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UK REFERENDUM ON EU MEMBERSHIP

APPENDICES TO ITEM NO. 8

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BRIEFING PAPER

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European Union Referendum Bill 2015-16

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Summary

This Bill was introduced in the House of Commons on 28 May 2015 and requires the holding of a referendum on the UK's continued membership of the European Union (EU) before the end of 2017. This Paper has been prepared as a guide in advance of the second reading debate on Tuesday 9 June 2015.

The Prime Minister, David Cameron, announced on 23 January 2013 that if the Conservative Party was elected to power following the 2015 general election, it would hold a referendum on the UK's membership of the EU in the next Parliament, framed on an in/out question. The Conservative Party published a draft European Union (Referendum) Bill on 14 May 2013. This provided for a referendum to be held by the end of 2017, with the details of the date and the conduct of the election to be contained in orders to be laid before both Houses. Two Private Members' Bills based on this draft bill failed to progress through both Houses in the previous Parliament.

The UK has been a member of the EU since 1973. An earlier referendum on membership took place in 1975. Proposals for EU reform are discussed in Briefing Paper 07138 *Reforming the EU: UK plans, proposals and prospects*. A forthcoming Briefing Paper will discuss the likely effects of the UK leaving the EU, updating former Briefing Paper 13-42 *Leaving the EU* produced in 2013.

The *Political Parties, Elections and Referendums Act 2000* (PPERA) provides a regulatory framework for referendums held in the UK. Each referendum still requires primary legislation to set the terms of the question and the franchise to be used, amongst other provisions.

This Bill contains eleven clauses which deal with the question, the franchise and the conduct of the referendum. Three schedules provide further details of the rules governing the campaign and the conduct of the referendum. The Bill gives the Secretary of State the power to make provisions for the date and the conduct of the poll, through regulations, subject to the affirmative procedure. Prior consultation with the Electoral Commission is required for most regulations concerning the conduct of the poll.

This paper provides details of the provisions in the Bill and includes information about the two European Union (Referendum) Bills that were introduced in the last Parliament. More information on these Bills is provided in Briefing Paper 14/55 European Union (Referendum Bill).

1. Introduction

The Prime Minister, David Cameron, announced on 23 January 2013 that if a Conservative Government was elected to power following the general election of 2015, it would hold a national referendum on European Union (EU) membership, framed on an in/out question, during the next Parliament.

The Conservative Party published a draft European Union (Referendum) Bill on 14 May 2013. This provided for a referendum to be held by the end of 2017, with details of the date and the conduct of the election to be contained in orders to be laid before both Houses. Subsequently, in the ballot for Private Members' Bills on 16 May 2013, James Wharton, Conservative MP for Stockton South, came first and announced that he would introduce a version of the Bill. The Bill passed the Commons with one amendment (to extend the franchise to Gibraltar), but failed to complete its passage through the House of Lords. It was re-introduced in the 2014-2015 session by Bob Neill and was unchanged from the Bill that left the Commons in the previous session. The Bill had its second reading but no money resolution was brought forward by the Government so the Bill could not progress to detailed scrutiny by a Public Bill Committee.

In its manifesto for the 2015 general election, the Conservative Party reiterated a commitment to an in/out referendum on EU membership on renegotiated terms before 2017.[1] The Labour Party manifesto for the 2015 general election contained a commitment to hold an in/out referendum on the occasion that powers are transferred from the UK to the European Union.[2] Acting Labour leader Harriet Harman has since declared support for a Bill providing for a referendum on EU membership to be held before 2017.[3] Liberal Democrat policy is also to have a referendum following any treaty change that would transfer power from the UK to the EU.[4] The SNP manifesto stated opposition to an in/out referendum, and specified that should such a referendum occur, the SNP will "seek to amend the legislation to ensure that no constituent part of the UK can be taken out of the EU against its will."[5] It has been reported that SNP leader Nicola Sturgeon will reiterate a commitment to a 'double lock' on EU membership, to prevent Scotland being forced out of the EU against its will.[6]

The Bill (Bill 2) was announced in the Queen's Speech on 27 May 2015, and introduced the day after. It is due for a second reading on 9 June 2015. It extends to the United Kingdom and Gibraltar. It differs from the

1 Conservative Party Manifesto, p30
2 Labour Party Manifesto, p77
3 'Labour to back EU Referendum Bill, says Harman', *BBC News*, 24 May 2015
4 Liberal Democrat Manifesto, p149
5 Scottish National Party Manifesto, p9
6 'Nicola Sturgeon: EU membership "vital for jobs"', *BBC News*, 31 May 2015

Draft Bill published by the Conservative Party in 2013 in that it includes Commonwealth citizens living in Gibraltar in the franchise, and provides more technical detail about the rules governing the campaign and the conduct of the referendum. The *Explanatory Notes* state that the Bill does not contain any provisions that fall within the terms of the Sewel (legislative consent) convention. Secretary of State Phillip Hammond has stated that in his opinion, the Bill is compatible with the European Convention on Human Rights. The *Explanatory Notes* provide a detailed commentary, which covers the franchise, the question and the conduct of the referendum

2. A brief overview of the UK in the EU

The question of the UK's relationship with the European Union (EU) has been a matter of political contention for a generation.

The UK joined the European Community (EC) in 1973. This membership was put to a referendum in 1975, when 67% of the electorate voted in favour of staying.

The Member States of the EC agreed to establish a single market in 1986. In 1993, they created the European Union and provided for the free movement of goods, services, people and money. The European Union saw its largest expansion to date in 2004, when 10 new countries joined at the same time.[7]

In the 1990s, the Referendum Party and the United Kingdom Independence Party (UKIP) were formed to seek the withdrawal of the UK from the EU.[8] UKIP won 24 out of the UK's 73 seats in the European Parliament in the 2014 European election, making it the biggest UK party in the European Parliament. The party secured its first two elected Westminster MPs in by-elections on 9 October 2014 and 20 November 2014, and retained one seat following the 2015 general election.

Since 2010 there have been a number of Private Members' Bills on the subject of a referendum on the continued UK membership of the European Union, which have made no progress. The *European Union Act 2011* provides that any transfer of power or competences from the UK to the EU needs to be approved by a national referendum.

A *YouGov* poll from February 2015 shows that in a referendum on UK's EU membership, 45% would vote to stay in the EU, while 35% would vote to leave. A similar poll showed that in September 2011 these numbers were 30% in favour of staying, and 52% in favour of leaving.[9]

Prime Minister David Cameron has emphasised that he wishes to renegotiate the terms of the UK's EU membership before the referendum is held. These negotiations focus, among other things, on restricting access to benefits for EU citizens from other countries resident in Britain, a removal of the commitment to 'ever closer union' from the European treaties, and the transfer of power back to national parliaments.

The Labour Party is committed to an in/out referendum if power were to be transferred to the EU.[10] On EU reform, Labour is against "isolation

7 'The history of the European Union', *European Union Website*, accessed 26 May 2015
8 Robert Ford and Matthew Goodwin, *Revolt on the Right*, 2014, pp1-60
9 'Record support for staying in the EU', *YouGov,* 23 February 2015
10 Labour Party Manifesto, p77

and cutting ourselves off from our European allies", and its manifesto for the 2014 European Parliament elections stated that Labour would "work with our European partners to deliver real and effective reform from within the EU". Labour's areas of reform include: "restraint in EU annual and long-term budgets; scrapping the Strasbourg Parliament; more transparency in meetings of EU Ministers and for national parliaments to play a stronger role in the making of new EU rules; changes to the European Parliament to make sure votes are more transparent and the expenses system for MEPs is reformed".[11] Labour also proposed to appoint an EU Growth Commissioner, review the EU budget and EU agencies to help secure savings and efficiencies.

The Scottish Nationalist Party described itself as "unashamedly, though not uncritically pro-European" in its manifesto for the European Parliament elections in 2014.[12] It emphasised a commitment to EU membership for an independent Scotland. SNP areas for reform included fishery and agriculture, where Scottish interests are said to diverge from UK interests.

The Liberal Democrats' priorities lie in reforming trade with the EU and reforming the EU budget.[13]. While they advocate an in/out referendum on the occasion of the transfer of further powers to Brussels, former party leader, Nick Clegg, defeated an attempt by senior party members to guarantee a referendum in the party's general election manifesto.[14]

For more information on proposals for EU reform, see Briefing Paper 07138 *Reforming the EU: UK plans, proposals and prospects*. A forthcoming Briefing Paper will discuss the likely effects of the UK leaving the EU, updating Briefing Paper 13-42 *Leaving the EU* produced in 2013.

11 Labour Party European Manifesto, 2014
12 Scottish National Party European Manifesto, 2014, p3
13 Liberal Democrats, Referendum and Reform' (accessed 7 January 2015)
14 Liberal Democrat Voice, 2 July 2014

3. The referendum in the UK

Many states have provisions to hold referendums in relation to major constitutional changes and in recent decades the UK has also used the device, despite having no codified constitutional rules requiring its use. Only two referendums have been held nationwide. The first was the referendum on the continuing membership of the European Community (preceding the European Union) in 1975, and the second was on proposals to introduce the Alternative Vote (AV) for Parliamentary elections in May 2011.

Just before the 2010 general election, the House of Lords Constitution Committee published a report *Referendums in the United Kingdom*. It concluded that referendums are most appropriately used for 'fundamental constitutional questions', which are hard to define but would include the question of leaving the EU, along with other questions such as whether:

> · To abolish the Monarchy; [...]
>
> · For any of the nations of the UK to secede from the Union;
>
> · To abolish either House of Parliament;
>
> · To change the electoral system for the House of Commons;
>
> · To adopt a written constitution; and
>
> · To change the UK's system of currency.
>
> This is not a definitive list of fundamental constitutional issues, nor is it intended to be.[15]

The *Political Parties, Elections and Referendums Act 2000* (PPERA) sets out a regulatory framework for referendums. Among other things, PPERA regulates how much can be spend by campaigners (these limits are higher for campaigners registered with the Electoral Commission, known as permitted participants) and what donations they can accept. Each referendum held subsequently still requires primary legislation to set the terms of the question and the franchise to be used, amongst other provisions.

There have been three referendums on the following questions since PPERA came into effect:

- Assembly for the North East and local government reorganisation, held on 4 November 2004 by an all-postal ballot;[16]
- Greater devolved powers for the National Assembly for Wales, held in March 2011;[17]

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15 House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL 99 2009-10

16 Electoral Commission, *The 2004 North East regional assembly and local government referendums*, November 2005

- Whether to move to the AV system of election of MPs to the Commons, held on 5 May 2011.[18]

In each case, there was separate legislation setting out the question, the franchise and any relevant modifications to PPERA, such as a role for the Electoral Commission in providing public information.

Rules for a fourth referendum, on Scottish Independence, were set out in the enabling Scottish Parliament legislation rather than relying on PPERA.[19]

Part 7 of Briefing Paper 12/43 UK Election Statistics: 1918-2012 sets out the text of the question and the result for each referendum between 1979 and 2012. Briefing Paper 14/50 provides details of the Scottish Independence Referendum 2014.

17 Under powers in the *National Assembly for Wales Act 2006.* The National Assembly Members' Research Service Paper 11/007 *The National Assembly for Wales Referendum 2011* sets out the question and preceding statement and the result

18 See Library Research Paper 11/44 *Alternative Vote Referendum 2011* for question and results

19 See Scottish Independence Referendum Act 2013

4. The Bill's provisions on the EU referendum

4.1 The referendum (clause 1)

Clause one sets out the requirement to hold a referendum (subsection one). The date must be appointed by the Secretary of State by regulation (subsection two), and must be no later than 31 December 2017 (subsection three). Subsection four provides that the question to appear on the ballot paper is:

> "Should the United Kingdom remain a member of the European Union?"

Subsection five provides that the Welsh version of the question will also appear on ballot papers in Wales:

> "A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?"

The question

Under PPERA, the Electoral Commission has a duty to assess the intelligibility of a referendum question. It has published guidance on the criteria to be used for assessment.[20] The Commission tests intelligibility by using focus groups and similar techniques to ensure the electorate understands the question. It made an assessment of the question specified in the *European Union (Referendum) Bill 2013-2014*: 'Do you think that the United Kingdom should be a member of the European Union?' The Commission recommended that the question should preferably be phrased so that the answer would not take a 'yes' or 'no' form, as this could appear biased; but that if these response options were retained, the wording should be changed to 'Should the United Kingdom remain a member of the European Union?'[21]

The Electoral Commission will produce a separate assessment for the question specified in this Bill after consultations close on 19 June 2015.[22]

The *Referendum Act 1975* set out the question for the 1975 referendum as follows:

> Do you think that the United Kingdom should stay in the European Community (Common Market)?

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20 Electoral Commission, *Our approach to assessing the intelligibility of the question*, November 2009

21 Electoral Commission, *Referendum on Membership of the European Union: Question Testing*, October 2013

22 Electoral Commission, *EU Referendum question assessment*, accessed 1 June 2015

4.2 Entitlement to vote in the referendum (clause 2)

Clause two specifies that the referendum will use the parliamentary franchise, which consists of British citizens, resident Irish citizens, Commonwealth citizens who meet the residency requirement for registration as an elector, and British citizens who are overseas voters (British citizens may register as overseas voters for up to 15 years after leaving the UK). Service voters are also eligible. Members of the House of Lords are not eligible to vote in the elections for the Commons, but are specifically given the vote. Commonwealth citizens who would be entitled to vote in European elections in Gibraltar are also entitled to vote in the referendum.

The franchise

The choice of franchise excludes citizens of other EU countries resident in the UK who are eligible to vote in local government and European Parliament elections. EU citizens from Cyprus and Malta resident in the UK qualify as Commonwealth citizens, and Irish citizens resident in the UK are also included in the parliamentary franchise.[23]

The referendums to establish the devolved legislatures in Wales and Scotland in 1997 were held under the local government franchise, but the AV referendum and the 1975 referendum on the EC were held under the parliamentary franchise. The Scottish independence referendum was held under the local government franchise, with the inclusion of 16 and 17 year olds.

16 and 17 year olds cannot vote in UK Parliamentary elections and are therefore not included in the franchise for the referendum. The voting age was previously reduced in Scotland specifically for the Scottish independence referendum but Scotland has been given the power to legislate to allow 16 and 17 year olds to vote in Scottish Parliament elections. There is a bill currently before the Scottish Parliament to make provision for reducing the voting age at these elections. Unless the voting age is reduced for UK Parliamentary elections, 16 and 17 year olds will not be able to vote in the referendum in any part of the UK.

The *European Parliament (Representation) Act 2003* provided for Gibraltar to be enfranchised for elections to the European Parliament. This followed a ruling in the European Court of Human Rights which found the UK to be in breach of the European Convention on Human Rights (ECHR) for failing to allow Gibraltarians to vote or stand in the elections to the European Parliament in 1994. The 2003 Act required the Electoral Commission to propose a region in England and Wales with which the citizens of Gibraltar could participate in EP elections. The region chosen was the South West. The Bill makes provision for citizens

[23] *Representation of the People Act 1983*, section 1

of Commonwealth countries entitled to vote in European Parliament elections in Gibraltar to be included in the franchise.

The previous *European Union (Referendum) Bill 2013-2014* had been amended at report stage to extend the vote to Commonwealth citizens resident in Gibraltar.

The number of registered overseas electors (British citizens living abroad) tends to peak in the years when there is a general election before falling in the following years. For example, in December 2012 there were 19,120 registered UK overseas voters, compared with 32,739 in December 2010.[24] The Government's legislative agenda presented in the Queen's Speech on 27 March 2015 included a *Votes for Life Bill 2015-16* that abolishes the restriction on voting in British parliamentary elections for British citizens living abroad for more than 15 years.[25]

4.3 The conduct of the referendum (clauses 3 & 4)

Clause three provides that the referendum is governed by Section VII of PPERA; and by Schedules one, two and three of the Bill, which introduce detailed arrangements concerning the conduct of the poll and the campaign.

Clause four provides that the Minister may make regulations on the conduct of the referendum, including provisions about voting, and applying or modifying relevant legislation for the purpose of this referendum.

Subsection two provides that the Minister may, by regulations, make provision for the referendum to be held on the same day as any other election or referendum.

Subsection three provides that the Minister may, by regulations, modify or amend this legislation where necessary because the referendum will be held in Gibraltar as well as the United Kingdom.

Subsection four provides for the types of regulations that may be made under this clause.

Subsection five requires the Minister to consult with the Electoral Commission before making any regulations under this clause. Such consultation may be carried out before the commencement of this clause (subsection six).

Combination of polls

There is nothing in statute at present which would prevent a combined poll. There are arguments for and against holding referendums on the

[24] ONS *Electoral Statistics*, General Register for Scotland *Electoral Statistics*, Electoral Office for Northern Ireland personal communication

[25] Prime Minister's Office (Press Office), *The Queen's Speech 2015*, 27 May 2015, p96

same day as another election.[26] Whilst combining polls may improve turnout and is likely to reduce overall costs, the specific issue of the referendum may be overshadowed by the competition for power between political parties, or vice versa, and this may confuse voters.

The Lords Constitution Committee recommended against holding referendums on the same day as general elections in its 2010 report, but thought other combinations should be considered by the Electoral Commission on a case by case basis.[27] The Electoral Commission evidence to the Committee suggests that each case should be considered on its merits.[28]

The AV referendum in 2011 was held on the same day as the elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly as well as local elections in 279 local councils in England and 26 in Northern Ireland. The turnout rate in Scotland and Northern Ireland for the AV poll was higher than in England, at 50.4 per cent and 55.2 per cent respectively. The turnout for England was 40.7 per cent and for Wales 41.5 per cent.[29]

The Electoral Commission report on the AV referendum noted:

> During Parliamentary scrutiny of the PVSC [Parliamentary Voting System and Constituencies] Bill, concerns were expressed that the referendum would dominate media coverage at the expense of the scheduled elections held on the same day. Evidence from media content analysis, however, suggests that there was a reasonable balance between coverage of the referendum and the scheduled elections, with each attracting varying levels of coverage in the UK-wide or other media.[30]

The Scottish independence referendum was held as a stand-alone poll. Turnout was 84.6 per cent. The Electoral Commission report on the Scottish referendum states that the decision not to combine the poll with other elections enabled a clear cross-party campaign; had other elections been held, voters could have been confused by political parties campaigning together in the referendum campaign, but against each other for the purpose of the other poll.[31]

The Electoral Commission further commented that while it continued to be of the view that each proposed combination of polls needs to be considered on its own terms:

> Where significant cross-party campaigning for a future high-profile referendum is likely (such as, for example, a referendum on

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26 See for example *A comparative study of referendums: Government by the people,* Matt Qvortrup 2005

27 House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL 99 2009-10, para 145

28 Electoral Commission written evidence to Lords Constitution Committee

29 For details see Research Paper 11/44 *Alternative Vote referendum*

30 Electoral Commission, Referendum on the voting system for UK parliamentary elections, October 2011

31 Electoral Commission, Scottish Independence Referendum, December 2014

> the UK's membership of the European Union), we would not expect the poll to be held on the same day as another set of polls. This would help ensure voters and campaigners are able to easily participate in the referendum and minimise the risk of voter confusion.
>
> Any government introducing legislation for future referendums, not only in Scotland but also those held across or in other parts of the UK, should also publish at the same time its assessment of the implications of holding other polls on the same day. This will enable legislatures (including the Scottish Parliament and the UK Parliament) to consider the relative benefits and risks of the proposal as they scrutinise the referendum Bill.[32]

There have been reports that the EU referendum could be held in 2016.[33] A number of other polls are statutorily scheduled to be held on 5 May that year, including elections for the three devolved legislatures, Police and Crime Commissioners in England and Wales, the London Assembly and Mayor of London, and local authorities in many parts of England. In a briefing on the EU referendum prepared in May 2015, the Electoral Commission has specified that:

> It is important that voters and campaigners are able to engage fully with the issues which are relevant at these elections. It is also important that any debate about the UK's membership of the European Union takes place at a time that allows the full participation of voters and campaigners, uncomplicated by competing messages and activity from elections which might be held on the same day.
>
> We therefore believe that a referendum on an issue as important as the UK's membership of the European Union should not be held on the same day as the other polls taking place on 5 May 2016.[34]

Combining the referendum with other polls could also create administrative challenges, as combining expenditure limits for both devolved elections and a referendum is likely to prove complex. Moreover, the franchise used for the other polls scheduled in 2016 is different from the one used for the referendum: citizens from other EU countries resident in the UK are entitled to vote in local elections.

