17 January 2014

Mr Roxburgh
Balance of Competences Review
Single Market: Financial Services and the Free Movement of Capital
HM Treasury
1 Horse Guards Road
Westminster
London
SW1A 2HQ

Dear Mr Roxburgh

BIBA's response to the Review of the Balance of Competences, Single Market: Financial Services and the Free Movement of Capital call for evidence

The British Insurance Brokers' Association (BIBA) is the UK's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

General insurance brokers contribute 1% of GDP to the UK economy and BIBA brokers employ more than 100,000 staff.

BIBA helps more than 400,000 people a year to access insurance protection through its *Find a Broker* service, both online and via the telephone.

Brokers provide professional advice to businesses and individuals, playing a key role in the identification, measurement, management, control and transfer of risk. They negotiate appropriate insurance protection tailored to individual needs.

BIBA is the voice of the industry advising members, the regulators, consumer bodies and other stakeholders on key insurance issues.

Please find below BIBA's answers to your questions, please note BIBA did not supply an answer to question ten as we did not feel it was relevant to us.

BIBA strongly feels that the UK should remain a member of the EU and an active partner in its deliberations. However, our experience of the EU policymaking process means we feel strongly that the process through which the EU comes to decisions requires reform. Although we understand the Treaty of Rome prefers maximum harmonisation, we understand the pressure from individual countries to adopt a minimum harmonisation approach to allow for member states to reflect the specificities of their own circumstances in their national legislation. This is something with which we sympathise, we believe that Member States should have a far greater say in the creation and

implementation of the EU legislation that affects them. For example, an issue of great concern to our members currently is the ability of insurers supervised by regulators in other member states to passport into the UK and operate effectively on the basis of a much more lax regulatory regime – including lower capital levels. To that end, we would like the UK regulator to have greater powers in being able to repel poorly capitalised firms.

1 How have EU rules on financial services affected you or your organisation? Are they proportionate in their focus and application? Do they respect the principle of subsidiarity? Do they go too far or not far enough?

EU directives, specifically the Insurance Mediation Directive (IMD) and the Distance Marketing Directive (DMD) have a fundamental impact on our 2,000 member firms as they set the framework for our regulation.

They are proportionate on the whole although some of the disclosure requirements are overly cumbersome, for example, Article 12 of IMD on information requirements for intermediaries (transposed into UK regulations via the Financial Conduct Authority's (FCA) rulebook (ICOBS) requires disclosure of matters such as any ownership links between intermediaries and insurers. Feedback supplied by our members from their clients indicates quite clearly that customers are not interested in receiving this information; to the extent that some complain of it being an unnecessary distraction from the information that is important to them.

Likewise, the proposed compulsory remuneration disclosure in the proposed recast of the IMD (IMD2) might play to how some markets in Europe operate, but does not consider research undertaken by the UK regulator, the FCA, on behavioural economics[1], which highlights the danger of "information overload" and the role regulation has played in this, in the context of achieving good consumer outcomes.

The principle of subsidiarity is a difficult fit when directives are given from Europe based on concepts operating in local markets and incorrectly seen as appropriate elsewhere. By way of example, while independent intermediaries (acting primarily in the interests of their clients) is a recognised model in the UK, in France the "middlemen" are generally the agent of the insurer. It feels that subsidiarity can never be achieved when so much of the detailed rule making comes direct from the EU.

2 How might the UK benefit from more or less EU action? Should more legislation be made at the national or EU level? Should there be more non-legislative action, for example, competition enquiries?

We strongly believe in having appropriate and proportionate regulation but feel that some of the legislation coming out of Europe will stifle growth of the UK and European economies. At the moment we see a continual move by the EU to impose more red tape, restrictions and regulation on the financial services sector. This will have a negative impact on our ability to compete on a global scale against the emerging economies outside of Europe.

It should not be a question of more or less legislation from Europe but about achieving the right legislation. Europe should focus on key issues, for example we have been discussing IMD2 for more than five years and there is still no end in sight. We are of the

[1] See www.fca.org.uk/static/documents/occasional-papers/occasional-paper-1.pdf

belief as is our European trade body BIPAR that the IMD was not in need of revision anyway, particularly so soon after it originally came into force in January 2005.

We believe European directives contain too much detail, become overly cumbersome which in turn slows down the legislative process and that the EU should focus on the key high level principles that matter and allow the member states to determine the detail of legislation for their own market.

