economic circumstances without undue complexity. The Commission also needs to seek fair competition rules for EU undertakings in other key jurisdictions, notably BRIC nations.

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?

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?

There has been no hindrance.. While the members of both our organisations welcome UK participation in other international groupings, the underlying economic benefits of the Internal market is undeniable. The UK's active participation in the EU is of primary commercial importance to many UK companies, and to most US and other foreign investors in the UK; and the UK has played an active, important and pragmatic role in the EU's deliberations that has been broadly helpful to business. It is important that the UK's ability to influence important decisions at EU level and attractiveness as a location for investment aimed at serving the wider EU market should not be impaired.

7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

The Single Market is the EU's biggest asset. Many companies headquartered outside the EU chose to locate their regional bases in the UK where they can access the deep capital markets in London, and from there branch out in to other European markets. In addition, the wholesale financial services sector is one of the most integrated parts of the Single Market. There is a very high degree of integration of money markets, considerable integration of bond markets and increasing integration of equity markets. London is the main beneficiary of this integration as is demonstrated by the strength of London's performance across the variety of metrics used to assess the share of the global capital markets business.

Access to the Single Market not only benefits the financial services sector, but also benefits the UK real economy more broadly as a result of the EU's negotiation of Free Trade Agreements (FTAs) and the leverage it is able to deploy as the largest trading bloc in the world. The EU is well-positioned to negotiate timely FTAs. It is questionable whether, if the UK was outside the EU, the UK would be as well-placed to negotiate access to these markets on behalf of companies based in the UK; and possible that these companies would be at a competitive disadvantage relative to their European peers. Also, trade partners would likely put a lower priority on negotiating with the UK alone, compared to negotiating with the EU, which allows access to the markets of its 27 Member State. The overall opportunity for UK firms to gain access to emerging market economies, and benefit from the liberalisation of fast-growing emerging economies, is significant.

Trade Policy is another area which should remain at EU-level. The EU plays a vital role in opening up market access worldwide, with far greater leverage (for example into Asian markets) than could be obtained by nations acting individually. We support the Commission's deepening of trade policy efforts regarding multilateral trade agreements, such as around services and government procurement, and with regard to bilateral EU trade and investment agreements with countries such as the U.S., Japan, Vietnam, India and Mercosur, building on the work on the Korea and Singapore agreementsdeals.

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?

Where new legislation is proposed, it should be subject to much more effective subsidiarity testing – in other words, there should be an agreed need that an issue needs tackling and can only be tackled effectively at supra-national level. This could include a competitiveness test for the measure itself and for its cumulative interaction with other measures: a comprehensive approach to new legislation is needed. This also requires renewed efforts to create a more effective and independent process of economic impact assessment: at present the – albeit improved - process still has little effect on the overwhelming momentum to legislate.

EU Electronic Communications legislation, for example, needs far more effective and consistent implementation of existing rules, applied to all converging sectors across telecommunications and broadband, rather than additional legislation. An operator doing business across the EU (and globally), is conscious that even under existing rules they are placed at a competitive disadvantage to other European (and indeed U.S.) operators gaining fair access in the UK but without reciprocal

access to their home markets. This has a negative impact, which would be exacerbated by being treated as a purely national competence.

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?

There are number of areas of EU policy-making that give cause for reflection. We believe these are probably best tackled by more effective and consistent enforcement of existing rules, and a more selective and evidence-based approach to any new legislation, rather than a radical change to existing Institutional or Treaty relationships. The areas of pensions and some employment legislations may, however, best be dealt with as national competencies.

The UK's consistent support for open markets, competition policy and the single market have been critical to the successes of the European project. The major reforms that are needed to create a deeper and broader single market will be much less likely to happen without a strong and engaged British voice.

Australian Government

SENATOR THE HON BOB CARR

MINISTER FOR FOREIGN AFFAIRS
CANBERRA

14 FEB 2013

The Rt Hon William Hague MP
First Secretary of State
Secretary of State for Foreign and Commonwealth Affairs
UNITED KINGDOM

Dear Secretary of State

I am grateful for the opportunity extended to the Australian Government to contribute to the Balance of Competences Review, which was launched by you on July 12, 2012. The Australian Government's perspective on the Foreign Policy Report of the Review is set out below.

Australia and the United Kingdom enjoy a deep and enduring partnership founded on shared values and common strategic and economic interests. This partnership is characterised by strong community links and robust two-way trade and investment. We also value our close cooperation and coordination on global and regional challenges. In recent years we have strengthened our engagement through annual Australia-UK Ministerial Consultations and collaboration in the G20, the Commonwealth and now the United Nations Security Council.

Australia is also a close partner of the European Union (EU). We share with the EU a strong commitment to human rights, democracy, free trade and sustainable development. The 27 members of the EU acting together form a force more powerful than they would speaking and acting separately. We are often natural partners in the pursuit of peace, security, climate change solutions and global trade liberalisation through the United Nations and the World Trade Organization.

The scope and depth of EU and Australian bilateral relations has intensified in recent times. Our cooperation on development assistance in Africa and the Pacific and on piracy in the Indian Ocean is valuable. Our proposed framework agreement and agreements on linking emissions trading systems and international crisis management will be important in underpinning future collaboration.

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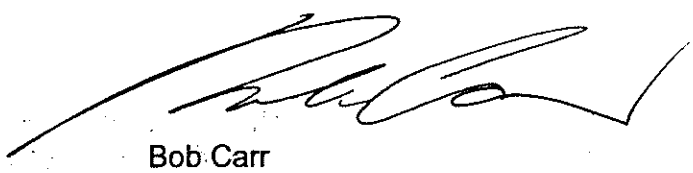
Australia therefore sees both the UK and the EU as key partners. We appreciate the special role the UK has played in helping to shape the EU as an outwardly-focused institution to the benefit of the international community. The UK has championed free trade, the single market, and been a strong advocate on the need for the EU to remain competitive. The UK is also a leading voice in EU enlargement, which has helped transform Eastern Europe and improved Europe's security and prosperity. In advocating a spirit of inclusiveness and openness the UK's efforts have benefited both the EU and third states, including Australia.

Australia recognises the UK's strength and resilience and looks forward to seeing it continue as a leading economy and effective power. Strong, active membership of the EU contributes to this.

While not intending to comment on the detail of every competence or on internal questions of how sovereignty is shared in the EU, I particularly want to register Australia's strong appreciation for the important and positive role that the UK has played in EU foreign policy. I hope to see this continue long into the future.

Yours sincerely



Bob Carr

THE HON DR CRAIG EMERSON MP

Minister for Trade and Competitiveness
Minister Assisting the Prime Minister on Asian Century Policy

The Rt Hon Dr Vincent Cable MP
Secretary of State for Business, Innovation and Skills
1 Victoria Street
LONDON SW1H 0ET

Dear Dr Cable

I am writing in response to the call for submissions to the Balance of Competences Review launched by Foreign Secretary William Hague on July 12, 2012. Specifically, I wish to provide comments for consideration in the European Union (EU) internal market review, which is being led by your department.

As your department's call for evidence states, greater European integration through the internal market brings economic gains for participants in many ways, such as through the removal of trade barriers, encouraging competition and economies of scale. EU member states can attract more investment than they would as individual economies as investors gain access to the whole EU internal market. The UK for example attracts strong Australian investment partly due to our long-term links but also because of the UK's position in the EU market. The internal market, with its objectives of free movement of goods, persons, services and capital, therefore brings great benefits to the economies of Europe and the UK.

The EU internal market benefits from the UK's presence because of the UK's economic strength and influence on policy. The UK and Australia share similar approaches in many areas of economic policy, particularly trade, and I consider the UK a positive advocate for sound economic and trade policies within the EU. In particular, we share common views on the need for reform of the Common Agricultural Policy and, more broadly, on market-based approaches to global food security.

The UK's influence on EU policy is also important in the context of the EU's role in international forums. The UK, as a major global economy, would undoubtedly remain a key player in these organisations regardless of EU membership, for example in the G20. However, through its membership of the EU, the UK can leverage its influence even further. I see this as particularly important in advancing multilateral trade liberalisation in the World Trade Organization.

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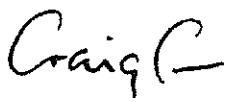
As well as benefiting Europe and the UK, the UK's participation in the internal market benefits Australia. Australia and the UK have an extensive economic and trade relationship, the UK being Australia's largest export and investment destination in Europe. The economic advantages from internal market membership mean a stronger UK economy, with flow-on benefits to Australian businesses. Australia's strong links with the UK allow Australian businesses to use the UK as a platform for trade and investment in the broader EU market.

I encourage the UK to maintain its influence by remaining an engaged participant in all aspects of the EU internal market.

Yours sincerely



Craig Emerson

Austrian Federal Economic Chamber

Austrian Federal Economic Chamber - WKO

1. 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?

The Internal Market of the EU is an area without internal frontiers designed to ensure the free movement of goods, services, capital and persons. A well-functioning internal market is of fundamental importance. Open markets and more cross border trade lay a solid ground for dynamic markets and increased competition. This is the basis for more and growing enterprises and increased economic welfare. The completion of the single market, allowing businesses to trade across the EU without legislative barriers and procedural obstacles, is a crucial facilitator of economic recovery and growth. SMEs represent 99.8% of European enterprises. Therefore, the Austrian Federal Economic Chamber believes that the Single Market strategy should be more focused on how to improve their level of competitiveness. Based on this, the measures proposed regarding innovation, IPR & patents, services, access to international markets should be more targeted towards SMEs, especially micro enterprises.

2. 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?

e.g. :Consumer rights have already reached a remarkably high level within the European Union. With regard to the review of the consumer acquis, attention should be drawn to a fair balance between consumer interests and the interests of undertakings, in particular of SMEs, which in total numbers are by far the largest, and thus most affected group of businesses in Europe. An excessive focus on the consumer protection could create a situation with an imbalance in the demand and supply side in the internal market. A business-friendly regulatory environment benefits not only the SMEs but also their workforce and the consumers.

1. 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?

The Single Market is a key driving force behind economic growth. But to deliver growth and jobs, better implementation of existing rules is essential. Despite its achievements so far, the single market is not yet complete. Important gaps remain in some areas. Pieces of legislation are missing. And administrative obstacles and lack of enforcement leave the full potential of the Single Market unexploited. The mutual recognition principle is a main driver for facilitating the market access in other Member States. This guarantees compliance with the principle of subsidiarity by avoiding the creation of detailed rules at EU level and makes it possible to maintain the diversity of products and services. It is thus a pragmatic and powerful tool for economic integration. The mutual recognition principle and reinforced market surveillance should be given more attention. When deciding how national laws should be harmonised, the new measures should not go beyond what is

necessary to achieve the aims pursued. The Austrian Federal Economic Chamber favours a transparent, constructive and result-orientated debate on the best regulatory instrument to be chosen according to each specific situation.

2. 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?

Good implementation and efficient enforcement of single market rules throughout the EU is fundamental. Action by authorities and stakeholders at all levels is required. However, Member States are often reluctant to implement/apply Community law correctly. Therefore, the Commission's role as "Guardian of the Treaties" is of paramount importance to ensure a well-functioning Internal Market. Infringement procedures are very helpful for the completion of the Internal Market, but they have to become quicker, less bureaucratic and more transparent. Giving priority to infringements having the greatest impact is positive. Priority setting, however, may not result in slowing down infringement procedures in cases which do not meet the Commission's priority criteria. Rather, the Commission should commit itself to bring all well founded cases before the ECJ within a certain time period, e.g. one year. Cases having a big impact shall be dealt with even quicker. Other means to solve Internal Market problems, e.g. SOLVIT and the notification pro-cedure according to Directive 98/34/EC should be strengthened. A well founded but unsuccessful SOLVIT-complaint or a detailed opinion within the framework of Directive 98/34/EC should replace the letter of formal notice

BAE Systems

BALANCE OF COMPETENCES REVIEW

CALL FOR EVIDENCE – INTERNAL MARKET SYNOPTIC REVIEW

RESPONSE BY BAE SYSTEMS PLC

Statement of Context

BAE Systems' businesses in Europe are in the defence and security sectors. Final customers for defence goods and services are always Ministries of Defence, and for security goods and services are in large proportion government departments and their agencies. Our responses to questions in relation to product and service markets reflect this perspective.

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?

Essential elements from our perspective are the absence of internal tariffs and customs restrictions, and openness of public procurement markets (but see also answer to Q9 below). The creation of a level playing field for competition in the EU is beneficial to business, not least from the viewpoint of a UK company which has faced more competition in its home public procurement markets than is common in comparable Member States. This is important also in the context of achieving high standards of conduct in public procurement.

Free movement of labour is also important, though national security restrictions apply to a significant number of jobs in our businesses.

The legally binding quality of EU legislation, which is never achieved in inter-governmental arrangements, is also an essential element of achieving internal market disciplines

The primary benefits arise from efficiencies of transactions in supply chains and the potential scale of the addressable market.

It is not easy to generalise about depth. Being outside the Eurozone, currency fluctuations may impact more on relative competitiveness than, for example, wage rates and taxation. But there can be substantial market benefits (discussed further under Q3) from the establishment of technical standards for new products driven by collaborative research; and to the extent that those standards are exported to other countries or contribute to wider international agreements, they can enhance industry competitiveness outside the EU.

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?

Social and employment actions and taxation are not necessary for the operation of the EU. It is both desirable and healthy that there is some competition between Member States in these areas if we wish to be industrially competitive in world markets.

But there are plainly a range of subjects which have cross-border and/or international impacts. There is merit in establishing common environmental standards for chemicals to enable supply chain and market efficiencies, providing they are sensibly managed. Whilst there may be merit, in principle, in establishing transferability of pensions across borders to facilitate labour mobility, this is not necessary for the internal market. Further, current EU practice is not to reduce barriers for pension schemes to operate across Europe but to increase the regulatory burden on schemes which inhibits them from operating across Europe. An internal market should allow variety to thrive and not be used as a means of controlling business to a state of uniformity.

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?

Intra-EU trade in defence and security goods and services has historically been conducted outside the framework of the Internal Market. Member States have in practice invoked Art 346 TFEU in relation to most defence procurements, and export control processes were a national responsibility. The Commission's Interpretative Communication (COM(2006)779) and the Defence and Security Procurement Directive (2009/81) have effectively extended the ambit of the Internal Market into these sectors, although Member States may continue to use Art 346 where strictly justified. In regard to export control, the Intra-Community Transfers Directive (2009/43) provides for common licensing processes in Member States, who retain jurisdiction on export control decisions, subject to the Council Common Position of 2008 and to EU embargoes.

Both these measures provide harmonisation and were transposed into national law in mid-2011. (It is worth noting that Directive 2009/43 was inspired by UK practice, as developed under the Export Control Act 2002.) It is too early to assess their effect, both in the UK and in continental markets, and they have yet to give rise to specific case law. But we would observe that the procurement directive is subject to a number of legal uncertainties – for example in relation to interpretation of Art 346 and to the position of various exclusions in relation to other overarching Treaty law. Harmonisation is a necessary support to legal enforcement in the field of public procurement and can bring significant benefits if all parties play the game, but it is also subject to unpredictable decisions in courts which, from case law we have observed in other sectors, do not necessarily coincide with the political intent of the legislator.

Mutual recognition is important in the field of technical standards. Choice between harmonisation and mutual recognition should generally be a function of time in technology cycles. Harmonisation is preferable, providing it can be achieved speedily, when new technologies are introduced; mutual recognition is appropriate for existing technologies and their evolutionary development where national standards already exist.

In some areas of employment and privacy law, harmonisation has proved difficult to achieve. By way of 2 examples:

1. within the UK, the Government has recently set out a detailed proposal for the reform of the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE Regulations"), which were relatively recently amended in 2006 and which implement the Acquired Rights Directive; it would appear as if the recent amendments to the TUPE Regulations have still not achieved clarity in this area which is subject to substantial European case law and differing approaches;
2. Similarly, and while acknowledging the current proposed EU Data Protection Regulation, implementation of the existing EU Data Protection Directive, and in particular the operation and functioning of national DP regulators, appears to differ greatly from Member State to Member State.

In the field of workplace Health & Safety, we would maintain that mutual recognition will drive higher standards than if a common denominator is sought through harmonisation. Already there are existing multiple layers at country level and additional requirements are likely to drive benefit.

Corporate Social Responsibility (CSR) should be aligned to a company's non-financial risk profile and addressing a company's impact in the locations and countries it operates. As such ,this does not benefit from attempts at harmonisation unless kept at a strategic, governance level.

In relation to Pension Schemes, current EU practice materially damages existing pension schemes and restricts the pan-European scope of pensions. For example the regulations governing cross border pensions regulations are so onerous that businesses restrict access to pensions for staff in the EU in a way they do not for staff in the rest of the world. Similarly the IORP directive as currently drafted would serve only to close pension schemes and thus reduce retirement benefits for individuals. Harmonisation does not help in this area as each country's pensions system is so different; mutual recognition is more suitable. Put simply an effective internal market should make it easier to operate in a pan-European way. The experience in pensions is quite the reverse.

In relation to Corporate Governance, EU initiatives seem to have broadly brought standards up to those applying in the UK. Changes to the Listing Rules, Prospectus Rules and Disclosure Rules and to company law generally on account of EU directives have not caused us any particular issues. We have not used European corporate entities, such as EEIG.

Concerning Art 114, please see our response to Q9.

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?

Please see our response to Q3.

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?

From the viewpoint of business integration, market development and efficiency, the Eurozone and the Schengen Area have been generally beneficial to companies that reside within them. From our particular perspective, however, they have made no substantive difference in the defence sector. In the security sector, absence from Schengen in practice makes certain public sector border management requirements less accessible; but that is counter-balanced by the existence of a separate UK market.

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?

No observations.

7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

With regard to Employment Legislation, we observe that, while the EU approach, gives rights to workers and providing a better social and employment environment (for example in relation to timescales required on consultation/TUPE/working time), it does however inevitably create more expensive work environments compared to other parts of the world such as the US or Far East.

In relation to Technical Standards, we would hope that current work on developing EU standards for certain security-related products may bring benefits when addressing some third country markets (see also para 3 of answer to Q3).

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?

As noted in para 2 of the answer to Q3, the Defence and Security Procurement Directive (2009/81) gives rise to a number of legal uncertainties and it is too early offer judgement on its effectiveness. HMG conducted an extensive consultation on transposition of the Directive and set out its view of its relevance and the scope for use of the Art 346 TFEU exemption in its White Paper 'National Security Through Technology' (Cm 8278). HMG decided, in line with industry advice, not to transpose one optional clause of the Directive concerning sub-contracts. But it also chose, for

reasons of legal consistency, to retain some language from the transposition of public procurement Directive 2004/18 which was not strictly required in transposition of 2009/81. Transposition was therefore very accurate with deviations above and below the minimum.

While we welcome the rigour and intellectual consistency of HMG's approach to the transposition and the use of the Treaty exemption, and while we wait for experience to substantiate an opinion, it is our impression that not all Member States may apply the same stringent criteria.

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?

We are concerned that the European Commission may seek greater competence in matters indirectly related to defence markets. It has announced its intention to issue a Communication on defence industry and markets in the first semester of 2013 The UK has a distinctive position as one of two Member States with substantially the greatest military capability and the largest volume of procurement, research and development, and international exports. The UK also assumes a substantial role in international affairs such that its essential interests require, *inter alia*, a competent and internationally competitive defence industrial base. Defence procurement and defence trade are excluded from the WTO and the Government Procurement Agreement, yet the Commission has contemplated, and may contemplate again, measures in these fields that would reach outside the Internal Market but which might be argued to be justified under Art 114 TFEU. We would not consider any such measures to be in the national interest and would query the process by which steps forward in the Internal Market may become grounds for action in new spheres of competence.

We have no particular comment on enlargement.

General

10. Are there any general points you wish to make which are not captured above?

Some Commissioners have expressed a wish to introduce controls at EU level on change of control of companies working on sensitive technologies. These are matters that should be examined in the future work on Free Movement of Capital and Competition. But we mention them here since they are subjects which are also driven in some degree by Internal Market considerations.

February 2013

Bar Council

Response to Internal Market Synoptic review

Article 114 TFEU - an expanding Legal Basis?

I INTRODUCTION

1. This is a response by the General Council of the Bar of England and Wales ("The Bar Council") to the Government's synoptic review of the balance of competences as between the EU and the UK in the area of the Internal Market.

2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

4. The Bar Council notes that, as part of its review of the balance of competences as between the EU and the UK, the Government intends to issue, over the course of the next 2 years, calls for evidence on specific aspects of the Internal Market, as well as in other areas of particular interest to the Bar and its clients. We thus intend to respond in detail to those later calls, and to limit ourselves, in the context of this first, wider call, to one particular issue that has been a matter of concern to the Bar Council for some time, namely the apparent trend towards extending the use of the internal market Treaty legal basis, Article 114 Treaty on the Functioning of the European Union (TFEU), to matters beyond what we believe to be within its scope. Thus we are not addressing here the merits of the balance of competence in the internal market as historically applied, but rather are raising the issue of the possible expansion of the EU's competence in this area without any further Treaty change. We believe that this issue should be taken into consideration as part of the synoptic review.

5. We understand that the legal framework for this issue is set out in the note prepared by Professor Barnard in the context of this review. Accordingly we do not propose to state the general legal position in any great detail. Rather, we summarise the concerns held by the Bar Council, and illustrate them in some detail by particular reference to a specific measure. In so doing we repeat observations which we made in early 2012 to the EU institutions in the context of that specific file.

6. The concern described above has arisen in several contexts in recent years. In the field of financial services, for example, we have noted a steady increase in the use of Article 114 (and its precursor, Article 95 TEC) since the onset of the financial crisis. By way of example, the proposal for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms (COM/2012/0280 final - 2012/0150 (COD), currently in negotiation under Article 114, raises several issues:

   i. whether the levies on the banking industry (required by part of the proposal) constitute a tax and thus infringe the exclusion in Article 114(2) TFEU of fiscal provisions from measures which may be adopted under Article 114(1);
   ii. whether common lending and mutualisation provisions (again required by part of the proposal) can constitute "measures for the approximation" of Member State provisions and whether they "have as their object the establishment and functioning of the internal market"; and
   iii. if the point ii. above is correct, whether the provisions relating to common lending and mutualisation could be ancillary or closely linked to other aspects of the proposal that could properly be adopted under Article 114 TFEU.

7. Again in the financial services field, we understand that there is talk of using Article 114 TFEU for the anticipated proposal which will set up a common resolution fund and resolution authority for the banks subject to the single supervisory mechanism. This is likely to be controversial for a number of reasons including those set out at paragraph 6 above, as well as the fact that it would apply to a subset only of the internal market – the single supervisory mechanism is mandatory only for the Eurozone and there will be a number of non-participating Member States, including, but not limited to, the UK.

8. In the area of civil and commercial law, a key file in which the Bar has concerns about the choice and use of Article 114 TFEU as the legal basis is the October 2011 European Commission proposal for a regulation creating a Common European Sales Law ("CESL")[1]. The remaining paragraphs of this introduction set out the points of principle that we wish to raise, whilst part II below reproduces our more detailed examination of the legal basis issues as they arise in the context of the CESL, by way of illustration of the expansion of EU competence that we perceive.

[1] http://ec.europa.eu/justice/contract/files/common_sales_law/regulation_sales_law_en.pdf).

9. The Bar Council has voiced its reservations about the European contract law project throughout the 10-year period of EU institutional activity preceding the proposal's adoption, whilst striving always to provide constructive input into the process. Our substantive reservations have, in recent years, been amplified by concern about the Commission's choice of legal basis, which has emerged as Article 114 TFEU. Article 114 enables European legislation to be passed by the ordinary legislative procedure, avoiding the requirement of unanimity under Article 352 of the TFEU. The limits of the competence it confers have been circumscribed by the European Court, particularly in Case C-376/98 *Germany* v *Parliament and Council* [2000] ECR I-8419 (which explains the circumstances in which a measure has the connection with the internal market that Article 114 requires) and Case C-436/03 *Parliament v Council* [2006] ECR I-3733 (which reiterates that Article 114 cannot be used to create new European "legal forms" such as the proposed Common European Sales Law).

10. We consider that Article 114 TFEU is not available for the proposal as presented by the Commission. Further, that if the legislative process that is now under way does result in the adoption of a European contract law measure based on Article 114, which is then upheld by the Court of Justice of the EU, this could signal a significant shift of competence towards the EU. There are several aspects to this concern:
    a. The Institutions' argument that the CESL Regulation is within the powers of Article 114 is based on the assertion that the Regulation harmonises national law because it inserts an 'optional' second contract law régime into the law of the Member States. This claim (which is examined further in part II below) would, if not challenged, enable almost anything to be done by Regulation under Article 114: any EU Regulation is "binding … and directly applicable" in all Member States; if this were accepted as meaning that any such Regulation is part of national law and (by virtue of being in uniform terms throughout the EU) *ipso facto* harmonises national law, the limits placed on the scope of Article 114 by Court of Justice case-law would be rendered nugatory.
    b. The Common European Sales Law is presented as an 'optional' régime, which parties can choose as the governing law of their contract. While this appears to make it less objectionable (though the Bar Council has doubts about its optionality in practice, and if it proves to be so, how much use it will enjoy), it still leaves the Regulation a potential precedent for the imposition of further European régimes on the Member States under Article 114 in future.
    c. Moreover, this technique could be used in other areas of law, some of which could potentially be even more sensitive than contract law.
    d. The Bar Council has consistently stated that Article 352 TFEU is likely to be the only defensible legal basis for such an optional instrument. We are however, in addition concerned that if the EU succeeds in adopting a measure in the field of substantive contract law under Article 114, whether optional or not, it will aim to use the same legal basis in the future for other civil or commercial law instruments, which might more properly have been adapted to, and adopted under, Article 81 TFEU – judicial cooperation in civil matters. If this were to be the result, it could have significant consequences, one of which is UK-specific:

i. Article 81 as a legal basis has so far been strictly interpreted to be limited to cross-border measures only. Using Article 114 could potentially open the door to some approximation of civil law, not necessarily limited to procedural aspects;
ii. By using Article 114, when Article 81 might more properly have been the legal basis, the EU could avoid the application of Protocol 21 whereby the UK and Ireland can choose whether or not to take part in a proposal in the area of freedom security and justice.

11. As stated above, the remainder of this paper is devoted to a detailed analysis, in the context of the October 2011 proposal for a CESL, of the elements that are required to be in place in order that Article 114 can be employed as the legal basis. As you will see, the Bar Council's view is that several of them are not fulfilled in this case. Against that background, if such an instrument were to be adopted in anything like its proposed form (and this of course remains to be seen at the time of writing), now or in the future, we believe that some or all of the concerns described above would arise, in turn opening the way to significant shifts in competence towards the EU, in ways perhaps not fully foreseen by all parties at the time that the Internal Market provisions of the Lisbon Treaty were negotiated.

II. A detailed look at Article 114 in the context of the October 2011 CESL proposal

12. The October 2011 proposal takes the form of a **Regulation**, preceded by an **Explanatory Memorandum**, and with attached to it an **Annex**, the latter forming the proposed Common European Sales Law ("CESL"). The preamble to the Regulation sets out the background and supporting arguments and its 12 Articles deal with the objective; the subject matter; definitions; its optional nature; its scope of application and other basic principles. A recent draft Report of the Legal Affairs Committee of the European Parliament proposes some amendments; these do not affect the substance of the proposal or of the Bar Council's objections.

13. The Commission claims that the proposed Regulation creates an autonomous but *national* contract law regime, to be used initially in cross-border B2C contracts and B2B ones involving at least one SME. There is an inherent contradiction here: the proposed Regulation cannot be autonomous (and contained in an EU Regulation), and at the same time be accurately described as part of the national law of the Member States. The Commission's Explanatory Memorandum and the recitals to the proposed draft Regulation, claim that the CESL will be a "second contract law regime within the national law of each Member State" with a view to justifying the use of Article 114 as its proposed legal basis. However, Court of Justice case-law, discussed below, makes it abundantly clear that the Regulation cannot be validly based on Article 114.

14. Article 114 provides, so far as material, that

a. "Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall ... adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in the Member States which have as their object the establishment and functioning of the internal market."

15. Article 26 TFEU refers to measures "with the aim of establishing or ensuring the functioning of the internal market". Since the Article refers to "measures", in principle any form of EU measure can be adopted. But a measure can only be adopted on the basis of Article 114 if that measure is:
    (a) "for the approximation of" national law or administrative practice; and
    (b) "with the aim of establishing or ensuring the functioning of the internal market".

II.1 The proposed Regulation is not for the approximation of national law

16. There is a well established line of European Court case-law which holds that creating a new legal form to exist alongside existing legal forms under national law does not amount to approximating national law and cannot be done under Article 114. The case-law goes back at least to Opinion 1/94 (on the competence of the Community to enter into the TRIPS agreement) [1994] ECR I-5267, where the Court observed (at paragraph 59) that

> "at the level of internal legislation, the Community is competent, in the field of intellectual property, to harmonise national laws pursuant to Article 100 and 100a[2] and may use Article 235 as the basis for creating new rights superimposed on national rights, as it did in Council Regulation (EC) No 40/94 ... on the Community trade mark".

17. That statement by the Court has been repeated in subsequent cases. The context in which the Court was speaking in the passage quoted was intellectual property law; the Court was drawing a distinction between the harmonisation of national intellectual property law – which could be done under what is now Article 114 – and creating "new rights superimposed on national rights", which could not be done under Article 114. The same distinction has been applied in subsequent case-law on patents, and the unavailability of Article 114 as a legal basis for creating European law forms of intellectual property was recognised by the Member States when they introduced, by the Lisbon Treaty, a new legal basis for measures creating EU intellectual property rights in Article 118 of the TFEU.

[2] The then Article 100a was the predecessor to Article 114; the then Article 100, now Article 115 TFEU, need not be further considered as it requires unanimity and only gives power to adopt Directives. Article 235 was the predecessor to the current Article 352 TFEU, giving the Council a residuary power, which can only be exercised by a unanimous vote, to take measures to attain a Treaty objective in the absence of specific power elsewhere in the Treaties

18. The same distinction as was drawn in Opinion 1/94 was drawn in the different context of the creation of the European Co-operative Society in Case C-436/03 *Parliament v Council* [2006] ECR I-3733. In that case the Court held that a Regulation creating a European form of co-operative society to exist alongside national co-operative societies was correctly adopted on the basis of the residual power in what is now Article 352 TFEU and could not have been based on Article 114.

19. For the purposes of this present paper, it is not proposed to set out the Court's reasoning in detail, but the reader is referred to paragraphs 37 – 46 of the Court's judgment which analyse the pertinent characteristics of the proposed European Cooperative society. In summary, the Court found that the European Co-operative Society was a new legal form; it existed alongside co-operative societies formed under national law, which was "left unchanged" (paragraphs 43 and 44); it had its own specific characteristics, referred to in paragraphs 41 and 42. It left some matters to be governed by local national law, but these were "of a subsidiary nature" (paragraph 45) and moreover, the subsidiary national law was not harmonised by the Regulation.

20. That analysis is directly applicable to the proposed Regulation on the CESL. Its title – "Common European Sales Law" – accurately describes what it is: a proposed common code of sales law, to be enacted in the EU legislative form of a Regulation and to co-exist with national contract law.

21. The preamble to the proposed Regulation refers to the CESL as a "single uniform set of contract law rules" (see recitals 6 and 8 and Article 1). It can only be a single uniform set of rules across all the Member States if the terminology it uses is given an "autonomous" meaning, independent of the meaning ascribed to the same or similar terms in national law; accordingly, recital 29 recites that

    > "the rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union law[3]. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law."

22. The self-contained nature of the CESL is reinforced by draft Article 11, which provides that:

    a. "Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules. Provided that the contract was actually concluded, the Common European Sales Law shall also govern the compliance with and remedies for failure to comply with the pre-contractual information duties."

[3] The description of the CESL here as a piece of Union law is inconsistent with the claim that it will exist 'within each Member State's national law'.

23. The new code of contract law is fairly comprehensive – though not completely: see below. Recital 26 says that "the rules of the Common European Sales Law should cover the matters of contract law that are of practical relevance during the life cycle of the types of contracts falling within the material and personal scope". This echoes recital 6, which says that the "uniform set of contract law rules should cover the full life cycle of a contract and this comprise the areas which are most important when concluding contracts. It should also include fully harmonised provisions to protect consumers". A number of areas are left to be regulated by local national law (some are mentioned in recital 27) but, as with the European Co-operative Society, these are portrayed as subsidiary and, moreover, there is no harmonisation of the national law in these areas.

24. Accordingly, just like European intellectual property rights and the European Co-operative Society, the Common European Sales Law will exist alongside national codes of contract law, which will be unaffected by it. Proposed recital 9 recites that the "second regime should be identical throughout the Union and exist alongside the pre-existing rules of national contract law". Section 3 of the Explanatory Memorandum, discussing the principle of proportionality, emphasises that

> "The Common European Sales Law will be an optional regime in addition to pre-existing contract law rules without replacing them."

25. In what appears to be an attempt to circumvent the case-law discussed above, the Commission's terminology has altered over the lifetime of the project. Whereas it was once content to refer to the CESL as a "28th regime" additional to the national contract laws of the 27 Member States[4], the preamble to the proposed Regulation, recital 9, goes out of its way to insist, in somewhat laboured language[5], that the Regulation

> "harmonises the contract laws of the Member States not by requiring amendments to the pre-existing national contract law, but by creating within each Member State's national law a second contract law regime for contracts within its scope"

and that

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[4] See for [see for example, speech by Commission Vice President Viviane Reding "Next steps for Justice, Fundamental Rights and Citizenship in the EU" at the European Policy Centre Briefing Brussels, 18 March 2010: http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/108&format=HTML&aged=0&language=EN&guiLanguage=en and, more recently, the Commission Green Paper of 1 July 2010, Page 9, discussion of Option 4, citation in Footnote 26).

[5] 9th recital; the Parliament's proposed reformulation is even more laboured, speaking of a "first" and "second" contract law régime within the national legal order (the "first" being existing national contract law and the "second" being the CESL

"the agreement to use the Common European Sales Law should therefore not amount to, and not be confused with, a choice of the applicable law within the meaning of the conflict-of-law rules".

26. The Regulation cannot turn itself into a Regulation that harmonises (or, in the language of Article 114, 'approximates') national law simply by claiming in its preamble that that is what it does. Whether it does so or not is an objective matter to be ruled upon if necessary by the Court of Justice[6].

27. The question therefore remains whether the proposed CESL Regulation approximates national law. It does not, for reasons already mentioned: it leaves the separate national laws of contract untouched. The claim is made that it approximates national law by "creating within each Member State's national law a second contract law regime". The proposition that the Regulation creates the CESL "within each Member State's national law" is presumably intended to displace the conclusion that it is (in the words of the *European Co-operative Society* judgment, quoted above) "a new legal form in addition to the national forms of [contract law]".

28. However, the claim that the CESL is created "within each Member State's national law" does not displace the conclusion that it is a new legal form in addition to the national systems of contract law, which is plainly what it is. The proposition is, moreover, at best misleading and at worst inaccurate.

29. In EU law a dichotomy is traditionally observed between national law and EU law; it is present in the terms of Article 114 itself when it refers to measures (i.e. measures of EU law adopted under the Article itself) for the approximation of provisions laid down by law, regulation or administrative action in the Member States (i.e. national law). The proposed Regulation, if it were adopted under Article 114, would self-evidently be a measure of EU law having no impact upon national law (because it leaves the national systems of contract law untouched, as demonstrated above).

30. Because it would be a Regulation, to which Article 288 TFEU would apply, it would be "binding in its entirety and directly applicable in all Member States"; national courts would apply it, just as they apply other provisions of EU law that are relevant to a piece of litigation, such as for example Regulation 593/2008 (the 'Rome I' Regulation on the law applicable to contractual obligations) or Regulation 864/2007 (the 'Rome II' Regulation on the law applicable to non-contractual obligations). But they would be applying it – as with those two other Regulations – pursuant to their duty to give effect to *EU* law.

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6 "In the context of the organisation of the powers of the Community the choice of the legal basis for a measure may not depend simply on an institution's conviction as to the objective pursued but must be based on objective factors which are amenable to judicial review": Case 45/86 *Commission v Council* [1987] ECR 1493 at paragraph 2. For example, the preamble to Directive 98/43 claimed that the Directive removed obstacles to the single market; objectively the Directive not do so and the Court annulled it: Case C-376/98 *Germany v Parliament and Council* [2000] ECR I-8419.

II.2 The Regulation does not remove obstacles to the internal market

31. A further obstacle to adopting the proposed Regulation under Article 114 TFEU is that a measure can only be adopted under that Article if it genuinely has the object of removing obstacles to the internal market. Again, the Court of Justice will verify whether this is the case (an example of a measure which failed the test is Directive 98/43, referred to in the footnote to paragraph 26 above). In the *European Co-operative Society* case the Court expressed the relevant requirements of Article 114 as follows:

    > 38 Article [114 TFEU] empowers the Community legislature to adopt measures to improve the conditions for the establishment and functioning of the internal market and they must genuinely have that object, contributing to the elimination of obstacles to the economic freedoms guaranteed by the Treaty, which include the freedom of establishment (see, in particular, Case C-376/98 *Germany* v *Parliament and Council* [2000] ECR I-8419, paragraphs 83, 84 and 95, and Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 60).
    >
    > 39 Recourse to Article [114 TFEU] as a legal basis is also possible if the aim is to prevent the emergence of obstacles to trade resulting from heterogeneous development of national laws; the emergence of such obstacles must, however, be likely and the measure in question must be designed to prevent them (see, to that effect, *Spain* v *Council*, paragraph 35; *Germany* v *Parliament and Council*, paragraph 86; *Netherlands* v *Parliament and Council*, paragraph 15; and *British American Tobacco (Investments) and Imperial Tobacco*, paragraph 61).

32. The proposed Regulation will not remove obstacles to inter-state trade, as required by Article 114 TFEU. At the heart of the Commission's justification for a CESL is the alleged barrier to cross-border trade caused by divergences in national laws. This is said to place "high costs" on traders to find out what the law is in the foreign states in which they wish to trade, and may even cause them not to trade in foreign states at all.[7] It is argued, therefore, that having an alternative common European sales law which parties can choose to regulate their relations will do away with these costs, which provide an unnecessary barrier (or obstacle) to cross-border trade.

33. This presupposes that traders will prefer to contract under a novel, untried code of contract law lacking any elucidation by way of case-law. Unless they do, which seems unlikely, the new Code will not get off the ground. A further deterrent to their doing so is not only that some of the substantive provisions of the CESL as proposed (e.g. those concerned with good faith) likely to impose even greater legal costs than those which the proposal seeks to avoid – e.g. necessitating legal advice on what will likely need to be done

[7] See, e.g., EC Green Paper COM(20100348 final, paras. 3, 3.1; Results of Feasibility Study, pp. 1, 3-5; Proposal for a Regulation on a Common European Sales Law (COM 2011 635 final), pp. 1-4

in order to satisfy the obligations imposed by the CESL and possibly still larger costs when those issues fall to be resolved in legal proceedings. In addition, it is not even the case that the CESL will do away with important differences between national laws which may impact upon cross-border sales contracts entered into on the terms of the CESL. This is because, although the CESL is heralded as providing for "*a single uniform set of harmonised contract rules*" (Proposal for a Regulation on a Common European Sales Law (COM 2011 635 final), p. 9), a closer examination of the proposal makes clear that this is not the case.

34. This is because, even were the proposed Regulation to apply, it does not lay down a common set of rules governing all aspects of the legal relationship which the parties to a sales contract enter into. Identifying the full extent of the continuing "gaps" is not easy because the text of the CESL does not exhaustively identify the areas of law which fall outside its province. One has to deduce what they are, therefore, from the absence of any specific provisions dealing with them. In one of the preparatory texts[8], however, it has been acknowledged that questions of capacity, representation (which is understood to refer to agency) and assignment are not covered by the proposal. In another[9], gaps are again referred to: this time, however, illegality, as well as representation.

35. A new article 11a proposed by the Parliament does contain a non-exhaustive list of matters not covered. These are said to "include

    (a) legal personality;
    (b) the invalidity of a contract arising from lack of capacity, illegality or immorality except where the grounds giving rise to illegality or immorality are addressed in the Common European Sales Law;
    (c) the determination of the language of the contract;
    (d) matters of non-discrimination;
    (e) representation;
    (f) plurality of debtors and creditors and change of parties including assignment;
    (g) set-off and merger;
    (h) property law, including the transfer of ownership;
    (i) intellectual property law; and
(j) the law of torts including the issue of whether concurrent contractual and noncontractual liability claims can be pursued together."

36. Even if the areas already identified as not being covered by the CESL (and so still being governed by the differing national laws of Member States, even when parties opt to apply the CESL to their contractual relationship) were the only aspects to fall outside the alleged "*single uniform set of contract rules*", it will be appreciated that they significantly undermine the argument that the

[8] Results of Feasibility Study, p. 6

[9] Proposal for a Regulation on a Common European Sales Law, in the Explanatory Memorandum, at p. 6

CESL will increase cross-border trade by doing away with the need to investigate the content of other countries' national laws. Particularly if a trader is selling products likely to be attractive to the young, it will still need to be apprised of the national laws of the countries in which it wishes to trade concerned with the age of capacity to enter into a contract, and what the remedies may be when a party falls below the age of capacity. Traders who are SMEs contracting with other traders under the CESL will still need to know who they can safely deal with as having authority to represent and bind the company with which they are dealing, and what remedies they may have if the authority is lacking.

37. Again, if it is the practice of an SME to encourage cash flow by factoring its debts, it (or its factor) will still need to know the circumstances in which the trader's debt can safely be assigned without being subject to a potential defence being raised by the purchaser. Traders will also still need to be alive to the differing circumstances in which a contractual transaction may be held to be illegal by the laws of another country and, if so, what the consequences of that are.

38. This issue of possible illegality has especial potential to cause legal complications which could bedevil contracts subject to the CESL. Illegality is a notoriously complicated area of the law in terms of deciding when the enforceability of a contract is adversely affected by infringing some statutory provision or some perceived public policy, and what remedies the parties may still have in such circumstances. Across the EU, there are doubtless significant differences on both aspects of this question. In the Advice to the Government given by The Law Commission and The Scottish Law Commission ("*An Optional Common European Sales Law: Advantages and Problems*"), it is pointed out that, although there are some things which everyone will recognise as being illegal, difficulties come when particular goods are not obviously illegal, but may be so in a particular State (e.g. it is unlawful to bring pepper spray into the UK, but not into other States), or when goods may not be sold to specific classes of people (for example in the UK, but not universally elsewhere, tobacco and glue cannot be sold directly to children). On top of all this, national laws can differ over the circumstances in which one or both parties can still enforce a contact which is prima facie illegal, or seek some other relief.

39. In the above circumstances, and even if one accepts the premise (for which there appears to be little direct empirical evidence) that differences in legal systems give rise to a significant barrier to cross-border trade because of the costs of investigating the national laws of other countries, it is far from clear that the proposed common European sales law will do away with the need to investigate significant areas of national law where differences will still remain. The failure of the CESL even to identify those aspects of law potentially affecting a contract which the CESL does not purport to regulate only makes the position worse.

40. In summary therefore, the Bar Council considers that the Commission not merely should not have chosen Article 114 as the legal basis for this proposal, but cannot do so.

41. As stated in the introduction to this paper, if it nonetheless succeeds in securing the formal adoption of the CESL in anything like its proposed form, and that instrument is either not challenged before, or is upheld by, the Court of Justice of the EU, it will be a precedent for significant expansion of the use of Article 114, with the possible consequences as outlined in our introduction above.

11 March 2013

BioIndustry Association

UK BioIndustry Association

Influencing progress and enabling connections for UK bioscience

Consultation on the government's review of the balance of competences between the United Kingdom and the European Union

BioIndustry Association (BIA) response

About the BIA

Established in 1989, the BioIndustry Association (BIA) is the trade association for health-focussed innovative enterprises involved in UK bioscience. BIA members are at the forefront of innovative scientific developments targeting areas of unmet medical need, and this innovation will lead to better outcomes for patients, to the development of the knowledge economy, and economic growth. Our goal is to secure the UK's position as a global hub and as the best location for bioscience and commercialisation, for the development of medical technologies that truly make a difference to people's lives.

The BIA welcomes the government's call for evidence of the balance of competences between the UK and the EU and believes it offers an opportunity to improve knowledge of the UK's membership to the EU and what it means for the UK's national interest. The focus within this submission is restricted to those areas that are of most concern to the BIA and its members.

Summary

The BIA supports the view that the current balance of competences between the UK and the EU is advantageous and effective for the bioscience sector. It is essential that the need for bioscience companies to think globally is met, and being part of the EU provides a great opportunity for this. Successful bioscience research and development (R&D) activities are becoming increasingly collaborative across the world and this must be supported. This is demonstrated by the EU's Innovative Medicines Initiative (IMI), a programme that will bring together experts across universities, hospitals and pharmaceutical companies to address current issues such as antibiotic resistance. The UK has a strong position in the EU through the excellence of its science base, meaning it should play a central role in shaping science policy. The main key benefits the internal market brings to the UK bioscience sector as discussed in this response include access to market, the legal framework governing medicinal products, the Intellectual Property (IP) framework, investment, employment law, and the harmonisation of R&D activities across Europe, for example the conduct of clinical trials.

Response

Question 1

Regulation: The biosciences base in the UK plays a strategic role in the EU. The European Medicines Agency (EMA) headquarters are based in London, giving the UK access to, and the opportunity to influence, regulatory affairs across the whole of Europe. As a leading voice, the UK can shape the direction of the EU and protect its national interests, for example the UK Member of European Parliament (MEP) is currently steering crucial legislation on clinical trials through Parliament which will in turn lead to new life-saving treatments and drugs and the creation of many skilled jobs. The EU legal framework for medicinal products ensures a high level of public health protection and promotes the functioning of, and encourages innovation within, the internal market. Placing medicinal products on the market is made subject to the granting of a marketing authorisation by the competent authorities. Community legislation also provides for common rules for the conduct of clinical trials. It is the BIA's view that this criteria should remain. It is important clinical trials and other regulatory activities are harmonised throughout the EU and that the UK is not working in isolation.

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Intellectual Property (IP): The IP framework in the EU currently works very well for the UK bioscience sector. The Central Division of the Unified Patent Court that covers the pharmaceutical and life sciences industries is to be based in London. This will enhance the UK's pre-eminent position in the provision of legal expertise for European life science IP. This will reduce costs and time for companies looking to defend or enforce their patents across Europe, and the involvement of the UK will play a key role in fostering innovation and economic growth, giving innovative bioscience companies the key ability to compete on the global market.

Investment: A significant amount of inward investment in the UK comes from Europe: within the current EU research framework programme, statistics report that since 2007 scientists in businesses, academia, and elsewhere are estimated to have received around £3.7 billion. Increases in funding support from the EU to the UK promote innovation and sustainable economic growth, and the UK continues to be strong here because of its excellence in the science and technology sectors. On a global scale, inward investment from countries outside of Europe may diminish if there is no portal to the attractive EU market for UK investors. Many UK bioscience companies have strong strategic partnerships with European companies. A good example of this is the successful company Oxford Biotherapeutics, who have recently collaborated with Italian pharmaceutical company Menarini Ltd for the clinical development and manufacture of a portfolio of novel antibody-based cancer drugs. If the UK were to leave the EU, important links to successful companies abroad may be at risk damaging the sector's activities. The single market increases competition in the bioscience sector which has a positive impact on the quality of the work produced by enterprises, contributing to UK growth.

Employment law: The EU has a large influence over UK employment law rights, introduced by virtue of the UK's membership to the EU. A fundamental principle developed by EU legislation is the free movement of workers, which importantly outlines that employees are entitled to look for a job, work and reside in another EU country with equal treatment as nationals without a permit. This is highly beneficial to the bioscience sector enabling businesses to form key partnerships throughout Europe and the rest of the world. It also helps to attract the world's best scientists to the UK. Other EU laws regarding minimum paid annual leave, additional rights for temporary and part-time workers, parental leave, anti-discrimination rules and data protection rights constitute a fair working environment in the UK. Harmonisation of legislation throughout Europe promotes strategic relationships and recruitment across all sectors, crucial for growth and innovation in the bioscience sector.

Question 4

Regulation: The internal market is deeper surrounding the regulation of medicinal products, including the reimbursement process. Medicine pricing is governed at the national level across all member states in Europe. The BIA support this and do not see any other reason why this should not remain the case. There are recognised limitations of the internal market in this area which include, on the regulatory side, issues with the implementation and interpretation of Community legislation by Member States creating obstacles to the free movement of medicines in the EU market. In order to optimise and simplify the regulatory processes in a rapidly changing world of scientific advances in medicine, measures are being adopted to simplify EU pharmaceutical legislation, for example, the revision of the clinical trials Directive.

Conclusion

The BIA has recently conducted a voluntary survey of our member companies. The responses show 80% of those members who feel they have enough information on the topic agree the UK should remain in the EU. The benefits of being part of the EU identified from an open question included education and skills training, enhancing creativity through collaboration, and decreasing the innovation gap toward the US. The BIA believe there are more benefits brought to the UK through continued participation in the EU, for example, the proposed regulation of clinical trials and other regulatory initiatives at the EU level help to provide a better environment for the UK. The harmonisation of the Internal Market is a key point, important because it affects everyone, from the businesses who depend on the Market to their employees and the customers.

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British American Tobacco

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7 February 2013

Mr Martin Donnelly, CMG
Permanent Secretary
Department of Business, Innovation & Skills
1 Victoria Street
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Dear Mr Donnelly

Thank you for your letter of 3rd January, regarding the Government's current *'Balance of Competences Review: Single Market Report'.*

I have pleasure in attaching a copy of our submission. You will see that we do have concerns related to the ever-expanding reach of EU regulatory activity, even in areas where there is no EU competence to legislate, or where regulation would be more appropriately adopted at national or even local level.

The notion of Internal Market, in our view, is often misconstrued and taken to equate uniformity, a view we do not share. While the Internal Market presents many advantages, diversity is equally important as it fosters competition.

BAT would welcome a meeting with Mr Frost and his team, should they have any questions arising from our submission.

Yours sincerely,

Nicandro Durante

Cc: Mr David Frost, Director for Europe, Trade, International Affairs, BIS

BRITISH AMERICAN TOBACCO

BALANCE OF COMPETENCES REVIEW
SUBMISSION BY BRITISH AMERICAN TOBACCO (HOLDINGS) LIMITED

The Single Market and Subsidiarity

While the business community has keenly embraced the notion of a Single Market, it has in many instances argued over the years that its completion does not necessarily require full harmonisation of the laws and regulations of EU Member States in all policy areas.

These concerns were widely debated during the European Council held in Birmingham on 16 October 1992 and led to adoption by the Council of "the Birmingham Declaration – A Community close to its Citizens" expressing notably the Council's determination to "respect the history, culture and traditions of individual nations, with a clearer understanding of what Member States should do and what needs to be done by the Community".

The Declaration reaffirms "that decisions must be taken as closely as possible to the citizen". The concept of "subsidiarity" was born and the Council states that making it work "should be a priority for all the Community institutions".

This paved the way for agreement in the 12 December 1992 Edinburgh Council on an overall approach to the application by the Council of the subsidiarity principle, notably resulting in the European Commission withdrawing some pending legislative proposals.

Following calls by the business community a.o. to give teeth to the Birmingham Declaration and the Edinburgh Council conclusions, these principles were eventually enshrined in a Protocol, which is now Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the Lisbon Treaty.

Twenty years later, implementation of these worthy principles remains another matter. It was hoped that a clear description in the Lisbon Treaty of the respective competences of the EU and its Member States would enable the institutions to achieve a true balance of powers and limit EU action to what is really necessary. Sadly, this is not the case and the problem lies largely in an excessive and often unjustified reliance on an alleged Internal Market objective (Article 114 TFEU) to justify detailed regulation in areas where the EU has no competence to legislate.

Public Health: A Supporting Competence?

A case in point is the Public Health area, where the EU only has a complementary or supporting competence (Article 6 TFEU).

During the discussions that took place in the framework of the Convention on the Future of Europe in 2002-2003 and subsequently during the negotiations leading to adoption in June 2004 of the – now defunct – Constitutional Treaty, there were repeated, well documented attempts by the European Commission to extend the EU's competence to the Public Health area.

The issue was hotly debated and was finally settled in what became Article III-179 of the proposed Constitution and ultimately the current Article 168 TFEU which reproduces the same wording.