4.4 Gibraltar (clause 5)

Clause five specifies that regulations under clause four may extend and apply to Gibraltar any enactment relating to elections and referendums that applies in any part of the United Kingdom. This clause also provides that the creation of powers under this legislation does not

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32 *Ibid*, pp 40-1

33 'David Cameron may bring EU referendum forward to 2016', *The Guardian*, 11 May 2015

34 Electoral Commission, *Referendum on the United Kingdom's membership of the EU*, 14 May 2015

affect the capacity of the Gibraltar legislature to make laws for Gibraltar; or the operation of the *Colonial Laws Validity Act 1865*.

4.5 Regulations under this legislation (clause 6)

Clause six provides that all powers to make regulations contained in this Bill (other than those under paragraph 12(10) of Schedule 3) are exercisable by statutory instrument.

The *Explanatory Notes* clarify that:[35]

> Regulations under paragraph 12(10) of Schedule 3 are made by the Electoral Commission and concern the accounts to be rendered for the purposes of the payment of the charges of a counting officer, a Regional Counting Officer or the Chief Counting Officer.

Statutory instruments containing regulations under this Bill are subject to the affirmative procedure, except for those containing only regulations under clause ten (commencement), or paragraph twelve of Schedule three (the maximum amount which a counting officer or Regional Counting Officer is entitled to recover in respect of services rendered or expenses incurred in connection with the referendum).

4.6 Miscellaneous provisions (clauses 7–11)

Clause seven provides for the relevant expenditure to be authorised by Parliament. Clause eight defines certain terms used in the Bill. Clause nine provides for the extent of the Bill, and clarifies that for the purpose of this referendum, Part VII of PPERA extends to Gibraltar.

Clause ten provides that sections six to eleven come into force upon Royal Assent; the other provisions come into force on the day the Minister appoints by regulations (and these may differ per provision).

Clause eleven provides that the short title of the Bill is the *European Union Referendum Act 2015*.

Cost of the referendum

The documents accompanying the Bill do not provide an estimate of the cost of holding the EU referendum. The Electoral Commission reported that the total cost of the AV Referendum in 2011 in terms of UK Parliament authorised funds was £75 million (excluding other costs funded through donations and other sources). The Government had overestimated the amounts payable for fees and reimbursements to Counting Officers: they paid out £58 million rather than the estimated £80 million. [36]

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35 *Explanatory Notes*, para 22

36 Electoral Commission, *Costs of the May 2011 Referendum on the UK Parliamentary voting system*, December 2012, p7

The Commission also noted that the overall cost of the referendum would have been higher if it had been a stand-alone poll; because it was held on the same day as other polls, certain costs, such as the hiring of polling stations and staff, could be shared. The Commission estimated that the referendum would have cost around £90 million on a stand-alone basis.[37]

On 16 July 2013, then Minister for Europe, David Lidington, introduced the money resolution for the European Union (Referendum) Bill 2013-14. He said that there had not been a detailed estimate of the cost of the referendum, but referred to the precedent of the £75.3m cost of the Alternative Vote referendum in 2011. He stated that exact costs would be dependent on whether the poll was combined with other elections.[38]

4.7 Campaigning and financial controls

Schedule one supplements Part VII (Referendums) of PPERA where it concerns the regulation and finances of the referendum campaign.

Paragraph one provides that the referendum period, during which the financial controls in PPERA and this legislation apply, is to be set by the Minister through regulations subject to the affirmative procedure.

Paragraphs two to six contain provisions relating to who may register as a permitted participant with the Electoral Commission, what information they need to provide, and the requirements relating to responsible persons.

Paragraph seven provides that the Electoral Commission may pay grants to designated lead campaign organisations in instalments. The *Explanatory Notes* state:

> Paragraph 7 modifies section 110 of the 2000 Act [PPERA] regarding the payment of grants by the Electoral Commission to designated lead campaign organisations. The effect is that, in relation to the proposed referendum, the Electoral Commission will be entitled to pay the grant in instalments, and may withhold instalments if it is satisfied that the designated organisation has breached one of the conditions that the Commission has set when making the grant. Under the 2000 Act, the level of the grant paid to each designated organisation must be of the same amount, but this need not be the case if the Commission has withheld any instalment(s) from any of the designated organisation(s) under this paragraph.[39]

The Electoral Commission pays grants to one 'designated lead campaign organisation' on each side of the campaign

Paragraph eight makes provision for assistance to be granted to designated organisations in Gibraltar, while paragraphs nine to eleven concern the appointment of referendum agents.

Permitted participants may appoint a 'referendum agent' to be responsible for any voting area; Referendum agents are regulated under Clause 4 of this Bill

37 *Ibid*, p8
38 HC Deb 16 July 2013 c1019
39 *Explanatory Notes,* para 36

Paragraph twelve provides that the media is not covered by controls on campaign expenditure. It states that the following are not treated as 'referendum expenses' (which are subject to control):

> (2) Those expenses are—
>
> a) expenses incurred in respect of the publication of any matter relating to the referendum, other than an advertisement, in—
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> (i) a newspaper or periodical;
>
> (ii) a broadcast made by the British Broadcasting Corporation, Sianel Pedwar Cymru or the Gibraltar Broadcasting Corporation;
>
> (iii) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996;
>
> b) expenses incurred in respect of, or in consequence of, the translation of anything from English into Welsh or from Welsh into English;
>
> c) reasonable expenses incurred that are reasonably attributable to an individual's disability;
>
> d) expenses incurred in providing for the protection of persons or property at rallies or other public events.
>
> (3) In sub-paragraph (2)(c) "disability" has the same meaning as in the Equality Act 2010 (see section 6 of that Act).

Paragraph thirteen protects the rights of creditors of the campaign organisations. Paragraph fourteen concerns the aggregation of expenses by people acting in concert at the referendum. The *Explanatory Notes* state:

> Sub-paragraph (1) sets out the circumstances in which persons will be regarded as having acted in concert. Sub-paragraph (2) provides that where expenses are incurred by persons acting in concert, the total value of those expenses is to be regarded as having been incurred by each of the persons in question, and counted against each person's spending limit accordingly. Sub-paragraph (5) provides that expenses incurred by or on behalf of a designated organisation are not to be regarded as having been incurred by any other person. Sub-paragraph (6) applies section 117(5) and (6) of the 2000 Act [PPERA]. The effect of those provisions is, in certain circumstances, to treat expenses incurred before the beginning of the referendum period as incurred during the referendum period. Sub-paragraph (7) provides that this applies even if the expenses were incurred prior to commencement. Sub-paragraph (8) provides that section 112 of the 2000 Act, which relates to notional referendum expenses, applies to this paragraph.[40]

[40] *Explanatory Notes* , para 41

Paragraphs fifteen and sixteen concern the application of the Bill and provisions of PPERA to Gibraltar and the UK. Paragraphs seventeen to twenty-four concern donations to the referendum campaign, including their permissibility, recording, and reporting; and related offences. In particular, paragraph twenty-two provides that the Minister may, by regulations, prescribe that periodical reports must be submitted to the Electoral Commission before the date of the poll. These reports must be published as soon as reasonably practicable (paragraph twenty-four).

Paragraph twenty-five provides that section 125 of PPERA, restricting the publication of promotional material for referendum campaigns by local and central governments, does not apply to this referendum.

Paragraph twenty-six extends controls on campaign broadcasts (PPERA, section 127) to Gibraltar. Paragraph twenty-seven provides that other provisions, including those specifying the role of the Electoral Commission in relation to compliance, apply to this legislation.

Designated organisations: public funding

Schedule one of the Bill provides that the Electoral Commission may pay grants to designated lead campaign organisations in instalments, and may withhold funding where an organisation fails to comply with certain conditions.

PPERA provides that the Electoral Commission may nominate designated or umbrella organisations for each side of the outcome of the referendum. These will benefit from maximum grants of £600,000 to each organisation for infrastructure costs, combined with a free referendum address sent to every household, and referendum campaign broadcasts.[41] The Commission decided to award £380,000 to each side for the AV referendum. Designated organisations have a maximum spending limit of £5 million. In the 1975 European Referendum, £125,000 each was made available to the two lead groups, using powers under the *Referendum Act 1975.*

The Electoral Commission may decide not to designate where it does not consider that an organisation exists which represents the body of opinion on one side. It cannot designate one side only. The Commission was unable to designate for the referendum on further devolution in Wales, held on 3 March 2011, since the only applicant for the 'No' campaign did not meet a statutory test of adequately representing those campaigning for a 'No' vote.[42] The main 'No' campaign had decided against applying for designation, reportedly in order to deny extra expenditure limits to the 'Yes' campaign.[43] The Commission

41 Electoral Commission, Referendum on the parliamentary voting system in the UK, 17 February 2011

42 Electoral Commission, No lead campaigners for National Assembly referendum, 25 January 2011

43 Lack of official campaigns for referendum 'sad day' 20 January 2011 *BBC News;* see also written evidence from No Campaign Ltd to Scottish Affairs Select Committee inquiry *The Referendum on Separation for Scotland*, HC 1608 2010-2012, para 4.14

published criteria for designation for the AV campaign.[44] However, there were concerns about the tight timetable for designation; the 'No' campaign were forced to commit funds before being officially informed of designation.[45]

Expenditure limits

The Bill gives the Minister the power to determine the 'referendum period', during which controls on expenditure apply. It also excludes the media from controls on 'referendum expenses', and provides for the aggregation of such expenses by persons acting in concert.

PPERA established maximum expenditure limits for regional and national referendums as primary legislation.[46] These limits are higher for campaigners who register with the Electoral Commission as 'permitted participants'. Expenditure limits apply during the 'referendum period', which is set out in the legislation authorising a particular referendum. The referendum on the Alternative Vote (AV) was the first nationwide referendum to be held under the PPERA provisions and the referendum period began with Royal Assent to the *Parliamentary Voting System and Constituencies Act* on 16 February 2011 and lasted 11 weeks.

Box 1: Total spent on the AV referendum campaign in £000s

Campaign	Lead designated campaign organisation	Other registered campaigners	**Total**
YES	2,100	70	**2,210**
NO	2,600	900	**3,500**

Source: Electoral Commission, *Costs of the May 2011 referendum on the UK Parliamentary voting system* , p34

Media comment is excluded from controls on campaign expenditure. A similar provision was contained in Section 5 of the *Parliamentary Voting System and Constituencies Act 2011* (PVSC). Newspaper advertisements would count as campaign expenditure. There are no specific guidelines on accuracy, beyond the usual Advertising Standards Authority guidance which notes that it has no remit over non-broadcast adverts where the purpose of the advert is to persuade voters in a local, national or international election or referendum. Complaints of political bias in radio or TV advertisements are made to Ofcom. Media ownership in the UK is not restricted to UK nationals, yet it is worth

44 Delivering the 5 May elections and referendum statement by Jenny Watson 16 February 2011

45 Scottish Affairs Select Committee, The Referendum on Separation for Scotland, HC 1608 2010-12 Q499

46 This was contrary to the recommendations of the Neill Committee. Its report argued that controls would be impractical and might be considered an unwarranted restriction on freedom of speech.

noting that donations from individuals abroad directly to referendum campaigns are prohibited if these are over £500.

Campaigning in the referendum on the question of remaining a member of the European Union is likely to be intense. In its report on the AV referendum, the Electoral Commission expressed its view that the regulated period should be extended beyond 28 days to the whole referendum period following the passage of the legislation.[47]

Permitted participants

Groups (including political parties, campaign groups and other bodies) must register as permitted participants with the Electoral Commission if they plan to spend more than £10,000 during the referendum period. The designated permitted participants are eligible for grants (see above) and the limit on expenses incurred by these 'designated' organisations is £5 million. In the case of permitted participants not designated under section 108, the maximum expenditure is £0.5m except for political parties, where the limit is related to share of the vote at the last general election, ranging up to £5m. Maximum expenditure for political parties that attracted less than 5 per cent of the vote is £0.5m. These limits are set out in Schedule 14 of PPERA.

Box 2: The EU Referendum: spending limits for political parties

Party	Vote share in the 2015 general election	Spending limit
Conservative	36.9%	£5m
Labour	30.4%	£5m
UKIP	12.6%	£3m
Liberal Democrat	7.9%	£2m

Source: *BBC News, Election 2015*

The Bill provides for pre-polling reports to be submitted. This modifies the requirement under PPERA that permitted participants must submit returns of expenditure to the Electoral Commission within 6 months of the poll. More detail is required where participants have spent over £250,000. This modification deals with the issue that full details of expenditure would not be known until the referendum has taken place. The Electoral Commission has expressed concern in the past about the difficulty of regulating expenditure during the short campaign period, when accounts will not be submitted until after the poll.[48]

47 Electoral Commission, Referendum on the voting system for UK parliamentary elections, October 2011

48 Evidence from Sam Younger, former Chairman of the Electoral Commission, to the Treasury Select Committee, 18 March 2003, HC 187-II, Session 2002-03, Q1327

Like the PVSC Act 2011, the Bill provides for the aggregation of expenses where persons are acting in concert.[49] The Electoral Commission had in the past expressed concern that existing legislation did not guarantee equality of spending, and that permitted participants could proliferate, causing difficulties in assessing whether expenditure limits had been breached.[50] A number of witnesses to the Lords Constitution Committee inquiry on referendums in April 2010 also repeated these concerns, as did witnesses to the Scottish Affairs Committee inquiry into a referendum for Scotland in 2012.[51] The Lords Committee recommended the aggregation of spending limits for permitted participants who operate to a common plan.

Political parties

If a registered party campaigns as a permitted participant under sections 105 and 106 of PPERA, it needs to indicate the outcome or outcomes for which it proposes to campaign. S106 (7) defines 'outcome' as 'a particular outcome in relation to any question asked in the referendum'. The declaration must be signed by the 'responsible officers of the party', defined in s64 (7) as the 'registered leader', the 'registered nominating officer' and any other registered officer. Under s106, it is necessary to make the declaration in order to become a permitted participant.

Controls on donations

The Bill includes provisions on which donations can be accepted, and how they should be recorded and reported.

Donations made to permitted participants are also controlled by PPERA. Permitted participants have to register donations received over £7,500 with the Electoral Commission, and refuse donations over £500 if they are from donors not on the UK electoral register, from non UK companies, from blind trusts, or from unknown sources.[52] The Bill (schedule one, paragraph 17) extends the list of permissible donors for donations to permissible participants who are not registered political parties other than minor parties to include: a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association, a Scottish Partnership, an individual registered in Gibraltar for the purposes of European Parliamentary elections, and bodies who are permissible Gibraltar based donors (as specified by section 54(2A)(b)-(g) of PPERA).

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49 *Referendums in the United Kingdom* HL Paper 99 2009-10, para 200. See para 17 of Schedule 1 to the *Parliamentary Voting System and Constituencies Act 2011*

50 Evidence to Select Committee on Transport, Local Government and the Regions, 10 July 2002, HC 1077-1, Session 2001-2, Q85

51 Written evidence submitted to the Scottish Affairs Select Committee from the No Campaign Ltd March 2012

52 These limits were set out in Section 20 of the *Political Parties and Elections Act 2009,* brought into force by SI 2009/3084; the Act also introduced new restrictions on donations for non-domiciled UK nationals, but these have not yet been brought into force

The Electoral Commission issued guidance for permitted participants on the acceptance of donations for the AV referendum.[53] The Commission will publish specific guidance for the EU referendum.

The regulation of campaigns

The Bill removes restrictions on the supply of campaign material by public bodies for the purpose of this referendum.

PPERA provides that any material to do with the referendum which is published in a referendum period must carry the name and address of the printer together with the name of any person or body on whose behalf it is published.[54] This was intended to help the Electoral Commission and the public identify who is behind publications, and therefore who has incurred referendum expenses. Campaign material is subject to statutory regulation in terms of defamation, incitement to hatred etc., but there is no equivalent to the electoral law provision prohibiting false statements about candidates (which led to the election petition in Oldham East and Saddleworth in November in 2010).[55]

Section 125 of PPERA places restrictions on promotional material published during the 28 days (known as the "relevant period") before a referendum by the Government, local authority or other publicly funded body, apart from the Electoral Commission.[56] This has caused some difficulties, according to the Commission, in alerting voters to the issues. The powers in the PVSC Act 2011 to enable the Commission to encourage participation in the AV referendum were added as a result.[57] This Bill provides that the restrictions of section 125 do not apply to the referendum, and additionally requires the Electoral Commission to promote public awareness of the referendum, and the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers to encourage participation in the referendum (Schedule 3, paragraphs 10 and 11, discussed below).

Campaign broadcasts

The Bill extends controls on campaign broadcasts to Gibraltar.

Only designated umbrella organisations can have referendum campaign broadcasts.[58] This is to ensure that, in any referendum, each side of the campaign will have equal access to free airtime for campaigning.[59] Section 127 of PPERA prevents the main purpose of any broadcast, other than a referendum campaign broadcast, from being to procure or promote a referendum's outcome. The Broadcasters' Liaison Group has a role in the allocation and regulation of party political

53 Electoral Commission, *Referendum on the parliamentary voting system in the UK: Situations and Procedures*, 2011
54 Section 126
55 See Library Briefing: Election Petition: Oldham East and Saddleworth
56 Section 125
57 Schedule 1, paras 8 and 9
58 PPERA Section 127
59 *Explanatory Notes*, paragraph 223

broadcasts and has issued production guidelines for referendum broadcasts. The BBC Trust has consulted on these and referendum guidelines were adopted by the BBC in December 2010.[60]

4.8 Control of loans etc. to permitted participants

Schedule two supplements PPERA where it concerns loans and other regulated transactions to permitted participants that are not registered political parties, or are minor parties. It establishes controls in relation to such transactions that are similar to those on donations (contained in PPERA and schedule one of this Bill).

A minor party is registered on the Great Britain Register, but it can only contest parish council elections in England and community council elections in Wales.

Regulated transactions are loans, credit agreements, and transactions based on the provision of security to a lender, provided for use towards referendum expenses (paragraph 2 of a new schedule 15A, to be inserted after Schedule 15 of PPERA for the purpose of this referendum).

The schedule sets out which regulated transactions are permissible, the information that needs to be recorded when they are entered into, and how they must be reported. Paragraph 15 of new Schedule 15A states that transactions worth over £7,500 must be recorded and reported; paragraph 20 of new Schedule 15A provides that reports must also include the total value of all regulated transactions that are not recorded (i.e. that are of a lower value).

The schedule also gives details of when non-compliance is an offence and the penalties related to these offences.

Paragraph three of the schedule states that the provisions contained in paragraphs one and two apply to regulated transactions entered into prior to the commencement of this schedule; except for the provisions on who may provide regulated transactions to campaigners, and what actions constitute offences.

Paragraphs four to six establish a pre-poll reporting regime for regulated transactions in line with that provided for donations in schedule one (discussed above).

Paragraph seven applies provisions in PPERA relating to compliance and enforcement to this schedule.

4.9 The administration of the poll

Schedule three applies section 128 of PPERA (Chief counting officers, and counting officers for referendums) to the referendum with certain modifications. It defines the role, responsibilities, duties and powers of the officers involved in the administration of the poll.

60 *Referendum campaign broadcasts*, BBC Trust, September 2014

It also creates duties for local authorities and the Government of Gibraltar to place the services of their officers at the disposal of the counting officers (paragraph five).

Paragraph ten concerns the role of the Electoral Commission. Among other things, the Commission must promote public awareness of the referendum and how to vote in it. Paragraph eleven provides that the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers must encourage participation in the referendum.

Paragraphs twelve to fourteen provide for the payment of officers involved in the conduct of the referendum. The Minister may specify the overall maximum recoverable amounts in regulations, with the consent of the Treasury. Payments are made by the Electoral Commission.

Paragraph fifteen sets out the procedure for challenging the result of the referendum in court. A challenge to the number of ballot papers counted or votes cast as certified by any of the officers involved in the conduct of the poll must be brought by way of judicial review and within six weeks of the date that the certificate to which the challenge relates was produced.

The conduct of the poll

PPERA provides that the Chief Counting Officer for a referendum is the chair of the Electoral Commission, currently Jenny Watson, who may delegate responsibility to counting officers for each relevant local government area.[61] The Bill confirms this role and allows the Chief Counting Officer to appoint Regional Counting Officers for this referendum for any of twelve regions. It provides that local returning officers will act as counting officers. The same provisions had been made for the AV referendum.

The Electoral Commission therefore has a major role in directing the conduct of a referendum. The Chief Counting Officer has powers of direction which make the poll more centrally managed than elections, which are subject to the discretion of local returning officers.

In general, the normal rules for the conduct of the poll contained in the *Representation of the People Acts* are applied to a referendum by order. This is provided for in clause four (discussed above). For the AV referendum, the passage of the legislation was so close to the actual poll that the conduct rules appeared in primary legislation.[62] There would be several detailed points of electoral administration to consider, such as the count and declaration of result. Results for the AV referendum were given by local authority area, for example, rather than parliamentary constituency.

