

# Submissions to the Call for Evidence

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# Kingfisher plc

**HMG Review of the Balance of Competencies between the UK and EU**  
**Internal market: Synoptic Review**  
**Kingfisher PLC response**

Kingfisher plc is Europe's leading home improvement retail group and the third largest in the world, with over a thousand stores in eight countries in Europe and Asia. Its main retail brands are B&Q, Castorama, Brico Dépôt and Screwfix. Kingfisher also has a 50% joint venture business in Turkey with Koç Group, and a 21% interest in, and strategic alliance with Hornbach, Germany's leading large format DIY retailer.

Kingfisher plc welcomes the opportunity to respond to the Government's Review of EU competences. Further contributions will be made to future consultations, including the "Services" and "environment" aspects of the Internal Market.

Kingfisher is a steadfast supporter of the Single Market. As a pan European retailer with large operations in the UK, France, Spain and Poland and with joint ventures in Germany and Turkey, the company has a clear interest in the harmonisation of certain standards and legislation across the EU.

Given these credentials, the Group has a major stake in the effective functioning of the single market. Our response to the consultation addresses only those questions relevant to Kingfisher PLC. Beyond the questions of the consultation, more broadly Kingfisher PLC has a set of principles which it considers essential to an effective and functioning EU. They are:

- The need to agree standardization requirements
- We have problems with third parties
- Good EU policy-making puts European consumers to the fore
- For business of all kinds, the benefits of commonality and certainly that the single market brings are important in and of itself
- With regards to the concepts of harmonization and mutual recognition, it is not a case of one versus the other; it is more a case of proportionality
- of policy making Goods – sourcing and common sourcing – makes it cheaper for customers

**Market integration and the Internal Market**

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?

The EU timber regulations are an example of an environmental policy which is essentially desirable in and of itself -it supports many member states' own endeavors to address the challenge of driving out unsustainable timber from the market – and which is also necessary for the single market.

B&Q in the UK has a long-standing policy on only sourcing and selling sustainable timber to its customers. Whilst going early on an ethical timber policy made sense to the UK business, before the adoption of the EU timber regulations, the business was put at a competitive disadvantage with its European competitors; the introduction of the EU timber regulations has therefore created a more level playing field, and ensures that we do not put at a commercial disadvantage for "doing the right thing". That said, and as a footnote to this point related to the broader question of the implementation of single market legislation, the business is minded that where national authorities are not enabled to enact the provisions of the Regulations, potential loopholes exist, potentially allowing some not to comply fully with the regulation.

## **The operation of the Internal Market**

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?

A number of directives aimed at reinforcing the single market have been implemented in a fragmented way which has had a material impact for the business and more broadly, this has adversely affected the wider business environment, competition and consumer purchasing power (on this point see more below)

### **The Services Directive**

The Services Directive is integral to the single market; Kingfisher's view is that its ineffective and piecemeal implementation in one of our European markets, Spain, has had a material impact on the business. The aim of the Service Directive is to "remove legal and administrative barriers to trade". However, the implementation of the directive in Spanish autonomous regions has failed to harmonise legislation and obligations across the regions. For example, regional authorities continue to impose an "economic needs test", which requires businesses to prove there is a demand for their services to the regional authorities. Not only does this severely impair the freedom of establishment but it also creates a business environment which benefits incumbents to the detriment of open and fair competition. For example, the region of Madrid has liberalised its commercial licensing legislation in the spirit of the Service Directive; this has resulted in increased competition among retailers with a corresponding degree of competition on price. As a result, consumers in the Madrid enjoy more competitively priced products than outside of that region.

### **REACH**

The REACH directive benefits the UK in terms of having a common EU approach for the effective identification and risk / hazard management of chemicals; without an EU framework, it would be difficult for the business to operate an effective common policy in this domain.

In France, the gold plating of the REACH directive poses a significant challenge not only for our French business, but to the Kingfisher Group as a whole, where the French interpretation of the REACH Directive which poses a challenge to pan European businesses such as Kingfisher to agree group-wide policies to enforcing EU single market legislation such as this.

By way of further background to this example, REACH sets a threshold of 0.1% weight-by-weight for hazardous substances (SVHC). Beyond this, information requirements for retailers towards professional users (and the general public) is compulsory. However, the interpretation by the French administration of this provision mean is that "article" is every component part of a given product, rather than its mass. This exceptional interpretation in France not only renders the job of retailers to communicate SVHCs more cumbersome, but it also presents an obstacle of agreeing group-wide European policies for pan-European retailers with the additional uncertainty and bureaucratic burden of navigating different legal systems.

In the future, we would like to see that the European Commission is better able to anticipate potential pitfalls with the implementation of single market legislation.

### **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?

Recent developments around the governance of the eurozone, such as the creation of the banking union, are a welcome development. They bring greater certainty to investors and build market and consumer confidence. This benefits businesses such as Kingfisher PLC with operations in non-euro and eurozone countries alike.

Achieving strong Eurozone governance should not come at the price of the single market – a twin track approach is required to achieve growth. We must not take our eye off of the other policies which will generate growth in Europe, such as a digital single market, which presents a considerable opportunity for growth in Europe.



There is a risk that excessive attention on the management of the eurozone detracts from the wider ambition of completing the single market. In addition, the creation of a more integrated core of member states with a separate supervisory regime, a banking union may hasten the shift to a multi-speed Europe, prompting concerns over the integrity of the single market.

Deeper political integration within the eurozone should not impact material changes to the overall EU acquis. The UK may end up being alone outside of the EU fiscal compact and banking union, but we have been in this sort of position before as the only EU member state not to adopt the Social Chapter initially whilst remaining a full member in other areas of competence.

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?

#### **Late Payments Directive**

The late payments directive aims to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of SMEs.

The transposition of the Directive into French law - the loi de modernisation de l'économie (LME) - goes beyond the requirements over and above the EU minimum. Where the Directive allows for a period for payment of suppliers (fixed in a contract) which does not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor, the French administration transposed the Directive allowing only 45 days for payment of suppliers.

This move has both a material impact on the French business – with a direct hit on working capital – and also wider unintended consequences. First, smaller and medium sized DIY retailers (the businesses that were supposed to benefit from this legislation) were impacted more heavily: their ability to pay suppliers in 45 days had a proportionately larger impact on their working capital. Second, this overly restrictive interpretation of the Directive forces retailers to look to source from outside of the EU, to countries where less restrictive payment terms exist, such as China.

# **Law Society of England and Wales**

# Balance of Competences Consultation - Internal Market Response

March 2013

*The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law.*

## Introduction

- I. UK membership of the EU has brought significant benefits to solicitors, law firms and their clients, most particularly through the ability to trade, provide services and establish across the EU and to seek effective redress to cross-border legal issues.
- II. The legal services sector plays a key role in the UK economy, the UK's competitive advantage and in improving the efficiency of doing business. Legal services directly contributed £26bn to the UK economy in 2011. This included almost £4bn of exports – a substantial volume of which was generated through trade with EU Member States.
- III. The UK legal services sector is globally focussed with offices and lawyers based throughout Europe and the world. Law firms exist in order to service the needs of their customers; these are commonly British businesses trading throughout the Internal Market and increasingly non-British clients doing business in the Internal Market.
- IV. The legal profession works day-to-day with clients throughout the EU dealing with a broad range of legal issues across a diverse range of fields ranging from commercial transactions, intellectual property and competition law to employment law, civil justice and dispute resolution.
- V. It is for these reasons that the Law Society and the legal profession have an interest in the stability of the UK's position within the EU and the future role of the UK at the heart of EU rule-making.
- VI. The Law Society nevertheless accepts that there is a debate as to the appropriate level of EU competence in various policy areas and will input into the other reviews of the balance of competences of most relevance to the legal profession.

## **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?**

1. The basic premise of the Internal Market is free trade. The UK has traditionally been a liberalising force working to open up markets on a global level. This is equally true within a European context where the UK has been a key player in the creation and success of the Internal Market to date.
2. The UK must continue its involvement to ensure that the Internal Market continues to grow and adapt to today's business environment. Access to the Internal Market is vital to UK businesses and the UK economy as a whole. Solicitors play an important role in facilitating the smooth operation of the economy. They seek to ensure that the rights of consumers, employees and businesses are protected. The Society seeks a legal

environment in the EU that is certain, clear as to rights and duties, and effective as to means of redress. The competitiveness of the EU and therefore the UK, ultimately depends on this.

3. Law and legal services underpin every aspect of the functioning of the Internal Market. The founding freedoms upon which the Internal Market is based apply to lawyers and legal firms directly enabling them both to work and to establish in other European countries and to provide legal services across borders. In this last respect in particular, access to the Internal Market provides access to a very broad client base which has allowed London to establish itself as one of the main legal hubs within the Union for UK-based businesses seeking to trade or establish cross-border as well as businesses based in other European countries and across the globe seeking advice on EU cross-border issues.
4. The freedom to supply goods and services requires the establishment of a level playing field, both in terms of equal access and in terms of fair competition. Trade barriers must be abolished which in practice often necessitates introducing an EU-wide set of rules. This is of significant importance to many of the Society's members and their clients in that it eases access, provides legal clarity and brings down the cost of doing business.
5. Furthermore, the Internal Market is unique in the sense that it has built a legal framework that allows individuals and businesses to enforce their rights in a much more efficient manner than would be available in a free trade area. This includes the possibility of relying directly on the Treaty provisions.<sup>1</sup> There are also a variety of legal instruments securing individuals' and businesses' access to justice through the promotion of alternative dispute resolution and mediation, the free movement of judgments, and common rules on choice of law.<sup>2</sup>
6. There are a number of direct benefits which it may be possible to quantify such as:
  - 6.1. the value of export or cross-border sales of goods within the Internal Market;
  - 6.2. the value of export or cross-border provision of services within the Internal Market;
  - 6.3. investment from other EU countries; and
  - 6.4. the number of jobs estimated to be dependent on the Internal Market
7. However, this is only part of the economic picture and to gain a full picture account should also be taken of the wider benefits to businesses and citizens and ultimately the UK. For instance, free movement allows for businesses to grow by establishing themselves in multiple jurisdictions bringing further economic benefits through job creation and tax receipts although these may not be directly recorded in the UK's EU trade balance.
8. The Internal Market also allows the UK a greater say in global trade. The combined power of the EU trading bloc is a major asset in negotiating Free Trade Agreements

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<sup>1</sup> See further in relation to question 3 below.

<sup>2</sup> The choice of law rules can be found in the Rome I and Rome II Regulations. The fact that there is also free movement of judgments (made much easier by the Brussels I Regulation and Lugano convention) with enforcement of English judgments across the Member States and EEA states, also serves to make the English court system in the UK more attractive to EU and non-EU litigants.

(FTAs) with countries across the globe in turn multiplying the effect of the Internal Market.<sup>3</sup>

9. A certain level of integration is necessary to ensure a reasonably level playing field if the Internal Market is to function properly. However, different issues arise in ensuring such level playing field across the various sectors of the Internal Market and as such the appropriate level of integration is not the same across the board. Furthermore, the integration can be deep but the rules themselves must be proportionate. In some areas it is also possible to achieve integration without necessarily imposing prescriptive rules.

**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?**

10. The extent to which EU action in "other" areas is required for the operation of the Internal Market is difficult to determine in the abstract: again it depends upon the specific factors and context where action is being considered.
11. In some cases action in such areas may be inextricably linked to the Internal Market freedoms. Where a company is exercising its freedom of establishment, for example by using the provision on cross border mergers or the *Societas Europaea* (SE), it is necessary to consider what effect, if any, this has on employees and any protections afforded to them by the law of their country of origin or destination. The Cross Border Merger Directive<sup>4</sup> and SE Regulation<sup>5</sup> therefore have provisions dealing with the treatment of employees.
12. The extent to which EU action in such matters is necessary for the smooth functioning of the Internal Market also relates back to the concept of a level playing field. A certain level of standardisation across these additional areas is needed to prevent Member States from introducing national provisions that indirectly favour national businesses and *de facto* create new trading barriers. Furthermore, the level playing field does not relate solely to equal access: but also to preventing competition in the Internal Market being skewed by overly large differences in legislation that directly and/or indirectly affects the costs of running a business. However, there may be practical difficulties in ensuring the genuine achievement of a level playing field, not least because the implementation of Directives inevitably leads to inconsistency of approach – not deliberately so as to favour one nation against another – but because the very concept of an all-embracing regulatory “law”, couched in general terms will inevitably be interpreted, and thus implemented, differently by each Member State.<sup>6</sup>
13. In addition to creating a level playing field for businesses, common rules are particularly important in the context of ensuring consumer protection and trust in the market. The assurance that the end-user benefits from a given set of rights or knows that there is a minimum quality requirement makes it more likely that cross-border offerings will be taken up. This may help businesses by broadening their customer base, and indeed it is

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<sup>3</sup> See further in relation to question 7 below.

<sup>4</sup> Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies

<sup>5</sup> Regulation 2157/2001 on the Statute for a European Company

<sup>6</sup> Examples of this include, for example, the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment) and the Habitats Directive (Directive 1992/43/EEC of the Council of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora), where geography, climate and circumstance will lead to a difference in interpretation. In a number of cases this is interpreted as either incorrect implementation (which all too often leads to infringement proceedings) or deliberate conflict within the Internal Market. This will be discussed further in future responses.

the lack of confidence and trust of consumers that remains one of the main challenges to furthering the Internal Market in services and e-commerce.

14. One of the most important considerations is not whether the EU takes action in "other" areas but whether the measures which are put in place in relation to the Internal Market are proportionate and fit for purpose. As the EU's competence is not exclusive in these areas, measures adopted must respect the principle of subsidiarity. Action in these other fields allows the UK to encourage best practice in areas where it has particular expertise or concerns. It can also ensure that British businesses do not have to comply with a higher national standard, from which businesses in other Member States would be exempt.

**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?**

15. The Internal Market is widely acknowledged as one of the foundation stones of the EU and one of the UK's most important contributions to the EU.
16. EU mechanisms can already be said to have successfully delivered an Internal Market, albeit that further steps remain along the path to full implementation. The current system is also, of course, open to modifications and improvements in line with market developments. BIS's own study from 2011 estimated that fully completing the Internal Market would bring the UK a national income gain of around 7 % of GDP.<sup>7</sup> by further liberalising and integrating national markets in services and e-commerce.
17. One of the most important mechanisms in creating the Internal Market has been the potential for direct applicability and enforceability of the Treaty itself. The direct effect of Articles 34, 49, 56 and 63 Treaty on the Functioning of the European Union (TFEU) has proven to be effective in preventing attempts by one Member States at discrimination or protectionism against suppliers in other Members States.
18. An important aspect of creating an effective system is the availability of effective dispute resolution mechanisms.
19. One of these mechanisms, particularly apparent from a private international law perspective, is the system for the mutual recognition of judgments. The enforcement of UK judgments across Member States and EEA states has been made much easier under the Brussels I Regulation and Lugano Convention. This assists both EU and non-EU clients that choose to litigate before UK courts and makes the English court system more attractive to litigants. This is also an important benefit for UK natural and legal persons seeking redress in other Member States.
20. Similarly the Society regards adoption of uniform governing law rules<sup>8</sup> as an integral and important aspect of the Internal Market. This has made it easier to assess with more certainty which law will be applied by Member State courts<sup>9</sup>. The provisions go hand in hand with the uniform jurisdictional and enforcement rules under the Brussels I Regulation and Lugano Convention. Both instruments increase legal certainty by

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<sup>7</sup> <http://www.bis.gov.uk/assets/BISCore/economics-and-statistics/docs/E/11-517-economic-consequences-of-completing-single-market.pdf>

<sup>8</sup> In respect of choice of law in contractual and non-contractual obligations under the Rome I and Rome II Regulations, respectively. This is touched upon in the answer to question 1 above.

<sup>9</sup> With the exception of those in Denmark.

providing a uniform set of rules to be applied by courts on questions of jurisdiction and enforcement of judgements. This is of benefit to both lawyers and their clients and can consequently reduce the cost of transaction or when enforcing judgement.<sup>10</sup>

21. It is also important that alternative dispute resolution mechanisms are offered which allow parties to avoid recourse to the courts. The recent agreement on the proposal for an Alternative Dispute Resolution Directive is an important aspect of this, in addition to the Mediation Directive.
22. The role of the Court of Justice of the EU (CJEU) is crucial in ensuring consistent application and interpretation of EU law throughout the Internal Market. This facilitates the smooth functioning of the Internal Market, promoting access to justice and redress in situations where problems arise from cross border commercial relations. The mechanism for sending preliminary references has assisted national courts of the Member States, often the "newer" States in particular, in ensuring the correct interpretation and implementation of EU law.
23. Although successful and efficient in many respects, the CJEU is not wholly without problems. The resources of the EU Courts have been constrained and this has led to a longer duration for court proceedings than desirable (although this is today more a feature of the General Court, which is less directly involved in the Internal Market than the CJEU). Concerns have also been raised about the output of the CJEU in certain technical but important areas of law where EU law interacts with complex sets of rules and case-law at national level, for example taxation and intellectual property. The Society believes that such concerns are not unique to the United Kingdom, but may be more widely shared by European practitioners in the fields concerned.
24. Broadly speaking the Society considers that the right balance between harmonisation and mutual recognition has been achieved. The principle of mutual recognition has been an important driver of the Internal Market since the "Cassis de Dijon" case<sup>11</sup> where the court concluded that the requirements which the Member State was attempting to impose "[did] not serve a purpose which [was] in the general interest and such as to take precedence over the requirements of the free movement of goods, which constitutes one of the fundamental rules of the Community." Where all EU Member States have the same minimum safety and quality levels, there are therefore no objective reasons for adopting national provisions. However, mutual recognition needs to be supplemented by some degree of harmonised rules, (minimum or maximum) dependent on the policy area to ensure a level playing field and consumers' trust in the market. To this end it should be noted both that the EU has adopted a number of different approaches to harmonisation and that the Internal Market *acquis* establishing common rules for standards, quality and safety of products and services more often than not replace 27 sets of national rules and they are thus not 'new'. In fact, this increases legal clarity for cross-border businesses and brings down costs as such businesses need only comply with one set of rules instead of 27.
25. The development of competition law at EU level has been one of the great successes of the Internal Market. It is regarded as an essential feature and brings with it many practical benefits.<sup>12</sup> This applies both to the rules directed at commercial undertakings

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<sup>10</sup> Similarly, other legislation such as the European Payment Order and Small Claims Procedure facilitate access to justice for contracting parties which in turn strengthens the Internal Market. The Society notes that these procedures, although available, may need to be more widely publicised in order to achieve their full potential.

<sup>11</sup> Case C-120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*.

<sup>12</sup> (a) What is now Article 101 TFEU has been very effective at breaking down intra-EU and global cartels, where in the past national industries often ran "no-poaching" understandings with their competitors in other Member States;

themselves and to the rules on State Aid. The latter, in particular, are viewed as having greatly reduced the practical ability of Member States to subsidise their national champions and thus as having made a significant contribution to the ability of UK business to take advantage of the Internal Market. The EU competition rules are not, however, perfect, and further work may need to be done, for example, on when Member States can control mergers to ensure freedom of expression, financial stability (banking, insurance, etc) or to cover national defence.<sup>13</sup>

26. As noted above one of the Society's primary roles is to represent the interests of solicitors and solicitors' practices. The EU has enabled an enhanced framework for freedom of provision of legal services and freedom of establishment for lawyers and law firms which has been key to the development of many London-based law firms.<sup>14</sup> Although this system is susceptible to further improvements, it has enabled the solicitors' profession to thrive. Furthermore it has been a liberalising force, opening other legal professions and professional markets throughout Europe. The direct applicability of some of the Treaty provisions has been key in enabling law firms to expand their businesses into other EU Member States (and those of other Member States to establish here) by relying on the Treaty rights without any need for detailed harmonisation of the rules and ways in which each profession is organised.<sup>15</sup> In turn, this has helped to ensure that the UK's voice is heard as the Internal Market is developed: UK law firms and UK lawyers are now one of the most prominent constituents of the legal community in Brussels, and they are closely involved with legislative and policy developments within the EU institutions.

27. Another benefit of the Internal Market is the opportunity to attract investment.<sup>16</sup> Practitioners have seen significant investment flows into and within the EU over the last 40 years, since the UK joined. The influence of the EEC Treaty, and its successor treaties today, in removing restrictions on the flow of capital (and in the UK's case the lifting of UK Exchange Controls) has led to significant investment into the UK both from other EU Member States and from non-EU States (the latter for example using the UK as a hub to supply the Internal Market) and investment from the UK into other Member States - although the pattern of UK investment into other EU Member states is by no means evenly spread between such States. It is outside the scope of this response to assess the economic level and value to the UK of those investment flows, but

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(b) The EU Commission has operated as an efficient enforcement body, with strong powers to detect and deter restrictive practices at EU level;

(c) Competition law is now accepted as a key tool of economic development in its own right across the EU; all EU Member States now have national legislation mirroring the EU competition rules;

(d) The EU merger control rules are effective at controlling larger mergers with an EU wide impact; a patchwork of national merger controls showed itself less well able to deal with large mergers affecting several EU markets;

(e) Further, the rule that the effect of a merger on competition is the only criterion used at EU level to decide whether to approve a merger has greatly reduced the practical ability of individual Member States to block mergers on protectionist grounds or to favour their "national champion". (In line with this approach, the UK's powers to control mergers on the grounds of national interest under the Industry Act have been revoked).

<sup>13</sup> The Society will wish to develop the views of the profession on this in future responses.

<sup>14</sup> The UK joined the EEC in 1973 at a time which coincided with the collapse of the UK commercial property market and after that the fall in the Stock Market which lost half its value in 1974. London law firms, in particular, were forced in a sense to go out and look for work. Some of them did so by establishing what became very successful practices, first in Paris and then in Amsterdam, Madrid and elsewhere. Dealing first with property work, they then moved into banking, corporate deals and general commercial work. These initiatives coincided with setting up offices in the Arabian Gulf, Hong Kong and Singapore. The development of these London based worldwide businesses was based not only on the use of English law and UK legal expertise but also our ability to be able to provide services across the EU including from offices based in other EU Member States.

<sup>15</sup> See for example the judgment in Case C-309/99 *CJ Wouters, JW Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, intervener: *Raad van de Balies van de Europese Gemeenschap*

<sup>16</sup> See also in response to Question 1 above.



practitioners have certainly advised on, and have benefited from, commercial legal work resulting from those investment and trade flows within the EU, resulting from the treaty rules to ensure the free movement of capital.

28. Some of the specific policy areas and instruments mentioned display varying degrees of harmonisation and mutual recognition. Competition law is almost completely harmonised as opposed to measures under civil judicial cooperation. Both policy areas are important to the functioning of the internal market but as they are very different in nature and scope they need to be regulated in different manners.
29. There is not a blanket answer as to where the axis between mutual recognition and harmonisation should be placed. This depends on a number of factors, not least the relevant sector, whether it is goods or services and the existing circumstances in, and variations between, Member States in any given field. While in some policy areas harmonisation constitutes the largest share of legislation, and vice-versa for mutual recognition, generally there will be a combination of the two modes of legislation as the two are complementary. It is difficult to imagine either technique standing entirely alone as even in areas where there is mutual recognition a common minimum level is necessary to genuinely create a level playing field and ensure consumers trust in the market. Technical standards, or standards to protect EU citizens, for example in the fields such as health and safety, are a good example of one of those areas where some level of harmonisation is needed.
30. It could be argued that EU legislative competence is somewhat imprecisely defined by the TFEU in respect of Article 114. Although a number of years have now elapsed since the first *Tobacco Advertising*<sup>17</sup> judgment, the choice of legal basis on which the EU decides it has competence to act has many times been the subject of judicial challenge at EU level, and this is particularly likely to be the case where an additional legal basis may be cited in conjunction with Article 114. There is a question as to whether the use of Article 114 should be monitored more strictly to ensure that it is only used as a legal basis for legislation which truly fulfils the objective set out in Article 26<sup>18, 19</sup>.

**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?**

31. The Internal Market is the result of an evolutionary process. Variations in "depth" between subject areas are the result of a number of factors:
  - 31.1. political and cultural considerations or sensitivities;
  - 31.2. the extent to which similarities already existed among Member State systems; and
  - 31.3. the need for modernisation of rules to reflect, for example, changing social attitudes, developments in technology and changes in the way business functions which have prompted change in different areas at different times.
32. The Law Society considers that the implementation of the Internal Market has been reasonably effective.

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<sup>17</sup> Case C- 376/98 - Germany v European Parliament and Council of the European Union

<sup>18</sup> Article 26(1) sets out that "The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties."

<sup>19</sup> For example the Society has questioned the competence of adopting the proposed regulations on a Common European Sales Law and considers that Article 114 is not an appropriate legal basis in this context.

33. The possibility of bringing private enforcement actions, and consequently the CJEU, has been key in furthering effective implementation. Both preliminary references and proceedings lodged with the Court itself have contributed positively in this regard. The power of the Commission to bring enforcement proceedings in the CJEU has helped ensure that Member States honour their obligations in properly implementing and observing agreed legislation. However, as mentioned earlier, further improvements to the CJEU do need to be made.
34. The most obvious factor hindering the implementation of the Internal Market rules, at least in the UK context, has been time. In some instances there has not been sufficient time to carry out proper consultation within the UK, subject draft UK legislation to detailed scrutiny or put in place the mechanisms needed to operate new systems. Carrying out these processes properly helps to ensure that measures can be implemented effectively.
35. Another factor is that directives are still unevenly implemented in the Member States both in terms of time and content. These differences can skew competition and have a negative impact on businesses in countries with a strong implementation record, such as the UK, and increases legal uncertainty. In that sense, sometimes the problems that arise from the application of EU law relate to the implementation rather than the law's substantive matter. It should also be noted that the EU itself adopts various different approaches to harmonisation which may leave greater or lesser discretion to the Member States.<sup>20</sup>

**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?**

36. The Society does not wish to comment on this question.

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

37. The Society notes the significant differences between these various groupings or organisations.
38. The Law Society believes, at least in the context of the G20 and the G8, that the two are complementary. From the UK perspective, membership of the G20 and G8 has had a positive effect on UK impact in the EU, and membership of the EU has raised the UK's status in the context of the G20 and the G8.
39. On a related note, membership of international groupings such as the G20 and G8, or even the Commonwealth, could not replace UK membership of the Internal Market.
40. The Society does not offer any comments as to whether UK involvement in the OECD and Commonwealth has affected the Internal Market.

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

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<sup>20</sup> Sometimes diverse national rules are replaced with a single EU rule, sometimes directives might provide a harmonised standard which manufacturers can choose to follow (but this is optional) and sometimes the EU simply sets down minimum standards, but Member States can adopt stricter measures.

41. The Law Society does not consider that the Internal Market has brought any additional costs when trading with countries outside the EU. On the contrary, it considers that it has resulted in significant benefits.
42. Membership of the EU brings advantages to the UK in a wider international context. The combined economic power of all 27 Member States is a valuable asset in negotiating major FTAs with countries throughout the globe. The EU trade protection measures (anti-subsidy, anti-dumping rules, and the operation of the customs union etc) are a good example of where EU action is more effective than action by the UK alone would have been.<sup>21</sup> While it may be difficult to quantify or assess these benefits in monetary terms, it remains an important factor which should be taken into account in assessing the economic benefit of the Internal Market.
43. From the domestic perspective, it should also be remembered that the UK is often used as a gateway to the rest of Europe. A number of practical and pragmatic elements feed into this including the accessibility of English language, the reputation of English law and the perception of the UK as a whole, and London in particular, as a global hub for all things trade-related, from financial services and investment opportunities to the daily activities of the companies themselves. This "gateway" function is inextricably linked to the UK's position within the Internal Market and the EU as a whole.
44. As noted above, a particular example of a benefit of the Internal Market from the perspective of parties outside the EU is that English judgments involving a non-EU party may be enforced in other Member States or EEA states. This reinforces the attractiveness of England and Wales as jurisdiction of choice.

**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?**

45. The UK has traditionally been one of the Member States which tends towards higher regulation. There have therefore been cases where requirements have remained in place over and above the EU minimum: a good example of this can be seen in the implementation of the Anti Money Laundering Directive where the UK imposes more stringent requirements. There have also been cases where, in adopting EU legislation, the UK has in fact put in place a higher standard of regulation than that called for in the EU measures. As a general rule, this type of approach can distort the competition in the Internal Market by imposing stricter and more burdensome demands on UK businesses than their European counterparts in turn potentially driving business out of the UK. In certain cases it could have a positive impact if it can be used as a competitive advantage but this depends on the particular sector and how price sensitive the product/service is.
46. In 2010 the Government announced an end to the gold plating of EU regulation.<sup>22</sup> It pledged instead to follow the "copy-out" principle except where it would adversely affect UK interests, such as putting UK businesses at a competitive disadvantage, and not to implement early unless there are compelling reason to do so. The Law Society believes that there are cases where a "copy out" approach is not attractive. This may be because the UK wants to apply higher standards than an EU Directive imposes - because it is considered desirable for the UK - or because the Directive is not clear in the way it is worded, and it is helpful for business to be clear about what is required of them to avoid having to incur costs caused by the uncertainty.

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<sup>21</sup> As a specific example, the EU has been far more effective in the aircraft anti-subsidy dispute with the US than any one EU member state could have been on its own.

<sup>22</sup> <https://www.gov.uk/government/news/government-ends-goldplating-of-european-regulations>

47. The Law Society does not have sufficient data to form a view on the practices of and subsequent consequences in other Member States.

**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?**

48. The Internal Market is constantly changing to adapt to challenges or exploit opportunities with the aim of promoting growth. The collective success or otherwise of these measures will impact accordingly on our national interest. With this in mind the Law Society believes that the UK government should engage positively and proactively to ensure the continuing success and further development of the Internal Market. To date the UK has been an important voice in Internal Market negotiations and in influencing the proposals the Commission puts forward. The UK has been particularly successful in areas such as company law and corporate governance: for example, the comply or explain approach to corporate governance has been adopted in the EU. If the UK were to cease to be a member of the EU, it would lose this influence.

49. As the EU enlarges it becomes more difficult for Member States to reach agreement. This can prevent the EU introducing enabling provisions which could be beneficial to businesses, e.g. because they allow a company to exercise its freedom of establishment.

50. There has been much talk recently of the potential adverse effects on non-eurozone countries from the increased political and economic integration of eurozone countries. This particularly entered the spotlight during negotiations over the establishment of a Single Supervisory Mechanism (SSM). While the Society recognises that it is important to be aware of the unique situation of the eurozone countries, the experience of the SSM indicates that it is possible to ensure appropriate safeguards are put in place, thus avoiding a negative impact on non-eurozone countries.

51. The Society believes that there are significant future opportunities, in particular sectors such as services, e-commerce, telecommunication, pharmaceutical, high-end engineering and energy where the UK is particularly strong.

52. Future enlargement would also provide the opportunity for UK businesses to provide goods and services more widely. UK consumers could also benefit from a more open market. The Law Society advocates market opening, both in the context of provision of legal services and in furthering the interests of its members' clients.

53. The Society observes that an efficient CJEU and General Court are important to the functioning of the Internal Market. Any further enlargement would need to take into account the corresponding impact on the volume of casework. The Society takes the view that there is already an urgent need for additional judges to tackle the workload of the General Court. This issue would need to be looked at carefully in the case of further enlargement.

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

54. There would be a number of consequences for the UK if access to the Internal Market was not on the basis of EU Membership. At present the UK has a strong position as one of the larger Member States which allows it to participate in and inform negotiations. Involvement in the Internal Market along the same lines as Norway or Switzerland would still require the UK to comply with the vast bulk of EU legislation including those "wider" areas of legislation which the EU considered essential for the functioning of the Internal

Market. However, there would be no UK Commissioner in the European Commission and UK citizens would not be able to elect Members of the European Parliament to represent their interests. Although, following the example of those non EU countries with Internal Market access, it would be possible for the UK to participate in Council discussions, its influence would be severely weakened as it would have no voting power and no power of veto.

55. The CJEU (including General Court) fulfils a key institutional function in ensuring the smooth functioning of the Internal Market and the EU as a whole. In many cases the system works well but it is not wholly without problems. The capacity of the Courts is constrained by the numbers of both judges and Advocates General who are required to deal with an increasing case load as the body of European law grows and the EU itself expands. The Society is also aware, as noted above, that some thought needs to be given to the qualifications and competencies required of judges and Advocates General in both the General Court and the Court of Justice in order to make those bodies efficient and practical courts.
56. The Law Society would also like to note that much public discontent and adverse press comments about recent decisions of the "European Court" were in fact aimed at decisions of the European Court of Human Rights (ECtHR) rather than the CJEU. The ECtHR is separate from the EU and involves a greater number of European countries. The Society is concerned that the public confuses the Courts in Luxembourg and EU Law with the requirements of the European Convention on Human Rights and rulings from the ECtHR in Strasbourg. The Society would suggest that future consultation aims to explain to the public the differences between the CJEU and the ECtHR.

# Levitt, Malcolm

The Common Commercial Policy involves trade agreements with countries outside the EU in the rest of the World. Several such agreements currently exist and others are being negotiated or are expected to be initiated, for example with china and the USA.

The UK's trade with such countries is therefore conducted according to such agreements, especially market access. The size of the EU's economy conveys considerable negotiating clout and being a multiple of the size of the UK economy it follows that it has much greater bargaining strength than the UK alone, so there has been a positive benefit to UK exports and economy..

Should the UK leave the EU it would cease to benefit from current or future trade agreements, to the considerable disadvantage of UK exports and the economy. Of course the UK could negotiate agreements of its own, but with much less bargaining strength. It is questionable whether third countries would accord much priority to UK demands when their officials are busy negotiating with the EU. Moreover, given the US Administration's warnings to the UK about its relations with the EU, no favours should be expected from the USA.

Finally, it is doubtful that the UK would have the official capacity in terms of skills, and experience as well as numbers to effectively initiate new trade agreements around the World to replace the EU agreements from which it would be excluded in view of the recent and ongoing decimation of the civil and diplomatic services.

Malcolm Levitt

# **Liberal Democrat European Parliamentary Party**



**DRAFT LIBERAL DEMOCRAT EUROPEAN PARLIAMENTARY PARTY SUBMISSION:**  
**INTERNAL MARKET CHAPTER 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?*

An Internal Market should comprise of common rules overseen by an independent judiciary, in order to enable all of the following:

- Free movement of goods,
- Free movement of services,
- Free movement of capital,
- Free movement of labour<sup>1</sup>.

The internal market follows an inherent liberal economic logic: if all of these components are in place across the EU, it should enable free trade, competition and the rational allocation of resources across 27 (soon to be 28) member states, a population of 500 million consumers and an economy of over £11tn in GDP. This should drive down costs for businesses and consumers, expand the size of the potential domestic market for domestic producers, enhance the scope for cross-border investments and stimulate further technological advances.

In practice, an internal market would need to have removed all obstacles to these four freedoms, including both tariff and non-tariff barriers. When it comes to internal tariff barriers, the EU's internal market is already largely complete – in other words, there are no longer any hard tariff barriers for trade and competition covering goods, services and capital within the EU. While significant progress has and is being achieved to remove non-tariff barriers, especially over goods (such as providing for common product and technical standards); there remains a long way to go, especially in the area of services and digital economy. In this sense, the internal market, while advanced in some areas, remains far from complete.

Moreover, creating an internal market is a dynamic process that requires constant attention, updating and reform as new products, technologies, services and other challenges emerge. The most obvious area we see this is in the digital sector which creates huge new opportunities to enhance the freedom of movement of goods, services and capital within the internal market, but also creates new challenges and barriers which must be addressed.

The gradual removal of tariff and non-tariff barriers within the EU has been made possible by the introduction of Qualified Majority Voting (QMV) in the Council of Ministers. Without a mechanism to prevent any one state blocking a proposal necessary to help create an internal market, it would have been impossible to make the progress achieved to date. The expansion of QMV was first introduced under the Single European Act (SEA), which in itself was the product of the Cockfield Report (British Commissioner), and was approved by the then Prime Minister, Margaret Thatcher, to her great credit.

Making crude generalisations over how deep the internal market needs to go to be effective is difficult since each sector varies. In some cases, a high level of harmonisation and tight regulation is needed to provide consumer confidence. In others, mutual recognition may be sufficient. Pragmatism needs to be applied to ensure the most appropriate medium for unblocking barriers and to create a level playing field in which all can compete fairly. Within this, subsidiarity and proportionality should be applied properly.

There are two further crucial points to be made about the internal market. First, the internal market should be seen as a springboard for UK businesses to tap into the dynamism of emerging markets around the world. The presentation by some that there is some simple choice between European and non-European trade is absurd. EU trade is, and is likely to remain, the bedrock of British trade in the world for some time to come. But the collective weight of the EU's internal market, the largest market in the world with 500m relatively wealthy consumers, is a highly attractive prize for other countries and their export industries. This gives the UK, via the EU, leverage and power in opening up market access around the world, clout in dealing with trade disputes in the WTO and the ability to export EU norms, rules and standards to other countries, further easing the market penetration of UK exporters around the world whilst also raising global standards in the process. Indeed, this latter point is arguably the biggest prize for the EU-US Free Trade

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<sup>1</sup> This paper will focus primarily on the first three of these freedoms and consider free movement of labour in the subsequent balance of competences semester.

Agreement: the creation of a transatlantic single market representing 50% of global GDP and that will set the benchmark for all future global standards.

The EU has trade agreements in place with 52 other countries around the world<sup>2</sup>, has negotiated agreements with 16 other countries<sup>3</sup> and is in the process of negotiating agreements with 62 other countries<sup>4</sup>. The collective weight of the internal market is the source of much of the EU's political and diplomatic power in the world as well. Further evidence on trade will be submitted in the Trade and Foreign Policy Chapters of the Balance of Competences, but the point stands that to consider the internal market in isolation from the political leverage and power that it generates for the UK in the world, would be entirely misguided and incoherent. It should be noted that the Commission has confirmed that outside the EU, or indeed, outside the single market, the UK would lose access to all of these EU Free Trade Agreements<sup>5</sup>. Renegotiating such deals bilaterally would take many years and we would do so from a position of relative and declining weakness as a country of 60m people rather 500m people.

The second key point is that the deepening and expansion of the internal market creates other spillover effects which require complementary and corresponding action in other policy areas, including at the European level. For instance, the improvement in the four freedoms, along with the improvements in technology and transportation, has helped to create easier opportunities for criminal organisation and activity to transcend national borders, as evidenced by ACPO in the ongoing Lords Committee Inquiry into the Justice & Home Affairs Opt Out<sup>6</sup>, with a range of cross-border criminal activities such as cybercrime, fraud, human trafficking and counterfeit goods, . The same is seen in many other areas from environmental pollution to the protection of civil liberties to international trade and foreign affairs. It would be entirely wrong, incoherent and illogical therefore, to envisage the internal market in a separate silo from these wider challenges. They are intimately intertwined and interconnected.

The below summarises the evidence we are aware of to show the economic benefits of the internal market.

**Headline Economic Benefits:** The UK economy benefits from the free trade under single market alone (not including EU external free trade deals) to the tune of up to £90bn annually, or £3,300 per household every year (27m households in UK)<sup>7</sup>. The level of trade liberalisation in the EU is unparalleled anywhere in the world. The EU's Single Market gives British companies free trade access to the world's biggest single market worth nearly £12tn in GDP and over 500 million consumers<sup>8</sup>. Around 50% of British trade, worth £450bn a year, is with other EU member states<sup>9</sup>. According to BIS data, around 3.5 million British jobs are directly or indirectly reliant on the EU's single market. That's 1 in every 10 British jobs<sup>10</sup>. The growth in free trade within the EU has generated up to £3,300 in extra income per British household per year over the last 30 years<sup>11</sup>. Today, over 100,000 British firms export to other EU countries, 94,000 of which are SMEs. 80% of all UK businesses think the Single Market delivers concrete benefits to them<sup>12</sup>. Over 200,000 UK companies trade with the EU every year<sup>13</sup>. In the Captains of Industry poll, 73% of directors from FTSE 350, top 500 industrials by turnover and top 100 financial companies by capital employed agreed that leaving the EU would damage the UK economy. Amongst FTSE 100 interviews, this number rises to 85 per cent<sup>14</sup>.

<sup>2</sup> Association Agreements with Algeria, Chile, Costa Rica, Egypt, El Salvador, Guatemala, Honduras, Israel, Jordan, Lebanon, Morocco, Nicaragua, Palestine, Tunisia; Economic Partnership Agreements with Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Jamaica, Mauritius, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Surinam, Trinidad and Tobago; Free Trade Agreements with Colombia, Peru and South Korea; the European Free Trade Association with Switzerland; European Economic Area with Iceland, Lichtenstein and Norway; Customs Union with Andorra, San Marino & Turkey; Economic Partnership, Political Coordination and Cooperation Agreement with Mexico; Stabilisation and Association Agreements with Albania, Bosnia, Croatia, Macedonia, Montenegro and Serbia; Trade, Development and Cooperation Agreement with South Africa.

<sup>3</sup> EU-Southern Africa Development Community (SADC) Interim EPA with Botswana, Lesotho, Mozambique, Namibia and Swaziland; EU-Cameroon Interim EPA; EU-Ghana Interim EPA; Interim EU-Pacific EPA with Fiji; EU-East African Community(EAC) Interim EPA with Burundi, Kenya, Rwanda, Tanzania and Uganda; EU-Cariforum Economic Partnership Agreement with Haiti; EU-Ivory Coast Interim EPA; Free Trade Agreement with Singapore; Deep and Comprehensive Free Trade Agreement with Ukraine.

<sup>4</sup> Free trade agreement with Bahrain, Canada, India, Japan, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia, Thailand, UAE & Vietnam; Deep and Comprehensive Free Trade Agreements with Armenia, Georgia & Moldova; Economic Partnership Agreements with Malawi, Zambia, Kiribati, Nauru, Samoa, Solomon Islands, Tuvalu, Tonga, Vanuatu, Gambia, Sierra Leone, Angola, Chad, Congo, Central African Republic, Democratic Republic of Congo, Equatorial Guinea, Gabon, São Tomé & Príncipe, Comoros, Djibouti, Eritrea, Ethiopia, Somalia, Sudan, Cook Islands, East Timor, Marshall Islands, Micronesia, Niue, Palau, Benin, Burkina Faso, Cape Verde, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Senegal and Togo.

<sup>5</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2012-008158+0+DOC+XML+V0//EN&language=EN>

<sup>6</sup> p.7-8 here: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/Protocol36OptOut/VolofevidenceP36asat110113.pdf>

<sup>7</sup> <http://www.theyworkforyou.com/wrans/?id=2011-09-06c.67079.h&s=section%3Awrans+speaker%3A11494#g67079.q0>

<sup>8</sup> <http://www.bis.gov.uk/policies/europe/eu-single-market-introduction>

<sup>9</sup> <http://www.bis.gov.uk/policies/europe/eu-single-market-introduction> and <http://www.theyworkforyou.com/wrans/?id=2012-03-27a.101662.h&s=section%3Awrans+speaker%3A11823#g101662.q0>

<sup>10</sup> <http://www.theyworkforyou.com/wrans/?id=2011-09-06c.66959.h&s=section%3Awrans+speaker%3A11494#g66959.q0>

<sup>11</sup> <http://www.theyworkforyou.com/wrans/?id=2011-09-06c.67079.h&s=section%3Awrans+speaker%3A11494#g67079.q0>

<sup>12</sup> 2006MORI Poll

<sup>13</sup> <http://www.theyworkforyou.com/wrans/?id=2012-03-27a.101662.h&s=section%3Awrans+speaker%3A11823#g101662.q0>

<sup>14</sup> <http://bnegroup.org/media/bne-deputy-director-in-public-service-europe/>

**Foreign Direct Investment:** Around 50% of foreign direct investment to the UK comes from other EU member states, and is worth £351bn a year<sup>15</sup>. Over 50% of companies investing in the UK cite the UK's membership of the Single Market as a core reason for investing in the UK<sup>16</sup>. Full access to the EU's single market helps to make the UK a magnet for foreign companies locating in the UK: Between 1998 and 2011, 603 major foreign companies chose to locate their European Headquarters in the UK<sup>17</sup>. A recent example is the decision by Japanese pharmaceuticals giant, Shionogi, to establish their European headquarters in part because of London's "easy access to the rest of Europe". FDI increased fourfold in the EU between 1992 and 2001 as international investors saw the internal market benefits<sup>18</sup>. In the UK, FDI increased from circa 20% of GDP in 1992 to around 36% in 2002 – despite a decline in the mid-1990s caused by the recession.<sup>19</sup> An OECD and Bank of England study suggest that UK withdrawal from the EU would cut FDI into the UK by over a third and damage household incomes<sup>20</sup>.

**Removed Trade Barriers & Opened up an EU-Wide Market:** Since the mid-80s, around 100,000 different technical regulations across the then EU Member States were either replaced by EU level regulations or became mutually recognisable. This has had huge economic benefits. For Instance, the controls over the transportation of goods from the UK to Italy was estimated to cost businesses up to €8 billion and national governments up to €1 billion annually at that time.<sup>21</sup> In the mid-90s, 76 per cent of intra-EU trade was estimated to be at risk of disruption through technical barriers if the EU did not act.<sup>22</sup> Part of this process has seen, for the most part, an end to the use of non-tariff barriers as a way of offering protection to home markets, especially in the area of goods.

The internal market has given companies in the EU far greater opportunities by enabling them to access a market of 500 million people, far exceeding the size of their home markets. The benefits of this greater scale in some sectors, such as aerospace, are substantial – without access to an EU-wide market, the survival of these industries would have been in serious doubt; it would be almost impossible for any country to have a national-only aerospace sector. The internal market has enabled joint ventures across borders achieving the necessary scale to survive and compete globally.

Removing internal barriers to trade has reduced risk to companies. For instance, prior to the internal market pharmaceutical manufacturers had to apply to each national regulator to license their products, a process that took on average five years for each country. The creation of the internal market and the single European Medicines Evaluation Agency reduced the approval time to a year cutting costs, boosting innovation and stimulating investment.

For example, the opening up of public procurement for rail rolling stock cut prices by 20-30 per cent within five years.<sup>23</sup> Manufacturing prices are estimated to have fallen 3.9 per cent in the four biggest EU Member States as a result of the internal market.<sup>24</sup> Air fares fell by roughly 41 per cent between 1992 and 2000 following deregulation and the cost of telephone calls by half as national monopolies were removed.<sup>25</sup>

Liberalising trade within the EU in new growth areas such as energy, digital, services and green tech. Sectors could have substantial economic benefits. This could add over £650 billion to the EU economy, making the average UK household almost £3,500 better off each year<sup>26</sup>. The benefits of the internal market have been multiplied through EU enlargement. For instance, the enlargement of 10 central and eastern European countries has seen UK exports to those countries treble over the last ten years to almost £12bn. Over 430,000 British nationals are retiring in another European country, 166,000 more than there were 10 years ago<sup>27</sup>.

**Free Movement of Labour – Benefits to British Nationals:** EU internal market rules provide UK nationals with freedom of movement opportunities across the entire EU. British families to travel freely on holiday throughout the

<sup>15</sup> <http://www.theyworkforyou.com/wrans/?id=2011-09-05a.66958.h&s=section%3Awrans+speaker%3A11494#g66958.q0>

<sup>16</sup> UKTI, OMB Research, (2010) UKTI Performance and Impact Monitoring Survey (PIMS) Inward Investment.

<sup>17</sup> Calculated taking 2010/11 figure from: <http://www.theyworkforyou.com/wrans/?id=2012-03-27a.101660.h&s=section%3Awrans+speaker%3A11823#g101660.q0> and 1998-2009 figure from <http://www.ukti.gov.uk/uktihome/item/113922.html>

<sup>18</sup> Ibid, p. 8.

<sup>19</sup> HM Treasury op cit, slide 23.

<sup>20</sup> Pain and Young, (2004) Macroeconomic Impact of the UK Withdrawal from the EU.

<sup>21</sup> 1992 *The Benefits of a Single Market*, Paoli Cecchini, Wildwood House, 1988

<sup>22</sup> 1996 European Commission study: [http://ec.europa.eu/internal\\_market/economic-reports/major-study\\_en.htm](http://ec.europa.eu/internal_market/economic-reports/major-study_en.htm)

<sup>23</sup> Ibid.

<sup>24</sup> Cited in *The economic effects of EU membership for the UK*, HM Treasury presentation, slide 22, 2005

<sup>25</sup> *The Internal Market – Ten Years without Frontiers*, European Commission, 2003, p.2.

<sup>26</sup> <http://www.bis.gov.uk/news/topstories/2011/Mar/eugrowth>

<sup>27</sup> The DWP Tabulation Tool here: [http://83.244.183.180/100pc/sp/tabtool\\_sp.html](http://83.244.183.180/100pc/sp/tabtool_sp.html)

EU at any time in the year - some 25m Brits go on holiday to other EU countries every year<sup>28</sup>. British nationals have greater opportunities to live and work anywhere else in the EU too. Some 260,000 Brits work in another EU country, an increase of more than 40,000 since 2005<sup>29</sup>. EU rules and the Erasmus programme make it easy for Brits to study in other EU member states, something over 11,000 British students currently do<sup>30</sup>. At least 435,000 British nationals have chosen to retire in another EU member state under EU free movement rules as evidenced by DWP statistics on overseas state pension claimants<sup>31</sup>.