Responding to concerns expressed at the time by the UK business community, the then Foreign Secretary Jack Straw, in a letter to the CBI's Director General dated 11 June 2004, wrote: "Article III-179.5 also makes clear that where European Laws or framework laws are established to combat major cross-border scourges and measures with the direct objective of the protection of public health regarding tobacco and alcohol abuse, they cannot provide for any harmonisation of the laws and regulations of the Member States. This means that Member States cannot be forced to harmonise their tobacco and alcohol regulations". This understanding would clearly apply to the wording ultimately adopted in Article 168 TFEU.

This however does not appear to be the case in practice.

The reality is that the relevant Directorate General of the European Commission increasingly relies on Article 114 TFEU (Internal Market) to justify sweeping harmonisation of Member States' laws rather than resorting – as it should – to recommendations.

Better regulation? Up to a point.

Over recent years, the European Commission has made great strides towards "better regulation", one important element of which is the obligation imposed on Commission Directorates General (DGs) to draft and submit a thorough impact assessment (IA) before presenting any legislative proposals.

The Commission Guidelines for conducting impact assessments clearly spell out the duty for the relevant DG to define the problem that needs to be tackled and to provide evidence of the nature and scale of this problem. In order to be able to legislate on the basis of Article 114 TFEU, the Directorate General for Health – which has no power to propose binding instruments in the Public Health area – should therefore demonstrate that there is a market failure.

The Guidelines make it equally clear that, where the EU does not have exclusive competence – which is the case of the Internal Market competence (Article 4 TFEU) – the Commission services responsible for a draft piece of legislation must justify any legislative initiative in the light of the principles of subsidiarity and proportionality. The draft proposal must in addition be scrutinised for compatibility with the EU Charter of Fundamental Rights.

In theory, these excellent rules should indeed lead to Better Regulation, especially as the Commission President, in the 2010 Communication on "Smart Regulation" vowed not to place on the agenda of the College of Commissioners proposals that have not duly received the Impact Assessment Board's (IAB) approval.

Sadly, while admittedly the IAB does a thorough job of scrutinising impact assessments, the reality is that these worthy principles are not necessarily respected, for a number of reasons, and notably the following:

- The evidence base for some proposals can be fairly weak, or even controversial, and the IAB will not necessarily be aware of the existence of scientific evidence – disregarded by

the proponents of these measures – that would negate the value of the studies being produced to justify action. Neither is it the Board's role to conduct its own research.

- The alleged Internal Market problem may be ill-defined and/or badly quantified and, again, the IAB is not necessarily equipped to assess the thoroughness of the analyses presented in the IA.

- Most importantly, if the services concerned, after receiving a negative IAB opinion, present a revised IA and this second report is still heavily criticised by the Board, even for lack of a legal basis or doubts about the proportionality of the measures envisaged, nothing stops the responsible Commission services from disregarding this criticism and proceeding with the draft proposal towards adoption by the College. In other words, the Commission President's assurance that no initiative not approved by the IAB would be adopted by the College remains a dead letter.

A striking example: The revision of the Tobacco Products Directive

A case in point is the current revision of the Tobacco Products Directive (Directive 2001/37/EC of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products) hereinafter referred to as the TPD.

This is a remarkable example of a process generally known as "competence creep".

This section lists a number of measures contained in the proposed revised TPD [Document COM(2012)788 final, adopted by the European Commission on 19 December 2012]. All of these measures either have no valid legal base, or infringe the principles of subsidiarity or proportionality, or even affect fundamental human rights without a shred of evidence that this would in any way benefit human health. The list of issues below is far from exhaustive.

While the purported objective of the proposed Directive is to "improve the functioning of the internal market", its true focus is essentially to reduce the attractiveness of tobacco products in the belief that this will reduce smoking prevalence. This is a public health objective presented under the guise of internal market concerns, and further justified by the purported need to conform to non-binding instruments such as the guidelines for the implementation of the WHO's Framework Convention on Tobacco Control (FCTC).

However, since the European Court of Justice has ruled that the predominance of a public health objective does not preclude reliance on Article 114 TFEU providing there are genuine internal market concerns, there is a need to examine whether the proposed measures, which go much further than Directive 2001/37/EC, fulfil these conditions.

- Before examining the proposed measures individually, it is important to realise that *there is in reality no internal market in tobacco products*, for at least two fundamental reasons: (i) taxation and excise regimes continue to differ and (ii) health warning language requirements are those of the Member State of placing on the market, with the result that manufacturers conform to the legislation in force in each Member State not only in these two respects, but also in all others provided for by national laws. Tobacco products can thus only be marketed in the Member State for which they are intended and thus the internal market in tobacco products is a myth.

BRITISH AMERICAN TOBACCO

- The proposed Directive seeks to regulate ingredients contained in tobacco products, notably by banning characterising flavours, such as menthol. Consumption of this category of products is prevalent in some Member States more than in others, a clear indication of national preferences, which should not be tampered with if the EU is to respect the diversity of its citizens' taste. Furthermore, there are at this stage no national regulations banning the marketing of mentholated cigarettes and it is therefore difficult to see how banning this entire category of product throughout the EU would improve the functioning of the internal market.

- The Commission also seeks to regulate in detail the ingredients present in tobacco products. It even seeks to give itself the power to regulate further in the future by means of implementing or delegated acts. No internal market need justifies such an interference in the market: national technical regulations related to tobacco products have thus far always been adequately dealt with under the Technical Barriers to Trade Directive and the Mutual Recognition Regulation – *which is only natural since there is no internal market for tobacco products.*

- The area of labelling raises similar issues. The Commission proposes to increase dramatically the size of health warnings to 75% of both main faces of the packs and to make pictorial health warnings mandatory on both sides. The objective of the proposed increase in size is to offer consumers comparable information in all Member States – when in reality it is widely acknowledged that awareness of the effects of tobacco on health is universal. There is therefore no genuine internal market need for increasing health warnings across the EU, and Member States are clearly better placed than the Commission to assess the level of their citizens' awareness and their need for information of equivalent size.

  It is worth noting that there already are disparities in the size of health warnings since these vary depending on the number of official languages in use in the various Member States.

  In addition, while the use of pictorial health warnings was optional under Directive 2001/37/EC, the Commission not only wants to make them mandatory, it also proposes to mandate them on both main faces of the packs. Again, there is no internal market justification for this: the use of pictorial warnings by the regulator in some Member States and not in others has not raised any barriers to trade in tobacco products and there is no legal basis for making them mandatory. Furthermore, even assuming there were an internal market need to make these so-called combined warnings mandatory, there is absolutely no internal market justification whatsoever for mandating them on both sides of the packs when there is thus far no such regulation in any of the Member States.

- The Commission also proposes to ban from the packaging of tobacco products any signs, including trademarks or colours which it deems to be misleading. Irrespective of possible infringement of intellectual property protection legislation, it is hard to see how such a proposal would genuinely improve the functioning of the internal market since there is no such restrictive regulation in any of the Member States.

- Similarly, cigarettes with a diameter of less than 7.5 mm would be deemed to be misleading, and banned. There is no such provision in any of the Member States and it

is therefore difficult to comprehend how the disappearance of a whole category of products would benefit the internal market when these products have never raised issues related to the free movement of goods.

- Finally, the Commission also wants to standardise the appearance and content of unit packs. Cigarette packs should have a cuboid shape and the only type of opening allowed would be the fairly classic flip-top lid. There is no such regulation in any Member State and thus no need to harmonise their laws. In addition, such a measure would infringe design and patent rights and would make it more difficult for manufacturers to distinguish their products from those of their competitors Such anti-competitive provisions, which are not designed to deal with an existing problem in the market, would harm competition in the internal market and can hardly be said to improve its functioning.

- A final word to add that, despite the absence of a genuine legal basis for all these measures, the Commission reserves the right in most areas to regulate into further detail at a later stage under implementing or delegated powers.

The above analysis has been deliberately limited to internal market-related issues as an example of the way in which abusive recourse to Article 114 TFEU upsets the balance of competences in the EU. The Commission's proposal for a revised TPD infringes other provisions of national, EU and international law. These do not however come within the ambit of this paper which is limited to discussing the balance of competences between the EU and its Member States.

Conclusion

The above analysis will have shown how easily the balance of competences can be distorted by abusive use of Article 114 TFEU compounded by a lax interpretation of the subsidiarity principle.

The leaders who, in 1992, reaffirmed that "decisions must be taken as closely as possible to the citizen" and stated that making the subsidiarity principle work "should be a priority for all the Community institutions" would be bitterly disappointed to see that even the Protocol designed to give teeth to their statements has not resulted in a clear balance of power between the EU and the Member States.

The above striking example of the proposal to revise the TPD shows that we are no longer in the realm of "competence creep". The proposed measures actually constitute "power grab" since the Commission now intends to regulate in its smallest details a whole industrial sector while the Treaty expressly excludes harmonisation of the laws and regulations of the Member States when it comes to measures which have as their direct objective the protection of public health regarding tobacco.

This is far removed from the initial, very laudable desire to have a "clearer understanding of what Member States should do and what needs to be done by the Community". This is also in flagrant contradiction with the UK Foreign Secretary's belief that: "This means that Member States cannot be forced to harmonise their tobacco and alcohol regulations".

British Bankers' Association

The voice of banking & financial services

Rt Hon Vince Cable MP
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Department for Business, Innovation & Skills
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balanceofcompetencies@bis.gov.uk

28th February 2013

Dear Secretary of State,

Government review of the balance of competencies between the United Kingdom and the European Union

This is the British Bankers' Association's response to the above review; we welcome the opportunity to participate in the process. The BBA represents 150 banks from 50 countries on UK and international banking issues. Before responding to the formal questions, our response summarises the reasons why we place such importance on the UK's membership of the Single Market and the importance of this to the success of the financial services industry in the UK and London as a global financial centre. It then moves on to draw conclusions from the experience of the development of the Single Market for financial services on the need for a Single Market to be complemented by common rules.

The BBA firmly believes that the Single Market is Europe's biggest asset; within the Single Market the City is as much an asset for Europe as it is for the UK. The pre-eminence of London - and the UK more broadly as a global financial centre is intrinsically connected to the UK's access to the Single Market. Without maintaining that access, London could be at risk of losing this status. For example, many banks headquartered outside the EU choose to locate their regional bases in the UK where they can access the deep capital markets in London, and from there branch out in to other European markets on a 'passported' basis.

The wholesale financial services sector is one of the most integrated parts of the Single Market. There is a very high degree of integration of money markets, considerable integration of bond markets and increasing integration of equity markets. London is the main beneficiary of this integration as is demonstrated by the strength of London's performance across the variety of metrics used to assess the share of the global capital markets business. For example, CityUk figures show that financial services and professional services employ over 11 million people across the EU (5.3 per cent of the total workforce) with 7.2 per cent of this figure located in the UK. Financial services generate a trade surplus of €36.7bn for the UK and financial services exports from the EU are worth €59.4bn[1].

This integration has led to the growing harmonisation of rules governing the sector, including the beginnings of the development of a Single Rule Book developed and overseen by the European Supervisory Authorities. This process has included discussion of the appropriate balance of where it is in the interests of Member States to act on a harmonised basis and where flexibility of rules is

[1] Figures from: Key facts about EU financial services and professional services: January 2013

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appropriate. In our view, there are occasions when full harmonisation is necessary – for example, minimum prudential requirements, or safeguards for depositors – and others where markets differ and flexibility is required to accommodate this, e.g. mortgage markets. To us this underlines the importance of the application of the principle of subsidiarity. Whilst we are unconvinced that there is a case for revisiting agreed settlements and cherry picking aspects of regulation for renegotiation, going forward we would encourage a greater focus on ensuring that action taken at Union level is justified, appropriate and necessary, particularly in light of the move towards banking union and the current volume (and backlog) of proposed EU regulation. It is vital that the Commission carries out the widest possible consultations and impact assessments in advance of making proposals for legislation. The Commission ought to provide clear consultation documents, consult all relevant target groups, leave sufficient time for participation, publish the results and provide feedback. There may also be value in the Commission carrying out cost benefit analyses, as the ESAs are obligated to do.

Access to the Single Market is not the only benefit the financial services sector accrues from the UK's membership of the EU. The sector benefits significantly from EU negotiation of Free Trade Agreements and the leverage it is able to deploy as the largest trading bloc in the world. There are considerable opportunities for the financial sector and other business service companies from the opening up of fast-growing emerging economies. The EU is well positioned to negotiate timely FTAs with these countries. It is doubtful that outside the EU companies based in the UK would be as well placed to negotiate expeditious access to these markets and would therefore be at a disadvantage to their European peers.

As a final point, we want to highlight that the best way to preserve and expand the Single Market and promote growth is to work with other Member States to further reduce trade barriers and increase EU competitiveness. As the Prime Minister's speech recognised, the UK is best able to do this from within the Union, to prioritise growth and competitiveness in partnership with other EU countries and institutions.

Our responses to the question set in the paper follow. Please do not hesitate to contact us should you require further information.

Yours sincerely,

Anthony Browne
Chief Executive

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?

We view the free movement of goods, services, capital and labour as the essential elements of an Internal Market. These are supported by the harmonisation of regulatory requirements where necessary subject to the principles of subsidiarity and proportionality.

We note, and agree with, the conclusions of the Forty-Fifth report of the Select Committee on the EU, which identified the following as essential elements of an Internal Market in Financial Services[2]:

a. reducing the costs of accessing capital and improving the efficiency of its allocation;
b. giving wholesale and retail customers access to a wider range of more competitively priced products;
c. promoting broader and more liquid equity and bond markets, which permit greater investment diversification and reduce risk; and
d. putting the financial services sector in a strong position to win market share outside the EU.

In addition to the above, however, we would argue that the following are further essential elements of an Internal Market in Financial Services:

a. the removal of cross-border constraints on clearing and settlement;
b. common principles for taxation (as opposed to harmonised tax rates)[3]; and
c. harmonised rules on bank recovery and resolution.

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?

This is not our primary focus, although we do believe that the free movement of people is an important element of the Internal Market.

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 our views on the scope and effect of the EU's powers under Articles 114 and the use of Article 115 for non-tax measures?

Harmonisation can face challenges where national legal regimes or infrastructures vary across the Union, e.g., the FSA has strong sanctioning powers that can be used against individuals and corporate entities – not all financial authorities may have the same powers.

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?

As noted above, we consider the integration of the Single Market for wholesale financial services to be one of the major success stories of the European Union and a major contributing factor to

[2] (http://www.publications.parliament.uk/pa/ld200203/ldselect/ldeucom/192/19204.htm

[3] Our thoughts on this issue are explored in more detail in our response to the HM Treasury call for evidence relating to the balance of competencies and taxation

London's position as a global financial centre. The experience of developing the Single Market in this area, however, has sometimes demonstrated that there may be negative consequences when national options or discretions are allowed in level 1 directives, often as a result of a failure to achieve political consensus.

In some cases, the relative shallow depth of the internal market in some areas reflects consumer behaviour, e.g., in the cross-border retail mortgage market, when there is no real customer appetite for cross-border products or services.

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?

Whilst we consider that EMU has reinforced the Internal Market we do not believe that remaining outside has been detrimental to the UK's interests. This view is supported by the fact that over 40 per cent of Euro denominated foreign exchange transactions are cleared through London. That being said, we are conscious that the deepening of EMU through the move to banking union may give rise to tensions between those countries which participate and those which do not. It is the nature of such arrangements that any sub-Union within a Union will tend to create negative externalities, and it is important to negotiate safeguards (including perhaps legislating for reviews of implementation and impact) to protect those that are outside a sub-Union. We believe that the agreed revisions to the structure and operation of the European Banking Authority, in particular, appear to be appropriate and sufficient to ensure that it can continue to operate on a neutral basis for the Single Market as a whole.

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?

The G20 has played an important role in the reform of the regulatory system for the financial sector in the period since the financial crisis. The UK played a leading role in this process and can be considered as one of the main authors of the post crisis consensus. This consensus has shaped the legislative agenda pursued by the European Commission. Whilst the European implementation of the G20 agreements has differed on occasions at the margins it can largely be said to be a faithful interpretation of the commitments made by the G20 countries. It is open to question whether, in the immediate aftermath of the crisis, the UK would have been as influential in shaping the European regulatory agenda as it has been by virtue of the implementation of the G20 conclusions. Overall, therefore, we consider that it is vital for the UK to be active in both European and international groupings but that the UK's approach of engaging fully on the global stage helps to shape European outcomes.

The UK and EU view of agreements reached at international forums can be at variance with the views taken by other jurisdictions, which may mean that international accords are not implemented consistently across jurisdictions. We would advise that the Government considers how other important jurisdictions (US, China, etc.) approach these agreements.

7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside the EU?

In the financial sphere, the EU has become a leading voice in the debate on financial regulation which has enabled it to play a significant part in the development of the global regulatory system. Most notably, the transatlantic dialogue between the Commission and US regulatory authorities on the detail of regulation has, on the most part, been positive and has contributed towards a growing harmonisation of rules which is positive for the industry, customers and investors. For example, we would highlight the mutual recognition of accounting standards which has removed the burden on

European banks with listings on US markets from reconciling their IFRS financial statements to domestic US standards. This removes a significant regulatory burden and, in conjunction with the growing harmonisation between the two sets of standards, provides a more consistent basis on which investors and other users of financial statements can make their decisions and therefore promotes a more efficient allocation of capital.

Despite the progress which has undoubtedly been made, on occasion there have been tensions between EU and US regulators and we would observe that the philosophical starting point for the European Union in such debates is often different to that in the UK. To us, however, this means that the UK authorities must play a full and active role in the European process from the very beginning to shape the positions taken and to ensure that UK views are heard and understood.

The UK potentially benefits significantly from the EU negotiation of Free Trade Agreements. Trade partners would likely put a much lower priority on negotiating with the UK alone, compared to negotiating with the EU, which represents the largest trading bloc in the world. In addition this status provides much more negotiating leverage for the UK within the EU than UK might have on its own, particularly in the area of services, including financial services. There is no evidence that the UK priorities are not fully represented in the negotiations so far e.g. South Korea FTA. The opportunity for European, and especially UK, financial and other business services companies from the opening up of fast-growing emerging economies is significant. Being outside the EU would likely delay the opening up of these markets to UK companies and place them at a long-term disadvantage to their EU-peers.

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?

The UK has maintained prudential requirements over and above those required by EU requirements. This has particularly been the case in the period since the financial crisis. Whilst, in general, we favour the harmonisation of such requirements it is true to say that the comparatively strong prudential position of UK firms in light of these requirements during this period of exceptional market stress has been a competitive advantage. That being said, there is evidence to show that such super equivalence by the UK supervisory authorities can have a detrimental impact on the attractiveness of London as a financial centre. For example, the FSA's liquidity regime has been cited by some foreign banks as a factor in decisions to for transfer business from the UK to other European markets.

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?

The on-going reform of EMU and development of Banking Union may give rise to tensions between the 'ins' and the 'outs' which impinge on the Internal Market. As related above, we consider the changes proposed to the operation of the EBA together with early UK engagement are the best way of mitigating this risk.

General

10. Are there any general points you wish to make which are not captured above?

The financial sector in the UK is substantially larger and more complex than its counterparts in the Member States of the EU. Its complexity however is sometimes a factor in not being able to get objective change at the EU level since the level of legislative input from Member States will be limited by experience.

British Chambers of Commerce

Review of the Balance of Competences between the UK and the EU: Internal European Market Synoptic Review

British Chambers of Commerce response

The British Chambers of Commerce (BCC) is an influential network of 53 Accredited Chambers across the UK, representing the interests of over 104,000 businesses who employ over 5 million people. No other business organisation has the geographic spread or multi-size, multi-sector membership that characterises the Chamber Network. Every Chamber sits at the heart of its local business community, providing representation, services, information and guidance to member businesses and the wider local business community.

Introduction

The BCC welcomes the opportunity to respond to the Internal European Market Synoptic Review as part of the review of the Balance of Competences between the UK and the EU.

The safeguarding of the interests of UK businesses is critical to the debate on the future of Britain's relationship with the EU. The BCC are leading the EU debate within the business community as the organisation that delivers both extensive trade support to British firms as well as representing the interests of British business.

Historically, businesses viewed the Internal Market as good for them, without necessarily expressing great love for it. However, this view has weakened over time as the benefits of the Internal Market have been eroded by the impact of rules imposed by Brussels, making them less competitive in the global market. We hope that this review is the starting point for a more productive relationship with the Internal Market.

For a start, ministers must push harder to remove barriers to free trade among European countries, and make the single market a reality for all businesses. The Internal Market for services, where the UK is the second-biggest exporter in the world and accounts for three-quarters of UK output, hasn't really got started. Businesses also tell us that the volume of bureaucracy is still too high, making them less competitive. For example, more than 400 laws have been passed by the European Union since the Coalition came to power – at a £696 million cost to businesses and taxpayers. The plethora of employment regulations continue to create significant costs for business. In addition, BCC research on employment legislation found that the annual net cost of the Agency Workers Directive to UK businesses is around £1.5 billion. The potential expansion of the EU social charter via EU judge-made law is also a major concern for UK business.

Looking forward, although UK businesses want more free trade in Europe they are not in favour of further political or fiscal integration. This is evidenced by a BCC poll which found that 85% of businesses wanted no further EU integration. We also believe that there is a debate to be had on the case for repatriation of some powers away from Brussels. We are currently polling Chamber members on specific competences they want to repatriate and we will communicate our findings as soon as they are available.

This is a crucial time for British business as we look to find new sources of economic growth and rebalance our economy towards exports. A stronger Internal Market will mean fewer barriers to British firms trading in Europe, and better outcomes for UK plc.

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?

What are the essential elements of an Internal Market?
For our members, it is access to a market of 500 million people with the real ability to move goods, services, capital and workers from Birmingham to Bratislava as freely as from Birmingham to Bradford. The absence of tariffs and administrative barriers has helped British businesses enjoy the sort of freedom that firms in other free trade areas enjoy, such as trade between states in the US. The Internal Market provides our members with access to new markets, lower travelling costs and a wider pool of labour and suppliers which in many instances have also led to lower costs. For example, a Chamber member who manufactures radiators in the North East of England, has been winning work internally within a global business group because they are more competitive on costs. One of the reasons behind this has been the ability to source cheaper raw material from mainland Europe, including a third of their steel from Belgium.

Some Internal Market rules have also led to greater opportunities for UK business to compete and trade in new markets across the Internal Market. For example, EU procurement rules have allowed businesses to compete for contracts across the internal market on the basis of value for money rather than where a company is based. Other essential elements of an internal market are that there are no gaps to ensure that there is a level playing field for all businesses and that the benefits from Internal Market membership are not outweighed by the regulatory costs of EU membership.

However, one of the key deficiencies of the Internal Market is that it is failing to deliver on many of the essential elements of an Internal Market. This is evidenced by the considerable gaps in the single market, including the failure to deliver a real internal market for services. UK businesses want the Internal Market they were promised and not the reality they are seeing on the ground.

Against which criteria should we judge its economic benefits?
For our members, the economic benefits of the Internal Market is best judged against the reality on the ground, that is the success of the single market should be measured in terms of economic, employment and trade growth, but netted off against the costs associated with operating in the Internal Market, including the regulatory and administrative costs. This was underlined by a poll of our members which found that while more than half (51%) of exporters favour a 'free trade area', when it came to increasing sales in global export markets, some reported that it was almost as easy to trade with a range of non-EU countries as it was with the EU itself (e.g. 9% of businesses reported regulatory barriers for some non-EU countries, compared to 12% of businesses reporting similar barriers in the EU). The reality among businesses is that the growing regulatory burden has meant that the balance of advantages of being in the EU is not what it once was. The BCC is compiling a living list of the advantages and disadvantages for business of the UK's Internal Market membership.

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?
In the operation of the Internal Market, EU action in a number of areas has led to instances of regulation going well beyond what is necessary. This has resulted in burdensome and costly regulation on UK business which has inhibited business growth. For example, the Habitats and Wild birds Directives went beyond its objectives as their was no allowance for revision once its objectives have been achieved (e.g. once a species has been 'saved' it should be removed from the directive). However, restrictions remain regardless of the situation on the ground. Feedback from Chamber

members highlighted the protection of crested newts in ponds which has become famous for blocking land development projects as a prime example of mission creep.

Another area of concern for our members, is EU judge-made law with the potential expansion of the EU social charter via EU judge-made law is a major worry for UK business. The EU Council of Ministers and the European Parliament often find it difficult to agree on detailed rules in this area and so leave directives at an unacceptable level of generality, which entails legal uncertainty and unpredictability for business. Where the EU Council of Ministers and European Parliament fail to agree detailed rules, there are frequent requests for preliminary rulings to the European Court, which then decides how directives must be read. The Court tends to take the most 'integrationist' position, in line with the basic purpose of the directive in question.

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?

How have the EU's mechanisms for delivering an Internal Market worked?
An underlying rationale of the Internal Market is to make business easier. However, our members often find that the existing legislation, directives and enforcement mechanisms are so cumbersome that they often render the internal market ineffectual. The BCC believes that more must be done to improve the workings of the internal market.

The Internal Market can often be too complex and onerous for small business, creating extra layers unnecessary administrative burdens. A business member highlighted the Toys Directive as a very specific example of the real burdensome impact of some EU rules on his company. The duty to retain information for ten years as part of the Toys Directive, and be required to provide it at anytime during the period is not appropriate for SMEs as the list of documentation to draw up is very long and therefore quite onerous. The requirements regarding chemical content also impose a new administrative burden. For example, chemical safety assessment will require laboratory testing, which is extremely expensive.

Businesses are also discouraged from selling across borders because they do not know their rights and the remedies available if they get into difficulty. Our members would benefit from a targeted information campaign explaining the opportunities of trading in the Internal Market to businesses across the EU. The Department for Business Innovation & Skills also needs to do more to promote the recently launched UK Single Market Centre as a single portal for the various single market related services for business, under one virtual roof.

Effective implementation and even enforcement and redress are key to the effectiveness of the Internal Market. There are plenty of instances of UK businesses and Chamber members fighting for years to sell their wares across borders; or having to comply with stricter rules than their competitors. This must become a thing of the past. The Commission and member states must speed up the use of the mutual evaluation and the Commission should systematically publish correlation tables so that differences in implementation are exposed. There needs to be a more robust complaint system or process of accountability within the EU. The Commission should also ensure that complaints procedures are handled within one year, and more resources required to give SOLVIT (the on-line problem solving network for EU Member States) real teeth.

However, there is evidence that the EU Impact Assessment Board is making welcome progress in recognising the costs to SMEs from EU business. The BCC's report 'Is regulation really good for us' found that costs to SMEs are considered in 52% of impact assessments in 2008/09, compared to 40% in 2006/07. BCC research also found that the impact on SMEs was considered in almost 80% of impact assessments that attempt to estimate the costs for all EU business.

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?

From our members' perspective, mutual recognition is generally more preferable than harmonisation so that goods lawfully produced in Britain can be sold in other member states without needing to comply with additional legislation from other member states. This would help avoid instances under harmonisation, where member states can create an uneven playing field by exceeding a minimum standard set by EU rules, with a disproportionate impact on smaller businesses. A business member revealed his concern that standards for disinfectant products vary from member state to member state so that a product that has been tested in the UK needs to be tested in Italy in order to be sold there.

Another business member, a company selling hygienic clothing and protective equipment to the catering industry, have found problems with French derogations on the use of specific alcohols in hygienic wipes and are very concerned about the Biocides Directive. They have found that even if they meet EU standards in the UK, they must change their formulas to meet French and other standards, thus proving to be an obstacle to trade.

For the goods sector, mutual recognition has largely worked since the Cassis de Dijon case, though it has since been qualified. For services, the existence of the Services Directive indicates that mutual recognition for services is not working properly. For mutual recognition to be effective it requires a unified method of enforcement across all member states to create a sense of trust, something which is not currently happening.

Furthermore, despite the presence of the Services Directive which should be hugely beneficial for UK businesses, the Internal Market for Services has not got off the ground. This has created a major gap in the internal market to the UK's economic disadvantage. Some member states are still applying ownership requirements or fixed tariffs for professional services; or worse, discriminating against service providers on the basis of nationality. This clearly contravenes the terms of the Services Directive. Germany would not for example, tolerate a similar situation in the internal market for goods.

We also know that many member states are contravening the principle of mutual recognition. For example, one business has been fighting for the past four years to gain access to EU member states that are illegally preventing Hills license plates from being sold in their market. With the help eventually of the European Commission he has broken into one market, but there are many more to go. Many other businesses would have and did give up long ago.

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?***

Why is the Internal Market so much deeper in some areas than others?

The reality on the ground for British business is that the degree of integration varies significantly across the internal market and ultimately there are still major gaps in the Internal Market often to the detriment of UK businesses. There are sectors where the playing field is full of pot holes, such as in energy which is worth 5% of GDP; or the failure of EU Directives to deliver a real internal market for services where in the UK alone, a single market in services could boost GDP by £4 to £6 billion per annum. Historically services have been less tradable than goods, with differences in languages and legal systems among the barriers to a fully functioning services sector.

How effective has implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules?

The effective implementation of the Internal Market been hindered by the constant flouting of Internal Market rules that are in place. Furthermore, even where EU law is complied with by all member states, there remains some room for manoeuvre for national governments and regulators. A good example of this is copyright levies where the EU has set a framework but member states are essentially free to act.

EU rules on state aid are supposed to help ensure that competition in the Internal Market is not distorted. However, in reality, a level playing field does not exist with EU Member States having varying approaches when transferring EU State aid policy into their national systems. The experience of British businesses trading in other EU markets is that their local conventions are routinely assisted, in contravention of EU state aid rules. In contrast, the UK rigorously enforces EU state aid rules and operate in detriment to our own companies.

Many of the rules governing the Internal Market are overly complex and expensive to comply with, which has resulted in burdensome and unacceptably high regulation costs for UK business. We know for example that reporting requirements for Intrastat are so onerous that one business member, a small shoe manufacturer, has one employee spending a day a month filling in forms. As a consequence, many businesses cut corners and consequently the information the European Commission collates and uses to form future policy is inaccurate.

The widespread feeling among chamber members is that there have been a number of instances where they were provided with insufficient warning or advice before a new rule was introduced. The introduction of the Agency Workers Directive was cited as an example of this.

They felt also that EU commodity codes for export and import are far too detailed. Businesses struggle to complete them accurately, and that it requires one person a day a month of work to complete.

Feedback from chamber members felt that the draft EU Data Protection Directive was likely to be overly strict and unworkable directive where the burden would be greater on the average SME, than those truly taking advantage of personal data. One business member, who is a sole trader offering business to business telephone canvassing service said that the costs associated with implementing the proposed directive may mean that her business is unable to survive. Another business member, a market research company based in Cambridge, felt that the draft rules would reduce employment and job opportunities in their firm as well as taking away the ability to practice responsible direct

marketing which is a vital tool for companies to be able to generate the business they need to grow or just to continue trading.

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?

Schengen is likely to have had a broadly negative impact on UK businesses and at UK border crossings for goods and workers, given the ease in which visas can be obtained for countries within the Schengen Area. Businesses and investors visiting the UK firms have to pay more than they would to visit a country in the Schengen Area. A current example of this impact is the negative impact on the attractiveness of the UK for commerce and trade with growing and dynamic countries like China.

Although the prospects for the UK economy remain closely linked to the fortunes of the Eurozone, autonomy over monetary and fiscal policy has helped to keep down the rate at which the UK government borrows. At present, the main threat to UK business from the Eurozone arrangements comes from developments which are ancillary to Eurozone rules but which are nonetheless politically associated with Eurozone policy more broadly. The EU's European Banking Authority has the power to make rules about which types of operations EU financial services operators may undertake. This will affect the operation and profitability of such operators throughout the EU, including in the UK.

7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

The EU has played a key role in boosting global trade whether through multilateral agreements such as GATT, or negotiating bilateral trade agreements with key markets. As the largest economy in the world, the EU has power and leverage to secure levels of access for our members which would be unrealistic for the UK to achieve alone. A harmonised regulatory environment, with harmonised labour and environmental standards, is very attractive for external trading partners such as China. However, the Internal Market is only working in certain sectors and other markets (e.g. services) remain fragmented. Furthermore, the benefits from trading globally via the EU has eroded over time as trade has become more globalised.

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 are numerous instances of gold-plating by government. We disagree with the Government's assertion that it only does this in exceptional circumstances. Gold-plating renders the Internal Market ineffective because the burdens added by member states destroy the balance struck during the EU negotiations. Businesses across the UK have found many instances of domestic gold-plating which often creep in during the transposition process.

The definitions on pay and holiday entitlement included in the Agency Workers Directive are a clear example of gold-plating by the UK Government. A business member in the manufacturing sector

which had 25 agency workers among its workforce, had to directly employ them all when the Agency Workers Directive regulations came in, as it would have cost £150,000 more to keep them as agency workers. However, now that demand for its products has decreased, and they have reduced flexibility to manage their labour force. As a consequence they have had no option but to introduce redundancy procedures.

The BCC successfully campaigned for the repeal of employment tribunals' power to make wider recommendations in discrimination cases. This additional power for tribunal was a form of UK gold-plating that went beyond EU requirements and gave tribunals powers beyond their expertise. The risk of wider recommendations would have added to an employer's risk of defending a claim at tribunal.

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?

Arguably the biggest challenge facing the internal market is its continued relevance in a increasingly global marketplace. The liberalisation of international trade is likely to continue at a pace, which may eventually make it as easy to move goods and services from Birmingham to Beijing as it is from Birmingham to Bratislava.

The creation of a digital single market is a significant opportunity for the internal market. Failure to establish a digital single market could act as a drag on UK growth, and estimates suggest that the lack of a single digital market will cost the EU 4.1% of EU GDP by 2020. Though the rapid growth in e-commerce is opening important new opportunities for the internal market in both goods and services, consumers and businesses continue to encounter practical difficulties making cross-border transactions. Cross-border e-procurement, and indeed cross-border procurement overall, remains at a low level in Europe. The EU needs to reform the structure and perhaps even the policy incentives to encourage the use both of technology and cross-border procurement. The interoperability of e-signatures is indispensable in this respect. The Commission should also consider making e-invoicing mandatory, data protection rules must be technology neutral and limited to fundamental principles and member states must take action to exceed EU targets for broadband reach and speed wherever possible.

More urgent action by the Commission and member states is required to ensure that business and consumers across the UK have access to an affordable and secure supply of energy. For consumers and businesses to really feel the benefit of greater liberalisation, it will require an increase in the amount of electricity traded between EU countries. At present only a very small amount of electricity is traded across Europe but if the correct infrastructure was in place the amount would greatly increase. More investment in improving electricity grid connections is imperative. Practical measures must be introduced to encourage behaviour change and deployment of climate friendly technology - using Horizon 2020 and COSME to incentivise change. The Commission must ensure that measures to improve energy efficiency are designed to create opportunities for business without creating further red tape.

Possible developments towards a 'Eurozone internal market' within the single market are likely to provide a challenge for businesses. Companies located in countries such as the UK, who would be outside the 'inner' single market could become marginalised. For example, the future Eurozone arrangements for banking union will probably include common rules on bank resolution and a common deposit guarantee scheme. These developments may well ultimately entail a new form of EU banking passport which may exclude UK banks who will be outside the future banking union.

The BCC would be keen to engage further as this review progresses. The BCC will continue to poll our members on issues relevant to this review and we will communicate our findings as soon as they are available.

British Influence

BRITISH INFLUENCE RESPONSE TO THE REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UK AND THE EU

British Influence believes that Britain must take a lead in and through Europe in order to maximise its influence on the world beyond, to keep people and markets free and the world as far as possible at peace.

We believe that British policy towards the EU should focus on maximising the EU's global influence, and directing it towards objectives, which are consistent with our own national objectives: a productive engagement in developing EU policies, which benefit the UK.

One of the most outstanding examples of British Influence in Europe is the blueprint for the completion of the Single Market, written by a (Conservative) UK Commissioner, Arthur Cockfield, and submitted by the Commission to the Milan European Council in June 1985. Majestic in its sweep, and widely hailed as a contribution of outstanding importance to the process of European integration, the Cockfield White Paper ushered in a period of very substantial economic growth and increase in European prosperity and employment.

The EU, and the UK's relationship with the EU, can always be improved. As such, British Influence welcomes the opportunity to contribute to the Government's review of the balances of competences between the UK and the EU; the review provides an opportunity for a more informed debate on the implications of EU membership for the UK; and for the UK to shape the debate on the future functioning of the European Union as a whole.

INTERNAL MARKET REVIEW

1. What are the essential elements of an Internal Market and against what criteria should we judge its economic benefits? How deep does the Internal Market need to be to be effective?

The essential element of the Internal Market is the ability for goods, services, capital and workers to move from Birmingham to Bratislava as freely as from Birmingham to Bradford with a level playing field for all concerned.

Cockfield correctly perceived three key aspects to his project: the welding together of the individual states into one single market; to replace the still greatly fragmented markets of the individual member states; ensuring that this single market was not static but growing; and ensuring sufficient flexibility to enable resources to flow into the areas of greatest economic advantage.

The scrapping of tariffs and administrative and technical barriers has led to increased trade, and to growth and employment. Both harmonisation, where appropriate, and more often mutual recognition for standards have led to increased competition and to lower prices for the consumer, which in turn has led to greater consumption, and to growth and employment. Moreover the

Single Market now enables EU wide (and global) value-added supply networks to develop which benefit business and consumers alike.
This wider and deeper development of business integration is the now prime mover in those areas, which have seen the elimination of barriers to extending business. The remaining areas to see the elimination of barriers, such as the energy and digital services markets, will similarly benefit from extending and deepening business supply network linkages, extending both within the EU and globally. The value-added benefits of trade, through supply network development, are now beginning to be measured via the OECD and WTO value-added trade measures.

The economic benefits of the Single Market can be partially measured in terms of GDP growth and employment growth, using trade with a non-EU country as a comparator, for example. What is more difficult to quantify is the extent to which the UK's share of third markets has been increased thanks to multilateral and bilateral trade deals that have been struck by the EU; or to what extent the minimum rights enjoyed by workers have increased productivity set against the costs for member states and employers of complying with those rights. The economic benefits of the Single Market cannot simply be reduced to UK trade in goods and services with the other members of the EU, or to the benefits of establishing an internal market, without reviewing the economic impact of all the policies that the Council over the years has decided to adopt (whether energy efficiency; increased parental leave; common waste rules etc.).

What remains manifestly clear to us is that the UK benefits substantially from being part of a single market of 500 million consumers worth in the region of £11 trillion. To what extent we could increase the benefits of participation is the principal issue for debate, not whether the benefits exist. Our view is that we need more not less Single Market, more liberalisation not less - since it is clear that those sectors that have integrated furthest have grown fastest and those like services, which have lagged behind, the least.

Regulators, politicians and businesses alike talk of the unrealised benefits of the services, energy and digital markets. Progress towards full liberalisation and common rules in these sectors has been slow, largely due to a political reluctance by member states to substitute European rules for a multiplicity of national ones - whether to protect national industries or domestic consumers; for strategic or security reasons; or because the sheer diversity of national rules makes harmonisation or even mutual recognition, the preferred method, a difficult process. How progress can be accelerated given these constraints should be a matter for urgent debate and action throughout the EU institutions and national governments. This is a policy area where the UK can, and does, lead.

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?

We believe that EU rules in these areas are in many but by no means all instances both necessary and desirable. Both people and pollution travel freely across the EU's borders and their flow needs to be managed by a single set of rules creating a level playing field for businesses and workers alike. The nature and the impact of those common rules reflect the shared values of the EU member states, as regards basic rights for workers, and protecting our natural environment. If there is little affection for the REACH and WEEE directives, for example, amongst the EU business community, this has more to do with the compliance costs they entail rather than whether they benefit the citizens of the EU as a whole. Equally no self-respecting employer wants to put its workers or customers at risk, whether through overwork or contamination.

Nevertheless they are some rules, which are costly and, in the case of employment and social legislation in particular, should take better account of the subsidiarity principle. There was little evidence for example that the EU needed to update the rules for Pregnant Workers (whether to protect vulnerable workers or to boost EU trade). As it happens Member States agreed and the draft languishes in Council. Similarly, the Working Time Directive is overly prescriptive. This is not an argument for restricting EU action in these areas but rather for cost effective, evidence-based policy making, which respects the principle of subsidiarity; and for routine assessment by all the institutions of the economic, social and environmental impact of their proposals and amendments. The institution of impact assessment of each and every proposed piece of legislation is a valuable step towards eliminating unnecessarily costly Directives where the benefits do not significantly outweigh the costs. However, on some occasions these studies are not well done.

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?

Regulation, underpinning the principle of the four freedoms, has been the primary vehicle for delivering the Single market. Regulation ranges from establishing a new set of EU rules, to setting EU standards, to making national rules mutually recognised. Directives often allow Member States some flexibility in implementation. In addition the Commission has set up an infrastructure to ensure that Member States adhere to the rules underpinning the internal market.

The mechanisms have generally worked well. In many areas (goods especially) it is now as easy to trade with Berlin as with Bradford, or to set up in another Member State. Much of the EU regulation has been genuinely deregulatory in the overall sense (such as the services directive which did away with 40,000 requirements on business) and has set a standard that

commands trust across the globe. Over the years the Commission has intensified its efforts to ensure that the rules are applied evenly across the EU and to penalise the Member States, which fail to apply them.

The increased use of qualified majority voting has been important to the creation and success of the Single Market, which before its introduction had made only slow progress. In practice Member States aim to reach as broad a consensus as they can, given the positive impact this has on the 'buy-in' from each member state, and its willingness to implement the rules in their entirety and on time, and then to enforce them.

However there are still gremlins that prevent the Single Market from existing and/or functioning optimally in every sector in every Member State, not excluding the UK, and these go beyond the choice of harmonisation or mutual recognition as a means of creating the level playing field:

Directives v. Regulations: from a purist point of view, the use of Directives where Member States are free to achieve a common objective by their own means and maintain or introduce different rules are often the best way of proceeding. Regulations can often be too prescriptive by nature and often require member states to abolish national rules or practices that function well and deliver the objectives of the regulation. Moreover it is fair to say that the Single Market would have taken a great deal longer to build if Regulations had been the only regulatory instrument. The choice between the two methods is best made by EU institutions, which aim to achieve an acceptable balance between them, recalling that EU law, unlike UK statute law, is *purposive* in interpretation.

Uneven implementation is still a problem and there still scope for the rules to be applied differently - which puts business at a competitive disadvantage and prevents the market from functioning effectively. The Commission's role and that of the European Court of Justice is important in ironing out these wrinkles.

National interest: where member states are resisting liberalisation or harmonisation so as to protect national industries, as is the case with French and German energy markets; or the consumer rights directive where Member States opted for a mix of maximum and minimum harmonisation to protect national consumers but which has resulted in a still fragmented market, which will do little to boost trade or increase consumer confidence.

Institutional limitations: the institutions have grown rapidly and the perception is that decisions are being taken further away from the citizen than ever before. This is particularly true for those that are impacted by new rules but do not directly benefit from them in profit terms. The lack of buy in often deters politicians from taking decisions that are in the best long-term logic of the market.

Regulation for regulation's sake: there are instances when Regulations are proposed with the intention of boosting trade, even when there is evidence

that they will do the opposite and where even consumer organisations regard them as unnecessary and confusing. One such is the CESL (Common European Sales Law) Such decisions invalidate the impact assessment procedures that the Commission has put in place to ensure proportionate and evidence based policy making. At best they are a distraction and a waste of valuable resource, at worse they are damaging to the progress of the single market.

Enforcement: the Commission is often reluctant to tackle Member States that do not play by the rules. It should name and shame more persistently (the Internal Market Scoreboard is a start but it should rank member states according to the quality of their implementation and enforcement) and show zero tolerance for any sustained refusal to implement legislation.

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?

Creating the Single Market in goods was relatively 'easy', given modern methods of production (e.g. the sourcing of components in many different countries). Many services, however, are very localised, and incorporate national or local traditions and are only becoming more tradable with recent technological advances. Certain industries like energy have a strategic and security dimension that has made opening up the market politically difficult.

That said, the overall implementation record is improving - with most states (not including the UK) now having implemented 99% of all directives, according to the Commission's Internal Market scoreboard. Initiatives like the Scoreboard have made a difference, although there is still plenty of scope for the Commission to name and shame laggards, or even to penalise persistent offenders. The complaints procedure needs to be radically overhauled, given the time and resources involved; and more resources need to be devoted to the agencies such as SOLVIT, which deal informally and very successfully with barriers in the Internal Market. Moreover there are instances of misapplication of EU rules by the business community out of omission rather than Commission, which is likely to be the case EU wide. Guidance on the existing rules whether from EU or national agencies needs to be more accessible. A single market one-stop shop in each Member State would be a step forward.

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?***

The absence of exchange rate fluctuations affecting profit calculations and hence also easier price discovery will have removed another element of risk and inefficiency within those countries belonging to both the single market and

the Eurozone, thereby potentially boosting trade and investment. However the closer integration of the eurozone countries that is now required in order to ensure the survival and success of the Euro presents challenges for its members. In relation to the single market, the UK and other non-eurozone countries will want to ensure that the internal market remains fully accessible to them and that they retain influence over the rules governing financial services in particular.

Creating the Schengen Area was a logical step towards a true Single Market and has had a positive impact on tourism (thanks to an efficient and light touch visa system) and investment. Britain's self-exclusion from the Schengen Area imposes costs on the UK, which could, over time, come to outweigh any security benefits.

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?

To the extent that all these groups required cooperation on issues of vital global importance, the single market will have been helped by UK and indeed French, German, Italian involvement in all the other groupings.

Trade between the EU and many developing Commonwealth countries has been greatly increased, as has trade between the EU and former French, Dutch, Spanish and Portuguese colonies.

7. Has the Internal Market bought additional costs/benefits when trading with countries outside the EU?

The EU has played a key role in boosting global trade, whether through multilateral agreements such as through the WTO, or negotiating comprehensive bilateral trade agreements with key markets, such as the recent FTAs with South Korea and Mexico. As the largest economy in the world, the EU has power and leverage to secure levels of access and investment that the UK alone could not hope to achieve. The opening up of numerous markets to Scotch whisky exports as a result of EU pressure is a case in point.

There is no evidence that membership of the EU has handicapped any of its Member States' exports to third markets. Indeed, Germany's success in exporting to China rather suggests the opposite. Indeed, where trade agreements can be reached, the single market offers greater opportunities for British businesses.

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?***

Since the UK joined the EEC, now EU, businesses have complained that Whitehall gold plated EU legislation by making it more burdensome than the EU intended it to be. Faced with anecdotal reports of 'gold-plating', the Government set out in 2004 with the Bellis report[1] and again in 2006 with the Davidson review[2] to investigate in a more rigorous manner the extent to which gold plating is a problem for UK business. This was accompanied in 2005 by academic research carried out by Tim Ambler of the London Business School and Francis Chittenden of Manchester Business School on behalf of the British Chambers of Commerce[3].

All the reports found evidence of some gold plating (where national legislation is more burdensome than the Directive requires) whether in the Insurance Mediation directive, or the Money Laundering directive or the Fire Regulations. However all the reports questioned to what extent relative gold plating (where national implementation is more burdensome than in other Member States) was a problem and to what extent it constituted a competitive disadvantage for UK businesses.

In the absence of substantial evidence, each report nevertheless put forward recommendations to minimise the risks of gold plating occurring, whether absolute or relative. These included the use of 'copy-out' (as opposed to the elaboration of the original text with clarifications) wherever possible; greater transparency of the implementation process thanks to annual implementation plans, the publication of transposition notes, cross departmental implementation teams etc.; increasing the clarity and legal certainty at source so as to reduce scope for different forms of interpretation by member states; exchange of best practice between member states; and giving the Commission and/or European Parliament a greater role in scrutinising Member State implementation.

Many of the recommendations have survived in one form or another: for example, copy out is recommended in the UK Government guidelines of 2011; and the Commission is engaged in a comprehensive review of whole swathes of the *acquis* specifically with regards to implementation. These have not done away with clear gold plating - the most recent and obvious example being the Agency Workers directive where the Government went beyond EU requirements on pay and holiday entitlement (at a cost to business of £850 million per annum for holiday alone). However it is still unclear to what extent UK business has incurred greater costs than its competitors.

We would certainly recommend the Commission to take further steps to measure the relative gold plating in each member state so as to give real

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[1] Implementation of EU Legislation, Robin Bellis, November 2003

[2] Review on the Implementation of EU Legislation, Neil Davidson QC, November 2006

[3] How Much Regulation is Gold Plate? A Study of UK Elaboration of EU directives, Tim Ambler, London Business School and Francis Chittenden, Manchester Business School, 2004

substance to the debate. The Commission's Annual SME Scoreboard which charts the development of proposals likely to have a significant impact on SMEs from Commission, through the Council and the Parliament, to implementation in the Member States and charts what level of burden has been added or removed in the process is a relatively recent but useful way of gauging the extent of relative gold-plating and the distorting affect it might be having on the Single Market.

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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?*

There are undoubtedly going to be risks for the Single Market, in the measures the Eurozone members are contemplating in the fields of banking and fiscal union. It will be important to ensure that the sort of variable geometry EU which will emerge safeguards the overall integrity of the single market.

Further enlargement is a major opportunity. In general, the larger the market the better: the successive waves of enlargement have positively influenced competition, specialisation, economies of scale, and have enhanced growth and employment opportunities. For example, trade grew faster after 2004 in both 'new' and 'old' member states than the preceding five years (by 12.8% and 6% respectively)[4], both within the EU and with third countries. Moreover, the obvious geopolitical advantages of enlargement, as regards extension of democracy, the rule of law, respect for human rights, non-discrimination and free markets, all have a positive impact on trade levels both within and without the EU.

With Croatia set to join and others waiting in the wings, the internal market is set to grow considerably. The accession of Turkey in particular, with its population of some 75 million, would add very substantially to the Internal Market's actual and potential growth, whether in terms of consumers, or GDP. Even though accession talks have failed to progress in the last three years, Turkey has used the prospect of membership to enact a series of economic reforms which have taken it from 26th to 16th largest economy in the world in the last ten years. The thaw in relations between Ankara and Paris should kick-start the negotiations and further boost that process, the Cyprus problem notwithstanding.

Opponents of enlargement, particularly as regards Turkey, cite unsustainable migration levels, or sclerotic decision-making and its adverse impact on the deepening of the Single Market. These concerns need to be addressed. In the case of migration, by substantial transitional periods before full free movement is permitted. But recent research shows that governments need to look at their social security systems rather than attempting to regulate the flow

[4] Five years of an enlarged EU, European Commission, February 2008

of migrants[5]. As for the deepening of the internal market, there is little evidence to suggest that enlargement has cause paralysis in decision-making.

10. *Are there any general points you wish to make that are not captured above?*

We reproduce here below some general points made by respondents to British Influence's call for evidence:

"We need as a country to be confident and central in the EU. We should pursue our agendas on the European scale while encouraging Europe to look outwards as we have always done."

"The future challenges are that in a time of economic and financial crisis, citizens in individual MSs will turn to more extreme and protectionist political parties without realising the economic consequences. There is a danger of European Commission officials also failing to prioritise and communication policy initiatives that are directly relevant to the interests of ordinary EU citizens."

"A variable EU can evolve by a process under which some members opt-out of new policies when these are introduced by new Treaties. But it would be both dangerous to the Single Market and to the EU itself if members could opt in or out of parts of the Treaties they have already ratified."

'I was the European Parliament rapporteur on the original programme to "complete the Single Market". Despite the fact that this has still not happened, it is amazing that so much was actually achieved. People now take it for granted, for example, that luggage is not searched at the Port of Dover by customs officials looking for an extra bottle of wine or packet of cigarettes, or anything on which you hadn't paid UK VAT.'

"Only an idiot would leave the EU".

March 2013

[5] Europe's Immigration Challenge, Elena Jurado and Grete Brochmann, Policy Network, February 2013

British Irish Chamber of Commerce

20130227/BICoC/R/EU Competencies

28 Feb 13

Balance of EU Competencies Review – 21 Feb 2013

Overview

1. The purpose of this review is to gather views on EU competencies and how they impact on the UK. The British Irish Chamber of Commerce (Chamber) was invited to a roundtable discussion hosted by the British Embassy on the EU, the Single European Market (SEM) and the UK. The Chamber, represented by its senior policy group discussed the SEM, how it is regulated and how effective it is from a business perspective.