61 *Parliamentary Voting System and Constituencies Act 2011,* Section 128

62 *Parliamentary Voting System and Constituencies Act 2011,* Schedules 2 to 8

Public awareness and information

The Bill provides that the Electoral Commission must promote public awareness of the referendum, and the officers involved in the conduct of the poll must take steps to encourage participation.

Before the 1975 referendum on EC membership, the Government ensured the distribution to all households free of charge of a non-technical version of its White Paper explaining its own recommendation of a Yes vote and short statements of both the 'Yes' and the 'No' views during the days immediately before the referendum.[63]

Before the AV referendum in May 2011 the Electoral Commission issued a booklet to each household in the UK. Content included different ways to vote (at a polling station, postal, proxy etc.) and a brief guide to AV and First Past the Post. The Commission did not provide political context to the choice of electoral systems.

In the Scottish referendum campaign the Electoral Commission published a voting guide to the referendum which was sent to each household in Scotland. The booklet contained statements from both the 'yes' and 'no' campaign and a joint statement by the Scottish Government and the UK Government.

63 Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, 1998, Cm 4057, paras 12.7 and 12.21

5. Types of referendum

This Bill requires a referendum to be held on the question of the UK's continued membership of the European Union (EU) before the end of 2017. It does not contain any requirement for the UK Government to implement the results of the referendum, nor set a time limit by which a vote to leave the EU should be implemented. Instead, this is a type of referendum known as pre-legislative or consultative, which enables the electorate to voice an opinion which then influences the Government in its policy decisions. The referendums held in Scotland, Wales and Northern Ireland in 1997 and 1998 are examples of this type, where opinion was tested before legislation was introduced. The UK does not have constitutional provisions which would require the results of a referendum to be implemented, unlike, for example, the Republic of Ireland, where the circumstances in which a binding referendum should be held are set out in its constitution.

In contrast, the legislation which provided for the referendum held on AV in May 2011 would have implemented the new system of voting without further legislation, provided that the boundary changes also provided for in the *Parliamentary Voting System and Constituency Act 2011* were also implemented. In the event, there was a substantial majority against any change. The 1975 referendum was held after the re-negotiated terms of the UK's EC membership had been agreed by all EC Member States and the terms set out in a command paper and agreed by both Houses.[64]

64 For details see Commons Library briefing *Regulation of Referendums* 29 January 2013.

6. A threshold for the referendum?

The Bill does not propose a threshold for the referendum. The only referendums held in the UK where a threshold has operated were the polls in Scotland and Wales in 1978 on the question of devolution.[65]

Discussion of the need for some form of threshold usually arises in the context of ensuring the legitimacy and acceptance of the outcome of a referendum. Certain states require constitutional change to be validated by a special majority in a referendum. This incorporates the idea that major constitutional change is something more important than the result of ordinary elections, and therefore should be the outcome of something more than a simple plurality of the votes. The UK does not have a comprehensive written constitution and so any requirement for a threshold has to be included in the individual referendum legislation. Standard Note 2809 *Thresholds in Referendums* gives further details and provides comparative examples of the use of thresholds.

6.1 1979 referendums

Campaigners for a Yes vote in the referendums on devolution held in Scotland and Wales on 1 March 1979 failed to meet the requirement that forty per cent of all electors should vote in favour of change. This threshold had been inserted on 25 January 1978 during the passage of the relevant legislation against the wishes of the Labour Government as a result of action by a combination of Labour backbenchers opposed to devolution and the official Opposition. The Acts specified that where it appeared 'to the Secretary of State that less than 40 per cent of the persons entitled to vote in the referendum have voted "Yes"... or that a majority of the answers given in the referendum have been "No" he shall lay before Parliament the draft of an Order in Council for the repeal of this Act".[66] The Secretaries of State were required to calculate the size of the total electorate and deductions were made to allow, for example, for the number of voters on the register who had died.[67]

6.2 Referendums 1979–2014

Since 1979 no further referendums have been held using a threshold. However, the issue has been raised from time to time. The *Referendums (Scotland and Wales) Act 1997* received a rapid passage through Parliament, achieving Royal Assent on 31 July 1997. The campaigners for a Yes vote in Wales won by a very narrow margin. However, there was

65 See Library briefing *Thresholds in Referendums* for background

66 *Scotland Act 1998*, s.85 *Wales Act 1998* s.80

67 Further detail is available in *The Referendum Experience: Scotland 1979* ed John Bochel and *The Welsh Veto* ed David Foulkes

some concern about the possible turnout for the North East referendum; the then junior minister, Nick Raynsford, reportedly said during the launch of the referendum campaign that ministers would not approve the creation of assemblies in regions where the turnout was "derisory".[68] This term was not further defined. When the poll was held on 4 November 2004, there was a turnout of 47.8 per cent and 78 per cent of voters rejected a North East Assembly.[69]

The House of Lords voted for a 40 per cent threshold for the AV referendum during the passage of the *Parliamentary Voting System and Constituencies Bill*, but this was subsequently overturned in the House of Commons.

There was no threshold for the Scottish independence referendum.

6.3 A 'double lock' threshold

In some federal countries there is a requirement for certain referendums to secure a majority in the population as a whole and in a majority of the states. This is the case in Australia, where referendums to approve changes to the constitution must achieve a majority of voters as a whole (voting is compulsory), and a majority in a majority of states. If one state is particularly affected by the proposed change, then there must also be a majority in that state.[70]

The SNP have pledged they will "seek to amend the legislation to ensure that no constituent part of the UK can be taken out of the EU against its will."[71] The party proposes that the UK should remain in the EU, unless each constituent part of the UK (England, Scotland, Wales and Northern Ireland) votes to leave.

The SNP leader, Nicola Sturgeon, has indicated that another referendum on Scottish independence could be called in a situation in which Scotland voted against leaving the EU while the rest of the UK voted in favour.[72]

Prime Minister David Cameron has refused such a threshold for each constituent part of the UK, referring to the reserved nature of foreign policy:

> They didn't give Orkney and Shetland an opt out, or the Borders an opt out, so this is a UK pledge, it will be delivered for the UK and it will be debated and discussed in Parliament after we publish the Queen's Speech.[73]

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68 See e.g. "Parliaments for the north: Prescott takes plans to the people", *Independent*, 4 November 2003 p8

69 'North East votes 'no' to assembly" BBC News 5 November 2004

70 Caroline Morris, 'Referendums in Oceania', in Matt Qvortup (ed), *Referendums around the world*, 2014, pp218-9

71 Scottish National Party Manifesto, p9

72 'EU referendum top priority for UK government', *Scottish legal news*, 19 May 2015

73 Ibid

7. Agreements to differ in a referendum campaign

The media has reported on differences within the Conservative Party with regards to remaining in the EU. It has been suggested that ministers could resign in order to campaign in favour of leaving the EU if Prime Minister David Cameron supports the campaign in favour of remaining a member of the EU, on renegotiated terms.[74] This way, the principle of Cabinet collective responsibility would remain unchallenged.

In some previous referendums, there have been 'agreements to differ' which suspended this principle. These are outlined in Briefing Paper 04/82 *The collective responsibility of Ministers*.

Most notably, this was the case for the 1975 European Community referendum, and the AV referendum in 2011.

7.1 1975 EC Referendum

Perhaps the most familiar instance of the twentieth century agreements to differ is that over the referendum of June 1975 on EC membership. The issue of Europe had caused divisions within as well as between the two major parties, and the Labour Government had come into office in 1974 pledged to renegotiate the terms of UK entry and to allow the people to vote on the outcome, either by referendum or general election. Three senior Cabinet Ministers - Michael Foot, Tony Benn and Peter Shore - wrote to the Prime Minister, Harold Wilson, in late November stating that "Ministers will have very deep convictions that cannot be shelved or set aside by the normal process of Cabinet decision-making ... The only solution might be to reach some understanding on the basis of 'agreement to differ' on this single issue and for a limited period".[75]

In a statement on 23 January 1975 the Prime Minister announced that a referendum would be held before the end of June, once the outcome of the renegotiation was known and the Government had made its recommendation. He stated:

> The circumstances of this referendum are unique, and the issue to be decided is one on which strong views have long been held which cross party lines. The Cabinet has, therefore, decided that, if when the time comes there are members of the Government, including members of the Cabinet, who do not feel able to accept and support the Government's recommendation; whatever it may be, they will, once the recommendation has been announced, be

74 "David Cameron warned he could lose ministers over EU campaign" *Guardian* 20 May 2015

75 *Tony Benn: a political biography,* by R Jenkins, 1980 p219; *Against the tide: diaries 1973-76*, by Tony Benn, 1990 pp274, 283

> free to support and speak in favour of a different conclusion in the referendum campaign. [HON. MEMBERS: 'Oh!'] [76]

The Opposition Leader, Edward Heath, noted that in that "unique operation and a major question of our time the Government are not going to maintain collective responsibility". He asked several questions about how the Government would make a recommendation; whether it would set out which Cabinet ministers supported the recommendation; and on the course the Prime Minister would follow.[77]

In his response, the Prime Minister said:

> The right hon. Gentleman said that a major constitutional question had been raised by what I have announced. This matter has divided the country. People on both sides of the question hold their views very deeply, very sincerely and very strongly. That applies both in this House and in the country. … while there may be differences about the Common Market, there is no division on this side of the House, or in the Cabinet, on the major issue of the referendum. That is why I believe it right to take this step in this unique situation.[78]

On 7 April, Mr Wilson set out the guidelines for the agreement to differ, as approved by the Cabinet:

> In accordance with my statement in the House on 23rd January last, those Ministers who do not agree with the Government's recommendation in favour of continued membership of the European Community are, in the unique circumstances of the referendum, now free to advocate a different view during the referendum campaign in the country.
>
> This freedom does not extend to parliamentary proceedings and official business. Government business in Parliament will continue to be handled by all Ministers in accordance with Government policy. Ministers responsible for European aspects of Government business who themselves differ from the Government's recommendation on membership of the European Community will state the Government's position and will not be drawn into making points against the Government recommendation. Wherever necessary Questions will be transferred to other Ministers. At meetings of the Council of Ministers of the European Community and at other Community meetings, the United Kingdom position in all fields will continue to reflect Government policy. I have asked all Ministers to make their contributions to the public campaign in terms of issues, to avoid personalising or trivialising the argument, and not to allow themselves to appear in direct confrontation, on the same platform of programme, with

[76] HC Deb 23 January 1975 c1746. See also Benn, *op cit* p305, and *The Castle diaries 1974-1976* by Barbara Castle, 1980 pp287-92

[77] Ibid, c1748

[78] Ibid, c1750

> another Minister who takes a different view on the Government recommendation.[79]

A Labour backbencher, Michael English, asked the Speaker if the announced guidelines were a contempt and breach of privilege, because they restricted ministerial freedom to participate in Parliamentary proceedings. He pointed out that such a restriction did not apply in 1932, when the coalition partners of the National Government had disagreed over Tariff Reform.[80]

However the Speaker ruled that "in general, I think that arrangements made within political parties in this House would be unlikely to raise questions of contempt or privilege. Also, the Chair must be careful not to appear to be trying to interfere in such arrangements". He believed that the guidelines meant that "the new element is freedom to dissent in the country, not any change in the normal practices in this House".[81]

The Prime Minister clearly set the limits of the 'agreement to differ' when, in response to a Parliamentary Question, he stated that it would end "on 5 June, when the referendum poll has been closed".[82]

7.2 2011 Alternative Vote Referendum

During the campaign for the Alternative Vote referendum held in May 2011, it was not MPs within one political party, but two coalition partners that agreed to differ. The 2010 Coalition Agreement signed by the Conservative Party and the Liberal Democrats stated that:

> We will whip both Parliamentary parties in both Houses to support a simple majority referendum on the Alternative Vote, without prejudice to the positions parties will take during a referendum. [83]

The Conservative Party supported the campaign against reform, while the Liberal Democrats campaigned for the introduction of the Alternative Vote electoral system. The parties continued to cooperate in the coalition government until the end of the 2010 Parliament.[84]

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79 HC Deb 7 April 1975 c351W. Several dissenting Ministers had issued a statement at a press conference on 23 March explaining their reasons for disagreeing with the Government's recommendation: *Keesings*, 1975, p.27137. See also Mr Wilson's written answer of 20 March, HC Deb Vol 888 c.471W; Benn *op cit* pp339-56 and Castle, *op cit*, pp347-9

80 HC Deb 8 April 1975 c1018. The first official 'agreement to differ' occurred over Tariff Reform, as the coalition partners of the National Government disagreed. More information can be found in Research Briefing 02809 *Thresholds in Referendums* .

81 HC Deb 9 April 1975 c1238

82 HC Deb 13 May 1975 c65W

83 Coalition Programme, p27

84 "Vote 2011: Tories ruthless and calculating, says Cable", *BBC News*, 7 May 2011; "AV wont split coalition, say Clegg and Cameron", *BBC News*, 1 May 2011

8. Progress of Private Members' Bills in the previous Parliament

In the 2010 Parliament, two identical Private Members' Bills were introduced. In the 2013-2014 session, James Wharton introduced the *European Union (Referendum) Bill*, and a Bill with the same name was introduced in the 2014-2015 session by Bob Neill. The Conservative Party supported the Bills and agreed to differ with their partners in the Coalition Government, the Liberal Democrats. Both Bills failed to pass through both Houses of Parliament and did not receive Royal Assent.

Research briefing 14/55 *European Union (Referendum) Bill* provides more details about both these Bills, and the procedure for passing a Private Member's Bill.

Briefly, the *European Union (Referendum) Bill 2013-14* received its Second Reading in the House of Commons on Friday 5 July 2013. It provided for a referendum to be held before the end of 2017 on whether the UK should be a member of the European Union. The Secretary of State was required to specify the date and conduct of the referendum in Orders before the end of 2016. These Orders would be subject to affirmative resolution in both Houses.

A money resolution was agreed and the Bill was debated in a Public Bill Committee. A new clause was added on the Bill's first day on report to allow those Commonwealth citizens in Gibraltar eligible to vote in European Parliamentary elections there to vote in the referendum. No further amendments were passed and the Bill passed its third reading without a division.

The Bill received a Second Reading in the House of Lords on 24 January 2014. In Committee stage, amendments were passed to change the wording of the question in line with the recommendations of the Electoral Commission; to make the referendum contingent on the production of impact assessments; and to require the Secretary of State to publish an assessment of the UK's intended relationship with the EU in the event of withdrawal. However, the debate on the Bill was then adjourned and no further progress on the Bill was made.

Issues debated during the different stages of the Bill included:

- whether the Prime Minister would be able to negotiate reforms in the EU before the referendum
- whether a referendum was necessary for the legitimacy of continued EU membership
- whether the Bill should be introduced as a Government Bill
- whether the referendum should be mandatory

- whether holding a referendum up to four years in the future was creating uncertainty about the UK's relationship with the EU
- the length of the campaign period
- the wording of the question
- the franchise, including the position of Gibraltar
- a threshold for the referendum
- the possible combination of the poll with other elections
- the use of the super affirmative resolution procedure
- the role of the devolved administrations

The *European Union (Referendum) Bill 2014-15* received its Second Reading in the House of Commons on 17 October 2014. It was identical to the Bill introduced in the previous session (including the clause to extend the vote to Commonwealth citizens resident in Gibraltar that was added during report stage). The Bill was committed to a Public Bill Committee but the Government did not bring forward a money resolution, therefore the Bill was unable to progress any further. There were reports about tensions in the Coalition Government over the failure to pass a money resolution.[85]

[85] "EU referendum bill: Tories accuse Lib Dems of 'killing off' bill", *BBC News*, 28 October 2014

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Disclaimer

Review of the Balance of Competences
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*[1], which was well received both inside and outside Whitehall. More recently, we have compiled a short position paper on the availability of business visas[2] 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

- 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.

[1] CoLC, Consensus (November 2011), *Access to Global Talent – the impact of migration limits on UK financial and professional business services*
[2] CoLC (March 2013), *Open for Business. Open for business visas?*

- 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)[3]. 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[4]. These international 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 [5] directly to the UK's economy, as well as quantitative contribution[6] 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[7]. Each employee's spending on goods and services also benefits the wider UK economy. These educated individuals are likely to

[3]CoLC, Oxford Economics (January 2011), *London's Competitive Place in the UK and Global Economies*

[4] 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

[5] 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*

[6] CoLC, London School of Economics and Political Science (2007), *The Impact of Recent Immigration on the London Economy*, p. 64

[7] CoLC, PwC (December 2012), *Total Tax contribution of UK financial services,* fifth edition

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 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[8].

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[9], 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

[8] *Ibid* 1, p. 29

[9] Established in the Treaty of Rome, 1957; amended by Directive 2004/38/EC on the right to move and reside freely (within the EEA)

European investors stating reduced EU integration would make the UK a less attractive location to invest[10].

10. Such individuals can, under the free movement of labour provisions, be recruited directly by City companies or transferred from elsewhere. Their 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)[11]. 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[12].

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

[10] Ernst and Young (2013), *Ernst and Young's attractiveness survey: UK 2013 – No room for complacency.*

[11] Open Europe (2013), *Kick-starting growth: How to reignite the EU's services sector*.

[12] 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[13].

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[14]. Since 1992, 2.75 million new jobs have been created across the EU[15]. An estimated 4.5 million UK jobs are dependent on exports to the EU[16]. EU FDI in the UK creates 50-60,000 jobs and safeguards 40-50,000 jobs every year[17]. 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 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,

[13] EU companies based in the UK, *Ibid* 11

[14] 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*

[15] 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*

[16] House of Commons (2013), *In brief: UK-EU economic relations – key statistics*

[17] Oxford Economics (2009), *An Indispensable Relationship: Economic linkages between the UK and the rest of the European Union*

decision makers cited access to skilled staff, including EU nationals, as one of the core reasons for choosing the UK[18].

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.

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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[18] The City UK (November 2012), *Driving Competitiveness, Securing the UK's position as the location of choice for financial and related professional services*

Balance of Competences Review – Single Market: Financial Services and the Free Movement of Capital

This is the response of the International Regulatory Strategy Group (IRSG) to HM Treasury's call for evidence in response to the *Balance of Competences Review – Single Market: Financial Services and the Free Movement of Capital.*

17 January 2014

The International Regulatory Strategy Group

The International Regulatory Strategy Group (IRSG) is a practitioner-led body comprising leading UK-based figures from the financial and professional services industry. It aims to be one of the leading cross-sectoral groups in Europe for the financial and related professional services industries to discuss and act upon regulatory developments.

Within an overall goal of sustainable economic growth, it seeks to identify opportunities for engagement with governments, regulators and European and international institutions to promote an international framework that will facilitate open and competitive capital markets globally. Its role includes identifying strategic level issues where a cross-sectoral position can add value to existing industry views.

It is an advisory body both to the City of London Corporation and to TheCityUK.

Key Messages

- Access to the Single Market is vital to the continued success of UK-based financial and professional services firms.
- European regulatory architecture needs to be coherent enough to be implemented at an EU level where appropriate, but flexible enough to allow national implementation to reflect local markets.
- Proposed regulation needs to be subject to more rigorous cost benefit analysis and impact assessment.
- Regulation needs to be properly targeted, and that requires policy makers and regulatory authorities to engage fully with the industry in an appropriate consultative framework.
- Following the regulatory reforms introduced in response to the global financial crisis, policy makers need to enable financial services to support economic growth across the wider economy, across the whole EU.
- The UK government needs to protect the integrity of the Single Market, as the banking union in the euro area begins to take effect.

Introduction

London has long been the most important international financial centre in Europe; a global hub for financial and professional services firms. The reasons for London's history of success as an international financial centre are many and various, including its location, a stable and predictable policy framework, a commitment to open markets, and the ability to attract investors from around the world.

The creation and development of the European Union's (EU) Single Market over the last 20 years has both contributed to and reinforced London's position as the world's leading international financial centre. It has created deeper and more liquid capital markets; provided access to a large pool of skilled labour; and helped to create a larger and more prosperous consumer market.

London's pre-eminence as an international financial centre has meant that the UK has had considerable influence within the EU over the development of financial regulation. The UK has also had influence because of its leading role in global regulatory discussions. The experience and expertise of the regulatory authorities in the UK has always been widely acknowledged in other Member States, even those that do not always share the UK's commitment to open markets, and by the European institutions.

London's standing as a financial centre and the UK's global influence has helped in the development of the Single Market in financial services, particularly the wholesale market. Retail financial services are less harmonised across the EU, reflecting the importance of local factors in determining the products consumers buy. Given local factors are important, the EU needs financial regulatory architecture that is flexible enough to be harmonised at a European level where necessary, but with national flexibility to meet local customers' needs.

The Balance of Competences review is taking place against a backdrop of the UK reflecting on its relationship with the European Union. There are a variety of opinions on this important issue, influenced by many different factors. However, recent opinion surveys demonstrate a large majority of business leaders support the UK's membership of the EU and believe that access to the Single Market is essential for the UK's economic competitiveness.

