

# Free Movement of Persons Balance of Competences Report

## Evidence (Part 1)

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[Submission 42 – Nigel Varian](#)

## **Submission 1**

From: [REDACTED]

Sent: 07 January 2013 04:59

To: BalanceofCompetence

Subject: Free movement of people.

It seems its OK for anyone to come to the UK and claim benefits but not on a reciprocal basis.

## **Submission 2**

From: [REDACTED]

Sent: 07 January 2013 04:46

To: BalanceofCompetence

Subject: Immigration

Why is the UK subject to such excessive levels of immigration of persons who have no viable skill sets. Why do we permit uncontrolled immigration of trained individuals and leave our own young to languish with no future?

## **Submission 3**

### **Confronting the Competence Conundrum - Three Proposals to Democratise the Union through an Expansion of its Legislative Powers**

Dr. Sacha Garben, Academic Fellow at the London School of Economics and Political Science, Law Department. The author can be reached at [S.Garben@lse.ac.uk](mailto:S.Garben@lse.ac.uk)

#### **1. Brief Introduction**

As Mayer notes, "the competence issue has become a code word for the future of European integration as such. How much Europe do we want? What kind of Europe do we want?"<sup>1</sup> Indeed, the question of what the EU is supposed and allowed to do, and especially what it is *not* supposed or allowed to do, is probably the most prickly and fundamental issue in public, legal and political debates about the European integration project. Although the momentum and appetite for change on the matter of competences has probably subsided after the Lisbon Treaty, which implemented some of the reforms that had been proposed as a result of the Debate on the Future of Europe, the on-going topicality of the matter finds poignant illustration in the current debate about the repatriation of competences in the UK.<sup>2</sup> This article hopes to re-direct the discussion into a more constructive domain that acknowledges the underestimated and understated broadness of the EU's powers in the current competence constellation, and embraces the inevitable nature of that broadness. It aims to confront the 'competence conundrum', locating the root cause of the failing to rein in the EU not in Articles 114 and 352 TFEU or their alleged over-use, but in the fundamentally functional nature of the EU integration project as mandated by the Treaties, which makes categorical demarcation of competences - if ever an effective strategy - impossible and undesirable. It is an appeal to the powers that be for a more honest and coherent approach to EU's mechanisms and *raison d'être*.<sup>3</sup>

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<sup>1</sup> F. Mayer, Competences – reloaded? The vertical division of powers in the EU and the new European constitution, *International Journal of Constitutional Law*, Vol. 3, 2005, p. 512.

<sup>2</sup> See V. Miller, *Repatriating EU powers to Member States*, Standard Note SN/IA/6153, London: House of Commons Library, 2011.

<sup>3</sup> Phrase borrowed from C. Hillion, Tobacco Advertising: If You Must, You May", *The Cambridge Law Journal*, Vol. 60, No. 3, 2001, p.489

To that end, three levels of reform will be proposed. The proposals limit - to varying degrees - the use of demarcation as a mechanism to contain the EU, thereby broadening the scope of the EU's legislative competence. To compensate for the increased scope of EU legislative action, these proposals will be coupled with an enhancement of democratic control of EU legislative activity. Accepting the fact that functionalism is in the Treaties' DNA, it is argued that the best way to contain the EU is to fully recognise and build on the open-ended nature of its formal powers, while enhancing the dynamic limits on the exercise of its competence in particular by national parliaments. Of course, these democratic improvements can be treated as self-standing suggestions, independent of reforms of legislative competence. They are presented as a set, however, because they can offer a comprehensive improvement of the constitutional settlement, taking a significant step towards a more accountable and democratic Union in which citizens take an interest, find themselves represented and over which they feel they have control. Although it will strike many as counterintuitive that European integration can be made more democratic by an enlargement of the scope of the EU's formal powers, this paper is intended to show that a careful appreciation of the peculiar nature of the EU legal order can lead to that somewhat uncomfortable yet illuminating conclusion. Broadening the EU's power base is the best way out of the competence conundrum, and combining it with enhanced dynamic checks will serve to shift a crucial part of the responsibility for containing EU action from the European legal domain to the national political one, where it can be more appropriately and effectively exercised.

## **2. Setting the Scene: Limitation through Demarcation?**

The European Union should not legislate on every aspect of our lives. For one, the EU lacks a deliberative democracy.<sup>4</sup> Secondly, even if there was a genuine European public sphere and a powerful European Parliament legitimated by high voter turnouts, democratic theory still imposes a preference for government at a level closest to the citizen as possible.<sup>5</sup> Thirdly, national and regional identity and cultural diversity

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<sup>4</sup> As comprehensively and convincingly argued by: A. Follesdal & S. Hix, Why is there a Democratic Deficit in the EU: A Reply to Moravcsik, *Journal of Common Market Studies*, Vol. 44, No. 3, 2006, pp. 533-62

<sup>5</sup> See on the democratic virtues of subsidiarity: G. Bermann, Taking Subsidiarity Seriously: Federalism in the European Community and the United States, *Columbia Law Review*, Vol. 94, No. 2, 1994, pp. 331 – 456 and A. Follesdal, Subsidiarity and Democratic Deliberation, in: E. Oddvar Eriksen & J. Fossum (eds.), *Democracy in the European Union: Integration through Deliberation*, London: Routledge, 2000, pp. 85-110

should be protected, ruling out excessive centralisation.<sup>6</sup> Fourthly, an argument could be made that as regulation limits individual autonomy, it should be minimized at all levels, including the EU. For all these and undoubtedly other reasons, we can all agree that there are limits to what the EU should do. The present contribution is in no way intended to challenge this conclusion. Neither does this article challenge, in principle, that a good way to contain the EU is to contain its legislative powers. There are, however, various ways to do so, and not all of these are equally effective and suitable. The current Treaties feature a double-pronged approach of limiting both the *existence* of competence and the *exercise* of competence, and it is argued here that only the latter way is suitable.

### 2.1. *Demarcation: Categorical Limitation of Competences*

The first method to limit the EU's legislative powers is through a demarcation of competences, which is as in most federal polities the most explosive of “federal” battlegrounds.<sup>7</sup> The issue of competence division has always been high on the agenda in Treaty reforms and has particularly gained momentum since the Nice Intergovernmental Convention, culminating in the Lisbon Treaty's explicit categorization of exclusive, shared and supporting/complementary competences. Although Treaty revisions have generally resulted in the granting of new powers, containment is consistently a very important driver for the Member States. It has always been clear that the EU only possesses those powers explicitly attributed to it, as it is a general rule for any international organisation. Even the Court of Justice in its most revolutionary and federalist judgment to date recognised that Member States have limited their sovereign powers only in “limited fields”.<sup>8</sup> Perhaps because the drafters of the Treaty initially felt it was unnecessary to state the obvious, the EEC Treaty referred to this principle only implicitly in Article 7(1) EEC.<sup>9</sup> Over time, however, the Member States have felt the need to make the principle ever more explicit in Article 3b EC (Article 5EC),<sup>10</sup> and now in Article 5(2) TEU, which provides:

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<sup>6</sup> Apart from a subjective preference for fostering a strong diversity of European cultures and identities, the protection of national identities is necessary from a democratic point of view, as an expression of political self-determination. See on this latter point: C. Calhoun, *Nationalism and Civil Society: Democracy, Diversity and Self-Determination*, *International Sociology*, 1993, Vol. 8, No.4, pp. 387-411

<sup>7</sup> J. Weiler, *The Transformation of Europe*, *The Yale Law Journal*, Vol. 100, No. 8, 1991, p. 2403

<sup>8</sup> Case 26/62, *NV Algemene Transport – en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*, ECR-00001, para. 3. In 1991 the ECJ however spoke of “ever wider fields”: Opinion 1/91 on the draft EEA Agreement [1991] ECR I-6084

<sup>9</sup> “Each Institution shall act within the limits of the powers conferred upon it by this Treaty.”

<sup>10</sup> “The Community shall act within the limits of the powers conferred upon it by this Treaty.”

Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

This central principle of conferral has been translated more concretely in a drafting technique that entails the specific and detailed attribution of competences in separate provisions scattered throughout the Treaty.<sup>11</sup> The detail with which these legal bases are defined outmatches the precision of the constitutions of most federal states.<sup>12</sup> The idea is that each policy area has negotiated its own specific scope of competence and appropriate procedures, allowing for better Member State control - or at least the illusion of it. The Maastricht Treaty took tight drafting a step further by defining several new competences in a way that at the same time limited these newly conferred powers.<sup>13</sup> Indeed, new competences were created (or rather codified) in the fields of culture, education, public health and industrial policy, but each came with the specific proviso that any legal measures adopted on the basis of these provisions were to be "incentive measures" without harmonizing national laws and regulations.<sup>14</sup> The harmonisation prohibitions are an indication that in the creation of these 'new' competences, Member States were at least as much concerned with setting down boundaries, establishing what the EU cannot do, as with creating scope for future EU initiatives.<sup>15</sup> The Lisbon Treaty has reaffirmed and extended this technique of limiting legislative competence, by applying it to the entire category of "supporting, coordinating or supplementary competences" in Article 2(5) TFEU.<sup>16</sup>

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<sup>11</sup> A. Dashwood, *The Relationship Between the Member States and the European Union/European Community*, *Common Market Law Review*, Vol. 41, 2004, p. 357-358

<sup>12</sup> G. De Búrca & B. De Witte, *The Delimitation of Powers between the EU and its Member States*, in: A. Arnulf and D. Wincott (eds.), *Accountability and Legitimacy in the European Union*, Oxford: Oxford University Press, 2002, p. 380

<sup>13</sup> G. Majone, *The European Commission: The Limits of Centralization and the Perils of Parliamentarization*, *Governance: An International Journal of Policy, Administration and Institutions*, Vol. 15, No. 3, July 2002, p. 380.

<sup>14</sup> Articles 149(4), 150(4), 151(4), 152(4)(c) EC.

<sup>15</sup> See, in relation to culture: N. Nic Shuibhne, *Minority Language Policy: Culture, Citizenship and Fundamental Rights*, The Hague: Kluwer Law International, 2002, p. 119

<sup>16</sup> See R. Schütze, *Co-operative Federalism Constitutionalized: The Emergence of Complementary Competences in the EC Legal Order*, *European Law Review*, Vol. 31, 2006, p. 167. Article 2(5) TFEU prohibits the adoption of legislation harmonising the law or regulations of the Member States on the basis of



## 2.2. Dynamic Constraints: Limiting the Exercise of Competences

The second way to limit the EU's legislative powers is to control its *exercise* of these powers. The first and foremost limitation of this form is the principle of subsidiarity, which demands all EU-level action be necessary in the sense that the policy-goals in question cannot be achieved as effectively and efficiently on the national level.<sup>17</sup> The second limitation on the exercise of EU powers is the proportionality principle, which requires EU action to be rational, in that it should be appropriate and necessary to achieve its aims, and that it should not limit individual (or Member State) autonomy too gravely (proportionality *stricto sensu*).<sup>18</sup> The third dynamic limitation was also introduced by the Maastricht Treaty and has been expanded by the Lisbon Treaty in Article 4(2) TEU. Although the precise legal value of this provision has yet to be determined, the idea is that EU action should respect "national diversity" and "core areas of constitutional identity".

It is true that these three principles have disappointed as effective grounds of judicial review of EU legislation.<sup>19</sup> This is partly due to the Court's lax attitude, illustrated by the fact that it fails to uphold even the mere procedural aspects of the subsidiarity principle.<sup>20</sup> Mainly however, it seems that the mechanism of judicial review is simply not fit for this purpose. The Court's position as the European judiciary vis-à-vis the European legislature, as well as the fact that it is somehow 'wired' to support the EU project,<sup>21</sup> make it an unsuitable actor to enforce subsidiarity, proportionality and national identity. Furthermore, successfully adopted EU legislation reflects a majoritarian preference among the national executives and the European

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the provisions concerning human health; industry; culture; tourism; education; vocational training; youth and sport; civil protection and administrative cooperation.

<sup>17</sup> See for an overview of the wealth of academic literature on the subsidiarity principle: A. Estrella, *The EU Principle of Subsidiarity and its Critique*, Oxford University Press, 2002.

<sup>18</sup> See T. Harbo, The Function of the Proportionality Principle in EU Law, *European Law Journal*, Vol. 16, No. 2, 2010, p. 158

<sup>19</sup> D. Chalmers *et al*, *European Union Law*, Cambridge: Cambridge University Press, 2010, pp. 364-369

<sup>20</sup> Chalmers *et al* refer to Case C-233/94, *Germany v. European Parliament and Council* ('Deposit Guarantee Directive') [1997] ECR I-2405 in illustration of this point.

<sup>21</sup> The ECJ's case law can generally be characterized as expansionist, meaning that it will most often choose a solution that furthers the integration process rather than one that limits it. As is well known, this often implies judicial activism, but sometimes also judicial restraint, especially when it concerns judicial review of EU legislation. Indeed, this explains the Court's non-interventionalist attitude in *ultra-vires* review, as well as its controversial case law on *locus standi*.

Parliament, which means it will not be soon challenged in Court.<sup>22</sup> Additionally, the subsidiarity principle is Janus-faced, in that it as much authorises as restrains EU action by means of an easily fulfilled efficiency requirement.<sup>23</sup> As virtually all common action can be argued to yield certain efficiency and effectiveness gains, *ultra vires* review is not the appropriate tool to operationalize subsidiarity, nor proportionality and national identity for that matter.

These problems can be overcome, however, by charging the right actors with policing these essentially *political* principles<sup>24</sup> through suitable mechanisms, as the political review by national parliaments through the Barroso Initiative and the Early Warning System shows.<sup>25</sup> As they have most to lose in the integration process,<sup>26</sup> national parliaments have the highest stakes in the observance of all three principles, meaning they can be trusted to exercise their review with vim, verve and vigour.<sup>27</sup>

### 2.3. *Disposing of Demarcation*

While Article 5 TEU specifies the limitations on the exercise of EU competence in the form of subsidiarity, proportionality and national identity, it is the TFEU that sets out the formal "areas of, delimitation of, and arrangements for" EU competences in Articles 2 to 6.<sup>28</sup> The prominence and assertiveness of these provisions gives the impression that the quest for clear demarcation, or for "a more systematic approach for the attribution of competencies to the Union",<sup>29</sup> that dominated the Member States' reform agenda for over a decade,<sup>30</sup> was brought to a successful end

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<sup>22</sup> S. Wetherill, *Competence Creep and Competence Control*, *Yearbook of European Law*, No 12, 2004, p. 1.

<sup>23</sup> Chalmers *et al*, *op cit*, p. 364

<sup>24</sup> S. Wetherill, *op cit*, p. 16

<sup>25</sup> Article 12 TEU and Article 7 Protocol No. 2 TEU. See P. Kiiver, *The Early-Warning System for the Principle of Subsidiarity: The National Parliament as a Conseil d'Etat for Europe*, *European Law Review*, Vol. 36, No. 1, 2011.

<sup>26</sup> Chalmers *et al*, *op cit*, p. 129.

<sup>27</sup> See the discussion on the Monti II proposal in Section 7, further below.

<sup>28</sup> The provisions classify EU powers in the three categories of exclusive, shared and complementary competences, and lay down the specificities of pre-emption. Article 2(5) TFEU underlines that legally binding acts adopted on the basis of the provisions of the Treaties relating to areas of complementary powers shall not entail harmonisation of Member States' laws or regulations. Competences not conferred on the Union remain within the Member States.

<sup>29</sup> I. Pernice, *Rethinking the Methods of Dividing and Controlling the Competencies in the Union*, in: *European Commission (ed), Europe 2004: le grand débat. Setting the agenda and outlining the options*, Brussels: European Commission, 2002, p. 17.

<sup>30</sup> The Intergovernmental Conference held in Nice in December 2000 launched the 'Debate on the future of the European Union' aimed at answering the question "how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity" (Nice Declaration 23). One year later, the Laeken Declaration of 13 December 2001 redrafted

with the Lisbon Treaty. This is, however, a misconception. This contribution is intended to show that the current system is deeply flawed. While pretending to protect certain sensitive policy areas from EU 'interference', there are various ways in which these fields can be subjected to both negative and positive EU integration nonetheless. Firstly, the application of the free movement provisions in areas of Member State competence has a profound impact on national autonomy (Section 3). Secondly, these areas can be impacted by EU legislation through other legislative competences, regardless harmonisation prohibitions (Section 4). The only effect of the prohibitions is to limit the development of holistic policy initiatives in these fields, thereby encouraging even less legitimate forms of harmonisation.

It is contended here that the cause of such 'competence creep' and the failure to stop it does not lie where it has traditionally been located, such as in Articles 114 and 352 TFEU and the way they have been deployed, but in the fact that categorical demarcation of powers per policy area is incompatible with the functional and horizontal nature of the integration project (Section 5). This functionality is engrained in the EU legal order, and cannot realistically be eradicated. Therefore, while limiting the *exercise* of competences is an effective and appropriate way to contain the EU and to empower national constituencies, limiting the *existence* of EU powers through demarcation is ineffective and counterproductive, and should be disposed of.

To dispose of demarcation means to broaden the formal scope of the EU's powers. Three different options will be presented that do so to varying degrees (Section 6). Firstly, it is proposed to abolish the prohibitions of harmonisation. The second suggestion is to do away with the categorisation of exclusive, shared and complementary competences, implementing a simple rule of pre-emption based on the primacy principle. The third option is to grant the EU a general legislative competence for the adoption of laws necessary for the attainment of its tasks, placing the flexibility clause of Article 352 TFEU front and centre in the competence-constellation. Of course, at any rate, these reforms should be backed up by equally rigorous improvement of the democratic safeguards in the legislative process. To this end, various ways to enhance democracy in the EU legal order will be proposed (Section 7). These mainly build on the idea that instead of categorically limiting the existence of EU powers, we should put to full use and extend the limitations on the

exercise of legislative powers that are already in place, namely those of subsidiarity, proportionality and national identity.

Although it might seem counter-intuitive, an enlargement of the formal scope of legislative competences combined with enhanced dynamic limitations would better serve the important goals of self-determination and national diversity than the current Treaty scheme. Furthermore, it might help politicise the Union, dispelling the technocratic fallacy that conceptualises the EU as a regulatory agency that can be legitimised through its output rather than a powerful federal polity that adopts highly distributive decisions and should hence be democratised.<sup>31</sup>

### **3. Negative Integration in Areas of Member State Competence**

In order to show how the current system fails to protect areas of Member State competence from EU integration, this section sets out the ways in which such areas can be deeply affected by the application of other Treaty provisions, most notably the rights to free movement and equal treatment. As we shall see, the ECJ's inclusive approach has meant that the EU does not need to have competence in a certain field to negatively integrate it. Even in areas that the Treaty explicitly indicates as falling under Member State autonomy, national policy freedom can be significantly restrained by EU law.

#### *3.1. Inclusion Rather than Exclusion*

In 1968, the ECJ was faced with the question whether an Italian tax on the export to other Member States of articles having an artistic, historic, archaeological or ethnographic value was caught by the prohibition on export restrictions laid down by the EEC Treaty.<sup>32</sup> The Italian government argued that such articles could not be assimilated to "consumer goods or articles of general use" and were therefore not subject to the provisions of the Treaty which on Italy's view applied only to "ordinary merchandise". The Court firmly rejected the idea that there was a general cultural exemption,<sup>33</sup> defining goods for the purposes of the application of the Treaty as all "products which can be valued in money and which are capable, as such, of

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<sup>31</sup> Follesdal & Hix, *op cit.*

<sup>32</sup> Case 7/68, *Commission v. Italy* [1968] ECR 423

<sup>33</sup> R. Craufurd-Smith, *Community Intervention in the Cultural Field*, in: R. Craufurd-Smith, *Culture and European Union Law*, Oxford: Oxford University Press, 2004, p. 28

forming the subject of commercial transactions". In subsequent years, the Court has continuously confirmed this approach, emphasising that practises, goods and services are not excluded from the scope of the Treaty simply because they fall in areas of Member State competence. For instance, the CJEU has held that teachers qualify as workers, and that privately funded education constitutes a service. In the *Tourist guide* cases the Court held the activities of tourist guides could not be exempted from the Treaty<sup>34</sup> and similarly it qualifies medical care as a "service" in the sense of Article 56 TFEU.

The well-known *Bosman* case displays a fine example of the Court's reasoning.<sup>35</sup> At issue were certain transfer rules in professional football that restricted the free movement of workers in the EU. Several governments argued that Article 45 TFEU was not applicable to sporting activities as in most cases sport was not an economic activity, and since sport in general had points of similarity with culture, which falls within Member State autonomy and should therefore be shielded from EU interference. The Court replied that considering the EU's objectives, "sport is subject to Community law only in so far as it constitutes an economic activity" which applied "to the activities of professional or semi-professional footballers". As regards the difficulty of severing the economic aspects from the sporting aspects of football, the Court held that EU law does not "preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain matches". However, this could not "be relied upon to exclude the whole of a sporting activity from the scope of the Treaty". Also the argument based on points of similarity between sport and culture was rejected, "since the question submitted by the national court does not relate to the conditions under which Community powers of limited extent, such as those based on Article 128(1) may be exercised but on the scope of the freedom of movement of workers guaranteed by Article 48, which is a fundamental freedom in the Community system".<sup>36</sup>

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<sup>34</sup> Cases C-154/89, *Commission of the European Communities v. French Republic* [1991] ECR I-00659, C-180/89 *Commission of the European Communities v. Italian Republic* [1991] ECR I-00709 and case C-198/89, *Commission of the European Communities v. Hellenic Republic* [1991] ECR I-00727.

<sup>35</sup> Case C-415/93, *Union royale belge des sociétés de football association ABSL v. Jean-Marc Bosman, Royal club liégeois SA v. Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v. Jean-Marc Bosman* [1995] ECR I-4921. See S. van den Bogaert *Practical Regulation of the Mobility of Sportsmen in the EU Post Bosman*, The Hague: Kluwer Law International, 2005, pp. 18-19

<sup>36</sup> Articles 128 and 48 are now Articles 167 and 45 TFEU respectively.

As the *Bosman* judgment shows, the ECJ is unwilling to carve policy areas out of the scope of the application of the Treaty, even if they fall within Member State competence. If certain (aspects of) activities can be regarded as economic, the Treaty freedoms will apply to them in that capacity, no matter whether they belong to a field where the EU has any competence or not. Any type of measure in any type of policy field that discriminates against subjects of mobility can be caught. The Court does recognise that certain non-economic considerations might have to be taken into account, but refers to the possibility of objective justification to accommodate this concern. Crucially, in the assessment whether a national measure is justified, the ECJ does not take into account whether a certain policy field falls within the scope of EU competence or not. Indeed, the Court explicitly and strictly separates the question of positive and negative integration, making clear that the fundamental freedoms fully apply even if they cut through areas where the EU possesses no, or only limited, legislative powers.

There are a few exclusions to the ECJ's inclusive attitude. The most well-known exception is the *Keck* judgment, in which the ECJ excluded from the scope of the free movement of goods national practices that qualify as "selling arrangements".<sup>37</sup> Sharply contrasting with the ECJ's habitual approach, this concept potentially saves sensitive socio-cultural practices from Treaty application altogether, and it is therefore not surprising that it has given rise to a flurry of academic analysis.<sup>38</sup> However, although the judgment has not been overruled, it is fair to say that its relevance has been severely restricted by later case law. Other examples of exceptions can be found in the area of education, where the ECJ has held that publicly funded education falls outside the scope of the service provisions,<sup>39</sup> and initially also excluded maintenance grants for higher education studies from the application of the Treaty.<sup>40</sup> In the *Bidar* case, however, the ECJ revisited that exclusion and held that EU law had developed, most notably through the insertion of a specific provision on education, so that maintenance grants had become part of the Treaty's *ratione*

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<sup>37</sup> Joined cases C-267/91 and C-268/91, *Criminal proceedings against Bernard Keck and Daniel Mithouard* [1993] I-06097.

<sup>38</sup> For an interesting recent account (which also references the wealth of preceding literature) see: T. Horsley, *Unearthing buried treasure: art.34 TFEU and the exclusionary rules*, *European Law Review*, Vol. 37, 201, 734-757.

<sup>39</sup> Case 263/86, *Belgian State v. René Humbel and Marie-Thérèse Edel* [1988] ECR I-05365.

<sup>40</sup> Case 39/86, *Lair v. Universitat Hannover* [1988] ECR 3161 and Case 97/86, *Brown v. Secretary of State for Scotland* [1988] ECR 3205

*materae*.<sup>41</sup> And while publicly funded education remains outside the scope of the service provisions for now, inroads are still made into public education through the other Treaty provisions on workers, EU citizenship and equal treatment.

### 3.2. *Limiting Member State Autonomy*

These limited exceptions notwithstanding, it shall be clear that the ECJ's stance in the vast majority of cases is to include rather than to exclude. This means that areas of complementary competence can be deeply affected by the application of other Treaty provisions. Of course, in cases where the ECJ has recognised that Member States have a legitimate interest in maintaining a barrier to free movement and do so proportionately, national regulation is upheld and common action is only necessary from a EU/market perspective. The problem lies with cases where national measures are struck down because 1) their aim pertains to maintaining the coherence of the entire policy system in question and hence is deemed too general or diffuse to qualify as a 'legitimate interest'; 2) their aim is 'economic' and therefore invalid; or 3) they fail the strict proportionality test. All three scenarios gravely limit Member States' policy autonomy in legal or practical terms. Complex and interrelated policy systems that have evolved through often difficult political negotiation, re-negotiation and compromising in the national democratic arena, are destabilised in (from their viewpoint) an erratic fashion by the application of free movement and equal treatment. Financial considerations are habitually at the heart of these negotiations, and the fact that the eventual outcome often reflects a compromise means that it will not always hold up well to the rationality standards imposed by the proportionality test. The limited nature of public budgets causes significant pressure to level down when mobility enlarges the recipient group of public services or benefits.

Although applicable in all areas of member state autonomy, this approach has had particularly far-reaching consequences in the area of public health.<sup>42</sup> The Court's case law has meant that - under certain conditions - individuals may access other treatments than those allocated in the national package and they can escape waiting

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<sup>41</sup> Case C-209/03, *The Queen, on the application of Dany Bidar v. London Borough of Ealing and Secretary of State for Education and Skills* [2005] ECR I-2119

<sup>42</sup> See: G. Davies, *Welfare as a Service*, *Legal Issues of European Integration*, Vol. 29, 2002, p. 27; P. van Nuffel, *Patients' Free Movement Rights and Cross-border Access to Health-Care*, *Maastricht Journal of European and Comparative Law*, Vol. 12, 2005, p. 253; C. Newdick, *Citizenship, Free Movement and Health Care: Cementing Individual Rights by Corroding Social Solidarity*, *Common Market Law Review*, Vol. 43

lists, which has profound consequences for national health systems by challenging domestic practices governing the allocation of these services.<sup>43</sup> National autonomy to decide on important political questions, weighing the cost and benefit of health care to the public and the individual, is thereby restricted by EU law. Furthermore, even though certain restrictions can be justified to protect the stability of the health care system, the Court imposes high standards of rationality through a strict assessment of proportionality, which most of the national arrangements in question have failed. So indeed, as Mossialos *et al* note, “the explicit stipulations of Article 152 EC [...] that health is an area of specific Member State competence [...] proved not to be the ‘guarantees’ of no EU interference in national health care services that they were often held to be”.<sup>44</sup>

The same is true for the area of education. Although the Court has held that unlike medical treatment, publicly funded education does not constitute a service, the case law has had an arguably even greater impact on national education systems than it has had on health systems. Firstly, privately funded education does constitute a service.<sup>45</sup> Secondly, the Court’s judgments on diploma recognition for professional and academic purposes require transparent and reasonable procedures operating from the assumption that equivalent diplomas should be recognised as such.<sup>46</sup> Most importantly, the Court has developed a progressive line of case law on mobile students’ right to equal treatment, which has meant that Member States cannot impose restrictions or higher fees on mobile EU students.<sup>47</sup> This is controversial because neither the economically inactive students nor their parents will have paid taxes in the host state, and there is no guarantee that they will settle there after their studies.<sup>48</sup> As Dougan points out, EU law requires Member States

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<sup>43</sup> D. Martinsen, Inter-institutional Dynamics in the Cross-border Provision of Healthcare Services, *ARENA Working Paper*, No. 5, March 2009, p. 6.

<sup>44</sup> E. Mossialos et al., *Health systems governance in Europe: the role of European Union law and policy*, Cambridge: Cambridge University Press, 2010, p. 1

<sup>45</sup> Case C-76/05, *Herbert Schwarz and Marga Gootjes-Schwarz v. Finanzamt Bergisch Gladbach* [2007] ECR I-06849

<sup>46</sup> Case C-313/01, *Christine Morgenbesser v. Consiglio dell’Ordine degli avvocati di Genova* [2003] ECR I-13467 and case C-19/92, *Dieter Kraus v. Land Baden-Württemberg* [1993] ECR I-01663

<sup>47</sup> Case 293/83, *Françoise Gravier v. City of Liège* [1985] ECR 593. See: G. Davies, Higher Education, Equal Access, and Residence Conditions: Does EU Law Allow Member States to Charge Higher Fees to Students not Previously Resident? *Maastricht Journal of European and Comparative Law*, Vol. 12, 2005, pp. 227-240, M. Dougan, Fees, grants, loans and dole cheques: Who covers the costs of migrant education within the EU?, *Common Market Law Review*, Vol. 42, 2005, pp. 943 – 986A.P. van der Mei, EU law and education: promotion of student mobility versus protection of the education systems, in: M. Dougan & E. Spaventa (eds.), *Social Welfare and EU Law*, Oxford - Portland (Oregon), 2005.

<sup>48</sup> Van der Mei 2005, *op cit*.



which choose to devote significant public resources to maintaining a high quality further education system for the benefit of their own populations to subsidize, through the principle of equal access, in addition potentially large numbers of foreign students.<sup>49</sup> As an important illustration, in the situation of Austria and Belgium, which were flooded by German and French medical students that were escaping their country's *numerus clausus* system, this led to a situation where it became impossible to maintain their deeply valued tuition fee-free and open-access higher education systems.<sup>50</sup>

### 3.3. *Intermediary Conclusions*

Negative integration in areas of Member State competence restricts national policy choices and thereby fundamentally limits the capacity of national and regional governments – and the constituencies they represent - to organise these policy areas in the way they see fit. As such, the Treaty provisions on competence division give a fundamentally wrong impression by suggesting that these policy fields remain within national autonomy. Judicial second-guessing of legislative choices can in itself be deemed controversial, let alone when it concerns the EU judiciary vis-à-vis the national legislatures in matters where the latter are explicitly supposed to retain competence and autonomy. This is all the more worrisome since the Court's judgments, for all their air of neutral rationality, can have highly redistributive consequences. The most flagrant examples are, as we have seen, the areas of public health and higher education, but this dynamic is by no means limited to these two fields. Even if, as shall be discussed further below, it is defensible that areas of Member State competence can be impacted by the application of the free movement provisions, it is remarkable that the Court does not acknowledge the potential difficulties of unrestrained application by allowing a larger margin of national discretion through a more relaxed proportionality test.

## 4. Positive Integration in Areas of Member State Competence

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<sup>49</sup> Dougan 2005, *op cit*, p. 956.

<sup>50</sup> See S. Garben, Case note on Case C-73/08, Nicolas Bressol and Others, Céline Chaverot and Others v. Gouvernement de la Communauté française, *Common Market Law Review*, Vol. 47, 2010, pp. 1493–1510.

This section will address the fact that, partially as a result of the afore-described negative integration that has triggered the need to re-arrange and re-regulate these seemingly ring-fenced areas on the European level, and partially as a result of the functional nature of the Union's powers, areas of Member State competence can also be impacted by positive integration. Indeed, the EU can adopt legislation through the application and implementation of other Treaty provisions, regardless harmonisation prohibitions. Furthermore, to the extent that this power is partially limited by these prohibitions, Member States can still positively integrate the policy areas in question through intergovernmental processes inside or outside the EU legal/institutional framework.

#### *4.1. Positive Integration in Areas of Member State Competence: Harmonisation by the Back Door*

Firstly, this can happen by virtue of specific Treaty provisions that provide competence on a particular issue related to an area that as a whole is qualified as a Member State competence. For instance, in the case of education, Article 53 TFEU grants the EU the power to adopt harmonising measures for the purposes of diploma recognition. Such *lex speciali* unhelpfully add to the confusion on what powers the EU does and does not have in certain fields. Secondly, and more importantly, the Treaty's functional powers – mostly related to free movement such as Articles 46, 50, 56 and 114 TFEU - can cut horizontally through virtually all policy areas, including those where the EU has no, or only complementary, competence. This means that the EU can, through implied powers, legislate in areas that are considered to fall within national autonomy.<sup>51</sup> As De Witte has pointed out, there are many examples of this phenomenon in the legislative practice of the EU,<sup>52</sup> such as the Directive on return of works of art illegally removed for the territory of Member States, the Television Without Borders Directive, the large body of legislation on the recognition of diplomas, the Citizenship Directive and the Patients' Rights Directive. Although this dynamic largely follows from the interaction of various Treaty provisions themselves, the ECJ has been instrumental in its validation, by

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<sup>51</sup> See K. Lenaerts, Education in European Community Law after "Maastricht", *Common Market Law Review*, Vol. 31, 1994, p. 11.

<sup>52</sup> B. de Witte, Clarifying the Delimitation of Powers: a Proposal with Comments, in: European Commission (ed), *Europe 2004: le grand débat. Setting the agenda and outlining the options*, Brussels: European Commission, 2002.

categorically refusing to shield any type of policy field from such indirect EU 'interference'.<sup>53</sup>

The obvious question is how this can be reconciled with the exclusions of harmonisation featured in the provisions on complementary competences. The Court has ruled on this issue in *Tobacco Advertisement*.<sup>54</sup> Germany challenged a directive that imposed a general ban on the advertising or sponsorship of tobacco products in the EU, maintaining that it had been adopted *ultra vires*. As the EU did not have a general power to legislate in the area of public health, the measure had been adopted on the basis of Articles 114, 53(2) and 62 TFEU. Article 168 TFEU on public health contains a prohibition of harmonisation, which according to the German government led to the invalidity of the directive. It is worth quoting AG Fennelly:

Although it is not contested that the Directive could not have been adopted on the basis of Article [168(4) TFEU], it would be surprising (and inimical to legal certainty) if the authors of the Treaty on European Union had, when providing new Treaty powers in respect of public health, so severely restricted existing competence in a different field simply because it sometimes has a bearing on health. Articles [114] and [168] are not, in any respect, inconsistent. As we have seen, Articles [114(3)] and [168(1)], third indent, combine to show that Article [114] may be used to adopt measures which aim at the better protection of health. The limitation expressed in Article [168(4)] is not in conflict with these provisions. It affects, in its own terms, only the incentive measures for which it provides.<sup>55</sup>

In essence, the Court agreed with the view expressed by the AG. It held that the prohibition of harmonization did not mean that harmonizing measures adopted on the basis of other provisions of the Treaty were prohibited from having any impact on the protection of human health. Although other Treaty articles were not to be used

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<sup>53</sup> In *Casagrande*, the Court held that: "although educational and training policy is not as such included in the spheres which the Treaty has entrusted to the Community Institutions, it does not follow that the exercise of powers transferred to the Community is in some way limited if it is of such a nature as to affect the measures taken in the execution of a policy such as that of education and training". Case 9/74, *Donato Casagrande v. Landeshauptstadt München* [1974] ECR 773

<sup>54</sup> Case C-376/98, *Germany v. European Parliament and Council* [2000] ECR I-8419.

<sup>55</sup> Opinion of Advocate General Fennelly, delivered on 15 June 2000.

in order to circumvent the express exclusion of harmonization of Article 168(4) TFEU, this did not mean that the European legislature was prevented from relying on the legal basis of Articles 114, 53(2) and 62 TFEU on the ground that public health protection was a decisive factor in the choices to be made. Although the Court ultimately annulled the directive, as the internal market rationale could not justify a general ban on advertisement, this was not because Article 168(4) prohibited all harmonization *per se*. In the area of public health, the recently adopted Patients' Rights Directive clearly proves this point, and there is nothing to suggest that this does not apply to the other areas which feature harmonisation prohibitions, such as culture<sup>56</sup> and education.<sup>57</sup>

#### 4.2. *Positive Integration in Areas of Member State Competence: Harmonisation<sup>58</sup> 'through the Bathroom Window' and "by Stealth"*

We have seen that EU law does not exclude the adoption of legislative, harmonising measures in areas of complementary competence despite harmonisation prohibitions. This however does not mean that these prohibitions have no legal force at all. Firstly, the Lisbon Treaty has clarified that they exclude the use of Article 352 TFEU in the relevant fields. Moreover, they prevent harmonising measures being adopted solely on the basis of the provisions on complementary competence, thereby ruling out the adoption of a self-standing EU policy on fields such as education, culture and public health. This arguably protects from positive integration particular

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<sup>56</sup> Indeed, several pieces of internal market legislation pursue cultural policy goals alongside their economic aims, such as the Copyright Directive 2001/29/EC and the Resale Right Directive 2001/84/EC, enacted pursuant to Articles 53(2), 62, 114 TFEU. As Psychogiopoulou notes, the “very essence of Article 167(4) TFEU resides in the fact that other provisions of the Treaty may be used to adopt measures with cultural implications”. See: E. Psychogiopoulou, *The Cultural Mainstreaming Clause of Article 151(4) EC: Protection and Promotion of Cultural Diversity or Hidden Cultural Agenda?* *European Law Journal*, Vol. 12, No. 5, September 2006, p. 585.

<sup>57</sup> See: G. Gori, *Towards an EU Right to Education*, The Hague: Kluwer Law International, 2001, p. 88 and S. Garben, *EU Higher Education Law – The Bologna Process and Harmonisation by Stealth*, The Hague: Kluwer Law International, 2011. As is also clear from for example the legislation on the recognition of diplomas, the Student Residence Directive and the Citizenship Directive, there are numerous legal bases in addition to Article 114 TFEU that can affect education.

<sup>58</sup> A note on the meaning of the word “harmonisation” seems in order at this point. Harmonisation refers to EU law measures for the approximation of the provisions laid down by law, regulation of administrative action in Member States. See W. van Gerven, *Harmonisation of Private Law*, in: A. McDonnell (ed.), *A Review of Forty Years of Community Law*, The Hague: Kluwer Law International, 2005, pp. 227-254. On a strict interpretation of the term, it could be argued that the harmonisation necessarily implies the adoption of binding EU measures that eliminates differences between the Member States by adoptions a single rule, standard or system. In contrast, for the purposes of this paper, a wider definition is adopted, which also includes the adoption of common norms, standards and systems on a voluntary basis and through cooperative, informal mechanisms rather than legal ones.

aspects of policy areas that have no economic relevance or interaction with any of the free movement provisions, but it also means that the EU is forced to base its policy in these areas (which might be necessary and desirable to counterbalance negative integration) on what is often an economic rationale. Furthermore, it encourages the Member States, when they need or desire to act collectively in these areas, to work through informal, intergovernmental methods, such as the Open Method of Coordination (OMC) and the Bologna Process, the legitimacy of which is highly questionable. In other words, in addition to doing nothing to stop harmonisation through the back door (positive integration through other legal bases), the prohibitions of harmonisation encourage what could be called 'harmonisation through the bathroom window' and "harmonisation by stealth".<sup>59</sup> The former is characterized by the use of soft law within the EU's institutional framework, whereas the latter is "public international soft law"<sup>60</sup> located in the shadows of that framework.

The prime example of 'harmonisation through the bathroom window' is the OMC, which is commonly perceived as a 'soft' policy instrument, with a focus on cooperation, leaving considerable discretion to the Member States.<sup>61</sup> Member State executives agree on certain objectives, but remain free to implement them in the way they see fit, taking into account their system differences, and they are not sanctioned for failures. Because of these flexible characteristics, the OMC is often seen as a solution to the problem of nationally sensitive policy areas where legal competence is lacking but coordination on the European level is nevertheless necessary. It has been described as respectful of national identity and subsidiarity.<sup>62</sup> This however

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<sup>59</sup> For this term I am indebted to Bruno de Witte.

<sup>60</sup> Specifically on the Bologna Process, see E. Hackl, *Towards a European Area of Higher Education: Change and Convergence in European Higher Education*, *EUI Working Paper*, RSC No. 2001/09, 2001, p. 28.

<sup>61</sup> See C. de le Porte, *Is the Open Method of Coordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas?* *European Law Journal*, Vol. 8, No. 1, 2002, p. 38. The TFEU does not mention the OMC as such by name, but it does introduce its characteristic elements in specific Treaty provisions. Although the phrasing varies somewhat per article, it generally mentions coordination, the establishment of guidelines and indicators, the organization of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The areas for which the OMC is now provided in the Treaty are: Article 149 TFEU (ex Article 129 EC) on employment, Article 153(2)(a) TFEU (ex Article 137 EC) and Article 156 TFEU (ex 140 EC) on social policy, Article 168(2) TFEU (ex Article 152 EC) on public health, Article 181(2) TFEU (ex Article 165 EC) on research and development, and Article 173(2) TFEU (ex Article 157 EC) on industry. In addition, there is an OMC in education that is unhelpfully not mentioned in the Treaty.

<sup>62</sup> See D. Hodson & I. Maher, *The Open Method as A New Mode of Governance: The Case of Soft Economic Policy Co-ordination*, *Journal of Common Market Studies*, Vol. 39, No. 4, 2001, pp. 719-746

underestimates the OMC's tangible effects in opening-up sensitive national sectors, and overestimates the way it respects national autonomy. Firstly, it might seem un-intrusive because of its non-binding character, but this only relates to its form and not to the content of the particular OMC in question, which can potentially be very far-reaching.<sup>63</sup> Furthermore, as to the method itself, international standard-setting and -comparing are very effective means for putting pressure on 'underperforming' states to make them conform to the European common standard.<sup>64</sup> Moreover, although the OMC might seem to be respectful of national autonomy, its executive-dominated nature and exclusion of transparent procedures and parliamentary involvement means it lacks democratic legitimacy.<sup>65</sup> This is all the more worrying considering that the adopted common standards to which convergence is directed are usually not as neutral as they may appear. Although often surrounded by figures and statistics that add to their air of scientific neutrality, these benchmarks are concrete expressions of policy choices that the OMC relocates from the national democratic arena to the European technocratic one.

If the concerns about the OMC's legitimacy are already serious enough, "harmonisation by stealth" denotes an even more worrying policy phenomenon, which avoids not only the checks and balances of the legislative process, but also those imbued in the EU's institutional framework altogether. The Bologna Process, which has introduced a common Bachelor-Master-Doctorate system all over Europe, is the most powerful example of this third kind of positive integration in fields of Member State competence.<sup>66</sup> The Process is based on two intergovernmental declarations devoid of legal effect, but which have effectively structurally harmonised the higher education systems of the participating countries,

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<sup>63</sup> The European Deficit Procedure is a case in point here.

<sup>64</sup> This can for example be seen in the area of education with the Programme for International Student Assessment (PISA) study. In Germany, as a reaction to the country's unsatisfactory results in the PISA study, national attainment standards for compulsory schools have been introduced. Not only does this amount to the creation of national standards in a country where such standards are uncommon, it might also impair the constitutional autonomy of the German *Länder*, which are normally in charge of educational matters. See H. Ertl, Educational standards and the changing discourse on education: the reception and consequences of the PISA study in Germany, *Oxford Review of Education*, Vol. 32, No. 5, 2006, pp. 619–634.

<sup>65</sup> See V. Hatzopoulos, Why the Open Method of Coordination Is Bad For You: A Letter to the EU, *European Law Journal*, Vol. 13, No. 3, 2007, especially pp. 325 - 328. For an in-depth analysis of the OMC see M. Dawson, *New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy*, Cambridge University Press, 2011, especially at pp. 203 - 207 and 280 - 292 on the role of national parliaments.

<sup>66</sup> Garben 2011, *op cit*.

which includes all Member States. Although the fact that Member States have retained full control over this voluntary project has been hailed as doing justice to national autonomy, it is mostly the national governments that have benefited from this arrangement to the detriment of national constituencies. Indeed, the Bologna Process perfectly illustrates Moravcsik's finding that "international cooperation redistributes domestic power in favour of national executives by permitting them to loosen domestic constraints imposed by legislatures, interest groups, and other societal actors".<sup>67</sup> These concerns apply especially to international soft law such as the Bologna Process, in which there are no pre-determined procedures, decision-making is limited to governmental officials and which does not require ratification. Although national parliaments could in theory have refused to legally implement the Sorbonne and Bologna Declarations, governments have been able to play into a lack of transparency and sense of urgency to push through the Declaration's implementation, arguing that the "international obligations" had to be met,<sup>68</sup> thereby subjecting the national higher education systems to an unprecedented level of reform and Europeanization without an effective national or European-level debate.

It might seem puzzling why Member States embark on such far-reaching Europeanization processes in areas of national autonomy. Apart from the fact that, as discussed above, a certain need or desire to collectively reform these areas can follow from the effects of the Court's case law, there is also a more cynical explanation on offer. Areas of Member State competence such as health and education tend to be highly contentious and politically charged on the national level, which is exactly one of the reasons why they have attempted to explicitly limit the EU's competence in these fields. At the same time however, this fact provides national governments with a strong incentive to divert to the European level if they want to reform these policy areas. The European level allows them to play "two-level games" whereby they can side-step national lobbies, stakeholders and general

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<sup>67</sup> A. Moravcsik, *Why the European Union Strengthens the State: Domestic Politics and International Cooperation*, *Harvard University Centre for European Studies Working Paper Series*, No. 52, 1994, p. 1.

<sup>68</sup> See on this issue: P. Ravinet, *From Voluntary Participation to Monitored Coordination: why European Countries feel increasingly bound by their Commitment to the Bologna Process*, *European Journal of Education*, Vol. 43, No. 3, 2008, pp. 353-367, V. Papatsiba, *Making Higher Education more European through Student Mobility? Revisiting EU Initiatives in the Context of the Bologna Process*, *Comparative Education*, Vol. 42, No. 1, 2006, pp. 93-111, C. Racké, *The Emergence of the Bologna Process: Pan-European instead of EU Governance*, in: *The Dynamics of Changing Modes of Governance in Europe*, in: D. De Bièvre & C. Neuhold (eds.), *Dynamics and Obstacles of European Governance*, Cheltenham: Edward Elgar Publishing, 2007, pp. 29 - 49.

public scrutiny.<sup>69</sup> Indeed, this has been offered as the main driving force behind the Bologna Process.<sup>70</sup> Although all EU/European action empowers national governments vis-à-vis all other national actors, EU legislative procedures at least offer checks and balances that are largely absent in intergovernmental processes. In the words of Chalmers *et al*:

Indeed, it is positively perverse for those who criticise the European Union because it is executive-oriented or does not sufficiently involve national parliaments to hark back nostalgically to [the] intergovernmental model. It leads to an even higher executive dominance and even greater parliamentary exclusion.<sup>71</sup>

The uncomfortable conclusion is therefore that the limitation of EU powers in these fields, which is done for reasons of subsidiarity, democracy and national diversity, actually makes them prone to even less accountable forms of Europeanization, and might undermine all these three important values.

#### 4.3. *Intermediary Conclusions*

Foreseeably, the fact that the EU can positively integrate areas of Member State competence has caused considerable criticism among commentators, political actors and national courts alike. It is habitually addressed in terms of ‘competence creep’, illustrating the perceived impropriety of this kind of deployment of EU powers. The finger is often pointed at the ECJ, for its expansive interpretation of the Treaty provisions and lax attitude towards *ultra vires* review. It is certainly a valid point that positive integration (like negative integration for that matter) in areas of complementary competence does not sit easily with national autonomy clauses, exclusions of harmonization and the principle of conferral. Although legally permissible, this kind of harmonisation by the back door clearly poses problems of transparency and accountability. Furthermore, because of the use of the internal market provisions, there is a risk of economic bias in the adoption of these measures, risking overlooking or undervaluing the socio-cultural values at stake. Still,

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<sup>69</sup> Moravcsik, *op cit*.

<sup>70</sup> Racké, *op cit*, Ravinet, *op cit*, Papatsiba, *op cit*.

<sup>71</sup> Chalmers *et al*, *op cit*, p. 132.



it remains open for discussion whether the ECJ's case law can indeed be called the culprit. It seems fair to say that national governments in their European guise are equally responsible for this development.<sup>72</sup> Moreover, as will be argued in what follows, on the most fundamental level the problem is engrained in the Treaty itself. It is the logic of functional integration running through the Treaty like its main artery that causes certain areas of Member State competence to be drawn into the integration process. Limiting the scope of positive integration in these fields through exclusions of harmonisation is therefore ineffective and counterproductive.

## 5. Confronting the Competence Conundrum

### 5.1. *In Search of a Culprit: Articles 114 and 352 TFEU*

The first, crucial question to address is whether the problem of competence creep lies with the existence, and/or wrongful use and interpretation of, the functional powers of Articles 114 and 352 TFEU, as seems to be the predominant opinion. Many have accused the EU of inappropriate use of these two functional powers that arguably allow for the "creeping expansion" of EU competences to the detriment of the Member States, and these legal bases were therefore singled out by the Laeken Declaration for potential revision.<sup>73</sup> Of Article 114 TFEU it is often argued that its harmonization powers are being put to use for purposes only remotely connected with the functioning of the internal market, because the Member States consider it "politically expedient to achieve certain extraneous objectives through common action but regardless of the constitutional niceties associated with the principle of attributed powers".<sup>74</sup> As Dougan notes, such criticism is of course "particularly acute in those situations where the policy objectives effectively being smuggled into ex-Article 95 EC relates to fields where Union competence, as provided for under the remainder of the Treaties, is either non-existent, severely circumscribed or subject to very different institutional arrangements".<sup>75</sup> Many feel that the lax approach of the ECJ has turned Article 114 into a general legislative

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<sup>72</sup> See P. Craig, *Competence and Member State Autonomy: Causality, Consequence and Legitimacy*, in: B. de Witte and H. Micklitz (eds.), *The European Court of Justice and the Autonomy of the Member States*, Cambridge: Intersentia, 2012.

<sup>73</sup> De Búrca & De Witte, *op cit*, p. 204.

<sup>74</sup> M. Dougan, *Legal Developments*, *Journal of Common Market Studies*, Vol. 48, Annual Review, 2010, p. 172.

<sup>75</sup> *Ibid.*

competence, the consequences of which are powerfully warned against by Dougan:

One need only recall that the power to harmonize involves an effective transfer of regulatory initiative to the Union legislature in a manner which can ultimately not merely *displace* but *replace* individual national political choices. An approach to Article 114 TFEU which greatly facilitates such transfers of competence is of especial constitutional significance not only because such transfers imply in every case fundamental reconfigurations in the exercise and accountability of public power, but also because such an approach poses specific legitimacy problems for the Union – problems arguably aggravated since the entry into force of the Lisbon Treaty, since the Union’s primary law now places renewed emphasis on the principle of the Union as an organization of only limited powers, and contains a more formalized system of differentiated competences explicitly attached to different policy spheres.<sup>76</sup>

In addition to the slippery slope that is Article 114 TFEU, the EU’s power can snowball through the flexibility clause of Article 352 TFEU, which mandates the adoption of EU measures “if action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers”. The unanimity requirement has always provided an important brake on this integration accelerator, and the Lisbon Treaty has further curbed its potential by adding paragraph three that provides that measures based on this article shall not entail harmonization of Member States’ laws or regulations in cases where the Treaties exclude such harmonization. While providing *a contrario* evidence that this limit is not applicable in the context of Article 114 TFEU, this does give at least some weight to the prohibitions of harmonization.<sup>77</sup> Nevertheless, Article 352 TFEU remains a powerful provision, especially in its post- Lisbon manifestation that no longer confines it to the attainment of objectives in the context of the common market. This is

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<sup>76</sup> Dougan 2010, *op cit*, p. 178.

<sup>77</sup> Slightly ironically, in areas where the Treaty does not provide *any* competence, i.e. the areas that remain with the Member States, the use of Article 352 TFEU is not prohibited. This means that these areas that are supposed to be the ultimate bastions of state autonomy are not protected against harmonisation on the basis of Article 352 TFEU.

illustrated by the Lisbon judgment of the German Constitutional Court, in which it stated that Article 352 TFEU:

meets with constitutional objections with regard to the ban on transferring blanket empowerments or on transferring *Kompetenz-Kompetenz*, because the newly worded provision makes it possible substantially to amend treaty foundations of the European Union without the constitutive participation of legislative bodies in addition to the Member States' executive powers [...].<sup>78</sup>

The legitimate criticism of over-use of Articles 114 and 352 TFEU notwithstanding, we agree with Craig that the dominant perception of the “competence problem”, which is based on implicit assumptions as to how the EU acquires competence over certain areas, premising that “the shift in power upward towards the EU is the result primarily of some unwarranted arrogation of power by the EU institutions to the detriment of states' rights”, is an over-simplistic view of how and why the EU has acquired its current range of power.<sup>79</sup> Indeed, the matter is “more complex and more interesting”.<sup>80</sup> Craig also correctly points out the “reality [...] that the EU's power has been expanded by a broad interpretation accorded to existing Treaty provisions, either legislatively or judicially, by a teleological view of [Article 352 TFEU] *and* by the attribution of new competences to the EU through successive Treaty amendments”,<sup>81</sup> and that it is important to place emphasis “on the conscious decision by the Member States to grant the EU competence in [these] areas”.<sup>82</sup> However, we locate the root of the competence problem somewhere else still: in the very foundations of the EU legal order.

## 5.2. *Functionality as an Inalienable feature of the EU Legal Order*

The EU has been explicitly charged with the task to achieve certain policy objectives, such as the creation of the common market with the fundamental freedoms and the principle of non-discrimination at its centre, and has been granted accompanying legislative powers. It is in recognition of the fact that carrying out

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<sup>78</sup> BVerfG, 2 BvE 2/08 vom 30.6.2009, Absatz-Nr. (1 - 421), para. 328, available in English at: [http://www.bverfg.de/entscheidungen/es20090630\\_2bve000208en.html](http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html)

<sup>79</sup> P. Craig, *Competence: Clarity, Conferral, Containment and Consideration*, *European Law Review*, Vol. 29, No. 3, 2004.

<sup>80</sup> *Ibid.*

<sup>81</sup> Italics added.

