Written Evidence on the Government's review of the Balance of Competences between the United Kingdom and the European Union

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1. Impact on the national interest

The United Kingdom joined the European Communities on 1 January 1973 and by this token became part of the first EU enlargement. Since then the European Communities/European Union have undergone six further enlargement rounds. Consequently, the European Union now comprises 28 countries. The enlargement has had a considerable and multidimensional impact on UK interests. In political terms, the UK is now a fully fledged member of a unique integration endeavour. Despite its weaknesses, the European Union remains the most successful peace-building exercise in Europe. This should not be forgotten, as it heavily contributes to the protection of UK interests. The current situation in Ukraine encapsulates the simple truth that peace should not be taken for granted. In economic terms, the UK is part of the internal market, which contributes to the UK's economy as the other EU countries are leading trade partners of UK-based companies. With every enlargement, the internal market grows, hence the opportunities for UK industry increase. Furthermore, UK citizens may enjoy the benefits of free movement rights, including free movement of workers and services. With 28 Member States on board, the European Union is one of the biggest trade blocks in the World. This allows the European Union to negotiate a variety of trade agreements, including free trade agreements. The UK economy benefits from that, too. Further, by being a Member State, the United Kingdom may influence the EU's negotiation mandate and its progress in negotiations.

The UK has influenced the enlargement process. In fact, until recently, the United Kingdom was a strong supporter of EU enlargement. It should be remembered that the Member States are heavily involved in the enlargement process to the point where they are masters of the game. Although the European Commission plays an important role, the final decision on the EU's negotiating positions as well as on the content of the Accession Treaties is in the hands of the Member States. It should be noted that the Accession Treaties are concluded between the old and the new Member States. The European Union is not a party to them. Bearing the above in mind, the United Kingdom, as a member of the European Union, had an opportunity to influence the process in the previous enlargement rounds (except the first one, of which it was a part) and it will continue to do so in the future (providing it does not withdraw from the EU).

The balance between the role of the Member States and that of the EU institutions in the enlargement process is adequate. While the EU institutions, particularly the European Commission, are heavily involved (particularly in the pre-negotiation phase) the main decisions, including the strategic decisions on conditions of accession, compliance with threshold criteria and ratification of the Accession Treaties, are in the hands of the Member States. This *modus operandi* serves UK interests, and no change is required.

2. Exercise of competence

The accession of Bulgaria and Romania has influenced quite considerably how the current enlargement policy is run. Concerns about the level of preparedness of both countries, as well as the conditionality and benchmarking employed with them, are well documented. The fact that Bulgaria and Romania are still covered by post-accession monitoring (the Co-operation and Verification Mechanism) implies that the pre-accession effort and scrutiny were not sufficiently robust. This is proven by the regular reports of the European Commission, which often demonstrate limited progress in the implementation of reforms.

However, an analysis of the *modus operandi* employed in relation to the Western Balkan countries, including Croatia, shows that the lesson has been learned. The new model of accession negotiations in the case of Montenegro and Serbia, as well as the very strict conditionality that is being employed with regard to other candidate and potential candidate countries, proves the point. A good example is Albania, which from the early stages of *rapprochement* has been subject to tight scrutiny, benchmarking and conditionality. Following a decision of the Council taken in June 2014, it is now a candidate country. The status was granted only when the authorities in Tirana implemented several reforms and adopted a Roadmap for the implementation of five priorities listed by the European Commission.