UK based financial institutions greatly benefit from the ability to employ staff from across the EU. This ability to attract a diverse workforce gives the businesses sectoral-knowledge, familiarity with business and regulatory cultures, linguistic skills and networks across the world, which is vital to ensuring the success of UK based financial institutions.

Business leaders are not uncritical of the EU. They want to see significant reform in Europe to facilitate economic growth and job creation across the whole economy, and in every Member State. This view is shared by the majority of the UK based financial services industry.

Recent surveys which support this position include the CBI's which showed 78% of businesses supported the UK staying a member of the EU, with virtually no distinction between large businesses and SMEs; TheCityUK's survey of financial service business leaders reported that 84% wanted the UK to remain a member of the EU and 95% said access to the Single Market is important for the UK's future competitiveness; and the Engineering Employers' Federation published a report in the autumn of 2013 saying manufacturers supported the UK staying in the EU 'no ifs, no buts'. However, opinion polling in November 2013 by Business for Britain showed many businesses believe the costs of complying with the Single Market outweigh the benefits.

It is useful to consider the UK's influence on the development of financial regulation in the EU, by looking at the development of regulations and competences pre-2008, the international response to the global financial crisis, and the more uncertain situation that has developed since the euro area crisis in 2010.

Before the global financial crisis, the UK played a lead role in shaping the European Union's creation of a Single Market for financial services. Key to this was the Financial Services Action Plan (1999), the central achievement of which was the implementation of the Markets in Financial Instruments Directive (MIFID), which brought the benefits of increased competition and consumer protection in investment services across the Single Market, thus complementing the Single Market in banking which had been achieved earlier in the decade. Another example is the Market Abuse Directive (MAD), where UK experience and expertise led to increased standards in the prevention of market abuse in the Single Market.

In response to the global financial crisis that began in 2008, the G20 and the Financial Stability Board (FSB) have provided the international framework for implementing an ambitious regulatory agenda to improve financial stability and protect taxpayers from the consequences of bank failures. Key elements of this agenda have included addressing the challenge of systemically important financial institutions ("too big to fail"), infrastructure reforms of the over-the-counter (OTC) derivatives market, and compensation in the banking sector.

The UK Government, the Bank of England and the UK regulatory authorities have all been actively engaged in shaping this agenda in the G20, the FSB and the EU.

Given London's role as Europe's international financial centre, it is in the UK's interest to see an internationally coordinated response to the global financial crisis. The UK's membership of the EU means that it is more influential than it might otherwise be in international fora such as the G20, and better placed to shape the EU input to, and implementation of, international regulatory framework agreements.

It is important to remember that the huge number of regulatory changes that have been introduced since the global financial crisis have originated at different levels: domestic, European and international. Often, regulatory change that has been introduced at the European level is the transposition of the G20 and FSB agenda; for example the Capital Requirements Directive (CRD) IV is the EU transposition of the Basel III capital requirements, which is supported by the UK.

Whilst implementing this huge volume of regulatory change has been challenging for both regulators and the financial services industry, a major regulatory response was clearly appropriate given the impact of the global financial crisis.

It is too soon to tell whether the regulatory response to the global financial crisis has been proportionate and effective. From such major change, there is an inevitable risk both to the international coherence of financial markets and to economic growth. However, the EU has not acted alone in implementing major regulatory change. In many cases, the UK has led the way and in some instances, such as banking structures (the Banking Reform Act, based on the Independent Commission on Banking's recommended reforms), has been more radical than either the EU or the FSB. The UK regulators have acted more quickly and taken tougher approaches than the EU regulators, for example with the early implementation of recent reforms, including CRD IV/CRR requirements.

However, there have been some regulatory initiatives originating in the EU that are misconceived and have potentially damaging, unintended consequences, which the UK Government and regulators have opposed. The obvious examples are the proposed Financial Transactions Tax (FTT) and the CRD IV/ CRR restrictions on bank remuneration.

The adequacy of the EU process for developing financial services regulation has also been a widespread concern. Improvements need to be made to the extent of consultation with the financial services industry, and to the thoroughness of impact assessments and cost benefit analysis, including to final users. This is an area where we would support reform of the EU processes.

Since the euro area crisis that began in 2010, the picture has become more complicated. The on-going creation of a banking union has been an important and

necessary step to bring financial stability to the euro area. It has also coincided with the establishment of the ESAs, adding to the complexity of the legislative process.

These changes also present important challenges to the UK, and the UK government and regulatory authorities will need to be engaged fully in EU policy developments to ensure the integrity of the Single Market is preserved. The UK's achievement in December 2012 in securing the "double majority" voting system as part of the banking union was a good example of where the UK government was fully engaged with the process, and secured the right outcome for the UK and for London as Europe's international financial centre. On other issues, the UK government could have been more effective at intervening on behalf of UK based financial services, for example in the development of the Alternative Investment Fund Managers Directive (AIFMD).

The UK has an essential role to play within the EU to continue to make the case for open international capital markets, to influence the creation of a Single Rule Book, and to secure an appropriate completion of the Single Market in services. It should also champion a positive agenda for Europe, which will be essential in making Europe competitive in global markets ensuring it is able to deliver the jobs and growth across the continent that everyone wishes to see.

Many Member States share these ambitions and it is a time of tremendous opportunity for the UK authorities and the financial services industry to work together to reform the EU and to deliver economic growth across the whole economy.

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

The 'depth' of the Single Market for financial services will vary depending upon the unique characteristics of each market: such as whether it is retail or wholesale, the impact and use of technology, the sophistication of the end-user and the extent to which market activity is domestically or internationally orientated. Where there are significant differences in local markets (such as in retail markets), it is appropriate to have a set of nationally adjusted rules and it might even be ill advised to apply a one-size-fits-all approach. It is therefore vital that any EU-level action in the area of financial services is demand driven, subjected to a rigorous assessment of subsidiarity and based on a full cost benefit analysis.

UK based financial institutions have, and continue to be, significantly affected by "EU rules". Prior to the financial crisis "EU rules" were largely targeted at completing the Single Market in financial services and had a largely positive effect on the UK. In particular, the "European passport[1]" for financial services and then the package of reforms contained in the Financial Services Action Plan (FSAP) in 1999, helped pave the way for greater cross-border trade in financial services. It allowed the UK to act as a channel for investment across Europe as well as to create a deep pool of capital and expertise for Europe's businesses.

EU rules implemented pre-2008 were broadly proportionate in nature. Proportionality was an essential platform for the UK's financial industry growth strategy, ensuring that the UK was an attractive destination for international business, and played its role in fulfilling the needs of final users. While UK based financial institutions may have preferred the details of certain rules to be different, some compromise was necessary to deepen the Single Market and the outcomes were broadly acceptable.

It is clear that the outcomes from some of the earlier FSAP Directives have fallen short of the stated objectives largely as a result of the Member States' differing approaches to harmonisation, which has led to uneven transposition and enforcement by national authorities. For example, the slow adoption of the MiFID regime in Spain prevented the full benefits of market reforms from materialising, in terms of increased pan-EU competition and improvements in the quality of trading and execution.

[1] The "European passport" is based on the principle of mutual recognition and allows financial services operators legally established in one Member State to establish/provide their services in the other Member States without further authorisation requirements.

Since the global financial crisis many "EU rules" have been mainly reactive in nature, driven by G20 commitments and targeted towards correcting the problems that led to the financial crisis. The European Commission has tabled a comprehensive framework for financial regulatory reform, including regulations introducing more stringent capital standards at banks and the mandatory clearing of standardised over-the-counter (OTC) derivatives through central counterparties.

Current EU legislative reforms

Asset Management: the recast of the UCITS directive (UCITS V) intends to address issues relating to the depository function, manager remuneration and administrative sanctions.
Capital markets: short-selling restrictions, enhanced transparency rules, regulation of financial benchmarks, clearing obligations for standardised OTC derivative contracts (known as EMIR), enhanced framework for securities markets (MiFID II/ MiFIR), shadow banking regulations, enhanced framework to prevent market abuse (MAD II/MAR) and new regulatory regime for hedge funds and private equity (AIFMD).
Banks: single rulebook of prudential requirements for banks, including capital, liquidity and leverage requirements and stricter rules on remuneration and improved tax transparency (CRD IV/CRR). Rules around deposit guarantee schemes and structural reform proposals (Liikanen proposals).
Single market: creation of the Single Euro Payments Area, strengthened regime for money laundering (AML 4) and proposals for long term investment funds.
Investors/Consumer: responsible lending (Mortgage Credit Directive), investor compensation schemes, access to basic bank accounts, improved investor information for complex financial products (PRIPS).
Insurance/Pensions: new prudential regime for insurers (Solvency II) and strengthened rules on the sale of insurance products (Insurance Mediation Directive II plus PRIPS).
Crisis management: requirement on banks to prepare recovery and resolution plans (Recovery and Resolution Directive).
Banking union: creation of the Single Supervisory Mechanism, the Single Resolution Mechanism and common deposit guarantee scheme.

It is unclear what the cumulative impact of these reforms will be or whether they are proportionate in nature. However, some reforms require particular attention. For example, the financial transaction tax (FTT) proposal does not seem to be appropriate or proportionate, given the lack of clarity about its objectives, the anticipated economic impact and the probable unintended consequences.

The FTT, as currently proposed, will mean that even parties outside the FTT area, like UK pension funds, will be taxed when they trade financial instruments issued in FTT countries. In addition, institutions in the FTT countries are likley to impose a surcharge when they buy financial instruments issued outside the FTT area, on the grounds that they will be taxed by their home country. This will make financing of private and public debt more expensive even for parties outside the FTT area. A study by London Economics[2], on behalf of the IRSG, estimates that the cost impact is likely to be greater on Member States not participating in the FTT, such as the UK, because debt securities represent a greater proportion of their corporations' capital structures.

Given the sheer volume of legislation, it is inevitable that in some areas regulation overlaps bring the risk of creating conflicting or duplicating requirements, and also the potential for consumer confusion or even detriment. For example, as our upcoming analysis of the implications of the FTT for the European regulatory reform agenda finds, there are several compatibility issues with existing and proposed regulatory initiatives.

Where this is likely to occur, legislators need to explore these issues ahead of proposals being tabled. If two separate regulations are still introduced, continual efforts need to be made to ensure consistency where appropriate as the two dossiers proceed. Conversely, where one regulation is introduced covering a number of sectors or products, it will also need to acknowledge where precise exceptions or alterations should be included to take into account the differences of certain products or markets.

An example of where this has proved challenging is the approach taken to MiFID II and the revision of the Insurance Mediation Directive (IMD II), which both address the provision of advice for certain financial products, investment products and insurance products respectively. Initially, these two directives were treated separately, which presented challenges in ensuring the texts evolved consistently. A recent move towards a possible inclusion of IMD II into MIFID II as the latter

[2] London Economics (2013), for the IRSG: "The impact of a Financial transaction tax on corporate and Sovereign Debt", http://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/research-2013/The-impact-of-a-financial-transaction-tax-on-corporate-and-sovereign-debt-ExecSummary.pdf

reaches final agreement, could risk there being insufficient time to ensure the specifics of insurance products are taken into account in these investment rules. Common rules and standards are not always appropriate across the financial systems of 28 Member States and should therefore meet the subsidiarity principle.

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

The UK would benefit from regulations aimed at completing the Single Market for wholesale markets and other financial services which are easily tradable across borders.

Many studies have revealed how continued fragmentation within Europe's capital market results in lower levels of market efficiency and higher costs to financial consumers, when compared with other major economies such as the United States. This has a negative impact on European corporates raising investment finance and on households when accessing everyday financial services or saving for retirement. Achieving greater efficiency and reduced transaction costs within the Single Market is necessary to ensure the long-term competitiveness of Europe's economy. So too is the need to ensure that effective third country regimes are put in place which do not hamper market access between Europe and the rest of the world. Nearly two-thirds of the UK's trade surplus in financial services is dependent on trade beyond the Single Market. As measures such as the FTT clearly illustrate, policymakers need to give sufficient regard to the cross-border character of financial services and markets as a key factor in 'better regulation'.

Greater attention needs to be given to the implementation of regulations. This is particularly important as we are now in the implementation phase of many post-crisis reforms. Financial regulations implemented across all 28 Member States need to be applied consistently.

The propagation of the EU Single Rulebook for prudential regulation by the European Supervisory Authorities (ESAs) could help promote regulator consistency in the future[3]. The ability of the ESAs to participate in colleges of supervisors and

[3] Under the Single Rule book approach, key technical rules are defined at the EU level and adopted through EU regulations, so that they are directly applicable to all financial institutions operating in the Single Market, without any need for national implementation or possibility for additional layers of local rules. A single rule book should help reduce the dead-weight costs associated with cross-border institutions complying with similar rules in a fragmented compliance process across different jurisdictions.

receive all relevant information is also a key element of improving the quality and consistency of regulatory implementation. So far, the ESAs have not used their supervisory consistency powers to any great extent in identifying divergent applications (peer reviews), policing (opinions or recommendations), enforcing consistency application of EU law, nor have they used their industry stakeholder groups effectively.

There are many actions still to prepare for, for example, the enforcement of CRD IV /CRR, EMIR and Solvency II. At the same time, other initiatives, such as the creation of the banking union, will bring a new dimension to the ESAs' banking supervisory convergence role. In the coming years, it will be important for ESAs to address interactions between regulatory authorities. This is particularly important for high-impact regulatory initiatives such as CRD IV/CRR, EMIR, and Solvency II.

However, regulation can only go so far in promoting the Single Market. Using an effective, independent competition regime to modify behaviour and restructure markets may be more effective. DG Competition has played an important role since the crisis in reducing barriers to competition across the EU financial system. DG Competition should consider using anti-trust intervention in the future where financial regulations threaten to undermine the integrity of the Single Market (e.g. access to clearing in euro-denominated products).

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

Financial Stability

The EU's relatively uneven regulatory framework and the uncoordinated nature of crisis management amongst national regulators undermined financial stability during the global financial and euro area crises. For example, the Irish Government's unilateral decision to guarantee all deposits in September 2008 left many other EU countries with little option but to introduce similar measures to protect their banking systems.

Since the crises, the EU regulatory effort to promote financial stability has been largely successful. EU regulators have adopted a multi-faceted approach to stabilising EU financial markets:

Macroprudential regulation: The creation of a pan-EU macroprudential regulator, the European Systemic Risk Board (ESRB) in 2011, was a step forward in overseeing the build-up of systemic risks in the EU. The ESRB is intended to take into account macroeconomic developments, so as to avoid periods of widespread financial distress. The ESRB also contributes to the smooth functioning of the Single Market and thereby ensures a sustainable contribution of the financial sector to economic growth across Europe. Since 2011, it has issued a number of warnings and financial stability reports.

Recapitalisation exercise: The European Banking Authority's (EBA) recapitalisation exercise in 2011/12 was a key milestone in rebuilding market confidence in the EU banking system. The exercise called for significantly higher capital reserves than required by regulatory standards, to help banks replenish their balance sheets.

CRD IV/CRR: New rules requiring banks to hold more and better capital cushions to absorb losses came into force on 1 January 2014. They have additional requirements for the most important banks to maintain sufficient liquidity to bridge crisis situations, and to limit their leverage.

Central clearing: Since early 2013 and in line with G20 commitments, over-the-counter (OTC) derivatives markets have been subject to European market Infrastructure regulation (EMIR), the first comprehensive European market infrastructure regulation requiring all standardised OTC derivative transactions to be cleared through an authorised central clearing house.

Banking union: Plans to establish a banking union sent a strong signal that EU authorities were serious about trying to break the negative link between sovereign debt and banks. It was part of number of initiatives to stabilise financial markets during the height of the sovereign debt crisis. The transfer of prudential supervision to the European Central Bank, compulsory for the euro area, will build on the single rule book of prudential requirements, crisis prevention, management and resolution and deposit guarantees for banks.

The development of the banking union has important implications for the UK, even though it remains outside the euro area. The UK government needs to actively monitor these developments and engage with other Member States in order to protect the UK's interests and avoid dilution of the UK's influence in the EU.

Growth and Competitiveness

The Single Market has had a profound impact on growth and competitiveness in Europe. Larger and deeper capital markets have helped finance businesses and

reduce the cost base of the European economy. Various studies have demonstrated that the more integrated financial markets are, the more efficient the allocation of capital is, because investment opportunities and competition are also greater. The UK's large financial and professional services cluster has reduced costs and increased the range of financial products and services available to European businesses and households. In the absence of the Single Market, final users would be faced with wider spreads and higher costs, businesses could find it more difficult to hedge risk and EU governments find it harder to raise debt.

London has long acted as a natural bridge for third countries accessing the EU's large financial market, given its track record for facilitating international trade in financial and professional services. In fact, decision makers specifically cited access to markets in the EU as a core reason for choosing the UK over other financial centres in over 40% of investment cases considered[4]. In over 45% of investment cases that located in the UK, decision makers cited access to skilled staff, including European nationals who have access to work in the UK, as one of the core reasons for their decision. This is especially the case where firms chose the UK as a European hub, rather than maintaining a number of offices across European locations.

Currently there are over 1,400 financial services firms in the UK that are majority foreign-owned, from around 80 countries.[5] The UK is the leading recipient of financial services foreign direct investment in Europe: over 40% of financial institutions new to locating in Europe chose London as their headquarters in the past seven years.[6]

Since the financial crisis, the growth and competition agenda has been overshadowed by prudential and market based reforms. The European Commission has tabled a number of proposals which may facilitate alternative sources of finance in the future (venture capital, social entrepreneurship and long term finance), but the effects will take time to be seen.

While regulatory reform has undoubtedly contributed towards creating a more stable financial system, concerns have been raised about the volume of regulation,

[4] TheCityUK (2012), 'Driving competitiveness: Securing the UK's position as the location of choice for financial and related professional services' November, http://www.thecityuk.com/assets/Uploads/Competitiveness-Reportlow-res.pdf

[5] City of London (2013) "An indispensable industry: Financial services in the UK", http://www.cityoflondon.gov.uk/about-the-city/what-we-do/Documents/an-indispensable-industry.pdf

[6] Michel Barnier (2013) "The single market in financial services: we need the UK on board European Commission - SPEECH/13/636" http://europa.eu/rapid/press-release_SPEECH-13-636_en.htm

the interaction between different dossiers and the specific impact on the competitiveness of the European economy[7].

An over-emphasis on regulation aimed at mitigating systemic risk is likely to act as a brake on growth-orientated policies. Regulatory reform in financial services cannot be taken in isolation from wider economic policies. True, sound regulation of financial services is important in itself. But financial services facilitate the functioning of the economy as a whole, by channelling savings towards productive investments. Obtaining the balance between stability and growth is not easy, but the UK has a key role to play to achieve it.

Consumer protection

The UK has had a robust consumer protection framework in place since the 1980s, which has helped influence the EU's response. For example, the Market Abuse Directive (MAD) aimed at transferring a number of UK safeguards to other EU Member States, giving investors confidence that markets would be protected against manipulation or abuse. It updated existing EU legislation and set out a harmonised system for dealing with insider trading and other forms of market manipulation.

Since the global financial crisis, there has been an acceleration in the number of EU implemented reforms which may increase consumer protection in some Member States in the future.

In order to restore lost trust and to create a safe environment for cross-border financial services within the Single Market, the European Commission proposed new rules to ensure retail customers receive full information in understandable terms, proper advice, and advisors act in the best interest of clients. The European Commission also proposed safer rules for retail investment funds ("UCITS"). It has also proposed strengthening national deposit guarantee schemes to ensure depositors have full access to their money in case of a bank crisis, and proposed similar rules for investor compensation. Finally, the European Commission has made proposals aimed at making bank accounts cheaper, more transparent and accessible to all.

[7] TheCityUK (2012), 'Driving competitiveness: Securing the UK's position as the location of choice for financial and related professional services' November, http://www.thecityuk.com/assets/Uploads/Competitiveness-Reportlow-res.pdf

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

In the last five years, a large number of separate proposals on financial regulatory reforms have been tabled by the European Commission. Policy makers have been put under public pressure to design and implement complex reforms in tight time periods. The sequencing of the negotiations and adoption of framework co-decision legislation (Level 1) with implementing measures (Level 2) has resulted in some bottlenecks and challenging timetables being proposed (e.g. CRD IV, EMIR, Solvency II). It is too soon to say whether good regulatory outcomes have resulted from this process.

At Level 1, we believe there are a number of ways the European legislative process can be improved, including:

G20: The G20 agenda, supported by the UK, should be recognised as the international driver of regulatory reform. Agreeing commitments on financial regulation will help financial institutions operate across markets and facilitate greater cross-border trade. It is important that EU legislators keep within the bounds of international standards whenever possible. Deviating from common standards will result in poor outcomes (e.g. loss of competitiveness, instability) for the financial industry, the wider economy and consumers. For example, the EU's action to restrict short selling on EU markets (Regulation on short selling and certain aspects of credit default swaps) could distort equity markets, increase settlement failure, and in time, aggravate falling share prices (especially in financial institutions).