**Free Movement of Labour – Benefits to British Economy:** EU Freedom of movement of labour rules help to stimulate the UK economy as well. EU tourist visitors provide the backbone of tourism numbers and income for the UK tourism industry – 8.9% of the population is employed in the UK tourism industry<sup>32</sup>. In 2011, there 7.3m tourists from other EU member states visited the UK representing 61% of all tourists to the UK and an increase of 25% since 2006<sup>33</sup>. EU tourists spent £3.1bn in the UK in 2011, 45% of all overseas tourism income in the UK and an increase of 56% since 2006<sup>34</sup>. Equally, free movement has helped stimulate the very high levels of investment from other EU member states into the UK as outlined above – EU business visits to the UK totalled 4.42m in 2011, 61% of all business visits to the UK<sup>35</sup>. Some 130,000 EU students study in the UK injecting over £1.5bn in spending to the UK economy<sup>36</sup> and providing crucial economic boost to the UK's higher education sector.

**Lower Prices, Higher Consumer Standards & Protections:** Great EU competition through the internal market and EU consumer rights laws have driven down prices, opened up markets for smaller businesses and boosted consumer protections. The average British UK consumer saves around £480 per person per year as a result of EU single market competition driving down price of goods and services<sup>37</sup>. 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. Since 2008 alone, when you're travelling in Europe, the cost of making a call has fallen by 26%, the cost of receiving a call by 50% and the cost of sending a text by a massive 70%<sup>38</sup>. EU rules to open up Europe wide competition in the airlines market has seen the costs of holiday and business flights to Spain, Greece or Germany plummet. The average flight in Europe is now £50 cheaper than it was 10 years ago<sup>39</sup>. EU rules mean that anyone whose package holiday company goes bust gets proper compensation and, if it happens when they're abroad, free transport home again. Since 1993, when these rules were introduced, 1.1 million Brits have got their money back and been safely brought home when their package holiday company went bust<sup>40</sup>.

Under current and emerging EU rules, British nationals will rights and protections are being increasingly strengthened abroad, such as through the European Protection Order which will ensure that British victims of violence who have a UK protection order will receive the same protections anywhere in the EU; or through the Victims Rights Directive, a package of measures that will ensure that any British citizen arrested on the continent will have their basic rights guaranteed including the right to be fully informed at all stages of the process, access to a lawyer and translation rights. The European Health Insurance Card (EHIC) enables UK travellers to receive free or reduced cost healthcare when on a temporary visit to another member states. 38 million Brits have asked for and been given an EHIC since it was introduced, more than half of the total British population<sup>41</sup>.

**Key Sectors:** A number of Britain's key sectors have a substantial European interest underpinned by full access to the single market, and a influential British voice on the shape of the rules that govern, deepen and expand that market, including:

- **Financial Services:** EU internal market legislation has liberalised EU financial markets to competition from British banks, funds and insurance companies and allowed unrestricted access to EU markets for British financial services

<sup>28</sup> <http://www.theyworkforyou.com/wrans/?id=2011-11-24b.82499.h&s=section%3Awrans+speaker%3A11494#g82499.q0>

<sup>29</sup> <http://www.theyworkforyou.com/wrans/?id=2011-11-24b.82500.h&s=section%3Awrans+speaker%3A11494#g82500.q0>

<sup>30</sup> <http://www.theyworkforyou.com/wrans/?id=2012-07-04a.114219.h&s=section%3Awrans+speaker%3A11823#g114219.q0>

<sup>31</sup> DWP Tabulation Tool here: [http://83.244.183.180/100pc/sp/tabtool\\_sp.html](http://83.244.183.180/100pc/sp/tabtool_sp.html)

<sup>32</sup> <http://www.ons.gov.uk/ons/rel/tourism/the-supply-side-of-tourism/2009/index.html>

<sup>33</sup> <http://www.visitbritain.org/insightsandstatistics/inboundvisitorstatistics/regions/regiontrends.aspx>

<sup>34</sup> Ditto

<sup>35</sup> Ditto

<sup>36</sup> <http://www.theyworkforyou.com/wrans/?id=2012-07-06a.114589.h&s=section%3Awrans+speaker%3A11823#g114589.q0>

<sup>37</sup> <http://www.theyworkforyou.com/wrans/?id=2012-04-16b.102035.h&s=section%3Awrans+speaker%3A11823#g102035.q0>

<sup>38</sup> <http://www.theyworkforyou.com/wrans/?id=2012-07-03b.114588.h&s=section%3Awrans+speaker%3A11823#g114588.q0>

<sup>39</sup> <http://www.theyworkforyou.com/wrans/?id=2012-07-02a.114587.h&s=section%3Awrans+speaker%3A11823#g114587.q0>

<sup>40</sup> <http://www.theyworkforyou.com/wrans/?id=2012-07-02a.114227.h&s=section%3Awrans+speaker%3A11823#g114227.q0>

<sup>41</sup> <http://www.theyworkforyou.com/wrans/?id=2012-07-02a.114223.h&s=section%3Awrans+speaker%3A11823#g114223.q0>

exports. In 2011, 40% of all trading in Euros takes place in the UK, double that of any Eurozone country. In the same year, the UK had a £17.6 billion trade surplus with the rest of the EU in financial services<sup>42</sup>. For the insurance industry, EU countries generate over 60% of annual overseas insurance premiums, totalling £7.5 billion<sup>43</sup>. Over 1 million people are employed in financial services in the UK with a further 987,300 employed in professional services<sup>44</sup>. In addition, an estimated 11.6% of UK tax receipts come from the financial services sector<sup>45</sup>. 164 EU financial services firms are based in the UK, employing thousands<sup>46</sup>, as well as 41 Swiss financial services companies that are based in London<sup>47</sup>. TheCityUK note that the development of the UK's financial services industry over the last two decades has been closely linked to EU developments<sup>48</sup>:

- The EU is the largest single destination for the export of financial services, generating a trade surplus of nearly £18bn, 38% of the UK's total trade surplus in financial services of £47bn in 2011.
  - The UK's share of financial markets in the EU: in wholesale markets 85% of hedge fund assets and 74% of trading in foreign exchange and interest rate over-the-counter derivatives. In equities, pension assets and marine insurance the UK accounts for around 40%-50% of EU market value.
  - The value of euro-denominated business and trading undertaken in the UK: Euro-denominated assets of UK banks accounted for 43% of total foreign currency denominated assets held by UK banks; and over 40% of euro denominated global turnover of foreign exchange trading is in the UK.
  - Financial institutions in the EU that have a presence in the UK: 164 out of 942 firms in the UK with overseas majority ownership are from the EU; and some £560bn, out of funds totalling £5.1 trillion, is managed in the UK by firms headquartered elsewhere in the EU.
  - EU customers of financial services businesses in the UK: 17% of premium income of companies on the London Market and 16% of Lloyd's premium income originates from customers elsewhere in the EU; and the UK private equity industry invested 48% of its funds in the EU in 2011.
  - In 40% of the cases in TheCityUK Driving Competitiveness report involving decisions by firms in financial and related professional services to locate in the UK, firms' access to markets in the EU was cited as a core reason for choosing the UK over other financial centres. 40% of the UK tax take from financial services is from international businesses operating in the UK that are most at risk of relocating to other countries.
  - Net inflows of foreign direct investment (FDI) in financial services in the UK totalled £46bn between 2008 and 2011, more than in any other sector.
- **Automotive Manufacturing:** The UK automotive sector is in the midst of a boom at present. The sector employs 740,000 people directly and many more indirectly in the supply chain and through the transport and shipment of manufactured vehicles (for instance, the success of Southampton port, the primary export hub for UK manufactured vehicles is highly dependent on this sector). In recent years, the UK has seen major investments in the UK from global automotive companies such as Nissan, Honda and BMW. While much of the new growth in emerging markets (many benefitting from EU free trade deals such as the recent EU-South Korea FTA), 50% of all cars manufactured in the UK are exported to EU countries<sup>49</sup>. Above all else, these investments were driven by a competitive national economy with tariff free access to a European market of over 500m people. The internal market has removed all tariff costs to these exports (outside, UK manufacturers would face a tariff of around 11% on car<sup>50</sup> imports into the internal market and up to 22% for other larger vehicles<sup>51</sup>). Car registrations in the EU in 2011 reached 13.1 million compared to only 1.9 million in India<sup>52</sup>. The EU is second only to China globally for new car registrations.

<sup>42</sup> <http://www.thecityuk.com/financial-services-in-the-uk/why-financial-services-matter/uk-financial-services-articles/links-between-financial-markets-in-the-uk-and-the-eu/> - page 1

<sup>43</sup> Ibid - page 2

<sup>44</sup> Ibid - page 3

<sup>45</sup> Ibid - page 8

<sup>46</sup> <http://www.thecityuk.com/financial-services-in-the-uk/why-financial-services-matter/uk-financial-services-articles/links-between-financial-markets-in-the-uk-and-the-eu/> - page 2

<sup>47</sup> [http://www.thecityuk.com/research/our-work/reports-list/economic-contribution-of-uk-financial-and-professional-services-2012/?utm\\_medium=email&utm\\_source=TheCityUK&utm\\_campaign=2038652\\_Economic+Contribution+of+UK+F%26PS+2012&dm\\_i=J8I,17P18,8G08XX,43Q2D,1](http://www.thecityuk.com/research/our-work/reports-list/economic-contribution-of-uk-financial-and-professional-services-2012/?utm_medium=email&utm_source=TheCityUK&utm_campaign=2038652_Economic+Contribution+of+UK+F%26PS+2012&dm_i=J8I,17P18,8G08XX,43Q2D,1) - page 7

<sup>48</sup> <http://www.thecityuk.com/research/our-work/reports-list/independent-economists-group-ieg-quarterly-reports/>

<sup>49</sup> [http://www.smmmt.co.uk/wp-content/uploads/SMMT\\_FACTS\\_2012\\_WEBv.pdf](http://www.smmmt.co.uk/wp-content/uploads/SMMT_FACTS_2012_WEBv.pdf) - pages 6 and 14 "around 80%" of UK vehicles are sold overseas, 60.9% of exports go to the EU = 48.72% of UK vehicles sold to the EU.

<sup>50</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20130107&languageId=en&taricCode=8703211000&countryId=JP&simDateDay=07&simDateMonth=01&simDateYear=2013&nomenCmd=View> - using the tariffs for Japan which has no preferential trade relationship with the EU.

<sup>51</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20120822&languageId=en&taricCode=8704213100&countryId=1011&simDateDay=22&simDateMonth=08&simDateYear=2012> - again using Japan.

<sup>52</sup> Ibid - page 30



- **Plastics:** There are 186,000 people employed directly in the UK plastics industry across 7,400 companies<sup>53</sup> and many more indirectly<sup>54</sup>. 35% of all plastics made in the UK are exported and in 2011, 67.7% of UK exports of plastics went to other EU countries<sup>55</sup>, tariff-free and across the EU-wide common playing field and regulatory framework. Plastics imports from outside the EU pay an import tax alone of around 6-6.5%<sup>56</sup>, and must meet EU regulatory rules such as those embedded in REACH and the Classification, Labelling and Packaging of Substances and Mixtures Directive, which the UK help to shape.
- **Chemicals:** The UK is host to over 3,000 chemicals companies, employs 214,000 people directly (many more indirectly), has an annual turnover of £60 billion, and the sector has an annual trade surplus of £8 billion. The industry is particularly important to the North of England and Scottish economies<sup>57</sup>. The UK is home to many international chemical companies including BASF, Bayer and Dow. In 2011, 57.5% of UK exports of *organic and inorganic* chemicals went to other EU countries<sup>58</sup> all tariff free due to the internal market (the EU operates various tariffs on chemical imports from outside the internal market, typically between 5% and 6.5%<sup>59</sup>). The UK was also able to influence the very substantial REACH directive to reduce costs on business whilst increasing consumer and environmental protections and ensuring a level playing field across the EU. In 2011, only 0.6% of British chemical exports went to India, 0.67% to China and 0.9% to Australia. The 2nd placed export destination was the USA which was 26.2%, less than half going to the EU<sup>60</sup>.<sup>61</sup>
- **Pharmaceuticals:** The UK Pharmaceutical industry employs around 165,000 people in the UK. In 2011, 49% of UK exports of pharmaceutical products went to other EU countries<sup>62</sup> all under the same standards, clinical practices and other requirements<sup>63</sup> across all 27 EU countries, which allow for unhindered export of British pharmaceuticals. Prior to the internal market pharmaceutical manufacturers had to apply to each national regulator to license their products, a process that took on average five years for each country. The creation of the internal market and the single European Medicines Evaluation Agency reduced the approval time to a year cutting costs, boosting innovation and stimulating investment. This ease of access to the EU-wide market was cited as a key reason for the recent decision by Japanese pharmaceuticals giant, Shionogi, to establish their European headquarters in part because of London's "easy access to the rest of Europe".
- **Aerospace:** The British Aerospace industry, another key UK success story, has benefitted from the greater scale offered by an EU-wide internal market – without access to an EU-wide market, it would be almost impossible for any country to have a national-only aerospace sector. The internal market has enabled joint ventures across borders achieving the necessary scale to survive and compete globally. The sector currently employs around 113,000 people directly and around 276,000 indirectly and has an annual turnover of around £20 billion<sup>64</sup>. Over 40% of UK made aircraft, spacecraft and related parts are sold to other EU countries within the internal market<sup>65</sup>.
- **Drinks:** The British Food and Drinks Industry employs around 400,000 people, and as many as 1.2 million in ancillary services; it accounts for 16% of the UK's total manufacturing sector by value<sup>66</sup>. 40% of all beverages and spirits sold abroad in the UK are sold to the European market<sup>67</sup>, tariff free, and under the same regulatory framework. For instance, the EU accounts for about 40% of total Scotch sales; France is the largest market, nearly twice as big as America, Spain is a larger one than China, and exports to Poland are booming, which joined the EU

<sup>53</sup> Ibid.

<sup>54</sup> <http://www.bpf.co.uk/Industry/Default.aspx>

<sup>55</sup> <https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Table.aspx> - in 2011, UK plastics exports to the EU were valued at £5.3 billion while they were only £2.6 billion to non-EU countries.

<sup>56</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20121203&languageId=en&taricCode=3901101010&countryId=JP&simDateDay=03&simDateMonth=12&simDateYear=2012&nomenCmd=View> - 6.5% tariff for polymers of ethylene using Japan as an example.

<sup>57</sup> [www.ukti.gov.uk/investintheuk/uktipublications/item/289700.html](http://www.ukti.gov.uk/investintheuk/uktipublications/item/289700.html) - page 41

<sup>58</sup> <https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Table.aspx> - UK organic and inorganic chemical exports to the EU - £7.99 billion (57.5%) - and to non-EU countries - 5.89 billion (43.5%).

<sup>59</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20120903&languageId=en&taricCode=2914120000&countryId=JP&simDateDay=03&simDateMonth=09&simDateYear=2012>

<sup>60</sup> <https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Table.aspx> - UK exports of organic and inorganic chemicals in 2011 were - £82.77 million to India, £92.7 million to China, £124 million to Australia and £3.6 billion to the USA.

<sup>61</sup> <http://www.economist.com/news/europe/21572191-why-scotch-whisky-makers-want-stay-european-union-johnnie-wont-walk-out>

<sup>62</sup> <https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Table.aspx> - in 2011, £10.2 billion of UK pharma exports went to the EU and £10.6 billion went to non-EU countries.

<sup>63</sup> Examples are the clinical trials directive, the medicinal products for human use directive and the regulation for authorisation and supervision of medicinal products for human and veterinary use.

<sup>64</sup> <http://www.ukti.gov.uk/export/sectors/advancedengineering/aerospace.html>

<sup>65</sup> <https://www.uktradeinfo.com/Statistics/EUOverseasTrade/Pages/EuOTS.aspx> and

<https://www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Pages/NonEuOTS.aspx>

<sup>66</sup> [http://www.fdf.org.uk/about\\_fdf.aspx](http://www.fdf.org.uk/about_fdf.aspx)

<sup>67</sup> <https://www.uktradeinfo.com/Statistics/EUOverseasTrade/Pages/EuOTS.aspx> and

<https://www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Pages/NonEuOTS.aspx>

in 2004, according to International Wine and Spirits Research. For example, the EU market accounts for nearly 30% of total sales and the company openly recognises that much of its current and future global trade access has been built off the back of EU free trade agreements (for instance, the 150% tariff on whisky imports is a key target in the EU-India FTA negotiations).

- **Agriculture:** The UK agriculture industry employs 307,000 directly and many more indirectly. In 2011, 87.5% of meat exports<sup>68</sup>, 71.4% of fish exports<sup>69</sup> and 92% of cereal exports<sup>70</sup> went to other EU countries all tariff inside the internal market and operating to the same hygiene, safety and other food product standards under EU internal market, co-shaped by the UK. The EU operates an import tax of 12.8% & €176.8 per kg<sup>71</sup> for beef, €77.8 per 100kg for hams<sup>72</sup>, €30.4 per 1000 chicken eggs<sup>73</sup> and 2% for Atlantic salmon<sup>74</sup>. The huge cost of subsidising domestic food producers in Norway, well above and beyond the costs within the EU, is indicative of the costs that are likely to be incurred for retaining a competitive UK food producing sector outside of the single market.

#### Views of Business Leaders & Investors:

There can be few better examples of the evidence of the economic benefits of the internal market than public comments to this effect by leading British business voices:

- *Richard Branson, Chairman of Virgin Group:* "Today global business relies on large trading agreements created by regions and not by countries. The EU is the UK's biggest trading partner. Its combined market dwarfs the US and China. For that reason alone, the UK must stay in to help rebuild the EU.....Looking ahead there are other more positive reasons to stay inside and involved. We must be at the centre to help the EU forge new partnerships with the emerging markets of Latin America and Asia - and to renew and extend our relationships with the US and Canada. Those powerful economies want to trade with a market of 500 million people and not the UK's 60 million. The UK must not become a peripheral country on the edge of Europe. This will be damaging to long-term prospects of British business and also in the country's ability to attract new international companies to set up and employ people in the country."<sup>75</sup>
- *Paul Walsh, Chief Executive of Diageo:* ""I support the fact that our prime minister said we should stay in Europe. We are a trading company. We must stay in Europe, we must position Europe for the future, which is more competitive, less regulation."<sup>76</sup>
- *Roland Rudd, Chairman, Business for New Europe, Sir Richard Branson, Founder, Virgin Group, Sir Roger Carr, President, CBI, Lord Davies of Abersoch, Chairman, Corsair Capital, Chris Gibson-Smith, Chairman, London Stock Exchange, Gerry Grimstone, Chairman, TheCityUK, Jan du Plessis, Chairman, Rio Tinto, Sir Michael Rake, Chairman, BT, Sir Martin Sorrell, Chief Executive, WPP, Malcolm Sweeting, Senior Partner, Clifford Chance:* "Mr Cameron is right to dismiss the idea of the UK emulating Norway or Switzerland. On average, Norwegians each pay €70 a year for the luxury of having to implement EU single market rules over which they have no say as they have no representation in the European Commission, Council, Court or Parliament. In 2011, Norway paid 79 per cent per person of what the UK paid. Switzerland has an even worse deal as it has no agreement with the EU on services. This is despite spending more than 10 years negotiating 120 separate agreements with the EU. Of the UK's annual tax revenues, £25bn is estimated to be vulnerable because it comes from mobile activity easily moved out of the UK. Spending 10 years trying to negotiate similar deals for the UK might eventually save some of our industries for goods but would seriously damage our world-leading exports of financial, legal and accounting services."<sup>77</sup>

<sup>68</sup> <https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Table.aspx> - UK meat exports to the EU in 2011 were £1.27 billion and only £182 million to non-EU countries.

<sup>69</sup> Ibid. - UK fish exports to the EU in 2011 were £963 million and only £387 million to non-EU countries.

<sup>70</sup> Ibid. - UK cereal exports to the EU in 2011 were £555 million and only £47 million to non-EU countries.

<sup>71</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20121105&languageId=en&taricCode=0201100010&countryId=JP&simDateDay=05&simDateMonth=11&simDateYear=2012&nomenCmd=View> - using Japan as an example.

<sup>72</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20121105&languageId=en&taricCode=0203121100&countryId=US&simDateDay=05&simDateMonth=11&simDateYear=2012&nomenCmd=View>

<sup>73</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20121105&languageId=en&taricCode=0407210000&countryId=US&simDateDay=05&simDateMonth=11&simDateYear=2012>

<sup>74</sup> <http://exporthelp.europa.eu/thdapp/taric/TaricServlet?action=tariff&prodLine=80&simDate=20121105&languageId=en&taricCode=0302140010&countryId=US&simDateDay=05&simDateMonth=11&simDateYear=2012>

<sup>75</sup> <http://www.virgin.com/richard-branson/blog/why-an-exit-from-eu-would-be-bad-for-british-business>

<sup>76</sup> <http://www.bbc.co.uk/news/uk-21274790>

<sup>77</sup> <http://www.bnegroup.org/media/letter-in-the-financial-times-britain-needs-to-lead-in-a-strong-reformed-eu/>

- *Roger Carr, President of the CBI:* "Whatever the emotional appeal of exiting the EU may be to some in our society, there are key facts that we must all remember: UK membership provides unfettered access to a single market of 500 million people, which today is our largest export customer. Departure would necessitate multiple bilateral agreements, frustrate free trade and damage our export performance in the medium term. Growth in new markets, however rapid, could not compensate for the inevitable decline in European activity. UK membership attracts inward foreign investment from both banks and industry capitalising on the open market culture, skills, rule of law, flexible labour force, language and time zone. The UK is often the preferred bridge into Europe. Departure would undermine jobs, dilute international relationships and damage national wealth. UK membership encourages large company capital investment within the UK, creating jobs and wealth that trickle down to medium and small company suppliers. Departure would be bad for employment and growth across a broad business spectrum. Europe benefits companies of all sizes."<sup>78</sup>
- *Mark Boleat, policy chairman at the City of London Corporation:* "London's position as Europe's leading international financial and business centre is crucial to sustaining jobs and growth not just in the UK but across the continent. That is why the UK must remain a full part of the EU single market, while also continuing to have full access to the decision-making process that sets the rules for this single market."<sup>79</sup>
- *Anthony Browne, chief executive of the British Bankers' Association:* "We are clear that we want the UK to remain an active participant in the single market, helping to write the rules and push for greater trade and economic growth."<sup>80</sup>
- *Terry Scuoler, EEF Chief Executive:* "The politics of our relationship with Europe have always been complicated but, the government must rise above this and do what is best for growth, jobs and investment. The UK's economic well-being is heavily linked to our biggest trading partner and we cannot afford to risk the disruption that leaving the EU would cause..... Rather than raising doubts about our future in Europe, the government should focus on making it work better for Britain"<sup>81</sup> and "If the door to a UK exit from the union is open it will diminish our ability to influence the reforms that Europe needs. It is far from certain, moreover, that the outcome of negotiations will be clear cut, meaning that greater uncertainty about UK membership – particularly for business, will prevail."<sup>82</sup>
- *Stephen Odell, Chief Executive of Ford in Europe:* "All countries should have their sovereignty, but don't discuss leaving a trading partner where 50pc of your exports go, that would be devastating for the UK economy."<sup>83</sup>
- *Ian Robertson, global head of sales at BMW:* "The UK not only has to be part of Europe. It has to be a fundamentally active part of Europe. To think about the UK being outside of Europe doesn't make sense. The thought of a UK outside of Europe with different trade agreements – sorry, it's not the way forward. Around the world, the biggest global trading blocs are getting bigger and we need to be part of one of them."<sup>84</sup>
- *Dave Hodgetts, Honda's UK Managing Director:* "Anything that weakens our ability to trade with the region would be detrimental to UK manufacturing....It depends on what's negotiated. There would have to be some penalty to being outside rather than inside that's the risk I think....But when we see an anti-competitive situation if we were outside the EU then we wouldn't support that."<sup>85</sup>
- *Sir Martin Sorrell, Chief Executive of advertising group WPP:* "Having a referendum creates more uncertainty and we don't need that. This is a political decision. This is not an economic decision. This isn't good news. You added another reason why people will postpone investment decisions."<sup>86</sup>
- *Mohamed El-Erian, head of US-based investor Pimco:* "People like us start putting in an uncertainty premium," said the US-based fund manager. If we're going to make investment decisions, the uncertainty premium associated with that goes up when you're not sure what the relationship between Britain and Europe will be."<sup>87</sup>

<sup>78</sup> <http://www.guardian.co.uk/commentisfree/2013/jan/12/britain-should-stay-in-eu>

<sup>79</sup> <http://www.ft.com/intl/cms/s/0/929ed456-654b-11e2-a3db-00144feab49a.html#axzz2lhob5T1p>

<sup>80</sup> <http://www.ft.com/intl/cms/s/0/929ed456-654b-11e2-a3db-00144feab49a.html#axzz2lhob5T1p>

<sup>81</sup> <http://www.eef.org.uk/releases/uk/2011/Britain-must-work-for-change-from-within-EU-say-manufacturers.htm>

<sup>82</sup> <http://www.ft.com/intl/cms/s/0/929ed456-654b-11e2-a3db-00144feab49a.html#axzz2lhob5T1p>

<sup>83</sup> <http://www.telegraph.co.uk/finance/newsbysector/industry/9813184/Ford-and-BMW-warn-against-UK-exit-from-EU-as-David-Cameron-readies-historic-speech.html>

<sup>84</sup> <http://www.telegraph.co.uk/finance/newsbysector/industry/9813184/Ford-and-BMW-warn-against-UK-exit-from-EU-as-David-Cameron-readies-historic-speech.html>

<sup>85</sup> <http://www.telegraph.co.uk/finance/newsbysector/industry/9796813/Hondas-UK-boss-warns-Britain-must-stay-at-heart-of-EU-as-it-cuts-800-jobs.html>

<sup>86</sup> <http://www.ft.com/intl/cms/s/0/929ed456-654b-11e2-a3db-00144feab49a.html#axzz2lhob5T1p>

<sup>87</sup> <http://www.bbc.co.uk/news/business-21173935>



- *Head of Deloitte UK, David Sproul:* "The Europe debate does not help to create certainty. When I talk to US clients who have not been immersed in the European debate as we have, they say that what they need is clarity. There is no question it will impact business - it will hit investment into the UK."<sup>88</sup>
- *Sir Andrew Cahn, former Chief Executive of UK Trade and Investment:* "If you don't know whether Britain is going to be a full positive member of the European Union in five years' time, you'll wonder if you want to make that additional investment."<sup>89</sup>
- *Robin Southwell, ADS Chairman:* ""As we debate Britain's role in Europe in the years to come, what we should not question is our role at the heart of the European aerospace sector. After all, if you look at both exports and imports, the eurozone does more business with the UK than with any other trading bloc. How many of you know that the UK recently overtook France and the US to become Germany's single largest trading partner? If that doesn't place us at the heart of Europe, then nothing does. So whatever the outcome for Britain's role in Europe, we must ensure that we remain part of the European Economic Community in protecting opportunities for investment, partnership and growth in our sector."<sup>90</sup>
- *John Longworth, Director General of the British Chamber of Commerce:* "The vast majority of businesses across the UK want to stay in the Single Market"<sup>91</sup>

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

### Environment

EU environmental laws cover a wide range of issues including air and water quality, nature protection, waste disposal and recycling, and the incorporation of environmental issues in other public policies. The reality is that pollution does not respect national borders. Water pollution of Europe's rivers and seas will affect many member states. Heavy industrial air pollution in one member state will inevitably have an impact on neighbouring member states. The rate of a nation's consumption of common fisheries resources will affect the ecology and economies of other state that also utilise those resources. Forests, habitats and ecosystems do not fit neatly within geopolitical boundaries. Emissions and noise from cross-border air, rail and road transport affect many countries, and the growth in freedom of movement in all its forms through the gradual development of the internal market itself has environmental consequences that need to be managed.

For all these environmental challenges and others, environmental laws form an important part of the single market and it makes economic as well as ecological sense for the EU to take action. Of course, the way in which the EU acts can always be debated – is Europe acting in the most cost-effective manner and so on. But the rationale for EU level action in the area of the environment makes sense from both an internal market perspective and an ecological one. In particular, acting together removes the distortions and trade barriers that would otherwise be created inside the internal market by wildly different environmental regulations, as well as preventing a race to the bottom in environmental standards as countries seek to secure marginal competitive edges. EU-wide action on the environment also helps to create new markets (especially in the booming sector of environmental goods and services), drives innovation and lowers adaptation costs. EU-wide action also has the advantage of setting standards and regulatory benchmarks for non-EU countries to meet when trading with the world's largest single market, gradually exporting higher environmental standards beyond Europe.

### Social and employment legislation

Social and employment legislation through the internal market has long been controversial in Britain. There are some parts of the legislation in this area which whole-heartedly embrace and support, particularly those regarding anti-discrimination. For others, where there is a clear cross-border internal market problems to manage, it make sense to

<sup>88</sup> <http://www.bbc.co.uk/news/business-21173935>

<sup>89</sup> <http://www.bbc.co.uk/news/business-21173935>

<sup>90</sup> <http://www.guardian.co.uk/business/2013/jan/29/uk-heart-europe-aerospace-industry-ads>

<sup>91</sup> <http://www.britishchambers.org.uk/press-office/press-releases/bcc-prime-minister-is-right-to-renegotiate-britain's-place-in-europe,-but-pace-and-ambition-required.html>

set down minimum standards on health and safety grounds, such as the working hours and rest periods for holiday coach driver or commercial airline pilots. There is a basic logic to having common minimum standards for employment in that it can make it easier for companies working across borders to be understand their obligations and reduces regulation through only having to comply with a single set of rules. There may also be good reasons for setting minimum standards for health and safety rules for certain jobs and professions as a means to remove barriers to competition and unlock the services market.

The question then, is less to do with whether there is some role for the EU in this area, but rather how the EU has applied that role, particularly given the global competitiveness challenge facing the EU as a whole and the emphasis on delivering flexible labour markets. In this sense, we warmly welcome the recent Commission REFIT programme to review and reshape existing legislation to better suit SMEs, administrative burden reduction targets and commitments to consider early interventions to remove potentially excessively burdensome legislation in the pipeline. This is the direction of travel that the EU should continue in, particularly with regard to this area of policy.

On the Working Time Directive, as mentioned above, there clearly is a need in certain areas for EU rules on working time where there are particular cross-border concerns. Moreover, the Working Time Directive includes a number of aspects which, while perhaps not essential to be laid down at a European level, are now highly valued and firmly embedded in UK society, such as the rights to annual working leave. But we would strongly defend the opt-out, a liberal innovation, which gives individuals the right to determine how many hours work, and thereby the wages they earn, that they need. And there are many other aspects of the WTD which need to be reviewed, including how it applies to doctors and the provisions for counting rest periods and on-call periods.

We would advocate a process of review of the entire stock of EU legislation with a view to modernising EU social and employment legislation, improving flexible working and labour markets, boosting EU-wide competitiveness and complimenting the direction of travel of many of the structural reforms ongoing in Eurozone countries.

#### Others:

As mentioned above, the progressive development of the EU's internal market creates a variety of different spillover effects demanding further action including at the EU level. We have outlined, for instance, the Justice & Home Affairs aspects of this. But clearly this applies in other areas too including external trade, enlargement and foreign affairs as well as other areas.

### **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?***

Article 114, as well as other EU measures, has been extremely successful for the EU's internal market for goods – there are no longer any border controls and vastly reduced non-tariff barriers in the areas of rules covering production processes and product labelling. This is a huge advancement in the internal market for goods compared to the 1980s. This process is clearly far less advanced in the internal market for services. The Services Directive is clearly a step in the right direction, but bolder EU action and greater political will is needed to really unlock the full potential of the EU-wide market for services.

Harmonisation has been hugely successful in many areas. For instance, there is now a substantial block of EU environmental legislation for cars, vans and other automobiles covering CO2 emissions, noise and other emissions performance. This has both created a level regulatory framework and a level playing field. In the process it has opened up a huge EU-wide market whilst also boosting consumer confidence. When you consider the booming success of the UK's car industry, particularly in attracting new international car manufacturers leading the field in efficient and low emission vehicles, this of substantial benefit to the UK. Equally, harmonisation has been very successful in many areas such as in safety standards for cosmetics, farming equipment, food products and toys.

There are areas where harmonisation has not worked as well. Generally speaking, this is where such EU rules have been used in a way so as to limit economic activity as opposed to promoting or stimulating it.

***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?***

It is true that the internal market is far from complete and varies considerably from sector-to-sector. The key reason in our view, this is that some areas have proved far more politically controversial to open up to EU-wide competition and a degree of EU regulatory control than others, or because of powerful resistance from strong domestic vested interests – often both.

Generally speaking the ‘low hanging fruit’ in the development of the internal market have already been achieved - the first tranche of internal market measures in the 80s achieved high levels of political and public support in large part because they produced quick visible economic benefits (such as lower air fares and telecoms). However, more recent measures have been in areas where harmonisation and mutual recognition is more politically difficult, such as in services or energy, and where the economic advantages of doing so are more difficult to pinpoint or take much longer to materialise. Equally, powerful vested interests from large state owned industries have played a blocking role or have been a drag on ambition in some areas. Moreover, some areas are relatively new, especially the digital sector, and the legislative framework has not yet caught up.

Throughout, Article 114 has been the essential foundation for internal market legislation and it must be preserved and protected, including its well balanced references to high environmental and other standards. We are not aware of any cases where Article 115 has been used for non-tax measures.

The transposition and crucial implementation of internal market legislation varies across the internal market as well. The Government has rightly placed considerable emphasis on the need for full implementation of the Services Directive which is an example of where poor transposition and implementation is present. Clearly, poor transposition and implementation tends to be highest in those areas which are most political contentious in the first place. There have been improvements in this area, such as the Internal Market Scoreboard and setting targets for transposition. But there remain particular laggards – the UK is not the worst but is no longer a leader – and areas of difficulty. Further and more radical action is needed to ensure that sufficient and transparent information is available to enable the Commission to better judge whether legislation has been properly transposed, such as Correlation Tables. Equally, there need to be more visible, independent and dynamic mechanisms to identify poor implementation and drive forward proper enforcement.

### **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?***

Clearly, exchange rate instability between the Eurozone and United Kingdom can increase costs and damage investment confidence, as well as deliver temporary benefits and competitive edges.

There are a number of businesses who have raised the damage done to the UK economy on tourism numbers and potential inward investment from operating an entirely separate visa system which is more expensive than the Schengen visa system and provides access only to the UK rather than the entire Schengen area<sup>92</sup>. While the number of UK visas issued has remained approximately stable at around 2 million per year since 2005, the number of Schengen visas has risen significantly, from around 8 to 12 million per year<sup>93</sup>. Currently, 80% of Chinese visitors to Europe get a Schengen visa, 11% per cent a UK visa, but only 7% obtain both.<sup>94</sup>

***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?***

<sup>92</sup> <http://www.ceps.be/book/britain-ireland-and-schengen-time-smarter-bargain-visas>

<sup>93</sup> Ibid

<sup>94</sup> <http://www.ft.com/cms/s/0/6714469a-0f06-11e2-9895-00144feabdc0.html#axzz2J047Y0Q7>

All EU Member States are members of these organisations and many others which enhance their influence. For instance, the G8 and G20 played central roles in resolving the global financial crisis with the Basel Committee producing a range of agreements on financial services which were subsequently implemented into EU legislation.

UK trading relations with Commonwealth countries has not been undermined by our membership of the EU. In fact, our trading relations with the Commonwealth countries were already substantially on the decline well before we joined the EU and our trade within Europe on the rise. In 1960, Australia was a 2<sup>nd</sup> biggest export market, Canada 3<sup>rd</sup>, South Africa 5<sup>th</sup>, India 6<sup>th</sup> and New Zealand 9<sup>th</sup><sup>95</sup>. At the same time, Germany was our 4<sup>th</sup> biggest export market, Sweden 7<sup>th</sup>, Netherlands 8<sup>th</sup> and Ireland 10<sup>th</sup><sup>96</sup>. By 1970, before the UK joined the EU, Australia had fallen to 6th, South Africa 8th and Canada 10th while India and New Zealand had fallen out of the top ten altogether. At the same time, Germany was our second biggest export market, Ireland 3<sup>rd</sup>, Netherlands 4<sup>th</sup>, Sweden 5<sup>th</sup>, France 7<sup>th</sup> and Belgium 9<sup>th</sup><sup>97</sup>. In 1980, trade with Commonwealth Nigeria had actually increased from 1960/1970 and it made the top ten<sup>98</sup>.

Today, the EU has trade agreements in place with 16 Commonwealth countries<sup>99</sup>, has negotiated trade agreements with 13 Commonwealth countries<sup>100</sup>, is negotiating trade agreements with 14 Commonwealth countries<sup>101</sup> and is considering launching negotiations with one more Commonwealth country<sup>102</sup>. Four more<sup>103</sup> benefit from preferential trade access through the EU's Generalised System of Preferences (GSP) scheme<sup>104</sup> and Pakistan also benefits from specific unilateral preferences<sup>105</sup>. There are just two Commonwealth countries where the EU has no current trade agreement, negotiation or preferential access<sup>106</sup>.

51% of New Zealand sheep meat exports go to the EU and Germany and France are big importers alongside the UK.<sup>107</sup> The EU is Australia's third biggest trading partner behind China and Japan.<sup>108</sup> EU trade with India has risen dramatically over the last decade and the proposed EU-India free trade agreement (of which the UK is a strong supporter) could lead to a further expansion in trade in both goods and services. UK membership has helped Commonwealth countries, including those in Africa and the Caribbean, get greater access to the single market.

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

The EU has become a global rule maker and standard setter. EU rules and standards are adopted outside the EU by companies in order to gain full access to the world's largest single market. This in turn makes it easier for European companies to compete and to export overseas and raises consumer confidence within the EU over non-European imports. In fields like environmental protection, product safety and many others, Europe is now in effect the world's most pre-eminent standards setter in the world. As one of the largest member states in the EU, this is a huge magnifier of the UK's ability to set global rules and standards.

The collective weight of the EU can help to enhance the UK's negotiating clout in negotiations, especially with larger member states. It is the combination of the EU's clout, the economic potential but above all the geopolitical potential for setting a whole raft of new international standards and legal rules that is driving the process towards the launch of the EU-US FTA. It is difficult to see how the UK could possibly get as good a deal when negotiating with large countries such as the US or India (another ongoing FTA negotiation) when it is acting along as a country of 60m people, than acting as a leading voice in the world largest single market of 500m people. Moreover, it is important to note how much of the rest of the world, especially other medium size countries and most small countries, are forming into

<sup>95</sup> House of Commons Library Note, UK Trade Statistics, 13<sup>th</sup> March 2012.

<sup>96</sup> House of Commons Library Note, UK Trade Statistics, 13<sup>th</sup> March 2012.

<sup>97</sup> Ibid

<sup>98</sup> Ibid

<sup>99</sup> Trade and Development Cooperation Agreement with South Africa; the EU-Cariforum Economic Partnership Agreement (EPAs) with Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago; other EPAs with Mauritius, Papua New Guinea and Seychelles.

<sup>100</sup> Concluded an FTA with Singapore and EPAs with Botswana, Cameroon, Ghana, Fiji, Kenya, Lesotho, Mozambique, Namibia, Rwanda, Swaziland, Tanzania and Uganda.

<sup>101</sup> Negotiating FTAs with India, Canada and Malaysia . Negotiating EPAs with Gambia, Kiribati, Malawi, Nauru, Samoa, Sierra Leone, Solomon Islands, Tuvalu, Tonga, Vanuatu and Zambia.

<sup>102</sup> Brunei

<sup>103</sup> The Maldives, Bangladesh, Nigeria and Sri Lanka

<sup>104</sup> <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/>

<sup>105</sup> <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/pakistan/>

<sup>106</sup> Australia and New Zealand.

<sup>107</sup> [http://business.newzealand.com/vBFwRKA/media/957498/meat\\_industry\\_factsheet\\_2012.pdf](http://business.newzealand.com/vBFwRKA/media/957498/meat_industry_factsheet_2012.pdf)

<sup>108</sup> European Commission 2010 figures,

<http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/australia/>

regional blocs of one form or another for this very reason. It would be extraordinary for the UK to seek to find its own way in a world dominated by a small number of large and emerging markets, and series of large regional blocs.

The EEA countries and for the most part Switzerland (via series of bilateral agreements) have concluded that the direct application of EU rules over which they have no say through the EU's decision-making process, is a price worth paying for securing full access to the EU single market. This is despite the damage that they openly accept has been done to their democratic systems and sovereignty, and the result which some have called "integration without representation"<sup>109</sup>. As an EU Member state, Britain enjoys substantial benefits in relation to these countries not only trade but also through services, capital and people free movement. Moreover, membership gives the UK vastly more political influence over the regulatory regime that those countries must apply.

Collectively, the EU is the world's largest economy, the largest exporter, largest importer, the largest investor and largest recipient of investment<sup>110</sup>. There is clear evidence that the EU has put British interests first in trade negotiations. For example, the Commission refused to conclude the Singapore free trade negotiations until they granted EU banks the same level of access that the USA currently enjoys, a key British demand<sup>111</sup>. Furthermore, the UK almost single-handedly convinced other EU countries to accept a deal which allowed unilateral trade preferences for Pakistan following the disastrous flooding there<sup>112</sup>.

***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 extremely difficult to judge the extent to which gold-plating has occurred in the UK and the impact this has had on the UK. In many cases, avoiding direct transposition of EU rules into UK law is entirely sensible as this laws need to be set within a domestic context and their transposition and implementation may be smoother and less costly as a result. On the other hand, there may be occasions where the transposition of EU rules has been used to hang other domestic political priorities. While as the OECD has argued<sup>113</sup>, this will have been done for entirely legitimate and beneficial reasons on many occasions, there may be others where it may have unnecessarily added to costs or undermined the development of a level playing field in the internal market.

In the sense, some of the Government's actions to deal with this are welcome, though these must be applied with a degree of flexibility and common sense. Nevertheless, according to the Davidson Review<sup>114</sup>, the scale of the problem of gold-plating is likely to be less dramatic than many have argued.

### **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? What impact would any future enlargement of the EU have on the Internal Market?***

Completing the internal market has been a priority objective of successive British Governments, and rightly so. The key sectors where much further, ambitious and brave action is needed to develop the internal market is in the energy, services and digital fields. Britain needs to set out a vision of what a completed single market would really look like and mean, and be prepared to take the difficult and bold political decisions needed to achieve it.

The UK should substantially improve its own performance in terms of internal market legislation transposition and implementation. The UK should also drive forward measures to improve the transparency of transposition efforts across all member states, improve monitoring of implementation on the ground and strengthen the enforcement measures at the EU level.

Further enlargement is largely welcome in that it expands the size of the internal market, increases export opportunities, boosts competition and enhancing the power of the EU as a trade negotiator and standard setter

<sup>109</sup> <http://www.europautredningen.no/english/>

<sup>110</sup> <http://trade.ec.europa.eu/doclib/html/122532.htm>

<sup>111</sup> [http://europa.eu/rapid/press-release\\_IP-12-1380\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1380_en.htm)

<sup>112</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xxix/8609.htm> or

<http://www.pakistantoday.com.pk/2012/09/16/news/national/eu-parliament-approves-autonomous-trade-preferences-for-pakistan/>

<sup>113</sup> <http://www.oecd.org/unitedkingdom/betterregulationineuropeunitedkingdom.htm>

<sup>114</sup> See Lords EU Select Committee 22nd Report 2006/07.

globally. Of course, the accession process must be rigorous and ensure that it involves both transposition of the acquis but also its implementation (with the necessary state institutions and regulatory capacity)

**Lloyd's**

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28 February 2013

Dear Sirs

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

### **Introduction**

We welcome the opportunity to respond to the Government's Call for Evidence on the balance of competencies between the UK and the European Union (EU). Our evidence focuses on economic factors, especially in relation to the international transaction of insurance.

Lloyd's is an insurance market, comprising members who carry on insurance business through syndicates writing insurance and reinsurance contracts. Lloyd's aggregate gross written premium income in 2011 was £23.5bn. Over 80% of Lloyd's business comes from outside the UK, including 16% from other European countries<sup>1</sup>. The Lloyd's market's aggregate premium income from Europe in 1991 was £1,036m; in 2011 it was £3,756m.

Lloyd's is at the heart of the London insurance market, the world's leading international insurance and reinsurance centre, estimated to employ at least 50,000 people. The UK insurance industry is the largest in Europe and the third largest in the world, after the US and Japan. UK insurance and pension funds, excluding intermediaries and other auxiliary services, contribute around 1.6% of GDP and in the 2010/11 financial year paid £10.4bn in taxes, equivalent to 1.9% of Government tax receipts<sup>2</sup>.

### **Key points**

- **The EU Internal Market:** has, since its launch 20 years ago, removed many barriers in areas such as the movement of goods, services and persons.
- **The UK:** is a powerful voice within the EU for freer trade and the removal of obstacles to cross-border economic activity.

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<sup>1</sup> Lloyd's Annual Report 2011

<sup>2</sup> *Insurance Briefing*, January 2013, TheCityUK



- **The UK insurance industry:** therefore benefits from trading opportunities in other EU Member States. UK insurance and reinsurance undertakings can conduct cross-border business, establish offices in other Member States and move their staff within the EU according to business needs, without facing significant trade barriers. This contrasts favourably with the difficulties that can arise with the conduct of insurance business in countries outside the EU.
- **Detailed and prescriptive regulation:** is not necessary for an Internal Market to work efficiently. The EU Internal Market does not have to be deep to be effective. Complex financial regulatory regimes laid down in detail at EU level tend to hinder rather than facilitate the Internal Market.
- **EU actions in areas such as the environment, social affairs and employment:** are not necessary to the operation of the Single Insurance Market.
- **Significant future developments in financial regulation:** are likely at international level. UK financial institutions would not avoid the imposition of new regulations if the UK were to leave the EU, but would lose market access opportunities within the EU.

Our detailed responses to the questions asked are attached.

Please get in touch if you have any questions.

Yours sincerely

## **CALL FOR EVIDENCE ON THE REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UK AND THE EU: DETAILED RESPONSES TO QUESTIONS**

### **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?**

Our principal experience of the EU Internal Market is the Single Insurance Market, in place since the early 1990s. It combines EU-wide market access with effective policyholder protection through Home State prudential supervision. The regulatory system and market access rules to which Lloyd's is subject under EU Internal Market rules compare very favourably with the onerous and restrictive rules applicable in many non-EU countries.

The Call for Evidence looks at the Internal Market's essential elements in some detail. The structure is explained on page 6 of the document and we do not have any additional comments to make.

Lloyd's conducts insurance business across the globe and we believe that the EU's Single Insurance Market's economic benefits can usefully be assessed by comparing cross-border trading arrangements within and outside the EU. The transaction of insurance in most countries requires a licence or authorisation. Naturally, each jurisdiction applies a framework of local rules and requirements to foreign insurers such as Lloyd's, or puts reliance on supervision undertaken in the home state.

#### **The EU's Single Insurance Market**

Insurance regulation, set out in insurance directives, is based on principles of exclusive Home State prudential supervision, mutual recognition of regulatory systems and passporting by insurers and reinsurers. Member States cannot impose financial or other prudential regulatory obligations on insurers established in other EU Member States, eliminating obligations on insurers to "balkanize" their assets across jurisdictions. The removal of barriers within the EU's Internal Market encourages trade on a cross-border and establishment basis, benefiting consumers through a wider choice of financial services providers and, as a result of healthy competition, cheaper financial products.

#### **Regulation of international insurance business outside the EU**

Many non-EU countries restrict foreign insurers' access to their markets and impose significant regulatory obligations, including requirements to maintain substantial and disproportionate funds locally. Such local funding is inefficient and burdensome and insurers inevitably incur additional operational costs, the burden of which eventually falls on their customers. Regulatory requirements in foreign jurisdictions give rise to duplicative processes, where, for example, firms must produce different sets of information for different national supervisors. This contrasts with financial reporting in the EU, where information is provided only to an insurer's Home State supervisor.

The International Association of Insurance Supervisors (IAIS) has improved international regulatory co-operation and co-ordination and there has been some progress in the removal of barriers to the transaction of international trade in services (see our response to question 7). Nevertheless, substantial obstacles remain. The financial crisis of 2007-8 and its protracted aftermath have provoked many jurisdictions to impose new rules on financial services, including sectors that were not at the centre of the crisis. The temptation is not always resisted to use regulation for protectionist purposes.

Lloyd's is fortunate to benefit from a network of authorisations negotiated many years ago. Otherwise, it can be difficult to persuade non-EU national authorities to permit Lloyd's to carry on business in their insurance markets (Lloyd's cannot expand by acquiring local insurance companies; in any case, many non-EU countries would prohibit this). When such permissions are granted, they may be subject to restrictions, expensive regulatory requirements and obligations to maintain complicated administrative structures locally. From 1991 to 2013, Lloyd's obtained authorisations to carry on direct insurance in 16 "new" countries. Of these 16, 14 were EU Member States, reflecting the implementation of the Single Insurance Market and the EU's expansion through accession, and just two were non-EU countries. Lloyd's authorisations in those two countries are subject to very tight regulatory restrictions, acting as barriers to growth and development.

### **Internal Market depth**

Nevertheless, an Internal Market does not need to be deep to be effective. Although we support an Internal Market which sets benchmarks for free trade and investment and an appropriate regulatory framework enabling the removal of internal barriers to trade, we do not consider that it must entail detailed regulation of economic and business transactions.

There are 27 Member States (a number that will increase), with different agendas and cultures and varying levels of economic development. It is therefore difficult to align EU rules and regulations in their totality across the Union and unrealistic to expect unanimous decision on every detail. Indeed, the process of putting in place detailed requirements across the EU often delays implementation of Internal Market measures. The Solvency II programme of insurance regulatory change, for example, has been discussed for over 10 years and is unlikely to be in place before 2016 at the earliest. A less prescriptive legislative package could have implemented Solvency II's essential elements many years sooner.