Key Points

- **The political origins and the economic benefits of the SEM are being overlooked.**
- **Legislation, regulation and implementation are designed to level the playing field across the SEM.**
- **The size of the SEM produces benefits of scale for its members, both internally and externally.**
- **The trajectory of the EU, particularly the tension caused between pressure for closer 'federalism' and liberal market economic drive, will need to be addressed.**
- **Support for a hybrid approach to further market integration, where two or more member states target specific projects for development and act as an example/test case for the remainder of member states.**

Findings

The political origins and the economic benefits of SEM are being overlooked

2. The assessment criteria against which to judge the economic benefits of EU membership were discussed. Participants agreed that economic benefits should be critiqued against the original aims of the union; political stability within and between member states, and also consider the future role of the single market as trading bloc.

- Political Stability

Our members discussed the evolving attitudes of member states' domestic audiences to the single market. Participants noted that support for the EU's internal market began to decline after the first 25 years of membership, as structural cohesion funds began to dwindle and the initial benefits of market access were normalised.

Politically, the internal market was designed to provide stability in Europe. The economic benefit, in terms of investment and growth, from such political stability is often overlooked. Participants noted that business *should* take political stability between member states for granted, but the role of political stability in attracting FDI

should not be overlooked during the review process. Stability gives business the confidence to invest and expand and this has underpinned the growth of the single market and the economies of its member states.

- Political Development

Designed to provide political stability in post-WW2 Europe, the institutions built to accommodate the single market provided neutral space for fractious political bodies to normalise relations. British Irish Chamber members' discussed the positive role this international political space played in normalising relations in post-conflict Northern Ireland. Chamber members suggest that the single market still has a role in creating a stable political climate in the region. The role of European institutions in ongoing secessionist debates, such as the Scottish independence from the UK, was discussed.

- Future Market Leaders

British Irish Chamber members discussed the benefits created by the size and volume of EU as a trading bloc when trading with external partners. Parties to the review discussed the considerable impact EU support has on member state's international negotiations. The eurozone also has an implied quality assurance mark which Chamber members identified as having considerable value in international negotiations. Participants discussed the impact that international developments will have on the status quo and proposed that directives and regulations should be devised with sufficient foresight so as to equip the European trading bloc with sufficient future advantage.

The importance of scale to the inner workings of the Single Market

3. The group discussed the essential elements of the internal market at the time of its formation and the development of the market in certain sectors through to the present day. Our members agreed that the policy areas which work well do so largely because member states cooperate and coordinate in the pursuit of a common goal.

4. The size of the single market and the volume of trade which its members conduct, both between member states' and with external parties, are elements essential to the success of the market. The benefits of market access to business in terms of best practice, stability, investment and in external trade relations would be comparatively diminished if the number of member states were smaller. Firms operating within the single market can trade across political borders which have largely harmonised regulations across a variety of sectors. A market of smaller size or with fewer or limited market freedoms would be less appealing to international markets and would not attract similar levels of FDI to its member states. Participants agreed that the successes of the internal market thus far were a function of its scale and that the scale of the internal market provided impetus to improve the market as a whole, as well as delivering areas of best practice in particular sectors.

The effectiveness of the EU's mechanisms for regulating and delivering the SEM

5. The Chamber discussed the EU's mechanisms for delivering an internal market, in particular the EU mechanisms designed to regulate the internal market and the liability of member states' to sanction in response for failing to implement these regulations.

- Regulating the Internal Market

British Irish Chamber members discussed the role of regulation in delivering a working internal market. It was noted that regulation is designed to level the playing field for business operating across the single market and also create a shared agenda for member states to prioritise and achieve wider ambitions. On balance, effectively regulating the internal market facilitates better decision making. While single legislative acts can sometimes be problematic, overall it is beneficial for business.

Participants discussed the EU wide response to the horsemeat crisis. Integrating the regulatory frameworks of member states in the food and agribusiness sectors has made crisis response a smoother process. Standards are set and harmonised across EU level and problems are addressed at this level. If the regulatory process were reversed, participants were concerned that state centric responses would be slower, less effective and less comprehensive to address the scale of modern challenges.

- Enforcing the Internal Market

Participants to the review discussed the imbalance between member state's implementation of regulation, along a North-South axis and also between larger and smaller member states. Discussions noted that states balance the desire to implement regulation with the inclination to safeguard economies.

The size of the state impacts the degree to which regulation is implemented as such actions are costly and can burden small states relative to large states. It was noted that smaller states are relatively disadvantaged when implementing regulation as the gains collected from fully executing EU directives are detracted from by a relatively costly implementation process.

Participants discussed the perception that member states in Northern Europe implemented and complied with EU regulations at a greater rate than their counterparts in the Southern member states. The bias in internal governance structures of Northern European member states was discussed as a function supporting compliance.

British Irish Chamber members discussed the role of the EU in enforcing the implementation of regulation and punishing member states who failed to cooperate. It was noted that infractions are not punished uniformly across member states and punishments are not deterring member states from infringing on agreements. Institutional delays in identifying and processing infractions by member states and competing priority structures were discussed as contributing to the imbalance in enforcing the internal market.

The pattern of development for the Internal Market and the effectiveness of the current model

6. The Chamber discussed the ongoing tensions created from the unequal development of political and economic union across member states. Alternatives to uniform development of the market across all member states were discussed and participants also discussed the effect of competing priorities on the implementation of the single market.

- Hybrid Development of an Internal Market

Participants to the review discussed the perceived tension created from unequal levels of political support for initiatives in the internal market and the uncertainly over prioritising political or economic progress amongst member states. Members discussed the internal market's 'glass ceiling', the absence of political union inhibiting the full realisation of the internal market.

The political evolution of the union was discussed and the effect that regulating and legislating in response to crisis has on the progress of the union was noted. In discussion, there was a perception that evolution only happens in the Union as a response to shocks which ripple through the member states unevenly.

The political linkages between member states should expand incrementally in a non-binary pattern, allowing member states to cooperate over issues which they have a mutual interest and letting this set an example for the rest of the member states.

Participants discussed the all islands energy market developed between Ireland and the UK as an example of hybrid development in the internal market. This develops a sector of the internal market, linking one geographical region under two political authorities, and might serve as an example for other EU member states or as an EU test case.

- Non-Completion of the Internal Market

Participants discussed the impact of an unfinished single market and noted the possibilities associated with completing the development of the single market. Member state's domestic markets are not uniformly regulated, facilitating parallel trade between jurisdictions as goods are redistributed from cheaper countries into more expensive markets. This skews markets and distribution patterns, creating shortage of supplies in one state while creating external price pressures in others. The system of parallel trade is not prohibited by the current market regulations as institutions have competing priorities and multiple constituency pressures. British Irish Chamber members noted that institutions are obliged to create the conditions conducive for free trade and also ensure that the abuses of the internal market are punished. Participants acknowledged the impact competing pressures has on outcomes attributed this to the incomplete status of the internal market.

British Irish Chamber of Commerce

Steve Aiken

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British Retail Consortium

HMG Review of the Balance of Competencies between the UK and EU:

Internal market: Synoptic Review

British Retail Consortium response

Market integration and the internal market

What are the essential elements of an Internal Market and against what criteria should we judge its economic benefits?

The essential elements of the Internal Market are the four freedoms of movement; goods, services, people and capital. For UK retailers the first two freedoms are of particular importance.

Free movement of goods.
UK retailers sell goods sourced from around the world. It is in their interest to source these goods free of extraneous costs, e.g. customs duties. In this respect, the UK's participation in the Single Market delivers benefits to UK retailers because goods sourced from within the Single Market are free of customs duties.

It is, however, hard to quantify this benefit as it would have to be compared with the cost of importing goods from elsewhere in Europe if the UK were not a part of the Internal Market, i.e. if the UK maintained its own import regime. It is impossible to second guess what that import regime might look like. It is conceivable that the UK would operate a very liberal trade regime and impose no customs duties whatsoever on imports from the EU. If this were the case there would be no economic benefit[1] from an import point of view from participation in the Internal Market. Conversely, the benefit to importers of the Internal Market would be much greater if the alternative was a UK import regime that applied high levels of customs duties to imports from the EU.

A necessary corollary of participation in the Internal Market is adoption of the common external trade policy. In a sense adoption of the common EU customs regime is the "price" the UK's importers pay for access to duty free goods from the Single Market. If the UK were not a part of the Internal Market and was free to set its own import policy it could, if it wished, impose much lower levels of import duty to goods from non-EU countries. In some product categories (in particular agricultural products) EU tariff rates and other forms of quantitative restrictions are still significant. Broadly speaking these barriers have been maintained at the insistence of protectionist-minded Member States in the EU and against the wishes of the UK. So it would be reasonable to assume that if the UK was not a part of the Internal Market and if it set its own trade policy, then UK importers would be likely to benefit from lower levels of customs duties and quantitative restrictions vis-a-vis imports from non-EU countries.

[1] This comment is qualified later in this section in the reference to customs compliance

Putting aside the costs of customs duties, there is one very specific benefit for UK importers sourcing goods from elsewhere in the EU. That is the absence of customs formalities. A study for Price Waterhouse in 1996 estimated that the costs of customs compliance (i.e. the administrative costs) within the EU equated to around 1% of the total value of the trade undertaken. The abolition of customs controls in the Internal Market has all but removed that cost for intra-Community trade, whereas those residual compliance costs are still incurred for imports from third countries, even where there is a zero-rate of customs duty.

UK retailers are now not just importers, but increasingly they are exporters as well. This is because they are selling more and more goods on-line and through other forms of distance selling (on-line sales now account for around 10% of total UK retail sales). UK retailers can now sell goods directly to consumers throughout the EU (and internationally). It is difficult to put an overall figure on the value of UK retail sales to customers in the EU, but recent figures produced for the BRC by Google indicate that the number of overseas searches of UK retail websites increased by 25% between Q4 2011 and Q4 2012.

The UK's participation in the Internal Market means that UK retailers can sell goods to consumers anywhere in the EU free of customs duties. If the UK was not part of the Internal Market remote sales of consumer goods to other EU countries could be subject to customs duties. This could have an impact on the price of products sold from the UK and therefore demand for them. The impact of tariff barriers on retail sales from the UK to the EU would depend, at least in part, on the level of customs duties applied. For some goods that are heavily traded through remote forms of retailing (e.g. textiles and apparel), it is worth noting that existing EU duty rates are relatively high – typically 12% of the value of the product.

Services and the right of establishment

A recent survey of the BRC's largest retailers with an international presence revealed that overseas sales (n.b. this includes third country markets as well as other EU markets) accounted for 45% of turnover in 2011, compared with 34% in 2006. Indeed, internationalisation is becoming increasingly important for retailers across Europe, with at least one "foreign" company in the top10 retailers[2] by turnover of every EU Member State except Germany. Despite the growth of internet selling, most of these international retail sales are made through a subsidiary or other form of business model that is physically established within the relevant overseas territory.

The right of establishment in other markets is therefore key to the international expansion of retailers.

Unfortunately, UK retailers still experience barriers to establishment in some other EU markets and in some markets (especially in Central and Eastern Europe) access to retail markets is becoming more difficult, not easier. Barriers to retail establishment can take various forms (e.g restrictions on the size of stores or requirements to source minimum percentages of goods domestically). It is clear therefore that the Internal Market in services is not as advanced as the internal Market in goods.

[2] Planet Retail data

Despite the barriers that EU retailers face in establishing in some other EU member States, there are still clear advantages for retailers from other EU Member States compared with third country retailers. The most obvious of these is that the Services Directive prohibits the use of economic means tests in assessing applications for establishment from EU retailers. In contrast, the EU's schedule of commitments under the Uruguay Round of GATS lists a number of Member States that have retained the right to apply economic needs tests to proposals for establishment from non-EU retailers.

How deep does the Internal market need to be to be effective?

There is a wide range of public policies that impact upon the ability of retailers to sell their goods within the EU. Many of these need to be at least co-ordinated at a European level in order for retailers to be able to take full advantage of the benefits of the Internal Market. These include:

- Product testing, certification and authorisation

Without arrangements for the mutual recognition of product authorisation, testing and certification, each product (that requires authorisation) would have to be retested/certified/authorised for each new market it enters.

- Product labelling

- Consumer rights

One barrier to the growth of cross-border retailing in the EU is the lack of fully harmonised consumer protection legislation. This means that retailers are sometimes reluctant to offer their goods across borders because they are unsure of what consumer protection legislation they might be exposed to.

To what extent is EU action in other areas – for example environment, social and employment – necessary for the operation of the Internal Market, as opposed to desirable in its own right?

We have seen no evidence that EU-level social and employment legislation is required in order to facilitate the Internal Market.

There are however, some examples of where other EU policies have inadvertently impacted upon the operation of the Single Market. For example, Ireland’s implementation of the WEEE Directive (which falls under the broad heading of

environmental legislation) is fully compliant with the provisions in the Directive, but nevertheless creates an unintended barrier to the Single Market by making it very difficult for UK retailers to sell white goods directly to customers in RoI where those retailers do not have facilities to collect used WEEE in Ireland (which is required under the terms of the Irish legislation implementing the WEEE Directive).

How have the EU's mechanisms for delivering an Internal Market worked? What evidence is there that harmonisation has worked well or badly?

The removal of customs formalities on intra-Community trade has been a total success.

The establishment of EU-wide systems for product certification, authorisation and registration have been largely successful, although some Member States are still tempted to misuse these systems to create technical barriers to trade. In some extreme cases, for example Poland, restrictive labelling provisions have been maintained despite being clearly contrary to EU rules.

Implementation of Services Directive (facilitating establishment of Services providers) has been a qualified success, although there are still examples of Member States maintaining discriminatory restrictions. Spain's maintenance of economic needs tests for retail establishments is a particularly obvious breach. The implementation of Points of Single Contact in Member States has been very patchy.

In particular, what do you believe is the right balance between harmonisation and mutual recognition?

Broadly speaking the BRC supports the principle of subsidiarity. This implies that where possible, mutual recognition of national standards should take precedence over harmonised rules.

Nevertheless, there are instances where harmonisation would be preferable. For example, the existence of 27 different consumer protection regimes across Europe, offering very different levels of protection, is a disincentive to retailers in offering their products throughout the EU. Conversely, a fully harmonised EU regime of consumer protection would give both consumers and retailers confidence that they would be dealing with the same rights and obligations wherever the retailer and customer were based in the EU.

Why is the Internal Market so much deeper in some areas than others?

Vested interests (commercial and political) have blocked liberalisation in some areas.

How effective has implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules?

Implementation of the Internal Market has been broadly effective for the free movement of goods although some Member States still occasionally use additional approval/testing requirements as technical barriers to trade.

Implementation of Services Directive has been more disappointing and in some instances market opening for retail establishment has actually moved backwards over recent years. For example, some Member States in Central and Eastern Europe have imposed new restrictions on retail establishment in their territories. Some of these restrictions relate to the size and format of retail operations, whilst others impose requirements on the proportion of domestically sourced goods that a retailer must stock.

On occasions, Member States have taken advantage of vague or ambiguous provisions in the Services Directive to effectively hide barriers to retail establishment. A common technique is for a Member State to construct a discriminatory measure and implement it as part of its planning regime. By doing this, the Member State seeks to avoid its substantive obligations under the Services Directive (which prohibits such discriminatory behaviour) and avoids its notification obligations.

More generally, implementation of the Internal Market has been most successful in those Member States that have a genuine commitment to it. Very crudely, Member States can be divided into Northern Liberals and Southern protectionists. Amongst the new Member States, Estonia, Latvia and the Czech Republic tend to be liberally minded.

For those Member States and sub-national authorities that are not convinced of the merits of the Single Market, the threat of infraction and financial penalties from the Commission can have a very powerful effect in ensuring proper implementation. For example, the Northern Ireland Executive overcame its deep-seated religious and moral objection to relaxing rules on the establishment for sex shops in the province when faced with imminent and substantial financial penalties for late transposition of the Services Directive.

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.

The Schengen Area removes certain border formalities that facilitate the movement of goods around the EU.

The creation of the Eurozone will have an impact on the competitiveness of individual suppliers, but it has little impact on the functioning of the Internal Market *per se*.

Has the Internal Market been helped or hindered by UK involvement in other groupings such as G20, G8, the OECD or the Commonwealth?

UK involvement in other international organisations has had no discernable impact on the Internal Market..

To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside the EU?

The Internal Market itself has no impact on costs or benefits in relation to trading with countries outside the EU. However, as explained above, a necessary corollary of the Internal Market is a common external trade policy. It is certainly the case that the EU's trade policy has an impact on the UK's trade relations with other countries.

If the UK were not part of the Internal Market and maintained its own trade regime, there would be a net benefit to UK retailers (in their capacity as importers) if the UK import regime was more liberal than the EU import regime and a net cost to UK retailers if the UK import regime was more restrictive than the EU.

However, it is also important to bear in mind that the EU is currently engaged in a number of bilateral trade negotiations with other countries which are likely to deliver benefits to UK operators (in terms of trade in goods, but also rights of establishment) which go significantly beyond the Most Favoured Nation benefits to which the UK would be entitled as an independent member of the WTO. Put simply, UK retailers get better terms of access to certain third country markets by virtue of their membership of the EU. Of course, the UK could negotiate preferential trade agreements with other countries if it were not part of the EU, although it is debatable whether, as a relatively small economy (compared with the EU as a whole) it would have the same negotiating leverage that the EU has.

To what extent has the EU 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 with what consequences?

This question does not make much sense in relation to the Internal Market – how do you gold-plate market liberalisation?

Overall, our perception is that the UK has implemented Internal Market rules properly and promptly (at least with regard to the free movement of goods and services).

On the other hand, there are concerns that other Member States have under-implemented Single Market legislation and have sought ways to keep their domestic markets closed to products and (more often) service providers from other Member States.

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?

From a retailer point of view the main challenge for the Internal Market will be to ensure full implementation of Services Directive and to resist protectionism reasserting itself in certain EU markets (especially CEE countries).

BT

BT preliminary input to 'Review of Competences'

BT is committed to a European Single Market based on principles of openness, fair competition, a level playing-field, and encouragement of innovation. The UK has been a leading force in shaping the EU on these policy lines and should continue to engage fully in their support.

We do not take a formal position on the optimal Institutional arrangements, and are opposed to a number of EU legislative proposals. We believe however that the current '*acquis*', and the role played by the Commission in its enforcement, are vitally important for UK (as well as other EU) companies, and for the ICT sector. We would be concerned if the benefits (particularly in terms of market access and competitiveness) were to jeopardised by a re-negotiation of competences were this to risk unravelling the existing balance.

Policy Areas

- Competition Policy should clearly remain embedded at EU-level and is the mainstay of completion and fair market access across Europe. It is essential to UK firms' ability to compete cross-border and for ensuring a fair deal for consumers. This is not to say that improvements cannot be made: the application of state aid rules (*such as on broadband networks*) needs to employ common sense and flexible principles according to economic circumstance without undue complexity, and the Commission needs to seek fair competition rules for EU undertakings in other key jurisdictions notably BRICS nations;

- Trade Policy is another area which must remain at EU-level. The EU plays a vital role opening market access world-wide, with far greater leverage (for example into Asian markets) than could be obtained by nations acting individually. We support the Commission's deepening trade policy efforts on plurilateral trade agreements such as on services and government procurement, and on bilateral EU trade and investment agreements with the USA, Japan, Vietnam, India, Mercosur etc building on the work on the Korea and Singapore deals;

- Internal Market policy must clearly remain an EU-level competence if it is to have any meaning. Effective extension in some areas e.g. energy markets, pay-tv and content, and in broader public procurement would be very welcome. Fair competition and access to markets clearly depends on a consistent approach to market liberalisation, but the missing ingredient is usually better enforcement rather than additional legislation. Where new legislation is proposed, it should be subject to much more effective tests of a 'European added value' – in other words there should be an agreed need that an issue needs tackling and can only be done so effectively at supra-national level. This could include a competitiveness test for the measure itself and for its cumulative interaction with other measures – we need a forensic approach to new legislation not the current *tsunami.* Similarly the current UK Government approach to implementation of EU measures seems appropriate to us: (a) there should be no 'gold-plating' of EU measures; and (b) no early implementation, unless there is demonstrable advantage to the UK.

- EU Electronic Communications legislation, for example, needs far more effective and consistent implementation of existing rules, applied to all converging sectors across the telecommunications, television, broadband and content industries, rather than new, additional legislation. As a UK-based operator doing business across the EU (and globally) we are conscious that even under existing rules we are placed at a competitive disadvantage to other European (and indeed US) operators gaining fair access in the UK but where is no

reciprocal access in their home markets. This impacts negatively on the UK and would be exacerbated by being treating as a purely national competence;

- UK competencies: by contrast, EU proposals for new legislation, for example in Pensions (IORPS/Solvency II), and social affairs can carry serious risks to competitiveness and innovation. Employment-related legislation, such as pensions, working time and agency measures, is an area where national competence is more appropriate;

- Better coordination/thinking: a review of the overlaps and interdependencies between EC directorates and between EU institutions may also help to drive efficiencies in policy making and to avoid 'a thousand flowers blooming'. There are, for example, many complexities and possible inconsistencies in the development of EC policy on climate change and energy/environment etc policies as they impact on the ICT and other sectors. Similarly, the many initiatives from various parts of the EC on sustainability, CSR and human rights and related mandatory reporting, accounting or voluntary codes. A prime example also is the draft Data Protection Regulation which, whilst sensible in broad principle in relation to harmonisation, goes into very substantial detail and complexity on definitions, new rights and obligations, free DSARs, anti-trust level fines etc, in a way which bears no proportionate thinking against EU competitiveness versus Asia/US in relation to the costs to EU businesses and the cooling impact on innovation.

In summary, there are number of areas of EU policy-making that give serious cause for concern. We believe these are probably best tackled by more effective and consistent enforcement of existing rules, and a more selective and evidence-based approach to any new legislation rather than a radical change to existing Institutional or Treaty relationships. The areas of pensions and some employment legislations may however be best dealt with as national competencies constitutionally.

BT
24 December 2012

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BALANCE OF COMPETENCES REVIEW: SYNOPTIC REVIEW OF SINGE MARKET

INITIAL SUBMISSION FROM THE BUILDING SOCIETIES ASSOCIATION

Introduction

The Building Societies Association (BSA) welcomes the opportunity to make a brief initial contribution to the Balance of Competences Review. We look forward to making a more substantive contribution during Semester 3 when more detailed consideration will be given to financial services.

The BSA represents mutual lenders and deposit takers in the UK including all 46 UK building societies. Mutual lenders and deposit takers have total assets of over £375 billion and, together with their subsidiaries, hold residential mortgages of £245 billion, 20% of the total outstanding in the UK. They hold more than £250 billion of retail deposits, accounting for 22% of all such deposits in the UK. Mutual deposit takers account for 31% of cash ISA balances. They employ approximately 50,000 full and part-time staff and operate through approximately 2,000 branches.

BSA members operate primarily, and in many cases exclusively, within the UK. However, all BSA members are for EU purposes *credit institutions*, and as such have been uniformly subject to the increasing volume of EU banking legislation ever since the First Banking Coordination Directive in 1977.

General Comments

We agree with the general observation (paragraph 24) that financial services is (now) an area of extensive EU competence, with the result that considerable regulatory and other powers have in effect been ceded to the EU and can no longer be exercised at Member State level. In this preliminary contribution, we express at this stage no value judgment as to the desirability of more or less EU competence, but we note that in financial services the scope of EU competence has grown significantly, while the scope for independent national decision-making on regulatory policy has shrunk correspondingly.

Early EU legislation, such as the First and Second BCD, primarily dealt with *mutual recognition*. By the end of the 1980s, it also became accepted that, for instance, the Basel Accord on capital adequacy should be implemented in the EU as an internal market measure – this was done initially through the Own Funds and Solvency Ratio Directives, and these typically harmonised *minimum* prudential standards. This process has continued, with increasing scope, through to the present negotiations on a Capital Requirements Regulation and revised Directive which will implement Basel III – though CRR, as a Regulation, now embodies *exhaustive* harmonisation. By the completion of the current set of directive dossiers, the remaining areas of national competence in banking regulation policy will have shrunk considerably.

Other areas of our members' business are also circumscribed by existing, or pending, EU legislation – such as the directives on Payment Services, Credit Agreements Relating to

Residential Property, Packaged Retail Investment Products and Deposit Guarantee Schemes.

Practical Consequences

We identify the following practical consequences of the growth of EU competence in financial services regulation based on the internal market.

First, the model of implementing international accords such as Basel II and III (intended for major internationally active banks) as internal market measures has necessitated their application to all EU credit institutions down to the smallest domestic savings bank. This risks imposing disproportionate, and unnecessary, burdens on small firms.

Second, the growth of EU competence in financial services regulation means that any influencing of emerging legislation or rules needs to be carried out at European level. This is less straightforward, and more resource-intensive, than advocacy to national governments or regulators. For a trade association in an individual member state, it is almost essential to work through EU-level industry bodies to obtain any leverage at all.

Third, problems arise where – in any field of regulatory policy – the UK decides to act first, applying unilateral standards, which are then superseded by harmonised standards under EU legislation, potentially resulting in a double dose of compliance and adaptation costs. Examples arise in both liquidity policy and mortgage regulation. Problems can also arise where EU legislation is "gold-plated" in UK implementation.

The internal market should operate to increase competition in key financial markets, and give our members the ability (if they wish) to passport into, or establish in, other member states. Some (now former) building societies took advantage of the internal market freedoms in the 1990s. But, especially since the banking crisis, personal financial services tend (at least in the UK) to remain largely domestic markets, certainly the current BSA membership remains on the whole focused on the UK market.

28 February 2013

Business for New Europe

BUSINESS FOR NEW EUROPE
EVIDENCE FOR REVIEW OF THE BALANCE OF COMPETENCES - INTERNAL MARKET SYNOPSIS
27/02/2013

The European single market is vital to the UK economy and plays a major role in the importance of the UK's relationship with the EU. We advocate that the UK government should build a stronger agenda and seek to more clearly recognize and build upon the key benefits of the European single market. The following identifies why—despite the current financial crisis—the UK's full access to the EU single market remains essential in the global political economy.

The world's largest market

- With 500 million people generating over £11 trillion in economic activity, the EU is a bigger trading area than both the US and China[1].
- 3.5 million British jobs are linked to the EU's single market. That's 1 in every 10 British jobs[2].
- The growth in free trade within the EU has generated around £3,300 per British household per year over the last 30 years[3].
- 49% of foreign direct investment to the UK comes from other EU member states, and is worth £351bn a year[4]. The UK attracts global FDI primarily because of its full access to the EU single market. An example of this is the recent decision by the leading Japanese pharmaceuticals giant, Shionogi, which is currently rolling out a five-year global expansion plan. In July 2012, Shionogi announced that they would set up their European headquarters in London because of London's strong infrastructure, outstanding talent and "easy access to the rest of Europe"; this creates 50 new jobs and Shionogi are now also considering moving part of their manufacturing operations to the UK.
- Of the firms that export outside of the UK – 74% operate in other EU markets.[5]
- Over 300,000 UK companies operate in the European Union. According to a House of Lords European Union Committee, 78% of business leaders believe the Single Market is helpful for business.[6]
- The single market adds €600bn a year to the UK economy[7], accounts for over 50% of all UK trade in goods and services, and 3 million jobs are directly or indirectly linked to it.
- Full completion would add a further €200bn to the EU's GDP. We advocate that the UK government prioritise the following two policy areas in the push for greater liberalisation and completion of the European single market: the digital single market and the energy market.

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[1] International Monetary Fund, 2011

[2] Written question for the Secretary of State for Business, Innovation and Skills, 6th September 2011

[3] Written question for the Secretary of State for Business, Innovation and Skills, 6th September 2011

[4] BIS Report: The UK and the Single Market, 2011

[5] BIS Economics Paper No. 17: UK trade performance across markets and sectors, February 2012

6 House of Lords European Union Committee, Re-Launching the Single Market

[7] 3 Boltho, A. and Eichengreen, B., The economic impact of European integration (2008), CEPR Discussion Paper No. 6820

Common Market

- **EU competition and consumer rights** laws have driven down prices, opened up markets for smaller businesses and boosted consumer protection. For example, British families and businesses now enjoy vastly reduced mobile phone roaming charges, cheaper flights and proper compensation when flights are delayed or cancelled. Overall mobile phone roaming costs have fallen by up to 75% since 2007.[8]
- The UK should push to **liberalise trade within the EU** in new growth areas such as energy, digital, services and green technology sectors. This could add over £650 billion to the EU economy, making the average UK household almost £3,500 better off each year[9].
- Excluding the UK, 80% of the UK's **food supply** comes from other EU Member States. The UK exported 77% of its food and non-alcoholic drink to the EU in 2011.[10]
- Of total medicinal and pharmaceutical products exported from the UK, 51% goes to other EU Member States. This trade with EU countries created £11 billion for UK firms in 2009.[11]
- German firms operating in the UK employ 400,000 people.[12]
- Between April 2011 and April 2012, 6.6 million people in the UK registered for the European Health Insurance Card.[13]

The Digital agenda

- The failure to complete a digital single market in the EU has the potential—under cautious assumptions—to cost Europe at least 4.1% of GDP by 2020, equalling €500 billion[14] (i.e. €1000 per person) due to the lack of coherence and fragmentation across EU member states which present significant barriers to growth in a swiftly growing market.
- In June 2004, itunes online music store was launched in the UK, France and Germany but it was not available across all member states in Europe until September 2011.
- Currently digital music sales account for 19% of total sales in Europe, while in the US it is 50% and Japan 25%.[15]
- The EU needs a common digital license. The Commission has made proposals which the UK supports and should continue to push.
- The UK also has the highest number of computer games companies in the EU. Of these UK games developers, 22% hope to expand in the EU.[16]

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[8] The Guardian, 10th May 2012

[9] Department of Business, Innovation and Skills, 31st March 2012

10 Food and Drink Federation, UK Food and Drink Export Performance, March 2012

[11] BIS Economics Paper No. 17: UK trade performance across markets and sectors, February 2012

12 Minister for Europe David Lidington speech, 15 October 2012

13 NHS Annual Report and Accounts 2011-2012

[14] Speech by Maros Sefcovic at Europe 2020 conference, 18th June 2012

15 European Commission: Europe's Single Market, 2011

The Energy Market

- Like the digital market, the EU's member states are operating in a highly fragmented European energy market and at present, EU 2020 targets in the area of energy will not be achieved. For example, in energy efficiency alone, the EU is forecasted to improve its energy efficiency by 9% which is less than half of the EU 2020 target.
- In May 2012, European Commission president, Jose Manuel Barroso, stated that the EU energy market was worth €620 billion in itself.3 This clearly underlines the importance of the Commission's communication 'Energy 2020: A Strategy for Competitive, Sustainable and Secure Energy ' goals which comprehensively set out the requirements for a stronger and more productive EU energy market, such as energy efficiency and infrastructure.
- We strongly encourage the UK government to actively support and push forward the EU 2020 goals in energy for the benefit of the wider EU economy as well as domestically. Furthermore, the UK does not have the capacity to independently meet national energy demands and is currently falling behind other EU countries in its ability to maintain important environmental priorities such as reducing greenhouse gas emissions and increasing the amount of energy produced from renewables.

[16] UK Trade & Investment: Video games marketing

CBI

Internal Market Synopsis - Balance of Competences Review

1. The CBI is the UK's leading organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi the CBI communicates the British business voice around the world.

2. The CBI welcomes the opportunity to provide evidence to the Government review of the Balance of Competences between the United Kingdom and the European Union. Our response focuses solely on the call for evidence questions.

Executive Summary

For Britain to pay its way in the coming years, we need to renew our role as a premier trading nation. Exports are a crucial component of the necessary economic rebalancing that the UK must perform in order to secure sustained growth. And although growth falters across much of Europe, increasingly driving export towards high-growth markets, the Internal Market remains a key destination for UK exports and should continue to be exploited by British business.

The Internal Market has been a true success story for the European Union – and for Britain. It has bought significant benefits to British businesses and consumers over the past twenty years and paved the way for economic growth in the European Union. Being part of the Internal Market has brought opportunities for cross-border activity in goods as well as services sectors. Access to a market of 500 million consumers has attracted inward investments thereby boosting British industry at home. As the EU's Internal Market has become the world's largest trading bloc, it has given Europe its global strength and made it a powerful launchpad for the UK to the rest of the world.

However, in an increasingly globally competitive world Europe is under pressure. To stand a chance in the global race for growth and jobs EU policy makers must complete and renew the Internal Market within a global framework making it fit for the 21st century. The EU must continue to ensure implementation and enforcement of current legislation across Member States whilst allowing new industries to tap into its benefits. Moreover, an open Europe must trump protectionism by ensuring a free flow of the four freedoms within Europe and keeping the Internal Market open for business from third countries. Operating on a global market the EU must also make sure that its push for reform creates opportunities rather than disadvantages for European businesses.

Europe is going through a period of transformation fuelled by the need to solve the Eurocrisis. This is both necessary and desirable as the future of Europe depends on the stability and prosperity of the Eurozone. However, as the Eurozone countries move towards closer integration the deepening of a multi-tiered Europe must be developed in a way that does not undermine decades of success by fragmenting the Internal Market. Closer integration will not be the solution for every Member State, and there must therefore be clear safeguards so the changes do not adversely affect the Internal Market for those members who wish to remain outside the 'core'. To ensure this it is vital that the UK remains at the table when decisions about Europe's future are being made.

As the enhanced cooperation procedure has increasingly become a popular tool for Member States to progress certain dossiers, with a select number of Member States implementing the legislation, it is vital that this procedure respects the desires of those not opting in and therefore only makes an impact on the particular Member States that opt in.

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 effective?*

The Internal Market is one of the EU's greatest achievements and underpins Europe's economic success. It has enabled businesses to operate in non-domestic markets, providing goods and services to Europe's 500 million citizens and allows European citizens to live, study and work anywhere in the EU. The Internal Market is the world's largest trading bloc and gives Europe its global strength.

For a fully functioning Internal Market, the four freedoms of goods, services, capital and labour, must be properly enshrined and enforced to encourage open, free and undistorted cross-border trade in the EU.

An effective balance between the interests of consumers and business must be upheld, offering Europe's citizens consistent minimum standards and product safety with greater access to a wider range of products and services, whilst at the same time EU legislation should actively encourage better market access for companies. Harmonisation is an important route towards an efficient Internal Market and is necessary to break down barriers, but must also in some cases be balanced with national flexibility.

In essence, the success of the Internal Market can be judged by the global competitiveness of the European Union. The full transposition and implementation of Internal Market legislation will benefit economic growth, as will the deepening of sectors that offer high growth potential. For example, one study has estimated that if the Digital Internal Market were to be completed in the EU, the potential benefits would amount to an additional 4% of EU GDP growth.[1]

The EU should continue its programme of economic liberalisation, with particular attention on the network industries. Opening up these markets to competition in an effective and efficient manner will result in consumers benefiting from greater choice and lower prices, as well as improving industrial performance.

Enforcement of the Internal Market's basic principles and regulation is paramount, consequently there needs to be an appropriate number of enforcement bodies across the Union. But the principle of subsidiarity must be taken into account at every stage of market development.

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?*

A basic minimum of legislation is necessary for the functioning of the Internal Market. However, policy initiatives pursued under other elements of the treaty can lead to extra burdens on businesses, which international competitors do not have to comply with. When legislating in these

[1] http://www.epc.eu/dsm/2/Study_by_Copenhagen.pdf

other fields, it is important that an Impact Assessment takes into account the potential impacts upon the Internal Market to ensure that European companies are not put at a competitive disadvantage and that production remains inside the EU.

In practice, there is evidence to suggest that EU intervention in the field of employment legislation can have a detrimental impact on the Internal Market. The different legal frameworks and methods of labour market organisation – all valid and well-founded – mean that EU interventions can have very different impacts in different Member States. Overly prescriptive directives can lead to practices being outlawed in some countries, like the UK with its common law system – that are allowed to continue in other countries through collective agreement or other derogation.

In addition, some interventions can undermine the principles of the Single Market. For example, the recent Commission proposal for an enforcement directive of the posting of workers directive contains provisions that would introduce joint and several liability in subcontracting chains (Article 12), creating huge uncertainty for businesses engaging in cross-border contracts, and flying in the face of two of the fundamental freedoms that underpin the Internal Market – the free movement of services and labour.

Our main conclusion is that the EU Internal Market should not attempt to harmonise labour regulations at an EU level given the diversity of the industrial relations systems across the Member States, but rather set out principles for national implementation to deliver. Likewise, such changes should be able to be flexible to different legal and labour market arrangements.

The concept of better and proportionate regulation is important for European businesses as it aims to reduce unnecessary administrative burdens and it is risk-based. This is particularly important in environmental policy, where the UK benefits from strong European leadership in the process of tackling climate change. Having a single set of rules, such as REACH for chemicals, have the potential of providing a level playing field which businesses value a great deal. However, such rules must be based on sound scientific analysis and must not place unnecessary burdens and costs on business, particularly SMEs, placing them at a competitive disadvantage with companies outside the EU.

It is nevertheless important to ensure that regulations enable rather than stifle business. Continued liberalisation of the internal energy market is desirable, but there needs to be adequate flexibility for Member States to develop the best instruments to suit national imperatives.

3. *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?*

The principle of mutual recognition allows for the free movement of goods and services without the need to harmonise Member States' national legislation. Despite the well-established principle of mutual recognition, national technical regulations and certifications may have the effect of excluding new products from the EU market and limiting the free movement of goods. The Services Directive was adopted under the principle of mutual recognition, but its limitations are clear given that the European services market remains fragmented. Many of the challenges are related to the lack of proper implementation of the Services Directive, burdensome national rules and procedures,

difficulties with the recognition of national professional qualifications and stringent rules for regulated professions.

Harmonisation is often perceived as beneficial to businesses as it intends to simplify procedures for cross-border trade in the EU, preventing businesses in one Member State obtaining an economic advantage over another, and decreasing administrative burdens. A minimum level of harmonisation achieves these benefits and provides adequate flexibility for Member States to deal with national differences. Maximum harmonisation on the other hand can prove counter-productive to the Internal Market if national flexibility is not secured. It is important to get the right level of harmonisation and this should be done on a case by case basis.

4. *Why is the Internal Market so much deeper in some areas than others? How effective has the implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules?*

The Internal Market is dynamic and functions in a constantly evolving global economy, therefore it must continuously adapt to realities, meaning that certain sections of the Internal Market are likely to be deeper than others.

There are major differences in how advanced the Internal Market for products has developed compared to that for services. It is much more advanced for products, whereas for services there is a real need to remove obstacles, promote innovation and create an adequate framework for standardisation to take into account the specificities of services. Lack of uniformity in the implementation and enforcement of Internal Market legislation for goods in some Member States creates a patchwork of rules which also distorts trade and competition.

The nature of our economy means that the Internal Market will never be fully completed, and rather than being viewed as a static project with an end goal it needs to answer to the opportunities and challenges brought by economic development. In particular the technological age provides Europe with vast opportunities, and legislation would therefore require flexibility to avoid hindering innovation and technological advances. Such a requirement is evident in the on-going discussions around the Data Protection Regulation, in which the danger is the introduction of overly prescriptive rules which would add to business uncertainty and create problems for technological innovation.

Effective implementation and enforcement of existing legislation is central to the development of the Internal Market. However, this is one of the major obstacles towards completing the Internal Market as Member States are falling short of implementation. In the Commission's most recent Internal Market Scoreboard, which was presented in September 2012, countries such as France, Italy, Belgium and Spain being amongst the worst performers. The UK was the tenth poorest performing Member State for infringement proceedings, with 31 proceedings opened for the wrong application of legislation and 7 proceedings for incorrect transposition.

The economic crisis has further highlighted the vulnerability of the Internal Market to economic protectionism, with national interests being promoted over the Internal Market's potential for innovation, technological developments, job creation and social inclusion. Therefore, the Commission must fulfil its watchdog role, to improve business and public perceptions and to ensure that the Internal Market functions efficiently.

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?

The European Union has allowed for a flexible approach to integration creating a multi-speed Europe where only a subset of Member States move forward with cooperation in certain areas. Such flexible integration is an important principle for European integration, allowing those who would like a closer cooperation to do so, whilst securing the rights for those who wish to remain outside.

The business community recognises the Internal Market as a success of the EU, and until now the EU has managed to get the balance right, making sure that the design of other forms of integration does not inflict on the principles of the Internal Market. Rules are still decided upon by all 27 Member States and implemented and benefitting businesses across borders, irrespective of further integration.

However, as we emphasise in our response to question number 9, this balance may be challenged as the core of Europe integrates further to accommodate the Euro crisis. We have already seen indications of such challenges the past years' developments following the Eurocrisis, for instance in the discussion around creating a Single Supervisory Mechanism for the Eurozone where the risk of fragmentation on the Internal Market surfaced as a key issue.

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?

Pressure for change within the Internal Market is sometimes driven not by an internal necessity but by external pressure from organisations and networks beyond its borders. The external influence has for instance been visible in the area of financial services, where the EU's regulatory reform agenda following the financial crisis has been heavily influenced by G20 commitments. This is a natural result of operating in a 21st century globalised economy. Indeed, the Internal Market should not operate in a vacuum, but must constantly relate to and interact with the world around it. UK and other Member States' involvement in these groupings mean they can directly shape an international agenda which will set the framework for European action. As Britain has been a firm supporter of the completion of an efficient Internal Market, we believe there has been a benefit for the Internal Market from UK involvement in other – more global – governance structures.

British business has been a firm believer that global approaches stand to benefit the Internal Market in areas where competition is global, and therefore supports the EU's work towards a global level playing field in areas such as climate change and financial services. However, the difficulty of achieving global agreements and global enforcement sometimes leads the EU to acts on its own. In some cases there may be an economic value to be the first mover, but too often global regulatory convergence is a distant reality and EU implementation therefore risks creating regulatory arbitrage putting European industry at a competitive disadvantage. It is therefore important that upon the formation of EU legislation, potential effects upon the competitiveness of European businesses in a global market are fully taken into account.

7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

We need global trade deals to drive growth and create jobs – in the UK and in Europe. The Internal Market should be considered as a launch-pad for British businesses to gain increased access to both developed markets, such as the US and Japan, and emerging markets where we have been underperforming, including the BRICs and other high-growth economies in regions including South-East Asia, Latin America and Africa.

The Internal Market supports the non-EU international activities of UK-based companies, as it makes it easier for our main trading partners to do business in Europe. It is only because of the existence of the Internal Market that the EU's trading partners are able to benefit from a set of common standards and regulations when they are trading with Europe. This provides a large incentive for third countries to negotiate market access and rules-based free trade commitments with the EU through FTAs, and is a major factor that supports inward investment in Europe (one fifth of this inward EU investment heads to the UK). The EU Internal Market is also a stepping stone towards the harmonisation of regulations between the EU and other trading partners, enabling a move towards a more global level playing field.

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?

In the context of the Internal Market, the UK is well-respected for its efforts to safeguard the EU's free trade area from the risk of economic nationalism. It has supported a balance between proper implementation and enforcement of Internal Market legislation that have already been agreed and new initiatives which foster competitiveness, jobs and growth.

In some cases the UK has gone beyond what is required from an EU Directive or Regulation, so called gold plating. There are two main ways in which this is done. The damaging form of gold plating is when the government takes a policy decision to go further than the directive requires, thereby putting UK firms at a competitive disadvantage.

An example of such gold plating is the UK's Agency Workers Regulations 2010 (AWR) – which implemented the EU Directive into national law – which has a complex definition of pay including 16 types of pay that must be included within the definition of 'pay', when the EU Directive only stated that 'basic pay' must be covered. Another example is the Working Time rules in the UK which provides for 28 days paid holiday whereas the EU directive only requires 20, costing UK employers very significant sums; with the rules now in place, most employers would not seek to change them, but it is a clear cost driven by UK policy.

However, in other areas a failure to provide contextual detail would be much more damaging, even though it means going beyond what is set out in the relevant Directive. In most cases this form of gold plating is useful for companies at it provide greater certainty on issues such as process, and is evident in the AWR setting out the detail of how and when end-users and agencies should liaise with each other. This level of detail does increase administrative costs – by imposing set processes – but it limits the potential for judicial activism that a 'copy-out' approach to transposing directives invites.

Future opportunities 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?*

The completion of the Internal Market is a major opportunity for the future with substantial benefits for both companies and consumers. Determined and comprehensive action at EU level combined with effective national implementation and enforcement could help remove remaining barriers, creating a more competitive Europe and thereby boosting growth and jobs. The potential is particularly evident for 'new' markets where fragmentation is evident. As mentioned previously, the Digital Internal Market is a clear indicator of an emerging sector, with technological advances rapidly taking place and if the remaining barriers were removed, there is a growth potential of 4.5% of EU GDP. Moreover, further work is needed to improve the Internal Market for services, which accounts for the largest part of the EU economy representing nearly 70% of EU GDP and two thirds of total employment in Europe. Better implementation and enforcement of the Services Directive, as well as modernising and simplifying administrative procedures for service companies would aid the services sector to tap into the benefits of the Internal Market.

There are key challenges facing the Internal Market that risk undermining its principles eradicating the achievements of the past decades. Protectionism and regulatory fragmentation is a continued threat to the operation and completion of the Internal Market. Member States regularly attempts to introduce new rules favouring national industries and creating additional barriers. For instance, Denmark has banned several products that are legal under EU rules such as Marmite and Ovaltine, disrupting the free flow of goods within the Internal Market. Protectionism particularly resurfaced after the financial crisis and the following Eurocrisis Member States adopted protectionist measures and begun to show a 'home bias', hampering cross-border activity and creating business uncertainty.

Moreover, protectionist tendencies can also be found at European level where details in legislative proposals attempts to close off our Internal Market by creating stringent rules for third countries based on strict equivalence and reciprocity. British business believes it is crucial that Europe must remain open for business. European growth is dependent on capital, products, labour and services not only flowing within the internal market – but between Europe and the world. For this to be possible, we cannot overregulate European industry but instead aim to make it globally competitive, through proportionate internal regulation and insistence on a global level playing field.

European Union integration is in constant change and the future transformation of the Union will have an impact on all Member States, including Britain. It is already evident that a Eurozone core will move towards an ever closer cooperation in an attempt to solve the Eurocrisis. This will not be the solution for every Member State, and there must therefore be clear safeguards so the changes do not adversely affect the Internal Market for those members who wish to remain outside the 'core'.

Additionally, through the enhanced cooperation procedure, which allows for Member States to move forward with an initiative in an area if it is not possible to achieve unanimity, there is the potential for further splintering at the EU level. The procedure as outlined in the Treaty foresees that a qualified majority of all Member States have to agree to allow enhanced cooperation to move

forward. All Member States will then take part in the following discussions, but the final vote on the final legislative text will only be taken amongst participating Member States. Although a possibly valuable form for cooperation, the enhanced cooperation procedure could create new layers of complexity and differing market conditions across the Internal Market.

A useful example is the enhanced cooperation on a Financial Transaction Tax (FTT) which was initiated by eleven Member States in the autumn of 2012 after it was deemed impossible to achieve an agreement amongst all Member States on the Commission's proposal on a European-wide FTT. Although the legislative process is still on-going at the time of writing, major challenges have already surfaced. The FTT as proposed will have substantial extra-territorial impact on institutions and financial activity in Member States not participating in the cooperation. The process has also been difficult as there was not a legislative proposal available at the point when all Member States were to approve enhanced cooperation, which meant that Member States had to make an uninformed decision. Also, the new proposal for an FTT through enhanced cooperation was not followed by a new impact assessment, particularly of its impact on non-participating Member States, which undermines the evidence based approach to legislative proposals. This experience of the FTT is a worrying signal of potential further integration within the Internal Market. It is of outmost importance that enhanced cooperation does not undermine the value of the Internal Market to businesses and consumers seeking a consistent and predictable Internal Market in which to operate. The procedure must be used in a way that ensures that non-participating Member States are not unfairly impacted by legislation on which they do not have a vote.

Centre for European Reform

Centre for European Reform Contribution to the UK Balance of Competences Review: the Internal Market Synopsis

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?

There is no threshold beyond which the removal of trade barriers becomes ineffective, at least in economic terms. Barriers to trade are numerous, and eliminating them is a potentially limitless process. Thus, a truly internal market may only arise in a highly centralised nation-state. Once countries have cut tariffs to zero, import quotas can go, then goods safety standards can be harmonised. Free labour and capital movement allow the two main elements of the production process to move to the places where they may be most productively deployed. A completed single labour market would have common qualifications, pensions, and unemployment insurance. Tax differences distort trade – especially consumption and corporate taxes – and so a 'completed' internal market would harmonise tax rates.

It is more useful to think about the European single market as a continuous bargaining process between member-states, who want both the growth in trade that arises from integration and also regulatory sovereignty – but must choose. The degree of integration reflects how far nation-states are willing to go. Negotiations between nation-states will not arrive at a magic formula that perfectly balances national regulators' knowledge of local markets and firms, democratic accountability, and trade opening. Trade-offs and deals, based upon member-states' perceptions of their interests, predominate.

There is, no doubt, poorly drafted and economically costly regulation that emanates from Brussels, and some of it is more illiberal than Britain would choose. Much employment legislation probably imposes more costs than it confers benefits. But the single market's bargaining process means that losses must be set against gains. No 'Goldilocks' formula for a perfectly functioning market is available.

Has the bargaining process delivered much trade? And at what regulatory cost? Unfortunately, an accurate cost-benefit analysis of single market legislation is impossible. There are over 3,000 single market directives and regulations in force, each of which gives benefits to producers, workers, or consumers, as well as imposing costs on them. European Court of Justice rulings add to the body of single market law. And its costs and benefits vary by member-state, because national governments are free in many cases to strengthen EU regulations, by adding rules as they are written into national statute. Some have attempted to quantify the costs incurred by the British economy by EU regulation. We should be very wary of these estimates, for two reasons. First, they are based on the UK's impact assessments, which mostly do not put a number on the benefits. Second, they do not evaluate the counterfactual: would regulation imposed by British authorities be less costly?

However, various empirical analyses have been conducted to examine how much extra trade the single market elicits. One is the 'gravity model', which establishes how much trade one might expect between countries, given the size of their economies, their distance from one another, and other factors like a common language. If EU countries trade with each other more than the expected amount, this means the EU's single market and, to a lesser extent, the euro are responsible. The UK Treasury estimates that the EU's internal market as a whole – customs union, four freedoms of

movement, and removal of non-tariff barriers – has boosted trade between EU members by 38 per cent of GDP. The Treasury researchers found a much smaller impact on Britain than for the EU as a whole – it led to an increase in trade of around 7 per cent of GDP (UK Treasury, 'EU membership and trade', 2005). The European Commission estimates that the single market programme from 1992 produced around 2 per cent growth in EU output. Facing greater competition, companies cut margins by around 1 per cent. Productivity in labour, capital and land use increased by half a percentage point (European Commission, European Economy Economic Papers, No 271, January 2007). Other estimates offer similar results. The economist Carsten Fink found that services trade was one-third higher in the EU than elsewhere (Carsten Fink, 'Has the EU's Single Market program led to deeper integration of EU services markets?', Sciences-Po, 2009).

Yet trade is not the only measure of integration. Trade is good in itself, as it gives buyers more choice of cheaper or different goods. But trade also puts competitive pressure on indigenous firms, and gnaws away at profits, putting pressure on managers to use capital and labour more productively. One way to measure this process is through price convergence: weak competition leads to divergences in prices across the EU, as incumbent firms can sell at high prices without fear of losing market share to foreign firms. Price dispersion has been falling quickly since 2004 in the accession member-states in Central and Eastern Europe, as they have integrated with the west. But prices have been converging much more slowly in the 15 western and Nordic member-states, falling from an average variation of 14 per cent in 2001 to 13 per cent in 2010 (John Springford, 'How to build European services markets', CER, 2012). A related indicator, the 'markup' difference between firms' costs and the prices they charge, shows that the single market in goods is far more integrated than that of services. Markups in manufacturing have fallen in the last two decades, while those in services have grown (Harald Badinger, 'Has the EU's single market programme fostered competition? Testing for a decrease in markup ratios in EU industries', Austrian Central Bank, 2007).

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?

If one sees the single market as a political bargain, as opposed to an economic policy designed by technocrats, then these actions are necessary to settle a deal. Some EU environment, social and employment policies may not be economically necessary, but act as a political *quid pro quo* for market opening. These policies arise from some member-states' fears of social and environmental 'dumping'. They argue that firms in less-regulated member-states may receive a competitive advantage with more open trade, because the firms' costs are lower if they pollute the environment or fail to protect their workers.