The "New Approach" on rule-of-law issues is a welcome development. The accession negotiations with Montenegro and with Serbia commenced with the crucial JHA chapters 23-24 and will only come to a successful conclusion if these two chapters are closed. This puts great emphasis on Justice and Home Affairs matters and, at the same time, allows the candidate countries to build a solid track record in the implementation of reforms. This is an important step forward when compared with the pre-accession experience of Croatia that was left with relatively little time to prove the effectiveness of the pursued reforms and implemented tasks. Robust implementation of the "New Approach" should guarantee that when the new countries are admitted to the European Union, the reforms aimed at meeting the accession benchmarks are irreversible. This, however, will require very strict monitoring by the European Commission throughout the accession process. Due to the rule-of-law and corruption related issues in all current candidate and potential candidate countries, their *rapprochement* has to be based on strict compliance with all benchmarks. This is a *conditio sine qua non*. Should the reforms unravel after the accession, the EU should resort to safeguard clauses which are traditionally provided in the Accession Treaties (but recently, with one exception, have never been used). At the same time, one ought not to forget that membership goes well beyond chapters 23 and 24. Upon accession, all candidates are expected to comply with the EU *acquis* in its entirety. Not only do the law books have to be compatible, but the approximated law also needs to be properly implemented by the national authorities, including courts. Furthermore, the EU *acquis* needs to be translated into the languages of the newcomers. Both tasks are a major challenge, particularly in the Western Balkan countries which have limited capacities and where public administration is rather small. This was a major problem during the previous enlargement rounds, particularly in the case of the 2004 and 2007 accessions. To start with, the last volumes of the Special Edition of the Official Journal in the languages of the new Member States that joined the EU on 1 May 2004 were published only in 2006. The Court of Justice held in the *Skoma-Lux* case that such non-published legislation was not enforceable for individuals. Thus, the effectiveness of EU law was undermined from the start, particularly the EU regulations which are directly applicable (Article 288 TFEU) and which could not be properly applied in almost half of the Member States. The situation was even more worrying when Romania and Bulgaria joined the European Union. By the time of accession, the number of translated legal acts on the date of accession was 51% and 46% (respectively) of the total number of acts. Moreover, the quality of translation was also a matter of serious concern, and in some cases versions in the new languages contained meaningless provisions and quite fundamental mistakes. Hence, the quality of approximation and implementation, as well as translation, of the *acquis* should also be covered by enhanced benchmarking and conditionality in future enlargement rounds. The European Union is not only a political club, but a legal order; this should not go off the radar of EU decision makers and Member States.

Technical assistance of the European Union is very valuable and should be continued. It is of highest importance that the IPA2 programme is implemented as efficiently as possible. Great attention should be paid to the good programming of assistance.

3. Future options and challenges

There are two main challenges to future enlargement rounds. The first is the ability of current candidate and potential candidate countries to meet the Copenhagen criteria. The challenge for the European Union is to reconcile the need to keep the enlargement momentum without simultaneously undermining the quality and robustness of *rapprochement*. The perspective of EU membership is an important catalyst for reforms and reconciliation in the Western Balkans, hence it cannot be abandoned. This does not mean, however, that the Western Balkan countries should be admitted at any cost. Arguably, the path that has been chosen, which is based on a step-by-step approach anchored on strict benchmarking and conditionality, is the way forward. One should not forget that good relations with all neighbours should remain indispensible for accession. As long as the Western Balkan countries are outside the European Union, the latter has CFSP instruments and mechanisms at its disposal. These will not be available, at least according to the EU Treaties, when the ex-Yugoslav countries accede.

Turkey remains a special case and a major challenge for the European Union. Accession negotiations have effectively been in limbo for a considerable time. At this stage, the European Union needs to develop plan B, should future accession not materialise.

Another challenge is the absorption capacity of the European Union. The ability of the European Union to operate with an ever-growing number of Member States has turned into a discourse on the absorption capacity of the club and has become the fourth criterion in the set developed by the European Council in Copenhagen in 1993. It is not only about the institutional framework of the EU and its ability to function with an enlarged composition, but also the capacity of the EU – in more general terms (also budgetary ones) – to function successfully. In political terms, the dwindling appetite for future enlargements in the Member States is a challenge, too. The benefits of future enlargement rounds should be properly explained to members of the public, and at the same time the myths about the enlargement issue should be unlocked.

The question remains whether and how the EU's approach to enlargement might be improved in the future. At this stage, it will suffice to follow the taken path and proceed with the current instruments of the enlargement policy.

It is difficult to assess what impact the future enlargement rounds might have on the United Kingdom. To begin with, one should not expect the next enlargement to happen in the current decade. Depending on the political situation, the UK's withdrawal from the European Union may happen first. If, however, by the time of the next enlargement the United Kingdom is still a Member State of the European Union, the impact will not be very profound provided the enlargement is limited to the Western Balkan countries. All current candidates and potential candidates are relatively small in terms of size and population. In the great scheme of things, their accession should not have major budgetary or immigration implications for the United Kingdom. However, bearing in mind the sensitivity associated with immigration, it might be worth revisiting the rules on transitional periods for the free movement of workers, which have been agreed to by the UK governments in relation to the three previous waves of enlargement. This is not only a question of extending in time the current 2+3+2 model for the free movement of workers, but also applying a transitional regime to the right of establishment and free movement of services. In the case of the latter, only Austria and Germany have previously negotiated restrictions for posting of some categories of workers.

A future enlargement that may have a considerable impact on the United Kingdom (as well as on other Member States of the European Union) is the accession of Turkey. As things stand in 2014,

this is not expected to take place in the foreseeable future. However, related concerns should be addressed when the negotiations gain pace.