### **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?**

EU actions in these areas are not necessary for the successful operation of the EU's Single Insurance Market.

The EU is developing legal and regulatory frameworks for non-insurance industries and sectors which have an indirect impact on the operation of insurers. Such initiatives include the regulation of credit rating agencies and auditors; financial transaction taxation; environmental liability; and others. EU insurers must take account of such measures but they are not necessary for the operation of the Single Insurance 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?**

Although we support the EU's Single Insurance Market, we consider that the EU's current approach to financial sector rulemaking leans too far in the direction of maximum (or "exhaustive") harmonisation, rather than mutual recognition, to the detriment of EU financial services. We think that EU legislation should concentrate at the highest level ("Level 1") at which fundamental principles are laid down and avoid the imposition of detailed EU-wide rules, unless demonstrably necessary.

**The EU's existing insurance regulatory framework**

The EU's existing insurance regulatory framework ("Solvency I") incorporates elements of mutual recognition and harmonisation. Rules are set out in Life and Non-life Directives drafted many years ago, when the ambitions of EU policymakers were somewhat less extensive, and generally operate on a mutual recognition basis. Member states must allow EU insurers and reinsurers from other Member States to trade freely in their jurisdictions subject to compliance with relevant Host State conduct rules. However, mutual recognition in a heavily-regulated sector such as insurance is bound to incorporate some elements of harmonisation, to ensure that Member States can be confident that undertakings in other Member States are subject to regulation at a broadly similar level.

**Recent approaches to EU financial legislation**

Recent EU financial legislation is usually complex and difficult to implement, for supervisors and undertakings alike. EU institutions appear determined to legislate in detail and to cater for every conceivable possibility in large and varied financial sectors spread across 27 countries, with limited provisions for differences.

This tendency has been reinforced by the Lamfalussy process, developed in 2001, to expedite the EU financial sector rulemaking process. The process has four Levels, three of which entail rulemaking. The inevitable consequences are that EU institutions impose harmonised rules at a micro-level of detail, entailing lengthy periods of legislative drafting and significant implementation costs for those on whom the rules are imposed. The more detailed a proposal for new legislation is, the more challenging it is to agree its content with

all parties involved. There is little evidence that the ultimate results of the process have been particularly efficacious in the regulation of financial services.

## **Solvency II**

Solvency II is an example of this. Lloyd's is committed to the principles underlying the Solvency II framework. Its provision will strengthen the quality of the supervisory regime to which insurers will be subject as well as insurers' own risk management capabilities.

Nevertheless, Solvency II has become an "exhaustive harmonisation" regime, developed on the assumption that closer integration of rules and regulations will be beneficial to all parties involved in insurance transactions. For example, it introduces a detailed and complex standard formula for the calculation of insurers' Solvency Capital Requirements. As it is impossible to design a standard formula appropriate for every insurer and reinsurer in Europe, an essential feature of the new regime is that large or other non-standard undertakings can use internal models for regulatory capital setting. Even so, many smaller entities will struggle to use the standard formula. It is unclear when Solvency II will be fully implemented, so there is no evidence on how this regime will work.

Solvency II follows Lamfalussy, so has a Level 1 Framework setting out key principles, complemented by detailed Level 2 rules and Level 3 "guidelines and recommendations" (basically a third level of detailed rules). This is a convoluted structure, requiring substantial time to finalise and agree. In the case of Solvency II, it has so far entailed:

- The Level 1 Directive – 312 Articles and 7 Annexes over 130 pages;
- To be amended by a further Directive – so far draft only, at least 90 pages of amendments.
- Level 2 Implementing Measures – draft only, 376 Articles, over 407 pages.
- Level 3 regulatory guidelines and recommendations – not yet finalised. So far, we are aware of 41 separate sets of guidelines, each several pages long.

Although the new regime was supposed to come into force in October 2012, most of it is not finalised. These new rules (for an insurance sector which was not a cause of the recent financial crisis) are expensive to implement. The FSA estimates that Solvency II implementation will cost the UK's insurance industry £1.9bn.

#### **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?**

Although we have some reservations about current directions of travel, we believe that implementation of the Single Insurance Market has been successful so far, reducing barriers to trade in insurance, to the benefit of UK insurers and therefore the UK economy as a whole. Nevertheless, the Internal Market will be hindered by attempts to legislate in detail at EU level.



We note an increasing tendency for EU legislation to be framed as Regulations (immediately applicable in all Member States) rather than Directives (which Member States implement through legislation). Regulations avoid problems that can arise when Member States fail to transpose a Directive by a required date or implement them in varied ways. Nevertheless, Regulations do give rise to fundamental questions about the balance of responsibilities between EU institutions and Member States. Such questions are beyond the scope of this response, but require careful consideration.

**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?**

Lloyd's has not experienced direct regulatory impacts from the Eurozone or Schengen Area agreements. We conduct substantial amount of business in countries which are part of the Eurozone, but these activities are governed by Internal Market rules.

**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?**

UK membership of the G20, the G8, the OECD and the Commonwealth has not had significant impact on the EU Single Insurance Market. Nevertheless, the UK's involvement in these international bodies is important to the direction of high-level policymaking on financial services regulation and therefore to EU insurers. These organisations do not produce legally binding prescriptive rules and regulations, but the policies of the G20, the G8 and the OECD often influence EU legislation.

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

The EU is a strong voice in the global community. It plays a major role on the international stage in shaping trade and regulatory debates. Its economic size and political influence give it substantial weight in international institutions and in the negotiation of bilateral and multilateral agreements with third countries.

The European Commission represents all Member States in insurance trade and regulatory negotiations and has concluded agreements that benefit the UK insurance industry, including Lloyd's. For example, the EU-Chile Free Trade Agreement concluded in 2003 allows UK insurers access to Chile marine, aviation and transport insurance business. The EU is in the process of negotiating agreements with other countries, which may bring further opportunities to Lloyd's and other UK insurers.

The EU-US Dialogue is being pursued with renewed vigour and its agenda includes co-operation in the context of insurance. Foreign insurers operating in the US are currently

subject to punishing rules on collateral obligations. We hope that this Dialogue will accelerate long-overdue reforms of these expensive discriminatory requirements.

**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?**

Our preferred EU regulatory approach of mutual recognition coupled with minimum harmonisation entails permitting Member States some flexibility to impose requirements over and above the EU minimum. It is sensible of the UK and other Member States to limit the extent to which they impose additional requirements. Nevertheless, we do not believe that this is problematic, provided, on the one hand, the UK does not seek to make existing detailed EU regulations even more complex and, on the other, other Member States do not impose additional restrictions on abilities to carry on businesses in their territories.

The UK has on occasion "gold-plated" EU legislation, creating a more burdensome domestic regulatory environment than other EU Member States. Recent UK approaches to transposition have tended to avoid this pitfall.

UK transposition of the Insurance Mediation Directive (IMD) is a frequently-quoted example of gold-plating. The FSA introduced stricter requirements in relation to disclosure of information and applied the Directive to direct selling of insurance, which the original Directive did not cover. Lord Davidson's 2006 Review found that the UK had gold-plated the implementation of the IMD and recommended simplification. This was subsequently taken forward by the FSA and IMD gold-plating is no longer evident. More recently, Solvency II is a maximum harmonisation provision, providing little scope for national discretion in transposition. Proposals for its transposition in the UK do not therefore entail gold-plating.

The retention of requirements beyond those in EU legislation by other Member States can act as a barrier to the Internal Market. In insurance, such additional obligations can be associated with "general good" requirements, permitted by Insurance Directives. The European Commission's 2000 Interpretative Communication on "*Freedom to provide services and the general good in the insurance sector*" lays down, *inter alia*, criteria that a provision must meet if it is included in general good requirements. Provided these criteria are met, general good requirements should not unnecessarily limit an EU undertaking's ability to carry on business in other Member States.

**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?**

Britain's membership of the EU is important to the continuing success of Lloyd's and the wider London insurance market, and thereby to UK prosperity. We believe that the UK is a

powerful voice within the EU for freer trade and the removal of obstacles to cross-border economic activity.

## Regulatory challenges

Financial firms worldwide must cope with a great deal of new international regulation, prompted by the financial crisis of 2007-8 and its lengthy aftermath. This is bound to affect the EU and the EU Internal Market, emphasising the importance of continued UK engagement in the EU and international policy bodies. We recognise that there are voices calling for more restrictions on the activities of the financial sector and that vigilance is required to ensure the continuation of existing Internal Market arrangements.

Many regulatory proposals originate from international bodies outside the EU. So long as they wish to transact business internationally, these provisions will impact UK insurers irrespective of the UK's membership of the EU. Notwithstanding the occasional frustration over the EU's approach to regulation, it is inconceivable that UK insurers would be subject to a significantly lower level of regulatory intensity if the UK were outside the EU.

Within the EU, potential future challenges include:

- **A single EU insurance supervisor:** The European Central Bank (ECB) is likely to assume a supervisory role in relation to Eurozone banks. There are concerns that this will serve as a precedent for the replacement of national insurance supervision by a pan-European supervisor. The ECB cannot act as a supervisor of insurers<sup>3</sup>. However, the European Insurance and Occupational Pensions Authority (EIOPA) has signalled that moves in the direction of pan-European supervision are desirable. Some might think that a single European insurance regulator is a natural step in the deepening of the Single Insurance Market. We do not agree. We believe that supervision of insurers should remain at the national level, where relevant expertise and knowledge are concentrated. The justifications for the ECB's assumption of supervisory powers over Eurozone banks – especially the continuing Eurozone financial crisis - do not arise for the EU's insurance sector.
- **Restrictions on branches:** There have been calls for greater powers for host state supervisors over local branches of other Member States' undertakings. We oppose these calls, as an undertaking's ability to establish a presence in another Member State without additional regulatory obligations is fundamental to the Internal Market.
- **Financial transaction tax:** Some Member States intend to introduce a new Financial Transaction Tax. We are pleased that this does not include the UK, but are disturbed at the risk that entities outside the so-called enhanced co-operation area might be captured in some circumstances.

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<sup>3</sup> Article 127(6) TFEU



## **Business opportunities**

- Further trade agreements, which would enable EU insurers to access new markets and develop business opportunities.

Enlargement of the EU has a similar effect, as new Member States open their markets to EU insurers. This may, on the other hand, bring the challenge of complex negotiations between almost 30 Member States on the detail of incoming rules and regulations (as already evident in the context of Solvency II).

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

We do not have any further comments on this Call for Evidence.

# **National Council for Voluntary Organisations**



# **Response to Foreign and Commonwealth Office Review of the Balance of Competences**

## **Call for Evidence on Internal Market**

**28 February 2013**

**NCVO: National Council for Voluntary Organisations giving voice and support to civil society**

**Registered charity number: 225922**

## 1. Introduction

1.1. NCVO is the largest general membership body for voluntary and community organisations (VCOs) in England. Established in 1919, NCVO represents over 10,000 organisations, from large 'household name' charities to small groups involved in all areas of voluntary and community action at a local level. Our members include national and local infrastructure organisations, thereby extending our reach still further.

1.2. NCVO champions volunteering and civil society. Our vision is of a society in which people are inspired to make a positive difference within their communities. A vibrant civil society deserves a strong voice and the best support, which we work to provide. We therefore welcome the opportunity to respond to the Review of Balance of EU Competences Call for Evidence on Internal Market issued by the Foreign and Commonwealth Office in November 2012, to represent the sector's views on social aspects of the Single Market.

1.3. Structure of the consultation paper:

- A summary of NCVO activities of national and European affairs
- Recommendations and specific examples with respect to Procurement and Social entrepreneurship

## 2. NCVO activities

Through our Chief Executive's role on the European Economic and Social Committee, we contribute regularly to EU policy reviews, including key opinions on the review of State Aid rules, and exploring social entrepreneurship; evaluating the role of procurement in better service delivery outcomes; and facilitating the growth of the social investment and enterprise markets.

NCVO has been involved in many opportunities to influence the evaluation of the procurement regulations. In January 2012, we submitted a Procurement Policy Note to the Cabinet Office. Additionally, we produced a Report outlining recommendations for the review of the European Procurement Directives which was submitted to the European Commission in 2011<sup>1</sup>.

In July 2012, NCVO Roundtable brought together UK Government officials, the Big Lottery Fund, the Big Society Capital and UK-based social investment experts to evaluate the UK's potential benefit in the EU's Social Business Initiative<sup>2</sup>.

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<sup>1</sup> <http://www.ncvo-vol.org.uk/policy-research/european-international/european-union/social-service-reform>

<sup>2</sup> [http://www.ncvo-vol.org.uk/sites/default/files/UploadedFiles/sbi\\_background\\_and\\_key\\_points\\_briefing.pdf](http://www.ncvo-vol.org.uk/sites/default/files/UploadedFiles/sbi_background_and_key_points_briefing.pdf)

### 3. **Key recommendations for the Call for Evidence on Internal Market**

NCVO believes in economic growth rooted in social inclusion. It works to encourage an enabling legislative environment that supports civil society and local communities to participate in decision-making and implementation of social policies. Only through social inclusion and a committed civil society can long-term solutions to a strong market economy be achieved.

The European Union has recognised the importance of societal participation to re-start growth in Europe. By considering social aspects in the key recommendations on renewing the Single Market, the vision of sustainable economic growth is seen to be central to the future of the EU. Internal Market regulations address the economic, social and environmental challenges and should work towards long-lasting economic success of the Member States. The EU's Social Business Initiative, led by Internal Market Commissioner Barnier, focuses on driving growth through innovative solutions and developing new forms of social enterprise to deliver local needs.

It is crucial for the UK to engage in the drafting of EU legislation so that it is well-positioned to shape policies. Many challenges facing this country require international solutions, so Britain's presence in shaping policy-making and EU legislation, provide the country with opportunities to form new markets, attract business partners and put forward the national interest in a strong regional forum, thereby shaping global priorities that meet our needs.

### 4. **Response to specific proposals**

#### **Q1. 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, in which social, political and economic dimensions are interlinked, facilitates economic growth efficiently. Market integration increases trading opportunities and widens cooperation at international levels. Likewise, greater prospects help British markets. Shaping these terms and conditions, is in the UK's interest.

Giving weight to social dimensions of the functioning of the Internal Market is crucial. To bring long-term solutions to economic stability, the following factors need to be taken into consideration:

- empowerment of civil society organisations in social service delivery through favourable procurement and state aid regulations;

- development of social entrepreneurship to reach those who are the furthest away from the labour market;
- investment in social innovation to modernise new methods of smart public spending.

By focusing on elements of the social market economy, we create preventative solutions that ultimately help avoid future financial instability.

The Europe 2020 strategy aims to complete the “single market in services, energy and digital products, and invests in essential cross-border links”. It recommends that “obstacles at national level must be removed ... if these efforts are combined and coordinated they will have the desired impact on growth and jobs”<sup>3</sup>. As a recognition of the need for the social dimension of economic growth and its relations to the Internal Market, the European Commission launched the Single Market Act<sup>4</sup> to create jobs and stimulate economic growth. The Act aims to strengthen confidence and exploit untapped potential benefits for small enterprises, and supports citizens and local communities by reviewing public procurement and encouraging social cohesion.

In line with the Union’s views, the UK’s Social Value Act<sup>5</sup> came into force in January 2013. The legal document recognises the added social value of economic, social and environmental benefits. Sir Stuart Etherington said: “This little gem of an Act has the power to radically transform our public services. It gives commissioners the green light to take into account the extra value charities bring”<sup>6</sup>. This has the potential to achieve better value for taxpayers and better outcomes for society.

What we clearly see is that both the UK and EU are working in the same vein towards common goals: to strengthen social values in market economies and establish purchasing power of local communities.

**Q2. 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?**

The EU already plays an active role in setting legal frameworks that affect UK organisations, and provides funding for environmental, social and employment programmes in the UK.

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<sup>3</sup> [http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/index_en.htm)

<sup>4</sup> [http://ec.europa.eu/internal\\_market/smact/index\\_en.htm](http://ec.europa.eu/internal_market/smact/index_en.htm)

<sup>5</sup> <https://www.gov.uk/government/publications/procurement-policy-note-10-12-the-public-services-social-value-act-2012>

<sup>6</sup> <http://www.ncvo-vol.org.uk/news/public-services/social-value-act-has-potential-transform-public-services>

Therefore, it is essential that the UK maintains a strong voice in Europe, to influence these decisions.

We will make some further comments here on the EU's influence on UK procurement and development of the Social Business Initiative.

*Procurement* is a cross-cutting issue in a range of policy agendas and initiatives, including aspects which affect competition, social and environmental targets, and innovation.

The voluntary sector has been involved in public service delivery for many years. As such, we have extensive experience of the UK Government and the EU's procurement policies and practice.

25% of voluntary organisations receive funding from one or more Government sources. Over the period since 2000, the voluntary sector's statutory income has grown faster than total public spending, suggesting that the voluntary sector has become a more important contributor to GDP and a notable player in the provision of UK public services<sup>7</sup>.

Over the past ten years, there has also been a shift towards service delivery contracts - worth £10.9bn in 2010, up from £4.3bn in 2000 (inflation-adjusted) - with a reducing number of grants available - worth £3bn in 2010, down from £4.4bn in 2000 (inflation-adjusted).<sup>8</sup> As a result of this shift towards contracting, procurement rules have had more of an impact on the UK voluntary sector than previously. In some cases, the move towards the use of commission mechanisms such as pre-qualification questionnaires and invitation to tender has presented changes to the sector particularly to those that have a turnover of less than £500,000.

Furthermore, a review of UK priorities demonstrated a direct link between the sector's activity and the Europe2020 objectives. For example, 46% of the sector's main areas of work were in training, education, employment and poverty.

## UK context

The Coalition Government's 'Big Society' agenda<sup>9</sup> is the latest mark of strong political commitment for public service reform in the UK, with its emphasis on supporting civil society organisations to have much greater involvement in the running of public services, and creating a diverse market to drive choice and empowerment of users.

The UK Government has adopted David Freud's blueprint<sup>10</sup> to tackle unemployment and welfare reform. This aims to stimulate development of a new welfare-to-work service industry, and requires CSOs to work with 'prime contractors' to deliver defined welfare

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<sup>7</sup> <http://data.ncvo-vol.org.uk/>

<sup>8</sup> <http://www.charity-commission.gov.uk/>

<sup>9</sup> Cabinet Office (2010) Building the Big Society  
[http://www.cabinetoffice.gov.uk/sites/default/files/resources/building-bigsociety\\_0.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/building-bigsociety_0.pdf)

<sup>10</sup> <http://www.dwp.gov.uk/docs/welfare-review.pdf>

outcomes in a 'payments by results' scheme. It is clear that this diversified approach presents opportunities and challenges for civil society organisations.

1. Procurement practice in the UK often shows a lack of understanding of the voluntary sector: we are particularly concerned that voluntary organisations are being shut out, as contract opportunities become larger, pass on too much financial risk and require too much capital.
2. For the next programme of Common Strategic Framework Funds 2014-2020 in the UK the voluntary and community sector is advocating for a greater role for civil society organisations in the delivery of the Funds as well as a blend of funding/delivery mechanisms and payment systems (grants, contracts, community-led local development) to increase flexibility to deliver the key priorities particularly under social inclusion.
3. Addressing poor procurement practice is crucial to create an effective public services market in the UK. The UK Government has taken steps to improve practice: launching a Commissioning Academy, and passing the Social Value Act.
4. Another area of concern in the UK is misinterpretation of EU rules. The Government should do more to provide local authorities and other commissioners with clear guidance on EU regulations and counter common myths, for example on pre-procurement dialogue with service providers and on disclosure of TUPE liabilities.

## EU context

The European Procurement Directives (The Directives) are underpinned by the EU Treaty principles to set out a legal framework for public procurement, to which all public contracting authorities in Member States must adhere.

With 17% of the EU's GDP acquired from public procurement activity, contracting authorities have a duty to ensure that their decision-making and spending power is used not only to attain best market rates for public goods and services, but also to serve the immediate and long-term social needs of their constituents.<sup>11</sup>

The Directives protect against corruption, open up procurement market, and ensure free movement and quality in purchase of supplies and services. By this, the European Commission promotes a highly competitive social market economy.

NCVO represents the interests of UK voluntary organisations, when we lobby the EU regarding its procurement and state aid regulations. Our key concerns are:

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<sup>11</sup> A7-0326/2011, European Parliament A series, commission report, seventh parliamentary term (2009-2014), no.326 of 2011.



1. Simplification of EU and UK procurement rules to ensure more flexibility, reduced red-tape and administrative costs in implementation at local level
2. Raising current EU procurement thresholds to make it easier for UK public authorities to contract with civil society organisations (this would apply equally to other EU member states)
3. Exemptions of Part B services and not-for-profit service providers to ensure less risk-averse and more appropriate practice so contracts are considered on the basis of type rather than size (changes do not affect competition and cross-border interests)

In December 2012, the European Parliament and Council adopted amendments in line with our recommendations at point 2 and 3 above. We welcome these most recent procurement developments.<sup>12</sup>

Social entrepreneurship, social innovation and social investment have been promoted by the EU in recent years. It may be helpful to explain what we understand by these terms in the UK:

- Social innovation covers ‘new ideas (products, services and models) that simultaneously meet social needs and create new social relationships or collaborations.’<sup>13</sup>
- Social entrepreneurship is about creating viable businesses that meet social needs. Many charities would also consider themselves to be ‘social enterprises’, where they are able to generate revenue to deliver services (i.e. not relying wholly on donations).
- Social investment is an emerging approach to the financing of voluntary organisations and social enterprises – through the provision of loans, equity investment and other types of investment in which the investor can expect a return.

These terms are often used differently by the EU or other EU member states. Sometimes interchangeably, or grouped under the EU phrase ‘social business’, to refer more generally to any organisations that deliver social benefits, and any type of funding or support providing to those ‘social businesses’.

#### UK context

In 2010, the UK voluntary sector included 163,000 charities, employing 765,000 people in the UK, with a combined income of £36.7bn and expenditure of £36.3bn (Source: NCVO). Social enterprises are less clearly measured, as they can take a range of legal forms. However, it is estimated that there are 68,000 social enterprises in the UK, employing 800,00 people (Source: Annual Survey of Small Businesses UK 2010). Also, there are 5,950

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<sup>12</sup>

<http://www.europarl.europa.eu/document/activities/cont/201301/20130110ATT58822/20130110ATT58822EN.pdf>

<http://register.consilium.europa.eu/pdf/en/12/st16/st16725-re01.en12.pdf>

<sup>13</sup> <http://www.socialinnovationeurope.eu/directory/united-kingdom/social-innovation-united-kingdom>

co-operatives in the UK employing 230,000 people (Source: Co-ops UK, 2012). There will be some overlap between these figures.

A significant proportion of all civil society organisations focus on improving people's lives – tackling root causes of disadvantage and focussing on earlier intervention to prevent negative social and economic outcomes. Their contribution to the UK economy is far more significant than simply their existence as employers, important though this is. Civil society organisations constitute an important sector of the economy creating jobs and economic value as well as social and environmental benefits (Source: Schmuecker and Tehrani, 2010).

The main sources of funding for these organisations remain: individual donations, Government sources, and trading income. These funding approaches remain the most important.

Some UK voluntary organisations and social enterprises also need access to repayable finance: loans, mortgages, growth and working capital. Because they can find it hard to access finance from commercial markets, the social investment market has developed to meet this need. UK-based social investment activity estimated at £190m in 2010. Experts estimate that the UK social investment market could be worth £1bn or more within the next five years.

The UK Government has taken steps to promote the development of this new social investment market. In 2012, it established Big Society Capital, a wholesale funding body, to provide capital to the social investment market. Big Society Capital successfully achieved EU state aid clearance in order to support this nascent market.

Innovative forms of social investment have emerged in the UK, such as the Social Impact Bond.

#### *UK Case Study – The Social Impact Bond*

The social impact bond has been developed as a new way to commission public services from voluntary organisations.

The first Social Impact Bond funds the One\* Service working with short-sentence prisoners discharged from HMP Peterborough over the next six years.  
[http://www.socialfinance.org.uk/sites/default/files/SF\\_Peterborough\\_SIB.pdf](http://www.socialfinance.org.uk/sites/default/files/SF_Peterborough_SIB.pdf)

Through a Social Impact Bond, private investment is used to pay for interventions, which are delivered by service providers with a proven track record. Financial returns to investors are made by the public sector on the basis of improved social outcomes. If outcomes do not improve, then investors do not recover their investment.

'Social Impact Bonds provide up front funding for prevention and early intervention services, and remove the risk that interventions do not deliver outcomes from the public sector. The

public sector pays if (and only if) the intervention is successful. In this way, Social Impact Bonds enable a re-allocation of risk between the two sectors'. (Source; Social Finance)

The UK has led the way in developing the Social Impact Bond, and shared learning with other countries including the US, which has now developed similar 'pay for success bonds'.

## EU context

### *EU Case Study – The Social Business Initiative*

The Social Business Initiative aims to “create a favourable climate for social enterprises, key stakeholders in the social economy and innovation”<sup>14</sup>.

Launched in November 2011, this initiative indicates the European Union’s commitment to placing the civil society and social innovation at the heart of its concerns, as part of the wider Single Market agenda and the EU 2020 strategy, to meet EU economic, social and environmental policy targets by aligning finance and commerce activities with ‘ethical’ and ‘social’ principles.

The SBI action plan includes 11 key actions to support social entrepreneurship in Europe, in order to:

- Improve access to funding, including social investment
- Increase the visibility of social entrepreneurship
- Improve the legal environment for social investment and new forms of businesses

### *What the EU’s SBI offers is:*

- Opportunity to raise level of exemptions from state aid and procurement
- Opportunity for social innovation through better access to funds
- Opportunity to shape design at a strategic pan-European level
- Opportunity for exchange of knowledge and creation of a new definition of social enterprise
- Opportunity for new forms of match funding

Engaging with this new EU initiative, UK officials and UK stakeholders such as NCVO are able to safeguard UK interests and support development of the UK social investment market. The UK is also able to exchange good practice with other countries at the EU level, enhancing collaboration across borders and attracting new investors to Britain.

NCVO believes that the EU Social Business Initiative has the potential to support growth of the social economy in the UK. Not only by increasing supply of social investment capital, but by supporting the profile and role of social enterprises and charities in delivering public services.

**Q3. 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**

<sup>14</sup> [http://ec.europa.eu/internal\\_market/social\\_business/index\\_en.htm](http://ec.europa.eu/internal_market/social_business/index_en.htm)

**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?**

With reference to this question, we would like to express our strongest support for CFG's short response to HM Treasury's Balance of Competences Review on taxation. Please see the letter in attachment.

**Q4. 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 the engine of the European economy. On the one hand, the Services Directive<sup>15</sup> enabled a large-scale Internal Market integration. From civil society's perspective, regulations strengthened the quality of services (for instance via voluntary certification of activities or drawing up quality charters), the European Code of Conduct gave the opportunity to all the stakeholders to take part in decision-making from the agenda-setting phase, they clarified information, strengthen citizens' rights as service users, and prohibited any discrimination based on nationality or the residence of the service beneficiary.

On the other hand, there has been limited opportunity for cross-border movement and cooperation by civil society organisations. This is due to lack of awareness in each country of the basic rules regarding not-for-profit and charity law in other EU countries. This is why we welcome the EU Foundation Statute Proposal<sup>16</sup> which intends to improve foundations' cross-border operations, to establish recognition of foundation status in any Member State, and to set out that any new foundation would be required to prove public benefit.

We encourage a step-by-step change to enable greater understanding and awareness-raising around the issue, for civil society to build an information campaign and develop a 'charter' that is recognised by the EU. This ensures national legislation can be compared and a gradual improvement of mutual recognition that could lead to more explicit legislation.

The Foundation Statute proposals focus on mutual recognition of not-for-profit and charity law and will set out a core set of public benefit objectives that can be shared across Europe, thereby clarifying the similarities that exist across the EU and enabling greater understanding of each system. The statute would not work if it seeks to impose a single regulatory system for the not-for-profit sector and it should not shift the tax regulation power in this area from member states. This would enable foundations to operate more easily across borders, reduce the bureaucratic burden for cross-border giving and thereby increase the potential resources available to the sector in each country.

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<sup>15</sup>

[http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/job\\_creation\\_measures/l33237\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/job_creation_measures/l33237_en.htm)

<sup>16</sup> [http://europa.eu/rapid/press-release\\_IP-12-112\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-112_en.htm?locale=en)

**Q6. 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?**

Economic challenges require international solutions.

The internal market has enabled the UK to group together key recommendations and bring a stronger united voice at wider global forums. Many current challenges are global in nature, such as economic turbulence, climate change, human rights, demographic shift and migration; these therefore require international solutions. The UK position in international negotiations is much stronger if the UK position has already been recognised within the Internal Market. The EU can set standards and enable agreement in key areas which can then be promoted to wider international partners, such as at the G8 and G20.

From the other perspective, the UK can bring a wealth of international expertise, through its historic links with many other partners, including Commonwealth countries that will enrich the Internal Market. These links enable inclusion of many other perspectives and bring new opportunities for exchange and expertise that will ensure that the Internal Market remains competitive in an increasingly globalised world.

**Q8. 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 is perceived to implement EU regulations correctly and is often regarded as a diligent partner.

However there is some evidence in the area of public procurement regulations to suggest the UK does at times go beyond EU requirements and is involved in so-called gold-plating. Gold-plating refers to over-implementation when national application goes beyond the minimum necessary to comply with an EU directive.

There is a strong culture of risk-averseness and inflexibility in public contracting authorities when applying the Directives. Procurement officers seem to have become more preoccupied with applying rules and fulfilling EU requirements rather than assessing service delivery outcomes, and in turn the potential for vast innovation in services.

This is a costly exercise for the contracting authority and wastes economic resources which could be used for social and more economically advantageous purposes.

Lack of clarity on Part A and Part B services, results in contracting authorities placing the same reporting and accounting obligations for both Parts, regardless of reduced legal requirements for Part B services. This disproportionate practice hinders opportunity for innovation and service provision from voluntary and community organisations, which often deliver Part B services.

The UK is recommended to raise awareness of the core requirements of EU regulations to avoid over-implementation which can reduce opportunities and place civil society organisations in a disadvantaged position. There is anecdotal evidence to suggest that other Member States take the opportunity of flexible implementation and will be taking up the new priority for social innovation. This can result in a more efficient application of public procurement rules.

**Q9. 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?**

Demographic change requires political and economic alterations into compound strategies. Shifts in human records, ages and location, affect long-term supply of human capital, influencing the lot from labour and pension costs to the accessibility of people. An ageing population, changes in female participation in the labour market, family fragmentation and urbanisation have serious impacts on citizens' accountability and needs, in particular in terms of childcare and care for the elderly. Furthermore, from 2012, the working-age population has started to decline. To guarantee sustainability of national and European welfare systems, more people have to work. Consequently, there has already been an increase in demand for public services. In order to reform social service delivery that favours CSOs, it is essential to simplify procurement rules and develop new and innovative solutions.

Since social inequalities have increased, the balance of social and market dimensions has been disrupted. For some citizens, social exclusion and poor working conditions are still a reality. Economic efficiency needs to go hand in hand with innovative social policies.

The EU can enhance the growth process by further developing the internal market, e.g. in the area of social service delivery, social innovation and social entrepreneurship. Unnecessary barriers to labour and businesses must not strangle the growth of dynamic and innovative service production while entrepreneurship and risk taking especially in procurement should be encouraged. Our shared idea is that globalisation and ageing populations call for urgent structural reforms with a view to enhancing flexibility, competitiveness and vitality.

**General**

**Q10. Are there any general points you wish to make which are not captured above?**

- Clearer definition of State Aid: - State aid rules need revisiting and clear guidance should be issued to UK providers. At present different public sector organisations interpret the rules in different ways.

# National Farmers Union

The Government's review of the balance of competencies between the United Kingdom and the European Union: call for evidence on internal market synoptic review

**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 NFU believes that the essential elements of an internal market are encompassed in the following principles: 1) fairness 2) transparency 3) effectiveness and relevance and 4) coherence.

- 1) Fairness – We believe that the foundation of the internal market must consist of a set of harmonised rules aimed ultimately at creating a level playing field and prevent market distortions. In short, if UK farmers are required to face regulatory conditions to access the common market then our competitors should be required to take commensurate actions.
- 2) Transparency – There must be a minimum level of standard to operate on the common market. For agricultural products these should consist of minimum food safety and plant and animal health regulations (SPS) rules, processing methods, product labelling and marketing standards. EU marketing standards inform the producers about the expected product quality; they also enable buyers to agree prices on paper or electronically without having to inspect every lot of the goods in question. Without common standards, trading in commodities would become more complex and costly.
- 3) Effectiveness and relevance – We believe that rules to operate on the common market must be effective in terms of their stated objectives. We support science based rules which have periodic review and sunset clauses.
- 4) Coherence - It is essential that the rules agreed across the market are coherent with each other as well as the objectives of the European Treaties. When considering the impact of action, legislators should consider coherence and the cumulative impact of 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?***

We believe that EU action in “other areas” are less central to the functioning of the common market in agricultural products. However there is certainly a role for these actions to be decided at a European level. They should underpin and facilitate the operation of the single market, and in effect, ensure that UK farmers operate on a level playing field.

We believe that agricultural production should be sustainable and therefore support science based rules relating to the environment and animal welfare. In short we believe that if farmers, are to face rules that introduce cost, bureaucracy and limitations, for example in the areas of environmental conditions, animal welfare standards, restriction in the use of labour and technical controls on the use of machinery or input products, then it is correct that all EU farmers face commensurate rules. Unfortunately we make this judgement largely from our experience that successive UK Governments have introduced or threatened costly legislation which has placed our farmers at a



competitive disadvantage. We see similar gold-plating tendencies from the UK authorities when Member States are given flexibility to implement EU legislation. Some examples of this are included in response to question 8.

**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?**

With regards to the placing of agricultural products onto the market, EC Regulation 1234/2007 "the Common Market Organisation in certain agricultural products" establishes much of the relevant rules. The "single CMO" as it is known, includes rules on marketing standards which relate, in particular, to quality, grading, weight, sizing, packaging, wrapping, storage, transport, presentation, origin and labelling of agricultural products. In the main, these rules are harmonised, meaning that member states have to follow one single rule.

The NFU believes that the CMO regulation has been an effective way of ensuring a fair and transparent functioning of the EU Internal Market for agricultural products. Further EU legislation relating to sanitary and phytosanitary (SPS) rules for example, banning the use of hormones in livestock, rules on the control of salmonella and other specified food-borne zoonotic agents and the marketing of plant protection products have further added to the integrity of the common market.

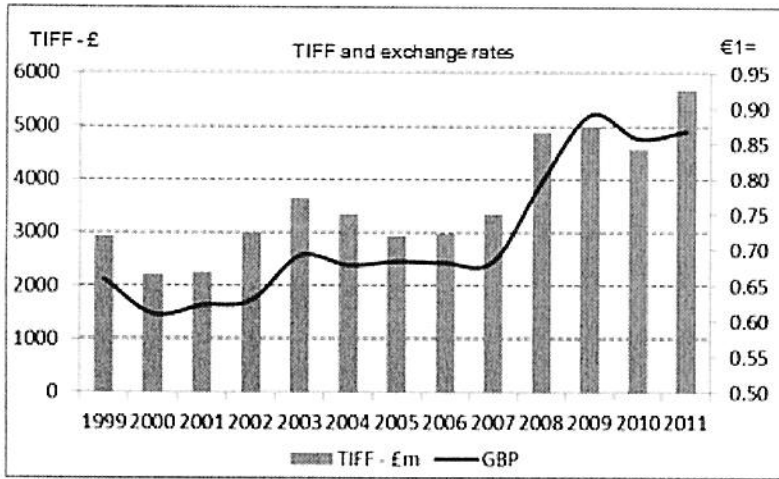
**4. Why is the Internal Market so much deeper in some areas than others? How effective has implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules?**

The Agriculture sector has always held an important position in the founding principles and development of the EU. The creation of the common market in agricultural goods, and the accompanying Common Agricultural Policy was written into the founding Treaty of Rome.

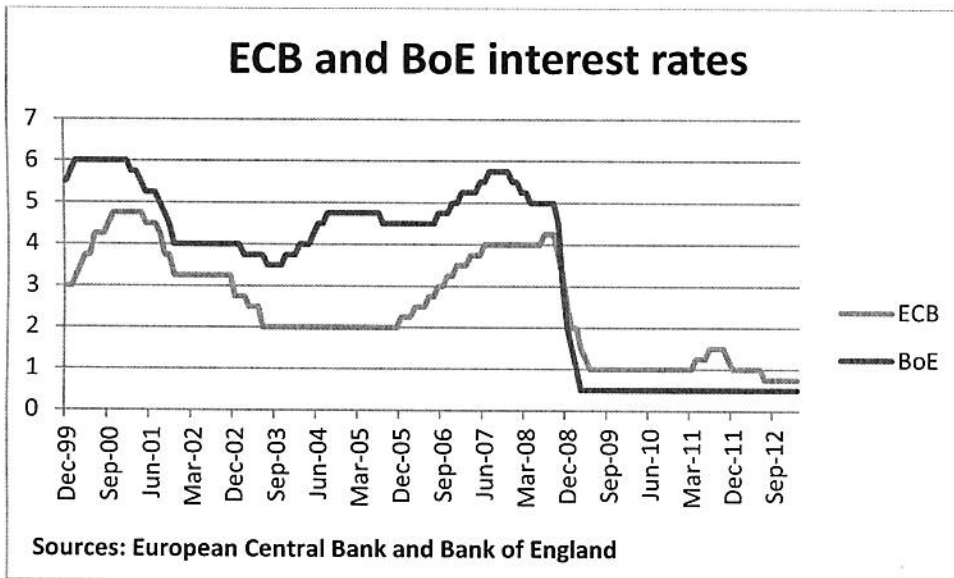
The EU food market is heavily regulated to ensure a safe and reliable supply of food for consumers at reasonable costs. Without the CAP and the internal market rules, individual countries may be more inclined to put in place protectionist measures which may result in food prices increasing for consumers and disruption of supplies.

**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?**

Farmers are acutely aware of the importance of currency movement on their businesses. Agriculture is a heavily traded sector and EU payments are established in Euros therefore currency exchange rates between member states has a big impact on farm incomes. Chart 1 shows the close correlation between the value of sterling against the euro and "total income from farming." Having a system where currency fluctuations impact on the value of payments introduces a risk into the CAP direct payments structure. In essence, a key tool to help farmers manage risk is subject to exchange rate risks itself.



Since the introduction of the euro, interest rates have in the main remained at higher levels in the UK. We make this observation without passing judgement on whether the UK farming industry would be better in or outside of the Eurozone.



**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 involvement in a range of international groupings is undoubtedly a positive for the UK in an international policy context. In regard to the development and operation of the internal market, it is not apparent how membership is either a help or a hindrance.

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

The EU's high agricultural products and food requirements has largely meant that the EU has had access to third countries markets. These standards facilitate EU exports, by contributing to the reputation of EU produce and thus conferring on them a competitive advantage, or by avoiding import bans for reason of non-compliance with the requirements (SPS measures in particular). Some standards, notably environmental and animal welfare standards, are more difficult to valorise outside of

the EU, but we believe are of critical importance in terms of differentiating EU produce in a trading environment where there is increased globalisation of agricultural goods.

**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 NFU has responded to a number of Government and independent inquiries into "red-tape." The full NFU submissions are available on request. We believe that there are many examples of where UK Government requirements place UK farmers at a competitive disadvantage. Several examples are summarised below:

Tether and Sow Stall Ban

In 1999, the UK Government introduced legislation that banned tethers and close-confinement stalls for breeding sows to improve pig welfare. The UK bans were introduced ahead of EU wide bans on tethers in 2006 and sow stalls in 2013, set by Council Directives 91/630/EEC and 2001/88/EC and Commission Directive 2001/93/EC. The UK went from being around 70% self-sufficient in pig meat down to 40%, losing just under half of the UK breeding sow herd.

In 2008, an EFRA committee inquiry found that "there can be no doubt that the early introduction of a ban on stalls and tethers ahead of most of the EU, and without assistance from the Government, placed a heavy financial burden on the industry. Many farmers are still recovering from the capital cost of the outlay necessary to comply with the welfare standards. It appears that the analysis of the cost on businesses likely to be imposed by the animal welfare measures introduced in 1999 significantly underestimated the capital costs to the pig industry. The Government must accept that its decision to introduce welfare legislation many years ahead of most of the EU was a significant factor in driving many farms out of business. The decision has placed English producers at a serious disadvantage to their EU counterparts, as our predecessor the Agriculture Committee predicted in 1999."

Cross Compliance

The Good Agricultural and Environmental conditions within Cross Compliance is another example of where over implementation has occurred. According to independent surveys Defra has implemented 24 required standards to fulfil the common EU requirement to prescribe GAEC – the highest number when compared to other member states. An example of over-implementation relates to the existence of 2m margins next to hedgerows.

The Welfare of Meat Chickens.

This Directive gave member states the option to allow producers to stock up to 42kg/m<sup>2</sup> providing certain high welfare standards can be demonstrated over a sustained period. Defra chose to gold plate the directive and allow English producers only to stock up to 39kg/m<sup>2</sup> meaning that European counterparts, for instance those in the Irish Republic and even within the UK in Northern Ireland will have the potential to get an additional 8% productivity from their farm capital investment.

The Environmental Liability Directive

This Directive allows member states to decide whether to extend the scope of the definition of damage to biodiversity to nationally protected habitats and species (as well as those protected under EU designations). 14 MS, including the UK, extended the scope of their national legislation.

**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 internal market and its rules are firmly established. This facilitates free trade negotiations with potential partners, offering opportunity to UK based producers in third country export markets. With regard to future expansion of the EU, the established internal market rules give clarity to any new

members to help transition, whilst also facilitating trade of existing EU members with any new member states.

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

The National Farmers Union welcomes this opportunity to comment on the balance of competencies review. The NFU represents more than 55,000 farming and growing members and in addition some 40,000 countryside members with an interest in the countryside and rural affairs. Regulation is a key issue for farm businesses who regularly report (see NFU Confidence Survey <http://www.nfuonline.com/Our-work/Economics-and-International/News/Weather-and-costs-cast-cloud-on-confidence/>) that administrative burdens and bureaucracy are stifling their ability to become more productive and competitive. Much of the regulation that impacts on farmers' and growers' businesses stems from policy and legislation set in Brussels, so this review is an important opportunity to re-establish clear boundaries between domestic and EU competency.

The Government's review should recognise that farmers and growers operate in a single market with the principles of equal access at its heart. This is especially important for primary food producers as the European single market in food is the bedrock of the European Union. There is a persuasive logic to establishing common rules that remove barriers to the free movement of goods and services within this single market and facilitate fair competition. However these common rules should apply the principles of better regulation.

The NFU objective is to ensure that the right framework is in place to allow our members' businesses to grow and remain competitive; thereby ensuring that UK farmers can continue to make a meaningful contribution towards addressing the global challenges that society face.

For this to happen, we firstly believe that the operating conditions under which our members operates must be fair. Whilst we operate on the EU common market, we seek a common, level playing field where UK farmers are able to compete on an equal footing with our European competitors, respond to market signals and increase farm competitiveness in a sustainable way. As a result of successive reforms of the CAP, the EU's internal market in agricultural products is increasingly aligned with the global market. We support this direction of travel and ultimately we seek actions and outcomes that ensure UK farmers are able to compete on global markets.

The following principles of commonality, simplification, market orientation and enhanced competitiveness guides NFU policy. To this end we firmly support

- Commonality /fairness
  - Equitable rules applied in a way which allows the market to operate on a fair and transparent basis.
  - Timely enforcement of EU legislation with meaningful infraction powers, including exclusion from operating on the EU common market, for those who fail to take the necessary agreed actions.
  - On-going assessment of the functioning of the common market to ensure that distortions in competition are not able to prevail as a result of differences in member state enforcement of agreed EU law
- Simplification / effectiveness and relevance
  - Science based rules that provide minimum levels of entry onto the market and are implemented in a way across the EU to prevent competitive disadvantage to any operators on the common market.
  - Periodic review of EU rules to ensure that legislation is kept abreast of scientific change and changes in market behaviour.
- Market orientations



- Our preference is for the continued harmonisation of powers relating to the production and sale of agricultural products, including food safety requirements, marketing standards and labelling requirements.
- Accompany these, we support the continuation of market driven, voluntary approaches that go beyond minimum levels, allowing competitive gain for those willing to guarantee higher minimum standards
- Increased competitiveness
  - We believe that environmental, animal welfare and social rules, where deemed necessary for the functioning of the common market, should be agreed at a European level with the flexibility to adapt to local conditions.
  - What is critically important to us is that there are safeguards to ensure that these rules are implemented in an equitable way by all participants on the common market to ensure no distortions in competition can prevail.

**Next plc**

## Market integration and the internal market

- Access to the internal market is important to the Next business.
- Harmonisation of regulation across the EU (in certain defined areas only) is necessary for the internal market to function effectively.
- Whilst Next may not agree with the detail and manner of implementation of some of the regulation derived from the EU (which can be both burdensome and expensive to comply with) we need to balance this against the benefit to Next of having a single set of rules which apply across the EU.
- Harmonisation in the appropriate areas and set at the right level can be effective in preventing standards from being used as trade barriers but all too often the standards adopted by the EU are set at too high a level.
- For example the Privacy & Electronic Communications Regulations were adopted as part of an EU Directive to regulate future use of cookies on websites. There are different interpretations of what these regulations require but when the Information Commissioners Office amended their website to reflect their view of the regulations (by adopting an “opt in” for all web users to the use of cookies) traffic to the website dropped by 90%.
- Another example is the REACH regulations adopted to map the use of chemicals in the EU, assess their harm and minimise any associated risks. Obligations have been imposed not only on manufacturers of such chemicals but also importers / distributors to report on chemicals in consumer products. This has involved Next in joining a SIEF (Substance Information Exchange) and creating a dossier of all relevant safety data on each individual substance. This exercise is both costly and unduly burdensome taking into account the nature and volumes of the products concerned (such as cosmetics and candles).
- However there are a number of areas in which the EU has harmonised regulation across the EU (such as for example energy employment and social policy) where such harmonisation is not in Next’s view necessary for the internal market to function efficiently. Some of the regulations in these areas has no direct impact on the Next business but others do and in Next’s view constitute an unnecessary cost and barrier to business across the EU.
- Next have carried out a review of the impact of regulation derived from the EU upon the Next business in order to analyse the benefits and burdens of such regulation and assess in which

areas it is necessary for the EU to issue regulations in order for the internal market to work effectively and in which it is not.

- We attach a spreadsheet listing the various competences of the EU. We have marked against each area of competence the extent to which Next believes it is necessary for the EU to have the ability to impose legally binding regulation in this area upon member states for the internal market to function effectively in accordance with the below index.

Symbol	Meaning
✓	The EU should have ability to regulate
✗	The EU should not have the ability to regulate
✗	The EU should not have the ability to regulate and such regulation that has been imposed constitutes the greatest burden on business
✓ and ✗	The EU should only have the ability to regulate but only in certain limited circumstances
?	Next is not in a position to comment

## EU COMPETENCES

Exclusive competence	Shared competence	Competence to support, coordinate or supplement actions of the member states	Competence to provide arrangements within which EU member states must coordinate policy
<p><u>customs union</u> – ✓ It makes sense for the EU to negotiate customs arrangements as a block with other nations who are not members of the EU. However certain customs duties imposed by the EU can sometimes be used for protectionist purposes (e.g. duty on porcelain) reducing business efficiency.</p>	<p><u>internal market</u> – ✓ Next benefits from the free movement of goods services and money within the EU.</p> <p><u>social policy</u> – ✗ Regulation in this area is not required for the efficient working of the internal market and imposes a significant administrative and</p>	<p><u>industry</u> – ✗ Regulation in this area not required for the internal market. If industrial policy is used to subsidise it serves to impose an equal and opposite burden on tax payers.</p> <p><u>culture</u> – ✗ Regulation in this area is not required for the internal market.</p>	<p><u>economic policy</u> - ✗ Regulation in this area is not required for the internal market.</p> <p><u>employment</u> – ✗ Regulation in this area is not required for the internal market and creates a significant administrative and financial burden on business.</p>



Exclusive competence	Shared competence	Competence to support, coordinate or supplement actions of the member states	Competence to provide arrangements within which EU member states must coordinate policy
<p><u>competition rules</u> – ✓ All businesses within the EU should observe the same competition rules to ensure a level playing field.</p> <p><u>monetary policy for euro members</u> – ✓ For those member states within the Euro only.</p> <p><u>common fisheries policy</u> – ? Not in a position to comment.</p> <p><u>common commercial policy</u> – ✓ Again it makes sense for the EU to negotiate trade agreements as a block with other nations who are not members of the EU.</p>	<p>financial burden on business.</p> <p><u>economic, social and territorial cohesion</u> – ✗ Regulation in this area is not required for the internal market. This is an unjustified cost to the UK and therefore business.</p> <p><u>agriculture and fisheries</u> – ✗ The Common Agricultural Policy artificially inflates the price of food reducing business efficiency.</p> <p><u>environment</u> – ✓ and ✗ Generally regulation in this area is not required for the efficient working of the internal market where it applies to a physical element of protection of endangered species, habitats and the use of natural resources. However harmonisation of product and safety standards to ensure product performance and safety across the EU is a benefit to business if implemented correctly.</p> <p><u>consumer protection</u> – ✓ Creates consumer confidence in cross border transactions and helps to ensure a level playing field across the EU.</p> <p><u>transport</u> – ✓ and ✗ Only to the extent necessary to facilitate free movement of goods within the EU which Next benefits from as an</p>	<p><u>tourism</u> – ✗ Regulation in this area is not required for the internal market.</p> <p><u>education, vocational training, youth and sport</u> – ✗ Regulation in this area is not required for the internal market.</p> <p><u>civil protection</u> – ✗ Regulation in this area is not required for the internal market.</p>	<p><u>social policies</u> – ✗ Regulation in this area is not required for the internal market and creates a significant administrative and financial burden on business.</p>

Exclusive competence	Shared competence	Competence to support, coordinate or supplement actions of the member states	Competence to provide arrangements within which EU member states must coordinate policy
	<p>international business ( for example common licences for hauliers). However efforts to use transport to promote the green agenda are not required for the operation of the internal market.</p> <p><u>trans-European networks</u> – ✓ and ✗ See comments on transport above.</p> <p><u>energy</u> – ✗ Regulation in this area to promote the green agenda is not required for the internal market and creates a significant administrative and financial burden on business.</p> <p><u>area of freedom, security and justice</u> – ✗ Regulation in this area is not required for the internal market.</p> <p><u>public health matters</u> ✗ Regulation in this area is not required for the internal market.</p> <p><u>research, technological development and space</u> – ✗ Regulation in this area is not required for the internal market.</p> <p><u>development cooperation and humanitarian aid</u> – ✗ Regulation in this area is not required for the internal market</p>		

# Open Europe

# Open Europe submission to the UK Government's Balance of Competences Review: Single Market synopsis

February 2013

## Introduction

In the 2012 report, *Trading Places*,<sup>1</sup> Open Europe concluded that, at present, membership of the European Union's Single Market and the EU's customs union still represents a greater benefit to the UK compared with the alternatives: membership of the European Economic Area, a Swiss-style free trade agreement, a Turkish-style customs union or simply falling back on the World Trading Organisation (WTO).