Transparency: The urgency of the legislative response to the financial crisis meant that the usual process of second reading was dropped in some cases to speed up the process. In the absence of the second reading, ensuring that there is sufficient transparency on trialogue negotiations is crucial.

Consultation: The new legislative process warrants re-examination of the current consultation process. In particular, there needs to be greater input from industry, both small and large firms, at the early stage of the legislative process, when the European Commission is investigating problems and considering what, if any, action should be taken. A similar process is essential before legislation is brought forward.

Timetables: The European Parliament should exercise its influence to promote a common sense approach in setting timetables for (1) transposition of Regulations and Directives; (2) implementation of regulatory technical standards; and (3) determination of review periods. This would allow national regulators and regulated firms sufficient time to build systems and operational structures, and then to adapt to new operational requirements. In the past few years, major reforms such as CRD IV, Solvency II and EMIR have all been delayed due to a failure to reach political agreement. Timetables for the legislative process need to be realistic if the results are going to avoid being damaging.

Technical advice: Given the complex nature of reforms which in some cases run to hundreds of pages, it is important that all parties have access to the necessary technical advice, and consult with the industry, before the Level 1 negotiations start. Sufficient time needs to be allowed for this. The European Commission, the ECB, and the ESAs, all need to ensure that they employ people with the relevant technical expertise in the areas where they promulgate regulation. They also need to have access to the relevant expertise and industry knowledge from market participants. To achieve this, we need to have meaningful consultation processes and timeframes.

Impact assessment: There should be a comprehensive assessment of the impact of all proposals before regulations are adopted; including those tabled during the trialogue negotiations.

It should be easier to review, amend or remove poor legislation which fails to achieve its objectives once implemented.

Maximum harmonisation regulations work best if they are applied in markets which are largely homogenous, market participants are cross-border in nature, and where differential rules may give rise to systemic risks (wholesale markets). Minimum harmonisation is appropriate on more nuanced areas which require supervisory judgement (such as risk culture).

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

Third-country access rules in European regulations should avoid limiting the ability of investors to access high-growth emerging markets and of firms to transact with third-country counterparties. It is essential to maintaining and growing levels of market liquidity in the UK financial services sector, and therefore access to investment capital across the EU.

Since the financial crisis there has been a general tightening of third country access to the EU. For example, the delay in finalising equivalence determination for third country regimes under the Credit Rating Agencies Regulation caused some concern amongst market participants. Of particular concern were proposals in MiFID II that have the potential to restrict access to services provided by non-EU countries, and provisions in AIFMD which limited European firms' ability to contract with third party asset managers.

Such restrictions risk violating the EU 's international commitments in multilateral and bilateral trade agreements, as well as disadvantaging emerging markets and developing economies. The regulatory aspects of the Transatlantic Trade and Investment Partnership (TTIP) should include financial services. This is the position of the UK government, and by making the case via the EU institutions, the point carries greater weight than if only made on a unilateral basis.

Where third country rules are put in place, it is important that they are agreed on an objective basis and do not potentially give rise to market protectionism. The effectiveness of the approach that the EU has adopted so far, of determining whether third countries have "equivalent" regulation, is as yet untested. It remains to be seen whether this works in practice while providing adequate protection for consumers.

We welcome initiatives such as the agreement between the European Commission and the Commodity Futures Trading Commission in regulating cross-border derivatives in the *Path Forward* in July 2013. Such measures should be replicated in other G20 commitments where possible.

The UK government must play a central role in promoting third country access and liberalisation of financial markets as a Member State of the EU. The UK is in an excellent position in terms of the scope of its involvement in multilateral organisations which includes the EU, G8, G20, FSB, Organisation for Economic Co-operation and Development and the Commonwealth. This seat at the table in all the major bodies responsible for directing policies with regard to financial markets and international trade is vital for the UK to champion the role of open markets in delivering economic growth, and gives it the appropriate policy weight.

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

Retail banking and retail insurance markets remain largely fragmented along national lines, with mergers predominantly between firms in the same country. Whilst there may be long-term benefits to adopting EU-level regulations in these areas, there are many challenges in adopting harmonised retail regulations across heterogeneous markets.

Apart from regulatory differences, there are many barriers to cross-border retail, including:

- cultural differences (risk profile etc.)
- insufficient tax harmonisation
- administrative requirements
- consumer inertia.

The regulatory architecture in this area needs to be sufficiently flexible to work in local markets. If regulation is adopted, it should be clearly targeted to protect consumers and ensure they have access to an appropriate range of products and services at a competitive price.

In principle, EU-wide regulations should focus on markets which are larger, have more players and economies of scale. In practice, the focus should be on those products and services that are most easily tradable across national borders.

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

There has been a significant shift towards regulation and supervision at the EU level following the financial crisis. The ESAs will play an important role in promoting supervisory convergence across the whole of the EU and in ensuring that new structures, such as banking union, do not unintentionally fragment the Single Market.

The establishment of the new architecture sent an important signal to markets and consumers, helping to rebuild trust and credibility of the European financial market. However, the new EU supervisory architecture has only been in place since 2011. A complete assessment of the new supervisory structures is therefore not yet possible e.g. EIOPA only receives its full powers under the implementation of Solvency II which is currently in train.

The current European Commission review of the ESAs is exploring ways to improve their operation – this is important, as the way these authorities operate in practice is just as important as any 'balance of supervisory powers'.

Improvements should include using a common set of definitions in their technical standards; this would promote coherence of financial regulation. These definitions should be available online as a single 'dictionary'. ESAs should produce their own timetables setting out the consultation periods for all the technical standards related to a particular regulation. The industry should have additional opportunities for interaction with the ESAs during the drafting of regulatory technical standards. UK based financial institutions have global experience and can play an important role in raising supervisory standards across the EU.

Expert Advisory Groups have a role to play, but they need to become more transparent in their operation including on the topics under discussion. The ESAs should consult with the Expert Advisory Groups before proposing legislation, to draw on their expertise, before rather than after proposals have been issued, which is their current practice. ESAs resource constraints should also be addressed given the important role they will play in shaping the future direction of the EU financial system.

8. Does the UK have an appropriate level of influence on EU legislation in financial services? How different would rules be if the UK was solely responsible for them?

The UK remains a very important voice in the development of EU financial regulation. Member States recognise and respect UK experience and expertise.

The UK's strategy for financial services needs to take a long-term approach. The UK government and financial institutions need to develop a positive agenda for growth and reform across Europe to help inform regulatory development. The UK government needs to encourage the PRA and the FCA to actively participate in the development of EU legislation.

Widespread UK secondments across the EU institutions and ESAs, to share and develop financial expertise, would be a positive development.

The UK chairmanship of the G20 in 2009 demonstrated how the UK was able to influence the international debate in ways which have been helpful in informing subsequent policy debates in the EU.

The UK is now leading the international debate on reforming corporation tax systems to deal more effectively with the taxation of intangibles and intellectual property, in a way which will ultimately shape how corporates organise their tax arrangements within the Single Market.

The EU needs the UK's influence as a champion for liberalisation and free markets, not just in Brussels, but on the global stage. An economic recovery can be supported by open, competitive and efficient markets. These enable the movement of people, capital and services across borders to drive growth across the whole economy. The increasing internationalisation of the City of London, an asset which serves the whole European economy, demonstrates these benefits in action.

The Single Market has been a major asset to the UK's financial services sector, while in turn the City of London has played a significant role in spearheading the development of a more integrated and cross-border financial market place. It is in the interests of the UK and Europe to have a coherent international financial regulatory framework which can help drive growth and competitiveness. Whilst global reforms have improved financial stability, reform needs to balance stability with promoting growth across the wider economy.

It is unclear how different UK rules would be if they were purely a national competence. In the 1990s and 2000s, the UK spearheaded the package of reforms designed to remove barriers to cross-border trade and boost integration. The UK's regulations on investment services and market abuse enforcement helped shape the subsequent EU Directives, MiFID and MAD, respectively.

Post the financial crisis, reforms have been primarily driven by G20—which the UK government helped shape in the immediate aftermath of the crisis. Undoubtably, there are some areas of EU rules where the UK would have taken a different approach. However, there are many examples where the UK would have taken a tougher stance. Recently, UK rules on financial benchmarks introduced a stringent Approved Persons regime for LIBOR submission and administration, together with requirements around internal controls and governance. Moreover, the UK's new Banking Reform Act (based on the ICB's recommendations) applies tougher requirements on banking structures than the current European proposals (the Liikanen report).

9. How effective and accountable is the EU policy-making process on financial services legislation, for example how effective are EU consultations and impact assessments? Are you satisfied that democratic due process is properly respected?

The EU regulatory reform agenda is at a crossroads. The European economy can reap huge benefits from current financial services reforms, if they are targeted to do the following:

- protect financial investors and consumers
- enhance the financial systems' shock absorption capacity to withstand future shocks
- reduce national divergences and costly fragmentation
- harmonise and strengthen risk management practices
- inject transparency to reduce information asymmetries
- reduce compliance costs of cross-border trade
- guard against the dangers of systemic risk and too-big-to fail financial institutions.

To establish a regulatory framework that can mitigate future crises, while not over-regulating in a way that inhibits growth and innovation, we need to understand how financial services work and what is the real impact of regulation on the wider economy. We welcome the spirit of engagement with the European Commission and the Parliament that informs this process. Engaging proactively with business is essential for policymakers looking for effective solutions to the current set of problems, and that, of course, is a two-way process.

We need to ensure that financial services remain an important part of the EU's offering to global business. We should value the support financial services provide to other sectors of the economy throughout the EU: providing better access to finance and lowering borrowing costs faced by households, businesses and governments, and increasing the potential for trade-led growth and investment. This is in line with the aspirations for the Europe 2020 strategy; both tapping the potential of the Single Market and attracting private capital to finance growth.

We are appreciative of efforts by Members of the European Parliament to engage with the sector during the legislative process. However, we are concerned at the closed nature of the trialogue process which makes it difficult for stakeholders to meaningfully engage with the European institutions. Adopting the same arrangements for trialogues as for Council Working Groups would promote transparency.

The mechanics of cost benefit analysis which demonstrate the need for new regulations must be more robust in order to avoid unintended outcomes. In a number of cases, the impact analysis is merely a qualitative comparison of possible approaches, rather than a proper quantified analysis, for example, Central Counterparty requirements as part of EMIR. Moreover, sunset clauses should be incorporated in proposals, so that modifications can be made to deal with any unforeseen adverse consequences.

10. What has been the effect of restrictions placed on Member States' ability to influence capital flows into and out of their economy, for example to achieve national public policy or tax objectives?

The free movement of capital in the EU is vitally important for London as Europe's international financial centre. Free movement of savings and investment flows between Member States has enabled London to position itself as a hub for Euro dominated business. The UK financial services sector attracts more foreign direct investment (FDI), and the UK attracts more FDI, than any other EU Member State. Economic research shows that ease of access to the integrated the Single Market is the lead driver for firms to invest in the UK[8].

In very exceptional circumstances, there is a role for capital controls as a macro-prudential tool to stabilise the economy to address the negative effects of large and volatile capital flows (Iceland in 2008 and Cyprus 2013). However the removal of the controls should be pursued as soon as possible to maintain the integrity of the internal market.

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

It was feared when the euro was created and the UK remained outside, that business would naturally migrate to centres within the euro area. In fact, these fears proved unjustified, but this was in large part because all the different elements in the Single Market Framework made it possible for business to be conducted in euro-denominated instruments in the UK and the other "Out" countries, on exactly the

[8] Source TheCityUK 2013 Statistical database

same legal basis and with the same degree of regulatory protection as within the euro area. This has led to London being the de facto centre of the euro-denominated markets[9] with major portions of the related market infrastructure located in London.

Thus far, the understanding that the UK was a fully collaborating participant in all these arrangements has largely kept at bay political pressure for euro-denominated business and related infrastructure to be relocated within the euro area. Discrimination against business being done outside the euro area, but still within the EU, is illegal under the Treaties. However, that Treaty protection would be removed in the event that the UK was to leave the EU and a large question mark would exist over the future of London as a key centre for euro-denominated business.

We support the creation of a strong banking union as a vehicle to restore credibility and stability to the euro area banking system (i.e. banks whose home country is in the euro area), a large part of which is located in London or is the counterparty of London-based firms.

The development of the banking union could potentially present a risk to the integrity of the Single Market, if rules were to be developed which only applied to euro area banks or which affected the relationship between activity within the euro area and activity in the rest of the EU.

The ability of the UK to be a 'gateway' to European markets may come under threat if additional requirements over product provision were given to businesses inside the Single Supervisory Mechanism (SSM). UK based banks, with subsidiaries in the euro area, will be directly impacted by the proposals. It is vital that banks whose home country is outside the banking union are not disadvantaged during their interaction with regulators or in their business activity inside the banking union. Similarly, it is important that the legal treatment of branches located inside the banking union is the same as it is for branches in other EU Member States.

As a priority, the UK government should seek to protect the integrity of the Single Market.

Many of the potential risks to the Single Market can be mitigated through adequate safeguards. We welcome the double majority voting requirements for the EBA's decisions on mediation and technical standards which the UK government successfully negotiated in 2012. This measure ensures that decisions are backed by both a majority of the participating and the non-participating Member States,

[9] 44% of all euro denominated foreign exchange trading worldwide in 2013. Source: TheCityUK 2013, "The UK and EU: a mutually beneficial relationship".

helping to preserve the UK voting voice, and weight, on the future of regulations in the Single Market.

It is vital the UK retains an influential voice in discussions on the future direction of the banking union. In particular, in relation to supervisory models, policies related to the licensing of firms, passporting arrangements, and the treatment of third country banks establishing branches or providing cross-border services. There should be a common interest in the closest possible dialogue between the UK regulators and the SSM, given that a large proportion of the business of banks with their home country in the euro area takes place in London, and much of it is subject to conduct of business regulation by the FCA as host regulator under the Single Market rules.

This commonality of interest is also important in relation to the other aspects of banking union beyond the SSM, namely arrangements for recovery and resolution and deposit insurance.

It will be important to monitor closely for any signs of fragmentation to the Single Market, as banking union develops from 2015 onwards. EU leaders have consistently acknowledged that the Single Market must be protected in any legislative proposals brought forward to strengthen economic and monetary union.

International Regulatory Strategy Group
17 January 2014

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TheCityUK

EU REFORM

Detailed proposals for a more competitive Europe

May 2015

TheCityUK

TheCityUK represents the UK-based financial and related professional services industry. We lobby on its behalf, producing evidence of its importance to the wider national economy. At home in the UK, in the EU and internationally, we seek to influence policy to drive competitiveness, creating jobs and lasting economic growth

Financial and related professional services are the UK's biggest exporting industry. We make a £67bn contribution to the balance of trade, helping to offset the trade in goods deficit. TheCityUK creates market access for its members through an extensive programme of work on trade and investment policy. To achieve this, we work closely with governments and the European Commission to represent member views and help deliver the best outcomes in international trade & investment negotiations. Allied to this, we have a country-focused programme to build relationships and to help open markets where our members see significant opportunities. We also have a strong focus on ways of influencing and delivering regulatory coherence through dialogue with regulators, governments & industry bodies internationally.

FOREWORD

The City is Europe's financial centre and the UK's membership of the EU is of strategic importance to the financial and related professional services industry. Business opinion both within and beyond our industry is that continuing membership is important to Britain's competitiveness, but reform is essential.

We are not alone in calling for the EU to work better for all of its 28 Member States and 500 million people. The British Government is committed to negotiating reforms ahead of a referendum; other Member States have also made clear their support for reform. The Juncker Commission has acknowledged the need for reform by its re-organisation of the Commission's work and the aim to be 'big on big things and small on small things'. It is also timely to reflect on the meaning of 'ever closer union' in a Europe much changed since that ideal was first espoused.

TheCityUK has produced the detailed proposals in this paper as practical measures to support the process of EU reform. In particular, we have focussed on the Single Market, the economic cornerstone of the Union. More detailed comment has been made elsewhere on the Capital Markets Union, but a Single Market for capital is central to the ability of our industry to be competitive in the global economy and deliver the jobs and growth which Europe needs.

The reforms proposed here are both achievable and cumulative; some of the individual measures are small in themselves, but taken together, they will enable Europe to do less in a more efficient and effective manner and create a deep and strong Single Market, open to the world. The equal treatment of Member States, regardless of which currency they use, and getting the balance of regulation right to enable growth are also central to our argument. In the previous EU mandate, the focus was on stabilising the financial system; in the current five year term there is an opportunity to create a strong and focused European Union able to compete successfully with the rest of the world. The test of any reform proposals must be that they encourage economic growth, prize competitiveness, bolster Europe's ability to foster global trade and investment and underpin the principle of subsidiarity and proportionality.

Chris Cummings
Chief Executive, TheCityUK

1.0 INTRODUCTION

TheCityUK believes that the European Union stands in need of reform, both to encourage a focus on pro-competitive, growth-orientated policies and to ensure that these policies are devised and carried out with the optimum combination of EU and Member States' powers and resources. The European Single Market, open to the world, provides the most secure way to support economic growth, which is so vital for the future prosperity of Europe and individual Member States. However, the Single Market needs to be fit for purpose, covering only those areas where common rules are necessary for the common good and constructed so as to deliver the results that are intended. There are shortcomings in the present arrangements, both of omission and commission and in the institutional processes used to construct and develop them. The dynamics and complexities of the EU have also changed since the original design of its current architecture and of the relationships of its institutions with Member States and with each other. Now is the time to modernise, refresh and update the EU to make it more relevant to citizens and put it on a more efficient footing.

In the debate as to whether 'more Europe' or 'less Europe' is needed in the field of financial and related professional services, TheCityUK rests firmly on the side of a 'better, more thoughtful Europe' that provides the deep pools of capital needed by business to lift levels of investment and hence growth in jobs and prosperity. This requires activity at EU level only where necessary and appropriate and considered, complementary action at Member State level. In short: 'Europe where necessary, national where possible'.

The reforms which are needed are numerous but are in many cases modest rather than revolutionary. It is through these numerous but necessary small reforms that real change will be achieved. The current Commission has undertaken to reform itself in ways which seem likely to further the changes that are needed. However, for Member States to achieve the goals they have set themselves, real progress needs to be made by all players involved, whether public or private. TheCityUK hopes and expects that the opportunities brought about by current debate on the future of the EU and how it works will now be exploited in order to meet the requirement by the people of Europe and their Governments for reform.

2.0 EXECUTIVE SUMMARY

A deep and strong Single Market, open to the world	
R1	Reaffirmed commitment to the completion of the Single Market
R2	Implementation of the Services Directive
R3	Formation of a Single Market Council to replace the Competitiveness Council
R4	Completion of the Single Market in Financial Services
R5	Development of a Single Capital Market
R6	Completion of the Digital Single Market
R7	Maintenance of access to global talent
Better regulation agenda	
R8	Reformed organisation of the European Commission, Council of the European Union and European Parliament
R9	Impact assessments for all EU institutions by an independent Regulatory Scrutiny Board
R10	Greater respect for subsidiarity and proportionality
R11	Mandatory post-implementation reviews
R12	Assessment of cumulative cost of regulation
A European agenda for jobs, growth and competitiveness	
R13	A European Commissioner for Growth
R14	Eurogroup Chair to be a permanent member of the European Council
R15	Encouraging long-term investment into the EU's economy
R16	Development of a Code of Conduct for the EU's Commercial Policy
R17	Resources for negotiating trade deals
R18	Increased spending on research and innovation
R19	Harmonisation of the EU's third country regime
R20	Third country access to the EU and effective communication and agreement between Commission Directorates-General
Fair and equal treatment of all Member States	
R21	Strengthening the involvement of national parliaments
R22	Protecting the integrity of the Single Market
R23	The ESAs' role and encouraging their alignment with the Single Market
R24	Strengthening of the ESRB's cross-sectoral approach
R25	Transposition and enforcement of EU legislation

3.0 THE IMPORTANCE OF THE SINGLE MARKET FOR FINANCIAL AND RELATED PROFESSIONAL SERVICES IN THE EU

Europe needs economic growth for its citizens and for its businesses, for jobs and for a high standard of living; financial services are vital to delivering that growth. All economic activity makes demands on the financial system and is supported by it. It is therefore critical that the financial system is allowed to play its full role in enabling job creation and growth.