<sup>82</sup> *Ibid.*

these tasks may require changes in all kinds of sectors that the Treaty endows the EU with functional powers. It is true that Articles 114 and 352 TFEU play a crucial role in this system. These provisions are deliberately broadly formulated in consideration of the flexibility for which they are intended to allow, necessarily implying uncertainty about their reach. Although they do not confer an unlimited competence, they do not tie down legislative action to particular sectors.<sup>83</sup> It is however not only Articles 114 and 352 TFEU that have a functional nature. Articles 46, 50, 53 and 56 TFEU provide more specific powers to implement the fundamental freedoms. Although they are narrower in their objective than Articles 114 and 352 TFEU, they too cut horizontally through potentially any policy field. In addition, the newer provisions on non-discrimination and citizenship follow this same "ends and means" rather than sector specific logic, authorising the adoption of legal measures that might affect any policy area. Similarly, apart from the mission to create a common market, the EU is now also competent to build an Area of Freedom, Security and Justice which can potentially include the adoption of measures in the sensitive areas of e.g. criminal law and family law.

It is important to realise that Articles 114 and 352 TFEU are not self-standing provisions but rather two concrete expressions, amongst others, of the fundamental logic of the Treaties that establishes open-ended legal integration as a facet of, and a means to, an ever-closer Union. It is therefore natural that many policy fields that were initially not expressly intended to be EU business can be and have been affected in the slipstream of the implementation of these functional powers, even in the absence of explicit legal competence.<sup>84</sup> The central point is that functionality is engrained in the Treaties and the EU legal order as a whole. It fits with the EU's core leitmotif to create "an ever-closer Union among the peoples of Europe" that so prominently features as the very first phrase in the Treaty.<sup>85</sup> This finding is relevant in and of itself, because it unmasks the misconception that the existence or specific formulation of Articles 114 and 352 TFEU are the heart of the competence problem. It also reveals why categorical definition of competences does not work, and why prohibitions of harmonisations do not effectively contain EU action. It shows that any

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<sup>83</sup> Weatherill 2004, *op cit*, p. 6.

<sup>84</sup> B. de Witte, The Scope of Community Powers in the field of Education and Culture in the light of Subsequent Practice, in: R. Bieber & G. Ress (eds.), *The Dynamics of EC-law*, Baden-Baden: Nomos Verlagsgesellschaft, 1987, p. 236.

<sup>85</sup> Of the TFEU. In the TEU, it features as the 13th consideration of the preamble.

real attempt to tackle the problem of competence containment will have to entail a radical overhaul of the competence-constellation as we know it.

So should we try and eradicate this functionality from the EU legal order? In full awareness of the significant difficulties that functionality poses, it is contended here that that is not a realistic way forward. Apart from the obvious mountainous practical difficulties in having to revise all the functional powers, the fact is that policy areas are not water-tight compartments, meaning that to limit the scope of these powers for their impact on areas of national autonomy would be highly impractical and, at least for those who strive for a successful and effective EU, undesirable.<sup>86</sup> A too rigid approach to competence division would not allow the EU to fully attain the tasks that have been explicitly and consciously allocated to it by the *Herren der Verträge*. In Weatherill's words, "the system must retain its necessary capacity for dynamism and adaptability".<sup>87</sup> Furthermore, broad legislative competences are necessary to prevent, or prevent aggravating,<sup>88</sup> a de-regulatory bias in the integration process. Scharpf has powerfully warned us about the risk of an imbalance between negative and positive integration.<sup>89</sup> As was alluded to before, incapacitation of national regulatory power through the application of the free movement provisions should be compensated for on the European level, through legislative competences to positively integrate the areas affected by the Court's case law, for otherwise we are left with a regulatory gap. In order to combat the potentially corrosive effects of negative integration on the vital areas in question such as education, health and culture, it is necessary to be able to 'plug the holes' on a European level. As Handoll argues, "where the Court has recognized the intrusiveness of 'functional' rules of free movement and non-discrimination into areas of national competence, the Community will have to be competent to take positive action to resolve resulting difficulties".<sup>90</sup> A broad interpretation of the legislative

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<sup>86</sup> See also the discussion below about "categorical federalism", Section 6.

<sup>87</sup> Weatherill 2004, *op cit*, p. 18.

<sup>88</sup> Even where competence exists and is uncontested, it is difficult to achieve positive integration due to the high majority thresholds needed to pass legislation and the great diversity of national systems and views.

<sup>89</sup> F. Scharpf, The asymmetry of European integration, or why the EU cannot be a 'social market economy', *Socio- Economic Review*, No. 8, 2010, pp. 211–250.

<sup>90</sup> Handoll, "Foreign Teachers and Public Education", in de Witte (Ed.), *European Community Law of Education*, Nomos Verlagsgesellschaft, 1989, p. 36. Advocate General Sharpston, in her opinion to *Bressol*, implicitly seemed to follow this approach. The Opinion recognised the difficult situation that Austria (and by extension Belgium) found itself in, remarking that: "the EU must not ignore the very real problems that may arise for Member States that host many students from other Member States". Indeed, the AG sought the solution at the European level, inviting "the Community legislator and the Member States to reflect upon the application of these criteria [of subsidiarity] to the movement of students between Member States". See Opinion of A.G. Sharpston, para 151 et seq.

powers of the same functional provisions that have caused this intrusion in the first place is therefore desirable, albeit still insufficient. The real solution would be to have a fully-fledged EU competence in order to redesign the systems in a holistic fashion, putting socio-cultural values on par with market logic.

Of course, this brings us back to the issue of negative integration through the ECJ's application of the Treaty provisions in areas of Member State competence. It is a fair point that many difficulties could perhaps have been prevented if the ECJ would not have held that EU law takes precedence over all national law and if it would have allowed carving areas of Member State competence out of the scope of application of all Treaty provisions, in a *Keck*-like way. In theory, this would have spared these areas of national autonomy from negative integration and therefore, possibly, there would have been less need or mandate to positively integrate them. The difficulties that have ensued from the *Keck* judgment however show that such an approach would in all likelihood have had its own downfalls. It would also have severely weakened the integration process, making it doubtful that we would have the EU that we have today. But even if that would seem to have been the better option to some, the milk has been spilt a very long time ago. And not unimportantly, all the main principles on which this dynamic is built have been either implicitly or explicitly endorsed by the *Herren der Verträge*. This means that unless we agree to an unprecedented, undesirable and for all intents and purposes unfeasible, volte-face on the fundamentals of the EU legal order, we have to accept that potentially all policy areas can be affected by case law applying the Treaties, and by secondary legislation adopted by the European Legislature.

### 5.3. *The Competence Conundrum*

It should be recalled that many of the judgments and legislative measures in the fields under discussion date from before the Treaty of Maastricht, i.e. in the absence of any Treaty provision authorising a role for the EU. It was, in fact, the growing, 'unauthorised' impact of the EU that prompted the adoption of the provisions granting complementary competences. The developments that took place in the absence of explicit competence had alarmed those Member States that were hesitant to concede any national autonomy or sovereignty in these fields. At the same time, however, there was the idea that vital areas like culture, education and public health were not only to be approached from an economic perspective; which led to propositions to

actually strengthen the EU's position by attributing it with explicit powers, so as to ensure that also the socio-cultural value of these policy domains would be taken into account on the European level.<sup>91</sup> Both concerns were accommodated in the eventual compromise: the adoption of specific provisions entailing a limited transfer of powers to the EU. Rather than rely on implicit competences, whose limits seemed out of control, the Maastricht Treaty opted for an explicit grant of competence that delimits the mode of action and the reach of such policies.<sup>92</sup> This has however failed to restrain both positive and negative integration in these fields.

This is the competence conundrum. The crosscutting nature of the freedoms and functional competences combined with the principle of primacy draws areas where EU competence is absent into the integration process. This spill-over prompts the adoption of circumscribed competences in these fields to 1) attempt to limit integration, and 2) to prevent 'economic perversion' of these areas due to the fact that the supreme European laws and regulations that have to be complied with will have been adopted generally through the internal market provisions. However, the very same reason why these areas were drawn into the slipstream of the EU integration process in the first place (i.e. functionality) makes that they cannot effectively be limited without severely undermining the *acquis communautaire* and the effectiveness of EU law. It is also the very reason why it is important to broaden the power base of the EU, to prevent an integration asymmetry or regulatory gaps resulting from the incapacitation of national regulatory power without compensation on the European level. But the limitations contained in these provisions prevent exactly that: the adoption of effective measures protecting and promoting self-standing EU policies in these areas. This means that for all the big talk of protecting national autonomy and excluding harmonization, these provisions on complementary competence have no bite, apart from hindering the adoption of much needed EU-level intervention fostering and protecting the non-economic dimensions and interests in these areas. The circumscribed competences therefore fail on both count 1) and 2).

Instead of locating the core cause of 'competence creep' or spill-over in the uncertain reach of Articles 114 and 352 TFEU, the Court's expansive interpretation of these provisions, "the schizophrenic attitude of the Member States towards the principle of

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<sup>91</sup> A.P. van der Mei, *Free Movement of Persons within the European Community, Cross-Border Access to Public Benefits*, Oregon: Hart Publishing, 2003, p. 344.

<sup>92</sup> Majone, *op cit*, p. 380

attributed powers"<sup>93</sup> or even a combination of all of these phenomena (that are each, of themselves, true), it needs to be recognized that these provisions form part of the overall logic and structure of the integration process as mandated and laid out by the Treaties since the very beginning. It is the Treaty itself, combined with the activist but now generally-accepted principles of primacy and direct effect, that causes the above-described dynamic whereby certain policy areas such as education, culture and health are inadvertently drawn into the integration process, and will continue to be further integrated regardless of categorical limitations of EU competence in these fields. The important point is that by recognizing this, our strategy for solving the competence conundrum should change. A different diagnosis warrants a different cure. Indeed, we have seen that a part of the treatment that has administered up until now, namely the categorical limitation of fields of competence, has only made the problem worse.

## 6. Three Proposals

The foregoing has argued that the "competence problem" cannot be solved by "clarity and conferral", but only by "containment" and "consideration".<sup>94</sup> The way out of the conundrum is to recognise that the functional and categorical approaches to competences that are now simultaneously present in the Treaty are immiscible and do not co-exist. It is the functionality engrained in the Treaty and magnified by the Court's interpretation that has led to an expansion of the original project that was hoped for initially by only a few and foreseen by even fewer. But although it is understandable that those who have sought to contain what some might feel closely resembles Frankenstein's monster, have resorted to classification and restriction of EU competences, it reflects a fundamental misunderstanding of the workings of the EU legal order.<sup>95</sup> This means we need to change tactics and either dispense of functionality or dispense of demarcation. This paper argues for the latter. As shall

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<sup>93</sup> C. Hillion, Tobacco Advertising: If You Must, You May", *The Cambridge Law Journal*, Vol. 60, No. 3, 2001, p. 489.

<sup>94</sup> These terms refer to: P. Craig, Competence: Clarity, Conferral, Containment and Consideration, *European Law Review*, Vol. 29, N. 3, 2004.

<sup>95</sup> On a (much) more cynical view, it actually reflects a cunning understanding of the working of the EU legal order on the part of the national governments/executive. After all, it is not their power that is really being limited in reality: they may decide to act through the EU by means of hard law or soft law, or they can opt for public international soft law outside the EU framework. All this allows them to play two-level games, as this intergovernmental cooperation "redistributes domestic power" in their favour to the detriment of national parliaments and constituencies at large. See Moravscik, *op cit*.



be argued below, we can do so in only a limited way by disposing of harmonisation prohibitions, or more fundamentally by completely reforming the current competence constellation. If we simultaneously invest in the more dynamic containment mechanisms that do work, or can easily be made to work, namely those of subsidiarity, proportionality and identity review, openly embracing EU law's functionality can provide a promising way forward for the Union.

### 6.1. *Abolishing Prohibitions of Harmonisation*

Perhaps more than any other feature of the Treaty, prohibitions of harmonisation in areas of complementary competences represent the flawed nature of the current competence scheme. They do not limit in any way negative integration in these fields, nor do they prevent positive integration through harmonisation through the back door, i.e. other legal bases in the Treaty. This makes them deceptive as well as ineffective. Furthermore, quite unhelpfully they do limit the kind and extent of harmonisation possible in these fields, in that they prevent the development of comprehensive and holistic policies. This leads to areas of complementary competence being affected rather as a side issue to free movement than a main objective, and often in a fragmentary and reactive fashion. Additionally, as we have seen, this encourages Member States if they desire integration in these fields to act informally, either within or outside the EU's institutional framework, which poses serious accountability and legitimacy problems. The first proposal for reform, therefore, is to abolish these problematic prohibitions.

The main advantage of removing the prohibitions of harmonisation would be the open recognition of the power that already largely exists in these fields, thereby making the competence-constellation less deceiving. It would be clearer to national parliaments, stakeholders and citizens that EU action can and does affect these fields, hopefully making them more alert and responsive to EU legislative proposals which will in turn allow them to more effectively influence legislative output through both national and European democratic processes. As such, this proposal alters less to the *lex lata* than one might expect at first face value, but it would still broaden the legal basis for EU legislative action in fields concerned to an important extent, since harmonising measures could now also be adopted on the basis of these

provisions and not only indirectly through other Treaty provisions. Apart from increased transparency, the potential to fill regulatory gaps and to promote socio-cultural concerns vis-à-vis economic ones, this would allow the EU to develop a certain degree of self-standing policy in these areas thereby potentially pushing action 'through the front door', diminishing the amount of legislation adopted on other legal bases or informal action embarked on outside the EU legal framework.

While the extension of the EU's powers through the abolition of harmonisation prohibitions constitutes an important element of the practical and normative value of this proposal, the main aim would be to face the competence conundrum head-on by not only recognising and consolidating the potential for EU integration in these fields, but also explicitly directing such potential action in a way that respects that subsidiarity and national identity deserve special protection. This could be given shape in the legislative procedure to be followed and the voting requirements in the Council (assent procedure with unanimity in the Council), and by specifying that legislative action should aim at filling regulatory gaps created by negative integration through the Court's case law. Additionally, such negative integration could itself be constrained by explicitly granting Member States a wide margin of discretion in the context of their objective justifications for derogating from the application of other Treaty provisions. As an example, Article 165 TFEU on education could be rephrased as follows:

1. [...]

When Union action on the basis of other provisions in this Treaty affects education, regard should be had in the adoption of those measures to the specific socio-cultural value of education and the primary responsibility of the Member States in this field.

In recognition of Member States' primary responsibility in this area, they shall be afforded a wide margin of appreciation in the assessment whether educational measures that restrict free movement and equal treatment rights as laid down in other provisions in this Treaty, pursue a legitimate objective and are proportionate and suitable to achieve that objective.

[...]

4. In order to contribute to the achievement of the objectives referred to in this Article:

— the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, after consulting the Economic and Social Committee and the Committee of the Regions, shall enact measures aimed at achieving the aims set out in the first paragraph of this provision and at addressing the need for common action arising out of the European Court of Justice's case law, especially in the context of free movement and European Citizenship.

## 6.2. *Eliminating Categories of Competence*

According to the current system, in the areas that are qualified as exclusive competences, only the Union may legislate and regulate. In the category of shared competences Member States may exercise their competence to the extent that the Union has not done so, whereas regarding the complimentary competences the Union can support, coordinate and supplement Member State action. According to Article 5(2) TEU, competences that have not been conferred on the Union remain with the Member States. This competence scheme is highly deceptive and confusing. Firstly, as De Búrca and De Witte already argued over a decade ago:

exclusive powers of the States can no longer be described generally in terms of broad policy areas or sectors. For example, it cannot be said that the Member States retain exclusive competence in the field of criminal law and policy, or family law and policy, since these are clearly areas with which many specific provisions and policies of EC and EU law intersect. While certain aspects of these general policy areas, such as, for example, prison rules, or the substantive terms of national divorce laws, clearly fall to be decided by the Member States alone and are barely touched by EU law, it is increasingly difficult to identify and isolate areas of exclusive EC or national competence without descending into this kind of detail.<sup>96</sup>

Indeed, it does not seem that nowadays any single policy area falls completely outside the scope of EU competences and hence "remains with the Member States". Secondly, as to the category of complementary competences, much of the foregoing has already addressed its deceiving nature. In reality, the competences listed under

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<sup>96</sup> De Búrca & De Witte, *op cit*, p. 207.

this header do not seem to differ much from those under shared powers, especially if the harmonisation prohibitions were to be abolished. Thirdly, the category of exclusive competences is also problematic, as there are problems with separating exclusive and shared competences, such as the internal market (shared) and competition rules and the customs union (exclusive)<sup>97</sup> and the arrangements on external competences.<sup>98</sup> Further difficulties are illustrated by the recent *Pringle* judgment in which the Court recognised that the European Stability Mechanism adopted outside the EU's institutional framework did affect monetary policy for the euro-Member States (which is an exclusive EU competence), but in an "indirect way" as a result of more general economic policy, and therefore did not exclude parallel action by the Member States.<sup>99</sup>

At the root of all this, is that this entire competence scheme suffers from some conceptual slippage. The central idea of the category of shared powers is that "in areas falling within this broad category, the exercise of [EU] powers does not exclude the continuing exercise of law-making powers by the Member States, but makes it subject to respect for the principle of primacy of [EU] law".<sup>100</sup> However, the very same can be said for complementary competences and areas where the Treaty does not provide any competence at all. The Court has often repeated, in slight variations of wording, that "powers retained by the Member States must be exercised consistently with EU law". The difference between areas of shared power and areas of no or complementary competence is that the EU powers exercised are arguably narrower in the latter fields, and therefore the continuing exercise of law-making powers by the Member States will be greater. However, this difference is of practical rather than conceptual nature, as the underlying logic of pre-emption based on the primacy of EU law is the same. Although contrary to established opinion,<sup>101</sup> it seems that it is that very same mechanism lies behind the fact that Member States cannot act in areas of exclusive EU competence: the nature of these policies implies that any unilateral national action would not be compatible

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<sup>97</sup> P. Craig, *The Lisbon Treaty, Law, Politics and Treaty Reform*, Oxford: Oxford University Press, 2010, pp. 159 - 161.

<sup>98</sup> P. Craig and G. De Búrca, *EU Law, Text, Cases and Materials*, Oxford: Oxford University Press, 2001, pp. 82 - 83.

<sup>99</sup> Case C-370/12, *Thomas Pringle v Government of Ireland, Ireland and The Attorney General*, Judgment of the Court (Full Court) of 27 November 2012.

<sup>100</sup> De Búrca & De Witte, *op cit*, p. 210.

<sup>101</sup> T. Konstadinides, *Division of Powers in European Union Law: The Delimitation of Internal Competence Between the EU and the Member States*, The Hague: Kluwer Law International, 2009, Chapter 5.

with the supreme EU policy in place. Arguably, it is not because these fields are exclusive that Member States cannot act but because Member States can no longer act without contravening the established EU policy that these competences are, or have become, exclusive.

At the root of this confusion lies fact that the current competence system reflects what Resnik, in the US context, has called "categorical federalism": the flawed approach that assumes that a particular rule of law regulates a single aspect of human action, e.g. about the market, crime, or fundamental rights "as if laws were univocal and human interaction similarly one dimensional".<sup>102</sup> Categorical federalism relies on such identification to locate authority in state or federal governments and then "uses the identification as if to explain *why* power to regulate resides within one or another governmental structure". As Resnik argues, this means that categories (of policy areas) are constructed around "two sets of human activities, the subject matter of regulation and the locus of governance, with each assumed to have intelligible boundaries and autonomous spheres", which does not reflect the reality of life, and the regulation of it. Resnik proposes a different approach, that of "multi-faceted federalism", which "invites exploration of the rich veins of federalism beyond the boundaries of contemporary legal discourse, fixated on a bipolar vision of states acting singularly and of a predatory federal government".<sup>103</sup> It presumes that:

governance cannot accurately be described as residing at a single site. State, federal, and transnational laws are all likely to be relevant. And multifaceted federalism remembers that any assignment of dominion can be transitory. One level of government may preside over a given set of problems for a given period rather than forever. Were one to use this lens, the assignment of regulatory authority would become a self-conscious act of power, exercised with an awareness that a sequence of interpretive judgments, made in real time and revisable in the future, undergirds any current designation of *where* power to regulate *what* activities rests.

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<sup>102</sup> J. Resnik, Categorical Federalism: Jurisdiction, Gender, and the Globe, *Yale Law Journal*, Faculty Scholarship Series, Paper 773, 2001, p. 620.

<sup>103</sup> *Ibid.*, p. 624.

This alternative view can be helpful to shift our perception of the demarcation of competences in the EU legal order just the same. It displays why devising categories of competence per policy area is not effective or suitable, especially not in the EU context where several functional powers exist that further complicate categorisation. Equally, it lays bare the defects of labelling some of these policy fields as exclusive to the Union or exclusive/predominantly reserved to the Member States. It seems that the only realistic approach is that all policy areas are to a more or less extent shared between the various levels of government, and that every act of regulation will be likely to draw in various policy fields and various levels of government in its implementation.

Indeed, this more fluid, sliding scale approach that re-conceptualises competence allocation between the EU and the Member States as a continuum where the single principle of pre-emption as a manifestation of primacy determines scope for national action vis-à-vis EU action (instead of a pre-determined categorisation and labelling of policy fields) also explains how policy areas can evolve from non-existent to complementary to shared to exclusive and in the opposite direction,<sup>104</sup> simply by virtue of how much EU law has been adopted or abolished in the meantime.<sup>105</sup> It appears that the labels are only descriptive, and not prescriptive. In other words, the simple rule is that as all existing EU law takes precedence over all national law, all Member State action in all policy fields needs to be compatible with all EU law, otherwise it is prohibited. The categories merely give a general indication of how much EU law there is to comply with per area, so helping one to roughly identify how much national competence there is left. By no means do they provide a complete picture and one still needs to examine all the relevant legislation and case law in potentially any policy area to know whether a Member State is competent to enact certain measure. Established opinion notwithstanding, the reality is that it is not the label of exclusive, shared or complementary that determines the scope of action for Member States, but the principle of primacy and the amount of EU law adopted. Neither is it these labels that determine the scope of EU action, but the functional powers - checked only by subsidiarity and proportionality.

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<sup>104</sup> R. Schütze, *From Dual to Cooperative Federalism: The Changing Structure of European Law*, Oxford: Oxford University Press, 2009. For a different opinion on the reversibility of exclusive competence see: K. Lenaerts & P. Van Nuffel, *Constitutional Law of the European Union*, London: Sweet & Maxwell, 2005.

<sup>105</sup> Indeed, it seems that public health is now in reality a shared competence instead of a complementary one: De Búrca & De Witte, *op cit*, p. 212

In this light, it is proposed to eliminate the categorisation of exclusive, shared and complementary competences and instead apply the principle of primacy as the sole and simple rule of pre-emption. For example, a sole article could replace Articles 2 to 6 TFEU as follows:

## TITLE I

### **UNION COMPETENCE**

#### Article 2

1. The Union shall possess only those competences that have been conferred on it by virtue of the provisions of this Treaty.
2. The legal bases in this Treaty that authorise action at the Union level pertain either to an objective to be achieved or to a specific policy area. If a legal basis authorises Union action necessary to achieve an objective specified by that provision, the measures adopted may affect any policy area. While the legislative procedure specified in the non-subject specific legal basis is applicable in these instances, such horizontal action should respect and refer to the objectives and arrangements of competence set out in the provisions in this Treaty dealing with all policy areas affected.
3. As a reflection of the fundamental principle that the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, Member States must exercise their powers in all policy areas consistently with Union law and to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.
4. Parallel action by the Member States on matters where the Union is competent shall be exercised in conformity with the provisions of the Treaties, and in particular the principles of primacy and sincere cooperation. In the instance that the Union has been accorded legislative powers on the basis of the Treaties, the Member States and the EU Institutions shall avail themselves of the appropriate legislative procedures when taking action in the relevant areas, unless they deem informal action more suitable to achieve the objectives in question, in which case they shall inform the European Parliament and the national parliaments of the reasons.

### 6.3. *The Flexibility Clause as the Rule rather than the Exception*

The third and final proposal is the most far-reaching, and would entail a revolutionary reform of the competence-constellation. Although strictly speaking not departing from the principle of conferral, it would have important constitutional implications. The central idea is that *as a general rule* the Union would be afforded all the powers that prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties. It would essentially place what is now Article 352 TFEU at the centre of the competence-constellation, by moving it to the beginning of the Treaty and appointing the ordinary legislative procedure as the relevant legislative process. The current legal bases could co-exist with the new general legislative competence, operating as *lex speciali*. This means that the intricate system of scattered and overlapping functional and subject-specific legal bases would continue to exist, but departing from a fundamentally different position as there would be no doubt or secrecy about the broadness of the EU's legislative powers.

Such a general legislative competence for the EU to achieve the aims of the Union set out in Article 2 TEU, checked by an empowered control of subsidiarity and proportionality, could serve to curtail technocracy and re-politicise EU policies, thereby enhancing democratic participation and thus legitimacy. Although it could of course be projected to widen the scope of possible legislation to be adopted at Union level, the extent of this extension is questionable. We have seen that through the functional competences, the flexibility clause, and intergovernmental policy-making, the Member States can already use the EU/European platform for almost every imaginable policy initiative. Under a general legislative competence, the greatest difference would be the fact that these policies would have to pass through the appropriate legislative procedures, and would stir the necessary public debate, something that seems far more desirable than the current solutions in place. In fact, it could very well mean that the Union becomes less productive in terms of its output. The Union's activities would thereby be curtailed by the democratic process, rather than an artificial and inefficient demarcation of competences. Formal extension of powers could lead to practical limitation of their exercise.



By way of example, this general competence could be integrated under Title I as proposed in subsection 6.2.:

## TITLE I

### **UNION COMPETENCE**

#### Article 3

1. The Union shall be competent to take the action that proves necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties.
2. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures as deemed necessary under the conditions laid down in the previous paragraph, unless the Treaty provides a specific competence by virtue of a provision dealing with the objectives or the policy areas in question.

In addition, to protect fundamental national idiosyncrasies as an expression of national identity and diversity, which by their nature cannot sufficiently be protected by majoritarian mechanisms, it could be considered whether the new provision should feature a limited opt-out procedure in narrowly circumscribed circumstances. This would have to be narrow enough not to turn the procedure in a *de facto* unanimity requirement, but accessible enough to provide a true safeguard for national diversity. Arguably, in this new federalist competence constellation, such circumscribed differentiation should not be feared but fostered.

### **7. Enhancing Democratic Legitimacy in the EU Legal Order**

Of course, if any of the foregoing suggestions were to be implemented, there would be an increased need to democratically control and contain the use of the widened EU powers. It is argued here that the interest of national constituencies is best served through dynamic constraints on the exercise of competence. As Nicolaidis has said: "in a world of cooperative and competitive partnership between levels of governance, modes of interaction and institutional design rather than allocation of powers between

levels are the key to legitimisation of the powers exercised".<sup>106</sup> In this discussion it is important to avoid the trap of conceptualising competences in a 'EU versus the Member States' fashion. More than a self-standing entity in itself, the EU is a platform for national political players. To a large extent, the current system allows national executives to play the rules to their favour and achieve the outcomes they want to achieve. In Weatherill's words:

It is commonly *executives* in the Member States that have been responsible for this process [of competence creep]. So the EU system has on occasion been exploited to diminish effective supervision by national Parliaments, regional entities, and citizens, leading to an understandable mistrust in 'creeping competence' for which the true culprit may be misperceived.<sup>107</sup>

The International and European legal system permits national governments to integrate sensitive policy areas through various supranational and intergovernmental, formal and informal mechanisms, while crying crocodile tears about unwanted interference from 'Europe' - thereby effectively shifting the blame and avoiding democratic scrutiny. It is not so much the EU in general as the way it can be used by these national executives that should be constrained and contained. Indeed, the main theme of increasing democratic legitimacy in EU law-making should therefore be that of empowering national parliaments/publics vis-à-vis their national executives/governments. Although further strengthening the European Parliament, through for example an extension of the OLP at the expense of the consultation procedure, would also be another step in the right direction to improve Europe's democratic credentials, the largest room for democratic improvement in the current legal and political EU order lies in empowering *national* parliaments in the process of adoption of EU legislation.

In recognition of the need to make national executives answerable for supranational legislation at the Union level, the past decade has already seen a few landmark changes that have led to a degree of institutionalization of parliamentary control over government ministers, exercising their policy-making powers in the

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<sup>106</sup> K. Nicolaidis, *The Federal Vision beyond the Federal State*, in : K. Nicolaidis and R. Howse (eds.), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford, Oxford University Press, 2001, p. 451.

<sup>107</sup> Weatherill 2004, *op cit*, p. 7.

Council.<sup>108</sup> Since 2006, through the informal mechanism of "political dialogue",<sup>109</sup> also known as the Barroso Initiative,<sup>110</sup> the Commission has taken it on itself to send its proposals directly to national parliaments, who return their opinions directly to the Commission.<sup>111</sup> These opinions are broad in range, in that they can concern every aspect of the legislative proposal in terms of content or procedure, but the Commission is not in any way bound by them. As a mirror image, the Early Warning System that was introduced by the Lisbon Treaty, which also sees national parliaments reacting to legislative initiatives, does oblige the Commission to review its proposal if a threshold of reasoned opinions is reached, while these opinions can only relate to subsidiarity concerns.<sup>112</sup> In their own way, both procedures are effective in empowering national parliaments by 1) allowing them to express their opinion on legislative proposals directly to the Commission, influencing agenda-setting from the get-go, and 2) by timely informing them of the legislative agenda which allows national parliaments to better control their executives when they act in/as the Council. Indeed, as Weatherill predicted, national parliaments in their monitoring role have injected "a fresh and critical voice into the debate".<sup>113</sup> Most noteworthy, in June 2012, the Commission received the first "yellow card" from national Parliaments. Twelve national Parliaments expressed subsidiarity-related

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<sup>108</sup> Konstadinides, *op cit*

<sup>109</sup> European Commission, *A Citizens' Agenda: Delivering Results for Europe*, COM(2006)211 final.

<sup>110</sup> See D. Jancic, The Barroso Initiative: Window Dressing or Democracy boost? *Utrecht Law Review*, Vol. 8, No. 1, p. 78.

<sup>111</sup> On its operation, see: European Commission, *Annual Report 2011 on Relations between the European Commission and National Parliaments*, COM(2012) 375 final. The total number of opinions received from national Parliaments in 2011, including reasoned opinions under the subsidiarity control mechanism, reached 622. This represents an increase of some 60 % compared to 2010 (387), which had already seen a 55 % increase over 2009 (250). This upward trend has continued into 2012, with more than 400 opinions received by June 2012.

<sup>112</sup> Protocol on the application of the principles of subsidiarity and proportionality, Articles 6 and 7. For a detailed analysis, see Kiiver, *op cit*. Every national parliament receives two votes, and upon 1/3 of the votes finding a breach of subsidiarity the Commission has to review the measure, and decide to amend, maintain or withdraw it (yellow card procedure). If a simple majority of the votes allocated to national parliaments finds such a breach, the Commission may only maintain it after review and approval by the Council and European Parliament (orange card procedure).

<sup>113</sup> S. Weatherill, Harmonisation: How much, How little? *EBLR*, 2005, p. 537. In contrast, for a more pessimistic account of the role of national parliaments see: T. Raunio, *Euro crisis and national parliaments: (temporary) end to the depoliticization of EU?* Paper presented at the Policy Network/European Institute seminar series 'Political union: what is it? Do we need it? How could it work?', 30 January 2013.

concerns regarding the Monti II-Regulation<sup>114</sup> amounting to 19 votes. Upon the mandatory revision of the proposal, the Commission has decided to withdraw it.<sup>115</sup>

The most obvious way to further enhance this promising system would be to merge the Barroso Initiative and the Early Warning System, thereby officially enlarging the scope of the reasoned opinions of the national parliaments to include proportionality, necessity and political merits. As Fabbrini and Granat have noted, this is already happening in practice,<sup>116</sup> and the Monti II yellow card has proven the effectiveness of the procedure. If the EU's legislative powers were to be enlarged as proposed in this contribution, it seems only fair and appropriate that national parliaments are allowed to express their views on the political content of the proposal, as well as on its proportionality and respect for national identity, without the Commission being able to ignore these views. An additional step would be to turn the "orange" card into a "red" one, forcing the European Commission to withdraw its proposal. Although under the current operation of the Early Warning System this does not seem necessary, as the chances of the Commission proceeding with a proposal that has received an orange card are virtually non-existent,<sup>117</sup> the enlarged competences of the EU would arguably warrant a stronger emergency brake. Furthermore, in line with Weatherill, it is proposed to supplement this *ex ante* control by national parliaments by allowing them an independent right to bring a challenge before the ECJ in respect of matters covered by the reasoned opinion procedure.<sup>118</sup>

In addition, in order to address the problem that the legislative proposal might be significantly and fundamentally altered in the legislative process (especially though opaque trilogues), a Final Check System could be devised, bookending the Early Warning System.<sup>119</sup> National parliaments that have issued a reasoned opinion on the legislative proposal would be allowed to check the act as provisionally

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<sup>114</sup> Commission's Proposal for a Council regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, COM (2012) 130.

<sup>115</sup> See:

[http://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/letter\\_to\\_nal\\_parl\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/letter_to_nal_parl_en.htm).

<sup>116</sup> F. Fabbrini and K. Granat, "Yellow Card, But No Foul": The Role of the National Parliaments under the Subsidiarity Protocol and the Commission Proposal for an EU Regulation on the Right to Strike, *Common Market Law Review*, Vol. 50, 2013. They are however critical of this development, arguing that this is not the way the procedure was intended.

<sup>117</sup> Chalmers *et al*, *op cit*, p. 131.

<sup>118</sup> S. Weatherill, Better Competence Monitoring, *European Law Review*, Vol. 30, No. 1, 2005, p. 40.

<sup>119</sup> Many thanks to Christel Koop and Imke Vunderink for helping develop this idea

adopted by the European Parliament and Council against the proposal on which they had given their opinion, and if the act has been fundamentally changed in the sense that it no longer conforms to the conditions under which they had initially approved the proposal (i.e. not voted against it), they can change their green light to a no-vote. If a - to be determined - threshold is then reached, the proposal would not be adopted, regardless of the agreement between the European Parliament and the Council. This Final Check System would have to feature a short timeframe for the national parliaments' reactions, as well as a high voting threshold, in order not to paralyse the legislative process. It should also be subject to judicial review by the European Court of Justice, who would be the one to circumscribe the process by interpreting when an act is "fundamentally changed" compared to its initial proposal in a way that it would justify granting national parliaments the possibility to vote against it at this late stage.

## **8. Conclusion**

Contrary to what the title of this article might suggest, this has not been a case for the unlimited extension of the European Union's activities and influence. We share Dashwood's opinion that the "Community caravan" should not be moved forward at every opportunity and at all cost, especially not by "night marches".<sup>120</sup> This view follows from the fact that the EU is not a fully democratically legitimate organisation/constitutional order, from a belief in governance at a level closest to the citizen, but also from a more subjective desire to maintain national cultures and identities. However, as this paper has argued, the best way to respect national identity, democracy, and subsidiarity is not through a clear demarcation of competences, and particularly not through the existing categorization of exclusive, shared and complementary competences. The current Treaty scheme is deeply flawed as it is ineffective, misleading, and counter-productive to the values it purports to protect. The Treaty pretends to protect certain sensitive policy areas from EU integration, which it fails to do. National constituencies are lulled into a false sense of security, making them prone to 'harmonisation through the back-door' via internal market competences, 'harmonisation through the bathroom window' and

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<sup>120</sup> A. Dashwood, *The Limits of European Community powers*, *European Law Review*, Vol. 21, No. 2, 1996, p. 113.

"harmonization by stealth". The capacity of national constituencies to discuss and mediate different conceptions of the 'common good', striking balances and agree on compromises<sup>121</sup> is severely limited by negative integration through ECJ case law and the various ways of shadowy positive integration by national executives in their various international guises. This article has proposed to reconfigure the current constitutional settlement so as to do justice to national self-determination by providing national parliaments better checks on positive integration and respecting national legislative outcomes in areas of Member State competences through a more relaxed proportionality assessment and hence restrained negative integration on the one hand, while on the other hand providing those national constituencies an additional opportunity to pursue their conceptions of the 'common good' in cooperation with other national constituencies, with whom there are tied in the process of ever-closer integration on the European level, by expanding the scope for democratically legitimated common action on that level. It shall be quite clear to the reader that in presenting this case for a re-thinking of legislative competences in the EU legal order, political feasibility has not been a primary concern. But even if these immodest proposals are deemed a million miles from political likelihood, there is a value in considering them purely theoretically. And indeed, it is one of the great privileges of EU scholars that the dynamic, constantly evolving nature of our topic of inquiry allows us - to a greater than average extent - to contemplate radically different approaches and sometimes see them take hold in reality.

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<sup>121</sup> I.e. their political self-determination, as defined by: M. Dawson & F. de Witte, Constitutional Balance in the EU after the Euro-crisis, *Modern Law Review*, forthcoming.

## Submission 4

From: [REDACTED]

Sent: 04 April 2013 12:44

To:

Subject: **Balance of Competences Review Submissions**

Good afternoon.

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



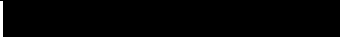
back copies. The Bruges Group has been publishing focused research papers for a number of years, and both it and Open Europe's research should also be taken into consideration. I have a copy of James Gladstone's paper for CAFE on CAP reform which I can copy and post on request, given an address. This is out of date, but then so is the CAP.

I hope this keeps you going. I am, of course, at the disposal of any and all groups for further discussion and bouncing around of ideas.

Good luck and kind regards,

Dr Lee Rotherham

### Submission 5

<b>Name</b>	Miss H A Prowse
<b>Organisation/Company (if applicable)</b>	
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	
<b>Email</b>	

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

**Positively? None.**

**Negatively? We are flooded with unwanted immigrants and I do not just want the numbers reduce, but reversed. I object to every single benefit given to all of them that they have not already paid for or agreed in advance by legitimate means**

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

My friends and family of many nationalities have lived and worked all over the Continent for generations – travelling in ones and twos and always speaking the local language. I have a Dutch neighbour and Dutch cousins. My brother has lived and worked in Francophone countries and I worked in Germany. My aunt had to delay her marriage a few years until my German uncle ceased to be an enemy alien, but my international address book continues to include Danes, Spaniards and Greeks.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

. Not only are our schools and hospitals at bursting point but politicians should look at – and smell – our sewers. Eastern Europeans are queuing in Cornwall to sign up with GPs and Luton has serious trouble with other immigrants' children in schools.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

The EU has already done far too much – and nothing good – and should do less. That would also cut our taxes. I like the idea in the Sunday Times of charging African and Asian immigrants, but want that extended to EU, too.

None of my friends and relations has ever had a problem – apart from that one aunt in the 1940s.

### Questions in relation to the labour market.

#### **5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

We have too many of our own unemployed, including all the skilled workers we need. I would never employ a foreigner.

#### **6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

My career is in defence and telecoms, neither sector being anything to do with a group of tinpot states on the other side of the Channel. The Royal Navy sails the ocean blue, and any telecoms company that could not transmit signals to every other country in the world, systems and software included, would be out of business.

I do encounter a lot of foreigners in some sectors, but they are only taking jobs that are ours by right.

#### **7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

I want the right to choose staff of British nationality first.

#### **9. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

The EU has already interfered to make us angry enough already. Let us take back, and arm, our borders.

## Questions in relation to social security coordination.

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

Social security rules are a nightmare and should all be ditched.

I am not interested in an 'EU labour market' as anyone I know has always been able to move around as an individual anyway.

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

We already have lost confidence in the system!

## Questions in relation to Immigration.

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

This has been horrendous. I repeat, we are FLOODED with unwanted immigrants and threatened with more next year. Roma people are defecating in our doorways and Poles are sleeping in illegal sheds at the backs of other people's homes. Every foreign beggar found on our streets should be departed at once, at their own cost, with their families, and dumped at Sangatte if necessary – after all, it was the French who let them through in the first place. I know, I was running a fibre-optic cable through the Channel Tunnel and my men gave me first-hand accounts of what was going on.

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

Here, we are overrun with Bangladeshis and Gurkhas, but a Pole once tried to sell fish door to door from an unrefrigerated van; I asked where he had come from but only to check his accent so that I could tell him to go home in Russian, which I thought more offensive than German. (His answer was 'Slough'.)

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

Repatriate all our borders, police them properly, with no exceptions.

#### Questions relating to future options and challenges.

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

If we returned to the status quo ante, and all recent EU nationals returned home, we Britons would be less angry, and less likely to march with the BNP.

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

I suggest you read Dante's 'Inferno'. Can you not see matters have already gone too far? If the EU wants to enlarge itself, then let it do so – but without the UK. Nobody is taking to the streets demanding entry, and even Turkey has other things to worry about. I cannot stop other countries from madness but I can vote in Britain and I will do anything to get out NOW. If our exit is delayed by even six months we will suffer an even greater flood of unwanted mouths to feed.

#### General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

The good news is that my Greek friend tells me that Greece is now so bad that the Albanian immigrants are going home!

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

It is a question of numbers.

'G8' means a meeting of the heads of eight governments, so who invited Humpty Dumpty and his friend, making a total of ten?

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

Yes. 'Population Matters' has collated all the statistics, as has UCL, on the impossibility of sustainable supporting more than 30 million people in our small islands (or 3 billion on our finite planet).

## **Submission 6**

**Making progress towards the completion of the Single European Labour Market,  
EPC ISSUE PAPER NO.75 MAY 2013**

Link to submission:

[http://www.epc.eu/pub\\_details.php?cat\\_id=2&pub\\_id=3529&year=2013](http://www.epc.eu/pub_details.php?cat_id=2&pub_id=3529&year=2013)



**Submission 7**

**From:** BEARDER Catherine [REDACTED]

**Sent:** 17 July 2013 15:11

**To:** FreeMovementofPersonsBoC

**Subject:** Submission of Evidence on the Free Movement of Goods: Balance of

**Competences Review**

On behalf of Mrs Catherine Bearder MEP, please find below a list of responses to your call for evidence on the balance of competences between the EU and UK in the area of free movement of Goods.

Sincerely,

[REDACTED]

**Free Movement of Persons:**

Call for Evidence questions

1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK nationals; and b) the UK as a whole?

I believe that the access to free movement across the EU for British citizens is a hugely beneficial thing for UK citizens. More than 20,000 British citizens live and work in other EU countries. Having free movement creates new job opportunities for British workers, and allows British people to buy property abroad and move there without applying for a visa, and with the knowledge that they have the same rights with regards access to social services etc as the national of that country. It allows UK residents to study in the many prestigious universities around Europe, and allows British universities to recruit students from across the EU to come and study their courses. I believe that the British economy has benefitted from the movement of highly skilled, and also non-skilled workers from other EU countries, and is now being damaged by the increasingly tight visa controls for non EU visitors who find it difficult to travel further into the rest of the Union or to visit the UK from mainland Europe.

2. What evidence is there that EU competence in this area makes it easier for UK nationals to work, access benefits and access services in another member state?

I believe that it is self evident that EU action in this area has made it easier for UK nationals to work and access benefits in other member states. Without EU action in this area UK nationals would still require working permits, would struggle to open bank accounts, access health care, unemployment benefit etc. The fact that UK citizens are treated equally in other EU countries with regards to the provision of all these services is as a direct result of the work of the EU in establishing the right to free movement of people.

3. What evidence is there of the impact on welfare provision and access to public services in the UK?

In my opinion there is a lack of evidence - not enough research has been done about the net gain/loss for the UK of allowing free movement of its workers to Europe, and free movement of workers from other EU countries into the UK. The public's perception that Britain is being swarmed by unskilled citizens of other EU countries who move to the UK in the hopes of living off the social welfare provision is based on anti EU newspapers, who provide neither statistics nor a balance debate. I would welcome a through study into this issue - conducted by an impartial auditor to establish the true story.

**Submission 8**

<b>Name</b>	Rodney Sabine
<b>Organisation/Company (if applicable)</b>	The English Library and Information Centre La Souterraine
<b>Job Title (if applicable)</b>	President
<b>Department (if applicable)</b>	
<b>Address</b>	████████████████████
<b>Email</b>	████████████████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	X <input type="checkbox"/>	Association under the law of 1901 (as all French NGOs are)
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

**We see a positive impact in allowing people to live and work within the EU as they wish.**

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

**The EU has intervened positively in several cases to stop both the UK and French governments from taking actions which inhibit the freedom of movement. Eg:-**

**The EU ordered the French Government to stop withholding health benefits from 'early retirees' from the UK.**

**The EU stopped the UK Govt from withholding Winter Fuel Payments from non-residents. The UK Govt has now changed the rules but we expect the EU will stop this eventually.**

**The EU are about to consider the Schindler case. If Schindler wins, the UK will have to stop depriving UK citizens of their right to vote after 15 years abroad.**

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**We are not aware of any. In general non UK EU members who move to the UK are younger and expat British who move to Europe are older. The impact on Health and Welfare is therefore positive for the UK and negative for countries such as France and Spain.**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

**The UK Government places considerable obstacles in the way of UK residents moving to other parts of the EU. There is very little Government advice before moving, and precious little support once one has moved. Specifically:-**

**A large number of benefits and welfare rights are not available to UK expats. If a person obtains these benefits before leaving, some of them can be 'exported', but there is no right to claim once you have left. This is contrary to and inhibits the right to move freely.**

**The removal of the right to vote after 15 years is also contrary to and inhibits the right to move freely. It is interesting to compare the UK with France in this respect. French citizens retain the right to vote wherever they are in the world, and there are members of parliament with specific responsibilities for different geographical areas.**

**The behaviour of the UK Government over Winter Fuel payments typifies its attitude to expatriates and the right to free movement. Having been beaten in the European court over the refusal to make the payments, the Government announced that payment will not be made in certain countries that are 'hotter' than the UK. The choice of countries seems to be based far more on the numbers of expats rather than the actual meteorology. France and Spain are on the list, yet Italy is not. In this part of France in the winter the temperature can remain at minus 10 centigrade for two or three weeks. Very few parts of the UK are this cold. Still, in Sicily, expats will still qualify. (But not in Malta – there's a lot of expats there)**

**Another area is marriage. One of our male members is about to marry a French National. This lady will never achieve British citizenship, even though she would easily pass the citizenship test, because she does not live in the UK. She has to live for 5 years in the UK (ironically not necessarily with her husband) to achieve citizenship. This is contrary to and inhibits the right to move freely.**

**Questions in relation to the labour market.**

<b>5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.</b>
None
<b>6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?</b>
<b>7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?</b>
<b>8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?</b>
Our view is that in general the citizen benefits from the work the EU does in this area and should do more

**Questions in relation to social security coordination.**

<b>9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?</b>
<b>10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?</b>

**The UK benefits system is so poor that EU coordination will only improve it**

**Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**Not clear how the right to free movement can be abused. It's a right...**

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**We hope that the EU will force European Governments to be serious about free movement, and that the UK Government will start to see expatriate UK residents as a resource to be encouraged, rather than as a group to be ignored or discriminated against**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

**More people would move around...**

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

<b>Other than the beneficial ones mentioned above, no.</b>
<b>17. Are there any general points you wish to make which are not captured above?</b>
<b>18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?</b>



## **Submission 9**

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### **Fractured Lives and Grim Expectations: Freedom of Movement and the Downgrading of Status in the Italian University System**

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*Abstract: The European Court of Justice (ECJ) has on numerous occasions concluded that EU nationals have not been treated fairly when they have competed for jobs outside their home states, even after many years of residence. Recent judgments issued by the Court illustrate that this is not simply a problem for recent members but also for some of the founding member states. This article examines a well-documented case of nationality-based discrimination against foreign language university teachers in Italy, known as the *lettori*. It describes how the *lettori* were discriminated against and declassified over several years, and draws upon semi-structured interviews and focus groups with *lettori* (n=21) conducted over a two-year period, from 2005-2007 to chart the social distance created between the *lettori* and their Italian colleagues. The article concludes that the reliance on courts and European institutions to adjudicate over employment matters in the Italian higher education sector exposes the lack of effective mechanisms to resolve labour disputes and further calls into question the promise of free movement and respect for other EU norms, including the prohibition against discrimination on the basis of nationality.*

Keywords: nationality-based discrimination, freedom of movement, higher education, *lettori*

The right to freedom of movement is one of the cornerstones of the European Union, associated with which is the prohibition against discrimination on the basis of nationality (TFEU Art. 18). For over fifty years these provisions have been central to the ambition of creating a European union of peoples and have recently been reaffirmed in the Treaty on the Functioning of the European Union in the context of EU citizenship,<sup>1</sup> and the rights of workers.<sup>2</sup> Together these provisions set out the legal basis for European nationals to travel and settle in other European states.<sup>3</sup>

While the scope of EU anti-discrimination provisions has grown over recent years to include matters of race, age, and sex,<sup>4</sup> it is disconcerting to note that nationality remains a contentious issue within the workplace. The European Court of Justice (ECJ) has on numerous occasions concluded that EU nationals have not been treated fairly when they have competed for jobs outside their home states, even after many years of residence. Recent judgments issued by the Court illustrate that this is not simply a

problem for recent members but also for some of the founding member states,<sup>5</sup> a fact also acknowledged by other EU institutions.<sup>6</sup> This article examines a well- documented case of nationality-based discrimination in Italy in order to understand the long-term effects such discrimination has on the victims.

The context for this article is the situation of *lettori*, the non-Italian foreign language teachers in Italian universities, who have claimed they have been victims of nationality-based discrimination and who have been vindicated by the findings of the ECJ which has issued multiple rulings against Italian state institutions.<sup>7</sup> In spite of these rulings, however, the occupational, social and economic status of the *lettori* has deteriorated over the past two decades, prompting further questions regarding the degree to which nationality-based discrimination can be mitigated through legal channels. This article explores the ways in which discrimination has been expressed and institutionalised, to the detriment of the *lettori*, most of whom are EU nationals. The part following reviews the history of the *lettori* struggle before national courts and the ECJ. The subsequent parts examine the impact of the non-enforcement of European rules regarding non-discrimination and charts the social distance created between the *lettori* and their Italian colleagues in the workplace.

The empirical basis for the article is a series of semi-structured interviews and focus groups with *lettori* conducted over a two-year period, from 2005-2007, with additional telephone interviews in 2009 and 2010. The sample (n=21) included British (English and Scottish), Irish, French, German, Spanish and non-EU nationals. Interviews were conducted in Brussels (2005), Edinburgh (2006), Verona (2006) and central Italy (2007). In order to locate participants, the author relied on contacts established from interviews conducted in 1995 and 1996 (see Blitz, 1999) and on contacts provided by the Association of Foreign Lecturers in Italy. Respondents were asked about their current employment status and the legal issues it posed; about difficulties they had encountered in securing alternative employment, in providing for their children's education and in dealing with government and public bodies; about how change in their occupational status had affected them in terms of their home life, work, social life and position in the community.

The central argument of the article is that discriminatory decisions to exclude staff on the basis of nationality were followed by attempts to separate and segregate non-Italian teaching staff, whose occupational roles and entitlements were determined by superiors on an arbitrary basis.

## **Historical context**

### *Creation of lettori*

On 11 July 1980, as part of an attempt to reform the Italian university system, a number of professional categories were created by means of a new education act and presidential decree.<sup>8</sup> One of these categories was the class of *lettori*. Article 28 of DPR 382, made it possible for foreign nationals now to be admitted to the university system as temporary teaching staff with annual contracts renewable for a maximum of six years. They were hired to carry out specialised duties including teaching their mother-tongue languages. The 1980 law also distinguished between non-Italian *lettori* – listed under the heading of *professori a contratto* and governed by private law – and Italian academics – who were treated as public servants. The *lettori* had no rights to benefits, social security, national health insurance, or pensions, and were considered to be

“autonomous workers”. The law also established maximum salaries for *lettori* equivalent to those of associate professors “*alla prima chiamata*” (amounting at the time to lire 1,000,200 or about €517). Most *lettori* taught approximately eight hours per week and conducted exams. For this reason, their work was implicitly recognised as a form of instruction.

Unlike Italian academics, the *lettori* did not need to be successful in a competitive entrance examination (*concorso*) to work in the university system (though they did need to pass annual competitive selections) and partly for this reason by their very presence they challenged the hierarchical structures within the university sector. Consequently, as university finances became increasingly stretched in the 1980s, disagreements between the *lettori* and university professoriate and/or administrations surfaced – coming to a head in 1993 when large numbers of *lettori* went on strike, following attempts to cut *lettori* salaries and reduce their duties by ousting them from examination commissions.

By February 1993, the European Parliament had been alerted to a string of complaints filed by David Petrie, President of the newly formed Committee for the Defence of Foreign Lecturers, who argued that Italian universities were discriminating against non-Italian teachers and were undermining the provisions of freedom of movement, as stipulated by Article 48 of the EEC Treaty. Even though in several instances local groups of *lettori* had successfully gone before local employment tribunals to obtain redress for wrongful dismissals, the processes of appeal in Italy ensured that universities could fight these decisions and prolong disputes, to the detriment of the *lettori*. For this reason, Petrie decided to approach European institutions. This was the start of a major battle between the Italian state and the European institutions, notably the European Parliament, Commission and Court of Justice.

At its heart was a dispute over the more favourable treatment and protection given to those on permanent contracts (*contratti a tempo indeterminato*). Since the terms of employment of *lettori* were governed by private law, they were not immediately eligible for such contracts, in contrast to Italian nationals working within the university system.

The bid to secure *tempo indeterminato* was initially fought through national courts, as *lettori* appealed against sackings and reductions in salary. On 29 April 1987, the *lettori* won the first round when a local employment tribunal in Verona declared that the plaintiffs should be treated as regular employees and that health insurance and pension contributions had to be paid on their behalf by the University. A year later, on 13 August 1988, the Pretura di Verona issued an injunction ordering the University to guarantee the employment status of the plaintiffs for the year 1988/89. The same tribunal ruled on 26 October 1991 that the contractual relationship between the *lettori* and the University was to be considered as indeterminate in terms of time and could not therefore be limited by annual contracts, a ruling later upheld by the Corte di Cassazione. However, in spite of these rulings, the struggle over *tempo indeterminato* did not result in a comprehensive settlement, and so the ECJ was asked to step in.

In the case of Pillar Allué and Carmel Coonan (C-33/88), known as Allué I, the ECJ ruled that *tempo indeterminato* should apply.<sup>9</sup> The Court’s ruling noted that there was a conflict between EC law and Italian law since only non-Italians seemed to be affected by time-limited contracts.<sup>10</sup> Four years later, on 2 August 1993, the ECJ ruled that it was illegal to issue time-limited contracts to non-Italian nationals, except under certain circumstances.