However, at the same time, the EU faces existential question marks regarding its future. At the heart of this debate lies the fundamental question: what should be the common cause or principle that binds its member states together? The two obvious candidates are the Single Currency and the Single Market. For the United Kingdom, which is not going to join the euro, it is vital to make the case for the Single Market. The alternative potentially means being 'not in the euro but run by the euro.'

Restating the primacy of the Single Market need not necessarily preclude greater eurozone integration but it does require formal recognition that those outside the Single Currency should enjoy strong, enforceable minority rights in EU decision making in matters affecting the Single Market. However, in order to champion the Single Market as the core of EU cooperation, the UK needs to be clear about what principles it should apply, what the limits of EU market integration are, and the trade-offs between the potential economic benefits from integration and the limits to national flexibility and national democratic preferences.

## Call for evidence questions:

- 1. *What are the essential elements of a Single Market and against what criteria should we judge its economic benefits? How deep does it need to be to be effective?***

It would be naive to assume the Single Market is simply an economic project but, from an economic point of view, **the 'four freedoms' (free movement of goods, services, capital and labour) are the essential elements of the Single Market, with EU competition law and state aid rules a necessary requirement to 'police' them.**

The criteria by which we should judge the success of the Single Market and the criteria by which we judge the benefits of the Single Market to the UK are not necessarily the same, although they will overlap. From an economic and trade perspective, the criteria that we should use to judge the success of the Single Market should focus on the following questions:

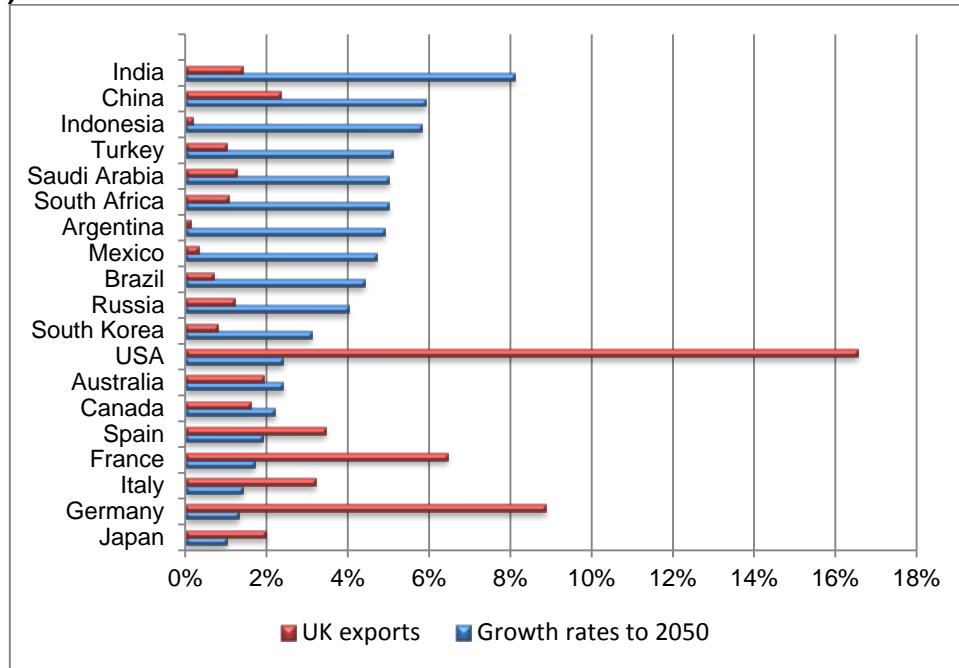
- **Does the Single Market make it easier to do business in/across the EU?**
- **Has the volume of trade increased (both intra and extra EU)?**
- **Have flows of FDI increased (without being artificially diverted)?**

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<sup>1</sup> *Open Europe*, 'Trading Places: Is EU membership still the best option for UK trade?', 2012; <http://www.openeurope.org.uk/Content/Documents/Pdfs/2012EUTrade.pdf>

While improving performance in these fields should be the aim of the Single Market, the UK's interests are most advanced by a liberalised *global* trading environment. In terms of export share, the UK exports upwards of 40% of its goods to the EU but less than 40% of its services to the EU. It is in the UK's interests to improve its export performance in emerging markets and areas of the world that are likely to experience greater growth over the medium to long-term.

**Graph 1: Growth rates to 2050 of the UK's current export markets (goods and services)**



Source: PwC<sup>2</sup> and ONS

It is therefore essential that the UK also measures the success of the Single Market against the following additional criteria:

- **How do the terms of access to the Single Market affect the UK's global competitiveness?**

The success of the Single Market in terms of increasing intra-EU trade should be looked at in conjunction with its effects on the UK's overall competitiveness and trade opportunities outside the EU (i.e. the degree to which the Single Market is trade creating versus trade diverting). For example, the trade distortions brought about by the EU's Common Agricultural Policy (CAP) where high tariffs lead to an artificial preference towards intra-EU trade.

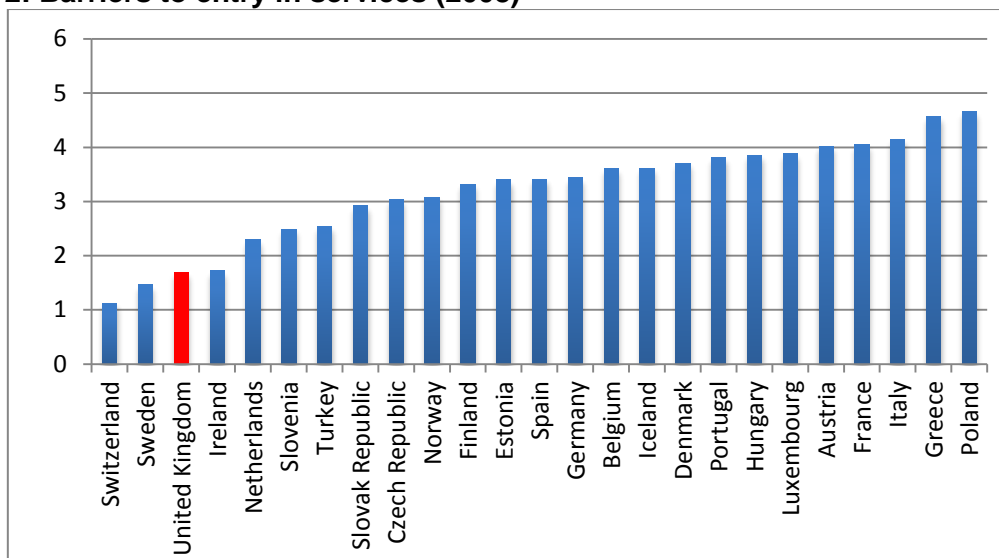
Positive effects such as improved competitiveness can be brought about by increased competition within the Single Market and from the potential ability of the EU to broker favourable free trade deals with other states. However, the combined aggregate interests of its members are not necessarily the same as the UK's.

Theoretically, a much greater level of harmonisation within the Single Market could make it easier for businesses to establish themselves in other member states, reduce barriers and increase trade within the EU. In some sectors, such as finance, other business services and digital services, the UK has some of the most competitive firms and most liberalised

<sup>2</sup> PwC, 'The World in 2050' (2011), <http://www.pwc.com/gx/en/world-2050/the-accelerating-shift-of-global-economic-power.jhtml>

business environment in the EU. It is therefore particularly important that EU market integration does not come at the expense of these industries' global competitiveness.

**Graph 2: Barriers to entry in services (2008)**



Source: OECD<sup>3</sup>

It is also increasingly clear that the costs or benefits of the Single Market to the UK are not static. Their value depends both on current EU policies and future political and economic circumstances – the aftermath of the immediate eurozone crisis is one such factor and the long-term solutions to address (or not) the eurozone's structural flaws are another.

In the 2011 report, *Continental Shift*,<sup>4</sup> Open Europe noted that, in the 1990s and 2000s, the benefits to the UK of EU financial regulation rested on two premises. Firstly, while EU-wide financial rules often increased compliance costs for firms in Britain, they generally allowed the UK to influence regulation across Europe in line with its thinking, reducing barriers to trade and creating opportunities for UK-based firms. Secondly, London was and is seen as an entry point to the EU's Single Market in financial services – a market which experienced significant growth in the 2000s as financial services developed rapidly.

However, as a result of the financial and eurozone crisis, the UK risks losing influence over the shape and thrust of new EU financial regulation, which is increasingly designed with the eurozone crisis in mind, reinforced by EU voting rules which under-represent Britain relative to the size of its finance industry. Equally importantly, over the next decade, growth opportunities for financial services within the EU are likely to be more limited than elsewhere in the world.

- **Does the EU's 'weight' in global trade talks benefit the UK's global non-EU trade?**

Similarly, the EU's Common Commercial Policy and exclusive competence to negotiate trade deals has a huge impact on the UK. The benefits of EU negotiating clout have to be balanced against the potential for 'lowest common denominator' deals and compromises. For example, in the case of EU free trade agreement negotiations with Singapore, the UK's

<sup>3</sup> Indicators range from 0 to 6, with 6 the most restrictive. OECD, 'Indicators of Product Market Regulation', Barriers to entrepreneurship, low-level indicators, 2011;

[http://www.oecd.org/document/36/0,3746,en\\_2649\\_34833\\_35790244\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/36/0,3746,en_2649_34833_35790244_1_1_1_1,00.html)

<sup>4</sup> Open Europe, 'Continental shift: safeguarding the UK's financial trade in a changing Europe', 2011: <http://www.openeurope.org.uk/Content/Documents/Pdfs/continentalshift.pdf>

priorities in financial services had to compete with the protection of geographical indicators for products such as Champagne and Parma ham. In addition, the reluctance to liberalise services within the Single Market means the EU risks punching below its weight in global talks on services, which could be to the detriment of UK interests.

In summary, **the UK needs to carefully balance the potential benefits of EU market integration against the impact this will have on the UK's global competitiveness** (positive and negative), recognising that **the assumptions of the past may no longer hold in an EU responding to the issues raised by the eurozone crisis.**

In addition, it should be noted that trade is only one part of the equation when it comes to assessing the costs and benefits of EU membership and the Single Market. Failure to make progress on EU services liberalisation will weigh more heavily if the real and perceived costs of the Common Agricultural Policy, Common Fisheries Policy, EU-wide regional funding, the budget and burdensome regulation cannot be reduced through reform. An honest assessment of the value of UK geopolitical influence within the EU, via its ability to influence not simply trade but also foreign policy and enlargement, must also form the basis of the calculation.

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

As we note above, the Single Market is not simply an economic project and its development owes much to a series of political negotiations dating back several decades. **The history of the Single Market shows that far from being a single policy designed around the economics of free trade, some policy areas now included within it predate the Single European Act (SEA), while others have since been added.** In addition those policies that we might not necessarily associate with the 'Single Market', such as climate change policies for example, can nevertheless have a major impact on businesses operating within the EU. **Social and employment law is not necessary for the operation of the Single Market nor is EU-level action in this area desirable in its own right,** as it limits national flexibility and often encroaches on national democratic preferences.

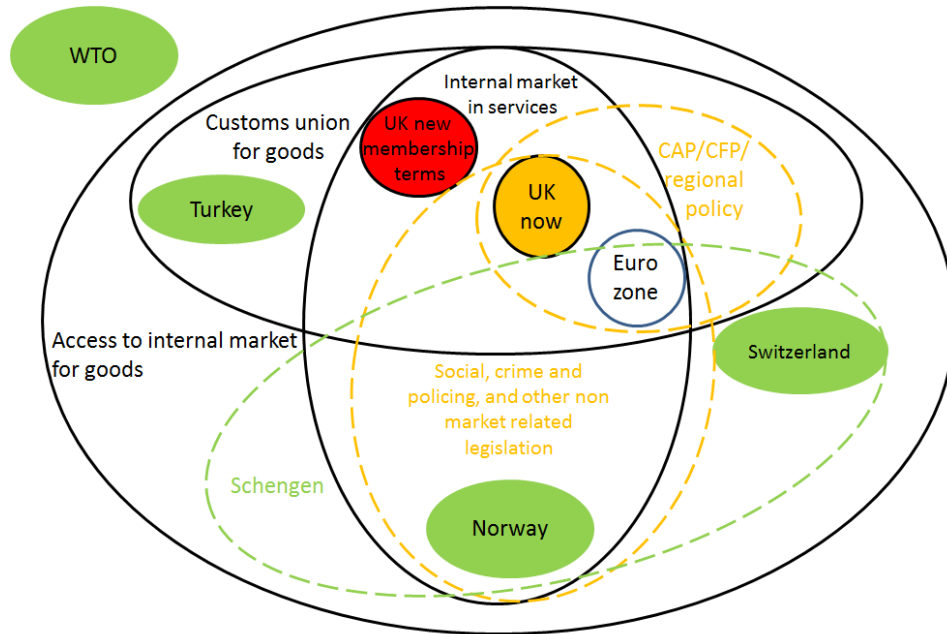
When Lord Cockfield presented his 1985 white paper "Completing the Single Market" he concentrated on specific technical and fiscal barriers to the free movement of goods, services and capital. Free movement of workers was not included because it already existed, as it had done when the UK joined. Environment policy was to some extent already present prior to the SEA and others, such as social and employment legislation, came after the SEA was created by a mixture of political decisions and case law driven by the European Court of Justice.

In *Trading Places*, Open Europe produced an illustrative model, reproduced below, of a more flexible model of EU cooperation, where the UK remains part of three circles: the customs union for goods, access to internal market for goods and access to the internal market for services.

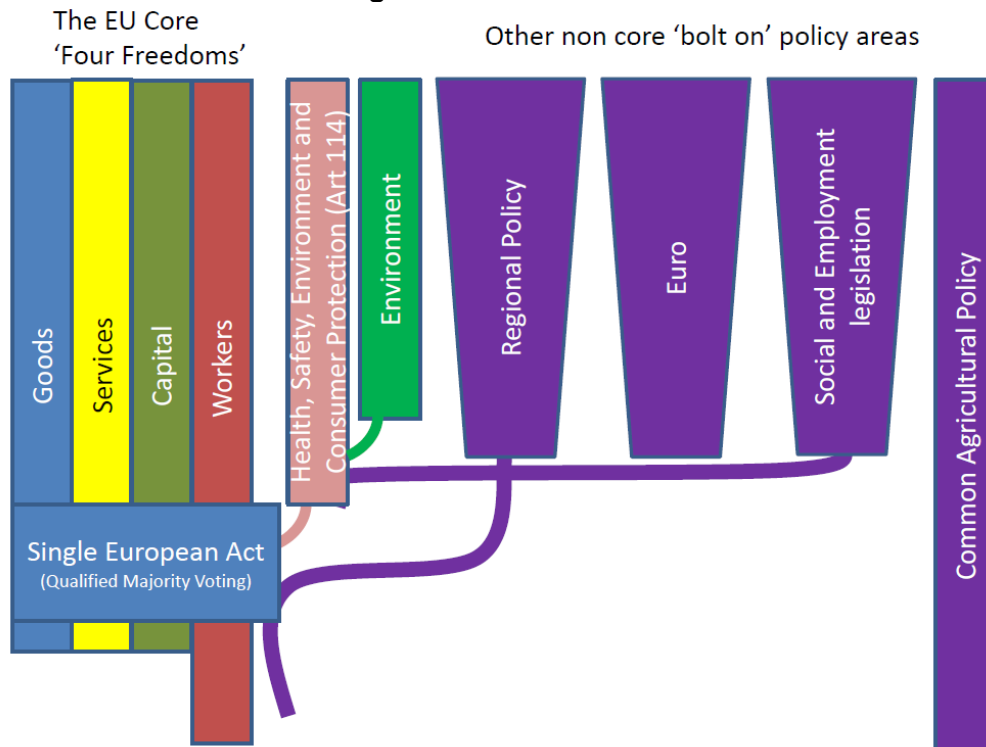
**There would continue to be some overlap between the 'four freedoms' and some other policy areas.** For example, **some common environmental standards can help to remove barriers to trade** (e.g. common emissions standards for cars). **Other aspects of environmental legislation to cooperate on cross-border issues would also be desirable, but in their own right rather than as a function of the Single Market.** In addition, it is conceivable that the UK may wish to retain its opt-in arrangement in justice and home affairs and participate in a far better targeted and modernised EU budget.

In other areas, such as social and employment policy, the EU's competence is exercised in an arbitrary manner and the justification for EU action has often been political rather than economic. This is an area where the UK and other member states could seek to return regulatory powers to national parliaments. Alternatively, in eurozone states there could be arguments for greater coordination in this field.

**Figure A: A new model for the UK: Within the EU customs union and at the heart of the Single Market?**



**Figure B: The evolution of the Single Market**





### Social and employment legislation was not part of the SEA

While it is often argued that acceptance of EU social and employment regulation is the 'political price' for UK access to the Single Market, history tells us that there was in fact no political deal that made UK access to the Single Market dependent on acceptance of EU social and employment law. This policy area developed well after the SEA was introduced.

1985: European Commission white paper for creating the Single Market did not include proposals for EU social and employment legislation.

1986: EU adopts the SEA. It introduced majority voting in the Council of Ministers for matters relating to the Single Market.

1992: Maastricht Treaty – Social Chapter attached as a protocol not binding on the UK.

1996: UK loses appeal against the introduction of the Working Time Directive under a health and safety article.

1997: Amsterdam Treaty incorporates the "Social Chapter" without a UK opt-out.

### The free movement of workers predated the Single Market.

Although now one of the 'four freedoms' the freedom of movement for workers actually predated the removal of internal tariffs and so has not always been seen as a necessary compliment to the free movement of goods, services and capital.

1951: The Treaty of Paris established the European Coal and Steel Community and established a right to free movement for workers limited to those industries.

1957: Treaty of Rome provided a right for the free movement of workers within the European Economic Community, which has since been developed by ECJ case law and secondary legislation.

1968: Internal tariffs were removed.

### Schengen

The UK, along with Ireland, is not a part of the Schengen free travel agreement and some states not within the EU (i.e. Norway and Switzerland) are within Schengen. Some argue that Schengen is an integral part of the free movement of workers and thus the Single Market.<sup>5</sup> Others argue that a single Schengen visa is vital part to creating an integrated tourism industry within the EU. However, these arguments do not take into account the UK and Ireland's decision not to join the Schengen system.<sup>6</sup> The Schengen system postdates the EU, grew up outside the EU and is not an integral part of the 'four freedoms'.

1985 Schengen agreement signed as a non-EU intergovernmental agreement.

1997: Amsterdam Treaty incorporated Schengen with a UK and Irish opt-out.

### Environment policy: a standalone policy searching for a legal base

Although some original measures that improved environmental protection also removed barriers to trade<sup>7</sup>, environmental policy, and increasingly climate change policy, has since emerged as a political priority of the EU, separate to that of the Single Market.<sup>8</sup>

<sup>5</sup> For instance Home affairs Commissioner Cecilia Malmström has written that Schengen free movement is "central to the success of the Single Market", <http://blogs.ec.europa.eu/malmstrom/schengen-turning-26-today/>

<sup>6</sup> Cyprus, Romania and Bulgaria are yet to join but are not specifically exempted.

<sup>7</sup> Some measures aimed at removing barriers to trade also removed environmental measures – such as the Danish bottle recycling legislation.

<sup>8</sup> Under WTO rules the tension between environmental protection and free trade has been dealt with via jurisprudence: [http://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_rules\\_intro\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/envt_rules_intro_e.htm)

1969: The Council Resolution of 28 May 1969 on the adaptation to technical progress of the Directives for the elimination of technical barriers to trade was used to the removal some environmental related barriers to trade such as those on vehicle emissions and biodegradable detergents.

1972: European Summit decides to establish an EC environmental policy. However, in the absence of a clear legal basis other treaty articles were used including the Flexibility Article (now art 308).

1986: SEA includes a reference to the environment.

1997: The Amsterdam Treaty introduced environmental requirements into other policy areas via the creation of sustainable development as an objective of the EU (now Article 3 TEU).<sup>9</sup>

### *Is the CAP still an intrinsic part of the Single Market?*

The Common Agricultural Policy came into existence because EU leaders decided that in building a common market, intra-EEC tariffs on agricultural products would have to be removed making the elimination or harmonisation of subsidies necessary. As the removal of subsidies was politically impossible, a common agricultural policy was created. Today reforms of the CAP have left the EU with a system of 'de-coupled' agricultural subsidies where payments to land owners are (in theory at least) unconnected to production. As a result there are no compelling economic reasons to continue the subsidy element of the CAP.

1957: Six countries sign the Treaty of Rome, creating the European Economic Community (EEC, later the European Union) with its "common market".

1962: Three major principles of the CAP are created: market unity, community preference and financial solidarity.

1968: The EEC eliminates all quotas and internal "tariffs".

2003: Decoupling of the majority of CAP subsidies from production.

### *EU Structural Funds were a side deal to buy support for economic liberalisation, especially among new, least developed member states*

It was widely believed among the less developed regions and states as well as the accession states that market liberalisation would create short term disruptions to their economies. There was an agreement that help would be needed – essentially a side-payment in return for political support for economic liberalisation under the Single Market programme, especially among the Southern nations.<sup>10</sup>

However, rather than acting as a transitional funding stream to help poorer EU nations catch up, the EU's regional policy has become an economically irrational recycling exercise with every member state receiving some funds irrespective of whether they are net contributors or net recipients.

Open Europe argued in its 2012 report, *Off Target*, that limiting the funds to EU member states with income levels at 90% or below the EU average would continue to help the poorest member states but allow the funds to be better targeted and remove transfers between the EU's richer member states.<sup>11</sup>

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<sup>9</sup> European Commission, Strategy for integrating the environment into the single market ';

[http://europa.eu/legislation\\_summaries/environment/sustainable\\_development/128090\\_en.htm](http://europa.eu/legislation_summaries/environment/sustainable_development/128090_en.htm)

<sup>10</sup> See Moravcsik, A., 'Negotiating the Single European Act: national interests and conventional statecraft in the European Community', *International Organisation*, Vol. 45, 1, Winter 1991

<sup>11</sup> *Open Europe*, 'Off target: the case for bringing regional policy back home', 2012; <http://www.openeurope.org.uk/Content/Documents/Pdfs/2012EUstructuralfunds.pdf>

1958: Establishment of the European Social Fund (ESF).  
1975: European Regional Development Fund established.  
1981: Greek accession.  
1985: Intergovernmental conference agrees European funding for less developed regions in return for market liberalisation. It was justified by the Commission because it argued "Some may even be harmed by it [liberalisation] - at least in the short term." A measure of "redistribution" including the use of "Community's structural funds, the EIB and other financial instruments which the Council could decide to create" was agreed.<sup>12</sup>  
1986: Spain and Portugal join.  
1992: Maastricht treaty established economic and monetary union, with a UK and Danish opt-out.  
1994: The creation of the Cohesion Fund, designed to encourage economic convergence between member states.<sup>13</sup>  
2004 & 2007: Enlargement to central and eastern Europe.

### ***3. What future challenges/opportunities might we face in the Single Market and what impact might these have on the national interest?***

The dynamics of the Single Market are shifting, as a result of the recent direction of travel in the eurozone and the growing economic and political pressure for much greater eurozone integration in the future.

This is likely to alter the historical dynamic of EU integration, which previously envisaged all the member states travelling in one direction at different speeds. **If the EU is to continue to benefit the UK and other like-minded member states, this dynamic will need to be replaced with a more flexible EU-wide approach, potentially whereby different principles of integration could be applied to euro and non-euro countries.**

**The shared goals of increased trade, growth and competitiveness are best served by the essential elements of the Single Market (i.e. the four freedoms), but in other areas, as before, there are likely to be different arrangements driven by the different political and economic needs of different groups of member states.**

Some policy areas, such as environment and climate policy, lend themselves to an EU-wide approach involving all 27 member states. There are questions as to whether the balance of competence might be altered in favour of greater national flexibility, for example, within targets agreed at the EU level, but the continuation of environmental standards that remove trade barriers is likely to be desirable as this helps the functioning of the Single Market.

In other policy areas, there is a growing case for greater differentiation between those countries which share the Single Currency and seeking closer integration, and those who do not. For example:

#### *Financial services*

**Financial services is the area where the case for formal recognition of the differences between euro-ins and euro-outs is currently strongest.** The burgeoning eurozone banking union has already set down the crucial precedent of a 'double majority', with the current proposals requiring a majority of eurozone and non-eurozone countries to pass decisions in the European Banking Authority.

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<sup>12</sup> European Commission press release 1985 intergovernmental conference: <http://aei.pitt.edu/2926/>

<sup>13</sup> [http://europa.eu/legislation\\_summaries/regional\\_policy/provisions\\_and\\_instruments/l60018\\_en.htm](http://europa.eu/legislation_summaries/regional_policy/provisions_and_instruments/l60018_en.htm)

If the banking union is completed, adding financial backstops to the supervisory role being conferred on the ECB, the current logic of EU regulation and supervision in this area will make less sense for those not involved including the UK, Sweden, Denmark and others. The principle will be that countries within the eurozone have common liabilities for each other's financial systems, and therefore common macro-prudential regulation and supervision is required. However, outside the banking union, the assumption will be that the UK would stand behind its own financial sector. So, beyond an EU role for implementing minimum regulatory standards, on capital requirements for example, which are agreed globally via forums such as Basel and the G20, **there is a strong argument for returning some macro-prudential and supervisory responsibility to the UK authorities and securing safeguards for the Single Market against potential discrimination driven by a eurozone caucus.** There is scope for an EU-level role in dealing with cross-border banks and crisis situations.

### Social and employment law

In the context of 'ever closer union' or greater economic and fiscal integration in the eurozone, it may make sense for there to be closer coordination of labour market policies within the currency union. In that context, European level social and employment law could be seen by some as work in progress because its coverage is rather patchy and arbitrary – while working hours and other workers' rights are regulated at the EU level, wage policies are set at the national level.

As the timeline above shows, EU-level social and employment law was not introduced as an equal counterpart to the removal of trade barriers in the Single Market. EU policy in this area has developed in an ad hoc fashion and largely at a time (the 1990s and 2000s) when it was assumed all member states were heading towards a common destination/degree of integration.

For countries like the UK which do not plan to join the Single Currency, **the argument for social and employment regulation at the EU level is not based on economics but on a political dynamic – the pursuit of ever closer (economic) integration – that arguably no longer applies in the same way as it does to countries who share a Single Currency.**

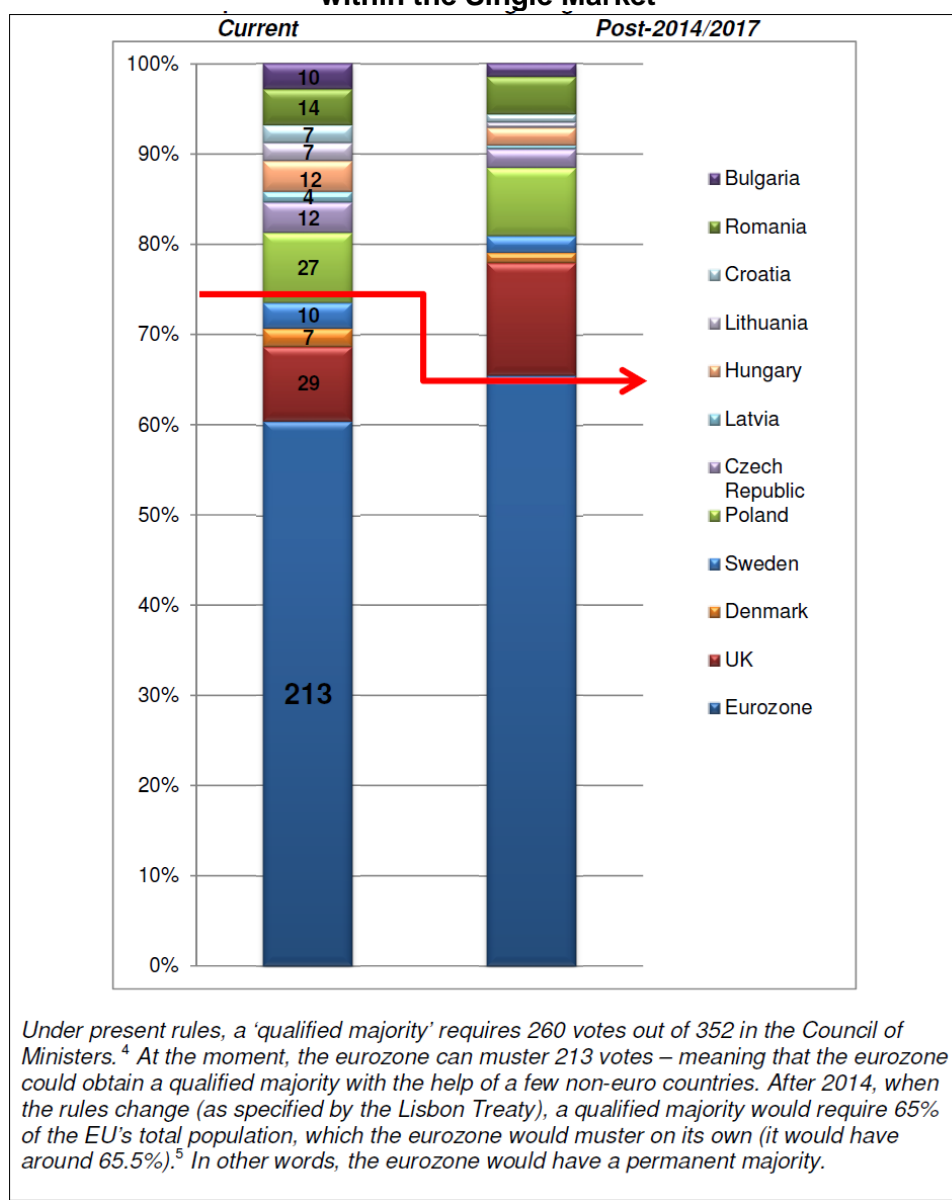
From a democratic perspective, social and employment laws are best decided at the national (or even regional level) as this allows them to respond better to local preferences and the needs of the local labour market.

### Future threats

EU states such as the UK that value open markets must continue to be vigilant of potential protectionist measures creeping in at the EU level as well as attempts to fragment the market. For example:

- **Eurozone caucusing:** Moves towards eurozone banking and fiscal union create the potential for a damaging split within the Single Market. With the voting rules agreed in the Lisbon Treaty coming in after 2014/17, the eurozone will have a qualified majority of the votes within the European Council. This creates a danger that decisions that affect all 27/8 EU states will be decided by an inbuilt eurozone majority.

**Figure C: How the eurozone's voting weights leads to the danger of discrimination within the Single Market**



Source: Open Europe, Safeguarding the Single Market (2012)

The eurozone will in future have much a greater incentive to take a common position on banking matters, unlike non-euro countries. To avoid free riding on future potential joint backstops for banks, a much greater degree of regulatory harmonisation within the eurozone may be needed, which could spill over to the single market. The eurozone will want to avoid an 'uneven playing field' in the Single Market.

The threats to the integrity of the Single Market are also illustrated by the ECB's insistence that clearing houses that deal with euro denominated securities should be located within the eurozone.

- **Green protectionism:** One potential threat is what has been labelled 'green protectionism'. This can include measures such as including environmental standards on the import of fuels, for instance the composition of biofuels and the

current attempts to block the import of oil products from Canadian tar sands.<sup>14</sup> Similarly, former French President Nicolas Sarkozy's proposed a 'carbon tax' on imports from China and other lower cost producers.<sup>15</sup> It is entirely possible that the economic crisis within the eurozone could lead to protectionist minded politicians and governments to call for the exportation of the EU's environmental costs via protectionism.

- **Proposals for a “Buy European Act”:** Another potential threat has appeared in the form of calls for a 'Buy European Act'. This led to a European Commission proposal to change EU public procurement rules, which is currently being discussed.<sup>16</sup> The current proposal would allow the European Commission to block non-EU countries' access to the EU's large state procurement sector unless there was 'reciprocity'. Proposals of this type are likely to lead to retaliatory, protectionist measures harmful to the EU's external trade. Interestingly, in this case, the proposal is also contrary to the opinion of the Impact Assessment Board.<sup>17</sup>

#### **4. How have the EU's mechanisms for delivering a Single Market worked? In particular, what do you believe is the right balance between harmonisation and mutual recognition?**

Mutual recognition, or what is sometimes referred to as 'judicial' mutual recognition<sup>18</sup>, both facilitates free movement of goods and services and grants member states regulatory discretion, as long as the objectives of the regulation are 'equivalent'.<sup>19</sup>

**The benefit of mutual recognition is that it facilitates the free movement of goods or services without adding extra regulation or requiring greater centralisation of regulatory power. It can also act as a break on member states' overregulation,** since their rules cannot stop intra-EU imports originating from other member states with more competitive rules, as long as the objectives are equivalent.

The 1979 European Court of Justice (ECJ) Cassis de Dijon case established the principle of judicial 'mutual recognition'. It established that a member state should allow a lawfully produced product marketed in another member state into its own market unless prohibition was justified by mandatory requirements, such as health and safety protection.

The benefits of mutual recognition over harmonisation:

- **Less regulation:** Harmonisation can create additional EU level regulation where national laws are already in place and the objectives of the laws are the same. Using mutual recognition as the primary tool allows for the use of existing regulation and avoids expensive creation of and adaption to new laws. It would also allow for downward pressure on regulation as a state that over-regulates will place its domestic companies at a competitive disadvantage vis-a-vis their competitors.

<sup>14</sup> ECIPE's Fredrik Erikson, 14 March 2012, 'Green protectionism' and Europe's coming trade wars', <http://www.publicserviceeurope.com/article/1641/green-protectionism-and-europes-coming-trade-wars>  
<sup>15</sup> FT, 27 November 2007, <http://www.ft.com/cms/s/0/7be2dd4e-9cb9-11dc-af03-0000779fd2ac.html>

<sup>16</sup> BBC, 2 May 2012, <http://www.bbc.co.uk/news/business-17811579>

<sup>17</sup> EC Proposal for a regulation establishing rules on the access of third-country goods and services to the European Union's internal market in public procurement, [http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/international\\_access/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/international_access/index_en.htm) ; EC impact assessment, [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2012/sec\\_2012\\_0191\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2012/sec_2012_0191_en.pdf)

<sup>18</sup> See Jacques Pelkmans, *College of Europe*, 'Mutual recognition: economic and regulator logic in goods and services (2012); [www.coleurope.eu/sites/default/files/research-paper/beer24.pdf](http://www.coleurope.eu/sites/default/files/research-paper/beer24.pdf)

<sup>19</sup> Often similar to the high levels of regulation deemed appropriate for Safety, Health, Environment & Consumer protection under Art 114.



- **Allows regulatory competition:** Mutual recognition allows for competition between states in order to create the best regulatory environment. This pro-competitive approach is superior to a rigid harmonised regulatory framework, allowing consumers and investors rather than civil servants to decide which member state's regulatory environment is preferable.<sup>20</sup>
- **Less ability for vested interests to push for over-regulation:** The propensity to over-regulate for vested interests is constrained under mutual recognition. In a system of harmonised regulation the ability for a vested interest to lobby for higher cost regulation in order to put up barriers to entry to new entrants can be a real danger. If left at member state level a monopolistic enterprise would find it difficult to influence all 27 states.
- **Flexible focus on objectives rather than legislation.** Under harmonisation of EU regulation there is a danger that a one size fits all regulation can cause problems at a local level where a diversity of situations are the norm. If the 'objectives' of the regulations are harmonised rather than the regulations themselves the application at a national level can be more flexibly applied.

The application of mutual recognition in the manner described above can be applied to both goods as well as tradable services. Harmonisation should be limited to exceptional cases. For mutual recognition to work effectively the Commission and ECJ are necessary, within strict mandates, as an enforcement mechanism.

Article 114(3) of the EU treaties requires the Commission to, as Stephen Wetherill has rightly pointed out, "take as a base a high level of protection" in health, safety, environmental protection and consumer protection. The treaty article is very wide-ranging in that any national measure may be harmonised provided that leads to an improvement in the functioning of the internal market. **Environmental protection, consumer law, public health policy, culture have all acquired a legislative dimension "contributed by the EU in the name of market-making" and "the EU legislature need not seek to disguise the re-regulatory dimension of its harmonisation initiatives".<sup>21</sup> The ECJ is often generous in its interpretation of the scope of the legislative power of harmonisation but mainly because the EU treaty, and the concept of internal market in particular, "simply is broad".<sup>22</sup>**

The concepts of proportionality and subsidiarity are often not respected, and the Lisbon Treaty made no attempt to limit EU action. Wetherill notes that "the idea of a 'hard list' governing competence, setting an exhaustive and tightly-defined agenda for the EU and/or placing areas off-limits the Union and therefore remaining within the exclusive competence of the Member States, was rejected." So too was the idea of equipping national parliaments with a veto, a 'red card' or creating a "court of competence" comprising members drawn from not only the EU but also national judiciaries.<sup>23</sup> **In short, there has been no effective mechanism introduced to deal with issue of EU 'competence creep', particularly with regard to the Commission's power to propose harmonising legislation, and the potential this has to increase costs for business or reduce national flexibility.**

<sup>20</sup> See Jacques Pelkmans, *ENEPRI*, 'Mutual recognition in goods and services' (2003), [www.ceps.be/ceps/download/867](http://www.ceps.be/ceps/download/867)

<sup>21</sup> Weatherill, S., The Limits of Legislative Harmonization Ten Years after *Tobacco Advertising*: How the Court's Case Law has become a "Drafting Guide", *German Law Journal*, 2011, Vol. 12 No. 3, p834

<sup>22</sup> Weatherill, S., The Limits of Legislative Harmonization Ten Years after *Tobacco Advertising*: How the Court's Case Law has become a "Drafting Guide", *German Law Journal*, 2011, Vol. 12 No. 3, p834

<sup>23</sup> Weatherill, S., The Limits of Legislative Harmonization Ten Years after *Tobacco Advertising*: How the Court's Case Law has become a "Drafting Guide", *German Law Journal*, 2011, Vol. 12 No. 3, p851

Meanwhile, the Commission's original proposal on capital requirements, CRDIV, included the worrying concept of 'maximum harmonisation', which would have prevented individual member states from imposing the stricter requirements they might think necessary to ensure financial stability and the health of their financial sectors. This type of harmonisation is extremely problematic in that it severely reduces member state flexibility and can actually hamper the objective of the underlying legislation.

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

While most studies point to an increase in trade and the associated economic benefits of the Single Market<sup>24</sup>, internal EU trade liberalisation is far more developed for goods than for services.

Despite the progress made in goods liberalisation, intra-EU trade for manufacturing goods is around 70% below intra-US states as a percentage of GDP, despite the EU population being much more concentrated.<sup>25</sup> This is probably a reflection of the fact that, as part of a single country, US states have tended to specialise more than EU member states.

On the one hand it illustrates that **the Single Market for goods could be developed further if member states were willing to specialise in sectors where they have a comparative advantage but we should also consider the possibility that the EU will never be as integrated as the US, due to practical issues of language but also cultural and political factors.** For example, Pacchioli found that EU member states have a "home-bias three to four times that of US states", indicating the "degree to which economic agents 'over-prefer' to transact with domestic agents rather than agents from other EU countries."<sup>26</sup>

Progress in services liberalisation has been far slower. While services are a large proportion of the EU economy, they remain a small proportion of EU trade. Services account for over 70% of Europe's output but only account for around 23% and 22% of the EU's internal exports and imports respectively.<sup>27</sup> About 58% of total EU trade in services in 2009 was within the Single Market, a share that has remained more or less stable since 2000. However, services trade within the Single Market grew slower between 2004 and 2008 than exports to third countries.<sup>28</sup>

While the EU has made limited progress in catching up with US GDP per capita, and more progress in catching up in terms of employment, the EU's productivity fell relative to the US' between 2000 and 2010. Much of this productivity gap can be explained by the differing productivity performance of US and EU service industries. In 2012, Mustilli and Pelkmans noted that, "Since 1995, EU productivity growth in services has fallen to a low annual average precisely when that of the US increased sharply... Empirical analysis quickly detected that productivity growth differentials, in just a few services sectors, were the main cause of the trend change."<sup>29</sup>

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<sup>24</sup> For a discussion see *Open Europe*, 'Trading Places: is EU membership still the best option for UK trade?', 2012, p16; <http://www.openeurope.org.uk/Content/Documents/Pdfs/2012EUTrade.pdf>

<sup>25</sup> Ilzkovitz et al, 2007, cited in BIS, 'The economic consequences for the UK and the EU of completing the Single Market', 2011, p3; <http://www.bis.gov.uk/assets/biscore/economics-and-statistics/docs/e/11-517-economic-consequences-of-completing-single-market>

<sup>26</sup> Pacchioli, C., 'Is the EU internal market suffering from an integration deficit? Estimating the 'home-bias effect'', CEPS, 2011

<sup>27</sup> *HM Government*, 'The European Union Single Market – what has been achieved in twenty years?' in 'Twenty years on: The UK and the future of the Single Market', CEPR and *HM Government*, 2012, p1

<sup>28</sup> *World Bank*, 'Golden growth: restoring the lustre of the European economic model', 2012, p104

<sup>29</sup> Mustilli, F. and Pelkmans, J., 'Securing EU growth from services', CEPS, October 2012, p9



This is largely because developing and liberalising trade in services is far more complex than trade in goods, and is contingent on a number of factors, often requiring the movement of people across borders, ease of establishment in another state, and comparable regulation between home and host state to create a level playing field. Many of these factors are inherently 'domestic' and greater liberalisation of services within the EU Single Market has therefore often faced political opposition in many of the member states and in the European Parliament.

In some sector-specific services markets (e.g. freight, rail, gas and electricity, road transport, air traffic control, etc), the notion of a Single Market probably requires a greater strategic and long-run approach to infrastructure investments, which introduces a two-level governance problem i.e. who decides and who pays?

**The EU's approach to the Single Market in services has therefore often bowed to national politics.** Most notably, this led to the removal of the "country of origin principle" (i.e. mutual recognition) from the EU's Services Directive. Although some particularly prohibitive restrictions on cross-border services trade are banned under the Directive, member states are still allowed to impose requirements "where they are justified for reasons of public policy, public security, public health or the protection of the environment..."<sup>30</sup>

Although the Directive largely avoided unnecessary harmonisation, this loophole creates opportunities or excuses for member states to keep barriers in place. At the very least, it creates ambiguity that has to be policed by the European Commission and the European Court of Justice. As a 2012 European Commission report noted, "the Directive left some room to Member States when deciding which existing regulation was incompatible with the provisions of the Directive."<sup>31</sup>

As a result, implementation has been rather patchy across the EU. A 2011 'peer-review' of the Services Directive, whereby Member States challenged each other on the regulatory requirements they had retained despite the Services Directive, reported more than 34,000 requirements still in force.<sup>32</sup> A follow-up report published in June 2012, which focused on the business services, construction, real estate, retail and tourism sectors, detailed the progress made but also found many specific barriers that remain in place.<sup>33</sup>

**Applying the mutual recognition (Country of Origin) principle would avoid such ambiguity and instead create 'regime competition' between member states.** The UK's continued push for services liberalisation should continue but the UK should be wary of attempts to 'harmonise' in this area, as this is only likely to increase costs for UK services firms, a sector where countries outside the EU take a majority of UK exports.

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<sup>30</sup> Article 16(3) of the Directive

<sup>31</sup> *European Commission*, 'The economic impact of the Services Directive: A first assessment following implementation', June 2012, p2;

[http://ec.europa.eu/economy\\_finance/publications/economic\\_paper/2012/pdf/ecp\\_456\\_en.pdf](http://ec.europa.eu/economy_finance/publications/economic_paper/2012/pdf/ecp_456_en.pdf)

<sup>32</sup> *European Commission*, 'On the process of mutual evaluation of the Services Directive', SEC(2011) 102, 27 January 2011, p9

<sup>33</sup> *European Commission*, 'Detailed information on the implementation of Directive 2006/123/EC on services in the internal market', SWD(2012) 148, 8 June 2012, Chapter III

## **Additional Open Europe material:**

*Open Europe*, 'Trading Places: is EU membership still the best option for UK trade?', 2012:  
<http://www.openeurope.org.uk/Content/Documents/Pdfs/2012EUTrade.pdf>

*Open Europe*, 'Safeguarding the Single Market: how to achieve a balanced European Banking Authority', 2012:  
<http://www.openeurope.org.uk/Content/Documents/PDFs/EBA safeguards.pdf>

*Open Europe*, 'Continental shift: safeguarding the UK's financial trade in a changing Europe', 2011:  
<http://www.openeurope.org.uk/Content/Documents/Pdfs/continentalshift.pdf>

*Open Europe*, 'Repatriating EU social policy: the best choice for jobs and growth?', 2011:  
<http://www.openeurope.org.uk/Content/Documents/Pdfs/2011EUsocialpolicy.pdf>

*Open Europe*, 'Off target: the case for bringing regional policy back home', 2012:  
<http://www.openeurope.org.uk/Content/Documents/Pdfs/2012EUstructuralfunds.pdf>

# **Open Society European Policy Institute**

# **REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION**

## **Submission to the Internal Market Synoptic Review**

### **CAPACITY**

The views expressed below are personal and based on 20 years of experience working on and in the EU as a British academic researcher on European politics, a policy-maker in a Commission cabinet, and now the director of the EU policy arm of an independent, private foundation which promotes democracy, justice, human rights and development.

### **PRELIMINARY REMARKS ON DEFINING UK INTERESTS - SCOPE AND AMBITION**

***Question 1: What are the essential elements of an Internal Market and against what criteria should we judge its economic benefits?***

1. One important factor that has brought economic benefits to the UK is that the Internal Market is part of a wider set of Europe-wide economic policies exercised through international trade and investment agreements with other economic powers, energy and climate policies, enlargement and neighbourhood policies. These external aspects of the Internal Market give the EU and all its members, including the UK, much more influence in other regions and the global economy than a common market alone would have done. The EU's panoply of economic relationships, standards and norms gives it an influence across the world that benefits not only the UK's own economy but also helps Britain to achieve its goals for efficient allocation of capital and global trade and investment flows. Membership of the EU has allowed successive UK governments to promote free trade, efficient capital markets and common standards at global level to a much greater extent than a Britain outside the EU could have done.
2. In particular, the Internal Market has given the EU extraordinary standard-setting power internationally that have also benefited UK firms. Other regions and countries have followed EU standards and norms, from bottle sizes in Japan to car-exhaust emissions in China, because the size and influence of its single market encourages firms around the world to converge on EU standards when designing their products. The UK has helped to shape these standards, and global convergence with them makes UK firms more competitive internationally.
3. The Internal Market's size and scale has also given the EU agenda-setting power for emerging global standards – which gives the UK more clout internationally. Two examples are the EU Emissions Trading Scheme, which has been copied by

California and Australia, and the Transparency Directive, which is helping to set new international standards for reporting requirements by the extractive industries.

***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?***

1. Among regional organisations and international bodies, the EU is uniquely powerful in engaging in many forms of engagement to achieve common goals for its members. Indeed, other regional organisations from ASEAN to the Andean Pact have modelled themselves on aspects of European integration. The EU doesn't always achieve its goals, and the search for unanimity is often long and sometimes fruitless, but it is rare that the UK would have had greater influence on such issues if it acted alone.
2. There is no question that the internal market could and should function better. However, the other groupings cited above are also dysfunctional in their own ways, and their spheres of action are very limited in comparison with the EU. To have greater influence in any of these organisations would not require the UK to disengage from the EU, and its influence in setting agendas in these other forums is directly connected to its influence in the EU.