For example the EU parliament recently discussed the anti-competitive proposal of restricting an advisors fee to 200 euros per case (MiFID2 debate). The EU should not be going anywhere near this kind of detail due to the varied type, size and style of markets throughout Europe.

As mentioned above, the fundamental differences in the market operating models across European member states suggests a minimum harmonisation approach to EU-wide legislation – permitting Member State discretion in implementation, to suit the peculiarities of their home market while still permitting a consistency of minimum consumer protection standards across the region.

There should also be more EU action in the areas of free trade agreements. An area where the EU can have a positive and constructive role in promoting the European economy.

3 How have EU rules helped or made it harder to achieve objectives such as financial stability, growth, competitiveness and consumer protection?

The original IMD has been on the whole a positive and well received directive, helping to ensure stability and consumer protection although containing onerous disclosure requirements.

However, we are now concerned that the EU seeks to change a successful directive by imposing harsher and inappropriate requirements and ideas that we believe simply do not fit different markets across Europe. For example at one point the EU suggested that intermediaries may have to declare, with the regulator at the point of registration, whether they will represent the customer or act on behalf of the insurer and whether they offer advice.

However, brokers act for both the customer and insurer and this is currently explained at point of sale as part of initial disclosures on a contract-by-contract basis. We believe that brokers cannot commit at the point of registration because who they represent may change on a contract-by-contract basis and during the administration process itself (an insurance intermediary acts as agent for their client in finding appropriate cover, but will be regarded as agent of the insurer when issuing confirmation that cover has been put in place). This could potentially and very seriously jeopardise existing business models across Europe.

The pan-European intermediary view is that this must remain a disclosure made on a contract-by-contract basis and we have made this point, proposing draft directive text amendments to this effect.

We are also concerned that the EU has not discussed with customer interest groups what information they require when arranging insurance. In practice, the European regulator will therefore not be able to create disclosure rules that apply to more than a million insurance intermediaries across Europe without this knowledge?

What we have ended up with from Europe is a process that can now only be described as “information overload”. Brokers are required to give enormous amounts of information to a customer. BIBA is concerned that the more information that is given to the customer the less inclined they are to read it.

In summary, from the best of motives, but excess of regulatory zeal, the EU is helping to create a situation where rules designed to protect customers actually have a negative effect by confusing them due to onerous disclosure requirements. We believe that similarly to when you receive a prescription from a doctor, there should be a more focussed and simplified disclosure requirement, cutting out unnecessary red tape and ensuring customers more clearly understand the key facts and significant exclusions which apply to them.

4 Is the volume and detail of EU rule-making in financial services pitched at the right level? Has the use of Regulations or Directives and maximum or minimum harmonisation presented obstacles to national objectives in any cases?

There are around 20 recent directives and their revisions that will have an impact upon insurance brokers. These include:

- The Insurance Mediation Directive revision
- MiFID2
- European insurance contract law
- Insurance guarantee schemes – investor compensation schemes
- Data protection
- PRIPS
- Alternative dispute resolution
- Consumer rights
- UCITS
- Solvency II
- Credit agreements relating to residential property
- Professional qualifications
- Public procurement
- VAT, (FAT), FTT, IPT
- E-commerce directive, anti-money laundering, collective redress, distance selling
- Sanctions
- IORP

And of course we have seen the rules on gender equality and the creation of the new European Supervisory Authorities (ESA). This is a staggering volume of new regulation to put on a sector over the course of a few years. We therefore strongly feel that the right level has NOT been achieved.

Insurance intermediary types vary dramatically across the member states. Proposed rules on disclosure of intermediary earnings would for example create an unlevel playing field against direct insurers that could lead to consumer detriment and distortion of market competition. Different states like, Italy, Germany, Finland and the UK have very different approaches and this is a level of detail that the EU should not interfere with. By getting in to so much detail the whole legislative process slows down as so many states will start to disagree.

5 How has the EU's approach to Third Country access affected the ability of UK firms and markets to trade internationally?

Based on the fact (as the call for evidence paper states) that the costs of financial system failure are borne by national, not EU, budgets and that member states have financial industries of vastly different size and sophistication with differing customer needs, the logical conclusion appears to favour individual nations managing their own risks in trading with Third Countries.