The non-enforcement of the Allué rulings eventually brought the Italian state into conflict with the European Commission which claimed that since the rulings had yet to be introduced into domestic law, infringement procedures remained in place. During this period, *lettori* in Verona were denied the right to apply for temporary teaching positions, on the grounds that they had never passed the *concorsi*, and again were forced to take legal proceedings against the university. In Naples, *lettori* were “sacked” on 15 July every year and would spend five, six, or seven months without work before being rehired.<sup>11</sup> In March 1995, *lettori* in Bologna argued that they were still being discriminated against,<sup>12</sup> in spite of the ECJ’s rulings in the Allué cases.<sup>13</sup>

### *Change in status and fragmentation of lettori*

A particularly important development took place on 21 April 1995 when a decree was passed and subsequently converted into law (21 June 1995) officially abrogating Article 28 of DPR 382. The decree (DPR 236) abolished the position of *lettore* replacing it with a category consisting of employees who were to be called “*collaboratori ed esperti linguistic*” (CELs, “linguistic experts”). CELs were to be employed on permanent contracts but new conditions were introduced with respect to incoming foreigners, and the decree merely offered the *ex-lettori* precedence in selection procedures for the new post. The net result of this decree was that teachers throughout Italy were forced to work longer hours for less pay and lower status. An estimated 223 *lettori* in the universities of Bologna, Naples Federico II, Naples L’Orientale, Salerno and Verona declined to apply for the new posts of CEL and were fired.<sup>14</sup>

The changes in the law produced essentially three groups: i) *lettori* who had been employed under DPR 382 but refused the new CEL contracts; ii) *ex-lettori*, who had been employed under DPR 382 but then opted for contracts as CELs under the 1995 legislation; iii) new CELs who had never been employed under anything but the 1995 legislation. In addition, one might include an additional category of the very few non-Italians who benefited from changes in the *concorsi* system which was now open to foreigners. The treatment of the former *lettori* would therefore differ widely across Italy, depending on the nature of the contracts signed between them and individual universities. Some universities created new job descriptions for the *lettori*, without their agreement, while the *ex-lettori* were no longer permitted to carry out teaching duties.

The mechanisms by which the *lettori* have been reclassified have not, however, been limited to their status under Italian law. For more than a decade, university management and administrators have been introducing policies and procedures designed to segregate the foreign-language from the remainder of the teaching staff. These procedures and their effects are discussed below.

### **Exclusion and invisibility**

Interviewees described the incremental effects of their exclusion which was punctuated by two distinct phases, first in the 1980s when they were removed from examination commissions, and then following the introduction of law 236 of 1995 when their duties were reduced and many were formally reclassified.

In June everything exploded. I had a job which from every point of view interested me and from one day to the next, there was a meeting, I was told you will no longer offer courses on civilisation but a beginner's language course. Therefore they had created a course for which I was not even competent to teach and knew nothing about. From that point on, I was pushed aside (French woman, Verona, 21 June 2006).

Respondents explained that *lettori* had in the past enjoyed the status of teaching staff and been official members of exam commissions, recognised as such by means of the official registers students were required sign before handing in their written exams. However, the change in their job titles that came with the new law brought with it a marked deterioration in status.

As one language teacher noted, the title of “*collaboratore*” was also used for cleaning ladies (Woman in central Italy, email to the author, 21 June 2010). Some participants explained that their hours also changed:

I have always worked 700 hours [per year]. You are now telling me I'm not a teacher and have to do this job in 450 hours. It's not possible (British woman, central Italy, focus group, 12 October 2007).

Several interviewees commented on their removal from exam commissions, even though they were still responsible for designing, administering and marking written exams as well as examining students orally. One woman explained that there was no actual change in examination procedures but the *lettori* were formally removed from all official documents which might attest to their role in any of the examination processes (English teacher, central Italy, email to the author, 19 June 2010).

The new law listed our duties much more vaguely, established that we were only “part-time workers” and no longer “full-time,” allowed us to work in other places, and listed us among the “*tecnici amministrativi*” [which] equals office personnel. By not specifying all our duties, it created an ambiguous situation in which it could be considered that our duties had changed, which they hadn't (Language teacher, central Italy, 27 June 2007).

Similarly, within the classroom, *lettori* were told that they no longer gave lessons but simply *esercitazioni* (practice sessions). A teacher in central Italy commented that “one *rettore* [university rector] told a *lettore* that he was not allowed “to explain grammar” in the classroom. *Lettori* could oversee language drills but not explain grammar.” She also noted that in some universities the *docenti* took special care to emphasise that the exams done by the *lettori* were “not real exams and [could not] be called exams” (Language teacher, central Italy, 27 June 2007).

Further efforts to set apart the work of the *lettori* from that of the professoriate were contained in a recent *regolamento* (regulation) issued by the University of Viterbo which stipulated not only that the marks awarded by a *lettore* were not binding, but also that any professor from anywhere in the university could override or ignore the mark given by a *lettore*. A seasoned teacher argued that the regulation was tantamount to saying that the final mark was at the discretion of the professor who could choose to

ignore the students' scores on the language tests – either to the benefit or detriment of that student (Language teacher, central Italy, email to the author, 19 June 2010).

### **Physical separation and arbitrariness**

In order to maintain the line that the *lettori* were now CELs, several university managers and administrators contrived to keep the non-Italian teachers at considerable physical distance from the Italian professoriate. One described how he was no longer permitted to enter the university by the front door but did so in protest, while his Italian colleagues avoided eye contact with him.

But I do walk in the other door. I can get to the office by going through the front door, and I'll tell you, I don't look at my shoes when I'm walking up the corridor, they look at their shoes (David Petrie, 25 May 2006, Edinburgh).

Petrie also spoke about being confined to a basement office, measuring four by six metres which was to serve 13 members of staff.<sup>15</sup> Others offered their own accounts of the cramped and insalubrious conditions in which they were expected to work:

We were given a mouldy chapel to do our lessons in my last year, where the echo was so bad it was impossible to understand when students spoke. Another room we were given was attached to the chapel and had poor lighting and no desks and there was no exit from that room without passing through the other, so that during your lesson, you had groups of students trooping through your class to get to the other classroom (Language teacher in central Italy, email to the author, 22 June 2010).

David Petrie described his relocation and his confined working conditions using political terminology:

What does apartheid mean? It means separate development. Now do you see yourself physically in a different building – yes or no? Yes. Do you see yourself divided by linguistic terminology that you are ... do you see the Italians having their job description changed? Do you see them being told that they don't actually do exams, that they do "tests"... all of these things? Do you see yourself physically in a different space? These are all things which I say justifies the accurate use of the word "apartheid". And similarly with the idea of "ghetto"; "ghetto" is to do with the geography. We are literally in the basement, in the bunker, in the bowels of the faculty and there are separate entrances for us, to make sure that we do not embarrass the professors by walking in the wrong door (David Petrie, Edinburgh, 25 May 2006.)

Some of the accusations made by Petrie were also made by other participants who noted that they were at times instructed to remain out of sight. One woman claimed that this happened during a visit to the university by the Italian President, Giorgio Napolitano, writing that she considered the instruction "an affront, degradation, a de-qualification – a very low blow – after 23 years of service at that university!" (Woman in

central Italy, email to author, 8 November 2007). David Petrie reported that he too was “pulled out of his classroom the same morning a government minister was officially opening the university for the academic year” (David Petrie, email to the author, 22 June 2010).

### **Casualisation and the introduction of timecards**

With the introduction of the first national contract in 1996, came a shift in government policy. According to one *lettore*, the Government had never set aside sufficient sums to cover the contracts of *lettori* and as a result universities were allowed to cover the shortfall in salaries through a supplementary contract (*trattamento integrativo*) “in accordance with productivity and experience”. This set the *lettori* further apart from other categories of worker, making them the only workers in Italy whose basic salaries were not stipulated in their national contracts. Further, a new law introduced by the current Berlusconi government has subjected the *lettori*, to a greater degree than other public-sector workers, to financial penalties, thanks to salary deductions, if they take sick leave. In some instances, absence from work due to illness can cost a *lettore* €40 for each of the first ten days of leave taken (J., telephone interview, 22 June 2010.)

A further illustration of the ways in which policies and procedures have been used to justify reclassifying *lettori* and reinforce their exclusion, is in the use of timecards in some universities. From the moment a *lettore* clocked in, they would be considered to be engaged in classroom activity – irrespective of whether or not they had already reached the classroom, needed to make photocopies in preparation for classes, or needed to speak to students. One US-educated woman described a situation where, although time keeping was allegedly used to monitor the comings and goings of the staff, in practice the use of the timecard interfered with classroom teaching. Moreover, supervisors could add hours to, or subtract them from, timecards at will. The net result, in the perception of one *lettrice*, was that she and her colleagues were “working under a situation of blackmail”; and she explained how she found herself threatened with disciplinary measures when, having not been provided with any information about the workings of the timecard system, she calculated her own hours. She explained that by taking a 30 minute lunch break, then adding 30 minutes onto her day, or by exceeding her required hours if she met with students, she accrued more hours than was permitted and was subsequently reprimanded.

Here is an example. Some *lettori* opted to do long days of 8 hours. By law, all office workers doing 7 hours 12 minutes are required to take a lunchbreak of minimum half an hour, which in theory is automatically removed from the timecard tabulation by most electronic systems in use today in the public administration. In other words, if your working day is 8 hours and you don't leave the premises of your workplace, clocking in and clocking out for lunch, then you have to remain an extra 30 minutes because the time card system automatically removes a half hour for the lunch break. In order not to have a thirty minute “debt,” you have to stay a half hour longer. Workers however also receive a meal ticket for the equivalent of 7 euros for each lunch break, which can be used to buy groceries at the supermarket. Immediately the question arose, are *lettori* who do 8 hours (or more during exams) required to stay an extra half hour

and are they entitled to a meal ticket? Nobody in the administration seemed to know the answer to this question. The timecard was applied this year [2007], and nobody could tell us if we needed to stay extra or not. First they said we had to, then we didn't, and in any case we couldn't have a meal ticket, but they never put it down in writing. Because they knew they would fall into contradiction. In the end those of us who stayed half an hour more ended up having too many hours on our time card and were accused of insubordination!

But I forgot to mention the real problem of this timecard. Every month the worker receives the official tabulation of his hours printed out by the machine. He checks it and then takes it to the head of his office to sign. Only when signed is it an official document. Now whereas we had been receiving copies of the tab sheets, no one said a word that they needed to be signed in order to be valid. In other words, we were never given the official documents tabulating our hours that every worker has a right to see (and keep a copy of) every month. Nobody even bothered to explain the process. In March, seven months after the timecard was introduced, we discovered that our tab sheets were just pieces of paper that had no legal value and the man in charge of the timesheets said, "The boss can cancel out anything she wants until it has been signed." We doubted this was true, but it illustrates the atmosphere under which we were working. So we asked for them to be signed. The union also made an official written request and did not receive a reply. That's when the real farce began. First we were told that they could not be signed since there were "unauthorised hours" on our tab sheets. The administration then sent us a letter of reprimand saying that accruing unauthorised hours could be considered an act of insubordination. (After three counts of insubordination you can be fired). They refrained from saying exactly how many hours they contested. Although we asked, they never replied (Language teacher, central Italy, 8 Aug 2007).

The use of the timecards also intensified the feeling among the *lettori* that they were 'shift workers'. One woman noted that with the timecard there was no possibility of making up lessons or even taking sick leave [if you found yourself about to run over your stated hours], given the then management of the timecard system. She then added, "They [the university] are paying less and getting more hours. It's slave work" (M., central Italy, focus group, 12 October 2007). Her colleague explained how the introduction of timecards had affected the quality of teaching and lowered morale.

... the regulating of our schedule in such short units – five hours per day, which had to accommodate everything – four hours of lessons and one hour of whatever else – lessened the quality of our service to students. If you were in the middle of showing students their exam papers, or conferring with a student when your schedule was about to end, you just had to stop, pack everything up, and rush out and punch your timecard. Or subtract whatever extra minutes you did that day from your next day – so that lessons got shorter, as did exams, and we weren't as available to students. That is what the director of *centro linguistico*



wanted: for us to gradually disappear. Since that time three out of 12 *lettori* in my university have gone on unpaid leave for a year – and one has transferred to another university (Language teacher, central Italy, email to the author, 22 June 2010).

One additional worry concerned the security of pension entitlements. A respondent from Tuscany explained how the reclassification of *lettori* and the introduction of a new law in 2005 had substantially reduced the pensions of *lettori*.

In 2005 a new law was introduced which said that state workers should not be in INPS [Istituto Nazionale per la Previdenza Sociale: the state pension institution for private-sector workers] but rather the INPDAP [Istituto Nazionale di Previdenza per i Dipendenti dell'amministrazione Pubblica: the state pension institution for public-sector workers]. Many universities registered the *lettori* without their consent with INPDAP. On 1 January 2008

Florence registered its *lettori*. Now the problem was that where INPS calculated pensions and severance pay on the entire income, INPDAP calculates on all but *trattamento integrativo*, in some cases 60 percent of someone's salary (J., telephone interview, 22 June 2010)..

The *lettori* argued that by failing to base final pension calculations on the entirety of their salaries, they would be left in a precarious position. For this reason, *lettori* at the University of Bologna returned to court and others began to explore the possibility of bringing another case before the ECJ.

At the time of writing (July 2010), the *lettori* in Siena are in dispute with their university which, facing overwhelming debts estimated to be in the hundreds of millions of euro, had reduced the pay of *lettori* by more than 60 percent (J., telephone interview with the author, 22 June 2010). Although the *lettori* in Siena have been well protected under a 2006 contract which has enabled them to receive the same level of pay as university researchers, once that contract expired at the end of 2008, the university's Administrative Council and Academic Senate withdrew from the local agreement which had provided a significant supplement to the salaries of *lettori* (through addition of the *trattamento integrativo*, i.e. the university's contribution, to their pay) and from 1 May 2010 approximately 45 *lettori* saw their salaries reduced to just €835 per month.

### **Resistance, resignation and adaptation**

Respondents displayed mixed feelings regarding the ways in which they could address their situations within the university structure. Resignation and feelings that the odds were stacked against them were expressed throughout the interviews.

*Lettoris'* rights were trampled, they were forced to work more hours and managed to be accused of insubordination because they worked more, generally humiliated, and clearly shown that the law works one way for Italians and another way for *lettori*. The general feeling is that since so many of us are seven to eight years shy of retirement, it's time to turn the

screw another notch, and make life as unpleasant as possible so that we will quit before they have to pay us our full *liquidazione* [severance pay] (Language teacher, central Italy, 8 Aug 2007).

Respondents reiterated that they had been mistreated and that was the reason why they initiated court cases. One language teacher joked:

What have we done for you to hate us? We keep your clients active, year by year? They trust us – they know we're doing the job right. They could never do it like we do...why did X and I start the court case? It was because we weren't getting paid properly. It wasn't a career advance! (M, central Italy, focus group, 12 October 2007).

Others argued that the *lettori* problem was essentially of European-wide significance.

I think the postscript as far as advising people working inside the European Union ... or specifically working in Italy ... the postscript is don't. Don't. If the *lettori* are sorted out, they will be sorted out after 20 years of litigation. Has the Italian state changed, reformed? Will it change? Will it open up its doors? No it will not. And so therefore my advice to a young graduate, whether he was a dentist, a doctor or anything else, if you've fallen in love with a young Italian woman don't go to work in Italy (David Petrie, Edinburgh, 25 May 2006).

Several respondents stressed the importance of seeking redress before the courts and identified the ECJ as the primary instrument for ending their disagreement with the Italian universities.

In this case as foreign workers who 20 years ago came away with dreams of a unified Europe, which today is being realised and it's a Europe that's expanding, we would have expected a court of justice at any level ... not to say at least a European level ... to have upheld and protected the rights of those individuals who so strongly believed in it. You know we believe we're part of Europe (Irish woman, Brussels, 18 July 2006).

Others mentioned the possibility of industrial action, speaking of the importance of working through the Confederazione Generale Italiana del Lavoro (Italian General Confederation of Labour, CGIL) and participating in strikes and protests against the general cuts in higher education and the attack on workers' rights (J., telephone interview with the author, 22 June 2010).

### **Explanations and effects**

Elsewhere I have suggested that the origins of the *lettori* problem may be explained by interest-group competition and longstanding traditions of patronage within closed, guild-like institutions (Blitz, 1999). Several interviewees offered further, cultural, explanations of the way in which the *lettori* had been treated and degraded. One *lettore* argued that craftiness was prized in a context where the rule of law was often absent.

... Italians themselves, they divide themselves into two groups, the so called *furbo* and the *fesso*: *furbo*, which I guess you could say are sly, cunning sneaky, and the *fesso* are the chumps. And those are the two categories that Italians divide themselves into. And you can choose to be either one of those. So most people say well why a chump be, I'd rather be a sly fox. You know the rule of law doesn't really enter this equation at all (S., Verona, 22 June 2006).

Others spoke of petty corruption while one added that though when Italian colleagues saw her in a different context, outside of work, they were often pleasant, the workplace was dominated by a "battle of the ranks" (Language teacher, central Italy, 27 June 2007).

Irrespective of the underlying causes, the reclassification of the *lettori* and the restructuring of the environment in which they work have carried a heavy price. Several respondents spoke of the development of painful physical conditions and the onset of depression. One Spanish man revealed a bad case of eczema which he linked directly to his employment, noting that when he was away from the university it was much better (central Italy, focus group, 12 October 2007). He eventually left the university, opting to work as a school teacher.

A longstanding resident in Italy offered the following account of her own situation:

Psychologically it was unbearable because I felt humiliated, then an enormous sense of having been cut out of everything which was now suppressed, destroyed, annihilated. I was in the midst of a crisis of humiliation when I had an asthma attack. We were in the basement bunker and our offices were being moved when I had a violent asthma attack (French woman, Verona 21 June 2006).

Another woman based in Southern Italy added that her and her colleagues' employment situations had been the cause of considerable stress adding that "it [was] cropping up at night... cropping up in our psyche" She herself experienced many migraines, linked to tension in her jaw and as a result was forced to wear a brace at night (central Italy, focus group, 12 October 2007). Her colleague continued, "last year, I had problems sleeping – this year I had a problem with asthma" (M., central Italy, focus group, 12 October 2007). When asked about how she attributed her illness to her situation at work she explained that "you can only blow your top so much at work", and therefore she, like her suffering colleagues internalised the negative situation she found at university:

I see it as a kind of suffocation and that is connected to my pathology and asthma. But I haven't had such bad asthma attacks as this year. The trigger was the end of the academic year, also at the end of August [just before I had to return to work]. It has affected my personal life with my partner (M. central Italy, focus group, 12 October 2007).

Others noted that financial pressures, as a result of their poor pay, worries over their pensions and the cost of legal fees, contributed to their ill health.

## **Discussion and conclusion**

The above discussion reveals that the discriminatory procedures which first brought the Italian state universities into conflict with the European Union institutions did not end with the introduction of law 236. Rather, the reclassification of the *lettori* as technical staff precipitated a series of actions which gave rise to new legal challenges and personal struggles.

### *Categorisation as justification for mistreatment*

The division of the *lettori* into the three groups described above resulted in differential pay arrangements and for many also a marked demotion in terms of their occupational status. Neither law 236 nor the introduction of new contracts, however, protected the *lettori* from abuse and harassment, even if the introduction of contracts set a financial parameter, in effect a baseline for the salaries of *lettori*. Consequently, reclassification of the *lettori* corresponded with a rise in the number of local court cases, not to mention further litigation before the ECJ.

Yet, the story of the *lettori* in Italy has significance beyond the Italian university context. From the perspective of the enforcement of EU norms regarding freedom of movement and settlement, the issue reveals just how difficult it is to guarantee protection of these rights in the workplace and how quickly one's occupational status can change. All of the participants interviewed asserted that even though their titles changed from *lettore* to *collaboratori ed esperti linguistici*, the demands placed on them remained the same, if not greater.

The introduction of new terminology to reassign occupational roles also had the intended effect of creating greater distance between the non-Italians and other members of the teaching staff. New terms were accompanied by new procedures and rules, from restricting entry to certain buildings, to exclusion from both pedagogic and formal activities, to the physical separation of non-Italian teaching staff in cramped basement offices and unsuitable classrooms. Although many of the *lettori* interviewed contested their reclassification, they all agreed that the use of particular words and titles was significant in so far as it gave the university and their superiors a cover for what they perceived as mistreatment.

### *Effects on quality of life*

Conflict with the university employers had a noted effect on the lives of the *lettori*. The above accounts of stress following harassment; of financial worries and costly court proceedings, and of an overall lack of control over one's working environment, point to some of the costs for *lettori* of their employment. Several cited their unsatisfactory working environment as a cause of their ill health. Others stated that their unacceptable situations could not be solely attributed to nationality-based discrimination but was part of a larger structural problem. They reported that new

adjunct teachers and other fixed-term public-sector staff, the *precari*, also faced poor conditions of employment, and that the university system as a whole was at breaking point.

Arguably, the structural issues identified in the above accounts and above all the repeated claims of arbitrariness call into question the application of European norms in the Italian university context. Indeed, most respondents linked their dissatisfaction at work to a failure of the European Union institutions to uphold their rights in Italy.

### *Economic and institutional factors*

Elsewhere (Blitz, 1999) I have suggested that the *lettori* problem emerged as a result of budget difficulties and that the *lettori* were victims of a protected system. While resource competition within the university system may be one reason for the increasing casualisation of teaching provision, an additional factor has undoubtedly been devolution of funding to university institutions which have been left to address shortfalls in the national budget for higher education. The current challenge to protect the pensions of *lettori* is one consequence of the increasing fragmentation of the university system, with its varied contracts and different sets of entitlements based on one's legal status. Equally, the recent decision by the University of Siena to rescind the rights of *lettori* to supplemental contributions (*trattamento integrativo*) which had made up a large proportion of their salaries, is the result of extreme financial pressures within that institution.

It is also important to highlight the role of competition over status and non-material goods, including titles and teaching privileges. The fact that much of the antagonism towards the *lettori* has been expressed in the context of the introduction of specific terminology to distinguish them from university lecturers and the professoriate, demonstrates the importance of status and titles in this protracted dispute. Arguably, occupational status has for long been a valuable resource in the Italian university context;<sup>16</sup> hence, the introduction of new terminology and the attempt at reclassification must be understood as an attack on the standing of the *lettori*. It is important to record that changes in occupational status have also given rise to material consequences, as a result of the casualisation of employment, the proliferation of new types of contract, and adjustments to the pension plans of *lettori*.

### *Governance and oversight*

The *lettori* problem also raises important questions regarding institutional management and oversight. Many respondents described arbitrary procedures which interfered with their ability to do their jobs, noting that there were few effective means of redress. Several argued that the national union, the CGIL, no longer represented their interests since there was now a variety of *lettori* employed on a range of administrative or technical contracts. Others noted the presence of a *lettore* among the members of the national secretariat of the CGIL and emphasised that only the CGIL had consistently represented all the different categories, *lettori*, *ex-lettori* and CELs. Some maintained that there could be no national solution to the *lettori* problem since the situation of the *lettori* differed markedly from one institution to another. One activist within the CGIL, however, concluded that in spite of its deficiencies, the 1996 national contract had, at the very least, provided financial and normative parameters which had protected the

*lettori* and ensured that they had certain basic rights (such as a right to maternity leave, rights to leave of absence, employment protection and so on) which other workers starting employment later in the universities did not have. Nonetheless, he recognised that *lettori* were constantly forced to seek redress before the courts to receive salary payments and entitlements and in order to protect their pensions.

For many, the European institutions above all the European Commission and the ECJ are the most important arbiters in the dispute between the Italian universities and the *lettori*. This reliance on the courts and international institutions to adjudicate over employment matters exposes the lack of effective mechanisms to resolve labour disputes and further calls into question the promise of free movement and respect for other EU norms, including the prohibition against discrimination on the basis of nationality.

### Notes

1 See Article 20 (2)(a) which states that “Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: (a) the right to move and reside freely within the territory of the Member States”.

2 Article 45 (ex Article 39 TEC) provides that “Freedom of movement for workers shall be secured within the Union” and that “such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.”

3 The rights of non-nationals have been strengthened as well. On 29 April 2004 a new directive (2004/38/EC) was passed by the European Parliament and European Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This directive amended previous Regulation (EEC) No 1612/68 and repealed a number of directives to enhance the rights of EU citizens and their families. These provisions were then included in the Treaty on the Functioning of the European Union.

4 See the most recent annual report of the European Union Agency for Fundamental Rights at: [http://fra.europa.eu/fraWebsite/attachments/AR\\_2010-conf-edition\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/AR_2010-conf-edition_en.pdf) (accessed 12 May 2010).

5 For example Eurofound acknowledged that “Nonetheless, the extent to which a general principle of non-discrimination applies in the EU remains unclear”. See the European Foundation for the Improvement of Living and Working Conditions, “Non-discrimination principle”, Eurofound, 12 March 2007, [www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/NO\\_NDISCRIMINATIONPRINCIPLE.htm](http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/NO_NDISCRIMINATIONPRINCIPLE.htm) (accessed 12 May 2010).

6 See “Discrimination in the European Union”, Special Eurobarometer, 263, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_263\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_en.pdf) (accessed 12 May 2010).

7 ECJ rulings include: Case 33/88 Pilar Allué and Carmel Mary Coonan v Università degli studi di Venezia [1989] ECR 1591; joined cases C-259/91, C-331/91 and C-332/91 Pilar Allué and Carmel Mary Coonan and others v Università degli studi di Venezia and Università degli studi di Parma [1993] ECR I-4309; case C-90/96 David Petrie and Others v Università degli studi di Verona and Camilla Bettoni [1997] ECR I-6527; case C-119/04 Commission of the European Communities v Italian Republic [2006] ECR I-6885; case C-276/07 Nancy Delay v Università degli studi di Firenze, Istituto nazionale per la previdenza sociale (INPS) and Repubblica italiana [2008] ECR I-3635.

8 See Decreto Presidente Repubblica 11 luglio 1980, n. 382, Riordinamento della docenza universitaria, relativa fascia di formazione nonché sperimentazione organizzativa e didattica (Also known as La Riforma Universitaria, [w3.uniroma.it/ studiorientali/leggi/dpr\\_382\\_1980.htm](http://w3.uniroma.it/studiorientali/leggi/dpr_382_1980.htm) (accessed 14 May 2010).

9 Case 33/88 Pilar Allué and Carmel Mary Coonan v Università degli studi di Venezia [1989] ECR 1591, European Court Reports, Luxembourg: Court of Justice of the European Communities.

10 “L’article 48, paragraphe 2, du traité CEE s’oppose à ce que la législation d’un Etat membre limite en toute hypothèse à un an, avec possibilité de renouvellement, la durée des contrats de travail des lectuers de langue étrangère, alors qu’une telle limite n’existe pas, en principe en ce qui concerne les autres enseignants”, (European Court Reports, Luxembourg: Court of Justice of the European Communities, 1989, p. 1592).

11 Interview with C.S., 18 March 1996.

12 Letter sent to the European Parliament’s Committee on Petitions by Martin Reynolds and others, 3 March 1995.

13 One petitioner stated that, “Our employer still refuses to recognise these decisions and to comply with and apply in full EU law.....As a result, we are still compelled to remain under court protection and continue to be discriminated against, with respect to our Italian colleagues, in regard to: (1) social security and medical benefits; (2) pension benefits; (3) security of tenure; (4) salary scales”.

14 David Petrie, letter to Professor Enrico Decleva, 18 February 2010, [www.allsi.org/CRUIENWEB.doc](http://www.allsi.org/CRUIENWEB.doc) (accessed 14 May 2010).

15 The European Parliament commented on the office space given to the *lettori*: “the basic human rights and democratic freedoms of fourteen foreign language teachers are being violated following eviction from their offices to a basement measuring six metres by four and through other forms of intimidations and legal filibustering...” See European Parliament, Human rights – B4-0968/95, Resolution on discriminatory treatment on the grounds of nationality for foreign language teachers (*‘lettori’*) at Verona University (Italy), in violation of Article 48 of the EEC Treaty, Texts Adopted by Parliament: Final Edition: 13/07/1995, [www.europarl.europa.eu/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=950713 &LANGUE=EN&TPV=DEF&LASTCHAP=12&SDOCTA=9&TXTLST=8&Type\\_Do c=RESOL&POS=1](http://www.europarl.europa.eu/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=950713&LANGUE=EN&TPV=DEF&LASTCHAP=12&SDOCTA=9&TXTLST=8&Type_Do c=RESOL&POS=1) (accessed 14 May 2010).

16 In 1977 Burton Clark noted that Italian universities operated along vertical lines, suggesting that they tended to preserve certain feudal elements: divisions of labour depended on personal agreements among a few individuals; authority was treated as a ‘private possession’; the division between superiors and subordinates recalled the gulf between feudal lords and vassals.

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## Submission 10



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### EEF response to Review of Balance of Competences: Free Movement of Persons

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#### Overview

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1. EEF, the manufacturers' organisation, is the voice of manufacturing in the UK, representing all aspects of the manufacturing sector including engineering, aviation, defence, oil and gas, food and chemicals. With 6,000 members employing almost 1 million workers, EEF members operate in the UK, Europe and throughout the world in a dynamic and highly competitive environment.
2. In responding to this call for evidence, EEF has addressed those issues which, as an employers' representative organisation, it is qualified to, based on evidence gathered from its members. After careful consideration of the issues raised, and after consultation with our members, we do not see that in terms of the operation of the single market, and the free movement of persons, there are any areas of EU competence which the UK could realistically and beneficially seek to repatriate to the UK national Parliament. Instead, we believe that there are a limited number of areas of the operation of the single market which need improvement, and that attempts to introduce further practical or administrative barriers to the free movement of people should be resisted by the UK government, working with other like-minded member states within the EU.
3. In September 2012, EEF published its report, *The Route to Growth – An Industrial Strategy for a Stronger, Better Balanced Economy*.<sup>1</sup> In this we argued that government needs to take a new approach if the UK is to achieve better-balanced growth, with investment and exports making a greater contribution than before. The single market has a key role to play in supporting both of these.

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<sup>1</sup> EEF, the manufacturers' organisation, *The Route to Growth – An Industrial Strategy for a Stronger Better Balanced Economy* (2012)



4. To support this, our report set out four key growth ambitions:
- i) More companies bringing new products and services to market;
  - ii) More globally focused companies expanding in the UK;
  - iii) A lower cost of doing business;
  - iv) A more productive and flexible labour force.
5. The single market is important to all these growth ambitions, but particularly so for the last three.
6. Our strategy was also to set clear benchmarks to track the progress of our economic objectives, with metrics that provide an important warrant of economic fitness. Relevant to this call for evidence are the following targets, to be achieved by 2015:
- The proportion of companies exporting more than 25% of their turnover will increase;
  - Companies will see a 10% reduction in the time and money spent complying with regulation;
  - The proportion of hard-to-fill vacancies will fall to 20% and be maintained at this level.
7. Having access to skilled workers plays an important role in reaching these targets.  
Research in our reports *Skills for Growth: A more productive and flexible labour force*,<sup>2</sup> and our *Invest for Growth: More globally focused companies expanding in the UK*<sup>3</sup>, shows that skilled workers are central to manufacturers achieving their ambitions on innovation, exporting and growing their businesses.
8. However, manufacturers continue to experience recruitment problems, and with demand for skills in all areas of business expected to increase in the coming years, we anticipate that such recruitment difficulties to continue. A restricted supply of skilled workers will limit the ability of the sector to grow, and consultations with our members in advance of submitting this response, and our *Invest for Growth*<sup>4</sup> report, revealed that the supply of skilled workers is already influencing their decisions as to where to invest.

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<sup>2</sup> EEF, the manufacturers' organisation, *Skills for Growth: A more productive and flexible labour force* (2012)

<sup>3</sup> EEF, the manufacturers' organisation, *Invest for Growth: More globally focused companies expanding in the UK* (2013)

<sup>4</sup> EEF, the manufacturers' organisation, *Invest for Growth: More globally focused companies expanding in the UK* (2013)

9. We must therefore ensure that employers have access to the best possible workers, and Government must encourage such supply, and not restrict it. The free movement of persons within the EU has very much been a success story; businesses have become familiar with the ability to recruit skilled workers from the EEA, and have seen the free movement of persons as a positive channel that widens the available talent pool. This is in contrast to the difficulties businesses have experienced, and continue to experience, in recruiting non-EEA workers. We have raised these issues in previous submissions to the UKBA and Migration Advisory Committee (MAC).<sup>5</sup>
10. The reliance manufacturers have placed on the free movement of persons goes beyond the recruitment of already economically active workers, and extends to students also. We would not want to see employers in the future struggle to recruit EU graduates in the same way as they currently do in recruiting non-EEA graduates. Any additional restrictions on free movement of persons will also impact the number of students studying key subjects in the sciences, technologies, engineering and maths at UK universities.
11. In addition, any analysis of the internal market must include both inward and outward migration. Outward migration from the UK also brings with it significant benefits to the UK's businesses. Many manufacturers in the UK operate globally<sup>6</sup>, with significant footprints in other EU member states. Frequently, even medium sized UK manufacturers have additional sites in the EU, or their supply chains, upon which they rely, and may be based in Europe. The ability for such businesses to post workers temporarily provides significant economic benefits to the UK.
12. Repatriating any element of immigration controls will be seen by other EU member states, and the EU institutions, as undermining the single market at a time when the clear direction of travel is to support and augment the free movement of people. We therefore believe that it is unrealistic to attempt any detailed analysis of elements of immigration policy which could be separated and repatriated to the UK Parliament. The free movement of persons is so fundamental to the operation of the single market that it is unlikely that other EU member states would agree to additional controls over their nationals whilst the UK would retain its current access to the single market.
13. Instead, we believe that the analysis of the single market should focus upon its improvement, removing the current obstacles outlined in this submission and preventing further unnecessary blockages being added through additional regulation by working with other EU member states.

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<sup>5</sup> <http://www.eef.org.uk/representation/consultations/submissions/skills-and-education/>

<sup>6</sup> EEF, the manufacturers' organisation, Flexibility in the modern manufacturing workplace (2011)

We therefore believe that further work is needed to reform the Working Time Directive, and the portability of pensions for example. These issues will be of greater importance to employers than a dissection of the current treaty obligations of the UK. In summary, we do not favour a “pick and mix” approach to the single market.

14. Finally, much of the call for evidence focuses upon the entitlement of EU migrants to claim UK social security benefits. Much of this debate is outside our area of direct interest; however, employers need clarity and consistency. They must clearly know what they are required to contribute for each worker they employ, whether this varies when the worker is in another member state and if the period of time for which the worker is outside the UK impacts upon who the recipient is and the prevailing rate. Whilst this may superficially appear straightforward, many of the workers who travel between member states do so on a time limited basis; the rules for the payment of social security contributions where workers are recruited or posted temporarily are therefore of the greatest relevance to employers in this area of the debate. Any further complexity, even if this involved the UK having greater control over the payment of its own social security benefits, would bring an additional cost to UK businesses.

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**What evidence do you have on the impact on the UK of EU competence on the free movement of persons, and what is the impact of this area of EU competence on employment sectors?**

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***As manufacturers continue to experience difficulties recruiting, and skills gaps grow, access to the EU labour market is more important than ever***

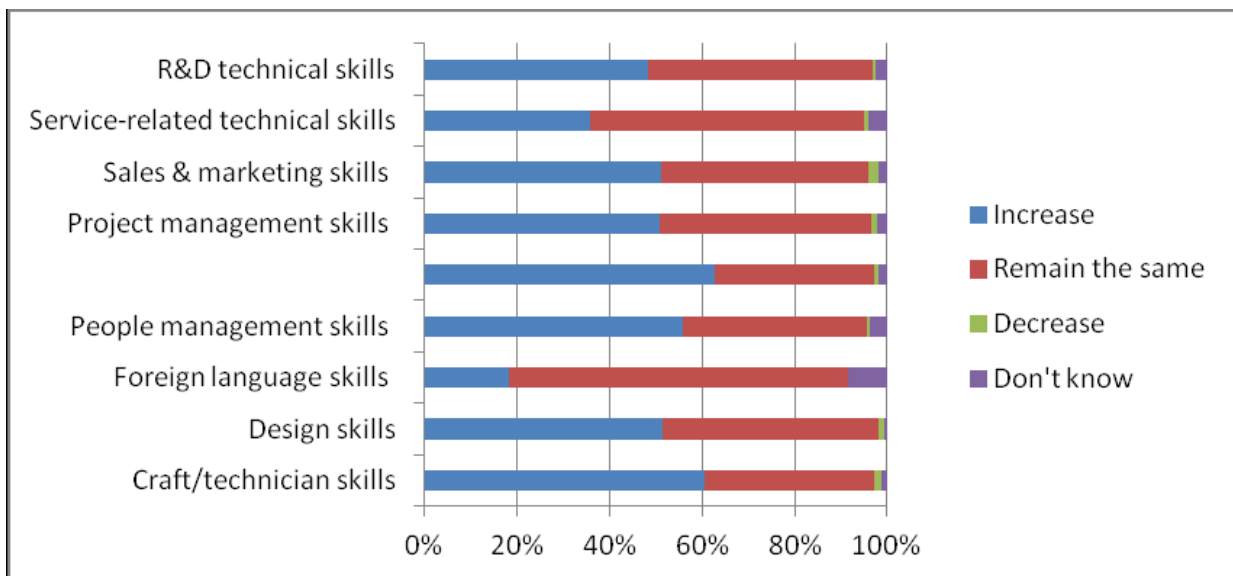
15. Our skills survey revealed that for three-quarters of employers, finding employees with the rights skills was one of their key business concerns; almost a half said it was their main concern. Such concerns will be exacerbated in the coming years, as manufacturers expect demand for skills across the entirety of the business to increase and an ageing workforce results in high numbers of engineers retiring. To compete in global markets, manufacturers must continuously focus on developing new products, services and processes.

16. The free movement of people will therefore play a key role in the future of the sector. Our skills survey also showed that almost a quarter of manufacturers recruit EU workers to bring in new skills into the workforce; and 11% of companies that said they recruit non- EU workers. Such figures demonstrate the dependency manufacturers have on workers from outside the UK.

17. The areas where manufacturers expect skill needs to increase (See Chart 1) most reflect their overall growth strategies:

- Launching new products – R&D, technical and design skills
- Developing new services – service related, technical skills
- Selling into new markets – sales and marketing skills
- Introducing new processes – project management, craft and technical skills

**Chart 1: Demand for skills sets expected to rise across all areas of business, % of companies saying demand for skills expected to increase in next three years**



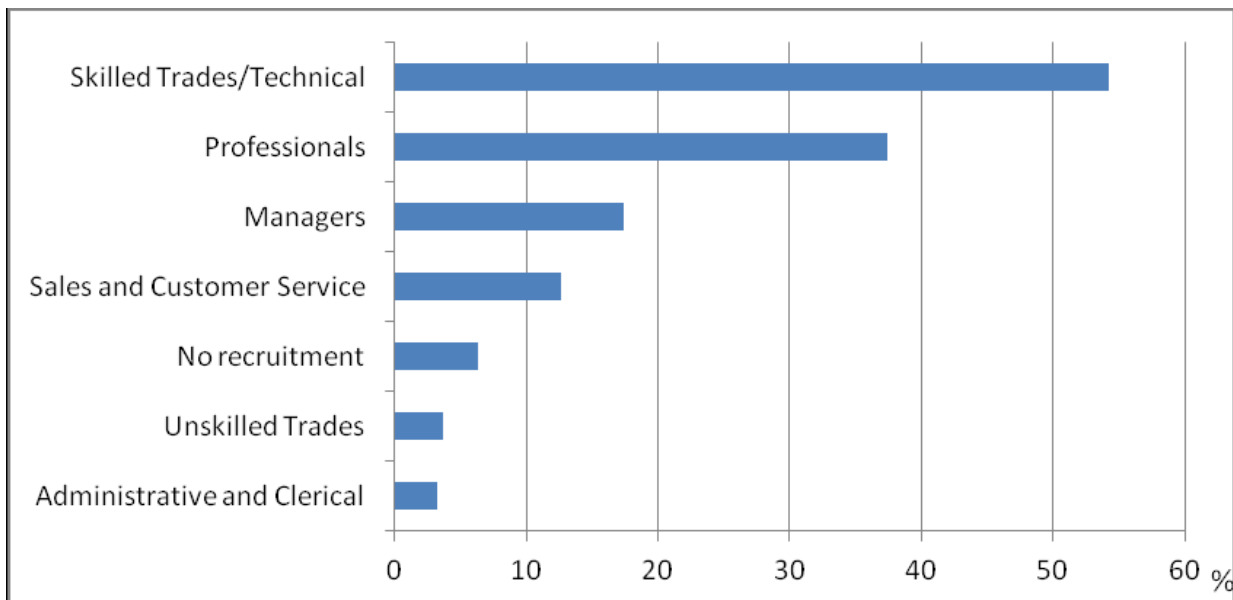
**Source: EEF Skills Survey 2012**

18. Whilst firms are responding to this through increased investment in skills, offering Apprenticeships and developing stronger links with schools and colleges, our research indicates that this is not enough. What is often needed is recruitment from outside the UK, and within the EEA, to meet the sector's demand for skilled workers.

19. Whilst much of this submission will focus on the need for businesses to access the widest pool of talent possible to fulfil their growing skills needs, it is worth noting that highly skilled migrants do not only fill skills shortages but often complement and enhance the skills of the resident labour market. In addition, manufacturers will often recruit from outside the UK to improve international networks and trade links, supporting them to fulfil their growth ambitions and launch into new markets. To achieve this, and meet our benchmark for the proportion of companies exporting more than 25% of their turnover to increase, Government must not restrict businesses access to the EU labour market.

20. Even before projections for future needs, manufacturers existing demand for skills have resulted in recruitment problems. Four in five firms are currently experiencing recruitment problems, and that these exist across the board (See Chart 2). Such recruitment problems are being experienced in all sectors within manufacturing, as well as by companies of all sizes. Table A2 of the call for evidence reveals that 16% of EEA (ex UK) workers occupy professional occupations and 12% occupy skilled trade occupations.<sup>7</sup> These are key areas of shortage for manufacturers where the domestic labour market cannot meet demand; over a half of companies identify skilled trades as an area where they are experiencing recruitment difficulties. Professional positions are another problem area, particularly for larger companies.

**Chart 2: Demand for skills sets expected to rise across all areas of business, % of companies saying demand for skills expected to increase in next three years**



**Source: EEF Skills Survey 2012**

21. Recruitment problems within manufacturing are acknowledged by others including the UK Commission for Employment and Skills (UKCES). Whilst the average number of hard-to-fill vacancies across the UK economy currently stands at 23%, this increases to 30% for manufacturing, one of the highest across all industries.<sup>8</sup> Looking at the economy-wide figure, our Route to Growth report set out a clear benchmark to Government to reduce the number of

<sup>7</sup> Home Office, A Review of Balance of Competences – Free Movement of Persons, Table A2

<sup>8</sup> UKCES, Employer Skills Survey 2012 (2012)

hard-to-fill vacancies to 20% in 2013 and be maintained at this rate. We would expect such figures to rise, and Government fail to hit our target, should the UK withdraw from the EU.

22. Table A.1 in the call for evidence<sup>9</sup> reveals that 10% of working age UK nationals work in manufacturing, compared to 15% of EU (ex UK) nationals. This illustrates that, though we are now starting to see a revival in efforts to improve the pipeline of talent going to into manufacturing, UK manufacturing is reliant on access to workers from the rest of the EU. In addition, evidence from our membership suggests that manufacturers are recruiting EU migrants for their work ethic as well as their ability and willingness to fill vacancies, at all levels, within the industry. The free movement of persons is underpinned by rights including protection against discrimination in the grounds of nationality with regards to employment. We have found that far from discriminating against EU workers on the grounds of their nationality, they find them to be highly productive workers that bring about high economic returns to their business.

*Businesses look to EU students, as well as economically active workers, to meet their current and future skills need*

23. As outlined in the call for evidence document the majority (59%) of EU migrants state that their main reason for migrating to the UK was for work related reasons, however a further 26% of EU migrants come to the UK to study. This is an important factor to consider, as those that come to the UK to study can then be recruited by employers upon completing their studies, and are likely to have relevant academic qualifications required by UK employers, together with a good standard of English.

24. Looking at UCAS Annual Data for 2012 Entry<sup>10</sup>, non-EU students account for 18% of engineering degrees (excluding Foundation Degree and HND) acceptances. This is of concern for manufacturers as they then struggle to recruit non-EU graduates due to the Government's decision to abolish the Tier 1 post-study work route. This route allowed non-EU students, who had graduated from a UK university to seek employment for a period of two years before returning to their residing country. This therefore widened the graduate pool available to employers. Now a student on a Tier 4 must switch to Tier 2 – with a job offer from an employer, who has a sponsor licence. We would not want to see employers' access to EU students restricted in the same way.

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<sup>9</sup> Home Office, A Review of Balance of Competences – Free Movement of Persons, Table A.1

<sup>10</sup> UCAS, Annual Data for 2012 Entry <http://www.ucas.com/data-analysis>

25. If there was a restriction on EU students (ex UK), then this would be a further 7% of engineering students to which manufacturers will not have easy access. Other subject degrees of concern would be Technologies (10% non-EU, 7% EU, ex UK), Physical Sciences (5% Non-EU, 4% EU, ex UK) and Computer Sciences (5% non EU, 6% EU, non UK). Restrictions on students will undoubtedly impact on universities, in particular damaging the UK's reputation as a global leader in higher education.
26. Furthermore, if it becomes difficult for EU students to stay in the UK after completing their studies, this has potential implications wider than manufacturers struggling to recruit. For example, investors that might want to invest in the UK and then commercialise their research in the UK would be less likely to do so and will take their innovative ideas elsewhere if they were not able to recruit EU graduates, post-graduates and post-doctorates.

*Employers face challenges in recruiting students and workers from outside the EEA; we must not place similar restrictions on the EU*

27. Without the free movement of persons, employers are likely to be faced with similar restrictions applied to non-EEA employees. There would be little point in repatriating the competence, and then leaving the current system unchanged. This has been the case following the accession of Croatia to the EU, whereby Croatian nationals need work authorisation subject to restrictions similar to those under Tier 2 for non-EEA nationals working in the UK.<sup>11</sup> The system for employers recruiting non-EEA workers is complex and bureaucratic, with SMEs in particular finding it difficult to navigate through a confused and complicated system. In addition, the recruitment of non-EEA workers is costly, not just in terms of administrative and management time, but also in obtaining a sponsorship licence and applying for certificates of sponsorships. We would not want to see this replicated when accessing EU workers in the future.
28. In contrast, the free movement of persons has been a success story. Businesses have become familiar with the ability to recruit skilled workers from the EEA, and have seen the free movement of persons as a positive channel that widens the available talent pool. For manufacturers, the free movement has continued to focus on economically active workers, which has supported them to fill skills and employment gaps within their businesses.

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<sup>11</sup> UKBA, Croatian Nationals – Living and working in the UK  
<http://www.ukba.homeoffice.gov.uk/eucitizens/croatia/liveworkuk/>

Manufacturers differentiate between free movement and border controls, with an understanding of the arguments for the latter. Extending the scope of free movement rights beyond just economic actors to students for example is not a concern to employers, but in fact increases their ability to recruit skilled EU graduates, as discussed above.

*Businesses benefit from outward EU migration also; workers can gain skills and knowledge that helps companies achieve their growth ambitions*

29. As well as benefiting from recruiting EU workers to their businesses, the free movement of persons also allows businesses to post workers to member states. This can have benefits such as encouraging trade links and knowledge transfer. In addition, the free movement of persons allows for intra-company transfers within the EEA. This process would become far more complex, strict and time-consuming should the UK withdraw from the EU and employers would need to comply with the same conditions as when recruiting non-EEA workers, our concerns around which are discussed above.
30. Any analysis of the internal market must therefore include both inward and outward migration. Outward migration from the UK also brings with it significant benefits to the UK's businesses. Many manufacturers in the UK operate globally<sup>12</sup>, with significant footprints in other EU member states. Frequently, even medium sized UK manufacturers have additional sites in the EU, or their supply chains, upon which they rely, may be based in Europe. The ability for such businesses to post workers temporarily provides significant economic benefits to the UK. Workers are able to gain additional skills and experience which they are then able to bring with them when they return to the UK.
31. UK businesses are able to support exports more effectively with UK workers based close to EU markets, or collaborate with partners in Europe to produce or promote new products. EEF members take for granted the ability to transfers employees with a company group, making the UK a more attractive venue for investment as a result, and any restriction upon this will damage the ability of UK-based manufacturers to compete



equally with their European counterparts. Decisions which parent companies take upon where to invest, or which business units to restructure, will in part be based upon the ease with which workers can migrate. Even if the UK could secure a new settlement with the EU, this would be detrimental to UK businesses if the cost of compliance and administrative burdens were to increase.

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**How would sectors and UK nationals benefit from the EU doing a)more or b)less in this area?**

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*Manufacturers' ability to compete on a global stage is dependent on the UK's labour market – we must retain its flexibility*

32. Many global trends in recent decades have created competitive pressures as well as opportunities for UK manufacturers. Companies have responded by focusing more on innovation, new products, processes and services linked to manufacturing. Much of this has been dependent on the ability of such firms to respond to changing markets and circumstances, and having access to workers with the skills, and the markets within which those skilled workers operate, is vital.
33. The ability of firms to respond rapidly is dependent on the UK's labour market, which has remained relatively flexible compared to some other countries. Such flexibility has allowed UK companies to recruit a range of people and adopt new production strategies in order to respond quickly to changing demand. A 2011 EEF survey<sup>13</sup> revealed that an overwhelming majority of companies (97%) agreed that responsiveness is one of the main factors driving their need for flexibility in the workplace. In addition, nearly nine in ten companies agreed that they need to be flexible to respond to changes in the type of products their customers are looking to supply. Manufacturers also need to be flexible in order to enter into new markets and bring products and services to market quickly. The ability to recruit EU workers again plays a key role here, and the free movement of persons has to date allowed this ease of access.
34. Employment legislation such as the Agency Workers Directive has already eroded this flexibility, with more legislation from the UK government, including flexible working and shared parental leave in the pipeline. Government must ensure that this does not continue. Pulling out of the EU's free movement labour system would dramatically erode the flexibility of the UK labour market.

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<sup>13</sup> EEF, the manufacturers' organisation, Flexibility in the modern manufacturing workplace (2011)

*There is more the EU can do to enhance the benefit of UK businesses from the single market*

35. Looking forward the focus for Government must be on enhancing and protecting the integrity of the European single market. Any derived rights subject to abuse for example must be reformed as a single block to ensure a level playing field. In addition, there is still much work to do to create better regulations at both a national and European level. Employers must be aware of their obligations, and employees must be aware of their entitlements, both when recruiting EU workers, and posting UK workers to member states. As such, regulations within the free movement of persons must be transparent and clear.
36. Policymakers in Brussels are showing an increased awareness of the need for smarter, more targeted regulation, and towards evidence-based law making. The recent publication of the European Commission's "Top Ten" most burdensome regulations<sup>14</sup> demonstrates a commitment to this process, and the UK should support this initiative positively. The recent creation of an independent impact assessment unit within the European Parliament will only assist the critical examination of future legislation. Many of the regulations identified by the Commission have a direct bearing upon the efficiency of the single market, and the follow up to this work recently published<sup>15</sup> we believe is evidence that the EU is at least pointing in direction which the UK would want it to be.
37. Specifically, we believe that the EU could do more to enhance the benefit to UK employers from the single market in the following areas,
- Posting of Workers. The current directive, (96/71/EC) prescribes rules for employers when workers are sent to work temporarily in a member state other than that which they habitually work. Current work in the European Parliament proposes a significant extension of these rules<sup>16</sup>, the effect of which would be to create de facto barriers to the free movement of workers.
  - Most commentators agree that the Working Time Directive needs revision, however, little progress has been made to date, despite several consultative exercises by the European Commission and social partner negotiations in 2012. The current directive restricts the flexibility of both employers and workers to work longer hours in a concentrated period of time, and to average the required 48 hours over a period longer than 17 weeks.

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<sup>14</sup> [http://ec.europa.eu/europe2020/pdf/top10\\_en.pdf](http://ec.europa.eu/europe2020/pdf/top10_en.pdf)

<sup>15</sup> [http://ec.europa.eu/europe2020/pdf/top10\\_en.pdf](http://ec.europa.eu/europe2020/pdf/top10_en.pdf)

<sup>16</sup> <http://www.europarl.europa.eu/committees/en/empl/draft-reports.html?linkedDocument=true&ufolderComCode=EMPL&ufolderLegId=7&ufolderId=09227&urefProcYear=&urefProcNum=&urefProcCode=#menuzone>

Employers conducting project work with a limited pool of workers in a compressed period in a number of different member states for example face unnecessary restrictions upon working hours. The UK already has extensive health and safety legislation bearing down upon employers, and the Directive adds little to the protection of workers.

- Social security coordination is a contentious area and one where the UK Government has challenged the view of the EU institutions of entitlement to UK benefits. These are largely issues for Government, not employers; however, employers require stable and transparent rules to operate effectively. Whilst significant differentials exist in the rate of employer social security contributions, for example between Belgium and the UK, these will have a practical impact upon employers' choice of where to position their workforce. The current regime for the payment by employers of social security is overly complex and a hindrance to the free movement of workers. The general rule under regulation 883/2004 is that the employer contribution is paid in the country where the employee works, irrespective of where the employer is based or the family of the worker resides. However, an exception to this general rule is where a worker is posted in accordance with directive 96/71/EC. Whether a worker is, or is not, a posted worker is a matter of significant contention, (see footnote 6 above and the debates within the European Parliament), and so employers can be left in considerable doubt as to which country they are liable to pay social security contributions in.

This uncertainty is damaging to the UK, as it is possible that contributions which should be paid to the UK Government are currently being paid to other member states owing to uncertainty as to when a worker is a posted worker. In addition, an employer cannot replace a worker posted for two years or more with another similar worker and avoid the payment of social security in the host member state. Whilst an employer may in posted cases continue to pay the social security payments in the UK for a period of 2 years, this can be extended to 5 years with the agreement of the host member state. We understand that this agreement is usually forthcoming. After a period of 5 years, the employer must then pay the social security contribution in the member state in which the worker is working. The position is complicated further, as the applicable employment law is likely to be that of the home member state for the first year, (the UK in our example), and thereafter the member state where the worker is working, with the exception of posted workers where the employer must comply with the limited requirements set out in the directive. Tax is subject to further, different, rules, (based on the 183 day rule).

Clearly, there is an urgent need to simplify the rules around the payment of tax and social security for employees who work temporarily, or permanently, in different member states. We would add that the UK could only influence this debate from within the EU and that common rules throughout the EU would be beneficial to most employers.