The single market operates by creating trust between national governments, businesses, workers and regulators. French trade unions, for example, fear that producers based in Central and Eastern Europe will enter French markets, taking French jobs away, because labour costs are lower. So, they demand a social and employment 'floor' guaranteeing a minimum level of labour rights. Similarly, some member-states fear that without strong anti-pollution rules, those countries with less onerous protections would have an advantage – they could use cheaper, but more polluting energy sources, for example. These minimum standards allow countries to accept the free flow of goods and services, people and capital, with less fear that liberalisation will lead to lost jobs and falling wages for some, as production shifts to countries with weak labour and environmental protections.

From a purely economic perspective, most economists have found that global growth in trade has had a small but detrimental impact on wage inequality, which has been growing throughout the developed world since the 1980s. But it is unlikely that the single market had much to do with this. Trade with countries with cheaper labour or more lax regulations has an impact on less-skilled workers at home. But the majority of trade in the EU is conducted by the rich countries in the west of the continent, which have similar levels of development, and labour and environmental protection – compared to the difference between Britain and China, for instance. Moreover, the impact of trade on inequality is small, compared to technological change: workers' skills have been replaced by machines and software, putting far greater downward pressure on their wages than low-cost production in other countries.

This suggests that environmental, social and employment protections at the level of the 27 are not really necessary for the single market to improve most people's lot. However, the rules are not especially onerous. The EU demands no minimum wage. And it is likely that many of the regulations protecting air, land and water would be replicated by the UK if it left the EU.

What is the right balance between harmonisation and mutual recognition? What evidence is there that harmonisation has worked well or badly?

Do EU regulations encourage trade between its members, while tying up Britain's domestic economy in red tape? This argument would be persuasive if two conditions are met. First, it would hold if EU institutions aligned member-states' regulations by making them identical – so called harmonisation, rather than allowing states to recognise each others' regulations – or 'mutual recognition'. Second, if, in the process of aligning national regulations, EU institutions made rules stronger, leaving Britain's economy more heavily regulated.

Is there too much harmonisation? Some single market legislation takes the form of regulations, which have direct effect, and replace all pre-existing rules on member-states' books. But most EU trade is conducted under the aegis of mutual recognition or directives (which member-states must implement, giving them some leeway, and which leaves them to enforce the rules).

While this means that the majority of new regulation probably comes directly from EU institutions, or is enacted by member-states in response, it also leaves a fair degree of discretion to member-states. One-fifth of goods are traded under the mutual recognition principle, without the need for a directive (Jacques Pelkmans and Anabela Correia de Britto, 'Enforcement in the EU Single Market', CEPS, 2012).The majority of the other goods markets are governed by so-called common objectives – whereby the EU sets common principles and minimum standards, and member-states are free to vary rules within bounds, while allowing goods produced abroad to enter their markets without restriction. Services, which make up 70 per cent of economic activity, are still largely regulated at the national level (although the 2006 services directive made member-states get rid of rules that unfairly hampered foreign businesses from entering their markets). Member-states still have broadly discretionary regulatory powers in public services, health and safety, environmental regulation, labour markets and professional qualifications.

Moreover, it should not be taken as axiomatic that harmonisation is a bad thing – or just a way to create a minimum floor of regulation so that mutual recognition can operate. Where consumers need a product to be safe and to do what its manufacturers say it will, it makes sense for the EU to

issue harmonised rules so that companies across the continent compete on price and quality – and the consumer benefits. Various studies have shown that harmonised standards raise trade in manufactures (see, for example, Marc Vancauteren and Daniel Weiserbs, 'Intra-European trade of manufacturing goods : An extension of the gravity model', 2005). This may be because they become more trustworthy. Standards can also reduce costs for producers. While they may have to change the product to meet the standard, they save on consumer research and marketing, to work out what level of quality foreign consumers are used to.

In services markets, the mutual recognition principle could be deployed to a greater extent. The services directive removed many national regulations that stopped foreign companies from entering. But many remain: the owners of German accountancy firms, for example, must be the accountants themselves, which makes it difficult for foreign companies with different ownership structures to enter German markets. And many member-states have long lists of regulated professions, and do not recognise other nationals' qualifications or, if none are required in other countries, their experience. However, opening EU services markets will also need more harmonisation in some sectors, such as retail financial services. Consumers cannot appraise the quality of the service at the point of signing up to a financial product. Harmonised rules about consumer information, what products can and cannot be sold, and how consumers are paid back if the service is poor will be necessary for deeper integration to be achieved.

Does the EU impose more burdensome regulation than the UK would choose? Many rules do get pushed through the Council and Parliament with the single market label, simply because single market decisions are taken by qualified majority voting, and do not require unanimity. Social and employment law, such as the working time directive, the part-time workers directive and the temporary workers directive, do increase the regulatory burden in the UK. Britain would probably not give workers the right to demand restricted hours, because they could simply refuse to take the job in the first place. But they are currently able to opt to work for more hours if they would like. Likewise, it would probably not offer such strong employment rights for part-time and temporary workers.

However, the number of part-time and temporary workers is growing quickly, as economic stagnation continues – which suggests that the cost of the directives is not insurmountable for employers. More broadly, if EU regulation were onerous, the OECD would not rank the UK as one of the least regulated developed economies. In product markets, it is the least regulated economy in the OECD. Its labour markets are third-least regulated.

Why is the internal market so much deeper in some areas than others? How effective has implementation of the internal market been?

The EU has integrated faster than the rest of the world since the single market programme began in 1992. However, it still has a long way to go to match the degree of integration achieved by United States – the continental market *par excellence*. Trade between the American states, as a percentage of their GDP, is 70 per cent higher than the EU-15. In 2009, the EU-15 traded 55 per cent of their output, while the American states traded 93 per cent.

That difference is down to the US's much more integrated services market. The large majority – three-quarters – of the growth in trade within the EU has come from rising trade in goods. There is

still significant ‘home bias’ in services: citizens of the EU-15 buy 94 per cent of their services from firms based at home. Services make up 70 per cent of the EU’s output and employment. And they are becoming increasingly tradable: the internet allows retail, for example, to take place without buyer and seller coming together. The same is true of design and architecture, engineering services, advertising, accounting and consultancy, among other sectors.

The 2006 services directive sought to remove national restrictions on services trade and foreign direct investment. But it did not go far enough. Across the EU, the average number of restrictions on establishment or cross-border provision fell by a third – the majority of barriers still remain (John Springford, ‘How to build European services markets’, CER, 2012). The directive left national regulators with too much discretion in defining services trade barriers. This has meant that the total reduction in barriers to entry has not been as large as the authors of the directive hoped.

In network services such as energy, broadband internet and transport, integration has been slow (Philip Whyte and Simon Tilford, ‘Lisbon Scorecard X: the road to 2020’, CER, 2010). These sectors need cross-border physical infrastructure for a single market to operate. For example, a European energy market requires major investment in cross-border interconnections, as well as backup storage for renewable power: if electricity companies in Germany generate surplus power, they can only sell it to Poland if enough electricity lines cross the border. A cost-effective renewables system would need solar power in the Mediterannean region to be transported north, and wind and wave power transported from Northern Europe to the south, as both energy sources are intermittent (Stephen Tindale, ‘Connecting Europe's energy systems’, CER, October 2012). In order to create a European electricity grid, the Commission estimates €1 trillion of investment is needed. But the EU’s capital commitment is unlikely to be enough. The ‘Connecting Europe’ investments were cut from the proposed figure – €50 billion – to €29.2 billion in February 2013’s EU budget deal (European Commission, ‘Conclusions on the Multiannual Financial Framework’, February 2013). The EIB’s project bonds for infrastructure investment will bring another €4 billion (EIB, ‘EU-EIB Project Bond Initiative launched with start of pilot phase’, November 2012). The EU hopes that this public money will bring in private capital, but member-states have different ownership structures, systems of subsidy, and rules about infrastructure coverage, which act as a deterrent to investment in cross-border infrastructure.

Alongside the single market’s partial construction, some problems with the enforcement of existing legislation remain. Much single market legislation takes the form of directives, and requires member-states to implement them. Member-states often drag their feet on the implementation of directives, or ‘gold-plate’ them to make them stronger – and may in so doing set up barriers to trade. According to the Commission’s annual checkup of the single market, Sweden, Malta, and the Netherlands take longest to transpose new rules. Belgium, Poland and Italy have the largest backlogs of directives yet to make it into national law. Italy, Poland and France are the worst gold-platers.

Member-states have also frustrated the Commission’s attempts to police national legislation to ensure it accords with EU law. The Commission has proposed that member-states hand over ‘correlation tables’ which show how much existing national rules diverge from EU directives, but has been rebuffed in some cases. National courts have defined various aspects of the e-commerce directive differently, which has forced companies seeking redress to take court action in several member-states at once. The ‘SOLVIT’ system gives regulators, businesses and people an informal

resolution mechanism for difficulties when migrating and doing business in another country. SOLVIT centres in each country put businesses and people in touch with regulators, to get them to amend rules that constrain freedom of entry, or offer ways around them. But the numbers of businesses using the system has been disappointing. In 2011, less than 200 cases were resolved through SOLVIT (European Commission, 'Making the single market deliver', 2011).

However, two reforms have improved implementation and enforcement, and could be built upon. First, directive 98/34 makes member-states submit any new regulation in goods markets to the Commission, which checks that it does not restrict imports from other member states. If it does, the Commission asks the member-state to amend the draft regulation. The Commission can also delay the national regulation for up to a year, which encourages national regulators to think about the impact on the single market beforehand, if they want speedy passage. The EU could consider extending this to services regulation, to prevent the gains that have been made from the services directive from being undone by new rules at the national level.

Second, the European Parliament's internal market committee has involved national regulators at an early stage in the legislative process, to tackle implementation problems before the directive comes into force. In the same spirit, the services directive was passed after national regulators evaluated each others' rules: by comparing notes, and with a little peer pressure, regulators removed much that did not work or was unnecessary. Forming colleges of national regulators to help write major EU directives would be the obvious next step. It would help to head off implementation problems. And it would encourage national regulators to trust each other, which would make it easier to pass legislation based upon the principle of mutual recognition.

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?

The British government's 2006 Davidson Review found no evidence that the UK tends to regulate more than the minimum. Previous studies that made this assertion counted the difference between the number of words in the original EU legislation, and the number of words that ended up on the member-state's rule-book. But member-states have different legal and regulatory systems, and so such differences are inevitable (HM Treasury, 'Davidson review of implementation of EU legislation', 2006).

As mentioned elsewhere, the OECD consistently finds the UK to be one of the most lightly regulated economies in the developed world. The World Bank ranked Britain seventh in its most recent scorecard of the ease of doing business in different countries (World Bank, 'Doing Business 2013').

City of London Corporation

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

Internal Market: Synoptic Review

response by the City of London Corporation
March 2013

Introduction

The City of London welcomes the Balance of Competences Review as part of the wider European debate about the need to modernise, reform and improve the EU in face of the collective financial, economic and social challenges. As the EU Internal Market Commissioner, Michel Barnier commented in November 2010 "the single market is more and more necessary and less and less popular". A serious and constructive debate about the benefits of the Single Market, and how it should be implemented, is therefore overdue.

The original goals of the internal market attempted to create a more efficient European economy by removing the internal barriers to trade and reducing the cost of doing business. By achieving economies of scale business costs are reduced, enabling greater market competition and specialisation. The EU Commission calculated these benefits to be worth an extra 2.2% of Europe's GDP and 2.75 million extra jobs between 1992, when the Internal Market entered into force, and 2006. Of the 6.5 million people working in financial services (and the 3.3 million working in professional services), many are concentrated in financial hubs which are spread across the EU.[i] This requires open, competitive and efficient markets, in which the ability to move people, capital and services across borders without encountering legislative, fiscal and regulatory barriers is essential for both consumers and firms. The increasing internationalisation of the City of London, an asset which serves the whole European economy, demonstrates these benefits in action. The Internal Market has been a major asset to the UK's financial services sector, while in turn the City of London has played a significant role in spearheading the development of a more integrated and cross-border financial market place.

However, we need to take stock and review the overall effectiveness of the Financial Services Action Plan. Among the successes, we have seen progress in areas such as securities, where measures such as UCITS and MiFID are well established. The MiFID review will see regulation extended to cover a wide array of financial instruments in fixed income markets. In the field of insurance regulation we have seen the IMD, and a series of directives covering motor

[i] The UK financial services sector in the EU, IRSG, 2012

insurance, life and general insurance. This will be accompanied by Solvency 2 in 2015. In payments, the Euro has made markets more transparent, reduced cross-border transaction costs and paved the way for other fundamental internal market reforms such as the creation of the Single European Payments Area (SEPA).

It is important to understand that the creation of an internal market is a long term project and further measures, including legislation, are required in order to complete the single market. The financial crisis has highlighted areas where deeper integration is required in the banking sector such as cross-border supervision and crisis resolution. The issue of market infrastructure (which was not addressed in the first FSAP prior to 2005) has also become a much more pressing requirement. In other areas, such as mortgages and pensions, much slower progress has been achieved, for a variety of reasons, meaning these markets remain largely fragmented between Member States. The eurozone crisis also highlights the need to consider the single market in the context of a multi-currency EU. The package of measures aimed at protecting the single currency (banking and fiscal union) needs to include adequate safeguards to protect the integrity of the single market as we move beyond the crisis.

This need to protect the single market from future challenges and enhance it, is critical at a time when Europe is "confronted with rolling waves of low-growth-or-no-growth, mass unemployment, excessive debt, and an ageing population" as the President of the European Council, Herman van Rompuy, commented recently in a speech in the City of London.[ii]

Many studies have revealed how continued fragmentation within Europe's capital market leads to lower levels of market efficiency and higher costs to end-users when compared with other major economies such as the United States. This has a negative impact on European corporates raising investment finance and households when accessing everyday financial services or saving for retirement. Europe's ability to deal with the challenges of creating jobs, growth and funding retirement will depend on creating a deeper and more efficient capital market free of any barriers to capital movements.

It is also vital given the lack of growth within Europe that the internal market remains open to the opportunities for growth in emerging markets. Achieving greater efficiency and reduced transaction costs within the single market are necessary to ensure the long-term competitiveness of Europe's economy. So too is the need to ensure that effective third country regimes are put in place which do not hamper market access between Europe and the rest of the world. Nearly two-thirds of the UK's trade surplus in financial services is dependent on trade beyond the single market. As measures such as the Financial Transaction Tax (FTT) clearly illustrate, policymakers need to give sufficient regard to the international character of financial services and markets as a key factor in shaping future single market legislation in order to deliver the necessary benefits to EU consumers and firms.

[ii] Speech to the Annual Conference of Policy Network, given by Herman van Rompuy, President of the European Council, February 2013

Question 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?

The Treaty of Rome (1957) sets out the essential elements of the Internal Market based on the four economic freedoms: the free movement of goods, freedom to provide services, free movement of capital and free movement of people. The operation of these freedoms relies on the creation of a common set of rules applied across all 27 EU Member States. The EU's "passporting" arrangement enables firms to operate on a cross-border basis anywhere within the single market either through the freedom to establish physical operations or to provide services at a distance.

The first of these freedoms was established with the creation of the European Customs Union in 1968. Progress in other areas notably in capital markets has been much slower. It was not until the Single European Act, SEA (1986) that a deadline of 1992 was set for the full completion of the single market. The SEA also introduced the concept of Qualified Majority Voting (QMV) which has enabled progress to be made on large areas of single market legislation covering financial services. Since 2000, there has been a concerted push by the EU to realise the creation of an Internal Market for financial services and capital markets through the Financial Services Action Plan (FSAP). The essential elements of the FSAP cover banking and payment services, insurance, securities, asset management, pensions and occupational retirement provision, and efforts to address financial crime.

As the recent financial crisis illustrates, the creation of a single market for financial services is still a work in progress particularly in the area of market infrastructure. It is still too early to judge the effectiveness of various directives over the past five years. However, it is clear that the outcomes from some of the earlier FSAP directives have fallen short of the stated objectives largely as a result of the differing approaches to harmonisation, which has lead to uneven transposition by national authorities, including gold-plating (these issues are highlighted in response to question 8).

Qualifying the impact of the single market on a macroeconomic level is very difficult given the need to disentangle the impact of other initiatives adopted at the national level (20% of the UK's financial regulation is still derived from domestic initiatives) as well as the significant market impact of technological change which have helped to drive efficiency and innovation in market infrastructure and across a range of financial products and distribution channels.

However, efforts to better evaluation of the Internal Market's benefits will help to assess the effectiveness of current legislation and whether the current balance of competences is appropriate. It would be sensible to attempt to measure the Internal Market's contribution towards meeting the Europe 2020 Strategy. Efforts to reduce poverty, boost R&D, and raise Europe's employment rate from 69% to 75% (key targets under the 2020 Strategy), will require deep, liquid capital markets able to inject the necessary finance into Europe's companies, notably within the high-growth SME sector where many firms currently struggle to access

credit. Standard & Poor's has predicted that the corporate sector is faced with funding gap of €35 trillion globally, of which EU companies account for one quarter of the total. The current retail "customer funding gap", which is the sum of money needed to finance long-term lending to consumers and an indicator of the size of the mortgage market, stood at £247bn at the end of 2011.[iii]

There are several areas in which the economic benefits of the Internal Market could be measured:

- **Market size:** a larger and deeper capital market helps to meet the financing needs of Europe's firms (through equity and credit markets) as well as financing credit to households, which in turn delivers higher levels of investment and job creation;
- **Inward investment**: the ability of firms to access an internal market of 500 million consumers has boosted made the UK more attractive to inward investment both from other EU Member States and third countries;
- **Transaction costs:** cost efficiencies arising from economies of scale will help to reduce transaction costs for businesses (e.g. fewer foreign exchange costs, more efficient payment systems) as well as reduce consumer prices;
- **Competition:** greater competition between European companies will result in greater choice and lower prices for end-user;
- **Trade volumes:** the removal of barriers to trade should encourage greater volumes of trade in both goods and services both within the Internal Market and with third countries

While these macroeconomic benefits provide an indication of how the Internal Market has delivered real benefits to the EU, we need to ensure that future regulation delivers the intended benefits through adopting a more granular understanding not just of the benefits but also of the compliance costs of each piece of legislation (through more robust impact assessments). This is addressed in response to question 4.

Question 2: To what extent is EU action in other areas – for example, environment, social and employment – necessary for the operation of the Internal Market, as opposed to desirable in its own right?

While the European Union has made great strides in removing barriers to cross-border trade in financial markets, there are numerous policy areas in which further integration could assist in the operation of the Internal Market for financial services.

Variations in taxation at the product level are critical in retail financial services markets given the widespread use of tax-incentivised product wrappers in the long-term savings market. The tax treatment of cross-border fund mergers in the UCITS market is one specific example of where national taxation regimes continue to hinder the Internal Market. A report published by

[iii] IRSG and the CBI, Wholesale financial markets paper

Ernst and Young in 2012 revealed that the effectiveness of UCITS V was being undermined by concerns among Europe's fund managers that cross-border fund mergers would have tax and accounting implications.[iv]

Harmonised employment, direct taxation and social security systems would be necessary for the development of a cross-border private pensions market. The lack of cross-border portability of pension contributions into national social security schemes by migrant or ex-pat workers results in workers amassing what may result in trivial pension pots in several countries over the course of their working lives.

Further progress in the areas of accountancy (where the EU is already considering changes to the Accounting Directives) and corporate governance (where the EU Corporate Governance Framework is under development) will also play an important role in further developing the single financial market.

Question 3: How have the EU's mechanisms for delivering an Internal Market worked?

As mentioned in response to other questions we believe that on the whole the EU's mechanisms have worked well. The growth of QMV has made progress towards an internal market more achievable while the implementation of the Lamfallusy reforms in 2001 has meant that EU regulation is now more responsive to changes in markets. One concern with this process has been the practice on some occasions to deal with detailed rule-making in the Level 1 Directive which might have been better dealt with in the Level 2 Regulations, as was the case with Solvency 2. The more fundamental point in recent years has focused on the effectiveness of the Level 3 Committees and their ability to ensure consistent implementation of EU rules across the Internal Market. The creation of the new ESAs in January 2011 and the move towards a single European rulebook will in theory help to address some of these concerns in future years.

However, the ongoing example of UCITS illustrates the nature of the problem we currently face. For example, in the fund management sector we have witnessed five UCITS directives since 1985 yet the market is still populated by funds of sub-optimal size: some 54% of UCITS funds have less than €50million (AuM). Consequently, important economies of scale remain unexploited and the end investor bears unnecessarily high costs. Research has estimated that costs within the fund sector could be annually reduced by €5-6 billion while another study in 2006 highlighted how a reduction in operating costs of European investment funds to levels experienced in the US would boost nominal investment returns by 3%. UCITS V represented the latest attempt to tackle these problems through the creation of a management company passport and arrangements for cross-border master-feeder funds. However, uneven implementation at the Member State level has already led to concerns about the ability of the directive to generate the desired goals.

[iv] Financial Times, 10 June 2012

The UCITS example highlights the fundamental question about the need to apply better impact assessments both ex ante and ex post to assess both the likely and actual impact of regulation on firms and consumers, in line with the requirement already in place in the UK to conduct a full regulatory impact assessment setting out a detailed cost-benefit analysis before embarking on legislative action.[v] This would better ensure that all regulation meets the proportionality test.

Other principles to which policymakers should be obliged to give due regard include the desirability of facilitating innovation so that market participants are not prevented from launching new financial products and services; and the need to consider the international character of financial services and markets and the desirability of maintaining a competitive position particularly in markets where there is intense global competition. This is particularly important for the UK given that the City of London accounts for 70% of international bond trading, 50% of ship broking, 20% of global hedge fund assets and 37% of foreign exchange trading.[vi] Finally, the need to consider the impact on competition between firms should also be applied more rigorously. The use of competition as a policy tool for addressing perceived market failures has been largely absent from the current approach to developing the Internal Market.

Question 4a: Why is the Internal Market so much deeper in some areas than others?

The development of the Internal Market is itself incremental and may be dictated by various factors not all of which can be addressed simply through regulation, for example, domestic political considerations, differences in culture and language, and disparities in regional economic development. The 'depth' of the Internal Market for financial services will vary depending upon the specific characteristic in each market; such as whether it is retail or wholesale; the impact of technological change, the execution risks associated with the complexity of individual financial products and distribution channels; the financial capability and sophistication of the end-user; the extent to which market activity is carried out domestically or on a cross-border basis; and the potential for negative externalities to arise when markets fail, either in the shape of systemic risks which could impact on the wider economy (such as the availability of credit) or the potential liabilities on taxpayers (arising from the need for State Aid for supporting systemically important financial institutions).

Many of the initiatives to deepen the Internal Market are inevitably shaped by events. The financial crisis has highlighted how given the public utility nature of some aspects of financial markets, there has now been a reappraisal of the need to deepen the Internal Market in the areas of cross-border crisis resolution and regulatory supervision. Reforms such as EMIR, CRD IV, MIFID II and Banking Union are all responses to the need for deeper Internal Market regulation which is capable of protecting consumers, markets and taxpayers.

[v] The principles of good regulation, FSA website, 13 February, 2013
[vi] Global Financial Centres Index, March 2012

Question 4b: How effective has implementation of the Internal Market been and what do you feel has helped or hindered the implementation of the Single Market?

The Internal Market has enjoyed numerous successes to date in removing barriers. If one looks at the extent to which financial services are traded on a cross-border basis then it is clear that Europe benefits considerably not just from the operation of the Internal Market in financial and professional services, but also directly as a result of the position enjoyed by the City of London, which has successfully leveraged its position within the Internal Market, to become the world's leading financial centre.

The growth of the European internal market place has been hugely significant to the growth of the City of London during the past decade, as London has been able both to channel investment across Europe as well as to create a deep pool of capital and expertise for Europe's businesses. To give an indication of the scale of liquidity provided by the UK financial sector to the rest of Europe, the Bank of International Settlements estimates that British banks held over $3.9 trillion of outstanding loans to businesses and entities in the EU at the end of 2011.[vii] This included close to $500 million being lent to countries in southern Europe.

There have been almost 300 listings by European firms on the London Stock Exchange since 1980 raising over €9 billion. Of this figure, over €2 billion has been raised by Dutch firms, €4.2 billion by Irish firms, €700 million by Cypriot firms and €650 million by Belgian firms, all of whom benefit from accessing deeper cross-border capital markets allied to expertise in ancillary professional services such as accountancy and legal services.[viii]

Efforts to improve further the implementation of the Internal Market – through improving the policymaking process, supervision and transposition of EU legislation – are addressed in response to Question 3 and 8.

Question 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?

The UK's decision to opt out of policy areas, including the Eurozone and Schengen, clearly will have some impact on the operation of the four freedoms within the UK, for example, in the area of foreign exchange transaction costs or visa requirements. The City of London will be making a more detailed assessment of these impacts during the course of our submission to the consultation examining the Internal Market for capital later in 2013.

[vii] The International Banking Market, Table 7a, The Bank of International Settlements, 2012
[viii] Europe Economics, The value of Europe's international financial centres to the EU economy, July 2011

Question 6: Has the Internal Market been helped or hindered by the UK involvement in other groupings, such as the G20, the G8, the OECD or the Commonwealth?

The UK is unique in terms of the scope of its involvement in multilateral organisations which includes the EU, G8, G20, FSB, OECD and the Commonwealth. This seat at the table in all the major bodies responsible to directing policies with regard to financial markets and international trade, can only have had a positive impact on the creation of the Internal Market. The UK chairmanship of the G20 has demonstrated how the UK has been able to influence the international debate in ways which has been helpful to informing subsequent policy debates in the EU. The UK is now leading the international debate on reforming corporation tax systems to deal more effectively with the taxation of intangibles and intellectual property, in a way which will ultimately shape how corporates organise their tax arrangements within the single market. The creation of the G20 and the enhanced role of the Financial Stability Board (FSB) directly inform the work programmes of international standard setting bodies such as IOSCO and OECD. The FSB work stream priorities focus on matters such as improving the understanding of cross-border and domestic financial interconnectedness, improving data and understanding of risk in non-bank financial institutions, and improving the data available on real estate prices and government finance statistics all of which is conducive to a better functioning Internal Market.

Question 7: To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

Given that the City of London has been able to establish itself as the world's largest financial centre, there is little evidence to suggest that the Internal Market has hindered the UK's ability to trade with countries outside the EU. Indeed, taken as a whole, the EU is the world's largest exporter of financial services with extra-EU exports of €59 billion at the end of 2010, which accounts for around one-quarter of global financial services exports. Half of the international cross-border lending originates within the EU, valued at around €18 trillion.[ix] The development of UCITS as a globally recognised product wrapper demonstrates how regulatory innovations within the Internal Market have helped to increase the cross-border marketing of investment funds to third countries.

The Internal Market has also helped to increase inbound trade and investment. Market access to the Single Market has been cited as one of the major reasons for Foreign Direct Investment (FDI) into the UK for foreign-owned institutions with $570bn being invested in the UK by foreign companies between 2006 and 2010. Currently, 249 of the 325 banks located in London are foreign-owned. Firms invest in London because they know that they can benefit from access to 27 markets via the EU passport for financial services.

This discussion of course raises the important role played by the EU in negotiating free trade agreements with third countries and the importance of opening up market access to growing markets in the emerging economies. The Free Trade Agreement (FTA) signed with Singapore in

[ix] TheCityUK, Key Facts about the EU financial and professional services industry, June 2012

December 2012 represents potentially the first of many such agreements with high growth, emerging markets in Asia and Latin America. However, there is a need to examine whether EU trade negotiators should follow the example of their US counterparts in working more collaboratively with the private sector when negotiating FTAs in order to achieve even greater liberalisation in the area of financial services and banking.

Question 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?

Super-equivalence (gold-plating) comes in many forms including early implementation of new rules, adopting additional or stricter rules, as well as widening the scope of directives. Given the size and complexity of the UK's financial services sector it often requires a differentiated regulatory approach to deal with market risks (and market failures) which might be highly specific to the UK. The Internal Market should not be applied in a one-size-fits-all approach. There are, as a result, some examples of super-equivalence which have been welcomed by the market such as the decision to extend the Market Abuse Directive (MAD) to exchange regulated markets and to the lower thresholds for the application of disclosure of major shareholdings. In this case, the adoption of higher standards was deemed to contribute to greater market integrity which can be beneficial to the City of London's position.

However, this should not detract attention from the broad market concerns about the additional compliance costs of super-equivalence. The Davidson Review (2006) identified that there was a clear sense that the FSA gold-plates EU directives and that this arises to a greater extent than in other EU countries.[x] In 2011, the Financial Services Practitioners Panel survey revealed that over 80% of firms felt that the FSA brought EU directives into UK regulation in more detail than necessary.[xi] In the case of MiFID alone these were calculated by CRA to be in the region of £315-375 million in one-off costs, and an extra £103-123 million in ongoing costs[xii], which demonstrates clearly the need to change how the UK transposes EU directives.

Some of these concerns could be addressed through following existing guidance set out by the UK Government's Better Regulation Executive which calls for smarter regulation and early engagement by UK policymakers in the development of EU directives in order to reduce the risk of any divergence between existing UK practice and future EU regulations.[xiii] Equally, the creation of the European Supervisory Authorities (ESAs) on 1 January 2011 presents a major shift in how EU rules will be transposed at the national level and how those rules will be supervised. The ESAs will aim of improve the quality and consistency of national supervision, strengthen oversight of cross-border groups and establish a European single rule book

[x] Davidson Review - Final Report: Implementation of the EU legislation, November 2006
[xi] Financial Services Practitioner Panel, 6th Survey of the FSA's Regulatory Performance, February 2011
[xii] The City of London Corporation, TheCityUK and Charles River Associates, Super-equivalence in the UK, August 2011
[xiii] HM Government Better Regulation Executive, Reducing Regulation Made Simple: Less regulation, better regulation and regulation as a last resort, December 2010

applicable to all financial institutions in the Internal Market. The interaction of these bodies with the "judgement-based" approach of the newly created Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) in the UK is another factor which we will need to take into account as the new regulatory architecture takes shape.

Question 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?

In order to realise the benefits of the Internal Market, EU policymakers must give sufficient regard to the globally competitive nature of capital markets. It is worth considering that the UK's trade surplus in financial services is dependent largely on trading with countries outside of the EU: 25% of the surplus comes from the United States with 38% coming from the rest of the world. Much of this trade is highly mobile and subject to relocating elsewhere if the tax and regulatory environment within the Internal Market becomes unfavourable. It is particularly important that Internal Market rules do not hamper the City of London in becoming a world leader in innovative new markets such as RMB trading or Islamic finance.
MiFID 2 is also a concern within this context , where we are faced with the danger of a one-size-fits-all approach being applied to pre-trade disclosure requirements in spite of widespread market concerns about the market impact. A recent survey by the Association of Financial Markets in Europe (AFME) revealed that 56% of buy-side market participants thought that the current proposals for pre-trade transparency requirements markets would reduce liquidity across the EU's capital markets while 36% of the smaller buy-side participants thought the proposals would also lead to higher transaction costs, which would ultimately make the cost of raising capital in Europe more expensive.[xiv]

The resolution of the Eurozone crisis constitutes by far the greatest current challenge to the Internal Market. The need to defend the Euro will lead to both a broadening and deepening of the Internal Market through efforts to extend the range of free market competences, particularly in the area of taxation, as well as undertaking fundamental changes to the supervisory arrangements governing how the Internal Market is regulated with the creation of a single banking supervisory body governing cross-border systemically important banks. The role and powers of the newly created European Supervisory Authorities (ESAs) created in 2011 will come under question as the supervisory role of the ECB expands.

Taken together this package of reform represents a major pooling of national sovereignty in areas of policy competence currently reserved for Member States. The application of banking union which excluded the UK would present potential risks to the integrity of the Internal Market. Banks in the UK hold around £1.4bn in euro denominated assets, suggesting the UK has a very large interest in the final form of any banking union, and the ability of the UK to be a 'gateway' to European markets may come under threat if additional requirements are brought in over product provision to businesses inside the banking union. One specific example that the

[xiv] Investor survey of fixed income liquidity 2013, AFME, February 2013

ECB has already mooted is forcing clearing houses responsible for euro securities to locate within the eurozone, which directly threatens the City of London's leading status as a euro denominated bond and derivatives trading centre.

The Financial Transaction Tax (FTT) illustrates the danger of pursuing policies which are at odds with the need to secure long-term growth and investment. The proposed 'residence principle', which will apply the tax if any one party to it is based in a participating Member State, means that there is the potential for such negative consequences to hit the UK even though the UK has exercised its right to opt-out of the FTT. Indeed, a study by London Economics was commissioned by the City of London to assess the impact of the FTT on corporate and sovereign debt.[xv] This study illustrates that the cost impact is likely to be greater on non-participating Member States, such as the UK, because debt securities represent a greater proportion of their corporations' capital structures. The London Economics study reveals that the FTT would represent a significant proportion of the one-year return on many types of bonds, and in many cases would constitute greater than the one-year return. In the case of corporate bonds with maturities of 0-2 years, the cost of the FTT will equal 13.6% of returns per transaction.[xvi]

Oliver Wyman has undertaken an impact assessment which shows that the FTT will directly increase transaction cost for all transactions by 3-7 times and by up to 18 times for the most liquid part of the market (FX swaps with maturity less than 1 week account for over 50% of the tax eligible FX cash and derivatives market). The FTT could also cause a relocation of volumes that could reduce liquidity and thereby increase indirect transaction costs by up to a further 110%. A separate report by Clifford Chance illustrates a possible "cascade effect" on debt security transactions suggest that the effective tax rate could end up being nearer to 100bps rather than 10bps.[xvii] The increased cost of capital will impact negatively on both corporate and governments which is likely to hit investment levels and GDP. A study conducted in 2002 showed that a permanent increase of 20bps in the cost of funds decreased business investment by 1.8% and the level of GDP (at constant prices) by 0.5%.[xviii]

As discussed in Question 7, the need to maintain and indeed develop greater access to financial markets in third countries is essential to maintaining levels of market liquidity in the City of London, and therefore access to investment capital across the Internal Market. A number of the proposals for reforming and deepening the Internal Market potentially run counter to this aim. The third country equivalence rules initially proposed under MiFID 2 presented a major potential barrier to corporate finance involving financial institutions in third countries deemed to have less than MiFID equivalent rules in place. Where third country rules are put in place it is important that they are agreed on an objective basis and do not potentially give rise to market protectionism. Equally, the EU must avoid poorly targeted attacks on offshore financial centres (many of which actually have a high degree of compliance with OECD and FATF requirements)

[xv] London Economics, Impact of the financial transactions tax on corporate and sovereign debt, A report conducted for the City of London, January 2013
[xvi] London Economics, 2013
[xvii] Clifford Chance, 'The new EU Financial Transactions Tax: why it seems set to impact financial institutions worldwide, and why legal challenges are likely' Clifford Chance Briefing Note, January 2013
[xviii] London Economics, 2013

as this could have similar impacts on access to the Internal Market via third countries with consequences for market liquidity and investment within the EU. The UK Treasury-commissioned Foot Review conducted in 2009 found that the UK Crown Dependencies made a significant contribution to liquidity in the UK market providing net financing of $332.5 billion in the second quarter of 2009.[xix]

[xix] Final report of the Independent Review of British offshore financial centres, October 2009

Commercial Broadcasters Association

Department for Business, Innovation and Skills

Review of balance of competences between the UK and EU

A response from the Commercial Broadcasters Association

February 2013

CoBA

A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the UK. Our members account for more than 300 television channels in the UK, which represents around two thirds of all UK channels. They are one of the fastest growing parts of the broadcasting sector, increasing investment in UK television content by 30% last year and are now worth £4 billion per annum to the UK economy in terms of GVA.[1]

2. Our members are Discovery Networks (chair), Bloomberg, BSkyB, Chinese Channel, Fox International Channels, NBCUniversal, QVC, SBS Broadcasting Network, Sony Pictures Television, Turner Broadcasting System, UKTV, Viacom International Media Networks, and The Walt Disney Company.

[1] COBA 2012 Economic Impact Report, Oliver & Ohlbaum Associates for COBA, September 2012

Question 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?

1.1 COBA represents broadcasters in the digital, cable and satellite television sector. Our members account for more than 300 television channels in the UK, which represents around two thirds of all UK channels. They are one of the fastest growing parts of the broadcasting sector, increasing investment in UK television content by 30% last year and are now worth £4 billion per annum to the UK economy in terms of GVA.[2]

1.2 COBA members include many of the world's leading multinational broadcasters, with channels across a range of EU Member States. As such they are governed both by UK legislation and regulation and European-level law, notably through the Audiovisual Services (AVMS) Directive.

1.3 Under the AVMS Directive, a channel licensed in one EU Member State may broadcast into another providing it meets standards (this is known as the "Country of Origin" principle).[3] As a result, many COBA members, as well as broadcasting in the UK, obtain non domestic licences through the UK regulator Ofcom to broadcast in other EU markets. This helps promote operational efficiency, as well as simplifying regulatory compliance for industry.

1.4 This has been a key factor in enabling COBA members to base their European operations in the UK, which has resulted in a significant economic benefit to the UK. Last year, COBA commissioned independent analysis to look at the economic impact of its members in the UK compared to their investment in the rest of Europe.[4] The research found that channels broadcasting to other European markets outside the UK are much more likely to be based in the UK

[2] COBA 2012 Economic Impact Report, Oliver & Ohlbaum Associates for COBA, September 2012

[3] Directive 2010/13/EU of the European Parliament and of the Council (Audiovisual Media Services Directive), Article 3 (1)

[4] COBA 2012 Economic Impact Report, Oliver & Ohlbaum Associates for COBA, September 2012

than other EU Member States. As a result, COBA members' investment in the UK is £2.1 billion per year, compared to £287m in the rest of the EU.

1.5 Even when comparing just non UK channels, COBA members are 2.5 times as likely to base their non UK services in the UK than in other EU markets. COBA members operate 127 non UK channels from the UK, compared to 54 channels based in other EU markets.

1.6 We believe this demonstrates the crucial role of the Country of Origin principle in underpinning the UK as a European broadcasting hub, with the resulting benefit to the UK economy.

Question 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?

2.1 We are concerned about two potential threats that could undermine the UK's role as a European broadcasting hub. Firstly, we are expecting debate to begin this year with a view to the eventual next incarnation of the AVMS Directive. This may open up discussion around the role of the Country of Origin principle and, potentially, whether it should be maintained. Abolishing the Country of Origin principle would undermine the ability of broadcasters to license and base their non domestic services in the UK, with the ensuing damage to the UK's status as a broadcasting hub.

2.2 Secondly, we are concerned about moves in some quarters of the EC to promote 'multi-territory' licensing, particularly where this might be done on an obligatory basis. Our members, along with most if not all broadcasters, depend on their ability to license Intellectual Property (IP) rights to the content they commission and finance to different markets and different platforms and services. This is vital in order to monetize those rights and, in so doing, raise the investment that is necessary to fund the creation of those television programmes in the first place.

2.3 This does not mean they do not seek to drive innovation wherever possible – for example, around 15% of UK television viewing is now via time-shifted services on various devices (e.g. PVRs and on-demand services), and this is predicted to rise to 30% this decade.[5] However, broadcasters require an

[5] UK Enters a New Media Age, Presentation by Oliver & Ohlbaum Associates

appropriate amount of flexibility in how they license those IP rights in order to maximize their value. We note that the current regime has allowed COBA members to increase their investment in UK content significantly, with investment in UK television production rising by 30% year on year in 2012. Any moves that would require broadcasters to license the IP rights to the content they finance on a blanket, 'one size fits all' basis across Europe would severely undermine this investment.

2.4 We also anticipate an increasing debate over the appropriate balance between enabling businesses to have reasonable flexibility in developing innovative uses of data on the one hand, and consumer privacy on the other.

Consumers for Health Choice

Department for Business, Innovation and Skills

Review of the balance of competences between the United Kingdom and European Union: Internal Market

Consumers for Health Choice Response

Consumers for Health Choice (CHC) is the leading consumer group working to protect the rights of the public across the European Union on natural health issues, including their choice to use safe and beneficial supplements and other products.

We would like to thank the Department for Business, Innovation and Skills for providing the opportunity to submit comments on the EU's competence on the internal market and we hope the comments that are provided are of assistance.

This consultation response broadly focuses on harmonisation across Europe and the negative impact that this can have on UK consumers.

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?*
CHC represent consumers that welcome many aspects of the internal market, in particular the guarantee that food and food supplements sold across Europe will be safe and well-labelled. Nevertheless, much of the legislation that governs this internal market is unnecessary and leads to the perverse outcome of consumers finding that products that they have long and safely used have been banned, or that there is less information available about them. For example, the Nutrition and Health Claims Regulation has seen, because of a flawed authorisation process, the banning of many well-established claims that are vital for consumers to understand what a particular product does. Similarly, the Food Supplements Directive of 2002, which seeks to set harmonised maximum permitted levels in vitamins and minerals in food supplements, may - in the name of harmonisation - end consumer access to safe, higher-potency food supplements that have been available on the market for many years.
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?*

NA

Questions **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?*

There has long been a focus on harmonising legislation governing foods and food supplements in the EU for the purpose of delivering one internal market. This focus on harmonisation fails, however, to take into account the different dietary patterns across the EU. In such areas where there are important dietary and cultural differences, mutual recognition should be preferred to harmonisation at all cost.

Trying to create a single market in products across 27 EU Member States should not result in restricted consumer choice if the products at risk are completely safe.

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?*

There is a large amount of EU legislation covering food and food supplements. Too often this legislation is overly complex and imposes considerable compliance costs on UK businesses, which are then passed on to UK consumers.

Questions **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?*

NA

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?

NA

7. *To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?*

NA

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?*

The UK has long been diligent in enforcing EU regulations and legislation in a timely manner, whilst some other Member States have taken a more proportionate approach to enforcing legislation.

This different approach towards enforcement and interpretation across the EU has also resulted in a number of legal inconsistencies, undermining the proper functioning of the internal market. The EU could work to identify problematic and unclear provisions providing relevant guidance before legislation is implemented.

Question **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?*

NA

Question **General**

10. *Are there any general points you wish to make which are not captured above?*

NA

Convention of Scottish Local Authorities

COSLA
Brussels Office

COSLA Submission

Review of the balance of competences

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?*

The **Convention of Scottish Local Authorities (COSLA)**) is the representative voice of all Scottish Local Authorities both nationally and internationally and it has long being advocating that the European Union legislation to fully respect the local competences and autonomy of Councils to organise and provide local services.

We welcome the possibility to contribute to the Balance of Competence review. We indeed believe that given the continuous development of the EU powers it is useful to take a step back and undertake a thorough assessment on what the implications of these developments are.

This is an officer level response drawing from existing policy lines on EU public services, procurement and internal market that can be found here.

Main principles

- COSLA believes that EU involvement should take place not only when it has clear EU Treaty competence (principle of Conferral) , but also *only when* its actions can provide real EU added value;

- Therefore we strongly defend the **subsidiarity principle** whereby "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level" as well as the principle of proportionality and looks forward to participate in the Subsidiarity Early Warning Mechanism with the Scottish Parliament and the Committee of the Regions as well as calling on the European Commission to establish robust mechanisms of pre-legislative consultation to local stakeholders in matters that affect them directly.

- Therefore we are keen that the EU law, and the actions on by the European Commission fully abides with Protocol 26 of the Lisbon Treaty on Services of General Economic Interest, whereby the Commission, it is role of watchdog of the EU Internal Market it should fully *respect "the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users"* in any European Commission forthcoming initiative as regards to public services provision and its relationship with EU Competition law.

- We do clearly respect the role of the European Commission as guardian of the Internal Market. However we disagree with the view that potential economic benefits can be put as an argument that override basic principle of allocation of competences such as the conferral, subsidiarity and proportionality principles upon which EU Treaty Law is based.

Detail

We note that whenever the Commission wants to table an Internal Market-related legislation it often foresees a certain economic benefit. For instance in its evaluation of the current public procurement directive models calculate an scenario of savings of 5% of contract prices could therefore translate into increases in EU employment and EU GDP of between 0.08 and 0.12% after one decade (160-240 000 jobs EU-wide). Even in these difficult times that does not know amount to much on an EU wide scale if at the same time there are regulatory burdens and additional capacity constraints on public authorities.

On that latter issue it is worth noting that the Commission is often overtly optimistic on the regulatory impact of its proposals, particularly at government levels under central government level. This is partly due to the fact that most of the ex-ante impact assessments carried out by the Commission are contracted-out surveys that tend to be self-selective in the evidence they gathered. Indeed it is often down to organisations such as COSLA to proactively approach the researchers or the Commission itself to provide an assessment of the impact at local level.

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?*

COSLA has often disagreed with the Commission´s view that any proposal in those other areas can be argued using Internal Market powers. It is at the very least quite a disingenuous position by the Commission to resort to Internal Market whenever it feels that it does not have sufficient chances of success arguing for a new proposal using the Treaty powers on environment or social issues, as Internal Market route is the area where the Commission powers are much more wide ranging. Indeed this was the case particularly in previous EU Treaties as the EU powers in sector-specific policies were less defined compared to Internal Market, which has always been at the core of the EU a power.

A key example for that is the forthcoming legislation on **Urban Mobility**. As the Commission does not have powers whatsoever in local planning it is arguing the creation of uniform rules on urban mobility using their vast powers on Internal Market. Clearly as COSLA we have been making representations to Government against using the pretext of an alleged economic gain to what amounts to a clear expansion of EU powers by diverted means.

The same could be said as regards to **social legislation** that it is often argued in terms of freedom of movement of workers when in reality it is legislating in minutiae detail not just the posted or cross-border workers (to which there could be a justification up to a point) but any type of work relationship, such as it is the case in the Working Time Directive.

Use of Procurement to deliver EU goals, inclulding use of life cycle award criteria The Commission continues to use its control of EU procurement rules to compensate for its limited powers in other of EU powers, and by the fact that the EU Budget is so small compared to the ambitious Europe2020 goals. This is why over the years it has used procurement to force Member States and local and regional bodies to use procurement to buy the greener, socially responsible objectives, and has certainly been the case in the new Public Procurement Directive currently in negotiation. Clearly this is an abuse, or at the very least, a creative expansion, of EU powers on Internal Market. Furthermore in spite of a new landmark Directive on Public Procurement, currently in negotiation, the Commision does continue to table separate procurement provisions in seemingly unrelated pieces of legislation (for instance, in legislation about energy efficiency of appliances, or housing standars). This disperse use of procurement powers creates legal uncerainty and is a challenge for local authorities to monitor let alone comply with these procurement obligations.

In our view the reason for EU action must be based on the conferral principle. The Lisbon Treaty has the merit of bringing real clarity on what are the areas in which the EU has powers and how far (exclusive, shared, supporting competence) these powers go. Therefore if a new proposal by the Commission is to be made it should rest on the relevant powers that have been attributed to the EU for that subject matter alone. In other words we do not consider that the Commission has a robust legal argument in the Commission claims that, for instance, the regulation of employment standards (such as working time) by Local Authorities can be argued in terms of improvement the free movement of workers across the Internal Market. If it is a social issue it should be tabled, and argued using the powers explicitly conferred by the EU Treaties. Equally the Commission, when aiming at proposing new EU legislation for a new sector it often argues the need for EU legislation on the basis of a market or even "the possibility of a market" even if such market is so local that it would not deserve consideration of EU rules.

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?*

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?*

On this regard we tend to agree with the Commission that the different nature of specific economic sectors, and notably within the services sector results in their relevance for EU law changing over time. Telecommunications (formerly state owned and regulated, became privatised with Intra-EU players due to technological change) is the classic example.

However what we clearly disagree with is whether Internal Market should also cover local public services, known in EU law as Services of General Interest, or more commonly Services of General Economic Interest. Indeed the distinction between SGI and SGEI is crucial as regards to their relevance for EU Internal Market, as the later are considered liable to EU internal marked rules whereas the former are considered exempt from EU interference. This is particularly a problem in the UK as due to the lack of a written constitution (or more exactly the non-existence of a single constitutional legal source) and the lack of constitutional recognition for Local Government makes it very difficult to argue protection from EU law to most local powers.

For instance recent research COSLA undertook for the Scottish Government showed that the statutory instruments that conferred some power to the Scottish Councils runs a list of several hundred pieces of legislation. So contrary to other countries where their constitutions list what are the public services to be provided by local government and thus exempt from EU legislation can be used against attempts this is not something that is possible to do in the Scottish/UK legal context.

At the same time, when applying the below criteria due to the evolution of provision of services in the UK over the last thirty years we have found that the majority of public services provided by local government are indeed falling under EU Internal Market rules.

SGI	SGEI
It is defined by law, constitution as State/Public Sector Functions	Law defines public sector obligations
It is not open to private competition	It can be open to public sector participation (£1 of private investment enough)
The public sector provides most of the financing of the service.	Private providers can be compensated for providing SGEI according to previously defined, objective criteria
The public sector does not seek to obtain a profit	Such compensation to private providers may make them generate a profit
Not open to procurement or private tendering	Private provides must be selected according to a transparent public procurement procedure(i.e. CCT)

Clearly such a situation cannot be justified. Even accounting for the fact that Scottish local authorities are the largest on average of the EU it cannot be possible that the vast majority of Scottish local government public services are subject to EU Internal Market rules just because there is no constitutional protection for Local Government

Even if the Commission then may decide to set minimum thresholds under with Councils are exempted (as it happens in State Aid or Procurement, for instance) it remains questionable that Local Government powers are subject to EU interference even when they do not have any EU-wide repercussion.

On that point we do fully recognise the fact that it is very difficult to define when a service, a procurement activity or a subsidy is "intrinsically local". However in spite of that this is not a sufficient argument not to define it where possible.

For instance, the idea of *"buying local"* something that it is politically welcome by local representatives (provided it does not result in unfair practices or major alteration of the EU internal market) however we are aware that defining this in legal terms is clearly opposed by the Commission.

COSLA nevertheless believes that citizens expect that public bodies which they fund should be more responsive to the needs of their area and the impact that their spending of public funds has on that local economy. This is not to say that proper and robust safeguards should not be in place. Practitioners would

only be keen if unambiguous criteria were defined in the Directive. For instance defining a maximum geographical distance of the legal seat of the provider from the main population centre of the Council, or an upper percentage of the annual procurement under which a buy local award criterion could be applicable.

Provided that these criteria were uniform, clear and unambiguous and even if they were very restrictive they would still mean a great improvement to the current situation of total exclusion.

It is symptomatic that the first ever EU legal guarantee for shared services (public-public cooperation) came as a provision of the new EU Procurement (article 11). For the first time ever in EU legislation, a definition is given of partnerships between public authorities. Until now the most that the Commission had been able to produce is several guidance notes (Interpretative communications) providing an interpretation on how to understand the (shifting) EU jurisprudence on shared services (Teckal but also Stadtreinigung Hamburg). Even after the latter landmark ruling, the Commission insisted in that its scope and precedent setting were limited in terms of the Commission's line. Thus Article 11 merely codifies the existing case-law, even if in the meantime Protocol 26 of the Treaty has come into force. This means that the Commission has now put into law their prior principle that no private capital should be involved in a shared service and that the degree of control that the individual authorities has over the new shared entity must be equivalent to that of its internal departments.

It could be said that the Commission is merely following the existing jurisprudence, most of those rulings came out before Treaty Protocol 26 came into force. But as the Public Procurement Directive was tabled two years after the new Treaty is in force it could be alternatively said that the commission is making a political and not merely a legal point with this proposal. This will result in the UK Government having to issue new guidance (building on a previous guidance based only on case-law) on what it is in their view a shared service according to EU rules: in other words the UK Government will provide guidance on how the UK institutions are to organise cooperation among them.

This amounts to EU institutions having a say on how the internal organisation of a Member State should be – clearly a power that the EU has not been conferred to exercise.

Moving ahead there is thus a good reason for the UK Government in any future Treaty renegotiation to call for local government services to be , in principle, exempt from EU Internal Market rules. The current protocol 26 of Services of General Interest was a concession to the Dutch Government on the very last day of negotiations, so we believe that politically there is scope to make progress in this and frame role of the Commission regarding local services to a level that is more justifiable that at present. Indeed we have a number of possible wordings to relevant Treaty provisions in storage that we are happy to discuss with Government ahead of any future Treaty renegotiations.