The years of the financial crisis saw the financial sector weakened and unable to play its full supporting role in the wider economy. Numerous measures have been taken to remedy earlier shortcomings and much has been done to establish the regulatory framework necessary for a strong, stable and supportive financial system. Financial stability is the basis for sustainable growth. However, high unemployment rates and weak economic growth also pose a risk to financial stability. The regulatory architecture needs to enable, rather than inhibit, growth by providing a seamless and effective conduit for capital to reach businesses. TheCityUK therefore supports the focus on jobs and growth, subsidiarity and better regulation adopted by President Juncker and his Commission. Regulation needs to be proportionate and tested for its effect on the Commission's agenda for jobs and growth. The Commission's Investment Plan and associated measures to promote long-term finance as well as the Capital Markets Union (CMU) initiative are also welcome. It is important that the EU builds on these initiatives and works with the financial services industry and others to achieve their delivery.

A number of EU Member States, have put forward ambitious proposals for EU reform. The EU can only be made to work better if support for reform is broad. TheCityUK will work with the financial and related professional services industry across the EU to develop the proposals put forward in this report and build alliances to deliver a better, more competitive EU.

The Single Market in financial services must facilitate the creation of jobs and growth and provide support for reform to make Europe more dynamic, flexible and globally competitive. Each part of the financial system has its role to play – including banking, insurance, asset management, long-term savings and market-based finance. Much has been done to reform financial regulation but a healthy financial system needs all its constituent parts to function well. It also needs to cater flexibly for new approaches to financing business, in the interests of enhancing European firms' ability to invest in new opportunities and compete in expanding global markets. The share of intermediation performed by banks is unlikely to match that experienced in the past. While smaller firms will continue to show a preference for bank finance, high growth companies and larger firms would benefit from a richer eco-system. It will therefore be increasingly important that the provision of market finance, both

11 MILLION

FINANCIAL AND RELATED PROFESSIONAL SERVICES FIRMS EMPLOY OVER 11 MILLION PEOPLE ACROSS THE EU. THERE ARE OVER 2 MILLION EMPLOYEES OF FINANCIAL AND RELATED PROFESSIONAL SERVICES FIRMS IN EACH OF GERMANY AND THE UK.

€77BN

THE EU IS THE LEADING EXPORTER OF FINANCIAL SERVICES WORLDWIDE, WITH EXTRA-EU EXPORTS OF €77 BILLION ACCOUNTING FOR ABOUT A QUARTER OF GLOBAL FINANCIAL SERVICES EXPORTS.

short and long-term, can play its full role in the years ahead. Practices already vary across Member States and businesses will no doubt continue to show a variety of financing models in the future. The important feature, from the point of view of the financial sector's contribution to the EU's competitiveness, is that all forms of European enterprise – large and small – should be free to choose the financing that works best for them, without artificial constraints distorting business choices. The focus on CMU by the new Commission recognises this.

The Commission has suggested that '90% of global economic growth in the next 10-15 years is expected to be generated outside Europe'.[1] It is important for the EU to be open to growth around the world and be able to draw on it and profit from it. The need for CMU to enshrine an open capital market – open to inflows of capital from the rest of the world and encouraging overseas investment – is one key corollary of Europe's reliance on growth in other regions, notably Asia. Another is the need for the EU to maximise the benefits to be derived from Europe's growing suite of bilateral trade and investment agreements with trading partners. The Commission's strategy "Global Europe – Competing in the World"[2] set the scene for a programme that has resulted in a series of bilateral trade agreements that are both broad (extending over all sectors of goods and services) and deep (covering matters such as regulatory cooperation). Agreements with Canada, South Korea and Singapore are already in place. There is the promise of future agreements. First among these is the Transatlantic Trade and Investment Partnership (TTIP), which will bring the EU and the US, as the world's two largest trading partners, into a closer trade and investment relationship than ever before. Agreements with Japan and with the ASEAN countries are also important components of the strategy. There are also negotiations for the plurilateral Trade in Services Agreement (TiSA) which offer the prospect of removing barriers to high-added-value services trade between the EU and some of its most significant markets, including the whole of North America (the US, Canada and Mexico) as well as a range of other partners.

In concluding these agreements Europe will gain new markets for the products of EU enterprises operating in the Single Market. It goes without saying that Europe's trading partners will in turn expect an open market within Europe. The Single Market as it has been realised today represents huge progress. But there is still more to be done in removing barriers – particularly in services business – between Member States[3]. To do so will help services businesses to achieve the economies

45%

BANKS IN EU MEMBER STATES HOLD AROUND 45% OF GLOBAL BANK ASSETS. OVER HALF OF CROSS BORDER INTERNATIONAL BANK LENDING, A TOTAL OF OVER €16 TRILLION, ORIGINATES FROM BANKS IN THE EU.

THE EU ACCOUNTS FOR 30% OF THE GLOBAL INSURANCE MARKET, WHILST 6 OF THE TOP 10 GLOBAL INSURERS ARE HEADQUARTERED IN EU MEMBER STATES.

[1] *Trade: a key source of growth and jobs for the EU* European Commission (2013)
[2] *Global Europe – Competing in the World: A Contribution to the EU's Growth and Jobs Strategy* European Commission (2006)
[3] TheCityUK/ Independent Economist Group *The Economics of Trade in Services (2015)*

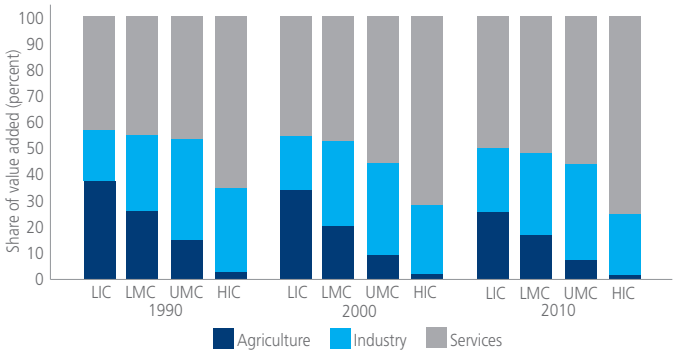
of scale that will enable European service providers to compete globally more powerfully than at present and to use the opportunities that the EU's programme of trade and investment agreements will bring, not least to boost jobs and prosperity across the EU.

Trade in goods and commercial services 2013, € billions

Country or region	Imports	Exports
EU	2188	2415
United States	2079	1688
China	1716	1817
Japan	750	648
South Korea	468	506

Source: Eurostat, WTO

Growth in Added Value of Services for EU Member States, as High Income Countries



Source: World Development Indicators.
Note: LIC = Low-income country; LMC = Lower-middle-income country; UMC = Upper-middle-income country; HIC = High-income country. Data for 2009 instead of 2010 were used for high-income countries.

As High-Income Countries (HICs), EU Member States stand to benefit most from expanding their services sectors and the growing added value to be gained from them.

Share of world foreign direct investment (FDI) in 2012 (%)

Country or region	Outward stock	Inward stock
EU	45.5	34.2
United States	35.7	26.5
Latin America	4.1	11.9
China	3.5	5.6
Japan	7.2	1.4

Sources: Eurostat, Unctad

The EU economy accounts for the highest global shares of both inward and outward FDI.

TOGETHER, THE EUROPEAN UNION'S 28 MEMBERS ACCOUNT FOR 16% OF WORLD IMPORTS AND EXPORTS

4.0 EU REFORM PRINCIPLES

This report builds on TheCityUK's previous work and in particular on *EU Reform – A View from TheCityUK*. It suggests detailed reform proposals that are needed to improve the EU's global competitiveness and facilitate sustainable growth.

These reforms should be coupled with the core principles of subsidiarity and proportionality: 'Europe where necessary, national where possible'. TheCityUK supports President Juncker's ambition for the EU to be 'big on big things and small on small things'.

The Single Market is the EU's flagship project. It represents the world's largest market with 500 million customers, worth £14 trillion annually. A renewed focus on a deep and strong Single Market, with fair and equal treatment of all Member States, small and large, both within and outside the euro area, needs to be at the centre of any reform agenda.

The time is ripe for action; there is a clear opportunity to work on the reform agenda in the context of the Commission's renewed focus on growth and to develop a regulatory architecture that furthers this ambition. It is crucial to recalibrate existing legislation and strike the right balance between consumer protection, jobs and growth. In advancing a better regulation agenda, greater respect should be paid to subsidiary and proportionality.

Many Member States have produced reform proposals and are calling for change. It is in the interest of all Member States that the EU should work better and TheCityUK welcomes the opportunity these national and European initiatives create to work together towards delivering a coherent programme.

If the EU is to serve the interests of its people better, the reform agenda needs to focus on change that can be delivered quickly, while not losing sight of more long-term and strategic goals. The most urgent reforms can be achieved within the existing treaty framework and concerted efforts should focus on incremental reform across a broad spectrum of initiatives. A lot of little things need to be done much better. Cumulatively these can amount to a major step forward in terms of outcomes. This alone will not suffice in the long-run and there is a debate to be had about a long-term vision for the EU. This paper also puts forward some ideas to be considered as part of that debate.

These proposals do not ask for more Europe, but for a better Europe, combining long-held beliefs about the importance of subsidiarity and proportionality with the opportunity to create jobs and economic growth.

SUBSIDIARITY AND PROPORTIONALITY

The principle of subsidiarity as defined in Article 5 of the Treaty of the European Union (TEU) sets out when the EU is competent to legislate. Similarly, the principle of proportionality (Article 5 TEU) limits the institutions to act only to the extent that is needed to achieve the objectives of the Treaties.

The application of both principles is laid down in the Protocol on the application of the principles of subsidiarity and proportionality which was reformed by the Lisbon Treaty to improve monitoring. The Protocol, inter alia, sets out that the Commission is obliged to prepare a Green Paper and a statement demonstrating compliance with the principles of subsidiarity and proportionality.

5.0 PROPOSALS FOR EU REFORM

5.1 A deep and strong Single Market, open to the world

The freedoms conferred by the European internal market have played a critical role in advancing prosperity in Europe for over five decades. The economies of scale for the continent as a whole would not have emerged without the free cross-border movement of goods, services, labour and capital. Each Member State would have been less well-equipped to play its economic role on the global stage. The advantages which the Single Market has delivered need to be preserved and, where agreed and necessary, extended.

The core role of financial and related professional services is to support the efficient operation of the economy, finance business and help meet the aspirations of individuals. If the market in financial services does not perform as well as it could, then it will be unable to fulfil its critical function of providing the finance for investment which helps businesses to grow and provide jobs. The EU's political, economic and social model cannot exist without the support of a well-functioning financial services sector. This can only be achieved through competitive provision of financial services within a framework of smart and proportionate regulation.

THE FOUR FREEDOMS

The four freedoms – the free movement of people, goods, services and capital – are the founding principles and cornerstones of the Single Market. They were first set out in the Treaty of Rome in 1957. With the Single European Act of 1987 the institutions gave themselves a deadline for competition of the Single Market by 1993. However, even today the Single Market remains incomplete in important areas.

THE ROAD TO THE SINGLE MARKET

1957: Treaty of Rome and founding of European Economic Area

1968: European Customs Union

1987: Single European Act

1992: Completion of the Cockfield Single Market programme

1995: first enlargement of the Single Market (Finland, Sweden and Austria)

2004: second enlargement of the Single Market (10 new Member States)

2006: Adoption of Services Directive

2007: third enlargement of the Single Market (Romania and Bulgaria)

2013: fourth enlargement of the Single Market (Croatia)

R1

Reaffirmed commitment to the completion of the Single Market

In the aftermath of the financial crisis, the EU rightly concentrated on bringing stability to the financial system. This has allowed the 2014-19 term to concentrate on economic growth with a renewed focus on the completion of the Single Market. TheCityUK believes that Member States should reaffirm their commitment to the completion of the Single Market, including in financial services, while acknowledging that a top-down harmonisation approach is not always the most efficient solution.

The external component of the Single Market, facilitating relations with international markets outside the EU, is equally important as it enables the EU to maximise the benefits from its relationship with the rest of the world.

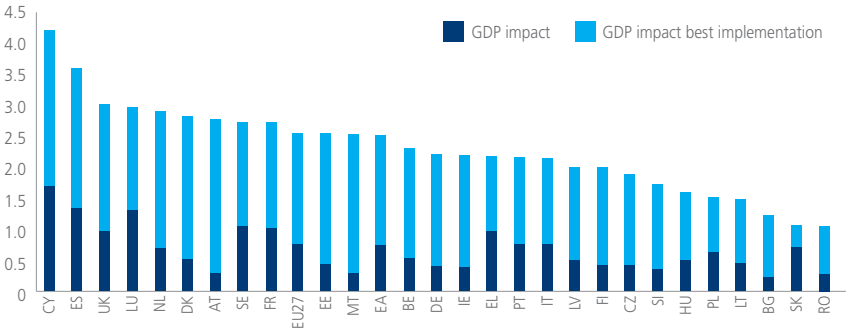
The Single Market Acts I and II[4] highlight areas where the Single a Market is still incomplete. The Single Market Act II identifies twelve areas for action to fully exploit the potential of the internal market. Non-tariff and technical barriers remain significant, as are the home bias, a preference for trade within national borders, and delays in transposing and implementing rules.

The European Commission should produce an action plan[5], setting out specific proposals to eliminate non-tariff barriers along with an implementation timeline. The European Council should commit to the completition of this programme by an agreed deadline.

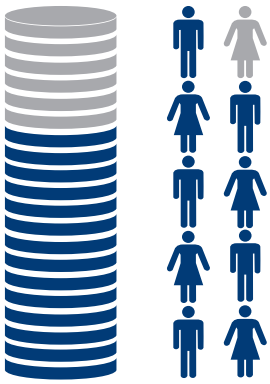
R2
Review of the implementation of the Services Directive

The European Services Directive was adopted in 2006 and aims to establish a competitive internal market in services and facilitate growth and job creation. The EU's services sector accounts for around 70% of its GDP and 9 out of 10 jobs in the EU. It has been estimated that liberalisation of services in the EU could lead to an increase of 0.3-0.7% of GDP[6]. The graph below illustrates the potential impact of further implementation of the Services Directive.

GDP impact of further implementation of the Services Directive (%)



Note: European Commission, First Assessment of economic impact of the Services Directive, June 2012
Source: Booth et al (2013)



THE EU'S SERVICES SECTOR ACCOUNTS FOR AROUND 70% OF ITS GDP AND 9 OUT OF 10 JOBS IN THE EU. IT HAS BEEN ESTIMATED THAT LIBERALISATION OF SERVICES IN THE EU COULD LEAD TO AN INCREASE OF 0.3-0.7% OF GDP

[4] *Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth European Commission (2011) and Single Market Act II Together for new growth* European Commission (2012)
[5] This action plan should be similar to the White Paper proposed by Lord Cockfield in 1985.
[6] De Bruijn et al *The trade induced effects of the Services Directive and the country of origin principle* (2006)

Delayed and partial implementation has kept the Services Directive from delivering its full benefits. According to a recent European Business Test Panel survey the diversity of national rules remains the main obstacle to cross-border trade in the Single Market[7]. Article 15 of the Directive, which allows countries to maintain pre-existing restrictions if judged necessary to protect the public interest, has also acted as a restraint on full and consistent implementation. While some consumers and market participants have demonstrated a preference for national and local products in many areas of services, a new impulse to the liberalisation of services within the EU could be given by applying the Directive more consistently across the EU and encouraging the Commission and national competition authorities to be more active in examining critically the concept of public interest in existing regulations. The focus should be on better and more consistent implementation rather than re-opening the Directive or further rule-making.

€5,300BN

EUROPEAN NON-FINANCIAL COMPANIES HAD LOANS OUTSTANDING OF AROUND €5,300 BILLION FROM EUROPEAN BANKS AT THE END OF 2012.

R3

Formation of a Single Market Council to replace the Competitiveness Council

A new Single Market Council for Member States' Economic Ministers should be created and tasked with bringing strategic focus to the completion of the Single Market and increasing the EU's international competitiveness. This Council should have a permanent Chair who should be appointed by the European Council for a two and a half year term. The Chair should be invited to attend European Council meetings for appropriate agenda items relevant to the remit of the Single Market Council. The Single Market Council should learn the lessons from the Internal Market Council and build on and absorb the capacities of the existing Competitiveness Council, which already deals with internal market issues as well as industry, research and innovation and space, but would bring greater focus and a strategic direction to the Single Market. The Economic and Financial Affairs Council would continue to the responsible for specific dossiers on economic policy, taxation matters, financial markets and capital movements, and economic relations with countries outside the EU.

R4

Completion of the Single Market in Financial Services

The Single Market in Financial Services remains incomplete in important respects, with insufficiently developed provision of cross-border services in insurance, pensions, capital market products and banking. In part this is intrinsic to the

[7] *Help us identify business obstacles in the internal market* European Business Test Panel (2011)

products themselves so that in insurance, for example, the local nature of retail insurance products means that cross-border sales will be the exception for the foreseeable future and firms will typically offer their services through the right to freedom of establishment. This local nature derives from a lack of adequate actuarial information across borders, poor infrastructure for cross-border claims management and fragmentation in the arrangements for taxation of insurance premiums. These arrangements will be complex to harmonise and harmonisation in some areas may not pass the subsidiarity and/or proportionality tests. Nevertheless a new focus on the removal of non-tariff barriers should be part of the work programme to broaden and deepen the Single Market in Financial Services.

In order to be clear where further reform is needed it is important that there should be a shared vision as to what the market in financial services should aspire to be. If the EU is to maximise its potential in the face of global competition there is no place, subject to tests of subsidiarity, proportionality and better regulation, for barriers which unnecessarily impede the cross-border flow of finance. TheCityUK believes that the following describes what the overarching vision for the Single Market in Financial Services should be:

The Single Market legal framework should result in an innovative and competitive financial marketplace within which borrowers, issuers of securities and insurance policies, and providers of pensions and of financial market services, will interact freely, on a non-discriminatory basis, with lenders, investors, policy holders and pension beneficiaries. They will do this on the basis of common and proportionate prudential regulation and investor or customer protection, on a cross-border basis if they choose, and have access to all necessary market infrastructure, wherever located, without necessarily requiring a local presence. The market for corporate ownership will safeguard the interests of investors and operate within a framework of sound, proportionate corporate governance and takeover arrangements, and be subject to high quality financial reporting and auditing standards.

R5
Development of a Single Capital Market

Post-crisis deleveraging and the shift towards more stringent capital requirements have contributed to constraints on the availability of finance, particularly for small and medium-sized enterprises (SMEs). This means that increased finance for investment must come from non-bank providers, including capital markets, private equity and innovative forms of finance such as crowdfunding. The diverse range of existing and potential instruments and related markets under this umbrella is generally underdeveloped and fragmented across the EU. The Commission's

10,500

OVER 10,500 COMPANIES ARE LISTED ON STOCK EXCHANGES OF EU MEMBER STATES, DOUBLE THE NUMBER IN THE US. COMPANIES RAISED €98 BILLION IN NEW EQUITY ISSUES ON STOCK MARKETS OF EU MEMBER STATES IN 2012.

€120BN

INTERNATIONAL AND DOMESTIC BOND ISSUANCE BY EU COMPANIES RAISED AN ESTIMATED €120 BILLION IN 2012.

ambition to create a Capital Markets Union is therefore to be welcomed. Enabling jobs and growth should be the main test of any reforms, rather than harmonisation or centralisation for their own sake.

Developing and integrating European capital markets will require action by European authorities, Member States, issuers, intermediaries and investors. Non-legislative and market-based solutions should be used wherever possible. Post-crisis regulatory reform should be calibrated so that the implementation of these pieces of legislation contribute to, rather than detract from, the goals of CMU. In addition, more robust enforcement of Single Market rules and competition policy will help to deliver a Single Market for capital. Capital markets development can work in tandem with other policy priorities, such as Energy Union, and attention should be given to maximising the complementarity of these policy areas.

The Commission, the European Supervisory Authorities (ESAs) and Member States should study the functioning of retail investment across the EU, with a particular focus on investor outcomes and issues like quality of guidance and advice. Such a study might particularly look at competition and best execution.

For all these reasons TheCityUK welcomes the Commission's CMU initiative. As part of its response, TheCityUK will identify the steps necessary to ensure the development of market finance. This work will extend beyond purely financial regulation and will be coordinated across disciplines. It will encompass recommendations for legislative or rule changes and support the establishment of private sector structures where there is evidence of market failure.

R6
Completion of the Digital Single Market

Studies estimate that the EU could gain up to 8% of GDP in ten years by advancing the completion of the Digital Single Market (DSM)[8]. For CMU to succeed it also needs a well-functioning DSM to allow for innovative and efficient financial markets and make optimal use of the transformation in traditional models of intermediation brought about by new technologies. These include, inter alia, new platforms for investors, peer-to-peer lending, crowd funding and supply-chain finance.

DATA-BASED INNOVATION IS EXPECTED TO LEVERAGE €330 BILLION A YEAR IN THE EU BY 2020.