38. A reduction in the time and cost of complying with regulation would bring substantial benefits to both employers and workers. Many more employers would be able to take advantage of the free movement of labour if such administrative barriers were reduced.

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**FOR FURTHER INFORMATION CONTACT:**



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**Submission 11**

<b>Name</b>	Martina Weitsch
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<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
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<b>Email</b>	██

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

Free movement rights provide UK and other EU nationals with access to a wider job market and wider cultural and social experience. That has to be good in a globalised world.

There are claims that this 'overloads' the UK public services and infrastructure. Whilst there may well be pressure points, in my view they are overplayed by politicians and the media.

There are (according to your own figures) 4 countries where there are more UK citizens living there than their citizens living here (Spain, Ireland, France and Germany); if there were any restrictions on free movement, these UK citizens would, arguably have to come back. Would they want to? Would the UK benefit from this? The free movement of students opens up a wide range of educational opportunities for UK (and other) students which will no doubt enhance their career prospects.

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

My own experience of living in another EU country (Belgium) for 10 years was that the fact that there is EU competence made some things easier; but there were also areas where this was not well developed enough.

For example my experience with the double taxation agreement (not an EU competence if my experience is anything to go by) was both difficult to understand and seemed to me to impact negatively on my income, as there were areas where I was taxed in both countries on the same income.

In fact, my own view is that taxation, voting rights, and access to benefits and service could be far more streamlined so that they derive from the country of residence in all cases. That's what I understand by European citizenship.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

I have no doubt that some public services are impacted by the demands of potential or actual clients who do not speak English well. That said, the more recent migrants (and those who are the subject of this consultation who are coming from European countries) do tend to speak some English and in my experience do as much as they can to get better at English when they are here. My experience of British expats in other EU countries isn't that positive in terms of willingness to learn the language. There have been studies that indicate that EU migrants use the health service less than UK citizens because of their age profile; clearly, where EU migrants have children, they will make demands on schools and in areas where this is a significant issue there needs to be provision made for them.

The fact that probably many of the UK migrants to France and Spain are older and do not have school age children will mean that this is different there. But in turn, they will make more demands on health and social care services. So it's really swings and roundabouts. But the information in the media obfuscates this.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

In my experience of living in other EU Member States there was both less hostility and less hassle than there is in the UK vis-à-vis EU nationals from other Member States. There was much more of an acceptance that this is the norm.

I think the action that is necessary (and that has to be at EU level through either cooperation or through EU legislation) is to sort out some of the issues about double taxation and some of the issues about benefits.

There are, in my view, some anomalies in the eligibility of people to UK benefits whilst not residing here. This is as much of an anomaly for UK citizens as for other EU citizens who have had periods of residence in the UK.

I do not see why for example, anyone not resident in the UK should be entitled to child benefit from the UK. I do not see why UK pensioners should be entitled to winter fuel allowance whilst resident in another country in the EU. There are no doubt other examples. But if the benefits systems of all Member States were scrutinised in a systematic way, these anomalies could be rectified, I am sure.

## Questions in relation to the labour market.

### **5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

My experience since returning to the UK in 2012 is that in certain occupations there is a predominance of people who, on the face of it, are likely not to be UK born/UK citizens.

This is borne out by your own figures. However, from my point of view this is a very good thing. If we did not have these people working in the industries that apparently UK-born people are less likely to want to work in, then this would have significant impact on those industries (agriculture, food, services, and the health service in particular). The arguments often put forward that 'they are pricing 'us' out of jobs' only reveals that the minimum wage (and this is not even enough, it should be a living wage) is not being enforced rigorously enough.

No doubt, foreign-born workers would like to get the 'rate for the job'; it is up to employers to pay that and it is up to the government to enforce that. If that were to lead to more UK-born citizens wanting to work in these industries: good on them and they would no doubt be able to compete fairly with others.

### **6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

See my response above. In my experience, the proportion of Belgians working in these areas in Belgium was higher than UK citizens in the UK; that may well be because in Belgium wages are higher and more attractive even for jobs that aren't very glamorous.

We live in a society that prides itself on being a market economy where the market is unfettered. In many areas this goes far too far in my view. But why should there be shackles on the employment market (in the form of barriers to migration within the single market) that are not evident or even thought about in terms of goods and capital.

It's ok to sell our water to French companies who can then profit from our water bills; but it's not ok for a Polish plumber to come here and provide a decent, efficient and pleasant plumbing service?

I recently wanted a small job doing in my flat; I tried several 'local' people to give me a quote: no joy!

### **7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**



This question is completely unanswerable because it is far too wide.

There is something quite wrong with the wage structure in this country. The government subsidises businesses by giving low-paid workers tax credits; but this has nothing to do with immigration.

Where EU citizens offer services (such as building and construction services) as self-employed businesses, then their prices and pay is their business from the customer's point of view; however, there should be - in all small and large businesses and irrespective of the nationality of either the owner or the employees - strict controls regarding minimum wages - at least - and transparency in terms of tax and VAT.

In my experience of dealing with companies especially in small domestic services (gardening, constructions, minor repair and servicing) there are those who do the right thing and those who don't. If customers are tempted to support the wrong approach because it's cheaper, don't blame immigrants.

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

I don't think that the EU needs to do much more; we have freedom of movement; what is now important is to make sure it works. That's about implementation and improving the rules where they don't achieve the desired results.

That makes sense for all Member States and so it makes sense to do it together.

The only way to make fundamental changes to the free movement of people would be to stop it; in other words, to put limitations on the freedom of movement - which is to reintroduce migration controls for EU nationals.

This would be tantamount to undermining one of the basic principles and freedoms of the EU; but it would also lead to a reinforcement of nationalism; and nationalism has been catastrophic for Europe (including the UK). So we should be very careful to lose something that has contributed to peace in the Europe for over 60 years.

## Questions in relation to social security coordination.

### **9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

I think it is very important that there is coordination because people move between countries and they need to make sure their social security contributions and benefits work the way they are meant to work.

For example, if a UK citizen works in another EU country and earns a state pension, it is important that they can access this without undue fuss when they get to pension age; the easiest way to do this is by pension services working effectively together.

Similarly, if someone moves to another country, works there and pays into the system through their taxes, then they should be entitled to the benefits that that system provides.

Nobody says (anymore) that if someone from Scotland works in England they should go back to Scotland for their JSA when they become unemployed; in a globalised world, the same should be the case right across the EU. To make that fully acceptable, the safety net in all EUMS should be comparable and that takes coordination and cooperation.

### **10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

There is no evidence that the current balance of competences is having a disproportionate impact on the UK. The numbers of people from EUMS living here and the numbers of UK citizens living in other EUMS don't bear it out. The reason public confidence in that system is undermined is because of the way in which this is portrayed both by the government (and other political parties) and by the media. So the way to address the public confidence issue is to publish some hard evidence that shows what the true situation is.

That means that the government has to come out clearly to show the benefits of migration: the benefits to the UK economy of having people here from other EU countries that contribute to the economy and that are prepared to do jobs which UK citizens often aren't prepared to do; and the benefits to UK citizens who can move freely to other EU Member States and pursue their careers and lives there.

And where there is a real impact on public services, solutions need to be found that do not vilify migrants.

## Questions in relation to Immigration.

### **11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

First of all in my view the graphs in your document are incredibly confusing and misleading. Especially the second graph (by excluding UK citizens: I presume both in the immigration - i.e. UK citizens coming back having lived in other EUMS and in the emigration - i.e. UK citizens moving to other EUMS) this is quite misleading.

The fact that there are quite a number of UK citizens who move to other EUMS has to be part of the discussion.

Other EUMS have systems of registration for their own citizens and UK citizens (and other citizens of EUMS) have to comply with that system. That allows them to keep track of where people are. The fact that the UK does not have such a system is not a result of EU competence.

Within reason (and without making an ID card a complete profile of the person including their health records and their library borrowing) I am in favour of an ID card system for everyone.

### **12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

There is much talk about 'Britain being full'; but in terms of population density, the UK ranks 53 in the world and Malta (rank 8), the Netherlands (rank 24), and Belgium (rank 34) are all more densely populated than the UK.

One of the key issues for the UK is that certain parts of the country are grossly overpopulated but this isn't because of immigration but because of the concentration of economic activity there; this is a long-term failure of successive UK governments to ensure that the country as a whole had economic activity commensurate with the needs of society and not only in the South East. The fact that there are large numbers of seasonal migrants in certain parts of the country has to do with the distribution of agricultural activity and the need for seasonal workers.

One of the key problems for rural communities has been - and that has been the case for decades - the cost of homes and the restrictions on building with the effect that local people can't get into the housing market without inheriting. That is a failure of housing and planning policy, and has little to do with migration.

### **13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

I don't think that there is any need for a change in the balance of competence. What is needed is competent administration of the systems that are said to be subject to abuse.

The rules are all there; they need to be enforced. If the NHS can't claim back money it is entitled to from other EU health services, then that is not the fault of EU citizens requiring urgent medical care when here. If people do abuse the system that should be addressed. But there is little evidence that there is any large scale systematic abuse.

The media create scare stories and then that becomes accepted wisdom. The government shouldn't pander to this but it does so because that wins votes.

### Questions relating to future options and challenges.

#### **14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

I think all this will settle down over time; there is clear evidence that many of the people who have come here from Eastern Europe want to go back when the economies there are better - and they already are; the hype about Romania and Bulgaria is ill-founded.

On the basis of even your own figures, even if Romanian and Bulgarian citizens came here in the proportions reflected in the figures for EU citizens resident in the UK in 2011 for Poland, for example, then that would be under half a million people; and of course, at the same time, some of the ones already here will go back.

#### **15. What impact would any future enlargement of the EU have on the operation of free movement?**

Croatia has just joined; the other accession states are: Montenegro, Serbia, Bosnia & Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Albania, Turkey and Iceland. The total population of all of these except Turkey is: 22.8 million. That is a relatively small number and of course, there is no suggestion that 'they will all flock to the UK'; indeed, Croatia is now a Member State and has 4.3 million inhabitants.

As for Turkey, that would be a much bigger issue; Turkey has a population of 75.5 million (somewhere between Germany and the UK); but of course, the Ankara Agreement - which the UK has been bound by since 1973 - already allows Turkish citizens access to the UK and other EUMS on a more preferential basis than other third country nationals. And whilst there are Turkish citizens in the UK now, this isn't a major problem. Accession would open up the UK and other EUMS labour market a little more. But as the UK has been a keen supporter of Turkish accession, there appears little concern with regard to this on the part of successive governments.

## General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

I am very keen to underline the beneficial impact that the experience of living in other countries has on the cultural and social awareness and tolerance of most people. This also applies in the same way to experiencing people from other countries who come to live in our country. So anything that encourages people to move, to experience other cultures and getting to know people from other countries beyond just tourism better is a good thing.

Rather than restricting immigration from other EUMS, would it not be better to encourage - especially at school level - more awareness of the rich cultural heritage that people from different countries bring into a community?

There are many examples where schools have, for example, festivals where pupils and teachers from different backgrounds share their songs, their dances, their food and their national costumes. Such programmes should be supported and become part of the main programme of the annual school timetable.

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

**Submission 12**

<b>Name</b>	Alan Reid
<b>Organisation/Company (if applicable)</b>	
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	████████████████████
<b>Email</b>	██

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	x <input type="checkbox"/>	British citizen, retired in Belgium

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

## Questions in relation to the labour market.

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

**7. What evidence do you have of the impact on UK nationals and non-UK**

**nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

**Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**



**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

17.

The mentions of 'border checks' in this consultation and in the 'Asylum and Immigration' consultation, taken together or separately, are muddled and deficient. They provide no basis for comment.

There are two terse sentences on border checks: '*Free movement is not the same as having border controls. Under the rules of free movement, Member States, such as the UK, may still apply border checks.*' It would have helped understanding if the rules in the Free Movement directive had been given:

*"Without prejudice to the provision of travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport...no entry visa or equivalent formality may be imposed on Union citizens."*

In other words, for British and other EU/EEA nationals entering the UK, formalities such as stamping of a passport, or questioning of motives, are not allowed (except in delimited circumstances). Both consultations fail to mention that, under the Directive, British citizens can also enter other Member States without having their passport stamped, or being questioned.

Of course, EU/EEA nationals who remain in another Member State will have to register locally in due course, in accordance with national rules.

Inexplicably, in the consultation on 'Asylum and Immigration', there is more detail than here on entry and exit (?) border checks on UK and other EU/EEA nationals. Moreover, some of these details do not properly recognise the rules quoted above.

Also mentioned in the other consultation are the juxtaposed UK immigration checks in France and Belgium (but not the corresponding juxtaposed checks in the UK). In my limited experience, juxtaposed UK officers also conduct disproportionate Eurostar ticket checks which have no basis in law (i.e. they are only administrative checks). On the other hand, the juxtaposed checks in the UK respect the rules quoted above.

**Submission 13**

**From:** [REDACTED]

**Sent:** 23 July 2013 11:22

**To:** FreeMovementofPersonsBoC

**Subject:** FW: Submission to Balance of competencies

Please find links below to submissions on behalf of the Fresh Start Project (the files seem to be too large to send).

<http://www.eufreshstart.org/downloads/immigration-chapter.pdf>

<http://www.eufreshstart.org/downloads/making-the-most-of-free-movement.pdf>

<http://www.eufreshstart.org/downloads/appg-for-european-reform-report.pdf>

<http://www.eufreshstart.org/downloads/manifestoforchange.pdf>

Please let me know if you would like further information.

With best wishes,

[REDACTED]

**Submission 14**

<b>Name</b>	Brian Cave
<b>Organisation/Company (if applicable)</b>	Pensioners Debout!
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<b>Department (if applicable)</b>	
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<b>Email</b>	████████████████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	Web Site for the Interest and Concern of Pensioners in France in relation the EU regulations.

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

### 1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?

Since 1973 the number of British pensioners resident in France has risen from almost zero to 59,000. There are 450,000 across the EU outside of the UK. It is clear that the EU has enabled easier movement of peoples. Many pensioners are in relatively low income brackets. In 1973 only the relatively well-off could have moved to the continent.

#### Effect on the UK

These aging people are not using the physical resources of the health service in the UK –that is to say the hospitals, and the time and expertise of the medical professionals .

They free up the housing stock. Most sell their housing and buy more cheaply on the continent.

However they do have some demands on the UK for costings for health and benefits. BUT the lack of uniformity in the costing of health across the EU is a considerable inhibiting factor. See below on this....

The movement of Sterling to Euros in pensions and benefits can be perceived as a negative effect on the British economy. BUT most pensioners have or would like savings in Sterling – Yet are frustrated by British regulations in doing this. Again see below.

The exchange rate depreciation £/€ since 2008 has been a considerable problem for many British pensioners in France.

I believe the movement of pensioners is on balance good for Britain –

- Reduces demand on physical resources in Britain.
- Enhances the culture of Britain and Britishness in Europe.
- Helps trade in British services and goods.

### 2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?

It is really quite easy for UK nationals to move and work in France. They can access French benefits and services easily enough.

### **3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

As I mention above – The movement of pensioners frees up medical and certain physical benefit provision (bus passes!) in Britain –Regrettably the British Government does not realise that quite a few British pensioners in France are living on very meagre incomes indeed. The British Government should understand and help –at least with moral support. It is felt that the UK Government has no interest in them. It is the responsibility of Governments to care for the citizen.

A Nation is the citizen body not a territory!

The UK is under EU LAW the 'Competent State' for Welfare Protection of the British Pensioners. But the UK ignores and fails to fulfil this duty of care. It has for many years attempted to withhold the benefits which would greatly assist the pensioner to move to France (and other EU countries).

### **4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

To return to the theme of health care. The interpretation of the EU regulations ACROSS the whole of Europe is affecting free movement. Although the UK is the 'competent state' for the welfare of the British Pensioner in France, the pensioner needs to take out health insurance. A married couple aged about 80 needs to find about 1,500 euros a year in health insurance. This covers about 20-30% of the medical costs. The French health service treatment is good, but much of the cost falls on the patients and it hits hard on the British pensioner who paid into the NHS via NI and of course would receive free healthcare within the UK.

A solution to this is as follows. Each nation which is the 'Competent State' in law for the pensioner should expect the pensioner to be costed/charged 'as though he/she were resident in their home State. I.E. they are medically treated in such manner as a resident citizen of the resident State but costed as a national of the 'Competent State'. This is indeed a possible (and to my mind a correct) interpretation of the EU Regulation 883/2004.

\*\*\*\*\*

The Briton in Europe has no one within the British Government to speak up for him/her. This is an enormous problem which must be addressed,

**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

**BANKING and Finance**

Freedom of movement is restricted by the FSA – A British institution. I have personal knowledge of this. My daughter wishes to invest in STERLING in the UK. She is resident in France . It would seem that bureaucracy emanating from the FSA is causing a certain investment house from taking on new clients within the EU (beyond the UK). Thus infringing EU law on freedom of movement of services and capital. Before the involvement of the FSA this firm had no difficulty in this regard! This has resulted in my consultation with the financial ombudsman.

\*\*\*\*\*

Further it is impossible to open a bank account based in mainland UK from an offshore address. The reverse is demonstrably possible. My son-in-law – a Dutchman resident in Britain, opened a German bank account. These inhibitions should be removed! It inhibits easy movement of money INTO the UK. And curiously these inhibitions are not the fault of the EU – but of the UK!

This is a great deterrent to investing in Britain.

\*\*\*\*\*

Considerable numbers of pensioner Britons resident abroad retain investments in Britain, which they began before and continue with after moving – it may be only a tiny amount in banks or building societies , but it is important to them.

The UK management of the financial sector (FSA again?) is making it impossible to open new accounts, change banks etc.

It would be of great value to the pensioner and to the UK economy if the UK Government/Treasury would allow British pensioners within the EU the same treatment as any British National at 'home'. It is a great problem, and essentially one created by the bureaucracy in Britain.

Most pensioners' income is entirely derived from Britain and they want to keep it in a homeland deposit.

Britain needs to encourage investment in Britain!

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**Banking and Investments in Britain- again!**

**It is not that the EU should do more – Britain needs to co-operate with the EU.**

**The problem is with Britain!**

**As I have said, it seems to me that problems are created by Britain not the EU.**

**The financial sector would benefit by a more sensible bureaucratic approach.**

**Britons abroad want to invest in British banks, building socs, investment houses – but it is the British controls which inhibit this!**

**Besides the pensioners (my immediate concern) the younger British citizens want to send money home and explore the British home market in investments. How can they if they cannot open accounts!**

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**



**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

I have touched on this above- I believe that one needs a harmonisation of rules on health and benefits cover across the EU. This is a very great challenge, and may well need quite radical thinking.

I suggest

1. S1 holders should be costed for health as though they are living in their 'home' state. That is to say the 'home' State which is indeed the 'competent State' for their welfare (I said this above).

2. Recent younger (not retired) EU migrants, resident of less than say x years (\*see 2a below) should also be treated as though they are S1 holders – i.e. they are dependent on their 'home' state – that State being charged for their treatment.

2a. The idea of x years residence could be replaced (or in addition to) by x amount of 'national insurance or equivalent' payments. Thus within the UK benefits would not be available (including generally health benefits) until the EU migrant had demonstrated an integration into the economy of the State. 2 and 2a could work together. If both are not satisfied, the EU migrant could be asked to leave – to return to their homeland.

Such a system would have to apply across the EU. e.g. Also to the British in France, Italy, Spain, etc...

Pensioners (necessarily dependent on their home State for welfare), would be considered as integrated into the State of residence after x years.

Integrated EU citizens should have the right to VOTE in the resident State for national elections.

#### **Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

Questions relating to future options and challenges.

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**VOTING and Representation as touched on above.**

**Europe is a network of nations somewhat different from any other associations, unions, federations that have existed before.**

**There are millions of folk who have migrated within the EU and bear strong links with TWO nation States.**

**One must understand a nation is the people – not a territory!**

**So (as an example) the French in London are contributing to the British economy and are socially involved in all manner or ways.**

**Should they not have a political voice – representation in the National Government.**

**ALSO they are French and hugely interested in the works of the National Assembly in Paris – They have indeed a voice in that Assembly.**

**So it should be across Europe.**

**Each National should have representation in their National Government.**

**Each resident citizen demonstrably integrated in the economy of the State of Residence should have representation in the same manner as any citizen of that State to the national Government of that State.**

**In short the opportunity of TWO representations!**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

**We need a period of rest, contemplation and review. The eastern and possibly the Balkan states need a time of quiet integration. A consideration of where we are now, how the existing regulations are working, before any further move is undertaken.**

## General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

**There are just THREE States of real significance in Europe**

**GERMANY FRANCE and BRITAIN.**

**Britain and France are the only two States with significant military defence capability.**

**The movement of Britons throughout the EU is a very significant and powerful influence indeed in giving credence to Britain in the EU.**

**Indeed one wonders if the EU would stick together without Britain.**

**The EU needs the glue which Britain supplies.**

**But the British Government needs to honour the British Citizens who together are ambassadors in Britain's interest.**

**Quite a few Britons are elected onto the local communal councils, undertake charitable works and at the moment are most respected members of their communities.**

**If Britain should withdraw from the EU I suspect that the million plus British Citizens resident in the EU will be looked at in a less friendly manner by their neighbours.**

**The 450,000 pensioners could well find that great difficulties arrive.**


**No healthcare support at all.**

**Removal of Benefits.**

**Lack of the feelings of belonging - citizenship support.**

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

**Submission 15**

<b>Name</b>	Giles Goodall
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<b>Department (if applicable)</b>	
<b>Address</b>	
<b>Email</b>	

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input checked="" type="checkbox"/>	Political party local branch

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

### 1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?

a) Estimates vary, but it is widely believed that between 1.4 million and 1.7 million British nationals currently avail of their free movement rights to live in another EU member state. Many millions more use the same rights to travel regularly and reside for shorter periods in other EU countries, for example on study exchanges, for traineeships, work experience and secondments. 113,909 British students and trainees have so far benefited from ERASMUS exchanges along with 19,000 British teachers. 24 million UK nationals have a European Health Insurance Card guaranteeing them healthcare in other EEA countries on equal terms with nationals, implying that these individuals also regularly exercise their free movement rights.

b) Economic research, both by EU and UK institutions such as the Commission and DWP, and by independent bodies such as CREAM and the NIESR, points to significant overall benefits to the British economy and exchequer from the presence of other EU nationals in the UK – without accounting for cultural benefits. For example:

- the GDP of EU-15 countries is estimated to have [increased by almost 1 %](#) in the long term as a result of post-enlargement mobility (in 2004-09)
- Of the estimated 2 million migrants from central and eastern member states since 2004, [fewer than 1%](#) has actually claimed jobseeker's allowance in the UK.
- EU migrants help to subsidise Britain, [paying in about 30% more in taxes than they cost our public services](#). They are also far less likely to claim benefits and tax credits, or to live in social housing.
- A study last year found that the presence of Polish children in the UK's schools has even [helped to boost British pupils' grades](#).

Free movement of workers is furthermore a central and essential tenet of the Single Market. It is indivisible from free movement of goods, capital and services. Restricting one would be akin to unravelling the whole market.

### 2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?

Common EU rules guarantee UK nationals hassle-free, non-discriminatory access to work and social security in other EU member states which simply would not be otherwise possible – without protracted negotiations such as those carried out by EEA countries.

The UK is one of the biggest ‘exporters’ of citizens within the EU, in terms of numbers of nationals resident in other member states.

The European Commission regularly brings infringement proceedings against various countries to enforce these rights, such as the case against Spain for failing to accept British nationals’ EHICs: [http://europa.eu/rapid/press-release\\_IP-13-474\\_en.htm](http://europa.eu/rapid/press-release_IP-13-474_en.htm), that against Greece for discriminating against workers with foreign qualifications ([http://europa.eu/rapid/press-release\\_IP-12-280\\_en.htm](http://europa.eu/rapid/press-release_IP-12-280_en.htm)) and against Luxembourg for student grants ([http://europa.eu/rapid/press-release\\_IP-12-173\\_en.htm](http://europa.eu/rapid/press-release_IP-12-173_en.htm)).

### **3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

The overall impact on taxes and public services in the UK is that other EU nationals are more likely to work and less likely to claim welfare benefits or use other public services. EU citizens effectively subsidise British natives to the tune of 30%, see [http://www.cream-migration.org/publ/uploads/CDP\\_18\\_09.pdf](http://www.cream-migration.org/publ/uploads/CDP_18_09.pdf)

### **4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

The European Commission's recent [2013 EU Citizenship Report](#) identified a number of remaining barriers affecting EU citizens exercising their free movement rights. These included access to support when seeking work in another member state, problems with administrative procedures such as dealing with local authorities in the member state of residence, and the loss of voting rights in national elections in the UK after 15 years overseas.

The [Commission's public consultation](#) found that among British respondents, 29% faced problems when travelling or living within the EU. 67% of these faced lengthy or unclear administrative procedures, 36% experienced problems with local authorities being unaware of their rights and 20% did not themselves know enough about their rights.

21% of UK respondents also said they'd experienced nationality discrimination in another EU country; 13% had problems opening a bank account in another EU country and 9% had problems buying property. 19% reported problems getting periods of study recognised.

These results suggest that obstacles certainly continue to exist and would benefit from further EU action.

## Questions in relation to the labour market.

### 5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.

See Q1

In addition, the latest [Fiscal Sustainability report](#) by the Office for Budgetary Responsibility finds that:

*"There is clear evidence that, since migrants tend to be more concentrated in the working-age group relatively to the rest of the population, immigration has a positive effect on the public sector's debt dynamics. This is shown in our sensitivity analysis, where higher levels of net inward migration are projected to reduce public sector net debt as a share of GDP over the long term relative to the levels it would otherwise reach."*

### 6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?

Farmers have [recently reported problems](#) recruiting adequate numbers of workers because of fears of new restrictions to free movement for EU citizens in the UK. There is no doubt other similar sectors could be negatively affected should additional obstacles be introduced in the UK (or even perceptions thereof).

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

We do not have access to any such evidence.

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

We do not have access to any such evidence.

#### Questions in relation to social security coordination.

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

In the European Commission's [public consultation](#) to prepare the 2013 EU Citizenship Report, among British respondents who had looked for a job in another EU country, 8% received unemployment benefits from their home country. 31% said that they thought the period for access to these benefits should be 6 months, 27% said 3 months, and 25% said more than 6 months. This clearly supports the current system for social security coordination, or indeed an amendment to make benefits portable for longer in order to support job seeking.

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**



We do not consider that such changes are required. The facts do not support this thesis. Rather, the government should invest in a more informed and factual debate to reinforce public confidence in the system.

### Questions in relation to Immigration.

#### **11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

Free movement is distinct from immigration, and should not be confused – as it frequently is in the UK debate. Free movement is a two-way street, which allows citizens and workers to travel temporarily or reside for a longer period, subject to certain conditions and restrictions. One would not talk about ‘immigration’ from Scotland to England, or from England to Wales, so why should we do so when talking about EU free movement rights?

#### **12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

We do not have access to any such evidence.

#### **13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

We know of no such evidence. A series of safeguards already exist under EU legislation. Cases of ‘abuse’ may be better addressed under UK arrangements.

### Questions relating to future options and challenges.

#### **14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

The UK should consider its future position on membership of the Schengen area. The Schengen area is evolving and holds out the possibility of long term benefits to UK citizens in terms of improving free movement.

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

The accession of Croatia, with its small population and relatively strong economic situation as compared to other recent enlargement countries, is unlikely to have a major impact on free movement in the EU single market. It traditionally has stronger ties with Germany, Austria and Sweden, which are home to relatively large diaspora populations, than with the UK, in any case.

There is no immediate prospect of another enlargement taking place in the near future, given the considerable process still lying ahead for other countries in the Western Balkans such as Montenegro, Serbia and Kosovo. Iceland's application to join the EU is effectively on hold, and Turkey's is unlikely to achieve rapid progress in the current climate.

It is therefore unlikely that further enlargements will have any sizeable impact on the operation of free movement in the short to medium term. The next enlargement of any economic or demographic significance is likely to be Serbia's – though this remains several years away at least.

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

The right to free movement is in general the EU citizenship right most cherished by Europeans. Opinion surveys repeatedly show this. 51% of British nationals believe European labour mobility is good for individuals and 41% for the economy, according to a [2010 Eurobarometer survey](#).

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

1) Free movement of people is an inherent part of the Single Market, which was a British-led initiative, brings innumerable economic and other benefits to the UK, and is arguably the EU's biggest single achievement.

2) It is also a direct and essential consequence of enlargement: Britain's other decades-old strategic objective in the EU. It is likewise indivisible from the multiple other benefits that Britain reaps from an expanded market place, trade, investment and procurement opportunities when new countries join the EU. This is without even mentioning the far broader benefits of the enlargement process in embedding democracy, free markets and the rule of law in 14 different countries which were until a few years ago dictatorships of various political hues and are now full EU members (notably those countries which joined in 1981, 1986, 2004, 2007 and 2013).

In broader terms of foreign policy, how can we espouse free market access and trade across Europe while erecting barriers to people? And how can we now put up a no entry sign to countries we pushed the EU to admit in the first place?

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

None further than those already quoted and linked to above.

**Submission 16**

<b>Name</b>	Brian WYLD
<b>Organisation/Company (if applicable)</b>	Eloquent SA
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<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	X	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

- a) For UK nationals, the ability to move within the EU means that I personally was able to gain experience in multi-national companies with sites in France, without any issues related to work or living permits. This experience I could then use to create a company based in France, which uses resources and provides services to EU wide companies. Based on the experiences of other UK nationals in the local (Grenoble) area, this is a common experience that is only possible due to the free movement rights of the EU**
- b) For UK as a whole, my experience is that many UK nationals have benefited from the multi-cultural experience enabled by these rights, and have then returned to work in the UK or create companies in the UK. The experience gained by the ability to work in the EU then allows them to export goods and services ex-UK.**

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

My experience is that the difference between a UK national (with full EU free movement rights) and a non-EU national is enormous. A non-EU national has great difficulty with the (French) administration, a UK national has none.

The ability for a UK national to get work and live in France is only practical because of the EU competence.

As director and co-owner of a French start-up, I know that hiring UK nationals is as easy as hiring French nationals, and over the last 12 years we have hired several UK and non-french nationals. However, hiring (even for work placements) a non-EU national is so hard that we have never even considered doing it.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

The primary obstacle is probably that of pension entitlement. It is not obvious or easy to ensure that pension entitlements gained in one EU state will be transferred to another (although in theory this should be direct).

More EU action in this respect (eg a centralised pension entitlement register) would ensure that the fears on this matter which can prevent UK nationals wishing to exercise their movement rights would be removed.

I have also experience with certain UK nationals where more EU action in establishing and enforcing technical equivalencies is required, for example in medical or teaching qualifications, in order to have their UK qualification recognised by a non-UK state.

### **Questions in relation to the labour market.**

#### **5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

The UK economy benefits from the enhanced experience and cultural horizons of those UK citizens that have been able to work in another EU state, both from the technical experience but also the ability to then work with those states from the UK, improving UK import/exports.

#### **6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

#### **7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

Employment opportunities for UK nationals are greatly enhanced compared to non-EU nationals within the EU labour market.

Employment conditions are also enhanced, as national equivalencies exist for certain sectors

**8. How would these sectors and UK nationals benefit from the EU doing a) one or b) less in this area?**

As previously noted, more work on qualification equivalencies would be useful in specific sectors to ensure UK nationals benefit from the salary scales for the local workforce.

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

Pension entitlements for multi-country working need to be better communicated and a centralised entitlement system might help in this respect.

Equally, clearer and enforced communication on social security entitlements for UK nationals seeking work in a EU context would ensure that they could seek employment cross-EU while still receiving their entitled social benefits

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**



None. To avoid undermining public confidence in the system, it might be useful to use legal proceeding to stop certain national newspapers disseminating sensationalised hype....

### Questions in relation to Immigration.

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

Local communities in France generally benefit from UK nationals exercising their right to free movement, as this can re-vitalise the local area.

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

In my experience there is very little abuse of the free movement rights in France, and that there rights have little or no negative impacts.

This question appears to pre-suppose an abuse of these rights, without proposing any evidence.

It may well be that there is abuse by the UK state of the free movement rights (lack of respect or active blocking of such rights by EU citizens) and that there is a need for a change in the UK framework to make exercising these rights easier....

### Questions relating to future options and challenges.

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these**

**have on the UK national interest?**

It is clear that the future challenge in this area is the anti-EU rhetoric and proposals being mooted by the UK government, with the real and dangerous prospect of the free movement rights for UK nationals being curtailed or removed.

Such a 'challenge' would almost certainly result in a very negative impact on the UK national interest, both in the ability for the UK to benefit from its national's ability to work easily within the EU, and in the certain in-flux to the UK of the current ex-pat population who would be forced to return (and be reliant on the UK social benefit system, as the current UK labour market would be unlikely to absorb them!). In my opinion there would be a large and negative impact on the UK economy should this happen.

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

As a beneficiary of the EU free movement policy, I would encourage strongly the UK government to support to its greatest ability the UK involvement in this action, and take whatever means are possible to ensure its continuing existence and improved operation.

Given the positive impact I see in the local French region due to the large number of non-French EU nationals (including UK nationals, who are only able to be here due to this policy), I would assume that there is a similar positive impact in areas of the UK that have embraced this action, and would therefore feel any reduction in its operation would certainly reduce the UK's dynamism and economy....

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

**Submission 17**

<b>Name</b>	Richard Smith
<b>Organisation/Company (if applicable)</b>	Labour International
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<b>Address</b>	
<b>Email</b>	

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	Political party

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

As a British citizen I have been able to enjoy the right to free movement and to work in another member state. My employment in the Aviation sector has resulted in work that has been beneficial to the UK as a whole.

I have been able to enjoy the right to retire in another member state.

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

My ability to travel and work in other member states has been enhanced by the ability to use healthcare facilities and other state benefits in those countries.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

A British citizen residing in another EU member state is disenfranchised after 15 years living outside the UK. Unless dual nationality is taken, a British citizen cannot exercise the democratic right to parliamentary representation either in the UK or the member state of residence. Most EU member states require nationality as a qualification for representation and the right to vote in national elections.

For retired former public service employees, teachers, military personnel, police officers and others, the double taxation treaties require pensions to be taxed in the UK (so-called Government pensions). The result is that after the 15 year period there is no access to elected representatives to represent their interests or to assist in the resolution of problems that may arise with public institutions.

The disenfranchisement after 15 years means that British citizens will not be able to participate in an EU referendum.

#### **Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment**

**conditions or other factors?**

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

**Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

A referendum on EU membership may have a negative impact on the ability or willingness of UK nationals to work or reside in other EU member states. For those UK citizens who are resident in another member state for more than 15 years, the inability to take part in such a referendum may inhibit their willingness or ability to enjoy free movement.

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

**General questions**



**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

The above comments regarding disenfranchisement arise from sections of the Representation of the People Act (1985) as amended.

**Submission 18**

<b>Name</b>	Jonathan Portes
<b>Organisation/Company (if applicable)</b>	National Institute of Economic and Social Research
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	████████████████████
<b>Email</b>	████████████████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input checked="" type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

### **1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

There is relatively little academic evidence on the impact of emigration from the UK to the rest of the EU. As a truism, revealed preference implies that UK nationals moving elsewhere in the EU do so because they will benefit (economically or otherwise) but hard evidence is scarce. Similarly, it is likely that UK companies, or multinationals with a UK presence, benefit from being able to transfer UK employees elsewhere in the EU without any restriction, but evidence is lacking.

### **2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

The large and increasing number of UK nationals working elsewhere in the EU suggests that EU competence has some positive impact - I have not seen a detailed analysis, but it seems likely that the proportion of UK national emigrating for work reasons whose destination is elsewhere in the EU has grown significantly in recent decades. See

<http://www.ippr.org/publication/55/1548/brits-abroad-mapping-the-scale-and-nature-of-british-emigration>

although this is now somewhat out of date.

### **3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

There is significant evidence that EU citizens resident in the UK contribute significantly more through tax than they "cost" in benefits and public services. See:

<http://www.guardian.co.uk/commentisfree/2013/mar/06/uk-benefits-eu-migrants-what-crisis>

and links therein:

[http://www.cream-migration.org/publ\\_uploads/CDP\\_18\\_09.pdf](http://www.cream-migration.org/publ_uploads/CDP_18_09.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/196677/nat\\_nino\\_regs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_regs.pdf)

It therefore follows that in the absence of migration from other EU states to the UK, welfare provision and access to services would suffer, on average and over time, other things equal. This is also the conclusion of the OBR's recent Fiscal Sustainability Report:

<http://niesr.ac.uk/blog/migration-and-public-finances-long-run-obrs-fiscal-sustainability-report#.Ue6kmo3ltzM>

### **4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

There are clearly areas with respect to recognition of qualifications, access to health care and other public services, etc, where greater EU action could potentially make it easier for UK nationals to exercise free movement rights.

See the testimony from me, John Springford, Don Flynn, and Jo Shaw to the House of Lords Select Committee on the EU (sum-committee B) on this topic.

<http://www.parliament.uk/documents/lords-committees/eu-sub-com-b/Innovation/ucEUB150713ev1.pdf>

**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

The academic consensus is that the impact has been broadly positive. No study has found any statistically significant negative impact on employment/unemployment. There may be some modest negative impacts on wages for low skilled workers, although evidence is not conclusive. The impact on growth has been positive, although the direct impact on GDP per capita is probably not large. See

<http://cep.lse.ac.uk/pubs/download/pa014.pdf>

[http://niesr.ac.uk/sites/default/files/publications/090112\\_163827.pdf](http://niesr.ac.uk/sites/default/files/publications/090112_163827.pdf)

[http://niesr.ac.uk/sites/default/files/publications/050811\\_152043.pdf](http://niesr.ac.uk/sites/default/files/publications/050811_152043.pdf)

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

See descriptive statistics here:

<http://ftp.iza.org/dp3756.pdf>

Also recent report for MAC by Frontier Economics; and at high skilled end by Centre for European Reform:

<http://www.cer.org.uk/insights/dont-let-englands-poujadists-kill-londons-golden-goose>

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

See answer to Q5, and the references in

<http://cep.lse.ac.uk/pubs/download/pa014.pdf>

and

[http://niesr.ac.uk/sites/default/files/publications/090112\\_163827.pdf](http://niesr.ac.uk/sites/default/files/publications/090112_163827.pdf)

in particular

<http://ftp.iza.org/dp3756.pdf>

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

See my and others testimony to the HoL EU Subcommittee B:

<http://www.parliament.uk/documents/lords-committees/eu-sub-com-b/Innovation/ucEUB150713ev1.pdf>

## Questions in relation to social security coordination.

### **9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

It seems highly probable that some degree of coordination of social security provisions, particularly in relation to the transferability of pension entitlements, is required to facilitate labour mobility in the EU. The lack of coordination is likely to be one factor, although not the most important, in explaining lower labour mobility within the EU compared to the US, and hence lower labour market flexibility within the EU compared to US. However, I am not aware of any quantitative evidence on this point.

### **10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

**There is no strong evidence here that major changes are required.**

<http://www.guardian.co.uk/commentisfree/2013/mar/06/uk-benefits-eu-migrants-what-crisis>

and links therein:

[http://www.cream-migration.org/publ\\_uploads/CDP\\_18\\_09.pdf](http://www.cream-migration.org/publ_uploads/CDP_18_09.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/196677/nat\\_nino\\_reqs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_reqs.pdf)

The main threat to public confidence would appear to come from Ministers and the media making misleading, and at times factually incorrect, statements. See also:

<http://www.cer.org.uk/insights/dont-let-englands-poujadists-kill-londons-golden-goose>

## Questions in relation to Immigration.

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

See

<http://niesr.ac.uk/sites/default/files/publications/NIESR%20EU2%20MIGRATION%20REPORT.pdf>

and the references contained therein. The recent HO report also contains useful qualitative information.

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**There is no strong evidence here that major changes are required.**

<http://www.guardian.co.uk/commentisfree/2013/mar/06/uk-benefits-eu-migrants-what-crisis>

and links therein:

[http://www.cream-migration.org/publ\\_uploads/CDP\\_18\\_09.pdf](http://www.cream-migration.org/publ_uploads/CDP_18_09.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/196677/nat\\_nino\\_regs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_regs.pdf)

The main threat to public confidence would appear to come from Ministers and the media making misleading, and at times factually incorrect, statements.



**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

Promoting a more efficient and flexible EU labour market is likely to require greater harmonisation across a number of dimensions (in particular social security, access to services and non-discrimination in employment). See my testimony and that of others to the HoL sub-committee B:

<http://www.parliament.uk/documents/lords-committees/eu-sub-com-b/Innovation/ucEUB150713ev1.pdf>

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

## General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

The long-term impact of immigration, including from the EU, on the public finances is clearly a matter of significant interest. See here;

[http://niesr.ac.uk/blog/migration-and-public-finances-long-run-obrs-fiscal-sustainability-report#.Ue\\_oqI3ltzM](http://niesr.ac.uk/blog/migration-and-public-finances-long-run-obrs-fiscal-sustainability-report#.Ue_oqI3ltzM)

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

There is a large literature relevant to this topic. I have hyperlinked to most of the most important relevant papers above; note some are clearly relevant to more than one question. Moreover, many of these papers contain references which are also of considerable relevance.

## **Submission 19**

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

#### **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 European Union (EU), a former Secretary-General of the European Commission and other former senior officials of the institutions of the EU. A list of members of the group with brief biographical details appears in the Annex.

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

Several members of the group have particular expertise in internal market, including free movement of persons, issues having worked for or as the UK Representative to the EU, or in the EU institutions dealing with these issues.

#### **General Points**

##### **The principle of free movement**

Participation in the EU's internal market of 500 million people worth £11 trillion is a key benefit of the UK's EU membership. The internal market is founded upon the fundamental principle that there should be free movement of goods, capital, people and services, as laid down in the founding Treaty. To take away one of these four elements - the free movement of people in this instance - would fundamentally undermine the effectiveness of the internal market and damage UK interests accordingly. Moreover, the free movement of persons itself directly benefits the UK as set out below.

Firstly, because, without free movement of people, businesses could not easily trade across borders within the EU. At its simplest, free movement enables a British lorry driver to take goods from the UK to another Member State and pick up goods for onward or return journeys. But it also enables businesses to provide services in another Member State without employing people in that country as existing employees can travel and work there freely when necessary. So free movement of persons reinforces the other freedoms.

Secondly, free movement of people enables businesses to fill key vacancies where there are local skills shortages. The UK is not only reliant on migrant workers from other Member States to fill unskilled or low-skilled work (for example seasonal workers in agriculture) but also in sectors such as financial services, health services and information technology.<sup>1</sup> The statistics quoted in the background brief show the

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<sup>1</sup> <http://www.economist.com/news/briefing/21567914-how-britain-could-fall-out-european-union-and-what-it-would-mean-making-break>

extent of the UK's dependence on labour from other European Economic Area (i.e. the EU plus Norway, Iceland, Liechtenstein and also Switzerland) countries to fill professional occupations and not just the low-skilled and unskilled jobs often highlighted by the media.<sup>2</sup>

Thirdly, free movement provides UK citizens with the opportunity to live and work or retire elsewhere in the Union, which, as the background paper highlights, some 1.4 million currently enjoy.

Fourthly, the background paper highlights the fact that in 2011 3.1 per cent of EU citizens lived in a Member State other than their own but this statistic only covers one aspect of free movement, residence. Across much of Europe large numbers of people have for many years lived in one country and worked in another, travelling back and forth each day; for example, between Northern Ireland and the Republic of Ireland. In fact, there are 600,000 EU citizens who are crossborder commuters living in one Member State and working in another.<sup>3</sup> So the free movement of people is not, as the background paper unfortunately implies, purely an issue of residence.

Fifthly, it is also surprising that the background paper makes no mention at all of the very important right under the free movement directive for Member States nationals to visit any other Member State and stay for up to three months without any visa requirements. This is of considerable importance to the British economy; tourism is an industry worth £115 billion a year to the UK and there are approximately 20.5 million visits to the UK each year by the nationals of other Member States.<sup>4</sup> And of course travel and tourism, and their growth over the last 20 years, are linked to other single market benefits, such as airline deregulation and protection for consumers against the collapse of package holiday businesses.

Sixth, free movement enables higher and further education institutions to recruit students and researchers from a large pool of applicants from across the EU without having to deal with any potential visa issues. This is particularly valuable to the UK whose higher education sector is often regarded in Europe as being the regional leader. It also enables students from Britain to take advantage of educational opportunities in other Member States on the same terms as their home students.

### Free movement over time

The Government's decision to look at free movement of people in the Balance of Competences Review is timely given the sometimes heated debate of recent years about immigration and its consequences in the UK. But it is important to look in a balanced way at the issue over the whole period of our membership, not least because the decision to allow free movement for A8 accession state nationals (the Member States who joined in 2004 with the exception of Cyprus and Malta whose circumstances were different because they are members of the Commonwealth)

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<sup>2</sup> Annual population survey 2012 quoted on page 15.

<sup>3</sup> Cited in: <https://ec.europa.eu/eures/main.jsp?catId=56&acro=eures&lang=en>

<sup>4</sup> Figures from the DCMS Balance of Competences Call for Evidence, p.6.

without using the transitional provisions included in the accession treaties was made by the British Government and not the EU. Moreover, the UK was the only large Member State to make this choice. Had transitional controls been put in place instead some of the impacts that have most concerned the public would almost certainly not have occurred but the decision *not* to have transitional controls reflected a stronger economy at that time and the demands of employers for skilled workers.

Developments since 2004 are a reminder that it is not just the principle of free movement that matters but also how it is implemented in Member States. This needs to be borne in mind as the debate continues about the potential impact of free movement involving Bulgarian and Romanian citizens from 1 January 2014.

## **Questions in relation to the UK Experience of the Free Movement of Persons**

### **1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

(a) Around 1.4 million UK nationals choose to be resident in the rest of the EU so the number benefiting from free movement is considerable. Free movement facilitates individuals to take work in the rest of the EU, study there or retire there and it enables families to be together. Career development is often enhanced for senior executives and professionals by working for a period abroad; free movement facilitates this.

(b) The primary benefits to the UK as a whole from the free movement of people are economic ones, deriving from its essential role as a cornerstone of the Single Market. More specifically, the main economic benefits are:

- recruitment - the ability of businesses in the UK to recruit from a wider pool, enabling them to meet skills needs, provide flexibility during periods of growth and to employ people at pay levels that reflect the market;
- overseas deployment of staff - without the need for work permits or visas enabling businesses to operate in or expand into EU markets using their existing workforce;
- travel and tourism – free movement has encouraged the growth of travel and tourism both into the UK from the rest of the EU and from the UK into other Member States (27 million Britons a year holiday in other Member States<sup>5</sup>); there is a read across here – as so often in the internal market – between the benefit of free movement of people with other liberalising measures, in this case including the opening up of the civil aviation market that has been a major stimulus to travel and tourism in the EU, as has the removal of capital controls;
- inward direct investment by European companies who face no obstacles to employment of their nationals in the UK, as well as by UK companies investing elsewhere in the EU;
- education and training – UK universities now have substantial economic impact, both in their local communities and more widely through research and development; free movement means they can recruit staff across the EU to help deal with critical skill shortages in specialist subjects, work easily in partnership with other institutions (and businesses) in the EU,

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<sup>5</sup> <http://www.ons.gov.uk/ons/rel/ott/travel-trends/2012/rft-travel-trends--section-3-uk-residents-abroad--2008-to-2012.xls>

including making the most of EU grants in research and development; in 2009-10, 14,000 members of staff at Russell Group universities were from other EU Member States.<sup>6</sup>

## **2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

Without the right of free movement in the treaties, with details enshrined in EU law, it would not be possible for UK nationals to exercise free movement very easily. For example, France for many years retained a requirement for all overseas nationals living there to have a residence permit even though such a requirement was, for EU citizens, a breach of EU law. Without the power of the Commission to intervene (backed up if necessary by the Court of Justice) this sort bureaucratic requirement could have remained in place rather than being removed as in this case it was.

Having general principles set out in a treaty is all very well but if there is no detailed legislation spelling out the provisions in practice and no Court to ensure that they are enforced then they can be largely meaningless.

In the twenty-first century families expect to be protected from accidents and disasters by state-supported social security and healthcare systems. Having a universal safety net means that people can live in other EU Member States confident that they will, at the very least, be able to get healthcare and social security on the same terms as citizens of that country. This gives people the confidence to move abroad, increasing job mobility, and enabling businesses to expand without having to meet the costs of health or social security provision in another country as well as in their home country. The EU's competence in this field is thus essential to provide that basic guarantee of support for those studying or working in another Member State.

It would be impractical for crossborder commuters to have to cope with different social security systems, especially as some people regularly work in more than one Member State.

## **3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

The number of foreign, including EU, migrants claiming benefits has been the subject of considerable debate within the UK. There is no published official estimate of the cost of social security benefits paid to EU migrants as the UK's benefit payment systems do not currently record details of a claimant's nationality.<sup>7</sup> Academic studies show that, far from EU migrants being a drain on the UK economy, their contribution in terms of direct and indirect taxes has exceeded expenditure on the public services used by them or the benefits received by them.<sup>8</sup>

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<sup>6</sup> <http://www.russellgroup.ac.uk/uploads/HoL-EU-Cttee-Inquiry-into-the-Modernisation-of-Higher-Education-in-Europe-the-EU-contribution.pdf>

<sup>7</sup> Hansard, 14 January 2013; Vol. 556, c. 466W.

<sup>8</sup> 'Assessing the Fiscal Costs and Benefits of A8 Migration to the UK,' Christian Dustmann et al,

The Department for Work & Pensions has had to substantially revise downwards its initial estimate of the additional cost of benefits for EU migrants if the current claimant rules were to be changed. The original estimate was £2 billion a year in 2011 but has been reduced to £155 million a year in 2012 following a review of the original figures in the light of the Labour Force Survey.<sup>9</sup> These figures are an estimate of what benefit claims could cost additionally if the tests used by the UK to determine eligibility to benefits (notably the “right to reside” test) had to be withdrawn. The £155 million figure compares to an estimated cost for the entire social security budget of £208.1 billion in 2012/13 and is considerably less than the estimated £3.4 billion paid (overwhelmingly to British citizens) as a result of fraud and error in 2011/12.<sup>10</sup>

It is justifiable to be concerned about abuses of the social security system. However claims of “benefit tourism” are hard to substantiate and even the speculative figure of £155 million is less than one tenth of one per cent of the UK’s social security budget.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

UK citizens living abroad need to be able to look to the Commission to enforce their rights against possible abuse by their host countries. We would encourage the UK Government to ensure the Commission is vigilant in carrying out this role. In this context the Commission’s recent announcement that it will pursue possible infringements by Spain in respect of its duty to provide healthcare provision to non-Spanish residents is to be welcomed. The well known example of British ski instructors in France unable to work demonstrates that the free movement rights of British citizens are not always respected.<sup>11</sup>

It is hard to see how less EU action in this field would improve the position of UK nationals exercising their free movement rights in other Member States. What is needed is greater clarity about entitlement to health and social security which is not so much an issue of competence as one of readily available information; the health and social security systems of Member States vary widely in their scope,

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Fiscal Studies, vo. 31, no. 1, 2010, pp1-41; The Fiscal Impact of Immigration in the UK, Dr Carlos Vargos-Silva, Migration Observatory, University of Oxford, February 2013:

[http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/briefing%20-%20the%20fiscal%20impact%20of%20immigration%20in%20the%20uk\\_0.pdf](http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/briefing%20-%20the%20fiscal%20impact%20of%20immigration%20in%20the%20uk_0.pdf)

9 [http://fullfact.org/factchecks/eu\\_commission\\_migrants\\_benefits\\_151\\_million-28973](http://fullfact.org/factchecks/eu_commission_migrants_benefits_151_million-28973)

10 House of Commons briefing paper: [www.parliament.uk/briefing-papers/SN02656.pdf](http://www.parliament.uk/briefing-papers/SN02656.pdf)

11 <http://www.telegraph.co.uk/news/uknews/9973579/Megeve-protest-call-for-British-intervention-over-arrest-of-British-ski-instructor.html>

organisation and financing and this makes it difficult for non-nationals to understand their entitlement.

The establishment of crossborder partnerships has improved the position of crossborder commuters; one of these operates in Northern Ireland and the border counties of the Republic.<sup>12</sup>

#### **Questions in relation to the labour market.**

#### **5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons?**

See answer to question 1.

#### **6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

We do not have detailed sector by sector information.

#### **7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

The Migration Advisory Committee (MAC) published a report in January 2012 looking at the impacts of non-EEA migration on the UK. In May 2013 the UK Government asked the MAC to look at both the economic and the social impacts of both EEA and non-EEA migrant workers in the UK with a brief to report by the end of April 2014. We believe that it would be premature to come to any firm conclusions about the impacts in advance of this report but we note that several other organisations have looked into the matter.

The OECD's *International Migration Outlook 2013* considered the impact of migrants on their host country and found that they have a negligible impact on the public finances of their host country as they contribute at least as much as they receive in benefits. Their study concluded that households headed by migrants on average in the OECD contributed €5,000 a year more than they received in benefits in 2007-09.<sup>13</sup>

The British Chambers of Commerce has argued that A8 immigration has benefited the British economy and a survey of its members found that it was the skills, experience and attitude of foreign workers that were the main reasons why they were recruited and only two per cent of employers cited lower wages as the reason for recruitment.<sup>14</sup>

#### **8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

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<sup>12</sup> [www.eures-crossborder.org](http://www.eures-crossborder.org)

<sup>13</sup> <http://www.ft.com/cms/s/0/032e276e-d390-11e2-b3ff-00144feab7de.html#axzz2WSuF4OJR>

<sup>14</sup> BCC presentation at a European Movement/Polish Embassy seminar, May 2013.



There is a case for clarification of the existing legislation but not if it undermines the principle of free movement..

### **Questions in relation to social security coordination.**

#### **9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

Current EU competence in the field of social security is critical because of the difficulties of people working in one country and having to make arrangements for social security, perhaps in their home country. People would be unwilling to travel across borders to work if they had no certainty that their social security contributions would, for example, count towards a retirement pension. This would significantly weaken the internal market and the economic benefits it brings the UK.

Expectations of social protection have risen across the industrialised world over the last 50 years and it would be hard to withdraw an established system which is understood by employers and their staff.

#### **10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

We dealt with the point about the cost of social security arising from EEA migrants coming to the UK in our answer to question 3. While we recognise the degree of public concern about so-called “benefit tourism” this concern is not matched by the evidence. It is regrettable that some have suggested that this is a major issue when the amount involved is far less than the cost of fraud and error in the social security system. Of course there is an issue of principle involved in that the UK (like other Member States) quite rightly do not want to see any abuse of the benefit system by EEA migrants but the key to sustaining public confidence is to publish evidence and promote measured debate.