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

1. Trade depends on the development of relationships with other countries and regions, and trade agreements are much more attractive when a trading partner can offer a large market. It is difficult to imagine that India, Japan or South Korea would have been interested in negotiating a trade agreement with the UK's population of 70 million, whereas the EU single market of more than half a billion people is a major attraction for them. Similarly, the US would not have bothered to initiate talks on a Transatlantic Trade and Investment Partnership (TTIP) with the UK alone.
2. Moreover, the US may be willing to negotiate alignment with some EU product standards under the proposed TTIP, and recently the American and European standards organisations agreed to collaborate on aligning standards to facilitate trade. By contrast, it is highly unlikely that such a large economic power would align with UK standards alone; rather, the UK would find itself having to align with American standards under a bilateral trade agreement because of the disparity in size and economic weight.

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

1. Living and working in Brussels, I hear growing dismay from other EU countries with an economically liberal outlook (such as Sweden, the Netherlands and Poland) at what they perceive as progressive UK disengagement from the EU. These countries would like to ally with the UK on many issues, but they are wondering how much to invest in alliances with a country that might withdraw in a few years. They are also very concerned about how the balance of approaches to the Internal Market among the 27 member-states and other areas might change if UK influence continues to diminish. Already, there are signs that other countries listen less to British voices because of the prospect of possible withdrawal, even though nothing has changed in legal terms.
2. A number of other member-states hoped that the Prime Minister would follow up his speech with concrete proposals for reform of the EU, for example on completing the Single Market in services. Such a proposal at this point would help to reassure other members that recent ministerial statements about the importance of the Single Market can be taken at face value, and that neither the speech nor the Competences Review is a cover for progressive disengagement.
3. Many of the member-states which have joined the EU since 2004 share the UK's broadly pro-market and free trade approach. However, they are concerned about the prospect of any "renationalisation" or "rolling back" of the Single Market that might mean double standards for different EU members. After all, they very recently had to meet all the standards contained in the *acquis communautaire* in order to join the Union, and were allowed none of the opt-outs that the UK has negotiated. For that reason, any attempt to introduce different levels of participation in the Internal Market, or indeed other policy areas, will meet a frosty reception.

# Road Haulage Association

## Road Haulage Association

### **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 most important element is a "level playing field" that ensures that competition is fair and allows all interested parties equal access to markets. Whilst there should always be opportunities to gain competitive advantage by operational efficiencies and economies of scale, the fundamental features of the market should ensure that those who are competing are doing so with similar opportunities.

### **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?**

The road haulage industry is heavily regulated, so many of the fundamental features of the industry are harmonised in principle, but many aspects of the business vary significantly across the EU. These include, but are not restricted to: social regulation, including rates of pay and employment regulation, road user charging, which includes vehicle excise duties, fuel duties and tolls, the last of which incur significant costs on UK operators in other member states, but do not have the same impact on non-UK operators operating in the UK. One significant aspect of cabotage operations is the fact that drivers effectively live in the cab of the vehicle for prolonged periods, and this is not desirable, when the industry is seeking to attract a broad range of new employees from all sectors of society, including ethnic minorities and females, who are currently badly under-represented in the workforce. Several operational requirements are more onerous on UK operators, including a lower limit on certain vehicle weights, periodic maintenance inspections, operating centre requirements and the threat of revocation of an operating licence. This means that no regulatory action can be taken against non-UK operators whose standards are not acceptable to UK regulators. They therefore operate in the UK under cabotage rules, but would not be licenced in the UK to carry out domestic operations. Above all, there is a significant difference in the levels of fuel duty between member states, which allows vehicles visiting the UK to operate with much cheaper fuel compared to that available to domestic operators.

### **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 controls imposed on cabotage operations have been ineffective. The MacKinnon Report of 2007\* demonstrates very significant impact on long distance road freight movements, with up to 50% of volumes being taken by non-UK registered companies. This has had a major negative impact on the UK haulage industry, particularly in the south east of England and Scotland. It is clear that, in this sector, harmonisation is very far from complete and that mutual recognition will not be effective until there is a genuinely level playing field. \*European Transport \ Trasporti Europei n. 35 (2007): 5-26



**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?**

The road haulage industry is a special case, in that it is heavily influenced by demand for transport services relating to the movement of products. In particular, vehicles are commissioned to move long distances by generators of loads, but those vehicles must then make their way back to their original departure point in order to serve the original consignor. This is a consequence of the nature of the industry and, as a result, the implementation of the Internal Market has resulted in massive distortions of the market, rather than creating a harmonised picture.

**2. 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?**

Not to any significant degree as far as the road haulage industry is concerned.

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

The impact has been negligible.

**4. 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?**

Please see above. The UK has retained many aspects of the original Operators' Licensing scheme, simply imposing relevant EU regulation on top of that structure, whereas other EU States have no similar requirements. This has distorted the market. No other members states apply similar regimes of either regulation or enforcement.

**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?**

Any further relation on the limits of cabotage beyond what currently applies will further damage the UK haulage industry, but will not bring any benefits in cost efficiency or carbon emissions. In fact the reverse is likely to apply as it will further disrupt domestic operations, reducing their efficiency and increasing carbon emissions. Further enlargement will have a similar effect.

# Rotherham, Dr. Lee

## **Dr. Lee Rotherham**

I am a former political adviser to three Shadow Foreign Secretaries; former adviser to the Conservative Parliamentary Delegate to the Convention on the future of Europe; an adviser to serving MPs and MEPs; a Research Fellow at the TaxPayers' Alliance; adviser to the Bruges Group; and (of relevance to EU Defence integration) a longstanding reservist with Military Intelligence with three overseas deployments under my belt.

I am uncertain if any of the publishers have sent copies of my research on to you. Correspondingly, please find below a bundle of online submissions to the Review of the Balance of Competences. Do forgive this blanket approach. While some consider issues being looked at by individual departments, others have clear cross over or address multiple topics. Given the importance of the task at hand I would rather papers didn't fall between stools.

[\*\*Engaging with the Enemy\*\*](#) rejects UK participation in EU defence assimilation, including the EDA.

[\*\*EU Diplomats\*\*](#) rejects UK participation in EU diplomatic assimilation, and underlines the threat generated by the EAS both to our FCO and to our ability to represent ourselves internationally. (A significant portion of EU legislation in fact is originally sourced from world-level agreements, so getting our veto back in places like Geneva means we would regain a veto at source in how the Single Market impinges on UK business.)

Both of the above usefully also provide case histories of how ever-closer union creates imperceptible shifts over time that all departmental studies should consider. They raise the question of whether indeed this Review can create a fixed buoy, or whether under the treaty structures a drift towards a federal Europe is inevitable so long as we are members. A consideration of the long term perspective on how competences work, starting with these timelines as examples, would therefore I suggest be constructive.

[\*\*Health and the Nation\*\*](#) considers the inherent threat of integrationism arising simply from EU membership, the existence of the ECJ, and the very nature of the Single Market, specifically in this instance in health care provision.

[\*\*Controversies - from Brussels and Closer to Home\*\*](#) is a selection of essays on areas of historical relevance to any renegotiation. This includes, significantly for your work, an attempt to create an algebraic formula to determine if EU membership is in any country's national interest (developed further at the close of [\*\*The EU in a Nutshell: Everything you wanted to know about the European Union but didn't know who to ask\*\*](#))

On the management of public finances in the EU and particular case studies;

[\*\*The EU Waste Mountain: a Guide for Holiday Skiers\*\*](#)

[\*\*From Thespians to Death Rays: Funding Surprises from the EU Grants List\*\*](#)

[\*\*Speaking Volumes: The European Commission's Libraries\*\*](#)

[\*\*The Stale Whiff of Fraud\*\*](#)

More are quoted in the two *Bumper Book of Government Waste*.

The cost of the CFP is assessed in [The Price of Fish](#) with the recommendation the UK should withdraw.

The cost of the CAP is audited in [Food For Thought](#) with the same conclusion.

We can only realistically reform or adapt either through national control, which is far more responsive to democratic pressure. The CFP in particular is an aberration even for supporters of European integration, starting with how it was rushed in to apply to the 1973 joiners with their Atlantic fisheries.

Use of education and culture programmes as an explicit and open form of propaganda is explored in

[The Brussels Propaganda Machine](#) plus

[The Hard Sell](#) and

[EU Orchestras](#)

My paper *EMU Understood*, which sets out why the UK should never join the Euro, is not online but the annexes are and they are [here](#).

A compilation of papers submitted during the Convention on the Future of Europe, reviewing where many competences should sit, can be found in [Plan B for Europe](#).

Other overviews of competence changes, also running across many departments, can be found in

[The Bottom Line](#) and

[Terms of Endearment](#).

The ECHR falls outwith your remit I suspect, but human rights legislation should not. You can find my take in [Britain and the ECHR](#), which contains an estimate of the costs (including increasingly through laws brought in by the EU but using Strasbourg as inspiration).

I would also suggest you consider the entire corpus of the *European Journal* as consisting of articles individually worthy of consideration given their subject matter and specialist authors. No doubt the European Foundation or Bill Cash MP could supply back copies. The Bruges Group has been publishing focused research papers for a number of years, and both it and Open Europe's research should also be taken into consideration. I have a copy of James Gladstone's paper for CAFE on CAP reform which I can copy and post on request, given an address. This is out of date, but then so is the CAP.

# Safelincs Ltd

## Safelincs Ltd

### **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?**

Essential Elements: Free flow of goods without excessive documentation requirements and without import/export duty Free flow of payments Unhindered traffic without hold-ups Ability to open businesses and bank accounts in other member states (does not always go smooth at the moment) However, free movement is only viable in the longterm if all member states are bound by similar labour rights, tax regimes etc, otherwise the competition becomes unfair. This requires member states to give up part of their autonomy.

### **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?**

Especially in areas of environment and resource use (eg fisheries), different legislative regimes would be damaging, encouraging evasion of businesses by relocating and creating unfair and damaging competition. Certain minimum standards in terms of labour rights and taxation must be achieved as well to avoid businesses moving to countries with lowest rights and lowest tax levels (see current invitation by UK to European businesses).

### **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?**

I can only speak for one area, where harmonisation of standards helped us to export: We sell a UK manufactured product to Germany on the back of a harmonised European quality standard (EN1155). The traditional approval body (DIBt) and process in Germany was trying to stop us with very unfair means, however, backed by the harmonised standard we were able to force the market in Germany open!

### **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?**

From our point of view the Internal market has worked well and has allowed us to expand into Europe with franchises in Italy, France, Ireland and Germany.

### **1. 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 instability of the exchange rate in current months has caused us some headache.

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

It allows us to quote products in Euros, a wider accepted currency than Sterling

# Schroders

**Michael Dobson**  
Chief Executive



Martin Donnelly CMG  
Permanent Secretary  
Department for Business Innovation & Skills  
1 Victoria Street  
London SW1H 0ET

12<sup>th</sup> February 2013

Dear Mr. Donnelly,

Thank you for your letter of 3<sup>rd</sup> January seeking our views on the Government's review of the competences of the European Union, specifically in relation to the operation of the EU's Single Market.

As the UK's largest asset management business, with assets under management of more than £200 billion and operating from 34 offices in 27 different countries, we are acutely aware of the need for markets to operate openly and efficiently and we are supportive of the Single Market. Approximately a quarter of our revenues came from continental Europe last year where we have £42 billion of assets under management. Importantly we are heavy users of the UCITS framework which enables our flagship fund range to be sold across the EU with the additional benefit that this framework is recognised in many jurisdictions outside the EU, particularly in Asia and Latin America.

Schroders competes in a global market, and many of our most powerful competitors are based in the US. It is important for European based companies such as Schroders to have the single market as effectively their home market, in order to achieve the economies of scale and cost advantages that US companies have as a result of the size of their domestic market.

As you know, in financial services the EU increasingly drives the legislative agenda. The Financial Services Action Plan in the 1990s started this process but it has accelerated since the financial crisis with the G20 response and subsequent Commission plan to take a new approach to the regulation of financial services. Although this means new rules with which we need to comply and existing rules being amended in a way that cause us additional cost, the move from 'minimum' to 'exhaustive' harmonisation is generally welcomed as this reduces the differences between the member States in which we do business.

We therefore look forward to engaging with the Government review but would rather produce detailed comments on that part of the review most relevant to our business, specifically the free movement of services. It would appear from the Foreign Secretary's announcement that this will be reviewed later this year. That said, we have two comments relevant to the operation of the Single Market.

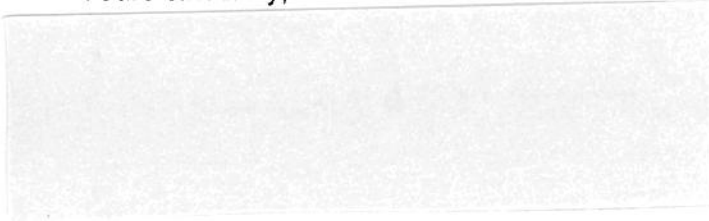


First, we welcome the fact that Commission proposals come with a requirement for a cost benefit analysis even if it would sometimes appear that the analysis is produced to fit the policy rather than the other way around. Such a requirement does not seem to apply to changes proposed during the legislative scrutiny of these proposals – particularly by the European Parliament. Amendments are tabled and compromises agreed across the political groups with what seems to be only a line or two of justification. Given the current Parliament's position as co-legislators we wonder if this is ripe for reform.

Secondly, in the area of financial services, much of the detailed legislation is pushed down to Commission directives or regulations using "Level 2" subordinate measures, these being delegated acts or implementing acts. The Commission rightly seeks the view of regulators (who consult publically on the proposals) and takes these into account when finalising the measures. However, the final rules are put to the Council and Parliament as a whole, meaning if a small but significant amendment is needed to the drafting this cannot take place because the power to do so is lacking (the package as a whole is approved or rejected). This problem was most apparent in the passage of the implementing measures to the Alternative Investment Fund Managers Directive. We think this structural flaw should be amended.

We look forward to engaging in the review over the coming months.

Yours sincerely,



# Scotch Whisky Association



## BALANCE OF COMPETENCES BETWEEN THE UK AND THE EU

### BIS CONSULTATION - INTERNAL MARKET: SYNOPTIC REVIEW

#### SCOTCH WHISKY ASSOCIATION COMMENTS

##### Overview

The Scotch Whisky Association (SWA) welcomes the opportunity to provide input to the UK government's Balance of Competences review.

The SWA is the industry's officially recognised representative body, responsible for protecting and promoting Scotch Whisky both at home and abroad. The Association's members export to over 200 markets worldwide; in 2011 industry exports were worth around £4.23 billion, representing nearly 25% of all UK food and drink exports. (With member companies also owning the import and sales teams in many overseas markets, the real value to the industry and UK plc is far higher.)

Sales of Scotch Whisky within the 27 EU Member States totalled more than half a billion bottles, or about 42% of the industry's volumes. The EU is vital to the industry's long term sustainability, both as an internal market and as a strong voice in international trade negotiations.

The trade environment within the EU internal market, in which one set of common rules applies, is immeasurably simpler than the alternative in which 27 different regulatory regimes would operate. The EU rules, agreed with considerable and very helpful input from UK officials and MEPs, impact on almost every facet of trade in Scotch Whisky. These include: spirits definitions; protection of 'geographical indications' (such as Scotch Whisky); labelling; taxation; a standardised range of bottle sizes; holding and movement of excisable products; and environmental issues.

While the internal market is not perfect, the existing arrangements permit the UK Government to help shape the rules which govern it; they also greatly facilitate the resolution of problems arising from the inappropriate application of EU rules. Securing and maintaining an optimal trading environment requires a strong UK presence when legislation is being prepared or amended.

The influence of the EU extends well beyond the single market. The Commission, again with considerable input from UK officials, has been a strong and effective supporter of the industry's wider interests in international trade negotiations whether at the multilateral, regional or bilateral level. It has also successfully secured the removal of tax and other discrimination against Scotch Whisky in third countries using the World Trade Organisation's dispute settlement mechanism. As the world's foremost internationally traded spirit drink, Scotch Whisky derives enormous benefit from the EU's expertise and negotiating muscle in the areas of trade policy and market access globally.

Consequently, the SWA is a strong supporter of maintaining the UK's active involvement within the EU. In the fields of internal market regulatory harmonisation and international trade policy, we see no issues which require subsidiarity or to be repatriated to national level.

In the following sections we highlight our main observations concerning some of the questions in the consultation document.

### Market integration and the Internal Market

- The EU is the world's largest trading bloc. The free movement of goods and harmonisation of rules for the trade environment (labelling, product definition, pack sizes etc.) is essential in ensuring that Scotch Whisky can be sold freely in the 27 Member States (and 3 EEA countries) without undue restriction.
- Harmonisation of the regulatory framework is extremely welcome since it means there is one set of rules instead of 27 sets of national laws that would otherwise apply.

### The operation of the Internal Market

- Following a period in the 1970s and 1980s when Scotch Whisky was sold in over 60 different bottle sizes, EU legislation streamlined and harmonised the sizes in which spirits had to be sold. The new rules were hugely beneficial in rationalising bottle variants, reducing consumer confusion and improving bottling machinery efficiency. The use of lightweight glass became possible, thereby providing huge environmental advantages.
- EU rules have been used to remove numerous barriers facing Scotch Whisky. Successful referrals to the European Court of Justice saw excise tax, VAT and other barriers in Denmark, France, Greece, Ireland and Italy removed and illegal 'whiskies' in France banned;
- The Technical Regulation Information System (TRIS) means proposed national legislation is submitted for scrutiny to stakeholders. This system is of immense value in (a) helping ensure national legislation is acquis-compliant, and (b) providing early warning about forthcoming legislative changes. It is regrettable, however, that Detailed Opinions issued under TRIS are no longer publicly available, as they help highlight the problems occasioned by national Member State action;
- The Electronic Excise Movement and Control System (EMCS), introduced in 2011, largely runs smoothly and has been a positive force in ensuring the smooth tracking and transit of excise goods within the EU.
- Internal Market rules are important even outside the EU. The Commission will often urge third countries to follow EU legislation when it is negotiating agreements or seeking to resolve trade barriers;
- The internal market is, however, not perfect, and the following areas continue to give rise to difficulties for Scotch Whisky exports:
  - a number of derogations are allowed from the broad principle that all spirits must be taxed alike. These distort competition and provide a precedent for third countries (and some other EU Member States) to follow;
  - EU excise tax structures enshrine discrimination between competing categories of alcoholic beverage. Mandatory minimum rates of tax apply on all alcohol; while the minimum for spirits is €550 or 1,000, on beer it is €187 and on wine it is zero;
  - 15 Member States require spirits in their domestic markets to carry a strip stamp or other excise / duty mark. These all impede free movement;

- Although EU rules permit online sales ('distance sales') of alcohol, in practice they require costly administrative arrangements to be put in place which effectively prevent online sales to consumers based in other Member States.
- Despite an EU food labelling Regulation, national labelling laws are also permitted. These fragment the internal market, add costs and complicate free movement;
- The considerable help and assistance of UK government officials in ensuring there is an appropriate framework for trade in spirit drinks in the EU is much appreciated. Improvements in all the areas set out above are much more likely to be achieved through EU collective action rather than unilaterally.

#### **Future options and challenges**

- EU enlargement has extended the benefits of the internal market through, among other things, acceding countries removing tariffs and quotas, preferential tax rates, import permits, inappropriate laws defining whisky and national labelling rules. The SWA is an active supporter of EU enlargement.

#### **Conclusion**

The SWA firmly believes the UK's EU membership provides significant benefits in improving trading conditions for Scotch Whisky. Scotch Whisky is the EU's most important Geographical Indication (GI) spirit, and the UK government has a vital role in ensuring the trade environment is appropriate for our sector and other UK businesses through the EU mechanisms. The Association therefore sees no advantages in altering the current balance of competences in this area.

**Edinburgh**  
**February 2013**

**Scott, Alan**

## Alan Scott

Having read the web article on the Balance of Competences Review, I thought I might offer a few short comments from a personal perspective.

I am sorry they are not segregated into report areas as I am commenting generally "off the top of my head" so to speak. Clearly David Cameron is not going to offer an in-out referendum but will have a publicity campaign for his revised Treaty proposals. It would be great to have a referendum on his EU agreed changes. Simply opting out of Europe is a retrograde step.

1. **Cyber Attack** – as this is number one on the UK risk register it would make sense to have a more co-ordinated EU approach to response and funding.
2. **Immigration and Crime** – I share much public concern about the impact of Romanians and Bulgarians entering this country at the end of 2013. I saw in Cyprus how over recent years they have infiltrated previously safe ex-pat areas north of Paphos and have systematically spread theft to the southern areas. I would like to see more emphasis on investigations into organised crime which appears to be part of this.
3. **Foreign and Security Policy** – I would like to see more flexibility for countries like UK and France to follow more individual policies, particularly in areas where they have historically had "hot spots" for their responsibilities.
4. **Energy** – this is an area for more co-ordination as we need more stability in supply and pricing. The German attitude to nuclear has held back UK nuclear growth which is vital to manage the growing energy needs and prices.
5. **Environment** – we should weaken the amount of spend on environmental protections, as in my view the billions spent through customer energy bills have been disproportionate to the environmental impact. In times of austerity this is unreasonable. We should spend some of this on simple marketing measures to consumers to save energy and water.
6. **Euro** – the UK should continue to stay away from the euro as more deficit/austerity issues will arise for euro countries in the coming years.
7. **Human Rights** – clearly the EU approach to Human Rights is not consistent with public opinion in the UK. There have been many examples of this in the media which I do not need to repeat here. We should develop our own approach and opt-out of the EU HR Convention.
8. **Al-Qaeda Threat** – Islamic Dawn? Here are my views written on return from Cyprus/Greece/Turkey recently:

Having spent a few post-retirement months seeing the World, I am more than uneasy about what I have seen. Some countries have so far escaped, others are waking up to the threat, others seem impotent to the dark cloud descending over their land.

Global Islamisation is rampant and the pace is getting faster each year. Is the EU/West so impotent that it can't stand up to the relentless creep of Islamisation?

Islamists see Western aggression in places like Afghanistan akin to the Christian Crusades which plagued the Middle East years ago, so to some extent one can understand why there is an Islamic revolt. Osama's attempt to sit round a table and talk may slow the revolt only for a while.

In the UK, Blair's attempt at inclusiveness has simply resulted in an open door to aggressive creeping Islamisation (in addition to the massive immigration baby boom). Like a rotting fungus it will spread in every corner clearing away British traditions and ways of life people of my generation grew up with. By 2050 the current radicalisation in schools will have come home to roost. Wake up Cameron and the EU!

In Lagos Nigeria mosques are being built next to every church. 400 people died in elections there two years ago. The north south divide between Muslims and Christians is like a dyke wall being breached every day. Why is this relentless creep so unstoppable? In Mali the French push to clear Islamists is only temporary. They will eat away at every opportunity. The breaches will become bigger and more permanent. There are many countries experiencing Islamisation.

The Chinese seem to have got it right to some extent by repression and oppression. France has taken bold steps the UK does not have the guts to follow. The Russians have a constant threat from the southern Muslim regions but so far the Islamisation is either unreported or dormant. Australia has a strong immigration policy which has largely controlled the problem. Middle East countries following the Arab Spring (Islamic Dawn?) are already falling to Shiite rule, like Egypt. Dictatorships under the guise of a "presidential style" will continue (Turkey). Where is the media comment on Libya today? Democracy is a rarity and not a real aim for many politicians.

In Turkey there is a longer term risk as half the country wants to be European and the eastern side from Istanbul wants to be more muslimised than westernised. The strategic need for Turkey to be westernised is clear. How can this Muslim country be integrated into Europe when all the signs are there that Islamisation will soon start from the east, like in Nigeria, and so many other countries? Greece and others may follow in Turkish footsteps. There are signs today of a deja vu with the communist domino effect (read today Global Islamisation) so many died for in the Vietnam War.

Is there some global Islamisation Council directing the dead hand? Where is the Western/EU Council to combat this threat to our World? Where is the academic research or serious media comment to analyse this growing amorphous rash over the past decades? What will our children see in the 2020's?



# Scottish Highland Institute for Peace

**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?**

An internal market has the virtue of enhancing overall economic growth via the mutual benefit and co-operation of the constituent states and alliances. A commonwealth or unity of states ( eg Like the United States) benefits most from a strong narrative of common interests, which seems to be the greatest deficit of the EU. The common narrative needs to be both strong and effective to meet the challenges of internal fragmentation and the "ghosts" of past history. For example proletarian references to football world cup history could act as a spoiler to potential partnerships in the automotive industry. However, historical areas of virtuous excellence including common acceptance of great philosophers, music composers and scientists - ( note common ascent rather than grand narrative) - do lead to mutual trust and understanding. Historical analysis indicates that this has worked in the past, even without a common market culture. The current anti-hero portrayal of each other's European Heads of State, can only further erode trust and co-operation. Like family jealousy, the media tend to feed on the negative aspects of EU leaders. So perhaps a virtuous impartial EU broadcasting channel could be accessed and generated to promote common EU virtues along with a progressive narrative. For historical credibility ( lost in recent short-termist politics) an academically well analysed pathway of progress is needed to secure an efficient non-fragmentary democratic process. At present, the EU parliamentary discourse and subsequent policy course is subject to many relatively petty fogging issues. The quest must always be taken seriously how much external interests such as trans national corporate interests or even security threats like the euro-narco-terrorist - politics nexus can skew decision making or dissolve virtuous policies. At this point in history, real time analysis needs to be at its best, perhaps with a super university of experienced research - practitioners across a wide spectrum of disciplines. Constituent states can offer good analysis from their security apparatus and external action agencies to highlight the challenges. The deficit lies in the EU's inability to respond effectively in a reflective manner that dissolves the current complex hybrid threats and challenges. These deficits explain how the internal market is weak and working expensively like a low efficiency boiler. Perhaps a top down inspirational leader, or leadership team, that is well informed by its own think tank, could engage more whole hearted collaborative activity and steer institutional reform. Better for this to happen virtuously, creatively with humanitarian excellence during peace than forced by an external ( or internal) catastrophic challenge.

**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?**

The word "necessary" is a whole area of study. It can refer to priorities or to absolute critical need - sine qua non. This is well worth a day of conference with some cross disciplinary speakers.

**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?**

Harmonisation, left to chance, is easily hijacked or exploited by manipulators from without and within. My question would be... what are the threats and challenges to an effective harmonisation programme? What levels of institution building is required to optimise harmonisation where it is desired? What interests, competitions and other forces are driving for mere mutual recognition and why a step back from commitment is in the real interests of constituent nation states? Persuading the elephant of self interest to leave the room or broadcast a more effective narrative might enhance harmonisation.

**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?**

I would need to consult my friends working in Brussels to discuss effectiveness and deficits.. I can bring to a conference a valuable source.

# Senior European Experts Group

# **Review of the Balance of Competences between the United Kingdom and the European Union: Internal Market: Synopsis**

## **Submission by the Senior European Experts Group**

### **Background**

The Senior European Experts group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, a former Secretary-General of the European Commission and other former officials of the institutions of the EU.

SEE has no party political affiliation. As an independent group, it makes briefing papers on contemporary European and EU topics available to a number of organisations interested in European issues, drawing on the extensive knowledge and experience of its members.

Several members of the group have particular expertise in internal market issues having worked for or as the UK Representative to the EU or in the Commission.

### Questions

#### **Market integration and the Internal Market**

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

Free movement of goods, services, capital and labour along with a common set of rules adjudicated by independent courts are the core elements of the internal market. If you take one or more of these elements away, the market ceases to be a true internal market accessible across the 27 Member States and the 500 million citizens of the EU. This paper deals primarily with the free movement of goods, services and capital. We will deal with the free movement of people in the next semester.

The procedure for the agreement of the common rules that govern the market is important as well. So long as the EU retained unanimity for internal market measures virtually no progress towards a single market was made. It was the introduction of qualified majority voting (QMV) in the Single European Act which paved the way to a single market. In a community of 27 Member States some method of overcoming objections from a single Member State is essential in order to reach agreement on the common rules of the internal market.

Assessing the effectiveness of any intervention in the economy is notoriously hard because there are so many factors that determine success or failure in economics. The three main benefits of the internal market could be summarised as:

- greater competition has meant wider choice, lower prices and contributed to economic growth;
- greater opportunity has meant bigger markets and higher inward investment;

- reduced risk for EU businesses has created greater incentives to expand and to innovate.

It is unquestionably in the UK's interest to be in a single market of 500 million people worth £11 trillion and to be able to participate in shaping and agreeing the rules of that market.

Greater competition has resulted from the removal of countless non-tariff barriers to trade that existed between EU Member States. There were approximately 100,000 sets of technical regulations in the then EU Member States in the mid-1980s that were subsequently either replaced by EU level regulations or made mutually recognisable. To transport a lorry load of goods from London to Milan in 1988 required 88 separate documents; the internal market replaced all of them with one piece of paper. Such controls were estimated to cost business up to £ billion and governments up to €1 billion annually at that time.<sup>1</sup> In 1996 it was estimated that 76 per cent of intra-EU trade would be at risk of disruption through technical barriers if it were not for EU action.<sup>2</sup>

The internal market has largely ended the practice of Member States using non-tariff barriers to protect their home markets, through EU mutual recognition and harmonisation rules enforced by the European Court of Justice. The German beer market was effectively closed to non-German producers by Germany's national laws on purity which applied nowhere else. For 25 years some EU countries argued that chocolate made in Britain (and in some Scandinavian countries) could not be sold in their countries as it did not contain enough cocoa butter. These and other non-tariff barriers have been removed opening up new markets to many EU companies.

Prices have fallen as a result of removing the web of restrictions that protected many markets. For example, the opening up of public procurement for rail rolling stock cut prices by 20-30 per cent within five years.<sup>3</sup> Manufacturing prices are estimated to have fallen 3.9 per cent in the four biggest EU Member States as a result of the internal market.<sup>4</sup> Air fares fell by roughly 41 per cent between 1992 and 2000 following deregulation and the cost of telephone calls by half as national monopolies were removed.<sup>5</sup>

The internal market has given companies in the EU far greater opportunities because access to a market of 500 million people exceeds anything in their home markets. The value of this greater scale in some sectors, for example aerospace, is considerable. The era when each of the larger EU Member States could expect to have their own aerospace industry is clearly over but the internal market has made possible the development of joint ventures that cross borders thus achieving the scale needed. This has led to companies being big enough not only to thrive in the EU but to be globally competitive

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<sup>1</sup> 1992 *The Benefits of a Single Market*, Paoli Cecchini, Wildwood House, 1988

<sup>2</sup> 1996 European Commission study: [http://ec.europa.eu/internal\\_market/economic-reports/major-study\\_en.htm](http://ec.europa.eu/internal_market/economic-reports/major-study_en.htm)

<sup>3</sup> Ibid.

<sup>4</sup> Cited in *The economic effects of EU membership for the UK*, HM Treasury presentation, slide 22, 2005

<sup>5</sup> *The Internal Market – Ten Years without Frontiers*, European Commission, 2003, p.2.

as well. The internal market has given EU companies the benefits of scale that were previously only available to US companies.

The internal market has been an important driver of foreign direct investment (FDI) into the EU and particularly into the UK. FDI quadrupled in the EU between 1992 and 2001 as overseas investors saw the benefits of the internal market.<sup>6</sup> In the UK FDI rose from about 20 per cent of GDP in 1992 to around 36 per cent in 2002 – despite a decline in the mid-1990s caused by the recession.<sup>7</sup>

Removing internal barriers to trade in the internal market has reduced risk to companies. For example, prior to the internal market pharmaceutical manufacturers had to apply to each of the national regulators to license their product, a process that took on average five years for each country. The creation of the internal market and the single European Medicines Evaluation Agency cut that to one year for approval across the entire EU. By removing risk, innovation and investment has been incentivised.

Generalising about how deep the internal market needs to go to be effective is not easy because it is likely to vary from sector to sector. In some areas a considerable degree of harmonisation and fairly tight regulation is needed to give confidence to consumers that cross-border trade will be safe and successful (for example when purchasing a car from a retailer in another country). In other areas mutual recognition may be sufficient to ensure effective operation of the market (for example in deciding whether a worker trained in another Member State is qualified to work in a particular profession). While it is important not to be too doctrinaire about harmonisation versus mutual recognition, a pragmatic decision needs to be made in each sector, and in many cases the EU has adopted mutual recognition. The aim must be to create a level playing field on which all players can fairly compete.

The concept of "minimum harmonisation", where the EU lays down minimum rules that must be applied to all the goods/services covered by the Directive concerned whilst permitting Member States to apply higher standards of protection within their own territories, has proved to be a valuable tool. Minimum harmonisation gives consumers confidence while permitting a Member State a degree of latitude to apply higher standards, provided that those higher standards do not breach the non-discrimination rules of the EU. A recent example of this was the Consumer Rights Directive adopted in 2011.<sup>8</sup> A similar case was the Food Information Directive which harmonised many aspects of food labelling, but left it to Member States to decide if they wanted to do more on a non-obligatory basis - this is what enables the UK to apply the "traffic light"/GDA food labelling rules that the Government has agreed with the food industry.<sup>9</sup> The recent bank capital rules were another example; in that instance the UK decided to adopt tougher rules than the minimum agreed at EU level because we believed that it was in our

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<sup>6</sup> Ibid, p. 8.

<sup>7</sup> HM Treasury op cit, slide 23.

<sup>8</sup> Directive 2011/83/EU

<sup>9</sup> Regulation 1169/2011

interest to do so. We have now reached a stage where the choice between mutual recognition and harmonisation is not quite as stark as the BIS briefing paper suggests.

An example of where mutual recognition is working well, relying on the *Cassis de Dijon* judgment in relation to trade in goods, is that of food composition. In this sector mutual recognition has replaced the former reliance on harmonisation directives such as those on jams and on chocolate.

All internal market legislation is now subject to a test of subsidiarity (and a separate test of proportionality) by the Commission and the Committee of Permanent Representatives has responsibility under the Council of Ministers' rules of procedure for ensuring that these tests are complied with. Under the Lisbon Treaty national parliaments also apply these tests and, if one-third of them raise problems over the subsidiarity of a Commission proposal, the Commission has to think again. These tests are valuable but it is important they do not become just a process but a genuine assessment of whether or not legislation at the EU level is necessary.

Although not part of the legislative process for the internal market, the work done by the Commission with the European and national standards bodies (BSI, CEN etc) to develop Europe-wide standards is extremely useful. These agreed standards are not usually obligatory but are universally applied and are important in making the internal market efficient, especially for new products. The same is true of the "CE" mark, which also supports mutual recognition.

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

#### Environment

EU environmental legislation covers aspects of nature protection, water quality, air quality, waste disposal and the incorporation of environmental issues in other public policies. Clearly EU regulation of, for example, water quality and air quality, has significant implications for the private sector. Costs have undoubtedly been imposed on water companies and users of road vehicles as a result of this legislation. But these policies might well have been adopted anyway because of public concern in individual Member States. For example, bathing water quality would have been an issue in the UK regardless of the EU Bathing Water Directive because of widespread concern about the public health consequences of sewage outfalls on British beaches.

Pollution is no respecter of national boundaries; pollution in the Rhine or the Danube, for example, will affect many Member States. Having one set of environmental regulations covering air and water quality and the disposal of waste across the EU does ensure that all private sector enterprises affected face a common regulatory burden and one that is justiciable in the European Court of Justice. To this extent they form a relevant part of the internal market. For example, the common standards on emissions and vehicle noise



have assisted the internal market by establishing a single set of standards in a sector where manufacturing is dispersed and there is a great deal of crossborder trade.

Regulation of the natural environment, such as wildfowl and habitats, has less relevance to the internal market but the EU's involvement is more limited in its scope.

#### Social and employment legislation

Social and employment legislation through the internal market has long been controversial in Britain, reflecting the views of different political parties, although the so-called social market economy is as important to politicians of the right as of the left in most continental countries. There are those who would argue that social and employment legislation was made part of the internal market as part of a "grand bargain" in which deregulation and the opening up of markets were balanced with greater protection for the rights of workers.

Some employment legislation, for example on coach drivers' working hours, could be said to have a direct bearing on health and safety and to provide protection for consumers (no one wants to go on holiday on a coach driven by someone who has been driving for an excessive number of hours). Having common basic standards for employment does make it easier for companies working across borders to be clear about their obligations and reduces regulation because they only have to comply with one set of rules. Nor is it easy to dismiss the argument that wide differences in social protection between Member States, imposing economic costs, lead to distortion of competition.

#### **The operation of the Internal Market**

*3. How have the EU's mechanisms for delivering an Internal Market worked? In particular, what do you believe is the right balance between harmonisation and mutual recognition? What evidence is there that harmonisation has worked well or badly? What are your views on the scope and effect of the EU's powers under Articles 114 and the use of Article 115 for non-tax measures?*

In respect of the internal market in goods, we now have complete absence of border controls and dramatically reduced non-tariff trade barriers and obstacles due to processes of production or labelling rules. Compared to the situation in 1985, where each Member State applied its own rules in many sectors and checked compliance at the border, it is a real success story for Article 114 and the other EU mechanisms. These mechanisms have clearly been less successful in relation to services (though the Services Directive was a major step in breaking down barriers), but that is primarily a matter of political will rather than inadequate mechanisms (see below).

Successful examples of harmonisation include the Directives on toys, novel foods, cosmetics and tractor safety which have successfully harmonised safety standards to enable the internal market to function effectively and have given consumers the necessary confidence. There is a substantial body of environmental legislation, such as that on car and van CO2 emissions, tyre noise and truck emissions performance that are essentially harmonising in order to enable the internal market to work for these products.

Where harmonisation has not worked so well is where the Member States and the European Parliament have sought to use the legislation to restrict economic activity rather than to encourage it; for example, legislation on genetically-modified organisms and pesticide regulation.

The report by former EU Commissioner Mario Monti in May 2010 highlighted the obstacles to completing the single market but it also emphasised the benefits which would come from further integration in this area.<sup>10</sup>

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

The internal market varies in depth because it has proved easier to reach agreement in some sectors than others. Some parts of the internal market, for example air travel, took a long time to deregulate because of powerful opposition from vested interests which commanded significant political support. In that instance many of the fiercest objectors were flag carrier airlines that were state-owned or dependent on public sector subsidies. In areas of largely private sector dominance, such as insurance, agreement has been easier to reach. The qualified majority voting (QMV) system has helped to overcome objections where few countries objected to opening up the market.

The first wave of internal market measures in the late 1980s, promoted by Lord Cockfield in the Delors Commission, achieved high levels of political and public support. They achieved a momentum of their own and quickly produced visible economic benefits such as reduced air fares and cheaper telecommunications. Subsequent measures have often been in areas where harmonisation or mutual recognition is politically more contentious (such as general services or the energy market) and where the benefits may be less visible or take longer to appear. A particular problem has been the presence of large state-owned enterprises in some countries which politicians have sought to protect from both an external takeover and from competition. The process of completing the internal market has slowed as it has become more difficult. New areas of economic activity have developed since 1992, so it is perhaps not surprising that, for example, creating the digital single market has been difficult.

The opening up of the market in services (excluding financial services which are the subject of separate legislation) has been far more difficult. The Services Directive, which was adopted in 2006 but only came into force at the end of 2009, has had some effect. Fourteen Member States changed their approach to implementation of the directive in various ways when pursued by the Commission under enforcement procedures but in order to reach agreement the draft directive had to be narrowed in scope.<sup>11</sup> The absence of a country of origin principle in the directive, despite a precedent having successfully

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<sup>10</sup> [http://ec.europa.eu/bepa/pdf/monti\\_report\\_final\\_10\\_05\\_2010\\_en.pdf](http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf)

<sup>11</sup> [http://ec.europa.eu/internal\\_market/services/infringements/index\\_en.htm](http://ec.europa.eu/internal_market/services/infringements/index_en.htm)

been established in EU financial services legislation, was regrettable and significantly weakened the directive.

As we suggested above, the mechanisms established by Article 114 have been effective and we should continue to support them. Article 114 is the central enabler of internal market legislation which, were it to be weakened, would only reduce our ability to break down barriers. And it is well balanced with references to high environmental and other standards. We know of no case where Article 115 has been used for non-tax measures.

It would not be in our interest to give every other Member State a veto over measures to open up the internal market – which is why Mrs Thatcher’s Government supported the introduction of QMV in the Single European Act.

Failure to implement internal market measures either at all or in a timely way has hindered the development of the internal market. There are still too many Member States whose compliance is dilatory but performance, as shown in the European Commission’s September 2012 *Internal Market Scoreboard*, has improved. The target of no more than one per cent of directives not having been transposed by the deadline was reached in 2012 (but regrettably the UK is one of the countries still not reaching the target).<sup>12</sup> But there are still significant problems in getting some Member States (notably Italy and Poland) to transpose internal market legislation correctly into national law.<sup>13</sup> Effective enforcement is crucial to make the internal market work effectively – and to its credibility to investors.

### **Interaction with other forms of market integration**

*5. To what extent do you feel that the Internal Market has been positively or adversely affected by other forms of integration of which the UK is not part, for example the Eurozone or the Schengen Area?*

Exchange rate variations between sterling and the eurozone can increase costs as well as confer benefits.

As regards Schengen, UK visa requirements are known to have a negative impact on tourist numbers and may deter business visitors. For example, after the UK imposed visa requirements on all South African visitors to the UK from March 2009 visitor numbers fell by 30 per cent over the subsequent three years.<sup>14</sup>

The UK visa application form costs £78 and entitles the holder to access two countries (the UK and the Republic of Ireland); it is eight pages long and must be completed in English. The Schengen visa application costs €60 and gives access to 26 countries and

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<sup>12</sup> [http://ec.europa.eu/internal\\_market/score/docs/score25\\_en.pdf](http://ec.europa.eu/internal_market/score/docs/score25_en.pdf), p.10

<sup>13</sup> Ibid, p. 14.

<sup>14</sup> Cited in, *The Impact of Visa Facilitation on Job Creation in the G20 Economies*, UNWTO & World Travel & Tourism Council, [http://www.wttc.org/site\\_media/uploads/downloads/Visa\\_facilitation.pdf](http://www.wttc.org/site_media/uploads/downloads/Visa_facilitation.pdf)

the form is three pages long.<sup>15</sup> At present 80 per cent of Chinese visitors to Europe get a Schengen visa, 11 per cent a UK visa but only seven per cent obtain both.<sup>16</sup> Not being in Schengen is likely to have had a negative impact on tourism in the UK, particularly as regards visitors from emerging markets such as China and India.

Two other problems have arisen: the difficulty in getting visas has deterred companies from setting up in Britain and thus choosing to locate elsewhere in the EU; and the restrictions on the issue of student visas have adversely affected some UK universities and colleges.

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

Every Member State belongs to these or similar organisations which add to their influence. The G8 and G20 played an important part in resolving the global financial crisis with agreements at the G20 on financial services, for example, leading to subsequent EU legislation.

Trade with Commonwealth countries has not been impeded by EU membership. On the contrary, 51 per cent of New Zealand sheep meat exports go to the EU with France and Germany large importers as well as the UK.<sup>17</sup> The EU is Australia's third largest trading partner after China and Japan.<sup>18</sup> EU trade with India has risen dramatically over the last decade and the proposed EU-India free trade agreement (of which the UK is a strong supporter) could lead to a further expansion in trade in both goods and services. UK membership has helped Commonwealth countries, including those in Africa and the Caribbean, to get greater access to the single market, greater flows of official development aid and to stabilise their export receipts from European countries.

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

In the last 20 odd years the EU has emerged as a global rule maker, shaping and influencing rules and standards worldwide. Common standards adopted by EU can be of benefit to companies outside the EU because they know that if they meet the standard in many sectors for one EU country they meet them for all. For EU countries it has been useful because it has created very clear, enforceable safety standards in goods often imported from outside the EU (e.g. toys). This enhances consumer confidence in the market place.

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<sup>15</sup> European Tour Operators Association statement, <http://www.travel-impact-newswire.com/2012/05/uk-becoming-victim-of-its-own-visitor-visa-hassles-etoa/#axzz2Izzek5b3>

<sup>16</sup> <http://www.ft.com/cms/s/0/6714469a-0f06-11e2-9895-00144feabdc0.html#axzz2J047Y0Q7>

<sup>17</sup> [http://business.newzealand.com/vBFwRkA/media/957498/meat\\_industry\\_factsheet\\_2012.pdf](http://business.newzealand.com/vBFwRkA/media/957498/meat_industry_factsheet_2012.pdf)

<sup>18</sup> European Commission 2010 figures, <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/australia/>

In areas such as product safety, environmental protection, public procurement, financial regulation and accounting, the EU has in effect become the global standard-setter. The best example is the GSM standard - created in the EU in 1982, now used by over three billion mobile phone customers in 212 countries.

As EU standards have so wide a coverage it is all the more important that the UK should join in setting them - since it will be influenced by them, in or out.

All the main elements of the internal market have been adopted by a number of European countries that are outside the EU: Norway, Iceland and Liechtenstein through their membership of the European Economic Area (EEA), and Switzerland through a series of bilateral agreements with the EU. For these countries access to the internal market is so vital that they have accepted the direct application of EU rules on their territory without having a part in the EU's decision-making process; and they also make a contribution to the EU budget without benefiting from expenditure under it. As a member of the EU the UK enjoys substantial benefits in relation to these countries not only in the field of trade but through free movement of services, capital and persons. As a participant in the EU's decision-making process, the UK has more political influence over the regulatory regime applied by these countries in fields covered by the internal market than they have themselves.

*8. To what extent has the UK kept requirements over and above the EU minimum, and what effect has that had on the UK's place in the Internal Market? Have other Member States done so, and if so with what consequences?*

There has been a vigorous debate within the UK – and other Member States – as to the extent of what has been called “gold-plating”, where implementing legislation goes beyond the requirements of EU law. This issue has been the subject of independent scrutiny through the Davidson Review in the UK which did not find that there was a significant problem:

“Inappropriate over-implementation may not be as big a problem in the UK - in absolute terms and relative to other EU countries - as is alleged by some commentators”.<sup>19</sup>

But the perception of gold-plating remains and the current government has introduced new procedures to try to ensure that it does not happen. It is important that the effectiveness of these procedures is kept under scrutiny. The 2010 study by the OECD and the European Commission of regulation in 15 countries, including the United Kingdom, was a useful exercise in highlighting the challenges presented by EU regulation at Member State level.<sup>20</sup> The UK does, on occasion, set standards higher than the EU agreed minimum because it concludes that it is in its interests to do so, for example with bank capital requirements or environmental standards.

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<sup>19</sup> Cited in the Report of the House of Lords EU Select Committee, 22nd Report 2006/07.

<sup>20</sup> <http://www.oecd.org/unitedkingdom/betterregulationineuropeunitedkingdom.htm>

## **Future options and challenges**

*9. What future challenges/opportunities might we face in the Internal Market and what impact might these have on the national interest? What impact would any future enlargement of the EU have on the Internal Market?*

Completing the internal market has long been an objective of British policy and has been endorsed by the European Council as a key EU priority. More work needs to be done to deliver this objective as regards digital issues, to realise the energy internal market and to complete the internal market in services.

Better compliance with existing internal market obligations is a key concern. As the Commission itself acknowledges through its published *Internal Market Scoreboard* there are some countries that are persistent offenders when it comes a failure to either implement or to transpose correctly EU law. Whilst the greater emphasis placed on improving compliance is welcome, we believe that there is a strong case for reviewing the current enforcement procedures to see if they are effective, particularly in services. A significant issue for companies and consumers is the time taken to ensure compliance. The existing system of deadlines does not appear to always work because of the tendency for them to be seen as a target date to achieve the passing of any necessary domestic legislation in a Member State rather than being the date when the new law comes into force.

Each enlargement of the EU increases the size of the internal market, and increases the opportunities for the U.K. to benefit from it. The accession of Turkey, for example, would add a growing economy and a population expected to exceed 90 million by the year 2025 and increase the market for services, a strong export sector for the UK. On the other hand enlargement can pose problems to the internal market if new Member States are not equipped with adequate regulatory authorities.

## **General**

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

No.

20.02.13

# Smiths Group plc

28 February 2013

By email: [balanceofcompetences@bis.gsi.gov.uk](mailto:balanceofcompetences@bis.gsi.gov.uk)

## **CALL FOR EVIDENCE: GOVERNMENT REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UK AND THE EU**

Smiths Group is a global technology business, listed on the London Stock Exchange. Through our five divisions we employ some 23,000 people in more than 50 countries, and serve a diverse range of customers in the transportation security, threat detection, medical devices, communications, energy and engineered components sectors. In FY2012, the EU accounted for 29% of Smiths Group's asset base, and represented 25% of our total revenues of £3bn.

On the basis of our experience in EU and international market sectors, many of which are subject to significant regulatory oversight, I am pleased to submit the following views in response to the call for evidence.

### ***Market integration and the Internal Market***

In his 23 January speech, UK Prime Minister David Cameron identified the need for the EU to address its crisis of competitiveness. Smiths Group supports the view that rather than stifle a dynamic Single Market, the focus for political leaders across the EU should be on protecting and extending the benefits of that Market for businesses, workers and consumers. As the Council of the EU set out in its *Conclusions on the Annual Growth Study 2013* (12 February 2013), "priority should be given to low cost reforms with short term growth benefits, such as competitiveness and competition-enhancing reforms in product markets, as well as reduction of unwarranted regulatory and administrative burden on companies."<sup>1</sup>

As part of the Europe 2020 agenda, the EU Commission has identified a number of areas for further action to strengthen the Single Market Act and to foster growth – the so-called "SMA II" package – that includes the development of fully integrated transport networks, greater cross-border mobility for businesses and citizens, and support for the digital economy.

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<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ecofin/135432.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/135432.pdf)



Smiths Group broadly supports measures such as these, which aim to strengthen the competitiveness of the internal market and to reduce the burden of doing business across Member States; it is on such issues of competitiveness, and on meeting already established Europe 2020 targets such as the percentage of GDP to be spent on R&D, that EU leaders should focus their energies.