UK investors will no doubt look to their recent experience with Iceland (currently a Third Country but on way to EU membership) as a good example of allowing access to domestic trade without equivalence.

6 Do you think that more or less EU-level regulation in the area of retail financial services would bring benefits to consumers?

As specified in our earlier introduction we appreciate the EU's preference for maximum harmonisation but we believe that minimum harmonisation is a far better solution. The IMD is sufficiently strong that we believe there is no reason why individual states cannot make their own legalisation that they feel appropriate e.g. HM Treasury wisely decided to regulate travel agents for the sale of connected travel insurance. Our main concern lies with poorly capitalised passported insurers entering the UK market and then failing as we have seen with Balva, Lemma, Quinn and others.

Passported, non-UK regulated overseas insurers have the potential to damage the UK insurance market. 548 insurers have so far exercised their right to passport into the UK under the 3rd Non-life Directive. BIBA members argue that a number of them may not always be well capitalised as they operate from a home states where insurer's solvency (particularly in potentially stressed scenarios) is not as actively supervised as in the UK. They may also not offer adequate policyholder protection in the event of their failure.

Unfair competition damages the UK market. When passported insurers enter the UK market, it has ended with uninsured customers and reputational issues for the industry. BIBA does not wish to see competition in the interests of consumers being damaged, but we believe that this type of competition does not work in the interests of customers.

This issue is becoming more and more of a concern in our sector and is undermining the UK market. The UK must be able to better navigate the Treaty of Rome to prevent this damaging scenario.

The UK must raise this issue in Europe and the UK regulator must do more to work with passported insurers' domestic regulators. BIBA believes that the this balance of competences review is the ideal vehicle to take this issue forward.

7 What has been the impact of the shift towards regulation and supervision at the EU level, for instance with the creation of the European Supervisory Authorities? Should the balance of supervisory powers and responsibilities be different?

We are supportive of the work EIOPA are doing with comparison websites otherwise we have very little engagement with them. We have been concerned recently that certain draft directive text, for example the recast IMD, allows an increasing number of delegated acts to EIOPA. We believe these should be restricted or completely removed. We feel the ESA's role in this area should be restricted to the provision of guidance.

8 Does the UK have an appropriate level of influence on EU legislation in financial services? How different would rules be if the UK was solely responsible for them?
No, we have the largest financial service market in Europe, yet we feel that the UK voice is often one slightly isolated; we are more successful if we partner with Germany, Holland in order to get things achieved.

9 How effective and accountable is the EU policy-making process on financial services legislation, for example how effective are EU consultations and impact assessments? Are you satisfied that democratic due process is properly respected?
The trialogue process is comprehensive, however we have concerns that the European Parliament only pay lip service to the Council of Ministers and that the process is so vast it is very hard to turn them if they start going in the wrong direction.

We have 2 major concerns regarding the policy making process:

(i) We have been concerned about the quality of the published cost benefit analysis (CBA) on several occasions during the last few years. We understand and accept that a pan-European CBA is extremely difficult but the imposition of greater administration and cost burdens on small firms must be underpinned by a robust analysis, clearly demonstrating that the benefits of any proposed directives out way the costs.

(ii) BIBA has attended a couple of open hearings and we have been left with the strong impression that these are simply a box ticking exercise where little if any of the hearings take into account the points raised in evidence.

11 What may be the impact of future challenges and opportunities for the UK, for example related to non-membership of the euro area or development of the banking union?

Our members believe we should be part of the EU. Numerous members have branches across Europe and significant European income. A UK departure from the EU would have a dramatic, adverse, impact upon them. But we do believe that the UK should have greater control and influence over what comes out of Europe. Ensuring the UK achieves what is best for our economy, businesses, insurance brokers and citizens.

12 Do you have any further comments about issues in addition to those mentioned above?

We are very keen to co-operate with HM Treasury on this.

In summary our three key points are:

1. We should remain part of Europe but have greater say in the creation and implementation of the directives that affect us.

2. We are very concerned about passported insurers and would like the UK regulator to have greater powers in being able to repel poorly capitalised firms.

3. Directives should be focus more on core issues, a type of leaner minimum harmonisation so that the specificities of individual states can be better accommodated.

If you would like to meet to discuss any of the points raised above, please feel free to contact me on the details below.

Yours sincerely

Graeme Trudgill FCII
Executive Director