It is important to remember, and this point is rarely made in discussions about migrant claims on social security in the UK, that the principle of non-discrimination reciprocally protects British nationals working in other Member States. British citizens living and/or working in other Member States would be at a severe disadvantage if the EU were to no longer to require a basic level of social security protection for them.

The current political issue is the impact of A8 migration, and migration from Bulgaria and Romania, on the public consciousness combined with the perception that the UK has a generous benefit system. But the evidence points to a proportionately smaller number of claims by EEA migrants than by UK nationals. A study by the Centre for Research and Analysis of Migration at University College London in 2009 found that A8 nationals were 60 per cent less likely than individuals born in the UK to receive state benefits or tax credits.<sup>15</sup>

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<sup>15</sup> [http://www.cream-migration.org/publ\\_uploads/CDP\\_18\\_09.pdf](http://www.cream-migration.org/publ_uploads/CDP_18_09.pdf)

The UK Government is already working with other Member States on possible reforms to the current EU social security rules. Such reforms should concentrate on creating a system with greater clarity which continues to underpin the free movement of persons within the single market whilst reducing abuse.

### **Questions in relation to Immigration**

#### **11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

While there is evidence of abuses of free movement, as the background paper records, it is worth pointing out that there are 1.4 million Britons living elsewhere in the EU and 2.3 million EU citizens living here; a net balance of 0.9 million, just 1.4% of the total UK population.

#### **12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

The recently announced inquiry by the Migration Advisory Committee will be helpful in identifying evidence of the impact that free movement does appear to have had in concentrated areas, particularly but not exclusively rural communities in East Anglia and Lincolnshire, where the proportion of A8 migrants is high and communities have changed very quickly. It will be important once the Committee has reported for government, central and local, to then assess whether they are supporting those communities effectively or not (see answer to question 17 below).

#### **13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

We are not aware of any evidence of significant abuse of free movement. The European Arrest Warrant is both a deterrent against criminals moving to the UK (or any other Member State) in order to evade arrest and an effective means of removing them should they come here, not least because it avoids the long delays associated with the former extradition system.

### **Questions relating to future options and challenges.**

#### **14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

We believe that the salience of the issue of free movement will decline over time as it is highly unlikely that we will ever again be in a position where 10 new Member States join at the same time and that the British Government of the day decides not to make use of the transitional provisions on free movement that are now an accepted feature of accession treaties.

#### **15. What impact would any future enlargement of the EU have on the operation of free movement?**

We would expect, as with Croatia joining the EU this year, that the UK Government would make use of transitional provisions on free movement of persons with future enlargements and indeed we would suggest that they do so. Negotiations for further enlargements mean that this is an issue that will remain of concern, particularly should Turkey join.

## **General questions**

### **16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

No.

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

Looking at the issue from the other point of view – if there were not free movement – the difficulties of controlling borders and issuing work permits would be considerable, indeed for many Member States, impractical. The sheer scale of movement between Member States in an era of easy and widespread international travel is such that reintroducing residency permits for all EU citizens living in the UK, for example, would cost a considerable amount, would require costly control measures which would damage sectors of the economy (and public services) such as agriculture, tourism, education and the NHS and would be of dubious benefit.

An issue not addressed by the background paper, and which in our view is relevant to the important study now being carried out by the Migration Advisory Committee, is whether the UK has done enough in terms of skills policy and in its relations with other EU Member States to address some aspects of the free movement of persons that have caused public disquiet.

In some economic sectors, and agriculture is clearly one of these, the UK has become dependent on overseas nationals to fill low-skill, low paid vacancies. In a country with over two million people unemployed this not surprisingly causes public concern. We believe that there has been too much of a tendency in the UK to focus criticism on migrants themselves or their employers and a failure on the part of government and the further education sector to address the labour and/or skills shortages that have led to the widespread recruitment of foreign born nationals.

There has been a failure on the part of the UK and other Western and Northern EU Member States to put pressure on the governments of Central and Eastern European states with large Roma populations to tackle the discrimination that they experience and which triggers migration. Such discrimination is of course a serious violation of the European Convention on Human Rights to which all EU Member States belong and which they are expected to uphold as a condition of their EU membership. There needs to be a much sharper focus on tackling this sort of migration at source by working positively with European Commission, EU agencies, governments and NGOs to address the discrimination and economic exclusion which is often its main cause. In this regard it is perhaps regrettable that the UK did not participate in the Decade of Roma Inclusion, especially when the United States chose to do so.

### **18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

None, apart from those already cited.

## **Annex: Members of the Senior European Experts group**

### Sir Michael Arthur

Director-General Europe, FCO, 2001-3; British High Commissioner to India 2003-07; British Ambassador to Germany 2007-10.

### Graham Avery

Director, European Commission, 1987–2006.

### Sir Colin Budd

Chairman of the Joint Intelligence Committee 1996/97. British Ambassador the Netherlands, 2001-05.

### Sir Michael Butler

British Permanent Representative to the European Communities, 1979-85.

### Lord Butler of Brockwell

Secretary to the Cabinet and Head of the Home Civil Service, 1988-98.

### John Cooke

Member of the UK Permanent Representation to the EC 1969-73 and 1976-77. Under-Secretary, International Trade Policy Division, DTI, 1992-96. Chairman, OECD Trade Committee 1996-97

### Sir Brian Crowe

Director-General (External & Politico-Military Affairs) Council of the European Union, 1994-2002. Previously Deputy Under-Secretary for Economic Affairs, FCO.

### Sir David Elliott

UK Deputy Permanent Representative to the EU 1982-91. Director-General (Internal Market), Council of the European Union, 1991-95.

### Lord Hannay

UK Permanent Representative to the European Communities 1985-90 and to the United Nations, 1990-95.

### Lord Jay of Ewelme

Permanent Under-Secretary of State, Foreign & Commonwealth Office, 2002-06.

### Lord Kerr of Kinlochard

UK Permanent Representative to EU 1990-1995; Permanent Under-Secretary of State, Foreign & Commonwealth Office, 1997-2002.

### Andy Lebrecht

UK Deputy Permanent Representative to the EU, 2008 – 2012.

### Sir Emyr Jones Parry

UK Permanent Representative to NATO, 2001-03 and to the UN, New York 2003-07. Political Director and previously EU Under-Secretary at FCO. Now President of Aberystwyth University.

Sir Nigel Sheinwald

UK Permanent Representative to EU 2000-03. Prime Minister's Foreign Policy & Defence Adviser, 2003-07. British Ambassador to the United States, 2007-12.

Sir Stephen Wall

UK Permanent Representative to EU 1995-2000. Head, European Secretariat, Cabinet Office, 2000-04.

Michael Welsh

Member of the European Parliament for Central Lancashire, 1979-94.

Lord Williamson of Horton

Deputy Director-General (Agriculture) European Commission 1977-83. Cabinet Office 1983-87. Secretary-General, European Commission, 1987-97.

July 2013

## **Submission 20**

### NATIONAL CITIZEN PREFERENCE IN AN ERA OF EU FREE MOVEMENT

With Government looking to review the balance of competencies – between the UK and the EU – now is an opportune moment to revisit the question of freedom of movement and citizen preference.

Many EU citizens value the fact that it is easy to be more than just a visitor in another EU country – that it is possible to study, work, live and retire there, even if relatively few (currently about 3 per cent) actually take advantage of this possibility. But it is also my contention that the idea of non-discrimination between national citizens of the EU has gone too far for most EU citizens. Indeed, EU law and the decisions of the European Court of Justice have gradually dissolved almost all special rights, rules and privileges for national citizens - in particular in labour market and welfare systems (also in the way university students are treated). This was not noticed until recently because the scale of movement was slight. But with the arrival of a bloc of relatively poor countries into the EU from central and eastern Europe in 2004 it has become all too evident to citizens, and it is not popular.

This is especially true in the UK (which opened its labour market doors early to the new arrivals in 2004) but since 2011 it has been true for poorer citizens in other richer EU states like the Netherlands too. The price that the EU pays in terms of unpopularity and mistrust is too high for the relatively modest economic gains associated with unqualified free movement. Abolishing free movement is neither possible nor desirable but it should be possible to enter various qualifications and exemptions to make it work better and prevent it disrupting national social contracts. Few EU citizens consider themselves Europeans first, and they regard the inability of their national governments to retain ultimate control over who lives and works in the country and the inability to privilege national citizens over those from other EU states as rather a bewildering development. The free movement system is not working as intended. It was designed with the movement of a few thousand professional people in mind. But it has in recent years become a mass system encompassing mainly low skilled occupations – a kind of intra-EU ‘gastarbeiter’ system.

#### The background

The 1957 Treaty of Rome enshrines the principle of free movement, meaning the right to reside and work in another EU country. Initially free movement legislation focussed on non-discrimination for those who were economically active, meaning employees and the self-employed (though the latter were covered by free movement of services rather than persons). But the right to work was not unqualified: for several decades there were various limits and controls including the requirement that you had to have a job offer from an employer, you could not just turn up and look for work for an unlimited

period. Equal rights were gradually extended beyond workers to others such as students and retirees. And in 1992 the Maastricht Treaty introduced the concept of EU citizenship. The non-national EU citizen now lives in another EU country not as a worker with equal rights but as a full citizen with equal rights. The rulings of the European Court of Justice have, over time, deepened and extended those rights (which are now gathered together in the 2004 free movement directive). More or less the only thing that a non-national EU citizen cannot do that a national citizen can do is vote in national elections.

None of this had much significance until a few years ago. As recently as the year 2000 only 0.1 per cent of EU citizens lived in another EU country, it was a largely symbolic right used mainly by multinational companies, spouses, senior professionals and a small but growing number of retirees. The reason for little use of free movement was that living standards remained very similar across the EU and the incentive to move was thus rather low.

That all ended in 2004 with the arrival of the central and eastern European countries. Three countries - the UK, Ireland and Sweden - decided to give them instant access to their labour markets rather than apply the usual seven year transitional period that all other member states enforced.

Defying expectations of a flow of at most a few tens of thousands of central and eastern Europeans a year almost 1.5m actually arrived in the UK in the 7 years after 2004 (about 1m remain resident in the UK). It was the biggest peacetime movement in European history.

What was the reason for the large movement to the UK (Ireland also experienced a relatively large inflow, Sweden rather less)? It was partly a function of the weakness of the central and eastern European economies as they gradually became integrated into the western capitalist system. Numbers may also have been pushed up by the fact that only a little more than a decade earlier there were severe travel restrictions on the citizens of those countries, the opportunity to live and work in another country for a few years was especially attractive to younger people who had not had the opportunity to travel much.

But by far the biggest reason for the larger than expected flow was the large disparity in incomes between the relatively poor joining countries - with a total population of around 80m - and the rich countries of the EU. The average per capita income of the joining countries was about one quarter that of the rich countries.

In retrospect it is clear that it was a mistake not only not to use the transitional seven years that most other EU countries did use but, for the whole EU, not to consider applying some sort of income threshold - of say 75 per cent of the average per capita income of the rich EU countries - before new countries were given full labour market access.

## The impact

What has been the impact of this latest wave of EU free movement, which since 2011 has applied to all EU member states? This is disputed by economists: but various reports, most notably, by the NIESR (May 2011) have found remarkably little effect on the UK population, either positive or negative, from the great east European migration. NIESR described it as “negligible”.

Many of those who arrived have done jobs that were complementary to already resident workers and others helped to create jobs that would not otherwise have existed at all. But a glance at some of the figures suggests that there must have been some job displacement and downward pressure on wages, especially at the bottom end of the labour market. According to the ONS around 20 per cent of all low skill jobs in the UK are taken by people born outside the country; and given that there are many areas with few immigrants it means that in many urban areas and sectors (such as hospitality and food processing) it will be even higher. In 2012 about 25 per cent of all EU workers were in elementary occupations and another 11 per cent worked as plant and machine operatives (16 per cent were in professional occupations).

The economic consensus, as mentioned, is that the great east European migration has had surprisingly little effect, with some benefits for employers and better off citizens and some disbenefits for workers at the bottom end. I think this may underestimate the negative effects at the bottom, and among the self-employed builders and tradesmen. The Migration Advisory Committee is in the process of taking a closer look at this issue.

The UK has felt the force of free movement in recent years more than any other EU country partly because of the early opening of its labour market in 2004 but also because it has an attractively open labour market with a long tail of low skill jobs and a common pool welfare system which places few restrictions on access. There is no evidence of significant abuse of the welfare system by central and eastern Europeans, they may even be average net fiscal contributors (though if tax credits are included that may not be the case). But ease of access to work, housing and healthcare have added to the magnet effect of the UK.

Many other EU countries have more or less hidden protections for their domestic workers whether through “insider” labour market regulation or more insurance based welfare systems. Nevertheless other EU countries are now starting to worry about the effect of their 2011 labour market opening. (Germany has a Polish population almost as large as the UK but unemployment remains quite low by recent standards so it has not yet become a national issue.)

What about the social and cultural side? The roughly 100,000 people from France who live in London, or the similar number from Germany, are mainly in professional jobs



and generally blend in well. Some Europeans have become "commuter immigrants" - working in the UK for a few weeks or months and then returning home for a similar period. The social story for the several hundred thousand east Europeans who are establishing roots in this country is mixed. In many places the newcomers have fitted in well, speak good English and (especially in the case of Poles) often help to revive Catholic church congregations and schools. But in other places the eastern Europeans live quite separately in their own enclaves and have little contact with the British population.

Britain experiences an overall "human deficit" on free movement with (in 2011) around 2.3m EU citizens living and working here and 1.4m British citizens living and working in the EU. The two biggest inflow populations are Polish (690,000) and Irish (350,000) and the two biggest destination countries for British citizens are Spain (411,000) and Ireland (397,000).

Supporters of the free movement status quo stress not just the importance of the principle for the idea of creating an EU civil society but the establishment of the outlines of a European labour market and the benefits of allowing poorly performing EU economies to export their temporary unemployment to better performing nearby economies, helping to smooth over temporary frictions.

But labour markets remain overwhelmingly national and exporting unemployment has to be managed so it is not at the cost of national citizens. And the slender gains from such new developments must be set against the much greater danger that it will alienate too many people from the whole EU project. European civil society is fostered by many things including cheap air fares, the Champions League and the organized interaction between EU universities. The ease of interaction in professional labour markets may be a factor too. But increasing competition for jobs and public services at the lower end of the income spectrum makes the EU less not more attractive.

One of the problems with free movement on its recent large scale is that in a country like the UK there is an asymmetry in terms of the distribution of costs and benefits. Better-off retirees and young professionals who are not disadvantaged by EU inflows tend to also be the British citizens who are most likely to want to live and work in another EU country, while those with few skills who experience the inflow most negatively inside Britain are also the least likely to benefit from working abroad in the EU.

Nonetheless it is clear that free movement is a deeply ingrained principle of the EU and will not, and should not, be scrapped. It is part of the "religion" of the EU. But is applied too inflexibly and without sufficient regard to national sentiment.

Solutions

The UK now has an opportunity to lead a movement across the EU to bring free movement back in to line with what most EU citizens would regard as fair - especially in labour markets and welfare. The suggestions below could be regarded as part of a British "opt out" - partly on the grounds that Britain has been (and remains) more impacted than other countries - but the ideas would be more persuasive if presented as a more general "stock take" on the post-2004 experience of free movement and therefore available to all EU countries. None of these suggestions below should apply retrospectively and all EU citizens should continue to have the right to visa-free entry into any other EU country and the right of settlement if they are able to support themselves.

1. Looking ahead to further EU enlargement we should avoid repeating the experience of the recent large movement from central and east European countries. The simplest way to ensure this is to make sure that automatic labour market access does not apply until a country has reached 75 per cent of income per head of the average of all other EU countries.

2. EU transnational labour market regulation should in future build in more national caveats and discretions. Some of these qualifications might be triggered if the EU inflow breaches a cap of, say, 75,000 in a single year or whatever the appropriate number might be in smaller countries. That would allow national governments to insist that higher skilled EU nationals have a job offer before they come (as used to be the case) and lower skilled EU nationals would only have access to jobs that are on an approved shortage occupation list and/or after it has been properly established that no national citizen is available for the work. If a cap is considered too hard to manage then countries should have the simple right to enact a "safeguard clause", as Switzerland currently does, to restrict EU inflows from certain countries. In this way the small number of professionals from, for example, France, Germany and the Netherlands could continue to have full access while restrictions would be placed on countries, such as Poland or Lithuania, where most of the inflow is into elementary occupations.

3. Own citizen preference in labour market support should not fall foul of the anti-discrimination rules as it currently does. There are many ways this special help could be arranged. It could be managed geographically or by category of person or some combination of the two: in areas of particularly high long-term or youth unemployment special government employment incentives (such as waiving national insurance for the hard to employ) could be provided ONLY to national citizens. The Labour Party, for example, is currently offering a "jobs guarantee" for people under 25 who have been unemployed for more than a year. It should be possible to reserve this only for national citizens, similarly with any special help in training or apprenticeships.

4. Certain jobs such as those in the higher civil service or the armed forces are currently reserved only for national citizens. Different countries interpret the rules in different ways, but countries should legitimately be able to draw the net relatively wide

to include jobs where reading the cultural codes of a country or speaking the language like a native are relevant job criteria.

5. Currently EU citizens have access to most aspects of the welfare state simply by virtue of being habitually resident in the UK. They usually have to pay into the system here for two years before acquiring rights to contributory benefits if in work (in the same manner as UK citizens). But they qualify almost at once for non-contributory benefits, and for social housing, so long as they are habitually resident and working or seeking work. This is considered unfair by most people. Attempts are now being made to make the habitual residence test tougher in a way that would probably exclude many “commuter immigrants.” But a simpler and more decisive rule would be for non-citizens from the EU to wait for a period of two years before acquiring access to child benefit, tax credits, job seekers allowance, housing benefit and disability benefits. The same should apply to social housing.

6. The issue of having to treat EU students in the same way as UK students from the point of view of fees and grants also needs to be reviewed. It seems to have had the perverse effect of keeping the number of European students in the UK lower than it might otherwise have been as universities have a much bigger incentive to attract foreign students from outside the EU who pay higher fees. A fee structure somewhere between the UK level and the outside EU level should be considered.

## Conclusion

Some of the proposed labour market changes above would be largely symbolic. A highly motivated Latvian graduate with relatively low wage expectations is still likely to be more attractive to employ than many young British citizens at the bottom end of the labour market, even with a state employment incentive that excludes the Latvian. And special training and other help already goes overwhelmingly to national citizens.

Nonetheless, the symbolism is important. If large scale free movement becomes more entrenched more non-citizens are likely to qualify for special help. Also the current rules which make it impossible to employ any kind of citizen-favouritism in labour markets, and welfare too, challenge the instincts most people have about national citizenship.

Populist parties like UKIP which combine anti-EU sentiment with hostility to large scale immigration feed off the feeling that a common sense national interest is being thwarted by EU rules. This can have large political effects. Geoff Evans at Nuffield College in Oxford has evidence that Labour lost the 2010 election on the issue of immigration more than any other, its blue collar core vote either did not vote or switched away from Labour.

Such people with poor qualifications and few prospects have often lost out twice over

recent decades with their former manufacturing jobs being exported overseas to lower wage countries like China and then poorer Europeans being imported to this country to directly compete with them in the new private sector service jobs that they may now be employed in.

The British are not the only people to feel disquiet about this. Spain opened its labour market to Romanians and then closed it again. Some of the central and east European countries regret losing some of their best educated young people to work in cafes in London. But the main group of countries that are open to the idea of restoring some citizen preference while retaining the basics of free movement are northern European countries like the Netherlands, Denmark, Sweden and Germany. Though even in those countries the issue is controversial and building a coalition for reform will require care and political subtlety.

Yet how can it be against the European spirit to provide special support to some of the most vulnerable in your own society? What is required is not an end to freedom of movement but sufficient flexibility to allow a restoration of limited favoritism and protection, within the labour market and welfare system, for those national citizens who need it most.

David Goodhart, Director of Demos

**Submission 21**

<b>Name</b>	Ministry of Foreign Affairs of the Republic of Bulgaria
<b>Organisation/Company (if applicable)</b>	
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	
<b>Email</b>	

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

**Questions in relation to the UK Experience of the Free Movement of Persons**

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

Free movement of persons is one of the fundamental freedoms guaranteed by EU law. It is an essential element of the Single Market which plays a key role in strengthening Member States' economies and in providing for raising the standard of living and the quality of life across Europe. The European Commission estimates a GDP boost of 0.4 % in the long term for EU-15 countries because of the increased labour force and for allowing for adjustment of production capacity<sup>137</sup>. Research by Dustmann, Frattini and Halls (2010) has found that in the four fiscal years after 2004 A8 migrants made positive contributions to UK public finances.

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

The Free Movement Directive (2004/38/EU) aims to guarantee that EU citizens will be able to fully exercise their rights to move, live and work freely anywhere in the EU. These rights are exercised on a reciprocal basis.

Without the EU competence in this area, UK nationals would have to face much more difficulties in getting access to the labour markets and the social systems of other Member States. For instance, as regards access to the Bulgarian labour market/ social system, some important differences between a third country national and UK national could be summarised as follows:

	Non-EEA nationals	UK national
Access to the labour market	Restrictions in place - need for a work permit	Same as natives, no restrictions
Health care	They are obliged to pay health insurance contributions in order to receive health-care services.	UK nationals are treated as Bulgarian nationals according to the Rules on the coordination of the social security. If insured under the UK / EU legislation they are not obliged to pay health insurance contributions for health-care services.

<sup>137</sup> Some of the sources for data used are given in the question 18 section.

### **3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

The available data, studies and researches show that EU provisions on access of citizens from one Member State to another Member State's welfare system are rarely abused and do not lead to overburdening of the public services of the latter. Particularly in the case of Bulgarian citizens in the UK, there are no evidence of the so called "benefits tourism", on the contrary:

- A study from 2011 has found that a much higher share of the UK-born population claim benefits in comparison with Bulgarians residing legally in UK, and the predominant part of the claims are for child benefits. The Bulgarian workforce in the UK is predominantly young, single, relatively well educated.
- Bulgaria is ranking very low on child benefit claims table - it is the 16-th country in 2012 by the number of Child Benefit Awards to Overseas Children (238 children out of a total of 40 171 awarded benefits).
- Department for Work and Pensions data shows that in 2011 16.6% of the working age population in UK were claiming working age benefits, compared to only 6.6% of working age non-UK nationals. Bulgarians are not among the top 20 non-UK nationals, recipients of working age benefits.
- The same Department for Work and Pensions report from 2012 reveals data which shows that EU nationals are only 25% of all Non-UK nationals claiming working age benefits where those from Asia and Middle East were as 34% and those from Africa - 27%. EU Enlargement counties citizens' represented only 10.6% of the recipients of Jobseekers allowance in February 2011.
- A report of the National Institute of Economic and Social Research concludes that it is unlikely that there will be a significant impact on the health services, as well as on the welfare system, from further migration of A2 citizens. The same study also confirms that A8 citizens are 28% less likely to live in social housing than natives.
- Research by Dustmann, Frattini and Halls (2010) has found that in the four fiscal years after 2004 A8 migrants made positive contributions to UK public finances.
- Results from a BBC survey from April of 2013 showed that the tightening of the rules for access to the British social security system are not affecting Bulgarians making decision to relocate, because they are not motivated by gaining access to benefits.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other Member States? What obstacles, if any, do UK nationals face when exercising their free movement rights in other Member States?**

Bulgaria applies in full the EU provisions on the free movement of workers (incl. Art. 1-6 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union).

According to the Bulgarian legislation EU citizens (incl. UK citizens) have free access to Bulgarian labour market and equal rights to Bulgarian nationals.

In this respect, under the current EU and Bulgarian legislation UK nationals face no obstacles regarding their rights to work and access to benefits and services in Bulgaria. Any change that might impede rights of the Bulgarian nationals may invite reciprocal actions that may affect UK nationals' access to benefits and services in Bulgaria.

**Questions in relation to the labour market**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons?**

No precise calculations could be made on the contribution from the Bulgarian workers to the UK economy. Nevertheless, as cited above the overwhelming majority of studies point out to a positive economic impact from intra EU migration (increased labour force; allowing for adjustment of production capacity; positive contribution to the UK public finances).

Analysis of the Office for Budget Responsibility by the Migration Matters Trust revealed that within five years as of 2013, public sector net debt in the UK would rise by £18bn if immigration has stopped. In the next 10 years there will be 13.5 million job vacancies in UK, but only 7 million young people will graduate in that period.

Available data shows that even though EU citizens have the full right to move in order to live and work in the UK, in comparison to the Non-EU citizens, they are a minority of the overall immigration to the UK. The Oxford Migration Observatory quotes data for the period 2004-2011 which shows that EU immigration represents only 29% of the overall immigration to the UK for that period.

Office of National Statistics data from the Labour Force Survey shows that for the period January-March 2013 EU citizens represent 5.3% of the employed persons in UK, while the Non-EU citizens - 9.1%. The employment levels for the same period are 71.1% for the UK citizens, 75.6 % for the EU citizens (71.1% for Bulgarian and Romania citizens) and 63.3% for the Non-EU citizens.

Bulgarian citizens in UK are having jobs in sectors in demand of labour in UK -



construction, trade, agriculture, and health sector. The Bulgarian workforce in the UK is predominantly young, single, relatively well educated which will contribute positively to the UK public finances, not vice versa. Results from a BBC survey of April 2013 showed low percentage of Bulgarians making plans to look for jobs in the UK and more over - that they will not relocate unless there is a solid job offer. Bulgarians are an insignificant number as a share of the population in UK. The total share of A2 working age nationals residing in the UK for 7 years or less in 2010 was 0.2%, compared to 0.8% from EU-15, 1.5% from EU-10 and 2.7% for third country national.

The European Commission has concluded that there is no evidence either of a direct link between magnitude of labour flows from Bulgaria and Romania and the transitional arrangements in place nor any tangible imbalances in the British labour market as a result of the free movement of Bulgarian citizens to the UK. On the contrary, limitations to the right to free movement of workers within the EU create an uneven level playing field, with higher risks of abuse by employers. The current work permit system in UK, where Bulgarian citizens are given the right to work for a particular employer (including the farms under the Seasonal Agricultural Scheme) creates the possibility for abuse. In case of problems with the contract the employee are reluctant to seek legal redress fearing that he/she could loose the job and will not be in a position to find a new employer. The latter entails the need to apply for a new work permit, a procedure that takes months.

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

Intra EU migration for economic reasons is based on supply and demand principles. Research results quoted above found no evidence that migration from A8 has had any adverse impact on the native British workers.

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

The Oxford Migration Observatory cites results from Lemos and Portes which have found no evidence that migration from A8 has had any adverse impact on the native British workers. No impact has been found as well on claimant unemployment (including younger workers and low skilled) and no impact on wages.

A Migration Advisory Committee report from May 2013 on the Seasonal Agricultural Scheme for Bulgarian and Romanian nationals concluded that British workers in the agriculture are not displaced. Operators and growers are trying unsuccessfully to recruit (and retain) British workers, who are reluctant to live on (be tied to) the farm; either cannot or will not work at the intensity required to earn the agricultural minimum wage and have little incentive to come off social security benefits for seasonal work. Bulgarian and Romanian workers in the agricultural sector are presented in the report as highly valued, a stable and reliable source of labour.

Bulgarians represent an insignificant share of the population in UK. The total share of A2 working age nationals residing in UK for 7 years or less in 2010 was 0.2%, compared to 0.8% from EU-15, 1.5% from EU-10 and 2.7% for third country nationals. Bulgarians constitute only 5% of intra-EU mobile persons, comparable to the levels of British, French and German nationals (working age citizens living in another Member State, 2010 data). In addition surveys indicate that the UK is not the most attractive place for Bulgarians seeking employment - in 2010 only 14.5% of the Bulgarian recent intra-EU movers relocated to UK.

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

We will refrain from providing answers to questions in the review of the balance of competences in the free movement of persons area where they fall outside of our competences.

**Questions in relation to social security coordination**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

The primary sources of the legislation of the European Union (EU) define the free movement as a basic right of the citizens of the Union. On the other hand the social security systems of the EU Member States operate on a territorial principle and govern events arising solely in the territory of the respective state.

As a result of this, the movement of the EU citizens may cause an accumulation of liabilities, respectively rights, according to the legislation of more than one Member State or may make it impossible for a person to be covered by the social security system of any Member State.

The unfavorable situations, arising from the movement of the citizens of the Union could be overcome only by applying an above EU co-ordination tool, which will eliminate the contradictions, springing from the application of (certain parts of the) national legislations in cases of trans-boundary situations.

The main goal of the co-ordination rules is to guarantee and stimulate the free movement of the Member States citizens. In other words, the right to free movement of EU citizens could not be achieved properly without an adequate system for co-ordination of the social security systems of the Member States.

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

The EU rules on social security coordination ensure that EU migrants are not automatically entitled to claim benefits in the other Member States. As the statistical information provided above confirmed there is no evidence that the UK suffers significantly from benefit tourism. EU migrants do not represent a disproportionate number of benefit claimants - rather the reverse. EU citizens who are not employed are not be eligible for benefits as EU law requires them to have resources higher than the income threshold under which the benefits are granted. On the other hand, EU law stipulates that before EU citizens who are not active in the labour market become eligible for social security benefits, they have to pass a strict “habitual residence test” to prove that they have a genuine link with the UK. National authorities have the power to use the EU rules to prevent abuse of the social security systems.

The measures in the framework of the available instruments within the EU are directed towards solving actual problems and aim at strengthening the control on the lawful exercise of the right to free movement and not an introduction of restrictive measures, affecting the fundamental rights of all EU citizens as a result of the fault of a particular person.

Any measures in this respect should be proportionate, non-discriminatory and should not contradict the EU law. A possible change in the competences suggests a change in the EU legislation. This approach would be justifiable only if all existing means and available instruments have been exhausted and the dimensions of the problem have indeed seriously affected the normal functioning of the social system of the Member States.

### **Questions in relation to Immigration**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

Available data shows that even though EU citizens have the full rights to move in order to live and work in the UK (unlike the Non-EU citizens) in comparison with the Non-EU citizens they are a minority in the overall immigration to the UK. The Oxford Migration Observatory cites data for the period 2004-2011 which shows that EU immigration represents only 29% of the overall immigration to the UK for that period.

As The European Report on the Free Movement of Workers in Europe in 2011 - 2012 states, fraud and abuse of the right to free movement are grounds to refuse, terminate or withdraw a residence permit in most Member States. Most frequently, Member States regulate marriages of convenience through their immigration rules,

either through their definition of spouse or by including fraud as a ground to revoke, terminate or withdraw rights or a combination of both. So in our view a strict enforcement by the relevant British authorities of the existing rules may bring about the desired effects on curbing the abuse of marriages of convenience problems and the violations of the rights of free movement of persons within the EU.

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

As it was already pointed out, Directive 2004/38/EU provides competences to the Member States to fight abuses and frauds by developing well-functioning mechanisms and rules at national level.

Member States may apply sanctions in the field of civil, administrative or criminal law, to deny, terminate or deprive some of the rights, provided for by the Directive. Thus, the legislation in force provides every Member States with effective legislative mechanisms to tackle real and current serious threats against the public interests.

The competency belongs to the Member States due to the fact that each Member State has its specific administrative, legal, economic and social systems. A change could only be in the direction of strengthening the competences of the EU without harmonisation of the practises and the systems of the Member States. Any attempt to harmonise national systems can seriously hamper those systems by disregarding national specificities.

The first step in this suggested coordination is the currently executed exchange of information and good practices between the Member States. The available tools, such as the free movement experts group (FREEMO) and the working process in the framework of the *EU Action on Migratory Pressures - A Strategic Response* should exhaust their full potential before any other alternative decisions are discussed.

Bulgaria has experience in bilateral cooperation with other Member States which have reported problems related to abuses of the right of free movement. The establishment of joint patrol teams with local police and representatives of the Bulgarian police authorities has given positive results in the prevention and detection of frauds and, in some cases, of crimes.

## Questions relating to future options and challenges

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

The Accession Treaties gives the opportunity to the Member States to temporarily restrict the free access of workers from the new Member States to their labour markets. The period of the transitional arrangements should be used for preparing the national public with detailed objective information about the situation that will arise after the lifting up of the transitional periods.

## General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

- Report from the Commission to the Council on the Functioning of the Transitional Arrangements on Free Movement of Workers from Bulgaria and Romania - SEC(2011) 1343 final, 11.11.2011
- Identifying social and economic push and pull factors for migration to the UK by Bulgarian and Romanian nationals, Dr. Rukhsana Kausar, 2011
- Nationality at point of National Insurance Number registration of DWP benefit claimants: February 2011 working age benefits, DWP, January 2012
- The Migration Advisory Committee - Migrant Seasonal Workers: The impact on the horticulture and food processing sectors of closing the Seasonal Agricultural Workers Scheme and the Sectors Based Scheme, 2013
- The National Institute of Economic and Social Research - Potential impacts on the UK of future migration from Bulgaria and Romania, 2013
- Christian Dustmann, Tommaso Frattini and Caroline Halls - Assessing the Fiscal Costs and Benefits of A8 Migration to the UK

**Submission 22**

<b>Name</b>	Bell Graham, Bell Richard
<b>Organisation/Company (if applicable)</b>	Garden Solutions
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	████████████████████
<b>Email</b>	████████████████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	Landscaping, Garden Design

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

There are no obstacles to setting up a small business in France, except language, that do not apply equally to UK citizens, resident in France, and French nationals.

The same applies to individuals. Nobody, French or foreign looks forward to going to the sous prefecture, tax office or soc sec agency. Paperwork is always a challenge.

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

When a business or an employee is registered into the social security system, they have the same rights as French nationals. Of course French soc sec charges are much higher and for many UK citizens, the benefits never accrue.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

The French carte vitale system is available to anybody who is tax resident in France and works very well. The European medical card gives access to medical care in other member states. I have one but have never had to use it so can't comment on its efficiency.

Unemployment benefit is available, too freely I believe, to anybody who has been registered into the French soc sec system.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**



In France, there are no obstacles to free movement. The Schengen agreement operates across most of the EU. Free movement back to the UK is more difficult. EG the import of Pets is still expensive and time consuming. Passports continue to increase in cost. Telephone charges across borders are coming down but are still a "rip off" by the telecoms companies.

We certainly don't need more regulations and form filling!

### Questions in relation to the labour market.

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**We have employed a number of UK nationals in France, on both short term, seasonal, and longer term contracts, without any issues.**

**As usual work time directives are completely ignored in the small business sector especially for UK nationals who are more interested in maximising salary than obeying some directive from Brussels that is totally impractical in many sectors of employment**

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

**Work time directives are impractical in the agricultural sector but are bypassed by seasonal contracts which allow much more flexible working.**

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**As you know, in France they love to legislate and regulate and then ignore!**

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**The French medical system , in my opinion is much better than the NHS. However it is more costly, evidenced by high social charges (not for pensioners) and not very efficient, lots of people. Strangely, the French medical system is staffed almost totally by ethnic French people whereas , in my opinion, the NHS would collapse without doctors and nurses from Asia and Africa. Don't know why.**

**With respect to retirement pensions. There is a lot of confusion as to which system one needs to apply and at what age, 65 or 60, in the case of France. French state pensions are much more attractive than the british state pension, Whether they can continue to afford it is another matter.**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

**In my opinion, it is quite difficult to claim benefits in the French system unless you are registered to work. As I said previously , after that, the unemployment benefits are too generous, which probably contributes to the high unemployment rate in France. The minimum wage if France 9, 6 euros is higher than in Uk but it is still difficult to find French nationals who want to work at that rate.**

**Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

**Submission 23**

<b>Name</b>	
<b>Organisation/Company (if applicable)</b>	British Hospitality Association
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	████████████████████  ████████████████████
<b>Email</b>	████████████████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	YES.
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**6. What is the impact of this area of EU competence on employment sectors, such as ‘distribution, hotels and restaurants’, ‘banking and finance’, agriculture, or other sectors?**

It is estimated that about 22 per cent of those working in the UK hospitality industry were born outside the United Kingdom, against 14 per cent across the economy as a whole. (Source: People 1<sup>st</sup>, Sector Skills Council.) However, most of these are from non-EEA countries: about 13 of the 22, and most (56 per cent) of the non-EEA workers had arrived by 2000, against 34 per cent of the EEA workers, the overwhelming majority of whom came in connection with the lifting of restrictions on the A8 countries.

Free movement for EEA workers has therefore contributed about 9 per cent (22 minus 13) of the hospitality workforce in the UK. This had a considerable impact in the previous decade, but is having less impact now.

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

The Low Pay Commission’s 2007 report noted “the widely held view that A8 workers are contributing to the success of the UK economy by filling gaps in the labour market.” By 2010, under different economic circumstances, the LPC stated that “migrant workers overall have not fared worse in the recession than those born in the UK.” We do not have sectoral information to support those conclusions or otherwise.

However, we would make two sector specific points: first, the most serious labour shortage in hospitality is of chefs, and especially Asian and Oriental chefs, who cannot generally be found in the rest of the EEA. Second, the UK hospitality industry gains from the movement of chefs, managers and others between countries: this is an international industry and the ability to maintain this mobility is important.

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

We do not think the EU needs to do more, but we would be concerned if it were to do less to encourage intra-EU mobility.

#### Questions in relation to social security coordination.

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

#### Questions in relation to Immigration.

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

See 6 and 7, above.

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

The majority of EEA migrants, notably those from the A8 countries, who work in hospitality do so in major cities, especially London, and not to any extent in rural areas.

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

## Questions relating to future options and challenges.

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

This is hard to assess: we have yet to see whether the A2 (Bulgarian and Romanian) accessions or that of Croatia will bring significant numbers of their nationals to work in the UK hospitality industry.

## General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

As indicated above, the Low Pay Commission has published its annual reports, with relevant comments about migrant workers. The Migration Advisory Committee has also, of course, done much work on this.



**Submission 24**

<b>Name</b>	
<b>Organisation/Company (if applicable)</b>	Architects Registration Board (ARB)
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	8 Weymouth Street London W1W 5BU
<b>Email</b>	<a href="mailto:info@arb.org.uk">info@arb.org.uk</a> [REDACTED]

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input checked="" type="checkbox"/>	UK Statutory Regulator for Architects
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

### **1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

The Architects Registration Board (ARB) is responsible for implementing in the UK the provisions relating to the architects under Directive 2005/36/EC on the mutual recognition of professional qualifications and Directive 2006/123/EC on services in the Internal Market.

Directive 2005/36/EC provides a faster route to recognition of qualifications and registration across the EU as it sets the rules on how architects can use their home professional qualifications to register in any EU Member State.

Those who hold qualifications listed in Annex V.7.1. of the Directive can benefit from automatic registration of their qualifications as they have met the EU minimum training requirements.

From 2007 to mid-2013, ARB granted registration to 2872 (non-UK) architects under the provisions of the Directive. In comparison, during the same period ARB granted registration to 6027 UK architects.

Since 2007 (end of the Directive transposition period) and until 2012, and despite a peak of applications for registration in 2008, the number of applications from EU architects on the Register has remained an average of 436 applications per year. In comparison, the average number of UK applicants in the same period is 920 per year.

### **2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

The implementation of the Professional Qualifications Directive (2005/36/EC) has enabled architects across the EU to use their home qualifications to secure registration in other Member States.

The Directive has removed some administrative obstacles to recognition of qualifications and registration by aligning minimum training requirements at EU level.

The Directive has been transposed in 2007 into the Architects Act 1997

The listing of EU-recognised architectural qualifications includes over 40 UK qualifications. British architects who hold these qualifications can benefit from the automatic recognition of their qualifications (i.e., their qualifications do not need to be assessed for equivalence). If they hold a Part 3 qualification (obtained after completion of practical training and examination) making them eligible to access the market in the UK, they are automatically eligible to register in any EU Member State without the need to pass additional examinations.

EU competence in this area makes it easier for British architects to work in other EU Member States, as they can have their UK qualifications recognised. This means that they don't need to re-qualify in the Member State they move to.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

The principle of automatic recognition of qualifications is based on harmonised minimum training requirements; this means that Member States are able to set stricter training requirements at national level. ARB believes that Member States should continue to retain the ability to set higher national standards of education, in order to reflect national needs and in particular to have flexibility to determine the structure and duration of architectural education. This does not create obstacles to EU mobility but encourages diversification and recognises national and cultural differences.

Obstacles known to ARB relate to issues of implementation or of misinterpretation on the Professional Qualifications Directive by other competent authorities.

Under the principle of automatic recognition, those who hold qualifications listed under Annex V.1.7 of the Directive and have met the national requirements for access to market are eligible to automatically register in another Member State. In some instances, British architects who held listed qualifications and met the requirements to register in the UK, have been required by the authority of another Member State to undertake additional examinations in order to meet the access to market requirements of that country. This created an obstacle to free movement as the decision of the authority went beyond the provisions of the Directive. More enforceable guidelines for implementation of the Directive circulated to competent authorities could help in encouraging a more harmonised application of the rules.

Difficulties of implementation also exist when applying the general system (when the automatic recognition of qualifications does not apply). A more systematic and harmonised approach could help in checking the comparability of qualifications.

#### **Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

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**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

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**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

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UK Schools of architecture are increasingly integrating exchange programs such as Erasmus in their undergraduate qualifications.

This provides students with new opportunities to diversify their education and gain additional skills valuable when seeking employment.

According to the European Commission's statistics on the movement of professionals<sup>1</sup>, between 2007 and 2012, 12% of those who migrated have obtained their architectural qualifications in the UK and 21% of recognition decisions have been taken in the UK. The UK remains one of the main Member States attracting EU architects.

<sup>1</sup> Database of EU regulated professions, please follow this link:

[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm)

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

#### Questions in relation to social security coordination.

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

#### Questions in relation to Immigration.

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

With regards to the free movement of persons facilitated by the recognition of professional qualifications, we have identified the following challenges:

- The negotiation of EU trade agreements and of mutual recognition agreements (MRA) between the EU and other countries are likely to be beneficial as the architect profession is mobile internationally. Organisations such as the Royal Institute of British Architects may be able to provide further information on this subject. It is however important that national standards of education and training are maintained.
- Institutions are increasingly developing partnerships with other institutions in the EU. The emergence of joint degrees for example could represent a challenge with regard to validation processes at national level and regarding processes of EU recognition of qualifications.
- The Professional Qualifications Directive 2005/36/EC is currently being modernised. There will be challenges for the UK regarding the transposition and implementation of the new rules. Some of the new provisions may have implications in terms of resources. For example, if the European Professional Card is introduced for architect at European level, ARB would potentially need to invest in additional resources to comply with the Directive.
- The involvement of stakeholders in the EU decision-making process. With the development of implementing and delegated acts, it isn't clear how stakeholders such as ARB are consulted. There is a risk that decisions which might impact on ARB processes and on British architects are taken without adequate consultation of relevant parties.

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

It is difficult to predict the impact of any future enlargement of the EU on the operation of free movement. Several factors would need to be considered, for example the size or proportion of architects per inhabitant in the country. However, because ARB receives a significant number of applications from EU migrants wishing to access the profession of architect in the UK, we can assume that future enlargements will enhance that trend.

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

The collaboration between architects' regulators at European and international level has improved since the creation of the European Network of Architects Competent Authority. ENACA was specifically created to improve administrative collaboration in the implementation of the EU Professional Qualifications Directive.

ARB is a member of ENACA and has benefited from being part of the network by collaborating on the development of EU-wide projects and exchanging best practice.

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**



## **Submission 25**

### **HOME OFFICE AND DEPARTMENT FOR WORK AND PENSIONS REVIEW OF THE BALANCE OF COMPETENCES**

#### **INTERNAL MOVEMENT: FREE MOVEMENT OF PERSONS**

#### **RESPONSE FROM MIGRATION WATCH UK**

### **Summary**

1. EU competence develops over time and, in practice, is irreversible. The addition of a dozen new members with a total population of about 100 million and a standard of living of roughly a quarter of the EU 15 is, combined with the free movement of labour, placing increasing strains on wealthier members – notably Germany, the UK and the Netherlands.
2. Britain is almost uniquely vulnerable. The presence of one million migrants from the A8 is a significant “pull factor” for further migration. Our benefit system is based on residence, requiring no history of contributions, and tax credits (designed to lift children out of poverty) are a huge incentive to low paid migration.
3. The effect of EU competence is to open this benefit system to EU workers, almost from arrival. A worker from Romania or Bulgaria with a spouse and two children would, even on the minimum wage in the UK, receive take home pay eight or nine times that which he or she would earn at home after allowing for the difference in the cost of living. A single such worker would earn five times as much as at home. The benefit to the GDP per head of British residents would be negligible.
4. Restricting access to benefits for five years is a minimum requirement to reduce these incentives but would entail a very difficult negotiation with EU partners and the Commission.

### **Context**

5. When the UK – alongside Ireland and Denmark - joined the European Community in 1973 it was a community of six Western European countries designed to facilitate trade between members. Over the years the powers of the EC/EU have grown as has its membership. It now comprises 28 countries of varying size and economic performance with a total population of over 500 million.
6. As the EU has grown in size, both geographically and institutionally, so has the power that it wields over members. Successive treaties, secondary legislation, directives and case law are binding on member states which cannot subsequently repatriate the powers concerned.
7. This ever evolving process, often resulting in further loss of national control, is an important consideration in assessing present competencies. With specific regard to

free movement, the relationship today is very different to the past and may well be very different to how it will look in the future. Indeed, it must be assumed that UK control over migration matters will be further eroded. Of particular concern is the possible accession of Turkey. The Turkish economy is growing quite fast but there are still huge numbers of poor, especially in the East who could form a major wave of migration; by the time of accession, Turkey could have a population of 80 - 100 million.

### **EU Free Movement**

8. The principle of free movement of labour is one of the four pillars of the common market, established in the Treaty of Rome signed in 1957. It allows for nationals to take up employment across the Union and take their families with them. This was originally free movement of labour, not all citizens.

9. What the EU is now moving to is, in effect, free movement of all persons, regardless of economic activity or inactivity. Successive changes have expanded free movement to include students, self-employed people, self-sufficient people and job seekers. This is a clear departure from the original principle of free movement of labour.

### **Implications for the UK of EU Legislation on Free Movement of Persons**

10. EU legislation on the free movement of persons as well as social security harmonisation has always prevented the UK from controlling EU migration. However, net migration from the EU15 has not been particularly significant. Between 1997 and 2011 it averaged 24,000 per year and reached a high of 38,000 in 2004. Overall it amounted to less than 30% of net foreign immigration.

11. It is net migration from the A8 that has transformed the picture. The census has demonstrated serious discrepancies in the net migration estimates of A8 migrants that render them unreliable. However, the population estimates show that the A8 population in the UK has increased by around 100,000 per year since 2004.

12. As the government seeks to bring total net migration to the UK down to acceptable and sustainable levels it is targeting non-EU migrants since they are the only group that can be controlled through the immigration rules. As non-EU migration falls, EU migration as a proportion of total net migration will increase.

### **Social Security**

13. This situation is exacerbated by the present EU regime on social security. Social security and free movement are intricately connected. Social security provision for EU citizens was intended to ensure that EU nationals wishing to work in other EU

member states were not disincentivised from doing so as a result of national social security rules.

14. This principle has also been stretched to the limit. All EU citizens are now supposed to have free and full access to the welfare state of other countries in exactly the same manner as nationals of those countries. In the context of the UK, where entitlement is based on residency rather than contribution, this in effect allows EU citizens to enter the UK and claim benefits almost on arrival so long as they can demonstrate that the UK is their “centre of interest”.<sup>1</sup>

15. There remains one thin line giving some protection to the UK welfare state - the ‘right to reside’ element of the Habitual Residence Test which limits access to certain benefits. EU nationals have a right to reside if they are exercising their treaty rights as a worker, student, self-employed person, self-sufficient person, or a job seeker. British nationals satisfy this test by fact of their citizenship. However, the European Commission has opened an infringement procedure against this test on the basis that it “indirectly discriminates against non-UK nationals coming from other EU Member States and thus contravenes

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<sup>1</sup> The habitual residence test is the test applied by the Department of Work and Pensions and local authorities when making decisions about someone’s entitlement to welfare and social housing. The test is not defined in legislation, but in case law, and considers a person’s length and continuity of residence, their future intentions, their employment prospects, their reasons for coming to the UK, and where their centre of interest lies. House of Commons Library, ‘The Habitual Residence Test’, Standard Note SN/SP/416, May 2011, URL: <http://www.parliament.uk/briefing-papers/SN00416.pdf>

EU law.”<sup>2</sup> The UK government has not amended the legislation in line with Commission request and the matter has now been referred to the European Court of Justice for adjudication. If the UK is unsuccessful at the ECJ the implication is that all EU citizens will be able to move to the UK and become resident immediately thus gaining immediate access to benefits.

16. Meanwhile, there is a particular problem over the EU requirement to pay child benefit to children still resident in their home country but at the level of benefits in the country where the worker is employed.

17. The extent to which EU workers draw benefits in the UK cannot be accurately determined as the nationality of recipients is not recorded. This will be corrected when Universal Benefit is introduced nationwide.

18. It is however often claimed that migrants are far less likely to claim benefits than UK nationals. This appears to be based on a DWP study which omitted tax credits, as well as Housing and Council Tax Benefit<sup>3</sup>. In addition, the DWP study was carried out in February 2011 when EU nationals from the A8 generally had to work for at least 12 months before getting access to job-seekers allowance and other benefits. These restrictions on access to benefits for A8 migrants were lifted in May 2011<sup>4</sup>; now all benefits can be claimed almost immediately on arrival (see paragraphs 14 and 15).

19. The UK is uniquely attractive to migrants from Eastern Europe because our system of tax credits heavily favours those in low paid work. Restricting access to both benefits and in-work tax credits would significantly reduce the incentive to migrate from some of the poorer countries in Eastern Europe, where wages are far lower and the social security system does not significantly increase the wages of the low paid.

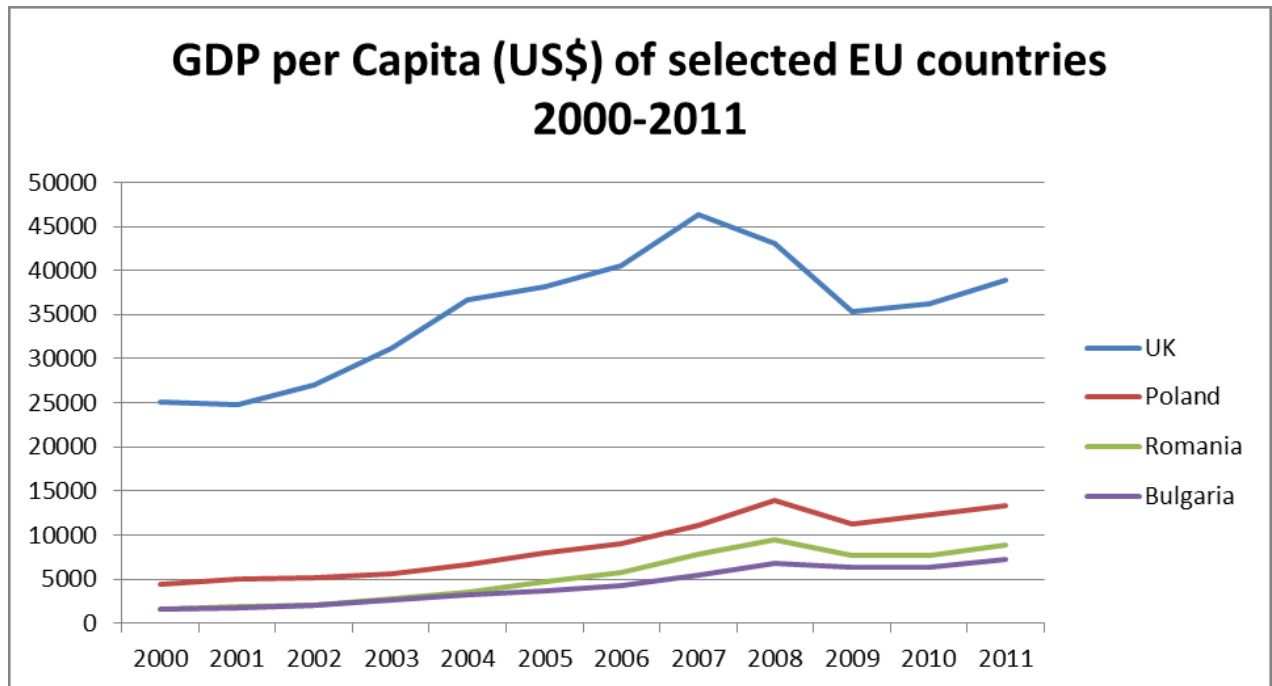
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<sup>2</sup> European Commission Press Release, ‘Social security coordination: Commission requests United Kingdom to end discrimination of EU nationals residing in the UK regarding their rights to specific social benefits’, 29<sup>th</sup> September 2011, URL: [http://europa.eu/rapid/press-release\\_IP-11-1118\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1118_en.htm)

<sup>3</sup> Department of Work and Pensions, ‘Nationality at point of National Insurance number registration of DWP benefit claimants’, January 2012, URL: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/196677/nat\\_nino\\_regs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_regs.pdf)

<sup>4</sup> Migrants’ Rights Network, Frequently asked questions about the rights of EEA nationals to access benefits and the changes A8 nationals from 1 May 2011, URL: <http://www.migrantsrights.org.uk/files/publications/FAQ-rights-benefits-A8-May-2011.pdf>

Figure 1. GDP per Capita of Selected A8 and A2 countries, 2000-2011. Source: World Bank.



20. The benefits and tax credit regime significantly boost the wages of migrants from East Europe most of whom are low paid. For example, a single person in Poland working at the minimum wage would have a weekly take home pay of £98. Moving to the UK and taking a job at the minimum wage would increase his wage by two and a half times to £254 once the costs of living have been accounted for. However, were that person to be denied access to the welfare state for five years (on the grounds that he had not contributed anything in income tax and national insurance) he would only be able to earn just under twice what he could at home. Similarly, Polish families are able to substantially increase their wage by moving to the UK, earning almost four times as much as they would at home. However, were the incentive of benefits not available then the increase would be significantly less, especially for families. Romanian and Bulgarian nationals would be able to increase their take home pay by a factor of five or eight, as outlined in the table below.