### ***The operation of the Internal Market***

The UK has an important role to play in pressing for the removal of barriers to the smooth functioning of the internal market, and we welcome several of the business-friendly measures that the UK has championed, such as the EU-wide patent system that is due to enter into force from 2014. The UK's insistence on a proportionate approach to regulatory burdens – on issues of significance to Smiths as apparently diverse as the revision of the Medical Devices Directives and the revision of the IORP Directive – is also to be welcomed.

In our experience, efforts to strike the right balance between harmonisation and mutual recognition between Member States depend very much on the industry sector concerned. In the medical device sector, for example, a CE-mark based system of mutual recognition is an appropriate method for ensuring the timely introduction of innovative products to improve patient care – subject, of course, to rigorous technical and regulatory scrutiny and approval. In the aviation security sector, developments towards the harmonisation of standards across Member States and the introduction of a Common Evaluation Process for the certification of screening equipment have brought greater clarity and consistency of approach. We broadly welcome the future direction of travel, including the potential for pre-commercial procurement opportunities to assist with the commercialisation of academic research, as set out in the Commission's Communication on *Security Industrial Policy* (COM (2012) 417, July 2012).

Crucially, the UK should continue to ensure that measures already adopted by Member States are robustly enforced. As an example of relevance to Smiths Group, the poor record of certain Member States in paying medical technology suppliers is a matter of considerable concern – it is not unusual, in a number of Member States, for debts to be outstanding for over a year. The EU medical industry association Eucomed estimates that the combined outstanding debts of Italy, Spain, Portugal and Greece now stands at least €9bn for 2012, and while there has been some notable progress in Spain, the industry would welcome more visible support from the Commission in enforcing Member State compliance with the requirements of the Late Payment Directive, which the UK will itself transpose into law in March 2013.

It is also important to ensure that burdensome regulatory measures are not adopted without due process and consultation, or by bodies that sit outwith the Commission's competence and beyond its control. In the medical device sector, for example, there is evidence of this tension in some of the regulatory pronouncements of the Central Management Committee, a body made up of

representatives of Member State Competent Authorities. On the basis of an unclear legal mandate, with little attention to the regulatory impact of its decisions, and with nothing in the way of external communication, the CMC has proposed far-reaching and costly changes to the labelling of medical devices which have led to considerable industry confusion and concern.<sup>2</sup> The activities of such arm's length bodies should be clarified and more carefully monitored in order to avoid unnecessary duplication – and even contradiction – in regulatory regimes.

### ***Interaction with other forms of market integration***

The EU Commission has a leading role in shaping trade defence instruments and in tackling protectionism on the global stage. As a business, Smiths Group has appreciated the support of the Commission in defending industry positions in the EU from illicit dumping behaviours by competitors, and in tackling retaliatory measures through the WTO Dispute Resolution process.

In February 2013, US and EU Commission leaders endorsed the findings of the US-EU High Level Working Group on Jobs and Growth, and signalled their intent to launch negotiations on a potentially wide-ranging free trade deal by the end of June 2013. In terms of these wider aspirations to remove, where appropriate, non-tariff barriers between the two blocs, we will await further detail with interest. It is clear that delivering greater compatibility, mutual recognition, and even harmonisation, on these 'behind the border' obstacles to trade – differences in technical regulations, standards, certification and government procurement restrictions – could significantly reduce the burden of cost and compliance and create new market access opportunities. We are broadly supportive of this approach.

I hope the response set out above is useful to you as the Government continues its deliberations on this issue. Please do not hesitate to contact me if you would like to discuss any of these points further.

Yours sincerely

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<sup>2</sup> <http://www.cmc-md.eu/>

# Standard Life plc

## **Standard Life Plc input to Department for Business Innovation and Skills call for evidence as part of the Review of the Balance of Competences**

**March 2012**

Standard Life Plc is pleased to respond to the Department for Business, Innovation and Skills call for evidence on the Government Review of the Balance of Competences between the United Kingdom and the European Union. In particular, this response relates to the Internal Market: Synoptic Review and the call for evidence issued in November 2012.

### **About Standard Life**

Established in 1825, Standard Life is a trusted provider of long term savings and investments to around 6 million customers worldwide. The Standard Life group includes savings and investments businesses, which operate across its UK, Canadian and European markets; corporate pensions and benefits businesses in the UK and Canada; Standard Life Investments, a global investment manager, which manages assets of over £167bn globally; and its Chinese and Indian Joint Venture businesses. At the end of December 2012 the Group had total assets under administration of over £218bn\*.

Standard Life plc is listed on the London Stock Exchange and has approximately 1.5 million individual shareholders in over 50 countries around the world. It is also listed in the Dow Jones Sustainability World Index, ranking it among the top 10% of sustainable companies in the world.

Standard Life has operations in several member states in the EU, and is the leading provider of workplace pension schemes in the UK, where we administer group schemes with over one million members. The content of our response reflects the role we play in the financial services sector within Europe, and beyond, and our desire to encourage greater levels of long-term savings and investments in all territories.

As a member of trade bodies including TheCityUK and the Association of British Insurers (ABI), Standard Life has provided comment and input to other responses to the BIS' call for evidence. However, given our areas of operation, Standard Life has identified several key areas in relation to the operation of the EU single market that it would like to make specific, high-level comment on:

- Pensions and Insurance
- Financial and Capital Markets
- Consumer Protection and Regulation
- Trade and International Competitiveness.

### **Pensions and Insurance**

We welcome the intention that has been expressed by the European Commission to encourage a single market for pensions in Europe and to remove inappropriate barriers to cross-border activity.

However, we also support the view expressed that there is no 'one size fits all' approach to the operation of occupational and retail pensions in Europe - due to demographic, national and societal structures which differ across the EU 27 Member States, as well as the significant influence of differing approaches to taxation on how pensions are managed. In recent years, efforts to harmonise prudential rules for pensions and insurance have proved extremely problematic when it comes to reaching agreement across member states – eg. Solvency 2 delays and the review of the IORP Directive – in large part because the matters being negotiated fall very close to member state competences which mean that pension systems, and the nature of financial service provision in this area, operates very differently in different countries and so forging EU-wide policy and measures can be very challenging.

A desire for maximum harmonisation and the attempt to apply all aspects of a regime identically across all EU territories might work where customers, products and tax regimes are

\*All figures as at 31 December 2012

similar but for the pensions and insurance industry we have experienced the challenges in getting something that works for all. A 'level playing field' issue in one member state may not be a level playing field issue in other member states and the approach to delivering retirement saving can be very different. Initial discussions on the review of the IORP Directive have highlighted this difficulty. The legal and regulatory structures for pensions are hugely different by territory and getting a detailed rulebook to apply to everything across Europe may be an inappropriate ambition, i.e. the cost of doing so, given the practical difficulties, may significantly outweigh the benefits. We have seen with Solvency 2 how aiming to agree EU-wide harmonisation despite very different member state regulation and industry shapes has resulted in significant delays, additional costs and a very highly politicised process.

In short, Pensions and Insurance are areas where the single market has already been identified as not functioning as well as it could. Set alongside this, people across Europe need to be encouraged to save more to meet their own future aspirations, to reduce the burden on governments and European institutions. We would like to see a much greater focus on coordinating and communicating best practice with regard to the vital aim of increasing levels of saving, through high level guidelines and principles – for example, experience from behavioural economics and nudging techniques that has successfully increased savings levels in some member states including the UK.

### **Financial and Capital Markets**

There is no doubt that financial markets operate more and more beyond the national level. Increasingly, the direction of travel is towards international and global trade in financial and capital markets. For this reason, we support EU competence at this level as we believe post-crisis solutions to recent issues with the markets can be more effectively found at the EU level than at UK level. Recent discussions about the review of MiFID (Markets in Financial Instruments Directive) and MiFIR (Markets in Financial Instruments Regulation) - while not being ideal in every aspect from our perspective - generally offer necessary and positive developments in terms of the safe and effective operation of financial markets.

At the same time, the ability of the UK to operate in a wider and deeper European capital market offers a beneficial and effective mechanism to raise capital finance for significant national and international projects.

The Alternative Investment Fund Managers Directive (AIFMD) is causing significant changes in investment products that are only sold in the UK and therefore have no need for a passport. The particular funds concerned are Investment Trusts, which have operated successfully and safely for more than 150 years in the UK but that now have to operate under an EU regime which requires additional responsibilities and processes, and Non UCITs retail schemes which are UK only regulated collectives. The changes are intended to provide additional protection for consumers, but we are not clear that this will necessarily materialise due to the added complexity and it will come at a cost for investors, which has not yet been quantified.

### **Consumer Protection and Regulation**

Following on from the point above, the operation of a single financial rulebook and consistent regulation for markets and retail financial services offers an opportunity to better protect customers of financial services than might be available operating at the national level. Recent developments not only in MiFID, but also with the developing PRIPs (Packaged Retail Investment Products) offer the possibility of creating an improved, consistent and comparable approach to disclosure for packaged saving and investment products (such as investment bonds, ISAs or personal pensions) across Europe, which would support the effective functioning of a single market for these types of products in Europe.

European Supervision of financial services has developed significantly in recent years. For the most part this has driven greater harmonisation, consistency of regulation and sharing of best practice for the benefit of consumers. However, we believe there are certain areas where it is important that national, member state regulators – i.e. the FSA in the UK – are able to go further than the European level where it is right for their domestic market. An example

of this might be the Retail Distribution Review reforms in the UK, of which Standard Life has been a vocal supporter, which has raised professional standards, removed commission bias, and improved clarity and transparency for consumers of retail financial services and related advice. It is important that national regulators are not required to roll back regulation such as this, or 'level down' to meet European harmonised rules. The removal of commission bias within the Retail Distribution Review is, in our view, an example that could be highlighted by European regulators as a 'best practice' approach that could be applied in other member states too. It is also important that national supervisors retain the right to intervene on matters where domestic evidence demonstrates action is required within a national market.

It is also worth recognising that the market for savings products is heavily influenced by home taxation policy. With taxation being a competence reserved for member states, it again makes it difficult to operate an effective single market. It is perhaps worth noting, however, that the two EU countries which are tax neutral, Luxembourg and Ireland, do have great success in having their funds distributed on an international basis, not just in Europe through an EU passport.

The EU Financial Transactions Tax proposals are subject to on-going negotiations so until the geographies and types of firms it covers are confirmed, it remains unclear whether it could have an effect on the costs consumers pay when buying retail products; or the cost of dealing for pension schemes and insurance companies, with a potential knock-on effect on our customer's long term savings.

In the context of the European Supervisory Authorities, we believe it is likely that Eurozone integration and banking union will have an impact on how European supervision operates. It is likely that the creation of a single supervisory mechanism for Eurozone banks will also in time influence the supervision of other financial services sectors, both within and outside of the Eurozone. It is currently too early to say what changes to financial supervision there may be, and how fundamental the impact might be. It is important that any change in power of European Supervisory Authorities operates to the benefit of consumers and providers in non-Eurozone countries as well as those covered by the single supervisory mechanism.

### **Trade and International Competitiveness**

The Standard Life group includes a global asset management business; Standard Life Investments, a significant savings and investments business in Canada, retail distribution operations in Hong Kong, Singapore and Dubai; and Chinese and Indian joint venture businesses. As such, international trade agreements between relevant territories are important to us.

We believe that, all things being equal, it should be possible to deliver more competitive free trade agreements with other global territories when negotiating as part of a single market of 500m citizens within Europe, than when negotiating as a single member state. The effective functioning of the EU single market for trade and services is vital to achieving this aim, and offering attractive opportunities for trade and improved liberalisation of the international territories in which we operate.

### **Summary**

We believe that a fully functioning EU single market in goods and services offers some benefits to Standard Life and its customers, mainly in relation to international trade and capital markets. However, there are areas where the effective operation of the single market can be improved, where the balance of competences can be improved or clarified, or where the situation may change with the advent of further Eurozone integration. Standard Life will continue to engage in discussions with UK and European policy makers where it believes it can offer constructive suggestions to help improve operations in the areas in which it has relevant interest.

We also intend to contribute to the more specific consultation on trade in services scheduled for later in 2013.



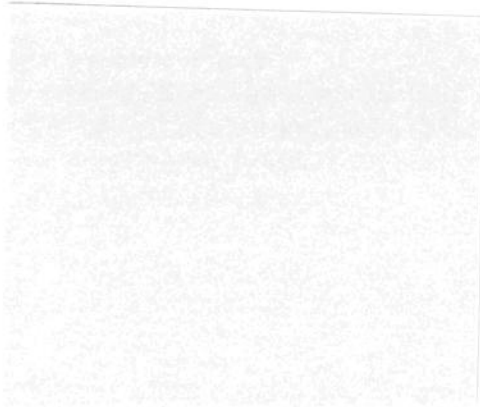
# Swiss Confederation





Swiss Confederation

CH-3003 Bern, DEA IB/DEA/parad



Reference: 862.0  
Our reference: parad  
Berne, 11 February 2013

## **Balance of Competences: Internal Market synoptic review**

Dear Mr. Peters

Let me thank you again for the interesting discussion we had on 10 December 2012 in Berne. On the occasion of this very useful exchange you explained the aims of the ongoing *Government Review of the Balance of Competences between the United Kingdom and the European Union (EU)* and drew our attention to the open call for evidence for the review covering the overall application and effect of the EU Internal Market.

As already pointed out during our discussions, Switzerland - as a Non-Member State of the EU - does not have a full view of the state of competences between the EU and its Member States. However, we follow your efforts of reviewing the balance of competences in different policy areas closely and with great interest.

In this regard, we remain particularly interested in the future development of the internal market and its different forms of market integration, as it makes a major contribution to economic growth and prosperity in Europe. Furthermore, its positive impact on the world economy as a whole is remarkable. These achievements need to be preserved.

Even though Switzerland is not a member of the EU, it has concluded a dense network of agreements with the EU which ensure mutual market access in several areas of common interest. Thanks to these agreements, Switzerland is today the EU's fourth partner in trade in goods and its second export market (9% of total EU exports in 2011). The total trade volume amounts to about 830 million Euro per day. Regarding trade in services, Switzerland is again the EU's second largest trading partner and accounted for its largest trade surplus with a third country in 2011 (more than 25 billion Euro). In addition, Switzerland invests significantly in the EU, both in terms of capital stock and number of staff: in 2010, Swiss companies employed more than one million people in the EU. Hence, the mode of governance and possible

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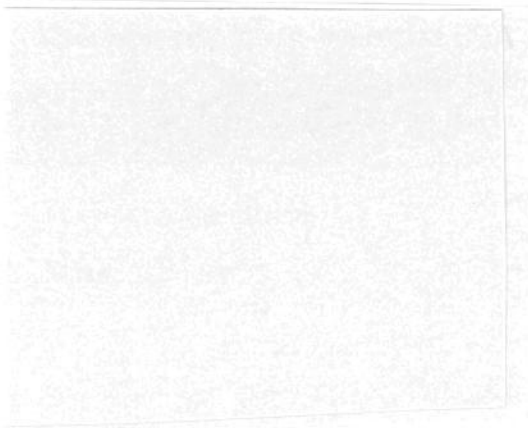
future reforms of the functioning and the coverage of internal market policies of the EU have direct effects on the consolidation and further development of these relations.

Switzerland is aware of possible conflicts of interest when it comes to further harmonization in different policy areas. In particular, the right balance between the objectives of horizontal measures, such as consumer or environmental protection, and the aim of reducing trade barriers, is necessary in order to develop the full potential of the internal market.

Likewise, the external dimension of future regulatory efforts has to be taken into account. It is crucial for Switzerland that the EU's regulatory activity does not come at the expense of the market access of third countries. In this context, we are particularly concerned about the raising of new trade barriers in the field of financial services, which could significantly impede cross-border market access for financial services providers. It is, in our view, in the interest of both Switzerland and the EU to ensure that markets, in particular financial markets, remain open and competitive, thus ensuring consumers can benefit from a full range of products and services.

You may want to communicate these observations to the service in charge of this call for evidence.

Yours sincerely



# Tams, Svenja

Tams, Svenja

**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?**

Ability to experiment with, test and bring to market new, more effective, useful and efficient technologies, services and business models -- in particular also social innovations to address social needs and sustainability challenges. We require the capacity of a market to learn from such innovation. -- In order to do so more effectively, there are benefits to diversity of expertise and perspectives, and scale. As a consequence, the vibrancy of innovation that responds to societal challenges (i.e., related to sustainability and social needs) benefits from an integrated European market, mobility of talent, resources, capacity building and research and development. -- An isolationist stance of the UK, is likely to limit the UK's innovative capacity in this respect.

**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?**

Integrated research funding, capacity building / training, mobility of talent are essential for Internal Market. To address scale of environmental and social issues, why would we adopt an isolationist stance and disconnect ourselves from European networks?

**1. 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 Eurozone and Schengen certainly makes trading and travelling much easier, once we are outside of the UK.

**4. 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?**

Asking the reverse, do you have a question to what extent has the UK keeping requirements below EU minimum damaged the EU? -- Regularly travelling to the continent, it strikes me that professional standards in the UK (not necessarily rules & regulations) are often below EU standards.

**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?**

Would the UK Internal Market on its own really be able to address the need to adapt to sustainability challenges and growing social needs, social inequity without European integration? How sufficient are internal capacities in this respect? Is there sufficient scale within the UK to build internal capacities on its own -- in particular in fields of social innovation and sustainability innovation?

# The Weir Group plc



**The Weir Group PLC**

**Response to call for evidence**

**Government review of the balance of competences between the United Kingdom and the European Union**

**Department for Business, Innovation & Skills: Internal Market Synoptic Review**

The Weir Group PLC (Weir) is pleased to provide evidence to the UK Government review of the balance of competences between the United Kingdom and the European Union. Our observations address the areas highlighted by the Department for Business, Innovation & Skills in its review of the Internal Market.

Weir is a global engineering business, operating in more than 70 countries and employing 14,000 people. In Europe, we have around 30 manufacturing and service operations throughout the EU and European Economic Area, with 3,000 employees. We manufacture and support equipment used principally in the production of minerals, oil and gas and power.

While we are conscious that the Internal Market was created to deliver benefits beyond the purely economic, our comments focus on the business aspects of single market arrangements.

**Key questions**

- 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?**

Weir competes for customers, skills and technological innovation within a European and global context. Any Internal Market arrangement must ensure the mechanisms to create a strong internal single market environment also enable European businesses to be successful beyond these market borders. The European single market has been a largely positive force, but was conceived in an era when significant macro-themes such as globalisation and the rise of China were not as prominent. It is important that the Internal Market keeps pace.

From a purely business perspective, the Internal Market should be deep enough to deliver the mechanisms which can underpin Member States' global competitiveness.

- 2. To what extent is EU action in other areas – for example, environment, social, employment – necessary for the operation of the Internal Market in its own right?**

From a business perspective, to the extent that failure to act/action in these areas leads to either internal barriers to trade, an unfair advantage to individual Member States or impedes the global competitiveness of market participants.

**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?**

From Weir's perspective, of the four freedoms of the Internal Market, the free movement of goods and labour are the most significant, and we believe that the mechanisms for delivering these have been broadly effective. National interests will, of course, continue to make regulation and enforcement across the market challenging, but broadly the Internal Market has been a positive force from Weir's perspective.

We would not offer a view on the right balance between harmonisation and mutual recognition, other than to observe that in the Internal Market area, EU competence is substantial. For an exporter of goods, mutual recognition or harmonisation have the potential to cut down on red tape and licensing requirements, but this should not come at the expense of higher national standards which may serve consumer interests more effectively. Ultimately, business should be competing on product and service quality. Any mechanism for delivering the Internal Market should ensure companies can still gain competitive advantage without being hidebound by rules that go beyond ensuring fair markets.

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

The European Single Market is unlike any other. The example of the United States is often used to compare, but this is invalid in many ways due to the relative coherence of the US political and economic system when compared against the 27 Member States of the EU, all with different economic circumstances and political and regulatory outlooks.

The imposition of national interests upon the collective decision-making which influences the EU Internal Market has inevitably made implementation challenging.

The key mechanisms for delivering implementation, ie regulations v directives, have advantages and disadvantages. Regulations arguably create greater certainty, removing the scope for national interpretation that exists with directives. But many Member States may value the scope for adaptation which directives provide. This, of course, can lead to divergent practice. From Weir's perspective, the cross-border movement of goods and flexibility to move stock around Europe could be a more streamlined process.

**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 Schengen area?**

The eurozone has created a greater degree of interdependence amongst 17 of the 27 Member States due to the extension to these States of shared monetary policy. Notwithstanding the significant focus on the difficulties of the eurozone area of the previous two to three years, single currency membership must be a factor taken into account by

eurozone Member States in relation to decisions on the Internal Market, arguably adding an additional dimension to the decision-making process.

**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?**

Weir has no specific view on this question.

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

Global businesses must comply with the regulatory landscape of the destination market for goods, services and skills. This compliance often takes place across multiple territories. In general terms, the Internal Market has ensured good minimum standards across Europe, which provide a degree of assurance to customers and other consumers beyond the borders of the Internal Market. In achieving this, the imposition of unnecessary additional cost on business must be avoided. One area which may merit examination is the need to comply with CE marking, which is not a requirement anywhere else in the world.

**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 with what consequences?**

Weir has no specific view on this 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 developing the Internal Market, the EU must strike a balance between the needs of 27 Member States in a European market of 500 million people, at the same time as continuing to create the conditions for these same Member States to compete against countries such as the US and China. For instance, what should be an Internal Market response to the growing competitive position of US manufacturers from toppling energy prices due to unconventional oil and gas production; and, how will the Internal Market in the area of services be developed to introduce truly market-wide competition? These are two of the pressing challenges which the Internal Market must address.



# **The Wine and Spirit Trade Association**

## **Introduction**

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 340 companies producing, importing, transporting and selling wines and spirits. We work with our members to promote the responsible production, marketing and sale of alcohol and these include retailers who between them are responsible for thousands of licences.

We work with Government Departments such as Defra, the Food Standards Agency and BIS to ensure UK implementation of EU regulations is as smooth as possible for the alcohol industry.

We also work with our European colleagues through Comité Vins and Spirits Europe to ensure that existing and future European legislation relating to wines and spirits does not adversely impact businesses in our sector.

### **1/ Food safety and labelling**

The production and labelling of wines and spirits is governed by EU law. The EU's common market organisation for wines and spirits means that product labelling, descriptions and definitions are harmonised across all 27 member states and provide protection for EU product denominations.

This arrangement has facilitated trade between EU member states which has been broadly advantageous for the UK and its consumers.

However, the single market has in some instances created issues in relation to imports of some products from outside the EU which are not always compliant with EU standards, but many of these have been (or are being) dealt with via bilateral agreements between the EU and third countries.

**We therefore believe that it would not be possible or desirable for the UK to attempt to repatriate powers on specific legislation governing the production of wines and spirits and aromatised wines.**

### **2/ Consumer Protection Policy**

Consumer Protection Policy at EU level has been reviewed recently and a new Directive on Consumer Rights will come into force on 13 June 2014. While UK Consumer Protection Policy has always been relatively high compare to other EU member states, the new Directive will introduce improved consumer protection principles such as stronger withdrawal rights, increased clarity of prices and more transparency.

The Commission's efforts to harmonise Consumer Protection Policy across all member states will in time provide EU consumers with the needed guarantees and safeguards to have the confidence to shop across borders and, as such, should be welcomed.

According to a recent report for the European Commission, cross-border online shopping in the EU has increased from 6% to 11% between 2006 and 2011. This is in part due to improvements in EU Consumer Protection Policy. (ref: 'Consumers' attitudes towards cross-border trade and consumer protection", EC May 2012').

### **3/ Excise Duty**

Directive 2008/118 on the general arrangements for products subject to excise duty is the key directive governing the structure of excise duty across the EU. This sets the basis upon which excise duty is levied on alcoholic drinks.

The Directive allows EU member states to set their own rate of excise duty and also to charge a 'zero rate' on some products such as wine where for instance 15 out of 27 EU member states do not currently charge any excise duty at all.

Having an EU directive which sets the basis upon which alcoholic drinks are taxed provides certainty for operators who trade across borders, but within a single market, as they only have one taxation system for 27 member states.

**We believe it right for the UK to retain sovereignty over setting its own excise duty levels within the parameters of this Directive, but we believe the structure of excise duties (i.e. the basis upon which taxation is levied on alcohol) should remain under EU control.**

This is illustrated by several European Court of Justice cases which have been brought against some EU member states who were thought have set levels of excise duty on some products at a rate which was unfairly disadvantageous to other products.

One such case was brought against the UK in 1983 (European Commission vs UK, ECJ 170/78). The European Court of Justice ruled that still wine and beer were competing products and that taxing wine in excess of the equivalent rate of beer in a beer-producing and wine-importing country was against the Treaty of Rome, since it discriminated against products of other Members States. As a result of this ruling, the UK was required to bring wine and beer duty rates into line and rates for wine and beer have moved in parallel ever since.

### **4/ Environmental Legislation**

Regulation aimed at 'greening' supply chains has not yet been adopted at EU level, but is under active consideration. Although the EU is the right level at which to address most environmental issues, a badly constructed EU Regulation based on poor evidence could prove excessively burdensome for business, especially SMEs and micro businesses, potentially leading to insolvencies and discouraging new start-ups.

Where a future EU Regulation is adopted, standards should be reasonable and adoption progressive; it should encourage efficiencies; and enforcement should be devolved to national level. Above all, new regulation should not be a barrier to international trade.

## **5/ Working Time Directive**

Different sectors need additional labour at different times. For example, elements of the UK wine and spirit supply chains need extra hours in the run up to Christmas. **We believe that working time should be decided at national (or business) level and would encourage the UK government to negotiate removal of the Directive. At worst, the UK government must preserve its current 'opt out'.**

**TheCityUK**

## **Review of the Balance of Competences between the United Kingdom and the European Union Internal Market: Synoptic Review**

TheCityUK's response to the Government Review is appended. Further contributions will be made to future consultations, including the "Services" and "Capital" aspects of the Internal Market. Five themes arise from the current consultation and are worth highlighting:

### **1. The UK as an international financial services centre has benefited from the Internal Market in many ways**

- The UK's pre-eminence as a global financial centre rests to a significant extent upon its participation in the European Union and access to the Internal Market
- UK-based firms with an international outlook take for granted participation in the Internal Market and regard this as a key factor in the continuing attractiveness of the UK as a destination for investment
- The rest of the European Union is the UK's largest export destination
  - Nearly 38% of the UK's trade surplus in financial services arose from trade with other EU Member States in 2011, compared with 25% arising from the US
  - Over 40% of euro foreign exchange trading takes place in the UK
- TheCityUK's recent report on Driving Competitiveness<sup>1</sup> found that:
  - Access to markets in the EU were a core reason for choosing the UK over other financial centres in over 40% of the UK-positive investment decisions
  - In over 45% of UK-positive investment cases, decision makers cited access to skilled staff, including EU nationals, as one of the core reasons for choosing the UK

### **2. Advancing the Internal Market in financial services would benefit the UK**

- Our long-term economic success depends on the UK's ability to deal with the challenges we face in competitiveness, global trade and advancing the Internal Market. TheCityUK endorses advancing the Internal Market in financial services as a priority objective of UK policy
- Advancing European competitiveness should underpin further development of the Internal Market. The current reliance on legislation and regulation as the primary means of developing the Internal Market should be challenged

### **3. The UK's continuing influence in the EU financial regulatory reform programme is vital and we very much support this**

- The extensive and ongoing period of European regulatory reform carries with it heavy costs. We calculate that there are at present 40 separate pieces of legislation under review with complex and potentially unknown interactions
- The balance of control and influence in financial regulatory policy and supervision is changing and doing so quickly. Two key developments have been the recently created

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<sup>1</sup> TheCityUK report on Driving Competitiveness: Securing the UK's position as the location of choice for financial services – November 2012

European Supervisory Authorities (changing regulatory decision-making) and Banking Union (where direct supervision of major banks in participating member-states will be undertaken by the European Central Bank).

#### **4. It is vital that Europe remains open to global opportunities and growth**

- Given that 90% of global growth now takes place outside the EU, the need for the Internal Market to be competitive as well as open has become all the more important
- The Internal Market must remain open to business from non-EU countries (many of which are growing quickly) and should avoid extra-territorial legal approaches which damage relations with trading partners

#### **5. There need to be objective measures of success for the Internal Market**

- TheCityUK identifies the following as possible measures of the Internal Market's success:
  - Competition and competitiveness: is the Internal Market strengthening competition and innovation, enhancing EU businesses' global competitiveness?
  - Ease of doing business: has the Internal Market eased the doing of business across the EU?
  - Market-openness: is the Internal Market open to the supply of goods and services between member-states and from third countries?
  - General economic yardsticks: is the Internal Market producing welfare gains, fostering economic activity and wealth creation?



**Review of the Balance of Competences between the United Kingdom and the European Union  
Internal Market: Synoptic Review**

**Detailed submission**

This submission takes the questions in the Call for Evidence. It aims at responding to each question (to the extent relevant to TheCityUK and its member-businesses), and also to develop each question, where appropriate, to bring out further points that TheCityUK considers important.

***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 “four freedoms” (of goods, services, capital and labour) administered under a common set of rules subject to justiciability and appealability by an independent judiciary are the internal market’s core elements. Without these four features, and the rights attaching to them, the market could not be a full internal market accessible across the 27 Member States (28, from April 2013) and the 500 million citizens of the EU.

The procedures for agreeing common rules for the internal market have also become an essential element. These procedures are enshrined in the Single European Act, under which agreement on the common rules is reached (in most cases) by qualified majority (QMV) voting. This QMV system replaced the previous regime under which rule-making generally required unanimity. Had unanimity remained the norm, much past progress in introducing rules across the internal market would not have been made, as a single member-state would have been in a position to block it.

The “four freedoms”, and common rules implementing them, are not however enough in themselves to underpin the internal market. There must be effective pro-competitive policies – properly balanced so as to operate at both EU level and within member-states – as an essential element. Competition needs to be encouraged, as competitive markets work better, and are more resilient, than markets beset by subsidised sectors or areas of “sheltered competition”. Here progress has been patchy. In certain sectors, and in certain member-states, the fostering of competition has not been recognised as a self-evidently desirable objective. This has worked against the progress of the internal market.

The need for the internal market to be competitive as well as open has become all the more important in recent years, given the changed global context. When the internal market was first devised, the key task was to bring about open markets within Europe, moving away from pre- and post-war divisions and economic reconstruction policies based on the national needs. This is no longer enough. Europe has now to compete in global markets. Policies – whether at the national market or the EU market level – must cater for this objective. This means, for instance, that EU



measures must compete to match the highest global standards, not only in substantive content but also in the manner in which they are introduced and implemented: the EU needs to adhere to best practice in terms of efficient, transparent, consultation-based, least-business-restrictive measures.

How should the economic benefits of the internal market be judged? In TheCityUK's view, this means identifying yardsticks for measuring the internal market's success. The following are possible yardsticks:

- **Competition and competitiveness:** has competition within the EU been enhanced? Given that 90% of global growth takes place outside the EU<sup>1</sup>, is the internal market functioning so as to strengthen competition and innovation, enhancing EU businesses' competitiveness in the global marketplace?
- **Ease of doing business:** has the internal market made for greater ease of doing business across the EU, in terms of the regulatory environment, reduction of barriers and business costs?
- **Market-openness:** is the internal market open to the supply of goods and services both between member-states and from third countries, so that comparative and competitive advantage (both within and from outside the internal market) can operate to maximum effect?
- **General economic yardsticks:** is the internal market producing steady welfare gains, operating so as to enhance employment and output, reduce prices, raise levels of inward and outward investment, and generally foster economic activity and wealth creation?

TheCityUK will examine these issues in detail in its evidence in the Review's future Semesters. In the meantime, the main obvious benefits of the internal market (operating in varying degrees) can be encapsulated as:

- **Removal of Market Barriers:** the steady elimination of trade barriers between EU member-states, for both goods and services (although this remains a work in progress);
- **Competition:** greater competition between European businesses resulting in greater choice both for personal consumers and for businesses sourcing commercial inputs;
- **Market Size:** a bigger "home market" for European businesses, across all 27 member-states;
- **Risk Reduction:** the lowering of risk in trading between member-states, with a resulting rise in cross-border economic activity generally, including enhanced investment;
- **Inward Investment:** the operation of the world's largest unified market as a magnet for attracting inward investment from overseas businesses seeking establish a commercial within the internal market to serve customers across the EU.

Taken overall, the internal market, and the enhanced economic activity resulting from it, has brought market benefits to UK businesses and those of other member-states: it has removed a multiplicity of cross-border barriers, so providing the benefits of market scale that were previously only available to, for instance, US companies in the US market. The internal market has been a significant catalyst for foreign direct investment (FDI) into the EU and particularly into the UK. FDI is reckoned to have increased fourfold in the EU between 1992 and 2001 as overseas investors saw the benefits of the internal market.

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<sup>1</sup> Cited in "Trade: a key source of growth and jobs for the EU: Commission contribution to the European Council of 7-8 February 2013"

How far have corresponding benefits accrued? This is an important question, given the integral role of financial and professional services in supporting all areas of economic and commercial activity. It relates both to benefits to UK financial and professional services over 40 years of EU membership, and also to benefits to the EU as a whole, given London's position as the EU's financial centre. It is particularly salient given three features of the UK market in these sectors:

- **Strength of the UK financial services sector:** in the case of the UK economy, the financial and professional services sector has a special interest in the internal market, given the key role of service businesses including financial and related professional services in the UK economy, the UK's international competitive advantage and in meeting the saving, protection, commercial and investment needs of UK citizens and businesses. Financial services account for 9.6% of UK GDP - higher than all other major economies including the US (7.7%), Japan (4.9%), Germany (4.4%) and France (4.7%). A significant portion of this is made up from the contribution of financial services exports (3.9%);
- **Reliance on the EU market:** some basic figures tell the story:
  - In 2011, 37.7% of the UK's trade surplus in financial services was derived from trade with other EU Member States, compared to 25% from trade with the US;
  - Over 40% of euro foreign exchange trading takes place in the UK;
  - TheCityUK's "Driving Competitiveness"<sup>2</sup> report noted that:
    - Access to markets in the EU was the core reason for choosing the UK over other financial centres in over 40% of the UK-positive investment decisions;
    - In over 45% of UK-positive investment cases, decision makers cited access to skilled staff, including EU nationals, as one core reason for choosing the UK
- **International participation in the UK market:** the activities of UK financial business are strongly matched by those of non-UK firms established in the UK, which rely on the internal market and its "four freedoms" as the basis for conducting business in Europe. UK exports of financial services to the EU totalled £17.8bn in 2011, 80% up on the £9.8bn in 2005, although down from a peak of £21.8bn in 2008. Main destination centres in the EU for UK exports of financial services in 2011 were the Netherlands £3.2bn, Germany £2.8bn, France £3.0bn, Ireland £1.5bn, Luxembourg £1.9bn and Spain £1.2bn. The existence of the Single Market also partly explains the UK's success in attracting foreign firms. A total of 962 financial companies were authorised by the FSA as foreign owned at end 2012. Some 454 companies, nearly half of the total, were from the US and a total of 176 from EU Member States.

The Review asks: how deep does the internal market need to be to be effective? The framing of the question seems to posit an answer in terms of depth of regulatory harmonisation. But it can be answered in other terms, such as "as deep as is compatible with the right balance of regulation, competition and growth" or – more cynically – "as deep as mutual trust between member-states allows". The answer will vary from sector to sector. In the case of financial and professional services, the sector is highly regulated in all EU member-states, although the type and coverage of

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<sup>2</sup> TheCityUK report on Driving Competitiveness: Securing the UK's position as the location of choice for financial services – November 2012

regulation has historically varied from one member-state to another. As a general rule, it could be posited that the greater the degree of regulation, the deeper the internal market needs to be if it is to ensure a minimum level of genuine uniformity of treatment across all member-states. For this reason, UK financial and professional services have strongly favoured the extension and deepening of the internal market, with the object of steadily removing all barriers to commercial establishment and cross-border service-provision from one member-state to another.

For financial services, the question of how deep the internal market needs to be is complex and nuanced, depending, for instance, on whether wholesale or retail financial services are in question, and also on whether those responding are large multinational providers with a base in the UK or smaller businesses with little outreach into the internal market or internationally. Much of the argument centres on the degree of reliance on the Single Market and the regulatory framework – the “single rule-book” – that it provides. This “single rule book” is a work in progress. It is partly the result, post-crisis, of a wholly legitimate drive to deliver financial stability and to restore trust. In EU terminology, financial regulation is not an EU “common policy” established under the Treaties (i.e. it differs from the EU’s Common Commercial Policy or the Common Agricultural Policy). Instead, it comprises a developing body of legislation and institutions. These have evolved to a point where the EU’s common legal framework for much of financial services is now a “given” for those international financial business using the UK as their base for serving EU or global financial markets: indeed the provision of financial services in the UK by non-UK firms has become to a large degree dependent on the maintenance of that common EU legal framework and the UK’s part in devising it and operating within it.

*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?*

TheCityUK’s answer to this question is confined to financial and professional services, and the implications of EU action in other areas on the internal market for the sector. Three examples are offered:

- **The EU “Lisbon Strategy”:** this action and development plan (2000), for the economy of the European Union between 2000 and 2010 was intended to accompany the Single Market programme, so as to “make Europe, by 2010, the most competitive and the most dynamic knowledge-based economy in the world”. This important step, incorporating many policy initiatives to be taken at EU level or by member-states, was intended to bring together a range of different pro-competitive steps to supplement the core legislative programme for the internal market. Achieving this has been patchy, with a degree of outright failure. Where it has failed it has – by default - accentuated the degree to which attaining a full internal market is regarded as a matter of legislation rather than of competitive policies, actively pursued. But such policies remain essential;
- **The EU employment framework:** the right to work anywhere within the EU has obvious value for financial and professional services, as a sector with large numbers of highly skilled and mobile employees. In the same way, some employment legislation, conferring common basic standards for employment, may facilitate the operations of international businesses working across borders. It may enable them to be clearer about their duties as employers across the

internal market, and may reduce the overall regulatory burden by requiring compliance with only one set of norms. Equally, however, an absolute identity of rules seems unnecessary and impractical, given the range of local factors in play in any market; and intrusion into terms of employment on a sectoral basis (such as attempts to fix remuneration in the financial sector in ways that do not apply elsewhere) may create distortions without contributing to the overall efficacy of the internal market;

- **EU data privacy legislation:** legislation protecting data privacy is clearly important in its own right. For a sector such as financial services, which needs to collect, process and retain large volumes of data on individual clients, businesses and other data-subjects, a uniform data protection regime across the internal market is a valuable aid to business. This is however only true if the resultant regime is balanced and calibrated to meet essential needs, and is not excessively onerous or disproportionately punitive in penalties for rule-breaches. Current EU debates on data-protection provide examples of an EU initiative that is desirable in principle but risks losing sight of the right balance for serving needs ranging from protection of data-subjects' privacy to practical and economic operability by business. By demanding that restrictions be imposed on data-flows to non-EU markets which do not apply equivalent regimes, it may damage EU businesses' competitiveness in third country markets. It also risks creating an EU template for data-protection which, if followed by other jurisdictions, could have market-restrictive effects as data (the lifeblood of most businesses) becomes less easily transferable.

### **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?*

This question is framed as if assuming that legislation and regulation must inevitably be the chosen means for delivering an internal market. While this is undoubtedly true for some activities and sectors, it would be wrong to rely on a conveyor-belt of legislation alone. A pro-competitive ethic underlying legislation, plus enforcement of rules, are equally necessary, backed by free-market policies at both EU and member-state level to enhance competition and consumer choice.

As before, TheCityUK's detailed response is confined to financial (and, to a lesser extent, professional) services sector. For this sector, EU mechanisms for delivering the internal market have developed through a set of incremental legislative steps to equalise the terms on which financial services can be provided in different member-states. The legislation began by focusing on "freedom of establishment" and "freedom to provide services". It initially concentrated on the least controversial financial services operations, starting with capital transactions and then reinsurance (a financial service required, by simple and efficient means, across all six original member-states, whose individual economies differed in their capacity to provide it). From these beginnings legislation expanded to cover a wider range of financial services, introducing steadily more uniform approaches to prudential tests of providers' soundness and to product and price control.

Progress was then driven forward by the Cockfield Report, which proposed a clear distinction between what had to be harmonised and what could be left to mutual recognition of national

regulations and standards. Mutual recognition came into its own following the ECJ's *Cassis de Dijon* ruling (1979), which effectively laid down that full harmonisation of national laws was not needed for the movement to a single market - all that was required was acceptance (or recognition) of each other's laws. For financial services, this spurred an accelerated incremental legislative process which, by the 1990s, had reached a significant degree of critical mass. As the Financial Services Action Plan (2000) developed, it amounted to a legal framework enabling a firm from one member-state to establish branches in others, conducting business on the balance sheet of the parent company in its "home" member-state, on a basis which both "home" and "host" country authorities could be satisfied was subject to a common regulatory framework. Similarly, non-EU firms were given an incentive to establish in one single member-state in the EU on the basis that they could freely provide services across the EU from that base on the same legal basis. More recently, there has been a changing balance in EU financial services regulation:

- Regulatory policy and some supervision of financial services is shared between the EU and its member-states;
- EU financial services legislation is increasingly being enacted as Regulations rather than Directives, reducing the scope for member-state discretion in implementation;
- Over the past ten years the Lamfalussy process has governed the process of rule-making and implementation of financial regulation in the European Union;
- The recent introduction of the European Supervisory Authorities has significantly changed the regulatory decision-making process;
- Banking Union, including direct supervision of major banks in participating member-states, represents a major step toward the Europeanisation of financial services (see Question 9).

All these changes also represent change in the previous balance between harmonisation and mutual recognition, with the likelihood of further change to come. TheCityUK will comment further on the balance between harmonisation and mutual recognition in the Review's subsequent Semesters.

Two other changes of balance in recent years should be highlighted:

- **Third country access:** until recently, with the waning of the "Fortress Europe" concept, little internal market legislation – whether for financial services or in other fields - had serious implications for third country access (although data protection and "safe harbour" arrangements were an example). Third country access has recently become a more salient issue: the Alternative Investment Fund Management (AIFM) Directive and the Market in Financial Instruments Directive (MiFID) are examples.
- **Extraterritoriality:** extraterritoriality (formerly seldom a significant concern) has become a more frequent feature of EU legislation.

Both need to be guarded against, in the interests of maintaining market-openness and good relationships with trading partners in a globalising world.

Taken all in all, the creation of the integrated EU framework for financial services has had a very marked and highly positive effect for those UK-based financial services businesses with an EU-wide or global reach, and an equally positive effect for their clients. Without such a common legal framework and set of legal freedoms, their commercial operations might well not take place at all or else might take place in a non-EU centre. Without it, too, there would be far less interest in

establishment in the UK by non-UK EU firms, while their home country authorities might not allow it without additional regulation. The recent crisis has revealed imperfections in the EU legislative framework – hence the Turner Review’s observation (2009)<sup>3</sup> that there needed to be either “more Europe” or “less Europe”. The City as it exists today, as a market place of firms from across the EU and outside, is made possible by the framework of internal market legislation.

For financial services businesses with a narrower or UK-focused remit these benefits are less marked. They are significantly offset by the challenge of dealing with the pattern, extent and characteristics of EU regulation. Embracing some forty separate pieces of legislation<sup>4</sup> – a pattern that no member-state, left to itself, would have probably have followed – the EU legislative programme is huge in its extent. It is also subject to deficiencies in terms of impact tests. True, the Commission now has a responsibility to test all internal market legislation for market impact, “subsidiarity” (i.e. whether legislation at EU or member-state level is needed) and proportionality; the Committee of Permanent Representatives has responsibility under the Council of Ministers’ rules of procedure for ensuring that these tests are met, and (under the Lisbon Treaty) national parliaments should also apply these tests. The tests are valuable, provided that they are carried out thoroughly. In TheCityUK’s view, the tests are applied more rigorously to regulation outside the prudential sphere: they need to be applied equally to prudential regulation. This is all the more important given that EU legislation will be implemented through a fragmented supervisory structure, albeit with a degree of supra-national coordination.

Against this background, it will remain important for the UK to:

- Remain engaged effectively with EU Institutions;
- Uphold the principles of smart regulation and ensure that proper impact assessments are conducted;
- Press the case for better and more uniform enforcement of rules;
- Proactively participate in the debate over structural reform of the EU (i.e. Banking Union);
- Preserve third country access.

As for Articles 114 and 115 of the Treaty on the Functioning of the European Union (TFEU), TheCityUK understands that the questions in the Review reflect a view expressed by some commentators that, despite the limits set out in Article 114, these Articles may be used as a general legislative competence, that the limits may have been breached, and that there may be resultant “competence creep”. TheCityUK simply notes that Article 26 of TFEU places a duty on the EU to adopt measures with the aim of establishing or ensuring the functioning of the internal market. Article 114 is the key article on the procedures for doing so, while Article 115 allows the Council, acting unanimously, to issue directives bearing on member-states measures that directly affect the establishment or functioning of the internal market. Article 114 (based on Article 95 of the previous EC Treaty) appears to be a cornerstone of the EU legislative process. TheCityUK is not aware of a case where Article 115 has been used for non-tax measures.

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<sup>3</sup> Turner Review (published by the Financial Services Authority 2009)

<sup>4</sup> See TheCityUK’s chart attached

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

The internal market is not homogenous: its features vary by sector and by member-state. It is deeper in some areas than others because it has proved easier to reach agreement in some sectors than others. In sectors where there is both a high degree of regulation and also a high degree of private sector competition, these factors have tended to spur the progress of internal market implementation. In other sectors, where there is a high degree of concentration and/or state control (civil aviation and energy are examples) progress has come later, if at all. As already noted, QMV has also been an important factor in advancing internal market legislation.

In financial services, these predisposing factors led to a relative degree of progress in establishing the internal market. There have been significant benefits, for instance, in reduction of trading costs through MiFID and other measures. Weaknesses were however exposed in the financial crisis of 2008 and onwards, including systemic negative feedback between the solvency of banks and their sovereigns. This has led to a much intensified programme of EU regulatory legislation, raising questions as to the articulation of legislation affecting the internal market as a whole with those rules which are specifically necessary for the integration of the Eurozone.

This is not the place for a full examination of the current Commission programme of internal market legislation for financial services (which can be covered in more detail in TheCityUK's responses on the "Internal Market (Services)" and the "Internal Market (Capital)" in the Balance of Competences Review's third semester). However, as regards helping or hindering implementation of internal market rules, certain general features in financial services regulation can be adduced (which may have analogies in other parts of the internal market):

- **Policy objectives:** financial services regulation has important implications for EU economic growth. An over-emphasis on regulation alone is likely to act as a brake on jobs and growth-oriented policies. Regulatory policy should prize stability but not at the expense of economic growth or of competition within the internal market. Like other policy areas, it needs to be viewed in terms of its potential as a spur to business expansion and lasting job creation;
- **Policy coherence:** as in other policy areas, there is a risk of sacrificing policy coherence in the interests of advancing a programme geared to legislation as the EU's activity of choice. There needs to be a compensating focus on policy coherence and a pro-competitive agenda, across EU regulation of financial services and related professional services, EU proposals for taxing financial services, the EU's strategy for regulatory convergence with other global markets, and the EU's trade and investment policy for market opening; as well as an interest in such other areas of EU policy as encouraging Small and Medium Enterprises (SMEs); finance for business including promoting alternative sources of finance; trade finance; corporate governance, competitiveness and innovation;

- **Regulatory Gaps:** for financial services, the creation of a full internal market has been hampered by the continuing distinction between “prudential” regulation (the preserve of “home” country regulators, and harmonised under EU legislation) and “market conduct” rules (which remain the preserve of “host” countries” and are much less harmonised). This remains a significantly incomplete feature of the internal market for financial services;
- **Creation of new European Supervisory Authorities (ESAs):** these are new bodies, with which rulemaking powers will reside (member-states’ regulatory bodies will have a secondary supervision and enforcement role). They should be significantly useful in increasing confidence in the degree to which national supervisors act in uniform ways, although the exact way in which the ESAs will exercise their overarching regulatory powers has still to be experienced;
- **Interaction between ESAs and member-state institutions:** there are nonetheless risks of ESAs developing along one track while member-states’ supervisory authorities follow different or varying tracks, leading to mismatches in responsibility and scope. In the case of the UK, it is already clear that there will not be a perfect match between the responsibilities of the new UK bodies responsible for prudential regulation (the Prudential Regulatory Authority) and market conduct (the Financial Conduct Authority) and those of the ESAs (ESMA EIOPA and the EBA which are set up along sectoral lines). This sort of problem may proliferate across the internal market as a whole, diminishing the effectiveness of implementing internal market rules. It may be necessary to take positive steps at EU level to reduce it.

Failure to implement internal market measures either at all or in a timely way has hindered the development of the internal market. However, as shown in the European Commission's “Internal Market Scoreboard”<sup>5</sup> (September 2012) performance is gradually improving. Effective enforcement is crucial to making the internal market work effectively - and to its credibility for market players and investors. TheCityUK would tend towards supporting measures to enhance enforcement, while recognising that they could well require Treaty changes to invest EU institutions with greater enforcement powers.

*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?*

If TheCityUK has points to make, these will be offered in TheCityUK’s responses on the “Internal Market (Services)” and the “Internal Market (Capital)” in the Review’s third semester).