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?*

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?*

7. *To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?*

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?*

It is fair to say that the UK is particularly compliant to Internal Market rules. Just two key examples:

- For the Services Directive the UK had a team of several dozen officials in Whitehall and a robust effort to ensure proper implementation was undertaken across the UK (COSLA provide assistance as

regards to the Scottish Councils). Some of the UK solutions, such as the Web-based Point of Single Contact are regarded as a case of best practice by the Commission worth replicating in other countries.

- For procurement legislation the UK is very thorough implementing and monitoring the compliance of EU rules. A proof of that is that the evidence we had gathered from local practitioner efforts is that the fear of non-compliance has resulted in governmental guidance to Councils based in the most literal interpretation of the EU rules, to the point that even in cases where the Commission allowed national and local authorities a certain room for manoeuvre the UK guidance, followed by the individual Local Authorities, has always encouraged the most thorough interpretation possible of the rules. This fear of non-compliance has led that in the UK most operations that could be put to tender are done so rather than using the exceptions that the EU legislation provides in order to not having to tender out some operations.

One reason for this zeal of compliance is by the fact that the UK scrutiny bodies such as the Accounts Commission and Audit Scotland do exercise a monitoring of local authorities that is more thorough than equivalent bodies in other countries. Equally the fact that UK LAs are the largest average in Europe their activities are larger and easier to monitor by central government or the Commission.

Clearly it could be said that this puts the UK public sector as a disadvantage to other countries whose public bodies have less pressure to follow EU Internal Market rules. However it is not clear, not even from local government, that there should be a trade-off between having more local flexibility if that means in exchange a loss of fairness and public transparency in public decisions.

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?*

Clearly we see the new legal texts recently negotiated (the Fiscal Treaty and the packages of rules to stabilise the euro and increase control over the finance sector) and the new treaties in preparation by the Commission for 2014-5 as an opportunity for the Commission to gain further powers in the area of Internal Market.

However as the Prime Minister speech on 23 January it also provides the UK with an opportunity to press for less EU action in a number of areas such as Internal Market on the basis that the EU institutions adopts an excessive interpretation of the powers that the Treaties confer to them.

Key recommendations to Government:

From the point of view of local government, not just Scottish local government but in fact the vast majority of local government organisations across the EU, there are a number of lines that could be pressed in a future IGC:

Treaty protection of local public services: as mentioned above this can be achieved by surgical changes to Part I of the Lisbon Treaty and an expanded wording of Protocol 26 on Services of General Economic Interest.

Legal protection to local services: if the above is judged tactically too open to challenge on the basis of openign the door for unfair practices and protectionism it could be attempted the obligation for the Commission to table through secondary legislation a framework setting out the areas or principles that would exempt local public services from EU interference. To date the only attempt has been that of a "Quality Framework for services of general interest": This non binding proposal was tabled as a trade off to secure the Current commission approval by MEPs. While in the end it only amounted to a general policy guidance which confirms and updates prior Commission guidance of interest for local authorities, rather than a landmark legislation to clarify the extent that local services should be subject to EU rules it shows that the Commission can be open to persuasion if the appropriate levers are put in place.

EU Public Procurement legislation should be consolidated and any current or forthcoming current proposals need to be made consistent with each other, ideally only one department within the European

Commission should be responsible for all procurement proposals irrespective of the subject to ensure medium term predictability for local regulatory services.

Current or future requirements in **EU legislation on free provision of Services across the EU should be done in a proportionate fashion** as to avoid the multiplication of red tape and disproportionate requirements, let alone service quality criteria, being imposed on local councils

Similarly future requirements in **EU legislation on free provision of Health or other public Services across the EU should be done in a proportionate fashion** as to avoid the multiplication of red tape and disproportionate requirements being imposed on local councils.

EU social legislation needs to take fully into account, and indeed respects, the need for certain local services such as social care or fire and rescue services to be discretionary organised locally including the possibility of setting specific working time limits to ensure continuity of public services.

Fully develop the EU policy development arrangements contained in the **Part 2 of the Localism Act 2011** so that COSLA and our sister organisations elsewhere in the UK can work with the UK Goverment from the moment that the Commission starts formulating policies affecting local govmernent in order to promtly identify impacts, liabilities and opportunities for local government across the UK.

10. Are there any general points you wish to make which are not captured above?

We are happy to work with Government in the preparations and the discussions leading to a new Treaty, both in terms of providing additional evidence on the above as well as making the appropriate representations to the above both in Whitehall and in Brussels.

February 2013

Dougan, Michael

Written Evidence for the Government's Review of the Balance of Competences Between the United Kingdom and the European Union: Internal Market (Synoptic Review)

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Introduction

The concept of the Internal Market as an area without internal frontiers, in which the conditions of competition between states is approximate to those prevailing within a single country, implies tackling two main challenges: **1)** barriers to cross-border movement in goods and services etc; and **2)** distortions of competition across Member States arising from different regulatory compliance costs. At the Union level, there are two main sets of legal tools designed to address those challenges: **a)** the primary Treaty provisions on free movement law (whose interpretation and application are essentially a judicial responsibility); and **b)** the adoption of Union secondary legislation to harmonise national laws for the purposes of the internal market (which is primarily a political responsibility shared between the Commission, the Council and the European Parliament).

In constitutional terms, the Internal Market is simply another field of shared competence between the Union and its Member States. Thus, in the absence of Union legislation, the Member States may exercise their own inherent regulatory power relating to the production and provision of goods / services – but in doing so, they will be subject to the requirements imposed under the primary Treaty provisions. After the adoption of Union harmonising legislation, the Member States must exercise their own inherent regulatory power, relating to the production and provision of goods / services, subject to whatever obligations are imposed by that Union legislation. In certain cases, depending on the precise design of the Union's harmonisation measures, the Member States may also remain subject to the primary Treaty provisions on the free movement of goods / services.

However, although the Internal Market may thus fit readily in the "standard model" of shared competence, this field holds a particular importance for Union constitutional law. In the first place, it provides the nursery for many of the key concepts and developments which shape the broader character of the Union's legal system – concepts such as discrimination, mutual recognition and proportionality. In the second place, provided there is some form of cross-border economic activity and an identifiable hindrance to cross-border trade capable of justifying their application, the primary Treaty provisions will extend to virtually every policy field. Even sectors like education or public health, which for regulatory purposes would normally be considered primarily a Member State responsibility and only subject to complementary Union competences, can still be scrutinised by the courts pursuant to

the Treaty's free movement rules.[1] Indeed, where such scrutiny reveals the existence of barriers to movement or distortions of competition, that finding may well open a path for the exercise of Union legislative competence – so that not only the primary Treaty provisions, but also the internal market's harmonising powers, may extend across a broad range of what (in national terms) would be seen as far-flung policy sectors.[2]

The direct and far-reaching application of the primary Treaty provisions, together with the extensive harmonising competences conferred upon the Union for the functioning of the internal market, therefore marks this out as a particularly dynamic field of Union activity. This written evidence will offer some brief thoughts on the application of the primary Treaty provisions; then on the adoption of secondary harmonising legislation.

Primary Treaty Provisions

In the absence of Union harmonising legislation, the Member States retain the ability to make basic regulatory choices about the production and provision of goods / services. The essential effect of the primary Treaty provisions is to allow the courts (national and European) to scrutinise those basic regulatory choices, so as to ensure that they conform to certain fundamental requirements imposed under Union law. In particular, where it is possible to identify a prima facie barrier to cross-border trade, the relevant national measures must serve a legitimate public interest; they must also comply with the principle of proportionality; and (where relevant) should respect the other "general principles of Union law", including the fundamental rights of natural and legal persons as protected under the Treaties. If the disputed national measures fail to satisfy those requirements, they cannot be enforced against cross-border goods / services, though they do remain fully applicable within the purely domestic market. If the disputed national rules do in fact meet the requirements imposed under primary Union law, they can be enforced against all goods / services within the national territory (whether purely domestic or cross-border in nature).

The overall impact of the primary Treaty provisions is therefore that, for cases involving cross-border trade, the EU challenges the Member States to demonstrate that regulatory choices which hinder economic integration nevertheless serve some valuable public interest, are not protectionist or arbitrary in their effects, are essentially rational and evidence-based in character, and do not go further than is necessary to achieve their own policy goals. But even in such situations, the process of choosing an appropriate regulatory response for any given policy problem still remains essentially for the Member State to make for itself – Union law acting primarily as a scrutiny mechanism to rule out certain more extreme choices and / or poorly designed / executed decision-making procedures. The entire system is often referred to as one of "partial market deregulation".

Against that background, it might be useful to highlight several key features of Treaty-based free movement law, which can often provide the source of confusion

[1] Consider, e.g. Case C-372/04 *Watts* [2006] ECR I-4325.

[2] Consider, e.g. the Patients' Rights Directive 2011/24 [2011] OJ L88/45.

and / or tension in the division of competences between the Union and its Member States.

1) defining which situations involve cross-border trade

The primary Treaty provisions only apply to cases which involve a cross-border element: that will usually consist in the importation of goods / services (so that the host state is creating a barrier to movement); though it can also involve the exportation of goods / services (so that it is the home state which creates the barrier to movement). The precise rules differ slightly across each relevant primary Treaty provision: e.g. the situations in which exported services will trigger the application of the primary Treaty provisions are wider than those in which exported goods will fall within the scope of application of Union law.[3] But despite those differences, the need to demonstrate an underlying cross-border dimension to the case remains alive: the Court consistently denies the application of the primary Treaty provisions on goods and services to "wholly internal situations".[4]

It is worth nothing that, in the case of the free movement of persons, the caselaw on Union citizenship has gone beyond that on the free movement of goods or services. In a series of recent judgments, the ECJ has found that even certain wholly internal situations may fall within the scope of Union law, where the effect of national rules would be to deprive an individual of the genuine enjoyment of the substance of the rights associated with their status as Union citizens: e.g. where the withdrawal of Member State nationality or the expulsion of a child's third country national primary carer would effectively force that individual to leave the EU territory entirely.[5] However interesting academically, and challenging conceptually, those judgments are relatively marginal and do not affect the basic principle that the internal market provisions on goods and services apply only to situations involving cross-border economic activities.

2) defining which national rules create prima facie barriers to cross-border trade

This is another crucial line dividing Member State and Union competences in this field: how we define the concept of a prima facie barrier to movement will determine the precise range of national measures that become subject to scrutiny under the primary Treaty provisions; as opposed to those national rules which instead fall altogether outside the scope of EU law and require no form of justification whatsoever.

Every system of economic integration – not just the EU but also organisations from the WTO to NAFTA – has to make such choices. The outcome will have a profound impact upon the character and potency of the legal entity which is then charged with

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[3] E.g. contrast Case C-384/93 *Alpine Investments* [1995] ECR I-1141 (services); with Case C-205/07 *Gysbrechts* [2008] ECR I-9947 (goods).

[4] E.g. Case C-448/98 *Guimont* [2000] ECR I-10663; Case C-212/06 *Government of the French Community and Walloon Government v Flemish Government* [2008] ECR I-1683.

[5] E.g. Case C-135/08 *Rottmann* [2010] ECR I-1449; Case C-34/09 *Zambrano* (Judgment of 8 March 2011); Case C-434/09 *McCarthy* (Judgment of 5 May 2011); Case C-256/11 *Dereci* (Judgment of 15 November 2011).

its implementation. Thus, one might entrust the judicial authorities with only a relatively low level of economic integration, tackling only blatantly protectionist or discriminatory national measures deemed obviously inimical to free and fair cross-border trade. Or one might instead expect the courts to police a more ambitious level of economic integration, which scrutinises also national measures which, even in the absence of blatant protectionism / discrimination, nevertheless have the effect of hindering the cross-border movement of goods / services, e.g. through the imposition of double regulatory burdens upon products already lawfully manufactured and marketed in their country of origin. However, there is broad agreement that no system of cross-border economic integration, administered primarily by the judiciary, should go so far as simply to challenge the very existence of market regulation by its Member States, regardless of any specific or demonstrable hindrance to cross-border commerce, so that the commitment to free movement morphs from being an instrument for integrating distinct national markets, into a tool to promote outright market deregulation within the domestic legal order.

The ECJ's interpretation of the scope of national measures falling within the purview of the primary Treaty provisions has inevitably ebbed and flowed over time: on some occasions, as with the famous *Sunday Trading* caselaw, it has felt as if the Court indeed risked using the free movement provisions as a tool for interfering in national regulatory policies despite the absence of any distinct or compelling hindrance to cross-border trade;[6] on other occasions, the Court has appeared to restrict the scope of application of the primary Treaty provisions in a way that some felt was actually endangering the achievements of single market integration by failing to scrutinise national rules that did seem to create barriers to cross-border trade.[7]

There is no doubt that the detail of the caselaw on this subject remains relatively complex, and in places unclear, as well as subtly variegated across the different Treaty provisions. However, provided one can accept that such details, uncertainties and differences are more a matter of expert attention than broad political concern or public interest, the basic scheme of the Court's definition of national barriers to movement is relatively straightforward to describe.[8] The primary Treaty provisions will catch:

- quantitative restrictions on goods and services, together with blatantly discriminatory measures

- double regulatory burdens (e.g. product requirements for goods or professional standards for services) that restrict the sale of goods / provision of services already lawfully marketed in their country of origin in accordance with the latter's own rules

- other national rules (e.g. selling arrangements for goods or services) that restrict or prevent access to the market (even in the absence of any obvious discrimination or double regulatory burden).

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[6] Case 145/88 *Torfaen BC v B&Q* [1989] ECR 3851.

[7] E.g. consider the Opinion by AG Jacobs in Case C-412/93 *Leclerc-Siplec* [1995] ECR I-179.

[8] See especially the goods ruling in Case C-110/05 *Commission v Italy* [2009] ECR I-519.

There seems to be a general consensus that, although there is undoubtedly a degree of complexity as well as uncertainty around the edges, overall, the Court has struck a fair balance between the desire to scrutinise national policy choices which do create potential problems for the internal market (on the one hand) and the need to respect national policy choices which have little or no adverse impact upon cross-border trade (on the other hand).

3) identifying the range of public interest objectives considered legitimate

National rules that create a prima facie barrier to cross-border trade are not rendered automatically unlawful. On the contrary, that finding simply means that the legal analysis proceeds to a second stage: the disputed national rules must now be justified by reference to a legitimate public interest.

For those purposes, the range of public interest objectives available to the Member State will depend upon the nature of the barrier to movement its domestic legislation has created. On the one hand, more serious types of cross-border restrictions (e.g. quantitative restrictions and directly discriminatory measures) can only be justified by reference to the closed list of derogations set out expressly in the primary text of the Treaty itself: e.g. in the case of goods, that covers issues such as public health and public security. On the other hand, when it comes to less serious types of restriction (e.g. product requirements for goods or market access restrictions on services), the national rules can be justified either by the express Treaty derogations or through a broader set of "mandatory / imperative requirements". The latter are not a closed list: they can, in principle, cover any public interest objective, apart from the pursuit of purely economic (protectionist) goals.

Nevertheless, that strict division between categories of available justifications for prima facie barriers to movement has caused problems in the caselaw. For example: national legislation seeking to promote certain environmental objectives (say) through the promotion of locally produced green energy, might well create a relatively serious barrier to movement (in the form of a quantitative restriction for or discrimination against imported energy). Strictly speaking, such a measure should not be capable of justification at all: environmental protection is not an express Treaty derogation. But in practice, the ECJ has often found pragmatic ways of upholding important national environmental measures anyway: e.g. by avoiding finding that they discriminated against imported goods; or by stretching one's natural understanding of the protection of public health (as involving a direct and immediate danger to human well-being) so as to include also the long term public health gains to be realised through the fight against climate change.[9] For many, the preferable solution would be to amend the Treaty so as to "update" the list of express derogations in the light of changing social and political concerns. However, repeated calls for Treaty change in this regard have not been supported by the Member States.

4) the complex nature of the proportionality assessment

[9] See, e.g. Case C-2/90 *Commission v Belgium* [1992] ECR I-4431; Case C-379/98 *PreussenElektra* [2001] ECR I-2099.

Assuming that a disputed national measure can be justified *in principle* by reference to a legitimate public interest, the focus of judicial scrutiny will generally revolve around the principle of proportionality, i.e. so as to ensure that the Member State's measures are appropriate to and necessary for the attainment of its own policy goals *in practice*.

There is an abundance of caselaw and commentary on that multi-faceted proportionality assessment. Several key points are perhaps worth highlighting:

- The proportionality assessment will usually be concerned with the substance of the policy measure, i.e. does it go beyond what is necessary to achieve its own goals and, in particular, were other policy responses available which would have had a less drastic impact upon cross-border trade? But the intensity of that scrutiny varies from case to case: e.g. in situations where there is a potential risk to public health, the Court will often offer Member States a wider margin of discretion and apply the precautionary principle; similarly, in situations (such as gambling regulation) where there are significant cultural and moral differences across the Member States, the Court will generally adopt a deferential approach to national policy choices; whereas in situations where the threat to the public interest appears less immediate or serious, and the basic policy issues are less socially and culturally sensitive, the Member State may find itself condemned for failing to provide a clear and convincing empirical evidence base for its disputed measures.[10]

- Increasingly, the proportionality assessment extends beyond matters of substantive policy to issues about the quality of the national decision-making procedures themselves: even if the Member State was entitled to adopt the policy it did, the Court might still criticise the manner in which the policy was actually introduced, e.g. if the Member State has sought to apply its policy with inappropriate retroactive effects; or failed to provide an appropriate transitional period so as to allow affected undertakings to adapt their economic activities to a radically different regime.[11]

- Another important question concerns what level of public interest the courts have in mind when applying the principle of proportionality, since that can decisively affect the margin of discretion left to the Member State in designing its regulatory policies. The principle of proportionality is not some mathematical formula that can be applied in an entirely value-free way. On the contrary: whether a national measure is deemed appropriate and necessary (say) for protecting consumers or workers, may well depend upon exactly *which* consumers or workers are deemed deserving of legal protection. E.g. if the judges decide that the Member State should seek only to protect the average consumer or worker, then they are more likely to find disputed national rules based upon a high standard of protection to be disproportionate, i.e. because those rules actually seek to safeguard the interests of particularly vulnerable consumers or workers. However, this line of inquiry is

[10] On the latter point, consider, e.g. Case C-385/99 *Müller-Fauré* [2003] ECR I-4509; Case C-147/03 *Commission v Austria* [2005] ECR I-5969; Case C-269/07 *Commission v Germany* [2009] ECR I-7811.

[11] Consider, e.g. Case C-309/02 *Radberger Getränkegesellschaft* [2004] ECR I-11763; Case C-320/03 *Commission v Austria* [2005] ECR I-9871.

fraught with difficulty: such values are often unarticulated by the judges, so it can be very difficult to identify (other than by inference from relatively small or large samples of caselaw) how the courts' underlying understanding of the "deserving" public interest then interacts with the principle of proportionality.

5) barriers to movement created by private conduct

This has long been an important area of academic enquiry, and nicely illustrates how the rules applicable to each Treaty provision on free movement can subtly differ from each other.

In the case of the free movement of goods, the Treaty will directly catch all actions of the Member State understood in a broad sense: they apply to legislative, administrative, regional / local, and even judicial bodies; they apply equally to constitutional or legislative rules, administrative decisions and practices, and even non-binding guidelines, circulars or statements.[12] The goods provisions will also catch the actions of bodies which, even if they are not categorised as public authorities under national law, are nevertheless controlled by the Member State or otherwise "woven into the fabric of government": e.g. professional self-regulatory bodies whose authority and powers are recognised and indeed supported by state measures.[13] However, the Court tends to draw a line at that point: purely private conduct, not underpinned by the state itself, has not traditionally been regulated directly by the free movement of goods rules.[14] The closest the Court has come to holding that the goods provisions apply to purely private bodies is the recent *Fra.Bo* ruling – but even that was a special case, since it involved statutory recognition for the quasi-regulatory activities of a national standardisation body.[15] However, even if purely private conduct is not directly caught by the primary Treaty provisions on goods, the Member State itself remains under an obligation to take "appropriate measures" to address barriers to the free movement of goods which are created by purely private parties: this is the famous *Commission v France* caselaw.[16] What counts as "appropriate measures" is obviously a highly contextual assessment taking into account a wide range of factors: e.g. whether the private conduct was lawful / unlawful and peaceful / violent; whether the private conduct specifically targeted foreign goods or merely had certain incidental effects upon cross-border trade; the duration of the hindrance to free movement; what steps could have been taken by the state and / or economic operators to avoid the impact of the private conduct etc.

In the case of services, it is generally assumed that not only public action but also purely private conduct can directly trigger the primary Treaty provisions. However, the majority of decided cases have again involved either quasi-public organisations or associations which are responsible for self-regulating a given economic sector (such

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[12] E.g. Case 249/81 *Commission v Ireland* [1982] ECR 4005; Case C-470/03 *AGM-COS.MET* [2007] ECR I-2749.

[13] E.g. Cases 266-267/87 *Royal Pharmaceutical Society* [1989] ECR 1295.

[14] E.g. Case C-159/00 *Sapod Audic v Eco-Emballages* [2002] ECR I-5031.

[15] Case C-171/11 *Fra.Bo* (Judgment of 12 July 2012).

[16] Case C-265/95 *Commission v France* [1997] ECR I-6959. Also: Case C-112/00 *Schmidberger* [2003] ECR I-5659.

as sporting authorities);[17] or bodies which undoubtedly exercise significant collective economic power (such as trade unions).[18] In only a small number of cases has the ECJ applied the primary Treaty provisions on free movement to purely private conduct based upon the exercise of small scale of economic power and influence, e.g. as with a private bank which discriminated against foreign nationals in its employment recruitment practices, and was held to have infringed the primary Treaty provisions on the free movement of workers.[19]

Secondary Legislative Measures

The primary Treaty provisions provide an effective means of dealing with illegitimate barriers to cross-border movement erected by the Member States. But they leave in place legitimate barriers to movement which pursue a valuable public interest and do so in a proportionate manner. Moreover, the primary Treaty provisions do not seek to address the more general problem of distortions of competition between Member States which arise from different regulatory compliance costs. Such distortions can particularly affect purely domestic production, and might well be exacerbated by the impact of the free movement provisions: domestic goods / services marketed in accordance with domestic rules may be forced to compete "on their own turf" with imported goods / services marketed in accordance with the rules of their country of origin. Thus, the operation of the primary Treaty provisions will often be supplemented by secondary legislative measures adopted by the Union's political institutions.

Through its contribution to the internal market, the Union legislature seeks to address outstanding barriers to movement and / or distortions of competition through the harmonisation of national laws: disparate domestic regulatory standards are replaced (at least to some degree) with a common Union regulatory standard. The Member State's own regulatory power must then be exercised subject to the obligations imposed by the Union's secondary legislation and (where appropriate, depending on the degree of harmonisation) by the primary Treaty provisions. The result is often referred to as a form of "market re-regulation".

Against that background, it might again be useful to highlight several key features of Union internal market harmonisation, which can for their part provide the source of further confusion and / or tension in the division of competences with the Member States.

1) triggering internal market harmonising competence

The main legal basis for adopting internal market legislation is Article 114 TFEU. However, a potential competence problem immediately arises with this Treaty provision. As a matter of principle, harmonisation cannot simply be a matter of adopting common rules that reduce barriers to movement and / or distortions of competition; the Union legislature must also and inevitably decide the level at which

[17] E.g. Case 36/74 *Walrave and Koch* [1974] ECR 1405.

[18] E.g. Case C-341/05 *Laval un Partneri* [2007] ECR I-11767.

[19] Case C-281/98 *Angonese* [2000] ECR I-4131.

to harmonise its common rules – so that the internal market automatically implies the need for the EU to articulate and pursue certain "flanking policies" in other policy spheres, e.g. as regards the protection of the environment, workers or consumers. Yet however inevitable, that situation does give rise to the danger of "competence creep": the internal market legal bases can act as a trigger for the Union's pursuit of ulterior policy goals; there is a risk that, if a measure's connection to the internal market becomes too tenuous, those other policy goals begin to emerge as autonomous rather than merely flanking policies.

In the past, it was indeed not uncommon for the EU to use its internal market competences so as to enact other policy measures whose connection to the improvement of cross-border trade appeared relatively obscure. But such patterns of legislative behaviour were relatively uncontroversial at the time: in the first place, because internal market legislation was originally adopted through unanimity in Council; and in the second place, because the Treaty provided no alternative legal bases for the proposed action, so that it was still "flanking" the internal market (however tenuously). However, in more recent decades, the prospect of "competence creep" has become much more controversial: in the first place, internal market measures are now largely adopted by QMV in the Council, so there is no guarantee that every Member States has expressly consented to a broad construction of the Treaty; in the second place, the Treaty does now provide a whole series of alternative legal bases in fields such as environmental law, public health and social rights – each with their own procedural specificities, and often also with their own explicit competence limitations – so that a broad construction of the internal market risks distorting the delicate balance of power envisaged by the Member States when they agreed to the Treaties. Such concerns about "competence creep" became increasingly evident not only at a political but also at the judicial level, e.g. with the warnings sounded by the German Federal Constitutional Court in its famous *Brunner* ruling.[20]

The main case defining the scope of Article 114 TFEU and countering the risk of "competence creep" remains the *Tobacco Advertising* ruling.[21] In that case, the ECJ set out a carefully balanced quid pro quo for the Member States. On the one hand, the internal market does not confer upon the EU a general power to regulate in the public interest. Article 114 TFEU requires harmonising measures to make an actual contribution to the functioning of the internal market: for that purpose, mere disparities between national laws are not enough to justify Union action; the latter must tackle either genuine barriers to movement or appreciable distortions of competition. On the other hand, provided those competence triggers are fulfilled, the Union cannot be faulted for having taken into account other public interests goals when determining the content of its internal market harmonisation measures – or indeed, for allowing such policy goals to play a crucial role in the decision about whether to harmonise in the first place.

For some, *Tobacco Advertising* represents a clear statement against "competence creep" based on the Union's internal market competence. For others, the ECJ's subsequent caselaw has rolled back from the stringent criteria purportedly set out in *Tobacco Advertising*: e.g. the idea established in the *Biotechnology Directive* case that

[20] [1994] 1 CMLR 57.

[21] Case C-376/98 *Germany v Parliament and Council* [2000] ECR I-8419.

future as well as current obstacles to movement can suffice as the basis for harmonisation;[22] e.g. the ruling in *Swedish Match* that Article 114 TFEU can be used as the basis for imposing a total ban on the marketing of a product, thus extinguishing rather than integrating markets.[23] Such criticisms have led to calls for the Court to develop a more rigorous test for triggering the Union's internal market competence: e.g. a reformulated qualitative test that asks for proof of "significant" barriers or distortions; or even some form of quantitative threshold in order to justify Union legislation (such as a minimum value of economic activity or cross-border trade affected by the relevant barriers / distortions).

However, it is worth pointing out that, even if the Court's language is sometimes less robust than in *Tobacco Advertising* itself, most or even all of the disputes which have arisen since that landmark case appear entirely justifiable on their own terms: e.g. when it comes to *Swedish Match*, it would be odd to deny that the Union is entitled to ban products from being placed on the internal market, if they are positively proven to be unsafe for humans, animals or plants. Moreover, many would argue that calls for greater legal precision in the test for triggering internal market competence actually pose new and difficult challenges of their own: after all, a more defined legal test for harmonisation measures would have the effect of shifting primary responsibility for choices about whether to intervene in a given sector of the internal market towards the unelected judges and away from the accountable political institutions.

2) the relevance of subsidiarity to internal market competence

The criteria established in *Tobacco Advertising* seek to govern *when* the Union is entitled to intervene in the internal market so as to pursue the harmonisation of national laws. Another set of principles is then intended to guide *whether* the Union should actually proceed to exercise those competences (even if they are theoretically available). The most obvious such principle might appear to be subsidiarity. However, subsidiarity has certain inherent limits in the context of internal market legislation, which render it of little real value in policing the boundaries between Union and Member State power.

In the first place, it is well known that enforcing the principle of subsidiarity is essentially a political responsibility. Although judicial review of Union measures on subsidiarity grounds is possible, nevertheless and for understandable reasons, the ECJ is usually reluctant to substitute its own assessment for that of the Council and / or European Parliament concerning the "added value" of taking action at the Union (rather than purely national) level. The national parliaments have an important role to play, under the Lisbon Treaty's "yellow card" system – but that is again an essentially political dialogue with the Commission and the other Union institutions.

Secondly, and perhaps more fundamentally, subsidiarity is not a particularly relevant limitation upon the exercise of Union competence over the internal market, once it has already been demonstrated that the *Tobacco Advertising* criteria have been fulfilled and such competence exists as a matter of principle. After all, the emergence of cross-border obstacles to trade and/or distortions of competition is a *sine qua non* for

[22] Case C-377/98 *Netherlands v Parliament and Council* [2001] ECR I-7079.

[23] Case C-210/03 *Swedish Match* [2004] ECR I-11893.

the very existence of Union competence under Article 114 TFEU; and equally, their emergence would seem to support the conclusion that only action coordinated under the auspices of the Union can provide an effective regulatory solution. Thus, compliance with the conditions for relying upon Article 114 TFEU seems to automatically imply that the requirements of subsidiarity have also been satisfied.[24]

3) legal styles and forms of harmonisation

Much of the popular discourse about EU law is grounded in a rather persistent stereotype of internal market legislation: that the EU seeks to harmonise the rules applicable to a given good or service with encyclopaedic thoroughness; and that those EU rules then entirely pre-empt the Member States from retaining their own distinctive policy choices. In short: internal market legislation crushes diversity and choice, in favour of uniform European-level regulations.

However, that stereotype is entirely unrepresentative of the reality of internal market legislation. In that regard, one should highlight two major trends in Union harmonisation.

The first trend is the triumph of the "new approach to harmonisation" which emerged in the 1980s after the ECJ's landmark ruling in *Cassis de Dijon*.[25] Rather than seeking to harmonise a given economic sector exhaustively, the Union's attention focuses only on harmonising those essential public interest requirements which might justify prima facie barriers to movement under the primary Treaty provisions: e.g. basic safety requirements for toys or foodstuffs. Otherwise, national regulatory autonomy over the relevant economic sector is fully preserved. The Union merely obliges the Member States to mutually recognise each others' non-harmonised rules: a host state cannot impede the free movement of goods / services which have been lawfully marketed in their home state in accordance with the Union level essential public interest requirements.

That fundamental change in the style of internal market harmonisation has provided the basis for the vast majority of Union legislative activity since the Single European Act. It has also had myriad consequences for the operation of the internal market: for example, vastly accelerating the speed and efficiency of economic integration between Member States; permitting existing Union law to be adapted more quickly and effectively to changing technologies and / or market behaviours; and preserving a wide space for different national regulatory approaches within the internal market while still promoting free movement across borders.

Two consequences are particularly noteworthy. On the one hand, the "new approach" endorses the idea that the internal market can function fully and effectively despite the persistence of certain distortions of competition between Member States arising from different national regulatory standards. Indeed, many see such "distortions" as a positive benefit of the "new approach", insofar as it forces the Member States

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[24] Consider, e.g. Case C-491/01 *ex parte British American Tobacco* [2002] ECR I-11453; Cases C-154/04 and C-155/04 *Alliance for Natural Health* [2005] ECR I-6451; Case C-58/08 *Vodafone* [2010] ECR I-4999.

[25] Case 120/78 *"Cassis de Dijon"* [1979] ECR 649.

themselves to engage in a process of regulatory competition inter se, aimed at attracting business and investment on the basis of supplying a "better" legal framework than other parts of the single market. On the other hand, the "new approach" based on mutual recognition places a high emphasis on securing also mutual trust between the Member States: host countries naturally seek guarantees that, in return for free access to their national markets, home state regulators will adequately protect the public interest on behalf of all EU citizens. Much of the Union's internal market activity is therefore about creating and maintaining the conditions for mutual trust between the Member States: for example, through networks of national authorities sharing information and coordinating responses; through the notification of draft national actions for discussion and deliberation amongst peers at the Union level; and through safeguard clauses and other emergency channels for intervention in the event of a pressing risk to public safety.

The second major trend in Union harmonisation consists in a gradual shift away from harmonisation which is total, in the sense of fully pre-empting the ability of Member States to retain or enact different or additional regulatory standards within the harmonised core; towards harmonisation which is minimum, insofar as the Member States remain entitled to retain or enact additional (though not lower) regulatory standards, i.e. which go further in protecting the relevant public interest than the basic Union standard of harmonisation.

Such minimum harmonisation is standard practice in many fields of EU policy: e.g. environmental protection and employment rights are both fields where the idea of minimum standards is expressly enshrined in the Treaties themselves. In the field of the internal market, minimum harmonisation is not expressly provided for in the text of Article 114 TFEU, but is relatively common in secondary legislation, e.g. dealing with the protection of consumers' economic interests. However, minimum harmonisation in the field of the internal market will often be combined with a clause limiting the application of higher national regulatory standards to domestic goods /services only, so that the additional rules cannot be enforced against imported goods / services. Even if there is no such express "wholly internal situation" clause, the Court will invariably insist that any additional national regulations, imposing standards above and beyond the Union's harmonised norms, must be independently assessed under the primary Treaty provisions, i.e. to examine whether they create barriers to cross-border trade and (if so) whether those barriers can be justified.[26] By those means, the primary Treaty provisions can remain relevant to the exercise of national competences even post-harmonisation by the Union legislature.

The combination of the highly selective approach to harmonisation which characterises the "new approach", and the minimum harmonisation which has become commonplace across various fields of EU policy-making including Article 114 TFEU, has one very obvious consequence: the idea of achieving an internal market based on the eradication of barriers to movement and distortions of competition between Member State is something of a chimera. Over a period of time, the Union has reconciled itself to the idea that it is perfectly possible to have a fully functioning internal market which not only tolerates but even actively encourages both *certain*

[26] E.g. Case C-410/96 *André Ambry* [1998] ECR I-7875; Cases C-369/96 and C-376/96 *Arblade and Leloup* [1999] ECR I-8453; Case C-441/04 *A-Punkt Schmuckhandels* [2006] ECR I-2093.

competitive differences between national regulations and *certain* barriers to movement for mobile goods / services.

Some Concluding Observations

Those brief reflections have not sought to provide a comprehensive account of the internal market's basic principles and characteristics, let alone of its more detailed channels of operation or specialised fields of activity. Nor have I ventured into some of the most important policy debates which currently surround the internal market's core legal framework: for example, the tension between encouraging a degree of regulatory competition between Member States and avoiding the sort of social dumping that can lead to a regulatory "race to the bottom"; or the debate about just how far the internal market can tolerate regulatory differentiation between the Member States without endangering its fundamental goal of market integration, particularly as enhanced cooperation initiatives or the pressure for closer Eurozone integration begin to touch upon "core" internal market activities in fields such as intellectual property and financial services.

Instead, my aim has been to convey a strong sense that the internal market is better understood as an evolving process – rather than some concrete model or destination – based upon a complex division of regulatory roles and responsibilities between the Union and its Member States, as well as between the Union institutions and indeed between the Member States inter se. In this centrally important field of EU law, the boundary between national and Union competence has the character, not of a clear dividing line, but of a potentially infinite series of actual and potential interactions. Policy choices will usually be the outcome of a multi-faceted interplay between the exercise of national level political discretion, the conduct of judicial scrutiny based on Union primary law, and the intervention of Union level legislative activity.

Liverpool
28 February 2013

Euclid Network – European network of civil society professionals

A citizen-friendly Europe

The hidden resource of competitiveness on the single market

28 February 2013

Executive summary:

Executive summary

Euclid Network's paper describes why and how deeper civil society influence on the functioning of the EU market will help Europe to stay competitive in the world economy.

It focuses first on the tools that civil society organizations may already use to exert a positive impact on competitiveness.
Namely, it makes concrete proposals for more and better involvement of organized civil society in the process of standardization and regulation of products.
It stresses also the need for more cooperation between EU regulatory agencies and civil society organizations.

The paper analyses the obstacles that remain regarding access of civil society organizations to the market and preventing them from playing their role fully. These obstacles involve the functioning of the EU directive on services, EU competition law and public procurement rules.

Finally, we plead for a better participatory democracy in Europe and we develop the positive role it could play for competitiveness through social innovation. We stress particularly the importance to develop greater involvement of civil society organizations with the European economic and social committee (E.CO.SO.C.) and of a better and more transparent use of the resources of the EU budget already available for citizens.

Here are some practical suggestions for early action where Euclid could assist:

- A roundtable on how to make cross-border trading work well for civil society
- Draw out lessons from negotiation of the new Financial Regulation for application to procurement

Identify good practice on transparency in the EU

A citizen-friendly Europe: the hidden resource of competitiveness on the single market.

I. Introduction

Euclid Network (EN) fully endorse the ambition to make the EU more competitive and flexible in order to preserve the values of our societies and make the economy better adapted to respond to the challenges of global changes.

To reach this goal, we believe, member States need to better combine these European and national assets:
- the European single market; a border-free Europe where people, goods, services, investments and innovations move around as freely as they do within a single country is yet to be achieved although it is at the core of the EU project;
-the diversity of our nations and communities that unite in permanent dialogue and competition for the definition of the common good; citizens to become more and more involved at all levels, being local, national or European, in the search for economic and societal innovations creating value.
- civil society competing in the demand for change and unrestricted access for innovation to nearly 500million consumers through the EU to make the market listen more and better to the citizens' advice, the hidden resource for growth through competitiveness in Europe.

I.1. Civil society

Why would deeper civil society influence on the functioning of the EU market help Europe to stay competitive in the world economy?

As Secretary General of the United Nations Ban Ki Moon said in 2009 at the meeting of the "World Economic Forum" in Davos: " our time demand a new definition of leadership: governments, civil society and the private sector working together for a collective global good".

Distinct from government and business for-profit (ie profit first or profit maximization), civil society is the arena where people associate to advance common interests.

In Europe, there are 4500 or so legally constituted organizations, according to the UN, operating internationally or in one country. The number is larger but there are no reliable data for the whole EU and it depends what you count. For instance the final figure changes if you include INGOs for international development together with cooperatives. The European Commission has recently reported 5000 'social enterprises' as associated to the Social Business Initiative.

If legal forms depend on each country's law and practices, they consist mainly in entities registered under special nonprofit laws. There are also companies acting not just for profit that

trade on the market to maximize social impact (ie impact first or public good mission) or are keen to recognize the social responsibility of enterprises, and some unincorporated groups. All are actors for change. We accept the World Bank classification of civil society organisations (CSOs) that distinguishes between operational organizations acting for changes through projects and advocacy associations seeking to achieve change through influence of the political system.

Operational organizations deliver services and welfare (particularly on social and environmental issues) and often are important actors in public policy and contributes to an inclusive and sustainable economy. They are also called social enterprises although the legal definition changes from country to country.

Advocacy associations, whose members are professionals not involved in governmental affairs (academic, scholars, public figures, former policy makers, retired civil and military officials, analysts, experts) engage in national or transnational dialogue on policy analysis and exchange of experience. As such they have the capacity to depoliticize discourses and practices of social movements.

I.2. The European single market

The European single market is a multi-purpose tool whose better functioning is in the interest of every citizen in Europe, being envisaged as consumer, producer or worker.

It confronts social, economic and enterprise models in Europe, pushing for dissemination of best practices creating wealth and welfare, on company law, intellectual and property rights and the creation of an environment favorable to initiatives. In so doing it speeds up the adjustment of industry to structural changes, particularly fostering better exploitation of the industrial potential of innovation and research.

Free to do business across the entire economic bloc, companies expand their operations, with the resultant competition bringing down prices and increasing consumer choice. Companies benefit in return from a solid base for staying competitive in the world economy.
The vast and unified European market attracts investors from outside the EU, adding their contribution to Europe’s expertise and wealth.

Finally, European economic integration at market level acts as a defence against periodic downturns in individual countries, allowing trade to continue in the whole and stopping member States or business from recourse to protectionist measures that would worsen the crisis.

Anyway, competition in the single market must be regulated in order to have it really helping technological, societal and organizational innovation to flourish and leave space for the development of small business and the implications of social organizations.
In this the civil society organizations have a positive role to play.

I. 3. Positive role of civil society on competitiveness and the market

Indeed a CSOs, whether an operational entities or an advisory association, focuses on a special aspect of society, for the promotion of which it has a particular interest or responsibility and unique knowledge, in theory and in practice.

CSOs have depth of knowledge in their own field and taken together with other sources of advice, are indispensable tools to understand the whole picture in our complex world, at economic, social, scientific and environmental levels, as well as at the intercultural and transnational levels of policies.
As organizations which seek change for the better, CSOs each offer unique expertise on the different factors of innovation at stake in any solution-oriented decision making process. Sensibility to risks, particularly acute among civil society in particular, help to bring out how change factors conflict with each other and possibly advance different, if not opposed, social and economic interests.

Economic systems, being enterprises or industrial sectors, may be able to benefit from the information provided by CSO.s on societal and environmental sustainability aspects of their operations to improve practices .They may retain from there an advantage in the market through gains of productivity in organization or process.

Public authorities at local, national or European level also may, through dialogue with civil society and arbitrating between the interests represented, improve acceptance of policies or facilitate implementation of long-term goals.

Social enterprises as a type of CSOs providing products and services to make an impact can also create new markets (eg social cooperatives in Italy or Specialist People to help mentally disable people to find a job in Denmark,), improve the quality of the market (eg Slow Food or the partnership between Danone and milk producers in Ukraine) or partner with private corporations and government in public service delivery (eg Shaw Trust to tackle unemployment in the UK or Groupe SOS catering service run by formerly unemployed people in France).

II. The impact of civil society

How in practice could civil society help the European single market authorities to improve competitiveness of the economy?

II.1. Better standardization

Organized civil society can first of all have a positive influence on productivity of the economy by being enabled to improve the sustainability of products and to customize services delivered to the market.

The advice of concerned CSOs should be channeled effectively to decision makers and properly taken into consideration during processes of standardization and regulation of regarding goods and services.

Civil society has a lot to say to industry concerning safety and environmental or health impact of products, for instance, as well as about whether services are fit for purpose.

The European Committee for Standardization, established under the Belgian law as an international nonprofit association, is the major recognized European organization for the planning, drafting and adoption of European standards in economic activities, together with CENELEC for electro technology and ESTI for telecommunication. The new EU regulation

on European standardization came into force on 1 January 2013. It is within this legal framework that these European standardization organizations will operate. As platforms for the development of European standards and technological specifications they have a major role to play as well as to foster the welfare of European citizens and the environment of the European economy in global trading.

European standards are recognized as national standards in each member state. With a European-wide common standard, conflicting national standard are withdrawn. Goods and services can reach the market with much lower development and testing costs. This helps to position Europe in the global economy.

Members of the European standard organizations are the national standard bodies. For the U.K. this is the "British Standards Institution", established by Royal Charter. The national standards bodies act as 'one stop shops' for all stakeholders with an interest in the process for European or international (ISO) standards. They convey the national point of view on technical matters under consideration at European level, notify new national projects for consideration and also implement European standards at national level. Therefore a balanced representation of interested parties on technical boards and committees of national standardization bodies is key to assure accuracy and sustainability of standards.

To ensure the standardization process benefits from the information obtained and evaluated regularly by CSOs in their own domain of action, these organizations should be given a role in the operation of national standardization bodies and systematically given the opportunity to propose a point for the agenda at national level. Where this could be of particular value, for civil society interest and for the economy in general, is in sectors such as customer services, data protection, environmental management and sustainability, health and safety, and risk-management.

The internal market is essential for prosperity, growth and employment in EU member states. As an integrated, open, and competitive area it promotes competitiveness and innovation. It is important that everyone, citizen or business, can make the most of it.

II.2. Better regulation

CSOs should have their say when Europe is starting a process to harmonize legislation to better respond to the challenges of globalization. Europeans must be at the heart of what is the driving force for growth in Europe.

In particular, CSOs have a crucial role to play regarding European legislation on services of general interest (public services or SSGI) and the analyses that the Commission conducts on the social impact of proposed legislation.

This should concern not only improvements, announced by the Commission, of the quality of the current legal structures of the social market economy such as foundations, cooperatives, mutual associations. Consumer interests must also stay central to the internal market. And civil society is particularly concerned by measures planned by the Commission regarding the development of market surveillance.

The single market is not exclusively an economic project. Its aim must also be to improve human health, the environment and the safety of Europeans, as the Commission recognizes.

CSOs have a major role to play in the assessment and improvement of the functioning of the internal market from a consumer perspective. This may encompass the causes of existing malfunctions and proposed remedies; consumer complaints processes, price levels and transparency, after-sale services, consumers' choice, sources of supply suppliers and the quality of products and services, especially safety features.

Despite its achievements so far the single market is not yet complete. There are gaps, notably in the services sector. And administrative obstacles continue to prevent the full potential of the single market being exploited by citizens.

Achievements include more choice and lower prices, the ability to travel freely and to settle and work where one wishes and to study abroad. But the completion of the single market is a continuous exercise.

Therefore the European Single Market Act II of 2012 puts forward key actions for the near future. Freeing up drivers for growth include opening up domestic rail services for more EU competition, having a fully-fledged cross-border job placement and recruitment tool, facilitation of e-commerce, priority actions for development of social entrepreneurship and building consumer confidence, notably through improvement and enforcement of product safety rules.

Single Market I and II recognize the added value of civil society and social enterprises. The Social Business Initiative launched in 2011 to foster an enabling environment is one of the 12 levers of the Single Market (see http://ec.europa.eu/internal_market/social_business/index_en.htm). This policy is coupled by Social Innovation Europe (see http://www.socialinnovationeurope.eu)

In all this CSOs have a valuable role to play. They may help to open doors to innovative, greener and more inclusive growth, making life easier for the citizen, consumers and workers in the single market as well as for business.

For this result to be achieved CSOs openness to enter into public debate must be met by the EU Institutions at all stages of the EU legislative process and at national level when implementing EU directives and regulations.

The existing practice of the EU Commission of broad and open consultation of civil society before deciding on legislative proposals should be generalized and empowered with a mores strategic use of social media as, for instance, www.opencoesion.it the digital platform of the Italian Government to inform citizens on the use of structural funds project by project, encourage bottom-up monitoring and get feedbacks.

Green papers to generate thinking and *White Papers* setting out Commission proposals should be routinely considered for any piece of important legislation.

Where a new legislative proposal of the Commission will affect citizens, directly or indirectly, it should be accompanied by a report on how CSOs have been engaged in the drafting. And if they have not been engaged, it should be clarified why not. This report –perhaps called a *Citizen Impact Report*- would have to be discussed as a priority by the legislative bodies of the EU- the Council and the European Parliament- similar to a report on subsidiarity now which has to show that the legislation is appropriate.

The Europe Commission launched its first and only Citizenship Report in 2010 and run a consultation on the topic last year but limited to legal rights (see http://ec.europa.eu/justice/newsroom/citizen/opinion/120509_en.htm).

Consultation with C.S.Os should be generalized at national level. In the UK the practice of the House of Lords panels on EU legislation offer a good example of what could be developed in other member States.

Such consultations would boost citizens' confidence in European legislation and the role national governments play in deciding upon and implementing it. This could prove of particular value in measures to be taken to remove any legal obstacles still preventing Europeans from working where they wish in a time of crisis, for recognition of professional qualifications; and for EU wide non-judicial redress for consumers.

At national level consultation would be of value regarding implementation of European rules and the introduction of recognized best practices originating in other countries.

CSOs have another role to play in support of market surveillance by the national bodies assuming responsibility for coordination with regard to the single market. They should be participate in the design and implementation of national measures aimed at monitoring the market and of national legislations implementing single market rules, alongside other actors already involved in the framework, such as academics and national statisticians. The framework should address systematic, ex-post impact assessments reports or audits to be launched by national authorities responsible of the implementation of EU single market directives.

II.3. Civil society and decentralized European agencies

European decentralized agencies play an important role regarding the implementation of EU policies, technical, scientific, operational and regulatory in nature. All support cooperation between the EU Commission and national governments by pooling technical and specialist expertise from both the EU institutions and member States.

"Executive" agencies (such as the Research Agency) manage European programmes, at times in partnership with the private sector, university and research bodies. Supported by public funds they must work differently from the public sector: their decisions are taken from the perspective of commercial edge or expertise.

"Regulatory" agencies - about 30- have a very different role. Some focus on networking between national authorities but the majority can adopt individual decisions with direct effect, or provide additional technical expertise on which the Commission can base a decision. They can be funded by the receipt of fees or payments and EU budget funding. Regulatory agencies have autonomy in limited areas; their governance varies. These agencies the size and composition of the management board that has authority over the agency's work program.

Although the Commission is present in it, it is in a minority. Regulatory Agencies make a significant contribution to the effective functioning of the single market. So their ways of working ought to reflect the best attempt to allow each to discharge its responsibilities effectively.

In standardization that produces European voluntary norms and in developing legislation to remove administrative obstacles to the single market, organized civil society must become a stakeholder in the process for decisions by regulatory agencies each time they directly affect the citizen.

Here are some examples of the scope for action:
- the European Environment agency that provides independent information on the environment to feed into EU and national policy making, including assessments on social factors putting pressure on the environment, effectiveness of policies or sustainable consumption
-the European Center for Disease Prevention and Control working in partnership with national health protection bodies to strengthen disease surveillance and early warning systems
- the European monitoring Center for Drugs and addiction, whose aim is to ensure comparability of information on drugs and drug addiction across Europe, devising methods and tools required to this
- the European Food safety authority created to increase common protection, whose activity covers nutrition, animal health and welfare, plant protection, and that communicates to the public on risks
- the other agencies active on safety for specific risks, such as the European Aviation Safety agency (EASA) which assists the European Commission in the drafting of rules for aviation safety and certifies aeronautical products and organizations to ensure airworthiness and environmental protection standards; its competence is also to be extended to air operations and flight crew licensing;

These examples are directly connected to civil society values:
- the European Institute for Gender Equality, developing public awareness and tools to integrate gender equality in all policy areas
-the European Union Agency for Fundamental Rights providing relevant authorities in European Institutions and the member States with assistance and expertise on fundamental rights when implementing European regulations. It promotes dialogue with civil society in order to raise public awareness of fundamental rights and has created a Fundamental Rights Platform with the Council of Europe and civil society.

In each case, a review should be done at national and EU level to determine how civil society organizations could better participate in the processes of these bodies. As a minimum, national authorities, public or private, should be under an obligation to share views with CSOs active in the field before engaging in national or European decision processes.

III. Remove obstacles to C.S.O. access to the market

In order to have a positive impact on the European decision-making process, CSOs must be given full opportunity to express their views and not be impeded to do so by size or fragile economic structure.

III.1. The directive on services

The nonprofit character of CSOs should not deprive them of the benefits of the “directive on services in the single market” when they can offer services in competition with other type of organizations such as business.
Designed to release the untapped growth potential of service markets, the directive is

primarily aimed at significantly increasing transparency for business and customers when they want to provide, or use, services in the single market.

The directive requires the member states to simplify bureaucracy for service providers, removing unjustified burdens and facilitating the cross-border provision of services. It lays down a set of measures to promote high quality of service and to enhance information and transparency about providers and their services. In particular the setting up of "single contact points" allows service providers to obtain all relevant administrative information without the need to contact several authorities.

The problem is that the output of CSOs can compete with business in the market for certain type of services, such as consultancy or training and education. But the service directive excludes from scope "social services mandated by the State or by charities recognized as such by the State".

So customers and providers of these nonprofit services will miss out on the potential benefits of (*cross-border trading).* The directive will abolish discriminatory measures on nationality or residence conditions, "economic tests" for providers, territorial restrictions or the obligation to have activity in certain member States. Member States are authorized to impose restrictions on the provision of services based in another member state to their own national customers.

Other difficulties arising from the general derogation to the "freedom to provide services without setting up an establishment in the country" principle of the service directive are linked to the lack of recognition of certain professional qualifications.

National and EU authorities should engage in discussions with concerned CSOs to measure the impact of these restrictions on activities of these organizations and on society to which CSOs may be providers of specific, and in some cases unique services. Appropriate remedies could be identified and implemented in the framework of a revision of the directive.

III.2. Competition law

Fragile economic structure of certain CSO.s should not lead to legal obstacles for them to provide services to governments or to EU institutions.

It should be recognized first that current EU competition laws regarding state aid do not completely fit with CSOs. The leeway that competition rules leave for innovation must benefit socially innovative organized civil society and permit governments to support it.