Table 1. Table of Incentives to Migrate to the UK

Table of Incentives to Migrate to the UK, Weekly Take Home Pay at Minimum Wage						
	In Home Country after Tax with Benefits		In UK after Tax with Benefits		In UK after Tax without Benefits	
	Single Person	Worker & Spouse + 2 children	Single Person	Worker & Spouse + 2 children	Single Person	Worker & Spouse + 2 children
Poland	£98	£145	£254	£543	£184	£184
Romania	£55	£70	£254	£543	£184	£184
Bulgaria	£49	£62	£254	£543	£184	£184

21. East European migration has been of great benefit to individual employers by providing very low paid workers who are also very industrious and flexible. However, according to a study by the NIESR, their contribution to GDP per head in the medium term is likely to be “negligible”.<sup>5</sup>

**Policy Options to address tension between EU legislation and effective immigration control.**

*a. Opt-out of principle of free movement*

22. The UK could seek to achieve an opt-out from the principle of free movement of persons while remaining committed to the other principles of the free movement, goods, services and capital. This would not be negotiable. Nor is it necessarily desirable. The UK needs to remain open to talented people from across the EU. There are also over 400,000 British people exercising their treaty rights by working in other EU countries and another half a million people living but not working across Europe.<sup>6</sup>

<sup>5</sup> National Institute of Economic and Social Research, ‘Labour mobility within the EU – The impact of enlargement and the functioning of the transitional arrangements’, Discussion paper 379, April 2011, URL: [http://niesr.ac.uk/sites/default/files/publications/270411\\_143310.pdf](http://niesr.ac.uk/sites/default/files/publications/270411_143310.pdf)

<sup>6</sup> Migration Watch UK, Briefing Paper No 4.21, The British in Europe, April 2013, URL: <http://www.migrationwatchuk.org/briefingPaper/document/296>

*b. Better enforcement of habitual residence test*

23. The UK could enforce the rules that already exist more effectively. The Habitual Residence Test<sup>7</sup> which acts as the gateway to the welfare state is poorly policed. The test is an on-going one for recent EU migrants and should be better enforced in stages, as laid down in EU legislation. For example, all EU citizens have treaty rights which grant them the right to move for a three month period to any EU country, regardless of their economic status. After this initial three months EU citizens then have to prove that they are exercising one of their treaty rights, i.e. as a worker, student, self-employed worker or self-sufficient individual. If they do not fall into one of these categories they should lose their right to reside and therefore any claim to any sort of welfare benefit. If they cannot provide for themselves without recourse to welfare then they should be encouraged to go home. If, however, EU citizens are exercising another treaty right, as jobseekers, the treaty allows them to do so for up to six months. If after this period an individual has not found work his right to reside should end. Access to all benefits should also be terminated. This will require better coordination with local authorities who currently decide on applications for social housing, housing benefit and Council tax benefit. Anyone who does not have a right to reside and who cannot live without financial support from the welfare state, should be helped to go home.

24. All of the above is allowed, and indeed stipulated, in the various treaties and would simply be a case of enforcing the rules. In order to implement such a system, EU citizens would have to register with the police or Home Office if they wished to remain in the UK after three months thus allowing the various authorities to enforce the right to reside test at various stages of residency. A similar system is operational in Spain whereby an EU national must register his presence if he wishes to remain beyond three months.<sup>8</sup>

25. This would ensure than the benefits system is not abused however it does not address the key issue, which is that access to the benefits system for EU citizens can provide a huge economic incentive to migrate to the UK, especially from the less wealthy Eastern European states.

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<sup>7</sup> See here for more on the Habitual Residence Test, Migration Watch UK, Briefing Paper No 4.19, Briefing Note: EU Nationals and access to the British Welfare State, February 2013, URL: <http://www.migrationwatchuk.org/briefingPaper/document/289>

<sup>8</sup> Foreign and Commonwealth Office, Residency Requirements in Spain, URL: <https://www.gov.uk/residency-requirements-in-spain>

*c. Restricting access to the welfare state for probationary period*

26. The UK could seek to negotiate a deal whereby EU citizens maintained their treaty rights as workers, students etc., but would not have access to social security benefits or tax credits for a period of five years, bringing the regime for access into line with that for non-EU citizens. This would be a challenging task but the UK could expect some support from other countries which have had a similar experience of EU migration, such as Germany and the Netherlands.<sup>9</sup>

### **Conclusion**

27. The effect of EU competence on the free movement of persons is to leave the UK open to very substantial migration of workers from Eastern European member states. The scope for a renegotiation that does not undermine the single market is limited to restricting access to benefits but even that will, in practice, be difficult to achieve.

31<sup>th</sup> July 2013

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<sup>9</sup> Joint letter from UK Home Office, Austrian Federal Ministry of the Interior, German Federal Ministry of the Interior and Dutch Ministry of Security and Justice to the then President of the European Council for Justice and Home Affairs Mr Alan Shatter, April 2013, URL: [http://docs.dpaq.de/3604-130415\\_letter\\_to\\_presidency\\_final\\_1\\_2.pdf](http://docs.dpaq.de/3604-130415_letter_to_presidency_final_1_2.pdf)



## **Submission 26**

### **BMA response to the Home Office and Department for Work and Pensions Review of the Balance of Competences Internal Market: Free Movement of Persons**

The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors and medical students from all branches of medicine all over the UK. With a membership of over 152,000 worldwide, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

The European Union (EU) has an important role to play in social and employment law. Health professionals benefit from EU health and safety legislation which in turn benefits patients in the form of increased patient safety. The European internal market guarantees that professionals can move and work freely throughout the EU having their professional qualifications recognised in other EU member states. The aim of the Directive is to allow European professionals (in certain regulated categories) with recognised qualifications to practise their profession in any European country without unnecessary restrictions or difficulties.

The BMA supports, in principle, the free movement of doctors in the EU, so long as there are appropriate safeguards to ensure patient safety. The UK health system has benefitted from EEA and international doctors practising in the UK. Due to the changing nature of modern medicine, the BMA recognises that the Directive on the Recognition of Professional Qualifications (2005/36/EC) requires updating. It is essential that the system emphasises a healthcare professional's continuing fitness and suitability to practise in the host member state. EEA doctors who exercise their right to free movement must be able to demonstrate regularly to the host competent authority that they are fully qualified and fit to practise.

The BMA has contributed to the debate on the revision of Directive 2005/36 and continues to engage with this process. This response summarises our ongoing concerns and highlights the challenges faced by the UK training system as a result of free movement.

#### **Language Competence**

The BMA believes that all doctors, whether they are from European Economic Area (EEA) countries or elsewhere, must have a clinically appropriate command of English, both written and verbal, that enables a high level of patient care, including

communicating with colleagues, patients and relatives. Before granting access to the profession, a competent authority must be able to satisfy itself that an individual doctor has the necessary skills in order to practice medicine in that country. This includes language, communication and clinical skills and is important for all doctors but especially for those who are self-employed.

Current European legislation means that one-size-fits-all English-language tests of European doctors as a condition for working in the UK are not permitted. Both regulators and employers must be able to verify the language skills of EEA doctors where legitimate doubt arises. The EU rules do not prohibit language testing per se, rather they state that testing should be proportionate and not form part of the first stage process (i.e. recognition of the professional qualification). The competent authorities for the health professions should be able to verify language skills of applicants to the register directly or indirectly by delegating this to another body. The strength of concern around language testing has been recognised at a European level through improvements to the provision for language testing in the revised Directive.

Facilitating the movement of professionals is an important principle. It must not restrict the actions of the General Medical Council and employers in undertaking essential language checks. The EU should set the requirements that facilitate free movement whilst providing member states with the ability to implement additional controls where there is evidence that indicates a legitimate need.

### Length of Basic Medical Training

Provisions that set the length of Basic Medical Training are essential and must recognise that longer training time does not necessarily equate to better trained doctors. The UK four year graduate entry programmes prove that shorter, more intense, well designed and delivered and educationally challenging courses can produce high calibre trainees and fully competent doctors. The BMA supports the move to clarify the current wording of the Directive from 6 years *or* 5500 hours to five years *and* 5500 hours. The move to 5 years *and* 5500 hours recognises that training practices are changing and that the length of training is far from the only factor that determines quality.

### Oversubscription of the UK Foundation Programme

In 2012, for the third year running, the UK Foundation Programme was oversubscribed, with more applicants than posts in 2013. This situation is likely to be repeated in subsequent years with the problem of oversubscription becoming more acute. All medical students graduating from UK medical schools must obtain a place on the Foundation Programme. Without the opportunity to complete Foundation Year One (FY1) a doctor cannot secure registration with the GMC and cannot practise as a doctor in the UK or elsewhere. This would have a devastating

effect on any affected graduates and would waste substantial financial investment in educating and training doctors to work in the NHS. The causes of oversubscription are complex. One contributing factor is the unpredictable number of applications from eligible EEA graduates. The impact on the Foundation Programme, and on UK graduates, of new states joining the EU continues to be a real concern.

A further difficulty experienced by those at UK medical schools is the ability to have pre- registration experience in Europe recognised so that it leads to full registration in the UK. It is possible for EEA medical students who are at the pre-registration stage to apply to the UK Foundation Programme and progress to full registration. The facility for the movement of UK students to Europe to complete their training is not straightforward and comes with the associated risk that training will not be approved.

Language barriers continue to be a barrier to completion of training in Europe. It is often the case that the level of English attained by our European colleagues is higher than the language competence obtained from the UK education system making it harder for UK citizens to maximise their rights of free movement.

#### Delegated Acts and Specialty Training Curriculum

The BMA has particular concerns around the use of delegated acts which would give the European Commission the power to supplement certain 'non-essential' elements of EU law. Delegated acts have supremacy over national laws and are approved through expert committees which are led by the Commission. These delegated acts add an additional layer of complexity to the EU legislative landscape enabling the Council and Parliament to partially regulate a particular field and to delegate power to the Commission to supplement the regulations. The BMA is particularly concerned about the proposed use of delegated acts to regulate the minimum periods of specialist training and the inclusion of new medical specialties in the Directive's annexes. The BMA welcomes the proposal that the European Commission will carry out appropriate and transparent consultations with experts from competent authorities and professional associations when preparing such delegated acts.

There have been some discussions at a European level regarding the harmonisation of specialty training curricula. Any setting of European wide curricula must be approached with care, especially if any legal basis were to be formed through delegated acts. The BMA supports the creation of high standards across Europe. There is a danger that UK standards, or the standards of those admitted to the medical register from Europe, reduce in line with an EU minimum. The current UK specialty curricula have complex oversight systems but remain flexible to changes. This flexibility could be lost if it became EU-led. The BMA believes that the efforts

required to reach a harmonised standard for specialist training would neither be worthwhile nor produce meaningful or safe standards, and would ultimately add unnecessary complexity to the UK's system by replicating the work of the medical Royal Colleges and the GMC.

If harmonisation were to be introduced under future revision of Directive 2005/36/EC, the UK would be required to recognise the qualifications of specialists who had qualified under these standards. Were the UK to remain one of the only countries not to adopt harmonised standards, there is a risk that UK qualified specialists would be hampered in their ability to have their qualifications recognised across the rest of Europe. The BMA would like to see the continual improvement in medical training across Europe and wishes to be actively involved in this, but at present the BMA has not been reassured that patient safety will not be put at risk by the development of common curricula. Education and training remains a national competence<sup>1</sup> and the BMA strongly resists any moves towards European controls. The UK needs to ensure that qualifications are equivalent and comparable but this does not require a top-down approach. Any future extension of competence would not be welcomed by the BMA.

### Recognition of General Practitioners

The Directive is designed to facilitate the free movement of doctors within the EU and lists those medical specialties that are recognised within EU member states. In recent years, an increasing number of EU countries have introduced a specialty in family medicine as well as or instead of the traditional title of general practitioners. The current situation in which two tiers of general practitioner, operating under different provisions of the Directive, exist across the EU is hampering the ability of doctors to move freely across the EU contrary to a right that is enshrined in the EU's founding treaties. Doctors from those countries where general practice is not recognised as a specialty (as in the UK) are not able to join the specialist GP register in countries where general practice is considered to be a specialty (such as Germany). This creates a two-tier system of GPs and prevents UK doctors from practicing medicine under the same terms and conditions as their German counterparts. This has resulted in the creation of a barrier to genuine free movement of doctors across the EU. There is a lack of political will to address this situation.

### Workforce planning

The BMA has not seen any clear information that indicates the proportion of the medical workforce that is working under the rights of free movement. The only data we have is on the origin of basic medical qualification but this does not show whether someone from outside the EEA gets recognition in another EU country and subsequently moves to the UK when they acquire rights of free movement. This increases the uncertainty within medical workforce planning and competition at the

different grades from the Foundation Programme through to consultant level. This lack of information makes it very difficult to make any judgement on the impact of free movement on the medical profession.

Without clear data it is difficult to determine what the scale of the UK workforce movement currently is to and from Europe. Without such data we cannot determine challenges or opportunities to the UK and the impact of future enlargement of the EU on the medical workforce. A requirement to collect data, beyond that on primary medical qualification would help in making a full assessment of the impact and assist with workforce planning.


The BMA will be watching any developments that seek to use the mutual recognition of qualifications directive as a basis for future recognition of qualifications from outside of the EU. This is of particular interest as the EU and USA are currently negotiating a proposed Transatlantic Trade and Investment Partnership (TTIP). EU market access negotiators may aim to ensure that European professional qualifications can be recognised across the USA, and vice versa. Data on the current impact (both positive and negative) of the mutual recognition of qualifications on the UK is essential before any further extension of these rules.

The BMA supports freedom of movement for doctors who wish to pursue their careers in other countries but patient safety is paramount and must not be compromised. All doctors, whether from the European Economic Area countries or elsewhere, must have a clinically appropriate command of English and the requisite clinical skills if they wish to practise in the UK. The UK must continue to protect the quality of its training. EU legislation must fully respect the principle of subsidiarity and the right, enshrined in the EU Treaties, of member states to organise and finance their healthcare systems according to national practices. This is particularly important given the nature of the UK's publicly funded NHS.

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1 Under articles 165 and 168 TFEU

**Submission 27**

<b>Name</b>	Eur-Ing Crispin Brown C Eng, FIET.
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<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	X	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

- a) From over 40 years of movement from the UK to France, from France to the USA and then back from the USA to France I can attest to the clear expansion of personal opportunities for professional employment and growth. The comparison between the move from the UK to France (and then back to France from the USA) with the challenges of taking up similar professional opportunities in the USA are very telling. The move to the USA was very difficult and clearly deliberately discouraging for UK nationals. The move in and out of France was the opposite.
- b) My own experience in being able to influence French policy thinking (both formally and informally) to support and defend a UK point of view would not have been as effective without the opportunity to live and work within the French system under the member state agreements.

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

Personally, I can attest to the complete and unfettered access to work and all other official support in France. At no time has any hindrance been placed in my way in France (I have actually had more trouble accessing similar services in the UK as a non-resident UK national than I have had in France!)

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would**

**improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

- a) There remains huge areas of untapped opportunity for HM Gov to impact and influence the collective EU position of “managed” free movement within EU states. I am not aware of any significant positive action of HMG in this areas and the popular perception of citizens of other EU States is that HMG has little or no desire to play a positive role.**
- b) It would clearly benefit both the UK and other EU states if the commission focused less on bureaucratic irrelevances and more on the alignment of policy and administration between EU States.**
- c) From the earliest days of the Treaty of Rome I have personally been exercising my free movement rights in France and have never been subject to any obstacles specific to my UK nationality.**

**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**From my own business I sub-contract some 40%+ of my business to UK based companies. My market position and image supported by my demonstration of free international movement has allowed my activity to grow and sustain throughout difficult economic periods. Restriction on such movement would hinder such engagement of UK firms.**

**6. What is the impact of this area of EU competence on employment sectors, such as ‘distribution, hotels and restaurants’, ‘banking and finance’, agriculture, or other sectors?**

**My own sector is in Engineering and Consulting. This has become a very international market. Within Europe the UK still enjoys a strong reputation in this sector. Realistically, in the face of German (and to some extent Italian) competition, any perceived reduction in the UK position on free movement in the EU would severely damage this fragile competitive advantage.**

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment**



**conditions or other factors?**

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**Differing parts of the EU have differing social security legislation. All have very good elements. All have less good elements. All are seeking ways to revise and restructure their legislation. An open-minded engagement between members states can provide great avenues to understand in detail the attributes of each member state's systems and progressively adopt those solutions which are most attractive. Such an approach would provide a (slow) automatic coordination and practically support a pan-European labour market**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

**In the UK (and in other member states) the public confidence in the systems in place are undermined by highly publicized abuse of the systems. While this abuse is undoubtedly expensive, the real numbers of abusive access to social security are relatively low and the individuals (nationals or non-nationals from member states) need to be called to order. Changing the systems to address abuse is "throwing the baby out with the bathwater"**

**Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on**

**immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**(see answer to question 4).**

**The opportunities afforded to HMG to positively impact EU legislation and practice in the free movement of persons is immense. So far this opportunity seems untapped and the public perception is that this lack of UK leadership is by choice.**

**Engagement with already existing EU structures (Schengen and even single currency) would bring a significant positive change in the perceived role of the UK in EU leadership.**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

The fact that new states are seeking membership of the EU suggests that their citizens see benefits in adhering to both the principles and practices of the EU. The popular UK view that these are third world countries who, through the free movement of persons provision, are seeking to export their low competency unemployed. This is both misguided and wrong. The opportunities that this enlargement can bring to UK businesses both in export and in access to new sources of competency and labour is significant.

The challenges to ensure that abuse does not further damage the perceived value of this opportunity are real and will need the government to lead a positive and practical public debate.

### General questions

16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?

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

The current popular (public) debate has been heavily focused on the desire to avoid any risk of negative impact on the UK from the EU. Now the debate would benefit from how the UK can actually demonstrate leadership within the EU to open its full potential to all member states (including the UK).

18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?

The current debate appears “data-phobic”. Below is some data.

In spite of much economic challenge many EU countries are moving up the list. Much of this performance is associated with EU engagement and the free movement of persons

<http://www.bloomberg.com/visual-data/best-and-worst/best-for-doing-business-countries>

**Submission 28**

<b>Name</b>	[REDACTED]
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<b>Email</b>	[REDACTED]

<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input checked="" type="checkbox"/>	Incorporated by Royal Charter to regulate the engineering profession.
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

## Questions in relation to the labour market.

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

**8. How would these sectors and UK nationals benefit from the EU doing a)**

more or b) less in this area?

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

**Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**


### General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

--

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

With reference to directive 2005/36 there is very little statutory regulation in the UK in respect of engineers/engineering activities. Consequently we experience very few problems with inbound EU engineers, with less than 100 applications for recognition a year.

The directive creates an expectation of recognition which some highly regulated member states fail to deliver on. It can be frustrating when the Commission appears to lack either the will or the teeth to deal with repeated non-compliance. However, in practice the number of cases affected is very small (in single figures annually). This suggests the system in general is working and it probably saves us the effort of having to negotiate bi-laterally with those member states that have some form of regulation. On balance it is probably more helpful than not, although we have no empirical evidence to back this up.

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

--

**Submission 29**

**From:** [REDACTED]

**Sent:** 26 July 2013 11:49

**To:** FreeMovementofPersonsBoC

**Subject:** Review of the Balance of Competences Consultation - Internal Market: Free movement of Persons

Dear Sirs

NATS would like to thank you for the opportunity to respond to the UK Government's Review of the Balance of Competences Consultation regarding the Internal Market: Free movement of Persons .

Having considered the materials presented and the subsequent questions being asked NATS wishes to make the following comment against question 17 only.

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

The EU has relatively recently adopted common rules for the licensing and training of Air Traffic controllers. As yet this has had little impact on the movement of NATS personnel, either into or out of the UK.

Yours faithfully

[REDACTED]

**NATS**

[REDACTED]

[REDACTED]

4000 Parkway, Whiteley,  
Fareham, Hants PO15 7FL

[www.nats.co.uk](http://www.nats.co.uk)



**Submission 30**

<b>Name</b>	[REDACTED]
<b>Organisation/Company (if applicable)</b>	Institute of Social Policy, Centre of Migration Research, University of Warsaw
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	Nowy Swiat 67 03-822 Warsaw Poland
<b>Email</b>	[REDACTED]

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	x	Academic Institution, University
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

**Questions in relation to the UK Experience of the Free Movement of Persons**

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

Definitely the most important source of knowledge helping assess the benefits ensuing for the UK from free movement of persons is comprised by results of research conducted among employers. They let identify the labour market niches where immigrants can be employed. Certainly the complementarity of the employment of foreigners in relation to the employment of the UK nationals needs to be verified. One of most recent reports worthwhile of being used is the paper drawn up by the *Chartered Institute of Personnel and Development*  
<http://www.cipd.co.uk/publicpolicy/policy-reports/employing-migrant-workers.aspx>

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

The data presented in the source material suggest unambiguously that UK nationals benefit from free movement of person within the EU. Simultaneously it has to be assumed that in contrast to e.g. Poles, employment is usually not the purpose of their stay in other states. Results of the research of Eurostat and of receiving states demonstrate that many of the UK nationals taking advantage of free movement of persons are retired people. It needs to be stressed, however, that free movement of persons is a kind of entirety, i.e. It covers various categories of moving persons. It would be definitely a mistake to restrict the free movement of workers hoping that that existing rules will be kept for students or pensioners. Opening a discussion in one area might result in restriction of freedom as such, which would be detrimental to everyone.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

Results of research conducted in Poland prove that Poles going to the UK are not interested in taking advantage of the welfare system. Their main goal is to undertake employment. The fact that Poles migrate to Anglo-Saxon countries and not to Nordic ones, which have a more generous welfare system, confirms the thesis that the migration of Poles is typically of employment nature. Also it seems that the increasing possibility to arrange for official formalities over the Internet will minimize the adverse impact on access to public services for UK nationals.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

It seems that, if correctly exercised, the current regulations related to free movement of persons are adequate to ensure practical right to migration within the EU. A major role is played here by the line of judgments of the European Court of Justice. Simultaneously it needs to be stated that the command of language is the main obstacle to migration. This obstacle cannot be removed via administrative measures.

**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

Available data definitely prove positive impact of free movement of persons within the EU. In practice, the economic effects of this freedom should be considered in the context of the entire single market. Restriction of any of the four freedoms would result in practice in reduction of the positive impacts of the operation of the single market within the EU. In the case of Poland, the effect of free movement of persons is also analysed. The effects of financial transfers coming from employment emigrants, which supply household budgets, are compared with the losses ensuing from realization of the economic potential of Poles outside Poland, which contributes to GDP growth of other states, e.g. the UK.

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

The source material suggests that these are the sectors that employ the largest numbers of the nationals of other Member States. It would be advisable to draft an alternative scenario showing what the competitiveness of those sectors as well as the quality and access to services for UK nationals would look like in the absence of free movement of workers. One may venture a hypothesis that the situation would be worse than it is now. The presented data clearly demonstrate that the demand in the UK labour market is generated rather by the second segment of the labour market. This fact should be taken into account in the migration policy.

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

The issue of free movement of workers is of marginal importance here. Definitely the level of wages and employment opportunities both for UK nationals and for employment immigrants are determined by the general situation in the labour market. Again it would be advisable to create an alternative variant, e.g. in the situation of hypothetical exit of all Poles from the UK. How many vacant jobs would be left as a result of such situation, and how many jobs would be taken by UK nationals and what wages rise/decline would take place with respective impact on the competitiveness of particular sectors.

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

Creation of social security coordination was necessary for the realisation of free movement of workers, and consequently – in a broader context – of the single market. This concerns mainly the pension rights. Under the current situation one can examine to what extent exclusion from social security coordination of family benefits and social assistance benefits would restrict the use of migration within the EU for abuses of social security systems. It needs to be stressed, though, that the scale of those pathologies is limited.

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

Social security coordination should definitely remain at the EU level as regards the acquisition of pension rights. One could consider restriction of EU competencies as regards the transfers of family benefits from social security system.

### Questions in relation to Immigration.

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

Internal migrations within particular states are of greater importance than the effects of free movement of workers.

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

### Questions relating to future options and challenges.

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

One can point out two fundamental issues: public opinion, whose position will depend on the situation in the labour market, and this is where no significant improvement is to be expected in the forthcoming years; and the demographic issues, which will have impact on the structure of movements within the EU.

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

In the nearest perspective it is hard to imagine another big EU enlargement. This means that the issue of free movement of workers should be solved between the present Member States. Labour market crises will have a greater effect on the migration flows within the EU than any future enlargements.

### General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

In my opinion the points made above fail to address the issue of the effects of demographic processes on the realisation of free movement of persons within the EU. The changes in the population structure we will deal with in the forthcoming years will have significant impact on both the scale and the types of migrations within the EU.

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

One should pay attention to the results of National Censuses in the part related to migration in particular states. In the case of Poland, the relevant data are to be found here: [http://www.stat.gov.pl/gus/ludnosc\\_PLK\\_HTML.htm](http://www.stat.gov.pl/gus/ludnosc_PLK_HTML.htm)

**Submission 31**

<b>Name</b>	[REDACTED]
<b>Organisation/Company (if applicable)</b>	[REDACTED]
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	[REDACTED]
<b>Email</b>	[REDACTED]

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

**Positive impact for UK Nationals and for the UK as a whole.**

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

An obstacle I see relates to pensions. For my service in the UK, I have to go through the UK Pensions Office, in order to obtain my UK pension, instead of everything being dealt with by the French Social Security organization. Instead of receiving one payment from the French system, I will receive a part of my pension from the UK and another part from France. The whole process is complex.

Having no right to vote in either the French parliamentary elections or in the UK parliamentary elections.

## Questions in relation to the labour market.

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**



**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

**Must be very favourable in banking and finance due to the high number of highly qualified French professionals working in this sector in the UK.**

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

#### **Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

#### **Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

<b>13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?</b>

**Questions relating to future options and challenges.**

<b>14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?</b>

<b>15. What impact would any future enlargement of the EU have on the operation of free movement?</b>

<b>A beneficial impact.</b>
-----------------------------

**General questions**

<b>16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?</b>

<b>17. Are there any general points you wish to make which are not captured above?</b>

<b>18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?</b>

## **Submission 32**

### **Open Europe submission to the UK Government's Balance of Competence Review: Free Movement of Persons**

July 2013

The submission below has drawn on the following publications:

*Open Europe*, 'Tread carefully: The impact and management of EU free movement and immigration policy', March 2012;

[http://www.openeurope.org.uk/Content/Documents/EUimmigration2012\\_new.pdf](http://www.openeurope.org.uk/Content/Documents/EUimmigration2012_new.pdf)

*All Party Parliamentary Group on European Reform*, 'Inquiry into EU free movement and immigration: The lifting of transitional controls for Bulgaria and Romania', May 2013, a report prepared by Open Europe;

<http://www.openeurope.org.uk/Content/Documents/APPGfreemovement2013.pdf>

#### **Questions in relation to the UK Experience of the Free Movement of Persons:**

***1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK nationals; and b) the UK as a whole?***

The free movement of workers within the EU has the potential to boost growth and competitiveness in both the UK and Europe. In addition, the ability for companies based in the UK to easily draw on a wide talent pool is seen by many firms as an advantage. However, free movement also throws up a huge number of political challenges, such as a substantial loss of national control over who can enter the country, increased competition in low-skilled sectors of the labour market, downward pressure on wages, and increased demand for public services and infrastructure. If public confidence is not to be lost, free movement needs to be managed with extreme care and tempered with other policies including the right of the UK to protect its welfare system from abuse.

Rules that were conceived for a much smaller and homogenous EU must now be reviewed and reformed in order to ensure that business and individuals can continue to benefit from the free movement of *labour*, while national governments must be given greater flexibility to safeguard and develop their own welfare systems and public services. Failure to address the concerns of host populations, not simply in the UK but in other Northern EU member states, has the potential to completely undermine public trust in the EU as a whole.

The recent influx of EU migration from the newer member states has undoubtedly stoked public anxiety about EU immigration and immigration more generally. Inward migration from the EU was mainly flat between 1991 and 2003, but following EU

enlargement in 2004 there was a significant jump in EU migration inflows to the UK.<sup>1</sup>

This change has resulted in the UK experiencing substantial and sustained net inward migration from the EU and has understandably politicised the issue. Nevertheless, EU migration only represents around a third of total net inward non-British migration to the UK.

However, the high levels of unemployment across the EU, particularly in the eurozone, could increase the incentive to migrate to Northern member states including the UK. The English language continues to be a major incentive to come to the UK in particular.

Assessing the longer-term fiscal impact of immigration is a very difficult task. Beyond the short-term fiscal impact of immigrants, i.e. the difference between migrants' tax payments and their use of public services, a more comprehensive approach would assess the net present value of the fiscal impact of immigrants over their entire lifetime (possibly including the fiscal impact of future descendants). This latter approach requires anticipating future developments to an extent that is unlikely to be accurate.<sup>2</sup> It is also difficult to disaggregate the impact of EU free movement rights from inward migration to the UK taken as a whole.

The previous Government tended to focus on the positive impact that migration had on UK economic growth as a case for continued net immigration to the UK.<sup>3</sup> Instead, the focus of analysis should be on the effects of immigration on income per head.

The National Institute of Economic and Social Research has estimated that, taking 2005 as a baseline, A8 immigration (from the Central and Eastern member states that joined the EU in 2004) would have a negative impact on GDP per capita in the short run (over the first four years) and a positive but small impact on GDP per capita in the longer run (0.3% higher by 2015).<sup>4</sup> Others have pointed to other benefits of migration from the enlargement countries such as increased trade.<sup>5</sup> However, how much this has to do with free movement of people as opposed to these countries' full entry into the EU's single market is unclear.

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<sup>1</sup> *Migration Observatory*, 'Migration flows of A8 and other EU migrants to and from the UK', 3 April 2013; <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Migration%20Flows%20of%20A8%20and%20other%20EU%20Migrants%20to%20and%20from%20the%20UK.pdf>

<sup>2</sup> *OECD*, 'Migration in OECD countries: Labour market impact and integration issues', 2007, p8

<sup>3</sup> See for example *Home Office and Department for Work and Pensions*, 'The economic and fiscal impact of immigration: A cross-departmental submission to the House of Lords Select Committee on Economic Affairs',

2007, p11, <http://www.official-documents.gov.uk/document/cm72/7237/7237.pdf>

<sup>4</sup> Cited in *House of Lords, Economic Affairs Committee*, 'The economic impact of immigration', p25

<sup>5</sup> *IPPR*, 'Floodgates or turnstiles? Post-EU enlargement migration flows to (and from) the UK', 30 April 2008, p54, <http://www.ippr.org/publications/55/1637/floodgates-or-turnstilespost-eu-enlargement-migration-flows-to-and-from-the-uk>

Meanwhile, the temptation to use immigration to remedy structural fiscal issues can only be a short-term fix. For example, immigration, particularly of younger workers, is often seen as a way of paying for ageing populations' taxpayer-funded pension entitlements. In the short run, the entry of relatively young migrants to the UK will tend to decrease the dependency ratio, that is the ratio of those not in the labour force (the dependent) and those in the labour force. However, immigrants will also grow old and require pensions.

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work, access benefits and access services in another member state?**

N/A

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

On a basic level, the fiscal impact of migrants is measured by comparing the taxes they pay with the services and benefits they receive. For example, immigrants who are working in the UK and paying taxes but who have not have been educated in Britain or claimed welfare benefits will produce a net fiscal benefit. The evidence overwhelmingly suggests that new migrants from Eastern Europe have come to the UK in search of work and not welfare benefits.<sup>6</sup>

However, the UK's ability to impose temporary restrictions on A8 migrants' access to certain welfare payments is likely to have played a role in this. It would be useful to reassess the above now that this ability no longer exists.

Nevertheless, the European Commission's legal challenge to the UK's 'right to reside test' (see below) threatens to not only undermine political confidence in free movement but also threatens to increase the EU's reach into the UK's welfare system. The Commission should be resisted in the strongest terms and **the argument should be made that national governments need more not less control over their welfare systems if free movement of people in the EU is going to continue.**

Aside from welfare, the NISER has noted that "of all services potentially accessed by migrants, education is one in which rights of access are the most clear and where impacts may therefore be felt", concluding that: "There is no doubt that some local authorities in England, Scotland and Wales, were not prepared for the scale of migration from the EU8 countries from 2004 onwards and that some services were put under pressure as a result."<sup>7</sup>

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<sup>6</sup> Based on A8 migrants who arrived after EU enlargement in 2004 and who have at least one year of residence, and are therefore legally eligible to claim benefits; Christian Dustmann, Tommaso Frattini and Caroline Halls,

'Assessing the fiscal costs and benefits of A8 migration to the UK', *Fiscal Studies*, Vol 31 No 1, 2010, p30; Madeleine Sumption and Will Somerville, 'The UK's new Europeans: Progress and challenges five years after accession', *Equality and Human Rights Commission*, January 2010

<sup>7</sup> *National Institute For Social and Economic Research*, 'Potential impacts on the UK of future migration from Bulgaria and Romania' April 2013,

Meanwhile, EU/EEA migrants' access to the UK's National Health Service, which unlike many other EU member states' systems is free at the point of use, also presents a challenge. As Health Secretary Jeremy Hunt recently told Parliament,

"If people come here to work, we have an obligation under EU law to allow them access to free treatment, but if they are economically inactive or if they are temporary visitors, we should be able to reclaim the cost of that treatment from their home country in the EEA. The fact is that we do that very poorly indeed at the moment and that is one of the things we need to change."<sup>8</sup>

He also noted that it is difficult to know the exact scale of the issue as the current system acts as a disincentive for hospitals to declare those who are not entitled to free NHS care.<sup>9</sup>

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

N/A

#### **Questions in relation to the labour market:**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons?**

The overall impact of new post-EU enlargement migration on the UK economy is inconclusive. However, the impact of new EU immigration is most likely to have been felt at the low-skill end of the labour market, increasing competition for jobs amongst low-skilled and younger workers. A8 migrants are likely to have reduced the real wages of those in the low-skill sector in the short term, although this could come with overall benefits to the UK economy by improving competitiveness.

**6. What is the impact of this area of EU competence on employment sectors, such as distribution, hotels and restaurants, banking and finance, agriculture, or other sectors?**

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<https://www.gov.uk/government/publications/potential-impacts-on-the-uk-of-future-migration-from-bulgaria-and-romania>

<sup>8</sup> Hansard, 25 Mar 2013 : Column 1295;

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130325/debtext/130325-0001.htm#1303251000004>

<sup>9</sup> Hansard, 25 Mar 2013 : Column 1292

The academic literature and statistics suggest that new migrants from the EU accession countries tend to be young and well educated.<sup>10</sup> A8 migrants also have higher education levels, on average, than the UK-born population.<sup>11</sup>

Despite this, A8 immigrants tend to “downgrade”<sup>12</sup> and are more concentrated in low-skilled jobs than UK native workers. In 2008, the ONS estimated that 38% were in elementary occupations and only 13% in higher skilled occupations.<sup>13</sup> The proportion of A8 workers in low skilled jobs is far higher than workers from other EU countries and migrants from the rest of the world, partly because the UK can apply skills-linked restrictions on many migrants from outside the EU.

### **7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

Despite the uncertain impact on overall prosperity of the native UK population, the overwhelming evidence is that new migrants from the A8 countries are jobseekers and have a high rate of employment. In 2008, the ONS estimated that the employment rate of A8 migrants was over 80%.<sup>14</sup>

In addition, Graph 1 below, showing the number of National Insurance Numbers issued, demonstrates that immigration from the A8 accession states slowed following the UK’s economic downturn in 2008 as job opportunities decreased. The graph also shows that, following the onset of the downturn, A8 immigration reduced compared to other immigrant groups. The evidence therefore suggests that potential A8 immigrants have stayed at home whereas other immigrant groups have continued to arrive in search of jobs. It adds further weight to the evidence that A8 migrants’ primary purpose is work related and that, without the prospect of employment, A8 migrants are less likely to come to the UK.

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<sup>10</sup> Christian Dustmann, Tommaso Frattini and Caroline Halls, ‘Assessing the fiscal costs and benefits of A8 migration to the UK’, p9

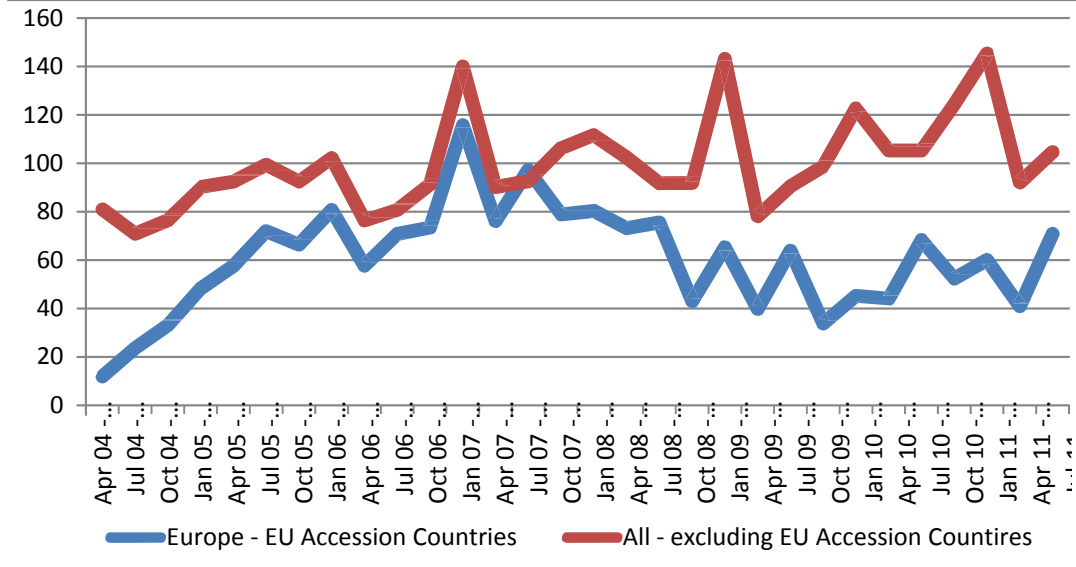
<sup>11</sup> 32% of A8 men and 40% of A8 women are educated beyond 21 years of age compared to 18% and 16% of the native population – although the ONS comes to a slightly different view using a different methodology, see Christian Dustmann, Tommaso Frattini and Caroline Halls, ‘Assessing the fiscal costs and benefits of A8 migration to the UK’

<sup>12</sup> Madeleine Sumption and Will Somerville, ‘The UK’s new Europeans: Progress and challenges five years after accession’

<sup>13</sup> Cited in *House of Lords, Economic Affairs Committee*, ‘The economic impact of immigration’, p18

<sup>14</sup> See *House of Lords, Economic Affairs Committee*, ‘The economic impact of immigration’, p19

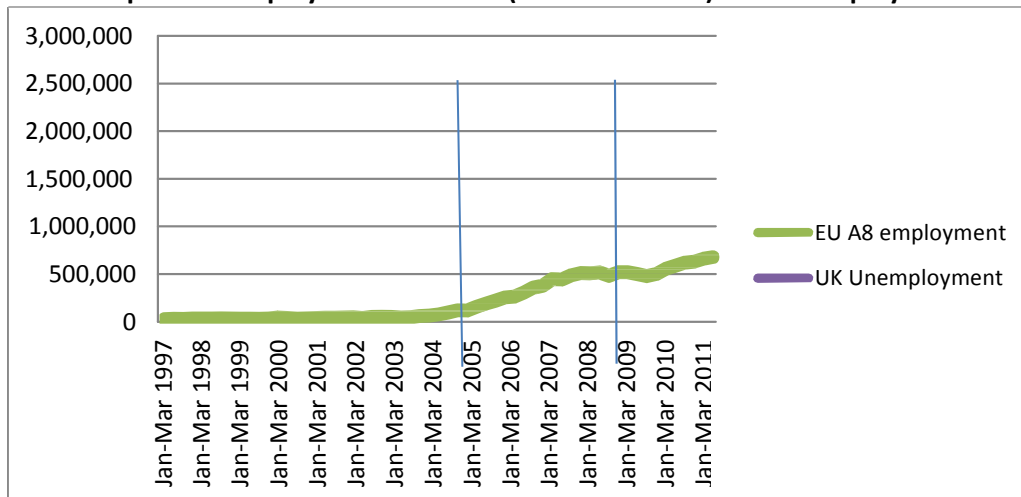
**Graph 1: National Insurance Number allocations (thousands, April 2004 – September 2011)**



Source: ONS

Similarly, Graph 2 below, based on the Labour Force Survey figures, shows that the number of A8 workers in the workforce increased significantly between 2004 and 2008 before stabilising at the beginning of the downturn. At this point, for the workforce at large, unemployment began to rise sharply. However, A8 migrants have responded comparatively well to the recent recession with employment levels holding up and unemployment levels remaining low - below that of native UK workers. This is partly a function of the flexibility inherent in a workforce capable of relocating to their home state. It may also be due to the relative strength of the sectors A8 migrants are employed in compared to sectors where UK natives have recently become unemployed.

**Graph 2: Unemployment in the UK (total workforce) and A8 employment**



Source: ONS, Labour Force Survey



While the graph above shows that A8 migration cannot be the main cause of unemployment since 2008, when a rapid spike was registered, it does show a small increase in overall unemployment in the UK shortly after the 2004 accession. However, it is not clear whether there is any causal link to the increased employment of A8 nationals.<sup>15</sup>

Nevertheless, as A8 migrants are overwhelmingly concentrated in low-skilled sectors, their impact on the native UK population is likely to be concentrated in this section of the labour market. It could be argued that UK natives might have filled these lower skilled jobs following unemployment, had they not already been taken up by A8 employees, or that younger workers have faced greater barriers to entering the labour market. There has been little research into the impact on youth employment. However, a report examined by the House of Lords in 2008 thought it possible that “native” youngsters may have been losing out in the battle for entry level jobs.<sup>16</sup> The Lords also found that “although the evidence is limited, there is a clear danger that immigration has some adverse impact on training opportunities and apprenticeships offered to British workers.”<sup>17</sup>

It is also clear that even if A8 migration did create unemployment it was not due to a lack of job creation per se, as over a long time frame total UK employment has increased. The UK economy has a good record in creating jobs but they have tended to be filled by EU and non-EU migrants, even as the number of UK natives employed decreased. UK-born unemployment has remained stubbornly over one and a half million for most of the last decade, despite at least three million jobs being created.

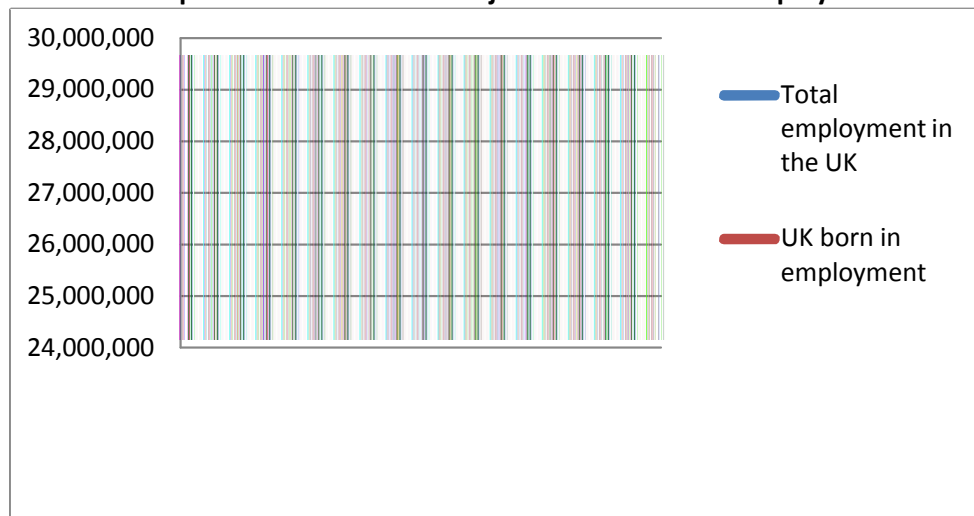
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<sup>15</sup> One of the first studies on the impact of A8 migration on UK unemployment concluded that there was “no discernible statistical evidence to suggest that A8 migration has been a contributor to the rise in claimant unemployment in the UK,” see Nicola Gilpin et al, ‘The impact of free movement of workers from Central and Eastern Europe on the UK labour market’, *Department for Work and Pensions*, Working Paper No 29, <http://research.dwp.gov.uk/asd/asd5/WP29.pdf>. However, the results have been questioned by Professor Rathbone of Cambridge University, who points out that, if the statistical relationship between migration and unemployment was deemed significant, it would mean that “60 or more local workers will become unemployed for each 100 A8 immigrants”, see <http://www.regional-studies-assoc.ac.uk/events/2008/dec-cambridge/presentations/Rowthorn.pdf>

<sup>16</sup> *Ernst and Young Item Club*, ‘Special report on migration’, 18 December 2007, as recited in evidence to the House of Lords, <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeconaf/82/8011514.htm>

<sup>17</sup> *House of Lords, Economic Affairs Committee*, ‘The economic impact of immigration’

**Graph 3: Total number of UK jobs versus UK-born employed**



Source: ONS

This trend could lead to an employment trap, whereby the UK economy fails to remedy the underlying causes of UK natives' unemployment.

This highlights the fundamental need for the Government to promote greater participation in the labour force amongst UK citizens through its education and welfare policies, improving both the incentives to work and workers' skill-levels.

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

N/A

**Questions in relation to social security coordination:**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

The rules governing access to welfare for EU citizens are complex. The EU's distinction of 'social security' benefits and 'social assistance' benefits does not sit well with the UK's 'universalist' welfare system. This issue has been exacerbated by the extension of free movement rights from solely workers to the economically inactive, jobseekers, students and family members.

The EU's Rights of Residence Directive establishes that EU member states are not obliged to provide 'social assistance' (e.g. Housing Benefit and Council Tax Benefit) to nationals of other EU countries during their first three months of residence, or if their only grounds for remaining in the UK for longer than three months are that they are actively looking and have "a genuine chance" of finding work. The premise of the Directive being that after three months, foreign EU nationals must be either in work, self-sufficient or they lose their right to stay in the host member state.

‘Social security’ benefits (e.g. sickness, unemployment, family, and other benefits) are covered by a separate EU Regulation<sup>18</sup>, which, unlike a Directive, has direct legal effect in the UK. It establishes that these benefits must be made available to all nationals of EU member states without discrimination but can only be claimed by people who are ‘habitually resident’ in the member state.

While there has been a degree of convergence of European welfare models in recent years, there remain two distinct philosophies – the Beveridgean and Bismarckian – that tend to characterise EU member states’ welfare systems. The Bismarckian system is based on a social insurance system funded by contributions by employees and their employers during employment. Benefits are based on these contributions and therefore are linked to previous earnings. This system contrasts sharply with the Beveridgean system developed in the UK, where general taxation plays a far greater role in financing benefits and where those in need receive a similar amount, regardless of their contributions. The Social Democratic model of welfare adopted in Scandinavia follows a similar ‘universalist’ tradition to the Beveridgean system. Enlargement to include a new group of EU member states has introduced yet another type of system.

**Table 1: Types of social protection system<sup>19</sup>**

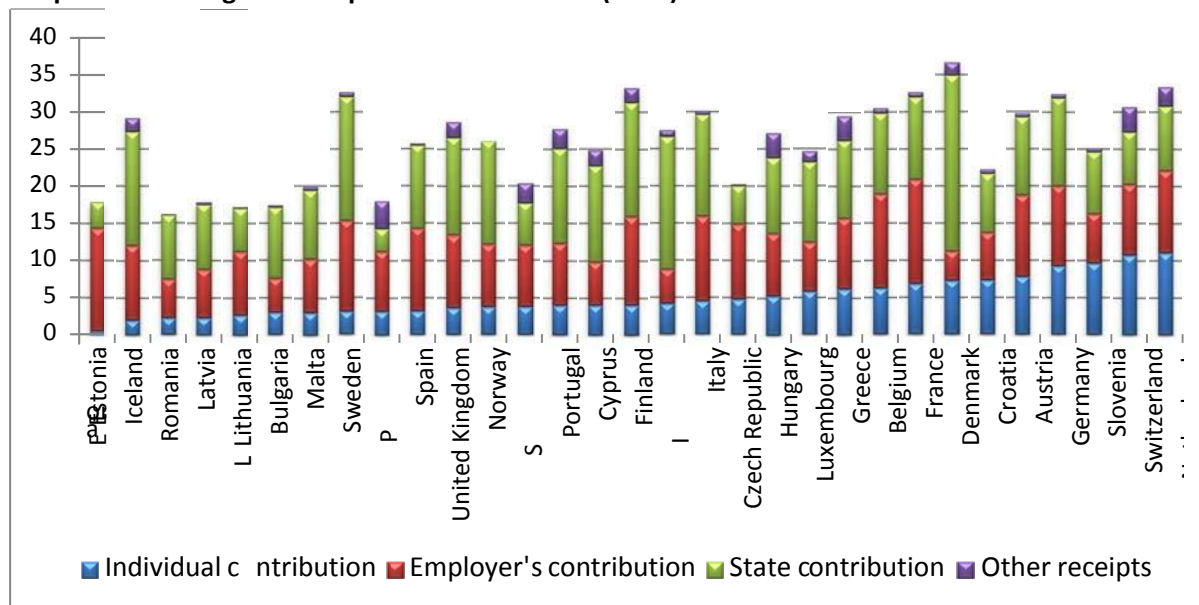
	Social Democrat /	Continental / Bismarckian	Liberal / Eastern Europe
Objective	Poverty elevation	Income maintenance	Safety net
Benefits	Flat-rate	Earning replacement	Mixed
Eligibility	Need	Contribution	Mixed
Coverage	Everyone	Employee	Mixed
Financing	Taxation	Contributions	Mixed

Graph 4 below shows that compared with other established EU welfare systems, the UK is heavily reliant on the Government and therefore general taxation to fund its welfare system, while other member states systems’ rely more on employee and employers’ contributions.

<sup>18</sup> See Regulation (EC) No 883/2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:200:0001:0049:EN:PDF> – Article 4 of the Regulation states, “Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any member state as the nationals thereof”

<sup>19</sup> Adapted from Esping-Andersen, Gosta. 1990. *Three Worlds of Welfare Capitalism*, Princeton, NJ: Princeton University Press, and Bernhard Ebbinghaus, *Comparing Welfare State Regimes*, University of Mannheim 2012 and Wilhelmus Antonius Arts and John Gelissen, ‘Three worlds of welfare capitalism or more? A state-of-the-art report’, *Journal of European Social Policy* 2002; 12; 137, <http://esp.sagepub.com/cgi/content/abstract/12/2/137>

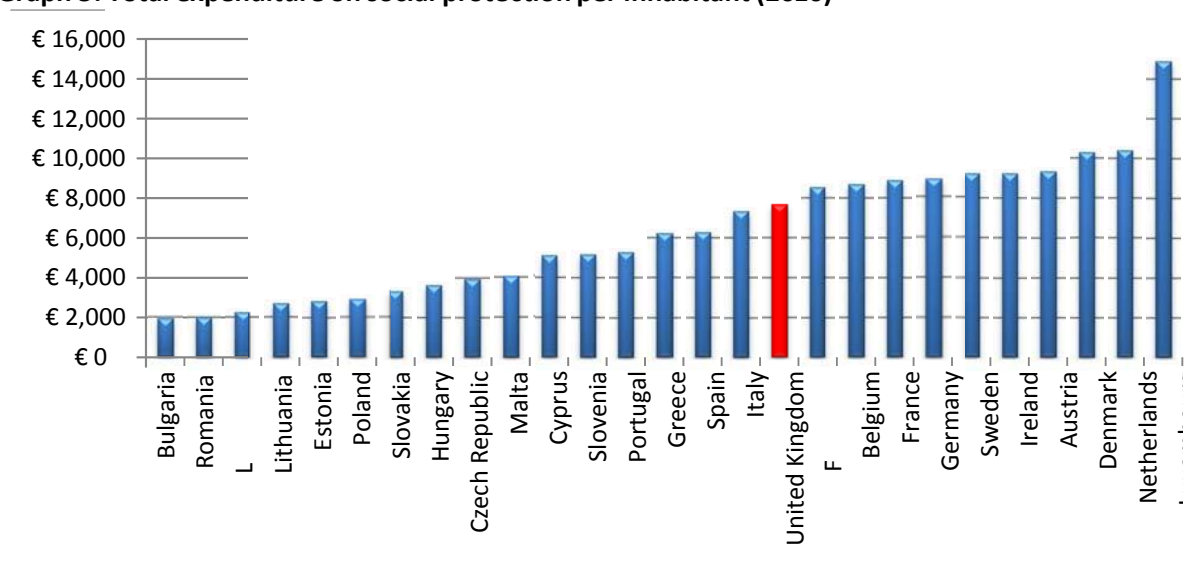
**Graph 4: Financing of social protection % of GDP (2010)**



Source Eurostat<sup>20</sup>

Graph 5 below illustrates that the level of welfare spending also differs across the member states.

**Graph 5: Total expenditure on social protection per inhabitant (2010)**



Source: Eurostat 2010<sup>21</sup>

<sup>20</sup> Eurostat, [http://epp.eurostat.ec.europa.eu/portal/page/portal/social\\_protection/data/database](http://epp.eurostat.ec.europa.eu/portal/page/portal/social_protection/data/database) (this does not take into account spending based on borrowing)

<sup>21</sup> Eurostat, [http://epp.eurostat.ec.europa.eu/portal/page/portal/social\\_protection/data/main\\_tables](http://epp.eurostat.ec.europa.eu/portal/page/portal/social_protection/data/main_tables)

In many other member states income-related (or safety-net) benefits tend to stand outside the main social security scheme as 'social assistance', and therefore such benefits are not generally covered by EU Social Security Regulations. The EU rules give member states greater flexibility when granting access to 'social assistance' benefits, which means that member states with this different welfare model may have more flexibility than the UK has in granting access to benefits that do not depend on contributions.

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

It is important that the freedom to move within the EU is and non-UK nationals' not abuse access to welfare must be tightly regulated if any public and political confidence in free movement is to be sustained.

However, in 2011, the European Commission launched 'infraction' proceedings against the UK, claiming that the 'right to reside' element of the UK's Habitual Residence Test violates EU law. This is because it "indirectly discriminates non-UK nationals coming from other EU Member States" as UK citizens automatically pass the test.<sup>22</sup> Details of the Commission's complaint are not public, as it has not yet reached the Court of Justice but from the information available it would appear it also objects to the UK's application of the 'right to reside' test to benefits the Commission deems to be in the 'social security' category.

The dispute between the UK Government and the European Commission is largely the result of a clash between the UK's particular welfare model (described above), which includes many non-contributory, means-tested benefits, and the EU Regulation, which prevents any discrimination and applies the same logic to every EU member state, despite the heterogeneity of individual welfare systems.