[8] *Economic rationale for a Digital Single Market* Fabian Zuleeg and Robert Fontana-Reval, EPC (2010)

The capital markets framework should allow for consumers of financial services to enjoy the benefits of innovation and consequent efficiency gains. As part of CMU, the European Commission and the ESAs should collaborate on a new framework ('regulatory sandbox') to facilitate innovative and collaborative discussion between firms and authorities about how new technologies and distribution channels can develop. In addition, European policymakers should embed future-proofing in financial regulation to account for technological development.

Improved EU-wide digital infrastructure, including far wider broadband access, will be a prerequisite for a DSM. However, infrastructure alone will not suffice and the creation of a DSM implies aligning, at least to some extent, Europe's consumer protection and data protection regimes. Additionally, lack of consumer trust in cross-border services also prevents the completion of the DSM. While cultural and language barriers are contributing factors that will only slowly diminish, a clear and aligned set of rules on privacy and consumer protection will likely go some way to addressing these factors.

The draft EU Data Protection Regulation, which will replace the existing EU Data Protection Directive 95/46EC, is aimed at strengthening citizens' data protection rights and ensuring, through the mechanism of a Regulation, a consistent approach to data protection across the 28 Member States. Data Protection is firmly grounded as a fundamental human right in the proposed Regulation. This means that the compliance burden for organisations under the draft Regulation will increase considerably with the introduction of:

- breach notification;
- fines of €100 million or 5% of global turnover (as proposed by MEPs);
- explicit consent provisions to allow processing of personal data;
- appointment of data protection officers;
- a one stop shop for data controllers;
- an enhanced role for the new European Data Protection Board;
- privacy by default and design;
- a strengthening of the restrictions on transferring personal data outside of the EU; and
- an evolving concept of accountability for data controllers.

The draft Regulation looks set to change the privacy landscape in the EU and beyond for both individuals and corporates. This first overhaul of data protection legislation since 1995 is overly prescriptive and not fit for a modern, digital

AN INCREASE IN THE BROADBAND PENETRATION RATE BY 10 PERCENTAGE POINTS IS EXPECTED TO INCREASE ANNUAL PER-CAPITA GDP GROWTH BY 0.9 TO 1.5 PERCENTAGE POINTS.[9]

[9] BUSINESSEUROPE *The digital economy is crucial for growth* (2014)

economy. It will negatively affect the EU's ability to use data innovatively and exploit the opportunities provided by disruptive technologies. In making changes to the draft regulation, it will be important to cater for the increasing significance of digital data in all areas of international commerce. Trade necessarily involves international transfers of data, whether for storing customer files using cloud computing, or processing in global hubs, or complying with requirements of regulators in foreign jurisdictions, or even the transmission of basic trade documentation in electronic form. Safeguarding the data protection rights of individuals is of utmost importance in this environment, but must be achieved in a balanced and non-trade-restrictive way that will allow international commerce to function efficiently.

R7
Maintenance of access to global talent

The Single Market can only deliver its full benefits to individuals and companies if there is free movement of labour across the entire EU. This is as true of the provision of financial and related professional services as of any other sector. Financial services providers cannot provide a deep pool of capital to business or deliver the services needed in their most effective and efficient form unless they can deploy people with the right skills in whatever location across the EU those services are required. Without the availability of the right technical skills in the right language in the right location, consumers and enterprises will not receive the services they need in order to maximise their own economic opportunities. During the continued debate about the free movement of labour it will be vital to ensure that its critical role in the cross-border provision of financial services remains fully recognised.

There are increasing concerns among citizens about 'benefit tourism' and the pressure that intra-EU migration puts on public services. There is a need to respond to these concerns. However, it is difficult to tackle a problem that cannot accurately be measured. That is why the EU's Interior Ministers should ensure that reliable data on intra-EU migration is made available in cooperation with Eurostat. In light of the recent ECJ ruling which confirmed Member States' power to tackle welfare domestically, there is only a coordinating function for the EU to play.

THE EU COUNTRIES HOSTING THE LARGEST NUMBER OF EU MIGRANTS IN 2010[10]

GERMANY – 3.7 MILLION

SPAIN – 2.5 MILLION

FRANCE – 2.4 MILLION

THE UK – 2.2 MILLION

ITALY – 1.2 MILLION

[10] *EU Migrants in other EU Countries:* An Analysis of Bilateral Migrant Stocks Centre on Migration, Policy and Society (COMPAS) at the University of Oxford (2012)

5.2 Better regulation agenda

The years following the financial crisis saw a spate of fresh regulation at the global, European and national level. The crisis itself and the scrutiny of the behaviour of financial firms revealed weaknesses in previous regulatory arrangements. A comprehensive, speedy response was demanded, with the pre-eminent need to preserve financial stability in the face of the scale and magnitude of the shocks to which the financial system and its users were exposed.

Doing so much in such a short time militated against taking the necessary steps to ensure the rules which emerged catered for the needs of users of financial services and did not prevent financial firms and markets from meeting them. Now is the time to take stock and check that the regulation that is in place, or in preparation, meets what is required. It is time for a fresh look at the right regulatory design principles and the best processes to help determine the key features of good regulation and how it can best support the growth agenda.

In retrospect there were shortcomings in the way that legislative proposals were brought forward. Some of the pieces of legislation are now seen as problematic, whether because of their impact on the economy and on users of financial services or on the financial services industry. Legislative processes have sometimes taken inadequate account of the treaty principles of subsidiarity and proportionality. Such shortcomings should not be repeated as fresh legislation is considered.

R8

Reformed organisation of the European Commission, Council of the European Union and European Parliament

TheCityUK welcomes the reforms in the Commission's structure and working practices being undertaken by President Juncker. The institutional reforms which President Juncker has brought about in restructuring the Commissioners' roles, and the enhanced coordination which will result from the Vice-Presidents' responsibilities, are highly creative and desirable. In particular, the designation of a Vice-President for Jobs, Growth, Investment and Competitiveness and the First Vice-President for Better Regulation, Inter-institutional Relations, the Rule of Law and the Charter of Fundamental Rights, provide an important opportunity to increase policy coherence across key Directorates-General. There should be comparable reforms in the Council and Parliament to match the ambitions for more coordinated and effective policy-making.

R9
Impact assessments for all EU institutions by an independent Regulatory Scrutiny Board

Impact assessment, compliance cost assessment and cost-benefit analysis need to be central to the legislative and rule-making process. No legislation should go through the College of Commissioners, Council of Ministers or European Parliamentary Plenary without an adequate impact assessment having been published beforehand.

Many of the concerns which are widely held among Member States about EU legislation derive from previous failures in this area. Reform here would contribute to restoring confidence in the EU.

There are a number of institutional reforms which would help achieve this goal. Partly this relates to the quality of the resources devoted to making policy and how they are organised. The new First Vice-President responsible for Better Regulation should undertake a fundamental review of the tests which need to be applied to any legislative or rule-making proposal and the resources devoted to this work. Member States also need to commit themselves to equally sound Better Regulation processes, whether implementing EU legislation or devising their own. Improving the assessment of proposals during Level I must also address how best to involve the ESAs and proper scrutiny and testing of amendments to the initial proposal.

The First Vice-President's plan to transform the current Impact Assessment Board (IAB) into a Regulatory Scrutiny Board with a wider remit is a step into the right direction. Building on these developments, the Regulatory Scrutiny Board should be made an independent body accountable to the European Parliament. It should serve all EU institutions and scrutinise amendments by the Council and the Parliament. Currently these are being assessed separately by the Council and the Parliament as they see fit.

R10
Greater respect for subsidiarity and proportionality

The main features of Better Regulation which require particular focus are proportionality and subsidiarity. The impact of regulation needs to be proportionate to the market failure or opportunity for liberalisation that is being addressed; and regulation needs to be precisely targeted in both cases to ensure that unintended consequences are minimised.

In addition to the critical Better Regulation principle of proportionality, there also needs to be a proper balance between what is regulated at the European level and

what is regulated by Member States. The scope of action at the EU level, whether in financial and professional services or more widely, should be confined, as the Treaty says, 'if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or regional and local level'[11]. Both principles need to be tested and considered by the Regulatory Scrutiny Board before new legislation can be proposed.

R11
Mandatory post-implementation reviews

No new piece of regulation should go un-reviewed, including by Member State parliaments. There should be a requirement to examine ex-post the actual impact of each piece of legislation on the market: whether it has achieved its desired result and, if not, how it should be recalibrated. This should include reviewing the interaction with other legislation and rules and provides an excellent opportunity for the involvement of Member State parliaments. The manner of the post-implementation review should be agreed as a compulsory part of the rule-making process, as should the deadline by which the review should be completed. This builds on and universalises the processes already agreed in some instances. Reviews would not necessarily have to lead to legislative changes.

R12
Assessment of cumulative cost of regulation

When impact assessments and cost-benefit exercises are being conducted the individual costs associated with each piece of legislation should be examined alongside the cumulative cost of regulation as it affects a particular sector rather than simply being assessed on a stand-alone basis. This is to address the risk that individual pieces of legislation might appear cost-justified in isolation but not if the overall cumulative impact on the market concerned is taken into consideration. This assessment should be incorporated into the Regulatory Fitness and Performance Programme (REFIT) to which the Commission is committed and which has already achieved a lot of progress.

The European Council has already agreed that regulatory fitness should remain a priority which demands both regulatory simplification and better use of cost-benefit analysis at all governance levels and stages of the legislative process. Member States have been encouraged to use the flexibility provided to decrease the burden for SMEs as they implement European legislation.

[11] *Consolidated Version of the Treaty on European Union Article 5(3)* – Official Journal of the European Union (2012)

5.3 A European agenda for jobs, growth and competitiveness

The full realisation of Europe's economic potential was being impaired by its loss of global competitiveness even before the financial crisis. Returning to long-term economic growth is an essential part of the EU's ability to deliver on the promise of peace and prosperity. Unemployment, particularly amongst the young, is a major social issue throughout much of the EU. The twin tasks of creating jobs and encouraging faster growth represent the most important current challenges for Europe. Reform of the EU and the way it delivers for all its people is a vital part of securing future economic prosperity and delivering Europe's potential.

R13

A European Commissioner for Growth

TheCityUK welcomes the new role of the Vice-President for Jobs, Growth, Investment and Competitiveness and the commitment to jobs and growth in Europe that it signals. This portfolio should be continued in all future Colleges of Commissioners. Additionally, the Growth Commissioner should be tasked with testing all new proposed legislation for its impact on jobs, growth and competitiveness and in cooperation with the Vice-President for Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights ensure the results of this testing are featured prominently in all impact assessment reports.

R14

Eurogroup Chair to be a permanent member of the European Council

A strong and stable Eurozone is in the interest of all Member States. But it is the Single Market which both underpins the economy of every Member State and can enable the EU's ambitions for competitiveness, investment, jobs and growth to be realised. The governance of the Eurozone must thus both serve the principle of non-discrimination between Member States and support the Single Market. This could be facilitated by permanent membership of the Eurogroup Chair in the European Council. The Eurogroup Chair would be a non-voting participant.

THE TOTAL VALUE OF FINANCE PROVIDED TO EU COMPANIES AMOUNTED TO OVER €15 TRILLION AT THE END OF 2012. THIS FUNDING IS MAINLY BASED ON EQUITY CAPITAL RAISED ON STOCK EXCHANGES AND BANK LENDING, ALTHOUGH PRIVATE EQUITY AND DOMESTIC AND INTERNATIONAL BONDS ALSO PLAY A KEY ROLE.

R15

Encouraging long-term investment into the EU's economy

Long-term investment is a central part of Europe's competitiveness, jobs and growth agenda, particularly given the increasing financing demand from infrastructure projects and from growth companies. The European Commission acknowledges the need to improve access to financing for both infrastructure and growth companies in its Investment Plan.

On 4 March 2015 the IRSG, which is co-sponsored by TheCityUK and the City of London Corporation, published *Long-term Finance for Infrastructure and Growth Companies in Europe*. The report looks at long-term investment in infrastructure and growth companies, identifies obstacles to investment and makes recommendations on how to remove these barriers. It also quantifies the positive impact of additional spending on infrastructure on employment and GDP. Recommendations include the development of infrastructure pipelines and databases, the provision of refinancing guarantees, setting up central credit registers and creating national information and education resources for growth companies. The report can be accessed via our website.[12]

R16

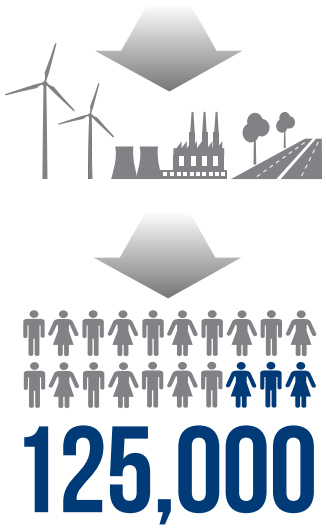
Development of a Code of Conduct for the EU's Commercial Policy

The EU does not function in isolation from the rest of the world and the international context always has to be taken into account in decision-making, especially in terms of the impact that decisions have on the EU's international competitiveness.

In negotiating trade and investment agreements the EU has far greater clout than even its largest Member States acting individually. With access to a market of 500 million consumers, the EU should continue to use its negotiating power to deliver improvements in market access, securing remedies where disputes occur, addressing non-tariff barriers, achieving regulatory coherence and responding and defining new or emerging issues such as data collection, intellectual property, forced local content requirements and the emergence of global value chains.

But the EU cannot rely on size alone in achieving results in trade and investment negotiations. As trade and investment barriers become more complex – particularly regulatory barriers in other countries – the Commission, which negotiates on behalf of Member States in keeping with the rules of the Single Market, needs to

INCREASED SPENDING ON INFRASTRUCTURE WOULD CREATE AN ADDITIONAL 125,000 JOBS IN A YEAR IN THE EU.



[12] *http://www.thecityuk.com/research/our-work/reports-list/long-term-finance-for-infrastructure-and-growth-companies-in-europe/*

draw more efficiently on the experience of Europe's businesses competing in global markets. It also needs to harness Member States' knowledge of their businesses' trade and investment experience. To do this more effectively the procedures within which trade and investment policies operate need to be improved to reflect both Commission and Member State competences and the changing features of international business, including the need to understand complex value chains. The Commission's current work towards a new trade and investment strategy for jobs and growth is therefore welcome. As part of this, TheCityUK proposes that a code of conduct be agreed for how the Common Commercial Policy (CCP) can best be run, involving the private sector, Member States and other stakeholders. This should not compromise the effectiveness of the European Commission's ability to act as the single point of contact for our trading partners during negotiations. As future trade agreements will be significantly more complex than past agreements, Member States, the private sector and other parties need to be involved in a transparent and timely manner. This would represent a vital step if the EU is to maximise its competitive advantage by negotiating market opening trade and investment agreements that play to EU commercial strengths to the maximum extent possible.

R17
Resources for negotiating trade deals

Europe will not succeed economically by looking inwards. Using the negotiating strength of the EU to make the global economy more fair and open will benefit people, businesses and states in every part of the world. Formerly the key focus was on multilateral negotiations towards global agreements liberalising trade worldwide. But the failure of the Doha Development Agenda over a decade and a half has inevitably led to a more sophisticated mix of bilateral, plurilateral and multilateral agreements. For financial and related professional services, these also have the advantage of offering scope for a far deeper regulatory component. All of this, however, requires a greater level of resources than in the past. Key current examples are the negotiations for TTIP and the TiSA: TTIP will be an unprecedented agreement between the world's two largest economies, while TiSA is being negotiated by nearly a third of the members of the World Trade Organisation (WTO), accounting for 70% of world trade in services. The Commission represents the EU in these negotiations which include financial services, telecoms, e-commerce and aspects of maritime transport.

THE EU REMAINS THE WORLD'S LARGEST EXPORTER, IMPORTER, FOREIGN DIRECT INVESTOR AND RECIPIENT OF FOREIGN DIRECT INVESTMENT.

There is an urgent need to complete ongoing trade and investment negotiations, especially with the US, Japan and India. In particular the completion of the TTIP negotiations would enable the EU to set the standards for future international services sector trade liberalisation. The EU is currently negotiating a large number of trade and investment agreements, but with very limited resources. Although the Commission is rightly giving priority to those negotiations with the greatest prospects of success, consideration should be given to moving further resources to the Commission's Trade Directorate-General and putting in place a more transparent prioritisation process, to maximise the EU's opportunities to access the economic growth that is taking place in the rest of the world.

R18

Increased spending on research and innovation

Only 13.1% of the EU's Multiannual Finance Framework (MFF) is spent on 'competitiveness for growth and jobs', which includes research, innovation, education and training.[13] The proportion should be increased to reflect the crucial role R&D spending plays in encouraging economic growth. The EU's 2020 strategy further sets national combined private and public sector R&D spending targets at 3%, a goal which the EU28 has not reached yet. Even though R&D spending as percentage of GDP grew from 1.87% to 2.06% from 2002 to 2012 in the EU28[14], more should be done to reach the 3% target.

There is a strong link between direct government funding, tax incentives and private sector R&D spending. Increasing national R&D subsidies and building on best practice in many Member States will thus play an important role. Public policy should also aim to improve public-private research collaboration and encourage the formation of innovation clusters where companies and public sector institutions jointly work on research projects and seek funding.

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU 28	1.87	1.86	1.82	1.82	1.84	1.84	1.91	2.01	2.00	2.04	2.06
Euro area	1.88	1.87	1.85	1.84	1.87	1.88	1.96	2.06	2.07	2.12	2.14

Source: Eurostat

[13] *Multiannual financial framework 2014-2020 and EU budget 2014 – The figures* – European Commission (2013)
[14] *Gross domestic expenditure on R&D, 2002–12 (% of GDP)* Eurostat (2014)

R19

Harmonisation of the EU's third country regime

Third country access to the Single Market is in the European economy's best interest and should be facilitated for those countries that demonstrate rules equivalent to the EU's. The regime applied to third countries needs to be revisited in order to minimise the costs resulting from inconsistent approaches in different directives. Japan is a good example in this context. The European Securities and Markets Authority (ESMA) and the European Commission have granted equivalence to Japan on a number of issues in European Market Infrastructure Regulation (EMIR) including with regard to Central Counterparties (CCPs). However the European Banking Authority (EBA) has given a non-equivalence determination to investment firms from third countries including Japan's securities firms. The lack of consistency in such decisions makes the EU a less attractive destination for firms from outside the EU.

As a part of the Commission's cumulative impact assessment of post-crisis regulatory reform, a rigorous and impartial study of third country regimes across the legislative framework should be undertaken. The results of this study should be the basis for beginning a political dialogue aimed at reshaping the European Union's approach to third countries and achieving international regulatory coherence in financial services. A new consistent approach to transitional periods to allow ESAs and the European Commission sufficient time to conduct third country reviews before confirming equivalence urgently needs to be agreed.

R20

Third country access to the EU and effective communication and agreement between Commission Directorates-General

Reflecting the need for the EU to be open to the many benefits in terms of jobs and growth from embracing flows of investment by international businesses, fund managers and other investors, care should be taken to ensure the maintenance of third country access to the EU as agreement is sought to deliver CMU. Equally, third party equivalence issues bring into sharp focus the requirement for effective and timely consultation procedures within the Commission so that the relevant Directorates-General are involved and engaged at arriving at an agreed approach having taken in to account all the potential impacts. DG FISMA, for example, may lead on equivalence but DG Trade has a deep interest because it affects investment. The risk is that trade and investment negotiations open markets but the equivalence rulings can undermine that.

5.4 Fair and equal treatment of all Member States

Within the Single Market legal framework it should be a matter of indifference where either providers or users of financial services are located. There is already treaty provision to this effect (Article 18 TFEU). In order to secure the maximum advantage for users of financial services it should rather be a matter for the interplay of competitive forces between providers wherever located.

The maintenance of financial stability in the euro area is a vital interest for all Member States whether within the Eurozone or outside. It follows that all Member States should be recognised as having that interest whether they belong to the Eurozone or not. The boundary between the euro and non-euro areas is completely permeable, not just for goods and services, but especially for financial services firms, with very many goods and services businesses active in each discipline active both within and outside the Eurozone. There is no reason why this should change.

Equally there is no inherent reason why regulatory requirements should be different for Euro and non-Eurozone establishments or activities. Decision-making on regulation should however be kept separate from decision-making on supervision where Member States are more differentiated, as has already been agreed in relation to banking under the arrangements surrounding the establishment of the Single Supervisory Mechanism (SSM).

The institutional arrangements for both regulation and supervision should continue to reflect both this interdependence and community of interest, with no place for discrimination on the basis of domicile within the EU, whether in terms of the transactions which may be undertaken or the location of activities or infrastructure.