EU law must establish that support of CSO.s , particularly of those using voluntary work-force or pro-bono services and in-kind support, through preferential loans or grants, will not be considered anti-competitive practices against the liberal professions or the services sector for instance in consultancy.

The Commission should complete regulation to declare certain categories of governmental interventions in the economy to be compatible with the single market, by clearly stating assistance to CSOs as a category of governmental aid exempted from the obligation of notification.

The specific character of CSOs, namely their cost structure, would be made compatible with the criteria of EU competition law without any possibility for future legal uncertainty concerning costs eligible for State intervention or other criteria of aid transparency and for calculation of the incentive effect and maximum amount of aid.

In particular, the regulation must take account of the specificities of CSOs regarding the authorized intensity or threshold of aid, governmental support being on an “ad hoc” basis or intervening under a general “scheme” of support of civil society.

The problem of identifying eligible costs in order to determine the level of state intervention or the effect of possibly cumulated measures must be clarified in favor of CSOs. That is also necessary in the case of combination of support, through EU funding that authorizes now in-kind financing as eligible costs, and national funding.

In addition, the Commission regulation on “de minimis” aid should be reviewed to exempt aid of more than EUR 200.000 in a period of 3 years if some costs taken into account to fix the aid level are in fact in-kind financing of CSOs activities.

In general, aid supporting training of CSOs or provided by CSOs to one-another must also be declared compatible with the single market, knowledge obtained being transferable or not to other social activities or to business.

CSOs, as SMEs, have a decisive role to play in enhancing social stability as they boost economic dynamism. However, even more than is the case for SMEs, the modest resources available to CSOs may impede them to play that role, particularly on social innovation. Aid declared compatible with the single market by the Commission regulation regarding support of business for their research, investment and for consultancy and costs of other services, must be of benefit in the same way to CSOs

III.3. Public procurement rules

Service provided by CSOs to government must be facilitated, alongside the necessary clarification of their status regarding state aid, by easing their access to public procurement. Measures introduced recently in that direction in the new EU financial regulation after a campaign initiated by the Euclid Network must be generalized to public procurements by member states and local public bodies (see http://www.euclidnetwork.eu/projects/policy-and-advocacy-work/reform-of-european-funding/why-campaign.html).

The public authorities spend just under 20% of the EU’s GDP on procurement. This public expenditure is an essential tool for growth and opening up public contracts to fair competition, giving citizens better quality for the best price, is one priority project for the programme on achievement and completion of the single market of the EU.

Better access of CSO.s to public procurement will sustain the offer of environmentally friendly, socially responsible and innovative goods and services that the EU need to achieve in order to boost prosperity.

Modernization of the legislative framework of public procurement in member states must therefore take stock of the progress realized at EU level, with the entering into force of the new EU financial regulation in January 2013. The new EU financial regulation recognizes all

kinds of in-kind financing, including volunteering, as normal costs for CSOs. That must be taken into account for the national public procurement rules to evolve in the same way. In particular low costs of CSOs coming from services offered to them pro bono must be fully accepted and taken into account as a valuable characteristic of CSOs and not be considered any more as unfair economic advantage.

Other changes must address the possibility for CSOs to have access to simpler administrative procedures and reduction in red tape.

IV. Improving European participatory democracy

IV.1. Through a permanent dialogue with the EU Institutions

Organized civil society enjoys a recognized role in the framework of EU Institutions. Art.11 of the European Union treaty states that EU Institutions maintain a permanent dialogue with CSOs that has to be opened, transparent and regular.

Apart from providing a basis for consultation from the European Commission of all stakeholders on its proposals, the requirement also asks the EU Institutions to enable CSOs to make opinions known and publicly exchange in all domains of EU actions. The EU Commission that retains the initiative on actions to be taken in most domains of European policies, as the institution in charge of the European common interest, and the European Parliament, that represents the citizens at EU level, have particular responsibilities here.

But responsibility for Europe to be transparent to citizens lies also with member states as they concur in the Council of the European Union to legislate on EU laws. Sessions of the Council of ministers are open to the public when voting on EU legislation. But it is not enough.

Accountability of national governments on European business to the public depends even more on how they debate in their national parliaments about the votes they intend to make in the EU Council. Improvements in that aspect of European democracy are awaited in most member states.

And so are better links with civil society organizations to be set up at national level in the preparation of national positions on proposed EU legislation. Some form of permanent national fora should be created for that purpose, geared to the work of national departments most in contact with European affairs and the CSOs. concerned with their activities. This will be of particular interest for national administrations whose ministers participate in the Competitiveness Council in charge of the single market and industry. This Council meets only 5 to 6 times a year, with different representatives of the same government each time, depending on the matter to be discussed (ministers for industry, research, and so on…).

CSOs should plead at national and European level for a more coherent and better coordinated handling of matters related to EU competitiveness ensuring an integrated political approach to the enhancement of competitiveness and growth.

The strategic use of new technologies and social media is the long term solution for an open, transparent and accessible democratic participation.

On the contrary, various committees and generic representation such as European Economic and Social Committee (ECOSOC) which have been set up in '90s to increase participation have just increased the bureaucratic burden further filtering a dialogue between policy makers and citizens without any added value to the policy making process. Commission's departments and programme have balanced this establishing their own specialized stakeholder groups as for instance Europe for citizens structured dialogue and Commissioner Barnier's expert group on social entrepreneurship.

The ineffectiveness of formal committees as ECOSOC has been caused mainly by a non-meritocratic selection of members in the member states. Rules and procedures are obscure, inconsistent and arbitrary, often based on political affiliation. This shortcoming has even been acknowledged in an internal enquiry on the selection process commissioned by the Presidency of ECOSOC. Therefore the selection process has to be changed radically or this form of generic and structured participation should be dropped.

IV.3. A better use of the EU budget

Of the EU budget, activities supporting citizenship and actions in relation to EU policy for "freedom, security and justice" (immigration and asylum, protection of the customers, health, youth, but also the protection of EU borders) represent a mere 1, 6%.

A priority should be for CSOs to assure this budget is used in the most efficient way, that is in the interest of both the development of a vivid organized civil society in each member state and of the EU Institutions being kept permanently and accurately informed on the evolution of European societies.

CSOs should ask for European financing in support of citizenship to be used in priority in order to permit organized civil society to fully play its role in support of positive social change, for more democracy, social responsibility, a sustainable economy and the share of culture.

In that they need to receive full support from the EU Commission that would help by reducing red tape and from national governments whose services in charge of relations with CSOs should be of help to match requirements for participating in E.U programs.

Broad consultations are needed at national and local levels in order for rapid progresses to be achieved that would effectively make every organization with such an ambition able to defend its cause in Europe.

V. **Practical Suggestions**

V.1 - A roundtable on how to make cross-border trading work well for civil society

Euclid members in the UK and across Europe have some appetite for cross border trading. A number are already substantial businesses. But they cannot exploit the benefits of cross border trading. There are obstacles to social enterprises and other civil society organisations accessing the market.

Section III of this paper, “Remove obstacles to CSO access to the market”, includes an introductory over-view of this topic and touch on:

- The directive on services
- Competition law
- Public procurement rules

Our proposal is to develop the thinking further at a roundtable with around 15 people from big social enterprises in the UK and other EU countries to share experiences and ideas with each other, and with officials from Whitehall and Brussels.
Potential outcomes:

- Boost growth through increasing cross-border trade
- In light of balance of competences review, help the UK government to get clear how to open the market for social enterprises – identify incentives and barriers.

This is a cross-cutting topic in Whitehall, with key interests in the Cabinet Office/BIS:

- Overview of balance of competences review
- Lead on public procurement rules
- Support for social enterprises and social investment

V.2 Draw out lessons from negotiation of the new Financial Regulation for application to procurement

The Financial Regulation covers all EU funding. A revised version of the regulation has just been approved by the European Parliament on the 1st of January 2013. The new regulation has a huge impact on civil society organisations and social enterprises as it increases European Institutions effectiveness, improves transparency, cuts red tape and introduces innovative financial mechanisms.

Euclid has advocated for changes[1] since 2008 and now would like to see the extension of these rules and principles applied to grants also to procurement rules.

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[1] Euclid Network, together with the Civil Society Working Group on EU financial support within the Structured Dialogue Group (hosted by DG Communication), worked with more than 70 umbrella groups from across Europe in order to advocate for changes in the Financial Regulation. The European Parliament and the European Commission have been in the discussion since the beginning, enabling an effective dialogue among the various parties in order to find joint solutions. After more than 10 months of discussion between the European Institutions, involving six parliamentary committees and more than 500 amendments, the Parliament has given the green light to the following changes, which are the main achievements of EN’s campaign:
• Recognition of VAT as an eligible cost
• Simplification of administrative procedures for low value grants (the threshold has increased from 10000€ to 60000€)
• Allowing contribution in kind and volunteering as co-financing for low value grants
• Allowing surplus as reserves for certain grants
• Setting time limits for the funding process
• Facilitating the pooling of EU resources with private funds via the creation of “public private partnerships”, notably in the research field
• Using incentive prizes, which are intended to provide a potentially high leverage effect with light administrative procedures (especially in the research area)
You can find additional information here: http://www.euclidnetwork.eu/projects/policy-and-advocacy-work/reform-of-european-funding.html

V.3 Identify good practice on transparency

Transparency is a thread throughout the project. The EU has long recognised the value of transparent communication, as it ensures that projects are accountable, legitimate and it creates trust in the contributors and in the decision-makers.

EN encourages constructive debate and the sharing of good practice on transparency in the EU.

The EU has already developed a Transparency register[2] and register for applicants of grants applicants in external cooperation programmes called PADOR[3] .

Furthermore, the new financial regulation foresees the introduction of standardized electronic processes for data exchange, also between the Member states and the Commission[4].

At national level, one of the best practices is the website by the Italian government www.opencoesione.it. "OpenCoesione" is Italy's first national web portal on the implementation of investments programmed in the 2007-2013 programming cycle by Regions and State Central Administrations. Publication of data allows Italian citizens to evaluate if and how projects meet their needs and whether financial resources are allocated effectively. The lack of transparency on how public money is spent is one of the main reasons for the slow pace in implementing development policies and in understanding whether investment projects actually respond to local demand.

[2] http://europa.eu/transparency-register/ t provides citizens with a direct and single access to information about who is engaged in activities aiming at influencing the EU decision making process, which interests are being pursued and what level of resources are invested in these activities.
It offers a single code of conduct, binding all organisations and self-employed individuals which accept to "play by the rules" in full respect of ethical principles. A complaint and sanctions mechanism ensures the enforcement of the rules and to address suspected breaches of the code.
The Transparency register has been set up and is operated by the European Parliament and the European Commission. The Council of the European Union supports this initiative. See for reference the "Official documents" page.

[3] http://ec.europa.eu/europeaid/work/onlineservices/pador/index_en.htm

[4] As mentioned in Art 91 a, of the Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 http://www.euclidnetwork.eu/files/financial_regulation_final_21_1.pdf

European Commission

UK Review of the balance of competences

I) Internal market: Synoptic Review

NB: It is understood that specific aspects of the internal market will be the subject of separate calls for evidence in the course of the review exercise.

1. The UK and the Single Market

- Single Market Country Report 2012: United Kingdom:

  http://ec.europa.eu/internal_market/strategy/docs/governance/sm-country-report_uk_en.pdf

2. General

- 2013 Report on the State of Single Market Integration:

  http://ec.europa.eu/europe2020/pdf/sgmktreport2013_en.pdf

- Internal Market Scoreboard February 2013:

  http://ec.europa.eu/internal_market/score/docs/score26_en.pdf

- Commission Communication on Better Governance for the Single Market:

  http://ec.europa.eu/internal_market/strategy/docs/governance/com_2012_259_en.pdf

- Commission Staff Working Document on the External Dimension of the Single Market Review:

  http://ec.europa.eu/citizens_agenda/docs/sec_2007_1519_en.pdf

- European Commission website on Better Regulation:

  http://ec.europa.eu/governance/better_regulation/index_en.htm

3. Services

- European Commission report assessing economic impact of Services Directive:

  http://ec.europa.eu/economy_finance/publications/economic_paper/2012/ecp456_en.htm

- Commission Staff Working Document assessing the implementation by Member States of the Services Directive (includes sections on the UK):

  http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/report/SWD_2012_148_en.pdf

4. Financial Services

- European Commission Report on Financial Stability and Integration:

  http://ec.europa.eu/internal_market/economic_analysis/docs/financial_integration_reports/20120426-efsir_en.pdf

- Report by the European Central Bank on Financial Integration in Europe:

  http://www.ecb.int/pub/pdf/other/financialintegrationineurope201204en.pdf

- Evaluation of the economic impacts of the Financial Services Action Plan, prepared by CRA International for the European Commission:

  http://ec.europa.eu/internal_market/finances/docs/actionplan/index/090707_economic_impact_en.pdf

5. Public Procurement

- Study on the cost and effectiveness of public procurement in Europe, prepared for the European Commission by PwC, London Economics and Ecorys:

  http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf

- Final report of study on cross-border procurement above EU thresholds, carried out by Ramboll Management Consulting and University of Applied Sciences HTW Chur on behalf of the European Commission:

  http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cross-border-procurement_en.pdf

- Report estimating the benefits from procurement Directives, prepared by Europe Economics for the European Commission:
  http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/estimating-benefits-procurement-directives_en.pdf

6. Free Movement of Goods

- Industrial policy Communication update: a stronger European industry for growth and economic recovery (Commission staff working document):

  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0297:FIN:EN:PDF

- General overview of the Commission's work on the free movement of goods:

  http://europa.eu/legislation_summaries/internal_market/single_market_for_goods/free_movement_goods_general_framework/index_en.htm.

- Participation of the UK in the 98/34 procedure:

  http://ec.europa.eu/enterprise/policies/single-market-goods/prevention-technical-barriers-trade/notification-procedure/index_en.htm

7. Free Movement of Labour

7.1 Free movement of workers

- Free movement of workers- achieving the full benefits and potential (2002):

  http://eur-lex.europa.eu/L/LexUriServ.do?uri=CELEX:52002DC0694:EN:NOT

- Reaffirming the free movement of workers. Rights and major developments (2011)
  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0373:EN:NOT

7.2 Regulation 883/2004 on the coordination of social security systems

- The Coordination of Healthcare in Europe: Rights of insured persons and their family members under Regulations (EC) No 883/2004 and (EC) No 987/2009 (European Commission publication, 2011)

  http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=5942&type=2&furtherPubs=yes

- Follow-Up Report on the implementation of Regulations (EC)No 883/2004 and (EC) No 987/2009, Report prepared by Rapporteurs Jitka Konopaskova and Maja Saslin for DG Employment, Social Affairs and Inclusion, European Commission in conclusion of the April 2011 conference in Gödollö on "Modernised EU social security coordination: one year on" (see in particular pages 14-18)

  http://ec.europa.eu/social/BlobServlet?docId=6772&langId=en

Faure, Jean-Pierre

CALL FOR EVIDENCE ON THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

WHAT ARE THE ESSENTIAL ELEMENTS OF AN INTERNAL MARKET AND AGAINST WHAT CRITERIA SHOULD WE JUDGE ITS ECONOMIC BENEFITS?[1]

1. SHORT OPENING REMARKS

1.1. THE ESSENTIAL ELEMENTS OF A SINGLE MARKET[2]

- **Eliminating unnecessary[3] obstacles**[4] to make it work effectively;
- A certain degree of **harmonisation and/or mutual recognition** => more **functional integration**[5];
- **Efficient and timely implementation of EU laws by Member States** (enforcement) to create a level playing field, to have a positive impact on competition and to induce efficiency[6]. Cooperation between Member States is a must for the sake of coherence[7];
- **The social dimension** of the Single Market[8] must be on a par with economic freedoms and market developments <=> the Single Market is not an end in itself but **a means to improve people's standards of living** (see art. 3.3 of the consolidated version of the TEU). Esp. in times of crises, people turn away from the EU's model because it (i.e. the Single Market) is seen as a vector of profit maximization (*"the market is a ruthless God"*[9]);
- **Going for a digital Single Market** will lead to economies of scale (e.g. administrative costs reduction), simplification and more/better integration of resources, potential and ideas[10] as well as better (time) management. A Single Market cannot be achieved by a Member State alone;

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1 Or, as the Dutch Employers' Federation VNO puts it, ***"When will it really be 1992?"***.

2 See also the Monti, Grech and Herzog reports as well as the summary of EESC recommendations (from relevant EESC opinions) related to these reports (http://www.eesc.europa.eu/?i=portal.en.publications.24624).

3 This certainly includes intellectual and ideological barriers (in spite of the EU and its Single Market not being an ideology but a cooperative strategy).

4 A number of obstacles cannot be removed – at least not in the short or medium term. Language barriers are an example though the UK basically benefits from English being THE *lingua franca* for exchanges worldwide. See the SMO catalogue of obstacles: http://www.eesc.europa.eu/?i=portal.en.publications.24626
All stakeholders must agree on the concept of "unnecessary obstacles" and certain "obstacles" are indeed safeguard mechanisms.

5 Mutual recognition is only possible if some form of harmonisation has been implemented.

6 This implies making use of and promoting all existing EU networks and instruments, starting with SOLVIT. In the first half of 2013 the SMO will publish (hard copy and online) a directory of all such online instruments. There should also be equal focus on impact assessments and quality of legislative design.

7 See e.g. IMI and SOLVIT which, besides, needs more resources.

8 One should not forget that the Single Market is a means to achieve *"full employment and social progress"* among others (see art. 3.3. TEU).

9 I think Max Kohnstamm, Dutch philosopher and author of the *"Limits to growth"* (see also in the same vein http://www.clubofrome.org/?p=326), said that once. The market is international while labour remains national.

10 There are many best practices across the EU that do deserve being promoted and shared (see Estonia and Austria on e-public services, Portugal on e-procurement etc.).

- **High level quality and level playing field** to boost fair competition and allow economy to grow through the advantage of same conditions;
- The **involvement of all players**[11] is crucial for the Single Market to work effectively, to achieve maximum acceptance[12] and **benefit businesses, workers and citizens alike**;
- As a corollary, it is essential to accompany the Single Market with a **proper (effective) information and communication policy** based on verifiable facts and figures which people can identify with/understand.[13]

Another element is needed for the future, namely **a more speedy EU legislative process** to keep pace with global developments and react to emergency situations; this in turn implies simplification, possibly alternatives to regulation[14].

1.2. ECONOMIC BENEFITS

The current discussion around the Single Market comes to us through the prism of the multiple crises. The 2 % GDP growth[15] and job creation resulting from EU/Single Market membership are verifiable facts. A Single Market delivering its full potential would yield an annual growth rate of up to 4 %. To achieve this, politics must support the Single Market. Economy and politics are the two sides of the same coin. The partly unregulated financial sector[16] remains a major risk factor. There again, a "climate change" is needed if we are to break the cycle of crises and increase the prospect of our economies growing again. Everything is interconnected. You can't expect economic recovery if you don't deal with systemic risks in the first place.

The overall criteria to measure the benefits of the Single Market are basically the degree of satisfaction of consumers (e.g. the quality/price ratio), of enterprises (e.g. advantageous competitive position, results), of workers (e.g. salaries, working conditions, social benefits). This sums up art. 3.3. TEU. All this requires active participation of all said social and economic actors. A focus on strictly economic issues as might be illustrated by the options taken by certain third countries (e.g. China or India) has heavy consequences in terms of social justice.

The concept of ***"the cost of non-Europe"***[17] analysed in the Cecchini report has dramatically changed. New parameters have come into play since this report was drafted. As the EESC recently noted[18], "*not only has the building of the Single Market progressed considerably in the last quarter of a century but, above all, the context has developed substantially and now includes at least five new key factors which were not present in the late eighties:*

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11 This includes of course civil society organisations. The beneficiaries of the Single Market should visibly commit themselves to promoting it when they see benefits for themselves. When referring to beneficiaries (or winners) of the Single Market one ought to keep in mind that there are not only winners in the Single Market.

12 See the EP report on "*The 20 main concerns of European citizens and business with the functioning of the Single Market*" (2012/2044(INI).

13 I.e. transpose into facts of everyday life. All multipliers have a responsibility and must display "critical ownership".

14 See the EESC (SMO) self- and coregulation database: http://www.eesc.europa.eu/?i=portal.en.self-and-co-regulation-enter-the-database. On this, the EESC adopted an exploratory opinion ("*Better regulation*") at the request of the UK Presidency in 2005 (CESE 1068/2005) and closely cooperated with the Cabinet Office and the then DTI.

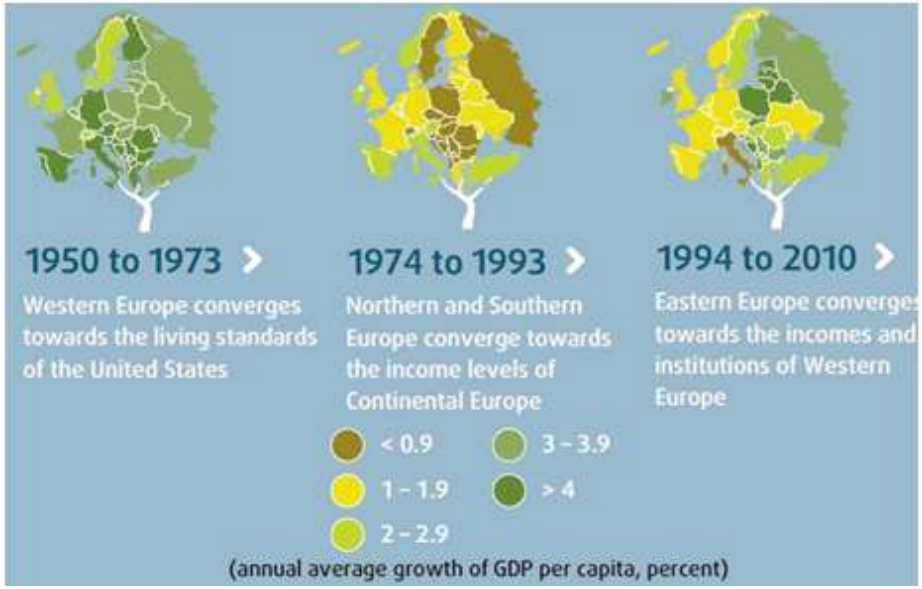
15 However, growth cannot be infinite and policies must take this "natural limitation" into account.

16 I do not think one can use the term "services" in this context since banks have proved serving their interests only – with the dramatic global damage we know.

17 EESC opinion "*Towards an updated study of the cost of non-Europe*", CESE 1374/2012, http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\sous-comite\sc035%20pour%20une%20analyse%20actualisee%20du%20cout%20de%20la%20non-europe\ces1374-2012_00_00_tra_ac.doc&language=EN. The BIS study raises interesting issues re the downside and upside of the Single Market (p. 32-35).

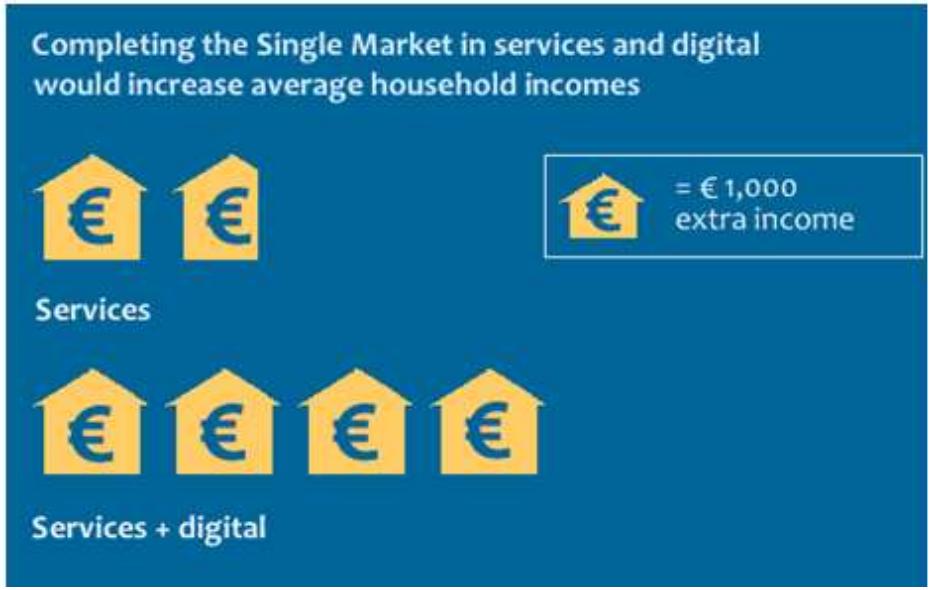
*1) **Globalisation** is much more advanced, with the arrival on the international market of emerging countries (...), whereas Europe's competitors in the 1980s were primarily developed countries;*
*2) Europe is now made up of **27 countries** whose levels of development, economic structures and social systems are more disparate than was the case in the 1980s;*
*3) European integration has evolved considerably, with various key institutions such as the **Euro**[19] **and the ECB now in place** (at least for a number of Member States);*
*4) An **economic crisis** worse than any since the 1930s is still ravaging Europe, having now become a sovereign debt crisis; and lastly*
*5) The imperative need for the **EU Member States to cut their debts** in the coming years".*

EUROPE'S GROWTH RATE[20]



Source: The World Bank, *"Golden Growth – Restoring the lustre of the European economic model"*, 2012.

ECONOMIC BENEFITS FROM SERVICES AND THE DIGITAL SINGLE MARKET[21]



Source: BIS Economic Paper No. 11/Eurostat, *"The economic consequences for the UK and the EU of completing the Single Market"*, Feb. 2011.

18 Opinion on *"Towards an updated study of the cost of non-Europe"*, see footnote 15.

19 However, as Milton Friedman put it, one should keep in mind *"the political consequences of a monetary area that is not conterminous with a political entity"* (http://opinion.financialpost.com/2011/11/11/from-the-archives-mundell-vs-friedman-on-the-euro/).

20 See http://siteresources.worldbank.org/ECAEXT/Resources/258598-1284061150155/7383639-1323888814015/8319788-1326139457715/fulltext_contents.pdf.

21 See also http://www.bis.gov.uk/assets/biscore/economics-and-statistics/docs/e/11-517-economic-consequences-of-completing-single-market

Depending on their economic model, certain Member States (Germany in particular) are coping rather well with the current downturn and rely very much on direct access to EU national markets, esp. within the Eurozone, for their growth and employment. Others are hugely and visibly benefiting from EU membership (Poland in particular, esp. in terms of infrastructure). Member States, like Estonia, fully going digital[22], have triggered a new impetus e.g. in terms of cross-border SME cooperation leading to substantial economies of scale (see footnote 19).

2. SUMMARY

"ESSENTIAL ELEMENTS" IN A NUTSHELL
Eliminate unnecessary obstacles;
Harmonisation and/or mutual recognition;
Effective and timely (transposition and) implementation (esp. of directives);
Social dimension;
Digital dimension;
High quality and level playing field;
Involve all players and benefit businesses and citizens;
Information and communication;
Speedy legislative process.

"ECONOMIC BENEFITS" IN A NUTSHELL
Economies of scale;
More choice for consumers => positive impact on prices;
Steady improvement of standards of living and growth rates in Europe[23];
Expected growth rate of 4 % p.a. if the Single Market worked properly (and uniformly in all Member States);
2 % GDP growth and job creation resulting from EU/Single Market membership so far;
7.1 % growth alone for the UK if barriers within the Single Market were removed (see footnote 15, p. 10 of the BIS study).

[22] See http://www.eesc.europa.eu/?i=portal.en.events-and-activities-digital-estonia and especially http://www.eesc.europa.eu/resources/docs/rik_cross-border-digital-signature_mr-magi_new.pdf.

[23] The World Bank via the Facebook page of the *Single Market Observatory* (SMO) (https://www.facebook.com/photo.php?fbid=291128980948432&set=a.158436290884369.35434.138728772855121&type=3&theater).

3. TEN (PERSONAL) REMARKS

1. Political and functional issues cannot be separated (=> the Single Market suffers from natural, legal AND ideological/political barriers);

2. With 10 % of Europeans benefiting from mobility[24] and some 25 % directly affected by the crises a lot more must be done in terms of information, awareness raising[25] and social justice;

3. Leaving it alone to the market – *"a ruthless God"* – to sort things out would undermine governance;

4. Civil society actors (i.e. incl. the market[26]) must be involved on a pluralist basis in the design of the Single Market. In parallel, the European Parliament has a pivotal role to play in many respects, also as a democratic monitoring instrument;

5. A regulatory framework is first and foremost a set safeguard mechanisms;

6. To paraphrase M. Friedman, *"the Single Market is not conterminous with a political entity"*[27]. In this context, political entity equals political will to unleash the full potential of the Single Market for the benefit of all Member States in a fierce global competitive context;

7. *"More Europe"* (economic, financial, banking, fiscal, social and political union) should definitely mean *"better Europe"* (more social or grass-root oriented, sustainable, future-proof, reactive to urgencies, implementing simplification measures esp. for SMEs, etc.);

8. One might have *"questions regarding the ability of the present EU institutional model as shaped by the Lisbon Treaty to handle (the) crisis; (…) wonder how stricter and more effective control over the financial system can be achieved, in view of the successive stock market crashes with all the inevitably ensuing social and economic damage. (There is an urgent need) to show the necessary ambition and vision to successfully regenerate the European economic and social model in keeping with the values and principles enshrined in the Treaty"*[28];

9. In reference to question 6 and the UK's involvement in the Commonwealth, I would think that there is no contradiction between keeping historic, cultural and economic ties alive and being committed to a geographically closer market, which the UK is[29]. Likewise there is no contradiction between being a national of any given Member State and feeling European at the same time, e.g. enjoying cross-border mobility for various purposes;

10. Questioning the *acquis* of the past 60 years or so at the expense of a common future is highly risqué (see footnote 23) as is illustrated by the rise of xenophobic, nationalist and backward looking parties. *"Wehret den Anfängen!"*[30]

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[24] I personally tend to think this is too low a figure esp. if we take tourism into account.

[25] Also to make sure EU citizens know/use their rights and access the relevant online instruments (e.g. SOLVIT is hardly known even by Chambers of commerce, esp. at local level). The EU and its Single Market remain abstract and far away due to lack of information... and disinformation.

[26] Reacting to the British Prime Minister's plans to hold a referendum on the UK's EU membership (however, David Cameron recently said that *"(...) an in/out referendum (was) the false choice"*), ten British business leaders wrote a letter saying that *"to call for such a move in these circumstances would be to put our membership of the EU at risk and create damaging uncertainty for British business, which are the last things the prime minister would want to do. We need a strong reformed EU with Britain at the heart of it"*. Now, my "safe-or-sorry" question would be: where was the voice of the British business community in the past?

[27] A number of Member States have long negotiated opt-outs that basically make the Single Market look very much like a cafeteria system of preferences.

[28] See EESC opinion on *"Developing a people-oriented, grassroots approach to internal market policy"*, CESE 466/2012, http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\int\int563\ces466-2012_ac.doc&language=EN. The SMO/EESC and the EFTA Consultative Committee published a joint document on this topic in 2012.

[29] Just looking up in an atlas will reveal how close the UK is to Europe.

4. REFERENCES AND SOURCES

EESC information report on ***"The impact of the Lisbon treaty on the functioning of the Single Market"***, ces241-2008_fin_rev_ri_en.doc (separate appendix with comparative synopsis of the various treaties and their impact on the Single Market[31]);

VNO publication ***"When will it really be 1992?"***, part 1: http://www.eesc.europa.eu/?i=portal.en.self-and-co-regulation-literature.3244; part 2: http://www.vno-ncw.nl/SiteCollectionDocuments/Brochures/When%20will%20it%20really%20be%201992,%20part%202.pdf

Report of the European Parliament (IMCO Committee) on ***"The 20 main concerns of European citizens and business with the functioning of the Single Market"***, RR\915643.doc, http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0310&language=EN#title1

EESC opinion on ***"The Single Market Act II"***, …

EESC opinion on ***"Key actions towards a Single Market Act II"***, http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\int\int648\ces1575-2012_00_00_tra_ac.doc&language=EN

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EESC exploratory opinion at the request of the Czech EU Presidency on ***"Legislative barriers to competitiveness"***, CESE 865/2009, http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\int\int452\ces865-2009_ac.doc&language=EN

EESC opinion on ***"How to improve the implementation and enforcement of EU legislation"***, CESE 1069/2005, http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\int\int262\ces1069-2005_ac.doc&language=EN

30 *"A stitch in time saves nine"*. This was the motto of the German antifascist movements in the 1920-30's. We full well know what happened a few years later…

31 Can be sent in PDF format upon request (N.B.: long document).

Federation of Small Businesses

Federation of Small Businesses
The UK's Leading Business Organisation

balanceofcompetences@bis.gsi.gov.uk

28 February 2013

Dear Sir/Madam,

FSB response to the call for evidence on the Internal Market: Synoptic Review

Please find below the response of the Federation of Small Businesses (FSB) to the Balance of Competences Review – the consultation on the Internal Market.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party-political and, with 200,000 members, it is also the largest organisation representing small and medium-sized businesses in the UK.

Small businesses make up 99.3 per cent of all businesses in the UK, and make a huge contribution to the UK economy. They contribute up to 50 per cent of GDP and employ over 59 per cent of the private sector workforce.

The FSB has a diverse membership, and there are many differing opinions and concerns about our relationship with the EU. However, the European market remains the main destination for our exporting members. Our latest research shows that they are also starting to look to countries outside the EU. The EU trade agreements to open up markets are therefore of major importance to them. Furthermore, inward investment- allows businesses in the supply chain to benefit from companies that base themselves in the UK to deliver to the European market.

There are more than four million people in the UK that are either self-employed or run their own business. Although the single European market gives them access to 500 million customers and 23 million businesses, the burden of EU regulation falls too heavily on the smallest firms. The Government and the EU must do everything they can to further free up barriers to trade and support communities, ensuring small businesses have the best support and environment in which they can create growth and jobs.

We trust that you will find our comments helpful and that they will be taken into consideration.

Yours faithfully,

David Caro
Chairman for EU and International Affairs

Federation of Small Businesses

Federation of Small Businesses

The UK's Leading Business Organisation

FSB response to the Balance of Competences Review: Internal Market Synoptic Review

February 2013

Introduction

Small businesses are the lifeblood of the European economy, providing more than two thirds of private sector employment. SMEs make up 99 per cent of all businesses in the EU, of which 92 per cent are micro enterprises. The FSB's membership falls firmly into the latter category. The average headcount of an FSB member's business is seven members of staff.[1]

Just over one fifth of FSB members export. The European market is the main destination for our exporting members (88 per cent trade within the EEA).[2] A third of exporters provide services cross-border, and 65 per cent export goods. Although it is noted that not everything can be classified as either a good or a service (e.g. databases, software).

The internal market offers easy access for first-time exporters with a market of 500 million customers and 23 million businesses on their doorstep. The internal market creates some legal certainty and a level playing field through competition rules and many harmonised rules. This means that businesses can save considerable cost when selling to EU countries. In theory, 27 sets of regulation are merged into one.

However, the different ways and the different standards to which member states implement EU legislation can affect competiveness in the EU. Some of our members fear that they are put at a commercial disadvantage by complying with regulations, when others may face a lighter regime. In addition, EU rules often mean red tape and adjustments costs, e.g. standards and product rules.

We support the continuous development of the internal market and the liberalisation of trade, including digital entrepreneurship. However, its rules should be developed and screened according to the highest smart regulation principles. Small and micro-businesses have more difficulty in complying with regulation than big businesses and suffer from the cumulative effect of legislation. Almost a third (31 per cent) of FSB members finds regulation and enforcement (arising from EU and UK legislation) a barrier to success.[3] One particular law may not appear so burdensome, but it is the accumulation of burdens that discourages a business from taking on staff or venturing into new markets. Therefore, we believe that only quality legislation, implemented to the same standards by all the member states, can underpin a common market.

[1] FSB 'Voice of Small Business' Member Survey, February 2012.
[2] FSB 'Voice of Small Business Survey Panel', September 2012.
[3] FSB 'Voice of Small Business Member Survey', February 2012.

I Market integration and the Internal Market

Essential elements of an Internal Market?

The internal market is, first of all, a **market place** that should be accessible for all, consumers and businesses. The internal market should enable trading without barriers and solve cross-border payment issues, VAT confusion and legal obstacles, and should be free from protectionism. In addition, the rules that govern it should be purposeful and entail no unnecessary burdens.

Playing by the rules should be default behaviour of all actors in the internal market. A **level playing field** is vital for keeping the market fair and open for all. This means adherence to, and enforcement of (competition) rules, and equal implementation of EU rules by all member states.

An internal market is one that is **kept up-to-date** and open for business. This means that the rules that govern it should be screened regularly to see if they are still fit for purpose and that new rules are developed according to the latest smart regulation principles, i.e. are based on evidence-based impact assessments and subject to a small and micro-business test.

As the main guardians of the internal market, the EU should **protect** it against dumping of goods and anti-competitive practices, through adequate anti-dumping measures and trade defence policies. The member states should help enforce these measures and remove non-compliant products.

Finally, an internal market should be **competitive** on a global scale, and have the goal of free trade with non-members. The EU is currently the biggest trading bloc in the world, with high quality products, foodstuffs and services. Everything should be done to maintain this position. Free trade is the backbone of welfare, and healthy economic relationships should be fostered with other regional markets and countries through trade agreements. Our exporting members can now benefit from 29 EU trade arrangements with third countries that go above and beyond WTO rules.

What criteria should we judge its economic benefits on?

Support for remaining part of the internal market is highly dependent on the general welfare it brings for the citizens and businesses of its constituent members. This can be expressed through **GDP**, **price levels**, **purchasing power**, and **employment figures**. In addition, **global competitiveness** of member states and **trade balance** could be an indicator of how well the internal market is functioning. Finally, the **diversity and availability of products and services** and the **ease of doing business** are the most visible economic benefits the internal market can be judged on.

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?

Social and Employment legislation

There are arguments for and against EU legislation in the area of employment and social issues. In any case, subsidiarity principles must be respected. Having some common social and employment rules can create a level playing field between companies in different areas of the EU. On the other hand, we must be aware that over-burdensome legislation will disadvantage the EU against our global competitors.

In areas where EU regulation is deemed necessary, legislators should always take into account the needs of micro and small businesses. We would like to see greater recognition of the important role small firms play in creating employment and that small and micro businesses need more flexibility. However, much of the EU's social and employment law is decided by **'social partners'**. The EU social dialogue process is enshrined in the Treaties but consultation of management and labour is not a UK tradition and UK small businesses have no voice in the social partner negotiations.

However, every UK business has to apply the legislation stemming from the many different social partner agreements. Therefore, we think the process should be subject to more stringent micro and SME tests and to a rigorous impact assessment process.

Environmental legislation

The FSB accepts that, due to their nature, cross-border environmental issues such as carbon emissions are generally best tackled on a European or global level. Actionon an EU level can also help create a level playing field amongst member states, avoiding a situation where firms in one member state can undercut firms in another, due to lower environmental costs. However, we need to see environmental legislation take account of the unique characteristics of small firms. This often comes down to how environmental regulation is enforced but also the cost environmental legislation can have on small businesses, which is disproportionately higher than that for larger companies.

The cost of complying with environmental regulation has increased significantly in the last few years. Small business owners are facing an ever-increasing amount of environmental regulation, adding extra costs and constraints to their normal business activity. FSB survey research shows that 61 per cent of members who claimed that there was a cost of compliance said that the cost of complying with regulation is more than £1,000 per year, and 10 per cent said that it cost them more than £10,000 per year.[4]

Many of the aims of current environmental regulations are sensible and produce environmental benefits greater than the costs of achieving them. However, the FSB believes that structural changes in the regulatory development process are needed to ensure that, from an early stage, regulations dealing with environmental policies are developed with an understanding of the specific position and needs of small businesses.

[4] 'Regulatory Reform. Where Next?' FSB publication, 2012.

Specifically, we believe regulation should target large persistent offenders, but aim to work with, and educate, smaller business whose non-compliance is often due to ignorance. We would like to see a focus on education rather than enforcement action to remedy any non-compliance by the smallest of businesses.

In addition, the FSB believes where businesses are exceeding their statutory responsibilities and complying with private sector certification schemes, such as the Red Tractor scheme for dairy farmers, statutory inspections should be considered redundant, or at least kept to a minimum level.

II The operation of the Internal Market

How have the EU's mechanisms for delivering an Internal Market worked?

Without effective monitoring by the Commission of how existing EU law is implemented, there will continue to be tension between those Member States calling for more regulation and those who believe the existing 'acquis' is sufficient. For example, if existing legislation on Display Screen Equipment (DSE) was enforced, it could reduce the incidences of musculo-skeletal disorders, thereby potentially removing the need for a new Ergonomics Directive.

Therefore, the Commission's focus through its new regulatory fitness 'REFIT' programme on the implementation role of Member States is welcome. Inconsistent application of EU law robs small businesses of a level playing field and can put UK firms at a disadvantage. We therefore would like to see more transposition grids for key pieces of legislation.

In particular, what do you believe is the right balance between harmonisation and mutual recognition?

There are pros and cons to both harmonisation and mutual recognition. Generally speaking full harmonisation in most areas, except for tax, is best for cross-border trade, but it does not allow for flexibility that may be needed in local markets. For example, FSB members may benefit from CE marking if selling wood products abroad, but it is harder to see the benefits if staying on the domestic market.

The proliferation of standards can restrict small business activities and increase their costs. While we recognise that an increase in standards can help open up the European market for businesses that want to trade outside of the UK, it is also very difficult for small businesses to keep up with frequently changing standards. Depending on how much trade you do with other countries, the small business view on standards does differ, but we would like to highlight that they should not automatically be seen the alternative to regulation, as they do cost money and can be complex. We prefer 'softer' alternatives. We are most concerned that any standards at an EU and UK level are made as suitable for small businesses as possible so that they are easier to use for those that wish to. Standards should not be agreed for the sake of it and should be simple and cheap to implement, thus encouraging more small businesses to participate.

Mutual recognition would be better suited to tackle fragmentation in the field of education and culture (e.g. professional qualifications). Seven per cent of members that trade within the EU say a lack of recognition of domestic qualifications is a challenge that a business has to overcome when exporting services.

What evidence is there that harmonisation has worked well or badly?

As said above, full harmonisation works well for cross-border trade. The problems start when a piece of legislation intended to harmonise, is not fully harmonising all aspects of an area of law. For example, the new consumer laws will still leave room for manoeuvre in every member state through minimum harmonisation clauses. This means one body of harmonised consumer rules and potentially 27 different additional rules with regard to language, information requirements or delivery. Some FSB members have indicated that they have difficulty in understanding other countries' rules as to why they do not export. The EU institutions seem to think harmonisation is just introducing a rule for all, but, like VAT, this can be implemented to different levels in different countries, thereby reducing competitiveness and increasing cross-border complexity.* This is illustrated by a quote from one of our members:

"One thing that we find is a real problem when selling to other EU countries is that products have to conform to the relevant EU regulation on labelling, but this is interpreted quite differently in each country. At the moment I am having a real problem with Slovenia and Belgium whereas I am quite happy with Finland and the Netherlands. So different interpretation of the regulations is a problem for us – it may have something to do with culture or translation or protectionism and maybe a bit of all three, but nevertheless it is one of the biggest burdens for us in selling into the EU."

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?

No comment.

Why is the Internal Market so much deeper in some areas than others?

How much integration there is in the internal market, depends on a number of factors. In the first place, the EU treaties determine the scope and subject matter of the EU competence to legislate. Where the treaties allow for EU action, the Commission initiates legislation. This decision could also be influenced by stakeholder pressure. The second factor that impacts on the degree of integration is the political process. Politicians vote on whether EU action in a certain area is adequate and/or necessary, and modify or reject Commission proposals accordingly. If legislation is agreed, the way it is implemented by the member states (in case of a directive) also determines the level of integration. Finally, if and how legislation is enforced influences how successful integration is.

*__Addendum__: With reference to Footnote 31 in the Single Market report, note that the FSB supports the optional "28th regime" as it would harmonise (consumer) rules, making (online) cross-border trade easier.

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 works relatively well for goods but barriers exist for the services sector and the digital industries. These barriers are worth £3,400 a year to the average household.[5] With nearly 40 per cent of our members engaging in ecommerce and 35 per cent of exporting members exporting services,[6] taking away those barriers would benefit our membership.

As said above, unequal implementation of directives is undermining the effectiveness of the internal market. For example, the Services Directive does not always work as intended. This directive liberalised the European market in services and requires that countries recognise each other's licences. Despite many campaigns (among which an FSB-led campaign), most small businesses do not know that the licences they hold in the UK are also valid in other European countries. And even when they know this, the process may not work. One of our members provides business services. He told us it is easier to apply for a Spanish licence than ask the authorities to clear with the UK administration that he has the necessary licences to operate his business in Spain. This is an example of how barriers to trade persist if member states do not implement and enforce single market legislation to the same degree.

III Interaction with other forms of market integration

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?

The crisis we are in is now half a decade old. Although global issues impact on the UK economy, the crisis in the Eurozone, and the lack of solutions to solve it, has been clearly felt here. There is a general drop in demand from Eurozone countries, and the problems in the Eurozone cause uncertainty, in particular for exporters to countries such as Greece and Spain. Although export within the EEA remains unchanged with 88 per cent of exporting within this area, small exporting business are diversifying their country portfolio and are looking beyond Europe.[7]

With regard to Schengen, our members find it positive that they can freely move goods around the continent. There is less bureaucracy when it comes to crossing borders, and fewer documents are required.

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?

[5] Chatham House speech Nick Clegg, 1 November 2012.
[6] FSB 'Voice of Small Business Survey Panel', September 2012.
[7] FSB 'Voice of Small Business Survey Panel', September 2012.

No comment.

To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

Our exporting members (21 per cent) are now diversifying their export destinations beyond Europe. They benefit from the existing EU trade agreements. We are looking forward to EU trade agreements with other countries, in particular the agreement with the United States, as this is the second most important export destination for our members after the EEA.

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?

While a report by the FSB and Foreign Policy Centre in 2006[8] demonstrated that gold-plating had presented a significant problem to the (UK's) small business community "putting UK businesses at a competitive disadvantage to their continental counterparts", we recognise that other reports have concluded that 'gold-plating' is less of an issue.

Certainly we believe this is an issue that Member States should tackle and welcome the UK Government's recent efforts in this area. We support the approach the UK Government has taken to reduce 'gold-plating' and the regulatory burden arising from EU regulation. As set out in the 'Guiding Principles for EU Legislation' they will implement European legislation as late as possible 'unless there are compelling reasons for earlier implementation'. However, we also think the Commission has a key role to play in order to ensure the proper functioning of the Single Market, that regulations are enforced to the same degree on the ground and that ultimately there is a level playing field for small businesses.

Our members fear that they are put at a commercial disadvantage by strictly complying with regulations, when others may not, potentially because of uneven enforcement regimes or differing insurance/ legal regimes. This is obviously not limited to the UK, it is in the interests of all businesses that there is transparency as to how other countries are meeting the obligations of a particular EU law.

Have other Member States done so, and if so with what consequences?

We do not have concrete examples of member states keeping requirements over and above EU legislation.

[8] *Burdened by Brussels or the UK?*, FSB-FPC 2006.

The way legislation is implemented could also be determined by cultural factors: different legal and political traditions, administrative practices, enforcement regimes, attitudes to authority, translation of definitions in other languages.

IV Future options and challenges

What future challenges/opportunities might we face in the Internal Market and what impact might these have on the national interest?

A possible banking union and fiscal consolidation in the Eurozone, as well as various forms of banking taxes (e.g. the FTT) are some of the challenges we may face in the future. The impact these have on our national interest will depend on how the Government handles the negotiation process with regard to these issues.

What impact would any future enlargement of the EU have on the Internal Market?

The impact of future enlargement of the EU depends on which country, or which group of countries, gain EU membership. Generally speaking, there will be more customers and more choice of personnel to hire. Also, enlargement could mean more competition from other EU companies in domestic markets.

V General

Are there any general points you wish to make which are not captured above?

The benefits of the internal market to small businesses give a mixed picture. Yes, there is less red tape at borders and it is easier to move goods and people around. But there are still barriers.

Furthermore, all small businesses, including those who only trade on the domestic market have to implement EU rules. This could lead to unnecessary red tape. However, there clearly remains an appetite to find new customers in other European countries and the EU is the biggest export market for small businesses. Therefore, the FSB supports the internal market but insists policy makers produce legislation that is proportionate and evidence-based to govern it. Please find below a few principles:

- 'Think Small First' and legislate as a last resort. This requires better evaluation of current policies, including transposition in the member states;
- Greater transparency at the stage when proposals are initiated – why is it so difficult to find out where proposals are in the Commission pipeline and if they are dropped or delayed?;
- Special treatment for micros. Micro businesses should always be considered for either an

exemption from the proposed legislation, special measures, lighter regimes or an extended transition period, this will encourage start-ups and entrepreneurship;

- More realistic and transparent costs. The Commission should set out the total net costs to business of their regulatory proposals and consider a form of managing regulatory costs, such as the 'one-in, one-out' system, especially where the value of the "out" matches or exceeds that of the "in";
- A more transparent impact assessment process;
- Push member states on transposition;
- Delegated acts in Commission proposals create uncertainty for businesses and should be used sparsely;
- All Social Partner agreements proposing legislative action should undergo a cost-benefit analysis and be scrutinised by the Impact Assessment Board;
- Established review dates (sunset clauses) are a useful way of keeping the legislative stock manageable.

In conclusion, for small businesses (including first-time exporting businesses, seasoned exporters and domestic traders) to benefit from, and take part in the internal market, the answer is smart regulation and liberalising trade.

For further information

Fresh Start

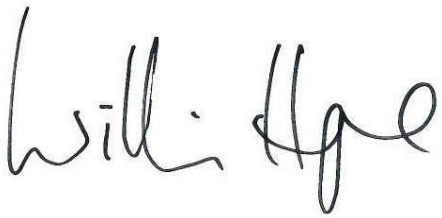

fresh start
project
MANIFESTO FOR CHANGE
A new vision for the UK in Europe

Foreword from the Rt Hon William Hague MP, Secretary of State for Foreign and Commonwealth Affairs.

I congratulate all my Colleagues, their staff and others who helped put together Fresh Start's Manifesto for Change. It is a well-researched and well-considered document full of powerful ideas for Britain's future in Europe and, indeed, for Europe's future.

Many of the proposals are already Government policy, some could well become future Government or Conservative Party policy and some may require further thought.

Europe is changing so fresh thinking is doubly welcome. It will be essential reading for all of us when we come to write the Conservative Party's next general election manifesto. I warmly congratulate everyone involved.



THE FRESH START PROJECT

MANIFESTO FOR CHANGE

A new vision for the UK in Europe

January 2013

Contents

1. Introduction

The status quo in the European Union is no longer an option. The Eurozone is facing up to the inevitable consequences of the financial crisis, and is moving towards fiscal and banking union. This is not a path that the British people will go down, and together with other non-Euro members of the EU, we must articulate and negotiate a new and different relationship for ourselves whilst remaining a full member of the EU.

Our ambition is to build on the success of the single market. We want to ensure the EU institutions protect and deepen the single market. We also want to protect British sovereignty, ensuring that the British Parliament can decide what is best for Britain. We do not share the vision of 'ever closer union' as set out in the EU treaties.

The UK has to tread a fine line between fighting for the best interests of Britain, while at the same time supporting our fellow Member States who wish to pursue further and deeper fiscal and political integration. This manifesto sets out the new relationship for Britain within the EU that we want our Government to achieve. Our success in the negotiation will mean a new and sustainable position for the UK within the EU.

We seek five significant revisions to the EU treaties:

- An emergency brake for any Member State regarding future EU legislation that affects financial services.
- The EU should repatriate competence in the area of social and employment law to Member States. Several EU members are already finding their attempts at structural reform are hampered by inflexible EU bureaucracy, and we should work with them to negotiate change. Failing that, we should seek an opt-out for the UK from existing EU social and employment law, and an emergency brake for any Member State regarding future EU legislation that affects this area.
- An opt-out for the UK from all existing EU policing and criminal justice measures not already covered by the Lisbon Treaty block opt-out.
- A new legal safeguard for the single market to ensure that there is no discrimination against non-Eurozone member interests.
- The abolition of the Strasbourg seat of the European Parliament, the Economic and Social Committee, and the Committee of the Regions.