*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 UK is only one among a number of member-states that are members of the G20, the G8 and OECD. For financial services, it was undoubtedly important that, at the time when the financial crisis was at its height, UK chairmanship of the G20 London Summit was able to produce a strong

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<sup>5</sup> [http://ec.europa.eu/internal\\_market/score/docs/score25\\_en.pdf](http://ec.europa.eu/internal_market/score/docs/score25_en.pdf)



consensus for collective action, resulting in the enhanced role of the Financial Stability Board (FSB). The FSB's subsequent initiatives have resulted in further agreements at the G20 level and also in on-going work in such international bodies as OECD and the IMF. On balance, the UK's involvement in such groupings (like that of other member-states) must have helped the internal market rather than hindering it.

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

The question of extra costs and benefits is important. TheCityUK is attempting to marshal examples and metrics for measuring effects. If TheCityUK has points to make, these will be offered in TheCityUK's responses on "Trade & Investment" in the Review's second Semester, or "Internal Market (Services)" and "Internal Market (Capital)" in the Review's third semester.

*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 certain cases EU rules are made on the basis of "minimum harmonisation", allowing member-states to set higher standards within their own jurisdictions, provided that these comply with the EU's non-discrimination requirements. This can be valuable: the UK authorities have considered it to be worthwhile in the case of bank liquidity requirements. But there is no general rule: the arguments need to be considered on a case-by-case basis. The Davidson Review (2006)<sup>6</sup> looked into the "over-implementation" of EU legislation and made specific recommendations for removing unnecessary regulatory burdens in a number of legislative areas, including financial services. The EU-OECD Study "Better Regulation in Europe: United Kingdom"<sup>7</sup> also reviewed the question. TheCityUK does not have anything to add to these general reviews, while noting that the government has introduced (2010) a direct 'copy out' principle, to ensure that the way European law is interpreted does not unfairly restrict British companies.<sup>8</sup>

### **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?*

TheCityUK endorses completion of the internal market as an objective of UK policy. TheCityUK also endorses EU enlargement as a general policy objective.

But compliance with existing internal market rules and obligations remains a challenging concern. The Commission's "Internal Market Scoreboard" is a useful step. But, as the recent Monti Report<sup>9</sup> underlined, more is needed. The fact that compliance can only be monitored ex-post also makes for built-in delay in bringing errant member-states to book. TheCityUK believes that there is a strong

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<sup>6</sup> <http://www.bis.gov.uk/files/file44583.pdf>

<sup>7</sup> <http://www.oecd.org/unitedkingdom/betterregulationineuropeunitedkingdom.htm>

<sup>8</sup> <https://www.gov.uk/government/news/government-ends-goldplating-of-european-regulations>

<sup>9</sup> [http://ec.europa.eu/bepa/pdf/monti\\_report\\_final\\_10\\_05\\_2010\\_en.pdf](http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf)

case for reviewing the current enforcement procedures to see how to make them more effective, particularly in services.

Enlargement is both a desirable outcome and a challenge to the working of the internal market. The accession of new member-states can work against rapid implementation of a uniform internal market, in both financial services and other sectors. Inevitably, acceding member-states have their own transitional timetables for adjusting to the EU *acquis* and for introducing and reinforcing their regulatory and supervisory institutions and “competent authorities”. This needs to be recognised when considering future accessions and adaptation by new member-states to the regulatory and supervisory obligations of EU membership.

The challenges presented by “unknowables” should not be under-estimated. The EU financial sector is in the course of fundamental regulatory change. On the one hand, there is the legislative programme introduced by Commissioner Barnier: this could itself have unforeseen effects on the structure and operations of the sector. On the other, there are initiatives outside this legislative programme, such as certain member-states recourse to “enhanced cooperation” to introduce a Financial Transactions Tax, which may also alter the shape of the sector, or the pattern of individual business’s offerings, as firms adapt or re-locate their business for tax reasons. The interaction of these choices and chances is hard to predict, but could well bring unforeseen challenges to legislators and the sector alike.

Finally, the effects of the Eurozone on the internal market will present on-going challenges. So long as there is a substantial number of non-Euro member-states the “double-majority” system should work to balance the internal market interests of those member-states within the Eurozone and those outside; but this will change as further member-states are admitted – albeit probably with more caution than before – to Eurozone membership.

**28 February 2013**

A - Financial Stability & Reducing Systemic Risk	B - Transparent, Safe & Competitive Single Market promoting economic growth	C - Financial Supervision, Corporate Governance, Audit & Accounting	D - Consumer Protection
<i>Regulation promoting stabilising effects, and reducing systemic risk</i>	<i>Regulation promoting Single Market for financial services as a driver of economic growth</i>	<i>New structures to Improve supervision of financial institutions; corporate governance arrangements supporting this</i>	<i>Regulation promoting and protecting consumer interests</i>

**PIPELINE STAGE 1.**  
*Emerging issue or review of policy and existing regulation*

**PIPELINE STAGE 2.**  
*Intent aired by authorities (speech / high level paper drafted by regulator)*

**PIPELINE STAGE 3.**  
*Green paper / White Paper / Consultation issued*

**PIPELINE STAGE 4.**  
*Formal Legislative Proposal / Market Standards issued*

**PIPELINE STAGE 5.**  
*De facto standards agreed; legislation in place; secondary legislation in preparation*

<p>Macro-economic Levers/ESRB</p> <p>Risk-free status of Sovereign Debt</p> <p>Banking Union/Single Resolution Mechanism</p> <p>Tax Arbitrage</p>	<p>Payment Systems</p> <p>Eurozone/Single Market boundary</p> <p>Banking Union/Deposit Guarantee Scheme</p>	<p>Review of ESA Powers</p> <p>Competition Authorities</p>	<p>Islamic Financial Instruments</p> <p>Collective Redress</p> <p>Payment Services</p> <p>Variable annuities</p> <p>Pension Reform</p>
<p>FSB Report on Systemically Important Insurers</p> <p>Trading Book Review</p> <p>Liikanen Report on structure of EU banking</p>	<p>Emerging Markets / Capital Flow</p> <p>Commodities</p> <p>Green Paper on long term investment</p>	<p>Super-equivalence/ Single Rule Book</p> <p>International Reg Convergence</p> <p>Extra-territoriality</p> <p>Gender Targets for Boards of listed companies</p>	<p>Consumer Credit</p> <p>Retail Banking Package</p>
<p>Green Paper on Shadow Banking</p> <p>Banking Reform Bill</p> <p>Parliamentary Commission on Banking Standards</p>	<p>Recovery &amp; Resolution Procedures for nonbanks</p> <p>FPC Macro-Prudential Tools</p> <p>Financial Transaction Tax – enhanced cooperation</p>	<p>Action Plan for SMEs</p> <p>Anti-Money Laundering Directive IV</p> <p>LIBOR &amp; other market indices</p> <p>Third Country Access</p>	<p>UCITS VI</p> <p>Mortgage Market Review</p> <p>Review of Client Assets Regime</p> <p>Review of Unregulated CIS &amp; Close substitutes</p> <p>EU Contract Law</p> <p>IORPs</p> <p>Insurance Guarantee Schemes</p> <p>Investor Compensation Schemes Directive</p>
<p>Crisis Management</p> <p>Recovery &amp; Resolution Directive</p> <p>Broadening the resolution regime to non-banks</p> <p>CRD IV</p>	<p>Innovative Financial Instruments</p>	<p>MiFID II / MiFIR</p> <p>MAD II/MAR</p> <p>Central Securities Depository Regulation</p>	<p>Regulation on Key Information Documents for PRIIPs</p> <p>Insurance Mediation Directive</p> <p>UCITS V</p>
<p>Solvency II</p> <p>Dodd-Frank Act: Banks / Corporates</p> <p>Bank Levy</p>	<p>FATCA</p>	<p>EMIR</p> <p>AIFM Directive</p> <p>Offshore RMB Centre</p>	<p>Dodd-Frank Act: Consumers</p>
<p>Covered bonds</p> <p>Financial Markets Infrastructure</p> <p>Post-trade issues</p>	<p>Cross-border debt recovery</p> <p>European Venture Capital Funds</p> <p>European Social Entrepreneurship Funds</p> <p>Credit Rating Agencies III</p>	<p>Banking Union/Single Supervisory Mechanism</p> <p>Banking Union/interaction with EBA</p> <p>Financial Services Act: FPC, PRA, FCA responsibilities</p> <p>Financial Sector Sanctions</p> <p>Dodd-Frank Act: Regulators</p>	<p>Statutory Audit Regulation on Public Interest Entities</p> <p>Transparency Directive</p> <p>FCA/UKLA Approach to Supervision</p> <p>Common European Reporting</p> <p>Financial Conglomerates Directive</p> <p>Internal Governance Guidelines</p> <p>Global Accounting Standards</p>

# Trades Union Congress

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**TUC submission to BIS**  
**Review of the balance of competences**  
**February 2013**

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## **TUC evidence to BIS on the EU internal market**

### **Introduction**

1 The Trades Union Congress (TUC) has 53 affiliated unions, representing almost six million members, who work in a wide variety of sectors and occupations. The TUC welcomes the opportunity to respond to the BIS call for evidence on the internal market as part of the wider Review of the Balance of Competences between the EU and the UK.

2 In general, while we want to engage with the Review process, the TUC has some concerns with regards its methodology. The review claims to be an evidence based exercise, however some questions are so vague that they can only be answered in general terms and with opinions that are, by their nature, subjective and representative of the view of the respondent/s. While the TUC is not averse to sharing its views on this and other subjects, it is difficult to envisage how these will be 'weighed' next to other organisations' responses to come to an allegedly neutral assessment of the implications of EU membership, which is the stated aim of the review.

3 With regards to this particular call for evidence, the TUC supports an internal market in which the social and economic dimensions go hand in hand, and can only support the completion of the internal market if effective social protection and safeguards for public services are guaranteed. In our view support for the internal market and the EU among citizens and working people will only be maintained if the social dimension is strengthened and extended, a view which is not unique to the TUC but increasingly being recognised by the European Commission as well as other actors.

4 The TUC response to this call for evidence focuses in particular on:

- the economic benefits to the UK deriving from trading freely with its European neighbours;
- the need for creating a level playing field in social and employment protection to counter the negative effects that market integration has had in respects of certain rights/entitlements and of the risk of social dumping;

- the alleged 'gold plating' of EU rules in the UK; and
- future enlargement and the need to keep an 'open door' policy as in 2004 so as to decrease the risk of illegal migration and thus exploitation of migrant workers.

### **Responses to consultation 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?**

5 The EU is the world's biggest exporter and the second-biggest importer. In 2011, despite the crisis, its combined GDP was bigger than the US and trade with the rest of the world accounts for around 20% of global exports and imports. Access to a market of such proportions has undoubted economic benefits to any participating country. Indeed nearly 50% of UK goods are exported to the EU – but overall the UK accounts for only 22% of total EU exports<sup>1</sup>, which could suggest that the British economy is much more dependent on the internal market than the EU is on the British economy.

6 In 2002, the European Commission conducted a ten-year review of the single market. It identified the following benefits from market opening:

- an increase in EU GDP in 2002 of 1.8% or €164.5 billion
- the creation of some 2.5 million jobs in the EU since 1992 that would not have been generated without the opening up of borders
- extra prosperity amounting to €877 billion since 1992, which is equivalent to roughly £3,850 (€5,700) for an average household<sup>2</sup>.

7 The OECD has estimated that a 10% increase in trade exposure is associated with a 4% rise in income per capita – thus, an increase in intra-European trade since the early 1980s may have been responsible for a growth in income per capita in the UK of around 6%<sup>3</sup>.

8 Given the compelling evidence the TUC believes that there are clear economic benefits deriving from the internal market. However, the TUC also believes that

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<sup>1</sup> [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/International\\_trade\\_in\\_goods](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/International_trade_in_goods)

<sup>2</sup> [http://ec.europa.eu/internal\\_market/10years/docs/workingdoc/workingdoc\\_en.pdf](http://ec.europa.eu/internal_market/10years/docs/workingdoc/workingdoc_en.pdf)

<sup>3</sup> <http://www.parliament.uk/documents/lords-committees/eu-sub-com-b/singlemarketinquiry/singlemarkettwo.pdf> p.110

while great progress has indeed been made on completing the internal market, there hasn't been an integrated approach and the single market has become an end in itself rather than being seen as a tool for the achievement of broader societal goals that are at the heart of the European project, such as the development of a social market economy which comprises the improvement of living conditions, high levels of employment, social inclusion etc (articles 1-3 TEU). Thus the negative aspects of some policies – the fact that there have inevitably been losers as well as winners – have not been properly addressed, and as a result even the European idea itself has been brought into question. Widespread concerns about jobs displacement illustrate this. The TUC has argued many times that the internal market needs a social dimension – as Jacques Delors famously said 'people will not fall in love with the Single Market'.

9 Thus the TUC believes the social dimension must form an integral part of the internal market. Measures respecting and promoting fundamental social rights, collective bargaining, employment rights and equalities, are essential to protecting working people and their living standards. Effective labour market regulation can play an important role in preventing unfair competition and the undercutting of employment standards as well as supporting and generating high value, high trust and highly productive workplaces.

10 Historically, the process of economic integration has focused on removing barriers to trade, starting with the establishment of a customs union and progressively focussing on product market standardisation. Integration in these areas has been far reaching – less so in the fields that would indeed make Europe more competitive, such as developing a Europe-wide industrial strategy (most recently the Commission's communication on this falls short of what is needed) and a coherent framework for greening the European economy, encouraging R&D and ensuring the future sustainability of the EU. Deeper integration in these areas would be welcome if it aimed at increasing the quality of European products and not just at decreasing production (and labour) costs.

**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?**

11 As stated above, the TUC believes that common regulations in the environmental, social and employment fields are not only desirable but necessary for the attainment of the EU objectives and for the creation of a level playing field in which free competition does not equate to undercutting and exploitation of workers.

12 Much of the conventional economic analysis assumes all regulation is bad and therefore less of it is inherently a good thing and will result in higher growth and

more jobs. This is a one-sided view that fails to take into account the potential benefits of regulation. Setting high and consistent standards can encourage competition on the basis of innovation and productivity, rather than cost-cutting and poor quality provision. Moreover, restrictions can have a good economic and social reason for them, for example, most governments tightly control gambling activity and set tough requirements for firms engaged in services with significant environmental, legal or public health implications.

13 By way of example it is useful to remember what happened during the adoption of the Services Directive, with the European Commission and some Member States pushing through a proposal just based on narrow market logic, and ignoring wider concerns from citizens and trade unions in particular. This contributed to a rejection of the Constitutional Treaty in the French and Dutch referenda and to increased hostility towards the EU elsewhere. Renewed efforts must be made to win back citizens by giving the EU a human and social face, starting with shoring up their protections at work – rather than perceive these as obstacles to the internal market. Even the European Commission recognises<sup>4</sup> that many perceive that increased liberalisation in recent years has been only achieved at the cost of social rights.

14 The TUC believes that there is a need for legal reform in the EU to reconcile economic freedoms with fundamental social rights and ensure that EU law complies with human rights standards as recognised by the ILO and Council of Europe. Protections are also needed to ensure equal treatment for workers who exercise rights to free movement, including posted workers. Such protections are the only way to prevent unfair competition. If these issues are not adequately addressed the EU will increasingly be perceived as a business conspiracy with nothing in it for ordinary citizens and workers.

### **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?**

15 It is difficult to assess whether the two principles of mutual recognition and harmonisation have worked; it would be fair to say that a mix of both has helped develop the internal market to a high level of integration as we have today. The

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<sup>4</sup> Communication "Towards a Single Market Act: For a highly competitive social market economy" COM (2010)608



two principles should be seen as complementary and offering different benefits. Mutual recognition for instance allows businesses not to face duplication in licensing requirements. On the other hand, harmonisation of national regulations at a high level of protection for workers, consumers and environment has clear advantages too. Where either principle hasn't achieved the desired result of eliminating barriers and discriminatory behaviour, the European Court of Justice (ECJ) has sought to level the playing field through its case law.

16 In this debate one should not lose sight of Member States' jealously guarded sovereignty, as well as popular opposition, which has led in many instances to the rejection of European Commission initiatives that sought to revive the principle of mutual recognition. Again the Services Directive illustrates this when attempts to introduce the 'country of origin' principle – whereby host countries would no longer be allowed to exercise controls over foreign services providers operating on their territory – were defeated.

17 As to the use of articles 114-115, which allow for the approximation of national laws and provisions with the purpose of completing the internal market, the TUC believes that the exceptions contained therein offer sufficient guarantees to Member States concerned that the EU might abuse the powers conferred to it. These articles explicitly exclude harmonisation in the field of fiscal policy, free movement of persons as well as rights and interests of workers. The latter caveat in particular is meant to fully respect national industrial relation systems – a feature which the TUC wholeheartedly supports. The treaty also allows for Member States to maintain national provisions for overriding reasons of public interest, which again the TUC views as a significant counterbalance to EU competence.

#### **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?**

18 The TUC agrees with the view that some areas of the internal market are better integrated than others. For example, there is a stark contrast between the level of integration of the product market and the services market or indeed the freedom of movement of workers. However the TUC also maintains that not all areas lend themselves to cross-border trade and that potential trade in services is always limited as many services are necessarily local and personal, as argued in a report<sup>5</sup> on the economic case for the Services Directive. Indeed a study carried out by Price Waterhouse Cooper for the then DTI on barriers to establishment and cross-border trade found that 60% of the barriers to cross-border provision of services cited by firms were natural, mainly cultural and language, rather than regulatory barriers –

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<sup>5</sup> TUC report *'Besides the point? - the economics of the Services Directive'* 2005

which in our view undermines the case for further deregulation. Moreover, the European Commission's own reports for the Services Directive show virtually no barriers in trade in IT, very small barriers in retail and only found significant barriers in the 'regulated professions' such as accountancy.

19 A debate about effective implementation of the internal market cannot be had without regards to the macroeconomic situation. Without such perspective, there will always be a tendency to say that the market is not functioning properly because of bad regulation or uncompetitive practices, thus leading to structural reforms as the answer. However the last 20 years have shown that whether the internal market was developing well had much more to do with whether the economy was growing than with the specifics of structural reform proposals. In fact, it is much easier to achieve successful structural reforms, and to complete economic integration, when the economy is growing than when there is a recession.

20 Too often, internal market policies have become synonymous with neo-liberalism – with ideological 'the market knows best' policies – rather than with measures to make the market truly European by ensuring non-discrimination and equal treatment for economic operators and for their workers. The TUC does not believe in protectionism or picking winners, but the market has not always been a good servant of long term industrial policy.

### **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?**

21 The TUC does not believe that other forms of integration have the potential to adversely affect the internal market – other countries, which have chosen to participate in these formations, have not suffered detrimental effects and their relationship with the internal market has not changed. The TUC also maintains that current economic woes in the UK have little to do with the crisis in the Eurozone, but more to do with self-defeating austerity policies independently chosen by the Government.

22 The Schengen Area allows EU citizens of the participating countries to travel passport-free – it probably has positive effects on tourism, but it's hardly a defining feature of an internal market, since to seek employment abroad, to sell products and services and to move capital around there are still other forms of control in place, which apply equally to both the UK and the Schengen Area countries.

23 Of the areas of integration which can bring tangible benefits, enhanced judicial and police cooperation seems the most obvious one. In an increasingly integrated

market it is not uncommon for consumers and workers to need to seek judicial redress in jurisdictions other than their own country and the possibility to have mutual recognition of court rulings might go a long way to ensure that the EU does more for its citizens.

24 In terms of future forms of integration e.g. banking union, fiscal union etc, the TUC believes that the freedom of participating countries to choose what is appropriate for their common system should be respected. It is not edifying for a country to lecture others on the need to further integrate in order to save their economies and then seek to interfere in their plans with the sole objective of protecting an industry of perceived national interest such as financial services.

25 As for the latest form of enhanced cooperation (ECP) to introduce a financial transaction tax, the TUC maintains that the Commission has duly verified whether it would be detrimental to the internal market and found that in fact an ECP on this issue would help reduce market fragmentation in that a number of participating countries were already introducing FTTs at national level in order to raise much needed revenue and regulate speculative finance – objectives which the TUC supports. It is indicative that the legal basis of the original proposal for an EU wide FTT was article 113, which is the article that allows the adoption of measures in the field of taxation aiming at fostering the functioning of the internal market and avoid distortions of competition.

**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?**

26 The UK is not the only EU member that is also a member of other international bodies such as the ILO (it is interesting to note that it is not mentioned in the question). These groupings are not mutually exclusive and there can be benefits from taking part, especially when considering that we live in a globalised world where international relations play an important role. In some of these bodies, membership of the EU can also multiply national influence and increase a country's leverage – that is when the EU succeeds in 'speaking with one voice' because there is an identity of interests amongst its members vis à vis other parts of the world. The TUC fears that this opportunity hasn't always been exploited to its fullest e.g. in the climate change talks, where so much more could have been achieved.

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

27 The TUC believes that the internal market has brought additional benefits to international trade but that more could be done, especially in the relationship between trade and labour standards, where the EU should be setting high parameters (also given the rules it applies internally).

28 For the TUC, trade policy should reward and support countries genuinely interested in the well-being of their workforce, in skilling them up, providing them with decent work and capturing value through fairly shared productivity gains, not through the suppression of fundamental labour rights. To realise this, the EU should ensure that all social chapters in free trade agreements have dispute settlement and sanctions provisions accorded the same status as any other part of the agreement. It also needs to provide and align technical assistance to help governments build effective labour market institutions.

29 The TUC advocates this position, not for any protectionist reasons, but to encourage a fair trading environment and mature systems of industrial relations in our trading partners. Take Uzbekistan for example: the Uzbek government routinely takes children out of school to harvest the cotton that is ending up in the clothes on the UK high street. The ILO has condemned this practice but has limited ability to prevent such actions. The flow of trade opened up under trade liberalisation is making this abuse possible, yet can easily be used to assist with providing the solution. The threat of removing trade preferences would strengthen the efforts of the ILO and the international community to encourage the Uzbek government to stop using child labour.

**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?**

30 According to the latest Internal Market Scoreboard<sup>6</sup> timely transposition of EU legislation is one of the criteria with which the European Commission assesses a country's record in terms of its compliance with internal market rules. In May 2012 the UK was still to notify implementation of 17 directives to the Commission (most in the area of transport, but also energy), thus missing the 1% deficit transposition target, and has increased its transposition delay compared to 2011. But timely implementation represents only the first step towards the proper functioning of the internal market. Member States also need to transpose EU Directives correctly into national law to ensure that citizens and businesses can benefit from the internal market's full potential. Based on the infringement proceedings opened by the Commission, the UK has not correctly transposed eight directives and there are 38 pending cases (the EU average is 31) against the UK where further instances of non compliance may be found.

31 These figures show that the conception of the UK as a zealous law-abiding EU member is misguided. Moreover and as stated in its response to the Davidson

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<sup>6</sup> [http://ec.europa.eu/internal\\_market/score/docs/score25\\_en.pdf](http://ec.europa.eu/internal_market/score/docs/score25_en.pdf)

Review on implementation of EU legislation, the TUC does not support the view that the UK 'gold-plates' or permits 'regulatory creep' when implementing EU law. Indeed there are examples where successive UK Governments have failed to implement EU directives effectively and have as a result created legal uncertainty and generated costs for businesses, employees and trade unions. In addition, failure to implement EU directives effectively could also expose the Government to claims for compensation. Thus the TUC takes the view that it is beneficial for the Government to implement EU legislation fully and clearly.

32 The TUC is also concerned that the debate on over-implementation has led to Government departments and agencies not taking the opportunities offered, when implementing EU Directives, to improve protection and consolidate existing legislation where appropriate. This minimalist approach has meant that many regulations in fields such as health and safety and employment protection have been far less effective than they would otherwise have been. The way in which the directive 1996/71 on posting of workers wasn't even transposed into an act, but merely referred to on a Government department's website is a case in point. With a more exhaustive implementation perhaps situations like the ones at Lindsey Oil Refinery would not have happened.

33 It also means that too often the onus transfers to workers (and their trade unions) to instigate litigation to ensure EU law is given effect within the UK. Where individuals are not represented by trade unions, they will simply lose out on their basic EU entitlements.

34 The TUC has argued that there are clear examples of how the use of options within Directives and implementation over and above the minimum required offers clear productivity, labour market and economic benefits, in addition to offering better protection for workers. In such scenarios, we believe that so-called 'gold-plating' is not only legitimate but also beneficial. The fact that the UK has opted not to use the flexibility provided in the 2004 public procurement directives to allow jobs clauses in defence and other infrastructure contracts has often resulted in job losses and industrial decline in the UK but jobs promotion and growth elsewhere in Europe (Bombardier, Cross Rail are clear examples of this).

35 As to whether other Member States have over-implemented EU law or otherwise, the TUC believes that this is not for the Government to comment on – so long as EU law has not been breached (and only the European Commission and ultimately the ECJ are competent to assess whether that is the case), other sovereign states are free to choose whatever level of implementation is appropriate for their systems, as permitted by EU law. If the UK felt in any way at a competitive disadvantage vis à vis other countries with regards to a given piece of EU law it could always seek to challenge the other country's behaviour. Perceived negative effects of other Member States' regulatory framework do not necessarily constitute breaches of EU law.

## 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?**

36 As stated above in Q2, increased hostility towards the EU, perceived just as a free market where businesses can thrive but workers bear the brunt of unfair competition, can potentially lead to rejection of the EU as a whole. Thus one of the main challenges in the forthcoming debates about the future of the EU will be to strengthen its social dimension so that all its citizens can benefit.

37 Enlargement has expanded the internal market and extended the reach of EU rules to new countries; with it came economic growth and opportunities for business to access new markets. These are the reason why the UK has supported enlargement and should continue to do so.

38 The TUC has taken a similar view in supporting the choice of not resorting to transitional measures for migrant workers from new Member States that joined in 2004, and has disagreed with Government over the erection of barriers towards Bulgarian and Romanian workers. The motive has always been that restrictions only increase the risk of illegal migration or bogus self-employment and with it of exploitation of migrant workers, who are already very vulnerable. The TUC has supported the view that intra-EU migration has brought benefits to the British economy, but has also expressed concerns where there have been instances of mistreatment of migrant workers and undercutting of terms and conditions. The TUC believes that a more balanced integration of economic and social objectives in the completion of the internal market is paramount before any future enlargement takes place – only in this way can acceptance of the EU among citizens increase and discriminatory and xenophobic attitudes decrease.

# UK European Consumer Centre

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 UK European Consumer Centre is part of the ECC-Network, which consists of 29 centres in Europe including Iceland and Norway. The Network provide free and confidential information and advice in the resolution of consumer cross-border disputes when buying goods and services in the EU Member States. The UK ECC is co-funded by the European Commission and the Department for Business, Innovation and Skills. As a front line consumer advisory body, we are well aware of the types of issues that consumers face when buying goods and services around the EU. In some instances unscrupulous traders may have circumvented a law specific to a particular member state to cause consumer detriment, whilst in other cases there may exist a more widespread vulnerability to a particular malpractice with no current consumer protection existing.

Concerning mechanisms available to deal with such issues, firstly the EU Member States could respond to infringements of consumer law and protect consumers' rights based on their national rules of law, this has an advantage of speed and agility however such practices may lead to further fragmentation of the single market. Secondly, and more robustly, the European Union has sought to achieve its strategic goals through a number of legal measures designed to eliminate EU trade barriers through the holistic application of a number of legislative techniques. In the past few years the EU has been able to legislate in such a way to remove many of the obstacles that consumers previously experienced. For example the transposition of a piece of legislation using either maximum or minimum harmonisation across the single market has the power, respectively, to provide the consumer with rights and remedies in his/her own country which are either consistent across member states, or a bare minimum beyond which the degree of protection can vary.

However the resulting choice of maximum or minimum harmonisation has had a major impact on consumers in various ways. For example, see the difference between indirect/direct applicability of directives, regulations, decisions, etc. Furthermore we need to avoid the paralysis that an accentuated bureaucracy can produce where the consumer can find themselves cut off from the legislative process. How can a consumer inform the appropriate body at the EU level of a potential gap in the legislation exposed by their particular matter? Are there too many avenues or duplications which might create confusion and thereby bring the consumer to a standstill? Might this in turn deter the consumer from bringing his/her problem to satisfaction or resolution?

We believe that complimentary roles of the EU institutions and national parliament can improve the current consumers' landscape. However this does not signify the creation of a basis for "Excessive regulation" where national jurisdictions alone can respond to the consumer's needs. On balance, there is an argument for favouring maximum harmonisation as the overarching model, as, from the above arguments, simplification of the rules reduces fragmentation, clarifies both scope of application and interpretation and enhances social inclusion. All of which ultimately strengthens the single market. However adequate due diligence across all member states in the form of impact assessments of legal measures should always precede their implementation.



## 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?*

Our experience in dealing with consumer issues is that there are still barriers to purchasing freely within the EU and there is certainly scope for further improvement particularly in matters related to enforcement of rules and consumer awareness. Both issues could be tackled at the national and EU level simultaneously in an integration fashion. Particularly as communication channels have improved and the EU Commission have been more reactive and sensitive/responsive to consumers' issues which should further strengthen the integration process. There are, however, still circumstances where the EU-level action is the most appropriate and the extent of EU competences can be seen as an advantage to consumers and legitimate traders, ie in particular when the collective interest of the consumers are going to be affected.

The European Union has sought to improve the EU economy between Member States through the removal of trade barriers in the EU. Probably the most significant of the future challenges with regards to consumers will be the simplification of consumer law processes across the European Union (and its potential enlargement) and the creation of a highly integrated EU contract law which, in the long term, will lead to the removal of the many current disparities amongst Member States contract law rules. However simplification/integration should not mean reducing consumers' rights but enhancing the chance for consumers to build their confidence in buying goods and services from the Single Market in order to promote economic growth and prosperity.

# UK Weighing Federation

## UK Weighing Federation

### 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 most significant element of the internal market is the free movement of goods, and services across national borders. Without this, all of the benefits will be removed and manufacturers will need to produce goods for all of the separate markets. Implicit within this is the need for the technical harmonization of standards relating to the products that are being traded. Technical Barriers to trade. One of the main functions of the single market is the need to remove the possibility of member states using technical legislation to protect their own internal markets from competition. As the nature of weighing and measuring technology (and the technology in other market sectors; machinery medical devices etc) becomes more and more advanced, the opportunity for member states to undertake protectionist actions on technical grounds becomes greater and greater. An example that we are involved in at the moment is the clarification of the electromagnetic immunity requirements for weighing instruments. There is a sharp increase in the immunity requirements for weighing instruments. Unless the implementation of these requirements is carefully agreed and harmonized there is a strong risk that some member states will use these requirements to hinder the placing on their markets of instruments produced from other member states. We have the same challenges in a large number of other technical areas e.g software, that I would be happy to expand upon. The "level playing field" One of the other crucial functions of the single market in relation to goods is to ensure that competition between businesses is operating correctly. The requirements of the single market ensure the transparency of technical requirements and specific parameters of the product being traded. This should ensure freely operating market with products that are similar in their technical specifications being traded between economic operators. A failure to have the transparency of the technical specifications will make it easier for the development of an asymmetric market, with items of a lower technical specification being traded in competition with those of a higher specification. The crucial element in the market place of weighing and measuring equipment is that it is often very difficult for a consumer to be aware of those differences. An example of this would be the development of the market in cheap non-complaint instruments from the Internet. The present problems are generated by a poor level of enforcement, but the absence of the requirements for the technical specifications for the single market would make control of this problem by market surveillance authorities impossible. Against what criteria should we judge its economic benefits? In the broadest sense this should be the cost of having the single market compared to not having it. As we have been operating in the single market for many years the question of the cost of not having it is very difficult to meaningfully decide and we would be speculating as to the financial implications of its removal. Usefully indicators could be comparing the cost of designing and selling instruments for markets that are not in the single market to those that are, eg the USA, South Africa, Russia and Australia. When supplying to those markets the instruments have to be subject to specific type approval processes and verification procedures to meet the national requirements of these market which are different in technical details. This should be compared to the one type approval process and verification procedure for the single market, the EEA and the designated states. How deep does it need to be to be effective? As considered earlier, it is probable that the technical requirements would be come deeper as the technical development becomes more and more advanced. There is a practical question that must be (and is to some extent being addressed) as to which point deeper technical requirements must recognize the practical limitations of enforcement. There is little point in

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sophisticated technical requirements if it is not practical to ensure compliance

**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?**

I have no comment on this with regard to the UKWF

**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?**

It would be the view of the UKWF that on balance the mechanisms for delivering the internal market have worked well. The nature of the process is that it appears bureaucratic but it is the view of the UKWF is that this is the reflection of the transparency of the mechanism. The UKWF and its European organization CECIP are actively involved in all procedures and have few complaints about its operation. The debate between the harmonization and mutual recognition is a crucial one. Although "Cassis de Dijon" and "Cidrerie Ruwet" on the face of it offer access to other member states markets there are a number of significant exceptions that make it possible for members states to still prevent access to products. For the purpose of weighing and measuring instruments the "fairness of commercial transactions and the defence of the consumer" exists as an obvious method by which member states could (and have in the case of Cidrerie Ruwet) tried to use weights and measures legislation to prevent the operation of the single market. Although in both case the final conclusion for the businesses involved in this litigation was positive, it is the view of the UKWF this is a much more expensive and cumbersome method of ensuring the single market compared to technical harmonization. I would also draw attention to the attempt by the OIML (International Organization of Legal Metrology) to put in place a process for mutual acceptance agreements for type approval certificates. This has been met with limited success with many OIML members not participating fully in this process. This has left the decision of OIML members to decide if they wish to participate. This situation is of little value to manufacturers. It is the view of the UKWF that national interest in this process was the dominating force, and although well intentioned has lead to greater confusion in the market place. It would be the view of the UKWF that many of the problems of this process would be reflected in the single market if we made greater use of mutual acceptance

**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?**

It is the view of the UKWF that the depth of the internal market is connected to the technical nature of the market. The operation of the single market is not without its vagaries and problems but given the nature size and different cultural views that are represented it is felt that on balance it is effective. It is felt that any move away from the present frameworks would give national governments a greater opportunity to implement technical barriers to trade and is not something we would support. One of the major concerns of the UKWF is the implementation of the market surveillance rules that ensure the operation of the single market. For the single market to operate properly it must be correctly regulated to ensure that only complaint equipment is traded (see the "level playing field" above). The level of market surveillance is presently insufficient to ensure that legal compliant manufacturers are trading fairly against illegal trading.

**1. 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 UKWF has no comment on this

**2. 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 nature of the European single market is very technical and nature and groupings mentioned above have very little bearing on this.

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

The costs or benefits for the non-EU market have not a result of the single market. The cost of entry into these markets is independent of the single market There has been some benefit for markets that border the EU as they have tended to try and align with the single market and the technical requirements bear many similarities. e.g Armenia and Moldova, but these are not major markets

**4. 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?**

For the purposes of legal metrology legislation the UK has implemented the bear minimum of requirements. This has a little effect and manufactures of weighing and measuring equipment, as they will build instruments for the single market. Instruments will not be built for the UK market alone, as this would not be cost effective There is an SI that allows manufacturers to build and have approved instruments to EU requirements when there is no such requirement for the legislation in the UK. There are a number of examples where the UK implementation sits uneasily with the single market requirements and has in reality created extra burdens as manufactures attempt to reconcile these. e g checkweighers

# United Utilities plc

**EVIDENCE SUBMITTED BY UNITED UTILITIES GROUP PLC**  
**ON THE REVIEW OF THE BALANCE OF COMPETENCES**  
**BETWEEN THE UNITED KINGDOM AND EUROPEAN UNION:**  
**INTERNAL MARKET: SYNOPTIC REVIEW**

## **INTRODUCTION**

1. United Utilities Group PLC (UU) is a FTSE 100 UK water company. The vast majority of its business is UK-based but the company also operates in other jurisdictions. UU's UK business is affected by EU harmonisation, principally through the Water Framework Directive, which the Company will address in detail in the Department for Environment, Food and Rural Affairs call for evidence later in 2013. This note will seek to comment on the experience of the company when operating in other EU Member States and of its recent experience of the EU Pilot process.
2. This note will argue that the EU Pilot process lacks transparency; that the regime is opaque; that there is a lack of executive will at the Commission to enforce the single market principles set out in the Treaty of the Functioning of the European Union (TFEU); and that the Commission's discretionary powers with regards EU Pilot cases is unchecked by other EU institutions. Moreover, the lobbying efforts of individual Member States, whose conduct is under scrutiny, can serve to add another layer of complexity.
3. UU is a c. 35% shareholder and the technical operator of AS Tallinna Vesi (ASTV), the largest water and wastewater provider in Estonia. UU's holding in ASTV represents the largest British investment in Estonia. This investment followed a 2001 privatisation, implemented by an international procurement process which was overseen by the European Bank of Reconstruction and Development (EBRD), with the endorsement of the Estonian Government and the City of Tallinn municipality, the other major shareholder which also holds c. 35% of the shares. In the interest of customers, the main criterion for bidders was to offer the lowest possible increases in tariffs to enable compliance with European directives. The privatisation contract was agreed on that basis and ASTV has complied with its stipulation in full over the intervening twelve years.
4. In 2010, members of the Estonian government party began to develop an aggressive narrative against ASTV and the regulatory regime which it had itself endorsed, which suggested that ASTV's tariffs were too high, the company too profitable, and that the privatisation agreement was illegal from its inception. On August 3 2010, the Estonian government passed the Anti-Monopoly Bill, which modified existing legislation to discriminate against ASTV, allowing the terms and conditions of the privatisation regime to be unilaterally overturned.
5. The Estonian government claimed that it did not need to honour the privatisation contract because the parties were the City of Tallinn and UU, as apposed to the Estonian State. Differentiating between City and State is

inconsistent with EU law. Moreover, post-privatisation ASTV's loan guarantees in respect of the EBRD's funding were transferred from the Estonian State to UU. EBRD was party to the entire privatisation process.

## **EU PILOT 1794/11/MARKT**

6. In December 2010, ASTV submitted a complaint against the Estonian authorities (EU Pilot 1794/11/MARKT) to the European Commission. The company's case is that the Estonian authorities violated both freedom of establishment (Art. 49 of the TFEU) and the free movement of capital (Art. 63 of the TFEU) by enacting legislation that discriminated against ASTV and EU investors and by unilaterally overturning the EBRD endorsed international privatisation regime.
7. Based on the information provided to the Commission by the Estonian authorities, in summer 2011 DG Markt recommended that the case be closed and the company received a pre-closure letter. Following further evidence submitted by ASTV (EBRD also expressed its concerns about the Estonian authorities conduct) and in the light of a concurrent legal process in the Estonian courts, the Commission agreed to keep the case open. It is important to note that the Commission was aware of the Estonian legal process when it issued the pre-closure letter.
8. In September 2012, the Estonian Supreme Court rejected an appeal made by the CA against a previous ruling of the Estonian District Court that stated that the tripartite privatisation contract between United Utilities, ASTV and the Estonian State (via the City of Tallinn) was a public law contract. The ruling is in direct contradiction of the position expressed by the Estonian authorities in its previous communications with the Commission...
9. The expressed position of the Estonian Government is that since 2002 all utilities in Estonia have been regulated in the same way, with the only anomaly being ASTV's privatisation contract. However, in August 2012 the case of Kunda Elamu, a heating company regulated by the CA, (as well as other cases dealt with by the CA) demonstrated that no consistent method of regulation existed in Estonia before or after the amended Public Water Supply and Sewerage Act came into force on 1 November 2010. The Commission was duly informed by ASTV of such precedents. UU is now confident that in this regard the CA has knowingly made inaccurate statements, if not false representation, to the Commission and has, in this case at least, given different treatment to local and international investors.



## ANALYSIS

10. Highly regulated industries are inevitably subject to a politicised environment and ASTV's dispute with the Estonian authorities can be characterised as a consequence of competing political priorities of the various factions within the Estonian political sphere. The Internal Market should offer a 'level playing field' to companies making cross-border investments yet there are additional sensitivities when operating in a political context. When a complaint is made against a Member State by an individual company that company is faced with the entire edifice of the diplomatic footprint of that Member State in Brussels: the Permanent Representative.
11. EU Pilot 1794/11/MARKT provides evidence of an ex post intervention by a new Member State. Yet in recent years, the Commission has been increasingly less inclined to pursue infringement proceedings against Member States. This is in part compounded by the lobbying efforts of Member State's Permanent Representative and the support of the complainant's own government's Representation is often necessary, but not always available.
12. As such, the default position of the Commission tends to be that of the Member State under investigation. As stated here, the Commission had initially moved to close EU Pilot 1794/11/MARKT before calibrating the evidence presented to it. Its very short pre-closure letter suggested that initially it had not fully reviewed and examined the facts of the case. This is effectively encouraged by the subsidiary principle where a concurrent legal case is running in local courts. In complex cases, when a violation of the TFEU principles is alleged, as in ASTV's case, there are a number of difficulties in relying on the efficacy of local legal systems. Only intense efforts by ASTV to explain its case – coupled with the concerns expressed by the EBRD – persuaded the Commission to keep it open. As a result, the Commission has now shown much greater rigour in its examination, particularly as the arguments put forward by the Estonian authorities became more extreme.
13. An EU Pilot case can be closed in anticipation of a legal ruling in a Member State, which unfairly handicaps the complainant: in fact the decision to close a case can influence the local court's decisions in favour of the State. Moreover, there is no appeal process: the Commission has full discretion on when and on what basis an EU Pilot case is closed. A lack of transparent and clear procedural rules at the Commission – there is no structured process or timeframe put forward to aid the complainant – compounds this situation. The Commission is very clear that an EU Pilot case cannot remain open indefinitely but where action is only permissible once the failure of a local legal process is demonstrated, this a dangerous inconsistency.
14. In the case of ASTV, the absence of a decisive ruling from the Commission has meant a period of regulatory uncertainty resulting in the severe depression of ASTV's share price. This uncertainty will persist until the matter is settled by the local courts, which could take anything up to two years. Throughout that period ASTV tariffs will be frozen in line with a 2010 ruling of the

Estonian District Court, meaning a material loss for the company over that period.

## CONCLUSIONS

15. The reluctance of the Commission to pursue infringement proceedings against a Member State is in part a consequence of the Commission's unwillingness to reduce the prospect of foreign direct investment (FDI). Perversely such an approach reinforces the status quo in Member States, perpetuating an environment that discourages FDI. The impact of that position will be felt as Member States, particularly in the Eurozone, attempt to raise funds through the privatisation of state assets. Unstable regulatory environments characterised by ex post interventions by individual governments will prevent investment by risk adverse investors.
16. The expansion of the European Union has brought a series of challenges. The legal systems of longstanding Member States are highly developed and used to interpreting EU law: this is not the case with the legal systems of many Member States that have acceded to EU Membership in recent years. Enlargement had been politically expedient and less concerned with local legal structures. This coupled with a reluctance on the part of the Commission to pursue infringement proceedings has provided greater licence to new Member States to ignore the principles enshrined in TFEU.
17. Given these circumstances, the current regime and the conduct of the Commission could lead to a system failure. The Commission is vigorous in its approach to harmonisation verification in Member States but the its enforcement of Internal Market rules and principles is hardly analogous. Paradoxically, in cases where an EU intervention is more necessary, the discretionary powers enjoyed by the Commission and its unaccountability risks inconsistent application of Internal Market rules across the EU. The result would inevitably be that Member States would be increasingly inclined to violate the Internal Market freedoms by adopting politicised intervention designed to further national interests.

# Vodafone

## **Initial Vodafone comments on FCO Balance of Competencies Review**

### **Introduction**

1. Vodafone's history shows how Britain can shape the European Union to its benefit. Britain was the first country in Europe to privatise the incumbent BT and open its telecommunications markets to competition in the 1980s. Vodafone was founded to take advantage of this opportunity and compete with BT in the UK. The European Commission, led first by a Belgian and then by an Italian Competition Commissioner, forced other Member States to follow Britain's lead in the late 1990s. This was part of a Single Market programme which itself owed much to British leadership in the 1980s and 1990s. It allowed Vodafone to expand outside the UK, applying the lessons it had learned competing with BT to challenge operators like Deutsche Telecom, Telecom Italia and Telefonica in their respective 'home' markets.
2. In doing so, Vodafone was able to use the same technology in every market because Europe's GSM technology had become the global standard. It prevailed over the competing CDMA standard favoured by the US because of the scale of the European market. GSM was developed by European engineers and European Governments, including the UK, working together. This would never have happened if Britain had adopted one standard and the rest of Europe another.
3. Today Vodafone's largest business is to be found in Germany. It serves almost 36 million customers, compared to 19 million which Vodafone serves in the UK. Vodafone's UK business generates less than 10% of the Group's total profits. The UK benefits handsomely from Vodafone's European scope. In 2011/12, Vodafone was responsible for £1 of every £8 of dividends paid to shareholders on the London Stock Exchange. We returned £26bn to shareholders, including British institutions, pension funds and over half a million British citizens since 2008, most earned outside the UK. Vodafone employs hundreds of British-based employees and professional advisers to support its European operations, and British banks support the majority of Vodafone's global financing needs, for which Vodafone pays over £500m in interest charges every year. British businesses benefit from having lower cost, better quality telecommunications services across the rest of Europe (and beyond) as a result of the competition Vodafone is able to provide in those markets.
4. Our history explains why we believe that British business and Britain as a whole are better off as a result of our membership of the European Union. Britain's future prosperity and position in the world will also be inextricably linked to Europe. Many of Europe's most significant achievements, including the single market and the liberalisation of markets formerly dominated by monopolies, owe their existence to Britain's influence inside Europe. Companies like Vodafone would simply not exist in anything like their current form without it.
5. Europe faces formidable challenges and the European policymaking process has many shortcomings. The way the Union operates is far from perfect and it will change irrespective of Britain's position. But Britain has a better chance of influencing the future trajectory of

European policy if it is an active participant with a stake in the results. Companies like Vodafone will be affected by changes to the European Union whether or not the British Government is a co-author of them.

6. The Government's review of competences is in the best tradition of measured, practical analysis which characterises British policymaking and from which Europe can only benefit. But Britain's influence should be exercised not only or even mainly in the major inter-governmental treaty negotiations of the kind which this review anticipates. Far more important is the way in which British and other officials conduct themselves the daily administrative and legal life of the Union. The boundaries between Commission and Member State powers are more often decided here, in Council working groups, in the European courts and in the conduct and aspirations of officials who work for the European institutions and for the Member States.
7. In any such review we need to consider the benefits for Britain in terms of economic growth and jobs, as well as considering some of the very visible 'costs' of Europe. The CBI's forthcoming study of the benefits for the UK of participation in the Single Market promises to be a welcome and important contribution to the debate. Britain stands to gain if we can export our economic and social models to the rest of Europe, as we have done in the past. We can and should influence the development of European thinking into directions more attuned to British interests.
8. Too little attention is paid to the benefits which we obtain when trading outside Europe because of our membership of the European Union. Europe has given British companies like Vodafone the opportunity to acquire scale on the European continent and to use this as a stepping stone into the US, Japan, China and India. The UK remains a significant economic power, but our domestic market of 60 million people is small by global standards. Vodafone has almost 20 million customers in the UK and 120 million in the European Union. But our business in India already has over 150 million - and China Mobile has over 700 million. These figures will determine who wins future battles over global technology standards and technology leadership in key industries such as telecommunications.
9. Companies which limit themselves to the UK will be small in global terms. This may not matter in some sectors but it does in others. The UK should seek to be a home for global leaders and will need to be part of Europe to be so. The US, China and India need access to the European market, which remains the largest in the world. European companies are able to secure access to these markets in return. British companies, representing a market with one twentieth the population of China or India, would have no such assurance.

## Internal market: synopsis

### General comments

10. The UK has one of the most liberal, open economic markets in the world. This commands cross-party support in Britain. But the rest of Europe has often been slower to embrace the case for open markets. The Single European Act provided for the completion of the Single Market by 1992 but it remains a work in progress today.
11. The Commission itself remains committed to the widening and deepening of the single market. This remains a core belief for many officials working on economic matters in Brussels and Britain should be an important ally to them. However, Britain's long standing support for the single market means that it is also well placed to criticise when necessary. The Government should not uncritically accept Commission proposals which purport to further the Single Market, or which stretch this concept beyond any credible limits.
12. We note that the overwhelming majority of legislative proposals which are made by the Commission today are adopted without significant amendment or challenge, either by Ministers or by national officials in Council working groups. In Vodafone's case, attempts by the Commission to harmonise pricing in various telecoms markets, which clearly lacked any sound economic basis, have nonetheless eventually been accepted by Council, including British representatives. In part this is because many Member States have inadequate resources to effectively scrutinise all measures emanating from the Commission, and in part because Presidencies are measured by their capacity to move proposals towards adoption. Each measure will of course need to be assessed on a case by case basis, but British officials and Ministers need to be prepared to be robust critics if measures are proposed without adequate justification. In this, it is also important that the British Government is consistent and principled in its approach.
13. The Government has identified deepening the single digital market as a priority. The European Commission has claimed that full implementation of the measures it proposes would add 5% to European GDP by 2020. Vodafone agrees with general aim but believes this is an example of an area where rigorous British analysis can provide a counterweight to abstract rhetoric. There is a need for clear thinking about what we mean by the single digital market. To do this we need to understand the differences between the single market for physical goods and services and that for digital ones. It is also important to distinguish between measures which will promote competition within national markets and measures which will promote a single market which transcends national borders. Many desirable measures are important for the former without necessarily contributing much to the latter.
14. The Commission sees a key element of its strategy as reducing barriers to cross-border e-commerce transactions, allowing European consumers to purchase goods from websites in neighbouring Member States. It is concerned that consumers lack the confidence to make cross-border purchases when they are unsure of their rights of redress, the security of

transactions or privacy. Although removing these obstacles would be useful for other reasons, this is not the main barrier to a digital single market. This is because digital platforms and digital content hosted on servers, unlike activities which involve physical production or service delivery such as factories or shops, can and already are easily replicated across many national markets at minimal additional cost. This has enabled US digital service providers such as Facebook, Amazon or Google to offer digital services in Europe today. These firms are already market leaders not in some European markets, but in all.