In order to maintain any public confidence in EU free movement it is essential that EU rules respect differing national welfare systems that have developed through national democratic choices. Open Europe believes the UK should work with like-minded member states to secure changes to the EU's rules on free movement to address this issue:

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<sup>22</sup> *European Commission* press release, 'Social security coordination: Commission requests United Kingdom to end discrimination of EU nationals residing in the UK regarding their rights to specific social benefits', 29 September 2011, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1118&format=HTML&aged=0&language=EN>

- Firstly, the right of residence in another member state should be more closely linked to being in work or self-sufficient. This could be achieved by strengthening and clarifying the definition of habitual residence in EU legislation to ensure that rights of residence (after the initial three month period in the Rights of Residence Directive) are dependent on a genuine economic link to the host country such as being in work, being self-sufficient and removing the right of residence as a job seeker unless someone has been in employment in the host country for a certain period. When determining whether an EU citizen is a “burden” on the welfare system, the host member state should be allowed to apply general thresholds for the income/resources that person is required to have.
- Secondly, the EU’s Social Security Regulation should be amended to ensure there is no access to a host member state’s benefits without the person having the right of residence in that country under the Rights of Residence Directive. Where the Rights of Residence Directive currently speaks about the host country’s “social assistance system”, the Directive could explicitly include all state welfare.
- Thirdly, the rules on family benefits should be tightened so that people cannot claim for non-contributory benefits such as Child Benefit if their child is not living with them in the host country.
- Fourthly, the requirement for equal treatment with nationals of the host member state should be removed for EU citizens without a permanent right of residence in the host member state when it comes to the provision of state welfare that is in particularly scarce supply, such as social housing.

**Questions in relation to Immigration:**

***11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?***

N/A

***12. What evidence do you have of the impact on local communities and their economies, including rural areas?***

The social impacts of EU/EEA free movement are very difficult to measure because it is difficult to disaggregate EU migration from other forms of migration and much of the evidence is therefore anecdotal. However, local communities can indeed suffer when the pace of change puts pressures on local infrastructure. For example, local authorities can face difficulties planning for demographic changes and sometimes mobility is associated with inefficient use of public services.<sup>23</sup>

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<sup>23</sup> *Migration Policy Institute*, ‘How free is free movement? Dynamics and drivers of mobility within the European Union’, March 2013;  
<http://www.migrationpolicy.org/pubs/MPIEurope-FreeMovement-Drivers.pdf>

As we set out above, the evidence on the overall economic impact of new EU migration is inconclusive. However, the likelihood is that it has had an impact on specific groups, the low-skilled and young, by increasing competition and downward pressure on wages. This is certainly the public perception.

Furthermore, big migration inflows – especially when they are concentrated in a specific geographic area – can drive housing prices up. This can have a double effect on low-skilled workers already experiencing a downward pressure on wages and a fear of unemployment that now see their disposable income consumed by higher rents and property prices.

The concentration of immigration in some areas, combined with a lack of accurate data, has also led to complaints from local authorities that funding is not been allocated correctly to take into account new spending pressures.<sup>24</sup> The difficulty poor data creates with planning is a real problem. The Audit Commission cites one example of schools in Peterborough, scheduled for closure, which had to be retained at the last minute due to a sudden surge in pupils linked to migration.<sup>25</sup>

A more effective system of statistics and planning should be put in place in order to avoid sudden strains on public services and improve public debate on immigration. With better and more timely data, the central Government could respond quicker to the problems created by sudden flows and allow local services to respond quicker.

***13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?***

See answer to question 10.

## **Questions relating to future options and challenges:**

### ***14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact might these have on the UK national interest?***

Several other EU countries have stressed the need to make sure EU migrants move around to work, rather than to claim benefits. For example, Germany, Austria and the Netherlands signed a letter along with the UK calling for tighter restrictions to migrants' access to welfare handouts and other state-funded services.

The UK must work with like-minded countries to reform the system to better link rights of residence, including access to welfare, to economic contributions to the host member state.

### ***15. What impact would any future enlargement of the EU have on the operation of free movement?***

Arguably the issue that has most damaged the UK public's perception of EU migration is the underestimate of A8 migration following the UK's decision not to introduce transitional controls in

2004. In 2013, Romania and Bulgaria will also gain access to the UK's labour market followed by Croatia in 2018. In the future, there remain a number of candidate states, including Turkey, and potential candidates which if given access to the EU's labour market could, due to their size and relative wealth, have a substantial impact.

For future EU enlargements, tighter transitional controls should be employed, based on more objective criteria such as relative GDP per capita rather than the arbitrary time-limited controls used up to now.

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<sup>24</sup> *House of Lords, Economic Affairs Committee, 'The economic impact of immigration'*

<sup>25</sup> *House of Commons, Communities and Local Government Committee, 'Community cohesion and migration', Tenth Report of Session 2007-2008, 30 June 2008,*  
<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomloc/369/369i.pdf>



## **Submission 33**

### **RCN RESPONSE TO HOME OFFICE/DWP REVIEW OF EU/UK BALANCE OF COMPETENCES INTERNAL MARKET: FREE MOVEMENT OF PERSONS**

#### **ABOUT THE ROYAL COLLEGE OF NURSING**

With a membership of over 415,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

#### **INTRODUCTION**

The RCN welcomes the opportunity to feed into a review which we hope will allow for an informed and objective discussion about the impact of EU policy, programmes and legislation on the UK. In an online survey of RCN members, over 65% of respondents thought that the UK's engagement with Europe was significant for them as a nurse.

The RCN has already responded to the Department of Health's review focusing on the balance of EU/UK competences in health. However, one of the key areas impacting on nursing has been the mutual recognition of professional qualifications legislation, which has been an important cornerstone of EU free movement legislation. The RCN therefore wishes to respond to specific aspects of this joint Home Office and Department for Work and Pensions review of competences in relation to free movement of persons.

#### **RESPONSES TO RELEVANT CONSULTATION QUESTIONS**

- 1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK nationals and b) the UK as a whole?*
- 2. What evidence is there that EU competence in this area makes it easier for UK nationals to work, access benefits and access services in another member state?*
- 4. What evidence is there that a) more EU action, or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?*

#### **FREE MOVEMENT OF HEALTH PROFESSIONALS**

Facilitating the free movement of workers was one of the cornerstones of the original

Treaty of Rome establishing the European Economic Community. For health professionals the key to making free movement a reality has been the original “sectoral” health professions directives, adopted in the 1970s, which allowed for automatic recognition of qualifications where certain minimum education requirements were met. These have since been integrated into an overarching piece of EU legislation which covers over 800 professions. The directive was founded on the EU’s internal market competences rather than its public health remit, which created some tensions in relation to the balance between free movement objectives and public protection.

For automatic recognition of qualifications across Europe to work, there has to be an underpinning set of standards for the preparation of nurses and other health professionals to ensure patient safety and care quality and that is why requirements for the content and length of nurse education form an integral part of the EU regulatory framework. The directive has therefore also been an important lever for raising standards of nurse education in countries wishing to join the EU, and in women’s access to further education<sup>1</sup> and it has provided some assurances on patient safety.

Given its early adoption it provided a focus for national nursing organisations to begin to contribute collectively to shaping European legislation and has led to collaboration on other EU nursing and health issues.

Under the current revision of the directive, the European Commission has sought to speed up and streamline processes for migrants seeking professional recognition, a move the RCN supports, where this does not compromise patient safety. However, the RCN also sought the strengthening of public protection measures in the revision such as clear ability of health regulators to make language checks for all EU nurses, a duty to alert other regulators if a health professional has been banned from practising in any member state and exclusion of health professionals from possible “partial access” to that profession in another member state. Such arrangements, now agreed by the three EU institutions, and awaiting formal adoption in autumn 2013, are important for ensuring that nurses registered in the UK have English language skills. The new rules clearly do not, however, remove the responsibility of employers to ensure that any health professional recruited for a specific post is competent to carry out that role, including adequate communication skills.

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<sup>1</sup> [http://www.euro.who.int/data/assets/pdf\\_file/0004/154516/Eurohealth\\_Vol-17\\_No-4\\_web.pdf](http://www.euro.who.int/data/assets/pdf_file/0004/154516/Eurohealth_Vol-17_No-4_web.pdf)

Given developments in nursing over the last 35 years the RCN and the European Federation of Nurses Associations (EFN) has also pushed for the minimum requirements in the directive relating to nursing to be aligned with today's expectations of nurses as autonomous practitioners who assess and respond to patients needs, develop and manage services, and apply the current evidence base to their practice.<sup>2</sup>

The requirements in the directive covering nurses in general care have had a number of important implications for UK nursing. Nursing is a global profession and nurses have been one of the professional groups to benefit most from the free movement arrangements across Europe. Whilst the number of EU nurses coming to the UK has been relatively small traditionally, with recruitment much higher from Commonwealth countries, the number from EU/EEA countries has been rising over the last ten years. Some individual trusts in England are now recruiting nurses from Spain and Portugal and the number of nurses registering in the UK from these countries rose to over 500 each between April 2011 and 2012.<sup>3</sup>

The Nursing and Midwifery Council's statistics, which capture the number of nurses registered to practice in the UK from EU/EEA countries, show the trends in movement of registered nurses to the UK. These have highlighted a significant drop in non-EU migrants and a steady increase in nurses from other EU countries. The statistics also show that since 2006/7 more nurses have left the UK, than have joined the Nursing and Midwifery Council register from overseas.<sup>4</sup>

It is estimated that 5% of qualified nurses working here have been trained outside the UK<sup>5</sup>. EU trained doctors make up roughly 10% of those registered, and doctors trained outside the EU making up an even greater proportion at about 26%<sup>6</sup>. So it is fair to say that the NHS would not be able to function without the contribution of overseas trained health professionals.

Recent studies on future nursing workforce trends, notably by the Centre for Workforce Intelligence<sup>7</sup>, have estimated that by 2016 there could be a considerable shortfall of nurses, whilst over the last three years the number of pre-registration nurse training places commissioned has dropped by 13%.<sup>8</sup> So a further nursing shortage is looming and may well result in NHS trusts seeking to recruit more widely from other EU countries.

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<sup>2</sup> RCN Response to draft EU Professional Qualifications Directive 2011  
[http://www.rcn.org.uk/data/assets/pdf\\_file/0003/434928/RCN\\_response\\_to\\_December\\_2011\\_Mutual\\_Recognition\\_of\\_Professional\\_Qualifications\\_legislative\\_proposals.pdf](http://www.rcn.org.uk/data/assets/pdf_file/0003/434928/RCN_response_to_December_2011_Mutual_Recognition_of_Professional_Qualifications_legislative_proposals.pdf)

<sup>3</sup> Nursing Standard, vol 27, no 25, 20 February 2013 "Staff recruitment from abroad rises as trusts plug skills gap"

<sup>4</sup> Royal College of Nursing (2012) *Overstretched, under-resourced, the UK nursing labour market review 2012*.

<sup>5</sup> Data from the RCN's forthcoming UK nursing labour market review 2013

<sup>6</sup> [http://www.gmc-uk.org/doctors/register/search\\_stats.asp](http://www.gmc-uk.org/doctors/register/search_stats.asp)

<sup>7</sup> Centre for Workforce Intelligence, *Future nursing workforce projections- starting the discussion*, June 2013, <http://www.cfwi.org.uk/publications/future-nursing-workforce-projections-starting%20the%20discussion>

<sup>8</sup> Royal College of Nursing, *Frontline Firs: Nursing in red alert*, April 2013, [http://www.rcn.org.uk/data/assets/pdf\\_file/0003/518376/004446.pdf](http://www.rcn.org.uk/data/assets/pdf_file/0003/518376/004446.pdf)

## **SOCIAL SECURITY AND PATIENTS RIGHTS TO CROSS BORDER CARE**

As stated in the consultation document the area of social security legislation is a complex one, so the RCN will limit its comments to those aspects most relevant to nursing and the RCN's European work.

Despite the restrictions on the EU's role in determining the financing, organisation and delivery of health services, it has applied its competence in relation to free movement of people to develop rules which more directly impact on patients' access to health services in Europe.

One of the early provisions under the EU's competence in relation free movement of workers and social security was to provide access to certain benefits when an EU citizen, who would have been covered by social security legislation in their home member state, was working in another EU country. The categories have been extended over time from workers to cover those visiting or residing in another member states

Regulations adopted under this provision mean that there are reciprocal arrangements between member states for access to emergency care when visiting another EU country, for pensioners living in another member state (eg UK pensioners in Spain) , for home health services to send a patient for planned treatment in another country (eg when highly specialised care is required). UK nationals benefit from these arrangements if they are visiting or living in another EU country.

Under the EU's competence to facilitate free movement and access to services, some patients have also taken their cases to the European courts to seek reimbursement for planned treatment they have chosen to have outside the member state they are living in. Given the confusion about these rights the European Commission and member states have sought to introduce a clearer legal framework.

To achieve this the patients' rights to cross border care directive was adopted in 2011 and is due to be implemented in the UK this year.

The EU's intervention was based on free movement principles and whilst the RCN supported the need for patients, professionals and health services to have greater clarity, we highlighted some of the practical challenges. These included concerns about continuity of care once a patient returned to their home member state and equity, given that the system was to be based on "reimbursement" requiring patients to have some means of funding the care up front.

Whilst in an online survey of RCN members 90% of respondents rated as important the EU's powers to introduce reciprocal arrangements for access to emergency care, this dropped to just over 50% in relation to planned care in another member state. Given that the overwhelming majority of UK citizens choose to access healthcare in this country, the RCN is clear that arrangements to implement the cross border care directive should not undermine domestic planning, provision and financing of health services.<sup>9</sup>

The RCN acknowledges that greater clarity was required in relation to patients deciding to travel for treatment in another EU country. For those UK patients choosing this route there also needs to be clear information and an understanding that any treatment is subject to the safety standards and regulatory arrangements in that country. However, the RCN does not believe that the NHS should proactively be encouraging UK residents to seek treatment elsewhere. The prime focus should be on ensuring that patients have access to high-quality, timely, appropriate care in their locality.

In terms of UK impact of the directive, the review undertaken by York University<sup>10</sup> for the Department of Health, concluded that the current demand for overseas healthcare was "insignificant" compared to NHS treatment and only 5% of those surveyed said they had even considered seeking treatment outside the UK. However, a much larger group said they would do so in future (60%), particularly if waiting times in the UK were too long.

*14. What future challenges and/or opportunities might we face in relation to EU competences in the areas of free movement of persons and what impact might these have on the UK national interest?*

*15 What impact would any future enlargement of the EU have on the operation of free movement?*

In considering recognition of health professionals and their ability to practice in another EU country, precedence has often been given to "removing barriers to free movement" rather than considering the paramount importance of patient safety and public protection. This has been witnessed most starkly in the previous discussions over the ability of health regulators to undertake language controls of EU doctors and nurses, but also in attempts to block updating education standards for nurses, to fit with the demands of modern day nursing.

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<sup>9</sup> [http://www.rcn.org.uk/data/assets/pdf\\_file/0006/501927/6.13\\_Publications\\_-\\_cross\\_border\\_care\\_Feb.\\_2013.pdf](http://www.rcn.org.uk/data/assets/pdf_file/0006/501927/6.13_Publications_-_cross_border_care_Feb._2013.pdf)

<sup>10</sup> <http://www.networks.nhs.uk/nhs-networks/cross-border-healthcare-network/documents/York%20Project%20-%20Final%20Report.doc/view>

The RCN would want to see EU level development of robust measureable education competences for nursing, using the relevant professional expertise, with greater emphasis placed on the EU's competence to ensure a high level of health protection in other policy areas rather than free movement of people principles being the overriding concern.

The minimum standards to allow free movement continue to set a benchmark for countries wishing to join the EU and allow access to the recognition arrangements for health professionals.

The TAIEX missions and peer review have played an important role in preparing accession countries to meet these training requirements and the RCN would want to see this work continued with future candidate countries.

In previous EU enlargement negotiations the RCN has also supported the stricter requirements for some Polish and Romanian nursing qualifications acquired before accession, which did not meet the EU standards<sup>11</sup>.

We were pleased that the Polish Government responded to this gap by offering bridging courses to those nurses, and hope very much that the Romanian Government will introduce similar programmes in future. Ultimately in order to be able to benefit from automatic recognition of health professional qualifications and enter the UK register, future member states will need to be able to demonstrate their nurse education meets the agreed EU wide standards.

In conclusion the RCN does not see the need for either an expansion of EU competences in this area or in any "repatriation" of powers. However the

balance needs to be addressed between differing areas of EU competence, in particular the EU's remit to ensure a high level of health protection in all policies, which needs to be more effectively addressed, compared with the drive for free movement and completion of the single market.

**Royal College of Nursing, July 2013**

**Email: [international@rcn.org.uk](mailto:international@rcn.org.uk)**

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<sup>11</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_363/l\\_36320061220en01410237.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_363/l_36320061220en01410237.pdf)

**Submission 34**

<b>Name</b>	Kenneth Hanslip
<b>Organisation/Company (if applicable)</b>	NSL Ltd
<b>Job Title (if applicable)</b>	Account Director
<b>Department (if applicable)</b>	NSL Validation Solutions
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<b>Email</b>	██████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	X	Private company

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

The ability to exercise free movement rights for UK Nationals is an extremely positive opportunity for UK Nationals to experience the diverse nature of working practices and industries within the European Union. By undertaking work within a different country setting to that of the UK, horizons are broadened and the many learning experiences available are both varied and enriched. Those UK Nationals who bring their new found knowledge and experience back into the UK working environment help to enrich that environment and can offer different aspects and solutions to business practice. On a negative note, the free movement rights are in reality only open to those UK Nationals who can afford to buy a UK passport which at the moment is the only means available to both travel and establish UK citizenship. The cost of a UK passport is often beyond the means of many people and especially young people starting off their working careers. Within the wider EU, Citizens are able to travel across EU borders with an Identity Card which tends to be a cheaper option than a passport so by not having a cheap and accessible travel document available to them UK Nationals are somewhat disadvantaged and this may well inhibit their ability to travel.

**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

No factual or professional knowledge of this area

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**



With no requirement for EU Citizens to have work opportunities open to them or adequate means of financial support when they enter the UK, there will be occasions when EU Citizens take up the resources of the welfare system or public services. An additional problem is that, at present, the validation and verification of EU Citizenship through an Identity Card, Passport or Travel Document is not something that can be easily checked. Whilst there are a number of systems that will validate a document, there is no means yet available to employers or the wider public service to establish quickly and easily that the person presenting the document is in fact the holder of a legitimate EU Citizenship. With the growth in systems that can identify forged and counterfeit documents, there is a growing trend to produce a document that purports to be issued by an EU country rather than a document from a country external to the EU, the thinking being that by simply presenting an EU document, citizenship entitlement will not be questioned. Welfare and public services and the wider business community need to have an ability to verify a document holder's entitlement to EU Citizenship over and above the simple production of a

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

No factual or professional knowledge of this area

**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

Within the general service industry, there is a high level of the employment of EU Nationals from outside of the UK and particularly so in London. Generally, this tends to be in the younger age brackets and within those trades traditionally seen to be attractive to young people such as hotel, restaurant and hospitality work. In many cases and particularly where the employment lies within the areas of the service industry which are considered to be menial or 'dirty' labour intensive employment, the indigenous population tends to steer away from that type of employment. There is however a general trend towards the employment of Polish and East European nationals within the restaurant and hospitality areas and especially so in London. It may be that the long hours and relatively low pay discourage UK Citizens from applying for these posts however it may well be that this area of work, often unskilled with a high turnover of staff, requires a constant supply of staff that cannot be adequately met from the UK workforce alone. It is also the case that this area, which can often have low levels of document scrutiny and validation, attracts a high number of illegal migrant workers on false

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

Within agriculture, the work being offered tends to be outside in the cold, wet and occasionally sun, but is often regarded as being so manually intensive with such long hours that it doesn't have much attraction to the indigenous population. For these reasons, the employment of EU Nationals is often the only way that crops can be harvested. Within the distribution, hotels and restaurant sectors, there is a high degree of employment of EU Nationals and with a lack of checking and validation options open to employers and with the high turnover of staff, this area is prone to illegal migrant working by persons holding forged or counterfeit EU documentation.

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

No factual or professional knowledge of this area

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

These sectors and indeed the whole employment market within the UK would benefit from EU support and the support of the UK Government to offer employers access to robust document validation and verification systems. It shouldn't be acceptable that the production of an EU passport, identity document or travel document alone is sufficient to establish EU Citizenship. Unless employers and those who provide welfare or public services have some means to establish to an accurate degree that the person producing an EU document is in fact an EU Citizen the value of an EU document's legitimacy will continue to be held in fairly low esteem. Both France and the Netherlands have reported problems with their biometric passports with France advising that up to 1 million of their latest biometric passports may have been issued falsely. The present EU offering on document validity, PRADO, is not a user friendly or sufficiently precise portal for the checking of a document's status and doesn't assist where a document has been previously stolen and altered or presented through the impersonation of the legitimate document holder.

#### **Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

No factual or professional knowledge in this area

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

No factual or professional knowledge on this area

#### **Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

An EU document has replaced external non-EU identity documents as the document of choice for those intending to enter and take up work unlawfully within the UK. It is also the document of choice for those who have entered the UK legally on legitimate travel documents but who now intend to remain and take up work in the UK illegally. The far reaching and diverse border area within the EU and the differing scale of robust border controls means that the credibility of an EU document has been eroded. The EU and the UK Government therefore need to work with relevant partners to establish credible schemes to assist in the validation and verification of a person's EU Citizenship and the legitimacy of EU

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

No factual or professional knowledge within this area.

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

Given the EU's overall 'control and management' of the free movement of citizens, it is obligated to ensure that the documentation produced to establish that right is robust and secure. The EU should ensure that the whole process of document issue is secure to a set and consistent standard and that all documents have security features and controls aligned to EU policy rather than local national policy. There should be one standard style and type of EU passport document, identity card and visa so that when the documents are produced, they can be validated and verified quickly and easily. The large numbers of documents that are presently capable of being produced to establish EU Citizenship, range from extremely secure passports to identity cards consisting of a photograph stapled onto a cardboard identity card. With such a diverse range of documents available and such a diverse range of security protection in these documents, it is almost inevitable that abuse of the free movement principles will occur. In some ways, this abuse is facilitated by the lack of consistency in document type and security features. The prize of accessing EU Citizenship benefits is immense and the EU must therefore accept and meet its obligations in this area.

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

With economic difficulties both inside and outside of the EU set to remain or increase, there will be a marked increase in non-EU citizens seeking to enter the EU on false documentation or through porous borders. The non-EU citizen will then seek to obtain forged or counterfeit EU documents, something that does appear to be a relatively easy option and then use the right of free movement to move to the areas of the EU which are seen to be more attractive and in this, the UK always features highly. The value of the right to free movement cannot ever be underestimated. Possession of an EU national identity card, one of the most commonly falsified documents, secures a wide range of employment and social benefit opportunities. With the expansion of the EU, the ability to control forged and counterfeit document production is weakened and the need to protect the right of free movement and restrict it solely to those entitled to that benefit means that steps to enhance document security have to be considered and

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

Unless proper document security and validation controls are implemented now, the future expansion of the EU will make the problems and issues caused by false EU national documentation simply too big to resolve. As the EU borders grow, they touch more on areas of hardship whose citizens naturally want to receive and benefit from the enormous benefits of EU citizenship. The larger the EU border, the more chance that porous areas will develop through which non-EU citizens from neighbouring countries and beyond will enter the EU. The availability of forged and counterfeit EU documentation will then allow those non-EU citizens to impersonate EU Citizens and to take up the free movement rights. The UK may well continue to be the destination of choice for non-EU citizens travelling on false documentation. The fact that UK employers continue to see and reject growing numbers of false EU documentation highlights very much the issue that if the first time that a false EU document is rejected is at the point of production in the UK, then the border controls both within the EU and the UK that allowed the person presenting the false document entry to the UK have failed. This requires some resolution before the EU grows further.

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

Only that where such a 'prize' as the EU right to free movement is on offer, it is inevitable that there will be concerted and consistent moves to abuse the process and the right to take up the benefits on offer. Efforts to secure borders are extremely useful but no matter what effort is put in to that security, technology will inevitably be failed by the fact that there are too many documents purporting to identify an EU Citizen and too many variations on what is acceptable proof, when that proof is acceptable and in the case of Schengen / non-Schengen countries, where that proof is acceptable. Robust and consistent document security across the whole of the EU allied with consistent and type approved document validation and verification systems is the key to protecting the right of free movement and reducing illegal migration.

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

## **Internal market: Free Movement of Persons**

### **A submission by the City of London Corporation**

The City of London Corporation (“CoLC”) is grateful for the opportunity to make a submission to this Review. The CoLC has for several years chaired a City of London Migration Working Group as a forum for reflecting the views of those firms and organisations representing the UK-based financial and professional business services industry (“the City”). This group directly informs CoLC’s own work on migration policy and related visa issues. The group has also proved to be a valued forum for engagement between the City and Ministers or officials from the Home Office, which has led to progress on a number of issues, including business visa applications and related processes. CoLC also welcomes decisions by the Home Office to review online applications, Tier 1 usability, translation services, and initiatives to work with other EU member states, in particular the recent announcement to establish a shared-visa with Ireland.

In support of our work, CoLC has previously published a number of reports on migration issues, including our November 2011 research report on migration, [\*Access to Global Talent\*](#)<sup>138</sup>, which was well received both inside and outside Whitehall. More recently, we have compiled a short position paper on the availability of business visas<sup>139</sup> and we continue to make parliamentary submissions and consultation responses to the Home Office on these issues on behalf of our City stakeholders.

In the context of this Review, we are answering the following questions:

5. *What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons?*
6. *What is the impact of this area of EU competence on employment sectors, such as [...] ‘banking and finance’ [...] or other sectors?*

### **Summary of conclusions**

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<sup>138</sup> CoLC, Consensus (November 2011), *Access to Global Talent – the impact of migration limits on UK financial and professional business services*

<sup>139</sup> CoLC (March 2013), *Open for Business. Open for business visas?*

- The UK-based, international financial and professional services industry benefits from access to the pool of skilled and talented people via the free movement of labour provisions of the EU single market;
- It would damage British trade and economic interests to withdraw from these provisions.
- It is, however, essential that access to the wider international market in skills in non-EU / EEA states is not made so difficult that talented individuals locate or do business elsewhere.
- Highly-skilled workers, particularly in financial services, are not a burden on the state (see paragraph 3 below); they generate wealth and are positive contributors to the UK economy. Their spending on goods and services in the UK also benefits the UK economy as a whole.
- London's strength as a financial centre derives from its position as the junction of EU and global business. It is Europe's international financial centre. Its workforce must reflect this.
- London's ability to attract both EU / EEA and non-EEA nationals is a major advantage to the City's global position and UK trade.
- The Free Movement of Persons inside the EU provides the UK with access to talent from across the world's largest and wealthiest Single Market, a market in which London is the global hub for financial and professional business services (see paragraph 12 below).

## **The broader international skills pool**

1. London is recognised as the 'destination of choice' – through better job opportunities, leisure amenities, transport links and cultural reference points – for many immigrant workers. In the last 20 years, London has seen the proportion of its population who are foreign-born more than double, to its current level of 33% (approximately 2.5 million people)<sup>140</sup>. The City, itself a global financial services hub and centre for international trade, is dependent on access to a global talent pool of individuals who live and work in the UK.

2. Both the City's working population, and those businesses that are located here, are representative of London's broader cosmopolitan mix. This is also reflected by the international characteristics of those businesses located here, in areas ranging from asset management, through pension provision, capital-raising, legal services, accountancy, insurance and maritime services. Approximately 20.7% of those employed in financial services in the UK (excluding pensions and insurance) were born overseas<sup>141</sup>. These international

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<sup>140</sup>CoLC, Oxford Economics (January 2011), *London's Competitive Place in the UK and Global Economies*

<sup>141</sup> This figure includes those UK nationals also born overseas and is taken from Rienzo, C. (August 2012), *Migrants in the UK Labour Market – an overview*, *Briefing - Migration Observatory at the University of Oxford*, 2nd Revision: p. 4



firms, many of which have located their headquarters in the UK (see paragraph 13 below), have global business and clients, and they want to recruit the best people they can from across the world.

3. Highly-skilled migrant workers are a benefit to the UK economy, not a burden, as they generate wealth and deliver a net contribution<sup>142</sup> directly to the UK's economy, as well as quantitative contribution<sup>143</sup> to wider society. In 2011, the average wage of a highly-skilled, well-paid employee in the financial services sector for example was between £45,000 and £55,000. During the same period, employment taxes for each employee were- £22,971 on average taking amounts borne and collected together. These figures are an indication of the direct benefit to the Exchequer for each job created or maintained in this sector<sup>144</sup>. Each employee's spending on goods and services also benefits the wider UK economy. These educated individuals are likely to be investors, entrepreneurs, or key staff for the many international firms which are major investors in the UK. These individuals are not likely to remain in the UK long-term, and even if they do, they are less likely to make claims on publicly-funded services, such as the NHS and state education. They are also likely to be highly trained in skills that are passed onto British workers and businesses.

4. The City's ability to attract skilled workers from outside the EU / EEA is limited by the regulations put into place by HM Government, although it is accepted that the process of review and re-examination has produced improvements in recent months.

5. City business broadly accepts the political need for UK controls on skilled immigration. Its key argument, however, is that when these controls are too rigid - and the perception is created that the UK is not "open for business" - that talented people and the business areas in which they work belong elsewhere. This perception has the capacity to damage inward investment and inhibit the flow of capital.

6. In reality, the presence of skilled and talented people, with cultural, commercial and political knowledge, can bring and anchor business here and, rather than

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<sup>142</sup> George *et al* (February 2012), Skilled immigration and strategically important skills in the UK economy, *Final report to the Migration Advisory Committee (MAC) by National Institute of Economic and Social Research*

<sup>143</sup> CoLC, London School of Economics and Political Science (2007), *The Impact of Recent Immigration on the London Economy*, p. 64

<sup>144</sup> CoLC, PwC (December 2012), *Total Tax contribution of UK financial services*, fifth edition

displacing British workers, can create new opportunities for them while generating corporate profits, tax revenue and export earnings. This is supported by respondents to our (CoLC) survey in 2011 – one well-known global bank indicated that comprehensive training programmes led by foreign staff contributed to developing the UK labour force as a long-term objective<sup>145</sup>.

7. It is therefore important that the UK's continued adherence to the free movement of persons from within the EU / EEA should not be a reason for supporting the over-regulation (or even prevention) of recruitment of skilled individuals from outside the EU / EEA.

8. In the financial and professional business services sector, and in other areas of "the knowledge economy", the UK is in a position which, with careful policy management, can generate a double advantage:

- Through its adherence to the free movement provisions of the Single Market it has cost-effective access to the EU / EEA skills pool, attracting talented individuals here and anchoring the businesses which employ them; and
- By applying its work permit rules for talented and highly-skilled individuals from outside Europe it widens the existing pool and broadens the capacity to do global, rather than solely domestic and European business.

### **The EU / EEA commitment**

9. For the City, access to the EU and EEA pool of skilled and talented people, under the free movement of labour provisions<sup>146</sup>, has been a considerable benefit and is essential for the UK's success in the future. European companies regard the extent of the UK's integration with the EU as important for FDI attractiveness with 56% of European investors stating reduced EU integration would make the UK a less attractive location to invest<sup>147</sup>.

10. Such individuals can, under the free movement of labour provisions, be recruited directly by City companies or transferred from elsewhere. Their

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<sup>145</sup> *Ibid* 1, p. 29

<sup>146</sup> Established in the Treaty of Rome, 1957; amended by Directive 2004/38/EC on the right to move and reside freely (within the EEA)

<sup>147</sup> Ernst and Young (2013), *Ernst and Young's attractiveness survey: UK 2013 – No room for complacency*.

employment is not subject to the various regulations governing entry to and work in the UK by non-EEA nationals. This free movement has contributed to the development of a competitive Single Market.

11. For the City and other major areas of the economy, the free movement of labour provisions has facilitated benefits, in terms of sectoral knowledge, familiarity with business and regulatory cultures, linguistic skills and networks of contacts in the public and private sectors.

12. The free movement of labour within the EU provides the UK with access to talent from across the world's largest and wealthiest Single Market, a market in which London is the global hub for financial and professional business services. EU cross-border trade in 'services' currently amounts to approximately €101 billion a year (0.8% of EU GDP)<sup>148</sup>. Within that EU market the UK has a 74% share in foreign exchange trading, a 74% share in interest rate OTC derivatives trading, a 51% share in maritime insurance and an overall 19% share of total financial and related professional services employment<sup>149</sup>.

13. As a global centre for financial and professional business services, London is the location of choice for many non-UK businesses that choose to establish either their headquarters or a strategic branch of their businesses here:

- Out of 971 companies in the UK (worth over £5 million) with overseas majority ownership, 172, some 18%, are from the EU, mostly from Germany 34, France 33, Netherlands 25 and Italy 15. A further 62 are from elsewhere in Europe, principally Switzerland (39);
- Out of 251 foreign banks authorised to take deposits in the UK, nearly a third, 79, are from the EU, with a number of other banks entitled to establish branches in the UK but not accept deposits. EU banks in the UK hold nearly £1.4 trillion in assets or 17% of total assets of banks in the UK;
- Some 115 companies from EU countries were listed on the London Stock Exchange's markets in March 2013, accounting for over a fifth of 589 listings of foreign companies. EU companies also account for around a fifth of the market valuation of UK foreign listings. Most EU companies on the London Stock Exchange are from Ireland (51), Cyprus (15), Netherlands (11), and Luxembourg (11);
- Out of funds managed in the UK totalling £5.1 trillion, more than 30%, or some £1.9 trillion, is managed by overseas headquartered firms. Around 11% of total UK assets are managed by EU headquartered firms. There is also significant outsourcing; £765 billion is managed in the UK on behalf of

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<sup>148</sup> Open Europe (2013), *Kick-starting growth: How to reignite the EU's services sector*.

<sup>149</sup> TheCityUK (2013), *Links between financial markets in the UK and the EU*

overseas-domiciled investment funds, of which the majority is domiciled in Luxembourg and Ireland<sup>150</sup>.

14. It is also important to emphasise that the international talent pool in London is not only drawn on by British companies or those from the individual's own country. A Spanish national working for a Japanese bank dealing with Latin American business, or a Greek maritime expert working for an American-owned insurance broker, are typical examples of the transfer of knowledge and experience across national boundaries.

15. The UK's commitment to this aspect of the Single Market has proved to generate strong business benefits, with the free movement of labour of migrants from the new EU member states adding £5 billion to UK GDP between 2004 and 2009<sup>151</sup>. Since 1992, 2.75 million new jobs have been created across the EU<sup>152</sup>. An estimated 4.5 million UK jobs are dependent on exports to the EU<sup>153</sup>. EU FDI in the UK creates 50-60,000 jobs and safeguards 40-50,000 jobs every year<sup>154</sup>. Withdrawal from the internal market, or the imposition of controls on the recruitment or transfer of skilled and talented EU / EEA nationals equivalent to those applied to other non-EEA jurisdictions by the UK, would be damaging.

16. If the UK was to withdraw from the free movement of labour provisions a key risk would be the likely tendency for firms doing business in other EU centres to locate nationals of that country, or from other countries remaining subject to the free movement provisions, in their domestic operations. These domestic businesses would then be built up at the expense of further growth, or even reduction, of their existing UK-based business, leading to a reduction in the City's tax-take and a likely increase in UK unemployment. The UK's adherence to the free movement provisions means that, for instance, German or Italian companies can productively deploy their own nationals here, where the competitive clustering of financial and professional business services adds value to their

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<sup>150</sup> EU companies based in the UK, *Ibid* 11

<sup>151</sup> Holland *et al*, National Institute of Economic and Social Research (May 2011) *Labour mobility within the EU - The impact of enlargement and the functioning of the transitional arrangements*

<sup>152</sup> HM Government (2012), "The European Union Single Market – what has been achieved in twenty years?" in Centre for Economic Policy Research (2012): *Twenty Years On: The UK and the Future of the Single Market*

<sup>153</sup> House of Commons (2013), *In brief: UK-EU economic relations – key statistics*

<sup>154</sup> Oxford Economics (2009), *An Indispensable Relationship: Economic linkages between the UK and the rest of the European Union*

activity and value, and this benefits their British co-workers through transference of knowledge and skills.

17. The UK's continued adherence to the free movement of labour provisions, which enables access to international talent from across the EU / EEA, reinforces London's position as not only a European but also a global centre for financial and professional businesses services, and a 'destination of choice' for its participants, as well as supporting the argument for continuing full participation in the Single Market. International decision makers have specifically cited access to markets in the EU as a core reason for choosing the UK over other financial centres in over 40% of the UK-positive investment cases considered. 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<sup>155</sup>.

## Conclusions

18. London is a global hub for financial and professional business services which is dependent on access to a pool of international talent, from both within the EU / EEA and outside the EEA. The City's ability to attract both EU / EEA and non-EEA nationals to its international workplace are a major advantage to the City's global position and UK trade, placing the UK ahead of its closest competitors for this industry.

19. Skilled migrant workers are a benefit to the UK economy, not a burden, as they generate wealth and are positive contributors to wider society, wherever they are situated. Their spending on goods and services also benefits the wider UK economy. These individuals are likely to be investors, entrepreneurs, or key staff for the many international firms which are themselves major investors in the UK.

20. These skilled and educated individuals are not likely to remain in the UK long-term, and even if they do they are, in general, less likely to make claims on publicly-funded services, such as the NHS and state education. They are also likely to be highly trained in skills that are passed onto British workers and businesses.

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<sup>155</sup> The City UK (November 2012), *Driving Competitiveness, Securing the UK's position as the location of choice for financial and related professional services*

21. If access to the global pool of skilled workers is inhibited, international companies located here could decide to move key business areas outside the UK. One of the key reasons often cited to CoLC for doing this is because these firms view London as a gateway to the rest of Europe, and beyond. International companies such as these are also likely to employ large numbers of British workers. If such businesses decide to move away, there may be negative effects on employment levels, the UK's pool of skills and leadership ability and the volume of taxes raised. This issue is therefore about economic growth across the UK rather than just the needs of City firms.

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**Submission 36**

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<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>
<b>NGO/Civil Society</b>	Charity for the purposes of education and research
<b>Public Sector</b>	
<b>Retail Sector</b>	
<b>European bodies/institutions</b>	
<b>Business/Industry/Trade Bodies</b>	
<b>Other (please give details)</b>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

**Questions in relation to the UK Experience of the Free Movement of Persons**

<b>1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?</b>
To answer this question it is essential to consider the nature of the European Single Market and the position of the UK within it.

It is widely accepted throughout the EU, including within the UK, even amongst those who are sceptical about the EU as a whole, that participation in the European Single Market is beneficial to all parties.

The basic concept of the free movement of persons is one of a set of principles that are fundamental to the Single Market, along with single external tariffs, the absence of internal tariffs, and some degree of standardisation of commercial and social regulation.

Therefore, it would be mistaken to suppose that the impact of free movement rights upon the UK can be considered meaningfully in isolation from an overall assessment of the issue of UK membership of the Single Market. Free movement rights are integral to the Single Market, and an inevitable consequence of membership of it. While there is scope for a discussion about how they are applied in practice and the consequences for the UK, these considerations do not exist in a vacuum. It follows that alterations with an impact on the principle of free movement will have broader consequences for the Single Market.

A further point should be recorded regarding assessments of the impact upon the UK of free movement. Under any free market system, such as the European Single Market, there will be winners and losers. It is generally easier to identify losers than winners, partly because the former tend to be more vocal. But that is not to say that winners do not exist, nor that the overall benefits do not substantially exceed the disadvantages.

## **2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

There is little doubt that the exercise of EU competence in this field in general terms makes it easier for UK nationals to work and access benefits and services in another member state. It seems entirely reasonable to conclude that, had the UK never joined the EU, or if the EU did not exist, or if EU competence in the area of freedom movement rights was reduced, or if the UK somehow changed its terms of EU membership unilaterally to lessen its obligations in this field, or if it left the EU altogether, then the ability of UK nationals to work and access benefits in all the states that are presently members of the EU would not be greater, and would probably be considerably less, than it is now.

Of the range of possibilities, the most likely alternative now to existing EU arrangements would be bilateral agreements between pairs of member states, or international conventions without robust enforcement mechanisms. In such circumstances, the possibility of free riders, seeking to benefit from the adherence to standards of others while not complying themselves, is ever



present. The EU and its mechanisms are the means of preventing this problem.

**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

Precise figures regarding the use of public services and the drawing of benefits by EU citizens are difficult to establish. However, there is certainly no obvious reason to believe that free movement is creating any kind of drain on resources specific to Britain. Indeed, such evidence as exists suggests that the migrant population in general (EU and non-EU) claims significantly less in benefits than the native population.

We would draw attention to the work of the Centre for Research and Analysis in Migration in its 2009 report 'Assessing the Fiscal Costs and Benefits in Migration from Eastern European A8 Countries', which encourages the view that there is no reason to suppose that EU migration from accession states will create problems, and if anything the individuals involved will be less likely to claim entitlements than the native population.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

In considering this question, it is clear that any complaints that may exist about UK nationals being unable to exercise their free movement rights in other member states can only be resolved either by the EU introducing more rigorous and comprehensive regulations in this field, or enforcing existing rules more effectively, or both. This kind of response would presumably be defined as 'more EU action'.

But four important points arise in connection with the idea of 'more' or 'less' 'EU action'.

First, the meaning of the term 'EU action'. It should not create the impression that the EU is an external body which imposes behaviour upon UK and other member states. On the contrary, these member states are central to the decision-making processes of the EU, and citizens of these member states elect the members of the European Parliament, which also plays its part in decisions. (Furthermore, the domestic political and legal institutions of member states are crucial to the implementation of such decisions).

The UK has, therefore, participated in the decisions about the existing regime for free movement of persons, and can at EU level seek to achieve alterations to it in future, taking into account, if it wishes, what it perceives to be its national interests. How realistic it is to expect a radically different outcome from that produced by the workings of the same processes until now is of course open to question. No member state of the European Union can realistically expect the Union's policies and structures only to correspond to its own desires and perceived interests.

Second, just as free movement rights cannot fully be considered in exclusion from the totality of the Single Market, nor can the UK be considered in isolation from the whole of the EU. Questions about whether there should be 'more' or 'less' action have implications for all member states. A requirement for other member states to do more to help UK nationals would also apply to the UK in its behaviour towards non-UK EU citizens. Similarly, any lessening of UK obligations would imply that other member states would have the same reduction in their responsibilities towards UK nationals.

Third, the whole idea of a choice between 'more' or 'less' EU action does not necessarily capture all the issues at stake. It may be that in many individual cases debates revolve around the precise way in which the principle of free movement rights is being implemented. This could not and should not be regarded as a choice between 'more' and 'less' European action.

Fourth and finally, what some define as 'less action' by the EU in the field of free movement could in fact amount to abandonment of the principle of free movement altogether. The consequence of such a change would be the undermining of the Single Market as a whole.

#### **Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

As noted above, the free movement of persons is fundamental to the existence of the Single Market, which is widely accepted as beneficial to the economic performance of the EU as a whole and within it that of all member states, including the UK. The questions below refer to various sectors of the economy that are dependent upon the Single Market; and for this reason they are dependent upon the free movement of persons for their viability.

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

Typical complaints regarding the impact of EU free movement in this regard involve the idea that 'local' workers are being undercut by incomers, causing both downward pressure on wages and unemployment. A first observation is that the general principles of market economics underpinning the idea of the Single Market, of which there is wide acceptance across the political spectrum within the EU, in part involve flexible labour markets, with a component of that flexibility being wage levels. However, if the UK government is concerned about wages being driven down too far as a consequence of migration from the EU, the option remains open to it to increase the National Minimum Wage to a level it considers to be acceptable.

Previous research by the Institute for Public Policy Research (ippr) has suggested that the overall impact of migration on wages and employment levels in the UK is negligible. More specifically the impact of accession states from the EU seems to have been marginal ('The Economic Impacts of Migration on the UK Labour Market, 2009). However, it is possible that the impact may be greater over shorter periods of time in particular areas and sectors. An area to which attention is often drawn is the rural economy. However, there are grounds for supposing that migrants make a major contribution, for instance through enabling businesses to fulfill their recruitment needs, that have a wider benefits in the localities concerned (ippr, 'Migration and Rural Economies: Assessing and Addressing Risks, 2009).

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

As a key component of the Single Market, free movement is clearly crucial to securing improvements in areas such as employment opportunities and conditions, and wages. Furthermore, there is evidence that free movement is directly beneficial in its own right. The impact of migration from the accession states, according to some research, may have been to lessen unemployment and inflation (see eg: David Blanchflower, 'The Impact of Recent Migration from Eastern Europe on the UK Economy, 2007'). Furthermore, the opportunities, wages and conditions are clearly enhanced for those UK workers who benefit from freedom of movement by working elsewhere in the EU.

**9. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

Answering this question involves a consideration of the relative merits of protectionist and more liberal approaches to trade. In their actions, the institutions of the EU set out to provide for free movement. Were the powers of the EU reduced, and member states thereby able to pursue policies which served to restrict free movement, then – in accordance with free market principles widely accepted within the EU – the economic prospects of the EU will be diminished.

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

There will always be potential to debate the extent to which particular EU social security provisions contribute to the effectiveness of the EU labour market. It might be asked whether the particular goals they try to achieve are desirable, or whether they are realised properly. Such discussions take place at EU level when provisions are being devised and introduced; and they may be amended subsequently following further such debate. But it is important that a distinction is drawn between, on the one hand, consideration of the merits of particular EU provisions for the coordination of social security, and on the other hand the argument that the involvement of the EU in this area should be circumscribed or ended altogether. Problems within the first category can be resolved within the context of the existing EU framework without the abandonment of core principles. The latter category, however, points in the direction of dissolution of the Single Market.

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

In as far as they are politically attainable to begin with, alterations to the balance of competences intended to address particular perceived problems in an area of public policy within a given member state, are likely to have an impact beyond the particular issue to which they are addressed. A serious reduction in the scope of the EU's Single Market competences designed to satisfy complaints in the UK about immigrants and benefits would be likely to undermine the integrity of the overall concept of free movement and therefore the Single Market as a whole. Consequently, UK nationals and businesses, along with those of all member states, would suffer.

Another approach to the balance of competences could be to increase the role of the EU in social security policy, with a view to achieving greater convergence between the systems of member states and stipulating minimum levels of provision. By this means the potential for particular systems to suffer exceptional strain might be reduced.

Aside from the balance of competences, a means of addressing the issue of 'public confidence' in the benefit system would be for UK politicians of all parties, and in particular ministers of the day, to promote positively to the UK public the considerable benefits of the Single Market, and within that the value of free movement. Alongside this active campaign to explain the demonstrable merits of the EU, the UK government could make renewed efforts to set out the necessity of reciprocal access to social welfare and benefits, and seek to remove any stigma associated with the receipt of such entitlements.

## Questions in relation to Immigration.

### 11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?

This area is clearly one of political sensitivity. Anti-EU rhetoric often promotes the idea that freedom of movement has produced an uncontrolled and undesirable surge of outsiders into the UK. The reality, as discussed throughout this response, is that free movement, of which immigration from the EU is a manifestation, is essential to the Single Market.

EU competence in the free movement of persons makes it more possible than it might otherwise be for people from other EU member states to work and live in the UK. Nearly half of all foreign nationals living in the UK as of 2011 were from the EU - 2.283 million, 3.7 per cent of the total population. Non-EU foreign nationals accounted for 2.489 million, or 4 per cent. Were it not for the principle of free movement, it can be assumed that the proportion from the EU would be lower.

But any assessment of immigration should not be made in isolation from the issue of emigration. Migrants from elsewhere in the EU have contributed to a trend for immigration to exceed migration in the UK, which now dates back approximately two decades. Between 2001 and 2010, average net annual

migration to the UK was 197,000. This positive balance of net migration should be seen as a necessary component of a cyclical tendency. During long spells earlier in the twentieth century, British emigration exceeded migration. It seems desirable that departures from the UK should over time be compensated by arrivals. Free movement within the EU can help ensure that they are.

When the immigration in the UK is placed in comparative perspective within the EU, it does not seem that the UK should be regarded as a particular outlier. The most meaningful way of assessing the trends is through considering foreign nationals resident within the state as a percentage of the overall population. The UK comes 12<sup>th</sup> amongst the EU 27, with foreign nationals accounting for 7.6 per cent of the overall population. It comes behind states including Spain, Belgium, Ireland, Germany and Italy. Though these figures apply to all foreign nationals, not just those from elsewhere in the EU, they serve to suggest that the UK is not overrun by foreigners as a consequence of freedom of movement.

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

As noted in earlier answers, local communities and their economies, if the logic of liberal economics is accepted, benefit from immigration arising from EU free movement. These benefits arise both because of the overall enhancements to the UK economy associated with free movement, and because they provide labour required for the effective operation of local economies, not least in rural areas. Furthermore, it should be noted that local authorities have a degree of discretion in how they choose to deal with immigrants from the EU, in making decisions over such matters as the allocation of social housing. Where such discretion arises, EU competences are not the determinant factor.

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

The concept of 'abuse' of free movement rights requires consideration. The consultation paper seems to define it as involving 'false claims of family relationship' and 'fraudulent claims of Union nationality'. Such activity is presumably of a criminal nature, and is best tackled through enforcement action at EU-level. Any debate about altering the competences of the EU with regard to free movement is not directly relevant to this issue.

There is of course another populist definition of 'abuse' of free movement rights, which plays upon the idea of benefit tourism, and plays a central part in misleading narratives about the EU in the UK. It should go without saying that there are difficulties in reconciling this supposed problem with other notions about immigrants from the EU driving down wages and creating unemployment.

### **Questions relating to future options and challenges.**

#### **14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

The free movement of persons within the EU is dependent upon the EU having the ability to facilitate it. If this ability is removed from the EU, then national protectionist pressures within individual member states will always militate against free movement.

One means by which free movement within the EU might be undermined could be through individual member states being permitted to introduce restrictions on the availability of public services and benefits to immigrants from within the EU. Such practices would constitute the type of non-tariff barrier that would serve to compromise the Single Market, through providing people from the particular member state concerned with an excessive advantage over others from within the EU.

#### **15. What impact would any future enlargement of the EU have on the operation of free movement?**

Since, as established, free movement of persons is integral to the Single Market and therefore the EU itself as presently conceived, for the membership of the EU to be meaningful for any future member state, such membership must include within it participation in free movement. It is difficult to contemplate a possible member state accepting membership on any other terms. Therefore, after a transitional period, citizens from the new member state would be able to work and settle in the UK, and UK citizens would enjoy reciprocal rights. When particular countries are assessed as possible future members of the EU, the consequence of their participation in free movement will of course be taken into account. For instance, Turkish membership of the EU – which we note the present UK government supports – should be considered from this perspective.

### General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

There is a danger of confusion arising from attempts to distinguish EU 'action' on free movement of persons and the overall principle of free movement of persons.

The concept of free movement of persons is not in question – unless, that is, there is a willingness to abandon the Single Market, which we believe is not contemplated by the UK government or indeed governments of other member states within the EU. For this principle to be realised it is necessary for the institutions of the EU – the Commission, the Council and the European Parliament – to be able to make determinations about what principles are fundamental to facilitating free movement – for instance, whether access to welfare is required. Individual pieces of legislation, using established legislative procedures within which the UK participates, are then produced in pursuit of these decisions. Different opinions are of course possible about the merits of these individual measures, and the possibility to seek to change them in future exists. If such production of legislation is defined as EU 'action', then it does not relate directly to the question of possibly changing overall EU competence in the area of free movement.

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



Public debate on these issues would be facilitated if five separate themes could be considered separately, namely the general economic and social desirability of free movement within the European Union; the need for legislative and other European action to bring this about; the need for at least some reciprocal access to welfare benefits to figure in the European legislative programme for the Single Market; how wide-ranging this reciprocal access should be; and the implementation of European legislation in this area by individual governments or local authorities. The general view of the writers would be that free movement within the European Union is highly desirable; that this is inconceivable without significant reciprocal access to welfare benefits, that only European legislation can guarantee; that the present level of reciprocal access to welfare benefits is broadly appropriate and certainly not intolerable in any respect; and that national and local governments should be more forthcoming about the extent to which they are the source of European law relating to free movement and directly responsible for its implementation.

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

**Submission 37**

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<b>Organisation Type (if applicable)</b>	<b><i>Please mark / give details as appropriate</i></b>	
<b>NGO/Civil Society</b>	<input checked="" type="checkbox"/>	Independent research and think tank
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## Questions in relation to the UK Experience of the Free Movement of Persons

### 1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?

With regards to Northern Ireland and its EU land border with Ireland the ability to exercise free movement impacts positively on nationals from both jurisdictions.

Northern Ireland citizens can access another EU state on a daily basis with ease and without cumbersome red tape e.g. customs and check points.

Being able to freely move from one jurisdiction safeguards families, workers, the economy and industry.

### 2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?

With regards to the Northern Ireland / Ireland border EU competence creates a positive environment for citizens to consider working across the border and employers can with ease hire staff from either jurisdiction.

The EU safeguards a number of key areas of importance to workers on the island of Ireland including recognition of qualifications, aggregation of social insurance contributions, access to illness and maternity benefit while working and access to family benefits.

However citizens need to be well informed about their rights and entitlements. The EU funded Border People project ([www.borderpeople.info](http://www.borderpeople.info)) provides information for citizens crossing the Irish border regularly. It includes information on cross border taxation, social welfare, job seeking, qualifications, health, education and other practical areas.

### 3. What evidence is there of the impact on welfare provision and access to public services in the UK?

While rights are protected by EU legislation the practical application by authorities can mean families find it difficult to access public services in the UK.

For instance a family living in Northern Ireland with one parent employed across the border in Ireland is highly likely to experience difficulties when applying for Child Tax Credits. Their claim is processed by a Complex Case Team and the family will have no access to information on their claim. Furthermore they are likely wait for over one year before a decision is made regarding their application so many families in Northern Ireland are struggling to cope financially.

Access to public services depends heavily on citizens having access to information unfortunately the government information services, helplines etc do not cater for EU / cross border enquiries and citizens are left in the dark about their entitlements and obligations.

**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

The majority of the obstacles to free movement in Northern Ireland involve lack of knowledge about rights and obligations:

- Lack of reliable EU / cross border information services for citizens
- Inadequate knowledge of officials in Jobs & Benefits offices, Citizens Advice providers, tax offices, Tax Credits offices etc when dealing with citizens enquiries

Other obstacles include the dual currency - sterling and euro. This leads to fluctuating wages for cross border employees.