We also seek a number of other reforms that can be achieved within the current treaty framework, either by the UK on its own (such as improving scrutiny in the UK Parliament, removing 'gold-plating', invoking the block opt-out for some policing and criminal justice measures) or following negotiation with other Member States (such as reforms in the EU Budget, in CAP and CFP, and repatriating regional policy).

In this regard, we note that the Council has the power to request the repeal or amendment of mixed competence legislation, particularly to ensure respect for the principles of subsidiarity and proportionality. This power is clearly referred to in Declaration 18 to the Lisbon Treaty and contained in Article 241 of the Treaty on the Functioning of the EU (TFEU). We urge the Government to take advantage of it.

Where EU legislation threatens to cause significant harm in the context of UK practice, for example where patient safety in the NHS is put at risk, and appropriate reforms cannot be negotiated at the European level, the UK should consider unilaterally suspending the relevant obligations until a long-term solution can be negotiated.

This manifesto proposes reforms in each of the following areas: Trade; Regional Development Policy; Common Agricultural Policy; Common Fisheries Policy; the EU Budget and Institutions; Social and Employment Law; Financial Services; Energy; Policing and Criminal Justice; Immigration; and Defence.

If all proposals were implemented, the UK would make significant savings to its contribution to the EU budget. We would also secure control over important policy areas such as Criminal Justice, Employment, Financial Services, and Energy. Equally importantly, we want our Government to require the EU to go further in terms of trade liberalisation, both within and outside the EU.

This Manifesto for Change is not about 'cherry picking'; its goal is rather to articulate the necessary reforms that would lead to a more sustainable relationship for the UK in the EU.

Returning powers to Member States is not an impossible task. The 2001 Laeken Declaration by the European Council, which set up the Convention on the Future of Europe stated that the EU may "…adjust the division of competences….This can lead to restoring tasks to the member states." And the UK does have allies, with the Dutch Prime Minister Mark Rutte, saying on 29 November 2012 "What we want to do is have a debate at the level of the 27 [member states] whether Europe is not involved in too many areas which could be done at the national level."

Proposals for deeper fiscal and economic integration within the Eurozone will require changes to the EU treaties, presenting opportunities for the UK to also negotiate for treaty change. The recent agreement to introduce 'double majority voting' within the European Banking Authority was a ground breaking decision that clearly points to a new realism for all EU members. This is an historic opportunity, both to articulate a vision for the UK in the EU, and to negotiate the treaty changes needed to make it reality.

Whenever – and however – the British people are given the opportunity to decide the nature of the UK's future relationship with the EU, the Fresh Start Project believes that we should be focusing our efforts on a robust but achievable renegotiation of our terms of membership.

2. Trade

The recommendations in this chapter would involve treaty change to introduce a new legal safeguard for the single market. Other recommendations would involve negotiation within the current structures.

- The EU is the world's largest economy and trading bloc, and accounts for some 40% of the UK's total exports of goods and services.
- We must maintain and expand the benefits of the single market. Non-tariff and technical barriers remain which limit EU growth. The UK should seek to secure a new legal safeguard for the single market and to push for genuine liberalisation of the single market in services.
- The UK should encourage the completion of more free trade agreements currently being negotiated by the EU, including with Canada, the USA, India and Mercosur.

2.1. Background

The EU is the world's largest economy and trading bloc. It accounts for 29% of global economic output, 15% of global trade in goods and 24% of overall global trade. The EU accounts for some 40% of the UK's total exports of goods and services, making it the most important market for UK business.

The crisis in the Eurozone has contributed to a downturn in UK exports to the EU. Although UK exports outside the EU have increased, they have not increased sufficiently to offset the decline in UK exports to the EU. There is a risk that UK businesses competing in growth markets outside the EU are undermined by over-regulation from the EU.

External trade policy is an exclusive competence of the EU; under the Lisbon Treaty the European Parliament enjoys powers of co-decision over trade policy with the Council. The EU has negotiated a number of Free Trade Agreements (FTAs) with countries and regions across the world and negotiations are ongoing in other countries and regions.

The benefits of the single market to the UK are more apparent in the trade of goods than of services. Services account for 71% of EU GDP, but only 3.2% of this is from intra-EU trade. The Department for Business, Innovation & Skills, has estimated that the completion of the single market in services could increase EU GDP by 14% over ten years.

The UK is the second most favoured global destination for foreign direct investment (FDI), and the first choice among global corporations for the location of their European HQs. This record is connected to the UK's access to the single market.

The benefits of the single market, to UK exports and to FDI, are generally accepted to be the reason Britain entered the EU and the main reason for our remaining a member. If the UK decided that, overall, the benefits to EU membership were outweighed by the costs; there are three alternative models of trading with the EU that have been considered, but found wanting:

- Joining the European Economic Area (as for Norway)
- Negotiating a series of FTAs (as for Switzerland)

- Negotiating a new Customs Union (as for Turkey)

Norway, Switzerland and Turkey have preferential trading arrangements with EU Member States but are subject to bureaucratic rules of origin (though only in agricultural products in the case of Turkey). Most importantly, their trade with the EU relies on accepting or complying with many EU regulations over which they do not have a vote. This would be a disastrous position for the UK in terms of services trade. The customs union to which Turkey belongs is restricted to trade in goods and does not include services.

2.2. Proposals

We must maintain and expand the benefits of the single market. The European Parliament tends to have a more protectionist outlook than the European Commission and such a tendency must be resisted. We need to lobby for genuine liberalisation of the single market in services.

The UK should also seek a new legal safeguard for the single market. This would ensure that EU institutions and Eurozone members cannot discriminate against non-Eurozone member interests. This would require a change to existing EU treaties.

We should encourage the completion of more FTAs by the EU, including among others, with Canada, the USA, India and Mercosur. While this is the preferred route, if the EU proves unambitious or unsuccessful in these negotiations, it may be necessary for the UK to explore a means of negotiating more ambitious FTAs for trade in services with other economies in the future.

The UK has deep and historic ties to many countries and regions of the world, including to the Commonwealth. We should deploy British commercial diplomacy and UK Trade & Investment to capitalise on these links and support the growth of British trade with growing markets outside the EU. In addition, large diaspora populations living in the UK, and their links to their countries of origin, should be used to harness trading relations with those countries.

Government support for improving trade within and outside of the EU should extend beyond services provided by UKTI and the Foreign Office to the strengthening of business representation abroad as exemplified by the German Chambers of Commerce. There are effective British Chambers of Commerce abroad but the quality of representation is patchy. Government should work alongside Chambers to strengthen their capacity to promote UK exports.

3. Regional Development Funds

The recommendations in this chapter would not involve treaty change. They would involve negotiation within the current structures, and the current long-term budget negotiations provide a once-in-seven-year opportunity to negotiate these changes.

- Almost 30% of the total EU budget is spent on regional development, to which the UK has made a net contribution of around £21 billion over 2007-2013.
- The UK should regain control over its regional policy by negotiating to limit awarding EU funds to Member States with GDP per head of less than 90% of the EU average. This would benefit 23 out of 27 Member States, and enable regional spending to be focussed only on the poorer Member States.
- UK regional policy should then be implemented via a 'fifth pillar' of the regional growth fund and a new infrastructure investment fund.

3.1. Background

Since the late 1980s the EU has run its own regional policy, through the EU budget, that extends across all Member States. This policy is implemented through 'Structural Funds' comprising the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

Almost 30% of the total EU budget was allocated to spending on the Structural Funds over the period 2007-2013. This amounts to a sum of €280 billion and reflects a 43% increase as compared to the previous budgetary framework (the 2000-2006 budget allocation for the Structural Funds was €195 billion).

It is estimated that the UK will be making a net contribution to the Structural Funds (and to a much smaller EU 'Cohesion Fund' that only gives money to the poorer Member States) of around £21 billion over 2007-2013. This is the UK's contribution after the money it receives from the Structural Funds is taken into account.

The Structural Funds have serious flaws. These include:

- Allocation of support is based on EU regions that are too large – thus missing pockets of relative poverty and high unemployment.
- Planning of spending is often based on EU regions that do not fit local economic and political realities.
- They have a top-down structure; all spending plans require the approval of the European Commission and should comply with EU guidelines. This can frustrate local innovation.
- The EU will only provide some of the money for Structural Fund projects, with the remainder having to be found in the Member State in question. This can divert money from better-tailored national and local projects so as to unlock cash from the EU.
- There are no rigorous performance criteria linking disbursement of funds to clear results. Indeed, think-tank Open Europe found no conclusive evidence that the Structural Funds have had a positive overall impact on growth, jobs and / or regional convergence in the EU.

- There are excessively bureaucratic rules on how the funds must be administered. The EU management of these funds is focused on compliance not outcomes, with a resulting spend on bureaucracy rather than innovative interventions.
- For wealthier Member States, the Structural Funds recycle large amounts of money, via Brussels, not only within the same country, but often within the same regions. This is an ineffective and costly means of supporting those regions which underperform at a national level.

Negotiations among Member States and the EU institutions are now taking place over the shape and size of the Structural Funds for the period 2014-2020 and new legislation on the funds will be required.

3.2. Proposals

The Government should limit the award of funds to Member States with GDP per head of less than 90% of the EU average. This change should be a priority in ongoing and future EU budget negotiations since it would result in 23 of the 27 Member States making a net saving or receiving more. If such a change had been implemented between 2007 and 2013, the UK would have regained control of £13bn of spending, allowing the UK to maintain existing levels of spending and providing a £4.2bn net saving the Government could have chosen to retain or reinvest in the UK.

The UK should also push for spending from the Structural Funds in the poorer Member States to be much better targeted on results, and commensurate with the ability of the recipients to manage and absorb the funding.

The ongoing negotiations over the EU's Multiannual Financial Framework offer an opportunity to negotiate this change. If this opportunity is missed, the UK should make repatriation of regional policy a priority in the next budget round.

For the UK, as a Member State which has the capacity to fund its own regional policy, the only reliable way of repatriating the Structural Funds would be to negotiate a secure settlement for those areas which are net beneficiaries of the funds within the UK. Between 2007 and 2013, only two regions in the UK (Cornwall, and West Wales and the Valleys) were net recipients. Many other regions of the UK received significant funds over this period, but they contributed far more to the EU Structural Funds via general taxation.

The UK should continue to support these regions via a 'fifth pillar' of the regional growth fund and a new infrastructure investment fund. In fact, if regional policy were repatriated, the savings from reduced administrative costs could be used to enhance the funds that were spent in these regions. The European Commission estimates that 3-4% of total funds are spent on administration.

Such an approach would ensure that the UK would have control over spending within its less competitive regions ensuring an improved targeting of funds to projects and infrastructure bids which will make a real difference to the regional disparity in economic performance which currently scars the UK. A strong focus on performance and outcomes could replace an

overly burdensome EU ‘compliance’ approach which places far too great an emphasis on administration of the funds rather than results.

Repatriation of regional policy will be difficult politically as some EU countries currently receive a large benefit from structural funds. However, a healthy majority of Member States would benefit from such an approach and with clever negotiation, it should be possible to attract strong political support.

4. Common Agricultural Policy

The recommendations in this chapter would not involve treaty change. They would involve negotiation within the current structures, and the current long-term budget negotiations provide a once-in-seven-year opportunity to negotiate these changes.

- The Common Agricultural Policy (CAP) accounts for around 40% of the EU budget, and the UK makes a net contribution of around £1 billion per year. EU farmers are also protected by tariffs, which distort trade, raise food prices in the UK, and harm farmers in the developing world.
- In the long-term, the UK should strive to return agricultural policy to Member States, but the political situation makes this almost impossible to achieve in the near future.
- The direct payments to farmers in Pillar 1 of the CAP should be phased out, and there should be a parallel reduction in red tape and regulation in order to ensure a globally competitive farming sector.
- Pillar 2 payments for environmental stewardship should be increased with new tradable environmental payments introduced to allow productive land to be more intensively farmed and marginal land to be more focussed on environmental stewardship.

4.1. Background

The CAP accounts for around 40% of the EU budget and costs around £45 billion per year. Despite reforms which have begun to move the CAP towards a more market facing approach, it remains a hugely bureaucratic and expensive policy, and one to which the UK makes a net contribution of around £1 billion per year.

Apart from the budgetary costs to HM Treasury, UK farming is also penalised by the CAP as the policy is not commonly implemented across the EU. UK farmers receive less money in both Pillar 1 and Pillar 2 than their counterparts in most other EU countries. The cost of administering the CAP is also burdensome for the authorities and farmers. Market management support systems also tend to increase the price of food for consumers. EU tariffs on agricultural imports from outside the EU also often add substantially to the cost of food for EU consumers. The OECD estimated that in 2008, EU tariffs added approximately €25bn of costs to consumers across the EU.

The European Commission has proposed a reformed CAP after 2013. This includes 30% "greening" of direct payments (where they are dependent on fulfilment of certain environmental actions) and new schemes for young and small farmers. It also proposes to cap payments to large farms and to have more equal distribution of payments to Member States in Pillar 1. However, it does not propose a reduction in the overall CAP budget.

The CAP has evolved over time, but the Commission's proposals do not address the key challenge for the future of farming which is how to feed a growing and more affluent global

population. Estimates suggest that the world will need to produce 70% more food in the next forty years to meet global population growth.

In the long-term, the UK should strive to return agricultural policy to Member States, and ultimately create a liberalised global market in agricultural products without significant subsidies. Member States could then implement measures to ensure the long-term viability of farms. However, political constraints, in particular the vested interests of farmers in the EU make this highly unlikely to achieve in the near term.

The UK should focus efforts on reforming the CAP, and as there is scope for substantial renegotiation approximately every seven years, this presents an opportunity for reform.

4.2. Proposals

4.2.1. Competitive Farming

The Government should be ambitious in seeking to reduce the CAP budget. Pillar 1 accounts for 80% of the CAP and these direct payments must be phased out. This must be done uniformly across all 27 Member States to prevent market distortion and unfair distribution of taxpayers' money.

Cutting the amount of direct payments (principally the Single Farm Payment which accounts for 70% of Pillar 1) is vital if we are to have a market facing CAP that encourages innovation and allows our farming sector to compete in a global market where price volatility and increasing costs of production make reform all the more pressing.

However, as direct subsidies are reduced for those commercially successful farms there must also be a parallel reduction in red tape and regulation. There is a huge cost of regulation from the Department for Environment, Food and Rural Affairs (Defra) with over half of these regulations and some 80% of the resulting cost to businesses coming from the EU.

The agricultural sector in New Zealand can keep the cost of production low and compete in a global export market with the lowest level of government support to agriculture in the OECD at only 1% of farm income. This is only possible with light-touch regulation.

In order for the UK to increase the competitiveness of its farming sector the Government must cut barriers to growth. The independent Task Force on Farming Regulation, chaired by Richard Macdonald, and commissioned by the Government has made several recommendations to slash red tape, many of which are now being implemented. However, the Government must go further. In the seven months following the publication of the Task Force's report Defra revoked 39 statutory instruments but introduced a further 41.

There must also be an examination of the way EU regulations are transposed in this country to prevent so-called "gold-plating" of legislation that puts UK farmers and businesses at a competitive disadvantage to the rest of Europe. Defra engagement with EU institutions

should be greater, earlier, and in partnership with industry to shape better regulation. Greater Parliamentary scrutiny of EU regulation would help address this problem and the House of Commons should take forward the independent Task Force on Farming Regulation proposal that Delegated Legislation Committees consider substantive and amendable motions on statutory instruments, including those implementing EU laws.

4.2.2. Environmental Stewardship

The CAP needs to be an agri-environmental land management policy – not a social policy. The purpose must always be to provide food security and protect the environment. Reform of the CAP must recognise all the stewardship schemes that deliver excellent environmental results.

The European Commission is attempting to use one conservation policy across 27 countries, making it unfit for the needs of individual nations and landscapes. It also does not take into account that the UK's systems of conservation are more advanced when compared to other EU Member States.

Therefore, Pillar 2 should focus primarily on agri-environment schemes with the possibility of tradable environmental payments, which farmers could pass onto other farmers if they did not wish to carry out the environmental measures. Farmers in the uplands provide public good and are invaluable stewards of the natural landscape, protecting ecosystems and habitats for wildlife. They are also an important part of the rural community. It is for these reasons that livestock must continue to be kept on marginal hill land.

However, because of the adverse conditions in which they farm, many would struggle to receive a financial return if the Single Farm Payment was reduced, and would be unable to compete with farms on more commercially viable land. It is therefore vital that as direct Pillar 1 subsidies are phased out, Pillar 2 payments for environmental stewardship are increased for upland farms. There should also be scope for farmers with grade 1 agricultural land and without conservation land to pass their environmental payments onto upland farmers. The overall CAP budget would still be significantly reduced.

4.2.3. International Trade

The UK must be proactive in forging alliances with other EU Member States and put pressure on the EU to accelerate proposals to reduce tariffs on agricultural goods as part of the Doha Round. Pressure must also be brought to bear on the EU to conclude bilateral Free Trade Agreements with non-EU countries including for agricultural goods.

The Government should also seek to increase UK trade with countries outside the EU, through bilateral channels. The Government should build on its recent successes in China and Russia unashamedly promoting British food and drink products in emerging markets.

5. Common Fisheries Policy

The recommendations in this chapter would not involve treaty change. They would involve negotiation within the current structures.

- The EU's Common Fisheries Policy (CFP) is a highly centralised way of managing fisheries resources and is hindering coastal economies, marine conservation and food security.
- The Government deserves credit for its tough stance on fish discards and decentralisation, and should continue to pursue substantive reforms to introduce catch quotas, rather than landing quotas.
- The UK should press the Commission to bring forward proposals to register the owners of fishing quotas.
- The UK should also negotiate to regain control of our territorial waters (the 6 to 12 mile limit), and to complete the process of regionalising control of fisheries.

5.1. Background

The EU's CFP is a highly centralised way of managing fisheries resources in Europe. In fact, all the key decisions are taken by national fisheries ministers in Brussels, based on proposals from the European Commission. It has fundamentally failed as a fisheries management policy and instead hinders coastal economies, marine conservation and food security.

CFP reform takes place every ten years. The European Commission put forward its latest proposals in July 2011, and aims to have the reformed CFP in place in 2013. The on-going negotiations therefore present the UK with a unique window of opportunity to push for comprehensive reform.

The CFP has so far failed to ensure the sustainability of fisheries in Europe. On the contrary, the existing system of fixed fishing quotas, which is based on the quantity of fish that is landed, not on how much fish is actually caught, has encouraged the practice of 'discards' – unwanted fish being caught and then thrown overboard, dead or alive.

According to the European Commission, it is estimated that in European fisheries 1.7 million tonnes of fish are discarded every year, a staggering 23% of total catches. In 2010, UK vessels discarded an estimated 51,697 tonnes of fish.

EU fishing rules also force the UK to grant foreign vessels access to part of its territorial waters, putting small fishermen – and therefore smaller coastal communities – at a particular disadvantage.

5.2. Proposals

5.2.1. Discards

The Department for Environment, Food and Rural Affairs (Defra) needs to remain ambitious on the sensitive issue of discards, or else face the risk of the current negotiations ending up with nothing meaningful being achieved.

The Commission's plans for CFP reform are a step in the right direction and the Minister responsible for Fisheries, Richard Benyon MP, deserves credit for his tough stance on fish discards. However, there are several areas in which the UK should either push for greater clarity in the Commission's proposal and others where more fundamental reform should be pursued that go well beyond the current proposal.

The UK must shift from the current system of 'landing quotas' to a new system of 'catch quotas' – under which fishermen would be obliged to count all the fish that they catch against their quotas, not just the fish they land. Evidence from pilots in the UK and in other Member States, such as Denmark, suggests that 'catch quotas' can be an effective way to reduce discards.

5.2.2. Territorial Waters

The Government must also set its sights on regaining control of our territorial waters (the 6 to 12 mile limit), allowing the UK to reserve greater access to these waters for the small-scale fleet. In order to achieve this while respecting the UK's EU commitments, the UK should seek an EU agreement to denounce the 1964 European Fisheries Convention.

We also need to support our smaller in-shore fishing fleets by helping them with more 'fishing rights'. As part of this the Government would continue to recognise those countries that have had historical access to our seas prior to the inception of CFP. Countries like Belgium, France, the Netherlands and Germany have been fishing in our waters historically for many years.

5.2.3. Regionalisation

The Commission's proposal for 'regionalisation' of the CFP currently only deals with devolution of powers to individual Member States, but fails to lay down a formal mechanism for regional groupings of Member States to work together. As it stands, the proposal creates legal uncertainty and could ultimately lead to the Commission gaining more powers.

The UK should push for genuine regionalisation of the CFP. Under this scenario, the Commission would still propose a number of long-term 'framework' objectives to be agreed by the Council, while day-to-day management would be handled by regional groupings of Member States surrounding a specific sea basin. For example, the Commission would propose long-term targets for fish mortality over a period of ten years, within which regional groupings of Member States would work on the detail of fisheries management at the sea

basin or national level. Disputes within a regional grouping of Member States would be settled by co-decision between the Council and the European Parliament on the basis of a Commission proposal.

5.2.4. Final Points

It is vital that the UK speaks with a single voice in Brussels. Greater coordination between central government and the devolved administrations could certainly increase the UK's negotiating strength on CFP reform.

More broadly the UK must support measures to promote less popular fish through changing Government Buying Standards and by increasing the public's awareness of the benefits of eating fish. The "Fish Fight" Campaign has shown that there is widespread public support for reform of the CFP and that less popular fish can be promoted through a concerted campaign.

A total ban on the discarding of fish and greater management of our 6 to 12 mile limits in the short term will help to correct many of the inequalities and mismanagement of the CFP. The UK should also push for the Commission to bring forward proposals for the registration of landing quotas. In the long term, the Government must look towards a totally new fishing policy run by Member States and in that way Britain could have much more control of fishing in our own waters.

6. Budget and Institutions

The recommendations in this chapter would involve treaty change in order to abolish the Strasbourg seat of the European Parliament, the Committee of the Regions, and the Economic and Social Committee. The current long-term budget negotiations provide a once-in-seven-year opportunity to negotiate other changes to the budget.

- We should continue to take the lead in securing a new EU budget that improves effectiveness at no extra cost to any European taxpayer. The UK rebate is justified and should be defended.
- Reform of the EU institutions is politically and symbolically important and would serve to demonstrate the EU's awareness of its Member States' hardships.
- We should substantially cut administrative costs in the European Commission, European Parliament and abolish a number of EU quangos, which in some cases would require treaty change.
- The UK should press for a new Freedom of Information Act for all European institutions.

6.1. Background

The EU is in the process of negotiating the next Multiannual Financial Framework (MFF), a budget ceiling covering 2014-20. The Commission's proposal totals €1trn in commitments that, including "off-budget" items, represents a 5% real terms increase on the payments of the current MFF. The UK Government's position is to argue for at best a cut, and at worst a real terms freeze, although the House of Commons voted for a cut in a non-binding motion.

The MFF is in clear need of significant overhaul to reduce its overall scale, to eliminate the gap between commitments and payments, and to allow more flexibility so that funds can be reallocated to meet need. In MFF negotiations, the UK should focus on three key areas. Reforms to the CAP and the Structural Funds, which are the two largest areas of EU spending, are discussed elsewhere in this manifesto. The third area for focus is reform of the EU institutions. Symbolically and politically, the EU institutions represent the empire building of the federalist agenda. Agreement on reform should be possible because Member States themselves will not lose out.

It is in every European taxpayer's interest for the EU to spend their money more carefully and effectively. Finding institutional savings would demonstrate the EU's awareness of its Member States' hardships, which as yet it has patently failed to do.

6.2. Proposals

6.2.1. 2014-20 MFF

The UK should be ambitious in its negotiating position. Given our alliances, particularly with other net contributors, the UK should continue to take the lead in securing a deal that

ensures reform and improves effectiveness. The fixed 2% increase per year remains the fall-back and termination of the MFF (meaning the Commission would propose a budget to be passed by the Council via qualified majority voting, without a ceiling) would be a highly risky move for Brussels.

The UK net contribution to the budget was €9 billion in 2012, even after the rebate, making us one of the largest net contributors. Rather than accepting criticism of the current size of the rebate, we should remind Member States that the previous Government had already ceded a significant reduction in the rebate in exchange for promise of CAP reform. Our Government has pledged to protect the rebate. Handing away part of the rebate, like Tony Blair, achieved nothing in the past and we can have no confidence that it will in the future.

6.2.2. European Commission

Institutional reform should start with the Commission. The EU's ambitions for centralisation have resulted in significant increases in administrative spending, despite the austerity it has demanded of many Member States. Administrative costs should be cut by 15%, saving €867 million per annum. That may require the Commission to increase its proposed staff cut of just 0.5% after Croatia's accession to 10%.

Other efficiency savings should include a reduction in the tiers of management, salaries, allowances, and changing the pension age and terms. The cost of pensions for Commission staff is forecast to double to £2 billion by 2045, and it should be noted that all civil servants in the top two grades earn more than our Prime Minister. We therefore welcome the Prime Minister's stance at the budget summit in November 2012. He is right to press for a 10% cut in the overall pay bill, and for reforms to automatic promotion, special tax treatment, and pension rights for Brussels staff.

By participating in its own cuts and efficiency programmes, the Commission will show empathy with all European citizens, reflecting the spending cuts which government departments across the Member States are being forced to make. The 27 Commissioners should lead by example and reform their own pay and pension arrangements.

6.2.3. European Parliament

The UK Government should continue its opposition to the three-city functioning of the European Parliament. Not only would the abolition of the Strasbourg seat save at least €180 million per annum, it would also be a symbol of the ability of the EU to reform itself. The European Parliament itself has voted to stop the "Strasbourg circus".

Treaty change is required for this measure. The UK should build consensus among Member States, many of whom have been vocal in their condemnation of the Strasbourg seat, and whose MEPs themselves voted against its continued functioning. The Secretariat of the

European Parliament, with over 4000 officials, is based in Luxembourg. This Secretariat should relocate entirely to Brussels.

Other institutional reforms the UK should press for include removing excessive travel allowances and services, a review of all other allowances and privileges including the special taxation rate, mandatory production of receipts for all expenses and the abolition of funding to political parties and foundations. Projects that should be scrapped immediately include the House of European History, which is forecast to cost over €150 million to set up.

6.2.4. Quangos and other bodies

EU spending on quangos has jumped by 33.2% since 2010. Many agencies duplicate work, and reinforce the federal agenda rather than the subsidiarity principle. Moreover, they have a strong incentive to spend money to justify their own existence, often directly on self-promotion.

The UK should press for the abolition of the European Economic and Social Committee (EESC) and the Committee of the Regions. The EESC was created in 1957 as a proto-parliament but now acts as "a bridge between Europe and organised civil society". It is an advisory body, dominated in large part by unions, and serves little purpose. Its budget is €130 million.

The Committee of the Regions includes councillors, members of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly. Putting European directives into effect through local government does not require a separate body, and should be delivered through Member State government processes. Abolishing the Committee of the Regions would save €85 million per annum.

Abolition of these bodies will require treaty change. A significant reduction in the budget to leave only a token amount could be accomplished through negotiations on the MFF and would accomplish the same thing. Failing that, a fundamental review of activities and a budget reduction of 50% is required to focus activity.

The UK should also press for savings to be made by abolishing the two human rights agencies (saving €28 million), the four workplace and employment agencies (saving €73 million), the food safety agency (saving €78 million), and the numerous self-propagandising educational and cultural bodies (saving at least €47 million).

6.2.5. Transparency

The UK should press for a new Freedom of Information Act for all European institutions. All spending over €500 should be published, including any expenses. The Court of Auditors should be given appropriate resources and powers to ensure that the EU achieves a level of accountability suitable for a first world organisation. The UK should work with other Member States to introduce a mechanism to prevent an increase in any budget that has not been signed off by the Court of Auditors.

6.2.6. A slimmer, leaner, transparent EU

The UK must articulate its vision for the future of the EU and its budget and institutions: a slimmer, leaner, transparent EU, spending its citizens' money more effectively, sharing the hardships its Member States will endure throughout this MFF period and putting all spending in the spotlight.

7. Social and Employment Law

The recommendations in this chapter would involve treaty change, in particular for the UK to opt out of Articles 19 and 145-161 TFEU, and to introduce an emergency brake in this field.

- EU-driven social and employment law has imposed an ever-increasing regulatory burden on British businesses and employers. Over two-thirds of the annual cost comes from the Working Time Directive and the Temporary Agency Workers Directive.
- Our primary objective is to return competence over social and employment law from the EU to Member States. This would require treaty change.
- Failing that, the UK should seek to build an alliance of like-minded European partners to call for a substantial lessening of the regulatory burden by repealing legislation and a re-evaluation of the EU's powers in this area.
- Failing that, the UK should seek to negotiate a complete opt-out of all existing EU social and employment legislation, and to introduce an emergency brake to cover future legislation in this field.
- Ultimately, we must make complete repatriation of social and employment law a priority and give Parliament the power to vote on which regulations to keep in place, which to change, and which to remove.

7.1. Background

Especially since the last Government's decision to adopt the EU's "Social Chapter", surrendering the UK's opt-out, EU-driven social and employment law has imposed an ever-increasing burden on British businesses and employers. There is a myriad of different regulations, but over two-thirds of the annual cost arising from EU law in this area comes from the Working Time Directive (WTD) - calculated at over £2.6 billion a year - and the Temporary Agency Workers Directive (TAWD) - calculated at nearly £2 billion a year. Research by the think tank Open Europe has suggested that a halving of this type of regulation by the EU could boost the UK's GDP by £4.3 billion and create 60,000 new jobs.

As well as the financial impact, these directives have imposed a rigid framework upon the UK's otherwise flexible labour model, in an attempt to harmonise our working practices with those of other EU countries – a "one size fits all" approach is simply not practical and does not recognise the different circumstances in each nation. Indeed, this has caused particular damage in the National Health Service, where the WTD has severely impacted on patient safety and the training of junior doctors, as well as imposing unnecessary costs. Too often, regulations are imposed to deal with the poor standards in one country but end up imposing unnecessary bureaucracy on countries like the UK with already tough regulations.

The Conservative Party manifesto at the 2010 General Election promised to "work to bring back key powers over...social and employment legislation to the UK", and the Coalition Agreement committed the Government to "work to limit the application of the Working Time Directive in the UK". Action so far has been too slow, and the economic situation across the continent creates an urgent need and opportunity to bring control over this vital area back to the UK.

7.2. Proposals

We should immediately review the UK's current application of EU social and employment law, particularly with regard to the WTD and the TAWD, and remove any gold-plating, to ensure that any unnecessary regulatory burden is eliminated. This should be part of the Government's review of the balance of competencies.

The UK should also undertake a best practice review of its implementation of EU social and employment law before applying any further EU regulation in this area. It is important to look at how other countries implement EU laws (indeed, if they implement them at all) and consider the best ways to do so in the UK.

All EU nations should be looking for ways to increase productivity, reduce unemployment, and promote growth. The Government should ensure that the UK is at the forefront of such a move, building alliances with like-minded European partners to call for a substantial lessening of the regulatory burden imposed by the EU and a re-evaluation the EU's powers in this area.

The UK must make the case that national control over social and employment law is vital because of specific national factors such as the NHS and the different labour models in place across the EU. We should work with the EU institutions to repeal the WTD. Just as not all EU countries are members of the Eurozone or the Schengen area, we do not need the same labour market rules across the EU. We should accept the differing circumstances in EU countries, and enable flexibility for Member States as part of a Europe-wide pro-competition, pro-growth strategy.

Particularly given the economic climate in Europe, and the recommendations from the Troika to liberalise labour markets in Greece for example, the UK should work towards removing social and employment law as an EU competence.

Ultimately, we must make complete repatriation of social and employment law a priority, and should not settle for anything less. Clearly, any repatriation would require treaty change and this would likely be part of a much larger drive to bring powers back to the UK from the EU.

The UK should negotiate a complete opt-out from all existing EU social and employment legislation, and the EU treaty articles dedicated to producing such legislation (Articles 19 and 145-161 TFEU).

We should also negotiate a new emergency brake to cover future legislation arising out of policy areas in the EU treaties which affect national social and employment law. This would allow any Member State that considers a proposal that affects social and employment law to be a threat to subsidiarity or to an important national interest to refer that proposal to the European Council where unanimity, and hence a national veto, would apply.

National parliaments are best placed to decide on the appropriate social, employment, and health and safety regulations for each Member State, and we are confident the UK Government will retain appropriate domestic legislation in the UK.

If negotiation to repatriate these powers failed, we should consider the unilateral disapplication of EU social and employment law in Britain through an Act of Parliament. This is an extreme option and could well result in fines or suspension of obligations from other EU nations, though it is worth bearing in mind that no fine has ever been levied on the UK Government for non-compliance with EU directives. However, this would not be a petulant act, but rather a signal that this is a red line issue for the UK – hopefully, this would send a signal to the EU that, for the sake of pan-European growth, a better approach is needed, and appropriate diplomacy beforehand would establish support from other sympathetic and economically productive nations.

8. Financial Services

The recommendations in this chapter would involve treaty change, in particular to introduce an emergency brake for financial services regulation, and to introduce a new legal safeguard for the single market.

- A healthy financial services industry is critical to the UK economy and participation in the EU single market affords the UK significant trade benefits. UK financial services are a great European asset and financial institutions from elsewhere in the EU have a significant stake in its success.
- However, increased EU regulation is threatening to constrict our financial services industry in some areas, and the drive towards one size fits all "maximum harmonisation" legislation also risks exposing the UK to lower regulatory standards in other areas.
- There is also a real risk that Eurozone countries will begin to act as a bloc and outvote the UK on key financial issues. The UK has recently achieved a 'double majority' mechanism at the European Banking Authority, to avoid the Eurozone-17 writing the rules for all 27.
- We should build on this precedent, and negotiate a wider safeguard against proposals which are discriminatory or undermine the single market.

8.1. Background

The financial services industry is a critical sector of the UK economy, accounting for 10% of our GDP - just as the automotive industry is critical to Germany, agriculture is to France, and fishing is to Spain. Our financial services contribute substantially to the EU; they represent 61% of the EU's net exports in financial services and 36% of the financial wholesale market.

Participation in the single market affords the UK significant trade benefits throughout the EU, such as better connected business networks and mutually approved standards. Yet increased EU regulation is threatening to constrict the activity of our financial services industry - a staggering 49 regulations, many aimed at restricting financial services activity, have been proposed since 2008. And with impending banking union, there is a real risk that Eurozone countries will begin to act as a bloc; outvoting the UK on key financial issues.

The UK is a gateway through which non-EU business arrives in the single market, keen to utilise the UK's established financial services expertise. To continue to take advantage of this business, and to expand into the world's developing economies, we must ensure the EU does not impede our financial services industry through increased regulation. Global confidence in UK financial services must remain strong.

8.2. Proposals

We must maintain and expand the benefits offered by the single market, safeguarding what we already have, and developing further opportunities within and outside the EU. The Fresh Start Project proposes various measures to achieve this aim.

Domestic politicians should do more in the early stages of EU legislation, through greater scrutiny by Select Committees (particularly the Treasury Select Committee). MPs should debate potentially damaging EU proposals in the House of Commons so as to mandate our Ministers to help them to negotiate a more positive outcome with EU legislation. MPs should meet regularly with MEPs in order to keep our Parliament better informed, improve co-ordination of UK strategy, and ensure the position of Westminster is accurately represented in all financial services discussions. We should also prioritise the placement of UK nationals with financial services expertise into influential positions in the EU, for example though graduate schemes and secondments.

The UK and other Eurozone 'outs' have already managed to establish a very important precedent by securing a 'double majority' mechanism, which will prevent Eurozone caucusing, in the European Banking Authority. The risk that the European Court of Justice (ECJ) may prioritise the Euro over the single market remains however. The ECB has already demanded that UK-based clearing houses establish themselves inside the eurozone to be allowed to clear transactions in euros, something the UK has challenged at the European Court of Justice. If the ECJ was to rule against the UK in this case, it would sound a death knell to the success of UK financial services and fundamentally undermine the integrity of the single market.

The UK should seek a new legal safeguard for the single market. This would ensure that EU institutions and Eurozone members cannot discriminate against non-Eurozone member interests. This would require a change to existing EU treaties.

As financial services are a strategically important sector for the UK, we should assert the 'Luxembourg Compromise' in current negotiations. This stated that the Council of the EU would endeavour to find a solution acceptable to all Member States, if very important interests of one Member State were at stake. It has been used by France to protect its agricultural sector, though never formally adopted by the European Commission or ECJ, and is not protected by EU Treaties.

The UK should subsequently negotiate an emergency brake on EU financial regulations. Where proposals are judged by any Member State to have a disproportionate impact, be discriminatory, or undermine the single market, that country should be able to refer them to the European Council, where unanimity would apply. This might be combined with a provision that automatically allowed a certain number of other Member States to proceed with the proposal amongst themselves, if they wished.

Just as importantly, the UK should secure agreement to expand opportunities for financial services within the EU and outside it. The UK should continue to push for genuine liberalisation of the single market, especially in services. We should also seek a binding commitment from the European Commission to secure free trade agreements for financial services in the vast developing markets that offer the brightest prospects for financial exports.

9. Energy

The recommendations in this chapter would not involve treaty change. They may, however, require the UK to suspend its obligations under the 2009 Renewables Directive, the Large Combustion Plant Directive, and the Industrial Emissions Directive if they could not be satisfactorily renegotiated within the current structures.

- Much of the UK's existing generating capacity requires replacing over the next decade as nuclear power stations near the end of their operating lives, and EU directives force closure of older coal-fired power stations.
- UK energy policy should be conducted in the context of the withdrawal of most of the largest carbon emitting countries from the Kyoto accords and the overriding emphasis of competitor economies on cheap, reliable energy.
- The EU policy framework for climate change favours decarbonisation over adaptation and renewables over all other energy sources. The UK should renegotiate, or, if unsuccessful, unilaterally suspend its obligations under the 2009 Renewables Directive in order to determine the most suitable mix of technologies for energy security, cost effectiveness and environmental protection.
- The timescale for closures under the Large Combustion Plant and Industrial Emissions Directive should be extended if they cause an unacceptable impact on fuel poverty or energy resilience.

9.1. Background

Current UK energy policy has three overriding objectives: to provide cost effective energy and power to consumers and industry; to decarbonise our economy with a particular target of a reduction in emissions of 80% from the 1990 level by 2050; and to achieve security of energy supply.

This policy should be conducted in the context of the withdrawal of most of the largest carbon emitting countries from the Kyoto accords and the overriding emphasis of competitor economies on cheap, reliable energy, including coal in the case of China, India and Germany and fracked gas in the case of the USA.

The Climate Change Act 2008 target of an 80% cut in carbon emissions by 2030 is an exceptionally tough target to meet. It implies significant changes in the way that energy is generated and used. Not only will electricity need to replace fossil fuels as the principal source for transport, power and heating, but the electricity itself will need to be generated from lower carbon sources than at present. No other EU country has set itself such tough de-carbonisation targets.

It is clear from the table below that, of the larger economies, Poland, Germany, Ireland and the Netherlands all considerably trail the EU average in terms of carbon intensity per capita. For Poland and Germany this under-performance is likely to increase as they both move from low carbon sources to an even heavier dependence on electricity generated by coal.

	Renewables (percentage of total energy - 2010)	Tonnes of carbon per capita (2011)	Tonnes of carbon per unit of GDP
EU(27)	0.12	9.2	392
Belgium	0.05	11.1	370
Ireland	0.06	12.8	350
Germany	0.11	11.2	376
UK	0.03	8.8	293
France	0.13	7.6	275
Netherlands	0.04	11.8	351
Poland	0.09	10.7	1275

The EU has developed a policy framework which is orientated towards maximising the potential investment in renewables – not in reducing carbon. The consequence has been a number of directives (most particularly the 2009 Renewables Directive) which mandate renewable targets whilst being silent on the need to cut carbon.

In the UK, a subsidy regime has been developed which emphasises wind, solar and biomass, whilst little progress has been made in other areas. This is beginning to work its way through into higher prices for consumers and businesses (in 2012 18% of industry electricity charges are due to “green” taxes), and will lead to more fuel poverty and less competitive industry than would have been the case had we been freer to reduce carbon in other ways.

The UK starts from a very low base in renewables - just 1.5% of its energy came from renewables in 2005 - and is expected to increase that percentage ten times over, yet Germany’s commitment only requires it to triple its renewables production. This discrepancy puts our manufacturing industry at a competitive disadvantage.

Much of the UK’s existing generating capacity requires replacing over the next decade. Many of our nuclear power stations will have to be taken offline over the next decade as they reach the end of their operating lives. In addition, the Large Combustion Plant Directive (2001) will require the UK to close and replace a number of older coal-fired power stations. Replacing nuclear power stations will require around 7 Gigawatts of capacity and replacing coal-fired power stations will require 12GW to be replaced in the next 10 years.

To put this into context, this would require our 4000 existing onshore turbines to be increased fourfold. The Industrial Emissions Directive 2011, which came into force last year, will make this problem even worse, requiring even more plants to be closed. It has been estimated that capital spending in the order of £150 billion will be needed to replace our ageing infrastructure.

9.2. Proposals

The UK should follow two key policy principles:

1. If the UK is to meet its decarbonisation targets, it needs to have the flexibility to decide how to do this, rather than being instructed on how to proceed by EU directives which cover 27 countries, all with very different energy mixes. In particular, it should be free to determine what mix of technologies is best to allow it to meet the objectives set out at the beginning of this paper.
2. We should insist that our EU partners are aware of, and are making similar progress towards, their carbon reduction obligations to ensure that the UK is not put at a competitive disadvantage. In particular, we should robustly defend our national interest vis a vis the high coal burning, high emission countries such as Germany, Poland, Ireland and the Netherlands.

These translate into the following proposals:

1. The European Commission is actively considering developing renewables targets for the period after 2020 when the current directive expires. We should not join this effort unless the primary focus is carbon reduction – not renewables roll-out.

2. The UK should renegotiate, or, if unsuccessful, suspend its obligations under the 2009 Renewables Directive, and not sign up to further commitments with respect to renewable energy targets. Our own roadmap (which would replace it) should maximise the cost efficacy of the reduction measures taken.

3. We should review the timescale of the Large Combustion Plant and Industrial Emissions Directives with particular reference to the requirement to close down our large coal burning stations. To the extent we believe that premature closure is causing an unacceptable impact on fuel poverty or energy network resilience, we should extend their lives. We should make it clear to our EU partners that the large scale construction of unabated coal stations while we switch ours off is not a fair or an acceptable position.

4. We should force a full scale revision of the Emissions Trading System. The current system is penalising the UK for relative success in reducing carbon, by providing cheaper permits for other countries “to work the system” due to the consequent reduction in permit costs.

In all of the above proposals the Government should seek support from other Member States and push for renegotiation of the Directives through the Council’s powers to request the repeal or amendment of mixed competence legislation. These powers are clearly set out in Declaration 18 to the Lisbon Treaty.

10. Policing and Criminal Justice

Some of the recommendations in this chapter would involve EU treaty change, while others could be achieved without altering the EU treaties.

- The UK should exercise its 'block opt out' from 131 EU policing and criminal justice (PCJ) laws, as provided for by the Lisbon Treaty.
- Rather than opting back in to any of these EU laws, which would be irreversible and subject the UK to full European Court of Justice (ECJ) jurisdiction, the UK should pursue operational co-operation with EU partners via other means, such as international agreements, memoranda of understanding and voluntary co-operation on a case-by-case basis.
- The UK should seek EU treaty change to allow it to opt out of those EU PCJ laws that it has opted in to since the Lisbon Treaty entered force. These EU laws are not covered by the UK's 'block opt-out'.

10.1. Background

The Lisbon Treaty, which entered force in December 2009, radically increased EU control over policing and criminal justice (PCJ). EU laws in this area are now typically decided by qualified majority voting rather than unanimity. EU PCJ laws adopted since the Lisbon Treaty took effect also come under the full jurisdiction of the European Court of Justice (ECJ). This means that the European Commission can bring cases against the UK relating to its implementation of EU measures, and that the ECJ rather than the UK Supreme Court will have the last word on UK law in an increasing number of areas of the UK criminal justice system.

Under the Lisbon Treaty, the UK can exercise a 'block opt out' from 131 *pre-Lisbon* EU PCJ laws, by the end of May 2014. The UK can subsequently seek to opt back into these measures selectively, on a case-by-case basis. However, this remains a matter for negotiation with the EU, and any decision to opt back in would be irreversible and result in the Commission and ECJ assuming full jurisdiction over such measures for the first time.

In addition, the UK has already opted into 22 *post-Lisbon* EU laws in this area, including 8 amending or replacement measures that take pre-Lisbon laws out of the block opt out, ceding overarching control to the Commission and ECJ.

These measures are widely regarded as stepping stones towards a pan-European criminal code, decided by qualified majority voting, overseen by the Commission and enforced by the ECJ and a European Public Prosecutor. In September 2012, Jose Manuel Barroso, the President of the European Commission, re-affirmed: "... our intention to establish a European Public Prosecutor's Office, as foreseen by the Treaties. We will come up with a proposal soon."

10.2. Proposals

Britain should retain national democratic accountability over such a vital area of policy and law-making, and preserve the distinctive common law tradition so important in the UK justice system. International law enforcement co-operation with EU partners is vital. However, the

UK does not need to sacrifice democratic control over policy-making via supranational legislation and enforcement to achieve effective practical co-operation.

10.2.1. Exercise the block opt-out

The UK should exercise the Lisbon Treaty block opt-out, to prevent a major transfer of democratic authority from Britain to the European Commission and the ECJ, and avoid becoming bound irreversibly by a large number of EU laws in a sensitive policy area, the majority of which are of negligible law enforcement value to Britain.

These EU laws include mass data-sharing under the 'Prüm' regime, which extends beyond criminals to ordinary citizens, risks a disproportionate burden on the UK, lacks safeguards to protect personal information, and which is systematically vulnerable to error.

These laws also include EU measures designed to harmonise standards of criminal law, from the prohibition of drugs to the balance between hate crimes and free speech, which are predominantly irrelevant to cross-border operational co-operation and should be left to elected and accountable UK law-makers to decide and the UK Supreme Court to interpret.

10.2.2. Rather than opting back in to EU laws covered by the block opt-out, pursue arrangements for operational co-operation that do not cede democratic control

Instead of opting back in to EU laws under the block opt-out, the UK should pursue a re-negotiated model of PCJ co-operation with EU partners based on more flexible arrangements, where this adds law enforcement value, including treaty arrangements not subject to ECJ interpretation, memoranda of understanding and ad hoc co-operation. The UK should also build on existing alternative arrangements such as its co-operation with EU borders agency Frontex.

This approach should include the following:

- Offer to continue practical co-operation on criminal records checks.
- Offer to continue co-operation with Eurojust, the EU's body for co-operation and co-ordination amongst EU prosecutors, when it comes to cross-border matters, while avoiding the Commission's plans for a new EU law giving Eurojust the power to initiate criminal investigations in the UK.
- Offer to continue operational co-operation with Europol.
- Offer ongoing support to joint investigation teams on a case-by-case basis, subject to principles enumerated in a memorandum of understanding and under the ultimate judicial authority of the UK Supreme Court as regards operations in the UK.
- Negotiate international treaty arrangements on extradition to and from other EU countries, including basic safeguards that shield innocent citizens from spurious or flawed fast-track extradition to countries with poor criminal justice records, and which retain the UK Supreme Court as the ultimate judicial arbiter of the extradition of British nationals.
- Offer to continue and build on existing information co-operation under the Schengen arrangements for the purposes of border controls and security co-operation, without becoming bound by Schengen EU laws.

- Offer to continue administrative co-operation, which requires no legal basis, such as exchanges of liaison magistrates, the EU Directory on counter-terrorism specialists, and training at the European Police College, either on an ad hoc voluntary basis or under a memorandum of understanding.

10.2.3. Extend flexible co-operation to PCJ areas not covered by the block opt-out

The UK should negotiate EU treaty change to opt out of the EU PCJ laws that the UK has opted in to since the Lisbon Treaty entered force, and which ensures the UK can conclude international treaties, if needed, with EU partners to pursue more flexible co-operation in these areas.

Such new EU treaty provisions would allow the UK to opt out of the European Investigation Order, a measure which will empower authorities in other Member States to direct UK police to conduct investigations, under ECJ jurisdiction.

The UK should offer operational co-operation under more flexible arrangements where it assists UK law enforcement, including passenger name record checks for the prevention or investigation of serious crime and terrorist offences.

Opting out of existing EU PCJ laws is likely to involve the repeal of implementing UK legislation by Parliament, and will add to the workload of Government to come up with workable alternatives. This is a price worth paying to retain democratic control over PCJ issues in the UK.

11. Immigration

The recommendations in this chapter would not involve treaty change. They would involve negotiation within the current structures.

- The free movement of people across the EU has brought many benefits, but is also adding to the strain on the UKs infrastructure and public services.
- The UK should introduce transitional controls on immigration for new Member States, and should seek reforms to gain more control over the type and amount of benefits paid to EU nationals who are currently in the UK but not working.
- The UK should seek further reforms to prevent known criminals from entering the UK and to return convicted criminals to their Member State of origin.

11.1. Background

The free movement of people across the EU has brought many benefits for business and trade. British nationals have been able to live and work throughout Europe with few restrictions and talented Europeans have been able to come to Britain, set up businesses and add value to British firms. However, as the EU has expanded, the almost unrestricted access that over 500 million Europeans have to live and work in the UK is adding to the strains on Britain's infrastructure and public services. With the UK population set to reach 75 million by the mid-2030s and immigration accounting for two-thirds of this population increase, action needs to be taken to reform Europe's free movement rules as part of wider efforts to reduce net migration.

The UK is also not unique in seeking to curb immigration. Angela Merkel has warned of the impact of immigration and the associated failure of multiculturalism while recently elected French President Francois Hollande has called for limits to economic migration. Although Member States are able to reduce non-EU migration, under existing Treaty arrangements restrictions to the free movement between Member States of EU nationals can only be made on grounds of public security, public policy and public health. The principle of free movement can only be reformed substantially through Treaty change. The majority of Member States, the European Commission and European Parliament would be unlikely to support any changes to this principle. Nevertheless, there are ways that the Government can adapt existing rules to reduce immigration from Europe, test the limits of the existing arrangements and press for reforms to EU directives to secure favourable changes.

11.2. Proposals

11.2.1. Changing the right to reside requirements and access to social security

Out of the 2.3 million European nationals living in the UK, 551,000 are unemployed or economically inactive and 146,000 have never worked. The number who are economically inactive has risen by 23% since 2008 and those who have never worked are up by 30%. This is despite the disproportionately larger number of European nationals of working age living in the UK compared to the population as a whole. Existing free movement rules give them

access to benefits and the social assistance system, the right to reside in the UK and automatic permanent residence after five years.

The European Commission has been pushing for more powers to effectively override national controls over eligibility to social security and open up our benefits system for even more foreigners to enjoy. Recently the European Commission has challenged the UK over its rules which prevent some EU nationals from claiming child benefit and Jobseeker's Allowance. Free movement laws initially designed to help employers recruit and Europeans to work are now being left open to abuse by European nationals wanting to enjoy better benefits and public services in the UK.

The Government should continue with the efforts started by the previous Employment Minister Chris Grayling to build an alliance of Member States opposed to the Commission's meddling in domestic social security rules. Austria, Cyprus, Denmark, Finland, Germany, Ireland, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Sweden are reportedly supportive of these efforts. The Government should seek to galvanise enough support within the European Council to make a request under Article 241 of TFEU for the Commission to reconsider its approach to social assistance and the right to reside to give Member States greater flexibility to set their own rules on eligibility.

As part of the Government's review of the balance of competencies, full consideration should be given to seeking amendments to the Free Movement Directive (FMD), and in particular Article 7, which would enable Member States to exercise greater discretion to prevent European nationals who are economically inactive from being entitled to receive prolonged periods of social assistance.

Under existing rules, European nationals living in the UK are able to secure permanent residence automatically after 5 years, with some becoming eligible sooner. This means there are 1.6 million European nationals living in the UK who have permanent residence or who are eligible for permanent residence by virtue of the fact they have lived in the UK for 5 years. Out of that number, 900,000 have lived in the UK for 10 or more years.

Reforms should be sought to the FMD to raise the threshold for automatic eligibility for permanent residence from 5 years to 10 years.