R21
Strengthening the involvement of Member State parliaments

One of the most important steps in making the EU work better would be to strengthen the relationships between national parliaments and EU legislators. Increased and effective scrutiny by the relevant national legislators at the correct stages in the legislative process would both enhance the quality of legislation and improve the likelihood of subsequent political and public acceptance. While the Commission and European Parliament need to engage more energetically with national parliaments, it will also be necessary for national parliaments to put in place the processes and resources to enable this scrutiny to be real and effective,

A SIGNIFICANT CONTRIBUTOR TO ECONOMIC OUTPUT:

€636BN

THE EU FINANCIAL SERVICES SECTOR ACCOUNTED FOR €636BN OF GROSS VALUE ADDED IN 2013, NEARLY 6% OF TOTAL EU ECONOMIC OUTPUT. TAKING PROFESSIONAL SERVICES INTO ACCOUNT, THIS RISES TO AROUND 10%.

so that they can better link in EU and national activity. These processes and structures will vary between different EU Member States taking account of often long-standing national traditions.

In a second step, inter-parliamentary cooperation also could be improved to enable national parliaments to play their proper role in the European policy-making process. The Conference of Parliamentary Committees for Union Affairs (COSAC) which brings together national parliaments' EU committees with MEPs appears to be the appropriate vehicle to promote this cooperation. COSAC currently meets twice a year. This should be increased and each national parliament should commit to being represented by at least two MPs at each meeting. Additionally, the use of Interparliamentary Committee Meetings in between COSAC meetings should be increased to discuss draft legislation or other specific issues.

R22
Protecting the integrity of the Single Market

Although Treaty protection for the Single Market is well-established, European legislation for financial services has only recently begun to protect explicitly the integrity of the Internal Market and emphasise the principle of non-discrimination. Provisions that ensure fair and equal treatment for all Member States should be incorporated where appropriate in all future legislation. An example where this has already happened is MiFID II which contains a provision that no action can be taken by any regulator or by the ESMA and other European Supervisory Authorities (ESAs) that discriminates against any Member State as a location for the provision of investment services and activities in any currency.

R23
The ESAs' role and encouraging their alignment with the Single Market

Following the introduction of the SSM and the Single Resolution Board (SRB), the need for the ESAs to protect the integrity of the Single Market is gaining increasing importance. They play a key role in promoting supervisory convergence and ensuring that new structures, such as Banking Union, do not unintentionally fragment the Single Market. Over the past six years, the ESAs have mainly focused on regaining financial stability through more regulation, with many measures still having to be implemented. The Commission has estimated that over 400 Delegated and Implementing Acts (e.g. relating to MiFID II, Solvency II, Bank Recovery and Resolution Directive and CRD IV) remain to be adopted.

THE CONFERENCE OF PARLIAMENTARY COMMITTEES FOR UNION AFFAIRS

Article 10 of the Protocol (No 1) on the Role of National Parliaments in the European Union (TFEU) establishes COSAC's mandate:

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organize interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudge their positions.

The ESAs also work with the European Systemic Risk Board (ESRB) to ensure financial stability and to strengthen and enhance the EU supervisory framework. They aim to improve coordination between national supervisory authorities and raise standards of national supervision across the EU. TheCityUK does not believe that the ESAs should be given more powers, but they should be empowered to cooperate more in order to better fulfill their current mandate while respecting the role of national supervisors.

Within their supervisory role the ESAs should be given a clear responsibility to focus on the implications of how they perform their functions for jobs, growth and competitiveness. They should play a more prominent role in safeguarding the Single Market by using peer review to identify divergent application and interpretation of rules and enforcing the consistent application of rules through opinions and recommendations as set out in the Single Rulebook. They should focus on the rules for which they are responsible, and not be tempted to expend energy in trying to expand their competence.

In order to enable the ESAs to do this, they need to be more reliably resourced and where necessary be given easier access by national regulators to data on the institutions they supervise and regulate. This will enable them to interact more fully with stakeholders and improve their cooperation with National Competent Authorities (NCAs) in the formulation of the Single Rule Book through improving their consultation processes, both in terms of timetable and transparency. The data must continue to be provided by national supervisors to avoid unnecessary duplication and cost to firms. ESAs need to be more fully engaged by the Commission at the various stages of the policy-making process, while not prejudicing their independence in any way.

It is crucial that ESAs are resourced more reliably and independently, in accordance with their remit, in a manner that introduces greater accountability to stakeholders. A lack of resources for the ESAs has practical implications, as they are constrained in their legal and analytical capacity, their ability to meet legislative deadlines, to undertake sufficient peer reviews, and fulfil effectively their consumer protection obligations. The inclusion of ESA funding as a separate line in the EU Budget is therefore desirable and it is appropriate that the industry should contribute to the running costs through NCAs.

ESAs should be involved better in consultations and impact assessments relevant to their legislative work. Their expertise should be made available to Level I decision-making by submitting an opinion on Level I proposals as the ECB does, with a particular focus on jobs and growth. The ESAs' involvement in the development of Commission Impact Assessments could be systematised, as well as in ex post

assessments. More time should also be allocated to the ESAs to ensure effective consultation in relation to their Level 2 responsibilities, such that delays in Level 1 should not result in rushed rule-making in Level 2. Further work on ESAs reform and their role in protecting the integrity of the Single Market will follow.

Regulatory activities

	2011			2012			2013		
Draft regulatory technical standards**	EBA 0	EIOPA 0*	ESMA 4	EBA 1	EIOPA 0*	ESMA 39	EBA 36	EIOPA 0*	ESMA 36
Draft implementing technical standards**	EBA 0	EIOPA 0*	ESMA 0	EBA 0	EIOPA 0*	ESMA 10	EBA 21	EIOPA 1*	ESMA 3
Guidelines and Recommendations	EBA 4	EIOPA 0	ESMA 2	EBA 6	EIOPA 1	ESMA 8	EBA 6	EIOPA 6	ESMA 10
Technical advice requested from Commission	EBA 0	EIOPA 3	ESMA 5	EBA 0	EIOPA 3	ESMA 6	EBA 1	EIOPA 13	ESMA 18
Other	EBA 17	EIOPA 42	ESMA 4	EBA 25	EIOPA 29	ESMA 11	EBA 45	EIOPA 10	ESMA 29

** Pending the final adoption of Omnibus II and Solvency II EIOPA had no legal powers to adopt technical standards*
*** As submitted to the European Commission*

Common supervisory culture

	2011			2012			2013		
Colleges established	EBA 82	EIOPA 89	ESMA 0	EBA 87	EIOPA 91	ESMA 0	EBA 135	EIOPA 92	ESMA 6
Colleges visited in % of invitations	EBA 68%	EIOPA 87%	ESMA -	EBA 82%	EIOPA 82%	ESMA -	EBA 93%	EIOPA 89%	ESMA 100%
Training sessions	EBA 16	EIOPA 18	ESMA 9	EBA 13	EIOPA 21	ESMA 11	EBA 20	EIOPA 17	ESMA 28
Peer reviews completed	EBA 0	EIOPA 0	ESMA 2	EBA 0	EIOPA 0	ESMA 2	EBA 1	EIOPA 4	ESMA 2

Source: European Commission

R24
Strengthening of the ESRB's cross-sectoral approach

The ESRB is an important institution operating at the level of the EU28. The ESRB's role has been widening during the continuing integration of financial markets and it should ensure that it has adequate and specific expertise to provide opinions on non-bank (including capital market) activity. The recommendations made by the Commission and the European Parliament in relation to improvement of its performance should be assessed and the necessary action taken.

To that end, the ERSB's autonomy and independence from the ECB should be enhanced to ensure its work is truly cross-sectoral. The introduction of a two-tier managerial structure should be considered, to allow for the Steering Committee and the General Board to be co-chaired by the ECB President and a new Executive Director, so as to address the perception of the ESRB's current 'bank bias'. The Executive Director should be appointed and accountable to the General Board. This should be done within remit of Article 20 of the Regulation on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, which tasks the European Parliament and Council to 'review the modalities for the designation or election of the Chair of the ESRB' by 17 December 2013. This review has been completed and reforms are currently under consideration.

R25
Transposition and enforcement of European legislation

The Single Market can only work efficiently if its rules are completely and correctly transposed into Member States' national law in a timely manner. The European Commission's Single Market Scoreboard monitors Member States' enforcement performance. It contains data on both Member States' transposition deficit (the gap between the number of Single Market directives adopted at EU level and those in force in Member States) and compliance deficit (number of incorrectly transposed directives). The average transposition deficit currently lies at 0.7% while the compliance deficit for the EU28 stands at 0.6%.[15]

Even though the average transposition deficit has decreased gradually since 1997, the proper transposition and enforcement of EU law needs to remain a priority, especially as Internal Market and Services is the policy area with the second greatest number of cases of late transposition (198 cases in 2011) as well as infringements (Internal Market: 15%). However, these numbers do not reflect

[15] *Single Market Scoreboard* European Commission (Reporting period: 05/2014 – 11/2014)) (2015)

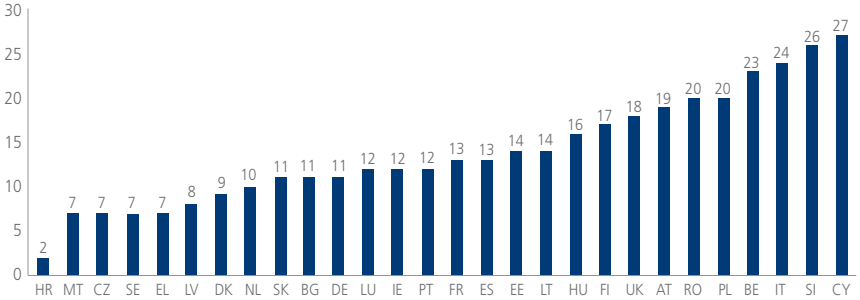
the full costs of these failings for the EU's economy as they only capture the most serious breaches.[16]

In the first instance, better adherence to the principles of proportionality and subsidiarity should reduce these delays and allow Member States to focus on the most important issues. Secondly, like all enforcement agencies, the European Commission has to prioritise cases of strategic importance and can only pursue a limited number of breaches. This power of 'selective enforcement' enables the European Commission to remain effective but also raises questions about fairness and politically motivated decision-making. The Commission has made public the criteria it uses in the selection of cases. These are however not legally binding and their application should be formalised and made more transparent.

There is concern that 'gold-plating' (when Member States exceed the minimum requirements when transposing EU laws) puts market participants in certain Member States at a competitive disadvantage and promotes divergent implementation of EU law. National authorities should provide clearer guidance on European rules to their firms and explain their rationale for gold-plating or front-running better.

The European Commission should enhance cooperation with its different agencies and relevant national actors and make proper use of new technologies, as demonstrated by the introduction of the EU Pilot tool. Prior to the adoption of new legislation, the Commission should encourage Member States to involve their officials tasked with the transposition and implementation of that particular piece of legislation and develop transposition and implementation plans. If desired the European Commission and its agencies should support Member States in these processes.

Late transposition of directives in the EU-28 (31 December 2013)



Source: European Commission (page 4, http://ec.europa.eu/atwork/applying-eu-law/docs/annual_report_31/com_2014_612_en.pdf)

[16] *29th Annual Report on Monitoring the Application of EU Law* European Commission (2012)

5.5 Long-term EU reform proposals

The imperative for reforming the EU should be to promote economic growth and secure Europe's competitive position in the global economy by focusing on well-scoped 'quick wins' that have the potential to bring tangible, immediate benefits to Europe's people. These are likely to be policy reforms that can be achieved without treaty change. These reforms are described in sections 5.1 – 5.4.

However, in order to harness the EU's full potential, constitutional reforms also need to be considered in the long-run. Bearing in mind that not all Member States are willing or able to move forward at the same speed or even on the same track, most EU Member States agree on the need for reform but have different priorities and ideas how this might be achieved. Proposals that should be considered are:

- Banking Union and any other policy or legal developments not involving all EU Member States should adopt the safeguards of the enhanced co-operation procedure;
- A provision that non-Eurozone Members have permanent observer status at Eurogroup meetings;
- Expansion of the time-frame during which the yellow card[17] can be used by national parliaments from eight to twelve weeks and lowering of the threshold to a quarter of all national parliaments;
- Re-examining the commitment to 'ever closer union' and emphasising the principles of subsidiarity and proportionality as well as the context of taking decisions as closely as possible to the citizens;
- Any treaty needs to deliver certainty as a key operative element. The legal basis for all legislation, including Banking Union, needs to be certain and the treaty framework needs to be clarified;
- Basing European decision-making processes on more genuine cooperation between European institutions and Member States and paying greater respect to the inter-institutional balance set out in Article 13(2) TEU; and
- Introducing stronger incentives for Member States to ensure the implementation of pro-competitive structural reforms.

[17] The yellow card procedure is an early warning mechanism giving Member State parliaments the opportunity to submit a reasoned opinion outlining why a specific proposal does not comply with the principle of subsidiarity. This right is enshrined in the Protocol (no.2) on the application of the principles of subsidiarity and proportionality, annexed to the TEU, TfEU and TEAEC under the Treaty of Lisbon.

BIBLIOGRAPHY

Stephen **Booth**, Christopher **Howarth**, Mats **Persson** and Vincenzo **Scarpetta**
Continental shift: Safeguarding the UK's financial trade in a changing Europe Open Europe (2011)

BUSINESSEUROPE *The digital economy is crucial for growth* (2014)

The Rt Hon David **Cameron** MP *EU speech at Bloomberg* Cabinet Office, Prime Minister's Office, 10 Downing Street (2013)

Damian **Chalmers**, Simon **Hix** and Sara **Hobolt** *Designing a new UK-EU relationship and how it could be achieved* London School of Economics (2013)

Grégory **Claeys**, Mark **Hallerberg** and Olga **Tschekassin** *European Central Bank accountability: how the monetary dialogue could be improved* Bruegel (2014)

Committee on Economic and Monetary Affairs *Enhancing the coherence of EU financial services legislation* European Parliament (2013)

Ian **Cooper** *The story of the first 'yellow card' shows that national parliaments can act together to influence EU policy* London School of Economics (2015)

Jon **Cunliffe** *evidence to the House of Lords EU Select Committee Euro area crisis: an update* House of Lords (2014)

Zsolt **Darvas** and Guntram B. **Wolff** *Should non-euro area countries join the Single Supervisory Mechanism?* Bruegel (2013)

Zsolt **Darvas** and Pia **Hüttl** *The long haul: debt sustainability analysis* Bruegel (2014)

Zsolt **Darvas** *Banking system soundness is the key to more SME financing* Bruegel (2013)

Roland **De Bruijn**, Henk **Kox** and Arajan **Lejour** *The trade induced effects of the Services Directive and the country-of-origin principle* European Network of Economic Policy Research Institutes (2006)

Jacques **de Larosière** *High-level group on financial supervision in the EU report* European Commission (2009)

Swati **Dhingra**, Gianmarco **Ottaviano** and Thomas **Sampson** *Should the UK stay or go? The economic consequences of Britain leaving the EU* London School of Economics (2015)

European Business Test Panel *Help us identify business obstacles in the internal market* (2011)

European Commission *Communication on the long-term financing of the European economy* (2014)

European Commission *Global Europe – Competing in the World: A Contribution to the EU's Growth and Jobs Strategy* European Commission – External Trade (2006)

European Commission *Green Paper Long-term financing of the European economy* (2013)

European Commission *High Level Expert Group on SME and infrastructure financing* (2014)

European Commission *Multiannual financial framework 2014-2020 and EU budget 2014 - The figures* (2013)

European Commission *REFIT – Commission making EU law lighter, simpler and less costly* European Commission Press Relaease Database (2014)

European Commission *Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth"* Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (2011)

European Commission *Single Market Act II Together for new growth* Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (2012)

European Commission *Single Market Scoreboard* (Reporting period: 05/2014 – 11/2014) (2015)

European Commission *Staff Working Document on long-term financing* (2014)

European Commission *Trade: a key source of growth and jobs for the EU* Commission contribution to the European Council of 7-8 February 2013 (2013)

European Commission *29th Annual Report on Monitoring the Application of EU Law* (2012)

European Council *Conclusions 26-27 June 2014 Summit* (2014)

Europe Economics for Business for Britain *EU Financial Regulation* (2014)

Eurostat *Gross domestic expenditure on R&D, 2002–12 (% of GDP)* Eurostat Statistics Explained (2014)

Fresh Start Project & Open Europe *Strategies for Fundamental EU reform – How to Achieve Treaty Change without Changing the Treaties!* (2014)

Charles Grant *How to build a modern European Union* Centre for European Reform (2013)

HM Treasury *Call for Evidence, Financial Services and the Free Movement of Capital* (October 2013)

House of Lords, EU Sub-Committee for Economic and Financial Affairs *European Banking Union* (2012)

Mugur **Isârescu** *Relations between euro and non-euro countries within the Banking Union* Bank for International Settlements (2014)

Jean-Claude **Juncker** *My priorities* European People's Party (2014)

Christine **Lagarde** *Jobs and Growth: Supporting the European Recovery* IMF (2014)

Malcolm **Levitt** *Getting Brussels right: "Best practice" for City firms in handling EU institutions* Centre for the Study of Financial Innovation (2010)

The Rt Hon David **Lidington** MP *Minister for Europe sets out UK approach to EU reform* Foreign & Commonwealth Office (2014)

Gerard **Lyons** *evidence to the House of Lords EU Select Committee Euro area crisis: an update* House of Lords (2014)

Kieran **McMorrow** and Werner **Roeger** *EU's growth prospects in the globalised economy* European Commission (2014)

Anand **Menon** *The next UK government must not let talk of a Brexit undermine its attempts to influence EU decision-making* London School of Economics (2015)

Ministerie van Buitenlandse Zaken *Testing European legislation for subsidiarity and proportionality –Dutch list of points for action* Government of the Netherlands (2013)

Dr Robin **Niblett** *The Future of the European Union: UK Government Policy* Chatham House (2012)

Jean-Paul **Nicolaï** et Natacha **Valla** *Quelle France Dans Dix Ans?* France Stratégie (2014)

Official Journal of the European Union *Consolidated Version of the Treaty on European Union* (2012)

Official Journal of the European Union *Consolidated Version of the Treaty on the Functioning of the European Union* (2012)

Open Europe blog team *Dutch government: "Time of 'ever closer union' in every possible area is behind us"* Open Europe (2013)

Bahar **Öztürk** and Mico **Mrkaic** *SMEs' Access to Finance in the Euro Area: What Helps or Hampers?* IMF (2014)

Jacques **Pelkmans** and Marta **Simoncini** *Mellowing Meroni: How ESMA can help build the single market* CEPS (2014)

Sebastian **Saez**, Daria **Taglioni**, Erik **van der Marel**, Claire H. **Hollweg** and Veronika **Zavacka** *Valuing Services in Trade: A Toolkit for Competitiveness Diagnostics* World Bank Group (2015)

Dr. Ulrich **Schoof et al** *Brexit – potential economic consequences if the UK exits the EU* Bertelsmann Stiftung (2015)

Nemat **Shafik** *Europe: Toward A More Perfect Union* IMF (2013)

John **Springford** *Will the Eurozone gang up on Britain?* Centre for European Reform (2014)

John **Springford** and Philip **Whyte** *The consequences of Brexit for the City of London* Centre for European Reform (2014)

TheCityUK *EU reform – A view from TheCityUK* (2014)

TheCityUK *Key facts about EU financial and related professional services* (2014)

TheCityUK *Key facts about the UK as an international financial centre* (2014)

TheCityUK *The City Listens* (2014)

TheCityUK *The City Speaks* (2013)

TheCityUK *UK and the EU – A mutually beneficial relationship* (2013)

TheCityUK/ Analitically Driven *Analysing the Case for EU Membership: How Does the Economic Evidence Stack Up* (2014)

TheCityUK/ Chlifford Chance *A Legal Assessment of the UK's Relationship with the EU – a Financial Services Perspective* (2014)

TheCityUK/ Independent Economist Group *The Economics of Trade in Services* (2015)

TheCityUK/ IRSG/ The City of London Corporation *Balance of Competences Review – Single Market: Financial Services and the Free Movement of Capital* (2014)

TheCityUK/ IRSG/ The City of London Corporation *Finance for Jobs and Growth in Europe* (2014)

TheCityUK/ IRSG/ The City of London Corporation *IRSG High Level Position Paper on Global Data* (2014)

TheCityUK/ IRSG/ The City of London Corporation *Long-term finance for infrastructure and growth companies in Europe* (2015)

Simon **Tilford** *evidence to the House of Lords EU Select Committee Euro area crisis: an update* House of Lords (2014)

Dr. Carlos **Vargas-Silva** *EU Migrants in other EU Countries: An Analysis of Bilateral Migrant Stocks* Centre on Migration, Policy and Society (COMPAS) at the University of Oxford (2012)

Fabian **Zuleeg** and Robert **Fontana-Reval** *Economic rationale for a Digital Single Market*, EPC (2010)

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