More EU action is needed to ensure the correct application of EU legislation and that national emphasis is placed on providing solutions for cross border families and workers.

Less EU action would leave Northern Ireland / Ireland vulnerable to national legislation that focuses on the need of mainland UK and not the needs of Northern Ireland and its land border with another European country.

**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU**

**competence on the free movement of persons.**

The Northern Ireland labour market is positively impacted due to the freedom of movement of workers.

- Citizens have increased employment opportunities as they can consider opportunities on either side of the Irish border.
- Northern Ireland employers have the advantage of a larger employee pool to recruit from.

A 2010 report\* completed by the Centre for Cross Border Studies on behalf of the EURES Cross Border Partnership estimates over 23,000 cross-border commuters exist in Northern Ireland / Ireland.

*\*Measuring Mobility in a Changing Island, May 2010, Joe Shiels , Annmarie O’Kane*

**6. What is the impact of this area of EU competence on employment sectors, such as ‘distribution, hotels and restaurants’, ‘banking and finance’, agriculture, or other sectors?**

*Outside the remit of the Border People project*

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

*Outside the remit of the Border People project*

**9. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

*Outside the remit of the Border People project*

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU**

**labour market?**

With regards to the Northern Ireland / Ireland border EU competence creates a positive environment for citizens to consider working across the border.

The fact their working rights and social security rights are secured in EU legislation eases their decision to take up employment opportunities across the border and further afield in the rest of Europe.

Key areas of importance to workers in Northern Ireland include recognition of qualifications, aggregation of social insurance contributions, access to illness and maternity benefit while working and access to family benefits.

However citizens need to be well informed. The EU funded Border People project ([www.borderpeople.info](http://www.borderpeople.info)) provides information for citizens crossing the Irish border regularly. Numerous enquiries from the public regarding aggregation of social insurance and entitlement to social welfare are received by the project team.

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

*Outside the remit of the Border People project*

**Questions in relation to Immigration.**

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

Migration along the border region of Northern Ireland and Ireland is well documented and regarded as a natural occurrence on the island.

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

EU competence eases movement between jurisdictions in the border region of Northern Ireland and ensures that communities are not hindered by invisible border lines.

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

*Outside the remit of the Border People project*

**Questions relating to future options and challenges.**

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

In order to embrace the opportunities presented to the Northern Ireland by the EU a central point of citizens' information is needed for the provision of EU / cross border information with emphasis placed on the Northern Ireland / Ireland situation.

The lack of knowledge is preventing citizens of Northern Ireland fully embracing their European Citizenship.

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

*Outside the remit of the Border People project*

**General questions**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

The free movement of tourists to Northern Ireland can be limited by the visa restrictions placed on tourists to Ireland. A dual visa or visa waiver is needed to ensure that the island can fully exploit its tourism potential.

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

Measuring Mobility in a Changing Island, May 2010, Joe Shiels , Annmarie O’Kane

[www.borderpeople.info](http://www.borderpeople.info) provides information for citizens crossing the border between Northern Ireland and Ireland

[www.crossborder.ie](http://www.crossborder.ie) – the Centre for Cross Border Studies

**Submission 38**





Northern Ireland  
Assembly

**COMMITTEE FOR SOCIAL DEVELOPMENT**

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02 August 2013

**Free Movement of Persons**

The Committee have consulted with key stakeholders on this issue and are submitting the Northern Ireland Council for Ethnic Minorities response for your consideration.

Yours sincerely

**Kevin Pelan**

**Dr Kevin Pelan**

**Clerk, Committee for Social Development**

Company Registration No: NI. 36868  
Inland Revenue Charity No: XR 11970

# **Submission to the Committee for Social Development on the DWP Call for Evidence Internal: Free Movement of Persons**

**July 2013**

## **1. Introduction**

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation<sup>1</sup> we represent the views and interests of black and minority ethnic (BME) communities.<sup>2</sup> Our mission is to work to bring about social change through partnership and alliance building, and to

achieve equality of outcome and full participation in society. Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

NICEM works in tandem with its sister organisation, the Belfast Migrant Centre, to provide support to EEA citizens and EU nationals on their rights in the European Union. NICEM also conducts action research alongside migrant communities to provide baseline research on their experiences. Of particular relevance here is the research carried out on the Polish community in relation to the impact of the economic downturn.<sup>3</sup>

Therefore, this call for evidence is of particular relevance to the clients and communities which NICEM works with, particularly since the Census 2011 figures that the Polish community is now the largest migrant community in Northern Ireland. In this submission, we will briefly outline the Northern Ireland context, the right to free movement and conclude with some recent pieces of research highlighting the advantages of migration.

## **2. Northern Ireland context**

Firstly, in the letter from the Committee, it was stated that the Department for Work and Pensions “has expressed a particular interest in evidence of how EU competence on free movement advantages or disadvantages Northern Ireland and its citizens”. One of the stated reasons for this is the fact that Northern Ireland “shares a land border with another EU Member State”. In terms of the particular impact of a land border, it is most apparent in border regions. This has become particularly apparent in the work of NICEM, since opening our offices in the North West. In that office we come across many EU migrants who live in Northern Ireland but work across the border in areas such as County Donegal. In some instances one family member may be working in Northern Ireland and the right to free movement of workers then allows the individual to seek work across the border. Currently, many clients present to NICEM in relation to queries about their rights as cross-border workers under EU law and often it is the case that EU law is being applied incorrectly by the authorities.

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<sup>1</sup> Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

<sup>2</sup> In this document “Black and Minority Ethnic Communities” or “Minority Ethnic Groups” or “Ethnic Minority” has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

<sup>3</sup> Available at: [http://nicem.org.uk/uploads/publications/Za\\_Chlebem\\_Report.pdf](http://nicem.org.uk/uploads/publications/Za_Chlebem_Report.pdf).

It is also worth pointing out that one cannot be a citizen of Northern Ireland in legal terms. In fact, in the context of this call for evidence, a particularly interesting point is the fact that a person from Northern Ireland may have dual nationality, i.e. both British nationality and Irish nationality. In addition, the Common Travel Area operates between the UK and the Republic of Ireland. This is of particular relevance in relation to fulfilling the habitual residence test which claimants must fulfil in order to access social security.

Secondly, it is important to put this review into its political and legal context. In terms of politics, this review is a part of a wider exercise being undertaken by the UK Government in relation to many areas of EU law. The first six reports were published on 22 July 2013, including a report on the Single Market, for which the free movement of persons is a cornerstone.<sup>4</sup>

Looking at the legal context for this review, it comes at a time when apparent frictions between EU law and UK law are becoming even more fraught. For example, in relation to the area of social security coordination, the European Commission announced earlier this year that it is taking the final step in its infringement proceedings by bringing the UK Government before the Court of Justice of the EU in relation to the application of the so-called 'right to reside' test. In broader terms, a recent study from the University of Glasgow and the University of Edinburgh has highlighted some interesting points, which are of particular relevance to this review. The study sought to answer four key research questions and we have summarised those briefly below for your convenience.

1. *In which areas do we see particular frictions between the systems of EU free movement law and UK immigration law?*

The study found that there are four main areas of friction:

- a. Residence rights – especially family members of EU citizens from third party states.
- b. Access to welfare and the 'right to reside' test.
- c. Perceived need to distinguish 'good' and 'bad' migrants.
- d. Transitional or special regimes' citizens (new member states/Turkey)

There appear to be several discrepancies between the interpretation of the law by the Commission and the CJEU and the way in which it is implemented by the UK authorities. Fundamental distinction between rights-based EU law, and permission-based UK law.

2. *What are the principal dimensions of these friction, in the sense of how they play out in both legal structures and popular discourse?*

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<sup>4</sup> Available at: <https://www.gov.uk/government/organisations/foreign-commonwealth-office/series/review-of-the-balance-of-competences>.

Reluctance to accept the rights-based character of EU law. This is clearer at the 'edges' of EU law (eg. third party national family members of EU citizens) where the contested areas of the Citizens Rights Directive are being invoked. Unfamiliarity with the full range of EU law by the UKBA or the courts may also be an issue in making correct decisions.

3. *Can identify the possible causes of those frictions? In particular, do they stem from causes within the legal systems in question, or are they the result of external factors impacting upon how free movement law operates in the UK?*

These frictions within the UK system represent a significant challenge to EU free movement. In EU law there is little discretion for decision-makers, and it is up to the authorities to show that there is a substantive reason to doubt assertions made by the claimant. The problems of implementation may, however, decrease as judgments are made by the Upper Tribunal and cases are referred to the CJEU.

4. *What types of measures or approaches might alleviate the friction between the systems and thus give rise to more effective implementation of EU free movement law in the UK?*

There is also friction due to the politicisation of immigration and changing attitudes to the EU. Current public consensus is wary of free movement. The easing of restrictions on Romanian and Bulgarian nationals at the end of 2013 may also cause some friction in both public attitudes and the implementation of the law.<sup>5</sup>

Of particular note, in NICEM's view is the reluctance to accept the rights-based character of free movement and the misapplication of EU law. This leads to a misunderstanding of the application of the law which then creates confusion around the fundamental purpose of free movement.

### **3. Advantages of the right to free movement**

The letter from the Committee also seeks "evidence of how EU competence on free movement advantages or disadvantages Northern Ireland and its citizens". As a point of clarification and as already stated above, it is possible for a person living in

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<sup>5</sup> Shaw, Miller and Fletcher (2013), Getting to Grips with EU citizenship: Understanding the friction between UK immigration law and EU free movement law, available at: [http://www.frictionandoverlap.ed.ac.uk/files/1693\\_fullreportlowres.pdf](http://www.frictionandoverlap.ed.ac.uk/files/1693_fullreportlowres.pdf).

Northern Ireland to have dual nationality, which is important to bear in mind when characterising citizens living in Northern Ireland.

NICEM does not feel that the right to free movement has any disadvantages and will reference some recent studies which highlight both the economic and social advantages of migration.

Earlier this year the Oxford Migration Observatory issued a briefing on the fiscal impact of immigration in the UK. That study crucially noted the following:

“In the four fiscal years following EU enlargement in 2004, migrants from the A8 countries made a positive contribution to public finance, despite the UK running a budget deficit”.<sup>6</sup>

In addition, it was noted that “while A8 migrants work mostly in lower wage occupations, they have high labour force participation rates and employment rates, a fact which offsets the impact of their lower wages”.<sup>7</sup> In fact, a recent study from the Joseph Rowntree Foundation on Ethnicity and Poverty in Northern Ireland highlighted earlier this year that there is high levels of underemployment in Northern Ireland, which means that migrants have the skills to work in higher wage occupations but are not afforded such opportunities.<sup>8</sup> That report also stated that “underemployment is not only an issue for those employed and their job or career progression, but also represents an underutilised resource for the Northern Irish economy”. Another study from the OECD has also called for more migration in order to contribute to economic growth.<sup>9</sup>

One further point in relation to the economic advantages of EU migration has been highlighted in a study by Dustmann et al found that “even if A8 migrants had the same characteristics as UK-born individuals they would still be less likely to receive government benefits and social housing.”<sup>10</sup> In fact this goes against common misconceptions and is in line with the findings of a transnational study funded by the European Commission which found that female migrants were shown in the UK case study to be more likely to receive benefits relative to native women.<sup>11</sup>

Lastly, in terms of the social contributions of migration, it is essential to bear in mind that this can also bolster economic advantages which has been highlighted in a recent study by the European Network Against Racism (ENAR).<sup>12</sup>

## 5. Further Information

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<sup>6</sup> <http://migrationobservatory.ox.ac.uk/briefings/fiscal-impact-immigration-uk>.

<sup>7</sup> <http://migrationobservatory.ox.ac.uk/briefings/fiscal-impact-immigration-uk>.

<sup>8</sup> Available at: <http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf>

<sup>9</sup> What are the migrants' contributions to employment and growth? A European approach - <http://www.oecd.org/dev/38295272.pdf>

<sup>10</sup> Dustmann, C., T. Frattini, and C. Halls. “Assessing the Fiscal Costs and Benefits of A8 Migration to the UK.” *Fiscal Studies* 31 (2010): 1-41.

<sup>11</sup> Institute for the Study of Labour (IZA) and the Economic and Social Research Institute (ESRI), *Study on Active Inclusion of Migrants*, September 2011, at page 78, available at: [http://www.esri.ie/publications/search\\_for\\_a\\_publication/search\\_results/view/?id=3476](http://www.esri.ie/publications/search_for_a_publication/search_results/view/?id=3476).

<sup>12</sup> [http://cms.horus.be/files/99935/MediaArchive/publications/20068\\_Publication\\_HiddenTalents\\_web.pdf](http://cms.horus.be/files/99935/MediaArchive/publications/20068_Publication_HiddenTalents_web.pdf).

For further information in relation to this consultation response please contact: [REDACTED]

## **Submission 39**

The aim of this submission is to reiterate, in basic terms, why economic liberalism, which is the driving force of the EU single market and free movement of persons, go hand in hand, and to argue that the European Union provides a framework for this to be undertaken in a secure and efficient manner.

### **Free movement of people across the EU**

The four fundamental freedoms established by the EU are freedom of goods, services, capital, and people, all of which are linked to the creation of the world's biggest single market, the EU internal market.

While very few have questioned the existence of a system which allows the free flow of goods, services and capital; in times of economic difficulties, the fourth freedom, that of people, is by some, suddenly called into question, despite its unalienable link to the first three.

### **General principles of free movement**

The opening up of economies across the world since the end of the Second World War has resulted in the most democratic and economically developed countries favouring the development of free(er) trade and shunning the economic protectionism, nationalism and isolationism that was seen as responsible for two world wars by the middle of the 20<sup>th</sup> century.

To establish a greater level of free trade and economic interconnectivity, measures such as the removal of trade quotas, subsidies and other non-tariff barriers have been encouraged where politically possible and foreign direct investment has been sought by governments. To enable this to happen, binding international agreements and international institutions have been established.

Economic liberalisation has led to economic development on a global scale, with worldwide trade growing, less inhibited by national constraints, and investment seeking out opportunities across borders.

Economic liberalisation has also created new problems, one of them being that while employment is flexible and fluid, flowing across borders, the same cannot always be said for employees. Capital can move globally, seeking the most favourable opportunities and conditions, placing workers in a situation where job opportunities are less static and more geographically fluid, both within and between countries.

A stratification of human capital has occurred, whereby jobs which require basic skills and are not geographically sensitive, have moved to wherever those jobs can be done for the lowest cost. Jobs requiring specific and especially high level skills have clustered in areas



where those skills can be found, drawing more skilled labour to that area and thus more economic activity in a virtuous circle; Silicon Valley in California would be but one well-known global example.

Once-thriving economic areas have gone into decline and suffered unemployment after investment has moved on, while high skill specialist clusters have thrived. Some geographic locations facing decline have managed to transform themselves; Leeds in the North of England is a good example as it is a former mill-town which reinvented itself as the UK's second centre for financial and legal services (outside of London), and the premier retail destination of the North of England.

Generally, economic liberalisation has extended its reach to goods, services and capital in a comprehensive way, but free movement of labour i.e. people, has been undertaken in a piecemeal and uneven way. While many countries have recognised the need to attract highly skilled individuals, and have adapted their immigration and visa rules accordingly (Australia and Canada's "points" systems provide examples); many other countries still retain complicated and not entirely logical restrictions on the free movement of people into their territories.

### **Intra-EU mobility**

Within the European Union, economic liberalisation has gone further than in other parts of the world by creating a border-free economic area within which citizens of any part of that area are free to live, work and study, subject to some minor practical requirements.

The European Union seeks to promote economic liberalisation through the free movement of capital, goods, services and people. Binding Treaties and legislation enshrine this, and it has been effective in creating a legal framework.

In addressing the problem stated above, namely that for goods, services and capital to flow freely, labour must also do the same, it has not been completely successful, in that the vast majority of workers have not sought out employment opportunities in other EU countries. Indeed it is often noted that intra-EU mobility of labour is far lower than in the United States<sup>156</sup>. This may be to do with linguistic and cultural differences, family ties, or the economic difficulties of moving. However, we have seen a large increase in economic interconnectivity, more Europeans working across borders than ever before, and the beginnings of an economic system with the potential to allow most citizens to benefit from a globalised economy.

### **EU free movement of people as enshrined in treaties and legislation**

The Principle of Free Movement dates back to the roots of the European Union, in the Paris declaration establishing the European Coal and Steel community. It has remained one of

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<sup>156</sup> Ester and Krieger 3-4 2008 'Comparing Labour Mobility in Europe and the US' Over.Werk

the core policies of the European Union ever since, and in the 2007 Treaty on the Functioning of the European Union, was enshrined in Article 45.

### **Article 45**

(ex Article 39 TEC)

1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
  - (a) to accept offers of employment actually made;
  - (b) to move freely within the territory of Member States for this purpose;
  - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
  - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.

### **Secondary legislation**

This principle was further clarified in the 2004 EU Directive on the right to move and reside freely.

It should be stated here that there are different elements of free movement which need to be addressed, and attention needs to be drawn to those on which there is a lack of clarity.

For example, does the freedom of movement for workers mean that one must have to prove that they are in the process of finding work?

Is this freedom passed on to the families of those workers?

Do social security rights form part of this freedom too?

The diverse interpretations of the 2004 Directive by different countries, contradictory judgements by the Court of Justice, and different readings of the Directive have meant that some of these points have not been clarified fully<sup>157</sup>.

## **Economic benefits**

### **Sustaining growth through migration**

The economic and philosophical consensus today, much like that in the 19th Century, maintains a faith in economic liberalism, and the idea that we should try not to interfere with natural patterns of growth. Where an industry is flourishing, we may need flexibility within the labour market in order to sustain that growth, for example, allowing workers to cross borders to find work. We have accepted, to a large extent, the idea that growth should occur organically, and that labour markets should be flexible to facilitate this.

Flexible labour markets can allow skills gaps to be filled; skilled labour moves from oversupply area to undersupply area; allowing individuals and businesses to benefit, growth to continue, leading to knock-on effects for the local area and other businesses. An example which demonstrates this in the UK is the lack of UK graduate engineers needed to fill recent vacancies. Growth would be further stifled were it not for businesses having the ability to recruit from other EU countries where graduate engineers may be struggling to find work. Such recruitment is made easier for British businesses by the lack of visa or work permit requirements for EU citizens; a new employee from another EU country just needs to show their passport to their new employer to demonstrate they are an EU national and then apply for a national insurance number (a relatively painless administrative procedure).

### **Enhancing competitiveness**

European businesses gain a competitive advantage if they are able to utilise the skills base of the European Union, rather than relying on a much smaller national labour market. These advantages do not just work in the favour of businesses, but for employees too, if they are willing and able to exploit further opportunities across the European Union. Around 2 million British people live permanently in other EU countries and they include many workers who have taken advantage of their ability to work freely across the EU.

Competitiveness can also be found by exploiting access to different national markets, by employing workers who can tailor goods and services to those different national markets. For example, a British company seeking to tap the large German domestic market would be greatly helped by employing some German nationals with insight into German consumer

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<sup>157</sup> Valke 2013 'New Referrals to the EU Court of Justice on Directive 2004/38' EU Rights Clinic Blog <http://blogs.kent.ac.uk/eu-rights-clinic/2013/04/29/new-referrals-to-the-eu-court-of-justice-on-directive-200438-from-austria-the-netherlands-sweden-and-the-uk/>

habits. No doubt some German companies seek British nationals to employ for precisely the same reason.

This pooling of skills through the opening up of labour markets can lead to benefits in terms of experience sharing, in terms of collaboration and innovation through closer proximity of businesses, universities and workers from different countries<sup>158</sup>. The UK's higher education and financial services sectors are both sectors where the pooling of experience and skills through attracting highly skilled and mobile workers from across the EU has worked very well.

## **Economic disadvantages**

### **Taking jobs from locals?**

The lump of labour fallacy contends that there are a fixed number of jobs in the world, or indeed in any one country or region. Under this theory, allowing workers to move freely could lead to jobs being taken away from domestic workers. This has been disproved on countless occasions, with many studies looking at the impact of female employment following the two World Wars and more recent studies, including many by the economists Gruber & Wise, finding no link between older workers and youth unemployment.

Nevertheless, it is important to look at the impact of free movement on the domestic labour market. Most evidence suggests that the economic impact of free movement on the United Kingdom has been beneficial, producing net gains for the Exchequer, increasing competitiveness in the labour market, bringing in valuable skills and showing little evidence of deflating wages. However, this increased competitiveness has not necessarily led to domestic workers adapting to an increasingly competitive environment. Structural unemployment existed prior to the 2008 financial crisis, and while the economy as a whole grew, an increase in GDP per capita could not be measured<sup>159</sup>.

This would suggest that a greater effort needs to be placed on promoting UK worker mobility and adapting education and training to the wider European labour market. One way of doing this is by increasing apprenticeship opportunities for young people, something which is now happening in many sectors of the economy.

### **Benefit tourism?**

The European Union principle of free movement of people presents complications for Member States, due to the possibility that populations will no longer be so static and that

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<sup>158</sup> Goldin & Cameron 2011 'Migration is essential for growth' European Financial Review  
<http://www.europeanfinancialreview.com/?p=4263>

<sup>159</sup> Booth, Howarth & Scarpetta 2012 'Tread Carefully' Open Europe  
<http://www.openeurope.org.uk/Content/Documents/Pdfs/EUimmigration2012.pdf>

demographic changes cannot be predicted simply by birth and death rates. Long-term welfare planning becomes a lot more difficult, and most importantly, there is a separation between contributions and the use of services and receipt of benefits. An EU citizen from one Member State may spend their working years in another, and then return to their home country in retirement. This would mean their education, pension and most likely the period of their life when they generate the biggest healthcare expenditure, would take place in a different jurisdiction to the one in which they have paid tax and social security contributions for most of their working life.

Trying to fix this problem is one of the greatest challenges for the single market. It has involved coordinating social systems, so that migrants are recognised on an equal-footing to nationals. However, this is balanced with a need to route large expenses such as healthcare back to the Member State of origin, and to ensure that access to publicly funded services and social welfare benefits is based on proof of long-term residence and commitment to work: Determining whether these criteria apply without discriminating between “locals” and “other EU nationals” can be very difficult.

The key principle which any Social Security system needs to apply is non-discrimination of EU citizens based on nationality. Regulation 883/2004 on the Coordination of Social Security Systems is the key text in this regard

The Regulation seeks to tie together national policies on welfare, ensuring that the principle of free movement of workers applies to those genuinely seeking work, in order to give assurance to those in charge of national budgets that they will not end up responsible for supporting non-working citizens from other countries. This means that despite what the tabloid press may report, an EU citizen cannot arrive in the UK one day and immediately claim job-seekers allowance, housing benefit and social housing; there are mechanisms in place that are used (in the UK and other EU countries) to prevent such eventualities.

Much like the 2004 Directive on free movement, it is not without criticism, though most studies have concluded that, for the UK at least, migration from within the European Union leads to a net financial benefit, with migrant workers from other EU countries far less likely to claim social welfare benefits than British citizens<sup>160</sup> and due to their age and work profile they are low volume users of public services like health and education (add reference).

## **Role of the EU in providing safe free movement**

While it has been argued that free movement has a positive economic effect, it should not simply be seen as an economic process. Social factors have to be taken into account too. One of the most important factors, and one which is quantifiable, is the impact of free movement on crime and law and order policies.

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<sup>160</sup> See above.

We have shown that free movement and the coordination of welfare systems have been facilitated by the European Union. The European Union has also pushed ahead in cooperation on justice matters, including cooperation between policing and crime agencies.

Allowing the free movement of workers, with almost non-existent border controls and no visa or work-permit requirements, also potentially gives criminals the opportunity to abscond across borders. Some of the worst examples of this can involve human trafficking and drug dealing, as well as suspected violent and sexual offenders or even terrorists seeking to evade justice and avoid arrest.

Measures such as the European Arrest Warrant, the Human Trafficking Directive and the European Asylum Package ensure that criminals operating across borders cannot exploit loopholes in an area of free movement.

In the UK, this has shown remarkable benefits. There have been a large number of deportations of criminals based in the UK, but who committed their crimes elsewhere<sup>161</sup>. Likewise, those who have committed their crimes in the UK and then fled to other parts of the EU have also been brought to justice more quickly than was previously possible. The most prominent example of the effectiveness of these measures is Osman Hussain, one of the failed July 2005 London bombing suspects, who was arrested using the European Arrest Warrant and deported back to the UK in a matter of days after he had fled to Rome.

Prior to the introduction of these measures, loopholes persisted, when criminals were able to flee to countries where arrest was unlikely, due to differences in criminal proceedings, sluggish administration or poor communication channels between policing and crime agencies. Even after arrest, suspects could at times spend years in custody before any extradition or trial proceedings could begin.

While some of these measures including the EAW are in need of reform, their existence is positive. Free movement of people may well entail new challenges in the field of law and order, and it can only be sustained if cooperation on law and order matters is sought at the same time as cooperation on economic matters.

## Conclusions

The UK has benefitted from the free movement of people, both through EU citizens moving to and actively contributing to economic life in the UK, and by British citizens being able to live, work and study freely in other EU countries. This is very much a two way street, as while around 2.2 million EU citizens are living in the UK, around 1.7 million British citizens

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<sup>161</sup>Home Office 2013 'European Arrest Warrant Data 2009-2013'

are living in other EU countries on a permanent basis and a further 0.5 million on a part time basis.

Any moves to unravel the right to free movement could cause serious economic and social problems for businesses, families and individuals as well as bureaucratic headaches for all countries involved. Imagine, hundreds of thousands of British pensioners being forced to return to the UK after having retired to France and Spain, while at the same time British businesses losing valuable skilled workers who are forced to return to their EU country of origin.

Free movement and economic liberalism are rightly seen as the political consensus in Europe; the economic arguments are strong and well documented.

However, this consensus in Europe hinges on the effectiveness of the European Union's systems of coordination.

## **Submission 40**

Review of the Balance of Competences:  
Asylum and Immigration and Free Movement of Persons  
PCG response



The voice of freelancing

July 2013

### **1. INTRODUCTION**

- 1.1. This document outlines PCG's views on the Home Office Review of the Balance of Competences between the UK and the European Union, with respect to the issues of asylum, immigration and the free movement of persons.
- 1.2. PCG is the association that represents the estimated 1.6 million freelancers in the UK, including contractors and consultants. PCG's 21,000 members are largely highly skilled specialists, supplying their expertise on a flexible basis to a variety of businesses- from large companies to SMEs.
- 1.3. Freelancers use a variety of legal forms. 96% of PCG's members work through their own limited companies- "limited company contractors". PCG also represents sole traders and freelancers who operate in partnerships or via "umbrella" structures. It therefore represents the very smallest enterprises in the UK.
- 1.4. These "nano-businesses" provide IT, engineering, project management, marketing and other functions in sectors including financial services, telecoms, oil and gas and defence.
- 1.5. Many of PCG's members work in other EU countries for short periods of time. As such, PCG supports co-operation between EU members to enable freelance businesses to operate across the EU.
- 1.6. PCG members also have serious concerns over the abuse and misuse of intra-company transfer permits, which allow offshore outsourcing companies to provide large numbers of low cost IT workers to third parties. This distorts the market for contractors, and can create undercutting. PCG believes that EU and international agreements limit the ability of the UK to effectively tackle abuse in this area.
- 1.7. PCG has come to its view by consulting a number of sources including:
  - specialist expertise from its own staff
  - published and unpublished survey data of its membership



- engagement with key stakeholders through an extensive meetings and consultation programme
- PCG's own online forums, a key method of communicating with PCG's members.

## 2. Summary of PCG's Position

### ***Balance of Competences***

- PCG believes the UK should continue to co-operate at EU level on issues such as the free movement of labour. It is important that dialogue occurs to ensure that freelancers are not prevented from working within other EU member states.
- However, the UK must retain a significant degree of control over its asylum and immigration policies. International agreements have limited the UK's ability to address the issue of ICT abuse.

### ***Free movement of persons***

- Ultimately, freelancers benefit from the free movement of labour between EU countries. In 2012, 15% of PCG members worked outside of the UK, with the majority working within the EU
- However, 'Gold plating' of EU policy can also mean that the UK's labour market is more exposed than its European counterparts to competition. This means there is no 'level playing field' for UK businesses.
- Greater clarity is needed over how and when UK freelancers can work within the EU. Many work through their own limited companies and they can encounter significant regulatory and administrative burden when working abroad.

### ***Intra-Company Transfers***

- PCG has serious concerns over the abuse and misuse of "intra-company transfer" (ICT) permits. These permits are intended to allow multinational companies to transfer senior or specialist staff, or staff that require training, between different locations.

- We believe ICTs are instead used by large offshore outsourcing firms to transfer large numbers of low-cost workers from outside of the European Economic Area (EEA) to the UK, for supply to third parties.
- Strict rules to prevent undercutting, such as the minimum salaries that each migrant must earn, can be abused with tax free allowances.
- The UK is severely limited in its ability to tackle this abuse. This is because it is party to a number of international and EU level agreements (such as the EU-India Free Trade Agreement) which restrict the steps it can take with regards to ICTs.

### **3. Free movement of persons**

#### ***Background***

- The UK is unique within Europe in having an extremely flexible labour market with a large, established freelance workforce of 1.6 million people. Freelance workers are those that work for themselves in higher professional and technical occupations – they are a subset of the wider self-employed population. PCG's own members work in sectors such as IT, finance, engineering and the creative sectors.
- The UK's flexible labour market and its freelance workforce have a unique competitive advantage within the Europe Union. Businesses within the EU often need highly skilled services, such as interim management, on a flexible basis. This is especially popular in the Netherlands and Germany. Of the 15% of PCG members who have worked abroad in 2012, 19% worked in the Netherlands, 16% in Germany and 13% in France.
- The UK has a high number of independent professionals (I-pros: another definition of freelancer) as a proportion of its self-employed workforce as compared to other European countries. However, competition from Europe is increasing – 8.5 million work in this way across Europe. In the last ten years for which figures are available, this represents a growth of 82%.

#### ***Lack of clarity***

- The growth in independent professionals and freelancing in the European Union is down to the liberalisation of previously much more restrictive labour markets. However difficulties remain for UK Freelancers who wish to work in other EU member states.

- Many freelancers choose to work through their own limited companies. This creates difficulties when working across borders. For example, it is often unclear whether an individual can continue to work through their own limited company for an extended period of time when working within the EU.
- PCG believes greater cooperation is needed between the UK and EU to ensure that UK freelancers do not face unnecessary administrative or financial barriers to working in other EU member states.
- The EU is currently consulting on plans to introduce “Single Member Limited Liability Companies” which may go some way to improving this process. However it is of critical importance that any measures introduced at EU level to tackle this issue do not affect those freelancers who choose to work in the UK alone, by changing the existing legal structures that exist for freelance workers in the UK.
- Dialogue must continue with other EU member states to ensure the free movement of persons within the EU is not hindered by restrictive labour market policies.

#### **4. Immigration and Asylum**

##### ***Intra-Company Transfers***

- PCG’s primary concern with respect to asylum and immigration policy concerns the abuse of “intra-company transfer” work permits. These permits are intended to allow multinational companies to transfer senior or specialist staff, or staff that require training, between different locations.
- We believe ICTs are instead used by large offshore outsourcing firms to transfer large numbers of low-cost workers from outside of the European Economic Area (EEA) to the UK, for supply to third parties. This allows the end users of this labour to bypass the Resident Labour Market Test, the immigration “cap” and various other immigration rules.
- Strict rules to prevent undercutting, such as the minimum salaries that each migrant must earn (the “going rate” for the role they are fulfilling) can be abused. The minimum salary thresholds can be met by paying ICT workers in part with tax free allowances.

- This abuse is damaging and distorts the market. UK freelancers are unable to compete with low cost IT workers paid below the minimum salary thresholds (which are set at the 25<sup>th</sup> percentile of typical pay). ICT workers can pay less tax than UK workers, can cost less for the end user, and are usually supplied in large numbers to end users.
- Skills are being lost as IT becomes a less appealing career prospect for graduates, who find that salaries and contract rates are under increasing pressure.

### ***The UK, EU and ICTs***

- The UK is severely limited in the steps it can take to tackle this abuse. This is because it is party to a number of international and EU level agreements (such as the General Agreement on Trade in Services 'Mode 4') which restrict the amount of policy it can make in this area.

- In particular, at EU level, the implementation of the planned EU-India Free Trade Agreement could lead to further relaxation of the rules surrounding ICT permits.
- For example the 'Mode 4' concession goes against the Government's policies to limit non-EU economic migration. The EU India Free Trade Agreement could thus undermine UK policy and ultimately leave room for abuse of ICT permits.
- The majority of ICT Certificates of Sponsorship are issued to large Indian offshore outsourcing companies. Given the UK's established IT sector and historical ties to India, it is likely that it will be disproportionately affected by the EU India Free Trade Agreement.
- ICT workers can earn salaries close to the minimum wage once allowances are discounted. This means there is scope for the abuse of low paid workers to occur.

### ***The future***

- The UK must retain a significant degree of control over its asylum and immigration policy, especially with regard to the policies surrounding intra-company transfer work permits.
- PCG believes serious consideration should be given to how international agreements are implemented. We support international business practice through the correct use of ICTs, but abuse of the permits by large offshore outsourcing companies must be prevented.
- We believe closer ties with the EU on immigration policy could create challenges in this regard, and any policy decisions should bear this impact in mind. We acknowledge that balancing the need for international trade with the need to prevent abuse is a complex and challenging task. However, it is an achievable and essential aim to ensure the continued success of the UK's 1.6 million freelance workers.

### **Contact:**





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**Submission 41**

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<b>Job Title (if applicable)</b>	Jo Shaw Professor, Maria Fletcher Senior lecturer and Nina Miller Westoby University teacher in law
<b>Department (if applicable)</b>	School of Law (both universities)
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<b>Email</b>	

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	X <input type="checkbox"/>	University

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

## **1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

### **a) UK Nationals**

We shall answer this question from the perspective of the Higher Education sector where we work as legal academics, using the example of the University of Glasgow to illustrate wider trends in the sector.

Free movement rights exercised through EU research/study/teaching/work exchange and mobility schemes (ERASMUS and MUNDUS) are extremely beneficial. These schemes offer university students and staff the opportunity and indeed the financial support to study or teach in another EU state for a period of time. The positive impacts on the participants (and the wider university sector) are variable and extensive if sometimes difficult to capture in full. The UK Parliament EU Committee has consistently recognised the value of these schemes -

<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldeucom/275/27507.htm>

Further evidence has been gathered and published by the British Council -

[http://www.britishcouncil.org/going\\_mobile\\_brochure\\_final\\_.pdf](http://www.britishcouncil.org/going_mobile_brochure_final_.pdf)

The University of Glasgow is committed to increasing the number of 'home' students having an international experience; recognising that there are many benefits of student mobility both for the university and the individual student  
[http://www.gla.ac.uk/media/media\\_105267\\_en.pdf](http://www.gla.ac.uk/media/media_105267_en.pdf)

### **Benefits to the University**

- Extending the profile and reach of the University in line with our international ambition to be in the top 50 Universities globally;
- Hosting incoming exchange students contributes to the internationalisation of the student body, the campus culture and the alumni network;
- Student mobility supports the commitment of the University to develop a multicultural diverse student learning community and the pledge to deliver an international education to all our students;
- Helps to build a presence in emerging student recruitment markets;
- Plays a vital role in the decision-making process for many students when selecting a University (as indicated strongly at Open Day and Applicants' Visit Days);
- Attracts better and highly motivated students, and contributes to the non-academic life of the University;
- Increases the employability of students which has a positive impact on positioning in some league tables.

### **Benefits to the Student**

- To live and study in another country for an extended period is a rare opportunity. Reports from returning Glasgow students frequently use the expression 'life-changing';



- New personal and intellectual maturity;
- Enhanced employability; employers recognise the skills implied by participation – flexibility, resilience, cross-cultural communication skills, the ability to adapt to new circumstances and deal constructively with differences;
- The opportunity to experience a different perspective on their academic subject, which they bring back to discussions in Departments in Glasgow;
- Academic horizons are widened and may lead students to reappraise their goals to include postgraduate study;
- Builds and develops interpersonal skills.

## **b) UK as a whole**

Mobility schemes such as ERASMUS and MUNDUS are viewed extremely positively by the UK Higher Education sector, often forming part of their key strategies (most notably, Internationalisation and Employability strategies). Student and staff mobility enhances the intellectual reputation of UK universities enabling them to attract world-class students and scholars. It would seem clear that the already excellent reputation of UK higher education is enriched by the mobility programmes supported by the EU. However, the active promotion of international mobility within this sector and renewed efforts to tackle remaining legal and administrative barriers to such mobility is essential if European HEIs want to continue to be the number one destination for mobile students against a background of increasing competition from Asia, the Middle East and Latin America.<sup>1</sup> Continued political commitment to student and staff mobility through support of the Bologna Process and the establishment of a European Higher Education Area (EHEA) is key.

Finally, it is acknowledged that there are difficulties involved in gathering meaningful data on the wider impacts of intra-EU mobility (eg Employability-related) through ERASMUS/MUNDUS programmes and certainly clearer definitions and indicators to measure this mobility would be welcome.

## **2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

In the absence of the free movement rights, UK citizens would be treated as third country nationals in other Member States and would have to rely on their respective (and differing) immigration systems. The essence of the system of free movement is its reciprocity, with different countries – and their citizens – benefiting in different ways as a result of the flows across borders. In addition, the system of free movement is based on law rather than discretion. Thus UK citizens – exercising their rights as EU citizens – have access to machineries of redress in other Member States if they are treated in a discriminatory manner. They are also able to complain to the Commission – as happened in the case of Spain allegedly failing to treat UK

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<sup>1</sup> Indeed the EU is being constructive in engendering a more comprehensive and strategic approach to the global challenges faced by Europe's HE sector: Commission Communication, *European Higher Education in the World*, Brussels, 11.7.2013 COM(2013) 499 final

citizens accessing Spanish hospital services using their EHIC cards. Finally, one of the benefits of the free movement system – which would not occur if competence were not conferred on the EU institutions to build and safeguard the system as there is no evidence of states otherwise cooperating in these matters – is that the legal framework is the same wherever you go. While implementation obviously differs between countries, the basic framework offers a common core of rights in what could be called a ‘common citizenship area’.

### **3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

The Migration Observatory has found that there is very limited systematic data and analysis about migrants’ use of public services, especially health and education. This is mainly due to the fact that immigration status is recorded inconsistently (or not at all) when public services are provided. Nevertheless, the National Institute of Economic and Social Research published a report (for the UK government in April 2013) on the potential impacts of future migration from Bulgaria and Romania; in it they reviewed the existing evidence of the impact of recent EU migration on public services and welfare provision.

Their review found a limited evidence base on the impact of migration on the welfare system. However current research has found that EU2 and EU8 migrants are less likely to claim benefits than other migrant groups and that of those EU10 migrants who claim benefits, the majority claim child benefits.

More specifically they found that the impact on the health service was not significant. This is due partly to the demographic of recent migrants being young, single (without dependents), healthy and skilled (this can be explained to a certain extent by the transitional provisions placed upon new member state migrants) and also because in general there was not great awareness of the entitlement to health care. This may change as migrants begin to settle in the UK on a more long term basis and either with or forming families.

The report found that there was limited information on the impact of education. The key service that potentially could be impacted is the need for language assistance; they also note that there is no evidence that migration has a negative effect on education.

The impacts of migration on housing will depend on housing supply as well as the buoyancy of the local housing market currently the majority of new Member State migrants live in private rented housing and a small number live in social housing. Overall the demands on housing are highly dependent on the rate of permanent settlement of EU migrants and particularly family formation.

### **4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

The basic rights that UK citizens enjoy in other Member States are contained in the EU Treaties. To that extent, legislative action has operated primarily to clarify and sharpen those rights, and also to establish the procedures that Member States should follow, e.g. in relation to process to be followed in the event that a Member State wishes to exclude a national of another Member State on grounds of public policy or public security.

a) More EU Action

- i) We would argue that a good example of more EU action in the legislative sphere being 'good' for UK citizens can be found in the form of the current draft directive under discussion before the Council of Ministers measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (COM(2013) 236). While this measure does not add further rights to the corpus contained in the Article 45 TFEU or Regulation 492/2011, it aims to ensure more effective avenues of redress are available for all EU citizens exercising their free movement rights (in this case specifically as workers). While few amendments to UK legislation may be required to implement this measure if it is adopted by the ordinary legislative procedure, it may make a greater difference for UK citizens insofar as it pushes other Member States to provide new avenues of redress to those who face discrimination in the workplace in other Member States. There may also be scope for the EU institutions to take further legislative action to ensure a more effective mutual recognition of qualifications between the Member States.
- ii) We would add that in this area more EU action in the form of enforcement of the law (both by the Commission and Court of Justice) would undoubtedly benefit UK nationals in the sense that it would clarify the scope of rights and help to enforce those same rights. It would also help to ensure that that Member States were implementing their EU law obligations fully and effectively. The UK and its citizens would benefit from a level playing field in this area.
- iii) We would also add that the EU could do more to facilitate (through for instance bringing together of relevant national experts/expert reports) the development of good practice guidelines, sharing of best practice etc.

b) Less EU Action

There is no evidence that less EU action will assist UK citizens.

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

We would respond to this question through legal analysis, leaving the provision of economic analysis to others who are better qualified than we are.

The free movement of persons is an essential element of the wider single market from which the UK – with its strong services sector – has benefited very extensively over the last twenty years. The different elements of free movement are legally and economically interdependent, as the case of mobile students or tourists show very well. Both receive services, but cannot effectively receive those services unless personal mobility is ‘free’.

**6. What is the impact of this area of EU competence on employment sectors, such as ‘distribution, hotels and restaurants’, ‘banking and finance’, agriculture, or other sectors?**

**See answer to Q1 above.** In short, competences around mobility impact upon the higher education sector by:

- encouraging individual and societal advancement
- encouraging more and better innovation and research
- helping to provide the highly skilled human capital that knowledge-based economies need to generate growth and prosperity.

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

A framework of free movement law is intended to protect all EU citizens. The lack of enforcement has undermined the position of UK citizens in other Member States. Good examples include Spanish hospitals and also the long-running saga in which Italy has failed to apply appropriate equal treatment principles in relation to the so-called *lettori* who work in Italian universities as foreign language teachers. Only with the benefit of EU law have these workers, over many years, been able to establish their rights to equal treatment, although it would appear that the situation – perhaps thanks to the economic crisis – continues to be problematic for this group.

**8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?**

The portability of pensions and other social contributions is an important benefit for mobile EU citizens and as a consequence for the labour market throughout the EU; it allows individuals who work in multiple Member States during their working lives to aggregate their entitlements and receive payments from each of their host countries

as well as their country of origin. This is frequently a complex process and many have criticised the system for being a structural barrier to mobility, including in the European Parliament, the European Economic and Social Committee and the European Commission itself. However, EU citizens are better positioned than third country nationals to claim social rights: a third country national who has worked in the EU and would like to return to retire in his country of origin has to rely on individual bi-lateral agreements that may or may not exist between his host country and country of origin. While an EU citizen can transport such benefits to another Member State a third country national will lose these social rights unless a bi-lateral agreement exists to protect them.

**10. What evidence is there that changes to current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

The impact of EU migration on the UK social welfare benefits system has received considerable discussions in the media particularly in the last few years. The discussion frequently describes current EU rules as enabling 'benefits tourists' to come to the UK

([http://www.frictionandoverlap.ed.ac.uk/files/1693\\_fullreportlowres.pdf](http://www.frictionandoverlap.ed.ac.uk/files/1693_fullreportlowres.pdf) p27). The term 'benefit tourist' and similar phrases suggest that the UK social security system is being exploited or affected disproportionately in relation to genuine need and is being undermined. However the fear of benefit tourists and the scale of benefit tourism are inflated in comparison with the actual occurrence. The National Institute of Economic and Social Research reported on the potential impacts of future migration from Bulgaria and Romania and found that in terms of the provision of welfare there is a limited evidence base on the impact of migrants on the welfare system. Studies covering EU10 migrants find them to be less likely to claim benefits than other migrant groups and that those who claim benefits, the majority claim child benefits. In the research report *Getting to Grips with EU Citizenship: Understanding the Friction Between UK Immigration Law and EU Free Movement Law* (p52) interviewees suggested some scepticism as to whether so-called 'benefit tourists' were as prevalent as the apparent publicised fear and whether they were actually able to operate the benefit system to their advantage: *'They're always trying to stop the benefit tourist. I have to say I've never actually seen a benefit tourist'*.

Nevertheless the fear of 'benefit tourists' that is perpetuated by the media contributes to undermine public confidence in the UK social security system. Further compounding the lack of confidence is the recent EU Commission announcement ([http://europa.eu/rapid/press-release\\_IP-13-475\\_en.htm](http://europa.eu/rapid/press-release_IP-13-475_en.htm)) that it has lodged a case at the Court of Justice against the UK on the lawfulness of the 'habitual residence test' (the complex test found in much of the UK social security legislation). The infringement action follows a period of two years where the Commission had requested that the UK government respond to the unlawful elements of the test. The details of this request are private during the early stages but the existence of this process has been public, communicated by European Commission Press Releases and reported on by the British media (eg <http://www.guardian.co.uk/uk/2013/may/30/uk-government-eu-migrant-benefits>).

Regardless of what the outcome of the Court of Justice case will be the UK social security system currently has the appearance of being vulnerable having received negative coverage by the European Commission and the media and continues to undergo significant scrutiny.

In response to this question, the extent to which the UK social security system is *in reality* disproportionately affected is less than the level of fear that surrounds the threat would suggest. Building public confidence or preventing public confidence being undermined, could be achieved by clearer domestic legislation that adheres to existing EU rules in the area which would reduce legal challenges both in domestic courts and infringement actions, in the public view like the one already taken by the European Commission.

### **11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

EU policies relating to external (third country national) and internal (EU citizen free movement) immigration have worked in the UK's favour. By its discretion to opt out of EU law on asylum and external immigration the UK has retained control over its borders and visa policy and EU law has therefore had a limited effect on immigration in the UK.

The law governing EU free movement on the other hand is not made up of a system of discretionary opt-outs, its origin as one of the four fundamental freedoms which form the foundation of the EU project dates back to the Treaty of Rome and means the UK government is more limited in being able to control the migration of EU citizens coming to the UK.

EU free movement law governs the entry, residence, removal and associated rights of EU citizens and their families. It is built on a system of facilitative principles and rights such as 'equal treatment'. National immigration law on the other hand governs third country nationals and is based on a system of control with sets of permissions which make a distinction between the citizen and the alien. Where it may appear that EU free movement law on the face of it overlaps with immigration law and has an impact on external immigration is where the rights associated with EU free movement law extend to third country national family members of EU citizens. The Citizens Rights Directive 2004/38/EC (as implemented by the UK transposing legislation Immigration (European Economic Area) Regulations 2004 as amended) provide that an EU citizen may be accompanied or joined in a Member State other than their own state of origin by their family members and this right includes family members who are either EU citizens themselves or third country nationals. The rights that third country national family members may enjoy are derivative rights and as such are dependent on and linked to the free movement rights of the EU citizen. So whilst it may appear that EU free movement law overlaps with UK immigration law and has an impact on external immigration it does not but rather EU law includes certain rights to third country nationals when their EU citizen family member is exercising their free movement rights.

**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

We refer you to a collaborative pilot research project which has recently been undertaken in Scotland (using Glasgow as a case study) which explored the extent to which more localised social and cultural impacts of migration could be evidenced and mapped. The project stemmed from a growing awareness that in the context of current policy debates and public rhetoric relating to migration in the UK and Scotland, which incorporate many strongly held views regarding the costs or benefits of migration, the evidence base is often dominated by economic or demographic arguments and statistics. The project examined impacts of both EU (particularly A8 and A2 migrants) and non-EU migration.

The research project was a collaboration between COSLA Strategic Migration Partnership (CSMP), Glasgow Refugee Asylum and Migration Network (GRAMNet) and the Centre for Russian, Central and East European Studies (CRCEES) at the University of Glasgow. The Final Report, authored by the lead researcher, Professor Rebecca Kay (CRCEES & GRAMNet) and by Andrew Morrison (CSMP) is here ([http://www.gla.ac.uk/media/media\\_271231\\_en.pdf](http://www.gla.ac.uk/media/media_271231_en.pdf))

**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

None. Article 35 CRD already clarifies that ‘abuse of rights’ acts as an individual derogation from rights under the Directive. Any restriction of rights on this basis must, as is usual in EU law, comply with the principle of proportionality. In reality this concept of abuse has been diminished (arguably leaving just abuse of family law, particularly via sham marriage) as the broad scope of EU free movement rights has been clarified by the Court of Justice (eg Metock). Indeed the Court of Justice will refer to Article 35 even in the absence of an allegation of ‘abuse of law’ in a particular case in order to pacify government concerns about (circumvention of) immigration control. (see C. Costello, Metock: *Free movement and ‘normal family life’ in the Union* Common Market Law Review (2009)

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact might these have on the UK national interest?**

**15. What impact would any future enlargement of the EU have on the operation of free movement?**

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

Shaw, J., Miller, N., and [Fletcher, M.](#) (2013) *Getting to Grips with EU Citizenship: Understanding the Friction Between UK Immigration Law and EU Free Movement Law*. Edinburgh Law School Citizenship Studies, Edinburgh, UK. ISBN 9780957517608

[http://www.frictionandoverlap.ed.ac.uk/files/1693\\_fullreportlowres.pdf](http://www.frictionandoverlap.ed.ac.uk/files/1693_fullreportlowres.pdf)

Potential impacts on the UK of future migration from Bulgaria and Romania, National Institute for Economic and Social Research,

Heather Rolfe, Tatiana Fic, Mumtaz Lalani, Monica Roman, Maria Prohaska and Liliana Doudeva

<http://niesr.ac.uk/sites/default/files/publications/NIESR%20EU2%20MIGRATION%20REPORT.pdf>

Tread Carefully: The impact and management of EU free movement and immigration policy, Open Europe, Stephen Booth, Christopher Howarth and Vincenzo Scarpetta March 2012

Rebecca Kay and Andrew Morrison, Evidencing the Social and Cultural benefits and costs of migration in Scotland (2012)

([http://www.gla.ac.uk/media/media\\_271231\\_en.pdf](http://www.gla.ac.uk/media/media_271231_en.pdf))



**Submission 42**

<b>Name</b>	Nigel Varian
<b>Organisation/Company (if applicable)</b>	
<b>Job Title (if applicable)</b>	
<b>Department (if applicable)</b>	
<b>Address</b>	██████████
<b>Email</b>	██████████

<b>Organisation Type (if applicable)</b>	<i>Please mark / give details as appropriate</i>	
<b>NGO/Civil Society</b>	<input type="checkbox"/>	
<b>Public Sector</b>	<input type="checkbox"/>	
<b>Retail Sector</b>	<input type="checkbox"/>	
<b>European bodies/institutions</b>	<input type="checkbox"/>	
<b>Business/Industry/Trade Bodies</b>	<input type="checkbox"/>	
<b>Other (please give details)</b>	<input type="checkbox"/>	British Citizen

Note: on the form below, please leave the response box blank for any questions that you do not wish to respond to. All boxes may be expanded as required.

### Questions in relation to the UK Experience of the Free Movement of Persons

**1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?**

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**2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?**

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**3. What evidence is there of the impact on welfare provision and access to public services in the UK?**

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**4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?**

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**Questions in relation to the labour market.**

**5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.**

**6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?**

**7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

**9. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?**

**Questions in relation to social security coordination.**

**9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?**

**10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?**

### Questions in relation to Immigration.

**11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?**

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**12. What evidence do you have of the impact on local communities and their economies, including rural areas?**

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**13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?**

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### Questions relating to future options and challenges.

**14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?**

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**15. What impact would any future enlargement of the EU have on the operation of free movement?**

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### General questions

**16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?**

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

**re: Free Movement of Persons.**

On 21 August 2010 our son, Chris Varian, was murdered and beheaded in a psychotic attack by a Swedish citizen who had only been in the UK for 19 days. It turns out that only a few weeks previously, on 12 June, he had been arrested for another psychotic assault in Vaxjo, Sweden, but had been released pending being formally charged.

The murder took place in the middle of a fine Saturday afternoon at The Oxfordshire Golf Club where Chris, as restaurant manager, was supervising a wedding reception. The killer, Jonathan Limani, was working there as a waiter. During a pause in the proceedings Chris went down to the staff smoking area for a break. Limani picked up a cheese knife, followed him down, and viciously assaulted him in a psychotic attack, finally completely decapitating him.

Limani had obtained this job while he was still in Sweden through an employment agency, HAR International AB, who specialized in international recruitment for the Hospitality industry. Limani had a history of psychiatric problems linked with violence for more than 5 years in Sweden and had been sectioned there twice before. We can't understand why he wasn't sectioned again after the attempted manslaughter in Vaxjo but our requests for an investigation into the failure of the Swedish Police and the Swedish Psychiatric Service to restrain this dangerous man have been refused by both the Swedish Chancellor of Justice and the Swedish Parliamentary Ombudsman.

Prior to departing Sweden to take up his job at The Oxfordshire he visited his psychiatrist, explained he was going to work abroad, and requested 3 months supply of medication. The psychiatrist did this and on 2 August Limani travelled to UK.

While in Sweden he regularly visited his psychiatric clinic. While in UK he was unknown in the health service. It was inevitable that he would try to stretch his supply of drugs before contacting the British Health Service and as a result he rapidly became more and more psychotic and dangerous culminating in this macabre murder which has left the victim's family scarred for life.

Any "Open Border" policy must address the issue of dangerous mentally ill individuals who cross borders and who then become "invisible" in the new country by leaving their care and monitoring support system behind them. By failing to address this the Government is effectively handing out a death sentence to an innocent

citizen and contravening Article 2 of the European Convention of Human Rights.

Article 2 of the European Convention of Human Rights is the Right to Life. This imposes responsibilities on governments one of which is : ... ***a positive duty to prevent foreseeable loss of life.*** We believe that this violent assault which resulted in such a macabre killing was foreseeable.

A high proportion of the other 100 or so paranoid schizophrenic murders which take place in the UK each year are also foreseeable and preventable and many of them have a foreign element.

We believe that dangerous mentally ill individuals must either be restricted from travelling freely in the EU or there must be a mechanism which transfers the responsibility of psychiatric care from country to country.

If such a system were in place we believe Chris would still be alive today.

**18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?**

[www.HundredFamilies.org](http://www.HundredFamilies.org)