11.2.2. Restricting immigration from new EU Member States and transitional controls

Under the last Labour Government, a failure to introduce transitional controls when eight new countries from Eastern Europe joined the EU in 2004 led to a significant influx of migrants from Eastern Europe. In 2003 there were 556,000 Europeans employed in the UK from the 14 other EU Member States and the 12 countries set to join in 2004 and 2007. By September 2011, almost 1.3 million Europeans were employed in the UK, with the numbers from the accession countries rising from 50,000 to 728,000. Transitional immigration restrictions were applied to Bulgarian and Romanian nationals, but they will expire at the end of 2013 opening up Britain to 29 million more people. The Government's Migration Advisory Committee has already warned that: "Lifting restrictions would almost certainly have a positive impact on migration inflows to the UK from those countries." Britain should not be left unprepared for new waves of European immigration in the future.

The Government has made a commitment to apply "transitional controls as a matter of course for all new EU Member States." This policy is welcome. However, transitional controls are time limited and once that period has expired large populations from less economically developed and less wealthy countries could still come to Britain. This effectively means that mass influxes of immigrants are postponed rather than controlled.

For future accessions of new Member States to the EU, the UK Government should secure the right in Accession Treaty agreements to renew or revise transitional controls in respect of immigration beyond the initial control period. This would enable the UK to control inward migration from new Member States in a more flexible manner and, if appropriate, extend restrictions. Britain can unilaterally veto the Accession Treaty if this objective is not met.

11.2.3. European National Offenders

Looking after the safety and security of the population is a priority for any Government, and to make our streets safer we should remove foreign national offenders from the UK. Although more than one-third of the foreign prisoner population in this country are from European countries, some 4,000 offenders, only around one-fifth (1,100) of foreign nationals deported from Britain are sent back to other European countries. The EU Prisoner Transfer Agreement has been introduced to enable countries to return EU nationals to the Member State of their nationality but question marks remain over how effective it will be.

The UK Government should exercise its powers under Article 27 of the FMD to prevent dangerous and persistent criminals from entering the UK. If this approach is challenged through the ECJ, then the Government should seek to revise the FMD accordingly.

The UK Government should also take action to deport a higher number of European national offenders than will be achieved through the EU Prisoner Transfer Agreement. A clear removals policy should be established to empower the Government to deport EU nationals based on the seriousness of convictions received and/or length of custodial sentence handed down, including those with permanent residence.

11.3.4. Asylum Seekers

Britain should always provide a safe haven to those in genuine need. Despite being an island nation, Britain has dealt with an annual average of over 23,000 asylum claims in the last five years that figures are available. Many asylum seekers, genuine and bogus, will travel through other EU Member States where they could seek asylum before arriving in the UK. But only 9.1% of the total number claiming asylum in the UK were considered for removal to a safe third country and just 5.4% were transferred from the UK to another Member State.

The Government should promptly return any asylum seeker who has come to the UK after entering another EU Member State, as it is able to do through the Dublin Regulation. This will reduce the numbers of asylum seekers in the UK. In the event that the first country they entered in the EU is unknown, the UK should have the right to return the asylum seeker in question to the last known EU Member State where that asylum seeker was present. Such a

policy would require the UK to press for amendments to be made to the existing Common European Asylum System and the Dublin Regulation.

12. Defence

The recommendations in this chapter would not involve EU treaty change.

- NATO remains the cornerstone of Britain's defence strategy and nothing should be done to undermine it.
- As all aspects of Common Security and Defence Policy (CSDP) are decided by unanimity, the UK should use its veto to block any measure that does not meet its objectives. CSDP must not be allowed to become a vehicle to challenge NATO, nor to create a European Operational HQ, nor to create a "European Army".
- Some EU operations have added value, and the UK should retain its membership of the European Defence Agency so long as it continues to deliver real, practical, capability.

12.1. Background

Nothing should be done to undermine NATO. It has been, and remains, the cornerstone of the defence of Britain and the continent of Europe, uniquely binding the USA into the efforts to maintain European security.

The Common Security and Defence Policy (CSDP), remains an inter-governmental element of EU cooperation. As a consequence, the UK has the power of veto, a power which the current Government has exercised in rejecting any increase in the budget of the European Defence Agency (EDA).

The basis upon which military activity operates in respect of CSDP is where NATO is unable, or unwilling, to take action. Under the CSDP, the EU has developed what it calls the "comprehensive approach" which seeks to capitalise upon the interest of a number of EU countries in undertaking opportunities such as capacity building in which NATO does not have such a keen interest.

A number of EU operations have added value, in particular Operation Atalanta where the EU operation has been commanded from Northwood, alongside NATO Operation Ocean Shield, to deal with piracy off the coast of Somalia. The EU has focussed specifically upon the protection of aid convoys. The Operation has demonstrated that the use of NATO assets (in this case, Northwood) obviates the need to replicate NATO facilities by building an EU Operational Head Quarters (OHQ). The EU mission to train Somali soldiers in Uganda has also added some value in undertaking a mission in which NATO had little or no interest.

However, Operation Althea, to provide security in Bosnia, has exposed the fundamental weakness of European defence by demonstrating the persistent incapacity to deliver a consistently adequate force.

12.2. Proposals

It had been the intention of the incoming Conservative Government to withdraw Britain from the EDA, but the early signature of the Anglo French Defence Accord made that politically unattractive. Accordingly, we gave the EDA notice that we would review our membership in two years' time (namely, Autumn 2012) and our decision whether or not to continue

membership would depend upon the capacity of the EDA to deliver serious capability. Whilst withdrawal from the EDA might win some immediate plaudits, it could well turn out to be a gesture which would disadvantage the UK.

It is important to recognise that much of the ministerial discussion at EU defence ministers' level is conducted within the framework of discussion about the EDA. Accordingly, if Britain were to withdraw from membership of the EDA, we would be excluding ourselves from a significant part of the EU defence agenda. Since we have a veto, we do not need to accept any recommendations presented within the EDA forum which fail to meet our objectives.

The EDA has in fact delivered some tangible benefits, particularly in the field of training helicopter pilots for operations in Afghanistan by crews from nations which would not otherwise commit. The Maritime Surveillance Programme has also delivered tangible benefit in co-ordinating surveillance of the sea routes around northern Europe and the Mediterranean.

CSDP must not be allowed to become a vehicle to challenge NATO, nor to create a European OHQ, nor to create a "European Army". We should continue to argue that the EU should provide capability which NATO cannot, or will not, as well as providing some of the softer military activities. Since we do not have to horse-trade under majority arrangements, we can wield significant influence and we should therefore continue to promote our vision of CSDP as well as retaining our membership of the EDA so long as it continues to deliver real, practical, capability.

The Fresh Start Project would like to thank those who have contributed so much to this manifesto, in particular:

Gutto Bebb MP, Nick de Bois MP, Therese Coffey MP, George Eustice MP, Mark Garnier MP, Chris Heaton-Harris MP, Gerald Howarth MP, Andrea Leadsom MP, Charlotte Leslie MP, Tim Loughton MP, David Mowat MP, Neil Parish MP, Priti Patel MP, and Dominic Raab MP.

For further information, please see www.eufreshstart.org

GMB Trade Union

GMB TRADE UNION RESPONSE

Department for Business Innovation & Skills

Call for Evidence:

Government review of the balance of competences between the United Kingdom and the European Union

Internal Market: Synoptic Review

February 2013

Introduction and Background

GMB is the UK's third largest trade union with approximately 620,000 members across a wide range of sectors, both public and private. We welcome the opportunity to respond to this consultation, and confirm that this response is on behalf of our GMB members.

This consultation is part of the Government's wider assessment of Britain's place in the EU and the terms of our membership.

GMB urges the Government to take into very serious consideration that trade union activists, and workers more widely, will not accept an Internal Market – or future policy direction for the EU – that does not have the principles of a social Europe at its core.

Millions of UK workers bought into the idea of a European Union on the basis of a balance of a free business market for jobs with a social dimension for equality, employment rights, collective bargaining, health and safety protections, access to justice, and the free movement rather than exploitation of labour. An EU that is only there for the needs of business without these social benefits is not one that ordinary British citizens will support.

Below is the GMB evidence in response to the questions raised in the BIS Consultation. We would be happy to provide further information, or discuss further any of the points made in this submission.

GMB urges the Government to give serious consideration to the issues of concern raised, and hopes that the Government will use its influence to strengthen and improve the functioning of the Internal Market in line with our advice and recommendations.

GMB Responses to questions in the BIS Call for Evidence on the Government's review of the balance of competences between the United Kingdom and the European Union

Internal Market: Synoptic Review

Market integration and the Internal Market

Question 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?*

The social dimension is an integral element of the Internal Market, not an 'add-on' area as suggested in question 2. A fair and efficient Internal Market cannot function properly without a balance between economic freedoms for business and guaranteed equality, employment rights, collective bargaining, health and safety protections, access to justice, and free movement rather than exploitation of labour. GMB urges the Government to reassess its ill-considered attempts to undermine the rights covered in the EU's Working Time Directive. This is vital health and safety legislation to protect workers, companies and consumers alike and is central to ensuring the smooth functioning of the Internal Market.

The Treaty of the European Union and the EU Charter of Fundamental Rights contain a commitment to protecting and improving the living and working conditions of workers in the UK and across the EU, which helps promote an Internal Market based on quality goods and services, productivity and a motivated workforce. UK workers will hold these principles as a condition for their support of the EU and will not back a one-way street Europe that is only there for the needs of business whilst turning workers into second class citizens in terms of social benefits. GMB and our trade union colleagues across the UK and the EU want to see the acceptance of a balance between the social and economic dimensions clearly enshrined in the Treaties.

It should be clearly established that market considerations and economic freedoms should never trump social concerns – and that if there is a conflict between the two, priority should always be given to employment and social rights – and it is against this social dimension that the economic benefits of the Internal Market must always be judged (as established in the ETUC's Social Compact for Europe and Social Progress Protocol). An Internal Market that does not take into account this social consensus will never get the support of ordinary British citizens.

A properly balanced Internal Market offers major economic and employment benefits to the UK (almost half our exports go to the rest of the EU, which is the world's largest market), but with opportunities also come responsibilities and the EU has done too little to mitigate the Internal Market's negative effects (see

responses to questions 2+3). There has been too much focus on removing barriers to free trade in the EU (through deregulation, simplification procedures, etc), at the expense of developing a viable Internal Market that can deliver sustainable jobs and growth and other broader societal goals that are at the heart of the European project. Flexibility has been the Internal Market's guiding mantra, but a flexibility geared towards business benefits, and often at the expense of workers particularly in some Member States including the UK. There has been a short-sightedness and deep-rooted failure to recognise the importance of sustainable, high quality and secure jobs with good working conditions to go alongside the economic freedoms. It has led to the casualisation of many jobs, with less security and a growth in unfair wage competition and social dumping. Effective labour market regulation would in fact help prevent the undercutting of wages and conditions and create a more level playing-field. This, in turn, would generate more trust and motivate workers towards higher productivity and stimulate greater economic growth.

In order to achieve this, a common base of employment laws and protections are needed. The Internal Market cannot function effectively with 27 different sets of rules and it is imperative for ensuring a level playing-field and equal treatment for all our workers that the UK does not opt out of EU social and employment policy areas.

There is also still not enough focus on green investment within the Internal Market and more strategic work is needed in this area in order to develop and support R&D and innovation projects that target the creation of quality goods and services and with them good and sustainable jobs. These are aims with which EU and UK citizens can identify, and would help to gain popular support for the EU Internal Market and the benefits of the EU more generally.

The EU has also never had a clear and effective industrial policy, even though developing an integrated strategy would be of incalculable benefit to the Internal Market and the EU's competitiveness. GMB acknowledges this is also an enduring problem at national level in many Member States, including the UK which has allowed itself to fall from being a leading nation globally in terms of innovation, invention and quality manufacturing and production to being a nation unhealthily dependent on the service economy and having sacrificed our high levels of industrial development. We need to protect and develop what is left of our industrial heritage through investment and support for R&D and innovation. This would improve the quality and marketability of UK and EU products and services and give more balance to the UK and EU economies.

Question 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?*

As we emphasised in question 1, social, employment and environmental considerations are an integral element of the Internal Market, not an 'add-on'. For British workers, it is the fundamental part of the deal for supporting the EU and this popular support will collapse without it.

Common regulation in the environmental, social and employment fields is crucial for a successful Internal Market, though EU action in these areas is also needed in its own right – this is not an 'either, or' issue.

These policy areas all contribute to the effective functioning of the Internal Market and must be mainstreamed more effectively within it to ensure a more efficient and beneficial operation. We cannot expect citizens to accept an Internal Market that allows the free movement of people but fails to guarantee them fair and equal social and employment rights, and protection against exploitation, social dumping and the undercutting of domestic wages and conditions.

GMB believes the European Commission and Member States must step up efforts to ensure these issues are integrated more effectively in Internal Market policy, but fears that they are currently falling short of doing this to the extent necessary to provide any substantial benefits.

For example, the results of the EU consultation that led to the revision of the Public Procurement Directives acknowledged the urgent need to do more in these areas but failed to deliver on this to the level many had hoped in the ensuing proposals. The European Parliament has made some progress in strengthening the focus on (socially and environmentally) sustainable public procurement and it is hoped the European Commission and Council will support these developments in trialogue.

Public procurement is a key tool for promoting growth and jobs across the EU, and the EU institutions and Member State governments should maximise its scope in order to deliver this. If EU decision-makers continue to walk away from further commitments to developing social and employment rights and protections in the Internal Market, this will threaten a further loss of popular support for the European project as ordinary citizens become increasingly unable to see how they benefit.

The operation of the Internal Market

Question 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?*

Harmonisation and mutual recognition should be seen as complementary, both providing different benefits and together helping to set high standards within the Internal Market.

Mutual recognition helps to avoid duplication whilst harmonisation should aim to allow for the best protection and standards for workers, consumers and the environment.

The issue of mutual recognition has led to some tensions between the Member States (for example as regards qualifications, with different approaches to training periods, quality and competence assessments, etc) but in these cases it is important to protect the quality and standards of training and competence levels, rather than level down to the lowest common denominator.

GMB believes that Articles 114 and 115 offer sufficient guarantees to ensure that policy proposals are dealt with at the most appropriate level. These articles explicitly exclude harmonisation in the fields of fiscal policy and the free movement of people and allow for national industrial relations systems to be fully respected. The Treaty also allows for Member States to maintain national provisions for overriding reasons of public interest, which GMB also supports.

Question 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?*

This question implies a continuing preoccupation that there are still too many obstacles to the Internal Market, and that further deregulation and liberalisation would be the best ways to solve this. However, not all sectors and activities lend themselves to cross-border trade and potential trade in services will always be limited by the fact that many services are necessarily local and personal, and that most barriers to cross-border service provision are natural (often cultural and linguistic) rather than regulatory. This draws in to question the case for further liberalisation as a way of overcoming the Internal Market's remaining barriers.

Revised proposals on EU public procurement for example are attempting to force more cross-border contracting, instead of accepting that the scope for cross-border public procurement will have limits.

It has been proved that the Internal Market always performs better at times of economic growth, so the focus now should be on ending counter-productive cuts and austerity measures and to stimulate growth, rather than just continuing calls to further liberalise and deregulate (which have only made the economy stagnate).

The trend of questioning the legitimate choice of governments and public authorities to choose how they deliver public contracts – whether in-house, public-public cooperation, etc – is not acceptable and a better understanding

must be fostered that supports the rights enshrined in the EU treaties for governments and other authorities to choose themselves how to deliver such contracts. This will lead to more sustainable growth and jobs, a more effective Internal Market and a more secure economy.

GMB is also concerned that the UK Government and some companies criticise other Member States which, within the legal scope of the rules, ensure public contracts support jobs and businesses, yet fails to use this legitimate scope itself. Building such clauses into public contracts more systematically at the appropriate phases would help to protect and promote jobs and growth in the UK. The Government knows that it had the power to do far more to help save jobs in Bombardier when the rail contract was tendered.

GMB feels the failure to include the living wage and other labour clauses (ILO C94) in the revision of the Public Procurement Directive has also been a huge missed opportunity and that British and European workers will suffer greatly as a result.

GMB also challenges the European Commission's preoccupation with promoting PPP/PFI models, which it does not have a mandate to do and which the UK experience has proved to be a flawed model. These models have been promoted as an 'attractive' way to support the funding of public projects, especially with the added pressures of cuts and austerity. However, the on-costs of this form of financing are immense and we are already seeing public authorities drowning under the impact of these burdens.

Interaction with other forms of market integration

Question 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?*

GMB does not believe that other forms of EU integration, such as the Eurozone or the Schengen Area, have adversely affected the Internal Market – which continues to function effectively in Member States that are part of these deeper groupings.

Moreover, the UK's current economic situation should not be blamed on the Eurozone crisis adversely affecting the Internal Market, but rather on the self-defeating domestic policies of continuous cuts and austerity that the current Government continues to pursue despite overwhelming evidence of its destructive force.

The Internal Market has been positively affected by judicial and police cooperation, which has proved time and again to bring tangible benefits to British citizens who find themselves victims of cross-border crime or accident. It is thanks to the European Arrest Warrant that victim's mother and GMB member

Maggie Hughes was able to bring to justice those who violently attacked her son whilst on holiday in Crete. GMB reminds the Government that UK passports hold a commitment to "allow the bearer to pass freely without let or hindrance, and to afford the bearer such assistance and protection as may be necessary" and urges the UK to be more centrally involved and take a more consistent approach in opting in and engaging on these issues at the EU level.

GMB believes the UK would benefit from involvement in more EU-wide initiatives which could bring real economic benefits if applied across all Member States, and feels the Government has missed many opportunities to take action that could benefit ordinary citizens. In particular, GMB regrets the UK Government's continued opposition to joining the EU-level Financial Transaction Tax, even though this would shift the burden of the financial crisis from ordinary citizens to the banking sector, which bears a greater responsibility, and could raise an estimated €57 billion if applied EU-wide.

Question 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?*

These groupings are not mutually exclusive, and belonging to them and speaking as 'one voice' together with other EU Member States helps to increase the UK's global influence and role.

Using the collective force and influence of these arenas in a consistent policy approach is vital but is still not happening to date. GMB is dismayed that the Government has left out the ILO from this list, though it has major relevance to the Internal Market. The EU has increased cooperation with the ILO over recent years and is referring more and more to its common standards and conventions, particularly as regards social and employment rights and protections. These are also more commonly appearing as benchmarks in relation to EU trade policy and agreements. GMB wishes to see recognition and compliance with agreed ILO Conventions and standards more generally referenced across Internal Market policy.

The Internal Market has not been affected by the UK – or any other Member State – being part of other groupings, but has rather been hindered by lack of political will to find and agree progressive ways to tackle the financial crisis and other vital policy areas such as climate change and unacceptable levels of youth unemployment (This is especially pertinent for the UK, which has experienced the fastest growing youth unemployment rate of any country in the G8 since the start of the recession, according to recent findings from the Work Foundation[1]).

[1] *UK lagging behind major competitor economies on tackling youth unemployment* (http://www.theworkfoundation.com/Media/Press-Releases/1057/UK-lagging-behind-major-competitor-economies-on-tackling-youth-unemployment)

The UK has come into criticism in EU circles for holding back progressive action that other Members States would like to take and has been warned by the OECD[2] that the cuts and austerity measures currently being pursued are not helping to boost sustainable growth and jobs, risk worsening inequalities and that the UK should "go social" to tackle the increasing polarisation of the labour market and growing rates of long-term and youth unemployment.

Question 7: *To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?*

It is necessary to apply the principles of 'social Europe' to all our trade, development and economic relations with third countries. This is currently not being done either systematically or effectively, and the imbalance between the economic and social aspects of the Internal Market is mirrored in the lack of balance in EU/third country agreements, which tend to focus on market freedoms and financial gains without offering adequate protections and guarantees for fundamental human, social and labour rights. These must become an enforceable part of all such agreements in a properly structured way, rather than as a simple add-on if and when public opinion turns on the heat.

The recently agreed EU free trade agreement with Colombia is a case in point, and GMB is dismayed and very concerned that EU leaders have chosen to support and strengthen their relations with a country that remains the most dangerous place in the world in which to be a trade unionist (225 trade union activists have been murdered there in the past five years alone). The assurances given by Colombia that it will improve the situation are vague and lack the structure or the vehicles needed to deliver them. The EU and Member State governments have the power to demand action in this area for Colombia but seem to lack the political will to do so.

We need to build sustainable trade with growing economies rather than exploit them. These are the markets of the future and ensuring decent working conditions, enforceable employment rights and standards, and quality goods and services will generate sustainable and more equal economic growth to the benefit of more people in developing countries, and consequently to the EU and its Internal Market. The EU should use its influence to set high standards in these areas and should only support and develop close relations with countries that respect their workers and their fundamental rights. It must only sign third country trade agreements that have strong, effective and enforceable social chapters guaranteeing dispute settlement and sanctions provisions.

[2] *Launch of the 2013 OECD Economic Survey of the United Kingdom: Sowing the seeds of an enduring recovery* (http://www.oecd.org/unitedkingdom/economic-survey-united-kingdom-sowing-the-seeds-of-an-enduring-recovery.htm)

These same principles should also guide bi-lateral trade relations between an EU Member State and third countries. Only by ensuring that trade agreements or relations benefit all people rather than the few will such agreements have the necessary integrity to be endorsed.

Question 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?*

This question attempts to lead responses by the misplaced assumption that the UK, to a greater extent than other EU Member States, regularly 'gold-plates' the minimum requirements set out by the EU, when in reality EU laws provide minimum standards in many policy areas that did not previously exist at all in the UK.

Setting such minimum standards has often been a point of contention between the UK and other Member States at EU-level negotiations, with many other countries keen to ensure that the minimum standards demanded by the UK do not in actual fact end up undermining the higher national standards many of them already have in place.

This is notably the case as regards legislation for temporary agency workers, collective redundancies, information and consultation, and European Works Council regulations.

The inadequate national level implementation of rights covered in the EU's Posting of Workers Directive has exposed British workers to undercutting of terms and conditions and the exploitation of vulnerable workers posted to the UK. It has fuelled widespread social dumping and labour market tensions (as highlighted by Lindsey and other refinery disputes). The rights for posted workers at EU and UK level require serious revision. The current proposals for an enforcement Directive are unlikely to go far enough and, unless remedied, risk having a major negative impact on the free movement of workers.

Future options and challenges

Question 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?*

Rather than the impact future EU enlargement could have on the Internal Market, the question should really ask what is the Internal Market's impact not only on

enlargement but also on the membership status of current Member States. As the effects of the financial crisis continue to be felt, hostility towards the European project is growing. Ordinary citizens no longer feel represented or protected by a Union they feel only focuses on an Internal Market that looks after the financial and business interests of the few rather than the wider interests of the many.

Ensuring a balance within the Internal Market between social and employment protections and economic freedoms, as well as enforcing the EU's social dimension, are vital in order to reassure ordinary citizens that there is something in the EU for them. Any attempt to walk away from a vision of a social Europe threatens to scupper popular support for the EU.

There is also a compelling need to focus on green and sustainable economic growth and good jobs as drivers of the internal market – it is important to remember that the free market is not an end in itself but must also focus on the environmental and social aspects linked to it.

As for future enlargement, rather than just seeing this as an opportunity to expand the Internal Market to new countries, the EU must be able to ensure that any further expansion of its borders is combined with guarantees that fundamental employment rights and protections, and the wider social dimension of the EU, apply to these citizens too. In GMB's view, it is crucial the EU establishes a more effective and stable balance between an economic and a social market, so as to prevent exploitation of migrant labour and an undercutting of pay and conditions.

General

Question 10: *Are there any general points you wish to make which are not captured above?*

GMB understands this consultation is part of the Government's wider assessment of Britain's place in the EU and the terms of our membership.

GMB has concerns about the biased nature of the way the Government is leading this debate, focusing on business interests only and pretending that it is British citizens who will ultimately chose, when, in fact, there is nothing for everyday British people in the vision of Europe set out in David Cameron's January speech.

GMB urges the Government to take into very serious consideration that trade union activists, and workers more widely, will not accept an Internal Market or involvement in a future EU that does not have the principles of a social Europe at its core.

Millions of UK workers bought into the EU ideal on the balance of a free business market for jobs that also has a social dimension for equality, employment rights, collective bargaining, health and safety protections, access to justice, and the free movement rather than exploitation of labour. An EU that is only there for the needs of business without these social benefits is not one that ordinary British citizens will support.

Government of Japan

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

Comment by the Government of Japan

The Government of Japan understands that this issue should be primarily reviewed and studied by the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the "UK") and its people from a long-term perspective. At the same time, it hopes that the review will be a constructive contribution for both the UK as a Member State of the European Union (hereinafter referred to as the "EU") and the entire EU.

Japan shares with the UK fundamental values as well as interests and responsibilities regarding the challenges which the international community is facing. Our two countries have been working closely not only in a bilateral context but also in the context of Japan-EU relations. The Government of Japan appreciates the role that the UK has played in the activities of the EU in various fields such as politics, the economy and security.

Meanwhile, the Government of Japan recognises that the EU has a large presence and influence in the international community. The Government is committed to making its relationship with the EU stronger than ever before. In this context, it expects that the UK will maintain a strong voice and continue to play a major role in the EU.

The UK, as a champion of free trade, is a reliable partner for Japan. More than 1,300 Japanese companies have invested in the UK, as part of the Single Market of the EU, and have created 130,000 jobs, more than anywhere else in Europe. This fact demonstrates that the advantage of the UK as a gateway to the European market has attracted Japanese investment. The Government of Japan expects the UK to maintain this favourable role.

Furthermore, the Government appreciates that the UK has been leading the process of deregulation or the rationalisation of regulations within the EU and has contributed significantly to making the EU market more attractive for foreign companies. In this context, Japanese companies operating in the UK look forward to further progress in deregulation or the rationalisation of regulations through the EU mechanism. The Government of Japan

expects the Government of the UK to continue to strive for the completion of the Single Market of the EU.

In addition, the Government of Japan expects that certain aspects of the EU's external relations, such as the speed of decision-making or the clarity of the channels of communication, will be further improved through the review.

Hodge, Michael

Hodge, Michael

3. 7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

See my general comments below. By providing UK firms with a bigger market and thus a broader production base with greater economies of scale the Internal Market can generally only have improved British firms' ability to compete outside the EU.

1. 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?

Enlargement will bring still greater opportunities to compete on an equal footing. The main challenges will be to iimprove our productivity and keep costs under control.

2. 10. Are there any general points you wish to make which are not captured above?

Yes - in my capacity as a retired member of HM Diplomatic Service. I was a DS9 (EO) Commercial Officer in the British Embassy Paris from January 1968 to June 1970. I returned to the Embassy as First Secretary Commercial from June 1989 to June 1992. During the first of these periods the UK was not a member of the European Economic Community. During the second period it was and had been for about 15 years. It was much easier to promote British exports during this second period than it had been during the first. In the earlier period British exporters faced tariff barriers if they wanted to sell into France even though these had fallen following the Kennedy Round of reductions negotiated within the GATT. The Commercial Department's hand-out most in demand was an explanation of how French TVA (VAT) worked. In the later period there were no tariffs and VAT was by then a familiar concept. Laws and regulations had had to be standardised in order to achieve the much sought after level playing field; rule from Brussels maybe, but it certainly helped British firms to sell. If they were to compete on an equal footing there had to be political compromises. The standardisation of the selling environment also brought less quantifiable advantages. The smaller newer British exporters the Embassy tended to deal with were often ill equipped to cope with the demands of the markets in continental Europe. For example, many of them still worked in imperial dimensions. As they began to see a much bigger market opening up for them, they started to respond to the demands of their European customers and adapt their product and pitch accordingly with corresponding benefits to their sales prospects. Immediately prior to my retirement in 1999 I served as HM Consul General in Chicago. During my three years in the United States I was always struck by how American mid-Westerners thought in terms of Europe not the UK. They were interested in the UK not so much because of the special relationship by which Britons set so much store but because it was a member of the European Union, its inhabitants spoke English and the country enjoyed a legal system not so different to their own. This made the UK not only an attractive place in which to invest (a British market on its own was much too small), but also a useful vehicle for ensuring that American views, and not just commercial ones, were properly understood in Brussels. It is not surprising to me that the

United States has made clear that it wishes the UK to remain a member of the EU.

Imperial Tobacco Ltd

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19 February 2013

Dear Sir

Government Review of the balance of competences between the United Kingdom and the European Union Department of Business, Innovation and Skills. Call for Evidence November 2012.

Imperial Tobacco is a FTSE 30 Company with its International Head Office in Bristol. Imperial Tobacco sales account for approximately 46% of the UK Tobacco market and has sales operations in all EU Member States and factories in several including Nottingham in the UK. We welcome the UK Government's initiative to review the balance of European Union competences in order to secure the best advantage for UK citizens and businesses within the EU. We will be looking to respond to a range of reports with relevance to our business and trust our responses will help the Government to act in the UK's national interest and to advance the wider interests of the EU.

a) Elements of the Internal Market

The EU Single Market has developed since its inception in 1993. This has been reinforced recently by the Single Market Act 2011 and Single Market II Act 2012 to make it more effective. Imperial Tobacco supports the completion of a single market where there is free movement of goods, persons, services and capital.

Paragraph 10 of the "Call for Evidence" document and Article 26.2 of the Treaty on the Functioning of the European Union state *"The Internal Market of the EU is an area without internal frontiers designed to ensure the free movement of goods,..."* In the case of tobacco products, for which legislation is introduced under Article 114 of the Treaty on the Functioning of the European Union, which has as its objective the establishment and functioning of the internal market, there is no single market as the legislation enables Member State to have specific local rules. For example, as legislation in individual Member States specifies different requirements for health

warnings, products have to be manufactured specifically for each Member State. Owing to the differences required "mutual recognition" does not apply. The only area a "single market" exists for the tobacco sector is on certain technical standards. For example, if a product is tested for nicotine, tar and carbon monoxide in the country of manufacture it does not have to be retested if it is sold in a different Member State.

We believe Article 114 is wrongly being used as the basis for certain public health regulations which effect tobacco products and that, as a consequence, the internal market does not exist for this sector. These different rules, coupled with different taxation, in different Member States result in a thriving market in illicit tobacco products.

b) Enforcement & National Agendas

To enable a single market to function it is vital that not only are the regulations for each Member State the same but they are enforced equally and the same in each Member State. The current problem being experienced in the UK with some beef products typifies this. The current variability of enforcement between Member States compounded by the different legal system in Member States distorts the market.

The United Kingdom regularly produces more onerous regulations when implementing Directives compared with other Member States. To date no account seems to be taken for the different legal systems in different Member States. This is compounded by "gold plating" when the UK implements Regulations which disadvantages businesses in the UK. The UK also leads by implementing Council Recommendations e.g. Council Recommendation of 30 November 2009 on smoke-free environments (2009/C 296/2) which most other Member States only take note of. Proper scrutiny is required before any action is taken on Commission Recommendations. A proper review of how Recommendations and Decisions are treated in all Member States should be carried out and then action taken to harmonise.

c) Harmonisation vs mutual recognition

To enable fair competition technical requirements in areas such as health & safety, environment and employment legislation need a greater degree of harmonisation across Member States. This should not be total harmonisation as a degree of flexibility is required to maintain the cultural diversity of Member States but should rout out anti-competitive practices.

d) The role of the Commission

An example of a part of the Commission exceeding its competence is DG SANCO proposing Article 14 on "traceability and security features" of the proposed European Tobacco Products Directive COM(2012) 788 final. OLAF, the EU Anti-fraud Office, has been the lead for the negotiations for this as part of the Code of Practice for the Framework Convention on Tobacco Control. Co-operation agreements that are legally binding have been signed by each of the major tobacco manufacturers with

the European Union – represented by the European Commission – and each named Member State which includes requirements for "tracking and tracing". In those agreements the Director of OLAF is designated as the European Commission representative for this agreement and therefore for issues of "tracking and tracing".

Innovation is being hampered by the traditional view of science taken by the Commission. In the USA the FDA now recognise "harm reduction" rather than the absolute live or die stance taken by the Commission. Harm reduction for the tobacco sector opens up new avenues which would, as Department of Health states,[1] "gain the maximum potential public health benefit" for consumers / citizens such as e-cigarettes and other non-tobacco nicotine containing products. The UK Medicines and Healthcare Regulatory Agency is currently conducting scientific and market research in consultation with stakeholders into e-cigarettes and other nicotine containing products. We believe regulation in this sector should be delayed until this consultation is completed and evidence based legislation can then be drafted.

Currently the EU Commission has the sole competency to instigate new legislative proposals or initiate revisions. As an unaccountable body this competency seems to be misplaced and would be better placed coming from national parliaments who are elected by the citizens of the EU. In Brussels, with the Commission, new legislation has become a job creation activity at times rather than addressing the needs of a single market.

e) International Trade negotiations

International obligations such as the Framework Convention on Tobacco Control are interpreted and implemented differently by different Governments in the European Union and by the Commission itself. The UK tends to take the most extreme approach. This is to the detriment of legitimate UK businesses.

The European Union block representing the Member States at WHO meetings on the Framework Convention on Tobacco Control and the Code of Practice meetings has worked well when adequate pre-meetings have taken place to agree the position. 27 Members speaking as a single voice is very powerful, however it is critical that the meeting fully understands the EU is speaking for 27 countries whilst most other speakers at the meeting are only representing one country.

f) Improvements

An example of where the single market could be further improved is over electronic payments. While in the UK there exists an excellent electronic fast payments system, no such system extends across all Member States. We recommend that this system should be rolled out across the EU.

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[1] Explanatory Memorandum on European Union Legislation 18068/12 21 January 2013

If you require any further information please contact the undersigned.

Yours faithfully,

Industry Council for Packaging and the Environment

The Industry Council for Packaging & the Environment

Market integration and the Internal Market

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?

It is essential for packaged goods producers that Single Market legislation guarantees free movement of packaging throughout the EU. Before Directive 94/62/EC on packaging and packaging waste was adopted, Denmark was able to protect its brewing industry by banning the sale of beer in cans, even though it acknowledged that cans are the most suitable container for long-distance distribution by using cans itself for its own exports.

The operation of the Internal Market

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?

The TRIS prior notification system has worked extremely well for packaging. Member states must send Brussels the drafts of measures (other than fiscal measures) which they intend to adopt within the framework of the Packaging and Packaging Waste Directive. This gives the Commission and the other member states a chance to challenge proposed measures which *prima facie* contravene EU free movement rules, and stop them coming into force. INCPEN has identified 16 cases where potential barriers to trade have been avoided: the UK intervened in 11 of these.

We are concerned that this facility may be lost once the Packaging and Packaging Waste Directive is aligned with the Waste Framework Directive and with the other 'waste stream directives'. The other waste directives are environmental measures, and have no provision for prior notification. Once legislation is in place, the Commission still has the right to challenge it at any time, but infringement proceedings are slow and much damage may be done before the situation is rectified.

Institute of Directors

Call For Evidence On The Government's Review Of The Balance Of Competences Between The United Kingdom And The European Union

Internal Market: Synoptic Review

Response from the Institute of Directors **28 February 2013**

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?

The 4 essential elements of a genuine Internal Market are the free movement of goods, services, capital and labour. The IoD strongly supports trade liberalisation, open markets and the creation of a comprehensive Internal Market, because the current reality falls well short of a genuine single market.

This raises a number of issues with regard to assessing the net economic costs and benefits of the Internal Market:

1. Clearly there is no genuine Internal Market covering all 4 elements and so one method for assessing the economic impact of the Internal Market is to compare the current situation with a theoretically complete Internal Market. This exercise requires very complex economic modelling procedures which often posit significant economic gains from completing the Internal Market, but which are nonetheless heavily dependent on the procedures and assumptions made along the way. Judging the economic benefits from these modelling exercises needs to acknowledge the potential deficiencies and margins of error.

2. It is very difficult to differentiate the net impact from the replacement of individual national regulatory structures, with supra-national ones. Theoretically the economic outcome could be positive or negative, depending on 3 issues: (1) The degree of severity in existing national regulatory requirements. (2) The scale of the positive impact from the opening up of markets through a unified structure. (3) How onerous, or not, the supra-national Internal Market requirements are in comparison with national regulation. For example, if the individual national regulatory requirements were light in a particular sector or product, but the Internal Market regulations in this area are heavy, does the stimulus to trade outweigh the net losses from switching from national to supra-national regulation? It might, but it might not.

3. Any assessment of the net economic impact of the Internal Market has to recognise that whilst trade with the EU accounts for roughly 10 per cent of UK economic activity, Internal Market rules apply to the other 90 per cent of activity as well. Homogenous regulation could be seen as inhibiting product market competition.

4. Assessments of the net economic impact of the Internal Market tend to avoid the counterfactual issue of whether or not regulatory competition across EU member states could produce a more efficient economic outcome. An Internal Market does not require uniform regulatory systems. The Internal Market is quite compatible with regulatory competition as long as regulation is non-discriminatory, e.g. if a British company can set up a subsidiary in any other European country, subject to exactly the same rules and regulations as a domestic company, or can export products, subject to the same rules as a domestic company, that is a sufficient condition for an Internal Market in that respect. It is not a prerequisite for these rules and regulations to be identical to British ones, or even similar.

   It is obviously true that harmonisation can reduces transaction costs - having to adapt to different regulatory regimes imposes additional costs on business that operate in various jurisdictions. From a static perspective, the removal of these transaction costs through harmonisation represents an efficiency gain. However, harmonisation also ends regulatory competition. From a dynamic perspective, that will almost certainly entail large additional costs and inefficiencies.

Competition between regulatory approaches has at least two major benefits:

- It allows a trial-and-error process of local experimentation. A polycentric system with many different approaches allows this type of incremental learning from best practice, but a monolithic system does not.

- Regulators are not necessarily neutral agents. They have an interest in expanding their competences, remits, and budgets, beyond the level that is economically beneficial. Competition between regulators reduces the scope for them to do so.

5. It is wrong to examine the Internal Market in isolation from all other aspects of EU membership. Any impact from the Internal Market needs to be seen alongside all the other dimensions of EU membership such as the Customs Union, net budgetary contributions, the CAP and employment and social legislation. In other words the Internal Market is part of a wider economic cost-benefit analysis. The difficulty of course is the benchmark employed. One cannot simply compare the Internal Market with a situation of zero regulation in the UK.

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?

It is neither necessary nor desirable. Imposing a 'level playing field' through legislation removes the potential benefit from competition between social models for the most efficient outcome. It also fails to recognise the various social models which exist already, right across the EU – Nordic, Franco-German, Anglo-Irish and Mediterranean.

The notion that an internal market requires a harmonisation of employment and social legislation is based on the fallacious 'race to the bottom' theory: the idea that countries with lower employment/social standards will gain an 'unfair' competitive advantage over the more stringently regulated ones. This runs contrary to most of what is known about the functioning of labour markets.

Wage rates are set by market forces and levels of productivity. Legislation affects the composition of the pay package, but not the pay level. If legislators in one country insist on extensive benefits or regulation that, for example, improves safety standards, these will come at the expense of lower cash salaries. The total compensation level has not increased; it has merely been shifted from payment in cash to payment in kind. But what affects employers' business calculations is the total cost of employing people, not the precise method of dividing non-pecuniary and pecuniary benefits between regulated and unregulated aspects of the total pay package. This reasoning applies both to employment regulation and also to health and safety standards for employees.

Even in the case of environmental standards, in most cases a similar logic applies. Environmental standards are about a trade-off between (perceived) environmental quality and material prosperity. Local electorates in different places will make different trade-offs in this respect, and as long as there are no major inter-regional spillover effects, it is reasonable for legislation to reflect this plurality. So there is nothing trade-distorting if countries, or regions, with very different social/employment/environmental standards form part of the same market.

In fact, the way in which the EU deals with these matters should be turned entirely on its head. The EU should be asking whether domestic legislation is designed to be trade-inhibiting or is significantly trade-inhibiting in practice. If it is, the EU Commission should be trying to over-turn such regulation through the ECJ rather than centralising regulation.

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 Article 114 and the use of Article 115 for non-tax measures?

Harmonisation which is justified by the alleged need to create a 'level-playing field' can be abused to pursue a 'raising rivals' costs' strategy.[1] An example would be the Working Time Directive, which was classified as a health and safety measure rather than a social policy issue, in order to avoid the requirement for unanimity.

[1] Howe, M. (2004) 'The European Court: the forgotten powerhouse building the European superstate', Economic Affairs, 24 (1), pp. 17-21.
Vaubel, R. (2009) *The European institutions as an interest group. The dynamics of ever-closer union*, Hobart Paper 167, London: Institute of Economic Affairs.

Again, a common market does not require a centralisation of economic or social policy competences at the EU level. The desire to centralise competences has to be seen as a political aim, not a requirement of economic policy. Mutual recognition can offer a more promising route than harmonisation, provided it is done in a transparent way.

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?

Services are generally less tradable than industrial goods, and language barriers and specifics of a country including its legal system also play a larger role. For example, there are no specific laws which would prevent a German hospital chain from opening branches in the UK. But in the context of the British healthcare system, the contracting out of publicly funded services to private healthcare providers is generally underdeveloped and bureaucratically complex. So there is simply less room for private providers in general, regardless of their origin. Long-term insurance products are often tied to specific pensions systems and tax systems and are arbitrated by different legal systems.

Services tend to fall into two categories. There are those where there are impediments to trade that are outside EU competences and there are those where there is substantial trade, but which is not especially facilitated by the existence of the single market.

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?

It has not been affected very much either way. The euro has been upheld as a facilitator of economic integration. Under this premise, one would naturally expect an acceleration of economic integration within the euro zone, at least relative to the non-euro zone members. But this is not what we have observed.[2] Other things equal, the introduction of a single currency should, of course, lead to an acceleration of trade, as one important trade-related cost is removed. But there is a countervailing factor. The creation of the single currency has itself created competitive imbalances between Northern and Southern Europe, which, in turn, act as impediments to trade.

Clearly the impact of the euro crisis on EU institutional structures will be profound. There is obviously a risk that Internal Market legislation could damage the City of London and UK financial services.

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?

It has rather been other way round. The fact that, as a member of a Customs Union, the UK cannot enter free-trade agreements on its own, has certainly impeded prospects for international trade. Due to the similarity of legal traditions, the Commonwealth countries would have been obvious candidates, especially for example, in the case of certain services such as insurance and legal services. At the same time, there has clearly been significant trade diversion from commonwealth countries towards the EU with regard to agriculture.

7. To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU?

The deepening of the internal market has not necessarily brought additional costs or benefits, but the fact that the UK is part of the Common Agricultural Policy (CAP) and thus bound by its external tariffs is clearly a trade impediment. The CAP can be shown to raise food prices in the EU well above world market prices. In countries with a more liberal trading regime in agriculture, such as Australia and New Zealand, food prices are almost identical to world market prices.[3] The cost of the CAP to the UK specifically depends, though, on what the counterfactual would be (i.e. the agricultural trade policy the UK would otherwise adopt). While clearly trade-distorting and costly, there has been some improvement in this area over recent decades.

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[2] Sarrazin, T. (2012) *Europa braucht den Euro nicht*, Deutsche Verlags-Anstalt.

[3] Niemietz, K. (2012) *Redefining the poverty debate. Why a war on markets is no substitute for a war on poverty*, Research Monograph 67, pp. 104-116, London: Institute of Economic Affairs.

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?

The extent and cost of 'gold-plating' is an unresolved empirical question.[4] There is however considerable anecdotal evidence of it.

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?

The biggest challenge is the drive towards centralisation, and the related risk of regulatory failure and loss of accountability.

Note: The IoD is surveying its members at present on matters relating to the EU, including the Internal Market and the *Government Review of the Balance of Competences between the UK and the EU*. The results of this survey, relating to the Internal Market, will be forwarded to the Review Team in March 2013.

[4] Gaskell, S. & M. Persson (2010) 'Still out of control? Measuring eleven years of EU regulation', London: Open Europe.

Jones, Barry M

Barry M Jones

Balance of competence: UK v EU
Call for evidence questions

I am an individual with manufacturing business experience and a HND Business Studies.

Definition:

EFTA: a non political European Free Trade Area with mutually beneficial non- political agreements on non-trade matters and with 30+ non EU countries
EEC: a free-trade Customs Union with mutually beneficial social funding to which the British people voted to stay in, in 1975.
EU: under Treaties of Maastrict, and especially Lisbon, intended to become a full-blown, supranational political union incorporating a customs union but one over which the British people have consistently been refused a say. The EU has conditional trade agreements with far fewer non EU countries than EFTA and forbids Britain to individually negotiate truly benficial free trade agreements with our major export markets

Market integration and internal market:

1: Essential elements of internal market are:

- Tariff free trade either through a non-political Customs Union (EFTA) or under WTO trade rules. Tariffs need to be removed or made uniform with some possible exceptions where they are of prime national importance, but still lie within internationally acceptable parameters under WTO rules
- Britain does not have to be member of the political EU to achieve tariff free trade! The EU has tariff free-trade agreements with several African and Asian nations, but they are not required to pay substantially towards the EU administration or social fund, nor join the Euro single currency!
(I worked in the commercial vehicle industry in the 1970s. In the 1960s/70s, excessive EEC and US import tariffs forced many British companies to set up plants abroad; this greatly benefited British trade as such companies created local brand loyalty, boosting sales. Joining the then tariff-free EEC Customs Union was beneficial to Britain in the early 1970s, but when we joined the EEC, many companies closed their plants (once tariff barriers ended) and lost brand loyalty and trade to other European companies who then moved in!)
- Agreement on standards (CE)
In order to market any product in Europe (or the USA) that product must meet CE (or US, or China) standards but when America exports to the EU, they are not required to comply with EU working hours directives or comply with the European Convention on Human Rights. Likewise the UK and EU exports to the USA or China but we are not required to fund their internal social budget or internal social politics!
- There are many international standards needed for international trade: A4 paper size, 3-1/2" floppy discs, International Postal Union, SI units... all achieved between sovereign nations outside of a political union, eg: UN, WTO and the non-political EFTA or NAFTA etc.
- Respect for Patents, Registered designs and copyright
- Freedom of movement of personnel and businesses, but still have respect for the needs of different levels of taxation, and restrictions on movement where of national importance to protect certain industries, but not overly protective to prevent free trade.
(Even though we were in the EEC in 1977, French planning regulations would not allow importation of special British machinery if French machines could do the same job!)

2: EU involvement in environment, social, employment etc

- All these goals are achievable between sovereign nations, through the UN or EFTA. They do not require Britain to be a member of the political EU to gain the same result.
(The whole point of the EU is achieve a level playing field, but by the very nature of human

beings, we are territorial and until such time as we have a common language, culture, currency, government and 'nation', it will remain impossible for the French to surrender CAP, the Spanish CFP and the Greeks to be financially stable, without reliance on other Eurozone members - creating resentment from the tax-payers who are quite unwilling to offer further support; yet they are never consulted by the supranational EU or the Parliament. The EU is undemocratic, once in power!

Operation of internal market:

3: Articles 114/115 and QMV:
- QMV is a disaster and unworkable. A veto must remain available for use in exceptional circumstances.
Patently if Britain, Germany, Holland and Scandinavia are the main net contributors, and are truly global traders, their 'livelihood' is seriously impaired by the need to fund the larger majority of 20 odd nett EU recipients who can out-number and out-vote the 'milch cow' nations. This is particularly true of the 17 Eurozone nations outvoting by QMV the 10 non-Eurozone nations.

4: No observations other than after 40 years France, Spain and Italy have still never allowed reform of CAP or, after 20 years, CPF as it is against their interests to relent!
(The Franch government still part-subsidises their car and railway industries; Germany will not allow Volkswagen to be foreign owned. Britain however allows foreign ownership except where it is not in the national interest - especially defence).

Interaction with other forms of market integration:

5: Effects of Schengen and Eurozone.
- Schengen has allowed unimpeded movement of illegal immigrants to French shores intent on gaining access to Britain's deluxe social security benefits (our taxes should first of all support out people); likewise unimpeded ingress of diseases (ash die-back, bark beetles etc, horsemeat, breast implants) on CE 'approved' products and packaging materials which may not be examined for compliance at the port of entry.
- The Eurozone political project was improperly managed by the EU from day one. Its faults were plain to see under the unnaturally enforced ERM alignment (which forced Britain's withdrawal), fudged accounting by France (pensions funds) and Italy and especially Greece which was clearly nowhere near ready to join the Euro! It was a purely a political, face-saving stunt and decision by the EU to let Greece join the Euro.
Single currencies can only work with a single government (and vice-versa), to wit: US dollar, Russian rouble. The Gold Standard failed as it could not (just like the Euro) tolerate the necessarily different exchange rates required by member states to rejuvenate their economy by devaluing to prosper.

6: Membership of G20, Commonwealth etc makes not difference. All the while the EU has rich and poor 'sovereign' nation states it will never be able to operate as a single voice – something which no EU member nation wants! Those countries in the G8, G20, OECD are there because of their pre EU economic strength.

7: No observations

8: The British governments clearly 'gold plate' EU directives - especially "health and safety"! 3,000 new EU laws are passed every year! Few are relevant to Britain's internal economy (80% of GBP)
There are three levels of EU legislation: 'Regulations' which must be implemented and put into force by Parliament regardless of whether they are actually needed in the UK (Imperial measurements 'banned' for no good reason when British customers ask for Imperial units): 'Directives' which must written into domestic law... at some time!: 'Statutory Instruments' by the thousand enforced by unelected EU civil servants without any need for approval by our Parliament!

Future options and challenges:

9: The most troublesome is major erosion of Britain's, and other nations', sovereignty and national interests from:

- Eurozone members out-voting non-Eurozone members by default
- Pro-EU propaganda with using mis-stated statistics!
- QMV under the Lisbon Treaty (rejected by France and Ireland and which would have been rejected had Labour allowed us a referendum)
- Refusal of the EU to accept a democratic 'No' from referenda. France, Denmark, Holland and Ireland have all been required to vote again and again until the get it right! Britain went to war to defend democracy but the EU despises democracy!
- unelected European Commissioners swears sole allegiance to the furtherance of their EU project, regardless of the member state they 'represent' - the Commissioner is often not even a member of the governing party so how can a single EU representative truly represent the best interest of Britain, France, Austria... at the UN or G20?
- financing Turkey and other new members: For how much longer can the EU expect British, Germany and Dutch taxpayers to fund newer, much poorer EU nations? The pips are already squeaking!
- The EU shows disregard of fundamental EU treaties. No EU nation is required to bail out another...yet that is precisely what is happening through the Eurozone, ECB and now through the IMF into which Britain pays heavily.

- Enlarging the market does not fundamentally increase Britain's trade for Britain has traded (and still trades) with every single country in the world. Government statistics (Pink Book) show that in the late 1960s Britain's trade with all those current 26 EU members was around 50% (EEC 30%, EFTA 20%), Commonwealth (30%), Rest of World (20%).
Today the 'EU' still only accounts for around 50%, Commonwealth (10%), USA 15%, RoW 15%! Our essential 'EU' trade has not changed radically over 50 years despite our EU membership. Indeed EU trade is in decl ine and the Eurozone economy is still stagnant.
Today, 82% of Britain's trade goes to just 22 countries: 5 independent nations, 4 Commonwealth, 3 EFTA, 9 EU (the EEC 6 + 3 former EFTA). Our largest export destination remains the USA at 15%, followed by Germany 11%, France 8%, Ireland 8%, Holland 7%, Belgian 5%, Italy 4%, Sweden 2%, Poland 1%. It is a complete fallacy to claim we trade with 'the EU' as 17 members of the EU are largely irrelevant to our exports!

It is also a complete fallacy to claim our trade with 'Europe' would suffer if we left! Indeed official Eurostat data shows that if we left the EU, Britain would be the EU's 2nd largest export market! No wonder the pro-EU EU Commissioner Neil Kinnock stated categorically that if Britain left the EU Britain's trade with the EU would not be affected. Why would it... and more importantly, why would the EU Commission lie?

General

10: Peace comes from mutually beneficial trading between businesses. It is customers and businessmen who decide what products they buy and with whom they trade - not politicians or governments!

- We do not have to be in a political EU to trade with and live in peace
- Every enforced political union has failed: USSR, Balkans, Eire/NI. Today, countries seek independence from foreign power: USA,Canada, India, Balkans, Czechoslovakia, Poland, Catalonians, Flems, Walloons, Scots... the political EU will soon implode.
- We must restore the EU to a Free Trade Customs Union - that is what the majority of British wanted when they voted to stay in the EEC (subject to negotiations... which never took place!) in the 1975 EEC in/out referendum.

Thank you.