15. There are other reasons to be wary of simplistic comparisons between European markets for physical and those for digital services. Cars manufactured in Germany can be exported across the European Union with limited modifications. But the value of digital goods is often very culturally specific – Spanish newspapers are of little interest to Germans, and the British weather is of little interest to anyone outside the UK. As a result, some key features of the single market for physical goods are much less compelling in the digital context.
16. This is not to say that barriers to a digital Internal Market do not exist. Vodafone still finds it difficult to organise and run its physical networks on a pan-European basis because Member States insist that certain assets remain physically located within national borders on the grounds of ‘national security’. In many cases these will be assets where Britain does not itself impose such restrictions.
17. This is one reason why we believe the Commission will need to be more assertive in addressing cybersecurity issues in future. It has recently taken some tentative first steps in this direction<sup>1</sup>. Greater Commission competence here is required both because threats are inherently trans-national in nature and co-operation between Member States and between Europe and the rest of the world is vital<sup>2</sup> and because ‘national security’ concerns are otherwise a significant obstacle to further realisation of the digital single market – and through it consumer benefits – by restricting the flexibility that firms have in moving assets around Europe and in organising their activities in the most efficient way possible. The Commission will need to take further measures to reduce barriers to the digital single market which are erected by Member States on grounds of ‘cybersecurity’. The UK should support the Commission in this area even if Ministers harbour doubts about other aspects of the Commission’s Justice and Home Affairs agenda.
18. Vodafone also encounters challenges in serving customers on a consistent basis when faced with divergent consumer protection, privacy and other requirements across Member States. These inhibit our ability to realise economies of scale and avoid wasteful duplication or customisation of services. Again, the Commission will need to be bolder if we are to overcome these barriers.

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<sup>1</sup> <http://ec.europa.eu/digital-agenda/en/news/eu-cybersecurity-plan-protect-open-internet-and-online-freedom-and-opportunity-cyber-security>

<sup>2</sup> As the UK Government itself recognised in convening the London conference in 2011

19. We think Facebook, Amazon and Google dominate their respective digital markets in Europe because they were first able to develop scale rapidly in the United States. The number of subscribers to or users of a service is critically important in digital services which rely on what economists call 'network effects' – a phenomenon where the more existing users you have, the more attractive is the platform for other users (whether advertisers or households). In such markets – and many digital markets are of this kind - the first firm to acquire significant scale can quickly dominate the entire market. US firms are able to attain such scale in their domestic market, and then to export services to the rest of the world. This is because the market for internet services is increasingly global in nature, with few physical assets. As a result, US firms do not simply dominate US or European markets, they dominate global markets.
  
20. Facebook, Amazon or Google's European rivals have not been able to achieve scale quickly enough to match their US counterparts. This is in part because divergent consumer protection, privacy and other regulation prevent them from doing so (although we should recognise that there are cultural and linguistic barriers in Europe which are more difficult to legislate for). Large firms with a global presence can overcome these barriers but smaller European firms can never grow fast enough. Greater harmonisation of regulations which affect the way European firms interact with their European customers would assist in efforts to expand new services more rapidly in Europe and narrow the gap with their US counterparts. The British Government has already made significant commitments to support innovation in digital content and services. This is a sector in which the UK enjoys significant industrial and cultural advantages. But many UK digital businesses will not be able to compete with their US counterparts unless they can rapidly scale their operations beyond the UK. Eliminating the obstacles to such growth does not guarantee success for Europe or the UK in digital services, but failing to do so ensures that European internet firms will continue to lag behind their US counterparts .
  
21. There will, however, still be limits to what can be achieved through centralisation of physical telecoms networks and other digital infrastructure. Most of the physical infrastructure that is required to run telecom networks is local in nature. A company like Vodafone cannot serve its Europe customers by installing a single radio mast at some central location: Vodafone needs to have the same number of base stations in Germany or Italy as its nationally-based rivals. The fixed wires and pipes delivering internet and TV cannot be provided remotely. High street retailing of devices and subscriptions also remains an inherently localised and national activity (although there are significant economies of scale in procurement). All of this explains why, despite the cross-border investments made by Vodafone and BT, truly pan-European telecoms networks have not emerged over the last decade. Scope exists for the creation of pan-European networks to serve multi-national business customers, but networks serving European consumers are likely to remain fragmented and nationally-focused for years to come.



## Responses to evidence questions

22. *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?*
23. The basic objectives of an Internal Market are clear: goods and services can be produced, bought and sold across the European territory without barriers, costs or competitive distortions at national borders. Firms should be able to freely organise their industrial activities within the European territory so as to maximise efficiency through specialisation, benefits of scale or for other reasons. These are essentially supply side benefits of the Internal Market which result in the better organisation of productive activities and an increase in competitive intensity (which ensures that some of these benefits are then shared with consumers). Companies based in Europe should be able to benefit from the scale of the European economy rather than being constrained by national borders. In a century likely to be dominated by economies of scale this is crucial to future growth.
24. An important question which Vodafone has encountered over the years is whether it follows that an Internal Market can be expected to result in greater price harmonisation, or even pricing uniformity for European consumers. The Commission has often taken this view – and Member States have generally demurred. However, we do not think price harmonisation should be an explicit target for policymakers<sup>3</sup>. In particular, a lack of price uniformity is not grounds for legislative or regulatory intervention in national markets. Demand side conditions are often inherently local, even if production is organised internationally. And some cost factors differ widely – property, tax, salaries etc. Competition should respond to the needs of individual consumers rather than producing uniform outcomes. The Commission and other policymakers should be careful to recognise that the single market can operate in different ways for different services. Differences between Member States and innovations in them benefit the single market as a whole. This is an area where British officials and Ministers need to adopt a rigorous and questioning approach in legislative negotiations.
25. The economic benefits of the internal market can be assessed both in terms of conventional enhancements in consumer welfare – more choice, better quality and lower prices – and in terms of gains in the capacity of European producers to compete inside Europe and beyond. This is of course not an easy task in the absence of a clear counterfactual. We have referred elsewhere to the benefits for European employees, shareholders and Governments when companies such as Vodafone can use the single market as a stepping stone to compete on a global stage.

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<sup>3</sup> The Commission has equated harmonisation with common prices on several occasions in telecoms: in 2009 it proposed that mobile termination charges payable between operators should converge to a range of 1.5 to 3 cents per minute and in 2007 it set uniform price caps for roaming services, so that UK consumers paid the same charges for this service as their Spanish or German counterparts (and vice versa). It is currently proposing that fixed wholesale charges for ‘unbundled’ copper networks should converge to between 8 and 10 euros per line for all national operators, irrespective of cost or other differences between national markets.

26. *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?*
27. There are a number of areas where EU action is undertaken on the basis of human rights or other considerations, but with direct consequences for the operation of the Internal Market. Privacy is one example: differences in privacy laws between Member States frustrate the capacity of firms to deal with customers on a consistent basis. Europe has a clear framework established by the Data Protection Directive, which is currently under review<sup>4</sup>. This is often supplemented by national variations which inhibit the development of pan-European services and the realisation of economies of scale. The Commission has rightly identified a lack of harmonisation in privacy rules as a significant barrier to the development of cloud computing services in Europe.
28. More co-ordinated European action on consumer protection is also required if rules are to be applied effectively to internet companies that operate beyond national or European borders. Attempts by an individual Member State to enforce measures against pan-European digital services providers are likely to be increasingly ineffective as such providers can boycott individual national markets without significant economic cost. But no global internet provider, however large, could afford to boycott the European Union as a whole. This greatly enhances the prospect that European-wide rules, uniformly enforced, will be complied with. Many large digital services providers already choose to locate their operations in Member States with less onerous national consumer protection and privacy regimes. This currently disadvantages nationally-based competitors, including Vodafone, who face more burdensome and differing regulations in their respective national markets (as well as risking a ‘race to the bottom’ amongst Member States seeking to attract geographically mobile internet service providers). Greater harmonisation at European level would reduce such unfair disparities between the internet firms and geographically constrained telecoms operators.
29. This is an area where we think the Government could encourage the Commission to seek to occupy more of the field in some or all aspects of consumer protection, particular insofar as they relate to digital services. This would be likely accomplished through the use of Article 114 Regulations. The Government should ensure that the resulting measures allow European firms and competition to operate effectively and that we do not simply overlay more law onto existing national regimes. To ensure this, such Regulations should include a version of the ‘free movement clause’, which disapply national laws once the relevant measure is adopted.
30. *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?*

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<sup>4</sup> [http://ec.europa.eu/justice/newsroom/data-protection/news/120125\\_en.htm](http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm)

31. The Internal Market is developed both through entry into other Member States and through trade with them. Vodafone has generally undertaken the former approach (with some aspects of the latter visible in Vodafone's commercial partnerships with telecoms companies in EU Member States in which we do not have our own operations).
32. In our experience, some EU mechanisms have worked well and others not. European competition law has been very effective in opening up markets to competition and in deterring competitive distortions in areas like State aid. The Commission's competence in this field is now well established and respected across the globe.
33. Competition law safeguards have allowed firms like Vodafone to compete effectively in other Member States – something we doubt would have been possible without the support of the European institutions, particularly the Commission, but also the courts. In many cases, recourse to DG Competition is the only action open to us when faced with ineffectual national regulators, protectionist public authorities or simply a failure to properly implement European policy in other Member States. We see no prospect of this need diminishing for the foreseeable future.
34. This is because the application and enforcement of many harmonisation measures by Member States has been poor, with the result that national variations often remain in place or that measures are simply not implemented at all. In Vodafone's case, for example, our ability to obtain access to the networks of our local incumbent rivals varies enormously between Member States.
35. We understand that the Commission has increasingly taken to adopting new measures as Regulations rather than Directives in order to overcome the failure of many Member States to adequately transpose European Directives. Regulations with direct effect do at least allow for the possibility of private actions by firms. But there is no easy solution to the challenge of compliance by Member States. The British Government should be supportive of Commission efforts, and of the role of the European courts.
36. *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?*
37. The initial focus was clearly on barriers to trade in goods, with barriers to entry following later. The need for action on digital markets has become more apparent as these services have developed, but the difference between physical goods markets and digital goods markets have not always been sufficiently understood by policymakers.

38. Vodafone has significant experience of the implementation of Internal Market rules under the Telecoms Regulatory Framework<sup>5</sup>. In this case, the so-called 'Article 7' procedure allows the Commission to review and comment (in public) upon measures which are proposed by the national telecoms regulatory authorities. The Commission can veto the proposals and prohibit their introduction in national markets if it believes they would undermine the Internal Market. It has done so in a number of cases. This mechanism has been effective in enabling the Commission to secure greater harmonisation of regulation across the continent through a mixture of informal persuasion, 'soft law' guidance and legal sanctions. It has also encouraged the national regulators themselves to better co-ordinate their work and improve the quality of their analysis in order to reduce the risk of a Commission veto. The process is relatively transparent, with Commission comments being published and other regulators invited to comment on the work of their peers. The 'Article 7' process described here is, as far as we are aware, unique in European law and, although far from perfect, could provide a useful model for arrangements to improve harmonisation in other sectors.
39. This noted, there are a large number of areas in telecoms policy where the Commission has further work to do and which Vodafone believes the UK Government should support. These include measures such as:
- a. harmonisation of the mechanisms used to allocate radio spectrum to the industry, aimed at ensuring a more consistent approach to auctions and more co-ordinated release of new spectrum across Europe. Better co-ordination should allow the European mobile industry to obtain more influence over what is a global supply chain for new technologies
  - b. better regulation of fixed incumbent operators, such as Deutsche Telecom, Telefonica or Telecom Italia, to ensure effective competition from smaller rivals and prevent anti-competitive conduct. BT and Ofcom agreed to implement the 'functional separation' of BT's operations in 2004 but progress in other European markets has been barely perceptible in comparison. Vodafone and BT would benefit greatly from more effective European action to control anti-competitive conduct by rivals in other Member States. In this connection, the Commission has recently made proposals to reduce discrimination and price squeezing which the UK Government should strongly support.
  - c. an EU-wide approach to various aspects of internet regulation, including 'net neutrality', so as to ensure effective enforcement, as explained above, and to enable pan-European operators to implement consistent measures in their networks
  - d. effective Commission oversight of the use public or industry funds by national Governments to support broadband investment and the roll out of infrastructure. In

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<sup>5</sup> See [http://ec.europa.eu/information\\_society/policy/ecomm/tomorrow/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/tomorrow/index_en.htm)

many Member States the processes for the allocation of such direct or indirect public subsidies today remain opaque and uncontested.

40. We can of course provide further details of Vodafone's views on specific policy proposals from the Commission if required for this review. BIS, DCMS and Ofcom are regularly briefed on these and other matters.
41. *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?*
42. We are not in a position to comment, but are not aware of any significant impacts.
43. *Has the Internal Market been helped or hindered by UK involvement in other groupings, such as the G20, G8, the OECD or the Commonwealth?*
44. Again, we are not well placed to comment but it is not clear to us that the Britain's involvement in other multi-national bodies has had a significant impact upon the development of the Internal Market. Many of these bodies share similar objectives in terms of removing obstacles to trade and, as such, should be complementary (although clearly different in scope) to the efforts of the European Union.
45. *To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside the EU?*
46. We believe that the Internal Market has brought unambiguous benefits for firms like Vodafone who have developed their business by entering other markets (rather than by trading with them):
  - a. the Internal Market allowed Vodafone to first acquire scale in Europe and then compete on the world stage (allowing us access to capital to fund entry into much larger markets, such as the US and India, and ensuring that our costs are competitive with those of similar sized firms elsewhere in the world)
  - b. the Internal Market has allowed Europe to dominate technology standards in some strategically important sectors because European firms and authorities have worked collaboratively to develop technologies (e.g. GSM mobile technology) which have then been adopted globally
  - c. the Internal Market has allowed Europe to influence economic policymaking in other regions of the world far more effectively than the UK could have done on a unilateral basis, allowing UK firms to enter and participate in global markets which might otherwise be less accessible to them

47. It is worth recalling that Britain led the world in the 1980s in many areas of economic policy and provided a model for the liberalisation of utility markets such as telecoms, transport and energy which was then taken up by policymakers not only in Europe but across the globe. Firms like Vodafone have applied experience gained in the UK to expand well beyond Europe (in Vodafone's case, into Australia, New Zealand and the US and subsequently into India and Africa).
48. One consequence of 30 years of European harmonisation is that it is much more difficult to discern a distinctive 'British' approach to many aspects of economic policymaking. In some cases this is because British ideas have become mainstream for the rest of Europe and indeed the world, and in others because Britain has found itself adopting a more 'European' model. The consequence is that today it is 'European', not 'British', models of regulation and policymaking which are studied by our counterparts in the US, India, China and Brazil. They are interested not in what Britain might do, but in what Europe might do.
49. *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?*
50. We think the UK has been more rigorous in applying Internal Market Directives than almost all other Member States. Although we are aware of accusations of 'gold plating', we have limited evidence of this in our sector. Much of what we regard as misguided regulation in the UK actually arises from initiatives by the UK regulator, Ofcom, and not from the implementation of European legislation. In many cases we find national regulators are more vulnerable to short term populist pressures from a national media or a national parliament than is the Commission. Indeed, the Commission can often be helpful in providing a more measured, technocratic counterweight to short term national pressures in complex areas of policy (although of course the Commission itself will also be subject to pressures from the European Parliament in some cases.)

We believe the UK should press hard for more effective implementation by other Member States and better enforcement by the Commission, even if this suggests that the Commission may occasionally have reason to enforce against the UK itself. The Government should also support the adoption of Regulations in preference to Directives. On balance, we believe the UK interest will be better served by more effective and more vigorous enforcement in the Union.

51. *What 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?*
52. The question implies that the Internal Market is now settled. We do not share this view – see our earlier comments on actions still required in relation to telecoms. Instead, we see the

Internal Market as a continuous work in progress, with constant risks that measures could be reversed. The benefits of the Internal Market, although very significant, are also fragile.

53. This is important because much of the debate on Britain's relations with Europe seems to suggest that Britain can secure the benefits of the Internal Market without participating directly in efforts to safeguard it. We consider this a dangerous assumption. It is more likely that others will regard further progress on the Internal Market as an element in a broader package of reforms, likely to be tied to action in areas such as environmental and consumer protection, judicial co-operation and migration. Britain will find itself having to engage across a broader range of issues in order to safeguard the Internal Market.
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55. *Are there any general points you wish to make?*
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## **Initial Vodafone comments on FCO Balance of Competencies Review**

### **Introduction**

1. Vodafone's history shows how Britain can shape the European Union to its benefit. Britain was the first country in Europe to privatise the incumbent BT and open its telecommunications markets to competition in the 1980s. Vodafone was founded to take advantage of this opportunity and compete with BT in the UK. The European Commission, led first by a Belgian and then by an Italian Competition Commissioner, forced other Member States to follow Britain's lead in the late 1990s. This was part of a Single Market programme which itself owed much to British leadership in the 1980s and 1990s. It allowed Vodafone to expand outside the UK, applying the lessons it had learned competing with BT to challenge operators like Deutsche Telecom, Telecom Italia and Telefonica in their respective 'home' markets.
2. In doing so, Vodafone was able to use the same technology in every market because Europe's GSM technology had become the global standard. It prevailed over the competing CDMA standard favoured by the US because of the scale of the European market. GSM was developed by European engineers and European Governments, including the UK, working together. This would never have happened if Britain had adopted one standard and the rest of Europe another.
3. Today Vodafone's largest business is to be found in Germany. It serves almost 36 million customers, compared to 19 million which Vodafone serves in the UK. Vodafone's UK business generates less than 10% of the Group's total profits. The UK benefits handsomely from Vodafone's European scope. In 2011/12, Vodafone was responsible for £1 of every £8 of dividends paid to shareholders on the London Stock Exchange. We returned £26bn to shareholders, including British institutions, pension funds and over half a million British citizens since 2008, most earned outside the UK. Vodafone employs hundreds of British-based employees and professional advisers to support its European operations, and British banks support the majority of Vodafone's global financing needs, for which Vodafone pays over £500m in interest charges every year. British businesses benefit from having lower cost, better quality telecommunications services across the rest of Europe (and beyond) as a result of the competition Vodafone is able to provide in those markets.
4. Our history explains why we believe that British business and Britain as a whole are better off as a result of our membership of the European Union. Britain's future prosperity and position in the world will also be inextricably linked to Europe. Many of Europe's most significant achievements, including the single market and the liberalisation of markets formerly dominated by monopolies, owe their existence to Britain's influence inside Europe. Companies like Vodafone would simply not exist in anything like their current form without it.
5. Europe faces formidable challenges and the European policymaking process has many shortcomings. The way the Union operates is far from perfect and it will change irrespective of Britain's position. But Britain has a better chance of influencing the future trajectory of



European policy if it is an active participant with a stake in the results. Companies like Vodafone will be affected by changes to the European Union whether or not the British Government is a co-author of them.

6. The Government's review of competences is in the best tradition of measured, practical analysis which characterises British policymaking and from which Europe can only benefit. But Britain's influence should be exercised not only or even mainly in the major inter-governmental treaty negotiations of the kind which this review anticipates. Far more important is the way in which British and other officials conduct themselves the daily administrative and legal life of the Union. The boundaries between Commission and Member State powers are more often decided here, in Council working groups, in the European courts and in the conduct and aspirations of officials who work for the European institutions and for the Member States.
7. In any such review we need to consider the benefits for Britain in terms of economic growth and jobs, as well as considering some of the very visible 'costs' of Europe. The CBI's forthcoming study of the benefits for the UK of participation in the Single Market promises to be a welcome and important contribution to the debate. Britain stands to gain if we can export our economic and social models to the rest of Europe, as we have done in the past. We can and should influence the development of European thinking into directions more attuned to British interests.
8. Too little attention is paid to the benefits which we obtain when trading outside Europe because of our membership of the European Union. Europe has given British companies like Vodafone the opportunity to acquire scale on the European continent and to use this as a stepping stone into the US, Japan, China and India. The UK remains a significant economic power, but our domestic market of 60 million people is small by global standards. Vodafone has almost 20 million customers in the UK and 120 million in the European Union. But our business in India already has over 150 million - and China Mobile has over 700 million. These figures will determine who wins future battles over global technology standards and technology leadership in key industries such as telecommunications.
9. Companies which limit themselves to the UK will be small in global terms. This may not matter in some sectors but it does in others. The UK should seek to be a home for global leaders and will need to be part of Europe to be so. The US, China and India need access to the European market, which remains the largest in the world. European companies are able to secure access to these markets in return. British companies, representing a market with one twentieth the population of China or India, would have no such assurance.

## Internal market: synopsis

### General comments

10. The UK has one of the most liberal, open economic markets in the world. This commands cross-party support in Britain. But the rest of Europe has often been slower to embrace the case for open markets. The Single European Act provided for the completion of the Single Market by 1992 but it remains a work in progress today.
11. The Commission itself remains committed to the widening and deepening of the single market. This remains a core belief for many officials working on economic matters in Brussels and Britain should be an important ally to them. However, Britain's long standing support for the single market means that it is also well placed to criticise when necessary. The Government should not uncritically accept Commission proposals which purport to further the Single Market, or which stretch this concept beyond any credible limits.
12. We note that the overwhelming majority of legislative proposals which are made by the Commission today are adopted without significant amendment or challenge, either by Ministers or by national officials in Council working groups. In Vodafone's case, attempts by the Commission to harmonise pricing in various telecoms markets, which clearly lacked any sound economic basis, have nonetheless eventually been accepted by Council, including British representatives. In part this is because many Member States have inadequate resources to effectively scrutinise all measures emanating from the Commission, and in part because Presidencies are measured by their capacity to move proposals towards adoption. Each measure will of course need to be assessed on a case by case basis, but British officials and Ministers need to be prepared to be robust critics if measures are proposed without adequate justification. In this, it is also important that the British Government is consistent and principled in its approach.
13. The Government has identified deepening the single digital market as a priority. The European Commission has claimed that full implementation of the measures it proposes would add 5% to European GDP by 2020. Vodafone agrees with general aim but believes this is an example of an area where rigorous British analysis can provide a counterweight to abstract rhetoric. There is a need for clear thinking about what we mean by the single digital market. To do this we need to understand the differences between the single market for physical goods and services and that for digital ones. It is also important to distinguish between measures which will promote competition within national markets and measures which will promote a single market which transcends national borders. Many desirable measures are important for the former without necessarily contributing much to the latter.
14. The Commission sees a key element of its strategy as reducing barriers to cross-border e-commerce transactions, allowing European consumers to purchase goods from websites in neighbouring Member States. It is concerned that consumers lack the confidence to make cross-border purchases when they are unsure of their rights of redress, the security of

transactions or privacy. Although removing these obstacles would be useful for other reasons, this is not the main barrier to a digital single market. This is because digital platforms and digital content hosted on servers, unlike activities which involve physical production or service delivery such as factories or shops, can and already are easily replicated across many national markets at minimal additional cost. This has enabled US digital service providers such as Facebook, Amazon or Google to offer digital services in Europe today. These firms are already market leaders not in some European markets, but in all.

15. There are other reasons to be wary of simplistic comparisons between European markets for physical and those for digital services. Cars manufactured in Germany can be exported across the European Union with limited modifications. But the value of digital goods is often very culturally specific – Spanish newspapers are of little interest to Germans, and the British weather is of little interest to anyone outside the UK. As a result, some key features of the single market for physical goods are much less compelling in the digital context.
16. This is not to say that barriers to a digital Internal Market do not exist. Vodafone still finds it difficult to organise and run its physical networks on a pan-European basis because Member States insist that certain assets remain physically located within national borders on the grounds of ‘national security’. In many cases these will be assets where Britain does not itself impose such restrictions.
17. This is one reason why we believe the Commission will need to be more assertive in addressing cybersecurity issues in future. It has recently taken some tentative first steps in this direction<sup>1</sup>. Greater Commission competence here is required both because threats are inherently trans-national in nature and co-operation between Member States and between Europe and the rest of the world is vital<sup>2</sup> and because ‘national security’ concerns are otherwise a significant obstacle to further realisation of the digital single market – and through it consumer benefits – by restricting the flexibility that firms have in moving assets around Europe and in organising their activities in the most efficient way possible. The Commission will need to take further measures to reduce barriers to the digital single market which are erected by Member States on grounds of ‘cybersecurity’. The UK should support the Commission in this area even if Ministers harbour doubts about other aspects of the Commission’s Justice and Home Affairs agenda.
18. Vodafone also encounters challenges in serving customers on a consistent basis when faced with divergent consumer protection, privacy and other requirements across Member States. These inhibit our ability to realise economies of scale and avoid wasteful duplication or customisation of services. Again, the Commission will need to be bolder if we are to overcome these barriers.

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<sup>1</sup> <http://ec.europa.eu/digital-agenda/en/news/eu-cybersecurity-plan-protect-open-internet-and-online-freedom-and-opportunity-cyber-security>

<sup>2</sup> As the UK Government itself recognised in convening the London conference in 2011

19. We think Facebook, Amazon and Google dominate their respective digital markets in Europe because they were first able to develop scale rapidly in the United States. The number of subscribers to or users of a service is critically important in digital services which rely on what economists call 'network effects' – a phenomenon where the more existing users you have, the more attractive is the platform for other users (whether advertisers or households). In such markets – and many digital markets are of this kind - the first firm to acquire significant scale can quickly dominate the entire market. US firms are able to attain such scale in their domestic market, and then to export services to the rest of the world. This is because the market for internet services is increasingly global in nature, with few physical assets. As a result, US firms do not simply dominate US or European markets, they dominate global markets.
  
20. Facebook, Amazon or Google's European rivals have not been able to achieve scale quickly enough to match their US counterparts. This is in part because divergent consumer protection, privacy and other regulation prevent them from doing so (although we should recognise that there are cultural and linguistic barriers in Europe which are more difficult to legislate for). Large firms with a global presence can overcome these barriers but smaller European firms can never grow fast enough. Greater harmonisation of regulations which affect the way European firms interact with their European customers would assist in efforts to expand new services more rapidly in Europe and narrow the gap with their US counterparts. The British Government has already made significant commitments to support innovation in digital content and services. This is a sector in which the UK enjoys significant industrial and cultural advantages. But many UK digital businesses will not be able to compete with their US counterparts unless they can rapidly scale their operations beyond the UK. Eliminating the obstacles to such growth does not guarantee success for Europe or the UK in digital services, but failing to do so ensures that European internet firms will continue to lag behind their US counterparts .
  
21. There will, however, still be limits to what can be achieved through centralisation of physical telecoms networks and other digital infrastructure. Most of the physical infrastructure that is required to run telecom networks is local in nature. A company like Vodafone cannot serve its Europe customers by installing a single radio mast at some central location: Vodafone needs to have the same number of base stations in Germany or Italy as its nationally-based rivals. The fixed wires and pipes delivering internet and TV cannot be provided remotely. High street retailing of devices and subscriptions also remains an inherently localised and national activity (although there are significant economies of scale in procurement). All of this explains why, despite the cross-border investments made by Vodafone and BT, truly pan-European telecoms networks have not emerged over the last decade. Scope exists for the creation of pan-European networks to serve multi-national business customers, but networks serving European consumers are likely to remain fragmented and nationally-focused for years to come.

## Responses to evidence questions

22. *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?*
23. The basic objectives of an Internal Market are clear: goods and services can be produced, bought and sold across the European territory without barriers, costs or competitive distortions at national borders. Firms should be able to freely organise their industrial activities within the European territory so as to maximise efficiency through specialisation, benefits of scale or for other reasons. These are essentially supply side benefits of the Internal Market which result in the better organisation of productive activities and an increase in competitive intensity (which ensures that some of these benefits are then shared with consumers). Companies based in Europe should be able to benefit from the scale of the European economy rather than being constrained by national borders. In a century likely to be dominated by economies of scale this is crucial to future growth.
24. An important question which Vodafone has encountered over the years is whether it follows that an Internal Market can be expected to result in greater price harmonisation, or even pricing uniformity for European consumers. The Commission has often taken this view – and Member States have generally demurred. However, we do not think price harmonisation should be an explicit target for policymakers<sup>3</sup>. In particular, a lack of price uniformity is not grounds for legislative or regulatory intervention in national markets. Demand side conditions are often inherently local, even if production is organised internationally. And some cost factors differ widely – property, tax, salaries etc. Competition should respond to the needs of individual consumers rather than producing uniform outcomes. The Commission and other policymakers should be careful to recognise that the single market can operate in different ways for different services. Differences between Member States and innovations in them benefit the single market as a whole. This is an area where British officials and Ministers need to adopt a rigorous and questioning approach in legislative negotiations.
25. The economic benefits of the internal market can be assessed both in terms of conventional enhancements in consumer welfare – more choice, better quality and lower prices – and in terms of gains in the capacity of European producers to compete inside Europe and beyond. This is of course not an easy task in the absence of a clear counterfactual. We have referred elsewhere to the benefits for European employees, shareholders and Governments when companies such as Vodafone can use the single market as a stepping stone to compete on a global stage.

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<sup>3</sup> The Commission has equated harmonisation with common prices on several occasions in telecoms: in 2009 it proposed that mobile termination charges payable between operators should converge to a range of 1.5 to 3 cents per minute and in 2007 it set uniform price caps for roaming services, so that UK consumers paid the same charges for this service as their Spanish or German counterparts (and vice versa). It is currently proposing that fixed wholesale charges for ‘unbundled’ copper networks should converge to between 8 and 10 euros per line for all national operators, irrespective of cost or other differences between national markets.

26. *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?*
27. There are a number of areas where EU action is undertaken on the basis of human rights or other considerations, but with direct consequences for the operation of the Internal Market. Privacy is one example: differences in privacy laws between Member States frustrate the capacity of firms to deal with customers on a consistent basis. Europe has a clear framework established by the Data Protection Directive, which is currently under review<sup>4</sup>. This is often supplemented by national variations which inhibit the development of pan-European services and the realisation of economies of scale. The Commission has rightly identified a lack of harmonisation in privacy rules as a significant barrier to the development of cloud computing services in Europe.
28. More co-ordinated European action on consumer protection is also required if rules are to be applied effectively to internet companies that operate beyond national or European borders. Attempts by an individual Member State to enforce measures against pan-European digital services providers are likely to be increasingly ineffective as such providers can boycott individual national markets without significant economic cost. But no global internet provider, however large, could afford to boycott the European Union as a whole. This greatly enhances the prospect that European-wide rules, uniformly enforced, will be complied with. Many large digital services providers already choose to locate their operations in Member States with less onerous national consumer protection and privacy regimes. This currently disadvantages nationally-based competitors, including Vodafone, who face more burdensome and differing regulations in their respective national markets (as well as risking a 'race to the bottom' amongst Member States seeking to attract geographically mobile internet service providers). Greater harmonisation at European level would reduce such unfair disparities between the internet firms and geographically constrained telecoms operators.
29. This is an area where we think the Government could encourage the Commission to seek to occupy more of the field in some or all aspects of consumer protection, particular insofar as they relate to digital services. This would be likely accomplished through the use of Article 114 Regulations. The Government should ensure that the resulting measures allow European firms and competition to operate effectively and that we do not simply overlay more law onto existing national regimes. To ensure this, such Regulations should include a version of the 'free movement clause', which disapply national laws once the relevant measure is adopted.
30. *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?*

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<sup>4</sup> [http://ec.europa.eu/justice/newsroom/data-protection/news/120125\\_en.htm](http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm)

31. The Internal Market is developed both through entry into other Member States and through trade with them. Vodafone has generally undertaken the former approach (with some aspects of the latter visible in Vodafone's commercial partnerships with telecoms companies in EU Member States in which we do not have our own operations).
32. In our experience, some EU mechanisms have worked well and others not. European competition law has been very effective in opening up markets to competition and in deterring competitive distortions in areas like State aid. The Commission's competence in this field is now well established and respected across the globe.
33. Competition law safeguards have allowed firms like Vodafone to compete effectively in other Member States – something we doubt would have been possible without the support of the European institutions, particularly the Commission, but also the courts. In many cases, recourse to DG Competition is the only action open to us when faced with ineffectual national regulators, protectionist public authorities or simply a failure to properly implement European policy in other Member States. We see no prospect of this need diminishing for the foreseeable future.
34. This is because the application and enforcement of many harmonisation measures by Member States has been poor, with the result that national variations often remain in place or that measures are simply not implemented at all. In Vodafone's case, for example, our ability to obtain access to the networks of our local incumbent rivals varies enormously between Member States.
35. We understand that the Commission has increasingly taken to adopting new measures as Regulations rather than Directives in order to overcome the failure of many Member States to adequately transpose European Directives. Regulations with direct effect do at least allow for the possibility of private actions by firms. But there is no easy solution to the challenge of compliance by Member States. The British Government should be supportive of Commission efforts, and of the role of the European courts.
36. *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?*
37. The initial focus was clearly on barriers to trade in goods, with barriers to entry following later. The need for action on digital markets has become more apparent as these services have developed, but the difference between physical goods markets and digital goods markets have not always been sufficiently understood by policymakers.

38. Vodafone has significant experience of the implementation of Internal Market rules under the Telecoms Regulatory Framework<sup>5</sup>. In this case, the so-called 'Article 7' procedure allows the Commission to review and comment (in public) upon measures which are proposed by the national telecoms regulatory authorities. The Commission can veto the proposals and prohibit their introduction in national markets if it believes they would undermine the Internal Market. It has done so in a number of cases. This mechanism has been effective in enabling the Commission to secure greater harmonisation of regulation across the continent through a mixture of informal persuasion, 'soft law' guidance and legal sanctions. It has also encouraged the national regulators themselves to better co-ordinate their work and improve the quality of their analysis in order to reduce the risk of a Commission veto. The process is relatively transparent, with Commission comments being published and other regulators invited to comment on the work of their peers. The 'Article 7' process described here is, as far as we are aware, unique in European law and, although far from perfect, could provide a useful model for arrangements to improve harmonisation in other sectors.
39. This noted, there are a large number of areas in telecoms policy where the Commission has further work to do and which Vodafone believes the UK Government should support. These include measures such as:
- a. harmonisation of the mechanisms used to allocate radio spectrum to the industry, aimed at ensuring a more consistent approach to auctions and more co-ordinated release of new spectrum across Europe. Better co-ordination should allow the European mobile industry to obtain more influence over what is a global supply chain for new technologies
  - b. better regulation of fixed incumbent operators, such as Deutsche Telecom, Telefonica or Telecom Italia, to ensure effective competition from smaller rivals and prevent anti-competitive conduct. BT and Ofcom agreed to implement the 'functional separation' of BT's operations in 2004 but progress in other European markets has been barely perceptible in comparison. Vodafone and BT would benefit greatly from more effective European action to control anti-competitive conduct by rivals in other Member States. In this connection, the Commission has recently made proposals to reduce discrimination and price squeezing which the UK Government should strongly support.
  - c. an EU-wide approach to various aspects of internet regulation, including 'net neutrality', so as to ensure effective enforcement, as explained above, and to enable pan-European operators to implement consistent measures in their networks
  - d. effective Commission oversight of the use public or industry funds by national Governments to support broadband investment and the roll out of infrastructure. In

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<sup>5</sup> See [http://ec.europa.eu/information\\_society/policy/ecommm/tomorrow/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecommm/tomorrow/index_en.htm)



many Member States the processes for the allocation of such direct or indirect public subsidies today remain opaque and uncontested.

40. We can of course provide further details of Vodafone's views on specific policy proposals from the Commission if required for this review. BIS, DCMS and Ofcom are regularly briefed on these and other matters.
41. *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?*
42. We are not in a position to comment, but are not aware of any significant impacts.
43. *Has the Internal Market been helped or hindered by UK involvement in other groupings, such as the G20, G8, the OECD or the Commonwealth?*
44. Again, we are not well placed to comment but it is not clear to us that the Britain's involvement in other multi-national bodies has had a significant impact upon the development of the Internal Market. Many of these bodies share similar objectives in terms of removing obstacles to trade and, as such, should be complementary (although clearly different in scope) to the efforts of the European Union.
45. *To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside the EU?*
46. We believe that the Internal Market has brought unambiguous benefits for firms like Vodafone who have developed their business by entering other markets (rather than by trading with them):
  - a. the Internal Market allowed Vodafone to first acquire scale in Europe and then compete on the world stage (allowing us access to capital to fund entry into much larger markets, such as the US and India, and ensuring that our costs are competitive with those of similar sized firms elsewhere in the world)
  - b. the Internal Market has allowed Europe to dominate technology standards in some strategically important sectors because European firms and authorities have worked collaboratively to develop technologies (e.g. GSM mobile technology) which have then been adopted globally
  - c. the Internal Market has allowed Europe to influence economic policymaking in other regions of the world far more effectively than the UK could have done on a unilateral basis, allowing UK firms to enter and participate in global markets which might otherwise be less accessible to them

47. It is worth recalling that Britain led the world in the 1980s in many areas of economic policy and provided a model for the liberalisation of utility markets such as telecoms, transport and energy which was then taken up by policymakers not only in Europe but across the globe. Firms like Vodafone have applied experience gained in the UK to expand well beyond Europe (in Vodafone's case, into Australia, New Zealand and the US and subsequently into India and Africa).
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Internal Market as a continuous work in progress, with constant risks that measures could be reversed. The benefits of the Internal Market, although very significant, are also fragile.

53. This is important because much of the debate on Britain's relations with Europe seems to suggest that Britain can secure the benefits of the Internal Market without participating directly in efforts to safeguard it. We consider this a dangerous assumption. It is more likely that others will regard further progress on the Internal Market as an element in a broader package of reforms, likely to be tied to action in areas such as environmental and consumer protection, judicial co-operation and migration. Britain will find itself having to engage across a broader range of issues in order to safeguard the Internal Market.
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# Waring, D

## D Waring

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 internal market is currently acting against UK interests where UK products were faulty as in BSE and beef the EU nations turned against UK beef. Where diseases are imported such as in ashtree saplings the UK cannot act in a timely and sensible manner to limit disease spread. The single market must not act against the good of member states natural environments or creatures therein.**

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 presupposes the EU has made any actions. Currently I see no evidence that it has acted constructively in environmental, social or employment terms.**

**On the environment here I cite the lack of a common fisheries Policy which covers not just rights of access but actual management of fish stocks through a marine biological research infrastructure.**

**In social terms I see everything possible being done to undermine society through diktat from Brussels and the ECHR while we are not a signatory of the Shengen Accord the border leaks like a seive, even though we are an island.**

**As to employment, the UK obviously lacks any controls on the movement of IPR from companies taken over by European rivals and has stepped down the ladder of industrial development preferring to see itself as a Northern equivalent to Sicily and I await the arrival of organised Crime to provide serious employment opportunities.**

The operation of the Internal Market

3.

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

**They have worked effectively to strip the UK of opportunity**

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? **Harmonisation is only permitted by dragging nations down and thanks to ineffectual government and their teams in Brussels we have lost out.** 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? **It is self evident that unless one has a good tax lawyer one will be impoverished as wealthy individuals and companies pay tax elsewhere in the EU to the detriment of the UK.**

4.

Why is the Internal Market so much deeper in some areas than others? How effective has implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules? **The UK has rigorously applied EU statutes where others appear to apply only those which benefit them**

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? **The Internal Market as tied us economically to the apron strings of the Germans and French and has ensured we are seen as a spent force politically, economically and militarily.**

7.

To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside of the EU? **Here I cite the implementation of the new Forth Crossing the implementaion of which which does little to benefit the local economy and Whitehalls management of which reflect poorly against the Welsh assemblies moves to ensure a high local participation in and benefit from monies for the Cardiff waterfront.**

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 EU has ensured a flood of benefit claimants from other countries to the UK, Poles fled hear for work, benefits and also to avoid the draft. Romanians have flooded here for benefits acrued via selling for example the Big Issue. The large influx of persons has once again ensured the need for mechanization and technical upskilling can be avoided by the presence of plentiful cheap Labour. The UK appears to follow the rules specifically to the letter while other nations do not. Here I cite the early bending of rules on national budgets by France and Germany.**

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 UK will be further disadvantaged as the Home and Foreign Offices attempt to ensure the UK is seen as the perfect European nation.**

General

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

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

One assumes that having trashed R&D the Government assumed Industry was picking up the activity. Well surprise industry thought it was Governments rols to do R&D and currently it seems no one in the UK is doing R&D.

**WPP plc**

# WPP response to Government Consultation on the Balance of Competences between the UK and the EU

As this consultation acknowledges, it asks very broad questions the full response to which would require a detailed analysis of current EU and local law and a consideration of on-going proposals and draft legislation together with historical analysis. We have not carried out such a detailed evaluation nor have we answered all the questions. Instead we have highlighted at top level a selection of issues that WPP businesses face doing business in Europe on a day-to-day basis and indicated how these have been affected by the measures taken to implement the Internal Market. The resolution of a number of issues does not necessarily require an exercise of legislative power by the EU and indeed resources might in some cases be better directed at providing practical infrastructure or administrative measures.

## **Marketing 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?*

A: In order to achieve a perfectly functioning Internal Market in WPP's sphere of operation, it requires, as a first condition, harmonisation of intellectual property rights and data protection legislation. Whilst this (together with harmonisation of other areas of law applicable to all business sectors) is a significant step toward the Internal Market, divergence in local regulation and in areas such as laws on unfair competition remain a notable hindrance to the cross-border provision of many WPP services.

We note that the European Commission's 2011 Communication on the Single Market for Intellectual Property [COM (2011) 287] has already identified a number of areas in which action is required to perfect the Internal Market in relation to intellectual property. If fully harmonised legislation is the deep end of an internal market, we do not suggest that it is necessary to go that deep or to fully harmonise those laws which are peripheral to the core legislation enacting intellectual property rights, in order to achieve a functioning internal market.

In delivering a wide range of WPP's business a thorough understanding of and responsiveness to cultural differences between the peoples of different countries is essential. Cultural harmonisation is, and should be, outside the remit of EU institutions and local codes of conduct or industry self-regulation underpinning culturally important issues will always represent a barrier to a perfect internal market for a number of our business sectors, notably advertising and direct marketing and a proportion of public relations activity.

We note that the Commission has proposed that the EU undertake a review of the laws on unfair competition and the various local equivalents to the UK's tort of Passing Off and French Parasitisme. In relation to these matters, we anticipate that there will be considerable resistance to harmonisation and, whilst it may ultimately be achievable, it will be long argued. It might well be prudent if the EU's remit, in the medium term, be focussed on harmonisation of the core Intellectual Property regime and in these peripheral matters be confined to collating information and resources to empower business to understand and compare local laws. The availability of clear and comprehensive information would be a considerable boon for businesses wishing to target communications across national boundaries.



In the table below we identify a few key areas in which there is at present no harmonisation and we suggest how the EU might take action.

<b>TABLE A</b>	<b>The issues in this section are live issues which represent current barriers to the Internal Market and which require harmonised laws</b>
<b>UNFAIR COMPETITION</b>	
<b>Divergence of laws</b>	<p>France has aggressive parasitisme laws and the UK has the tort of passing off, other countries have codified laws on the issue. This is a barrier to companies in one jurisdiction putting together creative work for clients in another jurisdiction or creating pan-European work.</p> <p>The EU could offer real value by bringing together online information from Member States to facilitate understanding of those local laws.</p>
<b>PRIVACY/PUBLICITY RIGHTS</b>	
<b>Divergence of laws</b>	<p>Some jurisdictions have no free standing right of publicity/personality and others have codified rights which extend to the benefit of a person's relatives/heirs. This is another barrier to companies in one jurisdiction putting together creative work for clients in another jurisdiction or creating pan-European work.</p> <p>The EU could offer real value by bringing together online information from Member States to facilitate understanding of those local laws.</p>
<b>ADVERTISING REGULATION</b>	
<b>Divergence of regulation</b>	<p>There is broad adherence across the EU to the EASA top line principles of advertising regulation (Legal, decent, honest and truthful) but local cultural issues lead to differing interpretations and specialist local rules. This is a barrier to companies in one jurisdiction putting together creative work for clients in another jurisdiction or creating pan-European work.</p> <p>EASA provides links to member SRO sites but the EU could usefully provide a collated online resource of comparative materials.</p>
<b>SALES PROMOTIONS</b>	
<b>Transparency of legal position</b>	<p>There has been debate about enacting a Sales Promotion directive for many years. In fact the requirement has to an extent been superceded by cases applying the Unfair Commercial Practices Directive to local sales promotion restrictions. Those cases have found local restrictions to go beyond what is permitted by way of regulation in this field. However, few but the most specialist lawyers are aware of the case law. Lack of transparency over the relevant legal considerations is currently preventing companies from taking advantage of the opportunity for pan-European promotions or offering cross-border access to local promotions.</p> <p>Whilst a harmonisation of sales promotion law would be preferable it has plainly</p>

	<p>represented a major challenge to the EU which could instead offer real value by bringing together a resource collating EU cases and local laws relevant to Sales Promotions.</p>
<p><b>COPYRIGHT</b></p>	
<p><b>Orphan Works</b></p>	<p>Under the orphan works directive [Directive 2012/28/EU] there is a commitment to freeing up orphan works for cultural institutions but this does not go far enough. This is also a commercial issue and it is not clear whether it is intended that such works become commercially available.</p> <p>Often the ownership of creative source material is difficult to establish, even with a diligent search. Due diligence exemptions for copyright infringement would be extremely useful and could be supported by an orphan works register of use providing contact details for the company using the work should an author come to light. Alternatively cultural institutions should be able to make orphan works available for commercial use. In the latter case, if due diligence has already been carried out to the institutions' standards, then the risk of harm to authors' rights is mitigated and the system would offer potentially good sources of revenue for the institutions to fund the digitisation of the relevant works.</p>
<p><b>DIGITAL</b></p>	
<p><b>Data Protection</b></p> <p><b>Contracts</b></p>	<p>New communications technologies provide exciting opportunities for marketing communications and inevitably operate in cyberspace without any regard for national borders. EU legislation has sought to tackle cross border consumer issues but other cyber legal issues remain outstanding.</p> <p>The Digital Agenda for Europe has put information and communication technologies at the forefront of the European economy of the future but the implementation of recommendations needs to move much more quickly. By way of example, it is almost 5 years since the Apple App store first opened and over half of mobile phone owners use Apps. However, the Article 29 Working Party has yet to publish its proposed guidance on Apps and specific provisions in legislation are a very distance prospect. It is not sufficient to legislate for web-based business and state that such legislation also applies in the mobile environment. Practical constraints of mobile media need to be addressed.</p> <p>The Commission's proposal to overhaul the Data Protection Principles enshrined in the 1995 Data Protection Directive is an opportunity to provide workable guidelines on data protection requirements which take into account the nature of different media. It must be clearly thought through but needs to move quickly.</p> <p>We largely agree with the UK government's position on the proposed Common European Sales Law which aims to provide an optional contract law for online transactions. We do not believe that the EU should pursue the creation of a new regime of contract law in addition to Member states' own existing laws. We do however, welcome the idea of the Code of EU Online Rights although the execution of the code is not as user-friendly as it might be.</p>

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?

[NO ANSWER]

### 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: For the type of services which WPP companies provide, harmonisation of relevant laws is essential for the Internal Market. In relation to intellectual property, the approximation of laws has been reasonably successful and we note that in relation to the remaining discrepancies in Copyright law the Commission has floated the idea of a European Copyright Code. However, harmonisation of the framework for managing the administration of intellectual property is far less effective. We identify in table B below areas in which the EU could make a significant contribution by focussing on implementing harmonised administration.

Mutual recognition of compliance with local industry regulation, such as CAP and BCAP Codes, would certainly overcome barriers represented by those codes, but it is difficult to see that it would be acceptable to Member States.

<b>TABLE B</b>	<b>The issues in this section are live issues for which the EU should focus on harmonised administrative measures</b>
<b>COPYRIGHT</b>	
<b>Collective licensing</b>	<p>The proposed directive on collective rights management encourages multi-territorial licensing for online use in the EU. However, it is not clear that the practical (and indeed the full legal) impediments to this have been thoroughly thought through. Given levels of institutional resistance to amalgamation within collecting societies strong leadership from the EU will be required to drive this through.</p> <p>For online communications in particular the commission's proposals for a one-stop licence shop would greatly simplify projects but again it seems unlikely to be a short or even medium term proposition.</p>
<b>TRADE MARKS</b>	
<b>Access to national registers</b>	<p>Whilst it is possible to search CTM registrations through the free access IPO register in the UK there is no free access to national registers of other EU jurisdictions (although we believe that such functionality is available through private subscription). Whilst the drive to harmonise trade mark procedures and reform OHIM is welcome, access to national registers will remain</p>

	<p>important.</p> <p>In its 2011 Communication the Commission identified the need for trade mark registrations systems to be more user friendly and publicly accessible but did not go so far as to recommend a central register.</p> <p>A central searchable database could be the ultimate goal but in the short term a site collating links to all searchable national registers would be useful.</p>
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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 implantation of Internal Market rules?*

A: Pre-existing treaties in areas such as intellectual property have to, to an extent, reduced resistance to harmonisation in the relevant areas. However the market for creative and communications businesses is, as noted in the answer to question 1 above, fragmented by cultural differences which cannot be harmonised or approximated.

#### **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?*

[NO ANSWER]

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 ANSWER]

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

[NO ANSWER]

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?*

[NO ANSWER]

#### **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?*

[NO ANSWER]

#### **General**

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